KROGER CO
Form 4
July 14, 2014

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
Sharp Erin S

(Last) (First) (Middle)

1014 VINE STREET

(Street)

CINCINNATI, OH 45202

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
KROGER CO [KR]

3. Date of Earliest Transaction (Month/Day/Year)
07/11/2014

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

_____ Director _____ 10% Owner
__X__ Officer (give title below) _____ Other (specify below)
Group Vice President

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Common Stock	07/11/2014		F		180 (1)	D	$ 48.82	22,161.0395 (2)	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Nu Deriv Secur Bene Owne Follo Repo Trans (Instr
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares		

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Sharp Erin S 1014 VINE STREET CINCINNATI, OH 45202			Group Vice President	

Signatures

/s/ Erin S. Sharp, by Bruce M. Gack, Attorney-in-Fact	07/14/2014
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) Payment of tax liability associated with restricted stock.

(2) The total amount of securities directly owned by the reporting person includes shares in the Company's employee benefit plans that are deemed to be 'tax-conditioned plans' pursuant to Rule 16b-3, to the extent disclosed on reports received from plan trustees.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. nel needed to support the growth in our service revenues as compared to the increase in our total revenues.

Sales and marketing expenses for the nine months ended September 30, 2004 and 2003 were $2,262,938 and $1,501,868, respectively, an increase of $761,070 or 50.7%. The increase is primarily due to expenses associated with the CapMed division of approximately $444,000 and an increase in expenses associated with tradeshow attendance of approximately $60,000, increased in marketing expenses of approximately $24,000 and an increase in personnel and commission expense of approximately $232,000. Sales and marketing expenses in each of the nine months ended September 30, 2004 and September 30, 2003 were comprised of direct sales and marketing costs, professional salaries and benefits and allocated overhead. We expect that sales and marketing expenses will increase in fiscal 2004 as we continue to expand our market presence in the United States and Europe.

The increase in sales and marketing expenses as a percentage of total revenues to 10.5% for the nine months ended September 30, 2004 from 8.2% for the nine months ended September 30, 2003 is primarily due to increased expenses associated with our CapMed division.

Net interest income for the nine months ended September 30, 2004 was $6,289 and net interest expense for the nine months ended September 30, 2003 was $101,409, an increase of $107,698 or 106.2%. This increase is primarily due to interest income earned on a higher average cash balance for the nine months ended September 30, 2004 as compared to the nine months ended September 30, 2003. Net interest income and expense for the nine months ended September 30, 2004 and 2003 is comprised of interest income earned on our cash balance and interest expense incurred on equipment lease obligations and the Quintiles Note.

Income before income taxes was $2,087,990 for the nine months ended September 30, 2004 and $1,424,374 for the nine months ended September 30, 2003, an increase of $663,616 or 46.6%. The increase was attributable to the increased revenues associated with an increase in services performed on projects for which we were contracted offset, in part, by the costs associated with increased staffing levels necessary to perform the newly contracted services.

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The increase in income before income taxes as a percentage of total revenues to 9.7% for the nine months ended September 30, 2004 from 7.8% for the nine months ended September 30, 2003 is primarily due to increased revenues associated with an increase in services performed on projects for which we were contracted with a lesser increase in costs of revenue as a percentage of total revenues for the nine months ended September 30, 2004.

Income tax provision for the nine months ended September 30, 2004 and 2003 was $846,332 and $296,412, respectively, an increase of $549,920 or 185.5%. The increase is primarily due to the increase in our estimated effective tax rate for 2004 to 41% as compared to 21% for the nine months ending September 30, 2003.

Three Months Ended September 30, 2004 and 2003

	Three Months Ended September 30, 2004	% of Total Revenue	Three Months Ended September 30, 2003	% of Total Revenue	$ Change	% Change
Service revenues	$ 6,547,281	86.5%	$ 5,462,240	86.2%	$ 1,085,041	19.9%
Reimbursement Revenues	1,019,743	13.5%	875,709	13.8%	144,034	16.4%
Total revenues	7,567,024	100.0%	6,337,949	100.0%	1,229,075	19.4%
Cost of revenues	5,020,102	66.3%	4,170,449	65.8%	849,653	20.4%
General and administrative expenses	1,067,226	14.1%	1,026,504	16.2%	40,722	4.0%
Sales and marketing Expenses	759,456	10.0%	520,669	8.2%	238,787	45.9%
Total cost and Expenses	6,846,784	90.5%	5,717,622	90.2.%	1,129,162	19.7%
Interest expense - net	2,664	0.0%	31,036	0.5%	(28,372)	(91.4)%
Income before income tax provision	717,576	9.5%	589,291	9.3%	128,285	21.8%
Income tax provision	287,784	3.8%	62,417	1.0%	225,367	361.1%
Net income	$ 429,792	5.7%	$ 526,874	8.3%	(97,082)	(18.4)%

