

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

IN RE GUIDANT CORPORATION)
ERISA LITIGATION)
)
)
)
THIS DOCUMENT RELATES TO)
ALL ERISA ACTIONS)
)

Master Docket No.
1:05-cv-1009-LJM-TAB

**UNOPPOSED MOTION FOR ORDER CERTIFYING A SETTLEMENT CLASS,
APPOINTING COUNSEL FOR THE SETTLEMENT CLASS,
PRELIMINARILY APPROVING A PROPOSED CLASS SETTLEMENT,
AUTHORIZING NOTICE TO THE SETTLEMENT CLASS, AND
SETTING A HEARING ON FINAL SETTLEMENT APPROVAL**

1. Plaintiffs in this ERISA litigation have reached a proposed settlement agreement (the “Settlement”)¹ with Defendants Guidant Corporation (“Guidant” or the “Company”), Ronald W. Dollens, James G. 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”), providing for a payment of \$7,000,000.00 to the proposed class in exchange for a release of all claims and the dismissal of the actions with prejudice.

Accordingly, the Plaintiffs move for an Order:

- a. certifying a class under Federal Rule of Civil Procedure 23(a) and 23(b)(1) and/or 23(b)(2), solely for purposes of the Settlement, consisting of all participants in, or beneficiaries of, the Guidant Employee Savings and Stock Ownership Plan (the “Plan”) whose Plan accounts held or acquired interests in investments in Company Stock for their benefit during the period January 1, 2003 through November 3, 2005,

¹ All capitalized terms used herein, if not otherwise defined, shall have the same meaning as set forth in the Stipulation of Settlement, filed contemporaneously herewith.

- excluding all Defendants and their immediate family members (the “Settlement Class”);
- b. preliminarily approving the Settlement embodied in the Stipulation of Settlement (“Stipulation”), attached as Exhibit 1 hereto, and the Preliminary Approval Order, attached as Exhibit A to the Stipulation;
 - c. directing that notice of the Settlement be disseminated to the Settlement Class in accordance with paragraphs 2.1 and 2.3 of the Stipulation; with the Notice to be substantially in the form attached as Exhibit B of the Stipulation, and the Summary Notice to be substantially in the form attached as Exhibit C of the Stipulation; and
 - d. scheduling a Settlement Fairness Hearing to determine:
 - (i) whether final approval shall be given to the Settlement and the plan of allocation as fair, reasonable and adequate to the Settlement Class under Federal Rule of Civil Procedure 23(e);
 - (ii) whether the application of Plaintiffs’ counsel for attorneys’ fees and reimbursement of expenses shall be approved under Federal Rule of Civil Procedure 23(h); and
 - (iii) whether the application for incentive payments to the named Plaintiffs should be approved.

Defendants do not oppose this Motion.

2. Plaintiffs, after conferring with counsel for Defendants, offer for the Court’s consideration the following proposed schedule of dates for the various events leading up to and including the Settlement Fairness Hearing:

- a. Date of mailing the Notice to members of the Settlement Class: within ten (10) days of entry of Preliminary Approval Order.
- b. Date for publication of the Summary Notice on Business Wire: within fifteen (15) days of entry of the Preliminary Approval Order.
- c. Deadline for filing papers in support of the proposed Settlement, the application of Plaintiffs’ counsel for attorneys’ fees, reimbursement of expenses and payment of incentive awards to Plaintiffs: no later than forty (40) days prior to the Settlement Fairness Hearing.
- d. Deadline for members of the Settlement Class to object to the Settlement or to the application of Plaintiffs’ counsel for attorneys’ fees, reimbursement of expenses, or payment of incentive awards to Plaintiffs: twenty-one (21) days prior to the Settlement Fairness Hearing.
- e. Deadline for filing reply papers in support of the Settlement or of the application of Plaintiffs’ counsel for attorneys’ fees, reimbursement of expenses, or payment of

incentive awards to Plaintiffs: no later than ten (10) days prior to the Settlement Fairness Hearing.

- f. Settlement Fairness Hearing: not less than one hundred (100) days after entry of the Preliminary Approval Order. This time frame is dictated by the Class Action Fairness Act of 2005 (“CAFA”), which requires in relevant part that within ten (10) days after a proposed settlement of a class action is filed in court, participating defendants must serve upon appropriate State and Federal officials (as those terms are defined in the statute) a notice of the proposed settlement. CAFA further provides that an order giving final approval of a proposed settlement may not be issued earlier than ninety (90) days following such notice to appropriate State and Federal officials.

THE BACKGROUND AND SETTLEMENT OF THE ERISA ACTION

3. This action was filed in this Court in July 2005. Plaintiffs filed their Consolidated and Amended Complaint for Breaches of Fiduciary Duty under the Employee Retirement Income Security Act (the “Amended Complaint”) in February 2006. The Amended Complaint asserted claims under the Employee Retirement Income Security Act (“ERISA”) for Defendants’ alleged breaches of their ERISA fiduciary duties by allowing the Plan to buy and hold Guidant stock when they knew or recklessly disregarded the serious risk to which the Plan and its participants were exposed because of purported significant problems with one of the Company’s major products – implantable heart defibrillators. The Amended Complaint alleged that Guidant and the director defendants breached their fiduciary duties by failing, *inter alia*, to provide other fiduciaries with timely and accurate information, monitor the actions of other fiduciaries and avoid conflicts of interest.

4. On September 15, 2006, the Court dismissed the Amended Complaint with prejudice on standing grounds. Plaintiffs appealed to the Seventh Circuit, which, by Order dated June 5, 2007, vacated the District Court’s Order and remanded with directions. 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. Following briefing and oral argument, on October 29, 2008, the Court entered an Order on Bifurcation which limited discovery to injury-based issues.

5. Following work with their experts regarding potential injury to class members, the parties agreed to explore the possible resolution of the ERISA claims, with their work with experts underpinning the parties' settlement discussions and negotiations. Pursuant to this process, the parties retained retired U.S. District Court Judge Nicholas H. Politan, before whom the parties and Company carrier counsel appeared for an all-day mediation session in New York on October 8, 2009. The parties provided Judge Politan with substantive mediation submissions in advance of the mediation session. As a result of these efforts, the parties arrived at the proposed Settlement. Thereafter, the parties undertook the drafting and negotiation of the settlement documentation, including the Stipulation, the notice with the plan of allocation, and forms of Orders. The parties executed the Stipulation on March 18, 2010.

6. Pursuant to the Stipulation, Defendants and Defendants' insurer will pay \$7,000,000.00 into the Settlement Fund for the benefit of the Class within thirty (30) days of the entry by the Court of the Preliminary Approval Order. This money will be placed in escrow, and all interest earned thereon will become a part of the Settlement Fund. Upon the Effective Date, all Released Claims will be released as against the Released Persons.

FILING A SECOND AMENDED COMPLAINT

7. As set forth at ¶ 1.26 of the Stipulation, the parties have agreed to a Settlement Class Period of January 1, 2003 through November 3, 2005.² In accordance with the Stipulation, and for Settlement purposes only, Plaintiffs are filing a Second Consolidated And Amended Complaint For Breaches Of Fiduciary Duty Under the Employee Retirement Income Security Act (the "Second Amended Complaint") simultaneously with this Motion. In accordance with

² The January 1, 2003 date reflects the beginning date of the class definition from the original complaint filed in this Action on July 11, 2005 (Document # 1, ¶ 49), and the November 3, 2005 date reflects the end date of the class definition from the Amended Complaint filed in this Action on February 8, 2006 (Document # 47, ¶ 68).

