IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

IN RE ENDOCHOICE HOLDINGS, INC. SECURITIES LITIGATION	**CIVIL ACTION NO. 2016 CV 277772** **(Consolidated with Civil Action No. 2016 CV 281193)** **JURY TRIAL DEMANDED**

CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE SECURITIES ACT OF 1933

Plaintiffs Jesse L. Bauer and Kenneth T. Raczewski (together, "Plaintiffs"), individually and on behalf of all others similarly situated, by their undersigned attorneys, allege the following based upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiffss attorneys, which has included, among other things, a review of Securities and Exchange Commission ("SEC") filings made by EndoChoice Holdings, Inc. ("EndoChoice" or the "Company"), analyst and media reports, and discussions with persons knowledgeable about EndoChoice and/or the industry in which it operates. Plaintiffs' investigation into the matters alleged herein is continuing and many relevant facts are known only to, or are exclusively within the custody and control of, the Defendants. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for formal discovery.

NATURE AND SUMMARY OF THE ACTION

1. Plaintiffs bring this action under §§11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act") against (1) EndoChoice; (2) certain of EndoChoice's senior

executives and directors (the "Individual Defendants") who signed the Offering Materials (as defined below) in connection with the Company's June 5, 2015 Initial Public Offering (the "IPO" or the "Offering"), and (3) each of the investment banks (the "Underwriter Defendants") that acted as underwriters for the Offering. The "Offering Materials" include the May 5, 2015 Registration Statement filed on Form S-1, three amendments thereto filed on Form S-1/A, the last of which was dated June 3, 2015 and declared effective June 4, 2015 (collectively, the "Registration Statement"), and the incorporated final prospectus dated June 5, 2015 (the "Prospectus"), together with certain road show and other materials deemed to be incorporated therein as a matter of law. In the Offering, the Company and the Underwriter Defendants sold 6,350,000 shares of EndoChoice common stock at an offering price of $15.00 per share.

2. Defendant EndoChoice is a medical device company that designs and sells various products for gastrointestinal ("GI") caregivers in the United States and internationally. EndoChoice offers what it describes as a comprehensive range of GI products and services that include single-use devices and infection control products, pathology services and imaging systems, such as colonoscopes and gastroscopes (both are types of endoscope) and related computer screens and systems. At the time of the IPO, EndoChoice stated that it served over 2,500 GI departments that perform endoscopic procedures.

3. EndoChoice's flagship product is its FUSE® endoscopy system ("FUSE"). FUSE is a full spectrum endoscopy system that allows GI specialists to see more than twice the anatomy (*e.g.*, twice the area of the colon) at any given point in a GI examination compared to standard, forward-viewing colonoscopes. According to the Offering Materials, the Company's FUSE system thereby "improves the ability [of the GI specialist] to more thoroughly examine the colon without prolonging the time to complete the colonoscopy." As the Offering Materials

further described, the Company's FUSE endoscope, with its 330º view of the colon during a colonoscopy (instead of the 140º to 170º view offered by standard colonoscopes manufactured by industry leaders Olympus, Pentax and FujiFilm), had also been clinically shown in a published study to detect 69% more pre-cancerous polyps than standard colonoscopes. As the Offering Materials noted, EndoChoice had begun commercialization of its FUSE system in December 2013, and revenues from sales of its FUSE system (which had more than doubled from $1.9 in the first quarter of 2014 to $4.2 million in the first quarter of 2015) accounted for the vast majority of the increase in the Company's gross revenues in the last four full quarters immediately preceding the Offering. Indeed, the Offering Materials expressly stated that "our success depends in large part on our ability to increase sales of our Fuse system," and that "[a]cceptance of our Fuse® system depends on educating GI specialists as to the quality, diagnostic benefits, ease of use and cost-effectiveness of our Fuse system."

4. On June 5, 2015, EndoChoice conducted the Offering, selling 6,350,000 shares of EndoChoice common stock to the public at an offering price of $15.00 per share.

5. In violation of the Securities Act, the Defendants offered and/or sold these shares pursuant to Offering Materials that contained inaccurate or untrue statements of material fact and that omitted to state material facts required to be stated therein. Under the Securities Act, Defendants are strictly liable for any and all materially untrue statements in or omissions from the Offering Materials. Moreover, because this case involves a registration statement, Defendants had an independent, affirmative duty to provide adequate disclosures about material adverse conditions, trends, risks, and uncertainties. *See* Item 303 of SEC Reg. S-K, 17 C.F.R. §229.303(a)(3)(ii). Thus, Defendants had an affirmative duty to ensure that the Offering Materials adequately disclosed all material trends and uncertainties that the Company's

management knew, or should have reasonably expected, would have a materially adverse impact on EndoChoice's business, net sales, revenue or income from continuing operations. Defendants failed to fulfill this obligation as well.

6. As alleged herein, the Offering Materials (a) affirmatively touted the capabilities and prospects for EndoChoice's FUSE flagship endoscopy systems, including by touting FUSE's "compelling, differentiated clinical efficacy" and "disruptive Fuse technology;" and (b) affirmatively represented, *inter alia,* that the Company had a "proven salesforce," consisting of a "team of 103 experienced sales and marketing professionals in the United States and Germany," that was "poised to contribute to future sales growth" and part of a "highly adaptable sales organization" The Offering Materials similarly represented that the Company's "significant investments over the past several years in [its] research and development, sales and marketing and manufacturing operations" had resulted in a "world class organization capable of driving sustainable global growth that can be leveraged to drive increased profitability," and that the Company had the "infrastructure in place to support continued expansion in the growing GI market."

7. However, such representations were materially untrue, inaccurate, misleading and/or incomplete because, *inter alia*, at the time of the Offering, the Offering Materials failed to adequately disclose that (a) EndoChoice's touted FUSE system was suffering from a variety of ongoing quality and design defects that were impairing the system's marketability and sales to GI professionals and service providers, or that (b) the Company's sales force was not properly organized, lacked the skill and experience necessary to legitimize the Company's claims of significant potential for imminent and rapid sales growth, and was not up to the standard of a "world-class organization" as referenced in the Offering Materials; or that (c) the Company had

already failed (and was continuing to fail) to successfully "adapt" its more tenured sales personnel (who had significant experience selling EndoChoice's non-FUSE products and services, but not expensive capital medical equipment) for the very different task of selling the FUSE system. The Offering Materials were also materially deficient in violation of the Securities Act because, *inter alia,* they also (d) failed to adequately disclose that, due largely to the nature and extent of FUSE's defective product and design problems and woefully inadequate sales force, the recent growth in EndoChoice's sales of the FUSE system was entering into a serious decline at the time of Offering, and (e) failed to disclose that the Company -- even though it had announced the introduction of an updated FUSE model ("FUSE Gen2") earlier that spring -- would not even begin to have demonstration units "in the field" for use by its sales representatives until later that summer, even though the Prospectus itself noted the "critical" importance of ensuring that the Company's sales representatives had a large number of "demo" units to use in marketing the FUSE system to GI physicians and service providers.

8. Unfortunately for investors, however, the truth concerning the serious nature and extent of the problems facing the Company did not begin to emerge until after its June 2015 Offering. For example, on November 5, 2015, EndoChoice stunned financial markets when it announced that it had sold ***only 21*** FUSE systems in the third quarter of 2015 (which included 3 "demo units" sold to international distributors, rather than to end-user customers). This dismal figure represented a sharp decline from the 26 FUSE systems sold in the first quarter of the year, and the 27 systems sold in the second quarter. In response, the price of EndoChoice's common stock plummeted 22%, from $10.28 to $8.01 per share. As one analyst commented, the shortfall in FUSE sales was not only "disappointing", but "[coming] so soon after the company's June

IPO is certainly concerning and raises questions about the trajectory of Fuse adoption going forward."

9. The news for EndoChoice investors, however, only continued to worsen. For example, the Company's results for the fourth quarter of 2015 were so poor that, on January 8, 2016, its management decided to issue an early announcement of the Company's preliminary fourth quarter results just days after the quarter had closed. In particular, the January 8, 2016 press release disclosed that EndoChoice had shipped a total of only 25 FUSE systems in the fourth quarter of 2015, of which only 19 were shipped to actual end-users (with the remaining six being "demo" units shipped to international distributors).

10. The Company's results were promptly characterized as "disappointing" in a J.P. Morgan analyst report issued later that day. As that report noted, EndoChoice's fourth quarter 2015 reported revenues of $18.6 million had come in $700,000 below Wall Street consensus estimates, and "[a]s was the case in the third quarter, the Imaging business [*i.e.* FUSE] was the source of the shortfall in 4Q, as sales of $5.2M fell $1.3M shy of our thinking." The J.P. Morgan report also pointed out that, if one excluded the six demo FUSE units sold to international distributors in the fourth quarter, commercial placements of FUSE units with actual end-users in the fourth quarter (19 systems) were only barely up in comparison to both (a) the immediately prior quarter (18 systems), and (b) the fourth quarter of the previous year (17 systems). As the J.P. Morgan report further stated that "[t]he question going forward is when we will see evidence of an acceleration in Fuse adoption," while adding that EndoChoice management intended to make "several planned enhancements to Fuse's design" to address unspecified (but presumably negative) "physician feedback" on the product. In response to the Company's disclosures of

January 8, 2016 and related analyst commentary, the price of EndoChoice's common stock fell again, by 14%, from $8.17 to $7.03 per share.

11. In the following months, the price of EndoChoice shares continued to languish, and the Company decided to rush to get yet another version ("Gen3") of the FUSE system to market in the hope that the third time would be the charm for finally fixing the product, design and reliability defects that had previously plagued the FUSE system, and for finally generating meaningful growth in FUSE sales. In the spring and early summer of 2016, analysts also expressed hope that the "Gen3" would eventually (*i.e.*, by late 2016 or early 2017) begin to produce increased FUSE sales. But as reflected in a July 2016 J.P. Morgan analyst report, these hopes were accompanied by reflections on how ill-prepared the Company had been to grow FUSE sales at the time of the IPO:

> Generating sustained Fuse adoption, particularly in the US, is the key to improving investor sentiment. ***The first generation Fuse [was] originally launched in early 2014 with sub-par image quality, followed by the second generation Fuse that had a poorly designed scope handle.*** Now with the third-generation Fuse system that [was] launched … in May [2016], ***EndoChoice finally has a system ready for prime time . . .***[1]

In sum, as this analyst report confirmed, EndoChoice's FUSE product had ***not*** been anywhere near "ready for prime time" at the time of the IPO, which had occurred more than a year earlier in June 2015.

12. Shortly thereafter on August 3, 2016, EndoChoice announced still more disastrous FUSE sales results, despite what Defendant Gilreath described as "really significant improvements to the reliability of the scope" that had finally been made to FUSE as part of the Gen3 product. The Company also disclosed that it was writing down the intangible value of certain of its FUSE assets (and taking a corresponding charge against earnings) by ***$12.6 million***.

[1] Unless otherwise stated, all emphasis in quoted materials is added.

In response, the price of EndoChoice stock plummeted to a little more than $4.00 per share – representing a staggering decline of nearly 73% from its IPO price of $15.00 per share of only 14 months earlier.

13. On September 27, 2016, EndoChoice announced that it had entered into an agreement to be acquired by Boston Scientific, Inc. ("Boston Scientific") (a Massachusetts-based medical technology company), under which Boston Scientific would acquire, through a tender offer, all of EndoChoice's outstanding shares of common stock for $8.00 per share. Although the $8.00 per share tender offer price represented a modest premium compared to the price at which EndoChoice shares had fallen in the weeks prior to this announcement, the $8.00 per share tender offer price was still barely *half* of the $15.00 per share Offering price of June 2015.

14. By this action, Plaintiffs, on behalf of themselves and the other members of the Class, seek to obtain a recovery under the Securities Act from Defendants for the substantial damages that Plaintiffs and the Class have suffered as a result of having purchased EndoChoice shares pursuant or traceable to the defective Offering Materials, as alleged herein.

JURISDICTION AND VENUE

15. This Court has original jurisdiction pursuant to Ga. Const. Art. VI, §4, ¶I, O.C.G.A. §15-6-8 (West), and Section 22 of the federal Securities Act of 1933, 15 U.S.C. §77v. Defendant EndoChoice's principal place of business is located in the State of Georgia, and many of the other Defendants are also Georgia residents or are licensed to do business in Georgia.

16. Defendant EndoChoice Holdings, Inc. ("EndoChoice") is headquartered in Alpharetta, Fulton County, Georgia, and is subject to the jurisdiction and venue of this Court.

