

1 LIONEL Z. GLANCY (#134180)
 2 MICHAEL GOLDBERG (#188669)
 3 ROBERT V. PRONGAY (#270796)
GLANCY BINKOW & GOLDBERG LLP
 4 1925 Century Park East, Suite 2100
 Los Angeles, California 90067
 Telephone: (310) 201-9150
 5 Facsimile: (310) 201-9160
 E-mail: info@glancylaw.com
 6 lglancy@glancylaw.com
 mmgoldberg@glancylaw.com
 7 rprongay@glancylaw.com

8 *Attorneys for Plaintiff*
 9 [Additional Counsel on Signature Page]

10
 11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

12
 13 BRADLEY COOPER, Individually and On)
 Behalf of All Others Similarly Situated,)
 14)
 Plaintiffs,)
 15)
 v.)
 16)
 THORATEC CORPORATION, GERHARD F.)
 17 BURBACH, TAYLOR C. HARRIS, and)
 18 ROXANNE OULMAN,)
 19 Defendants.)

Case No.
CLASS ACTION
COMPLAINT FOR VIOLATIONS
OF FEDERAL SECURITIES
LAWS
DEMAND FOR JURY TRIAL

20
 21
 22
 23
 24
 25
 26
 27
 28

CLASS ACTION COMPLAINT

1
2 Plaintiff Bradley Cooper (“Plaintiff”), individually and on behalf of all other persons similarly
3 situated, by his undersigned attorneys, for his complaint against defendants, alleges the following based
4 upon personal knowledge as to himself and his own acts, and information and belief as to all other
5 matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which
6 included, among other things, a review of the defendants’ public documents, conference calls and
7 announcements made by defendants, United States Securities and Exchange Commission (“SEC”)
8 filings, wire and press releases published by and regarding Thoratec Corporation (“Thoratec” or the
9 “Company”), analysts’ reports and advisories about the Company, and information readily obtainable
10 on the Internet.
11

NATURE OF THE ACTION

12
13 1. This is a federal securities class action on behalf of a class consisting of all persons other
14 than defendants who purchased Thoratec securities between April 29, 2010 and November 27, 2013,
15 inclusive (the “Class Period”), seeking to recover damages caused by defendants’ violations of the
16 federal securities laws and to pursue remedies under the Securities Exchange Act of 1934 (the
17 “Exchange Act”).
18

19 2. Thoratec researches, develops, manufactures, and markets medical devices for circulatory
20 support and vascular graft applications. The Company’s products include a ventricular assist device, an
21 implantable left ventricular heart assist device, a vascular access graft, and a coronary artery bypass
22 graft. Thoratec also supplies whole-blood coagulation testing equipment.
23

24 3. Throughout the Class Period, Defendants failed to disclose that the Company’s HeartMate
25 II Left Ventricular Assist Device had significant risk of pump thrombosis, causing numerous fatalities.
26 As a result of the foregoing, the Company’s statements were materially false and misleading at all
27 relevant times.
28

1 4. The truth slowly emerged over several months, that the Company's products were in fact
2 not as safe as conveyed to investors and the medical community, and in fact caused severed adverse
3 events such as blood clots.

4 5. On April 4, 2012, U.S. regulators ordered a recall for the company's HeartMate II heart
5 pumps for a potentially deadly defect. In a regulatory posting by the Food and Drug Administration, the
6 agency stated that the recall "was initiated after Thoratec found that a component of the implanted
7 device, which pumps blood for heart failure patients, may sometimes be improperly attached to the
8 HeartMate II."
9

10 6. In a note to investors, analyst Steven Lichtman, at Oppenheimer & Co in New York wrote
11 that, "the positioning of the component, called a bend relief, has been a concern tied to an increase in
12 blood clots seen with HeartMate II."
13

14 7. On the news, shares of Thoratec shares tumbled \$1.52 or almost 4.5% to close at \$32.83
15 on volume of 5,441,400 shares.

