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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10 **SACRAMENTO DIVISION**

11 **STEPHEN HALSEY,**
12 **Plaintiff,**

13 **vs.**

14 **SMITH & NEPHEW, INC.; Does 1 to**
15 **100**
16 **Defendants.**

Case No. 2:11-CV-00141-MCE-GGH

Date Complaint Filed: December 16,
2010

STIPULATION TO STRIKE
PLAINTIFF'S EIGHTH AND
NINTH CAUSE OF ACTION FOR
FRAUD AND PUNITIVE
DAMAGES AND ORDER
THEREON

Trial Date: None

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21 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
22 **RECORD:**

23 **COMES NOW** Defendant Smith & Nephew, Inc. and Plaintiff Stephen
24 Halsey and for good consideration stipulate as follows:

25 1. Plaintiff's Eighth Cause of Action for Punitive Damages in his product
26 liability lawsuit is hereby stricken, without prejudice, including but not limited to
27 Paragraphs 65 through 68 of the Complaint and the Prayer for Relief, Paragraph 6,
28 page 14, Line 9 of the Complaint.

1 2. Plaintiff's Ninth Cause of Action for Fraud is hereby stricken, without
2 prejudice, including but not limited to Paragraphs 69 through 76 of the Complaint.

3 3. Defendant Smith & Nephew, Inc. shall have thirty days from the date it is
4 given notice that the order is entered by the Court to file and serve its Answer to the
5 Complaint.

6 4. The parties shall bear their own fees and costs with respect to Smith &
7 Nephew, Inc.'s Motion to Dismiss for failure to state a claim for Fraud and Motion
8 to Strike Plaintiff's Claims of punitive damages.

9 5. The Motion to Strike (ECF No. 6) is now moot, and therefore
10 VACATED.

11 Dated: February 14, 2011

MORRIS POLICH & PURDY LLP

12
13 By: _____/s//_____

John W. Shaw

14 Karen M. Firstenberg

15 Attorneys for Defendants,

16 **SMITH & NEPHEW, INC**

17 Dated: February 14, 2011

MORRIS POLICH & PURDY LLP

18
19 By: _____/s//_____

20 Stewart C. Altemus, Esq.

21 Attorney for Plaintiff,

STEPHEN HALSEY

22 IT IS SO ORDERED.

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24 DATE: February 18, 2011

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27 MORRISON C. ENGLAND, JR.

28 UNITED STATES DISTRICT JUDGE