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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

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Robert B. DeTello
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MEDTRONIC SOFAMOR DANEK, INC.,)	
)	
Plaintiff,)	
v.)	Civil Action No. 01-2373 GV
)	
GARY KARLIN MICHELSON, MD, and)	
KARLIN TECHNOLOGY, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

**FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY
AND INJUNCTIVE RELIEF, AND SPECIFIC PERFORMANCE**

Plaintiff, Medtronic Sofamor Danek, Inc. ("Medtronic"), by and through its undersigned attorneys, upon personal knowledge as to itself, its own acts, its allegations as to the contents of documents, and, upon information and belief, as to all other matters, for its Complaint alleges:

NATURE OF THIS ACTION

1. This is an action to declare the intellectual property and contract rights of Medtronic under a license agreement entered into with Defendant Karlin Technology, Inc. ("KTI"), a separate purchase agreement entered into with Defendant Gary K. Michelson, MD ("Michelson"), and an assignment and guarantee executed by Michelson. The license agreement concerns threaded implants and threaded implants for use in spinal surgical or stabilization procedures, and instruments and methods related thereto. The purchase agreement concerns non-threaded implants and non-threaded implants for use in spinal surgical or stabilization procedures and instruments and methods related thereto.

2. Defendants KTI and Michelson have threatened to offer, and have represented that they offered, to other parties the technology owned by or licensed to Medtronic. Medtronic

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requests injunctive relief to protect the intellectual property to which it is entitled under the agreements and the assignment and guarantee from others, who have no right to it.

3. This action also seeks damages and specific performance from KTI and Michelson resulting from their breaches of the agreements and the assignment and guarantee; damages from Michelson on account of tortious interference with contract; and damages from Michelson and KTI resulting from intentional and/or negligent misrepresentation. Finally, Medtronic seeks declaratory relief that it has not engaged in any wrongful conduct with respect to KTI or Michelson including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition or any unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices, or unfair competition.

THE PARTIES

4. Plaintiff Medtronic, formerly known as Sofamor Danek Group, Inc., is an Indiana corporation having a principal place of business located at 1800 Pyramid Place, Memphis, Tennessee 38132. Medtronic is a medical technology company engaged in manufacturing and selling device-based medical therapies.

5. Defendant Michelson is an adult citizen of California residing at 438 Sherman Canal, Venice, California 90291.

6. Defendant KTI is a California Corporation with its principal place of business located at 4929 Premier Avenue, Lakewood, California 90712.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, in that the parties are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

8. The Court has personal jurisdiction over Michelson because Medtronic's claims arise out of and relate to Michelson's extensive contacts with this forum with respect to the agreements. The Court also has personal jurisdiction over Michelson because Michelson has had, and, continues to have, systematic and continuous contacts with this forum apart from those contacts related to the agreements.

9. The Court has personal jurisdiction over KTI because Medtronic's claims arise out of and relate to KTI's extensive contacts with this forum with respect to the agreements. The Court also has personal jurisdiction over KTI because KTI has had, and, continues to have, systematic and continuous contacts with this forum apart from those contacts related to the agreements.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

ALLEGATIONS OF FACT

The License Agreement

11. On or about December 31, 1993, Medtronic entered into a license agreement with KTI with respect to Michelson's threaded spinal implant technology ("License Agreement").

12. Under Section 2.1 of the License Agreement, Medtronic received, subject only to the limitations set forth in Section 2.3 of the License Agreement, the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology,"

including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments and methods related thereto which utilize the Technology.

13. Moreover, under Section 1.4 of the License Agreement Medtronic received the exclusive right to use and practice Technology which KTI may develop, acquire or license after the Effective Date of the License Agreement.

14. The scope of Medtronic's sole and exclusive license, and all other rights granted to Medtronic under the License Agreement, is, according to Section 2.3 of the License Agreement, limited only by a prior May 10, 1992 license agreement between KTI, Michelson and Spine-Tech, Inc. ("Prior Agreement").

15. "Technology" is defined in Section 1.4 of the License Agreement as:

1.4 Technology. Technology shall mean any United States and foreign patents and patent applications and future applications, including, without limitation, any amendment, continuation, division, reissue and reexamination thereof, and any know-how, trade secrets or confidential information, proprietary rights, processes, engineering/design/technical information and data pertaining to the Medical Device which KTI has heretofore developed, acquired or licensed as listed in Disclosure Schedule 3.2, or which KTI may develop, acquire or license after the Effective Date hereof, whether or not subject to the Prior Agreement.