Federal Rule of Civil Procedure 15(a)(2), defendants have provided their written consent to the filing of the Second Amended Complaint for Settlement purposes. The only substantive change in the Second Amended Complaint from the current operative complaint (Document # 47) is to change the class definition at ¶ 68 to reflect the Settlement Class Period of from January 1, 2003 through November 3, 2005.

STANDARD FOR PRELIMINARY APPROVAL

8. To grant preliminary approval, the Court must find that a proposed settlement falls within the range of possible approval under Federal Rule of Civil Procedure 23(e). A proposed settlement falls within the “range of possible approval” when it is conceivable that it will meet the standards applied for final approval. *See, e.g., In re Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001) (“All that is required at the preliminary hearing in order to progress to the fairness hearing is that the proposed settlement be ‘within the range of possible approval.’ . . . This bar is low.”) (*quoting In re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1124 (7th Cir. 1979)). The standard for final approval of a class action settlement is whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e); *see, e.g., Uhl v. Thoroughbred Tech. & Telecomms, Inc.*, 309 F.3d 978, 986 (7th Cir. 2002); *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996). In describing the process for approval of class action litigation, the Seventh Circuit has found:

District court review of a class action settlement proposal is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Manual for Complex Litigation* s 1.46, at 53-55 (West 1977). If the district court finds a settlement proposal “within the range of possible approval,” it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the

fairness hearing at which they and all interested parties have an opportunity to be heard.

Armstrong v. Bd. of Sch. Dirs., 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*, *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

9. The requirement that class action settlements be fair is designed to protect against collusion among the parties. *See, e.g., In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1383 (D. Md. 1983). There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's length negotiations. *See* 2 NEWBERG ON CLASS ACTIONS, § 11.40 at 451 (2d ed. 1985); *Goldsmith v. Tech. Solutions Co.*, No. 92-C-4374, 1995 WL 17009594, at *3 n.2 (N.D. Ill. October 10, 1995) ("it may be presumed that the agreement is fair and adequate where, as here, a proposed settlement is the product of arm's-length negotiations"). Settlements proposed by experienced counsel and which result from arm's length negotiations are entitled to deference from the Court.

10. As described above, the proposed Settlement was reached after an extensive and on-going factual and legal investigation and analysis, commencing in advance of the filing of the original complaint in this action in July 2005. The parties actively litigated the action, including briefing three motions to dismiss and an appeal to the Seventh Circuit. The parties retained experts, analyzed relevant materials, including document and data production, undertook substantial investigation and analysis, and entered into discussions regarding liability and potential damages in the case. In addition, the parties pursued arm's length settlement negotiations, including with the assistance and expertise of retired United States District Judge Nicholas H. Politan, an experienced mediator in the resolution of complex litigation such as this ERISA action.

11. Throughout the litigation, Defendants have asserted that Plaintiffs could not recover damages for harm caused by Defendants' alleged breaches of fiduciary duty as a matter of law for a number of reasons, including because after the class period ended, Guidant was purchased by Boston Scientific at a higher per-share price than Guidant stock had ever reached. In addition, Defendants argued that Plaintiffs faced substantial risks going forward in the litigation based on, *inter alia*, well-established legal precedent recognizing a presumption of prudence to the acquisition of company stock into an Employee Stock Ownership Plan ("ESOP"), and the fact the Court had dismissed Plaintiffs' imprudent investment claims regarding stock held in the Plan during the class period. Moreover, Defendants argued that as they had no duty to disclose the problems with the heart devices, the price of Guidant common stock was not artificially inflated during the class period, and thus, Plan participants suffered no injury as a result. Against this backdrop, the amount of the proposed Settlement – \$7 million – is substantial, equaling more than 25% of total damages estimated by Plaintiffs' damages experts, as calculated in accordance with the proposed plan of allocation. *See, e.g., Goldsmith*, 1995 WL 17009594 at *5 ("Courts have approved settlements even though, unlike here, the benefits amounted to only a small percentage of the potential recovery"; approving \$4.6 million settlement where plaintiffs' experts estimated damages of up to \$75 million); *In re Remeron End-Payor Antitrust Litig.*, Nos. 02-2007 and 04-5126, 2005 WL 2230314, at *24 (D.N.J. Sept. 13, 2005) (observing that "the Settlement Consideration represents about one-third of single damages, quite a substantial recovery").

12. In light of these factors, the parties respectfully submit that the substantial relief which the Settlement provides is well within the range of benefits that support "possible approval" of the proposed Settlement of this ERISA action.

CERTIFICATION OF THE SETTLEMENT CLASS

13. This Court should certify the Settlement Class because it meets all of the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(1) and/or 23(b)(2). The Stipulation provides that, for the sole purpose of implementation, approval, and consummation of the Settlement, the parties will jointly request the Court to approve the certification of the Settlement Class, comprised of any current or former participants in, or beneficiaries of, the Plan whose Plan accounts held or acquired interests in investments in Company Stock for their benefit for the period January 1, 2003 through November 3, 2005 (the “Settlement Class Period”), excluding all Defendants and their immediate family members, with Plaintiffs Erica Harzewski and Victor Valenzuela appointed as representatives of the Class (“Class Representatives”).

14. The Stipulation provides that for settlement purposes only, the requirements of Rule 23(a) and 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure are satisfied, subject to Court approval. Because in accordance with 29 U.S.C. §§ 1132 and 1109, ERISA actions are brought on behalf of the plan and not on behalf of individual plan participants, the Settlement Class will be certified under Rule 23(b)(1) and 23(b)(2) as a non-opt out class. *See, e.g., Berger v. Xerox Corp.*, 338 F.2d 755, 763-64 (7th Cir. 2003) (holding that litigation seeking plan wide relief more properly certified under Rule 23(b)(2) than Rule 23(b)(3)).

15. Accordingly, the Court should find, for Settlement purposes only, that:

- a. As identified from contemporaneous Plan participant transactional records, more than 13,000 Guidant employees were participants in the Plan during the Settlement Class Period, and thus, the members of the Settlement Class are so numerous that joinder of all members is impracticable, satisfying Rule 23(a)(1);
- b. Common questions of law and fact exist as to all members of the Settlement Class and predominate over questions solely affecting individual class members, satisfying Rule 23(a)(2). Among the questions of law and fact common to the Settlement Class are:

- (i) the merits of the allegations in the Complaints;

- (ii) whether Defendants breached their ERISA fiduciary duties by allowing the Plan to buy and hold Company Stock during the Settlement Class Period; and
 - (iii) whether Settlement Class members were injured by the Defendants' breaches.
- c. Class Representatives will fairly and adequately protect the interests of the Settlement Class in that they were Plan participants during the Settlement Class Period, and thus their claims are typical of the claims of the Settlement Class, and are not subject to any unique defenses, satisfying Rule 23(a)(3);
- d. Class Counsel are qualified, reputable counsel with experience in litigating large, complex class actions who have fairly and adequately represented and protected the interests of all of the members of the Settlement Class, satisfying Rule 23(a)(4); and
- e. Prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests, satisfying the requirement of Rule 23(b)(1); and/or
- f. Defendants have acted or refused to act on grounds that apply generally to the Settlement Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Settlement Class as a whole, satisfying the requirement of Rule 23(b)(2).

