MOLLY M. WHITE, Cal. Bar. No. 171448
DIANA TANI, Cal. Bar No. 136656
FINOLA HALLORAN, Cal. Bar No. 180681

Attorneys for Plaintiff
Securities and Exchange Commission
Randall R. Lee, Regional Director
Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. ENDOCARE, INC., KEVIN M. QUILTY, and JERRY W. ANDERSON, Defendants.	Case No. **CV06-4502 RSWL (SSx)** **COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(3)(A), 78u(e), and 78aa. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district.

SUMMARY

3. This matter involves a financial fraud perpetrated on the investing public by Endocare, Inc. ("Endocare") and the actions of certain of its senior management, including defendants Kevin M. Quilty, Endocare's senior vice president of sales and marketing, and Jerry W. Anderson, former president of an Endocare subsidiary. At the time of the alleged violations, Endocare developed and distributed medical devices for use in the treatment of various types of cancers and urological ailments. Endocare generated most of its revenue from the sale of its cryocare surgical system (referred to as a "box") and disposable probes that were used with the box in the treatment of prostate cancer.

4. Throughout 2001 and 2002, Endocare booked false sales, engaged in improper revenue recognition practices, and improperly understated or delayed the recognition of expenses to inflate earnings. Endocare's senior management also made false statements regarding Endocare's revenue during analyst conference calls. Quilty entered into numerous undisclosed side agreements and "parked" boxes shipped to Endocare-controlled storage facilities. Additionally, Anderson established fictitious business entities used to "purchase" $1.2 million worth of Endocare equipment in September 2002.

5. Defendants' actions resulted in Endocare overstating net revenue by at least 16% for 2001, 17% for the first quarter of 2002, and 33% for the second quarter of 2002 as reported in the financial statements included in its periodic filings. Additionally, Endocare's financial statements understated its pre-tax loss for 2001 by 20%, and falsely reported pre-tax earnings for the first two quarters of 2002, rather than properly reporting substantial pre-tax losses. Endocare's

financial statements for the third quarter of 2002 would have similarly contained misstatements, but Endocare never filed its Form 10-Q for that period because the acting controller (the "whistleblower") raised serious questions about Endocare's accounting practices. Endocare also included a misleading consolidated income statement for the third quarter of 2001, in an amended Form S-3 registration statement filed on November 14, 2001, from which Endocare realized gross proceeds of $78.2 million. Furthermore, Endocare incorporated by reference the inflated third quarter 2001 results in a registration statement filed in March 2002.

6. Endocare improperly received a direct and material benefit from its fraud. First, in November 2001, it received gross proceeds of $78.2 million as a result of a stock offering conducted at a time when the price of its common stock was inflated as a result of the fraud. Second, in March 2002, Endocare completed the acquisition of a company, using a combination of cash and more than 1.6 million shares of Endocare common stock to purchase the company. In this way, Endocare capitalized on the inflated value of its stock, which was created by Endocare's financial fraud.

7. After the whistleblower made his allegations, Endocare committed further violations in the course of investigating the allegations. The company made misleading disclosures in its Forms 8-K and its press releases. First, on December 19, 2002, Endocare announced in a Form 8-K and press release the termination of the whistleblower for conduct "materially injurious to the company." One week before issuing the December 19 Form 8-K and a concurrent press release, Endocare had disclosed that the company's independent auditors, KPMG LLP, had concluded that KPMG could no longer rely on the representations of management. The December 19 Form 8-K and release, however, falsely implied that Endocare had terminated the bad actors responsible for KPMG's concerns when, in fact, the culpable individuals remained at the company and approved the disclosure regarding termination of the whistleblower.

Second, on March 11, 2003, Endocare issued a press release in which it announced that, after an independent investigation, the audit committee had concluded that there "was no indication of fraud or intentional wrongdoing by management." This statement was false because the company had not conducted an "independent" investigation, and because an internal review, in fact, had uncovered evidence suggesting intentional manipulation. The company then filed a March 14, 2003 Form 8-K containing a similar false and misleading statement.

8. As alleged more specifically below, Endocare violated the antifraud, reporting, record-keeping, and internal controls provisions of the federal securities laws. Quilty violated the record-keeping and internal controls provisions of the securities laws, and aided and abetted Endocare's violations of the reporting and record-keeping provisions. Finally, Anderson violated the record-keeping and internal controls provisions, and he aided and abetted Endocare's violations of the record-keeping provisions. By this complaint, the Commission seeks permanent injunctions from future violations of the federal securities laws, disgorgement of all benefits received by defendant Quilty, and civil penalties from all defendants.

THE DEFENDANTS

9. Endocare, Inc. is incorporated in Delaware, with its principal place of business in Irvine, California. Endocare's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Endocare's common stock was listed on the Nasdaq Stock Market until January 16, 2003, when Endocare was delisted for failing to file its periodic reports with the Commission. Endocare, however, became compliant with the Commission's reporting requirements on June 28, 2004. Endocare's common stock currently trades on the Over-the-Counter Bulletin Board.

10. Kevin M. Quilty, age 52, is a resident of Washington Crossing, Pennsylvania. Quilty has been the senior vice president of sales and marketing at Endocare since February 2001 and continues to be employed by Endocare as a

senior vice president.

11. Jerry W. Anderson, age 59, is a resident of Gunter, Texas. Anderson was the president of Endocare's subsidiary, Advanced Medical Procedures, and served as Endocare's vice president of sales and marketing from 1999 to early 2001. Anderson no longer works at Endocare.

BACKGROUND

A. Endocare's Reporting Obligations

12. As a public company, Endocare was required to comply with federal statutes, rules, and regulations to maintain public trading of its stock and to sell its securities to the public.