Service revenues for the three months ended September 30, 2004 and 2003 were $6,547,281 and $5,462,240, respectively, an increase of $1,085,041 or 19.9%. The increase in service revenues was due to an increase in the number of projects resulting from the overall market growth for medical-imaging related services for clinical trials and what we believe to be our increasing market share.

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Service revenues were generated from 75 clients encompassing 179 distinct projects for the three months ended September 30, 2004. This compares to 62 clients encompassing 143 distinct projects for the three months ended September 30, 2003. One client, Novartis, encompassing 14 projects represented 13.9% of our service revenues for the three months ended September 30, 2004, while for the comparable period last year, one client, NPS Pharmaceuticals, encompassing four projects represented 12.0% of our service revenues. No other client accounted for more than 10% of service revenues in each of the three-month periods ended September 30, 2004 and 2003. Service revenues generated from our client base, while still concentrated as measured by the number of clients, has continued to become more dispersed over time and we believe more diversification is evident when revenue concentration is measured by the number of individual projects. We believe that measuring revenue concentration by project diversification may be more indicative of revenue concentration risk since we are often working on several separately-based and funded projects with a single client, with each project often being wholly independent from the others. Our primary scope of work in both periods included medical-imaging core laboratory services and image-based information management services.

Reimbursement revenues consist of reimbursements received from the customer for pass-through costs. Reimbursement revenues fluctuate significantly over the course of any given project and quarter to quarter variations are a reflection of this project timing. Therefore, our management believes that reimbursement revenues are not a significant indicator of our overall performance trends.

Cost of revenues for the three months ended September 30, 2004 and 2003 was $5,020,102 and $4,170,449 respectively, an increase of $849,653 or 20.4%. The increase in cost of revenues is substantially all due to the variable costs associated with the increase in staffing levels required for project related tasks due to the increase in revenues for the three months ended September 30, 2004. Cost of revenues for the three months ended September 30, 2004 and three months ended September 30, 2003 were comprised of professional salaries and benefits, allocated overhead and pass-through costs. We expect that our cost of revenues will continue to increase in fiscal 2004 as revenue increases.

The increase in the cost of revenues as a percentage of total revenues to 66.3% for the three months ended September 30, 2004 from 65.8% for the three months ended September 30, 2003 is primarily due to our increase in total revenues with a lesser increase in costs associated with project related tasks. The cost of revenues as a percentage of total revenues also fluctuates due to work-flow variations in the utilization of staff and the mix of services provided by us in any given period.

General and administrative expenses for the three months ended September 30, 2004 and 2003 were $1,067,226 and $1,026,504, respectively, an increase of $40,722 or 4.0%. The increase is primarily due to an increase in personnel to support the growth in our service revenues

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and also includes approximately $127,000 of expenses associated with the CapMed division. General and administrative expenses in each of the three months ended September 30, 2004 and 2003 consisted primarily of professional salaries and benefits, depreciation and amortization, professional and consulting services, office rent and corporate insurance. We expect that our general and administrative expenses will continue to increase to support our operations in fiscal 2004 as revenue increases.

The decrease in general and administrative expenses as a percentage of total revenues to 14.1% for the three months ended September 30, 2004 from 16.2% for the three months ended September 30, 2003 is primarily due to a lesser increase in personnel to support the growth in our service revenues as compared to the increase in our total revenues.

Sales and marketing expenses for the three months ended September 30, 2004 and 2003 were $759,456 and $520,669, respectively, an increase of $238,787 or 45.9%. The increase is primarily due to approximately $192,000 of expenses associated with the CapMed division. Sales and marketing expenses in each of the three months ended September 30, 2004 and September 30, 2003 were comprised of direct sales and marketing costs, professional salaries and benefits and allocated overhead. We expect that sales and marketing expenses will increase in fiscal 2004 as we continue to expand our market presence in the United States and Europe.

The increase in sales and marketing expenses as a percentage of total revenues to 10.0% for the three months ended September 30, 2004 from 8.2% for the three months ended September 30, 2003 is primarily due to increased expenses associated with our CapMed division.

