

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

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**SECURITIES AND EXCHANGE  
COMMISSION**

**Plaintiff,**

v.

**ILONA KAY COLLINS,**

**Defendant.**

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Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

**SUMMARY**

1. In the third quarter of 2003, Quovadx, Inc. (“Quovadx” or the “Company”), a Colorado-based software company, fraudulently recognized approximately \$380,000 in revenue from three purported sales of software licenses to MicroStar, Inc. (“MicroStar”), an Ohio company that sells software licenses and maintenance services to the healthcare industry. In fact, these purported sales were parking arrangements designed to accelerate revenue recognition for Quovadx from transactions that Quovadx was in the process of negotiating with other customers but had been unable to finalize before the end of the quarter. MicroStar had neither the ability nor the intent to pay for the licenses unless and until Quovadx found customers to buy the licenses. As a result, Quovadx improperly recognized approximately \$380,000 in revenue from the purported sales to MicroStar and materially overstated its software licensing revenue by approximately 14% for the third quarter of 2003.

2. Defendant Ilona Kay Collins (“Collins”) was Quovadx’s Controller during the relevant time, and she reported directly to Quovadx’s Chief Financial Officer. Collins approved the recognition of revenue from the third quarter 2003 MicroStar transactions when she knew or was reckless in not knowing that MicroStar was merely holding the software until it was resold to other customers the next quarter, and that there was no likelihood of otherwise collecting those revenues from MicroStar. In February 2004, after one of the customers refused to buy from MicroStar and bought from Quovadx instead, Collins participated in a plan to channel payment from that Quovadx customer to MicroStar, which created the false appearance that Quovadx had collected part of the MicroStar revenue. Collins also signed a management representation letter for 2003 sent to Quovadx’s outside auditor that failed to disclose the true facts and circumstances of the MicroStar transactions.

3. By the conduct described below, Collins violated, or aided and abetted violations of the antifraud, reporting, books and records, and internal controls provisions of the federal securities laws. Unless enjoined by order of this Court, Collins is likely to commit such violations in the future. The Commission seeks a judgment permanently enjoining the defendant from further securities law violations and imposing an officer and director bar and a civil money penalty.

#### **JURISDICTION**

4. This Court has jurisdiction pursuant to Section 22 of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77v(a)] and Sections 21 and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u and 78aa].

5. Collins, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business described in this Complaint, certain of which have occurred within this judicial district.

#### **THE DEFENDANT**

6. While employed by Quovadx, Collins, age 44, resided in Denver, Colorado. She was Controller at Quovadx from approximately November 2000 until April 2004, at which time she left Quovadx.

#### **RELATED ENTITY**

7. Quovadx, a Delaware corporation headquartered in Englewood, Colorado, is a software company that licenses software and sells related services to the healthcare industry. At all relevant times, Quovadx's stock was registered with the Commission under Section 12(g) of the Exchange Act and traded on the NASDAQ. During 2002 and 2003, Quovadx derived about one-third of its reported revenue from software licensing fees, with the rest coming from software maintenance and service contracts. Quovadx separately reported its software licensing revenue, which included sales of both software and licenses. During the relevant period, Quovadx had a continuously effective offering of securities pursuant to Form S-8. It also registered an offer of securities pursuant to Form S-4 in the fourth quarter of 2003.

#### **RELEVANT ACCOUNTING STANDARDS**

8. As a public company, Quovadx was required to file quarterly and annual reports with the Commission that presented its financial results in conformity with Generally Accepted Accounting Principles ("GAAP"). The American Institute of

Certified Public Accountants' Statement of Position 97-2, *Software Revenue Recognition* ("SOP 97-2") and related interpretations are the principal GAAP provisions governing the recognition of revenue for sales of software and software licenses.

9. Under SOP 97-2, a company may not recognize revenue from a software license sale unless and until there is: persuasive evidence of an arrangement; delivery of the software; a fixed or determinable seller's fee; and a reasonable probability of collecting the accounts receivable. Further, if payment is substantially contingent on the buyer's success in distributing the product to the customer, either due to the terms of the deal or because the buyer is so undercapitalized that it cannot pay until it sells the product, the seller may not recognize the software license revenue at the time of sale. In its financial reports filed with the Commission, Quovadx claimed that it had recognized revenue in accordance with GAAP.

