

1 Laurence M. Rosen, Esq. (SBN 219683)
2 THE ROSEN LAW FIRM, P.A.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 _____, Individually and On Behalf of All
12 Others Similarly Situated,

13 Plaintiff,

14 v.

15 RA MEDICAL SYSTEMS, INC.,
16 DEAN IRWIN, ANDREW JACKSON,
17 MELISSA BURSTEIN, MARTIN
18 BURSTEIN, RICHARD HEYMANN,
19 MAURICE BUCHBINDER, MARTIN
20 COLOMBATTO, RICHARD MEJIA,
21 JR., PIPER JAFFRAY & CO.,
22 CANTOR FITZGERALD & CO.,
23 SUNTRUST ROBINSON
24 HUMPHREY, INC., NOMURA
25 SECURITIES INTERNATIONAL,
26 INC., AND MAXIM GROUP LLC,

27 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

1 Plaintiff ____ (“Plaintiff”), individually and on behalf of all other persons
2 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint
3 against Defendants (defined below), alleges the following based upon personal
4 knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to
5 all other matters, based upon, *inter alia*, the investigation conducted by and through
6 Plaintiff’s attorneys, which included, among other things, a review of the
7 Defendants’ public documents, conference calls and announcements made by
8 Defendants, United States Securities and Exchange Commission (“SEC”) filings,
9 wire and press releases published by and regarding Ra Medical Systems, Inc. (“Ra
10 Medical” or the “Company”), analysts’ reports and advisories about the Company,
11 and information readily obtainable on the Internet. Plaintiff believes that substantial
12 evidentiary support will exist for the allegations set forth herein after a reasonable
13 opportunity for discovery.

14 **NATURE OF THE ACTION**

15 1. This is a federal securities class action on behalf of a class consisting
16 of all persons and entities other than Defendants who purchased or otherwise
17 acquired the publicly traded securities of Ra Medical: (a) pursuant and/or traceable
18 to the registration statement and prospectus (collectively, the “Registration
19 Statement”) issued in connection with the Company’s September 2018 initial public
20 offering (“IPO” or the “Offering”); and/or (b) from September 27, 2018 through
21 March 15, 2019, both dates inclusive (the “Class Period”). Plaintiff seeks to recover
22 compensable damages caused by Defendants’ violations of the federal securities
23 laws and to pursue remedies under Sections 11 and 12 of the Securities Act of 1933
24 (“Securities Act”) and Sections 10(b) and 20(a) of the Securities Exchange Act of
25 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

26 **JURISDICTION AND VENUE**

27 2. The claims asserted herein arise under and pursuant to §§11 and 15 of
28 the Securities Act (15 U.S.C. §§ 77k and 77o) and §§10(b) and 20(a) of the

1 Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated
2 thereunder by the SEC (17 C.F.R. §240.10b-5).

3 3. This Court has jurisdiction over the subject matter of this action under
4 28 U.S.C. § 1331, §22 of the Securities Act, and §27 of the Exchange Act.

5 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
6 Act (15 U.S.C. §78aa), §22 of the Securities Act (15 U.S.C. § 77v), and 28 U.S.C.
7 §1391(b) as the Company’s business has an effect in this District as the Company’s
8 headquarters are located in this District and the alleged misstatements entered, and
9 subsequent damages occurred, in this District.

10 5. In connection with the acts, conduct and other wrongs alleged in this
11 Complaint, Defendants, directly or indirectly, used the means and instrumentalities
12 of interstate commerce, including but not limited to, the United States mail,
13 interstate telephone communications and the facilities of the national securities
14 exchange.

15 **PARTIES**

16 6. Plaintiff, as set forth in the accompanying Certification, purchased the
17 Company’s securities at artificially inflated prices during the Class Period and was
18 damaged upon the revelation of the alleged corrective disclosure.

19 7. Defendant Ra Medical is incorporated under the laws of Delaware with
20 its principal executive offices located in Carlsbad, California. Ra Medical’s common
21 stock trades on the New York Stock Exchange (“NYSE”) under the symbol
22 “RMED.”

23 8. Defendant Dean Irwin (“Irwin”) was, at all relevant times, the Chief
24 Executive Officer (“CEO”), Co-President, Chief Technology Officer, and Chairman
25 of the Board of Directors of the Company, and signed or authorized the signing of
26 the Company’s Registration Statement filed with the SEC.

1 9. Defendant Andrew Jackson (“Jackson”) was, at all relevant times, the
2 Chief Financial Officer of the Company, and signed or authorized the signing of the
3 Company’s Registration Statement filed with the SEC.