16 8. Then, on November 27, 2013, after the market closed, The New England Journal of
17 Medicine released a study entitled, "Unexpected Abrupt Increase in Left Ventricular Assist Device
18 Thrombosis" concluding that the "rate of pump thrombosis related to the use of the HeartMate II has
19 been increasing at our centers and is associated with substantial morbidity and mortality."
20

21 9. On this news, Thoratec shares declined \$2.75 per share or 6.5%, to close at \$39.37 per
22 share on November 29, 2013.

23 10. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the
24 market value of the Company's securities, Plaintiff and other Class members have suffered significant
25 damages.
26
27
28

JURISDICTION AND VENUE

1
2 11. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the
3 Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17
4 C.F.R § 240.10b-5.

5 12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
6 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

7
8 13. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C.
9 § 1391(b). Thoratec maintains its principal place of business in this District and many of the acts and
10 practices complained of occurred in substantial part herein.

11 14. In connection with the acts alleged in this complaint, Defendants, directly or indirectly,
12 used the means and instrumentalities of interstate commerce, including, but not limited to, the mails,
13 interstate telephone communications, and the facilities of the national securities markets.

14
15 **PARTIES**

16 15. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein,
17 purchased Thoratec securities at artificially inflated prices during the Class Period and was damaged by
18 the revelation of the alleged corrective disclosures.

19 16. Defendant Thoratec is a California corporation with its principal place of business at 6035
20 Stoneridge Drive, Pleasanton, CA 94588. Thoratec’s common stock trades on the NASDAQ Global
21 Market (“NASDAQ”) under the ticker symbol “THOR.”

22 17. Defendant Gerhard F. Burbach (“Burbach”) has served at all relevant times as the
23 Company’s President and Chief Executive Officer.

24 18. Defendant Taylor C. Harris (“Harris”) has served at all relevant times as the Company’s
25 Chief Financial Officer and Vice President since October 11, 2012.
26
27
28

1 19. Defendant Roxanne Oulman (“Oulman”) has served at all relevant times as the Company’s
2 Vice President of Finance, served as the Company’s interim Chief Financial Officer between June 2011
3 and October 2012.

4 20. The defendants referenced above in ¶¶ 13 - 15 are referred to herein as the “Individual
5 Defendants.”

6
7 **SUBSTANTIVE ALLEGATIONS**

8 **BACKGROUND**

9 21. Thoratec is a world leader in mechanical support with a product portfolio to treat the full
10 range of clinical needs for advanced heart failure patients. The Company develops, manufactures and
11 markets proprietary medical devices used for mechanical circulatory support (“MCS”) for the treatment
12 of heart failure (“HF”) patients. For chronic circulatory support for HF patients, the Company’s
13 primary product lines are its ventricular assist devices include HeartMate Left Ventricular Assist
14 System and HeartMate II Left Ventricular Assist System (“HeartMate II”).

15
16 22. HeartMate II is an implantable, electrically powered, continuous flow, left ventricular
17 assist device consisting of a rotary blood pump designed to provide intermediate and long-term MCS.
18 HeartMate II is designed to improve survival and quality of life for a broad range of advanced HF
19 patients. HeartMate II received Food and Drug Administration (“FDA”) approval in April 2008 for
20 bridge-to-transplantation (“BTT”) and received FDA approval for use in HF patients who are not
21 eligible for heart transplantation in January 2010.

22
23 **MATERIALLY FALSE AND MISLEADING**
24 **STATEMENTS MADE DURING THE CLASS PERIOD**

25 23. On April 29, 2010, the Company issued a press release reporting financial results for the
26 first quarter ended April 3, 2010. Specifically, the Company reported net income of \$12.4 million, or
27 \$0.21 diluted EPS and sales of \$121.6 million, as compared to net income of \$5.6 million, or \$0.10
28 diluted EPS and sales of \$89.5 million for the same period a year ago.

