

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Joseph Pagliolo, Debra Anderson, Robert Avery, Brian Bowen, Hannelore Brandner, Vicki Brotzel, Greg Cardoza, Bruce Cerwin, William Colby-Newton, James Craig, George Crunkleton, Thomas Davis, Tracy Davis, Daniel Dewar, Antonio Duarte, Robert Esselstein, Dale B. Evans, Dale M. Evans, Kim Farmer, Linda Gregerson, John Hayes, Michael Horton, Robert Hughes, Beverly Johnson, Craig Johnson, Monica Joynt, Patrick Kelley, Urania Lima, Stuart Lindenberger, Curt Lindstrom, Henry Luber, Lori Lynch, Frank Malenowski, Jr., Kenneth Malmstedt, Judy Mathiowetz, Theodore Melzer, Edward Milner, Jr., Kathleen Mischke, Thomas Morin, Robert Odland, Janis Olson, Timothy Owens, Roy Pendley, Eric Penn, Maurice Ranasinghe, Yvonne Rickabaugh, Lynn Robeck, John Anthony Saldana, Shahin Sarkissian, Sylvia Sieferman, Robert Thurston, Armando Torrez, Jeri Troiden, Frank Trojan, Theresa Vimr, Ted Wardein, Donald Wells, David White, Patricia Wilke, Jeanine Yates, James Yost, for and on behalf of themselves and other persons similarly situated,

Plaintiffs,

v.

Guidant Corporation, an Indiana Corporation, Guidant Endovascular Solutions, Inc., an Indiana Corporation, Guidant Sales Corporation, an Indiana Corporation, Advanced Cardiovascular Systems, Inc., a/k/a Guidant Vascular Intervention, a California Corporation, and Cardiac Pacemakers, Inc., a/ka/ Guidant Cardiac Rhythm Management, a Minnesota Corporation,

Defendants

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Case No. \_\_\_\_\_

**Collective Action Complaint**

**Jury Trial Demanded**

Plaintiffs named above, for and on behalf of themselves and other persons similarly situated (collectively referred to hereinafter as “Plaintiffs”), for their complaint against Guidant Corporation, Guidant Endovascular Solutions, Inc., Guidant Sales Corporation, Advanced Cardiovascular Solutions, Inc., a/k/a Guidant Vascular Intervention, and Cardiac Pacemakers, Inc. a/k/a Guidant Cardiac Rhythm Management (collectively “Guidant”), state and allege as follows:

### **Introduction**

1. This is an age discrimination case arising out of a mass termination that occurred between August 6 and August 10, 2004 (the “August 2004 terminations”). At that time, Guidant, a corporation headquartered in Indianapolis, Indiana, but having its major operations in St. Paul, Minnesota, San Jose, California, and Temecula, California, notified about 721 Guidant employees (450 of which were age 40 or older) that their services were terminated sixty days after notice, and that their last day of work was the day on which the notice was delivered. At the time, the total number of Guidant employees (according to public sources) was approximately 12,000, of which approximately 100 resided and worked in Indiana.

2. The named Plaintiffs and approximately 390 other employees ages 40 and older were informed in August 2004 that their positions had been eliminated. They later learned, however,

- *that many of their positions were not eliminated,*
- *that some of their positions had been filled even before their termination, and*
- *that a vastly disproportionate number of terminated employees were 40 or older.*

3. Guidant’s failure to produce information in the manner required by federal statutes and regulations rendered the disparate treatment of older employees extremely difficult

to ascertain; the process of recognition, in fact, took months of effort by one employee—Joseph Pagliolo. After months of investigation and manual entry of a huge amount of age data supplied to terminated employees by Guidant in conjunction with their terminations, Pagliolo discovered that Guidant had violated all standard norms associated with age discrimination. He learned, for example, that a worker over 40 was 1.75 times as likely to be terminated as a worker under 40, who was in turn only .58 times as likely to be terminated as an older worker. This means the younger worker's chance of termination was less than three-fifths that of a worker over 40, whereas the standard rule is that discrimination is presumed when the younger worker's chance of termination is less than *four*-fifths that of older workers. Pagliolo also discovered by use of a statistical software package that the imbalance between older and younger terminated workers in this case is such that there is only a 1% chance statistically that the selection of employees for termination was not a product of bias.

4. Plaintiffs have complied with the necessary administrative prerequisites to suit, including timely filings with the Equal Employment Opportunity Commission (“EEOC”) and cross-filings with relevant state human rights agencies. All such filings contained information from which Guidant was placed on notice that the claims were filed on behalf of all persons similarly situated, and that collective and class litigation was contemplated.

5. Plaintiffs seek relief under the federal Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et seq.* Plaintiffs also seek declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, relating to the enforceability of a purported release and waiver signed by most Plaintiffs at a time when they believed Guidant's representations that the August 2004 group termination was a bona fide reduction in force necessitated by genuine need, and carried out in compliance with applicable law.

**Parties and Jurisdiction**

6. **Minnesota Employees:** Each Plaintiff named below was employed through the Minnesota facility of Guidant Corporation and/or Guidant Sales Corporation for the number of years and in the job capacity shown opposite his or her name. Each was well qualified for his or her position, and performed his or her duties in a satisfactory and competent manner. Each such Plaintiff's date of birth and age at termination is shown. Each filed a timely class-wide charge of age discrimination with the EEOC, which was then timely cross-filed with the Minnesota Department of Human Rights. More than 60 days have passed since all such charges were filed.

<b>First Name</b>	<b>Last Name</b>	<b>Residence</b>	<b>Years of Service</b>	<b>Job Title</b>	<b>Birth Date</b>	<b>Age at Termination</b>
Debra	Anderson	North Oaks, Minnesota	15 years	Assistant, Logistics	May 17, 1951	53
Robert	Avery	Glenview, Illinois	17.5 years	Senior Field Clinical Representative	April 14, 1941	63
Vicki	Brotzel	Blaine, Minnesota	24 years	Clinical Data Asst.	September 5, 1950	54
Greg	Cardoza	San Rafael, California	4.5 years	Sales Rep	October 21, 1951	52
William	Colby-Newton	St. Paul, Minnesota	4.5 years	Intermediate Systems Analyst	January 27, 1957	47
George	Crunkleton	Aurora, Colorado	12 years	Account Manager II	February 5, 1956	48
Thomas	Davis	White Bear Lake, Minnesota	7 months	Software Engineer	May 19, 1949	55
Tracy	Davis	St. Paul, Minnesota	3 years	Animal Care Asst.	May 19, 1964	40
Dale B.	Evans	White Bear Twp, Minnesota	25 years	IS Operations Technician	July 8, 1949	55
John	Hayes	Oakdale, Minnesota	27 years	Custodian	May 30, 1946	58
Robert	Hughes	Fishers, Indiana	7 years	Sales Representative	March 31, 1950	54
Michael	Horton	Centennial, Colorado	26 years	Sales Representative	July 24, 1947	57
Beverly	Johnson	Arden Hills, Minnesota	4 months	Administrative Assistant	June 14, 1942	62