13. These statutes, rules, and regulations, which are designed to ensure that financial information is accurately recorded and publicly disclosed, required Endocare to, among other things: (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of assets; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP") or any other criteria applicable to such statements and to maintain accountability for assets; (c) file with the Commission accurate annual, current, and quarterly reports on the appropriate forms including a financial statement containing the company's balance sheet and statements of income and cash flows prepared in conformity with GAAP; and (d) file with the Commission periodic reports that did not make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

14. Pursuant to the Commission's rules and regulations, Endocare reported sales revenue and income for specific periods, i.e., as of the end of each

quarter and at the end of its fiscal year. Endocare used a calendar year as its fiscal year. In 2001, Endocare's first quarter ended March 31; its second quarter ended June 30; its third quarter ended September 30; and its fourth quarter ended December 31. In addition to filing annual and quarterly reports with the Commission, Endocare also issued earnings press releases and held conference calls with analysts and investors to discuss its financial performance on a periodic basis, usually after the end of a quarter and before Endocare made its filings with the Commission.

15. Endocare's senior management knew or was reckless in not knowing that Endocare's public filings and earnings releases contained materially false and misleading information about Endocare's financial performance and business.

B. Applicable Accounting Rules

16. Under GAAP and the Commission's rules and regulations, Endocare could recognize revenue from a sale during a particular reporting period only if: (1) persuasive evidence existed of a sales arrangement with a customer; (2) delivery of the product had occurred; (3) the price for the product was fixed or determinable; (4) collectibility of the sales price was reasonably assured; and (5) Endocare had substantially performed all of its obligations to the customer.

17. GAAP and, in particular, Financial Accounting Standards Board Statement of Concepts No. 5 ("CON 5"), provide that revenue recognition is not appropriate before merchandise is exchanged for cash or claims to cash.

18. Accounting Principles Board Opinion No. 29 ("APB 29") directs that the revenue recognized of a nonmonetary asset acquired in exchange for another nonmonetary asset is the fair value of the asset surrendered. APB 29 also requires that material, non-monetary transactions be disclosed in a company's public filings.

19. Financial Accounting Standards Board Statement No. 57 ("FAS 57") states that financial statements shall include disclosures of related party

transactions that are material.

20. Also, Financial Accounting Standards Board Statement No. 48 ("FAS 48") provides that revenue should not be recognized when the buyer's obligation to the seller is contingent on resale of the product. FAS 48 also does not normally permit recognition of revenue on a sale with a right of return. The only exception to this rule exists when there is a history of such sales to provide a basis for estimating the amount of future returns and if income is reduced to reflect the estimated future returns through the establishment of a reserve for returned goods.

21. In addition, Accounting and Auditing Enforcement Release ("AAER") No. 108 and Staff Accounting Bulletin ("SAB") No. 101 set forth certain criteria that must be met to recognize revenue from bill and hold sales. Under GAAP, to recognize revenue on sales in which Endocare, as the seller, maintained inventory of the sold goods (otherwise known as/referred to as "bill-and-hold" sales), Endocare had to satisfy the following requirements: (1) the risks of ownership for the goods had to have passed to the buyer; (2) the customer must have made a fixed commitment to purchase the goods, preferably reflected in written documentation; (3) the buyer, not the seller, must have requested that the transaction be on a bill-and-hold basis and must have had a substantial business purpose for ordering the goods on a bill-and-hold basis; (4) there must have been a fixed schedule for delivery of the goods that was reasonable and consistent with the buyer's business purpose; (5) the seller must not have retained any specific performance obligations such that the earnings process was not complete; (6) the ordered goods must have been segregated from the seller's inventory and not have been subject to being used to fill other orders; and (7) the equipment must have been complete and ready for shipment.

22. Finally, GAAP also requires that expenses be recognized in the period in which liabilities are incurred for goods and services that are expended either simultaneously with the purchase or soon after.

C. **Endocare's Revenue Recognition Policies And "Record Revenue" Trend**

23. According to Endocare's public filings in 2001 and 2002, the company's revenue recognition policy required that revenue, including revenues from sales to distributors, could be recognized upon shipment for sales of boxes and disposable cryoprobes, provided acceptance was assured and collectibility was probable.

24. After obtaining Medicare coverage in July 1999 for use of its box in cryosurgery, Endocare began reporting a consistent history of "record revenue" growth quarter over quarter in its public filings, analyst conference calls, and press releases. Endocare's reported revenue began to rise more significantly beginning with the first quarter of 2001, increasing from $2.8 million for the quarter ended March 31, 2001, to $11.4 million for the quarter ended June 30, 2002.

THE FRAUDULENT SCHEMES TO OVERSTATE REVENUE IN 2001 AND 2002

25. Before revenue was recognized by Endocare, every box sale was approved by either Endocare's chief executive officer ("CEO") or its chief financial officer ("CFO"), who indicated their approval by initialing the customer's purchase order, which was then forwarded to the finance department to record the sale.

26. Since 1999, Endocare employees were required to use a template purchase order to ensure there were clear, unconditional terms as required by GAAP. The policy of the finance department was to record revenue only if (1) there was an unconditional purchase order; (2) delivery requirements were met; and (3) the customer was creditworthy.

27. Sales of many boxes were fraudulently recorded and/or reported as revenue by Endocare in 2001 and 2002.

28. Endocare's improper revenue recognition practices included

(1) false sales; (2) various contingent transactions, including bill and hold sales and side agreements with contingent sales terms; (3) agreements containing undisclosed financial incentives for customers to purchase boxes; and (4) an improper non-cash swap transaction. Quilty and Anderson participated in several of these transactions.

A. Endocare's False Sales to Inflate Revenue

29. Endocare fraudulently recognized $1,450,000 in revenue on three false sales transactions. In December 2001, Endocare's CEO called a physician in Celebration, Florida and asked him to sign a purchase order for a box, telling him that Endocare needed additional box revenue before the end of the year. After contacting the physician, the CEO instructed Endocare's Southeast regional sales director that he should forward a purchase order and side-letter agreement to the physician-customer. Endocare's sales director copied Quilty on a December 26, 2001 e-mail in which the sales director attached the side letter to the physician. The side letter said that the Florida physician was purchasing the unit "on behalf of a physician-owned company, of which he is an investor" and that the "company is in the process of formation." The side letter also stated that "Endocare will assist in the formation and resale of the system into existing targeted or future partnerships" and that "[w]hen the company is formed, [the physician] may transfer some or all ownership of this system to the company."

