UNITED STATES DISTRICT COURT
FOR THE
DISTRICT COURT OF COLUMBIA

UNITED STATES SECURITIES AND EXCHANGE COMMISSION 450 Fifth Street, N.W., Washington, DC 20549, Plaintiff, v. ARNOLD GELLER 2660 Peachtree Rd NW, Apt. 35 B, Atlanta, GA 30305 G. MICHAEL HARRIS 16 Winston Drive, Belleair, FL 33756 Defendants.	**COMPLAINT** Case No.:

Plaintiff Securities & Exchange Commission ("SEC" or "Commission") alleges:

SUMMARY

1. In 1999, Arnold Geller, G. Michael Harris and others formed a group of insurgent shareholders to acquire control of RMS Titanic, Inc. ("RMS"). Between May and November 1999, without required disclosure to the SEC and RMS shareholders, the group secured a majority of outstanding RMS common stock. Ultimately, on November 26, 1999, the Defendants, along with the other group members, filed a Schedule 13D ("November 1999 Schedule 13D"). That filing, in addition to being untimely, also contained materially false and misleading statements. After filing the November 1999 Schedule 13D, Geller, Harris and the other members of the group removed four RMS directors and two RMS officers, and installed Geller and Harris as officers.

2. As a result of the Defendants' actions, RMS shareholders and investors could not assess the potential for changes in corporate control and adequately evaluate the company's worth. RMS shareholders and investors did not receive the facts necessary for informed investment decisions. Because these shareholders and investors did not learn of the Defendants' plan to acquire control of the company until the Defendants had acquired a majority position, they were powerless to prevent the change of control once they received the news.

3. Geller and Harris, as signatories to the November 1999 Schedule 13D, each made materially false and misleading statements in that filing, and failed to timely file the Schedule 13D. In the November 1999 Schedule 13D, the Defendants identified November 16, 1999 as the date when the filing obligation was triggered. However, that statement was materially false and misleading because a group actually had formed as early as May 1999, and, at that time, held well over 5% of the outstanding RMS stock. Moreover, the Defendants represented in the November 1999 Schedule 13D that the group had engaged in a consent solicitation in which it solicited 10 RMS shareholders, thereby obviating the need to file proxy materials. However, this statement was materially false and misleading because each Defendant knew, directly or indirectly, that more than 10 shareholders had been solicited.

4. By making materially false and misleading statements in the November 1999 Schedule 13D, Geller and Harris violated Section 13(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78m(d)(1)] and Exchange Act Rules 12b-20 and 13d-1(a) [17 C.F.R. §§ 240.12b-20 and 240.13d-1(a)]. In addition, the Defendants violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and associated Exchange Act Rules because the group solicited more than 10 shareholders and failed to file proxy materials with the SEC.

The Defendants also violated Sections 13(d)(1) and (2) of the Exchange Act [15 U.S.C. §§ 78m(d)(1) and 78m(d)(2)] and associated Exchange Act Rules by failing to timely file the November 1999 Schedule 13D and to amend an earlier Schedule 13D, filed in October 1998, to reflect material changes. The SEC requests that this Court permanently enjoin Defendants from violating the securities laws cited here, and order Geller to pay civil penalties.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to Sections 21(d) and (e), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e), 78u-1 and 78aa].

6. Venue lies in this district pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts alleged in the Complaint occurred in this district, specifically the filing by Defendants of the November 26, 1999 Schedule 13D with the SEC in the District of Columbia.

7. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged here.

DEFENDANTS

8. Arnold Geller, age 62, lives in Atlanta, Georgia. From May 1993 to May 1995, Geller served as president of RMS, and he has served as a director of RMS since May 26, 1999. In November 1999, after the removal action, Geller became the president and chief executive officer of RMS, positions he currently holds.

9. G. Michael Harris, age 38, lives in Belleair, Florida. He was named executive vice president and chief operating officer of RMS after the removal action. Harris was a director of RMS from May 26, 1999 to August 2000. Harris is currently unemployed.

RELEVANT ENTITY

10. RMS is a Florida corporation with its principal executive offices in Atlanta, Georgia. In 1994, the United States District Court for the Eastern District of Virginia granted RMS sole salvor-in-possession rights to the wreck *R.M.S. Titanic*. RMS stock is registered with the SEC under Section 12(g) of the Exchange Act and trades on the NASDAQ OTC Bulletin Board.