17. Defendants Mark G. Gilreath, David N. Gill, and D. Scott Davis, are each residents of Alpharetta, Fulton County, Georgia, and Defendant James R. Balkcom, Jr. is a

resident of Atlanta, Fulton County, Georgia, and are therefore each subject to the jurisdiction of this Court. They are also subject to the jurisdiction of this Court by virtue of having signed the defective Offering Materials and authorizing defendant EndoChoice (a company headquartered in this State) to offer EndoChoice common stock to members of the public across the country, including in the State of Georgia.

18. Defendants R. Scott Huennekens (a resident of La Jolla, California), J. Scott Carter (a resident of Atherton, California), Uri Geiger (a resident of Israel), David L. Kaufman (a resident of Virginia Beach, Virginia), and Rurik G. Vandevenne (a resident of Cary, North Carolina), each committed the tortious acts and omissions set forth herein while within the State of Georgia, and by signing the defective Offering Materials authorized defendant EndoChoice (a company headquartered in this State) to offer shares of EndoChoice common stock to members of the public across the country, including in the State of Georgia, pursuant to those defective materials, and are each subject to the jurisdiction of this Court.

19. Defendant J.P. Morgan Securities, LLC, is a resident of New York, New York County, New York, that is licensed to do business in Georgia, and committed the tortious acts and omissions set forth herein while within the State of Georgia, and as an underwriter for the IPO it offered and sold shares of the common stock of EndoChoice (a company headquartered in this State) to members of the public across the country, including in the State of Georgia, pursuant to the defective Offering Materials, and is subject to the jurisdiction of this Court.

20. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, herein named, is a resident of New York, New York County, New York, that is licensed to do business in Georgia, and committed the tortious acts and omissions set forth herein while within the State of Georgia, and as an underwriter for the IPO it offered and sold shares of the common stock of

EndoChoice (a company headquartered in this State) to members of the public across the country, including in the State of Georgia, pursuant to the defective Offering Materials, and is subject to the jurisdiction of this Court.

21. Defendant William Blair & Company, LLC, herein named, is a resident of Chicago, Cook County, Illinois, that is licensed to do business in Georgia, and committed the tortious acts and omissions set forth herein while within the State of Georgia, and as an underwriter for the IPO it offered and sold shares of the common stock of EndoChoice (a company headquartered in this State) to members of the public across the country, including in the State of Georgia, pursuant to the defective Offering Materials, and is subject to the jurisdiction of this Court.

22. Defendant Stifel, Nicolaus & Company, Incorporated, is a resident of St. Louis, Missouri, that is licensed to do business in Georgia, and committed the tortious acts and omissions set forth herein while within the State of Georgia, and as an underwriter for the IPO it offered and sold shares of the common stock of EndoChoice (a company headquartered in this State) to members of the public across the country, including in the State of Georgia, pursuant to the defective Offering Materials, and is subject to the jurisdiction of this Court.

23. This action is not removable. The claims alleged herein arise under §§11, 12(a)(2), and 15 of the Securities Act. *See* 15 U.S.C. §§77k, 77l(a)(2), and 77o. Section 22 of the Securities Act, 15 U.S.C. §77v, expressly states that "[e]xcept as provided in [section 16(c)], no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States." Section 16(c) refers to "covered class actions brought in any State court involving a covered security, as set forth in subsection (b)" -- and subsection (b) of Section 16, in turn, includes within its scope only covered class actions "based

upon the statutory or common law of any State or subdivision thereof." *See* 15 U.S.C. §77p. This class action asserts only federal law claims. Thus, this action is not removable to federal court.

24. This Court has personal jurisdiction over each Defendant because they are either citizens of the State of Georgia and/or the claims and allegations asserted herein arise from conduct and actions taken by the Defendants which occurred within the State of Georgia, including their activities as directors and/or senior officers of a company headquartered in this State, and/or because of their role in offering and/or selling shares of EndoChoice to members of the public across the country (including in the State of Georgia) pursuant to the defective Offering Materials, and/or because of their registering to do business in the State of Georgia, such that due process of law will not be offended by this Court's exercise of personal jurisdiction over any Defendant. *See* O.C.G.A. §9-10-91 (West). In addition, §22 of the Securities Act provides for nationwide service of process.

25. Venue is proper pursuant to Article VI, §2, ¶¶IV & VI of the Georgia Constitution, and O.C.G.A. §§14-2-510 and 14-11-1108, because many of the Defendants reside or work in Fulton County, corporate defendant EndoChoice has its principal place of business located within Fulton County, and numerous actions relating to the claims at issue in this action occurred in whole or in substantial part within Fulton County, including the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Materials (which were prepared by Defendants, or with their participation, acquiescence, encouragement, cooperation, and/or assistance), which occurred in whole or in substantial part in this county.

PARTIES

A. Plaintiffs

26. Plaintiff Jesse L. Bauer purchased shares of the Company's common stock

pursuant and/or traceable to the defective Offering Materials, and was damaged thereby.

27. Plaintiff Kenneth T. Raczewski purchased shares of the Company's common stock pursuant and/or traceable to the defective Offering Materials, and was damaged thereby.

B. Defendants

28. Defendant EndoChoice is a medical device company that designs cutting-edge products for GI caregivers. At the time of the IPO, the Company stated that it served over 2,500 GI departments that perform endoscopic procedures. The Company's range of products and services include single-use devices and infection control products, along with pathology services and imaging systems that are intended to improve clinical outcomes and GI specialists' productivity. The Company was founded in 2008, and is headquartered in Alpharetta, Georgia. At all relevant times following its IPO, its shares were listed and traded on the New York Stock Exchange ("NYSE") under the ticker symbol "GI."

29. Defendant Mark G. Gilreath ("Gilreath") was, at all relevant times, the Chief Executive Officer ("CEO"), President, and a director of the Company. Defendant Gilreath signed or authorized the signing and issuance of the Offering Materials.

30. Defendant David N. Gill ("Gill") was, at all relevant times, Chief Financial Officer ("CFO") and principal accounting officer of the Company. Defendant Gill signed or authorized the signing and issuance of the Offering Materials.

31. Defendant R. Scott Huennekens ("Huennekens") was, at all relevant times, the Chairman of the Board of Directors (the "Board") of the Company. Defendant Huennekens signed or authorized the signing and issuance of the Offering Materials.

32. Defendant James R. Balkcom, Jr. ("Balkcom") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering

Materials.

33. Defendant J. Scott Carter ("Carter") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering Materials.

34. Defendant D. Scott Davis ("Davis") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering Materials.

35. Defendant Uri Geiger ("Geiger") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering Materials.

36. Defendant David L. Kaufman ("Kaufman") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering Materials.

37. Defendant Rurik G. Vandevenne ("Vandevenne") was, at all relevant times, a director of the Company, and signed or authorized the signing and issuance of the Offering Materials.

38. Defendants Gilreath, Gill, Huennekens, Balkcom, Carter, Davis, Geiger, Kaufman, and Vandevenne are collectively referred to herein as the "Individual Defendants."

39. The Individual Defendants each participated in the preparation of and signed (or authorized the signing of) the Offering Materials, including the Registration Statement. Defendant EndoChoice and the Individual Defendants who signed (or authorized the signing of) the Offering Materials are strictly liable for the materially untrue and misleading statements contained or incorporated into the Offering Materials, and any material omissions therefrom. The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of EndoChoice's Offering Materials and other filings with the SEC, including its "road show" and other presentations to securities analysts, portfolio managers, and institutional investors (*i.e.*, the market) in connection with the Offering.

40. Defendant J.P. Morgan Securities LLC ("J.P. Morgan") was an underwriter for the Offering. As part of the Offering process, J.P. Morgan agreed to purchase 2,540,000 EndoChoice shares, which it then offered and sold to members of the investing public in the Offering pursuant to the defective Offering Materials. J.P. Morgan also acted as a joint book-running manager of the Offering.

41. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was an underwriter for the Offering. As part of the Offering process, Merrill Lynch agreed to purchase 2,222,500 EndoChoice shares, which it then offered and sold to members of the investing public in the Offering pursuant to the defective Offering Materials. Merrill Lynch also acted as a joint book-running manager of the Offering.

42. Defendant William Blair & Company, L.L.C. ("William Blair") was an underwriter for the Offering. As part of the Offering process, William Blair agreed to purchase 793,750 EndoChoice shares, which it then offered and sold to members of the investing public in the Offering pursuant to the defective Offering Materials. William Blair also acted as a co-manager of the Offering.

43. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") was an underwriter for the Offering. As part of the Offering process, Stifel agreed to purchase 793,750 EndoChoice shares, which it then offered and sold to members of the investing public in the Offering pursuant to the defective Offering Materials. Stifel also acted as a co-manager of the Offering.

44. Defendants J.P. Morgan, Merrill Lynch, William Blair, and Stifel are referred to collectively as the "Underwriter Defendants." The Underwriter Defendants each served as a

financial advisor for, and assisted in the preparation and dissemination of, EndoChoice's materially defective, inaccurate, incomplete, and misleading Offering Materials.

45. The Underwriter Defendants are investment banking firms that specialize, *inter alia*, in underwriting public offerings of securities. As underwriters of the Offering, these Defendants earned lucrative underwriting fees as a result of their participation in the Offering.

46. In addition, the Underwriter Defendants met with potential investors and presented highly favorable but materially incorrect, incomplete, and/or misleading information about EndoChoice, its business, products, plans, and financial prospects, and/or omitted to disclose material information required to be disclosed under the federal securities laws and applicable regulations promulgated thereunder.

47. The Underwriter Defendants also assisted EndoChoice and the Individual Defendants in planning the Offering. They also purported to conduct an adequate and reasonable investigation into EndoChoice's business, operations, products and plans, an undertaking known as a "due diligence" investigation. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning EndoChoice's business, financial condition, products, plans, and prospects.

48. In addition to having unlimited access to internal corporate documents, the Underwriter Defendants and/or their agents, including their counsel, had access to EndoChoice's lawyers, management, directors, and top officers to determine: (i) the strategy to best accomplish the Offering; (ii) the terms of the Offering, including the price at which the EndoChoice's common stock would be sold; (iii) the language to be used in the Registration Statement and the rest of the Offering Materials; (iv) what disclosures about the Company would be made in the Offering Materials; and (v) what responses would be made to the SEC in connection with the

SEC's review of the Offering Materials. As a result of these constant contacts and communications between the Underwriter Defendants' representatives and the Company's management, at a minimum the Underwriter Defendants were negligent in not knowing of and adequately disclosing the Company's undisclosed problems and correcting the materially untrue statements and omissions contained in the Offering Materials, as alleged herein.

49. The Underwriter Defendants, together with EndoChoice and the Individual Defendants, caused the Offering Materials to be filed with the SEC and the Registration Statements to be declared effective in connection with the offer and sale of EndoChoice shares pursuant and/or traceable to the Offering, including to Plaintiffs and the Class.

50. Pursuant to the Securities Act, all Defendants are strictly liable for the inaccurate, untrue, incomplete and misleading statements in the Offering Materials. Plaintiffs are under no obligation to plead or prove that any Defendant herein acted negligently, although the Individual and Underwriter Defendants may attempt to establish a so-called "due diligence" affirmative defense to liability by affirmatively proving that they acted non-negligently (as more particularly described in §§11 and 12 of the Securities Act) in connection with the preparation of the Offering Materials. On information and belief, however, no Defendant conducted an adequate "due diligence" investigation sufficient to entitle him, her or it to an affirmative "due diligence" defense under the Securities Act.

51. In addition, pursuant to Item 303 of Regulation S-K (17 C.F.R. §229.303) and the SEC's related interpretive releases thereto, issuers (such as EndoChoice) are required to disclose any adverse trends, events or uncertainties known by management that have had or are reasonably likely to cause the registrant's financial information not to be indicative of future operating results. As alleged herein, the Offering Materials were also materially defective for

failing to adequately disclose known adverse trends, events and/or uncertainties concerning the demand for EndoChoice's FUSE products and which were reasonably likely to have a material adverse impact on the Company's sales, revenue and profitability, in violation of Item 303 of Regulation S-K. Under the Securities Act, Defendants, and each of them, are also strictly liable to Plaintiffs and the Class for such violations of Item 303.

52. For all of the claims stated herein, Plaintiffs expressly exclude any allegation that could be construed as alleging fraud or that any Defendant acted with deliberate or reckless intent, as Plaintiffs' claims are based on claims of strict liability under the Securities Act.

