IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES SECURITIES and EXCHANGE COMMISSION, Plaintiff, v. SOLOMON RC ALI, a/k/a RICHARD MARSHALL CARTER, JR., Defendant.	Civil Action No. 1:18-CV-1832-RWS

ORDER

This case comes before the Court on Plaintiff United States Securities and Exchange Commission's ("SEC") Motion for Partial Summary Judgment [Doc. 67 (liability only)] and Motion to Strike the Counterclaim [Doc. 66] of Defendant Solomon RC Ali ("Ali"). Also before the Court are various *pro se* motions submitted by Defendant Ali, including two Motions to Dismiss for Failure to State a Claim [Docs. 52, 63] and a Motion for Extension of Time to Complete Discovery [Doc. 55]. These matters are ripe for disposition. For the reasons explained herein, the Court finds that Plaintiff's Motion for Partial Summary Judgment and Motion to Strike Counterclaim are due to be granted, and Defendant Ali's motions are rendered moot.

I. Factual Background

This civil action is prosecuted by the SEC pursuant to Section 10(b) of the Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933 ("Securities Act"). See 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. § 77q(a). The SEC asserts that Defendant Ali perpetrated an egregious fraud against the investors of Revolutionary Concepts, Inc. ("REVO"), a start-up company that holds technology patents, while serving as REVO's Senior Vice President. The SEC contends that Ali arranged for REVO to enter into multiple transactions with entities that Ali had a financial interest in to the detriment of REVO's investors. According to the SEC, the transactions were shams and not conducted at arms-length in that Ali had close ties to the other companies, the assets REVO purportedly acquired were worthless, and Ali's claim in each instance that REVO could potentially earn millions from the deals was baseless. The SEC argues that Ali violated the federal securities laws by publishing press releases that he knew to be false or misleading in connection with the REVO sham transactions.[1]

[1] In addition to Ali, the SEC brought claims against REVO, Rainco Industries, Inc. ("Rainco" or "RCI"), Earnest H. DeLong, Jr. ("DeLong"), and Nicole C. Singletary ("Singletary"). [Doc. 1]. Each of these defendants has since agreed to payment of a civil penalty and entry of Final Judgment against them. [Docs. 7-10].

The SEC moves for partial summary judgment pursuant to Federal Rule of Civil Procedure 56 based upon the pleadings, statement of material facts, exhibits, and discovery materials submitted to the Court.[2] When evaluating the merits of a motion for summary judgment, the court must "view the evidence and all factual inferences raised by it in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-moving party." Comer v. City of Palm Bay, Florida, 265 F.3d 1186, 1192 (11th Cir. 2001). However, mere conclusions and unsupported self-serving statements by the party opposing summary judgment are insufficient to avoid summary judgment. See Ellis v. England, 432 F.3d 1321, 1326 (11th Cir. 2005) ("[S]elf-serving statements *alone* do not create a genuine issue of material fact.") (emphasis added)).

Defendant Ali filed a document labeled "Defendants' [sic] Response to Plaintiff's Statement of Undisputed Material Facts in Support of its Motion for Partial Summary Judgment and Controverting Statement of Facts." [Doc. 79 – "Def. Resp. PSMF")]. Ali did not file a separate Statement of Disputed Facts, and his response is largely conclusory and argumentative. For example, preceding his response to each disputed fact is some version of the following: "Plaintiff's

[2] The SEC and this Court served a Notice to Respond to Summary Judgment Motion on Defendant Ali given his *pro se* status. [Docs. 70, 75].

statement . . . is inaccurate, misguided, and Plaintiff has not told the whole story and they have ignored and misstated the facts. Plaintiff's misstatement is misleading and mischaracterizes the evidence in an attempt to unfairly attribute a wrong intent or motive to Defendant. The evidence cited does not support the Plaintiff's statement and does not support the position asserted." [Def. Resp. PSMF, *passim*]. Ali has largely failed to comply with Local Rule 56.1(B)(2), N.D. Ga., which provides in pertinent part:

> This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence . . .; (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1).

LR 56.1(B)(2)(a)(2), N.D. Ga.; see also Thyssen Elevator Co. v. Drayton-Bryan Co., 106 F. Supp. 2d 1342, 1345 n.1 (S.D. Ga. 2000) ("Unrebutted, evidentially supported Fact Statements are deemed admitted under S.D. Ga. Local Rule 56.1 and Dunlap v. Transamerica Occidental Life Ins. Co., 858 F.2d 629, 632 (11th Cir. 1988)."). Because the Court finds that Plaintiff SEC's fact statements are supported by the evidence presented, its SMF are deemed admitted unless otherwise noted herein.

Ali was born Richard Marshall Carter, Jr. in 1964. [Deposition of Defendant Solomon RC Ali ("Ali Dep.") 17-18, 25]. He changed his name to Solomon RC Ali in 2008. [Ali Dep. 22-23].

In July 2010, Ali became an officer and director of REVO, a publicly traded penny stock company.[4] [Ali Dep. 47, Exhibit 2 at 1, Exhibit 5 at 3]. Ronald Carter ("Carter"), who is not related to Ali, founded REVO. [Ali Dep. 45]. REVO owns patents related to smart camera technology. [Ali Dep. 41-42].[5] From 2012 through 2014, Carter and Ali were the senior officers and the only full-time employees at REVO. [Ali Dep. 58-59, 64-65]. As a start-up company, REVO did not have any earnings or revenue, and its stock traded at less than one cent per share. [Ali Dep. 41-42, 65-66, Exhibit 32].

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[4] Ali worked for and became a director of another publicly traded penny stock company named Universal Bioenergy, Inc. ("UBRG"), in 2009. [Ali Dep. 35-37, 285-87, Exhibits 39, 40]. UBRG is a public company founded in 2004 under the name Palomine Mining Inc., whose business is related to "the production, marketing, and sales of natural gas, petroleum, coal, liquefied natural gas, propane, refined petroleum products, electricity, and alternative energy" and "the acquisition of oil and gas fields, lease acquisitions, development of newly discovered or recently discovered oil and gas fields, re-entering existing wells, and transmission and marketing of the products to [its] customer base." [Daniel Report ¶ 29 (citations omitted)]. According to Ali, his job at UBRG as Senior Vice President for Finance and Investor Relations was "to raise capital" and "put out" press releases. [Ali Dep. 36]. As of the filing of the complaint in 2018, Ali was still a director of UBRG.

[5] Ali elaborated on the business of REVO in his deposition and explained that REVO has other patents as well that involve "two-way audio/video, motion sensors. . . ." [Ali Dep. 42].

Ali was hired by REVO because of Ali's prior experience in "corporate finance" and his ability "to raise money." [Ali Dep. 45-47]. Carter named Ali REVO's Senior Vice President for Corporate Finance and Investor Relations. [Ali Dep. 47]. Ali was responsible for overseeing REVO's finances, mergers, and acquisitions, helping REVO raise money, and increasing REVO's market capitalization. [Ali Dep. 51, 53, 55-56, 63-64, Exhibits 4, 5]. Ali professes to be self-taught but does not have a college degree or hold any professional certifications in accounting, business, finance, or evaluation. [Ali Dep. 22-24; PSMF 3; Def. Resp. PSMF 3].[7] Ali also wrote and issued REVO's press releases. [Ali Dep. 56, 74-82, Exhibit 6 at 277-78].