(Emphasis added.)

16. "Medical Device" is defined in Section 1.2 of the License Agreement as:

1.2 Medical Device. Medical Device shall mean a threaded implant or threaded implants for use in spinal surgical or stabilization procedures and instruments and methods related thereto, which utilize the Technology and are Michelson's invention as disclosed in the patent and patent applications listed in Disclosure Schedule 3.2, whether claimed or not, or whether issued or not.

(Emphasis added.)

17. Under the License Agreement, the license granted to Medtronic included: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2, and the corresponding trade secrets, know-how, confidential information and other listed items, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to U.S. Patent No. 5,015,247 ("the '247 patent"); and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere, or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

18. Despite its obligations under the License Agreement, KTI has refused to license to Medtronic all of the Technology pertaining to the Medical Device to which Medtronic is entitled, and has denied and disputed Medtronic's right to all of such Technology.

19. Under Section 2.4 of the License Agreement, KTI further granted to Medtronic the option to purchase the Technology and the Medical Device.

20. Pursuant to a covenant-not-to-compete contained in Section 3.2 of the License Agreement, KTI is strictly prohibited from competing either directly or indirectly with the spinal implants, instruments, methods and procedures that are the subject of the License Agreement.

21. Despite its obligation not to compete with respect to the Technology that is the subject of the License Agreement, KTI has threatened to license or assign the subject Technology to other parties who have no rights to such Technology.

22. On or about January 11, 1994, Michelson executed an Assignment and Guarantee related to the License Agreement. Pursuant to the Assignment and Guarantee,

Michelson warrants, represents, and guarantees that any future Technology that Michelson, either directly or indirectly, develops, creates, acquires, possesses or obtains a license to after the Effective Date of the Agreement which pursuant to the Agreement is to be licensed or assigned to Danek [Medtronic] shall be promptly transferred and assigned (a) to KTI so that Danek can enjoy the full benefits of same under the Agreement, or (b) to Danek, if Danek shall have previously exercised its right to purchase the Technology and the Medical Device as permitted by the terms of the Agreement.

(Emphasis added.)

23. Despite his obligation to assign future Technology to KTI for the benefit of Medtronic (or to Medtronic if Medtronic had exercised its right to purchase the Technology and the Medical Device), Michelson has failed to assign such Technology to KTI for the benefit of Medtronic.

The Purchase Agreement

24. On January 11, 1994, Medtronic and Michelson entered a separate agreement for the acquisition by Medtronic of all of Michelson's technology and medical devices directed to non-threaded spinal implants and methods and instruments for implanting the same (the "Purchase Agreement") including all of Michelson's technology pertaining to the medical device developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement.

25. Under Section 2.2 of the Purchase Agreement, Michelson assigned to Medtronic, "all of his worldwide rights, title and interest in, under and to" his rights in the "Medical Device" and "Technology," as those terms are defined in the Purchase Agreement including all of Michelson's Technology pertaining to the Medical Device developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement.

26. "Medical Device" and "Technology" are defined in the Purchase Agreement as follows:

1.1 Medical Device. Medical Device shall mean a non-threaded implant or non-threaded implants for use in spinal surgical or stabilization procedures, and instruments and methods related thereto, which utilize the Technology and are Michelson's invention as disclosed in the patent applications listed on Michelson Schedules A and B, whether claimed or not, or whether issued or not.

1.3 Technology. Technology shall mean any United States and foreign patents and patent applications and future applications, including, without limitation, any amendment, continuation, division, reissue and reexamination thereof, and any know-how, trade secrets or confidential information, proprietary rights, processes, engineering/design/technical information and data pertaining to the Medical Device which Michelson has heretofore developed, acquired or possessed or which Michelson may develop, acquire or possess in the future after the Closing Date hereof.

(Emphasis added.)

27. Under Schedule B of the Purchase Agreement, "Medical Device" specifically includes, among other things:

Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the Closing Date hereof, as Michelson will update and provide to . . . [Medtronic] from time to time.

28. Under the Purchase Agreement, Medtronic is entitled to the assignment of all then-existing and future patents and patent applications, and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the non-threaded implants, instruments and methods, among other things, that are disclosed in the patents, filed patent applications, unfiled patent applications, and elsewhere, including any such items

developed, possessed, created, or acquired by Michelson after the Closing Date of the Purchase Agreement.

