

US DEPT OF LABOR  
ADMIN LAW JUDGE

2013 SEP -6 P 12: 20

Defendants.

Case No.

2013-0FC-4

The parties and the Administrative Law Judge agree that this Consent Decree is without prejudice to OFCCP's right to investigate and redress violations of Executive Order 11246, as

amended ("Executive Order") and Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), if any, not arising out of or relating to the transactions and occurrences alleged in the Complaint, including OFCCP's right to institute future enforcement actions with respect to any such other matter. This paragraph shall not constitute a waiver by Medtronic of any defenses, legal or equitable, to any such future action. However, Medtronic agrees to continue to comply with Executive Order 11246, Section 503, and their implementing regulations in the future as provided in Section III. D. below.

#### **I. Jurisdiction and Procedural History**

1. The U.S. Department of Labor, Office of Administrative Law Judges, has jurisdiction in this matter pursuant to Sections 208 and 209 of the Executive Order, Section 503 and the regulations issued thereunder at 41 C.F.R. Chapter 60-30 and 41 C.F.R. Chapter 60-741.65.
2. OFCCP initiated a compliance review of the Danvers facility in July 2008.
3. OFCCP issued a Notice to Show Cause on December 3, 2010, advising Medtronic of its finding that Medtronic failed to afford equal employment opportunity in compensation to Hispanics employed as Senior Production Associates ("SPAs") at the Danvers facility in violation of 41 C.F.R. § 60-1.4(a). Medtronic denied the OFCCP's allegations.
4. The parties engaged in unsuccessful conciliation efforts before the Notice to Show Cause was issued. After the Notice to Show Cause was issued, OFCCP negotiated in good faith with Medtronic for over a year before the matter was referred to the Office of the Solicitor for administrative enforcement. Afterwards, the parties engaged in further conciliation efforts, which resulted in this Consent Decree.
5. OFCCP filed an Administrative Complaint with the Office of Administrative Law

Judges on September \_\_, 2013.

6. Defendants have waived the requirements of Federal Rule of Civil Procedure 4 as to service of summons upon them and have acknowledged receipt of Plaintiff's Complaint. By consenting to this Order, Defendants have admitted to the jurisdiction of this Court over them and over the subject matter of this action.

7. The parties, through their respective counsel, have agreed to resolve this matter pursuant to the terms set forth herein.

## **II. General Provisions**

8. This Consent Decree shall constitute the final Administrative Order in this case, and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board.

9. This Consent Decree constitutes full and final settlement and resolution of all issues and claims that were actually presented, or could have been presented, in the Complaint filed in this matter.

10. The record forming the basis on which this Consent Decree is entered shall consist of the Complaint, this Consent Decree and the attachments hereto.

11. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge. The effective date of this Consent Decree ("Effective Date") shall be the date on which it is signed by the Administrative Law Judge.

12. The parties waive all further procedural steps to contest the binding effect of this Consent Decree.

13. The parties waive any right to challenge or contest the validity of the findings and Order entered into in accordance with the agreements contained in this Consent Decree.

14. This Consent Decree shall be binding on each of the parties and their respective successors and assigns.

15. Nothing herein is intended to relieve Medtronic from compliance with the requirements of the Executive Order, Section 503 or their implementing regulations, or to limit OFCCP's right under and in accordance with applicable regulations to review Medtronic's compliance with such requirements not arising out of or relating to the transactions or occurrences alleged in the Complaint. Medtronic's compliance with this Consent Decree shall constitute compliance with the Executive Order and Section 503 with respect to those issues that are within the scope of the Consent Decree.

16. Medtronic agrees that OFCCP may review compliance with Sections III A. – D. of this Consent Decree, and will provide OFCCP with all documents that are reasonably related to such a review. Medtronic also agrees that, upon reasonable advance notice, OFCCP representatives may come onsite to the Danvers facility, as is necessary to review such compliance.

17. Medtronic agrees that there will be no retaliation, harassment or any form of reprisal or adverse action of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceeding under the Executive Order and Section 503 in relation to the terms of this consent decree. All future opportunities for promotion and training will be provided in an equivalent manner.

