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 d/b/a VNUS Medical Technologies

8 (additional counsel on signature page)

9 UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION
 12

13 TYCO HEALTHCARE GROUP LP d/b/a)	LEAD CASE NO. C08-03129 MMC
VNUS MEDICAL TECHNOLOGIES,)	
)	CASE NO. C08-3129 MMC
14 Plaintiff,)	
)	
15 v.)	STIPULATION AND [PROPOSED]
)	ORDER REGARDING EXPERT
16 BIOLITEC, INC., DORNIER MEDTECH)	DISCOVERY
17 AMERICA, INC., and NEW STAR LASERS,)	
INC. d/b/a COOLTOUCH, INC.,)	
)	
18 Defendants.)	

19)	
20 TYCO HEALTHCARE GROUP LP d/b/a)	CASE NO. C08-04234 MMC
VNUS MEDICAL TECHNOLOGIES,)	(consolidated with Case No. C08-03129
)	MMC)
21 Plaintiff,)	
)	
22 v.)	
)	
23 TOTAL VEIN SOLUTIONS, LLC d/b/a)	
24 TOTAL VEIN SYSTEMS,)	
)	
25 Defendant.)	
26)	
27)	

1 Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies and Defendants
2 biolitec, Inc., Dornier MedTech America, Inc., New Star Lasers, Inc. d/b/a CoolTouch, Inc., and
3 Total Vein Solutions, LLC d/b/a Total Vein Systems (each a “Party” and collectively the “Parties”)
4 anticipate that a number of experts will be preparing reports and testifying in this litigation. In
5 order to efficiently manage expert discovery, the Parties agree as follows:

6 1. No drafts of expert reports prepared for this case need be produced.

7 2. Reasonably in advance of each expert’s deposition, the expert will be required to
8 produce to the opposing side copies of (or to the extent previously produced, identify by production
9 Bates number range) all documents and information that were relied upon in preparing the expert’s
10 final report. The Parties’ obligations under Fed. R. Civ. P. 26(a)(2)(B)(ii) shall extend only to data
11 and information relied upon or, subject to paragraph 3 hereof, otherwise considered by the expert in
12 forming the expert’s opinions.

13 3. Discovery (from parties or expert witnesses) or questioning of expert witnesses in
14 this or any other litigation shall not extend to the production of documents, oral examination, or any
15 other form of inquiry concerning communications with such expert witnesses that both:

16 (a) occurred during the pendency of, and for purposes of, the above-captioned
17 case; and

18 (b) were made to, from, at the request of, or in the presence of an attorney for the
19 Party expecting to call the person as an expert witness,

20 unless the expert relies on the communication as part of the basis for his or her expert testimony.
21 For purposes of this Stipulation, “presence” includes physical proximity, inclusion on a telephone
22 call, and inclusion on the distribution list of a written communication. Nothing in this Stipulation
23 and Order shall be construed to limit the discovery or examination of expert witnesses concerning
24 compensation received by such expert witness for his or her testimony in this case and prior or
25 concurrent cases involving any of the Parties, if any, including but not limited to disclosures
26 required by Fed. R. Civ. P. 26(a)(2)(B)(vi).

27 4. Nothing in this Stipulation and Order shall be construed to limit the discovery or
28 examination of expert witnesses concerning documents or other information relied on by the expert

1 as a basis for his or her final opinions in this case.

2 5. Nothing in this Stipulation and Order prohibits the parties from seeking the full
3 range of discovery permitted by law into opinions, reports, deposition or trial testimony, drafts,
4 notes, or communications related to any expert's participation in cases (prior or concurrent) other
5 than this one. Nor shall anything in this Stipulation and Order be construed to limit the parties'
6 ability to object to or seek a protective order relating to any discovery into opinions, reports,
7 deposition or trial testimony, drafts, notes, or communications related to any expert's participation
8 in cases (prior or concurrent) other than this one.

9 6. Until such time as this Stipulation and Order has been signed by the Court, the
10 Parties agree that upon execution by all Parties, it will be treated as though it had been ordered by
11 the Court.

12 The Parties' assent to the entry of the foregoing Stipulation is hereby given by the Parties by
13 and through their attorneys.

14 Dated: November 20, 2009

Respectfully Submitted,

15 ATTORNEYS FOR PLAINTIFF
16 TYCO HEALTHCARE GROUP LP d/b/a
17 VNUS MEDICAL TECHNOLOGIES

18 By: /s/ David J. Lisson

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Dated: November 20, 2009

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ATTORNEYS FOR DEFENDANT TOTAL VEIN SOLUTIONS, LLC d/b/a TOTAL VEIN SYSTEMS

Dated: November 20, 2009

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I hereby attest that I have on file written permission to sign this stipulation from all parties whose signatures are indicated by a “conformed” signature (/s/) within this e-filed document.

/s/ David J. Lisson
David J. Lisson

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 25, 2010 ~~2009~~


MAXINE M. CHESNEY
United States District Judge