30. These contingencies set forth in the side-letter were not included on the purchase order approved by the CEO and submitted to the finance department. Endocare then shipped the box to an Endocare-controlled storage facility in Florida, where it remained until September 2002. During KPMG's third quarter review, Endocare's CEO contacted the physician in Celebration, Florida to explain to him how to fill out KPMG's confirmation request and confirm the accounts receivable. The CEO also warned the physician that an auditor from KPMG might contact him and that it was important to tell the auditor that the physician had

instructed Endocare to ship the box to Endocare's storage facility, which was not true. The physician followed the CEO's instructions.

31. In a meeting in late August or early September 2002 at Endocare, Anderson, the head of Endocare's billing unit, informed Endocare's CEO and Quilty that he intended to leave Endocare and offered to purchase a box and probes to start a mobile prostate therapy business. The CEO had previously told Anderson that Endocare could not sell a box to an employee. About one week before the close of the third quarter of 2002, however, Anderson again presented his proposal to the CEO and to Quilty. This time, Endocare's CEO suggested that Anderson "purchase" multiple boxes and pay Endocare when Anderson's new business was generating sufficient revenue. The CEO instructed Anderson to use names on the purchase orders that were familiar so as to seem legitimate and not raise suspicion.

32. Following the CEO's direction, Anderson instructed his subordinate at the billing unit to create two purchase orders in the names of Florida Medical Systems and Southwest Urology, two dbas that Anderson had previously registered. Anderson also instructed the subordinate to sign the purchase orders using the names of real employees who worked for known Endocare customers. Anderson further instructed his subordinate to fax the purchase orders to Quilty at Endocare. Anderson's subordinate forged the signatures of Endocare's customers on the purchase orders.

33. When the Southwest Urology purchase order came in, Endocare's CFO asked whose name was on the document. Upon hearing the name, the CFO responded that he did not want to sign off on the order and that the CEO needed to approve it. The CEO did, and Endocare booked $1.2 million in revenue. Shortly after the forged purchase orders were signed, the internal investigation ensued, and the third quarter financials were delayed.

34. Endocare's revenue recognition on these transactions was improper

under GAAP. CON 5 provides that revenue recognition is not appropriate until merchandise is exchanged for cash or claims to cash. Here, Endocare had no claims to cash and should not have recognized revenue on false and contingent sales.

B. Endocare Improperly Recognized Revenue On Box Sales Involving Bill And Hold Sales

35. Endocare improperly recognized $200,000 in revenue from Endocare's Southeast regional sales director's sale of a box in December 2001 to an entity called South Florida Partnership, which was to be formed by a businessman in the area. The box was shipped to Endocare's storage facility in Florida and remained there through April 2002. The representative and managing partner of the South Florida venture partnership never developed a physician partnership for the box, and in fact still owed Endocare $150,000 for a box purchased three months earlier. Endocare's CEO and Quilty knew that the box remained in storage without an end user as late as February 12, 2002, six weeks after the year end and before Endocare filed its Form 10-K reporting this revenue.

36. In March 2002, Endocare's Southeast regional sales director sold another box to the same representative partner of the South Florida venture partnership. The Endocare sales director negotiated and executed a side agreement that Quilty approved. The side agreement stated that the box was intended for another physician and that Endocare would pay the representative of the venture partnership a $25,000 commission upon the resale of the unit to the end-user physician. Endocare's sales director did not include this side letter with the purchase order. Endocare's CFO approved the purchase order. The side-letter, however, was not forwarded to the finance department for purposes of recording the sale. Endocare then shipped the box to the Endocare storage facility in Florida and recognized $250,000 in revenue from the transaction. The partnership's representative never paid for the March 2002 box. Endocare agreed to this side

agreement because it allowed Endocare to book a sale in the first quarter of 2002.

37. Endocare also improperly recognized revenue from the sale of three boxes to American Kidney Stone Management ("AKSM") in March 2002. Endocare shipped the boxes to AKSM, but AKSM refused delivery, citing space concerns. Endocare's CFO approved the purchase order of the sale of the three boxes to AKSM. Upon AKSM's refusal to accept delivery, an Endocare salesman, with Quilty's approval, leased a storage unit under his own name and paid for the unit with an Endocare corporate credit card. Endocare reimbursed the salesman for the charge on the credit card. AKSM took possession of one of the boxes in May 2002, while the other box remained in storage until January 20, 2003. Endocare's senior management knew that the AKSM boxes were sitting in storage. AKSM never paid for the two boxes.

38. In addition to failing to meet the revenue recognition criteria of CON 5 due to the contingent nature of these sales, and therefore failing to meet the requirement that merchandise be exchanged for claims to cash, these transactions further failed to meet revenue recognition criteria under Accounting and Auditing Enforcement Release ("AAER") No. 108 and the guidance under Staff Accounting Bulletin ("SAB") No. 101 for bill and hold sales. Endocare did not meet the elements of revenue recognition for bill and hold transactions. There was no fixed delivery schedule, and the AKSM boxes were put into a storage unit paid for by an Endocare salesman.

C. Endocare Entered Into Undisclosed Side Agreements to Improperly Inflate Revenue

39. For many customers, Endocare allowed the customer's payment for the box to be contingent upon successful formation of a business, the box generating a minimum number of procedures, and/or resale of the box to an end user. None of these side agreements and payment terms was reflected in the purchase orders approved by the CEO and/or the CFO, or disclosed in Endocare's

public filings.

40. In a box sale for $250,000 to Innovative Medical Technologies ("IMT") in December 2001, although the purchase order and invoice indicated 90-day payment terms, Quilty agreed and confirmed in a written side agreement that IMT's payment would not be due until the box generated a minimum number of procedures. Endocare's CEO approved the minimum procedure guarantee. In addition, in an unexecuted letter from Quilty to IMT, dated December 20, 2001, Endocare promised that it would assist IMT in forming an organization around the box, such as a physician practice group, or in reselling the unit. IMT never paid for the box despite ordering another unit in June 2002.

41. In June 2001, Endocare recognized $250,000 in revenue on a box sale to a New York physician, whose purchase of the box was contingent upon the successful formation of his physician partnership. After executing the purchase order, Quilty and another salesman offered to incentivize the New York physician to form the partnership and obtain financing to pay for the box by crediting the physicians for procedures performed on equipment not owned by these physicians. Through this arrangement, Endocare gave the New York physician a $64,500 check in July 2002 for procedures performed by other physicians. Endocare's senior management approved this payment one year after Endocare recognized the revenue from the sale.