SUBSTANTIVE ALLEGATIONS

I. ENDOCHOICE AND ITS FUSE SYSTEM

53. EndoChoice is a medical device company focused exclusively on designing and commercializing a platform of innovative products for GI caregivers. According to the Offering Materials, at the time of the Offering, EndoChoice served or supplied over 2,500 GI departments that perform endoscopic procedures, which represented approximately one-third of the U.S. GI service provider market.

54. Prior to 2013, the main components of EndoChoice's business consisted of (a) the sale of single-use therapeutic devices and infection control products (such as traps used to store and preserve polyps, irrigation products used to avoid cross-contamination, and single-use tools and endoscopy kits); and (b) GI pathology services (which EndoChoice delivers through an accredited laboratory that provides specialized services by trained pathologists who focus only on GI-specific diagnoses).

55. In January 2013, EndoChoice acquired both Peer Medical Ltd. ("Peer Medical"), which was then developing a new endoscope system that EndoChoice subsequently branded as

the "Fuse", as well as RMS Endoskopie-Technik, a German developer, manufacturer and repairer of video endoscopes. In December 2013, EndoChoice began limited commercialization of the FUSE endoscopy system.

56. The FUSE system enables GI specialists to see more than twice the anatomy at any one time compared to standard, forward-viewing colonoscopes, and has been clinically demonstrated to detect 69% more pre-cancerous polyps than standard colonoscopes. The Offering Materials represented that EndoChoice had also launched a "second generation" ("Gen2") FUSE system in January 2015, and that the Company "intend[s] to leverage [its] broad product platform, established customer relationships, commercial infrastructure and Fuse® technology to set a new standard of care for the global GI market."

II. THE OFFERING AND ENDOCHOICE'S MATERIALLY UNTRUE, MISLEADING AND INCOMPLETE OFFERING MATERIALS

57. On or around June 5, 2015, EndoChoice and the Underwriter Defendants conducted the Offering, selling 6,350,000 shares of EndoChoice common stock to the public at a price of $15.00 per share.

58. The Offering Materials contained untrue statements of material fact or omitted to state facts necessary to make the statements not misleading, and were not prepared in accordance with the rules and regulations governing their preparation. Instead, they presented a materially inaccurate, untrue, incomplete and misleadingly positive picture of EndoChoice's business, performance, prospects, and products, while omitting crucial realities. In particular, and as further discussed below, the Offering Materials materially misrepresented or failed to adequately disclose the truth concerning (a) the quality and design of the FUSE system; (b) the alleged readiness of EndoChoice's salesforce to meaningfully grow FUSE sales; and (c) the Company's resulting inability to meet its stated objectives of accelerating FUSE sales in the foreseeable

future, while concealing material facts concerning the actual stagnation in and other adverse trends affecting its FUSE business.

A. False and Misleading Statements Regarding the Quality and Design of the FUSE System

59. The Offering Materials repeatedly touted the quality and design of EndoChoice's FUSE system, and stressed that it was superior to the endoscopes of its large and well-established competitors because FUSE provided for "full spectrum" viewing and could therefore detect more pre-cancerous polyps than standard colonoscopies. For example, the Offering Materials stated that:

> We are a medical device company focused exclusively on designing and commercializing a platform of innovative products for gastrointestinal, or GI, caregivers. . . In December 2013, we began limited commercialization of our Fuse® full spectrum endoscopy system, or Fuse®. Our Fuse® system enables GI specialists to see more than twice the anatomy at any one time compared to standard, forward-viewing colonoscopes and has been clinically demonstrated to detect 69% more pre-cancerous polyps than standard colonoscopes. We believe our commitment to continuing innovation and focus on GI specialists provides us with the ***unique capability*** to meet their evolving needs. ***We intend to leverage our broad product platform, established customer relationships, commercial infrastructure and Fuse® technology to set a new standard of care for the global GI market.***
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> Our Fuse system, which is intended for visualization of the GI tract and related therapeutic interventions, enables a wider field of view for upper and lower endoscopy procedures. Specifically, the Fuse® colonoscope offers a 330º view of the colon during colonoscopy instead of the 140º to 170º view offered by standard colonoscopes. This enables the GI specialist to visualize more than twice the anatomy at any one time as compared to a standard colonoscope and improves the ability to more thoroughly examine the colon without prolonging the time to complete the colonoscopy. . . . The improved detection is clinically important not only because the pre-cancerous polyp is removed during the procedure, but also because clinical guidelines recommend more frequent colonoscopies following initial detection of pre-cancerous polyps.
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> * * *
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> We believe that worldwide there are approximately 6,000 endoscopy systems purchased annually, with approximately 40% of the sales occurring in the United States.

60. The Offering Materials further represented that because of its relative advantages over competing products and allegedly greater effectiveness in identifying polyps, that FUSE was a "disruptive" product that GI specialists would widely adopt:

> ***Disruptive, clinically-differentiated Fuse endoscopy system***. [Emphasis in original] Our Fuse full spectrum endoscope was the first endoscope to provide a revolutionary 330° field of view during colonoscopy, allowing GI specialists to see more than twice the anatomy at any one time compared to standard, forward-viewing colonoscopes, thereby significantly reducing pre-cancerous polyp miss rates. According to a tandem clinical study published in The Lancet Oncology, Fuse had a pre-cancerous polyp miss rate of only 7%, compared with up to a 41% pre-cancerous polyp miss rate for standard, forward-viewing colonoscopes. ***We believe that the improved clinical and cost outcomes that Fuse enables will lead to its widespread adoption over time***.

61. Similarly, the Offering Materials repeatedly represented that the FUSE system offered "compelling clinical efficacy," stating:

> We intend to educate GI specialists, referring physicians, administrators and patients on the ***compelling, differentiated clinical efficacy of our Fuse® system***, which has been recognized in multiple scientific publications. We believe the successful sale of a Fuse® system will anchor our relationship with a GI department for the life of the product, during which time we intend to sell additional single-use products as well as pathology and endoscope repair services.

62. Other language in the Offering Materials also emphasized the alleged "quality" and "ease of use" of the Fuse system, as well as how critically important these matters were to the Company's success:

> ***Our success depends in large part on our ability to increase sales of our Fuse® system***. GI specialists play a significant role in determining the course of a patient's treatment and, as a result, the type of product that will be used to treat a patient. In order to increase sales of our Fuse® system, we must effectively educate GI specialists about our Fuse® system and successfully demonstrate to GI specialists ***the merits of our Fuse® system*** for use in performing GI endoscopy as well as its advantages over standard endoscopes. Acceptance of our Fuse® system depends on educating GI specialists as to the ***quality***, diagnostic benefits, ***ease of use*** and cost-effectiveness ***of our Fuse® system***. . . .
>
> ***If*** a GI specialist experiences difficulties during a demonstration of our Fuse® system or during initial procedures using our Fuse® system, that GI department may be less likely to buy our system or to recommend it to other GI specialists. ***It***

> ***is critical to the success of our commercialization efforts to educate GI specialists on the clinical benefits and the proper use of the our Fuse® system and to provide them with adequate product support during product demonstrations*** and the initial clinical procedures. It is important for our growth that these GI specialists advocate for the benefits of our Fuse® system in the broader GI marketplace. If GI specialists do not use our Fuse® system effectively, it could result in an unsatisfactory experience for the GI specialist … which could have a material adverse effect on our business, results of operations and financial condition.

63. Similarly, in contrasting the FUSE system to EndoChoice's competitors' products, the Offering Materials referenced the "differentiation and advantages of our Fuse system" and the "***relative . . . efficacy [and] ease of use*** of our Fuse system. . . ."

64. The Offering Materials also made further specific representations regarding the purported quality of the images that the FUSE system provided to GI specialists, stating:

> Each [Fuse] endoscope consists of multiple components, including a distal tip containing multiple, sophisticated cameras and state-of-the-art light-emitting diodes, or LEDs, which provide ***crisp, clear imaging and lighting*** and project an expanded view of the GI tract.

Similarly, the Offering Materials described the system's FUSEBox video processor, which is connected to the FUSE endoscope, as embodying a "cutting edge graphics processing and computing platform."

65. In addition, while noting that future "product quality issues or product defects" *might* harm the Company's business or results of operations, the Offering Materials characterized such problems as having occurred only in the past or that might occur sometime in the future, without any indication that the Company's FUSE products were then currently suffering from serious product quality issues as of the time of the Offering. In particular, the Offering Materials represented that:

> ***In the past***, we have had to replace certain components and provide remediation in response to the discovery of defects or bugs in products we had shipped, including ***initial*** shipments of our Fuse® system.

66. In addition, the Offering Materials represented that:

> ***We have made significant investments over the past several years in our research and development,*** sales and marketing ***and manufacturing operations to build what we believe is a world class organization*** capable of driving sustainable global growth that can be leveraged to drive increased profitability.

67. The above statements were all materially false and misleading when made because, *inter alia,* they failed to disclose that, at the time of the Offering, the FUSE system suffered from a variety of significant product defects, reliability issues, and basic design flaws. As discussed further below, these undisclosed problems included, *inter alia,* poor quality imaging; a defective scope design that made it harder for GI physicians (especially women doctors) to comfortably maneuver the scope; low-quality component "angulation cables" (that controlled the maneuverability of the scope inside the GI tract) that were constantly breaking; poorly designed "snares" (used to remove polyps) that regularly got stuck in the GI tract; and defective imaging processors that frequently froze in the middle of an endoscopy procedure. For the same reasons, the Offering Materials failed to fully and accurately disclose the Company's actual ability to accelerate the growth of FUSE sales. Similarly, the Offering Materials' representation that EndoChoice's research and development and its manufacturing operations were (together with its sales force) two of three key elements that somehow constituted a "world-class organization capable of driving sustainable global growth that can be leveraged to drive increased profitability" was also materially untrue and misleading.

68. The Offering Materials also stressed that the market for GI products and services was not only large but also multi-faceted, and represented that EndoChoice had the unique ability to be a "one stop" provider of a comprehensive array of quality products and services covering all aspects of GI practice (including its "disruptive" FUSE system) that gave it a

significant advantageous position in the market. For example, the Offering Materials stated:

> We estimate that the addressable worldwide market for our GI endoscopy products and services is over $6 billion, with more than 70 million GI endoscopies performed each year in the United States, Japan and Europe combined. We estimate that the addressable market for our GI endoscopy products and services is growing at 7% annually driven by increased governmental and payor focus on screening, prevention and treatment of colorectal cancer and other GI conditions, an aging global population and changing dietary habits. GI endoscopies involve inserting a thin tube containing a camera or cameras into a natural orifice of the patient to examine the upper or lower GI tract in order to screen for, diagnose and treat various GI conditions, including colorectal cancer. GI endoscopies require a large number of steps, including setup, imaging, therapy, specimen retrieval, pathology and endoscope disinfection and repair, which we refer to collectively as the GI procedure cycle. The GI endoscopy market is highly fragmented and served by numerous companies, many of which focus on only one or two areas of the GI procedure cycle. We believe the needs of GI specialists are currently underserved due to the lack of a comprehensive provider solely focused on innovation in the GI endoscopy market.
>
> We founded our company to serve the evolving needs of GI specialists by continually bringing to market a broad suite of innovative products across the GI procedure cycle. Since we began our commercial operations in 2008, we have developed an extensive line of devices and infection control products and have added pathology and scope repair services capabilities. Our products and services are designed to improve clinical outcomes and GI specialist productivity. For example, our CinchPad product improved the transport process of endoscopes after use and eliminated the need to clean contaminated transport trays. In 2013, we acquired Peer Medical Ltd., which was developing a new endoscope system that we now call Fuse.
>
> * * *
>
> . . . ***We believe the combination of a broad and innovative product portfolio spanning the entire GI procedure cycle coupled with our disruptive Fuse® technology gives us a competitive advantage*** that will enable us to gain further share of our customers' spend.

69. However, given the many undisclosed quality problems afflicting the FUSE system, especially when combined with the inability of the Company's sales force to accelerate FUSE sales (as further described below), the Offering Materials' representations that the

Company's breadth of GI product offerings gave it a competitive advantage were materially untrue, incomplete and misleading.

B. Statements Regarding the Alleged Readiness Of EndoChoice's Salesforce To Meaningfully Grow FUSE Sales

70. The Offering Materials also made the following representations concerning the quality and "proven" experience of the Company's salesforce, and how it was allegedly "poised" to help deliver future sales growth:

> We have manufacturing facilities in the United States, Germany and Israel, 103 sales and marketing professionals in the United States and Germany and distribution arrangements covering 27 countries. We currently serve over 2,500 GI department customers across 50 sales territories in the United States to which we seek to leverage our expanding platform of GI products and services. As of March 31, 2015, only one percent of our GI department customers have purchased a Fuse system. Of the customers who have purchased Fuse, approximately 80% also purchased other products or services from us in 2014. In addition, approximately 65% of our customers purchased multiple products or services from us in 2014. ***Our proven salesforce is poised to contribute to future sales growth.*** We believe we have the infrastructure in place to support continued expansion in the growing GI market.

