

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

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|---------------------------|---|----------------------|
| IN RE GUIDANT CORPORATION |) | |
| ERISA LITIGATION |) | |
| |) | Master Docket No. |
| |) | 1:05-cv-1009-LJM-TAB |
| THIS DOCKET RELATES TO |) | |
| ALL ERISA ACTIONS |) | |

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”) is entered into between: (a) Plaintiffs, Erica Harzewski (“Harzewski”) and Victor Valenzuela (“Valenzuela”) (collectively, “Plaintiffs”), as individuals and on behalf of the Settlement Class (as defined herein) by and through Class Counsel (as defined herein); and (b) Defendants Guidant Corporation, Ronald W. Dollens, James M. Cornelius, Maurice A. Cox, Jr., Nancy-Ann Min DeParle, Enrique C. Falla, Michael Grobstein, Kristina M. Johnson, J.B. King, J. Kevin Moore, Mark Novitch, Jack A. Shaw, Eugene L. Step, Ruedi E. Wager, estate of August M. Watanabe, Roger Marchetti, Keith Brauer, Doug Wilson, Guido Neels, Cynthia Lucchese, Michael Moreman and Kristin Sherman (collectively “Defendants”), by and through their respective counsel.

The Stipulation is intended to fully, finally and forever resolve, discharge and settle the Released Claims (as defined herein), subject to the approval of the Court and the terms and conditions set forth in the Stipulation.

I. RECITALS

1. This Stipulation resolves, subject to the approval of the Court, the above-captioned Action. The original ERISA class action complaint in this Action was filed before this Court on July 11, 2005. A second ERISA class action complaint was filed on October 3, 2005. Plaintiffs filed their Consolidated and Amended Complaint for Breaches of Fiduciary Duty under the Employee Retirement Income Security Act (the “Amended Complaint”) on February 8, 2006.¹

2. In March 2006, Defendants moved to dismiss the Amended Complaint for failure to state a claim. Defendants separately moved to dismiss the Amended Complaint in April 2006, alleging lack of standing based on the fact that both of the named Plaintiffs had terminated their investment in the Plan and were no longer participants of the Plan. By Order dated September 15, 2006, the Court dismissed the Amended Complaint with prejudice on standing grounds.

3. Plaintiffs appealed to the Seventh Circuit, which, by Order dated June 5, 2007, vacated the District Court’s Order and remanded with directions. In September 2007, Defendants filed a renewed motion to dismiss on the merits, which motion the Court granted in part and denied in part by Order dated June 19, 2008.

4. By Order dated October 29, 2008, the Court limited discovery to injury-based issues. The parties served document requests and produced injury-based documents. Issues related to the scope of production were resolved by Order of the Court dated May 18, 2009. The parties, with Defendants’ carrier counsel, met before retired Judge Politan in mediation on October 8, 2009, resulting in the proposed Settlement (as defined in ¶ 1.27 below) of the ERISA claims in this Action set forth herein.

¹ For Settlement purposes only, Plaintiffs are filing a Second Amended Complaint in accordance with ¶ 1.26 below. The Amended Complaint and the Second Amended Complaint are referred to herein as the “Complaints.”

II. TERMS OF THE STIPULATION AND CONDITIONS OF SETTLEMENT

WHEREAS, counsel for the Plaintiffs has conducted an extensive investigation of the claims and the underlying events alleged in the Complaints, analyzed the claims and researched applicable law with respect to the claims and the potential defenses thereto, and engaged and consulted with experts retained to review and advise on the damages that the Class would seek to prove at trial; and,

WHEREAS, as a result of the investigation, legal research and discovery that has been conducted to date, and consultations with experts, the Plaintiffs and Class Counsel have concluded that a compromise and settlement of the Action would be in the best interests of putative class members; and,

WHEREAS, the Plaintiffs and Class Counsel have further concluded that the terms and conditions set forth in this Stipulation are fair, reasonable and adequate, considering the benefits that the Settlement Class will receive now from the Settlement and the attendant risks of further litigation of the complex ERISA claims alleged in the Complaints, before both the District Court and the Court of Appeals; and,

WHEREAS, the Defendants have denied, and continue to deny, that they committed any violations of law or breached their fiduciary duties, including with respect to each and every claim and contention set forth in the Complaints; and,

WHEREAS, the Defendants have also denied, and continue to deny, that the Plaintiffs and the Settlement Class have suffered any damages as a result of the claims alleged in the Complaints, that the price of Guidant stock was artificially inflated during the Settlement Class Period as a result of any alleged misrepresentations, omissions, or other acts of Defendants and,

that the Defendants are liable in any way for any claims directly or indirectly relating to the allegations set forth in the Complaints; and,

WHEREAS, the Defendants have entered into this Stipulation for the principal purpose of eliminating the burden and expense of further litigation.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession by Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby STIPULATED AND AGREED, by and among the parties to the Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Fed. R. Civ. P. Rule 23(e), in consideration of the benefits flowing to the parties hereto from the Settlement, that all Released Claims (as defined below) as against Defendants and the Released Persons (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions.