FACTUAL ALLEGATIONS

Background

11. In August 1997, the RMS board of directors, including Geller and Harris, among others, agreed to vote their shares to re-elect the incumbent board; they also agreed to certain restrictions on the transfer or sale of RMS stock ("1997 Voting Agreement"). This agreement was set to expire on August 31, 1999. In September 1997, Geller, Harris and others filed a Schedule 13D announcing the 1997 Voting Agreement ("September 1997 Schedule 13D").

12. On October 29, 1998, Geller, Harris and John Joslyn, the sole officer, director and shareholder of Westgate Entertainment Corp. ("Westgate"), a private corporation, disavowed the 1997 Voting Agreement in an amendment they filed to the September 1997 Schedule 13D ("October 1998 Schedule 13D").

13. Defendants and Joslyn also stated in the October 1998 Schedule 13D that they were "contemplating forming or becoming part of a group that will acquire additional securities of [RMS] for the purpose of effecting a change in control in the present Board of Directors and management."

14. In March 1999, Harris and Joslyn entered into a stipulated judgment ("March 1999 Stipulated Judgment") in which they agreed, and Geller agreed by virtue of an April 1999 side letter, to support the 1997 Voting Agreement and to vote their shares to re-elect the incumbent board. Harris and Joslyn agreed to withdraw the statements made in the October 1998 Schedule 13D. Geller agreed to withdraw all notices of termination of the 1997 Voting Agreement, which would include the notice in the October 1998 Schedule 13D. Joslyn and Harris, however, did not withdraw the statements they made in the October 1998 Schedule 13D, and Geller did not withdraw his revocation of the 1997 Voting Agreement.

15. As a result of the March 1999 Stipulated Judgment and the April 1999 side letter, Geller, Harris and Joslyn could no longer continue to "contemplate" forming or joining a group to effect a change in control at RMS. On April 21, 1999, RMS announced that Geller, Harris and three others were elected as directors, and the action became final on May 26, 1999.

The Plan to Remove Management

16. Contrary to the March 1999 Stipulated Judgment and the April 1999 side letter, Geller and Harris, along with Joslyn, within weeks of reaching those agreements, began to act to change control of RMS.

17. Beginning no later than May 1999, Geller and Harris, together with Joslyn, acted together in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock. At the time, Geller alone owned approximately 1,600,000 shares of RMS stock and, collectively with Harris and Joslyn,held just over 2 million shares of the stock, or approximately 13% of outstanding shares. Also in May 1999, Joseph Marsh ("Marsh"), P. David Lucas ("Lucas") and Steven Sybesma ("Sybesma") joined the group with Geller, Harris and Joslyn. Marsh, Lucas and

Sybesma owned approximately 325,000, 100,000 and 350,000 shares of RMS stock, respectively, or approximately 4.75% of outstanding shares. In fact, Sybesma had begun buying RMS stock in October 1998 after Harris informed him that RMS management was incompetent. Lucas had begun buying the stock in January 1999 after speaking to Sybesma.

18. Beginning in May 1999, Geller and Harris had discussions with Marsh, Lucas and Sybesma, among others, concerning their dissatisfaction with management, the removal of management at RMS, and methods by which they would accumulate enough shares to bring about such a change.

19. Around May 1999, in support of the common objective to remove RMS management, Geller, Harris and Joslyn solicited a major shareholder (the "Shareholder") for his approximately 4 million shares of RMS stock, nearly 25% of the outstanding shares. Geller, Harris and Joslyn sought funds for the purchase from Marsh, Lucas and Sybesma, among others; however, the purchase of the Shareholder's stock did not occur at this time.

20. At the end of May 1999, at Geller's suggestion, Lucas, Marsh and Sybesma opened securities accounts to acquire stock that would be used in removing RMS management. Beginning in June 1999, Lucas, Marsh and Sybesma began making large and coordinated open market purchases of RMS stock for this purpose. Generally, their broker bought blocks of stock and distributed it equally and at the same price among Lucas, Marsh and Sybesma.

21. By June 1999, the group consisted of Geller, Harris, Joslyn, Marsh, Lucas and Sybesma, and owned nearly 2.9 million shares of RMS common stock, or nearly 18% of the outstanding shares.