The Ali Trusts

Between 2009 and 2011, Ali created seven irrevocable trusts (the "Ali Trusts"). [Ali Dep. 319-20, Exhibits 59, 64-65, 67-71]. The Ali Trusts include the Rainco Holdings Trust, the Deen Executive Trust, the Ghanimah Holdings Trust, the Ibadah Life Trust, the Patronus Capital Trust, the Premier Executive Trust, and the Falah Family Trust. [Ali Dep. 319-20, Exhibits 59, 64-65, 67-71]. Ali and his family members were designated as the primary beneficiaries for six of the seven trusts.

[7] Ali attended a junior college but did not graduate. [Ali Dep. 22-23]. He claims to have taken various independent professional education courses and/or seminars and read numerous books on these subjects. [Ali Dep. 24; Def. Resp. PSMF 3].

[Ali Dep. 320, 342-44, Exhibit 66; Deposition of Earnest H. DeLong, Jr. ("DeLong Dep.") 33-39]. The Falah Family Trust designated charities as beneficiaries. [Ali Dep., Exhibit 66]. Ali appointed his attorney, Earnest H. DeLong, Jr., (also a named Defendant) the trustee for each of the trusts. [Ali Dep. 320; DeLong Dep. 17-18]. Ali did not fund the Ali Trusts with any assets when they were created. [DeLong Dep. 19-20, 22-23]. Financial records reveal that the Ali Trusts never had more than nominal assets. [DeLong Dep., Exhibits 9-15]. According to DeLong, "most of the accounts . . . had little or no money in them." [DeLong Inv. 119-120; DeLong Dep., Exhibit 9 at 193, Exhibit 11 at 461, Exhibit 12 at 539, Exhibit 13 at 404, Exhibit 14 at 102, Exhibit 15 at 026]. According to Ali, the Ali Trusts had a combination of corporate convertible notes and cash assets and received revenues in cash fees. [Def. Resp. PSMF 26, 40 (citing September 15, 2015, Declaration of Ross T. Helfer ("Helfer Decl.")), 60]. In addition, DeLong opened brokerage accounts for three of the Ali Trusts. [DeLong Dep. 65, Exhibits 16-20]. Most of the Ali Trusts' holdings were shares of stock or promissory notes relating to REVO and UBRG, companies at which Ali was an officer and director. [DeLong Dep. Exhibits 16 at 19432, Exhibit 18 at 017, Exhibit 20 at 001; DeLong Inv. 134-35].

Rainco Industries, Inc.

In 2011, Ali created a company called Rainco Industries, Inc. (also a named Defendant). [Ali Dep. 302, Exhibit 50; DeLong Dep. 107]. Ali made the Rainco Holdings Trust - one of the seven Ali Trusts for which Ali was the primary beneficiary - the majority shareholder of Rainco. [Ali Dep. 308, Exhibit 66 at 15; DeLong Dep. 110]. Ali's daughter was a director and the Corporate Secretary of Rainco. [Ali Dep. 118, Exhibits 55-56]. Nicole Singletary, Ali's "on and off" girlfriend between 2012 and 2016, was the President of Operations for Rainco. [Ali Dep. 21-22, Exhibit 52]. DeLong was Rainco's General Counsel. [DeLong Dep. 109].

Underlying Transactions

In support of its partial summary judgment motion, the SEC has submitted, *inter alia*, an Expert Report dated March 8, 2019, and prepared by Brian M. Daniel, ASA, CFA, CLP ("Daniel"), Vice President of Charles River Associates ("CRA"), an international consulting firm specializing in the areas of business valuation, licensing, and litigation and support services. [Doc. 67-8 – Daniel Report]. CRA was retained by the SEC to independently analyze the four transactions described below. Daniel's expert report provides a comprehensive analysis of the individuals

allegedly involved, the relevant entities, and the underlying transactions that are the subject of the SEC's case.[10]

REVO's Purchase of Greenwood Finance Group, LLC

In December 2012, Ali proposed that REVO acquire Greenwood Finance Group, LLC ("Greenwood"), a wholly owned subsidiary of Rainco. [Ali Dep. 84-85, 122, Exhibit 10].[11] REVO's purchase of Greenwood was consummated on December 7, 2012. [PSMF 72; Ali Dep. Exhibit 12]. Greenwood was created three weeks prior to the REVO purchase. [PSMF 86; Daniel Report ¶¶ 22, 31-40].

REVO issued securities purportedly valued at $18 million to Rainco as consideration for the Greenwood acquisition.[12] [Daniel Report ¶ 20]. However,

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[10] The graphics within the Daniel Report, incorporated herein by reference, best illustrate Defendant Ali's role and relationship to the entities involved in each transaction. [Daniel Report at 12, Figure 1 – REVO Acquisition of Greenwood; Daniel Report at 26, Figure 3 – REVO and Eyetalk License Agreement; Daniel Report at 35, Figure 5 – Greenwood Receives $10 Million Line of Credit from Rainco; Daniel Report at 46, Figure 6 – Greenwood Receipt of UBRG Notes as Interest].

[11] Greenwood, formed November 20, 2012, is described as a private equity firm that provides consultation services to early-stage businesses, as well as "broad-spectrum investment and capital services to small-cap and micro-cap companies." [Daniel Report 22, Ali Dep. Exhibit 30].

[12] REVO issued to Rainco 10 million shares of REVO Series A Convertible Preferred Stock valued at $1.80 per share for a total purchase price of $18 million. [Daniel Report ¶ 31; Deposition of Nicole Singletary ("Singletary Dep."), Exhibit 648]. Each Series A Convertible Preferred share was convertible into 1.8 shares of REVO common stock. [Daniel Report ¶ 31; Singletary Dep. Exhibit 648]. The value of REVO shares was an arbitrary value, and the purchase agreement expressly acknowledged that REVO (the

Greenwood's only assets were seven promissory notes issued by the Ali Trusts that required the Ali Trusts to pay $7.1 million in principal and to make annual interest payments of about $1 million. [Ali Dep. 143, 145, Exhibit 7 at 1-28, Exhibit 9 at 2]. Ali did not tell the REVO Board of Directors that he was the Settlor of the Ali Trusts, that he and his family members were the beneficiaries, or that the Ali Trusts only had minimal assets. [Ali Dep. 95-96, 99, 102-103].

The parties dispute the capability of the Ali Trusts to pay Greenwood the annual interest-only payment and/or the principal balance. [PSMF 60-61; Def. Resp. PSMF 60-61].[13] According to Ali, the promissory notes were balloon notes due to mature in ten years and, therefore, did not require principal payments to be made to Greenwood until the end of the ten-year period. [Def. Resp. PSMF 60; Daniel

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buyer) is a development stage company with no market value for its Preferred shares, and that there is no assurance that a market for those shares will ever exist. [Daniel Report ¶ 32; Singletary Dep. Exhibit 648; Ali Dep. 126 (agreeing that the $1.80 per share value was arbitrary)]. The arbitrary nature for setting the value of the REVO Preferred shares was not publicized. [Daniel Report ¶ 32]. REVO was also required to pay Rainco an annual dividend of $0.18 per share, totaling $1.8 million per year, which was never paid. [Daniel Report ¶ 31; Singletary Dep., Exhibit 648; Ali Dep. 127, 451].