18. Each party agrees to pay its own fees, costs, and other expenses incurred at any stage of these proceedings, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

19. This Consent Decree does not constitute an admission by Medtronic of any violation of the Executive Order, Section 503 or their implementing regulations. Medtronic specifically denies that it has violated the Executive Order, Section 503 or their implementing regulations. Medtronic has entered into this Consent Decree for its convenience, and to avoid the costs, uncertainties and risks associated with litigation. This Consent Decree may not be used as evidence in any proceeding other than to enforce the terms of this Consent Decree. Nothing in this order is intended to exempt Medtronic from compliance with the requirements of Executive Order 11246, Section 503 and the Vietnam Veteran's Readjustment Act of 1977 as amended and their implementing regulations.

### **III. Specific Provisions**

20. The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. To that end, they have negotiated in good faith and have executed this Consent Decree with the following specific provisions.

#### **A. Notice to Class Members**

21. For purposes of this Consent Decree only, the affected class members are 78 Hispanic individuals who were employed full-time at the Danvers facility as SPAs on April 30, 2008 ("Class Members"). The Class Members are identified on Attachment A hereto.

22. Within fifteen (15) days of the Effective Date, Medtronic will notify all 78 Class Members of the settlement and provide all relevant release of claim forms.

23. Medtronic shall mail, postage prepaid, address correction requested, the Notice to Class Members attached hereto as Attachment B ("Notice"), the Address and Social Security Verification Form attached hereto as Attachment C ("Verification Form"), the Release of Claims Under Executive Order 11246 attached hereto as Attachment D ("Release) (collectively,

“Forms”), to the Class Members listed on Attachment A. Each Class Member (or his/her legal representative in the event that he/she is deceased) shall be given thirty (30) days from the postmark date of the Notice to respond by returning the completed Verification Form and the Release to Medtronic. Any response postmarked by the thirtieth day following the postmark date of the Notice shall be considered to have been submitted within the 30-day period.

24. Within fourteen (14) days of its receipt of the last completed Verification Form and Release submitted within the 30-day period, Medtronic shall provide OFCCP with the following:

- a. Via overnight mail and/or email, copies of all completed Verification Forms and Releases returned to Medtronic within the 30-day period and the envelopes bearing a postmark date;
- b. Via overnight mail and/or email, copies of any completed Verification Forms and Releases returned to Medtronic after expiration of the 30-day period and the envelopes bearing a postmark date; and
- c. Via overnight mail and/or email, a list of any Class Members who did not respond at all to the Notice or whose Forms were returned to Medtronic as undeliverable, as well as evidence showing the documents were returned as undeliverable, and the Class Members’ last known addresses and other last known contact information.

25. Upon receipt of the list of any Class Members who did not respond at all to the Notice or whose Forms were returned to Medtronic as undeliverable, OFCCP shall attempt to verify the current addresses of the Class Members identified on the list. Within thirty (30) days of its receipt of such list, OFCCP shall provide to Medtronic, via email, a list of those Class Members identified on Medtronic’s list for whom OFCCP was able to verify current addresses.

26. Within fifteen (15) days of receiving OFCCP's list, Medtronic shall mail to each Class Member for whom OFCCP was able to verify a current address, copies of the Forms, postage prepaid, address correction requested ("Second Mailing"). Each such Class Member (or his/her legal representative in the event that he/she is deceased) shall be given thirty (30) days from the postmark date of the second Notice to respond by returning the completed Verification Form and Release to Medtronic. Any response post-marked by the thirtieth day following the postmark date of the second Notice shall be considered to have been submitted within the 30-day period.

27. Upon receipt of the last completed Verification Form and Release submitted within the 30-day period in response to the Second Mailing, Medtronic shall compile a list of all Class Members who have submitted completed Verification Forms and Releases in accordance with the instructions in the Notice and within the 30-day period in response to either the initial mailing of the Forms or the Second Mailing. Said list shall constitute the "Final List." Medtronic may choose to include on the Final List any Class Member who returned a completed Verification Form and Release after the 30-day period expired, but it is under no obligation to do so.

28. Within fifteen (15) days of its receipt of the last completed Forms submitted within the 30-day period in response to the Second Mailing, Medtronic shall submit to OFCCP, via overnight mail and/or email, the Final List and copies of all completed Verification Forms and Releases not previously submitted to OFCCP.

