

1 Matthew B. Lehr (Bar No. 213139)  
 Diem-Suong T. Nguyen (Bar No. 237557)  
 2 Chung G. Suh (Bar No. 244889)  
 DAVIS POLK & WARDWELL  
 3 1600 El Camino Real  
 Menlo Park, California 94025  
 4 Telephone: (650) 752-2000  
 Facsimile: (650) 752-2111

5 Attorneys for Plaintiff  
 6 VNUS Medical Technologies, Inc.

7 (additional counsel on signature line)

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

11	VNUS MEDICAL TECHNOLOGIES, INC., )	CASE NO.: C08-03129 MMC
12	Plaintiff, )	<del>PROPOSED</del> STIPULATED
13	v. )	PROTECTIVE ORDER REGARDING
14	BIOLITEC, INC., DORNIER MEDTECH )	CONFIDENTIAL INFORMATION
15	AMERICA, INC., NEW STAR LASERS, )	Judge: Hon. Maxine M. Chesney
16	INC. d/b/a COOLTOUCH, INC., DAVID S. )	
17	CENTANNI, and TYRELL L. SCHIEK )	
	Defendants. )	

18  
 19 The parties anticipate that discovery in this case will involve the disclosure of confidential  
 20 information, and therefore agree to the following Protective Order under Rule 26 of the Federal  
 21 Rules of Civil Procedure.

- 22 1. Designation of Confidential Material.
- 23 (a) General. Any documents, materials, tangible things, items, testimony or  
 24 other information filed with the Court, or produced or provided by any party in connection  
 25 with this litigation (“Producing Party” or “Designating Party”) to another party (“Receiving  
 26 Party”), may be designated as “Confidential” or “Confidential-Attorneys’ Eyes Only.” All  
 27 such information and material derived from it constitutes “Designated Material” under this  
 28 Protective Order. As a general guideline, Designated Material shall be so designated for the

1 purposes of avoiding invasion of privacy or protecting proprietary information, confidential  
2 business or financial information, trade secrets, or personal or financial affairs. A  
3 Designating Party may designate information “Confidential-Attorneys’ Eyes Only” when  
4 the information is particularly sensitive because it relates to trade secrets, technical  
5 information, technical practices or methods, present or future marketing plans, product data  
6 or projections, financial data, business strategy, or agreements and relationships with third  
7 parties.

8 (b) Designation Procedure. A party wishing to invoke the provisions of this  
9 Protective Order shall designate the documents, materials, items, or information, or portions  
10 thereof, at the time such information is disclosed, or when the party seeking protection  
11 becomes aware of the nature of the information disclosed and sought to be protected.  
12 Designation shall be made by marking or stamping the documents, materials, items, or  
13 information “Confidential” or “Confidential-Attorneys’ Eyes Only” on all pages (or, if  
14 applicable, paragraphs). In the case of information stored on electronic media, the items  
15 produced shall be marked or stamped on the media if possible. In the case of information  
16 produced for inspection, but not yet provided to the inspecting party, such information shall  
17 presumptively be deemed “Confidential-Attorneys’ Eyes Only,” regardless of whether so  
18 identified, until copies thereof are produced to the inspecting party.

19 (c) Designation Procedure For Deposition Testimony. With respect to  
20 deposition testimony, the witness under deposition, or his/her counsel, or any counsel  
21 representing any person at the deposition, may designate such testimony as “Confidential”  
22 or “Confidential-Attorneys’ Eyes Only” either on the record at the deposition or within  
23 thirty (30) days after the mailing of the deposition transcript by the court reporter. The  
24 provisions of this paragraph may be invoked with respect to the witness’s entire deposition,  
25 or any portion thereof, at any time during the deposition. Until thirty (30) days after  
26 mailing of the transcript by the court reporter has passed, the entire transcript shall be  
27 treated as “Confidential-Attorneys’ Eyes Only.”  
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1           2.    Use of Designated Material. Absent a specific order by this Court, Designated  
2 Material shall be used by the persons or entities to whom such information is disclosed solely for  
3 purposes of this litigation, and not for any business, competitive, or governmental purpose or  
4 function, and such information shall not be disclosed to anyone except as provided under this  
5 Protective Order; except that nothing in this Protective Order shall preclude any party or its counsel  
6 of record from disclosing or using, in any manner or for any purpose, any information or  
7 documents from the party’s own files which the party itself has designated as “Confidential” or  
8 “Confidential- Attorneys’ Eyes Only.”