29. Despite his obligations under the Purchase Agreement, Michelson has refused to assign to Medtronic all of the Technology to which Medtronic is entitled, and has denied and disputed Medtronic's rights to such Technology.

30. Pursuant to a covenant-not-to-compete in Section 3.2 of the Purchase Agreement, Michelson is strictly prohibited from competing either directly or indirectly with Medtronic with respect to the Technology and the Medical Device and from impeding Medtronic's quiet enjoyment of the Technology and the Medical Device.

31. Despite his obligation not to compete with respect to the Technology that is the subject of the Purchase Agreement, Michelson has threatened to license or assign the subject Technology to other parties who have no right to such Technology.

COUNT I
Breach of Contract // Damages
(Against Defendant KTI)

32. Medtronic realleges and incorporates by reference Paragraphs 1 - 31 of this Complaint as if fully set forth herein.

33. Under Section 2.1 of the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

34. Medtronic's sole and exclusive license under the License Agreement is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

35. Under Section 2.4 of the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase the Technology and the Medical Device as defined in the License Agreement, including but not limited to certain patents and patent applications.

36. Despite Medtronic's rights under the License Agreement, KTI has breached the License Agreement by refusing to license to Medtronic: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. KTI has also breached the License Agreement by denying and disputing certain of Medtronic's rights under the License Agreement.

37. Medtronic has duly performed its obligations under the License Agreement.

38. KTI's breaches have interfered with Medtronic's business and have, among other things, prevented Medtronic from developing and marketing products in the areas in which its rights have been denied and disputed by KTI. As a result of KTI's breaches of the License Agreement, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

COUNT II
Breach of Contract // Specific Performance
(Against Defendant KTI)

39. Medtronic realleges and incorporates by reference Paragraphs 1 - 38 of this Complaint as if fully set forth herein.

40. Under the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

41. Medtronic's sole and exclusive license under the License Agreement is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

42. Under the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase all of the Technology and the Medical Device.

43. Despite Medtronic's rights under the License Agreement, KTI has refused to license to Medtronic all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and, (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop,

acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

44. Medtronic has duly performed its obligations under the License Agreement.

45. Medtronic is entitled to a decree of specific performance directing KTI to honor its obligations under the License Agreement, including its obligation to license to Medtronic all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. In addition, Medtronic requests a decree of specific performance directing KTI to cease breaches of the License Agreement and other tortious conduct.

COUNT III
Declaratory Relief Re: License Agreement
(Against Defendant KTI)

46. Medtronic realleges and incorporates by reference Paragraphs 1 - 45 of this Complaint as if fully set forth herein.

47. Under the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and

sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

48. Medtronic's sole and exclusive license under the License Agreement, is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

49. Under the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase the Technology and the Medical Device as defined in the License Agreement, including but not limited to certain patents and patent applications.

50. Despite Medtronic's rights under the License Agreement, KTI has refused to license to Medtronic (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

51. Medtronic has duly performed its obligations under the License Agreement.

52. Medtronic is entitled to a declaratory ruling that it is entitled to an exclusive license to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents

and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

COUNT IV
Specific Performance: Assignment and Guarantee
(Against Defendant Michelson)

53. Medtronic realleges and incorporates by reference Paragraphs 1 - 52 of this Complaint as if fully set forth herein.

54. Under the Assignment and Guarantee, Michelson has an obligation to assign all Technology as defined in the License Agreement (including any future Technology that Michelson either directly or indirectly, develops, creates, acquires, possesses, or obtains a license to after the Effective Date of the Agreement) to KTI for the benefit of Medtronic or to Medtronic after Medtronic's exercise of its option to purchase the Technology and the Medical Device.

55. Despite his obligation to assign all Technology, Michelson has refused to assign certain of the Technology to KTI, claiming that it is in KTI's and Michelson's best interest to keep title to such Technology in Michelson's name for his personal income tax benefit, and has failed and refused to assign to Medtronic all such future Technology and has disputed Medtronic's ownership of such future Technology, thereby depriving Medtronic of its rights to all such Technology.

56. Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Assignment and Guarantee and to promptly assign to KTI for the benefit of Medtronic, or directly to Medtronic upon its exercise of the purchase option in the License Agreement, all Technology that Michelson, directly or indirectly, has developed, created,

acquired, possessed or obtained a license to after the effective date of the License Agreement. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to cease the breaches of the Assignment and Guarantee and other tortious conduct described herein.

COUNT V
Breach of Contract // Damages
(Against Defendant Michelson)

57. Medtronic realleges and incorporates by reference Paragraphs 1 - 56 of this Complaint as if fully set forth herein.

58. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's Technology and Medical Devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B to the Purchase Agreement, as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor [Medtronic] from time to time.

59. Medtronic has duly performed its obligations under the Purchase Agreement.

60. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign all of his Technology pertaining to the Medical Device, and has disputed Medtronic's ownership of certain Technology including after-developed technology.

61. Michelson's breaches have interfered with Medtronic's business and have, among other things, prevented Medtronic from developing and marketing products in the areas in which its rights have been denied and disputed by Michelson. As a result of Michelson's breaches of the Purchase Agreement, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

COUNT VI
Specific Performance
(Against Defendant Michelson)

62. Medtronic realleges and incorporates by reference Paragraphs 1 - 61 of this Complaint as if fully set forth herein.

63. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;

- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

64. Medtronic has duly performed its obligations under the Purchase Agreement.

65. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign to Medtronic all of his Technology pertaining to the Medical Device, and has disputed Medtronic's ownership of certain Technology including after-developed Technology.

66. Medtronic is entitled to a decree of specific performance directing Michelson to assign to Medtronic exclusively Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

67. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Purchase Agreement and to cease the breaches of the Agreement and other tortious conduct described herein.

COUNT VII
Declaratory Relief Re: Purchase Agreement
(Against Defendant Michelson)

68. Medtronic realleges and incorporates by reference Paragraphs 1 - 67 of this Complaint as if fully set forth herein.

69. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

70. Medtronic has duly performed its obligations under the Purchase Agreement.

71. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign exclusively to Medtronic all of his Technology pertaining to the Medical Device.

72. Medtronic is entitled to a declaratory ruling that it is exclusively entitled to ownership of all of Michelson's Technology pertaining to the Medical Device as defined in the

Purchase Agreement, including all such Technology developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement.

COUNT VIII
Tortious Interference with Contract
Tenn. Code Ann. § 47-50-109
(Against Defendant Michelson)

73. Medtronic realleges and incorporates by reference Paragraphs 1 - 72 of this Complaint as if fully set forth herein.

74. The core aspect of Medtronic's business is the manufacturing and selling of device-based medical therapies.

75. Medtronic intended to use the Technology and the Medical Device, trade secrets, know-how, etc., to which Medtronic is entitled under the License Agreement with KTI to further its business concerning spinal implants. Michelson was aware of Medtronic's License Agreement with KTI and KTI's obligations thereunder.

76. Michelson, by intentionally and maliciously causing KTI to fail and refuse to assign all rights to the Medical Device and the Technology to Medtronic under the License Agreement, and by denying and disputing Medtronic's rights to the Medical Device and the Technology, has wrongfully interfered with Medtronic's contractual relationship with KTI and caused KTI to breach its contract with Medtronic.

77. Medtronic has duly performed its obligations under the License Agreement.

78. As a direct result of Michelson's wrongful interference with Medtronic's contractual relationships with KTI, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs. Under Tenn. Code Ann. § 47-50-109, Medtronic is entitled to treble damages.

COUNT IX
Intentional Misrepresentation
(Against Defendants KTI and Michelson)

79. Medtronic realleges and incorporates by reference Paragraphs 1 - 78 of this Complaint as if fully set forth herein.

80. In connection with the negotiation and execution of the License Agreement, the Assignment and Guarantee and the Purchase Agreement, KTI, Michelson and their agents represented to Medtronic that should the transactions be entered into as agreed, KTI and Michelson would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology.

81. The representations referred to in Paragraph 80, above, were false in that Michelson and KTI did not intend to assign all such Technology rights to Medtronic, but instead intended to withhold from Medtronic certain Technology rights, including after-developed technology, in order to attempt to extract further consideration from Medtronic in exchange for such withheld technology. Further, Michelson did not intend to assign all such Technology to KTI or Medtronic pursuant to the Assignment and Guarantee, but instead intended to continue to hold certain of such Technology in his own name for his personal tax benefit.

82. At the time that Michelson and KTI made the representations referred to in Paragraph 80, above, Michelson and KTI did not believe them to be true and intended to induce Medtronic to rely on said untrue representations.

83. In justifiable reliance on Michelson's and KTI's untrue representations, Medtronic entered into the License Agreement and Purchase Agreement, and invested substantial sums of money in the development, governmental approval and marketing of products in the field of the Technology. However, as a result of Michelson's and KTI's misrepresentations, Medtronic has

been inhibited from entering into development and marketing of products with respect to the wrongfully withheld Technology.

84. As a result of Medtronic's justifiable reliance on Michelson's and KTI's false representations, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

COUNT X
Negligent Misrepresentation
(Against Defendants KTI and Michelson)

85. Medtronic realleges and incorporates by reference Paragraphs 1 - 84 of this Complaint as if fully set forth herein.

86. In connection with the negotiation and execution of the License Agreement, the Assignment and Guarantee and the Purchase Agreement, KTI, Michelson and their agents represented to Medtronic that should the transactions be entered into as agreed, KTI and Michelson would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology.

87. The representations referred to in Paragraph 86, above were negligent in that Michelson and KTI did not use reasonable care in making said representations.

88. At the time that Michelson and KTI made the representations referred to in Paragraph 86, above, Michelson and KTI had no reasonable basis for believing them to be true. Medtronic relied on said untrue representations.

89. In justifiable reliance on Michelson's and KTI's negligent representations, Medtronic entered into the License Agreement and Purchase Agreement, and invested substantial sums of money in the development, governmental approval and marketing of products in the field of the Technology. However, as a result of Michelson's and KTI's negligent

representations, Medtronic has been inhibited from entering into development and marketing of products with respect to the wrongfully withheld Technology.

90. As a result of Medtronic's justifiable reliance on Michelson's and KTI's false representations, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

COUNT XI
Injunctive Relief
(Against Defendants KTI and Michelson)

91. Medtronic realleges and incorporates by reference Paragraphs 1 - 90 of this Complaint as if fully set forth herein.

92. Medtronic's license to the Medical Device and the Technology under the License Agreement is sole and exclusive, subject only to the Prior Agreement, and Medtronic has acquired all of the worldwide rights, title and interest in the Medical Device and the Technology under the Purchase Agreement. Nevertheless, during various negotiations and discussions relating to the License Agreement and the Purchase Agreement, Defendants KTI and Michelson have threatened to offer, and have represented that they have offered, to other parties the Technology owned by or licensed to Medtronic, in an attempt to extract from Medtronic further consideration for the Technology than is provided in the License Agreement and Purchase Agreement. In addition to violating Medtronic's intellectual property rights under the License Agreement and Purchase Agreement, Defendants' actions constitute violations of the non-competition agreements contained in such agreements.

93. Medtronic will suffer irreparable harm for which no adequate remedy at law exists if Defendants are not enjoined from licensing or assigning the Technology in violation of the License Agreement and the Purchase Agreement.

94. Accordingly, Medtronic requests an injunction, enjoining Defendants and all other persons in active concert or participation therewith from licensing or assigning to others the Technology to which Medtronic is entitled under the License Agreement and the Purchase Agreement, including all such Technology developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement or the Effective Date of the License Agreement, and such other and further relief as may be deemed just and proper.

COUNT XII
Request for Declaratory Relief
(Against Defendant Michelson)

95. Medtronic realleges and incorporates by reference Paragraphs 1 - 94 of this Complaint as if fully set forth herein.

96. On or about May 11, 2000 Michelson sent Medtronic a notice dated May 10, 2000, purporting to invoke the "best efforts" clause of the Purchase Agreement in an attempt to retake from Medtronic the rights sold by Michelson to Medtronic under the Purchase Agreement.

97. Medtronic is entitled to a declaratory judgment that Michelson's notice purporting to invoke the "best efforts" clause remedy of the Purchase Agreement is ineffective, null and void on the grounds that the prerequisites necessary to invoke the "best efforts" clause remedy have not been met and the notice is defective. Specifically, among other things: (i) Medtronic has complied with its obligations under the "best efforts" clause of the Purchase Agreement; (ii) Medtronic has not determined that obtaining regulatory approval and actively promoting the sale of the Medical Device consistent with Medtronic's standards, beyond such activities as Medtronic has already undertaken, would not be an unreasonable or unnecessary business, regulatory, legal, financial or commercial risk or commitment; (iii) Medtronic's Board of Directors has not determined not to utilize the technology in the United States or Europe; (iv) the

notice is defective in that Michelson failed to tender to Medtronic the funds required to exercise the option; and, (v) the notice is defective under Paragraph 12.6 of the Purchase Agreement.