1 24. In the press release, the Company stated the following in relevant part:

2 “Thoratec had an excellent start to 2010 as we initiated the commercial launch of our
3 HeartMate II LVAS (Left Ventricular Assist System) for Destination Therapy (DT)
4 following the receipt of FDA approval of our PreMarket Application (PMA) Supplement
5 in January,” noted Gary F. Burbach, president and chief executive officer.

6 “Our DT launch initiatives have enabled us to achieve rapid traction in the market. Our
7 financial performance in the quarter reflects not only the benefit of initial DT
8 commercial activity in the U.S., but also continued adoption of the HeartMate II in
9 Europe and our new HeartMate external peripherals introduced last fall. We also
10 continued to add new HeartMate II centers, both in North America and Europe,” he
11 added. “In addition, we continue to see the benefits of our clinical training and
12 educational programs as evidenced by the positive patient outcomes portrayed in a
13 number of recent journal articles and presentations at leading medical meetings,” he
14 continued.

15 25. On May 5, 2010, the Company filed a quarterly report with the SEC on a Form 10-Q for
16 the first quarter ended April 3, 2010 which was signed by Defendants Burbach and Oulman. In
17 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
18 Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
19 any material changes to the Company’s internal control over financial reporting.

20 26. The 10-Q represented the following in relevant part concerning HeartMate II:

21 The HeartMate II is an implantable, electrically powered, continuous flow, left
22 ventricular assist device consisting of a miniature rotary blood pump designed to provide
23 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
24 quality of life and to provide five to ten years of circulatory support for a broad range of
25 advanced HF patients. Significantly smaller than the HeartMate XVE and with only one
26 moving part, the HeartMate II is simpler and designed to operate more quietly than
27 pulsatile devices. Effective January 20, 2010, the HeartMate II can be used in patients
28 with New York Heart Association Class IIIB and IV end-stage left ventricular failure
who have received optimal medical therapy for at least forty-five of the last sixty days,
and who are not candidates for cardiac transplantation.

HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
 (“BTT”) and received FDA approval for use in HF patients who are not eligible for heart
 transplantation (“Destination Therapy” or “DT”) in January 2010. In November 2005,
 the HeartMate II received CE Mark approval, allowing for its commercial sale in
 Europe. In May 2009, the HeartMate II was approved in Canada.

During the third quarter of 2009 we launched our new HeartMate external peripherals
 (GoGear), including new batteries, charger and power module, which are designed to

1 provide an enhanced quality of life for HeartMate patients by providing them more
2 freedom and mobility and the ability to more easily resume many aspects of a normal
3 lifestyle.

4 27. On July 29, 2010, the Company issued a press release reporting financial results for the
5 second quarter ended July 3, 2010. Specifically, the Company reported net income of \$17.5 million, or
6 \$0.29 diluted EPS and sales of \$95.1 million, as compared to net income of \$2.9 million, or \$0.05
7 diluted EPS and sales of \$69.2 million for the same period a year ago.

8 28. In the press release, the Company stated the following in relevant part:

9 "As has been the case over the past several quarters, our financial performance was
10 driven by continued adoption of the HeartMate® II LVAS (Left Ventricular Assist
11 System) for Bridge-to-Transplantation (BTT) and Destination Therapy (DT) in both
12 North America and international markets. This reflects the value of our market
13 development and clinical support programs, which are facilitating both adoption and
14 continued positive patient outcomes with the device," said Gary F. Burbach, president
15 and chief executive officer of Thoratec.

16 "We ended the quarter with 232 HeartMate II centers globally, an increase of 21 centers
17 in the first half of 2010. In addition, 159 centers worldwide are now using our new
18 HeartMate peripherals, which are providing important quality of life improvements to
19 patients as well as incremental revenue growth," he added.