1. DEFINITIONS

In this Stipulation, including the above preamble and recitals, the following capitalized terms shall have the meanings set forth below:

1.1. “Action” means *In re Guidant Corp. ERISA Litigation*, Case 1:05-cv-1009-LJM-TAB (S.D. Ind.), including the consolidated actions therein.

1.2. “Agreement Execution Date” means the date on which this Stipulation of Settlement is fully executed.

1.3. “Claims Administrator” means The Garden City Group, an independent firm to be retained by Class Counsel to, *inter alia*, provide notice and process payments to the Settlement Class.

1.4. “Class Counsel” means the firms of Morris and Morris LLC Counselors At Law and Wolf Haldenstein Adler Freeman & Herz LLP.

1.5. “Class Exemption” means the Prohibited Transaction Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632.

1.6. “Company Stock” shall mean Guidant Corporation common stock.

1.7. “Company Stock Fund” shall mean the Plan fund which invested in Company Stock, also known as the employee stock ownership portion of the ESSOP.

1.8. “Company” means Guidant Corporation.

1.9. “Costs of Administration” means all costs and expenses incurred in connection with the administration of the Settlement Fund, including the costs of the Plan record keepers. The Costs of Administration shall also include one-half of the costs of the Independent Fiduciary, capped at a total cost from the Net Settlement Fund of \$37,500.00.

1.10. “Costs of Notice” means all costs and expenses incurred in connection with disseminating notice of the Settlement.

1.11. “Court” means the United States District Court for the Southern District of Indiana.

1.12. “Defendants” means Guidant Corporation, Ronald W. Dollens, James M. Cornelius, Maurice A. Cox, Jr., Nancy-Ann Min DeParle, Enrique C. Falla, Michael Grobstein, Kristina M. Johnson, J.B. King, J. Kevin Moore, Mark Novitch, Jack A. Shaw, Eugene L. Step, Ruedi E. Wager, estate of August M. Watanabe, Roger Marchetti, Keith Brauer, Doug Wilson, Guido Neels, Cynthia Lucchese, Michael Moreman and Kristin Sherman. The Guidant Employee Benefits Committee and the Fund Advisory Committee were also named defendants in the Complaints. Following Guidant’s merger with Boston Scientific, however, these two Committees ceased to exist and therefore are not parties to this Stipulation of Settlement.

1.13. “Effective Date” means the first business day after the date by which all the following have occurred: (a) the Preliminary Approval Order has been entered by the Court with no material changes; (b) the Order and Final Judgment has been entered by the Court with no material changes, and, either: (i) all appeals from the Order and Final Judgment have been exhausted and it has not been vacated, reversed, or modified in any material way, on appeal, certiorari or otherwise, or (ii) the time for any appeal or other further review of the Order and Final Judgment has expired with no appeal having been taken; and (c) the Settlement has not been voided pursuant to Section 5.1 herein. The Settlement will be final and binding on the Effective Date.

1.14. “Independent Fiduciary” means a Plan fiduciary retained by Defendants, in Defendants’ sole discretion, to evaluate the fairness of the Settlement to the Plan and issue a release on the Plan’s behalf.

1.15. “Net Settlement Fund” means the Settlement Fund, plus interest accrued if any, less the Costs of Administration, the Costs of Notice, Court awarded attorneys’ fees, reimbursement of expenses and any Court ordered incentive awards to Plaintiffs, and taxes.

1.16. “Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as Exhibit B.

1.17. “Order and Final Judgment” means the Order and Final Judgment to be entered by the Court, which shall be substantially in the form set forth in Exhibit D hereto, *inter alia*, approving the Settlement, including the release of all Released Claims, and dismissing the Action with prejudice.

1.18. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association,

government or any political subdivision or agency thereof, and any business or legal entity, and their spouses, heirs, predecessors, successors, representatives or assignees.

1.19. “Plaintiffs” means Erica Harzewski and Victor Valenzuela, and each of their custodians, agents, assigns, representatives, heirs, executors, trustees and administrators.

1.20. “Plaintiffs’ Counsel” means Morris and Morris LLC Counselors At Law, Wolf Haldenstein Adler Freeman & Herz LLP, Gainey & McKenna, Law Offices of Bruce G. Murphy and DeLaney & DeLaney LLC.

1.21. “Plan” or “ESSOP” means the Guidant Employee Savings and Stock Ownership Plan, and includes, for purposes of payment of the Settlement consideration pursuant to the Stipulation, the successor plan, known as the Boston Scientific Corporation 401(k) Retirement Savings Plan.

1.22. “Plan of Allocation” means the terms and procedures for allocating the Net Settlement Fund among, and distributing the Net Settlement Fund to, the Settlement Class and is set forth in the Notice attached as Exhibit B.

1.23. “Preliminary Approval Order” means the Order to be entered by the Court, substantially in the form set forth as Exhibit A hereto, *inter alia*, certifying the Settlement Class for settlement purposes only, preliminarily approving the terms and conditions of this Stipulation, directing that notice be provided to the Settlement Class, and scheduling a Settlement Fairness Hearing concerning the final approval of the Settlement.

