

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10564 / September 28, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3991 / September 28, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18856

In the Matter of

MOTA GROUP, INC. AND
MOTA “MICHAEL” FARO,

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 Mota Group, Inc. (“Mota” or the “Company”) and Mota “Michael” Faro (“Faro”) (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 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 a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter involves the negligent failure of Mota and its Chief Executive Officer, Michael Faro, to ensure the accuracy of the financial statements Mota filed with the Commission in connection with the proposed sale of its securities in a planned initial public offering ("IPO"). In October 2016, Mota entered into an agreement with a large distributor of electronics and other consumer products (the "Distributor") under which Mota shipped approximately \$790,000 of product to the Distributor in advance of the 2016 holiday season.² In exchange, the Distributor was to pay Mota only for what the Distributor sold within 90 days, at which point the Distributor could return the unsold product (the "Holiday Order"). Because the Distributor had unlimited return rights and was only obligated to pay Mota to the extent the Distributor was able to resell the products, Mota was not able to recognize revenue under Generally Accepted Accounting Principles ("GAAP") until the Distributor sold the products. However, Mota and its CEO provided the auditing firm with inaccurate information about the Holiday Order, which resulted in the recognition of \$545,481 (or approximately 15 percent) more in revenue on its financial statements for the six months ended December 31, 2016 than it should have recognized under GAAP. Based in part on the inaccurate information Mota and Faro provided, the auditor consented to the inclusion of Mota's financial statements in four registration statement amendments filed with the Commission between February and May 2017.³

Respondents

2. Mota Group, Inc. is a privately held Delaware corporation based in San Jose, California that sells drones, toys, and other consumer products. Between October 2016 and May 2017, Mota filed with the Commission a registration statement on Form S-1 and five amendments thereto seeking to raise up to \$6.5 million by selling its common stock and warrants in an IPO. In May 2017, The NASDAQ Stock Market LLC approved Mota's application to list its common stock and warrants on The Nasdaq Capital Market. Mota's registration statement contained an amendment pursuant to Securities Act Rule 473 delaying the effective date of the

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.

² Mota sells drones, toys and other types of consumer products which are popular during the holiday season. According to Mota's filings with the Commission, its second fiscal quarter (which ends December 31) historically has been the quarter during which it recognizes its highest revenue.

³ The auditor consented, pursuant to Item 601 of Regulation S-K, to the inclusion in the registration statement amendments of its report with respect to its audits of Mota's financial statements for the fiscal years ended June 30, 2016 and 2015. However, the conduct described here does not relate to those audits.

registration statement until further request from Mota. Mota requested effectiveness of its registration statement on May 17, 2017, but voluntarily withdrew the request the following day. The registration statement was never declared effective and, accordingly, no securities have been sold under the registration statement.

3. Mota “Michael” Faro, age 37, resides in Saratoga, California. Faro is Mota’s founder, Chairman, President and Chief Executive Officer. He has no formal accounting experience or training.

The Holiday Order

4. Mota filed a registration statement on Form S-1 with the Commission on October 5, 2016 seeking to issue securities in an IPO. Later that month, it entered into the Holiday Order, which is described in detail below.

5. Previously, in June 2015, Mota entered into a vendor purchase agreement (“Vendor Purchase Agreement”) with the Distributor. Generally, the Vendor Purchase Agreement provided that when Mota sold the product to the Distributor, the Distributor would pay Mota within 60 days. Under certain circumstances, the Distributor could return excess inventory to Mota, for which the Distributor would issue a credit to Mota’s account with the Distributor.

6. In October 2016, Mota’s Sales Director and the Distributor entered into a side agreement under which the Distributor would order at least \$500,000 worth of Mota product in advance of the 2016 holiday season (the “Side Agreement”). The Side Agreement was memorialized in an email that Mota’s Sales Director sent to the Distributor, with a copy to Faro. In the email, the Sales Director stated “Spoke to Michael and he has agreed to the terms we discussed around the Holiday [buy] in for Mota products as follows.” According to Faro, he failed to read the email. Prior to this, Mota had entered into a few transactions with the Distributor, but nothing of this size, and according to the Side Agreement, it was meant, in part, to give “the Distributor the comfort of knowing [it had] the option to return any overstock.” Under the Side Agreement: 1) the Distributor would pay Mota only for the products that the Distributor sold through to its customers within 90 days “based on POS [point-of-sale] sell through reporting”; and 2) before the expiration of the 90 days (at the end of January 2017), the Distributor could return any unsold product to Mota without having to pay Mota for the returned product. These return rights were more generous for the Distributor than those under the Vendor Purchase Agreement.