16. In addition, as required by Rule 23(c)(1)(B), the [Proposed] Preliminary Approval Order defines the Settlement Class, identifies the claims of the Settlement Class, and, pursuant to Rule 23(g), appoints Plaintiffs' Interim Class Counsel as class counsel ("Class Counsel") for the Settlement Class.

THE NOTICE TO THE SETTLEMENT CLASS

17. Federal Rule of Civil Procedure 23(e)(1) provides that "[t]he Court must direct notice in a reasonable manner to all class members who would be bound by the proposal." While the Court has discretion as to the form and content of the notice, the notice must meet certain due process requirements. *See, e.g., Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 172-177 (1974). The notice must be "reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the [settlement] and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Notice must be given, moreover, “in a form and manner that does not systematically leave an identifiable group without notice.” *Mendoza v. Tucson School District*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 853 (9th Cir. 1976)). The content of the notice “may consist of a very general description of the proposed settlement” and should provide a fair recital of its terms. *Id.*

18. The content and proposed method of dissemination of notice in this case fulfill the requirements of Rule 23(e)(1) and due process, and should be approved. The Settlement provides for individual notice to each class member as well as summary notice on Business Wire. The proposed individual Notice:

- (a) identifies the action that has been settled (subject to Court approval) and the parties to that action;
- (b) describes the Settlement Class;
- (c) provides a summary of the claims, issues, and defenses in the action, and the terms of the proposed Settlement and the plan of allocation;
- (d) states that any member of the Settlement Class may enter an appearance if he or she so desires;
- (e) gives notice of the date and location of the Settlement Fairness Hearing and the matters that will be considered at that hearing;
- (f) identifies where documents relating to the Settlement will be available for review by members by the Settlement Class;
- (g) states the binding effect of a judgment on members of the Settlement Class under Rule 23(c)(3);
- (h) states that Class Counsel shall seek an award of attorneys’ fees, reimbursement of expenses and payment of an incentive award to named Plaintiffs, and provides the amounts of such applications; and

- (i) informs members of the Settlement Class of their right to object to the Settlement, the plan of allocation, the granting of any award of attorneys' fees and reimbursement of expenses to Class Counsel, or an incentive payment to named Plaintiffs, and the procedures for timely presenting their objections to the Court.

19. Rule 23(c)(2)(B) provides that for "any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." As set forth above, in accordance with the Stipulation, the Notice will be sent via first class mail to all individuals identified by the Claims Administrator as being within the Settlement Class based on contemporaneous Plan participant transactional data provided by Guidant, and will include a description of the proposed plan of allocation. Summary Notice will also be made by publication on a national business wire service.

20. 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. In the event the Agreement is disapproved, rescinded, or otherwise fails to become effective, the Settlement Fund shall be returned to Defendants subject to ¶¶ 3.7 and 3.8 of the Stipulation.

21. The proposed Preliminary Approval Order directs that Class Counsel will file papers in support of the Settlement, the plan of allocation, their application for an award of attorneys' fees and reimbursement of expenses and the payment of incentive awards to named Plaintiffs not later than forty (40) days prior to the Settlement Fairness Hearing, which is

nineteen (19) days in advance of the deadline for Settlement Class members to file objections. In addition, relevant documentation in support of the ERISA class action and proposed Settlement, including the Complaints, Stipulation, Notice and briefing by Class Counsel, shall be available on the website of the Claims Administrator, at www.GardenCityGroup.com, and the Claims Administrator shall establish a toll-free number for the use of Settlement Class members to obtain additional information related to the Action and the proposed Settlement.

22. For the reasons set forth above, the parties request that the Court enter the Preliminary Approval Order annexed as Exhibit A to the Stipulation, and schedule a Settlement Fairness Hearing at which members of the Settlement Class may be heard on the fairness of the proposed Settlement.

DATED: March 18, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing, as well as of the Stipulation of Settlement, with all exhibits, were filed electronically on March 18, 2010. Notice of this filing will be sent to the following parties by operation of the Courts electronic filing system. Parties may access this filing through the Court's system:

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

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

Karen L. Morris
Patrick F. Morris
MORRIS and MORRIS LLC
COUNSELORS AT LAW
4001 Kennett Pike
Suite 300
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302-426-0400

By: /s/ Mark C. Rifkin
Mark C. Rifkin

Mark C. Rifkin
Zachary Biesanz
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
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New York, NY 10016
212-545-4600

By: /s/ Kathleen DeLaney
Kathleen DeLaney

Kathleen DeLaney

Edward DeLaney
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317-920-0400

Attorneys for Plaintiffs and the Settlement Class

-and-

By: /s/ Donald L. Havermann
Donald L. Havermann

Donald L. Havermann
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By: /s/ Keith E. Eggleton
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Attorneys for Guidant Corporation

By: /s/ Robert K. Stanley
Robert K. Stanley

Robert K. Stanley
BAKER & DANIELS
300 N. Meridian
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Indianapolis, IN 46204
317-237-1283

Attorneys for All Defendants

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

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

**[PROPOSED] ORDER CERTIFYING A SETTLEMENT CLASS,
APPOINTING COUNSEL FOR THE SETTLEMENT CLASS,
PRELIMINARILY APPROVING A PROPOSED CLASS SETTLEMENT,
AUTHORIZING NOTICE TO THE SETTLEMENT CLASS, AND
SETTING A HEARING ON FINAL SETTLEMENT APPROVAL**

Before the Court is the unopposed motion (“Motion”) by Plaintiffs for certification of a settlement class, for appointment of counsel for the Settlement Class, for preliminary approval of a proposed settlement (the “Settlement”)¹ between plaintiffs Erica Harzewski and Victor Valenzuela (“Plaintiffs”) and Defendants, for authorization to disseminate notice to the Settlement Class, and for the setting of a hearing for final approval of the proposed Settlement. The Defendants, which include Guidant Corporation and former officer and directors of Guidant, support the motion to the extent it seeks approval of the Settlement. Defendants do not oppose the Motion. The Court has considered the Motion and is duly advised.

It is therefore hereby ORDERED and DECREED that:

1. The Motion is GRANTED.
2. The Court finds, subject to final determination following a hearing on notice to potential class members, that the proposed Settlement with Defendants set forth in the Stipula-

¹ Capitalized terms used herein, if not otherwise defined, shall have the same meaning as set forth in the Stipulation.

tion of Settlement (the “Stipulation”) is sufficiently fair, reasonable, and adequate such that notice of the Settlement should be provided to the Settlement Class (defined in paragraph 3 of this Order) and a hearing should be held as provided in paragraph 14 of this Order.

SETTLEMENT CLASS CERTIFICATION

3. For purposes of the Settlement, the Court certifies the following settlement class (the “Settlement Class”), pursuant to Fed. R. Civ. P. 23(a) and 23(b)(1) and/or (b)(2):

All participants in, or beneficiaries of, the Guidant Employee Savings and Stock Ownership Plan (the “Plan”) whose Plan accounts held or acquired interests in investments in Company Stock for their benefit during the period January 1, 2003 through November 3, 2005, excluding all Defendants and their immediate family members.

