

EMISPHERE TECHNOLOGIES INC

Form SC 13D/A

October 15, 2015

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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. 25)\***

**Emisphere Technologies, Inc.**

**(Name of Issuer)**

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

**291345106  
(CUSIP Number)**

Edgar Filing: EMISPHERE TECHNOLOGIES INC - Form SC 13D/A

**Janet Yeung**

**MHR Fund Management LLC**

**1345 Avenue of the Americas, 42<sup>nd</sup> Floor**

**New York, New York 10105**

**(212) 262-0005**

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

**October 14, 2015**

**(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).

Continued on following pages

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1 NAME OF REPORTING PERSONS

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

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

Anguilla, British West Indies

7 ☐ SOLE VOTING POWER

NUMBER OF

SHARES 20,094,348  
8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0  
EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 20,094,348  
10 ☐ SHARED DISPOSITIVE POWER  
WITH

0

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**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

20,094,348

**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)

27.0%

**14** TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR ADVISORS LLC

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

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

SHARES 22,796,620  
8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0  
EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 22,796,620  
10 ☐ SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

22,796,620

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)

29.8%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: 291345106 13D Page 4 of 16 Pages

1 NAME OF REPORTING PERSONS

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

(a) " (b) x

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

Delaware  
7 SOLE VOTING POWER

NUMBER OF  
SHARES 16,473,925  
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0  
EACH 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 16,473,925  
10 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

16,473,925

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)

22.3%

14 TYPE OF REPORTING PERSON (See Instructions)

PN



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1 NAME OF REPORTING PERSONS

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

(a) " (b) x

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

Delaware  
7 SOLE VOTING POWER

NUMBER OF  
SHARES 41,503,225  
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0  
EACH 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 41,503,225  
10 SHARED DISPOSITIVE POWER  
WITH

0

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**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

41,503,225

**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)

44.1%

**14** TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

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

(a) " (b) x

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

Delaware  
7 SOLE VOTING POWER

NUMBER OF  
SHARES 57,977,150  
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY  
EACH 0  
9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 57,977,150  
10 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

57,977,150

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)

54.1%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MHRC LLC

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

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

SHARES 22,796,620  
8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0  
9 ☐ SOLE DISPOSITIVE POWER  
EACH

REPORTING

PERSON 22,796,620  
10 ☐ SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

22,796,620

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)

29.8%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MHRC II LLC

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

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

SHARES 57,977,150  
8 ☐ SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0  
EACH 9 ☐ SOLE DISPOSITIVE POWER

REPORTING

PERSON 57,977,150  
10 ☐ SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

57,977,150

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)

54.1%

14 TYPE OF REPORTING PERSON (See Instructions)

OO



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1 NAME OF REPORTING PERSONS

MHR FUND MANAGEMENT LLC

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

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

80,773,770

SHARES ☐ 8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH ☐ 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON

80,773,770

☐ 10 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

80,773,770

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)

65.7%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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1 NAME OF REPORTING PERSONS

MHR HOLDINGS LLC

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

Delaware

7 ☐ SOLE VOTING POWER

NUMBER OF

80,773,770

SHARES ☐ 8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0

EACH ☐ 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 80,773,770

☐ 10 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

80,773,770

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)

65.7%

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

81,183,068  
SHARES ☐ 8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY

0  
EACH ☐ 9 SOLE DISPOSITIVE POWER

REPORTING

81,183,068  
PERSON ☐ 10 SHARED DISPOSITIVE POWER  
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

81,183,068

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)

65.8%

14 TYPE OF REPORTING PERSON (See Instructions)

IN; HC

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This statement on Schedule 13D (this Statement ) further amends and supplements, as Amendment No. 25, 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 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 ) and Amendment No. 24, filed on July 1, 2015 ( Amendment No. 24 ), and, together with the Initial 13D and Amendment No. 1 through Amendment No. 23, 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. 24.