29. If OFCCP believes any Class Member should be included on the Final List but is not, it shall notify Medtronic in writing, via email, and identify such Class Members within fifteen (15) days of its receipt of the Final List. In such written notification, OFCCP shall

provide Medtronic the reasons why it believes any Class Member should be included on the Final List. The parties will make every effort and negotiate in good faith to resolve any dispute between them about inclusion or exclusion of any Class Member on the Final List. Any Class Members whom the parties agree will be added to the Final List pursuant to this paragraph will be added no later than thirty-five (35) days after OFCCP's receipt of the Final List pursuant to paragraph 28.

30. Class Members who decline to sign the Verification Form or Release or who do not respond to the Notice at all shall not be entitled to any relief described herein. Class Members who complete the Verification Form and Release but return them to Medtronic after the 30-day period has expired shall not be entitled to any relief described herein unless Medtronic chooses to include their names on the Final List pursuant to paragraph 27 or if the parties agree to include their names on the Final List pursuant to paragraph 29.

**B. Settlement Fund**

31. In settlement of all claims for back pay and interest, to the affected class, Medtronic agrees to pay to the Class Members on the Final List the amount of \$290,000.00, which includes back pay totaling \$260,925.82, as well as interest totaling \$29,074.18. Within ten (10) days of the effective date of this Agreement, Medtronic shall deposit the \$290,000.00 into an interest-bearing account at the prevailing interest rate. Medtronic shall notify OFCCP within five days of the inception of the account that this action has been taken and will identify to OFCCP a person who can be contacted who will be able to provide the current balance of the account and the amount of accrued interest.

32. The amount of \$290,000.00, plus additional interest that accrues on the interest-bearing account (the "Settlement Fund") represents the total negotiated amount of back pay and



interest due under this Consent Decree owed to the Class Members through the Effective Date.

33. Within the later of (i) thirty (30) days of its receipt of the Final List, as set forth in paragraph 28, or (ii) fifteen (15) days of the parties' agreement to add any Class Members to the Final List pursuant to paragraph 29, OFCCP shall submit to Medtronic, via email and/or overnight mail, a list showing the percentage proportion of the Settlement Fund that each Class Member on the Final List shall receive pursuant to this Consent Decree ("Proportionate Percentage").

34. Within thirty (30) days of its receipt from OFCCP of the list showing the Proportionate Percentages, Medtronic shall take the following actions:

- a. determine the gross amount to be paid to each such Class Member by multiplying his/her Proportionate Percentage by the total amount of money that is in the Settlement Fund just prior to making the payments described in paragraph 34(c) and (d);
- b. pay each such Class Member who is employed by Medtronic at that time the amount determined pursuant to paragraph 34(a) in the manner in which the Class Member is normally paid his/her regular salary (e.g., direct deposit, check), subject to all lawful deductions as set forth in paragraph 35; and
- c. mail a check to all other Class Members on the Final List in the respective amounts determined pursuant to paragraph 34(a), subject to all lawful deductions as set forth in paragraph 35.
- d. At the time of all payments described in paragraph 34, Medtronic shall also notify OFCCP via email and first class mail that it has forwarded payments to the Class Members on the Final List and of the amounts paid to each such Class Member.

35. Medtronic shall make all legal deductions required by law (e.g., federal, state

and/or local taxes and FICA) and shall pay to the Internal Revenue Service the employer's share of Social Security withholding attributable to each Class Member's Proportionate Percentage on the portion of the settlement fund designated as back pay. At such time as Medtronic provides its employees with Form W-2s, Medtronic shall also mail a Form W-2 to each Class Member on the Final List who is not employed by Medtronic. For any portion designated as interest, Medtronic will issue a Form 1099 at the same time it issues the Form W-2.

36. Within thirty (30) days of making the payments as set forth in paragraphs 34 and 35, Medtronic shall provide OFCCP with:

- a. Payroll stubs or the equivalent verifying that it has paid Class Members on the Final List who are employed by Medtronic, pursuant to paragraph 34(a); and
- b. copies of all cancelled checks from Class Members on the Final List who were mailed checks pursuant to paragraph 34(b) that have been received by Medtronic as of such time.
- c. Medtronic will provide OFCCP with all other cancelled checks and all checks returned as undeliverable at the end of each subsequent thirty-day period during which any such cancelled and/or returned checks are received, up to 180 days after the date of mailing checks to Class Members as set forth in paragraph 34.