4. For purposes of disseminating notice of the Settlement, and subject to final approval of the Settlement at the hearing described in paragraph 14 of this Order (the “Settlement Fairness Hearing”), the Court finds and concludes for settlement purposes only that:

a. The Settlement Class is ascertainable from records kept with respect to the Plan, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable, satisfying the requirement of Rule 23(a)(1);

b. There are questions of law or fact common to the Settlement Class, satisfying the requirements of Rule 23(a)(2);

c. The claims of the representative Plaintiffs are typical of the claims of the Settlement Class, satisfying the requirement of Rule 23(a)(3);

d. The representative Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the Plaintiffs’ interests and the nature of claims alleged are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Plaintiffs and the Settlement Class; and (iii) the Plaintiffs and the members of the Settlement Class are represented by qualified, reputable

counsel who are experienced in preparing and prosecuting large, complex class actions, satisfying the requirements of Rule 23(a)(4);

e. Prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests, satisfying the requirement of Rule 23(b)(1);

f. Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole, satisfying the requirement of Rule 23(b)(2); and

g. The action is manageable as a class action.

5. Pursuant to Fed. R. Civ. P. 23(g)(1), the Court appoints Morris and Morris LLC Counselors At Law and Wolf Haldenstein Adler Freeman & Herz LLP as counsel to the Settlement Class ("Class Counsel"). The Court finds and concludes that such counsel fairly and adequately represent the interests of the Settlement Class.

6. The Settlement Fund shall be administered in accordance with the provisions of paragraph 3.9 of the Stipulation. The Court approves the establishment of the escrow account under the Stipulation as a qualified settlement fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the qualified settlement fund. The Settlement Fund shall be invested in accordance with paragraph 3.6 of

the Stipulation. In accordance with paragraph 4.2 of the Stipulation, 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, and 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.

STAY AND INJUNCTION AS TO ALL NON-SETTLEMENT PROCEEDINGS

7. The Guidant ERISA Action is stayed except as to matters related to the Stipulation, implementation of the Settlement contemplated by it, or matters related to the Settlement Fund, including applications for attorneys' fees, reimbursement of expenses, and incentive awards to Plaintiffs.

NOTICE

8. The Notice and Plan of Allocation (as provided at Exhibit B to the Stipulation) and the Summary Notice (as provided at Exhibit C to the Stipulation) (collectively the "Class Notice"), are approved and may be disseminated in substantially such forms. The Court finds that the mailing and publication of the Class Notice in the manner set forth in paragraphs 9 and 10 below, constitute the best notice practicable under the circumstances, as well as due and sufficient notice to all persons entitled thereto, and comply fully with the requirements of Federal Rule of Civil Procedure 23, the Class Action Fairness Act of 2005 and the due process requirements of the Constitution of the United States.

9. Class Counsel shall cause a Notice and Plan of Allocation, in the form provided as Exhibit B to the Stipulation, to be: (a) mailed no later than ten (10) days following the entry of

this Order, by first class mail, postage prepaid, to all members of the Settlement Class identified from relevant Plan participant transactional data; and (b) provided to all persons who request it, in response to the published Summary Notice provided for in paragraph 10 herein or otherwise.

10. Class Counsel shall cause a Summary Notice, in the form provided as Exhibit C to the Stipulation, to be published on Business Wire no later than fifteen (15) days after the date of entry of this Order.

11. No later than seven (7) days before the date of the Settlement Fairness Hearing, Class Counsel shall cause to be filed with the Clerk of the Court, and served upon counsel for Defendants, one or more affidavits or declarations of the person or persons under whose general direction the mailing of the Notice and Plan of Allocation and the publication of Summary Notice were made, showing that the mailing and publication were made in accordance with this Order. The Claims Administrator, who shall be retained by Class Counsel, shall maintain accurate records of the individual Settlement Class members to whom the Claims Administrator mails the Notice and Plan of Allocation, and of any such mailed Notice that are returned to the Claims Administrator as undeliverable.

**FINAL APPROVAL MOTION AND PETITIONS FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS**

12. No later than forty (40) days prior to the date of the Settlement Fairness Hearing, Class Counsel shall move for final approval of the Settlement and the Plan of allocation, and may petition for award of attorneys' fees from the Settlement Fund, reimbursement from the Settlement Fund of expenses, and incentive awards to Plaintiffs from the Settlement Fund. Any such petition will be addressed at the Settlement Fairness Hearing.

OBJECTIONS TO SETTLEMENT

13. Any objections to the Settlement, the plan of allocation, or to any petition for award of attorneys' fees, reimbursement of expenses, or incentive awards to Plaintiffs must comply with all procedures pertaining thereto specified in the Notice, and must be filed with the Court and served on Class Counsel and Defendants' counsel no later than twenty-one (21) days prior to the date of the Settlement Fairness Hearing.

HEARING ON FINAL SETTLEMENT APPROVAL

14. The Court will hold a hearing (the "Settlement Fairness Hearing") on _____, 2010, at _____.m., at the United States District Court for the Southern District of Indiana, Birch Bayh Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

15. At the Hearing, the Court will consider matters relating to the Settlement, including among others:

- a. final approval of the Settlement, including the plan of allocation, as fair, reasonable, and adequate;
- b. approval of expenses incurred and/or paid in connection with the provision of notice pursuant to this Order and administration of the Settlement Class to the extent not already authorized herein;
- c. the petition for an award of attorneys' fees to Class Counsel;
- d. reimbursement of expenses to Class Counsel; and
- e. the petition for an incentive award to Plaintiffs.

16. Any Settlement Class member who complies with the procedures set forth in the Notice may appear and be heard at the Settlement Fairness Hearing.

17. The Court reserves the right to adjourn the date of the Settlement Fairness Hearing without further notice to the members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

18. All reply papers in support of final approval of the Settlement or any petition for award of attorneys' fees, reimbursement of expenses, or incentive awards to Plaintiffs must be filed at least seven (7) days prior to the date of the Settlement Fairness Hearing set forth above.

OTHER PROVISIONS

19. Neither Defendants nor Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or reimbursement of expenses submitted by Plaintiffs' Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

20. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

21. Upon the Effective Date, Plaintiffs, individually and on behalf of the Plan and the Settlement Class, and each of their custodians, agents, assigns, representatives, heirs, executors, trustees, and administrators, shall be deemed conclusively to have fully, finally, unconditionally and forever released, settled, and discharged the Defendants and the other Released Persons, from, and with respect to, the Released Claims.

22. 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 con-

duct 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.

23. In the event the Settlement is disapproved, canceled or terminated in accordance with the terms of the Stipulation, the Stipulation and the Settlement shall have no force or effect (except those provisions that, by their terms, expressly survive disapproval or termination of the Settlement), the Parties to the Stipulation shall be restored to their respective positions in the Action existing as of the date on which the Stipulation was executed, preserving all of their respective claims and defenses.

Dated: _____, 2010

LARRY J. McKINNEY
UNITED STATES DISTRICT JUDGE

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

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

NOTICE OF CLASS ACTION SETTLEMENT

**Your legal rights might be affected
if you are a member of the following class:**

All Participants in and beneficiaries of The Guidant Employee Savings and Stock Ownership Plan (the “Plan”) for whose individual accounts the Plan purchased and/or held investments in Guidant common stock, beginning January 1, 2003 and ending on November 3, 2005 (the “Settlement Class Period”). Excluded from the Settlement Class are the Defendants and their immediate family members.

