

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MARILYN CLARK, Derivatively on
Behalf of MEDTRONIC, INC.,

Plaintiff,

v.

OMAR ISHRAK, GARY L. ELLIS,
CHRISTOPHER J. O'CONNELL,
MICHAEL J. COYLE, CAROL A.
SURFACE, RICHARD H. ANDERSON,
KENDALL J. POWELL, DENISE M.
O'LEARY, SHIRLEY ANN JACKSON,
ROBERT C. POZEN, JAMES T.
LENEHAN, MICHAEL O. LEAVITT,
PREETHA REDDY, SCOTT C.
DONNELLY, and VICTOR J. DZAU, and
DOES 1-5, Inclusive,

Defendants,

-and-

MEDTRONIC, INC., a Minnesota
corporation,

Nominal Defendant.

Court File No.

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT FOR
BREACH OF FIDUCIARY DUTY,
WASTE OF CORPORATE ASSETS,
AND UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

1. This is a verified shareholder derivative action by plaintiff on behalf of nominal defendant Medtronic, Inc. ("Medtronic" or the "Company") against certain of its officers and members of its Board of Directors (the "Board"). This action seeks to remedy defendants' violations of law, breaches of fiduciary duties, waste of corporate assets, and unjust enrichment that have caused substantial damages to the Company.

2. As detailed below, this action arises out of the Board's wrongful decision to force the Company to indemnify and reimburse Medtronic's officers and directors for millions of dollars of their personal tax liability in connection with an "inversion" merger that Medtronic entered into with an overseas entity, Covidien plc ("Covidien"). The multi-million dollar windfall tax reimbursement is wholly self-serving, counter to public policy, and harmful to Medtronic its shareholders.

3. An inversion is the relocation of a corporation's United States headquarters to another nation, usually to take advantage of another country's lower tax rates, looser or more accommodating corporate governance rules, and more flexible banking laws. In 2004, Congress passed the American Jobs Creation Act of 2004 to dissuade inversions and preserve U.S. corporate tax contributions. In particular, section 4985 of the U.S. Tax Code imposes an excise tax on the officers and directors of inverting corporations such as Medtronic. As a result, covered officers and directors are required to pay a 15% tax for their stock based compensation, including stock options, for shares held during the period beginning six months before and ending six months after the close of the inversion.

4. On June 15, 2014, Covidien and Medtronic announced they had entered into a definitive agreement pursuant to which Covidien would be acquired by Medtronic (the "Inversion"). Under the terms of the Inversion, Medtronic will acquire Covidien in a cash and stock transaction pursuant to which Medtronic stockholders would receive \$93.22 per Covidien share comprised of \$35.19 in cash and 0.956 of a newly issued share of the go-forward combined company. The Inversion will result in Medtronic no longer being incorporated in Minnesota and instead becoming Irish corporation in order to take advantage of Ireland's significantly lower corporate tax rates, and allow the Company to skirt its obligation to pay taxes in the United States.

5. The Inversion is deemed a taxable event for Medtronic stockholders, and each shareholder will be required to pay taxes on any gains. The Board, however, has agreed to reimburse the Individual Defendants (as defined herein) for certain of their personal tax liabilities in connection with the Inversion, specifically with respect to any excise taxes that may be imposed pursuant to section 4985 of the U.S. Tax Code. The reimbursements include grossing up the excise tax by making additional payments so that on a net after-tax basis, the Individual Defendants will be in the same position as if no such excise tax had been applied. As a result of the gross ups, the Company will be forced to pay approximately twice as much as the Individual Defendants would have paid if they covered their own personal tax liability. In particular, the Board is causing the Company to pay a personal tax bill, including gross ups, for the Company's Chief Executive Officer ("CEO") and Chairman of the Board, defendant Omar Ishrak ("Ishrak"), of up to **\$25 million**. The Board has also agreed to force the Company to pay

up to **\$38 million** to cover the remaining Individual Defendants' personal tax liabilities. In total, the self-serving tax reimbursements that were approved by the Board will cause the Company to waste approximately **\$63 million** to reimburse Medtronic's officers and directors for their personal tax liabilities. If the Individual Defendants paid their own tax liabilities, instead of forcing the Company to foot the bills with added gross ups, their total tax payments would amount to no more than \$32.7 million.

6. According to a spokesman for Medtronic, the Company claims that the tax reimbursements were implemented and approved by the Board so the Board would "not be discouraged from taking action that they believe is in the best interest of Medtronic and its shareholders." In effect, the Company has admitted that the Board is incapable of acting in Medtronic's best interests when their personal interests are at stake. By law, however, the Board is duty bound to *always* take actions that are in the best interests of the Company and its shareholders, whether or not those interests affect the officers and directors' personal tax liabilities. Therefore, the Board's reasoning is specious and serves as no cover for the Individual Defendants' self-dealing.

7. Plaintiff now brings this litigation on behalf of Medtronic to rectify the conduct of the self-serving individuals bearing ultimate responsibility for the Company's wasted assets—the directors and senior management.

JURISDICTION AND VENUE

8. Jurisdiction is conferred by 28 U.S.C. §1332. Complete diversity among the parties exists and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this Court in accordance with 28 U.S.C. §1391(a) because: (i) Medtronic maintains its principal place of business in this District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties owed to Medtronic, occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

Plaintiff

11. Plaintiff Marilyn Clark was a shareholder of Medtronic at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Medtronic shareholder. Plaintiff is a citizen of California.

Nominal Defendant

12. Nominal Defendant Medtronic is a Minnesota corporation with principal executive offices located at 710 Medtronic Parkway, Minneapolis, Minnesota. Accordingly, Medtronic is a citizen of Minnesota. Medtronic is a global leader in

medical technology focused on alleviating pain, restoring health, and extending life for millions of people around the world. Medtronic manufactures and sells device-based medical therapies and serves hospitals, physicians, clinicians, and patients in more than 140 countries worldwide with over 280 locations. Medtronic is comprised of three operating segments known as the Cardiac and Vascular Group, which includes Cardiac Rhythm Disease Management, CardioVascular, and Physio-Control; the Restorative Therapies Group, which includes Spinal, Neuromodulation, and Surgical Technologies; and the Diabetes Group.

Defendants

13. Defendant Ishrak is Medtronic's Chairman of the Board and CEO and has been since June 2011. Defendant Ishrak approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$24,750,381 for defendant Ishrak. Defendant Ishrak knowingly, recklessly, or with gross negligence: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Ishrak is a citizen of Minnesota.

14. Defendant Gary L. Ellis ("Ellis") is Medtronic's Chief Financial Officer and has been since May 2005 and an Executive Vice President and has been since April 2014.

Defendant Ellis was also Medtronic's Senior Vice President from May 2005 to April 2014; Vice President and Corporate Controller from August 1994 to May 2005; and Treasurer from October 1999 to May 2005. Defendant Ellis also held various positions at Medtronic from 1989 to August 1994. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$7,623,633 for defendant Ellis. Defendant Ellis knowingly, recklessly, or with gross negligence: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Ellis is a citizen of Minnesota.

15. Defendant Christopher J. O'Connell ("O'Connell") is Medtronic's Executive Vice President and President, Restorative Therapies Group and has been since August 2009. Defendant O'Connell was also Medtronic's Senior Vice President and President, Diabetes from October 2006 to August 2009; President of the Emergency Response Systems division from May 2005 to October 2006; Vice President of Sales and Marketing, Cardiac Rhythm Disease Management division from November 2001 to May 2005; and held various other positions with the Company starting in 1994. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$6,685,665 for defendant O'Connell.

Defendant O'Connell knowingly, recklessly, or with gross negligence: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant O'Connell is a citizen of Minnesota.

16. Defendant Michael J. Coyle ("Coyle") is Medtronic's Executive Vice President and President, Cardiac and Vascular Group and has been since December 2009. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$5,348,569 for defendant Coyle. Defendant Coyle knowingly, recklessly, or with gross negligence: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Coyle is a citizen of Minnesota.

17. Defendant Carol A. Surface ("Surface") is Medtronic's Senior Vice President and Chief Human Resources Officer and has been since September 2013. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$2,617,141 for defendant Surface. Defendant Surface knowingly, recklessly, or with gross negligence: (i) caused or allowed

the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Surface is a citizen of Minnesota.

18. Defendant Richard H. Anderson ("Anderson") is Medtronic's Lead Director and has been since at least June 2014 and a director and has been since October 2002. Defendant Anderson approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$793,809 for defendant Anderson. Defendant Anderson knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Anderson is a citizen of Georgia.

19. Defendant Kendall J. Powell ("Powell") is a Medtronic director and has been since June 2007. Defendant Powell was also Medtronic's Lead Director from August 2008 to at least July 2013. Defendant Powell approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$611,328 for defendant Powell. Defendant Powell knowingly or recklessly: (i) caused or

allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Powell is a citizen of Minnesota.

20. Defendant Denise M. O'Leary ("O'Leary") is a Medtronic director and has been since August 2000. Defendant O'Leary approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$739,780 for defendant O'Leary. Defendant O'Leary knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant O'Leary is a citizen of Colorado.

21. Defendant Shirley Ann Jackson ("Jackson") is a Medtronic director and has been since January 2002. Defendant Jackson approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$739,996 for defendant Jackson. Defendant Jackson knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the

Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Jackson is a citizen of New Jersey.

22. Defendant Robert C. Pozen ("Pozen") is a Medtronic director and has been since October 2004. Defendant Pozen approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$608,489 for defendant Pozen. Defendant Pozen knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Pozen is a citizen of Massachusetts.

23. Defendant James T. Lenehan ("Lenehan") is a Medtronic director and has been since January 2007. Defendant Lenehan approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$575,367 for defendant Lenehan. Defendant Lenehan knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing

by the Company's officers and/or directors. Defendant Lenehan is a citizen of Pennsylvania.

24. Defendant Michael O. Leavitt ("Leavitt") is a Medtronic director and has been since December 2011. Defendant Leavitt approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$172,779 for defendant Leavitt. Defendant Leavitt knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Leavitt is a citizen of Utah.

25. Defendant Preetha Reddy ("Reddy") is a Medtronic director and has been since September 2012. Defendant Reddy approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$629,530 for defendant Reddy. Defendant Reddy knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Reddy is a citizen of India.

26. Defendant Scott C. Donnelly ("Donnelly") is a Medtronic director and has been since July 2013. Defendant Donnelly approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$50,887 for defendant Donnelly. Defendant Donnelly knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Donnelly is a citizen of Rhode Island.

27. Defendant Victor J. Dzau ("Dzau") was a Medtronic director from February 2008 to at least June 2014. Defendant Dzau approved Medtronic's Inversion with Covidien on June 15, 2014. In connection with the Inversion, Medtronic has agreed to indemnify and reimburse certain officers and directors for approximately \$63 million in taxes resulting from the stock-for-stock corporate merger, including approximately \$536,643 for defendant Dzau. Defendant Dzau knowingly or recklessly: (i) caused or allowed the Company to approve illicit and egregious tax reimbursements as part of the Inversion; (ii) agreed to accept illicit and egregious tax reimbursements as part of the Inversion; and (iii) failed to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors. Defendant Dzau is a citizen of North Carolina.

28. The defendants identified in ¶¶13-17 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶13, 18-27 are referred to herein as the "Director Defendants." Collectively, the defendants identified in ¶¶13-27 are referred to herein as the "Individual Defendants."

29. The true names and capacities of Does 1 through 5, inclusive, are presently not known to plaintiff, who therefore sues these defendants by such fictitious names. The estimated aggregate excise tax payment to be paid to these unknown five Medtronic executive officers is approximately \$10.5 million. Plaintiff will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by the Company as a result of defendants' wanton and illegal conduct.

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

30. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owes Medtronic and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and was and is required to use their utmost ability to control and manage Medtronic in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Medtronic and not in furtherance of their personal interest or benefit. By virtue of such duties, the officers and directors of Medtronic were required to, among other things:

(a) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(b) exercise good faith to ensure that the Company was operated in a diligent, honest, and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

(c) remain informed as to how Medtronic conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices as necessary to comply with applicable laws.

31. To diligently comply with these duties, neither the officers nor the directors may take any action that:

(a) adversely affects the value provided to the corporation's shareholders;

(b) will otherwise adversely affect their duty to secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or

(c) will provide the officers and/or directors with preferential treatment at the expense of, or separate from, the public shareholders.

32. In accordance with their duties of loyalty, the Individual Defendants, as officers and/or directors of Medtronic, are obligated under Minnesota law to refrain from:

(a) participating in any transaction where the officers or directors' loyalties are divided;

(b) participating in any transaction where the officers or directors receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or

(c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

33. Defendants, separately and together, in connection with the Inversion, are knowingly or recklessly violating their fiduciary duties and aiding and abetting such breaches, including their duties of loyalty, good faith, and independence owed to Medtronic. Certain of the defendants stand on both sides of the transaction, are engaging in self-dealing, are obtaining for themselves personal benefits, including personal financial benefits at the expense of Medtronic. As a result of the Individual Defendants' self-dealing and divided loyalties, Medtronic has suffered significant harm.

34. Because the Individual Defendants are knowingly or recklessly breaching their duties of loyalty, good faith, and independence in connection with the tax reimbursements they secured for themselves in connection with the Inversion, the burden of proving the inherent or entire fairness of the tax reimbursements, including all aspects of their negotiation, structure, and terms, is placed upon defendants as a matter of law.

Breaches of Duties

35. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of

Medtronic, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

36. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Medtronic, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage the Company has already incurred, Medtronic has expended, and will continue to expend, significant sums of money.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

37. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

38. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants awarded themselves millions of dollars in tax reimbursements, thus unjustly enriching themselves and wasting corporate assets.

39. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the

Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment.

40. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to unjustly pay millions of dollars in taxes owed by the Individual Defendants. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

41. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

BACKGROUND OF THE INVERSION

42. An inversion is the relocation of a corporation's United States headquarters to another nation, usually while retaining its material operations in the United States. The change in legal residence from the United States to another country allows the company to take advantage of certain laws in that country. Typical advantages that draw U.S. companies to re-incorporate in another country include lower tax rates, looser or more accommodating corporate governance rules, and more flexible banking laws. Although

inversions are legal, in recent years they have become significant public policy issues because of the substantial United States tax revenues that are often lost.

43. In 1998, the U.S. Internal Revenue Code added section 367, which requires shareholders to recognize a gain on the exchange of stock for tax purposes. This provision was added to the code as an "exit toll" with the intention of making inversions less palatable to U.S. corporations.

44. Then in 2004, Congress passed the American Jobs Creation Act of 2004 to further dissuade inversions and preserve United States corporate tax contributions. In particular, section 4985 of the U.S. Tax Code imposes an excise tax on the officers and directors of inverting corporations such as Medtronic. As a result, covered officers and directors are required to pay a 15% tax on their stock based compensation, including stock options, for shares held during the period beginning six months before and ending six months after the close of the inversion.

THE BOARD AGREES TO FORCE MEDTRONIC TO REIMBURSE MILLIONS OF DOLLARS IN TAXES TO THE INDIVIDUAL DEFENDANTS

45. On June 15, 2014, Covidien and Medtronic announced they had entered into a definitive agreement pursuant to which Covidien would be acquired by Medtronic. The Inversion is essentially structured as a reverse merger wherein Medtronic will form a new Irish corporation, New Medtronic, in Covidien's home country of Ireland, and New Medtronic will purchase both Medtronic and Covidien. The surviving company will be renamed "Medtronic." Medtronic will acquire the Covidien shares in a cash and stock transaction in which Medtronic stockholders would receive \$93.22 per Covidien share

comprised of \$35.19 in cash and 0.956 of a newly issued share of the go-forward combined company. Following the Inversion, Medtronic stockholders will own 70% of the post-Inversion company, while Covidien stockholders will own the remaining 30% in addition to their cash compensation.

46. The Inversion will result in Medtronic ceasing to be a Minnesota corporation and becoming instead an Irish corporation in order to take advantage of Ireland's significantly lower corporate tax rates and to allow the Company to skirt its obligation to pay taxes in the United States. Indeed, analysts have estimated that Medtronic could avoid \$3.5 to \$4.2 billion in U.S. taxes as a result of the Inversion. The estimated savings are based on the taxes that Medtronic would incur if it used the \$14 billion in foreign profits it holds overseas in the United States. As a U.S. company, that would trigger taxes at a 25% to 30% rate. Those taxes will not be triggered as a foreign company. Further, as long as 20% of the new company's shares are owned by former Covidien stockholders, the post-Inversion company will pay Ireland's corporate tax rate of 12.5% instead of the United States' 35% maximum corporate rate, minus whatever tax breaks a company can find.

47. The Inversion is deemed a taxable event for Medtronic stockholders. Thus, the Inversion will force thousands of Medtronic stockholders to pay taxes on any gains simply to remain stockholders. Indeed, Medtronic stockholders who have held the stock for over a year could see federal taxes rates of 15% to 30% on their gain.

48. The Individual Defendants, however, have ensured that they will escape personal liability for any excise taxes that will be imposed pursuant to section 4985 of the

U.S. Tax Code. In particular, in connection with the 15% excise tax requirement of section 4985 of the U.S. Tax Code, Medtronic has announced that the Board is causing the Company to pay the excise tax bill for each of the Individual Defendants. As a result, Medtronic will be forced to pay approximately \$47 million to the Company's top five named executive officers, approximately \$10.5 million to five other unnamed executive officers (Does 1-5), and approximately \$5.5 million to the Company's non-employee members of the Board. In total, the self-serving tax reimbursements that were approved by the Board will cause the Company to expend approximately **\$63 million** to pay the taxes that are personally owed by the Individual Defendants. The following chart details the wrongful tax reimbursements that Medtronic will be forced to expend for each Individual Defendant:

Defendant Name	Tax Reimbursement
Executive Officers	
Omar Ishrak	\$24,750,381
Gary L. Ellis	\$7,623,633
Christopher J. O'Connell	\$6,685,665
Michael J. Coyle	\$5,348,569
Carol A. Surface	\$2,617,141
Unknown Executives 1-5	\$10,500,000
Non-Employee Directors	
Richard H. Anderson	\$793,809
Scott C. Donnelly	\$50,887
Victor J. Dzau	\$536,643
Shirley Ann Jackson	\$739,996
Michael O. Leavitt	\$172,779
James T. Lenehan	\$575,367
Denise M. O'Leary	\$739,780
Kendall J. Powell	\$611,328
Robert C. Pozen	\$608,489

Preetha Reddy	\$629,530
Total	\$62,983,997

49. To make matters worse, because the Company's payment of the excise tax included gross ups and is itself a taxable benefit, the \$63 million payout is approximately twice as much as the Individual Defendants would have had to pay if they paid their own tax liability from the Inversion. Indeed, in a statement filed by Medtronic on August 27, 2014 with the Securities and Exchange Commission, the Company disclosed that it will "gross up" the Individual Defendants' excise tax by making additional payments to the Company's covered officers and directors, "so that, on a net after-tax basis, they will be in the same position as if no such excise tax had been applied." If the Individual Defendants were to discharge their own tax liability the total excise tax payments would amount to no more than \$32.7 million, approximately half as much as the \$63 million the Company will be forced to pay.

DAMAGES TO MEDTRONIC

50. As a result of the Individual Defendants' self-serving actions, Medtronic will be forced to pay approximately \$63 million to cover taxes, including gross ups, owed by the Individual Defendants in connection with the Inversion.

51. The Individual Defendants wrongdoing also damaged Medtronic's reputation within the investing community. Medtronic's current and potential investors consider a company's ethics, integrity, and ability to implement rules, regulations, or internal controls necessary to ensure that the Company is adequately safeguarded from self-dealing officers and directors. Investors are less likely to invest in companies that

are known to place the monetary interests of their officers and directors over the interests of the company and its shareholders.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

52. Plaintiff brings this action derivatively in the right and for the benefit of Medtronic to redress injuries suffered, and to be suffered, by Medtronic as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment as well as the aiding and abetting thereof, by the Individual Defendants. Medtronic is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

53. Plaintiff will adequately and fairly represent the interests of Medtronic in enforcing and prosecuting its rights.

54. Plaintiff was a shareholder of Medtronic at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Medtronic shareholder.

55. The current Board of Medtronic consists of the following ten individuals: defendants Ishrak, Anderson, Powell, O'Leary, Jackson, Pozen, Lenehan, Leavitt, Reddy, and Donnelly. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

56. As an initial matter, because all of the current Director Defendants approved the illicit and egregious tax reimbursements, and each will receive payments from Medtronic as a result, the Director Defendants stand on both sides of the

compensation awards. Because they stand on both sides of the challenged payments and will receive personal financial benefits from those payments, the Director Defendants lack disinterest. The Individual Defendants will have the burden of proving the entire fairness of their compensation, and there is more than a reasonable doubt that the directors could impartially consider a demand. Accordingly, demand is excused. As detailed below, demand is also excused because the Director Defendants' conduct is not a valid exercise of business judgment and each Director Defendant faces a substantial likelihood of liability for their misconduct.

Demand Is Excused Because the Director Defendants' Conduct Is Not a Valid Exercise of Business Judgment

57. The Director Defendants are duty bound to act in furtherance of the best interests of Medtronic and not in furtherance of their personal interest or benefit. Defendants Ishrak, Anderson, Powell, O'Leary, Jackson, Pozen, Lenehan, Leavitt, Reddy, and Donnelly, constituting the Company's entire current Board, forced the Company to agree to pay approximately \$63 million to cover the Individual Defendants' tax liability in connection with the Inversion, over two times more than the amount the Individual Defendants would have had to pay if they accepted personal responsibility for their own tax payments individually. Defendants Ishrak, Anderson, Powell, O'Leary, Jackson, Pozen, Lenehan, Leavitt, Reddy, and Donnelly's conduct can in no way be considered a valid exercise of business judgment. Accordingly, demand on the Board is excused.

Demand Is Excused Because the Entire Board Faces a Substantial Likelihood of Liability for Their Misconduct

58. Defendants Ishrak, Anderson, Powell, O'Leary, Jackson, Pozen, Lenehan, Leavitt, Reddy, and Donnelly, all ten members of the current Board, are disqualified from fairly evaluating the derivative claims, let alone vigorously prosecuting them, because they are each responsible for damages suffered by Medtronic as a result of the \$63 million in tax reimbursements to be paid by Medtronic on behalf of the Individual Defendants, including millions of dollars in payments directly benefitting each current member of the Board. As part of the improper \$63 million tax reimbursement, defendant Ishrak has agreed to indemnify and reimburse himself for approximately \$24,750,381. As part of the improper \$63 million tax reimbursement, defendants Anderson, Powell, O'Leary, Jackson, Pozen, Lenehan, Leavitt, Reddy, and Donnelly have agreed to indemnify and reimburse themselves collectively, approximately \$5.5 million. Accordingly, all the Board members face a substantial likelihood of liability, further rendering demand upon them futile.

59. The acts complained of constitute violations of the fiduciary duties owed by Medtronic's officers and directors and these acts are incapable of ratification.

60. Medtronic has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for Medtronic any part of the damages Medtronic suffered and will suffer thereby.

61. Plaintiff has not made any demand on the other shareholders of Medtronic to institute this action since such demand would be a futile and useless act for at least the following reasons:

(a) Medtronic is a publicly held company with over 979 million shares outstanding and thousands of shareholders;

(b) making demand on such a number of shareholders would be impossible for plaintiff who has no way of finding out the names, addresses, or phone numbers of shareholders; and

(c) making demand on all shareholders would force plaintiff to incur excessive expenses, assuming all shareholders could be individually identified.

COUNT I

Against the Individual Defendants and Does 1-5 for Breach of Fiduciary Duty

62. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

63. As alleged in detail herein, the Individual Defendants and Does 1-5, by reason of their positions as officers and directors of Medtronic and because of their ability to control the business and corporate affairs of Medtronic, owed to Medtronic fiduciary obligations of due care and loyalty, and were and are required to use their utmost ability to control and manage Medtronic in a fair, just, honest, and equitable manner.

64. The Director Defendants breached their duty of loyalty by knowingly or recklessly approving and accepting illicit and egregious tax reimbursements as part of the

Inversion. The Director Defendants further breached their fiduciary duties by failing to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors.

65. The Officer Defendants and Does 1-5 breached their duty of loyalty by knowingly, recklessly, or with gross negligence accepting illicit and egregious tax reimbursements as part of the Inversion. The Officer Defendants and Does 1-5 further breached their fiduciary duties by failing to implement adequate internal controls to prevent self-dealing by the Company's officers and/or directors.

66. As a direct and proximate result of the Individual Defendants' and Does 1-5's breaches of their fiduciary obligations, Medtronic has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

COUNT II

Against the Individual Defendants and Does 1-5 for Waste of Corporate Assets

67. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

68. By their wrongful acts and omissions, the Individual Defendants and Does 1-5 caused or allowed the Company to waste millions of dollars to pay illicit and egregious tax reimbursements as detailed herein.

69. As a result of the waste of corporate assets, the Individual Defendants and Does 1-5 are liable to the Company.

COUNT III

Against the Individual Defendants and Does 1-5 for Unjust Enrichment

70. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

71. By their wrongful acts and omissions, the Individual Defendants and Does 1-5 were unjustly enriched at the expense of and to the detriment of Medtronic. The Individual Defendants and Does 1-5 were unjustly enriched as a result of the improper tax reimbursements detailed herein.

72. Plaintiff, as a shareholder and representative of Medtronic, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging the tax reimbursements and all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Medtronic, demands judgment as follows:

A. Against the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breach of fiduciary duty, waste of corporate assets, unjust enrichment, and aiding and abetting breaches of fiduciary duties;

B. Directing Medtronic to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote, resolutions for

amendments to the Company's By-Laws or Articles of Incorporation, and taking such other action as may be necessary to place before shareholders for a vote of the following Corporate Governance Policies:

1. a proposal to strengthen the Company's controls over self-dealing;
2. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board; and

3. a provision to permit the shareholders of Medtronic to nominate at least three candidates for election to the Board;

C. Awarding to Medtronic restitution from the Individual Defendants, and each of them, and ordering disgorgement of all illicit tax reimbursements, profits, benefits, and other compensation obtained by the Individual Defendants;

D. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs and expenses; and

E. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: October 3, 2014

ZIMMERMAN REED, PLLP

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