37. OFCCP will have thirty (30) days from receipt of any checks returned as undeliverable to a Class Member to locate the specific Class Member and to inform Medtronic of a corrected address so that the check may be re-mailed. Medtronic will re-mail the check by certified mail within fifteen (15) days of receiving from OFCCP the corrected address.

38. Any check sent to a Class Member which remains uncashed 365 days after either the date on which the check was initially mailed to the Class Member, or the date on which the

check was mailed to the Class Member for the second time pursuant to the process described in paragraph 37, or which is returned as undeliverable after the process described in paragraph 37 has been completed, whichever is later, shall be void. Further:

a. Any amount of money remaining in the Settlement Fund due to any such uncashed or undeliverable checks ("Residual Amount") shall be shared equally among all Class Members on the Final List for whom payment was deposited or who cashed checks sent to them pursuant to paragraphs 34 and/or 37 of this Consent Decree.

b. Payment of shares of any Residual Amount shall be made in the manner specified in paragraph 34.

c. Medtronic shall provide written verification of any Residual Amount that is in the Settlement Fund just prior to making the payments described in this paragraph, in the form of a bank statement or other similar document provided by the financial institution holding the Settlement Fund.

39. OFCCP or Medtronic may petition the Administrative Law Judge to extend any of the above time periods for no more than thirty (30) days in order to permit a Class Member on the Final List to receive his/her Proportionate Percentage, where the interest of justice would be served by such extension and for good cause shown.

**C. Injunctive Relief**

40. OFCCP has conducted a regression analysis on current data regarding the compensation of SPAs and has determined that no statistically significant disparity exists in the compensation of Hispanic SPAs. Therefore, no current salary adjustments are required at this time for Hispanics SPAs.

41. On an annual basis through June 30, 2016, i.e. the term of this Consent Decree,

Medtronic will provide OFCCP with all pertinent information necessary for OFCCP to determine if there is compensation discrimination against Hispanic SPAs at the Danvers facility, including but not limited to payroll data, all information relating to salary adjustments that incorporate performance reviews and the national origin and sex of all new SPAs hired. If the t-statistic for the Hispanic variable resulting from the compensation analysis is -1.96 or less, Medtronic shall increase the annual salary of each full-time Hispanic SPA included in the analysis. The compensation analysis will be conducted using the natural logarithm of annual base salary as the dependent variable and will include the following independent variables:

- a. A combined race/ethnicity variable (using the indicator variables Asians vs. Non-Hispanic Whites and Hispanics vs. Non-Hispanic Whites); and
- b. Amount of time employed at Medtronic using date of hire (or if break of more than one year date of re-hire) and the amount of such time squared.
- c. In addition, an annual performance rating indicator variable will be added to the analysis if Medtronic begins using performance ratings to impact compensation for the SPAs during the time period of the Consent Decree.

42. No later than sixty (60) days after the Effective Date, Medtronic will develop and implement procedures to ensure proper application and self-monitoring of the compensation system applied to SPAs in compliance with 41 CFR 60-1.4(a)(1). Medtronic will provide OFCCP with copies of the foregoing procedures no later than seventy (70) days after the Effective Date.

43. No later than sixty (60) days after the Effective Date, Medtronic will provide training on its equal employment opportunity programs for all persons involved in Medtronic's compensation processes at the Danvers facility. This training will include accurate

recordkeeping requirements. Additionally, Medtronic will, on a regular basis, train new employees and new managers responsible for its compensation process.

44. Medtronic will provide OFCCP, no later than ten (10) days after the training described in paragraph 43 has taken place, documentation showing that Medtronic has provided the training described in paragraph 43 for all persons involved in Medtronic's compensation processes at the Danvers facility, including the dates of the training, copies of an agenda, the names and job titles of all attendees, cost of the training and the name and job title of each person who conducted the training. Medtronic also agrees to notify OFCCP of any changes to its SPA compensation systems at the Danvers facility as a result of their monitoring and training, including the award of stock options, bonuses, or commissions when it provides the annual compensation information to OFCCP specified in paragraph 41.