**A FEDERAL COURT AUTHORIZED THIS CLASS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.**

- THIS NOTICE IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS AN EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THE ACTION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED. THIS NOTICE IS MERELY TO ADVISE YOU OF THE PENDENCY OF THIS ACTION, THE PROPOSED SETTLEMENT, AND YOUR RIGHTS WITH RESPECT TO THE PROPOSED SETTLEMENT.
- The Court has preliminarily approved a proposed settlement (the “Settlement”) of a class action lawsuit brought under the Employee Retirement Income Security Act (often referred to as ERISA) against Guidant Corporation (the “Company” or “Guidant”) and certain of its officers and directors (the “Action”). The Settlement will provide for payments to the Boston Scientific Corporation 401(k) Retirement Savings Plan (the “Boston Scientific Plan”) and for allocation of those payments to the accounts of members of the Settlement Class who had portions of their Plan accounts invested in Company Stock. Those members of the Settlement Class who are entitled to a distribution under the Plan of Allocation but who do not have an existing Boston Scientific Plan account will receive their allocation into a new Boston Scientific Plan account established for them by the Plan administrator. Settlement Class members will be notified by the Boston Scientific Plan record keeper or its designee

after allocations to Boston Scientific Plan accounts have been made. The Settlement is summarized below.

- The Defendants have denied and continue to deny any wrongdoing, liability, and injury to Plaintiffs and the Settlement Class. The Defendants have concluded that it is desirable that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation of Settlement in order to avoid the burden, expense, inconvenience, and distraction of further legal proceedings.
- The Court has scheduled a hearing on the final approval of the Settlement and the Plan of Allocation, and for approval of the application for attorneys’ fees, reimbursement of expenses and payment of an incentive award to the Plaintiffs (the “Settlement Fairness Hearing”) for _____, 2010, at _____m., before United States District Judge Larry J. McKinney. The Settlement Fairness Hearing will be held at the United States District Court for the Southern District of Indiana, Birch Bayh Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, in Courtroom 202 or in the courtroom then occupied by Judge McKinney.
- Any objections to the Settlement, the Plan of Allocation, or to the application for attorneys’ fees, reimbursement of expenses and/or any payment of an incentive award to the Plaintiffs, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page ___ of this Notice. The procedure for objecting is described in response to Question 12 below.
- This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Stipulation of Settlement (the “Stipulation”), dated March 18, 2010. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Stipulation. Copies of the Stipulation are available at www.GardenCityGroup.com, by letter to: Guidant Corporation ERISA Litigation, c/o The Garden City Group, Inc., P.O. Box 9590, Dublin, OH 43017-4890, by calling toll free 1-866-249-8107, or from Class Counsel at the addresses provided below or in response to Question 12. Additional information with respect to this lawsuit and the Settlement are also available by contacting Class Counsel.

PLEASE READ THIS CLASS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
YOU CAN DO NOTHING.	If the Settlement is approved by the Court and you are a member of the Settlement Class, you will receive whatever distribution or other benefits are provided to you under the Settlement without having to file

	a claim or take any other action.
NO ACTION IS NECESSARY TO RECEIVE DISTRIBUTION.	If you are a member of the Settlement Class and you have an existing account in the Boston Scientific Plan and you are entitled to share in the Settlement Fund, any share of the Settlement Fund to which you are entitled will be deposited directly into your Boston Scientific Plan account. If you do not have a Boston Scientific Plan account and you are entitled to share in the Settlement Fund, a Boston Scientific Plan account will be established for you under the Settlement, and you will be notified of any distributions into such account.
OBJECT (BY _____, 2010)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement.
GO TO A HEARING (TO BE HELD ON _____, 2010)	If you submit a written objection to the Settlement to the Court and counsel before the Court-approved deadline, you may (but do not have to) attend the Court hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you may not be permitted to address the Court at the hearing if you do not timely notify the Court and counsel of your intention to appear at the Settlement Fairness Hearing by _____, 2010 as described herein.

- These rights and options — and the deadlines to exercise them — are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments under the Settlement Fund in accordance with the Plan of Allocation will be made only if the Court approves the Settlement and that approval is upheld in the event of any appeals.
- Further information regarding the litigation, the Settlement, and this Notice can be obtained by contacting Class Counsel:

Morris and Morris LLC Counselors At Law
 4001 Kennett Pike, Suite 300
 Wilmington, DE 19807
 Phone: (302) 426-0400

Wolf Haldenstein Adler Freeman & Herz LLP
 270 Madison Avenue
 New York, New York 10016
 Phone: (800) 575-0735

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BASIC INFORMATION

1. Why did I get this Notice?

You or someone in your family may have been a participant in or beneficiary of the Plan during the Settlement Class Period (which is the period from January 1, 2003 through November 3, 2005).

The Court caused this Notice to be sent to you because, if you fall within that group, you have a right to know about the Settlement and about all of the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the net amount of the Settlement Fund will be paid to the Boston Scientific Plan and then allocated among Settlement Class members according to a Court-approved Plan of Allocation. This Notice describes the litigation, the Settlement, the Plan of Allocation, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Southern District of Indiana. The people who brought this suit are called the “Plaintiffs,” and the people they sued are called the “Defendants.” The Plaintiffs in the Action are Erica Harzewski and Victor Valenzuela. The Defendants in the Action are Guidant, 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 Action that is the subject of this Notice and the Settlement is known as *In re Guidant Corporation ERISA Litigation*, Civil Action No. 05-01009-LMJ-TAB.

2. What is the Action about?

The Action claims that the Defendants were fiduciaries of the Plan and violated fiduciary duties under ERISA that they owed to participants in the Plan. In their Amended Complaint and Second Amended Complaint (the “Complaints”), the Plaintiffs asserted causes of Action for the losses they allege were suffered by the Plan as the result of the alleged breaches of fiduciary duty by the Defendants.

The Complaints allege that, the Company and certain of its officers and directors were required to publicly disclose adverse information about problems at the Company with its implantable heart devices, and that they failed to do so in violation of their fiduciary duties. The Complaints also allege that Defendants had the duty to monitor the Plan’s investment in Company Stock, and failed to do so in violation of their fiduciary duties. The Complaints further allege that the Defendants breached their fiduciary duties by failing to avoid conflicts of interest.

The Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Action. The Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the

conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. The Defendants also have denied and continue to deny that Plaintiffs and the Settlement Class have suffered any damages or that the price of Guidant stock was artificially inflated as a result of any alleged misrepresentations, omissions, or other acts of Defendants. The Defendants have concluded that it is desirable that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation in order to avoid the burden, expense, inconvenience, and distraction of further legal proceedings.

Counsel for the Plaintiffs have worked on a fully contingent basis since first filing this action in the Court over four and one-half years ago, in July 2005. Plaintiffs' counsel opposed two motions by Defendants to dismiss the Named Plaintiffs' claims. The Court granted Defendants' motion to dismiss based on the standing of the named Plaintiffs. Plaintiffs' counsel appealed the decision, and the United States Court of Appeals for the Seventh Circuit overturned the dismissal. Plaintiffs' counsel opposed a third motion by Defendants to dismiss Plaintiffs' claims. This time, the Court granted Defendants' motion to dismiss in part and denied the motion in part. Plaintiffs' counsel have thoroughly investigated the matters at issue in this Action, including working with financial, industry and merits experts to assist in the evaluation of the merits of the ERISA claims. In addition, they undertook injury-related discovery and worked closely with their damages expert to estimate damages for the claims remaining after the Court denied in part the motion to dismiss.

The Settlement is the product of extensive negotiations between the Plaintiffs' counsel and the Defendants' counsel, including mediation before a retired United States District Court Judge. All of the Parties have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the Action be fully and finally settled as to them on the terms and conditions set forth in the Stipulation.

3. Why is this case a Class Action?

The Court has conditionally certified the Settlement Class in the Action for purposes of effectuating the Settlement. In a class action, one or more plaintiffs sue on behalf of people who have similar claims. All of the individuals on whose behalf the Plaintiffs are suing are Settlement Class members. One Court resolves the issues for all class members. U.S. District Judge Larry J. McKinney is presiding over this case.