July to August 1999

22. In the summer of 1999, the group continued its effort to remove management. Around June 1999, Geller and Harris, at Joslyn's recommendation, retained counsel ("Counsel") to advise them on issues related to RMS' upcoming August 1999 shareholders meeting.

23. In late July 1999, Joslyn spoke to the Shareholder's nephew to see if he could convince the Shareholder to sell as part of the effort to remove RMS management. Geller, Harris and Joslyn, through Counsel, sent a term sheet to the Shareholder which sought to secure the rights to vote the Shareholder's stock for five months. On August 2, 1999, the Shareholder rejected the offer.

24. From June 1999 through August 1999, Lucas, Marsh and Sybesma purchased on the open market about 1.2 million shares of RMS stock, approximately 7% of outstanding RMS shares. These purchases were in support of the group's common objective to remove certain officers and directors of RMS. By mid-August, Lucas, Marsh and Sybesma held 1.87 million shares of RMS stock, or 11.5% of outstanding shares. When combined with positions held by Geller, Harris and Joslyn, the group owned nearly 4 million shares, more than 24% of the outstanding shares.

Events After the August 1999 Shareholders Meeting

25. At the August 9, 1999 shareholders meeting, Geller and Harris, among others, were elected as directors of RMS. On August 31, 1999, the 1997 Voting Agreement expired. Geller, Harris and Joslyn were now free to vote their shares – and any shares they accumulated by acquisition, proxy, or otherwise – as they wished.

26. After the August 1999 shareholders meeting, Geller, Harris and Joslyn considered calling a new shareholders meeting for September 1999, in order to vote for the removal of the newly elected RMS directors. On August 14, 1999, Harris prepared a list of shareholders who could be solicited to vote at such a meeting, and faxed it to Joslyn.

27. In August 1999, Counsel gave a "Strategy Memo" to Geller, Harris and Joslyn that addressed restrictions on proxy solicitations and Schedule 13D requirements. The memo stated "[e]xtreme care must be exercised" to avoid violating the proxy laws; that the SEC "defines 'solicitation' very broadly" to include any communication which could be viewed "as being reasonably calculated to influence a shareholder to give, deny or revoke a proxy"; and, other than the 10 shareholders who can be solicited pursuant to the 10-count exemption, "we should limit communications to: 'I encourage you to attend the shareholders meeting.'" As to Exchange Act Section 13(d), the memo advised that beneficial ownership "may arise out of unwritten agreements or arrangements relating to acquisition or voting"; and, "[w]hen two or more persons agree to act together for the purpose of acquiring, holding, voting, or disposing of an issuer's equity securities, the group thus formed is deemed to be a 'person' and to have acquired beneficial ownership, for purposes of Section 13(d), as of the date of the agreement."

28. In August 1999, Counsel also advised Geller, Harris and Joslyn that the "best practice" would be to amend the October 1998 Schedule 13D to disclose the group's current intentions. Geller, Harris and Joslyn did not file an amendment to the October 1998 Schedule 13D.

29. In August 1999, Harris advised Jon Thompson ("Thompson"), an RMS shareholder and a friend of the Shareholder, that he and Geller wanted to take control of RMS and replace its then-president. Harris also told Thompson that he and Geller had unsuccessfully

sent Joslyn to secure the Shareholder's proxy, and that if they could obtain this proxy, they could replace this officer. Harris asked Thompson to secure the Shareholder's proxy, and Thompson agreed to talk to the Shareholder.

September through October 1999

30. Ultimately, the group moved away from calling a new shareholders meeting, and decided to remove management by a written consent of the majority of RMS shareholders.

31. In late August 1999 or early September 1999, Thompson called the Shareholder to acquire his proxy. The Shareholder said he would grant the proxy, but would not let Thompson vote the shares unless someone bought a majority of his position in RMS stock. Thompson reported this information to Harris. Harris, Geller and Joslyn tried to find buyers for the Shareholder's stock.

32. On September 20, 1999, Harris faxed draft proxies to Counsel. Harris asked Counsel to review the forms quickly because Thompson would be meeting with the Shareholder that day.