Craig	Johnson	Aurora, Illinois	4 years	Senior Sales Representative	January 17, 1947	57
Patrick	Kelley	Marine on St. Croix, Minnesota	24 years	Senior Mechanical Technician	August 8, 1952	52
Curtis	Lindstrom	Roseville, Minnesota	10 years	Senior Scientist	November 8, 1953	50
Lori	Lynch	Coon Rapids, Minnesota	24 years	Benefits Administrator	February 18, 1956	48
Frank	Malenowski Jr.	Blaine, Minnesota	28 years	Janitor	December 18, 1951	52
Kenneth	Malmstedt	Blaine, Minnesota	25 years	Janitor	July 17, 1956	48
Judy	Mathiowetz	Coon Rapids, Minnesota	16 years	Assembler	January 24, 1944	60
Theodore	Melzer	West St. Paul, Minnesota	6.5 years	Manufacturing Technician	February 16, 1961	43
Kathleen	Mischke	Circle Pines, Minnesota	5 years	Clinical Data Specialist	April 8, 1960	44
Thomas	Morin	N. Hudson, Wisconsin	18.5 years	Facilities Tech. III	September 29, 1956	48
Robert	Odland	Forest Lake, Minnesota	3 years	Senior Facilities Technician	March 13, 1962	42
Janis	Olson	Minneapolis, Minnesota	1.5 years	Senior Production Artist	May 30, 1956	48
Joseph	Pagliolo	Columbia Heights, Minnesota	3 years*	Advisor, Electronic Engineer	August 12, 1947	56
Maurice	Ranasinghe	Bloomington, Minnesota	30.5 years	Electronic Technician	January 24, 1951	53
Yvonne	Rickabaugh	Winston- Salem, North Carolina	15 years	Sales Representative	January 18, 1958	46
Lynn	Robeck	Blaine, Minnesota	28.5 years	Supplier Development	February 11, 1953	51
Sylvia	Sieferman	Roseville, Minnesota	4.5 years	Senior System Analyst	December 4, 1947	56
Robert	Thurston	Overland Park, Kansas	26 years	Senior Sales Rep.	July 28, 1949	55
Armando	Torrez	St. Paul, Minnesota	15 years	Janitor	September 12, 1960	43
Jeri	Troiden	Blaine, Minnesota	28 years	Manufacturing Training Supervisor	March 6, 1950	54

Frank	Trojan	Cincinnati, Ohio	6.5 years	CRM Senior Sales Rep.	May 12, 1946	58
Theresa	Vimr	Maplewood, Minnesota	24.5 years	System Analyst	June 28, 1959	45
David	White	Marble, Colorado	6 years	Manager, Leads Product Development	July 26, 1948	56
Patricia	Wilke	Aitkin, Minnesota	29 years	Manufacturing Supervisor	April 8, 1949	55
Jeanine	Yates	Arden Hills, Minnesota	5.5 years	Administrative Assistant	December 1, 1947	56
James	Yost	Merritt Island, Florida	8 years	Senior Test Systems Administrator	July 14, 1950	54

\* Plus six years from 1989 to 1996.

7. ***Santa Clara Employees:*** Each Plaintiff named below was employed through the Santa Clara, California, facility of Guidant Corporation and/or Guidant Sales Corporation for the number of years and in the job capacity shown opposite his or her name. Each was well qualified for his or her position, and performed his or her duties in a satisfactory and competent manner. Each such Plaintiff's date of birth and age at termination is shown. Each filed a timely class-wide charge of age discrimination with the EEOC, which was then timely cross-filed with the California Department of Fair Employment & Housing. More than 60 days have passed since all such charges were filed.

<b>First Name</b>	<b>Last Name</b>	<b>Residence</b>	<b>Years of Service</b>	<b>Job Title</b>	<b>Birth Date</b>	<b>Age at Termination</b>
Brian	Bowen	Livermore, California	15.5 years	Group Lead	January 29, 1958	46
James	Craig	San Jose, California	15 years	Supervisor, Equipment Dept.	November 24, 1954	49
Urania	Lima	San Jose, California	16 years	Technician	July 16, 1953	51
Edward	Milner, Jr.	Mountain View, California	7 years	Research & Development Manager	October 9, 1957	46
Timothy	Owens	Dublin, California	17 years	R&D Engineering Manager	September 23, 1950	54

Roy	Pendley	Capitola, California	15.5 years	Senior Engineer Technician	June 20, 1936	68
Eric	Penn	Santa Clara, California	16 years	Director, Research & Development	June 15, 1944	60
John Anthony	Saldana	San Jose, California	4.5 years	Senior Electrical / Mechanical Technician	May 19, 1956	48
Shahin	Sarkissian	San Jose, California	5 years	Principal Equipment Engineer	April 15, 1943	61
Ted	Wardein	Santa Cruz, California	15 years	Advanced Technician	December 12, 1951	52
Donald	Wells	Santa Cruz, California	6.5 years	Intermediate Technician	May 3, 1953	51

8. **Temecula Employees:** Each Plaintiff named below was employed through the Temecula, California, facility of Guidant Corporation and/or Guidant Sales Corporation for the number of years and in the job capacity shown opposite his or her name. Each was well qualified for his or her position, and performed his or her duties in a satisfactory and competent manner. Each such Plaintiff's date of birth and age at termination is shown. Each filed a timely class-wide charge of age discrimination with the EEOC, which was then timely cross-filed with the California Department of Fair Employment & Housing. More than 60 days have passed since all such charges were filed.