20 Burbach said the company is continuing to increase its penetration of international
21 markets. "During the first half of 2010, we had strong growth in Europe, as evidenced by
22 our revenue performance as well as the addition of new centers. In addition, we achieved
23 several important milestones in the Asia Pacific region. In conjunction with our local
24 partner Nipro, we completed enrollment in the six-patient confirmatory trial for the
25 HeartMate II in Japan. We and Nipro expect to file for regulatory approval in the early
26 part of 2011, with approval expected in early 2012. In addition, the regulatory authorities
27 in both Australia and Taiwan approved the HeartMate II for commercial use during the
28 second quarter.

"As we continue to deliver solid financial results, we are also executing on our strategy
to achieve longer-term growth," Burbach said. "We are making significant progress in
the development of our HeartMate II platform enhancements that are designed to
improve the HeartMate II patient experience and further strengthen our competitive
leadership in the market. We are also strengthening our efforts to drive awareness of the
therapy among referring clinicians and patients as well as to support our hospital
customers as they treat and manage increasing numbers of patients," he noted.

1 29. On August 10, 2010, the Company filed a quarterly report with the SEC on a Form 10-Q
2 for the second quarter ended July 3, 2012 which was signed by Defendants Burbach and Oulman. In
3 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
4 Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
5 any material changes to the Company's internal control over financial reporting.

6 30. The 10-Q represented the following in relevant part concerning HeartMate II:
7

8 The HeartMate II is an implantable, electrically powered, continuous flow, left
9 ventricular assist device consisting of a miniature rotary blood pump designed to provide
10 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
11 quality of life and to provide five to ten years of circulatory support for a broad range of
12 advanced HF patients. Significantly smaller than the HeartMate XVE and with only one
13 moving part, the HeartMate II is simpler and designed to operate more quietly than
14 pulsatile devices. Effective January 20, 2010, the HeartMate II can be used in patients
15 with New York Heart Association Class IIIB and IV end-stage left ventricular failure
16 who have received optimal medical therapy for at least forty-five of the last sixty days,
17 and who are not candidates for cardiac transplantation.

18 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
19 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
20 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
21 the HeartMate II received CE Mark approval, allowing for its commercial sale in
22 Europe. In May 2009, the HeartMate II was approved in Canada.

23 During the third quarter of 2009 we launched our new HeartMate external peripherals
24 (Go Gear), including new batteries, charger and power module, which are designed to
25 provide an enhanced quality of life for HeartMate patients by providing them more
26 freedom and mobility and the ability to more easily resume many aspects of a normal
27 lifestyle.

28 31. On November 1, 2010, the Company issued a press release reporting financial results for
the third quarter ended October 2, 2010. Specifically, the Company reported net income of \$15.5
million, or \$0.26 diluted EPS and sales of \$91 million, as compared to net income of \$11.8 million, or
\$0.20 diluted EPS and sales of \$65.1 million for the same period a year ago.

 32. In the press release, the Company stated the following in relevant part:

 "Our top line performance was driven by the continued worldwide adoption of the
HeartMate II® LVAS (Left Ventricular Assist System) for Bridge-to-Transplantation

1 (BTT) and Destination Therapy (DT). At the same time, we continued to achieve solid
2 operating leverage as reflected by our earnings performance.”

3 ***

4 Burbach noted that the FDA has approved a label change for the HeartMate II
5 incorporating the data from the company’s BTT post-approval study that showed
6 survival of 90 percent at six months and 85 percent at one year. “The outcomes from this
7 study also reflected continued improvements in several important adverse event
8 categories among HeartMate II patients, including zero device replacements and lower
9 reported rates of bleeding, stroke and right heart failure,” he commented.

10 “In addition, we continue to see the release of favorable HeartMate II data in key
11 scientific meetings and publications and are looking forward to a number of important
12 HeartMate II data presentations at next month’s Scientific Sessions of the American
13 Heart Association meeting—including outcomes from DT Continued Access Protocol
14 patients, updated cost effectiveness analysis and outcomes for New York Heart
15 Association Class IIIB patients.”