71. The Offering Materials further represented that:

> We employ a team ***of 103 experienced sales and marketing professionals in the United States and Germany***. In international markets, we sell through 27 distributors and employ a team of 12 experienced sales and marketing representatives in Germany who together serve our markets in Europe, the Middle East, Latin America and Asia. Sales and marketing expense consists primarily of salaries, employee benefits, commissions and bonuses and related costs for personnel in sales and marketing. In addition, sales and marketing expense includes marketing and promotional activities, trade shows, travel expenses and professional fees for consulting services. We expect the amount of sales and marketing expense to increase as we expand our sales force and marketing activities to support the commercialization of Fuse and further sales of our other products. The timing of these increased expenditures are dependent upon the commercial success of Fuse and sales growth of our other products, as well as the timing of any new product launches and the hiring of additional sales people.

72. As noted above, the Offering Materials also described how the Company's upgraded sales and marketing operations formed a key third component that, when combined

with the Company's research and development and its manufacturing operations, somehow constituted a "world class organization:"

> ***We have made significant investments over the past several years in our*** research and development, ***sales and marketing*** and manufacturing operations ***to build what we believe is a world class organization capable of driving sustainable global growth that can be leveraged to drive increased profitability***. Furthermore, our strategic investments in our clinical pathology laboratory and endoscope repair facilities enable us to monetize sectors of the GI endoscopy market that are ignored by the majority of our competitors. ***With these organizational and infrastructure investments already in place, we believe we have the resources to support accelerated growth***. As a result, we believe we can increase revenue and ultimately achieve and improve profitability through operating leverage."

73. In addition, the Offering Materials represented as follows with respect to its "Sales and Marketing" and its purportedly "highly adaptable" sales organization:

> We market and sell our broad platform of complementary GI products and services globally through ***a highly adaptable sales organization***. We employ a team of 103 experienced sales and marketing professionals in the United States and Germany, including a 72 member salesforce. . . .
>
> While we believe our U.S. sales organization provides us with broad coverage of the domestic market, we believe we have the opportunity to both expand our footprint and provide deeper penetration in our sales territories. ***Our U.S. sales organization consists of sales professionals who are experienced in the medical technology industry***, many of whom have demonstrated previous sales success working with other medical technology manufacturers. Furthermore, we believe our future success will be directly dependent upon the sales and marketing efforts of our employees. In order to generate our anticipated sales, we will need to expand the size and geographic scope of our direct sales organization.
>
> Once hired, the training process for ***new*** sales representatives is lengthy because it requires significant education to achieve the level of clinical competency with our products expected by GI specialists. In addition to general sales and marketing training, we provide our sales organization with comprehensive, hands-on training sessions on the clinical benefits of our products. We are still in the process of transitioning our sales force from selling less expensive single use products to nurses and procedure room supervisors to also selling more complex capital equipment (such as our Fuse® system) to GI specialists and senior administrators.
>
> . . .

> Our U.S. sales directors, managers and sales representatives have compensation arrangements that include base salaries, bonuses and commissions. We believe the contuned adoption of our Fuse® technology represents a compelling opportunity for us to attract additional highly-qualified sales and marketing personnel and international distributors and expand exclusive commitments to our portfolio.

74. However, the above statements, including statements that the Company's salesforce was "poised to contribute to future sales growth", of "world class" caliber and "highly adaptable", were all materially untrue, incomplete and misleading because (as further detailed below) at the time of the Offering (but unbeknownst to investors): (a) the Company's sales force was not properly organized, lacked the skill and experience necessary to legitimize the Company's claims of significant potential for imminent and rapid FUSE sales growth and was not up to the standard of a "world-class organization", and (b) the Company had already failed (and was continuing to fail) to successfully "adapt" large numbers of its more tenured sales personnel (who had significant experience selling EndoChoice's non-FUSE products and services, but not expensive capital medical equipment) for the very different task of selling the FUSE system. In addition, although the availability of an adequate inventory of "demo" units of the FUSE system was critical to the Company's and its salesforce's ability to "accelerate" the growth of FUSE sales, the Offering Materials were also materially misleading because they failed to disclose that it would not even ***begin*** to have demo units of the new "Gen2" FUSE system in the field until the middle of the summer, such that it was totally unrealistic (given FUSE's long sales cycle) for the Company's salesforce to be able to begin to materially increase (let alone at an "accelerating" rate) the growth of FUSE sales before late 2015 or the first half of 2016 at the earliest. Nor did the Offering Materials adequately disclose the extent of the recent turnover and attrition rate in the Company's "proven" salesforce, or the extent to which its payment structure created further incentives for damaging attrition and turnover in its salesforce.

C. Additional Statements Concerning the Company's Purported Ability To Generate Accelerated Growth in FUSE Sales

75. In the Offering Materials, Defendants also emphasized that the Company expected revenue to grow in 2015 "due to the commercialization of Fuse®" as a result of the system becoming "more widely adopted":

> We commenced limited commercialization of our Fuse system in December 2013. Our Fuse system is comprised of colonoscopes and gastroscopes, a FuseBox video processor, a FusePanel omage management system, a FuseView monitor system, a standard FuseCart and other related supplies. We sell our Fuse system primarily to GI departments in ASCs [ambulatory surgery centers] and hospitals and to distributors.
>
> We expect revenue to increase in the future as we expand our sales, marketing and distribution capabilities to support growth in the United States and internationally as our Fuse® system becomes more widely adopted. We expect revenues to increase during the remainder of 2015 from 2014 levels due to the commercialization of Fuse®, as well as a growing base of customers for our single-use infection control and device products and our pathology services.

76. Such statements, however, were also materially untrue, incomplete, and misleading when made because they failed to disclose the product quality and design problems and salesforce issues (including lack of adequate supplies of demo units) that significantly undermined any reasonable to believe that the FUSE system could or would accelerate through the remainder of 2015.

III. THE MATERIAL BUT UNDISCLOSED ADVERSE FACTS, PROBLEMS, TRENDS AND UNCERTAINTIES FACING ENDOCHOICE AT THE TIME OF THE OFFERING

77. Unbeknownst to investors, however, the statements in the Offering Materials cited above were materially untrue and misleading, and omitted necessary material information.

78. In sum, as alleged herein, at the time of the Offering, EndoChoice's salesforce was neither "world class" nor "poised" to materially expand the Company's sales of its Fuse system. To the contrary, EndoChoice was in the midst of an ongoing upheaval within the ranks

of its sales force that left it with a group of sales personnel that were not reasonably capable of meaningfully increasing Fuse sales until, at the earliest, the middle of *2016*. Moreover, although the Prospectus disclosed that the Company had "launched" its "second generation" ("Gen2") FUSE system in January 2015, it failed to disclose that the Company would not even begin to place demo units of the Gen2 FUSE into the field until July 2015. This material omission – that Gen2 would not be fully deployed in the field until July 2015 -- made it all the more improbable that the Company could realize any material growth in FUSE sales until sometime in mid-to late 2016 (especially when considering that the sales cycle for the FUSE system was roughly 6 to 9 months, and that GI departments and their GI specialists were most unlikely to "switch" from their existing imaging systems, which were manufactured by the well-established market leaders in the industry, unless they had an adequate opportunity to "demo" the system). Moreover, as Defendants' own Offering Materials stated, "[i]n order to market and sell our Fuse system effectively, we ***must*** maintain high levels of inventory and demonstration equipment." Accordingly, as EndoChoice and its management knew or should have known, the sharp upward trajectory and growth trend in the Company's pre-IPO FUSE system sales was already flattening out (and trending downward) as of the date of the Company's June 2015 IPO. Indeed, as further noted in §III below, EndoChoice closely tracked its sales pipeline and understood that, even if it hired additional (and more experienced) members of its salesforce, it would still be unreasonable to expect any new hires (or inexperienced existing sales employees) would be able to start increasing FUSE systems until after the passage of 9 to 12 months due to the longer sales cycle for this type of expensive capital equipment.

79. In addition, further compounding the Company's woes, the Company's FUSE system suffered from a variety of design and manufacturing defects, including both its "Gen1"

and "Gen2" versions. The nature and extent of these problems, which further adversely impacted the Company's FUSE sales, were not adequately disclosed in the Offering Materials.

A. The Undisclosed Significant Quality Issues With FUSE

80. Although having a superior and reliable FUSE product was obviously critical to the Company's ability to increase sales in the face of the well-established and reliable traditional scopes and related imaging products manufactured by its competitors, the FUSE system was riddled with undisclosed quality, design, and reliability problems at the time of the Offering.

81. For example, as a J.P. Morgan report stated in July of this year (at roughly the same time that this action was commenced):

> ***The first generation Fuse [was] originally launched in early 2014 with sub-par image quality, followed by the second generation Fuse that had a poorly designed scope handle.*** Now with the third-generation Fuse system that [was] launched … in May [2016], ***EndoChoice finally has a system ready for prime time*** with state-of-the-art screen resolution and a newly redesigned ergonomic handle.

82. Indeed, as further detailed in §III below, as EndoChoice began to report a steady stream of disappointing and stagnant sales results for FUSE for the first four full quarters that immediately followed the Offering, its senior management (including defendants Gilreath and Gill) repeatedly tried to distract investors from EndoChoice's continuing poor performance by trying to persuade investors that the *next* version of FUSE was (or would be) so much better than its inferior predecessors that EndoChoice's fortunes would finally turn around. For example, defendant Gilreath effectively conceded in response to an analyst question as recently as August 2016 that *both* the prior Gen1 and Gen2 FUSE systems (the only ones in existence at the time of the IPO) had suffered from significant quality, design, and reliability problems:

> Analyst: [I]t seems like the Gen3 was just a new handle, ***and your new handle just kind of gets it up to par*** with [the] kind of other competitors or what they

are currently using. So is that enough to cause a physician to have a full new demo…?

Gilreath: [The improvement to the] Gen3 was more than a new handle. Those ergonomics were applied in several pieces of the endoscope, and included a number of functional improvements, ***and really significant improvements to the reliability of the scope.*** [And] I think with Lumos [Fuse's purported answer to its prior poor imaging problems] it really sets us up further, and we'll experience that as we go further this quarter.

The Company's recent decision to take an impairment charge, involving a $12.6 million write down of the value of intangible assets that it had previously recorded in 2013 in connection with its acquisition of the FUSE technology and related manufacturing capabilities, further supports the conclusion that the FUSE system was so flawed that the technology is of only marginal (if any) commercial value.

83. The nature and extent of these serious quality, design and reliability problems, however, was not disclosed in the Offering Materials. Instead, for a more accurate picture of the state of affairs at EndoChoice, one would have instead done better to find unpublished blog postings that recounted the experiences of former EndoChoice employees. For example, as one former employee stated in an internet post on the "CafePharma" website in April 2015 in response to inquiry about employment opportunities at the Company:

> I spent two years trying to sell Fuse before I left last year. In my opinion I would stay where you are! Olympus absolutely dominates this market and will continue to do so. If you stick sound you will see deal after deal lost to Olympus while upper management [is] asking you what is wrong with you. Physicians are not that impressed with the Fuse system, yes it is innovative but the ability to see peripherally is not enough for physicians to pull the trigger and buy. ***It's the entire package that EndoChoice just isn't able to offer: high quality pixel image (Olympus image kills EC), 1to1 rotation from control handle to distal end, NBI, effective transfer of images to image management software, brand name and reliability that will take years for EndoChoice to achieve (which frankly they do not have the time to get there)***. Doctors these days are just looking for a reliable piece of equipment (from Olympus) to churn out 20+ cases a day and call it a day. I don't see the company lasting another year or so. From my knowledge

> they're so tight on money (since Fuse is not selling) that there's a hiring freeze. Just a few thoughts from someone who was with the company for several years.

84. As bad as FUSE's "Gen1" product was, a review of the same website also indicates that EndoChoice's "Gen2" product was also a sub-par product. For example, as a January 7, 2016 CafePharma post stated:

> It won't improve [at EndoChoice] until you get rid of the clueless senior leadership. ***Forcing to do demos with a device [Fuse Gen2] that was released too soon and then wondering why these demos failed is ridiculous.*** But they demand that we have to do demos and keep burning bridges at demo centers ***with a less than average product***. I won't even start with the facilities who actually bought Fuse and then want to return it within six months or it's collecting dust in the hallway because physicians refuse to use it.