1.24. “Released Claims” means any and all actual or potential claims, actions, causes of action, demands, obligations, and liabilities, including but not limited to claims for attorneys’ fees, expenses and costs not otherwise provided for by this Stipulation, whether arising under local, state, or federal law, whether by statute, contract, common law, equity, or otherwise,

whether brought in an individual, representative, or any other capacity, whether known or unknown (as set forth in ¶ 3.4 below), suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought by or on behalf of Plaintiffs, the Plan or any member of the Settlement Class and that arise out of, relate to directly or indirectly or are based on the allegations, facts, matters, occurrences or omissions set forth in the Complaints, which occurred prior to, during or after the Settlement Class Period, including but not limited to:

- a. breach of duties or obligations under ERISA to the Plan, to Plaintiffs, to the Settlement Class or to the other participants and beneficiaries of the Plan in connection with the acquisition or direct or indirect holding of Company Stock and/or the Company Stock Fund by or for the benefit of the Plan or the Plan's participants or beneficiaries;
- b. failure to provide accurate information to the Plan's fiduciaries or the Plan's participants and beneficiaries regarding Guidant or Company Stock;
- c. failure to appoint, remove and/or adequately monitor the Plan's fiduciaries;
- d. violation of ERISA duties related directly or indirectly to the acquisition, disposition or retention of Company Stock by the Plan;
- e. breach of ERISA duties in connection with the failure to avoid or resolve conflicts of interest; and
- f. knowingly participating in or enabling an ERISA breach of fiduciary duty related directly or indirectly to the acquisition, disposition or retention of Company Stock by the Plan, and/or failing to remedy such breach or in the breach of any other co-fiduciary responsibility.

1.25. “Released Persons” means any and all of the Defendants, and, with respect to each of the Defendants, his, her or its present or former parents, subsidiaries, affiliates, successors and assigns, and the present or former officers, directors, employees, agents, committees, fiduciaries, trustees, employee benefit plans including the Plan, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, heirs, estates, executors, administrators, successors and assigns of each of them. Released Persons shall also include both named and other fiduciaries of the Plan who were not otherwise named as Defendants, and all non-fiduciaries who participated in any alleged breaches of fiduciary duties with any fiduciaries of the Plan or who allegedly benefited from such breaches.

1.26. “Second Amended Complaint” means the Second Consolidated and Amended Complaint for Breaches of Fiduciary Duty under the Employee Retirement Income Security Act, filed with the Court contemporaneously with this Stipulation, pursuant to the proposed Settlement.

1.27. “Settlement” means, collectively, all of the terms and conditions of this Stipulation.

1.28. “Settlement Account” means the interest-bearing account at an institution to be selected by Class Counsel in accordance with ¶ 3.6 below, maintained for the purpose of holding the Settlement Fund, as funded by Defendants and Defendants’ insurer within thirty (30) days of entry of the Preliminary Approval Order.

1.29. “Settlement Class” means any participants in, or beneficiaries of, the Plan whose Plan accounts held or acquired interests in investments in Company Stock for their benefit during the Settlement Class Period, provided such class is approved by the Court in this case as a non-

opt-out class under Fed. R. Civ. P. 23(a)(1)-(4), 23(b)(1) and/or (2) and 23(e) for settlement purposes only. Excluded from the Settlement Class are any Defendants and their immediate family members.

1.30. “Settlement Class Period” means the period from January 1, 2003 through November 3, 2005.

1.31. “Settlement Fairness Hearing” means a hearing to be held by the Court, on notice to the Settlement Class, to consider, *inter alia*, final approval of the Settlement, the Plan of Allocation, and the award of attorneys’ fees, reimbursement of expenses and incentive payments to Plaintiffs.

1.32. “Settlement Fund” means the sum of Seven Million Dollars (\$7,000,000.00) funded by the Defendants and the Defendants’ insurer to the Settlement Account (as defined in ¶ 3.5 below) within thirty (30) days of entry of the Preliminary Approval Order, including any interest or dividends earned thereon. The Settlement Fund represents the monetary consideration for a complete settlement of all the Released Claims.

1.33. “Stipulation” means this Stipulation of Settlement.

1.34. “Summary Notice” means the Summary Notice of Proposed Settlement of ERISA Class Action, Settlement Fairness Hearing and Motion for Attorneys’ Fees, Reimbursement of Expenses and Payment of Incentive Awards to Named Plaintiffs, for publication on a national business wire service in accordance with the terms of the Preliminary Approval Order, substantially in the form attached as Exhibit C.

2. PROCEDURES TO EFFECTUATE THE SETTLEMENT

2.1. In connection with the requirements and terms of this Stipulation, Guidant has provided certain specified participant and/or Plan information (“Settlement Plan Information”) to Class Counsel, which information Class Counsel identified as necessary for the dissemination of

Notice and the calculation and administration of the Plan of Allocation. Class Counsel agree that the Settlement Plan Information will be maintained as “CONFIDENTIAL,” and will only be used for purposes of implementing the Settlement, including sending the Notice of the Settlement and the calculation and administration of the Plan of Allocation. Class Counsel further agree that the Settlement Plan Information will not be shared with anyone other than the Claims Administrator and Plaintiffs’ damages expert. To the extent that it is necessary to provide Settlement Plan Information to the Court in support of preliminary or final approval of the Settlement or distribution of the Net Settlement Fund, such data shall not include individual Plan participants’ names, addresses or other identifying information, unless directed by the Court. Plaintiffs’ Counsel will notify Defendants’ Counsel five (5) days in advance of any submission to the Court of Settlement Plan Information. If the Stipulation is terminated for any reason or the Settlement is not approved, Class Counsel, the Claims Administrator and Plaintiffs’ damages expert will promptly return or destroy the Settlement Plan Information.

2.2. As soon as is practicable following the execution of this Stipulation, and consistent with any scheduling orders issued by the Court, Plaintiffs shall apply to the Court for entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A:

- a. certifying the Settlement Class, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a)(1)-(4), 23(b)(1) and/or (2) and 23(e), with Plaintiffs as the named class representatives and Class Counsel as counsel for Plaintiffs and the Settlement Class;
- b. preliminarily approving the Settlement;
- c. setting the Settlement Fairness Hearing, upon notice to the Settlement Class, to consider: (i) whether the Settlement should be approved as fair, reasonable and adequate to the Class, and dismissing the Released Claims of the Plaintiffs and the

Settlement Class against the Released Persons on the merits and with prejudice; (ii) whether the Plan of Allocation is fair and reasonable and should be approved; and (iii) Plaintiffs' Counsel's motion for an award of attorneys' fees, reimbursement of costs and expenses and incentive payments to Plaintiffs;

d. setting the method of giving notice of the Settlement to the Settlement Class;

e. approving the Notice attached hereto as Exhibit B and the Summary Notice attached hereto as Exhibit C; and

f. setting a period of time during which any member of the Settlement Class may file written objections to the Settlement, the Plan of Allocation or the award of attorneys' fees, reimbursement of expenses and/or incentive payments to Plaintiffs.

2.3. The Claims Administrator shall provide the Notice, substantially in the form attached hereto as Exhibit B, to members of the Settlement Class via first class mail within ten (10) days following entry of the Preliminary Approval Order. The Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit C, to be published on Business Wire not later than fifteen (15) days following entry of the Preliminary Approval Order.

2.4. Defendants may, in their sole discretion, select an Independent Fiduciary to review the Settlement. If Defendants choose to have an Independent Fiduciary review the Settlement and provide a release of Plan claims, Defendants will arrange for the retention of the Independent Fiduciary and advise Class Counsel of the Independent Fiduciary's estimated costs and fees prior to consummating the retention. In accordance with ¶ 1.9 above, one-half of the costs and fees of the Independent Fiduciary will be deducted from and paid out of the Settlement

Fund, up to a total of \$37,500.00. Any costs or fees of the Independent Fiduciary in excess of a total of \$75,000.00 shall be the sole responsibility of the Company or its successor. The Independent Fiduciary will make any and all determinations necessary to determine the application of the Class Exemption and whether to issue a release on behalf of the Plan. The Independent Fiduciary shall have no authority to renegotiate any of the terms of the Settlement. Defendants and Class Counsel on behalf of Plaintiffs will comply with reasonable requests for information made by the Independent Fiduciary for the purpose of reviewing this Settlement, and any related disputes shall be referred to the Court for decision. If the Independent Fiduciary disapproves or otherwise declines to authorize the Settlement (or refuses to release the Plan's claim or states that the Settlement constitutes a prohibited transaction under ERISA § 406(a)), then Defendants shall have the option to waive this condition. Such option is to be exercised in writing within the earlier of: (i) ten (10) days of Defendants' receipt of the Independent Fiduciary's written determination, or (ii) ten (10) days prior to the date set for the Settlement Fairness Hearing. If Defendants elect not to waive this condition, then the Settlement shall terminate and become null and void pursuant to ¶ 5.1 and the provisions of ¶ 7.2 shall apply.

2.5. At or before the Settlement Fairness Hearing, Class Counsel shall move the Court for entry of an Order and Final Judgment, which shall be substantially in the form set forth in Exhibit D hereto:

- a. giving final approval to the Settlement as fair, reasonable and adequate under Fed. R. Civ. P. 23, and directing its consummation pursuant to its terms;
- b. stating that every member of the Settlement Class is bound by, and party to, the Stipulation and the Settlement;

c. directing that the Action be dismissed without costs and with prejudice, and that Plaintiffs and the Settlement Class release, as against each of the Released Persons, the Released Claims;

d. permanently barring and enjoining the Plaintiffs and every member of the Settlement Class, and every member of the Settlement Class's predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them, directly or indirectly, individually, derivatively, representatively or in any other capacity, from the assertion, institution, maintenance, prosecution or enforcement against Defendants, or any other Released Persons, in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims;

e. dismissing the Action with prejudice as against the Defendants, and releasing and barring assertion of the Released Claims by Plaintiffs and the Settlement Class, without costs to any party (except as stated herein);

f. reserving jurisdiction over the Action, including all further proceedings concerning the administration, consummation and enforcement of this Settlement; and

g. containing such other and further provisions consistent with the terms of this Settlement to which the parties hereto expressly consent in writing.