4. Why is there a Settlement?

The Court has not reached any final decisions in connection with Plaintiffs' claims against the Defendants. Defendants deny any wrongdoing, and, in connection with the Settlement, do not admit that they breached any fiduciary duties or otherwise are liable. Instead, the Plaintiffs and the Defendants have agreed to the Settlement. In reaching the Settlement, they have avoided the costs, delays and risks inherent in further litigation.

The Plaintiffs and their counsel believe that the Settlement is in the best interests of the Settlement Class. Additional information concerning the Settlement and the risks of further litigation are available in the Stipulation of Settlement and in the Unopposed Motion for Order

Certifying a Settlement Class, Appointing Counsel for the Settlement Class, Preliminarily Approving a Proposed Class Settlement, Authorizing Notice to the Settlement Class, and Setting a Hearing on Final Settlement Approval (the “Motion”), copies of which may be obtained at www.GardenCityGroup.com, by letter to: Guidant Corporation ERISA Litigation, c/o The Garden City Group, Inc., P.O. Box 9590, Dublin, OH 43017-4890, by calling toll free 1-866-249-8107, or by contacting Class Counsel at the addresses provided at page __ above or in response to Question 12 below.

5. How do I know whether I am part of the Settlement?

The proceeds of the Settlement will be distributed among Eligible Settlement Class Members (as defined at Question 7 below), according to a Court-approved Plan of Allocation described below. You are a member of the Settlement Class if you fall within the following definition:

All participants in, or beneficiaries of, the Guidant Employee Savings and Stock Ownership Plan whose Plan accounts held or acquired interests in investments in Company Stock for their benefit during the period from January 1, 2003 through November 3, 2005. Excluded from the Settlement Class are all Defendants and their immediate family members.

THE SETTLEMENT

6. What does the Settlement provide?

A Settlement Fund of \$7 million is being established in this Action.

The amount remaining in the Settlement Fund after payment of the Costs of Notice, Costs of Administration, taxes, Court-approved attorneys’ fees, reimbursement of expenses and an incentive award to Plaintiffs, and one-half of the costs of the Independent Fiduciary retained to provide an opinion on the fairness of the proposed Settlement (up to a cap of \$37,500.00) (the “Net Settlement Fund”), will be allocated to the Boston Scientific Plan and distributed among Eligible Settlement Class Members according to the Plan of Allocation to be approved by the Court.

Allocations to participants will be made into the existing Boston Scientific Plan accounts of members of the Settlement Class who are entitled to a distribution under the Plan of Allocation. Those members of the Settlement Class who are entitled to a distribution under the Plan of Allocation but who do not have a Boston Scientific Plan account will receive their allocation into a new Boston Scientific Plan account established for them under the Settlement. All Settlement Class members for whom new Boston Scientific Plan accounts have been created who receive a distribution from the Net Settlement Fund will receive notice of that distribution into their Boston Scientific Plan accounts by the Boston Scientific Plan record keeper or its designee. Notification of distribution to Settlement Class members with existing Boston Scientific Plan accounts shall be made pursuant to the Boston Scientific Plan record keeper’s established procedures.

Once the allocations are distributed to Eligible Settlement Class Member Boston Scientific Plan accounts, the allocations will be invested in accordance with the instructions previously provided by members for the investment of new contributions, or, if a member has not provided such instructions (as in the case for newly created Boston Scientific Plan accounts), such allocations will be invested in the default investment vehicle under the Boston Scientific Plan. In all cases, the initial investment, any subsequent changes in the investment by Eligible Settlement Class Members and any withdrawals of the investment from the Boston Scientific Plan will be governed by the terms of the Boston Scientific Plan.

All Settlement Class members and anyone claiming through them are deemed to fully release the “Released Persons” from all “Released Claims” and shall forever be enjoined from prosecution of Defendants and other Released Persons for any and all Released Claims. “Released Claims” is defined in the Stipulation to mean 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 paragraph 3.4 of the Stipulation), 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.

“Released Persons” is defined in the Stipulation to mean 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.

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.

The above description of the operation of the Settlement is only a summary. The governing provisions are set forth in the Stipulation of Settlement (including its exhibits), copies of which may be obtained at www.GardenCityGroup.com, by letter to: Guidant Corporation ERISA Litigation, c/o The Garden City Group, Inc., P.O. Box 9590, Dublin, OH 43017-4890, by calling toll free 1-866-249-8107, or by contacting Class Counsel at the addresses provided at page __ above or in response to Question 12 below.

7. How will distributions be made under the Plan of Allocation?

You are not required to submit any claim or other form to receive an allocation from this Settlement, and you are not responsible for determining the amount you may be entitled to receive under the Settlement. The calculation of the amount, if any, that will be allocated to your Boston Scientific Plan account will be made by the Claims Administrator, The Garden City Group, as part of the implementation of the Settlement, and will be based upon records maintained by the Plan and/or the administrator(s) of the Plan. If you are eligible to receive a distribution from the Net Settlement Fund, such distribution will occur automatically. If you have questions regarding the Settlement, you can contact Class Counsel listed on page __ above.

THE PLAN OF ALLOCATION

The proposed Plan of Allocation reflects Plaintiffs' allegations that over the course of the Settlement Class Period, the trading prices of Company Stock were artificially inflated on account of the Defendants' misrepresentations and/or omissions concerning problems with the Company's implantable heart devices. Estimated damages and the Plan of Allocation are based on event study analysis, which determines how much alleged artificial inflation was in the Company Stock price on each day during the Settlement Class Period by measuring how much the Company Stock price declined as a result of disclosures that Plaintiffs contend acted to correct the alleged misrepresentations and omissions. Because corrective disclosures reduced the alleged artificial inflation in stages over the course of the Settlement Class Period, the damages allegedly suffered by any particular Eligible Settlement Class Member under Plaintiffs' Plan of Allocation depends on when that individual acquired his or her Guidant Stock Fund Units¹, and

¹ Company contributions to Plan participant accounts during the Settlement Class Period were made in the form of Guidant Stock Fund Units. For the purposes of the Plan of Allocation, one Guidant Stock Fund Unit equals 2.03 shares of Guidant common stock. Plaintiffs contend that purchases and sales of Guidant Stock Fund Units from January 1, 2003 through June 23, 2005 were artificially inflated by the

whether: (i) he or she sold any Guidant Stock Fund Units during the Settlement Class Period; or (ii) retained them until after the end of the Settlement Class Period.

In accordance with the Plan of Allocation approved by the Court, the amount of your distribution will be calculated using the following formula:

Eligible Loss = (Injury from Paying Alleged Inflated Prices) – (Profits from Sales at Alleged Inflated Prices), where:

- (i) the “Injury from Paying Alleged Inflated Prices” is calculated by multiplying the number of Guidant Stock Fund Units contributed to your Plan account during the Settlement Class Period by the Multiplier for each day such a contribution was made. Thus, for example, if you had two Guidant Stock Fund Units contributed on December 31, 2004 and two Units contributed on August 31, 2005, and the Multiplier for December 31, 2004 was \$26.29 and the Multiplier for August 31, 2005 was \$21.78, your “Injury from Paying Alleged Inflated Prices” amount would be \$96.14 (2 x \$26.29) + (2 x \$21.78); and
- (ii) the “Profits from Sales at Alleged Inflated Prices” is calculated by multiplying the number of Guidant Stock Fund Units you sold from your Plan account (through termination or otherwise) during the Settlement Class Period by the Multiplier for each day such a sale occurred. Thus, for example, if you sold three of your four Guidant Stock Fund Units on October 20, 2005, and the Multiplier for October 20, 2005 was \$8.65, your “Profits from Sales at Alleged Inflated Prices” amount would be \$25.95 (3 x \$8.65). Note that for any of your Guidant Stock Fund Units that you did not sell prior to November 3, 2005, your “Profits from Sales at Alleged Inflated Prices” amount equals zero.