First Name	Last Name	Residence	Years of Service	Job Title	Birth Date	Age at Termination
Hannelore	Brandner	Escondido, California	17.5 years	Training Analyst	November 15, 1953	50
Bruce	Cerwin	Temecula, California	17 years	Sr. Regulatory Affairs Associate	June 22, 1945	59
Daniel	Dewar	Murrieta, California	20 years	Engineer, Research and Development	May 29, 1954	50

Antonio	Duarte	Temecula, California	11 years	Regulatory Compliance Auditor	January 26, 1951	53
Robert	Esselstein	Fallbrook, California	20.5 years	Facilities Manager	December 6, 1949	54
Dale M.	Evans	Temecula, California	5 years	Senior Systems Analyst	June 24, 1946	58
Kim	Farmer	Menifee, California	18 years	Software Quality Assurance Analyst	May 13, 1953	51
Linda	Gregerson	Kirkland, WA	18.5 years	Senior Administrative Assistant II	August 1, 1951	53
Monica	Joynt	San Diego, California	18.5 years	Manager of Recruiting (HR)	September 20, 1958	46
Stuart	Lindenberger	Redlands, California	11 years	Group Leader, Reliability Engineer	September 15, 1943	61
Henry	Luber	Temecula, California	11.5 years	Principal Engineer	March 24, 1948	56

9. Each person similarly situated to the above-named Plaintiffs who affirmatively opts into this action by filing a notice was formerly employed by Guidant in Minnesota or California. Each was well-qualified for the position or positions he or she held, and performed his or her duties in a satisfactory and competent manner. Nevertheless, Guidant terminated, forced to resign, or otherwise adversely affected the employment of each such person in whole or in part due to his or her age.

10. Defendant Guidant Corporation is an Indiana corporation with headquarters in Indianapolis, Indiana, where it employs approximately 100 individuals. Guidant Endovascular Solutions, Inc. is an Indiana corporation. Guidant Sales Corporation is an Indiana corporation, with locations throughout the country. Advanced Cardiovascular Systems, Inc., a/k/a Guidant Vascular Intervention, is a California corporation. Cardiac Pacemakers, Inc., a/k/a Guidant Cardiac Rhythm Management, is a Minnesota Corporation. For purposes of this Complaint, the

term “Guidant” is intended to cover all legal entities that employed one or more of the Plaintiffs herein at the time of their termination, including the entities above-named and any and all divisions of the above-named entities, including but not limited to Guidant Cardiac Surgery. Guidant has operating and manufacturing facilities in St. Paul, Minnesota, at which it employs approximately 3,000 individuals, and operating and manufacturing facilities in Santa Clara and Temecula, California, where it collectively employs approximately 4,000 individuals.

11. Guidant is an employer within the meaning of the ADEA, 29 U.S.C. § 621, *et seq.*

12. This action is brought under the ADEA and 29 U.S.C. § 216(b) on behalf of the Plaintiffs named above and all persons similarly situated who choose to opt in under procedures applicable to age discrimination claims, as designated by this Court. Declaratory relief is sought under 28 U.S.C. § 2201. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.

13. Venue of this action in the United States District Court for the District of Minnesota is proper pursuant to 28 U.S.C. § 1391(b) because Guidant’s largest single operations and manufacturing center is found here, a majority of Plaintiffs were employed and terminated here, and a substantial part of the events giving rise to the claims occurred here.

#### **ADMINISTRATIVE CHARGES AND PROCEEDINGS**

14. As previously alleged, Plaintiffs timely filed charges of age discrimination with the EEOC, each of which was timely cross-filed with the appropriate state agency. With few exceptions, these charges asserted (a) that Guidant was engaging in a pattern or practice of discrimination against the complainant and other similarly situated employees; (b) that the individual Plaintiff’s termination was believed to be part of a pattern or practice of age-based terminations associated with the August 2004 terminations; (c) that Guidant’s discrimination

against him or her was typical and representative of discrimination practice against other Guidant employees 40 years of age and older who were terminated in August 2004; and (d) that the Charging Party/Plaintiff and others similarly situated comprise a protected class of persons who have a cause of action against Guidant.

15. Each Plaintiff named in the caption of this case has consented to become a party Plaintiff in this action and a class representative as appropriate.

**Fact Allegations: Age Discrimination Claims**

16. At a time unknown to Plaintiffs, Guidant introduced “forced ranking” evaluations that required a minimum of 10% of employees in every evaluation cycle to be rated “Improvement Required,” *i.e.*, the lowest evaluation ranking. Plaintiff Pagliolo specifically inquired of the Guidant Human Resources Department as to whether the 2004 evaluations were the product of a “forced ranking” system; the department representative expressly denied that they were. Investigation conducted on behalf of Plaintiffs reveals that in fact forced ranking was employed in the 2003/2004 evaluations.

17. The express denials regarding forced ranking made to Plaintiff Pagliolo were false. For example:

- Plaintiff Bowen recalls that under Guidant’s focal point review policy, segments of the corporation would be reviewed at a specific point during the calendar year. In a mass meeting, Guidant made it known that it would strive to achieve a performance distribution of 20% Outstanding, 70% Valued, and 10% Improvement Required. During the review period slated for exempt personnel, Bowen was forced to rank one individual as “Improvement Required,” despite the fact that the individual should have been given a “Valued” ranking, because the committee had not achieved the standard distribution. Bowen resisted the ranking over two days of review with the committee, but eventually relented due to pressure.
- Plaintiff Milner, a manager, recalls that he and other managers were forced to rank employees, and had targets imposed on them: 20% Achiever (highest); 70% Contributor (middle); and 10% Improvement Required (lowest).

- Plaintiff Owens was required by his director and other management personnel to rank certain individuals as “Needs Improvement,” despite the fact that such individuals were equivalent to persons ranked at a higher level.
- Plaintiff Pagliolo’s manager told Pagliolo that all managers were being forced to put a certain percentage in the “Improvement Required” category, despite the company’s public position on forced ranking.
- Plaintiff Penn, a Director, recalls that Guidant practiced “Focal Reviews” in which all employees within defined employee categories were reviewed together once per year. Theoretically, performance was measured against objective criteria and categorized as exhibiting Outstanding, Valued, or Needs Improvement levels of performance aggregated over the prior twelve-month period. Managers of each employee category then convened in “Calibrations Meetings” at which the relative performance of all employees within a category was compared. At these meetings led by HR representatives, managers were required to determine which 20% of employees were “Outstanding, which 70% were “Valued,” and which 10% were “Needs Improvement.” When application of the objective criteria did not lead to the desired outcome, the managers were required to adjust the performance ratings of selected employees until the preset distribution percentages were achieved. Managers were guided on how to adjust the review of affected employees to support the new rating. If a calibration team submitted a non-compliant distribution for their groups, they were routinely directed by senior management to redo the calibration process, adjusting more ratings until the distribution fit the preset percentages for each category.
- Two of Plaintiff Rickabaugh’s managers freely admitted that they did not choose her ranking. One of the managers stated “I know this is not what you were expecting.” The other manager informed Rickabaugh that he was not allowed to give her the ranking he wanted because he was told that he did not know Rickabaugh like the other managers did. Both managers stated that they went to a meeting in which all of the managers discussed all of the sales representatives, and that rankings were chosen at that meeting.
- Plaintiff White, a manager, attended a presentation by a Human Resources associate, on the changes in the employee performance review process. The Human Resources associate’s PowerPoint presentation showed the distribution of how many individuals managers were ordered to place in each of the three new categories. White learned that management wanted more “Improvement Required” ratings, and it was a stated objective that managers were to identify 10% to receive “Improvement Required” ratings. White’s supervisor and the managers in the Leads Product Development Department became frustrated with trying to satisfy management’s expectations with implementing the forced ranking within their respective departments, and invited a Human Resources Vice President to a staff meeting to explain the implementation. The Vice President gave a lengthy overview, during which a department manager asked, “Wouldn’t it be a good idea to write all this down for us to follow?” The Vice President

responded to the effect that the process was still “fluid” and if they were to document it there would be many updates.