42. In September 2001, Endocare's CEO and its Southeast regional sales director requested that a physician in Gainesville, Florida take delivery of a box for $250,000, pending the ultimate sale of the box to the eventual end user. The end user was an associate of the Gainesville physician who was interested in forming a physician partnership to purchase a box. The Gainesville physician, who had already purchased his own box in June 2001, but still had not paid for it, agreed to assist in the sale to his associate. The Gainesville physician, however, was unsuccessful in helping Endocare sell the box to his associate by the end of the

third quarter of 2002. Endocare's CEO then called the Gainesville physician and told him that "it would really help Endocare" if he would take the box pending its eventual sale to his associate.

43. The Gainesville physician asked Endocare's sales director for written confirmation that Endocare would resell the unit in the event that the associate declined to purchase the box, and requested that the sales director's supervisor, Quilty, sign the letter agreement. In response, Quilty called the physician and confirmed that Endocare would resell the unit if the associate refused to purchase the box. Quilty sent the Gainesville phyician a side-letter agreement, reviewed by Endocare's CEO, affirming the commitment. The box was shipped to Endocare's storage facility in Florida in September 2001, where it remained through October 2002. Endocare improperly recognized revenue from this transaction in the third quarter of 2001.

44. In March 2002, Endocare improperly recognized revenue from a transaction with Focus Surgery, Inc. Endocare purchased $450,000 in equipment from Focus Surgery, and agreed to pay $250,000 for the development of a software program to make the Focus Surgery equipment compatible with Endocare's box. In a March 12, 2002 e-mail from an Endocare salesman to Focus Surgery, a copy of which was sent to Quilty, the Endocare salesman confirmed that Endocare would purchase equipment from Focus Surgery. In that March 12 email, which was sent two weeks before the date of the transaction, the Endocare salesman requested that Focus Surgery purchase one box from Endocare and promised to help Focus Surgery resell the box if no procedure revenue materialized from the venture. It was understood between both entities' representatives, including Quilty, that Focus would use Endocare's $250,000 payment for the development of the software program to pay for the $250,000 box it purchased from Endocare.

45. During a telephone conversation on or about June 25, 2002, between Focus's representative and Endocare's salesman, it was agreed that Focus's check

to Endocare would be dated June 28, 2002, and Endocare's check to Focus would be dated July 1, 2002. These selected dates had the intended effect of pushing Endocare's expense into the third quarter, as well as providing Focus Surgery with the funds to pay Endocare before the end of the second quarter. Endocare's CFO approved the $250,000 expenditure to Focus Surgery and signed the July 1, 2002 post-dated check, which was actually issued on June 28, 2002. The CFO also approved the purchase order for Focus Surgery to acquire a box from Endocare. At the time he approved the purchase order, the CFO was aware that Endocare was buying software from Focus Surgery at the same price that Endocare was selling its box to Focus Surgery. The purchase order stated that Focus Surgery was required to pay for the box in 90 days, without reference to the fact that Endocare was simultaneously obligated to pay for the software program within the same time.

46. In June 2002, Endocare's Southeast regional sales director negotiated the sale of a box to Tri-States Cryotherapy ("Tri-States"), a partnership that included five limited partners and one general partner, in a transaction that included a side letter committing Endocare to help resell the box. Quilty, who approved the side letter, discussed its terms with Endocare's CEO and CFO. The CFO authorized the transaction, including the side letter. The purchase order did not include or reflect the side agreement. Endocare improperly recognized $250,000 in revenue from this transaction.

47. In June 2002, Endocare's CEO participated in negotiations that led to the sale of three boxes and accessories for $900,000 to a physician in California, whereby Endocare agreed that no payment was due for six months and that the physician could withdraw from the deal if the number of procedures generated by the units did not meet projections. In a written proposal reviewed by the CEO, the California physician was offered a $45,000 "marketing contribution," no equipment costs for six months, a possible extension of the six month payment terms, assistance in securing an outside investor for a physician partnership, and

assistance in reselling at least one of the boxes. Despite the existence of these various contingent terms and continuing performance obligations on the part of Endocare, Endocare recognized $900,000 in revenue in June 2002. The purchase order, which was approved by Endocare's CFO, did not reflect the contingent terms or continuing performance obligations.

48. Endocare's recognition of revenue on these transactions was not appropriate under GAAP. These transactions failed the CON 5 requirement that revenue should not be recognized before merchandise is exchanged for cash or claims to cash. Several of the transactions also failed to meet the criteria in FAS 48. FAS 48 provides that revenue should not be recognized when the buyer's obligation to the seller is contingent on resale of the product. In addition to the resale agreement in the Focus Surgery transaction, the timing of the checks exchanged between Focus Surgery and Endocare establishes that Focus Surgery paid for the Endocare box with Endocare's money, making the exchange of assets between the companies inappropriate for revenue recognition under APB 29.

D. Endocare Induced Customers with Undisclosed Financial Incentives

49. In an effort to sell more boxes, Endocare provided a range of financial incentives to its customers that varied from consulting fees, to partnership development fees, to guaranteed procedure revenue. None of these incentives were disclosed in the box purchase orders or in Endocare's public filings.

50. In December 2001, Quilty sold two boxes for $500,000 to Biotechnology Integration Management ("BIM"), which was a dba wholly owned by a member of the board of managers of Bay Area Mobile Medical ("BAMM"). BAMM had previously purchased a box in September 2001. BIM's owner, who was in Chapter 11 bankruptcy, signed two purchase orders for BIM in December 2001. In order to reduce the owner's downside risk, Quilty signed a side-letter, in which Endocare agreed to provide BIM's owner with guaranteed minimum procedure revenue of three procedures per month, worth $15,000 for each box for

six months, for a total commitment of $180,000. Quilty also agreed to pay BIM's owner a consulting fee of $5,000 per month for an indeterminate amount of time, beginning January 1, 2002. By June 2002, both Quilty and Endocare's CFO knew that BIM's owner could not pay for these boxes. Quilty proposed that if BAMM obtained financing to purchase both the BIM and BAMM boxes, Endocare would extend the minimum procedure payments for 48 months, and include a minimum procedure guarantee for all three boxes. The purchase orders, which were approved by Endocare's CEO, did not include or reflect any of the side agreements and financial incentives.

