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 20 BOSTON SCIENTIFIC CORPORATION

21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT OF CALIFORNIA
 23 SAN JOSE DIVISION

24 DAVID LONGAKER,
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 26 Plaintiff,
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 28 vs.
 29 BOSTON SCIENTIFIC CORPORATION,
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 31 Defendant.

Case No. CV 11-01827 JF

**STIPULATION AND ~~{PROPOSED}~~
 ORDER ALLOWING DEFENDANT
 TO WITHDRAW PENDING MOTION
 TO DISMISS; FILE A NEW MOTION
 TO DISMISS; AND CONTINUE THE
 CASE MANAGEMENT
 CONFERENCE**

Date: June 17, 2011
 Time: 9:00 a.m.
 Div.: 3
 Judge: Hon. Jeremy Fogel
 Filed: March 9, 2011 (removed April
 14, 2011)
 Trial: None set

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Plaintiff David Longaker (“Plaintiff”) and Defendant Boston Scientific Corporation (“Defendant”), by and through their attorneys of record, hereby submit this Stipulation and [Proposed] Order requesting that the Court allow Defendant to withdraw the pending motion to dismiss, with the June 17, 2011 hearing date, and file a new motion to dismiss with a new hearing date and briefing schedule. The parties also request that the Court continue the July 8, 2011 Case Management Conference, pending the Court’s decision on Defendant’s motion to dismiss.

WHEREAS, on April 27, 2011, Defendant Boston Scientific filed a motion to dismiss the complaint in its entirety;

WHEREAS, the hearing on Defendant’s motion is currently set for Friday, June 17, 2011;

WHEREAS, in opposition to Defendant’s motion, Plaintiff filed a declaration in which he made certain factual allegations relative to a petition in bankruptcy previously unknown to Defendant when Defendant filed its motion;

WHEREAS, Defendant has conducted additional factual and legal research to ascertain whether, based on Plaintiff’s declaration, there are additional bases for Defendant to move to dismiss this action;

WHEREAS, based on factual and legal research conducted by Defendant, Defendant believes that it has additional bases to request dismissal of this action;

WHEREAS, rather than having hearing on two separate motions to dismiss, Defendant believes, and Plaintiff agrees, that it would be more efficient for Defendant to withdraw the current motion and file a new motion to assert the additional bases for dismissing the action, and to allow Plaintiff an opportunity to respond; and

WHEREAS, in light of impending new motion to dismiss, and for reasons of efficiency and judicial economy, the parties also request that the Court continue the July 8, 2011 Case Management Conference pending a decision by the Court on Defendant’s motion to dismiss.

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NOW THEREFORE, the parties agree and stipulate as follows:

- 1. That the June 17, 2011 hearing on Defendant’s motion be taken off calendar;
- 2. Defendant will file a new motion to dismiss to assert the additional bases it believes warrant dismissal of the action;
- 3. The parties request a new hearing date of **July 29, 2011**;
- 4. Based on the proposed July 29 hearing date, the parties request and agree to a briefing schedule as follows:
 - a. Defendant has until June 24, 2011 to file the new motion;
 - b. Plaintiff’s opposition, if any, shall be due no later than July 8;
 - c. Defendant’s reply, if any, shall be due no later than July 15, 2011.
- 5. The July 8, 2011 Case Management Conference be taken off calendar, pending the Court’s decision on Defendant’s motion to dismiss.

IT IS SO STIPULATED.

Dated: June 16, 2011

NELSON LAW GROUP
Robert S. Nelson
Danielle L. Tizol

By: /s/ Robert S. Nelson
Robert S. Nelson
Attorneys for Plaintiff
DAVID LONGAKER

Dated: June 16, 2011

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~~PROPOSED~~ ORDER

BASED ON THE STIPULATION OF THE PARTIES, THE COURT HEREBY
ORDERS AS FOLLOWS:

- 1. The June 17, 2011 hearing on Defendant’s motion to dismiss is hereby taken off calendar;
- 2. Defendant has until June 24, 2011 to file the new motion to assert the additional bases described in the parties’ stipulation;
- 3. Plaintiff’s opposition, if any, to the motion shall be filed no later than July 8;
- 4. Defendant’s reply, if any, shall be filed no later than July 15, 2011;
- 5. The hearing on the motion to dismiss is set for July 29, 2011;
- 6. The July 8, 2011 Case Management Conference is taken off calendar, pending the Court’s decision on Defendant’s motion to dismiss.

IT IS SO ORDERED.

Dated: 6/17/2011



 HON. JEREMY FOGEL
 United States District Court Judge