Net interest expense for the three months ended September 30, 2004 and 2003 was $2,664 and $31,036, respectively, a decrease of $28,372 or 91.4%. This decrease is primarily due to interest income earned on a higher average cash balance for the three months ended September 30, 2004 as compared to the three months ended September 30, 2003. Net interest income and expense for the three months ended September 30, 2004 and 2003 is comprised of interest income earned on our cash balance and interest expense incurred on equipment lease obligations and the Quintiles Note.

Income before income taxes was $717,576 for the three months ended September 30, 2004 and $589,291 for the three months ended September 30, 2003, an increase of $128,285 or 21.8%. The increase was attributable to the increased revenues associated with an increase in services performed on projects for which we were contracted offset, in part, by the costs associated with increased staffing levels necessary to perform the newly contracted services.

Income before income taxes as a percentage of total revenues remained relatively flat at 9.5% for the three months ended September 30, 2004 as compared to 9.3% for the three months ended September 30, 2003.

Income tax provision for the three months ended September 30, 2004 and 2003 was

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$287,784 and $62,417, respectively, an increase of $225,367 or 361.1%. The increase is primarily due to the increase in our estimated effective tax rate for 2004 to 41% as compared to 11% for the three months ended September 30, 2003.

Business Segments

We have set forth certain financial information with respect to our two business segments, pharmaceutical contract services and the CapMed division, in Note 5 Business Segments to our Consolidated Financial Statements in this Form 10-QSB. The quarter ended September 30, 2004 is the 3rd full quarter of operations of our CapMed business segment as we acquired the intellectual property of CapMed Corporation in November 2003. During the nine months ended September 30, 2004, we had CapMed segment sales of $21,956 and total costs and expenses of $740,726, consisting of approximately $444,000 of sales and marketing expenses and approximately $297,000 of general and administrative expenses. During the three months ended September 30, 2004, we had CapMed segment sales of $15,342 and total costs and expenses of $318,676, consisting of approximately $191,000 of sales and marketing expenses and approximately $128,000 of general and administrative expenses.

Liquidity and Capital Resources

	Nine Months Ended September 30, 2004	Nine Months Ended September 30, 2003
Net cash provided by operating activities	$ 126,890	$ 2,463,209
Net cash used in investing activities	$ (1,184,212)	$ (1,278,420)
Net cash provided by financing activities	$ 168,791	$ 9,529,695

At September 30, 2004, we had cash and cash equivalents of $12,400,922. Working capital at September 30, 2004 was $14,575,056.

Net cash provided by operating activities for the nine months ended September 30, 2004 was $126,890 as compared to net cash provided by operating activities of $2,463,209 for the nine months ended September 30, 2003. This decrease is primarily due to the increase in accounts receivable of $2,575,227 at September 30, 2004 from December 31, 2003 due to increased revenues, offset by the higher depreciation and amortization expense of $1,300,001 and the provision for deferred income taxes of $671,759.

Net cash used in investing activities represents our investment in capital and leasehold improvements. We currently anticipate that capital expenditures for the remainder of the fiscal year ending December 31, 2004 will be approximately $500,000. These expenditures represent additional upgrades in our networking, data storage and core laboratory capabilities for both our United States and European operations.

Net cash provided by financing activities is primarily attributable to the proceeds of $672,102 from our sales leaseback transaction offset by payments under equipment lease obligations and the Quintiles Note.

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The following table lists our cash contractual obligations as of September 30, 2004:

	Payments Due By Period				
Contractual obligations	**Total**	**Less than 1 year**	**1-3 years**	**4-5 years**	**After 5 years**
Long-term debt obligations					
Capital lease obligations	$ 1,571,296	$ 770,566	$ 800,730		
Facility rent operating leases	$ 5,058,612	$ 973,233	$ 2,770,310	$ 1,315,069	
Purchase obligations					
Employment agreements	$ 150,000	$ 150,000			
Quintiles Note	$ 541,663	$ 541,663			
Total contractual cash obligations	$ 7,321,571	$ 2,435,462	$ 3,571,040	$ 1,315,069	

On May 15, 2004, we renewed and amended our agreement with Wachovia Bank, National Association. The renewed and amended agreement is for an unsecured committed line of credit of $5,000,000. Interest is payable at the LIBOR Market Index Rate plus 2.0%. The agreement requires us, among other things, to maintain certain financial covenants. The committed line of credit matures June 30, 2005 and may be renewed on an annual basis. At September 30, 2004, we had no borrowings under the committed line of credit and are compliant with the financial covenants.