18. Introduction of the forced ranking system was a part of a pattern or practice of age discrimination against older employees at Guidant. Plaintiffs in this action and other similarly situated employees were subjected to this pattern or practice of age discrimination. As a part of this pattern or practice of age discrimination, Guidant began to target older employees for termination, taking steps that were designed to ensure poorer ratings, “raising the bar” for older workers, pre-hiring younger replacement employees, and targeting older Guidant employees for job elimination, transfer, and other steps designed to ensure low evaluation, resignation, or termination.

19. Plaintiffs reasonably believe the evidence will show that “Improvement Required” ratings were disproportionately given to older employees, that such ratings were not a valid measure of individual performance, and that persons with such ratings were included as a matter of course in the termination list for the August 2004 group terminations, enabling Guidant to fulfill its purpose of achieving and/or maintaining a younger workforce. As a result of the forced rankings, many older employees received “Improvement Required” ratings for the first time in their careers. Examples:

- Plaintiff Anderson, prior to 2004, had received ten “Going Beyond the Expected” Awards from Guidant, and a Guidant “Presidential Award of Excellence.” In 2004, she received an “Improvement Required” rating for the first time ever. Her work performance had not changed; only the review had changed. Although there were many positive notes in her file, none of them was included in her review. She had to ask for the positive points to be added to her review.
- Plaintiff Morin, prior to 2004, had received nine “Going Beyond the Expected” Awards from Guidant, and a “President’s Award for Excellence.” In 2004, Morin received an “Improvement Required” rating for the first time ever.
- Plaintiff Odland joined Guidant about three years before the August 2004 terminations. After his first year on the job, during which he took no sick leave or vacation, he received Guidant’s highest ranking on his performance review. But

in the spring of 2004, his review rating suddenly dropped to “Improvement Required,” despite his having improved his ability to deliver service to the company.

- Plaintiff Penn, a director, had a long history of strong performance reviews at Guidant and its predecessors. He received an “Improvement Required” rating for the first time in 2004, with no prior indication that his performance was in question. He attempted to get the supporting evidence on which the assessment was based and was unable to do so.
- Plaintiff White received an “Improvement Required” rating for the first time in 2004. However, White’s supervisor changed White’s “Improvement Required” rating to “Performer” status immediately prior to the supervisor’s departure from the Leads Product Development Department to a new position within manufacturing at Guidant.

20. The measures described above and others were taken by Guidant for the purpose of positioning older employees for a massive group termination designed to reduce the total Guidant work force by almost 10%.

21. The following examples are further evidence of the pattern or practice of discrimination against older workers at Guidant:

- Plaintiff Luber and others in his equipment group were repeatedly told by Guidant management that the average age of the group was too high.
- Plaintiff Anderson was told by her manager, “Now that you’ve turned 50, we have to raise the bar and you have to keep up.”
- Plaintiff Davis asked her supervisor why she was not being promoted, while several employees she trained were being promoted. In response, Davis’ supervisor told her that she was “getting on in years.”
- Plaintiff White’s supervisor stated during staff meetings that Guidant was vulnerable to age discrimination claims because of the forced ranking system that was intended to “weed out” people. During this period of forced rankings, Mr. White’s supervisor asked Mr. White on several occasions, during weekly one-on-one meetings, if he had retirement plans in place. It seemed odd to Mr. White that such questions were asked in the context of project-focused meetings. Additionally, during several Leads Product Development Department staff meetings, a fellow manager who had been with Guidant for many years and was generally understood to reflect the views of upper management, stated on several occasions that “people don’t grow old at Guidant.”

- Plaintiff Troiden’s supervisor said “Who in their right mind would hire a 59-year-old engineer?” The lowest performing engineer in Troiden’s group, who was younger, was not given a low ranking, a fact that the supervisor explained by saying that it would ruin the younger engineer’s career.
- An older employee in Plaintiff Davis’ department achieved more problem resolutions in one month than the rest of his group combined. The older employee was then nominated for employee of the month, but management decided to discontinue the employee of the month program that month. The program was resumed the following month.
- Plaintiff Rickabaugh witnessed that new hires, particularly those with less than one year and less than five years with Guidant, were recognized and applauded at the annual national sales meetings, while those who had been with Guidant longer were consistently overlooked. The new hires were generally younger than those with longer tenure.
- Plaintiff Wilke was asked by her supervisor when she was going to retire, was referred to as a “salty character,” was shown a video about putting up with older employees, and heard repeated references to the “brightest and best,” meaning younger employees. Wilke witnessed several instances in which younger employees got away with behaviors that older employees could not. Wilke also had a conversation with her former manager in the Spring of 2004, in which the former manager described an incident in which an older supervisor in Temecula was “put out to pasture.”
- Plaintiff Yates frequently heard that “no one grows old at Guidant.”
- Plaintiff Thurston’s supervisors told Thurston’s former coworkers that the reason Thurston was terminated was that he is too old, and shouldn’t be doing this anymore.
- Plaintiff Saladana regularly heard comments about the “brightest and best,” “young blood” and the “future of the company” in reference to younger employees.
- Plaintiff Odland, a senior facilities technician, was told by a manager that there were “too many senior level technicians” in the area where Odland served. The manager told Odland that all new hires were to be at the entry level “because they are young and they will work cheap.” Odland in fact prepared a training manual for the three younger employees (none of whom lost his job in the August 2004 terminations); all three were promoted to senior facilities technicians, and one in his early thirties was made lead.

22. Those responsible for selection of the persons subjected to the August 2004 group termination knew or should have known (a) that the process for selecting approximately 721

individuals for termination had not been properly tested or screened by an EEO compliance officer; (b) that the terminations (and the evaluations that gave rise to many of them) were the product of an almost entirely subjective process; and (c) that the terminated employees were disproportionately over the age of 40.