45. Medtronic will develop improved tools for determining the starting salary to be assigned to newly hired SPAs at the Danvers facility, and will ensure that any practice of allowing "exceptions" to starting pay is documented, based on consistent criteria, and does not have an adverse impact on Hispanic employees or result in disparate treatment on the basis of national origin. Factors involved in setting salary must be applied fairly, consistent with business necessity, and without discrimination.

46. Medtronic has an affirmative obligation to provide a reasonable accommodation for applicants and employees of whose disability Medtronic has knowledge. This includes employees who have a disability as a result of an injury while on the job. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same

level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Medtronic agrees to provide equal employment opportunity to qualified individuals with a disability and make such reasonable accommodations unless Medtronic can demonstrate that the accommodation constitutes an undue hardship as defined in 41 C.F.R. § 60-741.2(w).

47. If a Medtronic employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, Medtronic shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, Medtronic shall confidentially inquire whether the employee is in need of a reasonable accommodation. Medtronic has a duty to engage in an informal, interactive process with a qualified individual with a disability, as defined in 41 C.F.R. § 60-741.2(t), when such individual is in need of reasonable accommodation. This duty includes identifying the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. Reasonable accommodations must be analyzed on a case by case basis and include but are not limited to modification or adjustments to the work environment, acquisition or modification of equipment or devices, making existing facilities readily accessible to and usable, job restructuring, re-assignments to vacant positions, flexible leave policies that allow employees to obtain necessary treatment and other similar accommodations for individuals with disabilities.

48. Medtronic must train all employees involved in Medtronic's application, selection, hiring and termination process at the Danvers facility on Medtronic's reasonable accommodation process, including but not limited to job restructurings, assignments to vacant

positions and flexible leave policies.

49. Medtronic will provide OFCCP, no later than ten (10) days after the training described in paragraph 48 has taken place, documentation showing that Medtronic has provided the training described in paragraph 48 for all persons involved in Medtronic's application, selection, hiring and termination processes at the Danvers facility, including the dates of the training, copies of an agenda, the names and job titles of all attendees, cost of the training and the name and job title of each person who conducted the training.

**D. Other Agreements**

50. Medtronic agrees to prepare and update annually its Affirmative Action Plan and to keep all supporting documentation as required by the provisions of the Executive Order and its implementing regulations, for as long as it remains a federal government contractor subject to those provisions.

51. Medtronic shall ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. Parts 60-1 and 60-3, for as long as it remains a federal government contractor subject to those requirements.

52. On or before fifteen (15) days after the Effective Date, Medtronic shall submit to Rhonda Aubin-Smith, District Director, U.S. Department of Labor/OFCCP, JFK Federal Building, Room E-235, Boston, MA 02203, a report detailing Medtronic's record retention practices at the Danvers facility, which will discuss the policies and data that are being tracked and provide information related to its compliance with the self-monitoring requirements of 41 C.F.R. 60-2.17(b). .

53. On or before June 30, 2014, June 30, 2015 and June 30, 2016, respectively, Medtronic shall submit to Rhonda Aubin-Smith, District Director, U.S. Department of

Labor/OFCCP, JFK Federal Building, Room E-235, Boston, MA 02203 the annual compensation information specified in paragraph 41.

54. Medtronic shall retain all records pertinent to the alleged violations resolved by this Consent Decree and the reports submitted under it (including underlying data/information upon which the reports are based) consistent with regulatory timeframes.

55. Medtronic will allocate adequate resources for compliance with the record collection and retention requirements of the Consent Decree.

56. Once Medtronic has (i) satisfactorily made the payments set forth in paragraphs 34, 35 and, if applicable, 38; and (iii) submitted documentation and reports, which OFCCP deems acceptable, pursuant to paragraphs 41, 42, 44, 49, 52 and 53, OFCCP will, within thirty (30) days, provide a letter to Medtronic stating that Medtronic is in compliance with the pay requirements of the Executive Order for the Hispanic SPAs at the Danvers facility as of June 30, 2016.