In connection with our acquisition of Intelligent Imaging, as of February 1, 2002, we are obligated to pay quarterly payments of principal of $41,667 under the Quintiles Note, plus accrued interest thereon, and one payment of principal of $500,000 on November 1, 2004, unless the Quintiles Note is previously converted into shares of our common stock. The Quintiles Note bears interest at the rate in effect on the business day immediately prior to the date on which payments are due under the Quintiles Note equal to the three-month LIBOR as published from time to time in The Wall Street Journal plus 3%, compounded annually based on a 365-day year. We have recorded the balance of the Quintiles Note of $541,663 as a current liability as of September 30, 2004.

On November 1, 2004, we made the final payment on the Quintiles Note. This payment was comprised of the remaining principal balance of $541,663 and interest of $7,045.

On September 27, 2004, we signed a non-binding letter of intent to acquire Heart Core B.V., headquartered in Leiden, the Netherlands. Heart Core B.V. provides customized imaging services in the field of cardiovascular, pulmonary and orthopedic clinical research. The acquisition is subject to the execution of a definitive agreement and standard closing conditions.

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We have neither paid nor declared dividends on our common stock since our inception and do not plan to pay dividends on our common stock in the foreseeable future.

We have not entered into any off-balance sheet transactions, arrangements or other relationships with unconsolidated entities or other persons that are likely to affect liquidity or the availability of or requirements for capital resources.

We anticipate that our existing capital resources together with cash flow from operations and borrowing capacity under the existing line of credit, will be sufficient to meet our foreseeable cash needs. However, we cannot assure you that our operating results will continue to achieve profitability on an annual basis in the future. The inherent operational risks associated with:

- our ability to gain new client contracts;
- the variability of the timing of payments on existing client contracts; and
- other changes in our operating assets and liabilities

may have a material adverse affect on our future liquidity.

We may seek to raise additional capital from equity or debt sources in order to take advantage of unanticipated opportunities, such as more rapid expansion, acquisitions of complementary businesses or the development of new services. We cannot assure you that additional financing will be available, if at all, on terms acceptable to us.

Our fiscal 2004 operating plan contains assumptions regarding revenue and expenses. The achievement of our operating plan depends heavily on the timing of work performed by us on existing projects and our ability to gain and perform work on new projects. Project cancellation, or delays in the timing of work performed by us on existing projects or our inability to gain and perform work on new projects could have an adverse impact on our ability to execute our operating plan and maintain adequate cash flow. In the event actual results do not meet the operating plan, our management believes it could execute contingency plans to mitigate these effects. Our plans include additional financing, to the extent available, through the line of credit discussed above. Considering the cash on hand and based on the achievement of the operating plan and management s actions taken to date, management believes it has the ability to continue to generate sufficient cash to satisfy our operating requirements in the normal course of business for at least the next 12 months and the foreseeable future.

Changes to Critical Accounting Policies and Estimates

Our critical accounting policies and estimates are set forth in our Annual Report on Form 10-KSB for the fiscal year ended December 31, 2003. As of September 30, 2004, there have been no changes to such critical accounting policies and estimates.

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Item 3. Controls and Procedures.

Evaluation of disclosure controls and procedures. Based on their evaluation of our disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Exchange Act) as of September 30, 2004, our president and chief executive officer (principal executive officer) and our chief financial officer (principal accounting and financial officer) have concluded that our disclosure controls and procedures are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission s rules and forms and are operating in an effective manner.

Changes in internal control over financial reporting. There was no change in our internal controls over financial reporting that occurred during the quarter ended September 30, 2004 that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

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PART II. OTHER INFORMATION.

Item 6. Exhibits

10.1	Form of executive retention agreement of Bio-Imaging Technologies, Inc.
31.1	Certification of principal executive officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of principal financial and accounting officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of principal executive officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1350.
32.2	Certification of principal financial and accounting officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1350.

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SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

	BIO-IMAGING TECHNOLOGIES, INC.
DATE: November 12, 2004	By: /s/ Mark L. Weinstein
	Mark L. Weinstein, President and Chief Executive Officer (Principal Executive Officer)
DATE: November 12, 2004	By: /s/ Ted I. Kaminer
	Ted I. Kaminer, Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)

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