[13] In his response to PSMF 60, Ali describes in detail the mechanism and his rationale for funding the Ali Trusts and how they could legitimately issue promissory notes to Greenwood; Ali contends that the SEC "failed to understand the REVO / Greenwood transaction and their business model. . . ." [Def. Resp. PSMF 60]. According to Ali, "[a] convertible note is a debt instrument similar to a bond whereby an investor or lender can convert the note into equity or preferred or common stock of the issuer or company." [Def. Resp. PSMF 60].

Report ¶ 22]. Ali represents that the Ali Trusts were only required to make one annual interest-only payment to Greenwood. [Def. Resp. PSMF 60]. The first $1 million annual interest payment was due October 1, 2013, since the notes were issued October 1, 2012. [Daniel Report ¶ 22]. This was not paid.

On December 6, 2012, the day before acquiring Greenwood, REVO issued a press release titled, "REVO Seeks $15 Million Acquisition to Support Eyetalk Development." [Daniel Report ¶ 33 (citation omitted)]. Speaking about Greenwood, Ali is quoted as stating that, "[m]anagement believes this acquisition could be valued at greater than $15 million. The company being evaluated has a current EBITDA in excess of $1 million." [Daniel Report ¶ 33 (citation omitted)]. Ali is identified within the press release as the REVO contact. [Daniel Report ¶ 33 (citation omitted)].

In January 2013, REVO issued two press releases concerning its acquisition of Greenwood. On January 4, 2013, REVO officially announced the Greenwood purchase. Ali is quoted as follows: "After several months of negotiations, we are enthusiastic about an acquisition that brings RCI [REVO] significant revenues, assets, and the potential for a greater upside in 2013. This is an historical event in terms of RCI finally becoming profitable. . . . Greenwood is the first acquisition providing much needed book value and cash flow." [Daniel Report ¶ 34]. On

January 9, 2013, REVO issued another press release announcing new marketing and funding strategies in light of its Greenwood acquisition. Ali is quoted in pertinent part: "On the heels of $3 million in profits from 2012 to work with, Greenwood is set to exceed its 2012 funding revenue. . . . RCI will now have access to a larger spectrum of lending and financing sources." [Daniel Report ¶ 35].

In June 2014, Ali issued press releases stating that Greenwood was meeting with its "original investors" about collecting on the delinquent interest payments but did not share that Greenwood's original investors consisted of the Ali Trusts. [PSMF 96, 97; Ali Dep. Exhibits 35-36]. In addition, REVO's June 2014 press releases failed to disclose that Rainco, the entity selling Greenwood to REVO, was owned by one of the Ali Trusts. [Ali Dep. 118, 124-25]. Ali knew but failed to disclose in the press release that Greenwood was not "generating significant revenues and net profits." [Ali Dep. 145; DeLong Dep. 172-73; Daniel Report ¶¶ 33-37].

In February 2014, REVO licensed its patents to a newly-formed company named Eyetalk365, LLC ("Eyetalk").[18] [PSMF 126; Ali Dep. 158-59, Exhibits 16, 21]. The license agreement was Defendant Ali's idea. [PSMF 127; Ali Dep. 159]. Ali's ownership interest in Eyetalk, and what Ali knew about his potential for

[18] Eyetalk was incorporated in September 2013 for this purpose. [PSMF 128; Ali Dep. Exhibits 16, 19, 28].

obtaining an ownership interest, is disputed. [PSMF 129; Ali Dep. 173, Exhibit 17 at 1; Exhibit 18 at 1-3].

On February 12, 2014, Ali drafted and issued a press release announcing the Eyetalk deal stating that "the transaction could generate millions in long-term revenues[,]" and that "REVO will receive an up-front sign-up fee or pre-commercialization fee of $900,000 in consideration[.]" [PSMF 137-38; Ali Dep. 211, Exhibit 28].[19] Ali described the Eyetalk deal as "a major milestone" for REVO. [PSMF 141; Ali Dep 217, Exhibit 28].

On February 12, 2014, Ali wrote and issued a second press release entitled, REVO "Forecasts $30 Million in Revenues and $12 Million in Earnings from Global License of its Patented Technology Security System." [PSMF 142; Ali Dep. 220, Exhibit 29]. Ali is quoted as saying, "The total forecasted annual revenues to be

[19] According to the SEC, the $900,000 fee for the Eyetalk deal (i.e., alleged consideration) was REVO's promissory notes previously assigned to Ali and Carter being returned. [PSMF 140]. Ali took $500,000 in promissory notes issued by REVO to him that the SEC contends REVO could not make payments on, Ali donated the $500,000 to one of the Ali Trusts naming Ali's daughter and grandson as beneficiaries, and the Ali Trust then assigned the $500,000 in REVO notes to Eyetalk in exchange for a 19% ownership interest in the company. [PSMF 130-33; Ali Dep. 165-68, 177-78, 187, 194, Exhibit 20 at 4, Exhibit 22 at 1, Exhibit 23]. Eyetalk engaged in a similar transaction involving $400,000 in allegedly uncollectible REVO notes with Ron Carter. [PSMF 134; Ali Dep. Exhibits 24-25]. Eyetalk assigned the notes back to REVO as payment for the license. [PSMF 135; Ali Dep. 177-78]. REVO canceled its own notes and treated the $900,000 ($500,000 + $400,000) as consideration for the license agreement. [PSMF 136; Ali Dep. 178].

generated is in the $20 to $30 million range. The potential earnings for REVO is estimated at $8 to $12 million annually." [PSMF 143; Ali Dep. Exhibit 29]. Ali has presented no evidence to substantiate these claims. [PSMF 144; Ali Dep. 231; Daniel Report ¶¶ 81-88]. Ali testified that he "backed into" the valuation by assuming that, "if we're lucky, we will get about .001 to .005 percent" of the "84 billion dollar [technology] industry." [PSMF 145; Ali Dep. 221-25]. REVO received no money from Eyetalk in 2014 and received $77,000 in 2015. [PSMF 146; Ali Dep. 232; Helfer Decl. ¶ 11].

The February 12, 2014, press releases published by Ali failed to disclose that the license was with Eyetalk, that an Ali Trust owned 19% of Eyetalk, and that Eyetalk's $900,000 license fee was paid through a series of circular transactions involving REVO's own promissory notes. [PSMF 147; Ali Dep. Exhibits 28-29].

REVO / Greenwood's $10 Million Line of Credit with Rainco

In June 2014, REVO and its wholly owned subsidiary Greenwood obtained a $10 million line of credit from Rainco. [PSMF 108; Ali Dep. 241-42, Exhibit 33]. Ali negotiated the line of credit for REVO and Greenwood.[20] [PSMF 109; Ali Dep.

[20] According to the SEC, Ali drafted and signed the loan agreement. [PSMF 110]. Ali represents that REVO's President and CEO, Ronald Carter, signed the loan agreement (titled, "Senior Secured Revolving Credit Facility Agreement") on behalf of REVO. [Ali Dep. 242].