4 10. Defendant Melissa Burstein (“Melissa Burstein”) was a director of the
5 Company and signed or authorized the signing of the Company’s Registration
6 Statement filed with the SEC.

7 11. Defendant Martin Burstein (“Martin Burstein”) was a director of the
8 Company and signed or authorized the signing of the Company’s Registration
9 Statement filed with the SEC.

10 12. Defendant Richard Heymann (“Heymann”) was a director of the
11 Company and signed or authorized the signing of the Company’s Registration
12 Statement filed with the SEC.

13 13. Defendant Maurice Buchbinder (“Buchbinder”) was a director of the
14 Company and signed or authorized the signing of the Company’s Registration
15 Statement filed with the SEC.

16 14. Defendant Martin Colombatto (“Colombatto”) was a director of the
17 Company and signed or authorized the signing of the Company’s Registration
18 Statement filed with the SEC.

19 15. Defendant Richard Mejia, Jr. (“Mejia”) was a director of the Company
20 and signed or authorized the signing of the Company’s Registration Statement filed
21 with the SEC.

22 16. Defendants Irwin, Jackson, Melissa Burstein, Martin Burstein,
23 Heymann, Buchbinder, Colombatto, and Mejia are collectively referred to
24 hereinafter as the “Individual Defendants.”

25 17. Each of the Individual Defendants:

26 (a) directly participated in the management of the Company;

27 (b) was directly involved in the day-to-day operations of the Company at
28 the highest levels;

- 1 (c) was privy to confidential proprietary information concerning the
2 Company and its business and operations;
- 3 (d) was directly or indirectly involved in drafting, producing, reviewing
4 and/or disseminating the false and misleading statements and
5 information alleged herein;
- 6 (e) was directly or indirectly involved in the oversight or implementation
7 of the Company's internal controls;
- 8 (f) was aware of or recklessly disregarded the fact that the false and
9 misleading statements were being issued concerning the Company;
10 and/or
- 11 (g) approved or ratified these statements in violation of the federal
12 securities laws.

13 18. Defendant Piper Jaffray & Co. ("Piper Jaffray") served as an
14 underwriter for the Company's IPO.

15 19. Defendant Cantor Fitzgerald & Co. ("Cantor") served as an underwriter
16 for the Company's IPO.

17 20. Defendant SunTrust Robinson Humphrey, Inc. ("SunTrust") served as
18 an underwriter for the Company's IPO.

19 21. Defendant Nomura Securities International, Inc. ("Nomura") served as
20 an underwriter for the Company's IPO.

21 22. Defendant Maxim Group LLC ("Maxim") served as an underwriter for
22 the Company's IPO.

23 23. Defendants Piper Jaffray, Cantor, SunTrust, Nomura, and Maxim are
24 collectively referred to hereinafter as the "Underwriter Defendants."

25 24. The Company is liable for the acts of the Individual Defendants and its
26 employees under the doctrine of *respondeat superior* and common law principles
27 of agency because all of the wrongful acts complained of herein were carried out
28 within the scope of their employment.

1 enhancements; and other research and development activities, working capital, and
2 general corporate purposes.

3 32. The Registration Statement contained untrue statements of material
4 facts or omitted to state other facts necessary to make the statements made not
5 misleading, and was not prepared in accordance with the rules and regulations
6 governing its preparation.

7 33. Under applicable SEC rules and regulations, the Registration Statement
8 was required to disclose known trends, events or uncertainties that were having, and
9 were reasonably likely to have, an impact on the Company's continuing operations.

10 34. Regarding the Company's sales force, the Registration Statement
11 stated, in relevant part:

12 We market and sell DABRA and Pharos primarily through our direct
13 sales force in the U.S. As of June 30, 2018, we had a 15-person direct
14 sales force in the U.S. with 12 persons focused on vascular and three
15 persons focused on dermatology. Our sales force is organized by
16 geographic sales territories, and each territory is managed by a sales
17 manager who acts as the primary customer contact. We plan to
18 continue to increase the size of our sales organization to expand our
19 installed unit base and to increase utilization of the DABRA and
20 Pharos. Our initial focus for DABRA is high-volume OBLs. We
21 partner with distributors for DABRA and Pharos in select geographies
22 outside of the U.S.

23 Our marketing department currently consists of five professionals. Our
24 marketing program focuses on:

- 25 ■ educating physicians regarding the proper use and application
26 of DABRA and Pharos;
- 27 ■ supporting physicians' efforts to enhance referral opportunities;
- 28 ■ improving patient and caregiver awareness of our treatments;
and
- facilitating national and international marketing programs.