23. The August 2004 termination notices were accompanied by publicity generated by Guidant to the effect that the terminations were the product of a reduction in force necessitated by the reduced financial fortunes of the company. But many of the positions were in fact not eliminated, but instead were soon filled by younger, less qualified employees. The following examples reflect the fact that not only were jobs not eliminated, but Plaintiffs and other terminated employees were actively discouraged or prevented from reapplying for jobs for which they were well-suited and highly experienced:

- Plaintiff Anderson was replaced by a younger employee, who held Ms. Anderson's former position for approximately five or six months, and was in turn replaced by another younger employee.
- Although no one was given the same title as Plaintiff Avery, after his termination, other field clinical representatives were hired and/or transferred into the area in which Mr. Avery had worked.
- Plaintiff Bowen was informed at the time of his termination that the operations he had performed as a group lead were being terminated; in fact, those operations continued for approximately eight months after his termination. In May 2005, Bowen submitted his resume to Guidant in response to Guidant's online posting for an Equipment Engineer 27015. Mr. Bowen was a qualified candidate for this position, as he had held a similar title prior to becoming a group lead, and had intimate knowledge of Guidant's equipment and processes. Despite his qualifications for the position, Bowen never received a reply from Guidant.
- Plaintiff Brandner was replaced by a new hire. Ms. Brandner also recalls that older workers were not provided the opportunity to find alternative employment with Guidant after the group termination, but that such opportunities were provided to younger workers.
- Plaintiff Cerwin, after being terminated as a Senior Regulatory Affairs Associate, applied for a posted Guidant regulatory affairs position but was denied

employment. Regulatory work at Guidant, such as reporting to the FDA, is a necessary and legally required component of Guidant's business.

- Plaintiff Crunkleton, a Guidant salesman prior to the group termination, states that Guidant relocated a sales representative from Texas to Denver to take over Crunkleton's territory after the group termination. To the best of Plaintiffs' knowledge, formed after reasonable inquiry, the sales representative took over Mr. Crunkleton's position in May 2005.
- In Plaintiff Craig Johnson's sales region, five persons, believed to be under the age of 40 performed the same job as Mr. Johnson, but only Mr. Johnson was terminated in the group termination. After Mr. Johnson's layoff, his sales region was reorganized but was not cut back. To the best of Plaintiffs' knowledge, formed after reasonable inquiry, Guidant subsequently gave responsibility for Mr. Johnson's area to a younger sales representative.
- Approximately three months prior to Plaintiff Horton's forced early retirement, Guidant made three new hires and two transfers to the Denver sales region. At the time Mr. Horton was notified of the terminations, he met with the area director, and asked if, rather than retire, he could transfer into a lesser job such as field clinical engineer or field clinical representative. He was told that there was no position for him at Guidant. After Mr. Horton's layoff, however, Guidant made two additional hires in his sales area; the two new hires were approximately 32 and 37 years of age respectively.
- After the group termination, a younger engineer was given the work responsibilities that Plaintiff Luber had previously performed. Thereafter, Guidant advertised for positions in the manufacturing engineering area with an experience requirement of 0 to 5 years. Mr. Luber applied online for posted vacancies in May and July 2005 and, in each instance, received only an automated reply. Mr. Luber was never contacted by Guidant after he submitted his applications.
- At the time of the group termination, Guidant represented to Plaintiff Milner that he and others in his department were no longer needed because the Santa Clara plant would only be doing research in the future, not development, and that Mr. Milner's department was not needed because it was heavily involved in development. In fact, nearly half of Mr. Milner's department was working on a project called "Easystreet," a project that involved considerable process research. Mr. Milner was told that the Easystreet project was going to be scrapped. However, process development, the work done in Mr. Milner's department, continued for several months after the group termination. To the best of Plaintiffs' knowledge, formed after reasonable inquiry, Easystreet continues to be a viable project.
- During the last few months before his termination, Plaintiff Morin was instructed by management to train one of the younger technicians on how to calibrate

sensing equipment. Morin was led to believe that the purpose of such training was to provide him with backup. Shortly before Morin's termination, however, the younger technician was promoted to senior technician and has since taken over the calibrations.

- Plaintiff Lindemberger was replaced by a younger worker who is believed to be under 40 years of age.
- Plaintiff Pagliolo was replaced by a younger engineer. In September 2005, Mr. Pagliolo responded to a Guidant on-line posting and received an automated e-mail response stating that Guidant had received his application, but he has heard nothing further from Guidant.
- Despite Guidant's representations that Plaintiff Lindstrom's position was being eliminated, before, during, and after the group termination, Guidant was openly seeking and publicly advertising to fill positions with the same qualifications as Mr. Lindstrom, through college recruitment efforts, job fairs, print and online listings on the Guidant website.
- After his termination, Plaintiff Odland's role in facilities management was filled by a man approximately thirty years old. Odland has since been told by this individual that he has hired new people to replace the older facilities management employees who were terminated or (in at least one case) "managed out" in 2004.
- Despite Guidant's representations that Plaintiff Owens' position was being eliminated, his job as R & D Manager was reposted within months of Owens' termination.
- Approximately nine months prior to Plaintiff Rickabaugh's termination, a younger employee was moved into her sales area, and another younger employee was hired to assist him. Both employees are believed to be under the age of 40. At the time Plaintiff Rickabaugh was terminated, she was informed that she was being replaced by another worker, and that Guidant was laying off some people and repositioning others. Her replacement is believed to be under 40 years of age. Within a year, the replacement was removed from the territory, and another younger worker, also believed to be under 40 years of age (and who had previously been introduced as a clinical support person to customers in the sales area by Rickabaugh), was relocated back to the area to take Rickabaugh's former position.
- In early 2005, Guidant posted an opening for Principal Equipment Engineer, the job title formerly held by Plaintiff Sarkissian. Mr. Sarkissian applied for the position, but his application was never acknowledged by Guidant.
- Plaintiff Sieferman, in approximately October 2005, learned of 16 openings for the position of "Analyst, Information Systems," her former title. She applied for several of the positions, but received no response from Guidant. Sieferman also

discussed the open positions with her former group lead, by telephone and e-mail, asking whether the group lead would recommend her for one or more of the open positions. The group lead indicated that he would recommend her, but Sieferman never received any communication from the hiring manager to whom the group lead said he would make the recommendation.

- Plaintiff Thurston was replaced by a younger sales representative, who is believed to be under 40 years of age.
- Plaintiff White was replaced by a younger engineer in the Leads Product Development Department.
- Despite Guidant's representation that Plaintiff Wilke's position was being eliminated, Ms. Wilke was in fact replaced by a younger worker.

