

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10426 / October 16, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18253

In the Matter of

MERGENET MEDICAL INC.,

BRUCE MATTHEW SHER,

SHARA ANNE HERNANDEZ, and

PETER ANTHONY DECICCO JR.,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Mergenet Medical Inc. (“Mergenet”), Bruce Matthew Sher (“Sher”), Shara Anne Hernandez (“Hernandez”), and Peter Anthony DeCicco Jr. (“DeCicco”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents each consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

1. Mergenet Medical Inc. ("Mergenet") is a Nevada corporation with its principal place of business in Coconut Creek, Florida. It is engaged in the development of medical devices for pulmonary and respiratory conditions. Mergenet's securities have never been listed on any exchange and Mergenet has never filed periodic reports with the Commission.

2. Bruce Matthew Sher ("Sher") is co-founder, co-president, and director of Mergenet. Sher, 53 years old, is a resident of West Palm Beach, Florida. Sher oversaw Mergenet's employees and its operations and exercised non-exclusive control over the company.

3. Shara Anne Hernandez ("Hernandez") is co-founder and co-president of Mergenet. Hernandez, 62 years old, is a resident of Davie, Florida. Hernandez oversaw Mergenet's employees and its operations and exercised non-exclusive control over the company.

4. Peter Anthony DeCicco Jr. ("DeCicco") is an employee of the corporate development and public relations department of Mergenet. DeCicco, 52 years old, is a resident of Westminster, California.

5. From September 2012 through June 2015 (the "Relevant Period"), Mergenet, a privately held development-stage medical device manufacturing and sales company, raised approximately \$1.403 million from approximately 72 accredited investors.

6. During the Relevant Period, Mergenet marketed its securities using private placement memoranda ("PPMs"), written company presentations, videos, and oral communications. Mergenet mailed and emailed the PPMs, written presentations, and videos to investors and prospective investors.

7. During the Relevant Period, Mergenet, Sher, and Hernandez, made material misstatements or omissions to investors and prospective investors regarding:

(a) the status of Mergenet's applications to the Food and Drug Administration ("FDA") in 2008 and 2009 for clearance of one of the company's technologies, the High Flow Therapy respiratory device ("HFT Device"). For example, from September 2010 to June 2015, the PPMs Mergenet distributed stated that "[s]ome of Mergenet Medical, Inc., technologies have already received FDA clearance and/or approval and others are under review." After August 2010, although some of Mergenet's products were FDA cleared, the FDA had deemed withdrawn Mergenet's applications for clearance of the HFT Device and no application for clearance of the HFT Device was under FDA review; and

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

(b) projected sales of the HFT Device and related medical supplies when at the time, the FDA had deemed withdrawn Mergenet's applications for clearance of the HFT Device and no application for clearance of the HFT Device was under FDA review.

8. During the Relevant Period, DeCicco, as an employee of Mergenet's corporate development department, made a material misstatement to investors and prospective investors regarding the status of FDA clearance for the HFT Device.

9. As a result of the conduct described above, Respondents Mergenet, Sher and Hernandez each violated Sections 17(a)(2) and (3) of the Securities Act which prohibit any person in the offer or sale of any securities, from (a) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (b) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, respectively.

10. As a result of the conduct described above, Respondent DeCicco violated Section 17(a)(2) of the Securities Act which prohibits any person in the offer or sale of any securities, from obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Mergenet's Offer, Respondent Sher's Offer, Respondent Hernandez's Offer, and Respondent DeCicco's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents Mergenet, Sher, and Hernandez cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act, and Respondent DeCicco cease and desist from committing or causing any violations and any future violations of Section 17(a)(2).

B. Respondents Sher and Hernandez each shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$60,000, and Respondent DeCicco shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000, to the Securities and Exchange Commission. If timely payment is not made by each Respondent, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bruce Matthew Sher, Shara Anne Hernandez, and Peter Anthony DeCicco Jr. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

Establish a fund under the Fair Fund provision of Section 308 of the Sarbanes-Oxley Act, as amended, to distribute to affected investors, any disgorgement, prejudgment interest, and civil penalty payments that may be made, with any remaining funds subsequently remitted to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Sher, Hernandez, and DeCicco agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Sher, Hernandez, and DeCicco agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Sher, Hernandez, or DeCicco by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by each Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary