

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

STAT MEDICAL DEVICES INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
AMG MEDICAL, INC., LIBERTY	)	
MEDICAL SUPPLY, INC.,	)	
LIFESCAN, INC., and	)	<b>JURY TRIAL DEMANDED</b>
FACET TECHNOLOGIES LLC	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Stat Medical Devices Inc. (hereinafter “Plaintiff” or “Stat Medical”) by and through its attorneys, hereby demand a jury trial and allege, upon information and belief, in this Complaint against Defendants AMG Medical, Inc., Liberty Medical Supply, Inc., LifeScan, Inc. and Facet Technologies LLC, as follows:

**THE PARTIES**

1. Plaintiff Stat Medical is a corporation organized under the laws of the State of Florida having its principal offices at 2056 N.E. 153 St., North Miami Beach, Florida.
2. Upon information and belief, Defendant AMG Medical, Inc., (hereinafter “AMG Medical”) is a corporation organized under the laws of the State of Georgia, having a place of business at 3780 Mansell Road, Suite T-50 Alpharetta, Georgia 30022, and has appointed Kevin J. Loechl, 1150 Monarch Plaza, 3414 Peachtree Road, NE, Atlanta, Georgia and the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, as registered agents authorized to accept service of process on behalf of Defendant AMG Medical.

3. Upon information and belief, Defendant Liberty Medical Supply, Inc. (hereinafter “Liberty Medical”), is a corporation organized under the laws of the State of Florida having a place of business at 100 Parsons Pond Drive, Franklin Lakes, NJ and at 10045 S. Federal Highway, Port St. Lucie, Florida. Upon information and belief, Defendant Liberty Medical is affiliated with Medco Health Solutions Inc. Upon information and belief, Liberty Medical has appointed CT Corporation System, 1200 South Pine Island Road, Plantation, Florida as registered agent authorized to accept service of process on behalf of Defendant Liberty Medical.

4. Upon information and belief, Defendant LifeScan, Inc., (“LifeScan”) is a corporation organized under the laws of the State of California having offices at 1000 Gibraltar Drive, Milpitas, California. Upon information and belief, Defendant LifeScan is a wholly owned subsidiary of Johnson & Johnson.

5. Upon information and belief, Defendant Facet Technologies, LLC (“Facet Technologies”), is a corporation organized under the laws of the State of Georgia, having a place of business as 112 Town Park Drive, Suite 300, Kennesaw, Georgia, and has appointed Donald K. Jackson of 112 Town Park Drive, Suite 300, Kennesaw Georgia as registered agent authorized to accept service of process on behalf of Defendant Facet Technologies and has also appointed Business Filings Incorporated located at 108 West 13<sup>th</sup> Street, Wilmington DE as a registered agent authorized to accept service of process on behalf of Defendant Facet Technologies.

### **JURISDICTION AND VENUE**

6. This action arises under the Patent Laws of the United States of America, 35 U.S.C. §§ 101, *et seq.*

7. Subject matter jurisdiction of this Court is proper under 28 U.S.C. §§1331 and

1338.

8. Upon information and belief, each of the Defendants is subject to this Court's jurisdiction because each of the Defendants has, upon information and belief, transacted business in this District. Specifically, each Defendant either directly and/or through intermediaries, upon information and belief, ships, distributes, offers for sale, sells products in this District. Each Defendant thus has, upon information and belief, minimum contacts with this District, has purposefully availed itself of the privilege of conducting business in the District, regularly conducts and solicits business within this District, and has committed acts of patent infringement in this District.

9. Venue for the present action properly lies in this District under 28 U.S.C. §§ 1391(c) and 1400(a) and (b).

### **THE PATENTS-IN-SUIT**

10. United States Patent No. 7,947,057 (hereinafter referred to as the '057 patent), entitled "Lancet Having Adjustable Penetration Depth" was duly and legally issued on May 24, 2011, and a Certificate of Correction was issued on July 26, 2011. A true and correct copy of the '057 patent, with the Certificate of Correction is attached hereto as Exhibit 1.

11. United States Patent No. 6,022,366 (hereinafter referred to as the '366 patent), entitled "Lancet Having Adjustable Penetration Depth" was duly and legally issued on February 8, 2000. A true and correct copy of the '366 patent is attached hereto as Exhibit 2.

12. United States Patent No. 6,156,051 (hereinafter referred to as the '051 patent), entitled "Lancet Having Adjustable Penetration Depth" was duly and legally issued on December 5, 2000, and a Certificate of Correction was issued dated February 26, 2002. A true and correct copy of the '051 patent and Certificate of Correction is attached hereto as Exhibit 3.

13. United States Patent No. 7,311,718 (hereinafter referred to as the ‘718 patent), entitled “Lancet Having Adjustable Penetration Depth” was duly and legally issued on December 25, 2007. A true and correct copy of the ‘718 patent is attached hereto as Exhibit 4.

14. United States Patent No. 7,905,898 (hereinafter referred to as the ‘898 patent), entitled “Adjustable Lancet Device and Method” was duly and legally issued on March 15, 2011. A true and correct copy of the ‘898 patent is attached hereto as Exhibit 5.

15. Plaintiff Stat Medical is the assignee and owner of the entire right, title and interest in and to the ‘057 patent, the ‘366 patent, the ‘051 patent, the ‘718 patent and the ‘898 patent (hereinafter collectively, the “patents-in-suit”).

16. Plaintiff Stat Medical sells and distributes products in the United States that directly compete with the accused products.

17. All appropriate maintenance fees for the patents-in-suit have been properly paid to the United States Patent & Trademark Office (hereinafter referred to as “the USPTO”).

### **BACKGROUND**

18. Plaintiff Stat Medical develops, produces and distributes various products in the United States in the medical device field.

19. Plaintiff’s products include lancets, lancing devices, clinical safety lancets, heel blood sampling, pen needles. Stat Medical further manufactures products for third parties.

**Delica<sup>TM</sup> Device**

20. Defendant LifeScan makes, has made, uses, imports, sells and/or offers for sale a lancing device under the trade name OneTouch Delica<sup>TM</sup> (hereinafter “Delica<sup>TM</sup> device”) that, upon information and belief, infringes at least the ‘051 patent, the ‘366 patent and the ‘057 patent.

21. Upon information and belief, Defendant LifeScan has been on notice that its Delica<sup>TM</sup> device infringes one or more claims of the ‘051 patent and the ‘366 patent since July 19, 2010.

22. Upon information and belief, Plaintiff Stat Medical provided Defendant LifeScan with notice that its Delica<sup>TM</sup> device infringes the ‘051 patent and the ‘366 patent on or about July 19, 2010, during a conversation between the principal of Stat Medical and Mr. David Harris, an employee of LifeScan.

23. Upon information and belief, following the July 19, 2010 conversation, Plaintiff Stat Medical sent an email on or about July 22, 2010, to Mr. Harris again specifically identifying LifeScan’s Delica<sup>TM</sup> device and pointing out certain claims of the ‘366 patent and the ‘051 patent believed to be infringed by the Delica<sup>TM</sup> device.

24. Upon information and belief, Mr. Harris of LifeScan and/or Johnson & Johnson responded to Plaintiff Stat Medical on or about July 23, 2010 by email indicating that he had forwarded Stat Medical’s July 22, 2010 email to his legal department for review and asking for the names of Stat Medical’s attorneys.

25. Defendant LifeScan’s attorneys did not respond to Plaintiff Stat Medical’s July 22, 2010 email until August 12, 2010, wherein LifeScan stated, without providing any

substantive reason, that it did not believe its Delica<sup>TM</sup> device infringed either the '366 or the '051 patents, and asked for additional claim charts.

26. Plaintiff Stat Medical responded on or about September 29, 2010 with detailed claim charts detailing the infringement of the LifeScan Delica<sup>TM</sup> device of the '366 patent and the '051 patent.

27. Defendant LifeScan confirmed receipt of the September 29, 2010 email, and responded in an email on or about November 9, 2010 that it needed yet additional time to study the matter.

28. Plaintiff Stat Medical followed up again with Defendant LifeScan by email dated on or about January 25, 2011.

29. In response, Defendant LifeScan stated that it had completed its review and that it sees no issue as to the patents and claims identified. Defendant LifeScan provided no substantive reason for its position.

30. On or about February 25, 2011, Plaintiff Stat Medical asked Defendant LifeScan to provide a basis for its position.

31. By email on or about February 25, 2011, Defendant LifeScan refused to provide such basis and further indicated that it had referred the issue to its indemnitor, Defendant Facet Technologies.

32. On or about March 10, 2011, Plaintiff Stat Medical again asked Defendant LifeScan for the reason behind its position and pointed out that Stat Medical was not obligated to deal directly with LifeScan's indemnitor.

33. On or about July 28, 2011, Plaintiff Stat Medical informed Defendant LifeScan of the '057 patent and gave LifeScan notice of infringement of the '057 patent by LifeScan's Delica™ device.

34. Defendant LifeScan responded by letter dated August 8, 2011, indicating that it had referred the claim to Defendant Facet Technologies, but again failing to provide any substantive reason for its position with respect to the '366 patent or the '051 patents.

35. Upon information and belief, Defendant Facet Technologies makes, has made, imports, offers for sale and sells the Delica™ device discussed above in Paragraphs 20-34, which infringes one or more claims of each of the '366 patent and the '051 patent and has had knowledge of the '051 patent and the '366 patent and infringement since July 19, 2010 or shortly thereafter.

36. Upon information and belief, Defendant Facet Technologies makes, has made, imports, uses, offers for sale and sells the Delica™ device discussed above in Paragraphs 20-34, which infringes one or more claims of the '057 patent and has had knowledge of the '057 patent and infringement since July 28, 2011 or shortly thereafter.

#### **Liberty Medical Device**

37. Defendant Liberty Medical makes, has made, imports, uses, sells and/or offers for sale a lancing device under the name Liberty® II Lancing Device (hereinafter "Liberty® device") that, upon information and belief, infringes at least one or more claims of each of the '718 patent, the '898 patent and the '057 patent.

38. Upon information and belief, Defendant Facet Technologies makes, has made, imports, uses, offers for sale and sells the device that is sold and offered for sale as the Liberty®

device which infringes one or more claims of the '718 patent, the '898 patent and the '057 patent.

39. Upon information and belief, Defendant Facet Technologies makes, has made, offers for sale, and/or sells the Liberty® device to an intermediary supplier named Specialty Medical Supplies, who, in turn, supplies the Liberty® device to Defendant Liberty Medical.

40. By letter dated December 14, 2010, Plaintiff Stat Medical placed Defendant Liberty Medical on notice that the Liberty® device it makes, has made, imports, uses, sells and/or offers to sell infringes one or more claims of the '718 patent.

41. Upon information and belief, Defendant Liberty Medical and/or Specialty Medical Supplies provided notice to Defendant Facet Technologies on or shortly after Stat Medical sent Liberty Medical the December 14, 2010 letter placing Defendant Liberty Medical on notice of the infringement by the Liberty® device of one or more claims of the '718 patent.

42. Upon information and belief, Defendant Facet Technologies has been on notice that the Liberty® device that it makes, has made, imports, uses, offers for sale and sells infringes one or more claims of the '718 patent since at least December 14, 2010 or shortly thereafter.

43. Plaintiff Stat Medical placed Defendant Liberty Medical and Specialty Medical Supplies on notice that its Liberty® device infringed one or more claims of the '898 patent by letter dated April 29, 2011.

44. Upon information and belief, Defendant Liberty Medical and/or its intermediary supplier Specialty Medical Supplies provided notice to Defendant Facet Technologies on April 29, 2011, or shortly thereafter, of the infringement by the Liberty® device of one or more claims of the '898 patent.



45. Upon information and belief, Defendant Facet Technologies has been on notice that the Liberty® device that it makes, has made, imports, offers for sale and sells, infringes one or more claims of the ‘898 patent since at least April 29, 2011 or shortly thereafter.

**ReliOn™ Device**

46. Upon information and belief, Defendant AMG Medical makes, has made, imports, uses, offers for sale and/or sells a device under the name ReliOn™ (hereinafter “ReliOn™ device”) which infringes one or more claims of the ‘718 patent, the ‘898 patent and the ‘057 patent.

47. Upon information and belief, Defendant Facet Technologies makes, has made, imports, uses, offers for sale and sells the ReliOn™ device which infringes one or more claims of each of the ‘718 patent, the ‘898 patent and the ‘057 patent.

48. By letter dated December 14, 2010, Plaintiff Stat Medical placed Defendant AMG Medical on notice that the ReliOn™ device, which Defendant AMG Medical makes, has made, imports, uses, offers for sale and/or sells, infringes one or more claims of the ‘718 patent.

49. By letter dated June 6, 2011, Plaintiff Stat Medical placed Defendant AMG Medical, on notice that its ReliOn™ device infringes one or more claims of the ‘898 patent and further instructed Defendant AMG Medical to cease and desist selling the ReliOn™ device in view of its infringement of the ‘718 and the ‘898 patents.

50. Upon information and belief, Defendant Facet Technologies makes, has made, imports, offers for sale and/or sells the ReliOn™ device to and/or for Defendant AMG Medical as well as to other distributors.

51. Upon information and belief, Defendant AMG Medical communicated with and placed Defendant Facet Technologies on notice of that the ReliOn<sup>TM</sup> device infringes one or more claims of the '718 patent on December 4, 2010, or shortly thereafter.

52. Upon information and belief, Defendant AMG Medical informed Defendant Facet Technologies that the ReliOn<sup>TM</sup> device that it makes, has made, imports, offers for sale and sells infringes one or more claims of the '898 patent, on June 6, 2011 or shortly thereafter.

53. Defendant AMG Medical and Defendant Facet, as well as the other have not ceased to make, have made, import, offer for sale and/or sell the ReliOn<sup>TM</sup> device.

#### **COUNT ONE – INFRINGEMENT OF THE '057 PATENT**

54. Plaintiff incorporates by reference the allegations of paragraphs 1 through 53 above, as if fully set forth herein.

#### **Defendant LifeScan**

55. Defendant LifeScan has infringed the '057 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and/or selling without authority its Delica<sup>TM</sup> products in the United States, and will continue to do so unless enjoined by this Court.

56. Plaintiff has notified Defendant LifeScan that its products infringe the '057 patent.

57. Despite such notification, Defendant LifeScan has refused to cease its infringing activities, and continues to infringe the '057 patent.

58. Plaintiff Stat Medical has been and continues to be injured by Defendant LifeScan's infringement of the '057 patent because, among other reasons, Defendant LifeScan's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

59. Defendant LifeScan's acts of infringement of the '057 patent were done with full knowledge of the '057 patent. Upon information and belief, Defendant LifeScan is deliberately, intentionally and willfully disregarding Plaintiff's patent rights. Thus Defendant LifeScan has willfully infringed, and continues to willfully infringe, the '057 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

#### **Defendant Liberty Medical**

60. Defendant Liberty Medical has infringed the '057 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and/or selling without authority its Liberty® devices in the United States and will continue to do so unless enjoined by this Court.

61. Plaintiff has been and continues to be injured by Defendant Liberty Medical's infringement of the '057 patent because, among other reasons, Defendant Liberty Medical's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

#### **Defendant AMG Medical**

62. Defendant AMG Medical has infringed the '057 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and/or selling without authority its ReliOn™ devices in the United States and will continue to do so unless enjoined by this Court.

63. Plaintiff has notified Defendant AMG Medical that its products infringe the '057 patent.

64. Despite such notification, Defendant AMG Medical has refused to cease its infringing activities, and continues to infringe the '057 patent.

65. Plaintiff has been and continues to be injured by Defendant AMG Medical's infringement of the '057 patent because, among other reasons, Defendant AMG Medical's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

66. Defendant AMG Medical's acts of infringement of the '057 patent were done with full knowledge of the '057 patent. Upon information and belief, Defendant AMG Medical has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus Defendant AMG Medical has willfully infringed, and continues to willfully infringe, the '057 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**Defendant Facet Technologies LLC**

67. Defendant Facet Technologies has infringed the '057 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and selling without authority at least the ReliOn<sup>TM</sup> device, the Liberty® device and the Delica<sup>TM</sup> device in the United States, and such other devices as will be discovered during discovery, and will continue to do so unless enjoined by this Court.

68. Defendant Facet Technologies has been notified that its products infringe the '057 patent.

69. Despite such notification, Defendant Facet Technologies has refused to cease its infringing activities, and continues to infringe the '057 patent.

70. Plaintiff has been and continues to be injured by Defendant Facet Technologies' infringement of the '057 patent because, among other reasons, Defendant Facet Technologies' actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

71. Defendant Facet Technologies' acts of infringement of the '057 patent were done with full knowledge of the '057 patent. Upon information and belief, Defendant Facet Technologies has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus Defendant Facet Technologies has willfully infringed, and continues to willfully infringe, the '057 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**COUNT TWO – INFRINGEMENT OF U.S. PATENT NO. 6,022,366**

72. Plaintiff incorporates by reference the allegations of paragraphs 1 through 71 above, as if fully set forth herein.

**Defendant LifeScan**

73. Defendant LifeScan has infringed the '366 patent in violation of 35 U.S.C. § 271, and is still doing so by having made, making, using, offering to sell and/or selling without authority its Delica<sup>TM</sup> device in the United States and will continue to do so unless enjoined by this Court.

74. Plaintiff has notified Defendant LifeScan that its Delica<sup>TM</sup> product infringes the '366 patent.

75. Despite such notification, Defendant LifeScan has refused to cease its infringing activities, and continues to infringe the '366 patent.

76. Plaintiff has been and continues to be injured by Defendant LifeScan's infringement of the '366 patent because, among other reasons, Defendant LifeScan's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

77. Defendant LifeScan's acts of infringement of the '366 patent were done with full knowledge of the '366 patent. Upon information and belief, Defendant LifeScan has deliberately, intentionally and willfully disregarded Plaintiff Stat Medical's patent rights. Thus Defendant LifeScan has willfully infringed, and continues to willfully infringe, the '366 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

#### **Defendant Facet Technologies LLC**

78. Defendant Facet Technologies has infringed the '366 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and selling without authority at least the Delica<sup>TM</sup> device, and such other devices as will be discovered during discovery, and will continue to do so unless enjoined by this Court.

79. Defendant Facet Technologies has been notified that one or more of its products infringe the '366 patent.

80. Despite such notification, Defendant Facet Technologies has refused to cease its infringing activities, and continues to infringe the '366 patent.

81. Plaintiff Stat Medical has been and continues to be injured by Defendant Facet Technologies' infringement of the '366 patent because, among other reasons, Defendant's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

82. Defendant Facet Technologies' acts of infringement of the '366 patent were done with full knowledge of the '366 patent. Upon information and belief, Defendant Facet

Technologies has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus Defendant Facet Technologies has willfully infringed, and continues to willfully infringe, the '366 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**COUNT THREE – INFRINGEMENT OF U.S. PATENT NO. 6,156,051**

83. Plaintiff incorporates by reference the allegations of paragraphs 1 through 82 above, as if fully set forth herein.

**Defendant LifeScan**

84. Defendant LifeScan has infringed the '051 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and/or selling without authority its Delica<sup>TM</sup> devices in the United States and will continue to do so unless enjoined by this Court.

85. Plaintiff has notified Defendant LifeScan that its products infringe the '051 patent.

86. Despite such notification, Defendant LifeScan has refused to cease its infringing activities, and continues to infringe the '051 patent.

87. Plaintiff Stat Medical has been and continues to be injured by Defendant LifeScan's infringement of the '051 patent because, among other reasons, Defendant LifeScan's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

88. Defendant LifeScan's acts of infringement of the '051 patent were done with full knowledge of the '051 patent. Upon information and belief, Defendant LifeScan has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus Defendant LifeScan has

willfully infringed, and continues to willfully infringe, the '051 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**Defendant Facet Technologies LLC**

89. Defendant Facet Technologies has infringed the '051 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and selling without authority at least the Delica<sup>TM</sup> device and such other devices as will be discovered during discovery, and will continue to do so unless enjoined by this Court.

90. Defendant Facet Technologies has been notified that one or more of its products infringe the '051 patent.

91. Despite such notification, Defendant Facet Technologies has refused to cease its infringing activities, and continues to infringe the '051 patent.

92. Plaintiff has been and continues to be injured by Defendant Facet Technologies' infringement of the '051 patent because, among other reasons, Defendant Facet Technologies' actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

93. Defendant Facet Technologies' acts of infringement of the '051 patent was done with full knowledge of the '051 patent. Upon information and belief, Defendant Facet Technologies has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus Defendant Facet Technologies has willfully infringed, and continues to willfully infringe, the '051 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.



**COUNT FOUR – INFRINGEMENT OF U.S. PATENT NO. 7,311,718**

94. Plaintiff incorporates by reference the allegations of paragraphs 1 through 93 above, as if fully set forth herein.

**Defendant Liberty Medical**

95. Defendant Liberty Medical has infringed the ‘718 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, importing, using, offering to sell and/or selling without authority its Liberty® device in the United States and will continue to do so unless enjoined by this Court.

96. Plaintiff has notified Defendant Liberty Medical that its products infringe the ‘718 patent.

97. Despite such notification, Defendant Liberty Medical has refused to cease its infringing activities, and continues to infringe the ‘718 patent.

98. Plaintiff has been and continues to be injured by Defendant Liberty Medical’s infringement of the ‘718 patent because, among other reasons, Defendant’s actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

99. Defendant Liberty Medical’s acts of infringement of the ‘718 patent were done with full knowledge of the ‘718 patent. Upon information and belief, Defendant Liberty Medical has deliberately, intentionally and willfully disregarded Plaintiff’s patent rights. Thus Defendant Liberty Medical has willfully infringed, and continues to willfully infringe, the ‘718 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**Defendant AMG Medical**

100. Defendant AMG Medical has infringed the ‘718 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, importing, offering to sell and/or selling without authority its ReliOn<sup>TM</sup> devices in the United States and will continue to do so unless enjoined by this Court.

101. Plaintiff has notified Defendant AMG Medical that its products infringe the ‘718 patent.

102. Despite such notification, Defendant AMG Medical has refused to cease its infringing activities, and continues to infringe the ‘718 patent.

103. Plaintiff has been and continues to be injured by Defendant AMG Medical’s infringement of the ‘718 patent because, among other reasons, Defendant AMG Medical’s actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

104. Defendant AMG Medical’s acts of infringement of the ‘718 patent were done with full knowledge of the ‘718 patent. Upon information and belief, Defendant AMG Medical has deliberately, intentionally and willfully disregarded Plaintiff’s patent rights. Thus, Defendant AMG Medical has willfully infringed, and continues to willfully infringe, the ‘718 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**Defendant Facet Technologies LLC**

105. Defendant Facet Technologies has infringed the ‘718 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, importing, using, offering to sell and selling without authority at least the Liberty® device and ReliOn<sup>TM</sup> device in the United States,

and such other devices as will be discovered during discovery, and will continue to do so unless enjoined by this Court.

106. Defendant Facet Technologies has been notified that its products infringe the ‘718 patent.

107. Despite such notification, Defendant Facet Technologies has refused to cease its infringing activities, and continues to infringe the ‘718 patent.

108. Plaintiff has been and continues to be injured by Defendant Facet Technologies’ infringement of the ‘718 patent because, among other reasons, Defendant Facet Technologies’ actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

109. Defendant Facet Technologies’ acts of infringement of the ‘718 patent were done with full knowledge of the ‘718 patent. Upon information and belief, Defendant Facet Technologies has deliberately, intentionally and willfully disregarded Plaintiff’s patent rights. Thus Defendant Facet Technologies has willfully infringed, and continues to willfully infringe, the ‘718 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**COUNT FIVE – INFRINGEMENT OF U.S. PATENT NO. 7,905,898**

110. Plaintiff incorporates by reference the allegations of paragraphs 1 through 109 above, as if fully set forth herein.

**Defendant Liberty Medical**

111. Defendant Liberty Medical has infringed the ‘898 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, importing, offering to sell and/or

selling without authority its Liberty® devices in the United States and will continue to do so unless enjoined by this Court.

112. Plaintiff has notified Defendant Liberty Medical that its products infringe the ‘898 patent.

113. Despite such notification, Defendant Liberty Medical has refused to cease its infringing activities, and continues to infringe the ‘898 patent.

114. Plaintiff has been and continues to be injured by Defendant Liberty Medical’s infringement of the ‘898 patent because, among other reasons, Defendant’s actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

115. Defendant Liberty Medical’s acts of infringement of the ‘898 patent were done with full knowledge of the ‘898 patent. Upon information and belief, Defendant Liberty Medical has deliberately, intentionally and willfully disregarded Plaintiff’s patent rights. Thus Defendant Liberty Medical has willfully infringed, and continues to willfully infringe, the ‘898 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

**Defendant AMG Medical**

116. Defendant AMG Medical has infringed the ‘898 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, importing, offering to sell and/or selling without authority its ReliOn™ devices in the United States and will continue to do so unless enjoined by this Court.

117. Plaintiff has notified Defendant AMG Medical that its products infringe the ‘898 patent.

118. Despite such notification, Defendant AMG Medical has refused to cease its infringing activities, and continues to infringe the '898 patent.

119. Plaintiff has been and continues to be injured by Defendant AMG Medical's infringement of the '898 patent because, among other reasons, Defendant's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

120. Defendant AMG Medical's acts of infringement of the '898 patent were done with full knowledge of the '898 patent. Upon information and belief, Defendant AMG Medical has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus, Defendant AMG Medical has willfully infringed, and continues to willfully infringe, the '898 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

#### **Defendant Facet Technologies LLC**

121. Defendant Facet Technologies has infringed the '898 patent in violation of 35 U.S.C. § 271, and is still doing so by making, having made, using, offering to sell and selling without authority at least the Liberty® device and ReliOn™ devices in the United States, and such other devices as will be discovered during discovery, and will continue to do so unless enjoined by this Court.

122. Defendant Facet Technologies has been notified that one or more of its products infringe the '898 patent.

123. Despite such notification, Defendant Facet Technologies has refused to cease its infringing activities, and continues to infringe the '898 patent.

124. Plaintiff has been and continues to be injured by Defendant Facet Technologies' infringement of the '898 patent because, among other reasons, Defendant's actions have resulted in the wrongful diversion of sales and profits from Plaintiff.

125. Defendant Facet Technologies' acts of infringement of the '898 patent were done with full knowledge of the '898 patent. Upon information and belief, Defendant has deliberately, intentionally and willfully disregarded Plaintiff's patent rights. Thus, Defendant Facet Technologies has willfully infringed, and continues to willfully infringe, the '898 patent, making this an exceptional case within the meaning of 35 U.S.C. § 285.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks a judgment against Defendants as follows:

- a. That Defendants have infringed one or more claims of one or more of the '057 patent, the '366 patent, the '051 patent, the '718 patent, and the '898 patent.
- b. Awarding Plaintiff damages for Defendants' infringement of the '057 patent, the '366 patent, the '051 patent, the '718 patent, and/or the '898 patent.
- c. That Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and inducing infringement of the '057 patent, the '366 patent, the '051 patent, the '718 patent, and the '898 patent, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the '057 patent, the '366 patent, the '051 patent, the '718

patent, and the '898 patent during the life of the claims of each patent, without the express written authority of Plaintiff.

- d. That Defendants' infringement of one or more of the patents-in-suit is and has been intentional and willful.
- e. Awarding Plaintiff treble damages pursuant to 35 U.S.C. § 284.
- f. Deeming this case exceptional pursuant to 35 U.S.C. § 285.
- g. Awarding Plaintiff its reasonable attorney's fees.
- h. Awarding Plaintiff its costs of suit, and an assessment of interest.
- i. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as to all issues so triable.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Adam W. Poff

Adam W. Poff (No. 3990)

Monté T. Squire (No. 4764)

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