Exhibit 33]. Ali admits that he did not review Rainco's financial statements to see if Rainco had $10 million to lend REVO.[21] [PSMF 112; Ali Dep. 244, 251-52, 254]. REVO never accessed any funds through this line of credit. [PSMF 114; Ali Dep. 241-42, 275, Exhibit 33].

On June 24, 2014, Ali drafted and published a press release which stated that REVO and Greenwood were "working on a Definitive Agreement that would provide a Ten Million dollar line of credit to fund [their] revitalized investment operations." [PSMF 117; Ali Dep. 257, Exhibit 35]. A similar press release was issued the following day in which Ali is quoted as saying, "The borrowing of up to ten million dollars will not only help Greenwood's growth by addressing its bottom line but will ensure the creation of value through an accumulation of assets that can realize normal industry gains." [PSMF 119, 120; Ali Dep. 267-68]. Ali did not disclose in either press release that the lender was Rainco, that Rainco was owned by one of the Ali Trusts, and that Rainco did not have $10 million to lend. [PSMF 118, 121; Ali Dep. 257, Exhibit 35].

On July 2, 2014, Ali wrote and published another press release entitled, REVO "Signs New Agreement for $10 Million Line of Credit with Funding Company and

[21] At the end of 2014, Rainco's financial statements show that Rainco was negative $21,661.23 in its bank and brokerage accounts. [PSMF 113; Ali Dep. 241-42, 275].

Forecasts $20 Million in Revenues and $5 Million Profit." [PSMF 122; Ali Dep. 271, Exhibit 37]. Ali is quoted as estimating "$5 million in annual profits from this new credit facility;" "generat[ing] returns of 100% or more" from the borrowed funds; "forecast[ing] annual revenues . . . in the $10 to $20 million range;" and adding "75 million dollars" in "potential additional market value [to] the earnings to REVO." [PSMF 123; Ali Dep. Exhibit 37]. Ali has no documents that support the values recited within the Press Release. [PSMF 123; Ali Dep. Exhibit 37; Daniel Report ¶¶ 106-110]. Ali finally described REVO's receipt of the $10 million line of credit as "a monumental step in the history of" REVO. [PSMF 125; Ali Dep. 240-41, 275, Exhibit 37].

January 2015 UBRG Notes to Greenwood

In January 2015, Ali arranged for the Ali Trusts to make the required interest payments to REVO (now over $1 million) by transferring to Greenwood convertible promissory notes from UBRG. [Ali Dep. 281-83, 288-96, Exhibits 41-47]. Ali was still an officer and director of UBRG at the time. [Ali Dep. 281-83, 288-96, Exhibits 41-47]. On January 5, 2015, the Ali Trusts transferred UBRG notes with a face value of $200,000 to Greenwood, which was far less than the $1 million in accrued interest that the Ali Trusts owed under its notes. [Ali Dep. Exhibits 41-47]. UBRG never made any payments on its notes to Greenwood. [PSMF 101; Ali Dep. 301; Daniel

Report ¶ 148; Inv. Exhibits 476-77]. REVO did not realize any revenue from the receipt of the UBRG notes. [PSMF 103; Ali Dep. 301]. In fact, as of June 30, 2014, UBRG reported only $342 in cash and $14,453 in assets. [PSMF 102; Daniel Report ¶ 148].

On January 16, 2015, Ali wrote and published a press release entitled REVO "Announces Early Q1 Revenue." [PSMF 104; Ali Dep. 297-98; Exhibit 48]. Ali reported that "Income from a series of transactions recorded this month have a cash value that may well exceed one million dollars." [PSMF 105; Ali Dep. 297-98; Exhibit 48]. Ali concedes that he has no evidentiary support for this claim concerning the value of the deal likely exceeding one million dollars. [PSMF 106; Ali Dep. 301, Exhibit 40; Daniel Report ¶¶ 134-44]. Ali represented that REVO was "becoming a global technology company." [PSMF 107; Ali Dep. Exhibit 48].

Plaintiff's motions are ripe for disposition.

II. Summary Judgment Standard

Federal Rule of Civil Procedure 56 requires that summary judgment be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "The moving party bears 'the initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of the pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.'" Hickson Corp. v. N. Crossarm Co., 357 F.3d 1256, 1259 (11th Cir. 2004) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (internal quotations omitted)). Where the moving party makes such a showing, the burden shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). The applicable substantive law identifies which facts are material. Id. at 248. A fact is not material if a dispute over that fact will not affect the outcome of the suit under the governing law. Id. An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 249-50.

In resolving a motion for summary judgment, the court must view all evidence and draw all reasonable inferences in the light most favorable to the non-moving party. Blue v. Lopez, 901 F.3d 1352, 1357 (11th Cir. 2018); accord Patton v. Triad Guar. Ins. Corp., 277 F.3d 1294, 1296 (11th Cir. 2002). The Court is bound only to draw those inferences that are reasonable. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997)

(quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (internal citations omitted); see also Matsushita, 475 U.S. at 586 (once the moving party has met its burden under Rule 56(a), the nonmoving party "must do more than simply show there is some metaphysical doubt as to the material facts").

III. SEC's Motion for Partial Summary Judgment

The SEC moves for partial summary judgment on liability as to all claims. According to the SEC, Ali's actions and statements were purposefully designed to mislead and to encourage investment in REVO. As highlighted by the SEC, Defendant admits much of what the SEC alleges in its complaint. Ali admits that he was responsible for the content of the press releases at issue in this case. Ali attempts to defend his actions as not running afoul of the law.[22] Ali is mistaken.

"The SEC promulgated Rule 10b–5 pursuant to authority granted under § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b)." Janus Capital

[22] The SEC characterizes Ali's main arguments in his defense as follows: "First, Ali contends that he should not be held liable because he was not REVO's CEO. . . . Second, Ali argues that under Georgia law he did not own the Ali Trusts or Rainco and, thus, he had no duty to disclose their involvement in REVO's deals. . . . Third, Ali contends that he may not be held liable for false statements that involve future projections. . . . Fourth, Ali's contention that the Ali Trusts could have paid their debts by converting notes from REVO into stock and then selling the shares lacks merit. . . ." [Doc. 82 at 2-3].

Grp., Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2301–02 (2011). Rule 10b-5 reads:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) 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 were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5 (implementing 15 U.S.C. § 78j and 10-5).

"In order to establish a section 10(b) or Rule 10b–5 violation, the SEC must prove (1) a material misrepresentation or materially misleading omission; (2) in connection with the purchase or sale of securities; (3) made with scienter." S.E.C. v. Monterosso, 756 F.3d 1326, 1333-34 (11th Cir. 2014) (citations omitted).

"[T]he Supreme Court has instructed that § 10(b) and its 'in connection with' requirement be construed 'flexibly to effectuate its remedial purposes.'" S.E.C. v. Goble, 682 F.3d 934, 945–46 (11th Cir. 2012) (quoting SEC v. Zandford, 122 S. Ct. 1899, 1903 (2002)). "Therefore, the term 'purchase' as used in § 10(b) is not limited to 'traditional face-to-face commercial transactions.'" Id. (quoting Coffee v. Permian Corp., 434 F.2d 383, 385 (5th Cir. 1970)).