16 33. On November 4, 2010, the Company filed a quarterly report with the SEC on a Form 10-Q
17 for the third quarter ended October 2, 2012 which was signed by Defendants Burbach and Harris. In
18 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
19 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
20 any material changes to the Company’s internal control over financial reporting.

21 34. The 10-Q represented the following in relevant part concerning HeartMate II:

22 The HeartMate II is an implantable, electrically powered, continuous flow, left
23 ventricular assist device consisting of a miniature rotary blood pump designed to provide
24 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
25 quality of life and to provide five to ten years of circulatory support for a broad range of
26 advanced HF patients. Significantly smaller than the HeartMate XVE and with only one
27 moving part, the HeartMate II is simpler and designed to operate more quietly than
28 pulsatile devices. Effective January 20, 2010, the HeartMate II can be used in patients
with New York Heart Association Class IIIB and IV end-stage left ventricular failure
who have received optimal medical therapy for at least forty-five of the last sixty days,
and who are not candidates for cardiac transplantation.

HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
 (“BTT”) and received FDA approval for use in HF patients who are not eligible for heart
 transplantation (“Destination Therapy” or “DT”) in January 2010. In November 2005,
 the HeartMate II received CE Mark approval, allowing for its commercial sale in
 Europe. In May 2009, the HeartMate II was approved in Canada.

1 During the third quarter of 2009 we launched our new HeartMate external peripherals
2 (Go Gear), including new batteries, charger and power module, which are designed to
3 provide an enhanced quality of life for HeartMate patients by providing them more
4 freedom and mobility and the ability to more easily resume many aspects of a normal
5 lifestyle.

6 35. On January 27, 2011, after the market closed, the Company issued a press release
7 reporting financial results for the fourth quarter and year ended January 1, 2011. For the quarter, the
8 Company reported net income of \$12.62 million, or \$0.21 diluted earnings per share ("EPS") and sales
9 of \$97.6 million, as compared to net income of \$8.07 million, or \$0.14 diluted EPS and sales of \$81
10 million for the same period a year ago. For the year, the Company reported net income of \$53.17
11 million, or \$.89 diluted EPS and sales of \$383 million, as compared to net income of \$28.6 million, or
12 \$0.49 diluted EPS and sales of \$280 million for the same period a year ago.

13 36. In the press release, the Company stated the following in relevant part:

14 "This past year was marked by many successes, including FDA approval and launch of
15 the HeartMate II® LVAS (Left Ventricular Assist System) for the Destination Therapy
16 (DT) indication, continued improvements in clinical data in both the Bridge-to-
17 Transplantation (BTT) and DT patient populations, and an impressive financial
18 performance. We have also implemented a broad range of initiatives designed to further
19 develop the market and advance our leadership position," said Gary F. Burbach,
20 president and chief executive officer.

21 "Our financial performance for the year was driven by strong continued adoption of the
22 HeartMate II for DT and BTT in both North America and Europe, and we realized solid
23 operating leverage as evidenced by our earnings growth," he noted.

24 The company indicated that it ended 2010 with 254 HeartMate II centers globally, an
25 increase of 43 centers during the year, with 211 centers worldwide now utilizing its new
26 HeartMate peripherals, which are providing important quality of life benefits to patients
27 and generating incremental revenue growth. In addition, there are now 90 centers with
28 CMS (Centers for Medicare and Medicaid Services) certification for reimbursement for
DT.

"As we begin 2011, we have a solid foundation upon which to build our business, and
with our market development initiatives to drive referrals from cardiologists, facilitate
center expansion, increase our international presence and realize continued
improvements in patient outcomes, we are optimistic about our ability to achieve
significant long-term growth," Burbach commented."

