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15 *Attorney for Defendants and Counter-claimants*
 16 **FRESENIUS MEDICAL CARE HOLDINGS,**
INC. AND FRESENIUS USA, INC.

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 19 **OAKLAND DIVISION**

20 BAXTER HEALTHCARE CORPORATION,
 21 BAXTER INTERNATIONAL INC., BAXTER
 HEALTHCARE SA, AND DEKA LIMITED
 PARTNERSHIP,

22 *Plaintiffs and Counter-defendants,*

23 vs.

24 FRESENIUS MEDICAL CARE HOLDINGS,
 25 INC., d/b/a FRESENIUS MEDICAL CARE
 26 NORTH AMERICA, and FRESENIUS USA,
 INC.,

27 *Defendants and Counter-claimants.*

Case No. C 07-01359 PJH (JL)

**STIPULATION OF REMOVAL OF
 LIBERTY CYCLER FUNCTIONALITY
 RELATING TO, AND DISMISSAL OF,
 U.S. PATENTS NO. 6,929,751; AND
 7,083,719**

1 WHEREAS, Plaintiffs have asserted in this action infringement of United States Patent
2 No. 6,929,751 entitled “Vented Medical Fluid Tip Protector Methods” (“the ’751 patent”) and
3 United States Patent No. 7,083,719 entitled “Medical System Including Vented Tip Protector”
4 (“the ’719 patent”) in Counts VIII and IX of Plaintiffs’ First Amended Complaint, respectively;

5 WHEREAS, the Parties previously stayed by joint stipulation Counts VIII and IX of
6 Plaintiffs’ First Amended Complaint and Defendants’ related Counterclaims and Affirmative
7 Defenses (Dkt. No. 234);

8 WHEREAS, Defendants have removed functionality from the Liberty™ peritoneal
9 dialysis cycler relating to the basis for Plaintiffs’ assertion of Counts VIII and IX, as reflected in
10 the deposition testimony of several Fresenius employees as well as several of Defendants’
11 discovery responses; and

12 WHEREAS Defendants state in their Supplemental Response to Baxter Healthcare
13 Corporation’s Amended First Set of Interrogatories (No. 3), dated April 1, 2009, that “Fresenius
14 changed the accused Liberty’s priming mechanism to operate in a similar manner to previous
15 Fresenius peritoneal dialysis cyclers.”

16 NOW, THEREFORE, the parties and their counsel of record stipulate as follows:

- 17 • Defendants agree that they will not make, use, sell, or offer for sale within the United
18 States or import into or export from the United States any peritoneal dialysis machine
19 using the “priming” functionality—or mere colorable variations of the functionality
20 removed from the Liberty™ peritoneal dialysis cycler—as claimed in U.S. Patent No.
21 6,929,751 until after the expiration of U.S. Patent No. 6,929,751, or until after a
22 declaration that the previously asserted claims of the patent are invalid made by i) the
23 United States Patent And Trademark Office or ii) a court of competent jurisdiction;
- 24 • Defendants agree that they will not make, use, sell, or offer for sale within the United
25 States or import into or export from the United States any peritoneal dialysis machine
26 using the “priming” functionality—or mere colorable variations of the functionality
27 removed from the Liberty™ peritoneal dialysis cycler—as claimed in U.S. Patent No.

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7,083,719 until after the expiration of U.S. Patent No. 7,083,719, or until after a declaration that the previously asserted claims of the patent are invalid made by i) the United States Patent And Trademark Office or ii) a court of competent jurisdiction;

- All claims, defenses and counterclaims relating to U.S. Patents No. 6,929,751; and 7,083,719 shall be dismissed, without prejudice from the instant litigation, with each party to bear its own costs and attorneys' fees as to such claims, defenses and counterclaims; and
- The parties agree that this stipulation is not an injunction but reserve all rights and remedies to enforce its terms.

IT IS SO ORDERED.

Dated: August 13, 2010

By: _____
HONORABLE _____ HAMILTON
United States



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August 12, 2010

By: /s/ David K. Callahan /s/

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August 12, 2010

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HOLDINGS, INC. AND FRESENIUS
USA, INC.**

1 **ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.**

2
3 I, David K. Callahan, declare as follows:

- 4 1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare
5 Corporation's, Baxter International Inc.'s, and Baxter Healthcare SA's legal
6 counsel in the above-captioned litigation.
- 7 2. Pursuant to the Northern District of California Electronic Filing Procedures and
8 General Order No. 45, I attest that Maureen K. Toohey, counsel for Plaintiff
9 DEKA Products Limited Partnership and Michael E. Florey, counsel for
10 Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc. concur in the
11 filing of this document and have granted me permission to electronically file this
12 document absent their actual signatures.

13
14 Dated: August 12, 2010

Respectfully submitted,

Kirkland & Ellis LLP

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16
17 By: /s David K. Callahan s/
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22 *BAXTER HEALTHCARE SA*