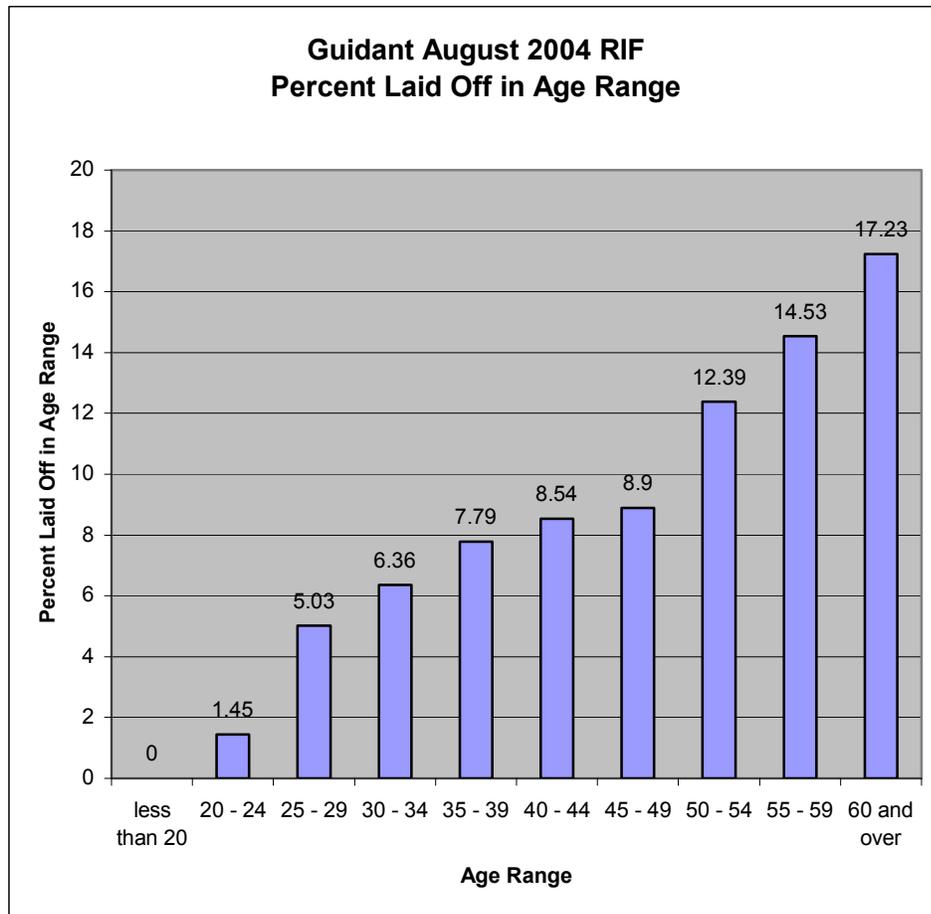
24. Guidant represented that the layoffs were being made "in order to offset current and projected decreased revenues and remain a profitable and competitive business." In fact, approximately two weeks before the August group termination, in a press release, Guidant reported record sales for the second quarter of 2004. In that press release, Guidant's CEO stated that "As to the future outlook, during 2004 and 2005, declines in coronary stent sales are projected to be offset by growth in revenue from the remainder of Guidant's product portfolio."

25. As more fully described below, careful analysis of the August 2004 group termination reveals that it failed in numerous and consistent ways to comply with regulatory and judicial guidelines that have been established as a *prima facie* threshold for a presumption of discrimination.

#### **Fact Allegations: Prima Facie Evidence of Age Discrimination**

26. Based on calculations performed following the August 2004 group termination, mathematical evidence of discrimination based on age is overwhelming. These calculations, which are derived entirely from the figures displayed in Exhibit 10, all of which were manually entered into a spreadsheet and then into a commercial statistical application, support the following conclusions:

- That 450 of the 721 employees targeted for termination in August 2004 were 40 years of age or older (62.4%), despite the fact that older workers represented just 48.6% of the Guidant workforce (if Exhibit 10 represents the entire Guidant workforce).
- That the terminations affected 10.5% of older workers and only 6% of workers under 40, and, as the following chart indicates, workers in higher age ranges were laid off at increasingly higher rates.



- That the rule-of-thumb “four-fifths” rule (source: *Uniform Guidelines on Employee Selection Procedures*) was clearly violated; the adverse impact ratio for older workers is 1.75 (an older worker is 1.75 times more likely to be terminated than younger worker), while the comparable impact ratio for younger workers is 0.57 (younger worker is only .57 times as likely to be terminated—under the four-fifths rule, this figure should not be less than .80).
- That the “chi-square” value in this case is 59.7881, which (a) is greater than the 6.635 standard, and (b) indicates that there is less than a 1% chance that these results would occur absent any form of bias.

- That the standard deviation statistic in this case is 7.732, meaning that the proportion of older workers selected for termination is well beyond two standard deviations above the proportion of all workers (older and younger combined) selected for termination.

**Fact Allegations: Declaratory Judgment Claim**

27. On various dates in early August 2004, approximately 721 Guidant employees were informed, either in person or by telephone, that their jobs with Guidant were being terminated. The majority of Plaintiffs also received a letter (**Exhibit 1**<sup>1</sup>) stating that Guidant had made the decision to eliminate a number of positions, and that their positions had been chosen for elimination. Terminated employees were advised that the date on which they received notice was their last day of work, though they would remain on the payroll for some 60 days until early October 2004. The termination letter further stated that the reduction in force was “expected to be permanent in nature.”

28. Attached to (and paginated as though they were part of) each termination letter were the following:

- a “Severance Agreement and Release of Claims,” marked “Informational Purposes Only – Do Not Sign” (**Exhibit 2** hereto);
- a “Notice of Scheduled Termination Date and Statement of Severance Pay and Benefits,” marked “Informational Purposes Only – Do Not Sign,” (**Exhibit 3**); and
- a “Severance Eligibility Disclosure” (**Exhibit 4**), which was a template containing no information about those who had or had not been selected for termination.

Plaintiffs and other terminated employees also received with the letter:

- a copy of “The Guidant Severance Pay Plan, 2004 Edition,” (**Exhibit 5**);
- a document called “Reduction in Force Impact to Benefits” (**Exhibit 6**); and

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<sup>1</sup> The name and other identifying information of the Plaintiff who received Exhibits 1 through 9, filed herewith, have been redacted. With few exceptions, each of the Plaintiffs herein received substantially identical documents to those marked as Exhibits 1 through 9.

- a document entitled “Questions and Answers about Severance Benefits” (**Exhibit 7**).

29. Because most employees who received termination notices were asked to leave the workplace immediately, terminated employees had no opportunity to discuss the terminations among themselves in the workplace or to learn the impact of the layoffs on other divisions of Guidant. Any such communication was forced outside the workplace and was left to the individual initiative of terminated employees, whose residences were widely scattered across California, Minnesota and other states.