9           3.    Access to Material Designated “Confidential.” Material designated “Confidential”  
10 under this Protective Order, and copies, extracts, compilations, summaries, and other materials that  
11 include or reflect such Designated Material, may not be provided to any third party. Material  
12 designated “Confidential” may be submitted to the Court only if submitted under seal in accordance  
13 with Paragraph 7 below.

14           4.    Access to Material Designated “Confidential-Attorneys’ Eyes Only.” Material  
15 designated “Confidential- Attorneys’ Eyes Only” under this Protective Order, and copies, extracts,  
16 compilations, summaries, and other materials that include or reflect such Designated Material, may  
17 be given, shown, made available, or communicated in any way only to:

18                   (a)    persons identified on the face of the Designated Material or in the associated  
19 metadata as authors or recipients thereof;

20                   (b)    outside litigation attorneys for the parties who are employed by the firms of  
21 record in this case, their staffs, and professional litigation support vendors retained by them;

22                   (c)    qualified persons taking testimony involving “Confidential- Attorneys’ Eyes  
23 Only” information, and necessary stenographic and clerical personnel thereof;

24                   (d)    independent consultants or experts and their staffs, if cleared by the parties  
25 pursuant to Paragraph 5 of this Protective Order;

26                   (e)    the Court and its staff; and

27                   (f)    a party’s in-house counsel or outside general counsel with the consent of the  
28 Designating Party, provided:

1 (i) Such consent will not be unreasonably withheld, and the refusal to  
2 grant such consent shall be based on the Designating Party's good faith concerns  
3 about protecting intellectual property rights or competitive business information  
4 from the requesting party's employees or representatives; and

5 (ii) The Designating Party may condition its consent on the material  
6 requested not being provided to any attorney involved in prosecuting patents or  
7 making decisions regarding the party's competitive position as to the Designating  
8 Party.

9 5. Clearance Procedure for Consultants and Experts. Designated Material may be  
10 provided to an independent consultant or expert as described in Paragraph 4(d) only after ten (10)  
11 business days following written notice to the Designating Party of the proposed disclosure to the  
12 consultant or expert. With the written notice shall be included a fully executed copy of the  
13 Acknowledgement attached hereto as Exhibit A, completed by the consultant or expert. If the  
14 Designating Party objects, in writing, to disclosure of Designated Material to the consultant or  
15 expert within the ten (10) day period, no disclosure of Designated Material may be made to the  
16 consultant or expert pending resolution of the objection. If the parties cannot resolve the issue  
17 informally, the party objecting to the proposed disclosure may thereupon seek an appropriate order  
18 from the Court disqualifying the consultant or expert or protecting against the proposed disclosure  
19 to the consultant or expert. Until the Court rules on the matter, no disclosure of Designated  
20 Material to the consultant or expert shall be made.