51. In late June 2002, Endocare's CFO approved recognition of $300,000 in revenue from the sale of another box to BIM on June 28, 2002. Concurrently with the sale, Endocare received a $500,000 check from BIM's owner to pay for the two boxes purchased in December 2001, and recorded the cash receipt on June 28, 2002. Endocare's CFO agreed to hold the check until financing was completed to cover the check. The CFO was notified around July 9, 2002, that the check bounced. BIM did not submit a new check, and BIM's owner made no payments on the three boxes he "purchased" from Endocare.

52. Endocare also recorded $1,000,000 in revenue from the sale of boxes to Theratech Ventures LLC, even though Endocare had provided hundreds of thousands of dollars in financial incentives to Theratech. For example, in November 2001, Quilty proposed that Theratech "develop" five cryotherapy partnerships and, in a written proposal, offered Theratech $20,000 per month in development fees beginning January 1, 2002, as well as expenses related to the development of the partnerships. Theratech then signed a purchase order for its first box in December 2001, and Endocare began paying the $20,000 per month fee and expenses to Theratech. Endocare's CFO approved the Theratech purchase order, which was dated December 17, 2001. The CFO also began signing monthly checks and approving invoices to Theratech for "development fees" beginning in

February 2002. At the time he was approving payments to Theratech, the CFO was aware of Quilty's deal with Theratech and understood Endocare's ongoing obligation to pay Theratech $20,000 each month.

53. In fact, in June 2002, Quilty extended the agreement for Endocare to pay the monthly development fees for another six months. The CFO, in turn, continued to pay Theratech its $20,000 fees consistently each month. Moreover, as reflected in an email dated July 12, 2002, Quilty again guaranteed Theratech a minimum of two procedures per month, worth $2,500 each, for 40 months, in an attempt to assist Theratech in obtaining financing for its December 2001 "purchase." The CFO approved some of these payments, as well as the development fees. Endocare even invested $36,000 in a Theratech-developed partnership in September 2002 and guaranteed a minimum of $5,000 per month in procedure revenue for 24 months. In addition, the CFO was the officer who signed the subscription agreement and the corresponding check through which Endocare invested $36,000 in the Theratech-developed partnership.

54. In September and the first two days of October 2002, Quilty and Endocare's CEO negotiated the sale of three more boxes to Theratech for $750,000. Endocare offered Theratech a $500,000 equity investment, a $750,000 loan, a $100,000 fee for each partnership developed, and an extension of the $20,000 per month development fee, plus expenses, through December 2003. Endocare's CFO, knowing of all the payments to Theratech throughout 2002, approved Theratech's September 30, 2002 purchase order for the three additional boxes. The final side letter, executed concurrently with the purchase order received electronically by Endocare on October 2, 2002, included the $750,000 loan, $100,000 fee for each partnership developed by Theratech, and the extension of the $20,000 monthly development fee. Notwithstanding all the financial inducements Endocare gave to Theratech, Endocare recorded revenue on the sales to Theratech in December 2001 ($250,000), and for three boxes on September 30,

2002 ($750,000), despite the fact that the final agreement for the latter sale was not received at Endocare until October 2, 2002. On December 12, 2002, Theratech rescinded the purchase of the three September 2002 boxes.

55. Endocare's above-described financial inducements to its customers, coupled with the lack of reasonable assurances to collect any remaining balance purportedly due to Endocare, rendered revenue recognition inappropriate under GAAP. For example, Accounting Research Bulletin No. ("ARB") 43, Chapter 1A ¶1 states that "profit is deemed to be realized when a sale in the ordinary course of business is effected, unless the circumstances are such that the collection of the sale price is not reasonably assured." In this instance, Endocare knew that BIM had a tenuous payment history, and that without providing cash in the form of consulting and guaranteed payments, the BIM and BAMM companies had little chance of paying their invoices from Endocare. Endocare knew that it was paying Theratech to establish its business with no guarantee that Theratech would ever be able to pay for its purchases from Endocare. Under GAAP, any recognition of revenue on these transactions was improper.

E. Endocare Improperly Recognized Revenue From a Non-Cash Swap Transaction

56. In March 2002, Endocare improperly recognized revenue from a non-cash swap transaction conducted with AKSM, in which Endocare accepted a competitor's device previously acquired by AKSM in exchange for AKSM receiving an Endocare box. Endocare recorded the full sale price of the box, $250,000, as revenue even though the competitor's device that was received as "payment" was valued at only about $70,000. Endocare's accounting records reflect that the receivable was "washed" against the payable to AKSM. Both Endocare's CEO and its CFO approved the non-cash swap. Before Endocare's CFO signed the purchase order, Quilty made the CFO aware of the fact that Endocare had committed to purchase a competitor's device from AKSM. The

CFO, in fact, approved the invoice from AKSM, obligating Endocare to purchase that equipment from AKSM. The purchase order did not reflect that this was a non-cash swap transaction. Endocare also failed to disclose this swap transaction in its public filings.

57. Endocare improperly recognized revenue on this transaction. APB 29 directs that the cost of a nonmonetary asset acquired in exchange for another nonmonetary asset is the fair value of the asset surrendered. Because Endocare was only able to collect about $70,000 (the fair value of the competitor machine received from AKSM) in assets from the sale of one box, Endocare's revenue from the sale of that box likewise should have been limited to $70,000, instead of the $250,000 in revenue it recorded. APB 29 also requires that material, non-monetary transactions, such as this one, be disclosed in a company's public filings.

ADDITIONAL IMPROPER TACTICS USED TO INFLATE ENDOCARE'S OVERALL WORTH

A. Endocare Understated Its Expenses, Thereby Inflating Earnings

58. In addition to Endocare's improper revenue recognition practices described above, Endocare engaged in conduct that resulted in Endocare's understatement of expenses in the first two quarters of 2002, thereby overstating pre-tax earnings. Specifically, Endocare delayed recording almost $470,000 in first and second quarter 2002 expenses until the third quarter of 2002. None of the entries were appropriate under GAAP.

