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20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**  
22 **SOUTHERN DIVISION – SANTA ANA**

23 COLIBRI HEART VALVE LLC,  
24 Plaintiff,  
25 v.  
26 MEDTRONIC COREVAVLE LLC,  
27 Defendant.

Case No.: 8:20-cv-00847-DOC-JDE

**JOINT RULE 26(f) REPORT**

Hon. David O. Carter

Scheduling Conference: Sept. 14, 2020

Time: 8:30 A.M.

Courtroom: 9D

28

1 Plaintiff Colibri Heart Valve LLC (“Colibri”) and Defendant Medtronic  
2 CoreValve LLC (“Medtronic”) (collectively, “the parties”) respectfully submit the  
3 following joint report in advance of the Court’s scheduling conference in the above-  
4 referenced matter. The Parties conducted a Rule 26(f) conference on both July 27,  
5 2020 and August 28, 2020.

6 **I. SUMMARY OF THE CASE, CLAIMS, AND DEFENSES**

7 On May 4, 2020, Colibri filed a complaint against Medtronic alleging  
8 infringement of U.S. Patent Nos. 9,125,739 (“the ’739 patent”) and 8,900,294 (“the  
9 ’294 patent”) (Dkt. 1). The ’294 patent and the ’739 patent relate to artificial heart  
10 valves and the methods for using them. The accused products consist of Medtronic’s  
11 CoreValve™ product line, which are artificial heart valves and delivery systems that  
12 are guided through a patient’s artery to the heart, where the artificial valves are  
13 implanted to replace diseased or damaged valves. On June 12, 2020, Colibri filed a  
14 first amended complaint (“FAC”) (Dkt. 30). Plaintiff seeks relief in the form of  
15 damages for infringement of the ’739 and ’294 patents.

16 Medtronic has not yet answered the FAC. Medtronic filed a Motion to Dismiss  
17 the FAC that has been briefed and is set for hearing on September 14, 2020, the same  
18 day as the scheduling conference.

19 **II. SHORT SYNOPSIS OF THE PRINCIPAL ISSUES IN THIS CASE**

20 Medtronic’s Motion to Dismiss alleges that Colibri has failed to adequately  
21 plead indirect and willful infringement of the ’739 patent, and direct, indirect, and  
22 willful infringement of the ’294 patent. Colibri has opposed some, but not all of the  
23 grounds for dismissal during the course of briefing.

24 Subject to and without waiving their respective positions and arguments, the  
25 parties assert that some of the disputed issues may include, but are not limited to, the  
26 following: (i) whether Medtronic has infringed the ’739 and ’294 patents; (ii) whether  
27 the patents-in-suit are valid; (iii) whether Medtronic willfully infringes the patents-in-  
28 suit; (iv) the proper construction to be given to disputed claim terms; and (v) whether

1 Colibri is entitled to damages and, if so, the amount of those damages.

2 The foregoing synopsis is based on the parties' current information, additional  
3 issues may arise in the course of discovery.

4 **III. STATEMENT OF WHETHER PARTIES ARE LIKELY TO BE ADDED**  
5 **AND WHETHER PLEADINGS ARE LIKELY TO BE AMENDED**

6 Colibri does not at this time anticipate adding any additional parties. Whether  
7 the pleadings are likely to be amended is dependent on the Court's decision with  
8 respect to Medtronic's Motion to Dismiss.

9 Medtronic does not at this time anticipate adding any additional parties.

10 To the extent either Colibri or Medtronic desires to add additional claims or  
11 parties, the Court has ordered that motions for leave to join other parties or to amend  
12 pleadings be filed no later than 60 days after the Scheduling Order, and noticed for  
13 hearing no later than 90 days after the Scheduling Order.

14 **IV. ISSUES WHICH MAY BE DETERMINED BY MOTION AND LIST OF**  
15 **CURRENTLY CONTEMPLATED MOTIONS**

16 As discussed above, Medtronic filed a Motion to Dismiss the FAC that is still  
17 pending. The Motion addresses the issues of direct, indirect, and willful infringement  
18 of the '296 patent, as well as indirect and willful infringement of the '739 patent, and  
19 Medtronic has requested that Colibri's claims be dismissed with prejudice.