COUNT XIII
Request for Declaratory Relief
(Against Defendants KTI and Michelson)

98. Medtronic realleges and incorporates by reference Paragraphs 1 - 97 of this Complaint as if fully set forth herein.

99. From time to time during negotiations and discussions pertaining to the License Agreement, the Purchase Agreement and other matters of discussion among the parties, KTI and Michelson have alleged that Medtronic has engaged in various improper acts, including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition, or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices. Medtronic denies all such allegations.

100. Medtronic is entitled to a declaratory judgment that it has not engaged in any wrongful conduct with respect to KTI and/or Michelson, including, without limitation, any breach of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiff Medtronic prays for a judgment:

A. Under Count I, a finding that Defendant KTI has breached the License Agreement and awarding to Medtronic such damages as are proven at trial and such other and further relief as may be deemed just and proper.

B. Under Count II, a decree of specific performance directing KTI to honor its obligations under the License Agreement, including its obligation to license to Medtronic exclusively, subject only to the Prior Agreement, all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. In addition, Medtronic requests a decree of specific performance directing KTI to cease breaches of the License Agreement and other tortious conduct.

C. Under Count III, a declaratory ruling that Medtronic is entitled to an exclusive license, subject only to the Prior Agreement, to: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic

under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and, (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

D. Under Count IV, a decree of specific performance directing Michelson to honor his obligations under the Assignment and Guarantee and to promptly assign to KTI for the benefit of Medtronic, or directly to Medtronic upon its exercise of the purchase option in the License Agreement, all Technology that Michelson, directly or indirectly, has developed, created, acquired, possessed or obtained a license to after the Effective Date of the License Agreement. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to cease the breaches of the Assignment and Guarantee and other tortious conduct described herein.

E. Under Count V, a finding that Michelson has breached the Purchase Agreement and awarding to Medtronic such damages as are proven at trial and such other and further relief as may be deemed just and proper.

F. Under Count VI, a decree of specific performance directing Michelson to assign to Medtronic exclusively Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;

- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

In addition, Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Purchase Agreement and to cease the breaches of the Agreement and other tortious conduct described herein.

G. Under Count VII, a declaratory ruling that Medtronic is exclusively entitled to ownership of all of Michelson's Technology pertaining to the Medical Device as defined in the Purchase Agreement, including all such Technology developed, acquired, or possessed by Michelson at any time after the Closing date of the Purchase Agreement.

H. Under Count VIII, a finding that Defendant Michelson tortiously interfered with Medtronic's contract with KTI and awarding Medtronic such damages as proven at trial and such other relief as may be deemed just and proper, including treble damages under Tenn. Code Ann. § 47-50-109.

I. Under Counts IX and X, a finding that Defendants intentionally and/or negligently misrepresented that they would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology and awarding Medtronic such damages as may be proven at trial and such other relief as may be deemed just and proper.

J. Under Count XI, an injunction, enjoining Defendants and all other persons in active concert or participation therewith from licensing or assigning to others any of the

Technology to which Medtronic is entitled under the License Agreement and the Purchase Agreement, including all such Technology developed, possessed, created, or acquired by Michelson after the Closing Date of the Purchase Agreement or the Effective Date of the License Agreement, and such other and further relief as may be deemed just and proper.

K. Under Count XII, a declaration that Michelson's notice purporting to invoke the "best efforts" clause of the Purchase Agreement is ineffective, null and void.

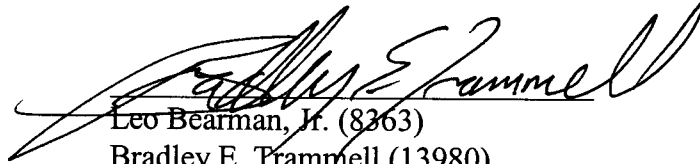
L. Under Count XIII, a declaration that Medtronic has not engaged in any wrongful conduct with respect to KTI and/or Michelson, including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition, or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices.

JURY DEMAND

Trial by jury is hereby demanded.

Respectfully submitted,

Dated: May 17, 2001



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