In the above example, your Eligible Loss would be \$70.19 (\$96.14 – \$25.95).

For Settlement Class members who held Guidant Stock Fund Units at the beginning of the Settlement Class Period, or who had multiple acquisitions or disposals during the Settlement Class Period, the Claims Administrator will apply a first-in, first-out (“FIFO”) method to such holdings, acquisitions, and disposals for purposes of calculating Eligible Loss. Under the FIFO method, Guidant Stock Fund Units disposed of during the Settlement Class Period will be matched first against Units held at the beginning of the Settlement Class Period. The disposal of any remaining Guidant Stock Fund Units during the Settlement Class Period will then be matched in chronological order against Units acquired during the Settlement Class Period.

The Claims Administrator will identify all Settlement Class members whose Eligible Loss is less than \$25.00 (“de minimis amount”). Any Settlement Class member whose Eligible Loss is calculated to be a de minimis amount will not receive an award from the Net Settlement Fund, and his or her Eligible Loss amount will not be considered or included in calculating Total

amount of \$26.29; from June 24, 2005 through October 17, 2005, by the amount of \$21.78; from October 18, 2005 through November 1, 2005, by the amount of \$8.65; on November 2, 2005, by the amount of \$4.95; and after November 2, 2005, by the amount of \$0.00. These amounts are referred to as the “Multiplier” in this Plan of Allocation.

Eligible Losses under the Plan of Allocation. The remaining Settlement Class members will be deemed Eligible Settlement Class Members. The parties reserve the right to lower the dollar value of the de minimis amount as appropriate, based on the final calculations of Total Eligible Loss amounts by the Claims Administrator. All distributions to Eligible Settlement Class Members will be made on a *pro rata* basis based on the percentage of the Eligible Loss of each such individual to the entire Total Eligible Loss amount.

8. When would I receive my distribution?

Distribution of the Net Settlement Fund to members of the Settlement Class is conditioned on several matters, including the Court's approval of the Settlement and such approval becoming final and no longer subject to any appeals to any court. Any appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals from such approval, the Net Proceeds will be distributed as expeditiously as possible. Any accrued interest on the Settlement Fund will be included in the amount paid to the Boston Scientific Plan, and allocated on a *pro rata* basis to the Boston Scientific Plan accounts of Eligible Settlement Class Members.

There Will Be No Payments Under the Settlement If the Settlement Agreement Is Terminated.

The Stipulation may be terminated on several grounds, including if: (1) the Court does not approve or materially modifies the Settlement, or (2) the Court does not enter the Order and Final Judgment or modifies it in a material way not consented to by Plaintiffs and Defendants, or (3) the Order and Final Judgment is reversed, modified or vacated on appeal in any material respect. Should the Stipulation be terminated, the Settlement will be terminated, the certification of the Settlement Class will be vacated, and the Action will proceed as if the Stipulation had not been entered into. If you have questions regarding the Settlement, you can contact Class Counsel at the addresses provided at page __ above or in response to Question 12 below.

9. Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from the Settlement. The Action was conditionally certified under Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) as a non "opt-out" class action because the Court preliminarily determined the requirements of those rules were satisfied. Thus, it is not possible for any participants or beneficiaries to exclude themselves from the benefits of the Settlement. As a Settlement Class member, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action or are otherwise included in the release under the Settlement.

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve it. See Answer to Question No. 12, below.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in the case?

The Court has appointed the law firms of Morris and Morris LLC Counselors At Law and Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel in the Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will seek the Court's approval to an application for an award of attorneys' fees in an amount not to exceed \$2,675,000.00, and for the reimbursement of expenses in an amount not to exceed \$325,000.00. This application will be considered at the Settlement Fairness Hearing. In addition, Class Counsel will seek the Court's approval to the payment of an incentive award to Plaintiffs in an aggregate amount not to exceed \$10,000.00. Any amounts awarded by the Court shall be paid from the Settlement Fund. Defendants take no position as to an award of attorneys' fees, reimbursement of expenses or the payment of incentive awards to Plaintiffs.

12. How do I tell the Court if I don't like the Settlement?

If you are a Settlement Class member, you can tell the Court that you do not agree with the Settlement, the Plan of Allocation, the application for an award of attorneys' fees, reimbursement of expenses or the request for an incentive award for Plaintiffs. To object, you must send a letter or other written filing saying that you object to the Settlement in *In re Guidant Corporation ERISA Litigation*, Civil Action No. 05-01009-LJM-TAB. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the Settlement. Your written objection must be mailed to the Court and to counsel at the addresses listed below, **to be received by no later than _____, 2010:**

COURT	CLASS COUNSEL	DEFENDANTS' COUNSEL
United States District Court for the Southern District of Indiana Birch Bayh Federal Building and United States Courthouse 46 East Ohio Street Indianapolis, IN 46204	Morris and Morris LLC Counselors At Law Attn: Karen L. Morris or Patrick F. Morris 4001 Kennett Pike, Suite 300 Wilmington, DE 19803 and Wolf Haldenstein Adler Freeman & Herz LLP Attn: Mark Rifkin or Zachary Biesanz 270 Madison Avenue New York, NY 10016	WILSON SONSINI GOODRICH & ROSATI Professional Corporation Attn: Boris Feldman or Diane M. Walters 650 Page Mill Road Palo Alto, CA 94304 and MORGAN LEWIS & BOCKIUS LLP Attn: Donald L. Havermann or Simon J. Torres 1111 Pennsylvania Avenue, N.W. Washington, DC 20004

THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement as fair, reasonable and adequate (the "Settlement Fairness Hearing"). You may attend the Settlement Fairness Hearing, and you may ask to speak, but you do not have to attend.

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Settlement Fairness Hearing at _____ .m. on _____, 2010, at the United States District Court for the Southern District of Indiana, Birch Bayh Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, in Courtroom 202 or in the Courtroom then occupied by United States District Judge Larry J. McKinney. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will then decide whether to approve the Settlement. The Court will also consider the petition for an award of attorneys' fees, reimbursement of expenses, and the payment of an incentive award to Plaintiffs.

14. Do I have to come to the Settlement Fairness Hearing?

No. Class Counsel will answer questions the Court might have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Settlement Fairness Hearing, but such attendance is not necessary.

15. May I speak at the Settlement Fairness Hearing?

If you are a Settlement Class member, you may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re Guidant Corporation ERISA Litigation*, Civil Action No. 05-01009-LJM-TAB." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received by the counsel and filed with the Clerk of the Court, at the addresses listed above in the Answer to Question No. 12 BY NO LATER THAN _____, 2010.

IF YOU DO NOTHING

16. What happens if I do nothing at all?

If you do nothing and you are a Settlement Class member, you will participate in the Settlement of the Action as described above in this Notice if the Settlement is approved.