2.6. At the Settlement Fairness Hearing, Class Counsel shall seek approval of the Plan of Allocation set forth in the Notice, attached hereto as Exhibit B. Defendants shall have no responsibility for structuring the content of the Plan of Allocation. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect the release of the

Released Claims or constitute grounds for any party to cancel, terminate or withdraw from the Settlement. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning the Plan of Allocation.

3. SETTLEMENT CONSIDERATION

Releases

3.1. Upon the Effective Date, Plaintiffs, individually and on behalf of the Plan, and the Settlement Class, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all of the Defendants and other Released Persons from, and shall forever be enjoined from prosecution of Defendants and other Released Persons for, any and all Released Claims.

3.2. Defendants shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of Plaintiffs, Plaintiffs' Counsel, and the Settlement Class for any and all claims, demands, actions, suits and causes of action, whether class, individual, or otherwise in nature, that the Defendants and other Released Persons ever had, now have, or hereinafter can, shall or may have against Plaintiffs, Plaintiffs' Counsel and/or the Settlement Class, whether known or unknown, on account of or arising out of or resulting from the commencement and/or prosecution of this Action.

3.3. Plaintiffs and Plaintiffs' Counsel are released from any and all actual or potential claims, actions, causes of action, demands, obligations and liabilities which pertain to any conduct related to the direction to calculate, the calculation of and/or the method or manner of allocation of the Settlement Fund or Net Settlement Fund to the Plan or any participant or beneficiary of the Plan pursuant to the Plan of Allocation, so long as undertaken and/or performed in accordance with the Plan of Allocation.

3.4. The Parties intend and agree that the releases granted herein shall be effective as a bar to any and all currently unsuspected, unknown, or partially known claims within the scope of their express terms and provisions. Accordingly, Plaintiffs hereby expressly waive, on their own behalf, on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants hereby expressly waive, any and all rights and benefits respectively conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common laws of any other State, Territory, or other jurisdiction. Section 1542 reads in pertinent part:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs, individually, on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants each hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction was separately bargained for, and that neither Plaintiffs, on the one hand, nor Defendants, on the other, would enter into this Stipulation unless it included the express release of unknown claims as provided for herein. Plaintiffs, individually, on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants each expressly agree that all release provisions in this Stipulation shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, and future claims, demands, and causes of action.

Settlement Fund

3.5. In full and complete settlement of the Released Claims, the Company and the Defendants' insurer will fund, or will cause to be funded, the Settlement Fund by paying into it Seven Million Dollars (\$7,000,000.00). This Settlement Fund will be invested in accordance with ¶ 3.6 below, and shall remain subject to the jurisdiction of the Court. The Settlement Fund shall be established at a financial institution designated by Class Counsel and administered in accordance with the provisions of this Agreement (the "Settlement Account").

3.6. The Settlement Fund shall be invested in United States Government Treasury Bills or Notes, instruments offered by a financial institution, but only to the extent fully insured by the U.S. Government or an agency thereof, or a mutual fund that exclusively invests in United States Government Treasury Bills or Notes (provided, however, that such portions of the Settlement Fund as may reasonably be needed to pay current expenses associated with providing notice to the Settlement Class, administering the Settlement Fund, and administering the settlement may be deposited into a financial institution). Notwithstanding the above, at the discretion of Class Counsel, the Settlement Fund may be deposited in a financial institution if such deposits are guaranteed by the U.S. Government or any agency thereof. All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.

3.7. If the Settlement is terminated for any reason permitted herein, including without limitation pursuant to ¶ 5.1 herein, then the Settlement Fund shall be returned to the Company and the Defendants' insurer within thirty (30) days, with all interest earned on it; except that the Settlement Fund shall be reduced by the amount of all Costs of Notice incurred as of that date, all Costs of Administration incurred as of that date in an amount not to exceed \$205,000.00. Class Counsel shall execute any documents necessary to effectuate the return of the Settlement

Fund in accordance with this provision; and the parties hereto shall be deemed to have reverted to their respective status as of the date on which the Stipulation was executed.

3.8. In addition to the amounts specified in ¶ 3.7 above, costs incurred in connection with providing notice to Settlement Class Members of the fact the Agreement has become null and void, if ordered by the Court to be issued, shall also be paid from the Settlement Fund, and shall be deducted from the amount of the Net Settlement Fund to be returned to the Company and the Defendants' insurers pursuant to ¶ 3.7 above.