1 37. On February 23, 2011, the Company filed an annual report with the SEC on a Form 10-K
2 for the year ended January 1, 2011 which was signed by, among others, Defendants Burbach and
3 Oulman. In addition, the Form 10-K contained certifications pursuant to SOX signed by Defendants
4 Burbach and Oulman, stating that the financial information contained in the Form 10-K was accurate
5 and disclosed any material changes to the Company's internal control over financial reporting.

6
7 38. The 10-K represented the following in relevant part concerning HeartMate II:

8 The HeartMate II is an implantable, electrically powered, continuous flow, left
9 ventricular assist device consisting of a miniature rotary blood pump designed to provide
10 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
11 quality of life and to provide five to ten years of circulatory support for a broad range of
12 advanced HF patients. Significantly smaller than the HeartMate XVE and with only one
13 moving part, the HeartMate II is simpler and designed to operate more quietly than
14 pulsatile devices. Effective January 20, 2010, the HeartMate II can be used in patients
15 with New York Heart Association Class IIIB and IV end-stage left ventricular failure
16 who have received optimal medical therapy for at least forty-five of the last sixty days,
17 and who are not candidates for cardiac transplantation.

18 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
19 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
20 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
21 the HeartMate II received CE Mark approval, allowing for its commercial sale in
22 Europe. In May 2009, the HeartMate II was approved in Canada.

23 During the third quarter of 2009 we launched our new HeartMate external peripherals
24 (Go Gear), including new batteries, charger and power module, which are designed to
25 provide an enhanced quality of life for HeartMate patients by providing them more
26 freedom and mobility and the ability to more easily resume many aspects of a normal
27 lifestyle.

28 39. On May 3, 2011, the Company issued a press release reporting financial results for the
first quarter ended April 2, 2011. Specifically, the Company reported net income of \$16.5 million, or
\$0.27 diluted EPS and sales of \$99.5 million, as compared to net income of \$13.4 million, or \$0.23
diluted EPS and sales of \$99.3 million for the same period a year ago.

40. In the press release, the Company stated the following in relevant part:

"Thoratec had a solid first quarter, highlighted by 13% sequential VAD unit growth in
North America. We believe this performance reflects favorably on our market and center
development activities and shows continued momentum in the DT market. We were

1 particularly pleased with the contributions made by centers that have adopted HeartMate
2 II since commercial approval," said Gary Burbach, president and chief executive officer.
3 "Our international revenues declined 3% year-over-year on a constant currency basis, as
4 we believe the broader market softened in the first quarter following robust growth in the
5 fourth quarter of 2010."

6 The company said it ended the first quarter of 2011 with 265 HeartMate II centers
7 globally, including 142 in North America and 123 internationally, versus 254 at the end
8 of fiscal 2010. Ninety-four centers in North America have received CMS (Centers for
9 Medicare and Medicaid Services) certification for DT reimbursement.

10 "There have been a number of important clinical education and market development
11 events over the past four months, including our Thoratec Mechanical Circulatory
12 Support Users' Conference and our largest summit for community cardiologists to date.
13 In addition, there have been a number of data presentations at recent professional
14 meetings that have continued to demonstrate the unrivaled clinical performance of the
15 HeartMate II. Despite the challenging patient populations and broad base of centers in
16 which HeartMate II has been studied, it has generated impressive survival outcomes and
17 the lowest reported rates of catastrophic adverse events, including pump thrombosis and
18 stroke."

19 "We also realized some important milestones with our product pipeline during the first
20 quarter, including the full commercial launch of our sealed inflow and outflow grafts for
21 the HeartMate II. Feedback so far has been excellent, with clinicians commenting
22 favorably on the grafts' ease of implant and potential to reduce peri-operative bleeding,"
23 Burbach added.

24 41. On May 5, 2011, the Company filed a quarterly report with the SEC on a Form 10-Q for
25 the first quarter ended April 2, 2011 which was signed by Defendants Burbach and Oulman. In
26 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
27 Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
28 any material changes to the Company's internal control over financial reporting.