Section 17(a) of the Securities Act, requires substantially similar proof, and "[t]o show a violation of section 17(a)(1), the SEC must prove (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter." Id. at 1334 (citation and internal quotation marks omitted). "To show a violation of section 17(a)(2) or 17(a)(3), the SEC need only demonstrate (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with negligence." Id. (citation and internal quotation marks omitted).

Ali concedes the "instrumentalities of interstate commerce" and "in connection with" the sale of securities criteria of the SEC's Section 10b-5 claims. [Doc. 82 at 14].[23] And the "in the offer or sale of" element of Section 17(a) is interchangeable with Section 10b-5. See SEC v. Radius Capital Corp., 653 Fed. Appx. 744, 749 (11th Cir. 2016). The focus of the Court's analysis is the first and third elements.

[23] Ali used the internet and newswires to publish REVO's press releases. [PSMF 149; Ali Dep. 71].

Section 10(b), 10b-5, and Section 17(a) Claims[24]

A. Ali is Responsible for "Material Misrepresentations" & "Material Omissions"

"[M]ateriality is an 'objective' inquiry involving the significance of an omitted or misrepresented fact to a reasonable investor." SEC v. Morgan Keegan & Co., Inc., 678 F.3d 1233, 1248 (11th Cir. 2012) (quoting TSC Indus. v. Norway, Inc., 96 S. Ct. 2129, 2130 (1976)). "In other words, a misstatement or omission is material if there is a 'substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'" Id. (quoting TSC Indus., 96 S. Ct. at 2132); see also SEC v. Ginsburg, 362 F.3d 1292, 1302 (11th Cir. 2004); SEC v. Merchant Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2007) (applying "reasonable man" standard). "[T]he materiality test requires the court to consider *all* the information available to the hypothetical reasonable investor[.]" Morgan Keegan & Co., Inc., 678 F.3d at 1248 (citation omitted; emphasis in original). The SEC only needs to prove one material misstatement or material omission in order to establish liability. Id.

[24] And because the ability of the SEC to establish violation of 10(b) and 10b-5 necessarily establishes violation of 17(a), the Court limits its discussion to the former.

As previously discussed, Ali admits that he wrote and published the REVO press releases at issue in the case. [Def. Resp. PSMF ¶¶ 18-19]. Once someone chooses to speak, the securities laws require "full and fair" disclosure about the deal. Merchant Capital, 483 F.3d at 769. Significantly, the securities laws prohibit "half-truths." Find What v. FindWhat.com, 658 F.3d 1282, 1305 (11th Cir. 2011).

First, Ali's representations that REVO's purchase of Greenwood made REVO more profitable were not true and no reasonable jury could conclude otherwise. [Daniel Report ¶ 34]. In the December 6, 2012, press release, REVO touts the Greenwood acquisition as having a value greater than $15 million. [Daniel Report ¶ 33; Ali Dep. Exhibit 13]. However, the record reveals that Greenwood had only been created three weeks prior for the sole purpose of the acquisition. [PSMF 86; Ali Dep. 142-43; Daniel Report ¶¶ 31-40]. Ali personally testified that Greenwood had not conducted any business that he was aware of. [Ali Dep. 466]. In reality, Greenwood's only assets were the promissory notes from the Ali Trusts.[26] [PSMF 89; Daniel Report ¶ 36]. There is no documentary evidence of any Greenwood $15 million valuation performed by Ali, REVO, or Rainco. [Daniel Report ¶¶ 38, 40;

[26] Between 2013 and 2015, the highest ending daily balance for any of the Ali Trusts was $30,050, and the highest ending monthly balance was $8,294. [DeLong Dep., Exhibit 10 at 286, 302, Exhibit 9 at 166; Daniel Report ¶ 39 n. 66].

Ali Dep. 443]. In fact, there is no evidence that Greenwood had $15 million revenue in 2012, and Greenwood had no revenue at all in 2013 and 2014.[27] [PSMF 91; Ali Dep. 282]. There is no evidence to suggest that an unrelated buyer would have been willing to pay $18 million to acquire Greenwood. [Daniel Report ¶ 71]. In addition, Ali did not disclose the related party-nature of REVO's acquisition of Greenwood from Rainco, which is important information for investors and potential investors to consider "because related party transactions may not yield arm's-length results." [Daniel Report, Executive Summary, ¶¶ 66-69, 70-72].[28]

Similarly, Ali issued press releases claiming that the REVO/Eyetalk license could lead to "$30 million in revenues." [Ali Dep. Exhibits 13, 29, 37, 48]. However, Eyetalk was formed on September 17, 2013, less than five months prior to execution of the license agreement. [Ali Dep. Exhibit 15]. There is no evidence that Eyetalk had begun product development at the time of the license agreement,

[27] Ali's contention that the Ali Trusts could have paid their debts by converting notes from REVO into stock and then selling the shares lacks merit. . . ." [Doc. 82 at 2-3]. To avoid summary judgment, Ali must produce evidence to this effect; not merely say so. Ali has produced no evidence that the Ali Trusts could have sold the hundreds of millions of shares of REVO stock needed to make the annual $1 million interest payments to Greenwood, and he concedes that if that course of action had been taken, the value of REVO shares would have been diluted.

[28] Identification of related party transactions is also required by SEC regulations. 17 C.F.R. § 210.4-08(k)(1).

and Eyetalk meeting minutes indicate that Eyetalk did not have the capital to even consider developing its own products. [Daniel Report ¶ 87; Helfer Dep. Exhibit 197]. Again, Ali did not disclose the related party-nature of the license agreement between REVO and Eyetalk as well as the true nature of the license fee, which is important information for investors and potential investors to consider "because related party transactions may not yield arm's-length results." [Daniel Report, Executive Summary, ¶¶ 89-100].

Moreover, Ali issued press releases stating that the $10 million line of credit could result in "$20 million in revenues" for REVO.[31] [Ali Dep. Exhibit 37]. Critically, press releases issued by Defendant Ali concerning Greenwood obtaining a $10 million line of credit did not mention that Rainco was the entity extending the credit or that Greenwood was originally a subsidiary of Rainco when first formed in 2012. [Daniel Report ¶¶ 111-117]. And as previously stated, Rainco did not have $10 million to lend to Greenwood. [Daniel Report ¶¶ 118-121]. In addition, the credit line was characterized in the Daniel Report as both an asset-based loan and a revolving credit because it was secured by "any and all property of Guarantors" (i.e.,

[31] According to Ali, the $10 million credit line was going to be used either for depressed assets or making acquisitions but Ali was unable to identify either the depressed assets that he and others at Greenwood were looking at or specific companies that Greenwood was interested in acquiring. [Ali Dep. 463-64; Daniel Report ¶ 107].

