

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

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Criminal Action No. 1:12-CR-314-SS 9

DEPUTY

v.

SUPERSEDING
INFORMATION

DAVID APPLGATE,

Defendant.

[Violation: 18 U.S.C. § 371 - Conspiracy
to Commit Wire, Mail and Securities
Fraud; and 18 U.S.C. §§ 1001 and 2 -
False Statements]

SUPERSEDING INFORMATION

THE UNITED STATES CHARGES:

General Allegations

At all relevant times to this Information:

1. ArthroCare Corporation (“ArthroCare”) was a Delaware corporation headquartered in Austin, Texas.
2. Among other products, ArthroCare sold medical devices that used its patented technology, called Coblation, to physicians and surgery centers. Coblation technology was designed to be used by physicians in surgical procedures to remove soft tissue in a way that was minimally invasive.
3. ArthroCare sold medical devices directly to physicians, surgery centers and other end-users through its sales representatives and sales agents. In addition, ArthroCare sold medical devices to distributors, who would then resell ArthroCare’s products to physicians, surgery centers, and other end-users.

4. DiscoCare, Inc. (“DiscoCare”) was a privately owned Delaware corporation, which was incorporated in 2005. DiscoCare was located at 2047 Palm Beach Lakes, Suite 200, West Palm Beach, Florida. ArthroCare was DiscoCare’s only supplier. At various times, DiscoCare was ArthroCare’s largest single distributor of medical devices. On December 31, 2007, ArthroCare acquired DiscoCare.

5. ArthroCare’s stock was traded publicly on NASDAQ, a national securities exchange, and its stock was registered with the United States Securities and Exchange Commission (“SEC”) pursuant to Section 12(b) of the Securities Exchange Act of 1934.

COUNT ONE
Conspiracy to Commit Wire, Mail and Securities Fraud
(18 U.S.C. § 371)

6. Between approximately December 2005, the exact date being unknown, through at least December 2008, in the Western District of Texas and elsewhere, the defendant **DAVID APPLEGATE** did knowingly and willfully conspire and agree with **JOHN RAFFLE** and others, known and unknown to commit certain offenses against the United States, namely:

- a. wire fraud, that is, to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and transmitting and causing certain wire communications to be transmitted in interstate and foreign commerce, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343;

- b. mail fraud, that is, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice to defraud and attempting to do so, did knowingly: (i) place in any post office and authorized depository for mail matter, any matter and thing whatever to be sent and delivered by the Postal Service; (ii) deposit and cause to be deposited any matter and thing whatever to be sent and delivered by any private and commercial interstate carrier; and (iii) cause to be delivered by mail and private and commercial interstate carrier, according to the direction thereon, any such manner and thing, in violation of Title 18, United States Code, Section 1341, and;
- c. securities fraud, that is, to knowingly and intentionally execute a scheme and artifice (i) to defraud any person in connection with any security of ArthroCare, an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 781), and (ii) to obtain, by means of materially false and fraudulent pretenses, representations, and promises, any money and property in connection with the purchase and sale of any security of ArthroCare, an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 781), in violation of Title 18, United States Code, Section 1348.

Purpose of the Conspiracy

7. The purpose of the conspiracy was to (a) conceal from ArthroCare's shareholders, the investing public and ArthroCare's external auditors the true nature of the purported sales to ArthroCare's distributors, (b) cause ArthroCare to make materially false and fraudulent representations to its shareholders and the investing public about ArthroCare's financial condition in order to maintain and increase the market price of ArthroCare's stock, and (c) benefit **APPLEGATE** and others through the continued receipt of compensation and the appreciation of their own ArthroCare stock.

Manner and Means

8. **RAFFLE**, **APPLEGATE** and others inflated falsely ArthroCare's sales and revenue through a series of end-of-quarter transactions involving DiscoCare. After **RAFFLE** and **APPLEGATE** determined the type and amount of product to be shipped to DiscoCare based on ArthroCare's need to meet sales forecasts, rather than DiscoCare's needs for the products, **RAFFLE**, **APPLEGATE** and others caused ArthroCare to ship millions of dollars worth of ArthroCare's medical devices to DiscoCare at the end of quarters. ArthroCare would then report these shipments as sales in its quarterly and annual filings at the time of the shipment, enabling the company to meet or exceed internal and external earnings forecasts.

Overt Acts

9. In furtherance of the conspiracy and to achieve its objects and purposes, at least one of the conspirators committed and caused to be committed, in the Western District of Texas and elsewhere, at least one of the following overt acts, among others:

10. On or about February 27, 2007, **APPLEGATE** and others caused ArthroCare to file a Form 10-K for 2006 that materially misrepresented ArthroCare's quarterly and annual sales, revenues, expenses and earnings.

11. On or about February 29, 2008, **APPLEGATE** and others caused ArthroCare to file a Form 10-K for 2007 that materially misrepresented ArthroCare's quarterly and annual sales, revenues, expenses and earnings.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
False Statements
(18 U.S.C. §§ 1001 and 2)

12. On or about February 29, 2008, in the Western District of Texas and elsewhere, the defendant **DAVID APPLEGATE, JOHN RAFFLE**, and others caused ArthroCare to file a Form 10-K for 2007 with the United States Securities and Exchange Commission that materially misrepresented ArthroCare's quarterly and annual sales, revenues, expenses and earnings.

All in violation of Title 18, United States Code, Sections 1001 and 2.

JEFFREY H. KNOX
Chief
Fraud Section, Criminal Division
U.S. Department of Justice

By:



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U.S. Department of Justice