42. The 10-Q represented the following in relevant part concerning HeartMate II:

23 The HeartMate II is an implantable, electrically powered, continuous flow, left
24 ventricular assist device consisting of a miniature rotary blood pump designed to provide
25 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
26 quality of life and to provide five to ten years of circulatory support for a broad range of
27 advanced HF patients. Significantly smaller than the HeartMate XVE and with only one
28 moving part, the HeartMate II is simpler and designed to operate more quietly than
pulsatile devices. Effective January 20, 2010, the HeartMate II can be used in patients
with New York Heart Association Class IIIB and IV end-stage left ventricular failure
who have received optimal medical therapy for at least forty-five of the last sixty days,
and who are not candidates for cardiac transplantation.

1 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
2 (“BTT”) and received FDA approval for use in HF patients who are not eligible for heart
3 transplantation (“Destination Therapy” or “DT”) in January 2010. In November 2005,
4 the HeartMate II received CE Mark approval, allowing for its commercial sale in
5 Europe. In May 2009, the HeartMate II was approved in Canada.

6 During the third quarter of 2009 we launched our new HeartMate external peripherals
7 (GoGear), including new batteries, charger and power module, which are designed to
8 provide an enhanced quality of life for HeartMate patients by providing them more
9 freedom and mobility and the ability to more easily resume many aspects of a normal
10 lifestyle.

11 43. On August 3, 2011, the Company issued a press release reporting financial results for the
12 second quarter ended July 2, 2011. Specifically, the Company reported net income of \$21.8 million, or
13 \$0.36 diluted EPS and sales of \$111.2 million, as compared to net income of \$17.5 million, or \$0.29
14 diluted EPS and sales of \$195.1 million for the same period a year ago.

15 44. In the press release, the Company stated the following in relevant part:

16 "We had an excellent quarter with double digit revenue growth both year-over-year and
17 sequentially, driven by the continued market penetration of the HeartMate II® LVAS
18 (Left Ventricular Assist System) for Destination Therapy (DT)," said Gary F. Burbach,
19 president and chief executive officer.

20 "We were particularly pleased with HeartMate II unit growth of 21 percent in the U.S.
21 and 20 percent internationally, demonstrating healthy underlying market trends and
22 HeartMate II's strong competitive position. This growth is being fueled by the
23 compelling long-term patient outcomes achieved with the device, as well as the impact
24 of our programs to facilitate referral activity, support capacity expansion at existing
25 centers, and foster VAD programs at new centers," he added.

26 The company said it ended the second quarter of 2011 with 272 HeartMate II centers
27 globally, including 135 in the U.S. and 137 internationally, versus a total of 254 centers,
28 including 130 in the U.S. and 124 internationally, at the end of fiscal 2010. In addition,
99 centers in the U.S. have now received CMS (Centers for Medicare and Medicaid
Services) certification for DT reimbursement, or an increase of nine versus the end of
fiscal 2010.

45. On August 4, 2011, the Company filed a quarterly report with the SEC on a Form 10-Q for
the second quarter ended July 2, 2011 which was signed by Defendants Burbach and Oulman. In
addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and

1 Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
2 any material changes to the Company's internal control over financial reporting.

3 46. The 10-Q represented the following in relevant part concerning HeartMate II:

4 The HeartMate II is an implantable, electrically powered, continuous flow, left
5 ventricular assist device consisting of a rotary blood pump designed to provide
6 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
7 quality of life for a broad range of advanced HF patients. Significantly smaller than
8 previous ventricular assist devices and with only one moving part, the HeartMate II is
9 simpler and designed to operate more quietly than pulsatile devices.

10 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
11 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
12 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
13 the HeartMate II received CE Mark approval, allowing for its commercial sale in
14 Europe. In May 2009, the HeartMate II was approved in Canada.

15 During the third quarter of 2009, we launched our new HeartMate external peripherals
16 (GoGear), including new batteries, charger and power module, which are designed to
17 provide an enhanced quality of life for HeartMate patients by providing them more
18 freedom and mobility and the ability to more easily resume many aspects of a normal
19 lifestyle.

