

EMISPHERE TECHNOLOGIES INC

Form SC 13D/A

July 05, 2016

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Rule 13d-101

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO § 240.13d-1(a) AND
AMENDMENTS THERETO FILED PURSUANT TO § 240.13d-2(a)**

(Amendment No. 26)*

Emisphere Technologies, Inc.
(Name of Issuer)

Common Stock, Par Value \$.01 Per Share
(Title of Class of Securities)

291345106
(CUSIP Number)

Janet Yeung

MHR Fund Management LLC

1345 Avenue of the Americas, 42nd Floor

New York, New York 10105

(212) 262-0005

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

June 30, 2016

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box “☐”.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1 NAME OF REPORTING PERSONS

**2 MHR CAPITAL PARTNERS MASTER ACCOUNT LP
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Anguilla, British West Indies
NUMBER OF **7** SOLE VOTING POWER

SHARES

BENEFICIALLY 21,240,726
8 SHARED VOTING POWER

OWNED BY

EACH

0
REPORTING **9** SOLE DISPOSITIVE POWER

PERSON

WITH 21,240,726
10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

21,240,726

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

28.1%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

**2 MHR ADVISORS LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES

**BENEFICIALLY 24,099,305
8 SHARED VOTING POWER**

OWNED BY

EACH

**REPORTING 0
9 SOLE DISPOSITIVE POWER**

PERSON

**WITH 24,099,305
10 SHARED DISPOSITIVE POWER**

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

24,099,305

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

31.0%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

**2 MHR INSTITUTIONAL PARTNERS II LP
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES

**BENEFICIALLY 17,674,191
8 SHARED VOTING POWER**

OWNED BY

EACH

**REPORTING 0
9 SOLE DISPOSITIVE POWER**

PERSON

**WITH 17,674,191
10 SHARED DISPOSITIVE POWER**

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

17,674,191

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

23.5%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

**2 MHR INSTITUTIONAL PARTNERS IIA LP
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF **7** SOLE VOTING POWER

SHARES

BENEFICIALLY 44,527,105
8 SHARED VOTING POWER

OWNED BY

EACH

REPORTING **9** 0
SOLE DISPOSITIVE POWER

PERSON

WITH 44,527,105
10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

44,527,105

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

45.9%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

**2 MHR INSTITUTIONAL ADVISORS II LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES

**BENEFICIALLY 62,201,296
8 SHARED VOTING POWER**

OWNED BY

EACH

**REPORTING 0
9 SOLE DISPOSITIVE POWER**

PERSON

**WITH 62,201,296
10 SHARED DISPOSITIVE POWER**

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

62,201,296

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

55.8%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

2 MHRC LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF **7** SOLE VOTING POWER

SHARES

BENEFICIALLY 24,099,305
8 SHARED VOTING POWER

OWNED BY

EACH

REPORTING **9** 0
SOLE DISPOSITIVE POWER

PERSON

WITH 24,099,305
10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

24,099,305

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

31.0%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: 291345106 13D Page 8 of 16 Pages

1 NAME OF REPORTING PERSONS

**2 MHRC II LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF **7** SOLE VOTING POWER

SHARES

BENEFICIALLY 62,201,296
8 SHARED VOTING POWER

OWNED BY

EACH

REPORTING **9** 0
SOLE DISPOSITIVE POWER

PERSON

WITH 62,201,296
10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

62,201,296

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

55.8%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

**2 MHR FUND MANAGEMENT LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES

**BENEFICIALLY 86,300,601
8 SHARED VOTING POWER**

OWNED BY

EACH

**REPORTING 0
9 SOLE DISPOSITIVE POWER**

PERSON

**WITH 86,300,601
10 SHARED DISPOSITIVE POWER**

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

86,300,601

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

67.2%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

**2 MHR HOLDINGS LLC
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)**

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

**5 N/A
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM
2(d) OR 2(e) ☐**

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES

**BENEFICIALLY 8 86,300,601
OWNED BY SHARED VOTING POWER**

EACH

**REPORTING 9 0
SOLE DISPOSITIVE POWER**

PERSON

**WITH 10 86,300,601
SHARED DISPOSITIVE POWER**

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

86,300,601

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

67.2%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MARK H. RACHESKY, M.D.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☐ (b) ☒