85. Plaintiffs' own investigator interviews of former EndoChoice employees has also provided further details concerning the nature and extent of the serious problems with the FUSE system.

86. For example, as a former Operations and Quality Coordinator who was employed at EndoChoice from late 2012 through the summer of 2015 ("CW1") confirmed, significant quality-related issues plagued the FUSE system. CW1 was one of approximately 30 personnel that worked in EndoChoice's Nashville repair facility (which repaired endoscopes made by other manufacturers, and which also became the sole repair facility in the U.S. for EndoChoice scopes that required repairs after FUSE was launched in late 2013), and was responsible for tracking all endoscope repairs, from repair quotes to repair order fulfillment. As CW1 stated, during his tenure (which lasted until shortly after the Offering), the Nashville site became "overwhelmed" with the increasing volume of scopes that required repair, and "from a materials standpoint, from a design standpoint, it seemed like there were always issues" with the FUSE system,.

(a) For example, CW1 stated that one significant and recurring problem was that the "angulation cables" used in the FUSE system consistently ruptured. These cables (also

known as wires) are part of the FUSE endoscope, and give physicians and/or medical practitioners operating the FUSE device the ability to bend and articulate the endoscope during a procedure. This functionality is critical during an endoscopy, as it allows the physician to angle and maneuver the endoscope within the patient's digestive tract.

(b) Additional quality issues that CW1 recalled included electrical problems such as lights on the scope that would not turn off or emitted too much heat, use of defective glue that did not always properly adhere, and defects that at times rendered the scopes unable to advance forceps and snares (used to remove polyps). As CW1 put it, "just front to back [FUSE] had a lot of problems."

(c) During CW1's tenure, the senior technicians at the Nashville facility location also prepared a list of the most prominent and recurring quality issues that they believed needed to be addressed by the Company's engineering team in Alpharetta, and CW1 also recalled that several senior repair technicians had complained that the FUSE's design, when compared to Olympus' system, made certain types of FUSE repairs much more difficult. Although the list was communicated from Nashville to the Company's engineering team in Alpharetta on multiple occasions, they were "completely ignored" by the engineering team. As these quality issues continued to plague and hamper the FUSE system, finally Defendant CEO Gilreath was forced to belatedly intervene (at around the time of the Offering or just 3 or 4 months before), and told the engineering team, in substance, that "this is ridiculous, you need to try to implement everything the Nashville guys have told you."

86. Similarly, a former EndoChoice Repair Technician ("CW2"), who was also based out of the Nashville facility from early 2014 to early 2016 and who performed FUSE repairs, confirmed that the FUSE system suffered from a wide variety of quality issues.

(a) For example, CW2 also identified the snapping (breakage) of FUSE's angulation cables as a recurring and prominent repair issue for FUSE scopes during CW2's tenure (including leading up to the IPO). CW2 noted how the FUSE scope had the ability to "retroflex", which involves manipulating the distal end of the scope back 180º degrees to look backward, thereby allowing physicians to also view the colon while withdrawing the scope. However, in part because EndoChoice did not adequately test FUSE's angulation cables, the act of turning the scope a full 180º degrees often caused them to break.

(b) In addition, another prominent issue throughout CW2's tenure involved problems that prevented FUSE operators from advancing or withdrawing various instruments from within the scope, such as snares and forceps. As CW2 explained, this issue arose from problems with a plastic sheath that runs the length of the scope (the "biopsy coat"), which could become disfigured from ordinary use. This disfigurement, in turn, would prevent such instruments from being passed through the scope itself.

(c) CW2 also described additional recurring quality issues, including glue not adhering properly, FUSEPanel screens "constantly" freezing, and transistors in the FUSE processors (*i.e.*, FUSEBox) blowing. With respect to the latter problem, CW2 noted that electric wattage and grounding of the scope had been calibrated based on European standards (because it had been developed and was manufactured in Europe), and that the discrepancy in electricity/power standards between the U.S. and Europe contributed to the problem.

87. Former members of EndoChoice's sales force contacted by Plaintiff's investigator also corroborated the existence of serious and pervasive problems. For example, a former territory manager who was employed for several years by EndoChoice before the Offering and

through late 2015 ("CW3"), confirmed that FUSE suffered from significant quality issues that were ongoing throughout his tenure, and noted that these issues seriously hampered FUSE sales.

(a) In particular, CW3 described how there were frequent problems involving FUSE's angulation cables, which snapped "constantly" during demos and also during actual patient procedures. As CW3 noted, snapping cables during a product demo or procedure significantly reduced the likelihood that a prospective customer would purchase the FUSE system, and this remained a significant issue through the end of his tenure in late 2015. For example, CW3 recalled one customer who had purchased a FUSE system in early 2015 to replace an Olympus system that the customer had previously used. This customer required a FUSE technician to make *seven* service calls within just the first six months after purchasing the FUSE device to repair mechanical problems, which included the repeated breaking of the angulation cables. By contrast, in the final year of owning and utilizing the Olympus product, this same customer had only required a single repair for a single issue.

(b) CW3 also described and corroborated another recurring problem with the FUSE device. As CW3 explained, FUSE opereators were frequently unable to maneuver and advance snares, because the snares would get stuck. Indeed, CW3 recalled being present on one such occasion when, during an actual patient procedure, the physician was unable to advance the snare and perform a polytectomy, even with the help of CW3's best suggestions.

(c) CW3 also confirmed that quality issues with the FUSE system's processor constituted a known and recurring issue. The endoscope plugs into a large rectangular computer called a FUSEBox Processor. CW3 stated that the FUSEBox Processor would at times freeze, or even turn itself off altogether. FUSE device operators would therefore have to reboot the FUSEBox Processor so that it would become functional again.

88. In addition, a former Regional Sales Manager ("CW4"), who was employed by EndoChoice from roughly mid 2013 through mid-2016 and was responsible for overseeing sales efforts across more than a dozen states, also confirmed that the FUSE system suffered from various problems, including the rupturing of angulation cables. CW4 also recollected that at some point during CW4's tenure with the Company, EndoChoice issued a recall of certain FUSE systems due to the recurring rupture of angulation cables. CW4 also confirmed that FUSE units were at times unable to advance snares as well as forceps, and that FUSEBox processors would at times freeze and need to be rebooted. Significantly, CW4 also confirmed that these quality problems hampered FUSE sales, and noted that Olympus' competing endoscope systems did not suffer from any such quality problems.

89. In addition, another former Regional Sales Manager ("CW5"), who was employed by EndoChoice from roughly mid 2014 through mid-2016 and was responsible for overseeing a half dozen or more Territory Managers at any given time, also confirmed that the FUSE system suffered from significant quality problems, including the rupturing of angulation cables. Indeed, CW5 stated that problems with the quality of the FUSE product was a major contributor to the Company's high turnover rate in its sales force and inability to retain personnel, as recently hired Territory Managers would quit after learning of the FUSE system's quality issues. As CW5 stated, during his tenure "scopes were breaking weekly", which CW5 stated represented an "excessive" rate of scopes falling into disrepair. Although CW5 noted that the problem was not as prevalent in his region, he was aware of the extent of the problem through ongoing discussions with his colleagues in the Company. CW5 further added that the durability and quality of FUSE's angulation cables was a consistent quality issue across all three generations (Gen1, Gen2, and Gen3) of the FUSE system. As CW5 put it, "everybody [in the Company]

knew the angulation cables were something that needed to be improved, because they weren't durable."

90. In addition, a former Territory Manager employed at EndoChoice from mid-2013 through early 2016 ("CW6") described how the FUSE scope also suffered from a serious design flaw relating its trifurcated air/water channel. This channel allows both air and water to flow to the three distinct tips at the distal end of the scope. To clean the scope, disinfectant fluid must be passed through the inside of the scope, including all three sections of the trifurcated distal end. As CW6 explained, when cleaning the scope, there was no way for customers to confirm that the cleaning fluid was passing through all three sections. This created the possibility of cross-contamination, where a scope that was not cleaned properly could infect the next patient.

B. The Undisclosed Problems With The Company's Salesforce

91. Having a high quality and experienced salesforce was also obviously critical to the Company's ability to increase, let alone accelerate, FUSE sales in the face of the proven capabilities and experience of its industry competitors. Unfortunately -- and contrary the Offering Materials' representations that EndoChoice's "proven" salesforce was a key component of its "world-class organization", was "poised" to help deliver meaningful sales growth, and was "highly adaptable" -- in fact the Company's existing salesforce was in a state of disarray, was woefully short of sales personnel with the experience, training, or skills to make a meaningful contribution to increasing FUSE sales, and the Company was having difficulty retaining quality sales personnel. Accordingly, the Offering Materials statements concerning its sales force's then-existing capabilities were also materially untrue and misleading, and omitted to disclose material information that was required to be disclosed.

92. The Offering Materials noted that the Company intended to increase the size of its salesforce with experienced personnel in the future, and that it was continuing to "transition" additional members of its existing salesforce to selling FUSE systems (as opposed to, *e.g.*, the Company's single use products). Such disclosure, however, utterly failed to adequately disclose how unsuccessful EndoChoice's efforts to transition its longer-tenured sales personnel (who had only limited experience selling FUSE or other expensive capital medical equipment) into sales personnel who had the kind of skills that could be reasonably expected to meaningfully contribute to increasing sales of the FUSE system (with the result that many of these longer-tenured personnel were regularly leaving or being fired in the months leading up to as well as after the Offering) – and also failed to disclose how the Company had also experienced significant problems in hiring and retaining new sales personnel with the necessary skills and experience to sell the FUSE.

93. Indeed, as further detailed in §III below, as EndoChoice began to report a steady stream of disappointing and stagnant sales results for FUSE for the first four full quarters that immediately followed the Offering, the Company began to gradually disclose the extent to which salesforce-related problems was responsible for these results. For example, Defendant Gilreath noted in a November 2015 conference call that the kind of sales representative that Company was hiring after the IPO "is not the sales rep we had two years ago [and] it is just a ***dramatic*** difference," but that this obviously critical upgrading had occurred too late (*i.e.* post-IPO) for the Company to reasonably expect any material impact on FUSE sales until May ***2016*** or even the second half of that year.

94. Similarly, during the same call in response a question regarding the Company's ability to get its stagnating FUSE sales "unstuck" from their continuing low levels, defendant

Gilreath noted that for that to occur, "the sales force has to be in place." Moreover, contrary to Offering Materials' rosy statements about an existing and proven salesforce that was "poised" in June 2015 to contribute to increasing FUSE sales, defendant Gilreath then admitted on the call that that "for the first time [*i.e.* as of November 2016], I think we can say that [that is] now coming together."

95. Plaintiffs' own investigator interviews of former EndoChoice employees has also provided further details concerning the nature and extent of the Company's serious salesforce-related problems at the time of the Offering.

96. For example, CW5, the former Regional Sales Manager who oversaw a half dozen or more Territory Managers ("TMs") at any given time, and who joined EndoChoice in mid-2014, described how during his tenure there was not only significant turnover and attrition of sales staff who had pre-dated the launch of the FUSE (with three territory managers quitting on CW5's first week on the job alone), but the majority of *new* TMs that CW5 himself hired (which were all in the post-FUSE launch period) *also* quit the Company during his tenure. As noted above, one of the major factors behind EndoChoice's high turnover/poor retention problem was the fact that FUSE systems suffered from significant and ongoing quality issues. However, another major contributing factor was the inability of TMs to meet management's sales targets, which were set by senior headquarters executives. Moreover, because EndoChoice provided a guaranteed base compensation to TMs for the first six months, CW5 noted that the Company's newly hired TMs during his tenure typically quit between six to twelve months from their hiring date – and within CW5's region ***the average tenure for TMs before they left was only 5.5 months.*** (Similarly, CW5 stated that he believed that only two pre-IPO TMs were still with the Company at the time CW5 left in 2016)**.** Because the average sales cycle for the FUSE system

was roughly nine months, this meant that many TMs did not stay on board long enough to even close one FUSE sale -- even though the Company revised its per-TM sales quotas downwards in 2015 to the equivalent of roughly two to three FUSE systems.

97. Similarly, CW4, another former Regional Sales Manager who managed six TMs at any given time while at the Company from mid-2013 to roughly mid-2016, also confirmed that there was a high rate of attrition among territory managers during CW4's tenure, including in the months leading up to the IPO. CW4 also noted that much of this turnover was attributable to the termination or departure of longer serving sales personnel who were experienced in selling EndoChoice's single use products and other non-FUSE products and services, but who had little or no experience selling expensive capital medical equipment, such as FUSE – and CW4 personally terminated such TMs in order to replace them with new personnel who had relevant experience selling expensive capital medical equipment. However, as CW4 also stated, even when new sales staff were hired, the Company had significant problems retaining them. For example, as CW4 described, EndoChoice made representations to such new hires as to expected commissions that never materialized due to the Company's unrealistic FUSE sales quotas. This "disenfranchised" much of the sales force, which caused many to leave.