#### **IV. Implementation and Enforcement of the Consent Decree**

57. All correspondence, emails and other communications required by this Consent Decree shall be submitted to OFCCP at the following address:

Rhonda Aubin-Smith  
District Director  
Boston District Office  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
John F. Kennedy Federal Bldg., Room E-235  
Boston, MA 02203  
Aubin-smith.rhonda@dol.gov  
(617) 624-6788 (telephone)  
(617) 624-6702 (facsimile)

OFCCP will notify Medtronic of any changes to the above contact information.

58. All correspondence, emails and other communications required by this Consent



Decree shall be submitted to Medtronic at the following address:

Michelle Miller  
Vice President and Chief Employment Counsel  
Medtronic, Inc.  
710 Medtronic Parkway  
Minneapolis, MN 55432-5604  
miller.michelle@medtronic.com  
(763) 505-3301  
(763) 572-5459

Medtronic will notify OFCCP of any changes to the above contact information.

59. The Office of Administrative Law Judges shall retain jurisdiction of this proceeding for the sole purpose of enforcing implementation of this Consent Decree in accordance with its terms. The Office of Administrative Law Judges shall retain jurisdiction of this case until thirty (30) days after Medtronic satisfies its obligations described herein.

60. Medtronic agrees that OFCCP may review compliance with Sections III A. – D. of this Consent Decree. If at any time during the term of the Consent Decree, OFCCP believes that Medtronic has violated any portion of the Consent Decree, Medtronic will be promptly notified in writing at the address identified in paragraph 58. This notification will include a statement of the facts and circumstances relied upon by OFCCP in forming that belief.

Medtronic will have fifteen (15) days in which to respond in writing to the allegations of violation, except in those circumstances where OFCCP alleges that such a delay would result in irreparable injury.

61. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 15-day period has elapsed (or sooner if irreparable injury is alleged), upon filing with the Office of Administrative Law Judges a motion for an order of enforcement and/or sanctions. The Administrative Law Judge may, if he or she deems it appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to

the issues of the factual and legal claims made in the motion.

62. If a motion for an order of enforcement or clarification is unopposed, the motion may be presented to the Administrative Law Judge without hearing, and the proposed order may be implemented immediately. If said application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service of such motion.

63. Liability for violation of this Consent Decree may subject Medtronic, and its successors, assigns, divisions or subsidiaries to the sanctions set forth in the Executive Order, Section 503 and their implementing regulations and other appropriate relief.

WHEREFORE, the parties move that an Order be entered adopting the above Consent Decree as the final disposition of this matter.

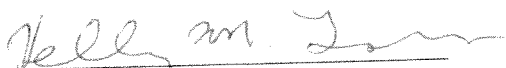
**IT IS SO ORDERED, ADJUDGED AND CONSENT DECREED:**

Dated: \_\_\_\_\_

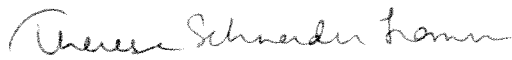
\_\_\_\_\_  
Administrative Law Judge

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

  
\_\_\_\_\_  
Kelly M. Lawson, Esq.

Dated: September 5, 2013

  
\_\_\_\_\_  
Theresa Schneider Fromm, Esq.

Dated: September 5, 2013


U.S. Department of Labor  
Attorneys for Plaintiff

*Post Office Address:*  
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Suite E-375 JFK Federal Building  
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Michelle Miller  
Vice President and Chief Employment Counsel

Dated: September ~~7~~<sup>4</sup>, 2013

  
Medtronic, Inc.  
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Minneapolis, MN 55432-5604  
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(763) 505-2706

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

US DEPT OF LABOR  
ADMIN LAW JUDGE

2013 SEP -6 P 12: 20

OFFICE OF FEDERAL CONTRACT COMPLIANCE  
PROGRAMS, UNITED STATES DEPARTMENT  
OF LABOR,

Plaintiff,

v.

MEDTRONIC, INC., and  
MEDTRONIC INTERVENTIONAL VASCULAR, INC.

Defendants.

Case No. 2013-OFC-4

**ADMINISTRATIVE COMPLAINT**

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP"), by its attorneys, alleges that:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303), Executive Order 12086 (43 Fed. Reg. 46501), and Executive Order 13279 (67 Fed. Reg. 77141) ("Executive Order 11246" or the "Executive Order"), Section 503 of the Rehabilitation Act, 29 U.S.C. § 793 ("Section 503") and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.