7. In November 2016, Mota shipped \$790,071 worth of product to the Distributor. The Holiday Order was the largest order from this Distributor, and it recorded \$643,107 as revenue in its books and records.⁴

⁴ This amount represented the total \$790,071 in product shipped to the Distributor under the Holiday Order less product returned to Mota in the December 2016 quarter and less an estimated reserve for possible future returns.

8. At the beginning of each month, the Distributor provided Mota with a point-of-sale report (“POS report”) in an Excel spreadsheet showing for the prior month how much Mota product the Distributor had sold and to which of the Distributor’s customers. The total dollar amount of products sold could be determined by summing up a column in the spreadsheet.

9. Faro and others at Mota had access to and received at least some of the POS reports. In particular, Faro reviewed the November and December 2016 POS reports and forwarded them by email to Mota’s Sales Director, commenting on the attached POS reports and instructing the Sales Director to try to increase sales to a new customer listed in the report. According to these reports, the Distributor had sold \$238,757 worth of product (out of the \$790,071) as of December 31, 2016. However, due to offsets such as rebates, the Distributor was only obligated to pay Mota \$97,626.

Mota’s Accounting for the Holiday Order

10. In early January 2017, Mota began discussions with an auditing firm, which had audited the Company’s annual financial statements (the “Auditor”) and was at the time reviewing its interim-period financial statements, about Mota’s financial statements for the quarter ended December 31, 2016.⁵ The Auditor was reviewing Mota’s interim-period financial statements before deciding whether to consent to their inclusion in an amended registration statement that Mota planned to file with the Commission.

11. Although Mota shipped \$790,071 of product to the Distributor in November 2016, both Mota and the Auditor knew the Distributor had not paid it for any of the product as of the close of the quarter on December 31, 2016. Because of this and the fact that the standard Vendor Purchase Agreement gave the Distributor certain return rights, the Auditor initially advised Mota that the Company could not recognize revenue from the transaction in the quarter ended December 31, 2016 and suggested Mota draft a memorandum explaining its position.

12. Faro was aware of the Auditor’s initial position, and on January 6, 2017, he emailed Mota’s outside accounting consultant, who was assisting the Company with accounting issues in preparation for the financial statements to be included the Company’s registration statements (“Accounting Consultant”). In his email, Faro requested assistance in preparing an accounting memo analyzing the accounting treatment for the Holiday Order, which he could then provide to the Auditor, who had asked for supporting documentation. In his email, Faro advocated for recognizing the revenue from the Holiday Order (less a reserve for potential returns) in the December 2016 quarter. Among other reasons, Faro stated that under the terms of

⁵ Mota’s fiscal year ends June 30. Accordingly, its Form S-1 registration statement amendments filed with the Commission between February and May 2017 included audited financial statements for the fiscal year ended June 30, 2016, and unaudited financial statements for the interim periods ended December 31, 2016 and March 30, 2017.

the sale, this was not a “consignment.”⁶ The Accounting Consultant was unaware of the Side Agreement.

13. On January 10, 2017, Faro learned that the Accounting Consultant was advising Mota’s Chief Financial Officer to obtain a written estimate from the Distributor of how much of the Holiday Order it might return to Mota, and that this information was “very critical” and that without it, there was a low chance that the Auditor would agree that revenue from the sale could be recognized in the December 2016 quarter. In response, Faro sent an email to the Accounting Consultant and Mota’s CFO stating that the Distributor had already sold over \$600,000 of the \$790,071 Holiday Order. Faro did not exercise reasonable care to ensure that the Distributor in fact had actually sold over \$600,000 of Mota’s product.

14. In fact, the November and December 2016 POS reports indicated that the Distributor had sold only \$238,757 by the end of the quarter, far less than the \$600,000 Faro had told the Accounting Consultant. However, neither Faro nor anyone else at Mota provided the POS reports, or the information reflected in those reports, to the Accounting Consultant.

15. The Accounting Consultant then drafted an accounting memo analyzing the Holiday Order, which he emailed to Mota’s CFO with a copy to Faro, that concluded that under GAAP, Mota should recognize \$790,071 (less a reserve for possible returns) in the December 2016 quarter. Mota’s CFO then sent the accounting memo to the Auditor, with a copy to Faro. Included in the memo as bases for its conclusion were inaccurate statements, including statements that the Distributor had already sold approximately \$600,000 of the Holiday Order and that the Distributor’s obligation to pay Mota was not contingent on whether the Distributor sold the product.