98. As CW4 also stated that, throughout CW4's tenure, the Company's senior executives imposed sales forecasts on their regional sales managers and TMs that simply could not be met and were not plausible – and CW4 also confirmed that these unrealistic quotas were in place in the first half of 2015. For example, CW4 recalled seeing data that was presented at EndoChoice's National Sales Meeting in Atlanta in February 2016 that showed that, for the full calendar year 2015, only ***two*** out of the Company's total of 60 TMs nationwide had met their annual sales quota. That only two of sixty TMs could make their sales quotas showed, in CW4's

words, the extent to which the Company lacked a "viable compensation plan" that contributed to EndoChoice's high rate of attrition and salesforce turnover during CW4's tenure. By contrast, CW4 noted that to properly motivate sales personnel a company should expect at least 50% of the salesforce to achieve the established quota, with a bell curve distribution of roughly "ten to fifteen percent at either end" that would differentiate clear over-achievers and under-achievers.

99. CW6, the former TM employed at EndoChoice from mid-2013 to early 2016, ("CW6"), similarly described the extraordinarily high attrition rate that the Company suffered with respect to its more tenured EndoChoice sales personnel who had pre-dated the FUSE launch. In particular, of the total of 18 TMs that the Company had when CW6 started in mid-2013, by November 2015 only one remained. CW6 confirmed that this turnover was due largely to these TMs lack of the experience in selling large, expensive capital medical equipment like the FUSE system (as opposed experience in selling inexpensive, single-use devices, which involved a "dramatically different" sales process). For example, CW6 described how FUSE sales involve a much longer sales cycle, and required not only significant product knowledge, but also substantial industry knowledge and a good understanding of hospital perations, budgetary issues, and profitability. But CW6 further stated that the training provided by the Company to try to transition sales personnel without prior experience in selling capital equipment was insufficient (for example, it did not include training to any significant degree with respect to understanding hospital operations, budgetary issues and cost center profitability issues and their impact on FUSE customers and potential FUSE sales). CW6 also stated that 30 to 35 territory managers never made their quota at any time, and that of these individuals, 30% "had not sold a single [FUSE] system." CW6 also noted that TMs participated in weekly conference calls with other

TMs in their region to discuss sales efforts and objectives, and similarly participated in monthly national calls that all TMs nationwide were required to participate in.

100. In addition, according to CW6, of the four Regional Managers employed at EndoChoice at the time CW6 joined the Company, only one remained by November 2015. CW6 also noted that EndoChoice management went to great lengths to keep the Company's high rate of attrition "very hush hush." For example, CW6 would not receive notice when other TMs had left the Company. CW6 also confirmed that the commission/compensation structure that was in place prior to the IPO and thereafter imposed a structure that made a TM's compensation more dependent on meeting FUSE sales quotas (even if the TM met revenue targets for other products), and believed that many if not most TMs at EndoChoice were also frustrated by this compensation structure -- and that this was also a primary reason that TMs left the Company.

101. CW3, the former EndoChoice TM who started at EndoChoice before the introduction of FUSE and left in late 2015, also described how the Company imposed unrealistic sales quotas on its TMs. Initially, in 2014, TMs were expected to sell five FUSE systems per year, which was so unrealistic that by late 2014 Company management had "realized that nobody could even come close" to such a sales target, with the result that the quota was reduced to three FUSE systems per year, and which remained at the level (or slightly less) from early 2015 on. However, even with this reduction, the overwhelming majority of TMs failed to meet their FUSE sales quotas. Indeed, CW3 estimated that of the roughly 50 TMs that the Company had in the period leading up to the IPO, less than 8% had been achieving their sales quotas as of the IPO. CW3 noted that he was aware of the struggles TMs had in trying to make the Company's unrealistic sales quotas and their performance through ongoing conversations with

fellow TMs, and CW3 participated in weekly conference calls with fellow TMs within CW3's region, and also participated in monthly national calls in which all sales staff participated.

III. THE TRUTH BEGINS TO EMERGE

102. Unfortunately for investors, however, by the fall of 2015 the truth concerning EndoChoice's actual condition and prospects had begun to emerge.

103. For example, before the opening of the market on November 5, 2015, EndoChoice issued a press release announcing its financial results for the third quarter of 2015. This release disclosed that EndoChoice's sales of its touted FUSE system had ***declined*** on a sequential basis from the previous quarter and that, as a result, the Company's gross margin had also declined by roughly 5.5% (from 35% to 33%). In addition, the Company separately announced that, in an effort to boost its flagging FUSE sales, it had entered into a strategic partnership with De Lage Landen Financial Services, Inc., to offer a new financing program (to be known as EndoChoice Capital) to help potential U.S. FUSE customers obtain lease financing for the FUSE system.

104. Later that morning, Defendants Gilreath and Gill participated in a conference call with analysts to discuss the Company's third quarter 2015 results. During that call, defendant Gilreath admitted that EndoChoice had shipped (*i.e.* sold) only 21 FUSE units in the third quarter (including "demo" units sold to overseas distributors rather than to end-user customers), compared to sales of 26 and 27 units, respectively, in the first and second quarters of 2015. In addition, Defendant Gill announced that, in light of the Company's re-assessment of the "status, the expected timing, and the probability of success for various opportunities in the near term Fuse [sales] tunnel," the Company was, *inter alia*, (a) reducing its guidance for total 2015 revenue to $72 to $74 million (down from its previous guidance of $73 to $76 million), (b) decreasing its forecast for expected gross margins to 33% to 34% (down from 35% to 36%

previously); and (c) increasing its estimate of total annual losses to $60 to $61 million (compared to $57 to $60 million previously).

105. Defendants Gilreath and Gill also effectively admitted that FUSE sales had suffered because -- contrary to the representations in the Offering Materials that EndoChoice's salesforce was a core element of its purportedly "world class organization" – as of the date of the Offering, the Company was in fact continuing to suffer from a lack of quality salespersons who were capable of effectively selling the FUSE product. As Defendant Gilreath admitted:

> It's one thing to say we're going to go from 50 to 70 reps, ***but I think the real market difference is that the sales reps we are hiring today is not the sales rep we had two years ago. And, it is just a dramatic difference.*** We've gone to a different level, and we've talked about that, and that was the reason we had such a top grading activity in the past year. But, with our new sales reps that are coming from companies like Boston Scientific, and GE, and Medtronic, and Intuitive Surgical, and so on; it's folks that have a tremendous amount of experience, and we're finding that not only are they more productive in demos but they're also more productive in knowing how to bring those things to closure and wins.

106. In response to analyst questions, Gilreath was also forced to admit that the state of the Company's salesforce was such that he did not actually expect to see a "material impact" from EndoChoice's ongoing efforts to upgrade the quality of its salesforce for another six months (*i.e.*, May 2016), if not the "back half of next year [2016]".

107. Similarly, in response to an analyst's question, Defendant Gilreath admitted that, contrary to the Offering Materials' rosy statements in early June 2015 about EndoChoice's touted FUSE products and its "world class" organization, *at best* the Company's salesforce and FUSE product offerings were ***only just now*** (in November 2015) "coming together."

> Analyst: I think you all made it abundantly clear on the progress you're making and these are still totally early days, and I get all that. But, let me just take, ***I'd rather have you answer this question,*** Mark or David: you've had a larger sales force, you've got great data, I, of course, totally believe in the technology, but if I look at the sequential numbers the last four quarters, Fuse shipments are sort of stuck in this plus/minus mid-teens kind of

range. ***What would you say to somebody who would be concerned that you're not making the progress that one would think despite the backlog, and maybe is the inflection point sort of six months away, three months away***, as all these mature and all these pieces come together? ….

Gilreath: … It's often difficult to predict inflection points in the capital equipment markets, but I do believe that we have a nice trend building. ***But, there are a few things that have to come together for that to occur. The sales force has to be in place***, the product has to be in place, the data has to be in place. ***And for the first time I think we can say that those three things are now coming together***.

108. That same day, J.P. Morgan issued an analyst report describing EndoChoice's third quarter 2015 results as "disappointing." As the report further stated:

> On the bottom line, the company reported a net loss of $11.6M ($0.47 per share) vs. consensus for a $12.7M ($0.54 per share) loss, as lower than expected operating expenses offset a weak gross margin.
>
> - ***Fuse's momentum slowed modestly in 3Q, as EndoChoice shipped 21 systems vs. our estimate of 30. This was down from 26 and 27 in the first and second quarters, respectively*** . . .

109. In response to the Company's November 5 disclosures and related analyst commentary, the price of EndoChoice common stock plunged over 22% in heavy trading on November 5, falling from $10.28 to $8.01 per share.

110. The following day, November 6, 2015, J.P. Morgan formally lowered its price target from $26.00 to $19.00, and reiterated its characterization of the Company's third quarter 2015 results as "disappointing." As J.P. Morgan's November 6 report further stated:

> [T]he Street's focus (and the culprit for the stock's 22% drop) was the Imaging business, where Fuse placements declined from 26-27 per quarter in the front half of the year to just 21 in the third quarter. Management attributed this slowdown to normal seasonality, the lumpiness of the capital equipment cycle, and unfavorable deal mix (smaller average orders). ***Regardless of the reasons, however, a shortfall so soon after the company's June IPO is certainly concerning and raises questions about the trajectory of Fuse adoption going forward***…

> … As a result, we are taking a more conservative approach with our forecast for 2016 and beyond. Our model now calls for 2016 revenues of $92.3M, down from our prior $99.4 estimate….

111. On January 8, 2016, the Company announced preliminary fourth quarter and full year 2015 results. The Company preliminarily announced that total revenue for 2015 was $72.3 million, up only $11.1 million compared to 2014. The Company also stated that deals were taking longer than anticipated to close, and that sales of two FUSE systems that it had purportedly expected to close in the fourth quarter of 2015 had "slipped" into the first quarter of 2016. The Company's preliminary fourth quarter 2015 results were, again, promptly characterized as "disappointing" in a J.P. Morgan analyst report issued later that day. As that report noted, EndoChoice's fourth quarter 2015 reported revenues of $18.6 million had come in $700,000 below Wall Street consensus estimates, and added: "[a]s was the case in the third quarter, the Imaging business was the source of the shortfall in 4Q, as sales of $5.2M fell $1.3M shy of our thinking."

112. The analyst report also observed that although EndoChoice had reported sales of 25 FUSE systems in the fourth quarter, this was still below J.P. Morgan's estimate of 28 units (as well as below the number of FUSE units sold in the first and second quarters of 2015). Moreover, J.P. Morgan pointed out that, if one excluded the six (6) demo FUSE units sold to international distributors in the fourth quarter of 2015, commercial placements of FUSE units with actual end-user customers in the fourth quarter (19 units) were up only very modestly from both (a) the prior quarter (18 units) and (b) from the fourth quarter of the previous year (17 units). As the report further stated: "[t]he question going forward is when we will see evidence of an acceleration in Fuse adoption," while adding that EndoChoice management also intended

to "discuss several planned enhancements to Fuse's design" to address "physician feedback" on the product.

113. Similarly, on January 8, 2016, William Blair issued an analyst report that stated EndoChoice's announced preliminary fourth quarter 2015 results were "below our expectations on the top-line with revenues estimated at $18.6 million (+2%), below our target of $19.3 million (+5%)," and that EndoChoice had placed only "25 Fuse systems worldwide, modestly below our estimate of 27 due to lower-than-anticipated sales into the United States." The report further stated that, on a call with analysts, EndoChoice management had conceded that FUSE sales were continuing to take longer than originally anticipated to "accelerate," and that it was making "changes to the existing system" in response to physician feedback. In response to the Company's announcement of disappointing preliminary fourth quarter results, William Blair also increased its estimate of EndoChoice's total *loss* for 2016 from a loss of $47.6 million to a loss of $51.3 million.

114. In response to the Company's January 8, 2016 announcement and related analyst commentary, EndoChoice's stock fell over 14%, from $8.17 to $7.03 per share.