20 Depending on the Court's decision with respect to the Motion to Dismiss, the  
21 remaining issues in this case could be narrowed substantially.

22 Medtronic also intends to file petitions for *Inter Partes* Review of the asserted  
23 patents in early September. Upon submitting the IPRs to the Patent Trial and Appeal  
24 Board, Medtronic will then file a Motion to Stay this case pending the outcome of the  
25 IPRs. Colibri intends to oppose the Motion to Stay.

26 The parties believe that resolution of the case likely will be materially advanced  
27 by a claim construction order. The parties therefore request that the Court schedule a  
28 claim construction hearing and have proposed dates for the hearing as well as dates for

1 claim construction briefings below.

2 For one or both of the patents-in-suit, and depending on the outcome of  
3 Medtronic's pending Motion to Dismiss and the IPRs, the parties expect that they may  
4 file motions for summary judgment on the key issues of infringement, validity, willful  
5 infringement, and/or various damages issues. The parties also anticipate filing  
6 motions *in limine* and *Daubert* motions. The parties each respectively anticipate filing  
7 these motions after the case has substantially progressed, and most likely not until  
8 after the Court's claim construction decision.

9 **V. SUMMARY OF SETTLEMENT DISCUSSIONS TO DATE, AND THE**  
10 **PARTIES' RECOMMENDED SETTLEMENT PROCEDURE**

11 The parties had certain settlement discussions prior to the filing of the  
12 Complaint. The parties and their representatives are each sophisticated, with  
13 extensive experience negotiating resolutions to complex matters and expect that they  
14 will engage in settlement discussions as appropriate.

15 The parties also propose to engage in further settlement discussions pursuant to  
16 the local rules. At the discretion of the Court, and referring to the available settlement  
17 procedures identified in the Court's July 17<sup>th</sup> Order Setting Scheduling Conference  
18 (Dkt. 43 at 3), the parties agree to settlement procedure 3 using a private mediator.

19 The parties believe that to the extent a settlement procedure is ordered by this  
20 Court, a mediation would be more productive and likely to succeed if conducted,  
21 subject to the schedule of the mediator, following claim construction and prior to any  
22 hearing on summary judgment.

23 **VI. DISCOVERY PLAN<sup>1</sup>**

24 **A. Proposed Discovery Plan**

25 1. No changes need to be made to the form for disclosures under Fed. R.  
26

27 <sup>1</sup> Medtronic believes a discovery plan is not required at this time in light of its  
28 expected IPR filings and Motion to Stay pending resolution of the IPRs. Medtronic

1 Civ. P. 26(a). Initial disclosures will be exchanged by the parties ten days after the  
2 Court’s decision on Medtronic’s Motion to Dismiss.

3 2. While the parties agree that discovery should take place pursuant to the  
4 Federal Rules of Civil Procedure and the Local Rules, the parties also contemplate and  
5 agree to the following: (i) expert discovery will follow the conclusion of fact  
6 discovery, as set forth below; (ii) infringement and invalidity contentions are  
7 contemplated to occur, along with claim construction, per a proposed schedule set  
8 forth below; and (iii) the parties will meet and confer in good faith on a stipulation  
9 that would avoid or minimize the need for Requests for Admission (“RFAs”) for the  
10 sole purpose of authenticating or stipulating to the admissibility of documents.

11 3. The parties will prepare a stipulated protective order and order on  
12 electronically stored information (“ESI”) to be presented to the Court in due course.

13 4. The parties agree that privileged and attorney work product material  
14 drafted, created, and/or generated on or after December 5, 2019 need not be identified  
15 in a privilege log.

16 **VII. MANUAL FOR COMPLEX LITIGATION**

17 This case does not constitute complex litigation and there is no need to utilize  
18 the Manual for Complex Litigation.

19 **VIII. TRIAL ESTIMATE**

20 Colibri has demanded a jury trial on all issues so triable. The parties estimate  
21 four days for such a jury trial.

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28 therefore agrees to the discovery plan below only to the extent that the Court considers  
a discovery plan to be necessary at this time.

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