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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 TYCO HEALTHCARE GROUP LP d/b/a
23 VNUS MEDICAL TECHNOLOGIES,

24 Plaintiff,

25 v.

26 BIOLITEC, INC.

27 Defendant.

Case No. C08-03129 MMC

Case No. C08-04234 MMC

(consolidated with Case No. C08-03129 MMC)

**JOINT STIPULATED MOTION AND
[PROPOSED] ORDER BY VNUS AND
BIOLITEC FOR DISMISSAL OF
BIOLITEC AND PARTIAL VACATUR OF
VERDICT**

AND ORDER THEREON

Judge: The Hon. Maxine M. Chesney

28 TYCO HEALTHCARE GROUP LP d/b/a
VNUS MEDICAL TECHNOLOGIES,

Plaintiff,

v.

TOTAL VEIN SOLUTIONS, LLC. d/b/a
TOTAL VEIN SYSTEMS,

Defendant.

1 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
2 (“VNUS”) and Defendant biolitec, Inc. (“biolitec”) have entered into a Settlement Agreement
3 resolving all claims asserted by VNUS against biolitec and all counterclaims asserted by biolitec
4 against VNUS in the above-captioned action;

5
6 WHEREAS the Settlement Agreement expressly contemplates the dismissal and vacatur
7 provided for herein, so that dismissal and vacatur will resolve all open litigation issues between
8 VNUS and biolitec, including without limitation those matters recited in the preamble to the
9 Settlement Agreement;

10
11 NOW THEREFORE, VNUS and biolitec hereby jointly stipulate and respectfully move
12 the Court for a confirmatory order as follows:

- 13
14 1) The portions of the December 8, 2010 verdict (D.I. 441) corresponding
15 specifically to biolitec (i.e., questions 1, 2, 3, 8a & 8b) are hereby VACATED
16 pursuant to Fed. R. Civ. P. 60(b). *See Thomas v. City of Tacoma*, 410 F.3d 644,
17 647 n.2 (9th Cir. 2005); *Click Entm’t, Inc. v. JYP Entm’t Co.*, 2009 WL 3030212,
18 at *1 (D. Haw. 2009);
- 19 2) biolitec is dismissed with prejudice from this action pursuant to Federal Rule of
20 Civil Procedure 41(a)(2);
- 21 3) The counterclaims asserted by biolitec against VNUS are dismissed with prejudice
22 pursuant to Federal Rule of Civil Procedure 41(c);
- 23 4) Each party will bear its own costs; and
- 24 5) The caption shall be amended in all subsequent pleadings to reflect this dismissal.
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Dated: September 8, 2011

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

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Dated: September 8, 2011

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 9, 2011


THE HON. MAXINE M. CHESNEY
United States District Judge