115. On March 3, 2016, Defendants Gilreath and Gill hosted an analyst conference call to discuss the Company's fourth quarter and full year 2015 results. During that call, Defendant Gilreath made the following statements regarding its FUSE product:

> We also made significant enhancements in Fuse during 2015, which we believe contributed to our growth. Our generation two system was launched in April 2015, bringing major improvements to imaging quality, and the gen two system also provided improvements in scope reliability, significantly reducing repair frequencies. . . .
>
> . . .
>
> [The Fuse enhancements we've made] have been really important. One of the things that I think is important for all of us to sync on is, ***although we launched***

> ***generation two in 2015, remember that it didn't make it into the sales force demo pool until around July.*** Over the second half of the year a better sales rep was demonstrating a better product, more reliable product. And so, that has yielded a better pipeline going into 2016 for the first time. So, we're optimistic on the pipeline.

116. These statements effectively admitted that the Company's first generation FUSE system suffered from significant quality and reliability problems, and that the Company's salesforce had no access to the newer "Gen2" demo units at the time of the Offering (and would not even begin to have access to them until the middle of the summer, thus making it unreasonable to expect any material reversal in the stagnating growth in FUSE sales until sometime in 2017 at the earliest[2]).

117. With respect to the Company's sales force, Defendant Gilreath also made the following statements:

> Moving on to a broader discussion of the sales force, we've made significant headway in our optimization efforts to improve the breadth and quality of our sales organization during the year. Following our significant top-grading efforts in 2014, we continue[d] to make improvements to our sales force during 2015, retaining our best performers while add[ing] experienced capital sales reps in additional territories. We believe this optimization has cultivated a very high caliber team, ***which is far more capable*** of demonstrating the advantages of Fuse and the entire product portfolio to physicians and administrators in the C suite.
>
> As of the end of 2015, we had a sales force of 58 reps, which included 45 territory managers and 13 account managers compared to 42 reps at the beginning of 2015.… We now stand at a total of 48 territory managers and 14 account managers for a total of 62. Most importantly, these high caliber reps have gained significant experience over the past couple of years ***and we enter 2016 with a much stronger field force***.

[2] Indeed, as Defendant Gilreath later admitted during the Company's May 4, 2016 conference call, the lack of demo units of the Gen2 FUSE system had slowed sales of FUSE units overall, as fewer customers ordered Gen1 systems and, predictably, actual sales of Gen2 systems to end-user customers did not even begin to occur until "the end of the year [2015]" and early 2016.

118. In addition, with respect to the Company's sales force, Defendant Gill made the following additional statements:

> ***As of the date of today's call [March 3, 2016], 75% of our territory managers have more than six months of field experience, up from 45% a year ago [March 2015], and 54% of our territory managers have more than one year of experience, up from 35% a year ago***, and 27% of our reps have more than two years of field experience. ***As a reminder, a sales rep takes six months to a year to become effective doing Fuse demos and then about six more months transpire before these deals start to close***. So, reps gaining more than one year of tenure in their territory is an important milestone and our financial models are driven by these same assumptions.
>
> …
>
> As you know, ***we've got a significantly enhanced product coming on midstream in the year***. So, we're certainly expecting an updraft in the second half of the year. In addition to that, the real driver is the pace of the reps in their territory gaining maturity and proficiency and performing in demos.
>
> So, as I mentioned on the call, our active TMs are up somewhat year over year by about 20%. The seasoned reps, those that have been in the field more than six months are up effectively double. So, we've got a much more tenured sales forces that is better trained.

119. The statements quoted in the two immediately preceding paragraphs effectively admitted that, as of the June 2015 Offering, the Company's sales force was far from "world class" and would not be "poised" to materially increase FUSE sales until sometime in 2017 at the earliest. Similarly, Defendant Gill's reference to "significantly enhanced product coming on midstream in the year" confirmed that, as of the time of the June 2015 Offering, the Company's existing and available "gen1" FUSE product suffered from material quality and design issues that would not be remedied (at the earliest) until the "Gen2" product became available (and that because of the absence of "Gen2" demo units in the field until the mid-summer of 2015 and the lengthy sales cycle for the product, FUSE sales would almost certainly be stagnant for the second half of 2015 as well as the first half of 2016).

120. On May 4, 2016, the Company announced its first quarter 2016 results and hosted a conference call with analysts that morning, and reported that it had shipped 30 FUSE systems in that quarter, which represented only a modest increase over the 25 units sold in its disastrous fourth quarter of 2015. Moreover, in a further tacit concession that its "Gen2" FUSE system had fallen far short of addressing the quality and design problems that had afflicted its first generation system, Defendant Gilreath discussed how the Company was already looking past Gen2 to get a "Gen3" FUSE system on the market. As Defendant Gilreath stated:

> Our latest Fuse system innovations, which we refer to as Generation 3, include improvements to scope ergonomics, drivability and enhanced imaging capability of Lumos… GI specialists are passionate about ergonomic control and our new handle, with a much sleeker profile, better fits the hands of most physicians, particularly women. In addition, our [inaudible] DriveWire helps steer the scope with more precision, accuracy and ease. And we have launched the Lumos adaptive Matrix Imaging in international markets and [are] planning to launch in the United States in the second half of the year upon receiving FDA clearance. Lumos is our proprietary imaging technology, which provides enhanced imaging capability to support the differentiation of tissue in the esophagus, stomach and colon. We believe that these ongoing enhancements to the Fuse system combined with improved tenure and greater productivity form our territory managers will further accelerate momentum in Fuse placements in the second half of 2016.
>
> . . .
>
> … Our Generation 3 system has significant improvements to drivability and should be what we think is the best imaging software in the business.

121. On the same call, Defendant Gill also noted that, as the Company moved to leave Gen2 behind and plow forward with Gen3, EndoChoice had taken a $600,000 charge against earnings "related to obsolete parts and systems that will no longer be used going forward once we launch the Gen3 Fuse system."

122. With respect to the sales force, Defendant Gilreath *again* discussed the Company's seemingly unending efforts to try to "upgrade" its sales force to the levels needed to materially grow its FUSE sales:

> We have several important drivers of upside to our business as we move in[to] the second quarter and second half of 2016. First, our territory managers have demonstrated an early ability to deliver increased placements as they gain tendering experience. We [are] encourage[d] by the fact that approximately half of our territory managers now have more than a year of experience and the entire team is focused on increasing demo activity, building the pipeline, and closing deals….
>
> These professionals are the highest quality men and women that we've had in the field since our inception and they are ***poised*** for improved productivity and market share gains.

Left unnoted in these remarks was the stark contrast between (a) Defendant Gilreath's representation that the Company's salesforce was finally "poised for improved productivity and market share gains" as of May 2016, vs. (b) the Offering Material's patently false misrepresentation that, as of the June 2015 IPO, the Company's "proven salesforce" was somehow "poised to contribute to future sales growth."

123. Following this call, later in the day on May 4, 2016, the William Blair firm issued an analyst report which noted that, despite the modest increase in FUSE sales, EndoChoice's reported revenues ($18.5 million) were still below William Blair's target of $18.8 million, but expressed hope that the Company the steps that the Company had taken in 2016 – "including moving to a more Fuse-specific salesforce and launching product enhancements" -- might "re-accelerate" adoption of FUSE by the end of the year. Regarding the quality of EndoChoice's earlier FUSE product, the report stated:

> We note that Fuse deals that were closed in 2015 were mostly with accounts that received a demonstration with the first generation Fuse system, which included a relatively poor image quality compared to its current generation, the need for three separate screens to view the 330-degree image, and an unfamiliar handle design. . . . In 2015, the Company sold 58 Fuse systems in the United States with an inferior product and less-experienced field organization.

The report also observed that "Fuse performance will continue to be the primary swing factor in revenue as well as the stock [price]."

124. In response to the Company's disclosures of May 4, 2016 and related analyst commentary, the price of EndoChoice stock fell over 11%, from $5.46 at the close on May 3, 2016 to only $4.83 per share at the close on May 5, 2016.

125. On July 13, 2016, as the price of EndoChoice stock continued to languish at around $5.00 per share, J.P. Morgan issued an analyst report announcing that it was assuming lead analyst coverage for the Company. As that report stated:

> At its core, EndoChoice is a platform gastrointestinal company with a complete package[] of single-use products, diagnostics, and the differentiated Fuse imaging platform backed by best-in-class clinical data. But since going public last June [June 2015], EndoChoice has stumbled on the execution of the Fuse rollout, the key growth metric tracked by the Street. In turn, this led to a 4% shortfall in 2015 sales vs. consensus, and a staggering 66% price decline since the IPO. Going forward, we see three key issues that EndoChoice must overcome to reestablish credibility with the Street and allow investors to gain confidence that execution is improving: (1) demonstrating sustained Fuse traction, particularly in the US market; (2) exhibiting gross margin improvement, which goes hand in hand with improving Fuse sales; and (3) removing the financing overhang with an equity raise, likely $25M-$50M in late 2016 or [first half of 2017], and providing a clear path towards profitability. . . .

Significantly, in its first report in its new role as "lead analyst" for EndoChoice, J.P. Morgan also specifically commented on how the FUSE system that EndoChoice had so highly touted in its Offering Materials was, in reality, far from being "ready for prime time" at the time of IPO:

> Generating sustained Fuse adoption, particularly in the US, is the key to improving investor sentiment. ***The first generation Fuse [was] originally launched in early 2014 with sub-par image quality, followed by the second generation Fuse that had a poorly designed scope handle.*** Now with the third-generation Fuse system that [was] launched … in May [2016], ***EndoChoice finally has a system ready for prime time. . .***

126. On August 3, 2016, the Company announced its second quarter 2016 results, and reported that its FUSE sales systems for the second quarter had slid back to only 25 units – down from 30 in the prior quarter (and also less than 27 units that it had sold in the same period in the prior year). The Company also hosted a conference call with analysts that day, during which the

Company also announced that, due to the significant problems it was continuing to have in trying to generate any growth in its FUSE sales, it was ***sharply*** reducing its revenue guidance for the entire 2016 year from $86-$93 million to only $80-82 million.

127. Once again, the decision to rush another "new and improved" generation of the FUSE system into the market – and the resulting delay in getting demo units of the Company's "Gen3" FUSE into the field (so that its salesforce could demonstrate the product for customers) was blamed by management as a major factor for the latest disastrous quarter (as well as for its reduced revenue guidance for the second half of the year). As Defendant Gilreath stated during the conference call:

> [T]he decision to debut the Gen3 system [in May 2016] had two consequences. We found that the announcement of Gen3 caused more customers than expected to pause their purchase decisions, awaiting an opportunity to re-demo with the Gen3 system. With the [debut of the Gen3 system] in late May, or two-thirds through the quarter, we [didn't] have enough time to deliver sufficient quantity of demo units to our sales team, thereby causing a delay with several of our best prospects…. As we move forward, upgrading our filed equipment to Gen3 is one of our highest priorities. We expect this upgrade process to be completed late in the third quarter, which will have some [adverse] impact on the ability to close quarters in the second half of 2016. We have therefore lowered our expectations for Fuse placements in the second half of this year.
>
> . . .
>
> ***[Our downward] change in revenue guidance is 100% attributable to Fuse***.… We have roughly 50 people in the sales force, It's a lot of demo equipment that has to be manufactured and placed and put in circulation, and we do expect that during the third quarter that some of those potential orders may have to be pushed to the fourth quarter because of timing delays to get demos done.
>
> … Unfortunately, on a logistics basis, we weren't fully prepared on the day of launch to fully output our sales force.[3]

[3] As Defendant Gilreath also stated on the call: "[T]he demo process is really quite clear, it is typically a week long, sometimes practices will ask us to go for an additional week if they have a lot of partners that didn't get a chance to use the equipment. And whether if it's a limited pool [of demo equipment], the sales leadership team determines where that pool goes for the best opportunities. ***We are very conscious of managing that on a day-to-day basis***."

128. On the same call, Defendant Gill also noted that, as the Company moved to leave Gen2 behind and plow forward with Gen3, EndoChoice had taken yet another charge against earnings in the second quarter, in the amount of $506,000, for obsolescence "relating to various Gen2 parts, which will no longer be used in the Gen3 system." In addition, Defendant Gill stated as a result of the Company's decision to lower its revenue estimates for the second half of 2016 (which as Defendant Gilreath noted was attributable *entirely* to reduced estimates of FUSE sales), the Company was taking an additional impairment charge of ***$12.6 million*** to write-down the value of intangible assets that EndoChoice had been carrying on its balance sheet in connection with its 2013 acquisitions of both FUSE developer Peer Medical and endoscope manufacturer RMS Endoskopie**.** As Defendant Gill stated:

> As a result of our decision to lower revenue estimates for the second half of 2016. We performed an impairment analysis of our intangible assets that were acquired during the 2013 acquisitions of both Peer Medical and RMS Endoskopie. Based upon our impairment assessments and the lowered expected future cash flows associated with these [Fuse-related] assets, ***during the second quarter we recorded a non-cash impairment charge of $12.6 million***, which fully impairs the developed technology, customer relationships, and other intangible assets arising from those acquisitions.