REVO and Greenwood). [Daniel Report ¶ 126]. To that end, while Greenwood was required to provide certain information ordinarily relevant to credit analysis, the credit agreement did not require Greenwood to provide the requisite information until the closing date. [Daniel Report ¶¶ 130-131]. For this reason, it is not clear whether Rainco reviewed the information Greenwood provided before entering into the agreement. [Daniel Report ¶ 131]. In addition, records reviewed by CRA reflect that REVO and Greenwood did not have any revenue and were short of the typical or standard loan to value requirement of between 1.00 and 2.00. [Daniel Report ¶ 131 (REVO's Consolidated Statement of Operations for the nine months ending September 30, 2014, about three months after the execution of the credit agreement)]. Consistent with his modus operandi, Ali did not disclose the related party-nature of the credit agreement between Greenwood and Rainco, and even failed to initially disclose Rainco as the lender, which is important information for investors and potential investors to consider "because related party transactions may not yield arm's-length results." [Daniel Report, Executive Summary, ¶¶ 111-117, 132-133].

Concerning the UBRG notes and Greenwood, Ali issued press releases stating that the UBRG notes had "a cash value that may well exceed one million dollars." [Ali Dep. Exhibit 29; Def. Resp. ¶ 105]. However, UBRG's 2014 financial

statements (the most recent available statements at the time) reflected that UBRG lacked the available funds to make the required payments on the notes acquired by Greenwood. [Daniel Report ¶ 148]. The UBRG notes were not actually cash equivalent, as publicized by Ali. [Daniel Report ¶¶ 136-44].[32] Moreover, the UBRG notes only had a face value of $200,000. [Ali Dep. Exhibits 41-47]. And REVO ultimately received no revenue from the UBRG notes. [Def. Resp. PSMF ¶ 103; Ali Dep. 299-301]. In short, the valuation publicized by Ali and REVO was unreliable and misleading. [Def. Resp. ¶ 149]. In addition, Ali and REVO failed to disclose the related party-nature of Greenwood's receipt of UBRG notes, which is important information for investors and potential investors to consider "because related party

[32] Presumably, Ali meant that after Greenwood converted the notes to UBRG stock, it would then be able to sell that stock to the market and the proceeds from that stock sale would equal approximately $1.2 million. [Daniel Report ¶ 138]. Cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near maturity that they present insignificant risk of changes in value because of changes in interest rates. [Daniel Report ¶ 137]. Investments generally must have original maturities of three months or less to be considered cash equivalents. [Daniel Report ¶ 137]. According to the May 20, 2015, UBRG Form 8-K, the shares issued to Greenwood were restricted securities and required Greenwood to hold them for a minimum of six months after issuance and only permitted Greenwood to sell an amount equal to 1% of the Company's issued and outstanding shares every ninety (90) days. [Daniel Report ¶ 140].

transactions may not yield arm's-length results." [Daniel Report, Executive Summary, ¶¶ 145-149].[33]

In sum, the Court finds that Defendant Ali's misrepresentations and omission of critical facts were material and that no reasonable jury could conclude that they were not. See, e.g., SEC v. Conrad, 354 F. Supp. 3d 1330, 1343 (N.D. Ga. 2019) ("materiality requirement does not set an especially high bar, as its role in the analysis is to filter out essentially useless information that a reasonable investor would not consider significant"). And, as well argued by the SEC in its filings, statements within press releases boasting about alleged multi-million dollar deals are frequently deemed to be material, and particularly in the context of a start-up company like REVO. [Doc. 67-1 at 18-19; Doc. 82]. And see, e.g., SEC v. StratoComm Corp., 2 F. Supp. 3d 240, 253-55 (N.D. N.Y. 2014) (summary judgment granted in favor of SEC; misleading to hype "$60 million" deal using present tense where no production of technology had actually occurred and funds

[33] On the other hand, UBRG disclosed 1) that Greenwood acquired a portfolio of UBRG promissory notes with a principal amount of approximately $150,660; 2) that Ali was a Senior Vice President and Director of UBRG, a Senior Vice President and Director of REVO (Greenwood's parent company) and that Greenwood may be deemed an affiliate of UBRG; and 3) that "[d]ue to potential conflicts of interests, (in the event Greenwood elects to convert the Notes to stock), Solomon Ali may or may not, formally elect to recuse himself from any direct or indirect involvement in the process of managing, supervising or coordinating the conversion of, and the selling of the Notes, and direct that Greenwood have that process managed by an independent third party." [Daniel Report ¶¶ 145-46].

did not exist absent buyer); SEC v. E-Smart Tech., 74 F. Supp. 3d 306, 318-20 (D.D.C. 2014) (summary judgment granted in favor of SEC; finding as a matter of law misleading to project "profits in excess of $100 million" where no actual order had been placed that would generate claimed profit). As summarized, Defendant Ali made statements (general and specific) about the value of the underlying transactions, including extraordinary statements concerning future projected earnings. In addition, Ali is responsible for material omissions, with the most significant omission being the related party nature of all four of the underlying transactions and Ali's own financial interest.

To the extent that Ali attempts to avoid liability by suggesting that he did not have the authority to speak on behalf of REVO, his claim is belied by the record and any issue of fact is immaterial.[34] The record establishes that Ali, as an officer and director of REVO, was solely responsible for drafting and publishing the company's

[34] Ali suggests that the statements within press releases identified by the SEC as misleading or false are not attributable to Ali but instead are attributable to REVO CEO Ronald Carter and the REVO Board of Directors. *After* being deposed and *after* testifying unequivocally that it was his job and his responsibility to issue press releases for REVO, Ali attempts to minimize his role and downplay his authority to act on REVO's behalf by asserting that he was not actually a "senior" or "executive" officer. As argued by the SEC, Ali cannot create a disputed issue of fact by contradicting his sworn deposition testimony. See Van T. Junkins & Assoc. v. U.S. Indus., Inc., 736 F.2d 656, 657 (11th Cir. 1984); SEC v. Greenstone Holdings, Inc., 2012 WL 1038570, at *9 (S.D.N.Y. 2012) (rejecting defendant's attempt to blame CEO for false press releases and granting summary judgment in favor of SEC).

press releases and identified on each as the individual contact for REVO. [Ali Dep. Exhibit 6 at 277-78; Def. Resp. PSMF ¶¶ 9, 13, 16-17]. And see Lorenzo v. SEC, 139 S. Ct. 1094, 1100-01 (2019) (a person who knowingly "disseminat[es] false or misleading information to prospective investors" violates Sections 10(b) and 10b-5 and 17(a)); and see SEC v. Big Apple Consulting, 783 F.3d 786, 795 (11th Cir. 2015) (applying same rule to Section 17(a)(2) and 17(a)(3) claims).

And, as argued by the SEC, more than one person or officer can be held responsible for making a misrepresentation (or an omission). See Monterroso, 557 Fed. Appx. at 924-26. To the extent that a factfinder could reasonably conclude that Defendant Ali was not *solely* responsible as the "maker" of any alleged misrepresentation cited by the SEC, at minimum, Ali is liable for aiding and abetting the violations.[35] See Janus Capital Group, 131 S. Ct. at 2302.[36]

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[35] To establish aiding and abetting liability, the SEC must prove (1) a securities law violation by REVO; (2) substantial assistance by Ali; and (3) that Ali knowingly or recklessly rendered his assistance. Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Woodward v. Metro Bank of Dallas, 522 F.2d 84, 94-95 (5th Cir. 1975). The fact that REVO has settled the SEC's claims against it does not preclude the Court from finding Ali liable for aiding and abetting REVO. See Standefer v. United States, 447 U.S. 10, 20 (1980).