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

N/A

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

7 ☐ SOLE VOTING POWER

NUMBER OF

86,749,899

SHARES

8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH

9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON

86,749,899

10 ☐ SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

86,749,899

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

67.3%

14 TYPE OF REPORTING PERSON (See Instructions)

IN; HC

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<u>Item 5. Interests in Securities of the Issuer</u>	13
<u>SIGNATURES</u>	16

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This statement on Schedule 13D (this Statement) further amends and supplements, as Amendment No. 26, the Schedule 13D filed on October 6, 2005 (the Initial 13D), as amended by Amendment No. 1, filed on January 17, 2006 (Amendment No. 1), Amendment No. 2, filed on May 11, 2006 (Amendment No. 2), Amendment No. 3, filed on August 20, 2007 (Amendment No. 3), Amendment No. 4, filed on August 24, 2007 (Amendment No. 4), Amendment No. 5, filed on July 2, 2008 (Amendment No. 5), Amendment No. 6, filed on July 2, 2009 (Amendment No. 6), Amendment No. 7, filed on August 21, 2009 (Amendment No. 7), Amendment No. 8, filed on August 25, 2009 (Amendment No. 8), Amendment No. 9, filed on June 9, 2010 (Amendment No. 9), Amendment No. 10, filed on August 2, 2010 (Amendment No. 10), Amendment No. 11, filed on August 27, 2010 (Amendment No. 11), Amendment No. 12, filed on December 22, 2010 (Amendment No. 12), Amendment No. 13, filed on July 1, 2011 (Amendment No. 13), Amendment No. 14, filed on July 8, 2011 (Amendment No. 14), Amendment No. 15, filed on June 5, 2012 (Amendment No. 15), Amendment No. 16, filed on September 27, 2012 (Amendment No. 16), Amendment No. 17, filed on October 9, 2012 (Amendment No. 17), Amendment No. 18, filed on October 19, 2012 (Amendment No. 18), Amendment No. 19, filed on January 10, 2013 (Amendment No. 19), Amendment No. 20, filed on April 30, 2013 (Amendment No. 20), Amendment No. 21, filed on May 9, 2013 (Amendment No. 21), Amendment No. 22, filed on March 31, 2014 (Amendment No. 22), Amendment No. 23, filed on August 22, 2014 (Amendment No. 23), Amendment No. 24, filed on July 1, 2015 (Amendment No. 24) and Amendment No. 25, filed on October 15, 2016 (Amendment No. 25), and, together with the Initial 13D and Amendment No. 1 through Amendment No. 24, the Schedule 13D) and relates to shares of common stock, par value \$0.01 per share (the Shares), of Emisphere Technologies, Inc. (the Issuer). Except as otherwise provided, defined terms used in this Statement but not defined herein shall have the respective meanings given such terms in Amendment No. 25.

Item 5. Interests in Securities of the Issuer

Item 5 is hereby amended by deleting such item in its entirety and replacing it with the following:

The percentages set forth in this Statement are calculated based on information contained in the Issuer's Form 10-Q for the quarterly period ended March 31, 2016, which disclosed that there were 60,687,478 Shares outstanding as of May 1, 2016.

All percentages of beneficial ownership presented herein are calculated after giving effect to the issuance of the Shares pursuant to exercise or vesting of warrants, restricted stock or stock options currently owned by the Reporting Persons, and assuming such Reporting Person's Convertible Notes, Bridge Notes and Reimbursement Notes were converted into Shares as of such date.

(a) (i) Master Account may be deemed the beneficial owner of 21,240,726 Shares (approximately 28.1% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 6,226,054 Shares held for the account of Master Account, (B) 5,515,644 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares, (C) 7,998,368 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes, (D) 1,181,336 Shares that can be obtained by Master Account upon the conversion of the Bridge Notes and (E) 319,324 Shares that can be obtained by Master Account upon the conversion of the Reimbursement Notes.

(ii) Capital Partners (100) may be deemed the beneficial owner of 2,858,579 Shares (approximately 4.6% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 847,125 Shares held for the account of Capital Partners (100), (B) 716,030 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares, (C) 1,093,792 Shares that can be obtained by Capital Partners (100) upon the conversion of the Convertible Notes, (D) 157,146 Shares that can be obtained by Capital Partners (100) upon the conversion of the Bridge Notes and (E) 44,486 Shares that can be obtained by Capital Partners (100) upon the conversion of the Reimbursement Notes.