30. In early October 2004, Plaintiffs and other terminated Guidant employees received a second package of materials from Guidant, including:

- a final “Severance Agreement and Release of Claims” (**Exhibit 8**), which purported to release all claims against Guidant, including claims for age discrimination under the ADEA;
- a final and personalized version of Exhibit 3, the “Notice of Scheduled Termination Date and Statement of Severance Pay and Benefits;”
- a “Severance Eligibility Disclosure” (which is a modified version of Exhibit 4) to which was attached a 184-page computer printout (**Exhibit 9**) alphabetically arranged by job title, showing a birthdate and a “yes” or a “no” in a column headed “Severance Eligibility?”

31. All but one Plaintiff (Pagliolo) signed the “Severance Agreement and Release of Claims” within 45 days of their respective “termination dates.”

32. The signed releases are invalid, as neither the releases nor the documents provided therewith comply with The Older Workers’ Benefit Protection Act, 29 USC § 626 (f)(1)(H) (“OWBPA”), which requires that terminated employees be informed as to “any class, unit, or group of individuals covered by such program, any eligibility factors for such program,” and as to “the job titles and ages of all individuals eligible or selected for the program, and the

ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.”

33. The releases are also invalid under the OWBPA because they fail to inform the recipient as to “any eligibility factors” for the group termination, as required by 29 USC § 626 (f)(1)(H)(i). Neither the release, nor the purported “Severance Eligibility Disclosure” provide any indication of what factors were used to determine which persons and/or positions were to be eliminated.

34. The releases are invalid under the OWBPA, as to all signatories, as signatories were induced to sign the release by Guidant’s misrepresentations. Plaintiffs and others terminated in the August 2004 group termination were informed that their positions were being eliminated and that the reduction in force was “expected to be permanent in nature.” In fact, many of Plaintiffs’ positions were not eliminated.

35. The releases are also invalid under the OWBPA because they fail to inform the terminated employee of the ages of all individuals eligible or selected for the program and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program, as required under 29 U.S.C. § 626(f)(1)(H)(ii). Rather than providing ages, the Severance Eligibility Disclosure provided birthdates. In addition to being a technical violation of the OWBPA, the failure to provide ages, rather than birth dates, indicates that the disclosure was not provided in a manner calculated to be understood by the average individual eligible to participate. In order for Plaintiffs to be informed as to the ages of those selected and those not selected for the group termination, Plaintiffs would be required to convert approximately 8,790 birth dates into ages.

36. The releases are also invalid under the OWBPA for failure to comply with 29 CFR 1625.22(f)(4)(ii). Under that regulation, age information is to be broken down according to the age of each individual selected for termination and each person not selected for termination. Guidant's "Severance Eligibility Disclosure" did not provide a breakdown by age. Rather, the only breakdown provided is by alphabetically listed job titles. Within each of the various job titles, the order in which individuals are listed is not by order of age, as contemplated by the regulations.

37. The releases are also invalid under the OWBPA because they fail to comply with 29 CFR 1625.22(f)(4)(iii). Pursuant to that regulation, information is to be broken down by grade level or other subcategory where, as here, the termination involves persons in several established grade levels and/or other established subcategories within a job category or job title.

38. The releases are also invalid under the OWBPA because they fail to inform the individual as to "any class, unit, or group of individuals covered by" the reduction in force, as required by 29 USC § 626 (f)(1)(H)(i). Neither the standard release, the Severance Eligibility Disclosure, nor the 184-page spreadsheet attached thereto provided Plaintiffs with any way of knowing what class, unit or group of individuals (the "decisional unit") was covered by the group termination.

39. Rather than defining or identifying the decisional unit involved in the terminations, as required under the OWBPA and the regulations, Guidant merely supplied the birth dates and job titles of nearly nine thousand employees, without identifying which Guidant divisions or locations that list represents. To the best of Plaintiffs' knowledge, formed after reasonable inquiry, Guidant's total workforce at the time of the August 2004 terminations was approximately 12,000 worldwide, and approximately 9,000 in the United States. As a result, it

appears that the list provided to Plaintiffs may be – but is not identified as – a list of all Guidant employees in the United States. Regardless of whether the information provided coincided with the actual decisional unit, the Release and accompanying documents failed to inform the terminated employees as to the decisional unit, as well as how the terminations broke down by location, division, or other unit with which the employee might identify.

40. To the best of Plaintiffs’ knowledge, formed after reasonable inquiry, while the decision to conduct the massive termination program may have been made at the national level, the management and record-keeping practices of Guidant are such that no one at the national level had sufficient information regarding the individuals terminated to make the national office the decision-maker with respect to each of the individuals terminated. To the best of Plaintiffs’ knowledge, formed after reasonable inquiry, the decision-making entity with respect to any individual employee terminated was an entity consisting of substantially less than 8,790 employees.

41. Plaintiffs’ receipt and retention of benefits under the terms of the invalid release does not, as a matter of law, constitute a ratification of the release itself.

42. Plaintiffs seek declaratory relief from this Court in order to establish disputed rights under the documents that make up and surround the Severance Pay Plan and the “Severance Agreement and Release of Claims.” These issues represent threshold issues for most of these Plaintiffs, and their early resolution will facilitate the swift administration of justice. Specifically, Plaintiffs ask the Court to declare that Guidant’s failures to comply with the OWBPA and the regulations promulgated thereunder render the release invalid as against federal age discrimination claims (though not otherwise), and that Plaintiffs may proceed in spite of the signed releases.

**Count I**  
**Declaratory Judgment**  
**28 U.S.C. § 2201**

43. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

44. All named Plaintiffs except Pagliolo signed the standard form “Severance Agreement and Release of Claims” presented by Guidant in conjunction with the August 2004 group termination in a form substantially equivalent to Exhibit 9 attached hereto.

45. For reasons elsewhere described herein, including willful failure by Guidant to comply with federal statute and regulatory guidelines pertaining to disclosure of information relevant to the assessment of possible age discrimination claims, Plaintiffs who signed releases were unaware until long after the deadline to sign the release that age discrimination played a role in the selection of persons scheduled for termination in the August 2004 group termination.

46. An actual controversy of a judicial nature exists between Plaintiffs and Defendant regarding whether the releases signed by Plaintiffs constitute valid waivers of Plaintiffs’ age discrimination claims under the ADEA.

47. A declaratory judgment with respect to the validity of the releases would terminate any and all uncertainty and controversy with respect to the rights of Plaintiffs to sue Guidant for age discrimination under the ADEA.

48. Plaintiffs seek the declaratory judgment of this Court, under the authority of 28 U.S.C. § 2201, that the Severance Agreement and Release of Claims is invalid under the OWBPA as a result of Guidant’s failure to fully disclose relevant and legally required information in connection with the August 2004 group termination, its failure to disclose required information in a manner calculated to be understood by Plaintiffs, and its

misrepresentations as to the reasons for the group termination, and declaring that Guidant may not assert, or gain benefit by, the terms of the standard waiver and release insofar as it applies to federal age discrimination claims.