129. With respect to product quality issues, in response to an analyst question, Defendant Gilreath again effectively conceded that *both* the prior Gen1 and Gen2 FUSE systems had suffered from significant reliability problems:

> Analyst: [I]t seems like the Gen3 was just a new handle, and your new handle just kind of gets it up to par with kind of other competitors or what they are currently using. So is that enough to cause a physician to have a full new demo…?
>
> Gilreath: [The improvement to the] Gen3 was more than a new handle. Those ergonomics were applied in several pieces of the endoscope, and included a number of functional improvements, ***and really significant improvements to the reliability of the scope.*** So I think with Lumos it really sets us up further, and we'll experience that as we go further this quarter.

130. The market and financial analysts both reacted sharply and negatively to the Company's latest disclosures. For example, on August 4, 2016, J.P. Morgan released an analyst report aptly titled "EndoChoice: The Fuse Has Run Out", which downgraded its rating of EndoChoice shares to "neutral" and slashed its year-end "price target" for EndoChoice shares from $10.00 to only $5.50 per share. As the report also stated:

> EndoChoice reported disappointing 2Q results [on August 3] after the close, with revenues of $19.3M (+3%) coming in $1.3M below the Street and $1.9M below our estimate. Imaging was the primary source of the shortfall, with sales of just $5.5M (-10%) and Single Use was $0.5M below at $9.4M (+3%). Following the May launch of the Fuse Gen3.

The report further noted that EndoChoice had only sold 25 FUSE systems in the quarter (15 in the US), and thereby sharply underperformed analyst expectations, largely because the Company had rushed into the market with the Gen3 product before it could supply an adequate number of Gen3 demo units to its salespersons in the field. As the report further stated: "As a result, there are only 15-20 demo units in the field for 50 sales reps vs. the 50 units that would normally be required, a level that won't be reached until late in 3Q." As a result, J.P. Morgan announced that it was also drastically reducing its estimates of FUSE sales for the third quarter of 2016 from 39 systems to only 25, and for the fourth quarter of 2016 from 51 systems to only 30.

131. In response to the Company's disclosures of August 3 and related analyst commentary, the price of EndoChoice stock fell over 21%, from $5.26 per share at the close on August 3, 2016 to close at only $4.13 per share on August 4, 2016.

132. On September 27, 2016, EndoChoice announced that it had entered into an agreement to be acquired by Boston Scientific, Inc. (a Massachusetts-based medical technology company), under which Boston Scientific agreed to purchase, through a tender offer, all of EndoChoice's outstanding shares of common stock for a mere $8.00 per share – or barely half of

the $15.00 per share price at which EndoChoice shares had been offered to the public less than 16 months earlier in its June 2015 IPO.

133. Interestingly, although the Boston Scientific press release announcing the acquisition noted that EndoChoice generated approximately $75 million of total sales in the twelve-month period ended June 30, 2016, the release stated that "[w]ith respect to the FUSE colonoscope, Boston Scientific intends to evaluate strategic options, and expects to provide further clarity at or around the time of transaction closing." Moreover, when the transaction closed in November 2016, Boston Scientific stated that it was continuing to evaluate "strategic options" with respect to FUSE, and would likely delay providing any further clarity until the end of the year. In the meantime, such comments support speculation by some (including at least one source contacted by Plaintiffs' Counsel) that – while Boston Scientific felt there was value in EndoChoice's growing pathology services business and in EndoChoice's Single Use Product business (and acquired EndoChoice for that reason) – Boston Scientific had concluded that the FUSE system had little value and that, unless it could dump it off to some other buyer, Boston Scientific plans to discontinue the FUSE product altogether (subject to having to maintain existing service agreements with existing FUSE customers for at least the next two years).

PLAINTIFFS' CLASS ACTION ALLEGATIONS

134. Plaintiffs bring this action as a class action on behalf of a Class consisting of all those who purchased EndoChoice common stock pursuant or traceable to the Company's Offering Materials and who were damaged thereby (the "Class"). Excluded from the Class are Defendants; their respective successors and assigns; the past and current executive officers and directors of EndoChoice and the Underwriter Defendants; the legal representatives, immediate

family members, heirs, successors or assigns of any excluded person; and any entity in which any Defendant has or had a controlling interest.

135. The members of the Class are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members of the proposed Class. The members of the proposed Class may be identified from records maintained by EndoChoice or its transfer agent, and may be adequately notified of the pendency of this action by mail using customary forms of notice that are commonly used in securities class actions.

136. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class have been similarly affected by Defendants' wrongful conduct.

137. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

138. Common questions of law and fact exist as to all members of the Class, which predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants violated the federal securities laws as alleged herein;

b. whether the Offering Materials contained materially false and misleading statements and omissions; and

c. to what extent Plaintiffs and members of the Class have sustained damages and the proper measure of damages.

139. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible as a practical matter for members of the Class

to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM
Violations of §11 of the Securities Act
(Against All Defendants)

140. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

141. This Claim is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against each Defendant.

142. The Offering Materials were materially inaccurate and misleading, contained untrue statements of material facts, omitted facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein.

143. EndoChoice is the issuer of the securities purchased by Plaintiffs and the Class. As such, it is strictly liable for the materially untrue statements contained in the Offering Materials and their failure to be complete and accurate.

144. The Individual Defendants each signed or authorized the signing of the Offering Materials. As such, each is strictly liable for the materially inaccurate statements contained therein and for their failure to be complete and accurate, unless they are able to carry their burden of establishing an affirmative "due diligence" defense. The Individual Defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements contained in the Offering Materials, and to ensure that they were true, accurate and complete, that there were no omissions of material facts that would make the Offering Materials materially misleading, and that they contained all information required to be stated therein. In the exercise of reasonable care, the Individual Defendants should have known of the material

misstatements and omissions contained in the Offering Materials and also should have known of the omissions of material fact necessary to make the statements made therein not misleading. Accordingly, each Individual Defendant is liable to Plaintiffs and the Class.

145. Each Underwriter Defendant served as an underwriter in connection with the Offering. As such, each is strictly liable for the materially inaccurate statements contained in the Offering Materials and the Offering Materials' failure to be complete and accurate, unless it is able to carry its burden of establishing an affirmative "due diligence" defense. Each Underwriter Defendant had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements contained in the Offering Materials, and to ensure that they were true, accurate and complete, that there were no omissions of material facts that would make the Offering Materials misleading, and that they contained all information required to be stated therein. In the exercise of reasonable care, each Underwriter Defendant should have known of the material misstatements in the Offering Materials and of the omissions of material facts necessary to make the statements made therein not misleading. Accordingly, each Underwriter Defendant is liable to Plaintiffs and the Class.

146. By reason of the conduct herein alleged, each Defendant violated §11 of the Securities Act.

147. Plaintiffs acquired EndoChoice's common stock pursuant or traceable to the Offering Materials, and without knowledge of the inaccuracies, untruths and/or omissions alleged herein, and have been damaged thereby.

148. This claim was brought within one year after the discovery of the untrue statements and omissions, and within three years of the date of the Offering.

149. By virtue of the foregoing, Plaintiffs and the other members of the Class are entitled to damages under §11 as measured by the provisions of §11(e), from the Defendants and each of them, jointly and severally.

SECOND CLAIM
Violations of §12(a)(2) of the Securities Act
(Against All Defendants)

150. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

151. Defendants were sellers, offerors, and/or solicitors of purchases of the EndoChoice shares of common stock that were offered pursuant to the Offering Materials. Defendants issued, caused to be issued, and/or signed the Offering Materials in connection with the Offering. The Offering Materials were used to induce investors, such as Plaintiffs and other members of the Class, to purchase EndoChoice shares in the Offering.

152. The Offering Materials contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted material facts required to be stated therein. Defendants' acts of solicitation included participating in the preparation of the materially inaccurate, untrue, misleading and incomplete Offering Materials.

153. As set forth more specifically above, the Offering Materials contained inaccurate or untrue statements of material facts and omitted to state material facts necessary in order to make the statements, in light of circumstances in which they were made, not misleading.

154. Plaintiffs and the other Class members did not know of the inaccuracies, untruths or omissions contained in the Offering Materials.

155. The Defendants were obligated to make a reasonable and diligent investigation of the statements contained in the Offering Materials to ensure that such statements were true and that there was no omission of material fact required to be stated in order to make the statements

contained therein not misleading. None of the Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Materials were accurate and complete in all material respects.

156. This claim was brought within one year after discovery of the untrue statements and omissions in the Offering Materials and within three years after the offered shares of EndoChoice common stock were first *bona fide* offered to the public, including to members of the Class.

THIRD CLAIM
For Violations of §15 of the Securities Act Against the Individual Defendants

157. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

158. The Individual Defendants were controlling persons of defendant EndoChoice within the meaning of §15 of the Securities Act. By reason of their ownership interest in, senior management positions at, and/or directorships held at EndoChoice, as alleged herein, these Defendants, individually and collectively, had the power to influence, and exercised the same, over EndoChoice to cause EndoChoice to violate §§11 and 12(a)(2) of the Securities Act as alleged herein.

159. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §15 of the Securities Act. As a direct and proximate result of the wrongful conduct, Class members suffered damages in connection with their purchases of the Company's shares.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action and certifying Plaintiffs as Class representatives;

B. Awarding Plaintiffs and the other members of the Class compensatory damages;

C. Awarding Plaintiffs and the other members of the Class rescission or a rescissionary measure of damages on their §12(a)(2) claims;

D. Awarding Plaintiffs and the other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and disbursements; and

E. Awarding Plaintiffs and the other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: December 2, 2016

LAW OFFICES OF ROBERT W. KILLORIN

/s/ Robert W. Killorin
Robert W. Killorin (#417775)
5587 Benton Woods Dr
Atlanta, GA 30342-1308
Telephone: 404-847-0617
Facsimile: 404-876-4476
Email: rwk@bellsouth.net

Co-Liaison Counsel for Co-Lead Plaintiff Jesse L. Bauer and the Proposed Class

William C. Fredericks
Thomas L. Laughlin
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10174
Telephone: 212-223-6444
Facsimile: 212-223-6334
wfredericks@scott-scott.com
tlaughlin@scott-scott.com

David R. Scott
Stephen J. Teti
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
156 South Main Street
P.O. Box 192
Colchester, CT 06415
Telephone: 860-537-5537
Facsimile: 860-537-4432
Email: david.scott@scott-scott.com
steti@scott-scott.com

Jesse Strauss
STRAUSS LAW PLLC
305 Broadway, 9th Floor
New York, NY 10007
Telephone: 212-822-1496
Email: jesse@strausslawpllc.com

Co-Lead Counsel for Co-Lead Plaintiff Jesse L. Bauer and the Proposed Class

Shannon L. Hopkins
Sebastiano Tornatore
LEVI & KORSINSKY, LLP
733 Summer Street, Suite 304
Stamford, CT 06901
Telephone: (203) 992-4523
Email: shopkins@zlk.com
Email: stornatore@zlk.com

Co-Lead Counsel for Co-Lead Plaintiff Kenneth T. Raczewski and the Proposed Class

LAW OFFICES OF DAVID A. BAIN, LLC

/s/ David A. Bain
David A. Bain (#032449)
1050 Promenade II
1230 Peachtree Street, NE
Atlanta, GA 30309
Telephone: (404) 724-9990
Fax: (404) 724-9986
Email: dbain@bain-law.com

Co-Liaison Counsel for Co-Lead Plaintiff Kenneth T. Raczewski

CERTIFICATE OF SERVICE

This is to certify that I have, on this day, caused counsel of record for Defendants to be served with a true and correct copy of the within and foregoing by electronic filing and by email, and by having the same deposited for next business day delivery in a properly addressed and prepaid envelope at the following addresses:

Michael R. Smith, Esq.
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Telephone: 404-572-2820

John R. Bielema, Esq.
Michael P. Carey, Esq.
Bryan Cave, LLP
1201 West Peachtree Street N.W.
Fourteenth Floor
Atlanta, GA 30309
Telephone 404-572-6600
Email: john.bielema@bryancave.com
michael.carey@bryancave.com

Done this 2nd day of December, 2016.

/s/ Robert W. Killorin
Robert W. Killorin (Georgia Bar No. 417775)

Local Counsel for Plaintiff Jesse L. Bauer and the Proposed Class