(iii) Advisors may be deemed the beneficial owner of 24,099,305 Shares (approximately 31.0% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 6,226,054 Shares held for the account of Master Account, (2) 5,515,644 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares, (3) 7,998,368 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes, (4) 1,181,336 Shares that can be obtained by Master Account upon the conversion of the Bridge Notes and (5) 319,324 Shares that can be obtained by Master Account upon the conversion of the Reimbursement Notes, and (B) (1) 847,125 Shares held for the account of Capital Partners (100), (2) 716,030 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares, (3) 1,093,792 Shares that can be obtained by Capital Partners (100) upon the conversion of Convertible Notes, (4) 157,146 Shares that can be obtained by Capital Partners (100) upon the conversion of Bridge Notes and (5) 44,486 Shares that can be obtained by Capital Partners (100) upon the conversion of Reimbursement Notes.

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(iv) Institutional Partners II may be deemed the beneficial owner of 17,674,191 Shares (approximately 23.5% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 3,240,750 Shares held for the account of Institutional Partners II, (B) 4,479,892 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares, (C) 8,702,877 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes, (D) 902,752 Shares that can be obtained by Institutional Partners II upon the conversion of the Bridge Notes and (E) 347,920 Shares that can be obtained by Institutional Partners II upon the conversion of the Reimbursement Notes.

(v) Institutional Partners IIA may be deemed the beneficial owner of 44,527,105 Shares (approximately 45.9% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 8,164,436 Shares held for the account of Institutional Partners IIA, (B) 11,286,210 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares, (C) 21,925,205 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes, (D) 2,274,304 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Bridge Notes and (E) 876,950 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Reimbursement Notes.

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(vi) Institutional Advisors II may be deemed the beneficial owner of 62,201,296 Shares (approximately 55.8% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 3,240,750 Shares held for the account of Institutional Partners II, (2) 4,479,892 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares, (3) 8,702,877 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes, (4) 902,752 Shares that can be obtained by Institutional Partners II upon the conversion of the Bridge Notes and (5) 347,920 Shares that can be obtained by Institutional Partners II upon the conversion of the Reimbursement Notes, and (B) (1) 8,164,436 Shares held for the account of Institutional Partners IIA, (2) 11,286,210 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares, (3) 21,925,205 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes, (4) 2,274,304 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Bridge Notes and (5) 876,950 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Reimbursement Notes.

(vii) MHRC may be deemed the beneficial owner of 24,099,305 Shares (approximately 31.0% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in Item 5(a)(iii) by virtue of MHRC's position as the managing member of Advisors.

(viii) MHRC II may be deemed the beneficial owner of 62,201,296 Shares (approximately 55.8% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in Item 5(a)(vi) by virtue of MHRC II's position as the managing member of Institutional Advisors II.

(ix) Fund Management may be deemed the beneficial owner of 86,300,601 Shares (approximately 67.2% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in this Item 5(a) by virtue of Fund Management's investment management agreement with Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA.

(x) MHR Holdings may be deemed to be the beneficial owner of 86,300,601 Shares (approximately 67.2% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in this Item 5(a) by virtue of MHR Holdings' position as the managing member of Fund Management.

(xi) Dr. Rachesky may be deemed the beneficial owner of 86,749,899 Shares (approximately 67.3% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) all of the Shares otherwise described in this Item 5(a) by virtue of Dr. Rachesky's position as the managing member of each of MHRC, MHRC II and MHR Holdings, (B) 14,000 Shares that can be obtained upon the exercise of certain options to purchase Shares, (C) 430,000 Shares that can be obtained upon the exercise of certain non-qualified stock options to purchase Shares and (D) 5,298 Shares held for his own account.

(b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 21,240,726 Shares which may be deemed to be beneficially owned by Master Account as described above, and (y) the sole power to direct the voting of 21,240,726 Shares which may be deemed to be beneficially owned by Master Account as described above.

(ii) Capital Partners (100) may be deemed to have (x) the sole power to direct the disposition of 2,858,579 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above, and (y) the sole power to direct the voting of 2,858,579 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above.

