

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

James D. Petruzzi (SBN 115175)  
THE PETRUZZI LAW FIRM  
4900 Woodway Dr., Suite 745  
Houston, Texas 77056  
Telephone: (713) 840-9993  
Facsimile: (713) 877-9100  
jdpetruzzi@gmail.com

MARTIN J. SIEGEL  
Appearing *Pro Hac Vice*  
Law Offices of Martin J. Siegel  
2222 Dunstan  
Houston, TX 77005  
(281) 772-4568  
martin@Siegelfirm.com

Attorneys for Plaintiff  
DR. SHAUN L. W. SAMUELS

Lien K. Dang (Bar No. 254221)  
KIRKLAND & ELLIS LLP  
3330 Hillview Avenue  
Palo Alto, California 94304  
Telephone: (650) 859-7000  
Facsimile: (650) 859-7500  
lien.dang@kirkland.com

Natalie Flechsig (Bar No. 300515)  
KIRKLAND & ELLIS LLP  
555 California Street, 27th Floor  
San Francisco, CA 94104  
Telephone: (415) 439-4000  
Facsimile: (415) 439-5000  
natalie.flechsig@kirkland.com

Attorneys for Defendants  
TRIVASCULAR, INC., MICHAEL A.  
CHOBOTOV, PH.D., ROBERT G. WHIRLEY,  
PH.D., AND JOSEPH W. HUMPHREY, PH.D.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

DR. SHAUN L. W. SAMUELS  
Plaintiff,  
vs.  
TRIVASCULAR, INC., ET AL.,  
Defendants

) Case No.: CV-13-2261-EMC  
)  
) Hon. Edward M. Chen

) **STIPULATION AND [~~PROPOSED~~]**  
) **ORDER DISMISSING TRIVASCULAR'S**  
) **COUNTERCLAIMS TWO THROUGH**  
) **FIVE WITHOUT PREJUDICE**

\_\_\_\_\_  
TRIVASCULAR, INC.  
Counter-Claimant,  
vs.  
DR. SHAUN L. W. SAMUELS  
Counter-Defendant

STIPULATION AND [PROPOSED] ORDER  
DISMISSING TRIVASCULAR'S COUNTERCLAIMS  
WITHOUT PREJUDICE

CASE No.: CV-13-2261-EMC

1 The parties through undersigned counsel respectfully submit the following stipulation:

2 **WHEREAS**, on August 13, 2015, Samuels filed his Second Amended Complaint (Dkt. No.  
3 77);

4 **WHEREAS**, on August 27, 2015, TriVascular filed its counterclaims one (Declaratory  
5 Judgment of Non-Infringement of the '575 Patent), two (Declaratory Judgment of Invalidity of the  
6 '575 Patent), three (Breach of Co-Investigator Agreements), four (Breach of Settlement Agreement),  
7 and five (Promissory Estoppel) against Samuels (Dkt. No. 78);

8 **WHEREAS** on September 14, 2015 Samuels filed his answer to TriVascular's  
9 counterclaims, denying each counterclaim (*i.e.*, Declaratory Judgment of Non-Infringement of the  
10 '575 Patent; Declaratory Judgment of Invalidity of the '575 Patent; Breach of Co-Investigator  
11 Agreements; Breach of Settlement Agreement; and Promissory Estoppel) (Dkt. No. 80);

12 **WHEREAS**, on December 17, 2015, this Court entered a final judgment of non-  
13 infringement of the '575 patent (Dkt. No. 98);

14 **WHEREAS**, on November 3, 2016, the Federal Circuit issued a judgment and order  
15 pursuant to Fed. Cir. R. 36 affirming this Court's finding of non-infringement of the '575 patent  
16 (Case 16-1490, Dkt. No. 48);

17 **WHEREAS**, on December 29, 2016, the Federal Circuit issued a mandate to this Court (Dkt.  
18 No. 111);

19 **WHEREAS**, TriVascular's counterclaims two through five remain pending before this  
20 Court;

21 **WHEREAS**, under Fed. R. Civ. P. 41(a)(1)(A)(ii) and 41(c), TriVascular may dismiss its  
22 counterclaims two through five without a court order by filing a stipulation of dismissal signed by all  
23 parties who have appeared;