**Item 4. Purpose of Transaction**

Item 4 is hereby amended to add the following:

In connection with that certain Development and License Agreement (the Expansion License Agreement ), dated October 14, 2015, by and between the Issuer and Novo Nordisk A/S, a Danish Corporation ( Novo Nordisk ), and that certain Amendment No. 3 to the GLP-1 Development and License Agreement ( GLP-1 Amendment No. 3 ), entered into on October 14, 2015, between the Issuer and Novo Nordisk, amending that certain GLP-1 Development and License Agreement, dated as of June 21, 2008 (as amended, the GLP-1 License Agreement ), Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA (collectively, MHR ) entered into that certain Amended and Restated Agreement with Novo Nordisk and the Issuer, dated October 14, 2015, attached as Exhibit 1 hereto (the Amended and Restated Forbearance Agreement ), whereby, among other things, MHR consented to the Issuer entering into the Expansion License Agreement and GLP-1 Amendment No. 3, and agreed to forbear, under certain circumstances specified in the Amended and Restated Forbearance Agreement, the exercise of certain rights under that certain Amended and Restated Pledge and Security Agreement, dated as of August 20, 2014, between the Issuer and Institutional Partners IIA.

Pursuant to the Amended and Restated Forbearance Agreement, and subject to the conditions described therein, MHR agreed that, among other things, if MHR forecloses on all or any portion of the intellectual property (the Licensed IP ) licensed to Novo Nordisk by the Issuer pursuant to the Expansion License Agreement, the GLP-1 License Agreement or the Development and License Agreement, dated as of December 20, 2010, between the Issuer and Novo Nordisk (the Insulin License Agreement and, together with the Expansion License Agreement and the GLP-1 License Agreement, the Novo Nordisk Agreements ), then upon the satisfaction of certain conditions, that certain Amended and Restated License Agreement, dated as of October 14, 2015, by and between Institutional Partners IIA and Novo Nordisk, attached as Exhibit 2 hereto (the Amended and Restated License Agreement ), would become effective and pursuant thereto, Institutional Partners IIA would agree, among other things, not to disturb certain rights granted to Novo Nordisk by the Issuer pursuant to the Novo Nordisk Agreements, in consideration for Novo Nordisk's performance of its obligations under the Novo Nordisk Agreements, as applicable, including the obligation to pay directly to Institutional Partners IIA fees and royalties as provided therein.

The foregoing discussion of the Amended and Restated Forbearance Agreement and the transactions contemplated thereby is qualified in its entirety by reference to the full text of the Amended and Restated Forbearance Agreement attached as Exhibit 1 to this Statement and incorporated into this Item 4 by reference to Exhibit 10.1 of the Issuer's Current Report on Form 8-K filed on October 15, 2015. The foregoing discussion of the Amended and Restated License Agreement is qualified in its entirety by reference to the full text of the Amended and Restated License Agreement attached as Exhibit 2 to this Statement and incorporated into this Item 4 by reference.



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**Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer**

The information set forth in Item 4 above and Exhibits 1 and 2 to this Statement are incorporated into this Item 6 by reference.

**Item 7. Materials to Be Filed as Exhibits**

Exhibit No.	Description
1	Amended and Restated Agreement, dated as of October 14, 2015, by and among Emisphere Technologies, Inc., MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP and MHR Institutional Partners IIA LP and Novo Nordisk A/S (incorporated by reference to Exhibit 10.1 to the Issuer's Current Report on Form 8-K filed on October 15, 2015).
2	Amended and Restated License Agreement, executed as of October 14, 2015, by MHR Institutional Partners IIA LP and Novo Nordisk A/S. (Exhibit D to the Amended and Restated License Agreement has not been filed; upon request, the Reporting Persons will furnish supplementally to the Commission a copy of any such exhibit.)

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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: October 15, 2015

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

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

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**Exhibit Index**

<b>Exhibit No.</b>	<b>Description</b>
1	Amended and Restated Agreement, dated as of October 14, 2015, by and among Emisphere Technologies, Inc., MHR Capital Partners Master Account LP, MHR Capital Partners (100) LP, MHR Institutional Partners II LP and MHR Institutional Partners IIA LP and Novo Nordisk A/S (incorporated by reference to Exhibit 10.1 to the Issuer's Current Report on Form 8-K filed on October 15, 2015).
2	Amended and Restated License Agreement, executed as of October 14, 2015, by MHR Institutional Partners IIA LP and Novo Nordisk A/S. (Exhibit D to the Amended and Restated License Agreement has not been filed; upon request, the Reporting Persons will furnish supplementally to the Commission a copy of any such exhibit.)