16. After reviewing the accounting memo, the Auditor asked Faro and Mota’s bookkeeper to identify the Distributor’s customers that had purchased the \$600,000 worth of product, and how much each customer had purchased. In response, Faro told the Auditor that Mota had asked the Distributor for the information the Auditor was seeking, but was told that such information is “proprietary.” Although several individuals at Mota, including Faro, had reviewed the POS reports that contained this information, no one at Mota provided the POS reports to the Auditor. Instead, Faro provided them with a list of customer names without sales amounts.

17. On February 1, 2017, the Accounting Consultant emailed the Auditor a revised accounting memo, copying Faro, and others at Mota, which stated that as of January 31, 2017, the Distributor “has already sold all of the \$790,000 total products.” In fact, according to the December 31, 2016 POS report, which had been emailed to Faro and others at Mota, the Distributor had sold far less than that. Faro did not take any steps to ensure that the sales information included in the accounting memo was accurate.

⁶ A consignment is an arrangement in which the owner of goods sends them to another party, who sells them on behalf of the owner. In a consignment sale, the owner of the goods may not recognize revenue until the goods are sold and it has the right to receive payment.

18. Thereafter, Mota improperly recognized revenue of \$643,107 from the Holiday Order in the quarter ended December 31, 2016. Mota recognized this revenue despite the fact that under the Side Agreement, the Distributor had the right to return product to Mota and not pay for it, and that as of December 31, 2016, the Distributor had not yet paid Mota anything from the Holiday Order.⁷

19. As a result, Mota's financial statements improperly recognized \$545,481 more in revenue for the six months ended December 31, 2016 from the Holiday Sale than it should have recognized under GAAP, overstating revenue for that period by approximately 15 percent.

20. The Auditor completed its review (based in part on inaccurate information provided by Mota and Faro) and consented to the Company's filing with the Commission of amended registration statements on Form S-1 on February 10, 2017 and April 25, 2017, which included these financial statements. The improperly recognized revenue for the December 2016 quarter flowed through to the following quarter, and after receiving the Auditor's consent, the Company included financial statements for the nine months ended March 31, 2017, which overstated revenue by approximately 11 percent, in amended registration statements filed with the Commission on May 10, 2017 and May 17, 2017.

Violations

21. As a result of the conduct described above, Mota and Faro violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person, in the offer or sale of any securities, directly or indirectly, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. A violation of Section 17(a)(3) does not require scienter, but may be established by a showing of negligence. See *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980); *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852 (9th Cir. 2001).

⁷ Under GAAP, Mota could not recognize revenue from the Holiday Order in the quarter ended December 31, 2016 (when Mota shipped the product) because the Distributor had not yet paid Mota and its obligation to pay was contingent on its resale of the product. See Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 605-15-25- 1(b) (accounting for sale where buyer has right to return product and payment is contingent on resale)). Even though Mota recognized the revenue less an estimated reserve for potential returns, this was improper under GAAP because the Distributor's payment obligation was contingent on its resale of the product. See *Id.* Under GAAP, Mota should only have recognized \$97,626 in revenue from the Holiday Sale. This is the amount the Distributor was obligated to pay Mota as of December 31, 2016 and represents the amount of product the Distributor sold as of that date, less rebates and other offsets.

Undertaking

Respondent Mota undertakes to:

22. Within five business days of the entry of this Order, submit a request on EDGAR pursuant to Rule 477 with the EDGAR header Form RW to withdraw its registration statement on Form S-1, File No. 333-213982, originally filed on October 5, 2016, including all amendments thereto.

23. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Mota agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy E. Pendrey, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802 with a copy to the Office of Chief Counsel of the Enforcement Division, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 no later than five days from the date of the completion of the undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents Mota and Faro cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act;

B. Respondent Mota shall comply with the undertakings enumerated in Paragraphs 22 and 23 above; and

C. Respondent Faro shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Payment must be made in one of the following ways:

- (1) Respondent Faro may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent Faro 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) Respondent Faro 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 Faro 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 Jeremy E. Pendrey, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802.

E. 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, Respondent Faro agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Faro's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent Faro agrees that he 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 Respondent Faro 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 Respondent Faro, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Faro 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 Respondent Faro 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