3.9. The Settlement Fund shall be treated as a Qualified Settlement Fund within the meaning of Internal Revenue Code Section 468B and Treasury Regulation § 1.468B-1. Class Counsel shall designate the person or entity (other than one of the Defendants) to serve as the "administrator" for tax purposes. Such administrator shall be responsible for making all necessary or advisable elections to carry out the intent of this provision, including a "relation-back election" and Defendants shall, as necessary, join in such elections. Such administrator shall be responsible for timely and properly preparing and filing all informational and other tax returns required with respect to the Settlement Fund, and may hire accountants or tax advisors to prepare tax returns for the Settlement Fund and to otherwise assist with respect to the tax obligations of the Settlement Fund. Any fees or expenses of such accountants or tax advisors shall be paid from the Settlement Fund as a Cost of Administration. The Settlement Fund shall be solely responsible for, and shall pay, all taxes (including any interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or charges that may be imposed on Defendants with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for Federal or state income tax purposes and all other expenses and costs incurred in connection with the

implementation of this provision (including, without limitation, expenses of attorneys and/or accountants incurred in connection with the preparation of required tax filings and returns). Defendants shall not have any liability or responsibility for taxes or tax-related expenses of the Settlement Fund, except those incurred, if any, prior to and as of any termination of the Settlement, which shall be paid out of the Settlement Fund.

3.10. As of the Effective Date, Defendants shall not have any right to the return of the Settlement Fund or any portion thereof irrespective of the collective amount of losses of the Settlement Class, the percentage of recovery of losses, or the amounts to be paid to the Settlement Class from the Settlement Fund.

4. ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT FUND

4.1. Subject to the supervision and approval of the Court, the Claims Administrator, as directed by Class Counsel, shall administer the Settlement Fund and shall calculate the amount of distribution from the Settlement Fund to each eligible Settlement Class member in accordance with the Plan of Allocation. The Plan's record keeper, or its successor, shall allocate the distribution to the accounts of eligible Settlement Class members pursuant to the calculations of the Claims Administrator. To effectuate this distribution to Settlement Class members who no longer have a current Plan account as of the time the Net Settlement Fund is distributed, the Plan's record keeper, or its successor, will create new Plan accounts established for the benefit of such Settlement Class members, and the costs thereof shall be deducted from the Settlement Fund. The Plan's record keeper, or its successor or designee, will notify Settlement Class members for whom new accounts have been created of the distribution after allocating the Net Settlement Fund to Settlement Class member Plan accounts. Notification of distribution to Settlement Class members with existing Plan accounts shall be made pursuant the Plan record

keeper's established procedures. Class Counsel shall be notified upon the provision of such notice.

4.2. Disbursements for all reasonable costs and expenses associated with providing notice of the Settlement to Settlement Class members, all reasonable Costs of Administration of the Settlement, including claims administration and work with financial institutions, in an amount not to exceed \$205,000.00, as well as any payments, costs and expenses incurred in connection with taxation matters relating to the Settlement and this Stipulation, shall be paid from the Settlement Fund following preliminary approval and up to the Effective Date of Settlement without the further approval of the Court.

4.3. Payment of attorneys' fees, reimbursement of expenses and incentive payments to Plaintiffs shall be made as provided under Section 6 herein.

4.4. All disputes with respect to the administration, processing and determination of claims of Persons claiming to be members of the Settlement Class and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

4.5. Upon Order of the Court, the Claims Administrator shall convey the Net Settlement Fund to the Plan for distribution to the Settlement Class only after the Effective Date and after: (i) all calculations for Settlement Class members have been processed pursuant to the Plan of Allocation; (ii) all objections have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired; (iii) all matters with respect to payment for all Costs of Notice, Costs of Administration, taxes, and the award of attorneys' fees, reimbursement of expenses and incentive payments to Plaintiffs have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired; and (iv) all Costs

of Notice, Costs of Administration, taxes, Court awarded attorneys' fees, reimbursement of expenses and incentive payments to Plaintiffs have been paid.

4.6. All members of the Settlement Class, regardless of whether they are entitled to a distribution from the proceeds of the Net Settlement Fund according to the Plan of Allocation, shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims.

4.7. Other than facilitating the work of the Plan's directed record keeper, Defendants shall have no role in or responsibility for the form, method or manner of administration of the Settlement, or distribution of the Net Settlement Fund to the Settlement Class. All expenses related thereto, including, without limitation, the Costs of Administration, shall be paid from the Settlement Fund. Except for the payments from the Settlement Fund described at ¶¶ 3.7 and 3.8 above, Defendants shall have no responsibility or liability for the administration or processing of the Settlement Fund or the Plan of Allocation, including, without limitation, determinations as to the calculations or distribution of the Net Settlement Fund.

4.8. Defendants shall have no responsibility for any payment of attorneys' fees, reimbursement of expenses or incentive awards to the Plaintiffs as approved by the Court, beyond the obligation to fund the Settlement Fund as set forth in ¶ 3.5 above.

4.9. In no event shall Defendants be liable for any attorney's fees or other costs incurred by any party in connection with any challenge to any request for or award of attorneys' fees, reimbursement of expenses or incentive payments to Plaintiffs, including appeals.