21 6. Treatment of Designated Material. Copies of Designated Material may only be made  
22 where reasonably necessary to prepare work product or conduct proceedings in this litigation.  
23 Material designated "Confidential Attorneys' Eyes Only" or copies thereof may not be stored or  
24 viewed at a non-designating party's business location, except to the extent provided in this  
25 Paragraph. Such information may be stored or viewed only at or on:

26 (a) the physical offices of outside attorneys of record in this litigation, or of  
27 professional litigation support vendors retained by such attorneys;

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1 (b) the physical offices of consultants or experts cleared under Paragraph 5 of  
2 this Protective Order;

3 (c) the site where any deposition relating to the information is taken;

4 (d) the Court;

5 (e) any intermediate location reasonably necessary to transport the information  
6 (*e.g.*, a hotel prior to a deposition); or

7 (f) computers/servers/other electronic media of the outside attorneys of record in  
8 this litigation, professional litigation support vendors employed by outside attorneys of  
9 record, or experts and consultants cleared under Paragraph 5, provided those persons have a  
10 reasonable expectation of confidentiality associated with the computers/servers/other  
11 electronic media.

12 Such information may also be viewed electronically at the physical office of a party's in-  
13 house counselor outside general counsel, provided that the information is not stored at the location  
14 and that such counsel may receive the information under Paragraph 4(f) of this Protective Order.

15 7. Filing of Designated Material with the Court. A party that wishes to file Designated  
16 Material with the Court (as pleadings or evidence) shall follow the procedure outlined in Local  
17 Rule 79-5. Administrative Motions to File Under Seal pursuant to Local Rule 79-5 may be filed on  
18 the same day the Designated Material is deposited with the Court.

19 8. Errors in Designation. A Producing Party that inadvertently fails to designate an item  
20 pursuant to this Protective Order at the time of the production shall make a correction promptly  
21 after becoming aware of such error. Such correction and notice thereof shall be made in writing  
22 accompanied by substitute copies of each item, appropriately designated. Those individuals who  
23 reviewed the documents or information prior to notice of the failure to designate by the Producing  
24 Party shall, to the extent reasonably feasible, return to the Producing Party or destroy all copies of  
25 such undesignated documents and shall honor the provisions of this Protective Order with respect  
26 to the use and disclosure of any confidential information contained in the undesignated documents,  
27 from and after the date of designation.

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1           9.    Improper Disclosure. If information designated pursuant to this Protective Order is  
2 disclosed to any person other than in the manner authorized by this Protective Order, the party  
3 responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure  
4 to the attention of the Designating Party, without prejudice to other rights and remedies of the  
5 Designating Party, and shall make every effort to prevent further improper disclosure.

6           10.   Objections to Designations. If at any time during the pendency of this litigation any  
7 party claims that information is not appropriately designated or that permission for in-house or  
8 outside general counsel to view certain material has been improperly withheld (the “Objecting  
9 Party”), the Objecting Party may serve a captioned notice of objection on the Designating Party.  
10 Within ten (10) calendar days of receiving such notice, the Designating Party shall respond in  
11 writing. If the Designating Party and the Objecting Party cannot resolve the dispute by informal  
12 conference, the Objecting Party may move for an order from the Court for re-designation within ten  
13 (10) calendar days from service of the Designating Party’s written response. If the Objecting Party  
14 moves for an order from the Court for re-designation, the Designating Party shall bear the burden to  
15 establish that the original designation complies with the guidelines and limitations described in  
16 Paragraph 1. The original designation shall remain effective until three (3) days after the Court’s  
17 entry of an order re- designating the materials.

18           11.   Use of Designated Material at Trial or other Court Proceedings. This Protective  
19 Order, insofar as it restricts the dissemination and use of Designated Material, shall not apply to the  
20 introduction of evidence at trial or the display or discussion of Designated Material during hearings  
21 held by the Court, including but not limited to claim construction and summary judgment hearings.  
22 However, any Party may seek appropriate court orders, including without limitation, an order  
23 which restricts the use of any material covered by this Protective Order during the trial or other  
24 Court proceeding, requests that portions of the transcript be sealed, or restricts access of the public  
25 to certain portions of the trial or other Court proceeding.

26           12.   Inadmissibility of Designation. Unless the parties stipulate otherwise, evidence of the  
27 existence or nonexistence of a designation under this Protective Order shall not be admissible for  
28 any purpose, nor shall the designation or acceptance of any information designated pursuant to this

1 Protective Order constitute an admission or acknowledgement that the material so designated is in  
2 fact proprietary, confidential, or a trade secret.