49. Plaintiffs further seek the order of this Court in compliance with precedent (*see, e.g., Oubre v. Entergy Operations, Inc.*, 522 U.S. 422 (1998); *Butcher v. Gerber Products Co.*, 8 F.Supp.2d 307 (S.D. N.Y. 1998)) and 29 C.F.R. § 1625.23 that Plaintiffs may assert their claims without returning cash benefits or suffering a discontinuation of other benefits during the pendency of this case.

**Count II**  
**Age Discrimination (Disparate Treatment)**  
**ADEA Collective Action**

50. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

51. This is a representative action under 29 U.S.C. §§ 626(b) and (c) and 29 U.S.C. § 216(b) by the above-named Plaintiffs and other similarly situated persons who opt into this action by filing an appropriate notice.

52. As elsewhere more fully set forth in this Complaint, Guidant engaged in an unlawful pattern or practice of age discrimination that adversely affected Plaintiffs, and each of them, and other similarly situated former Guidant employees in violation of 29 U.S.C. § 621 *et seq.*

53. The unlawful pattern or practice of age discrimination by Guidant alleged herein constitutes a willful violation of the ADEA.

54. Plaintiffs' charges of discrimination filed with the EEOC asserted claims on behalf both of the Plaintiffs themselves and others similarly situated, and adequately placed Guidant on notice that a collective action was forthcoming.

55. Plaintiffs and others similarly situated were adversely affected by the pattern or practice of unlawful, willful age discrimination by Guidant as elsewhere described herein. Plaintiffs and others similarly situated suffered actual damages in the form of lost salary and wages, bonuses, stock options, fringe benefits, retirement and insurance benefits, and other forms of compensation, as well as loss of career opportunity and advancement, costs of seeking alternate income, and in other respects, all in amounts yet to be determined, but reasonably believed to exceed \$75,000 per Plaintiff.

**Count III**  
**Age Discrimination (Disparate Impact)**  
**ADEA Collective Action**

56. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein

57. This is a representative action under 29 U.S.C. §§ 626(b) & (c) and 29 U.S.C. § 216(b) by the above-named Plaintiffs and other similarly situated persons who opt into this action by filing an appropriate notice, and an individual action under the ADEA.

58. As set forth more fully above, Guidant has utilized practices, policies and procedures that have disparately impacted former employees of Guidant, resulting in an unlawful pattern or practice of age discrimination in violation of the ADEA, 29 U.S.C. § 621 *et seq.*

59. The above-named Plaintiffs and others similarly situated were disparately impacted by Guidant's practices, policies and procedures, in violation of the ADEA.

60. Each of the above-named Plaintiffs has been disparately impacted by Guidant's practices, policies and procedures, in violation of the ADEA.

61. As a direct and proximate result of the aforesaid age discrimination by Guidant, each of the Plaintiffs has suffered damages in an amount to be determined at trial, but reasonably believed to exceed \$75,000 per Plaintiff, including, but not limited to, lost salary, bonuses, stock options, and other forms of compensation, lost retirement benefits, insurance benefits and other employee benefits.

**Count IV**  
**Age Discrimination (Disparate Treatment)**  
**Individual Claims**

62. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

63. Guidant discriminated against each named Plaintiff herein because of his/her age in willful violation of the disparate treatment provisions of the ADEA by engaging in the pattern or practice of age discrimination elsewhere described in this Complaint and by terminating each Plaintiff's employment in August 2004. As a direct and proximate result of Guidant's unlawful and willful age discrimination against them, each individual Plaintiff has suffered damages in an amount to be determined at trial, including, but not limited to, lost salary and wages, bonuses, stock options, fringe benefits, retirement and insurance benefits, and other forms of compensation, as well as loss of career opportunity and advancement, costs of seeking alternate income, and in other respects, all in amounts yet to be determined, but reasonably believed to exceed \$75,000 per Plaintiff.

**Count V**  
**Age Discrimination (Disparate Impact)**  
**Individual Claims**

64. Plaintiffs hereby incorporate by reference each and every allegation and averment made above as though fully set forth herein.

65. Guidant discriminated against each named Plaintiff herein because of his/her age in willful violation of the disparate impact provisions of the ADEA, by engaging in the pattern or practice of age discrimination elsewhere described in this Complaint and by terminating each Plaintiff's employment in August 2004. As a direct and proximate result of Guidant's unlawful and willful age discrimination against them, each individual Plaintiff has suffered damages in an amount to be determined at trial, including, but not limited to, lost salary and wages, bonuses, stock options, fringe benefits, retirement and insurance benefits, and other forms of compensation, as well as loss of career opportunity and advancement, costs of seeking alternate income, and in other respects, all in amounts yet to be determined, but reasonably believed to exceed \$75,000 per Plaintiff.

**JURY DEMAND**

66. *Plaintiffs demand a trial by jury.*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Guidant as follows:

1. Making such orders as are necessary and appropriate to certify the case for treatment as a collective action under the ADEA;
2. Awarding each of the Plaintiffs and Opt-In Plaintiffs back pay and benefits, together with interest thereon;
3. Restoring each of the Plaintiffs and Opt-In Plaintiffs to positions comparable to those from which they were terminated or, in lieu of reinstatement, awarding each

Plaintiff and Opt-In Plaintiff front pay and benefits for the period remaining until that person's expected retirement age;

4. Awarding each Plaintiff and Opt-In Plaintiff liquidated damages pursuant to the ADEA in an amount equal to that person's back pay and benefits award, together with interest thereon;
5. Declaring that Plaintiffs are entitled to test the validity of the releases of age discrimination claims under the ADEA in a court of law without tendering back any benefits received, or suffering a discontinuation of benefits to be received, pursuant to said release, regardless of whether said release is ultimately determined to comply with the OWBPA;
6. Declaring that the releases of age discrimination claims under the ADEA presented by Guidant to Plaintiffs and other similarly situated employees of Guidant are invalid as a matter of law, that said releases were not and cannot as a matter of law be ratified, and that Plaintiffs and Opt-In Plaintiffs who signed such releases are entitled to keep the benefits received and to continue to receive said benefits while pursuing rights under the ADEA;
7. Awarding attorneys fees and costs as appropriate pursuant to the relevant statutes;
8. Awarding prejudgment interest, costs and disbursement as appropriate herein; and
9. Awarding such other and further relief as the Court and/or jury deems equitable, appropriate and just.

Dated: March 1, 2006.

By: s/ Wood R. Foster, Jr.

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