5. CONDITIONS TO SETTLEMENT

5.1. The Settlement and Stipulation shall be terminated and shall be null and void, except as to ¶ 7.1 of this Stipulation, in the event that any of the following occurs:

a. The Court does not enter the Preliminary Approval Order in substantially the form attached as Exhibit A, certifying the Settlement Class for settlement purposes only and preliminarily approving the Settlement, or modifies the Preliminary Approval Order in a material way not consented to in writing by Plaintiffs and Defendants;

b. Unless waived by Defendants, the Independent Fiduciary, no later than ten (10) business days before the Settlement Fairness Hearing is held, declines either to: (i) on behalf of the Plan, issue a written release of claims against the Released Persons that is effective upon the entry of the Order and Final Judgment and is coextensive with the release of claims provided to the Released Persons by the Plaintiffs and members of the Settlement Class; (ii) approve, on behalf of the Plan and in writing, the Settlement in accordance with the terms of the U.S. Department of Labor's Class Exemption regulation; or (iii) state in writing that, in the judgment of the Independent Fiduciary, the Settlement will not constitute a prohibited transaction under ERISA § 406;

c. The Court does not enter the Order and Final Judgment or modifies the Order and Final Judgment in a material way not consented to in writing by Plaintiffs and Defendants; or

d. The Order and Final Judgment is reversed, modified or vacated on appeal in any material respect. For purposes of this ¶ 5.1, any reversal, modification or *vacatur* of the Order and Final Judgment relating solely and exclusively to an award of attorneys' fees, reimbursement of expenses or incentive payments to Plaintiffs and/or to the allocation or distribution of the Settlement Fund shall be deemed not material.

6. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE PAYMENTS TO PLAINTIFFS

6.1. At or before the Settlement Fairness Hearing, Plaintiffs' Counsel will move the Court for an award of attorneys' fees, reimbursement of expenses and the payment of incentive awards to the Plaintiffs. Any award by the Court of attorneys' fees, reimbursement of expenses and payment of incentive awards to the Plaintiffs shall be paid out of the Settlement Fund, and Defendants shall have no responsibility for the payment of such costs above and beyond the payment of the Settlement Fund. Defendants will take no position on Plaintiffs' Counsel's request for award of attorneys' fees, reimbursement of expenses and/or incentive payments to the Plaintiffs, with the understanding that the matter is left to the sound discretion of the Court.

6.2. Any award of attorneys' fees and/or reimbursement of expenses shall be paid to Class Counsel on behalf of Plaintiffs' Counsel from the Settlement Fund within five (5) business days after the Court's entry of the Order and Final Judgment awarding such attorneys' fees and costs, regardless of the existence of any objection to or appeal of the Settlement or the award of attorneys' fees and reimbursement of expenses, subject to the obligation of Plaintiffs' Counsel to promptly make appropriate refunds or repayments to the Settlement Fund as provided for in ¶

6.4. The Defendants, Company and its insurer shall bear no liability whatsoever for any costs, fees, expenses, damages, taxes, or other amounts that may arise in connection with this ¶ 6.2. Any award of incentive payments to Plaintiffs approved by the Court shall be paid from the Settlement Fund following the Effective Date.

6.3. Notwithstanding any other provision of this Stipulation, any order of the Court in connection with Plaintiffs' Counsel's motion for an award of attorneys' fees, reimbursement of expenses and/or incentive payments to the Plaintiffs, and any appeal from any such order(s), is not material to the Settlement and shall not operate to terminate or cancel the Stipulation, or

affect or delay the Effective Date or the finality of the Order and Final Judgment. Any order or proceedings relating to the award of attorneys' fees, reimbursement of expenses and/or incentive payments to the Plaintiffs, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement, or affect the release of the Released Claims or constitute grounds for any party to cancel, terminate or withdraw from the Settlement. The finality of the Settlement shall not be conditioned on any ruling by the Court concerning the award of attorneys' fees, reimbursement of expenses and/or incentive payments to the Plaintiffs.

6.4. If the Order and Final Judgment is reversed, modified or vacated on appeal in any material respect and the Settlement becomes null and void, Plaintiffs' Counsel shall redeposit into the Settlement Fund any amounts originally paid out as attorneys' fees and/or the reimbursement of expenses, plus interest, if any, that would have accrued on those payments had those payments remained in the Settlement Fund during the same period. Such a redeposit will be due within ten (10) business days of Guidant's Counsel's request for such redeposit.