(iii) Advisors may be deemed to have (x) the sole power to direct the disposition of 24,099,305 Shares which may be deemed to be beneficially owned by Advisors as described above, and (y) the sole power to direct the voting of 24,099,305 Shares which may be deemed to be beneficially owned by Advisors as described above.

(iv) Institutional Partners II may be deemed to have (x) the sole power to direct the disposition of 17,674,191 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above, and (y) the sole power to direct the voting of 17,674,191 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above.

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(v) Institutional Partners IIA may be deemed to have (x) the sole power to direct the disposition of 44,527,105 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above, and (y) the sole power to direct the voting of 44,527,105 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above.

(vi) Institutional Advisors II may be deemed to have (x) the sole power to direct the disposition of 62,201,296 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above, and (y) the sole power to direct the voting of 62,201,296 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above.

(vii) MHRC may be deemed to have (x) the sole power to direct the disposition of the 24,099,305 Shares which may be deemed to be beneficially owned by MHRC as described above, and (y) the sole power to direct the voting of 24,099,305 Shares which may be deemed to be beneficially owned by MHRC as described above.

(viii) MHRC II may be deemed to have (x) the sole power to direct the disposition of the 62,201,296 Shares which may be deemed to be beneficially owned by MHRC II as described above, and (y) the sole power to direct the voting of 62,201,296 Shares which may be deemed to be beneficially owned by MHRC II as described above.

(ix) Fund Management may be deemed to have (x) the sole power to direct the disposition of the 86,300,601 Shares which may be deemed to be beneficially owned by Fund Management as described above, and (y) the sole power to direct the voting of 86,300,601 Shares which may be deemed to be beneficially owned by Fund Management as described above.

(x) MHR Holdings may be deemed to have (x) the sole power to direct the disposition of 86,300,601 Shares which may be deemed to be beneficially owned by MHR Holdings as described above, and (y) the sole power to direct the voting of 86,300,601 Shares which may be deemed to be beneficially owned by MHR Holdings as described above.

(xi) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of the 86,749,899 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above, and (y) the sole power to direct the voting of 86,749,899 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above.

(c) As reported on a Form 4 filed on July 5, 2016, on June 30, 2016, Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA received additional Convertible Notes, Bridge Notes and Reimbursement Notes as paid-in-kind interest on the Convertible Notes, Bridge Notes and Reimbursement Notes already held by such Reporting Persons, respectively. Such additional Convertible Notes are convertible into 500,736 Shares (in the case of Master Account), 68,476 Shares (in the case of Capital Partners (100)), 544,843 Shares (in the case of Institutional Partners II) and 1,372,625 Shares (in the case of Institutional Partners IIA). Such additional Bridge Notes are convertible into 74,748 Shares (in the case of Master Account), 9,944 Shares (in the case of Capital Partners (100)), 57,120 Shares (in the case of Institutional Partners II) and 143,904 Shares (in the case of Institutional Partners IIA). Such additional Reimbursement Notes are convertible into 15,678 Shares (in the case of Master Account), 2,184 Shares (in the case of Capital Partners (100)), 17,082 Shares (in the case of Institutional Partners II) and 43,056 Shares (in the case of Institutional Partners IIA). In addition, on May 25, 2016, Dr. Rachesky was granted 40,000 non-qualified stock options as reported on a Form 4 filed on May 27, 2016.

(d) (i) The partners of Master Account, including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Master Account in accordance with their partnership interests in Master Account.

(ii) The partners of Capital Partners (100), including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Capital Partners (100) in accordance with their partnership interests in Capital Partners (100).

(iii) The partners of Institutional Partners II, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners II in accordance with their partnership interests in Institutional Partners II.

(iv) The partners of Institutional Partners IIA, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners IIA in accordance with their partnership interests in Institutional Partners IIA.

(e) Not applicable.

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SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Date: July 5, 2016

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR ADVISORS LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR INSTITUTIONAL ADVISORS II LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHRC LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

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MHRC II LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR FUND MANAGEMENT LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MHR HOLDINGS LLC

By: /s/ Janet Yeung
Name: Janet Yeung
Title: Authorized Signatory

MARK H. RACHESKY, M.D.

/s/ Janet Yeung, Attorney in Fact