33. On September 24, 1999, the Shareholder granted irrevocable proxies in favor of Thompson for a total of 1,963,321 shares, or approximately 12% of the outstanding shares of RMS stock. The proxies stated that Thompson had the power to vote "in favor of the removal and/or election of one or more members of the Company's Board of Directors." The proxies were set to expire on December 25, 1999. As a result of the grant of proxies by the Shareholder, Thompson held a beneficial interest in roughly 12% of outstanding RMS common stock.

34. During October 1999, the group continued its efforts to remove RMS management. Harris contacted Stanley Thomas ("Thomas"), Marsh's former broker. Because Harris knew that Thomas' clients held RMS common stock, he asked Thomas to secure voting proxies from his clients for purposes of changing management of RMS. Thomas told Marsh about Harris' request, and Marsh advised him to secure the proxies.

35. Notwithstanding their activities from May through October 1999, and their beneficial ownership of more than 5% of RMS stock, the group, comprised of Geller and Harris, as well as Joslyn, Marsh, Lucas, Sybesma, Thompson and Thomas, did not file a new Schedule 13D at any time during that time period announcing: they had formed a group in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock; they had increased their beneficial ownership of RMS common stock; and they had added new members to the group. In addition, because each of these facts was a material change from the October 1998 Schedule 13D, Geller and Harris should have filed an amendment to their prior Schedule 13D, but did not do so.

November 1999

36. In early November, and prior to November 16, 1999, Thomas solicited and verbally secured from nine clients the right to vote 157,324 shares of RMS stock. The clients executed written proxies in favor of Thomas which purported to affirm proxies that had been granted to Thomas on November 2, 1999.

37. Harris had retained a Florida attorney ("Florida Counsel") in October 1999 to advise the group. Florida Counsel understood his clients might try to remove RMS' directors.

38. On November 1, 1999, in a memo to Geller and Harris, Florida Counsel advised, because Geller and Harris did not tell him otherwise, that he was assuming that no more than 10 stockholders would be solicited in connection with the removal action, that all shareholders had been acting independently, and that a "group" did not exist. Geller and Harris did not thereafter tell Florida Counsel these assumptions were inaccurate. Florida Counsel also "recommend[ed] filing a Schedule 13D as soon as possible."

39. In November 1999, Harris arranged for the purchase of the Shareholder's stock. Harris, through TAG Acquisition, LLC ("TAG), an entity he owned and controlled, agreed to buy 1,634,384 shares of stock from the Shareholder for $3 per share. TAG obtained the funds for this purchase from Marsh, Sybesma and an individual who was a Marsh business associate and Thomas client (the "Associate"). Around November 11, 1999, Marsh, Sybesma and the Associate began transferring a total of $4.9 million into an escrow account so that TAG could purchase the shares. On November 16, 1999, the parties signed an agreement drafted by Counsel for TAG to buy the stock, thereby clearing the way for Thompson to vote the proxies granted by the Shareholder in connection with the transaction.

40. In November 1999, Marsh, directly or through others, solicited and obtained 827,000 shares of RMS stock from at least seven friends and acquaintances in support of the common objective to remove certain RMS management. Marsh never purchased this stock; instead, he acquired the shares through borrowing arrangements with these shareholders. In each case, Marsh transferred the shares back to the individuals after the takeover. Marsh's stock borrowing arrangements were a direct or indirect solicitation of a proxy to vote their shares in the removal action. Marsh ultimately voted the 827,000 shares in the removal action. Harris was aware that Marsh had solicited his friends and associates.

41. In November 1999, Harris solicited an RMS shareholder for his stock, which had been pledged as collateral for a loan (the "Pledgor"). The Pledgor agreed to sell the stock if someone would pay off the loan. At the time, the Pledgor understood that Geller, Harris and Joslyn wanted to remove RMS management. Joslyn paid the loan but realized he could not buy the shares due to restrictions placed on him under a 1996 stipulated judgment. Instead, Joslyn placed the stock with Marsh to vote in the removal action. Around November 18, 1999, the Pledgor instructed the transfer agent to transfer the shares to Marsh. Marsh ultimately voted the shares in the removal action.

42. In November 1999, Geller solicited proxies for the removal action from at least three RMS shareholders (the "Geller Shareholders").