2. This Court has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. § 60-1.26, 41 C.F.R. Part 60-30, and 41 C.F.R. § 60-741.65.

3. Defendant Medtronic Interventional Vascular, Inc., located in Danvers, Massachusetts, is a subsidiary of Defendant Medtronic, Inc., located in Minneapolis, Minnesota.

4. Medtronic, Inc. is engaged in the research, design, manufacture and sale of medical products.

5. Medtronic Interventional Vascular, Inc. is engaged in the manufacture of medical products, including catheters.

6. At all times pertinent hereto, Medtronic, Inc. and Medtronic Interventional Vascular, Inc. (hereinafter referred to collectively as “Medtronic” and “Defendants”) have been part of a single entity that has a United States government (“Government”) contract within the meaning of the Executive Order.

7. As a single entity, Defendants are subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and the implementing regulations issued thereunder.

8. The regulations issued pursuant to Executive Order 11246 provide at 41 C.F.R. § 60-1.40 and 41 C.F.R. § 60-2.1 that each Government contractor with 50 or more employees and a contract of \$50,000 or more must develop a written affirmative action program for each of its establishments in accordance with requirements set forth in 41 C.F.R. Part 60-2.

9. The regulations issued pursuant to Section 503 at 41 C.F.R. § 60-741.1, 41 C.F.R. § 60-741.4 and 41 C.F.R. § 60-741.5 require that contractors whose contract is in excess of \$10,000 shall not discriminate in employment against any qualified individual with a disability.

10. At all times pertinent hereto, Defendants have been part of a single entity that has had more than 50 employees.

11. At all times pertinent hereto, Defendants have been part of a single entity that has had government contract(s) or government subcontract(s) of \$50,000 or more.

12. The Executive Order requires Government contractors such as Medtronic to develop, maintain and implement a written affirmative action program for each of its establishments in accordance with the requirements set forth in 41 C.F.R. Part 60-2.

13. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4, Medtronic has agreed not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and has agreed to take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex or national origin. Specifically, Medtronic has agreed to take affirmative action to ensure that all employees are assigned rates of pay and other forms of compensation without regard to their race, color, religion, sex or national origin.

14. The regulations issued pursuant to the Executive Order provide at 41 C.F.R. § 60-1.20(b) that, in order for a contractor to be in compliance with the Executive Order, it must remedy any discrimination against members of an affected class, and must provide relief to such affected class members to remedy the effects of past discrimination.

15. The regulations issued pursuant to Section 503 provide at 41 C.F.R. § 60-741.21 that a contractor must make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. To determine the appropriate reasonable accommodation, a contractor should initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation, per 41 C.F.R. § 60-741.2(v).

16. Beginning no later than April 2008 and continuing thereafter, Medtronic has violated the Executive Order and the regulations promulgated thereunder in carrying out its

Government contracts by discriminating against Hispanics based on their national origin with regard to compensation.

17. Beginning no later than April 2008 and continuing thereafter, Medtronic has paid its Hispanic Senior Production Associates (“SPAs”) at Medtronic Interventional Vascular, Inc.’s facility in Danvers, Massachusetts, significantly less per year than its white SPAs at the same location.

18. The salary disparity between White and Hispanic SPAs continues to exist after adjusting for differences in legitimate, pay-determining factors.

19. The SPA jobs are entry-level positions at the Medtronic Interventional Vascular, Inc.’s facility in Danvers, Massachusetts.

20. Medtronic’s Affirmative Action Plan characterizes all SPAs as being in the same job group.

21. Beginning no later than April 2008 and continuing thereafter, pay-deciding officials of Medtronic have exercised discretion when setting compensation amounts for SPAs at Medtronic’s facility in Danvers, Massachusetts.

22. Beginning no later than April 2008 and continuing thereafter, Medtronic has violated the Executive Order and the regulations promulgated thereunder in carrying out its Government contracts by failing to identify and provide complete relief, including lost wages and salary adjustments, to the Hispanic SPAs who have been adversely affected by Medtronic’s aforesaid discrimination.