7. STIPULATION NOT AN ADMISSION

7.1. Neither this Stipulation, including all exhibits, orders or other documents referred to herein, nor any terms or provisions of the Stipulation, including the Plan of Allocation, nor any of the communications, negotiations, proceedings or documents produced to Plaintiffs' Counsel in connection with or related to this Stipulation, shall be:

- a. construed as or deemed to be evidence of, or a concession or an admission by any Defendant, or to give rise to any sort of inference or presumption of, (i) the truth of any fact alleged or the validity of any claim asserted in the Complaints or the Action, (ii) the truth of any fact or claim that has been, or ever could have been, or ever could be

asserted in the Action, or (iii) any liability, fault, wrongdoing or misconduct of any type by any Defendant with respect to the Complaints or the Action; or

b. offered or received into evidence in any proceeding or otherwise submitted to, or referred to in, any court, administrative agency, tribunal or other forum as evidence of, or as a concession or admission by any Defendant of, or as giving rise to any sort of inference or presumption of, any fault, misrepresentation, misconduct or omission in any oral or written statement or any document, report or financial statement issued, filed, examined, reviewed, considered, reported on, or made by any Defendant; or

c. offered or received into evidence in any proceeding or otherwise submitted to, or referred to in, any court, administrative agency, tribunal or other forum as evidence of, or as a concession or admission by any Defendant of, or as giving rise to any sort of inference or presumption of, any liability, fault, misconduct or wrongdoing by any Defendant in any civil, criminal, administrative, arbitral or other proceeding, but may be referred to in such a proceeding only as may be necessary to consummate or enforce this Stipulation, including the releases contained herein; or

d. construed by anyone for any purpose whatsoever as a concession by or an admission of or as giving rise to any inference or presumption of any liability, fault, wrongdoing or misconduct of any sort on the part of any Defendant; or

e. construed as a concession by or an admission of anyone or as giving rise to any inference or presumption that the consideration to be given hereunder represents the amount that could be recovered after trial, or as a release of any Person other than Defendants and the other Released Persons.

7.2. If the Settlement is terminated and becomes null and void for any reason, the Action shall for all purposes revert to its status as of the date on which the Stipulation is executed. Any and all statutes of limitations, statutes of repose and/or defenses based upon the passage of time applicable to the claims asserted in the Action shall be tolled from the date on which the Stipulation is executed to the termination of the Settlement.

8. MISCELLANEOUS PROVISIONS

8.1. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

8.2. This Stipulation may be amended or modified only by a written instrument signed by counsel for all parties or their successors-in-interest.

8.3. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by all members of the Settlement Class against the Released Persons with respect to the Released Claims. Accordingly, Plaintiffs and Defendants agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The parties hereto acknowledge that they do not have, and that they shall not assert, any claims of any violation of Fed. R. Civ. P. 11 relating to the prosecution, defense, or settlement of the Action. The parties to the Stipulation agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the parties to this Stipulation, and reflect a settlement that was reached voluntarily.

8.4. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

8.5. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

8.6. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties or inducements have been made to any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents. This Stipulation supersedes and replaces any and all prior agreements and/or understandings among the parties hereto.

8.7. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Stipulation shall exchange among themselves executed counterparts.

8.8. Plaintiffs and Defendants shall cooperate fully with one another in seeking approval of this Stipulation and use their reasonable best efforts to consummate the Settlement in accordance with and subject to its terms and conditions. Plaintiffs and Defendants will exert every reasonable effort, and will act reasonably and in good faith, to agree on and execute, at the earliest practicable time, such documentation as may be required in order to: (i) implement the matters enumerated herein; (ii) obtain the Court's preliminary and final approval of the Settlement; and (iii) secure dismissal of the Action with prejudice and without costs for any party.

8.9. This Stipulation shall not be construed more strictly against one party than another by mere virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that this Stipulation is the result of arm's-length negotiations between the parties.

8.10. Each counsel signing this Stipulation represents that such counsel has authority to sign this Stipulation on behalf of his or her client(s).

8.11. This Stipulation shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any and all Released Persons and any corporation, partnership, or other entity into or with which any party hereto may merge, consolidate or reorganize.

8.12. Any notice, demand or other communication required by this Stipulation (other than the Notice, or other notices given at the direction of the Court) shall be submitted either by any form of overnight mail or in person:

To Class Counsel:

MORRIS and MORRIS LLC COUNSELORS AT LAW

Attn: Karen L. Morris, Esq. or
Patrick F. Morris, Esq.
4001 Kennett Pike
Suite 300
Wilmington, DE 19807

- and -

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

Attn: Mark C. Rifkin, Esq.
270 Madison Avenue
New York, NY 10016

To Counsel for Defendants:

MORGAN, LEWIS & BOCKIUS LLP

Attn: Donald L. Havermann, Esq.
1111 Pennsylvania Avenue, NW
Washington, DC 20004

- and -

WILSON, SONSINI, GOODRICH & ROSATI, Professional Corporation

Attn: Boris Feldman, Esq. or
Diane Walters, Esq.
650 Page Mill Road
Palo Alto, CA 94304

8.13. All terms of this Stipulation and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of Indiana and without regard to the choice of law rules of any state, except to the extent that federal law requires that federal law govern.

8.14. All parties to this Stipulation shall be subject to the jurisdiction of the United States District Court for the Southern District of Indiana for all purposes related to the Action and this Stipulation.

Dated: March 18, 2010

By: /s/ Karen L. Morris
Karen L. Morris

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