

SEALED BY ORDER
OF THE COURT

FILED
FEB 24 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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FEB 21 2014

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9 Attorneys for the United States of America

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA, EX REL.,)
14 TIMOTHY J. RYAN, M.D.,)
15 INDIVIDUALLY,)

16 Plaintiffs,)

17 v.)

18 THOMAS FOGARTY, M.D.; FOGARY)
19 ENGINEERING, INC.; CARDIOVASCULAR)
20 CONCEPTS, INC.; ANEURX; and)
21 MEDTRONIC, INC.; MEDTRONIC AVE,)
INC.; MEDTRONIC VASCULAR, INC.,)

22 Defendants.)

CASE NO. 13-05936 DMR

**UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION; ~~PROPOSED~~
ORDER TO UNSEAL**

FILED UNDER SEAL

23 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court
24 of its decision not to intervene in this action. Although the United States declines to intervene, it
25 respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in
26 the name of the United States; providing, however, that the "action may be dismissed only if the court
27 and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.*

28 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language,
U.S. NOTICE OF ELECTION TO DECLINE INTERVENTION
Case No. C 13-5936 DMR

1 the United States only has the right to a hearing when it objects to a settlement or dismissal of the action.
2 *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v.*
3 *Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

4 Therefore, the United States requests that, should either the relator or the defendants propose that
5 this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with
6 notice and an opportunity to be heard before ruling or granting its approval.
7

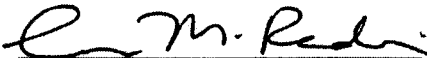
8 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
9 filed in this action be served upon the United States. The United States also requests that orders issued
10 by the Court be sent to the government's counsel. The United States reserves its rights to order any
11 deposition transcripts and to intervene in this action, for good cause, at a later date, and to seek dismissal
12 of the relator's action or claim. *See* 31 U.S.C. § 3730(c)(2), (3). The United States also requests that it
13 be served with all notices of appeal.
14

15 Finally, the United States requests that the Court unseal: (1) relator's Complaint; (2) the
16 summons, if any; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with
17 (Proposed) Order to Unseal; and (5) all other matters occurring in this action after the date the Court
18 enters the unsealing order.

19 Dated: February 21, 2014

Respectfully submitted,

MELINDA HAAG

20
21
22 By: 
23 Ann Marie Reding
24 Assistant United States Attorney
25 Attorneys for the United States of America
26
27
28

~~PROPOSED~~ ORDER TO UNSEAL

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), IT IS HEREBY ORDERED that:

1. The Complaint, the summons, the scheduling order, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. The relator shall serve the Complaint on defendants.

3. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

5. The parties shall serve all notices of appeal upon the United States.

6. All orders of this Court shall be sent to the United States.

7. Should the relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 2/24/14


DONNA M. RYU
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

U.S.A. *ex rel.*, *Timothy J. Ryan, M.D.*

Plaintiffs,

v.

FOGARTY ENGINEERING INC., ET AL,
Defendants.

UNDER SEAL

Case Number: CV13-05936-DMR

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

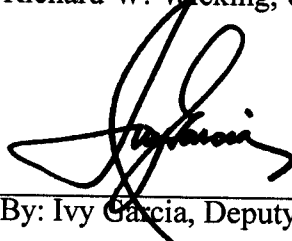
That on February 24, 2014, I SERVED true and correct copies of the Order to Unseal, by placing said copies in a postage paid envelopes addressed to the persons hereinafter listed, by depositing said envelopes in the U.S. Mail, or by placing said copies into an inter-office delivery receptacle located in the Clerk's office.

Daniel Ellsworth Wilcoxon
William Cooper Callaham
Martha Ann Taylor
Carolyn Ann Gyermek
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Rudy Nolen, Jr.
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1501 28th Street
Sacramento, CA 95816

Dated: February 24, 2014

Richard W. Wieking, Clerk



By: Ivy Garcia, Deputy Clerk