[36] Under Janus Capital, Ali "made" the statements if he had "ultimate authority" over the release, which is consistent with Ali's deposition testimony if not his summary judgment filings. Id. As explained by the Supreme Court,

The safe-harbor provision within Rule 10b-5 protects from liability forward-looking statements that fall within at least one of the following categories:

> (A) the forward-looking statement is—
>
> (i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or
>
> (ii) immaterial; or

> For purposes of Rule 10b–5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. One who prepares or publishes a statement on behalf of another is not its maker. And in the ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by—and only by—the party to whom it is attributed.

Id.

[38] As previously discussed, on July 2, 2014, Ali published a press release entitled, REVO "Signs New Agreement for $10 Million Line of Credit with Funding Company and Forecasts $20 Million in Revenues and $5 Million Profit," in which he was quoted as estimating "$5 million in annual profits from this new credit facility;" "generat[ing] returns of 100% or more" from the borrowed funds; "forecast[ing] annual revenues . . . in the $10 to $20 million range;" and adding "75 million dollars" in "potential additional market value [to] the earnings to REVO." [PSMF 122-23; Ali Dep. 271, Exhibit 37]. Ali describes this press release as merely providing "estimates and forecasts" and that he used "terms and phrases of caution, e.g., estimated, forecasts, and potential." [Def. Resp. PSMF 123]. Yet, Ali has no documents that support the values recited within the press release. [PSMF 123; Ali Dep. Exhibit 37; Daniel Report ¶¶ 106-110].

> (B) the plaintiff fails to prove that the forward-looking statement . . . was made with actual knowledge by that person that the statement was false or misleading.

15 U.S.C. § 78u-5(c)(1); and see Carvelli v. Ocwen Fin. Corp., 934 F.3d 1307, 1324 (11th Cir. 2019) (safe harbor provision is written in the disjunctive and provides three independent means of avoiding liability). While the Court has not attempted to analyze each representation made by Ali, the Court has already found that the valuations and inexplicable revenue predictions are material.

If the SEC's only evidence was that Defendant Ali was slightly wrong about future projections, it would be a different matter altogether. Instead, as discussed *infra*, the SEC has produced evidence of a scheme to defraud; evidence with respect to each underlying transaction that Ali had *no factual bases* for the bold projections he made. [Daniel Report ¶¶ 106-110]. On this record, no reasonable jury could conclude that Ali made the statements identified by the SEC without actual knowledge that his statements were false or misleading. As such, Ali's statements are actionable under § 78u-5(c)(1)(B).

Lastly, Ali argues that under Georgia law he did not own the Ali Trusts or Rainco and, thus, he had no duty to disclose their involvement in REVO's deals. The Ali Trusts and Rainco were involved in, if not counter-parties to, each of the REVO transactions. However, Ali's personal relationship and his financial ties were

not disclosed in the press releases described herein.[41] Liability under Section 10(b) and 10b-5 does not turn on Ali's ownership of the trusts or Rainco under Georgia law. The federal securities laws required Ali to provide full disclosure and the record reflects that he did not. See Find What, 658 F.3d at 1305. The involvement of trusts did not relieve Ali of the duty to fairly describe his financial interest in the transactions. [Doc. 82 at 6 (citing U.S. v. De La Mata, 266 F.3d 1275, 1295 (11th Cir. 2001)].

The Court finds, as a matter of law, that no genuine issue of material fact exists as to the materiality of Ali's misrepresentations or omissions and that, based on the evidentiary record, no reasonable jury could conclude otherwise. The first element of establishing a section 10(b) or Rule 10b–5 violation is satisfied.

B. Ali Acted Recklessly, Supplying the Requisite Scienter

"Scienter may be established by a showing of knowing misconduct or severe recklessness. . . . Proof of recklessness [ ] require[s] a showing that the defendant's conduct was an extreme departure of the standards of ordinary care, which presents

[41] As stated earlier, Rainco was majority-owned (55 percent) by Rainco Holdings Trust, one of the Ali Trusts, of which Ali is the primary beneficiary and of which his daughter, Rashell Carter, is the second beneficiary. [Daniel Report ¶¶ 66-67]. Defendant Ali's mother owned 11 percent of Rainco. And, as noted *supra*, Ali's daughter and his former girlfriend, Nicole Singletary, were both officers and directors of Rainco at the time of REVO's acquisition of Greenwood. [Daniel Report ¶ 68].

a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." SEC v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11th Cir.1982) (citation and alterations omitted). While scienter is an issue ordinarily left to a trier of fact, there are cases in which summary judgment may be appropriate. See, e.g., SEC v. Ficken, 546 F.3d 45, 51–52 (1st Cir. 2008); SEC v. Lyttle, 538 F.3d 601, 603–04 (7th Cir. 2008) (finding summary judgment was appropriate because without testimony to contradict the SEC's circumstantial evidence of the defendants' beliefs and state of mind, "no reasonable jury could doubt that they had acted with scienter"); In re Apple Computer Sec. Litig., 886 F.2d 1109, 1113 (9th Cir.1989). Scienter can be established through circumstantial or direct evidence. SEC v. Ginsburg, 362 F.3d 1292, 1298 (11th Cir. 2004).

The SEC has produced ample circumstantial evidence of scienter. "'When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.'" Ruch v. McKenzie, 2019 WL 1407012, at *9 (N.D. Ga. March 28, 2019) (quoting Scott v. Harris, 127 S. Ct. 1769, 1776 (2007)). Such is the case here.

At minimum, Defendant Ali's conduct was reckless – an extreme departure from the standard of ordinary care. This is borne out within the Daniel Report, which

is unrebutted by Defendant Ali. When asked about his experience, if any, in the valuation of intellectual property (i.e., value of patents, license agreements), Ali testified that he did not have any experience in this area and did not perform valuations at UBRG. [Ali Dep. 35, 37]. As detailed within the Daniel Report, the valuations proposed and published by Defendant Ali lack support and do not comport with governing principles of the relevant disciplines, namely, business and intellectual property valuation, licensing, and corporate finance, etc. And Ali's relationship to the Ali Trusts, trusts settled by Ali and which he and his family members are beneficiaries, represents a conflict of interest such that the objectivity of Ali's valuations are undermined. [Daniel Report, Executive Summary, ¶¶ 37, 73].

REVO's acquisition of Greenwood at Ali's suggestion – in existence for three weeks and having assets comprised of promissory notes from the Ali Trusts and formed for the sole purpose of being acquired by REVO - may be the most obvious fraud perpetrated by Ali. [Daniel Report ¶¶ 42-72 (discussing valuation techniques and absence of evidence showing that standard techniques were employed in assigning value to Greenwood acquisition)].[42] According to the Daniel Report,

[42] The Daniel Report summarizes why no reasonable jury could find that Ali had any factual basis to support the valuations and future projections that he knowingly publicized with regard to REVO's acquisition of Greenwood. [Daniel Report ¶¶ 38-59].