#### **FACTUAL ALLEGATIONS**

10. In late September 2003, Collins learned that Quovadx's sales force would be unable to complete negotiations by the end of the third quarter with three of its customers for the sale of software licenses. She also learned that, in order to nonetheless record the nearly-completed sales in the third quarter, Quovadx's sales force had reached three agreements with MicroStar, a small, Ohio-based software integrator, to hold the licenses until the intended customers would buy the licenses from MicroStar in the fourth quarter. Collins approved Quovadx's recognition of about \$380,000 in revenue in the third quarter of 2003 from these transactions with MicroStar. Collins approved this revenue recognition despite the fact that she knew, or was reckless in not knowing, that

MicroStar's payment to Quovadx was contingent on Quovadx delivering customers to purchase the software from MicroStar in the fourth quarter.

11. In addition, Collins took no steps to determine whether MicroStar had the ability to pay for the software licenses. MicroStar, in fact, had no ability to pay for the licenses other than by reselling them to the customers with whom Quovadx had been negotiating. Further, MicroStar had no reasonable ability to find alternative customers, absent Quovadx's assistance.

12. Shortly after Quovadx filed its quarterly report for the third quarter of 2003, Collins learned that MicroStar had not paid for any of the software licenses because the anticipated customers had declined to buy them from MicroStar. Collins did not direct Quovadx employees to reverse the MicroStar revenue. Instead, with her knowledge and approval, Quovadx's sales staff began to look for alternative customers to buy the software licenses from MicroStar. These efforts ultimately failed.

13. By November 2003, it appeared that the intended customers might not buy the software that MicroStar had been holding. However, in December 2003, one of the intended customers ("the U.K. customer") purchased *different* software licenses for approximately \$257,000 from a Quovadx subsidiary in the United Kingdom. Quovadx's then-Executive Vice President of Sales, its then-Chief Financial Officer, and Collins determined that they would have the payment from the U.K. customer channeled through MicroStar to Quovadx. When the U.K. customer made the payment in February 2004 to Quovadx's U.K. subsidiary, the U.K. subsidiary reversed the transaction from its books at Collins' direction and sent approximately \$257,000 to Quovadx's U.S. offices. Then, with Collins' knowledge and participation, Quovadx wired this money to MicroStar on

February 4, 2004. On February 6, 2004, MicroStar wired back \$247,000 to Quovadx, keeping \$10,000 as payment for holding the licenses for Quovadx. By channeling the payment through MicroStar, Quovadx created the false impression that MicroStar had made a substantial payment for the software it was holding and that MicroStar had the ability to pay the balance. At Collins' direction, Quovadx's employees continued to search for additional opportunities to channel software license sales to MicroStar to eliminate the remaining balance.

14. On or about February 10, 2004, in conjunction with the audit of Quovadx's annual report for 2003, Quovadx's then-Chief Executive Officer, Quovadx's then-Chief Financial Officer, and Collins signed a management representation letter to Quovadx's auditor. The letter represented that Quovadx's financial statements were prepared in conformity with generally accepted accounting principles. This representation was false and misleading with regard to the revenue reported for the MicroStar transactions because MicroStar had been holding the licenses for Quovadx to resell to other customers and there was no likelihood that MicroStar could otherwise pay for them.

15. In August 2004, after Collins ceased working at Quovadx, Quovadx reversed all three of the software license sales to MicroStar.

#### **FIRST CLAIM FOR RELIEF**

**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

16. The Commission realleges and incorporates herein by reference paragraphs 1 through 15 above.

17. Section 17(a) of the Securities Act prohibits a person from engaging in any transaction, practice, or course of business which would operate as a fraud or deceit upon a

purchaser in the offer or sale of any securities. One of the ways a person violates Section 17(a) is to engage in transactions, practices or courses of business that result in materially false or misleading statements or material omissions in Commission filings or in other statements disseminated to investors. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit materially false or misleading statements or omissions made in connection with the purchase or sale of securities.

18. Collins approved the recognition of revenue from the third quarter 2003 MicroStar transactions knowing, or recklessly disregarding, that MicroStar was merely holding the licenses for Quovadx to resell to other customers and there was no likelihood that Quovadx would otherwise collect the revenue. Further, in February 2004, Collins knowingly or recklessly participated in a plan to channel an unrelated payment from another Quovadx customer to MicroStar which then used those funds to make a payment to Quovadx, creating a false appearance that MicroStar made a substantial payment and had the ability to pay the balance.