24 **WHEREAS**, between January 5, 2017 and February 14, 2017, counsel for TriVascular and  
25 counsel for Samuels met and conferred regarding TriVascular's request that Samuels stipulate to  
26 dismissal of TriVascular's counterclaims two through five without prejudice;

27  
28

1           **WHEREAS**, in an effort to minimize the disputes between the parties and in the interests of  
2 conserving judicial and party resources, Samuels agreed on February 14, 2017 to TriVascular’s  
3 request to dismiss TriVascular’s counterclaims two through five without prejudice;

4           **WHEREAS**, on February 15, 2017, Samuels filed Plaintiff’s Objection to Reply Evidence  
5 Under Local Rule 7-3 in which he stated that “Samuels has now agreed to a dismissal without  
6 prejudice [of TriVascular’s counterclaims] in order to avoid future litigation and expense.” (Dkt.  
7 No. 134 at 4).

8           **ACCORDINGLY, IT IS HEREBY STIPULATED THAT:**

9           TriVascular’s counterclaims two through five may be dismissed without prejudice.

10  
11 DATED: March 1, 2017

Respectfully submitted,

12           /s/ James D. Petruzzi  
13 James D. Petruzzi (SBN 115175)  
14 THE PETRUZZI LAW FIRM  
4900 Woodway Dr., Suite 745  
Houston, Texas 77056  
15 Telephone: (713) 840-9993  
16 Facsimile: (713) 877-9100  
Jdpetruzzi@gmail.com

17  
18 MARTIN J. SIEGEL  
Appearing *Pro Hac Vice*  
19 Law Offices of Martin J. Siegel  
2222 Dunstan  
Houston, TX 77005  
20 (281) 772-4568  
21 martin@Siegelfirm.com

22           Attorneys for Plaintiff  
23 Dr. SHAUN L. W. SAMUELS

24           /s/ Lien K. Dang  
25 Lien K. Dang (Bar No. 254221)  
26 KIRKLAND & ELLIS LLP  
3330 Hillview Avenue  
Palo Alto, California 94304  
27 Telephone: (650) 859-7000  
28 Facsimile: (650) 859-7500  
lien.dang@kirkland.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

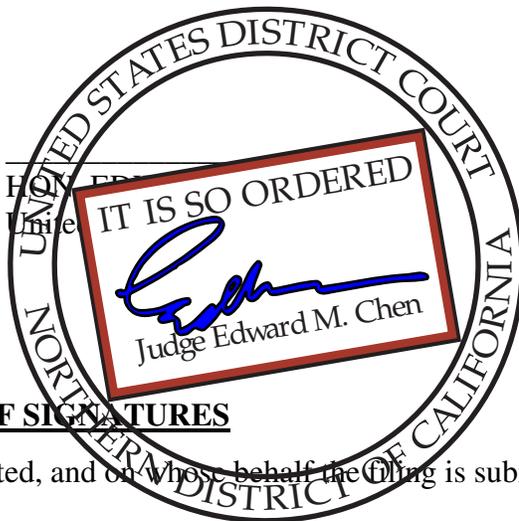
Natalie Flechsig (Bar No. 300515)  
KIRKLAND & ELLIS LLP  
555 California Street, 27th Floor  
San Francisco, CA 94104  
Telephone: (415) 439-4000  
Facsimile: (415) 439-5000  
natalie.flechsig@kirkland.com

Attorneys for Defendants  
TRIVASCULAR, INC., MICHAEL  
A.CHOBOTOV, PH.D., ROBERT G.  
WHIRLEY, PH.D., AND JOSEPH W.  
HUMPHREY, PH.D.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

~~**[PROPOSED]**~~ **ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED this 2nd day of March, 2017 that TriVascular's counterclaims two through five are dismissed without prejudice, pursuant to Fed. R. Civ. P. 41.



**ATTESTATION OF SIGNATURES**

I, Lien K. Dang, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: March 1, 2017

KIRKLAND & ELLIS LLP

/s/ Lien K. Dang  
Lien K. Dang

Attorney for Defendants  
TRIVASCULAR, INC., MICHAEL  
A.CHOBOTOV, PH.D., ROBERT G.  
WHIRLEY, PH.D., AND JOSEPH W.  
HUMPHREY, PH.D