GETTING MORE INFORMATION

17. How do I get more information about the Settlement?

This Notice summarizes the proposed Settlement. The complete terms of the Settlement is set forth in the Stipulation. No later than [INSERT DATE], counsel for Plaintiffs will file with the Court papers in support of final settlement, the Plan of Allocation, and the awards of attorneys' fees, reimbursement of expenses and payment of an incentive award to Plaintiffs. You may obtain a copy of the Stipulation, the Complaints, Plaintiffs' papers in support of final approval of the Settlement, and other documents relevant to this Action at www.GardenCityGroup.com, by letter to: Guidant Corporation ERISA Litigation, c/o The Garden City Group, Inc., P.O. Box 9590, Dublin, OH 43017-4890, by calling toll free 1-866-249-8107.

If you have questions regarding the Settlement or wish to obtain copies of relevant documents, you may also contact Class Counsel at the addresses provided at page __ above or in response to Question 12.

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

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

**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**

TO: ALL PERSONS WHO WERE PARTICIPANTS IN, OR BENEFICIARIES OF, THE GUIDANT EMPLOYEE SAVINGS AND STOCK OWNERSHIP PLAN (THE "PLAN") WHOSE PLAN ACCOUNTS HELD OR ACQUIRED INTERESTS IN INVESTMENTS IN COMPANY STOCK FOR THEIR BENEFIT FOR THE PERIOD JANUARY 1, 2003 THROUGH NOVEMBER 3, 2005 (THE "SETTLEMENT CLASS PERIOD").

PLEASE READ THIS NOTICE CAREFULLY, YOUR LEGAL RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of Indiana, that a proposed settlement in the amount of \$7 million (the "Settlement Fund") has been reached in the above-captioned ERISA class action. The terms and conditions of the proposed Settlement are set forth in the Stipulation of Settlement, dated March 18, 2010 (the "Stipulation"). If you have not yet received the full printed Notice of Class Action Settlement ("Notice"), you may obtain a copy by contacting the Claims Administrator at the address below. To obtain additional information about the Guidant ERISA Action and the proposed Settlement, or to obtain copies of the Stipulation and other relevant documentation, please contact the Claims Administrator at:

Guidant Corporation ERISA Litigation
c/o The Garden City Group
P.O. Box 9590
Dublin, OH 43017-4890
(or) 1-866-249-8107
(or) www.GardenCityGroup.com

You are further advised that a Settlement Fairness Hearing will be held before the Honorable Larry J. McKinney on _____, 2010, at _____m., at the United States District Court for the Southern District of Indiana, Birch Bayh Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, in Courtroom 202 to: (i) determine whether the proposed Settlement should be approved by the Court as fair, reasonable and adequate; (ii) consider the application of Class Counsel for an award of attorney's fees and reimbursement of expenses; (iii) consider payment of incentive awards to named Plaintiffs; and (iv) determine other matters described in the Notice. Settlement Class members may object to the proposed Settlement, the request for attorneys' fees, the reimbursement of expenses and/or any award to the named Plaintiffs. Any objections must be filed by _____, 2010.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE. Inquiries may be made to the Claims Administrator at the address and toll-free number listed above, or to Class Counsel at the following addresses:

Morris and Morris LLC
Counselors At Law
4001 Kennett Pike, Suite 300
Wilmington, DE 19803

Wolf Haldenstein Adler Freeman
& Herz LLP
270 Madison Avenue
New York, NY 10016

BY ORDER OF THE COURT

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

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

[PROPOSED] FINAL ORDER AND JUDGMENT

The Court has considered the Plaintiffs' Unopposed Motion for Final Approval of Settlement of the above-captioned ERISA class action (the "Motion"), and has held a duly-noticed final approval hearing on _____, 2010. The Court expressly finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and therefore grants the Motion and expressly directs the entry of final judgment as to the Released Persons (as defined in the Stipulation of Settlement).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction over the subject matter of this litigation and the parties, including the members of the Settlement Class certified by Order of the Court dated _____, 2010 (the "Settlement Class").
2. Terms defined in the Stipulation of Settlement, dated March 18, 2010 (the "Stipulation"), shall have the same meanings when used in this Final Order and Judgment.
3. The Court finds that due and adequate notice has been provided pursuant to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement Class, notifying the Settlement Class of, among other things, the pendency of this action and the proposed settlement

with Defendants. The notice provided was the best notice practicable under the circumstances and included individual notice by first class mail to all members of the Settlement Class identified from internal participant transactional data from the Guidant Employee Savings and Stock Ownership Plan (the "Plan"). Notice was also given by publication on Business Wire. Such notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005 and due process of law.

4. The Court finds that the Stipulation is fair, reasonable, and adequate to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement with the Defendants was reached following extensive investigation and resulted from vigorous arm's length negotiations which were undertaken in good faith by counsel with significant experience litigating complex class actions. The Stipulation is hereby approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and shall be binding on every member of the Settlement Class and party to the Stipulation. In this regard, the Court also finds that the Plan of Allocation set forth in the Notice is fair, reasonable, and adequate to the Settlement Class.

5. The Settlement Fund has been established pursuant to the Stipulation as a qualified settlement fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

6. The Court hereby awards attorneys' fees to Class Counsel from the Settlement Fund of \$ _____ and \$ _____ as reimbursement for expenses, payable pursuant to Section 6.2 of the Stipulation. Such sums shall include a pro-rata portion of the interest earned on the Settlement Fund. Class Counsel are authorized to allocate to other counsel the fees awarded herein, taking into account their relative contributions to the Action.

7. The Court hereby awards \$ _____ as an award to named Plaintiffs to be paid from the Settlement Fund in recognition of these Plaintiffs' efforts in initiating and pursuing this litigation on behalf of the Settlement Class.

8. Without affecting the finality of this Final Order and Judgment in any way, the Court hereby retains continuing and exclusive jurisdiction for the purposes of, among other things, implementing and enforcing the Stipulation and the Settlement contemplated thereby (including any issue that may arise in connection with the formation and/or administration of the qualified settlement fund described in ¶ 5 above) and determining any disputes that may arise with respect to the Stipulation, the Settlement, or the Settlement Fund.

9. Consistent with the Stipulation, the Released Claims are hereby released and fully and forever discharged as against the Released Persons. The Released Claims are defined as any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, including but not limited to claims for attorneys' fees, expenses and costs not otherwise provided for by the 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 paragraph 3.4 of the Stipulation), 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.

10. 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.

11. In addition, each of the Defendants releases and fully and forever discharges the Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to, or in connection with the institution or prosecution of the Action or the settlement of any of the Released Claims.

12. 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 are hereby permanently barred and enjoined from asserting, instituting, maintaining, prosecuting or enforcing against Defendants, or any other the Released Persons, in any state or federal court or arbitration forum, or in the court of any foreign jurisdiction, any and all Released Claims.

13. Neither this Final Order and Judgment, the Stipulation nor any document referred to herein nor any action taken pursuant to or to carry out the Stipulation is or may be deemed to be or may be used as an admission by or against any of the Parties to this Action of any fact, claim, defense, assertion, matter, contention, fault, culpability, obligation, wrongdoing or liability whatsoever. The Stipulation and its Exhibits may be used by the Defendants or the other Released Persons to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense.

14. Any Plan of Allocation submitted by Plaintiffs' Counsel or any order entered regarding the attorneys' fees application shall in no way affect or delay the Effective Date or the finality of this Final Order and Judgment.

15. This Action is hereby dismissed as to all defendants with prejudice and with each party to bear its own costs, except as provided for in the Stipulation.

_____, 2010.

LARRY J. McKINNEY
UNITED STATES DISTRICT JUDGE