The November 26, 1999 Schedule 13D

43. On November 26, 1999, the Defendants and the other members of the group filed a Schedule 13D, in which they stated that they were part of a group that "intend[ed] to consent and seek to solicit the consents and/or proxies" of certain shareholders in order to remove the incumbent directors, some of whom were also officers, and to install Geller and

Harris as officers. The Defendants claimed to have just over 50% of the outstanding shares of RMS. Each Defendant signed the filing, attesting that, "[a]fter reasonable inquiry and to the best knowledge and belief of each of the undersigned, each of the undersigned certifies that the information set forth in this Schedule 13D with respect to such person is true, complete and correct." After the filing, the price of RMS stock increased to nearly $4.00, a 25% increase from the previous day's close of $3.16.

44. The filing named Geller, Harris and Joslyn as members of the group, and as "solicitors" for purposes of the removal action. As such, they were not counted towards the 10-count. The filing identified those members of the group considered solicited for purposes of the takeover, which included Marsh, Sybesma, Lucas, Thompson and Thomas. The filing also stated that Geller, by proxy, voted shares owned by the Geller Shareholders, but falsely asserted that those individuals were not counted as having been solicited because Geller held their proxies "prior to the formation of the group." In total, the filing reported that 10 RMS shareholders had been solicited for purposes of the removal action.

45. The Defendants made materially false and misleading statements in their Schedule 13D. The Defendants stated that the obligation to file a Schedule 13D did not arise until November 16, 1999. However, the group actually formed as early as May 1999 and, at that time, held well over 5% of outstanding RMS stock. Moreover, the Defendants represented they had solicited 10 RMS shareholders, thereby obviating the need to file proxy materials. However, the Defendants solicited, directly or indirectly, or were aware of the solicitation of, RMS shareholders in addition to the 10 identified in the November 1999 Schedule 13D.

46. After filing the Schedule 13D, the group removed the incumbent officers and directors, and, in their place, installed Geller as president and chief executive officer, and Harris as vice president and chief operating officer.

47. Between May and November 26, 1999, Defendants, along with the other members of the group, secured a majority of outstanding RMS common stock. The Defendants failed to timely disclose their accumulation of RMS stock and their true purposes for such accumulation. In addition, because these facts were material changes from the October 1998 Schedule 13D, Geller and Harris should have filed an amendment to that Schedule 13D, but did not do so. As a result, RMS shareholders and investors could not assess the potential for changes in corporate control and adequately evaluate the company's worth. RMS shareholders and investors did not receive the facts necessary for informed investment decisions. Because these shareholders and investors did not learn of Defendants' plan to acquire control of RMS until Defendants had acquired over 50% of RMS stock, they were powerless to prevent the change of control once they received the news.

FIRST CLAIM
[Failure to Timely File a Schedule 13D]
Violations of Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)]
and Exchange Act Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)]

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)], and Exchange Act Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)], require a person or group that has acquired, directly or indirectly, the beneficial ownership of more than 5% of the outstanding shares of a class of voting equity securities to file with the SEC a Schedule 13D within 10 days of the date on which their beneficial ownership exceeded 5%. The filing requirement pursuant to Exchange Act Section 13(d)(1) applies to individuals and to groups. Section 13(d)(3) of the

Exchange Act [15 U.S.C. § 78m(d)(3)] defines a group as an aggregation of persons or entities that "act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer."

50. As described above, at least as early as May 1999, Geller and Harris formed a group with others in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock, and, that time, the group beneficially owned more than 5% of outstanding shares of RMS stock. The Defendants should have filed a Schedule 13D as early as June 1999, but failed to do so.

51. By reason of the foregoing, Defendants violated Section 13(d)(1) of the Exchange Act [15 U.S.C. 78m(d)(1)] and Exchange Act Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)].

SECOND CLAIM
[Reporting Violations]
Violations of Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)]
And Exchange Act Rules 12b-20 and 13d-1(a) [17 C.F.R. §§ 240.12b-20 and 240.13d-1(a)]

52. Paragraphs 1 through 51 are realleged and incorporated herein by reference.

53. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b.20] provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

54. Defendants made the following materially false and misleading statements in the November 1999 Schedule 13D: (a) the obligation to file a Schedule 13D did not arise until November 16, 1999; and (b) the number of shareholders solicited was no more than ten.

55. The statement that the obligation to file a Schedule 13D did not arise until November 16, 1999 was materially false and misleading. As early as May 1999, Geller and Harris formed a group in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock. At the time, the group beneficially owned more than 5% of outstanding shares of RMS stock. Thus, Geller and Harris should have filed a Schedule 13D as early as June 1999, but failed to do so.