23. Medtronic violated Section 503 by failing to engage in an informal, interactive process with a qualified individual with a disability in need of an accommodation. A Class Member alleged that Medtronic terminated him for failure to return to work within the company

allotted time frame after he was injured on the job.

24. The acts and practices described in paragraphs 16 through 18, and 21 through 23, above, violate Executive Order 11246 and Section 503 and the regulations promulgated thereunder, and violate Medtronic's contractual obligations to the Federal Government.

25. Unless restrained by Administrative Order, Medtronic will continue to violate the obligations imposed upon it by Executive Order 11246 and Section 503 and the regulations issued pursuant thereto.

26. On August 19, 2011, OFCCP issued to Medtronic Interventional Vascular, Inc. a notice to show cause why enforcement proceedings should not be initiated based upon its findings of the above-cited violations of the Executive Order. OFCCP has attempted to secure voluntary compliance through means of conciliation and persuasion. As part of these conciliation efforts, OFCCP provided evidence to Medtronic, including statistical evidence, demonstrating that Hispanic SPAs in the Danvers, Massachusetts facility were being discriminated against in their pay because of their national origin. These efforts were unsuccessful.

27. All of the procedures that are required prior to the filing of this Complaint have been met.

WHEREFORE, plaintiff OFCCP prays for a Decision and Order pursuant to 41 C.F.R. §§ 60-30.27 and 60-30.30 permanently enjoining Defendants, their successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them from: (1) failing and refusing to comply with the requirements of the Executive Order and Section 503 and the regulations promulgated thereunder; (2) discriminating against Hispanic SPAs in compensation based on their national origin beginning no later than April 2008 and



continuing thereafter; (3) failing to identify and provide complete relief to Hispanic SPAs beginning no later than April 2008 and continuing thereafter, including, but not limited to, lost wages, interest, front wages, salary adjustments, fringe benefits, seniority and all other benefits of employment resulting from Defendants' discrimination in compensation from at least April 2008 through the present; and (4) failing to engage in an informal, interactive process with a qualified individual with a disability in need of an accommodation.

In the event Defendants are found to have violated the Executive Order and Section 503, and fail to take the remedial actions ordered, Defendants will be subject to the following: (1) an Order canceling all of their Government contracts and those of their successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such Government contracts; and (2) an Order debarring Defendants and their successors, officers, agents, employees, divisions, subsidiaries and all persons in active concert or participation with them from entering into future Government contracts until such time as Defendants satisfy the Director of the Office of Federal Contract Compliance Programs that they have undertaken efforts to remedy their prior noncompliance and are currently in compliance with the provisions of the Executive Order and the regulations promulgated thereunder, including, but not limited to, providing complete relief to Hispanic SPAs, including, but not limited to, lost wages, interest, front wages, salary adjustments, fringe benefits, seniority and all other benefits of employment.

Plaintiff further prays for such other relief as justice may require.

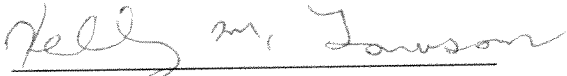
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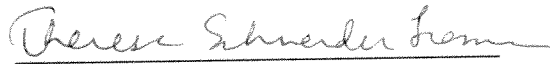
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Respectfully submitted,

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\_\_\_\_\_  
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Senior Attorney

  
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Theresa Schneider Fromm  
Senior Attorney

U.S. DEPARTMENT OF LABOR

Attorneys for Plaintiff

Date: September 5, 2013

**CERTIFICATE OF SERVICE**

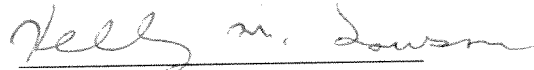
I certify that the foregoing Complaint and proposed Consent Decree were served this 5th day of September 2013, on the Defendants in the manner specified below:

**By Electronic Mail**

Medtronic, Inc.  
Attn: Michelle Miller, Esq.  
710 Medtronic Parkway  
Minneapolis, MN 55432-5604

**By First Class Mail**

Medtronic Interventional Vascular, Inc.  
Attn: Frank McKernan, Director of Human Resources  
37 Cherry Hill Drive  
Danvers, MA 01923

  
\_\_\_\_\_  
Kelly M. Lawson, Esq.