59. In late May 2002, Endocare received a $230,000 invoice from a vendor who developed marketing materials for Endocare, for services rendered in April and May 2002. Payment of the expense was not approved, however, until some time in late July 2002. Endocare failed to properly accrue for the expense in the second quarter when incurred, but rather, posted the expense from the invoice on and as of July 31, 2002 and issued a check to the vendor on August 5, 2002. Endocare had recorded no accrual in the second quarter related to these expenses.

Furthermore, although Endocare's CEO approved payment and expense recognition in late July 2002 – well before Endocare filed its Form 10-Q for the second quarter on August 15, 2002 – the expenses were not reflected in the financial statements included in the second quarter Form 10-Q.

60. Also in July 2002, Endocare approved payment of $65,000 to another vendor for printing services rendered in the first and second quarters of 2002, and $171,000 in legal expenses for services rendered by a law firm through June 30, 2002. Endocare failed to properly accrue for these significant expenses in the first and second quarters when they were incurred and instead recorded them in the third quarter.

61. None of the above expenses were properly recorded under GAAP. GAAP requires that such expenses be recognized in the period in which liabilities are incurred for goods and services that are rendered either simultaneously with the purchase or soon after. Here, Endocare had the benefit of legal and printing services at the time the expenses were incurred. By failing to appropriately accrue for these expenses, Endocare overstated its pre-tax earnings for the second quarter of 2002 by at least 62%.

B. Endocare Misled the Market about Procedure Numbers

62. In addition to the accounting improprieties described above, Endocare inflated its procedure revenue to artificially increase its overall worth. Specifically, Endocare received significant revenue from fees generated by procedures performed using Endocare-owned boxes. Procedure revenue was critical to Endocare because it reflected the present and future market acceptance and growth for Endocare's cryotherapy business. On February 19, 2002, Endocare's CEO misrepresented Endocare's procedure volume for the 2001 year-end in an analyst conference call. During the call, the CEO told analysts and investors that 2,200 cryotherapy procedures were performed in 2001 using Endocare boxes. This materially overstated Endocare's true procedure volume,

which was only 1,562 procedures. The CEO knew this representation was misleading because he received weekly updates regarding procedure numbers from Quilty.

63. In addition, on July 24, 2002, Endocare's CEO misrepresented Endocare's procedure volume for the second quarter of 2002 in an analyst conference call. During the conference call, the CEO told analysts that 1,300 cryotherapy procedures were performed in the quarter ended June 30, 2002, using Endocare's box. Endocare's true procedure volume, however, was less than half the reported amount – less than 600 for the quarter. The CEO knew that this representation was misleading because he had received internal reports of procedure volume from Quilty before the conference call that showed that Endocare's actual procedure volume was less than 600.

64. Endocare's CFO was also present on the February 19 and July 24, 2002 analyst calls. During the calls, the CFO provided overviews of the company's operational and financial status. With respect to the 2001 year-end call, the CFO knew that Endocare's procedure volume was significantly lower than 2,200. Just weeks before the call, on January 8, 2002, the CFO had been copied on an email from Endocare's director of finance that provided him and the CEO with a spreadsheet of revenue figures for Endocare. The worksheet breaks down revenue for the company. Clearly marked on the sheet is "Estimate Procedures 1600." Thus, the CFO knew that Endocare's procedure numbers were far less than the 2,200 figure that the CEO stated during the 2001 year-end call.

65. Endocare's CFO also knew that the actual procedure volume was significantly lower than 1,300 for the second quarter of 2002. The CFO regularly attended weekly meetings for senior management, during which Quilty provided updates on procedure volume. By the end of the second quarter, the CFO knew from Quilty's regular updates that Endocare's procedures numbers were not close to reaching its year end goal of 5,000 procedures. The CFO also knew from

Quilty's updates at those meetings that Endocare had not reached its second quarter goal of approximately 1,200 procedures, which it needed in order to reach its year end goal of 5,000 procedures.

66. Furthermore, throughout 2001 and 2002, both the CEO and CFO misled analysts regarding Endocare's procedure volume. The analysts relied on these misrepresentations when building their revenue models and quarterly notes. In fact, the CEO and CFO reviewed the analysts' revenue models and notes, which included Endocare's false procedure volumes, and yet the CEO and CFO failed to correct their misrepresentations. For example, Bear Stearns's 2001 annual revenue model states that Endocare's procedure volume for 2001 was 2,000 procedures. Bear Stearns's model was based on the CEO's and the CFO's misrepresentations. As discussed above, Endocare's true procedure volume was only 1,600.

C. Endocare Failed to Disclose Related Party Transactions

67. Endocare's largest customer in 2001 and 2002 was U.S. Medical Development Ltd. ("USMD"), a division of a large urologic group of physicians operating under the name U.S. Therapies LLC. In 2001, Endocare and USMD entered into a distribution agreement that provided USMD with regional exclusivity to market Endocare's box in exchange for a commitment to purchase at least six boxes per quarter that would be sold to end-users. Pursuant to the distribution agreement, Endocare sold 21 boxes from June 2001 through March 2002, for a total of $4,305,000. As a result, USMD quickly began to build-up an inventory of boxes in storage with no specific end users identified. Endocare advanced $900,000 to USMD for USMD to use as partial payment for the boxes back to Endocare. The advance was made under the guise of an earnest money payment as part of a letter of intent dated April 8, 2002, in which Endocare expressed interest in acquiring USMD.

68. Although the letter of intent requiring the $900,000 earnest money payment to USMD was dated April 8, 2002, Endocare's CEO approved a

requisition for a $900,000 check to USMD on March 27, 2002. The check requisition contained instructions to date the check April 1, 2002 – effectively making it a second quarter expenditure. Both the CEO and the CFO signed the post-dated check to USMD, which was credited to USMD's bank account on March 29, 2002. Contemporaneous with Endocare's check to USMD, USMD issued a $410,000 check, dated March 28, 2002, to Endocare for boxes purchased in September 2001. Although Endocare posted the check to its cash receipts journal on March 29, 2002, it did not deposit the check into its bank account until April 12, 2002. Endocare's files contained a note from USMD's CFO requesting that the $410,000 check not be deposited until confirmation was received that funds were available, with a notation "ask John on Friday."