56. The statement that the group had solicited 10 shareholders was materially false and misleading because Geller and Harris knew that more than 10 shareholders had been solicited in connection with the removal of RMS management. As described above, the Defendants solicited, directly or indirectly, or were aware of the solicitation of, RMS shareholders in addition to the 10 identified in the November 1999 Schedule 13D.

57. By reason of the foregoing, Defendants violated Section 13(d)(1) of the Exchange Act [15 U.S.C. § 78m(d)(1)] and Exchange Act Rules 12b-20 and 13d-1(a) [17 C.F.R. §§ 240.12b-20 and 240.13d-1(a)].

THIRD CLAIM
[Reporting Violations]
Violations of Section 13(d)(2) of the Exchange Act [15 U.S.C. § 78m(d)(2)]
And Exchange Act Rule 13d-2(a) [17 C.F.R. § 240.13d-2(a)]

58. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

59. Section 13(d)(2) of the Exchange Act [15 U.S.C. § 78m(d)(2)] provides that, if any material change occurs in the facts set forth in the Schedule 13D filed with the Commission, the filer must promptly file an amendment disclosing the change. Exchange Act Rule 13d-2(a) [17 C.F.R. 240.13d-2(a)] provides that an acquisition or disposition of one percent or more of the filer's position is deemed "material" for purposes of triggering the duty to amend.

60. Geller and Harris did not amend the October 1998 Schedule 13D to reflect the formation of a group in support of the common objective to remove certain officers and directors of RMS and/or for the purpose of acquiring RMS common stock, the increase in the group's beneficial ownership of RMS common stock, and the addition of Marsh, Lucas, Sybesma, Thompson and Thomas to the group.

61. By reason of the foregoing, Defendants violated Section 13(d)(2) of the Exchange Act [15 U.S.C. § 78m(d)(2)] and Exchange Act Rule 13d-2(a) [17 C.F.R. 240.13d-2(a)].

FOURTH CLAIM
[Proxy Violations]
Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)]
And Exchange Act Rules 14a-3, 14a-4, 14a-5 and 14a-6
[17 C.F.R. §§ 240.14a-3, 240.14a-4, 240.14a-5 and 240.14a-6]

62. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

63. Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] prohibits any person from soliciting any proxy or consent in contravention of rules and regulations promulgated by the Commission. The rules require, among other things, that persons soliciting proxies file with the Commission, and provide to shareholders being solicited, a proxy statement containing the information required by Schedule 14A, Exchange Act Rule 14a-3 [17 C.F.R. § 240.14a-3]; that the form of proxy adhere to certain requirements, Exchange Act Rule 14a-4 [17 C.F.R. § 240.14a-4]; that information included in the proxy statement be presented clearly and in a certain format, Exchange Act Rule 14a-5 [17 C.F.R. § 240.14a-5]; and that proxy statements and other materials meet certain filing requirements, Exchange Act Rule 14a-6 [17 C.F.R. § 240.14a-6]. However, Exchange Act Rule 14a-2(b)(2) [17 C.F.R. § 240.14a-2(b)(2)] provides, in part, that certain of the proxy rules do not apply to "[a]ny solicitation … where the total number of persons solicited is not more than ten."

64. Defendants solicited, directly or indirectly, or were aware of such solicitation of, more than 10 RMS shareholders in connection with the removal of RMS management. The Defendants failed to provide required proxy materials to shareholders being solicited and failed to file such proxy materials with the SEC.

65. By reason of the foregoing, Defendants violated Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Exchange Act Rules 14a-3, 14a-4, 14a-5 and 14a-6 [17 C.F.R. §§ 240.14a-3, 240.14a-4, 240.14a-5 and 240.14a-6].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a Permanent Injunction restraining and enjoining Defendants from violating the statutory provisions set forth herein;

B. Enter an order requiring Defendant Geller to pay a civil penalty of $85,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

C. Enter an order that, based on Defendant Harris' sworn representations in his Statement of Financial Condition dated June 3, 2004, and other documents and information submitted to the Commission, the Court is not ordering Harris to pay a civil penalty;

D. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

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Grant such other and additional relief as this Court may deem just and proper.

Dated: October ___, 2004

Respectfully submitted,

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