We use a targeted marketing approach to introduce our products to the
medical marketplace. We primarily target our marketing efforts to
practitioners through marketing materials, medical conferences and

1 journals. In addition, we host seminars and webinars where industry
2 leaders discuss case studies and treatment techniques using DABRA
3 and Pharos.

4 35. Moreover, regarding risks related to growing the Company's
5 salesforce, the Registration Statement stated, in relevant part:

6 *We will need to grow the size of our organization, and we may*
7 *experience difficulties in managing this growth.*

8 At June 30, 2018, we had 75 full-time employees. As our sales and
9 marketing strategies develop, and as we transition into operating as a
10 public company, we expect to need additional managerial, operational,
11 sales, marketing, financial, and other personnel. Future growth would
impose significant added responsibilities on members of management,
including:

- 12 ■ identifying, recruiting, integrating, maintaining, and motivating
13 additional employees;
- 14 ■ managing our internal development efforts effectively, while
15 complying with our contractual obligations to contractors and
16 other third parties; and
- 17 ■ improving our operational, financial and management controls,
reporting systems and procedures

18 Our future financial performance and our ability to successfully market
19 and sell our products will depend, in part, on our ability to effectively
20 manage any future growth, and our management may also have to
21 divert a disproportionate amount of its attention away from day-today
22 activities in order to devote a substantial amount of time to managing
these growth activities.

23 If we are not able to effectively expand our organization by hiring new
24 employees and expanding our groups of consultants and contractors,
25 we may not be able to successfully implement the tasks necessary to
26 further develop and commercialize our products and, accordingly, may
27 not achieve our research, sales and marketing goals, which would have
28 a material adverse effect on our business, financial condition, and
results of operations

1 36. Regarding risks affecting production, the Registration Statement stated,
2
3 in relevant part:

4 *We may experience development or manufacturing problems or delays*
5 *that could limit the potential growth of our revenue or increase our*
6 *losses.*

7 We may encounter unforeseen situations in the manufacturing and
8 assembly of our products that would result in delays or shortfalls in our
9 production. For example, our production processes and assembly
10 methods may have to change to accommodate any significant future
11 expansion of our manufacturing capacity, which may increase our
12 manufacturing costs, delay production of our products, reduce our
13 product margin, and adversely impact our business. Conversely, if
14 demand for our products shifts such that a manufacturing facility is
15 operated below its capacity for an extended period, we may adjust our
16 manufacturing operations to reduce fixed costs, which could lead to
17 uncertainty and delays in manufacturing times and quality during any
18 transition period.

19 Additionally, since all of our products are manufactured at our facility
20 in Carlsbad, any contamination of the controlled environment,
21 equipment malfunction, or failure to strictly follow procedures can
22 significantly reduce our yield. A drop in yield can increase our cost to
23 manufacture our products or, in more severe cases, require us to halt
24 the manufacture of our products until the problem is resolved.
25 Identifying and resolving the cause of a drop in yield can require
26 substantial time and resources.

27 If our manufacturing activities are adversely impacted, or if we are
28 otherwise unable to keep up with demand for our products by
29 successfully manufacturing, assembling, testing, and shipping our
30 products in a timely manner, our revenue could be impaired, market
31 acceptance for our products could be adversely affected and our
32 customers might instead purchase our competitors' products, which
33 would have a material adverse effect on our business, financial
34 condition, and results of operations.

1
2 37. The statements referenced in ¶¶34-36 above were materially false
3 and/or misleading because they misinterpreted and failed to disclose the following
4 adverse facts pertaining to the Company's business and operations which were
5 known to Defendants or recklessly disregarded by them. Specifically, Defendants
6 made false and/or misleading statements and/or failed to disclose that: (1) Ra
7 Medical's evaluation of sales personnel candidates was inadequate; (2) Ra Medical's
8 training program for sales personnel was inadequate; (3) Ra Medical could not
9 reasonably assure that its newly hired sales personnel were adequately experienced;
10 (4) Ra Medical would suffer a shortage of qualified sales personnel; (5) Ra Medical's
11 manufacturing process could not reasonably support increased catheter production;
12 (6) Ra Medical would suffer production delays; and (7) as a result of the foregoing,
13 defendants' positive statements about Ra Medical's business, operations, and
14 prospects, were materially misleading and/or lacked a reasonable basis

15 **The Truth Begins to Emerge**

16 38. On March 14, 2019, the Company revealed that the fourth quarter 2018
17 financial results were negatively impacted by issues related to the hiring and training
18 of qualified sales personnel as well as production limitations in the Company's
19 manufacturing process. The Defendant Irwin stated a press release, in relevant part:

20 During our steep ramp in the back half of 2018, we experienced certain
21 issues that had an impact on our fourth quarter revenue and into 2019.
22 In particular, the hiring and training of qualified sales personnel was
23 dependent on the onboarding of our CCO and we also found that we
24 needed a more robust training program for our newly hired sales
25 personnel.