69. The $900,000 payment to USMD was not disclosed to KPMG during its review of Endocare's first quarter 2002 financial statements, and it was not disclosed in Endocare's Form 10-Q for that period. Upon learning that the acting controller had disclosed to KPMG the March 2002 payment to USMD during the second quarter review, Endocare's CFO told the acting controller, among other things, that he should not have disclosed the USMD payment to KPMG.

70. The negotiations between Endocare and USMD continued into late June 2002, at the same time USMD was due to purchase another six boxes under the distribution agreement. At that time, USMD also owed Endocare $2 million for boxes purchased as early as November 2001. USMD did not have enough money to make the payment of $2 million it owed to Endocare. The parties agreed that USMD would purchase $1 million worth of disposable probes, rather than additional boxes. Before issuing a purchase order for the probes, however, USMD wanted Endocare to guarantee that it would acquire USMD. In response, Endocare's CEO offered a consulting agreement to the head of USMD, consisting of a salary of $650,000 per year, for three years, and 200,000 shares of Endocare common stock, all of which was worth about $3 million. On June 27, 2002,

USMD issued a purchase order for $1 million worth of probes. Endocare's acquisition of USMD was completed on September 30, 2002.

71. Endocare failed to properly disclose these related party transactions as required by FAS No. 57 (Related Party Disclosures), which provides that financial statements shall include disclosures of related party transactions that are material. Endocare and USMD were related parties. USMD was not only Endocare's major customer, but USMD was a related party because Endocare also had an investment interest in USMD's parent company, U.S. Therapies. None of the above transactions with USMD were disclosed in Endocare's public filings.

ENDOCARE INITIATES AN INTERNAL INVESTIGATION AND PUBLICLY DENIES ANY WRONGDOING

72. In February 2002, the whistleblower joined Endocare as the general manager of a company that Endocare had acquired. In July 2002, the whistleblower began acting as Endocare's controller and assisted in closing Endocare's books in the second and third quarters of 2002. During that time, the whistleblower discovered a June 4, 2002 e-mail from Endocare's director of sales for the Southeastern region to Quilty and the former controller, which contained a status report on several outstanding receivables for boxes purportedly sold by Endocare that were in warehouses. The acting controller told Endocare's CEO and CFO that sending product to warehouses and calling it revenue was fraud. He warned the CEO and CFO that if he discovered information to suggest this was not an isolated incident, he would resign and "go out loud."

73. In addition, the whistleblower, who was involved in responding to the due diligence inquiries of a potential acquirer of Endocare, learned that Endocare's CFO had provided the potential acquirer misleading information regarding the status of receivables from box sales. Specifically, the CFO represented to the potential acquirer that Endocare receivables were being paid, despite the fact that no payments had been received. The whistleblower told the potential acquirer that

he found some of the CFO's representations concerning the outstanding receivables to be wrong. On October 18, 2002, the potential acquirer offered to acquire Endocare at a price significantly less than anticipated, thereby effectively ending the merger discussions between the two companies. On October 24, 2002, the whistleblower contacted a board member and alleged accounting improprieties at the company. The board member referred the allegations to the audit committee.

74. In late October 2002, the audit committee retained a law firm to perform an initial investigation. KPMG was not satisfied that the law firm's investigation was sufficient to allay concerns of fraud, and notified the audit committee that KPMG's review of Endocare's third quarter 2002 financial statements was incomplete. KPMG also requested further investigation into the challenged transactions and suggested that the audit committee hire independent counsel and an independent forensic accountant to conduct the investigation.

75. Endocare delayed the release of its third quarter 2002 results, previously scheduled for October 30, 2002, and the filing of its quarterly report for the period ended September 30, 2002. On October 30, 2002, when Endocare announced its third quarter results would be delayed, its stock price dropped from a close of $5.20 on October 30, to a close of $2.83 on October 31, more than 45%.

76. On October 31, at KPMG's insistence, the audit committee retained a forensic accountant. On November 13, 2002, after considering the results of the forensic accountant, KPMG informed the audit committee that it was not prepared to complete its quarterly review until an expanded investigation of the whistleblower's allegations was performed. KPMG was concerned about the possible role of management in the transactions and the intent of the parties in engaging in the transactions.

77. On December 11, 2002, KPMG informed the audit committee that it concluded that it could no longer rely on the representations of Endocare's management and withdrew its report on Endocare's financial statements for the

year ended December 31, 2001. KPMG also indicated that the company's financial statements for the quarters ended March 31, 2002 and June 30, 2002 should not be relied upon. Endocare announced these facts in a press release on December 12, 2002.

78. On December 19, 2002, the company announced the termination of the whistleblower for "misconduct" that was "demonstrably and materially injurious to the company," in a Form 8-K and press release (the "December 19 Form 8-K"). Endocare's CEO and CFO both approved the final press release, which was attached as an exhibit to the Form 8-K. By highlighting the whistleblower's alleged misconduct and failing to disclose that the CEO and the CFO were members of management upon whom KPMG could not rely, the December 19 Form 8-K was misleading in light of the press release that Endocare issued a week before, reporting that KPMG had concluded that it could not rely on the representations of management.

79. On March 11, 2003, Endocare issued a press release, which the CEO and other board members approved, announcing the completion of the audit committee's investigation. Specifically, the press release stated that "an independent review and investigation of [Endocare's] accounts and accounting practices [had] been completed" and that the "audit committee and its advisors" had concluded that there was "no indication of fraud or intentional wrongdoing by management." The March 11, 2003 press release was false and misleading in two respects. First, the investigation by the law firm was not independent. Second, the press release claimed that there was "no indication of fraud or intentional wrongdoing." To the contrary, there was substantial evidence of fraud or intentional wrongdoing. For example, in investigating Anderson's false box sales, which had been shipped to a warehouse at the close of the third quarter of 2002, the forensic accountant received an obviously back-dated rental agreement from the supposed purchaser of the boxes. In fact, Anderson recruited a front man to

represent the entities that purported to purchase the equipment to the forensic auditors. When the forensic accountant requested a rental agreement for the boxes during the internal investigation, Anderson had the front man obtain a back-dated rental agreement. This back-dated rental agreement was suspect because its electronic date of November 6, 2002 was the very day on which the forensic accountant requested the agreement from the supposed box purchaser. In addition, the phony purchaser subsequently refused to speak to the forensic accountant about the back-dated agreement and later rescinded the order.