19. By engaging in the conduct described above, Collins knowingly or recklessly violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **SECOND CLAIM FOR RELIEF**

#### **Violation of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2, thereunder [15 U.S.C. § 78m(b)(5), 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2]**

20. The Commission realleges and incorporates herein by reference paragraphs 1 through 15 above.

21. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal

accounting controls or knowingly falsifying any book, record or account.

22. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

23. Exchange Act Rule 13b2-2 prohibits any director or officer of an issuer from directly or indirectly making or causing to be made misleading statements to an accountant in connection with an audit.

24. In February 2004, Collins participated in a plan to channel payment from another Quovadx customer to MicroStar, which created the false appearance that Quovadx had collected part of the MicroStar revenue.

25. Collins also made materially false or misleading statements and omitted to disclose material information to Quovadx's auditor in the management representation letter she signed on February 10, 2004. Contrary to her representations in that letter, Collins knew or recklessly disregarded the facts that: (1) a substantial portion of the MicroStar receivable had been paid with proceeds from an unrelated transaction; and (2) any further payment from MicroStar depended upon Quovadx identifying customers to purchase the software licenses from MicroStar.

26. By reason of the foregoing, Collins therefore violated Section 13(b)(5) and Exchange Act Rules 13b2-1 and 13b2-2, thereunder.

### **THIRD CLAIM FOR RELIEF**

**Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 13a-11 and 13a-13]**

27. The Commission realleges and incorporates herein by reference paragraphs 1 through 15 above.

28. Section 13(a) of the Exchange Act and Rules 13a-11 and 13a-13 thereunder require that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, file periodic reports with the Commission that are complete and accurate in all material respects. Exchange Act Rule 12b-20 requires that, in addition to the information expressly required to be included in a statement or report, an issuer must add such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

29. Quovadx materially overstated its software licensing revenue in the third quarter of 2003 by improperly recognizing revenue from the three purported sales of software licenses to MicroStar. As a result, Quovadx's quarterly report for the third quarter of 2003 and the earning release attached to its Form 8-K for that quarter contained materially inaccurate and misleading statements. By improperly approving the recognition of revenue from the MicroStar parking arrangements, Collins knowingly provided substantial assistance to Quovadx in its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

30. By reason of the foregoing, Collins aided and abetted Quovadx's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

#### **FOURTH CLAIM FOR RELIEF**

#### **Aiding and Abetting Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]**

31. The Commission realleges and incorporates herein by reference paragraphs 1 through 15 above.

32. Section 13(b)(2)(A) of the Exchange Act requires that issuers with securities registered under Section 12 of the Exchange Act, such as Quovadx, make and keep books, records, and accounts that accurately and fairly represent the transactions of the company. Section 13(b)(2)(B) of the Exchange Act requires that issuers devise and maintain systems of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformance with GAAP and to maintain accountability of assets.

33. Quovadx's books and records were materially inaccurate during the relevant period because they overstated software licensing revenue and did not accurately or fairly reflect the transactions of the company. Quovadx also failed to maintain internal controls sufficient to ensure that revenue recognition would occur properly and that its financial statements would be prepared in conformance with GAAP. Accordingly, Quovadx violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

34. By improperly approving the recognition of revenue from the MicroStar parking arrangements for the third quarter of 2003 and channeling an unrelated payment through MicroStar in February 2004 that made it appear that MicroStar had partially paid for the licenses, Collins knowingly provided substantial assistance to Quovadx in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

35. By reason of the foregoing, Collins aided and abetted Quovadx's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

## **PRAYER FOR RELIEF**

The Commission respectfully requests that this Court enter a final judgment against Defendant Collins:

- A. finding that Defendant Collins committed the violations alleged above;
- B. permanently restraining and enjoining Defendant Collins from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b) and 15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2] and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 13a-11 and 13a-13];
- C. barring Defendant Collins from serving as an officer or director of any issuer required to file reports with the Commission under Sections 12(b), 12(g), or 15(d) of the Exchange Act [15 U.S.C. §§ 78(l)(b), 78(l)(g), and 78(o)(d)], pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77(t)(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78(u)(d)(2)];
- D. ordering Defendant Collins to pay an appropriate civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77(t)(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78(u)(d)(3)];
- E. retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

F. granting such other and additional relief as this Court deems just and proper.

Dated: July 17, 2007

  
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