26 In addition, we experienced production limitations in our
27 manufacturing process as we scaled up catheter production. We believe
28 we addressed those issues and will begin to see the positive impact on
revenue beginning in the second quarter of 2019.

1 39. On this news, the Company’s share price fell \$2.14, nearly 33%, to
2 close at \$4.43 per share on March 14, 2019, damaging investors.

3 40. On March 15, 2019, the Company filed its annual report on Form 10-
4 K with the SEC for the year ended December 31, 2018 (the “2018 10-K”). The 2018
5 10-K further elaborated on Ra Medical’s hiring and training of sales personnel,
6 stating in relevant part:

7 We experienced issues that had an impact on our fourth quarter revenue
8 and into the first quarter of 2019. In particular, the hiring and training
9 of qualified sales personnel was dependent on the onboarding of our
10 Chief Commercial Officer, who joined in December 2018, and we also
11 found that we needed a more robust training program for our newly
12 hired sales personnel. In addition, we experienced production
13 limitations in our manufacturing process as we scaled up catheter
14 production. These production limitations affected the number of
15 evaluation cases performed during the fourth quarter of 2018 and into
16 the first quarter of 2019. We made changes in our production flow and
17 we are now in the final stages of validating our manufacturing process.
18 In addition, our Chief Commercial Officer implemented a new training
19 program during the first quarter of 2019.

20 41. On this news, Ra Medical’s share price fell \$0.56, or over 12.6%, over
21 the next two trading days to close at \$3.87 per share on March 19, 2019, damaging
22 investors.

23 42. By the commencement of this action, Ra Medical stock was trading
24 below \$3.46 per share, an approximate decline of 79% from the \$17 per share IPO
25 price.

26 43. As a result of Defendants’ wrongful acts and omissions, and the
27 precipitous decline in the market value of the Company’s common shares, Plaintiff
28 and other Class members have suffered significant losses and damages.

- 1 (a) whether Defendants' acts as alleged violated the federal securities
2 laws;
- 3 (b) whether Defendants' statements to the investing public during the
4 Class Period misrepresented material facts about the financial
5 condition, business, operations, and management of the Company;
- 6 (c) whether Defendants' statements to the investing public during the
7 Class Period omitted material facts necessary to make the statements
8 made, in light of the circumstances under which they were made, not
9 misleading;
- 10 (d) whether the Individual Defendants caused the Company to issue false
11 and misleading SEC filings and public statements during the Class
12 Period;
- 13 (e) whether Defendants acted knowingly or recklessly in issuing false and
14 misleading SEC filings and public statements during the Class Period;
- 15 (f) whether the prices of the Company's securities during the Class Period
16 were artificially inflated because of the Defendants' conduct
17 complained of herein; and
- 18 (g) whether the members of the Class have sustained damages and, if so,
19 what is the proper measure of damages.

20 49. A class action is superior to all other available methods for the fair and
21 efficient adjudication of this controversy since joinder of all members is
22 impracticable. Furthermore, as the damages suffered by individual Class members
23 may be relatively small, the expense and burden of individual litigation make it
24 impossible for members of the Class to individually redress the wrongs done to
25 them. There will be no difficulty in the management of this action as a class action.

26 50. Plaintiff will rely, in part, upon the presumption of reliance established
27 by the fraud-on-the-market doctrine in that:
28

- 1 (a) Defendants made public misrepresentations or failed to disclose
2 material facts during the Class Period;
- 3 (b) the omissions and misrepresentations were material;
- 4 (c) the Company's securities are traded in efficient markets;
- 5 (d) the Company's securities were liquid and traded with moderate to
6 heavy volume during the Class Period;
- 7 (e) the Company traded NYSE, and was covered by multiple analysts;
- 8 (f) the misrepresentations and omissions alleged would tend to induce a
9 reasonable investor to misjudge the value of the Company's securities;
10 Plaintiff and members of the Class purchased and/or sold the
11 Company's securities between the time the Defendants failed to
12 disclose or misrepresented material facts and the time the true facts
13 were disclosed, without knowledge of the omitted or misrepresented
14 facts; and
- 15 (g) Unexpected material news about the Company was rapidly reflected
16 in and incorporated into the Company's stock price during the Class
17 Period.

18 51. Based upon the foregoing, Plaintiff and the members of the Class are
19 entitled to a presumption of reliance upon the integrity of the market.