80. On March 14, 2003, Endocare filed a Form 8-K announcing that the audit committee had concluded its investigation, that it disagreed with KPMG that KPMG could not rely on the representations of senior management, and that the audit committee "concluded there had been no fraud or intentional wrongdoing by the company's management." Endocare also announced the dismissal of KPMG in the Form 8-K. Like the March 11, 2003 press release, the March 14 Form 8-K was misleading in light of the evidence of fraud before the audit committee and the fact that no investigation of management's role was performed.

ENDOCARE'S RESTATEMENT OF 2000, 2001, AND THE FIRST TWO QUARTERS OF 2002

81. On December 3, 2003, Endocare filed its annual report on Form 10-K for the period ended December 31, 2002, which included restatements of its consolidated financial statements for the years ended December 31, 2001, and December 31, 2000. For the year ended December 31, 2001, Endocare reversed $2,684,523 of its revenues that were improperly recognized during that period. As a result, Endocare overstated its revenues by more than 20%, and understated its loss from operations by more than 40% during that one-year period. Endocare also reversed $1 million (17%) in revenue recognized for the quarter ended March 31, 2002, and $2,590,000 (29%) in revenue recognized for the quarter ended June 30, 2002. In total, Endocare reversed more than $6 million in revenue recognized in

2001 and the first two quarters of 2002. Much of Endocare's revenue that was reversed was related to the sale of its box and disposable probes. Further, several sales of Endocare's box and probes that were recorded in the quarter ended September 30, 2002, were reversed in Endocare's books, or rescinded by the customers during the internal investigation. Finally, in its definitive proxy statement, also filed on December 3, 2003, Endocare announced that, in view of its subsequent investigation and the totality of the available information, it did not now disagree with KPMG's conclusion in December 2002 that KPMG could not rely on management's representations.

QUILTY PROFITED FROM HIS MISCONDUCT

82. For the quarters in which Quilty's misconduct occurred, Quilty received $97,374 in bonuses, $23,749 of which were tied to revenue projections.

FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

(Against Endocare)

83. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

84. Defendant Endocare, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

a. with scienter, employed devices, schemes, or artifices to defraud;

b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

85. By engaging in the conduct described above, defendant Endocare violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder (Against Endocare)

86. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

87. Defendant Endocare, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

88. By engaging in the conduct described above, defendant Endocare violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF COMMISSION PERIODIC REPORTING REQUIREMENTS

Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder

(Against Endocare)

89. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

90. Endocare violated Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, 13a-11, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13 thereunder, by filing with the Commission materially false and misleading periodic reports for the second and third quarters of 2001, the year end 2001, and the first and second quarters in 2002, and registration statements filed on November 14, 2001 and March 26, 2002. Endocare also issued misleading press releases and Forms 8-K in December 2002 and March 2003.

91. By engaging in the conduct described above, Endocare violated, and unless restrained and enjoined will continue to violate, Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13.

FOURTH CLAIM FOR RELIEF

VIOLATIONS OF COMMISSION PERIODIC REPORTING REQUIREMENTS

Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder

(Against Quilty)

92. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

93. Defendant Quilty knowingly provided substantial assistance to Endocare's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

94. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendant Quilty aided and abetted Endocare's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13.

FIFTH CLAIM FOR RELIEF

RECORD-KEEPING VIOLATIONS

Violations of Section 13(b)(2)(A) of the Exchange Act

(Against Endocare)

95. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

96. Endocare violated Section 13(b)(2)(A) of the Exchange Act by failing to make or keep books, records, and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

SIXTH CLAIM FOR RELIEF

RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act and Violations of Rule 13b2-1 thereunder

(Against Quilty and Anderson)

97. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

98. Defendants Anderson and Quilty knowingly provided substantial assistance to Endocare's violations of Section 13(b)(2)(A) of the Exchange Act.

99. By engaging in the conduct described above and pursuant to Section

20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendants Anderson and Quilty aided and abetted Endocare's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

100. By engaging in the conduct described above, defendants Anderson and Quilty violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified Endocare's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, defendants will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

SEVENTH CLAIM FOR RELIEF

INTERNAL CONTROLS VIOLATIONS

Violations of Section 13(b)(2)(B)

of the Exchange Act

(Against Endocare)

101. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

102. Endocare violated Section 13(b)(2)(b) of the Exchange Act by failing to have sufficient internal controls to assure that it accounted for its revenue and expenses correctly.

EIGHTH CLAIM FOR RELIEF

BOOKS AND RECORDS VIOLATIONS

Violations of Section 13(b)(5) of the Exchange Act

(Against Quilty and Anderson)

103. The Commission realleges and incorporates by reference paragraphs 1 through 82 above.

104. By engaging in the conduct described above, defendants Anderson and Quilty violated Section 13(b)(5) of the Exchange Act, which prohibits any person from circumventing or failing to implement a system of internal accounting

controls, or from knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined, defendants Anderson and Quilty will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that the defendants committed the alleged violations.

II.

Issue judgments, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendant Endocare and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

III.

Issue judgments, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendant Anderson, his officers, agents, servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and from aiding and abetting violations of Section 13(b)(2)(A).

IV.

Issue judgments, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendant Quilty, his officers, agents,

servants, employees and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

V.

Order defendant Quilty to disgorge all ill-gotten gains from his illegal conduct, together with prejudgment and post-judgment interest thereon.

VI.

Order defendants Endocare, Anderson, and Quilty to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

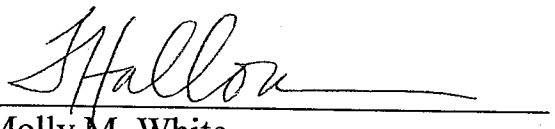
VII.

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 this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: July 19, 2006



Molly M. White
Diana Tani
Finola Halloran
Attorneys for Plaintiff Securities and Exchange Commission