3 13. Inadvertent Production. Counsel shall take reasonable steps to identify materials  
4 protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any  
5 such materials. The inadvertent production of any document or thing shall be without prejudice to  
6 any claim that such material is protected by the attorney-client privilege or protected from  
7 discovery as work product and no Producing Party shall be held to have waived any rights  
8 thereunder by inadvertent production. If a Producing Party discovers that materials protected by  
9 the attorney-client privilege or work product doctrine have been inadvertently produced, counsel  
10 for the Producing Party shall promptly give written notice to counsel for the Receiving Party. The  
11 Receiving Party shall take prompt steps to ensure that all known copies of such material are  
12 returned to the Producing Party. The Receiving Party may afterward contest such claims of  
13 privilege or work product as if the materials had not been produced, but shall not assert that a  
14 waiver occurred as a result of the production.

15 14. Notification of Subpoena, Document Request, or Order in Other Litigation. If a  
16 Receiving Party is served with a subpoena, document request, or order issued in other litigation that  
17 would compel disclosure of any information or items designated in this action as “Confidential” or  
18 “Confidential- Attorneys’ Eyes Only,” the Receiving Party must so notify the Designating Party in  
19 writing immediately and in no event more than five (5) days after receiving the subpoena,  
20 document request, or order. Such notification must include a copy of the subpoena, document  
21 request, or order. The Designating Party shall bear the burden and expense of seeking to protect the  
22 requested material from production in the other litigation.

23 15. Final Disposition of Designated Material. Upon termination of this litigation  
24 following settlement or final judgment (including exhaustion of all appeals), the originals and all  
25 copies of Designated Material shall be either destroyed or turned over to the Producing Party, or to  
26 its counsel, within sixty (60) days. However, attorneys of record may retain pleadings, attorney and  
27 consultant work product, and depositions (with exhibits) for archival purposes. If Designated  
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1 Material is destroyed pursuant to this Paragraph, counsel shall provide to opposing counsel a  
2 certification identifying when and how the destruction was performed.

3 16. Survival. The terms of this Protective Order shall survive termination of this  
4 litigation.

5 Assent to the entry of the foregoing Protective Order is hereby given by the undersigned  
6 parties by and through their attorneys.

7

8 Dated: November 13, 2008

Respectfully Submitted,

9

ATTORNEYS FOR PLAINTIFF  
VNUS MEDICAL TECHNOLOGIES, INC.

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11

By: /s/ Suong T. Nguyen

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Matthew B. Lehr (Bar No. 213139)  
Diem-Suong T. Nguyen (Bar No. 237557)  
Chung G. Suh (Bar No. 244889)  
DAVIS POLK & WARDWELL  
1600 El Camino Real  
Menlo Park, CA 94025  
(650) 752-2000/(650) 752-2111 (fax)  
mlehr@dpw.com  
nguyen@dpw.com  
gsuh@dpw.com

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ATTORNEYS FOR DEFENDANT BIOLITEC,  
INC.

18

19

20

By: /s/ Michael Rader

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Michael A. Albert (*pro hac vice*)  
Michael N. Rader (*pro hac vice*)  
Charles T. Steenburg (*pro hac vice*)  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 646-8000/(617) 646-8646  
malbert@wolfgreenfield.com  
mrader@wolfgreenfield.com  
csteenburg@wolfgreenfield.com

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ATTORNEYS FOR DEFENDANT  
NEW STAR LASERS, INC. d/b/a  
COOLTOUCH, INC.