20 52. Alternatively, Plaintiff and the members of the Class are entitled to the
21 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
22 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
23 Defendants omitted material information in their Class Period statements in
24 violation of a duty to disclose such information, as detailed above.

1 **COUNT I**

2 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
3 **Against All Defendants**

4 53. Plaintiff repeats and realleges each and every allegation contained
5 above as if fully set forth herein.

6 54. This Count is asserted against the Company and the Individual
7 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §
8 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

9 55. During the Class Period, the Company and the Individual Defendants,
10 individually and in concert, directly or indirectly, disseminated or approved the
11 false statements specified above, which they knew or deliberately disregarded were
12 misleading in that they contained misrepresentations and failed to disclose material
13 facts necessary in order to make the statements made, in light of the circumstances
14 under which they were made, not misleading.

15 56. The Company and the Individual Defendants violated §10(b) of the
16 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to
17 defraud; made untrue statements of material facts or omitted to state material facts
18 necessary in order to make the statements made, in light of the circumstances under
19 which they were made, not misleading; and/or engaged in acts, practices and a
20 course of business that operated as a fraud or deceit upon plaintiff and others
21 similarly situated in connection with their purchases of the Company's securities
22 during the Class Period.

23 57. The Company and the Individual Defendants acted with scienter in that
24 they knew that the public documents and statements issued or disseminated in the
25 name of the Company were materially false and misleading; knew that such
26 statements or documents would be issued or disseminated to the investing public;
27 and knowingly and substantially participated, or acquiesced in the issuance or
28 dissemination of such statements or documents as primary violations of the

1 securities laws. These defendants by virtue of their receipt of information reflecting
2 the true facts of the Company, their control over, and/or receipt and/or modification
3 of the Company's allegedly materially misleading statements, and/or their
4 associations with the Company which made them privy to confidential proprietary
5 information concerning the Company, participated in the fraudulent scheme alleged
6 herein.

7 58. Individual Defendants, who are the senior officers and/or directors of
8 the Company, had actual knowledge of the material omissions and/or the falsity of
9 the material statements set forth above, and intended to deceive Plaintiff and the
10 other members of the Class, or, in the alternative, acted with reckless disregard for
11 the truth when they failed to ascertain and disclose the true facts in the statements
12 made by them or other personnel of the Company to members of the investing
13 public, including Plaintiff and the Class.

14 59. As a result of the foregoing, the market price of the Company's
15 securities was artificially inflated during the Class Period. In ignorance of the falsity
16 of the Company's and the Individual Defendants' statements, Plaintiff and the other
17 members of the Class relied on the statements described above and/or the integrity
18 of the market price of the Company's securities during the Class Period in
19 purchasing the Company's securities at prices that were artificially inflated as a
20 result of the Company's and the Individual Defendants' false and misleading
21 statements.

22 60. Had Plaintiff and the other members of the Class been aware that the
23 market price of the Company's securities had been artificially and falsely inflated
24 by the Company's and the Individual Defendants' misleading statements and by the
25 material adverse information which the Company's and the Individual Defendants
26 did not disclose, they would not have purchased the Company's securities at the
27 artificially inflated prices that they did, or at all.

1 “controlling persons” of the Company within the meaning of Section 20(a) of the
2 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
3 which artificially inflated the market price of the Company’s securities.

4 67. Each of the Individual Defendants, therefore, acted as a controlling
5 person of the Company. By reason of their senior management positions and/or
6 being directors of the Company, each of the Individual Defendants had the power
7 to direct the actions of, and exercised the same to cause, the Company to engage in
8 the unlawful acts and conduct complained of herein. Each of the Individual
9 Defendants exercised control over the general operations of the Company and
10 possessed the power to control the specific activities which comprise the primary
11 violations about which Plaintiff and the other members of the Class complain.

12 68. By reason of the above conduct, the Individual Defendants are liable
13 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
14 Company.

15 **COUNT III**

16 **Violation of Section 11 of The Securities Act**
17 **Against All Defendants**

18 69. Plaintiff repeats and re-alleges each and every allegation contained
19 above as if fully set forth herein, except any allegation of fraud, recklessness or
20 intentional misconduct.

21 70. This Count is brought pursuant to Section 11 of the Securities Act,
22 15U.S.C. § 77k, on behalf of the Class, against the Defendants.

23 71. The Registration Statement for the IPO was inaccurate and misleading,
24 contained untrue statements of material facts, omitted to state other facts necessary
25 to make the statements made not misleading, and omitted to state material facts
26 required to be stated therein.
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Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff

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