"[e]ntities formed to accomplish specific purposes and that are controlled by management might be used to facilitate earnings management" and that "[e]ngaging in complex transactions with related parties, such as entitles formed to accomplish specific purposes, that are structured to misrepresent the financial position or financial performance of the entity" is an example of possible fraud. [Daniel Report ¶ 64 (citations omitted)]. Ali's own testimony was that REVO needed additional time to repay debt and that acquiring Greenwood would help REVO secure another loan. [Ali Dep. 431-40].[43] Viewing the evidence in the light most favorable to Defendant Ali, no reasonable jury could find that Ali formed Greenwood for any purpose other than as a sham - an effort to misrepresent REVO's financial health.

Most importantly, as previously discussed, Ali's concealment of the related party nature of each of these transactions, which establishes that they were not conducted at arms-length, from REVO investors is "classic evidence of scienter." Aldridge v. A.T. Cross Corp., 284 F.3d 72, 83 (1st Cir. 2002); SEC v. Pirate Inv. LLC, 580 F.3d 233, 243 (4th Cir. 2009). The third element of scienter is also met.

[43] Ali's testimony establishes that he was fully aware of the potential impact of the press releases on investors' decision making. [Ali Dep. 81-82 (agreeing that favorable news in press releases increased REVO's trading volume), 240-41 (agreeing that announcement of extension of $10 million credit line signaled to investors that Greenwood had favorable business prospects)].

The Court finds, as a matter of law, that Ali acted with the requisite scienter and that no rational jury could find otherwise.

C. Violation of Exchange Act Section 16(a) and Rule 16a-3 Reporting Requirements

The SEC also seeks summary judgment as to Defendant Ali's liability under Section 16(a) and Rule 16a-3 of the Exchange Act, which require officers and directors who are "directly or indirectly the beneficial owner" of equity securities to file ownership statements with the SEC. See 15 U.S.C. § 78p(a); 17 C.F.R. § 240.16a-3.

Richard Marshall Carter, Jr., is Defendant Ali's former name. [PSMF 150; Ali Dep. Exhibit 1]. Ali was the sole member of Richard M. Carter, LLC, and controlled the "financial and trading accounts." [PSMF 151-52; Ali Dep. 349, 360, Exhibit 79 at 1-2]. In 2014, Richard M. Carter, LLC, received over 18 million shares of REVO stock from Rainco. [PSMF 153; Ali Dep. Exhibit 79 at 2]. During this same time period, Ali was an officer and director of REVO. [PSMF 154; Ali Dep. 59-59; Def. Resp. PSMF 154 (contending Ali was not an "executive officer")]. The parties dispute whether the REVO stock shares were assigned directly to Richard M. Carter, Jr., which was no longer Defendant Ali's legal name, or Richard M. Carter, LLC. [PSMF 155-56; Ali Inv. Exhibit 46; Def. Resp. PSMF 155-56].

Nonetheless, it is undisputed that Ali did not file a Form 4 or Form 5 to report his beneficial ownership of these shares of REVO stock. [PSMF 156-57; Certifications of SEC; Def. Resp. PSMF 156]. Ali represents that this failure was not intentional. [Def. Resp. PSMF 156-57]. Ali stated that he filed a Form 3 and a Form 4 in August 2010 reporting his initial receipt of REVO stock in accordance with SEC, Section 16(a) and Rule 16a-3, but was experiencing major health problems when he neglected to file the necessary SEC forms reporting the stock to Richard M. Carter, LLC. [Def. Resp. PSMF 156-57]. Thus, Ali admits that he neglected to file his Form 4 and Form 5 annual statements disclosing his ownership of over 18 million REVO shares in 2014 while he was still serving as an officer and director for the company.[44] [Ali Dep. 349, 360, Exhibits 1, 79; Def. Resp. PSMF 150-57]. There is no scienter requirement for violation of Section 16(a) and Rule 16a-3. See E-Smart Tech., 82 F. Supp. 3d at 103-04; SEC v. Verdiramo, 890 F. Supp. 2d 257, 273 n.14 (S.D. N.Y. 2011). Whether Ali's failure was unintentional is of no moment.

[44] Ali disputes that the shares went directly to "Richard M. Carter, Jr." although no longer Defendant Ali's legal name. [Ali Inv. Exhibit 46]. It is undisputed that the shares were assigned to Richard M. Carter, LLC, and that Defendant Ali was the sole member. Ali's beneficial ownership is not in question. [Certifications of SEC at 1-5].

The Court finds that no genuine issue of material fact exists as to the SEC's claim alleging violation of Exchange Act Section 16(a) and Rule 16a-3.

Accordingly, the SEC's Motion for Partial Summary Judgment [Doc. 67] is due to be **GRANTED** as to all claims.

IV. SEC's Motion to Strike Defendant Ali's Counterclaim [Doc. 66]

The SEC also moves to strike Plaintiff's counterclaim pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.[45] [Doc. 66]. The SEC contends that Plaintiff's counterclaim is barred by Section 21(g) of the Securities Exchange Act of 1934 ("SEA"), which prohibits counterclaims in SEC enforcement actions without the SEC's consent.[46] [Doc. 66-1]. The SEC also argues that Plaintiff's counterclaim is untimely and not cognizable but rather a defense of the allegations in the complaint. [Doc. 66-1 at 4-6 and 5 n.1]. Because the Court finds that Section 21(g) of the SEA bars Ali's counterclaim, the Court need not discuss timeliness and whether Ali sufficiently states a claim.

[45] Rule 12(f) permits the court to "strike from a pleading an insufficient defense or redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).

[46] The Court has already applied Section 21(g) to bar Ali's third-party complaint. [Doc. 44 at 2-4].

Section 21(g) reads:

> Notwithstanding the provisions of section 1407(a) of Title 28[47], or any other provision of law, no action for equitable relief instituted by the Commission [SEC] pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

15 U.S.C. § 78u(g). "The purpose of Section 78u(g) is to ensure speedy resolution of SEC enforcement actions, and it has routinely been employed to dismiss third-party complaints and counterclaims, because such claims protract litigation." SEC v. McCaskey, 56 F. Supp. 323, 325 (S.D. N.Y. 1999).

Ali did not obtain consent from the SEC to pursue a counterclaim. [Doc. 66-1 at 4]. As such, the Court finds that his counterclaim is subject to dismissal as a matter of law. [Doc. 66-1 at 3-4 (listing cases)].

It is hereby **ORDERED** that the SEC's Motion to Strike Defendant Ali's Counterclaim is **GRANTED**. [Doc. 66].

V. Conclusion

It is hereby **ORDERED** that the SEC's Motion for Partial Summary Judgment [Doc. 67] is due to be **GRANTED**. It is further **ORDERED** that the SEC's Motion

[47] 28 U.S.C § 1407(a) provides for consolidation of cases in the context of multidistrict litigation.

to Strike [Doc. 66] Defendant Ali's Counterclaim is **GRANTED**. Defendant Ali's *Pro Se* Motions [Docs. 52, 55, 63] are **DENIED as MOOT**.

In light of the Court's ruling, the parties are **DIRECTED** to, in good faith, revisit the possibility of settlement and/or discuss dates for a hearing on damages and file a Status Report **within thirty (30) days** of this Order.

SO ORDERED this 10th day of April, 2020.

RICHARD W. STORY
United States District Judge