By: /s/ James W. Geriak  
James W. Geriak (Bar No. 32871)  
Allan W. Jansen (Bar No. 81992)  
Mark Stirrat (Bar No. 229448)  
ORRICK, HERRINGTON & SUTCLIFFE  
LLP  
4 Park Plaza, Suite 1600  
Irvine, CA 92614-2558  
(949) 567-6700/(949) 567-6710 (fax)  
jgeriak@orrick.com  
ajansen@orrick.com  
mstirrat@orrick.com

ATTORNEYS FOR DEFENDANT  
DORNIER MEDTECH AMERICA, INC.

By: /s/ Richard W. Miller  
Lisa Kobialka (Bar No. 191404)  
King & Spalding LLP  
333 Twin Dolphin Drive  
Suite 400  
Redwood Shores, California 94065  
Telephone: (650) 590-0700  
Facsimile: (650) 590-1900  
lkobialka@kslaw.com  
  
A. Shane Nichols (*pro hac vice*)  
Richard W. Miller (*pro hac vice*)  
King & Spalding LLP  
1180 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3521  
Telephone: (404) 572-4600  
Facsimile: (404) 572-5100  
snichols@kslaw.com  
rmiller@kslaw.com

Defendants David S. Centanni and Tyrell L. Schiek (“Centanni and Schiek”) condition their assent to Paragraph 2 (“Use of Designated Material”) of this Protective Order upon the consolidation of the instant case with a related case, *VNUS Medical Technologies, Inc. vs. Total Vein Solutions, LLC dba Total Vein Systems*, Case No. C08-04234 MMC (the “Related Case”). In the event that this case and the Related Case are not consolidated, Centanni and Schiek request

1 modification of Paragraph 2 of this Protective Order to allow Designated Material in this case to be  
2 used by the parties in the Related Case.

4 ATTORNEYS FOR DEFENDANTS DAVID S.  
5 CENTANNI and TYRELL L. SCHIEK


6 By: /s/ Todd Noah  
7 Todd Noah  
8 DERGOSITS & NOAH LLP  
9 Four Embarcadero Center, Suite 1450  
10 San Francisco, CA 94111  
11 (415) 705-6377/(415) 705-6383  
12 tnoah@dergnoah.com

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

16 /s/ Suong T. Nguyen  
17 Suong T. Nguyen

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19 Dated: November 18, 2008

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21 MAXINE M. CHESNEY  
22 United States District Judge  
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EXHIBIT A

1 Matthew B. Lehr (Bar No. 213139)  
Diem-Suong T. Nguyen (Bar No. 237557)  
2 Chung G. Suh (Bar No. 244889)  
DAVIS POLK & WARDWELL  
3 1600 El Camino Real  
Menlo Park, California 94025  
4 Telephone: (650) 752-2000  
Facsimile: (650) 752-2111

5 Attorneys for Plaintiff  
6 VNUS Medical Technologies, Inc.

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 VNUS MEDICAL TECHNOLOGIES, INC., ) CASE NO. C08-03129 MMC  
12 )  
Plaintiff, )  
13 )  
v. ) **STIPULATED PROTECTIVE ORDER**  
14 ) **REGARDING CONFIDENTIAL**  
BIOLITEC, INC., DORNIER MEDTECH ) **INFORMATION**  
15 )  
AMERICA, INC., NEW STAR LASERS, ) Judge: Hon. Maxine M. Chesney  
16 )  
INC. d/b/a COOLTOUCH, INC., DAVID S. )  
17 )  
CENTANNI, and TYRELL L. SCHIEK )  
18 )  
Defendants. )

19 **ACKNOWLEDGEMENT**

20 I, \_\_\_\_\_, hereby declare as follows:

- 21 1. My present employer is \_\_\_\_\_
- 22 2. My business address is \_\_\_\_\_
- 23 3. My occupation is \_\_\_\_\_
- 24 4. In the past 12 months, I have consulted and/or served as an expert for the following
- 25 companies (attach additional sheets if necessary):
- 26 5. I have reviewed a copy of the Stipulated Protective Order Regarding Confidential
- 27 Information in this action (“Protective Order”), and I understand and agree to be bound by its terms
- 28 and provisions.