20 47. On November 3, 2011, the Company issued a press release reporting financial results for
21 the third quarter ended October 1, 2011. Specifically, the Company reported net income of \$19 million,
22 or \$0.31 diluted EPS and sales of \$102.6 million, as compared to net income of \$15.5 million, or \$0.26
23 diluted EPS and sales of \$91 million for the same period a year ago.

24 48. In the press release, the Company stated the following in relevant part:

25 "Thoratec "Thoratec had a solid third quarter, generating double-digit growth in pump
26 unit sales year-over-year in both the U.S. and international markets. We continue to
27 benefit from increased adoption of mechanical circulatory support, as well as the market
28 leadership position of the HeartMate II® LVAS (Left Ventricular Assist System)," said
Gary F. Burbach, president and chief executive officer of Thoratec.

"We also experienced a strong quarter with respect to new center development, as we
added eight HeartMate II centers globally, including six in the U.S. and two
internationally. As of the end of the third quarter, we had 280 HeartMate II centers
worldwide, including 141 in the U.S. and 139 internationally, versus a total of 254 at the
end of fiscal 2010," he added.

1 "Our continued growth is being facilitated by our market development and clinical
2 education programs. In addition, the ongoing flow of data is demonstrating compelling
3 long-term outcomes in HeartMate II patients, including data published recently in
4 leading peer-reviewed journals," he said.

5 One of the recent data publications, which appeared in the October edition of The
6 Annals of Thoracic Surgery, compared outcomes from nearly 1,500 commercial bridge-
7 to-transplantation (BTT) HeartMate II patients with those of nearly 500 patients who
8 participated in the HeartMate II BTT clinical trial. The findings included Kaplan-Meier
9 survival of 89 percent at six months and 85 percent at one year for commercial patients.
10 In addition, commercial patients experienced declines in most adverse events versus
11 patients in the trial, with catastrophic events such as device replacement and stroke
12 occurring in just one percent and six percent of patients, respectively. "This dataset
13 demonstrates excellent and improving outcomes for HeartMate II patients in a real-world
14 setting among a broad range of implanting centers."

15 49. On November 7, 2011, the Company filed a quarterly report with the SEC on a Form 10-Q
16 for the third quarter ended October 1, 2011 which was signed by Defendants Burbach and Harris. In
17 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
18 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
19 any material changes to the Company's internal control over financial reporting.

20 50. The 10-Q represented the following in relevant part concerning HeartMate II:

21 The HeartMate II is an implantable, electrically powered, continuous flow, left
22 ventricular assist device consisting of a rotary blood pump designed to provide
23 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
24 quality of life for a broad range of advanced HF patients. Significantly smaller than
25 previous ventricular assist devices and with only one moving part, the HeartMate II is
26 simpler and designed to operate more quietly than pulsatile devices.

27 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
28 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
the HeartMate II received CE Mark approval, allowing for its commercial sale in
Europe. In May 2009, the HeartMate II was approved in Canada.

During the third quarter of 2009, we launched our new HeartMate external peripherals
(GoGear), including new batteries, charger and power module, which are designed to
provide an enhanced quality of life for HeartMate patients by providing them more
freedom and mobility and the ability to more easily resume many aspects of a normal
lifestyle.

1 51. On February 8, 2012, after the market closed the Company issued a press release reporting
2 financial results for the fourth quarter and year ended December 31, 2011. For the quarter, the
3 Company reported net income of \$15.3 million, or \$0.25 diluted earnings per share ("EPS") and sales
4 of \$109.4 million, as compared to net income of \$10.5 million, or \$0.17 diluted EPS and sales of \$97.6
5 million for the same period a year ago. For the year, the Company reported net income of \$71.53
6 million, or \$1.19 diluted EPS and sales of \$422.7 million, as compared to net income of \$53.2 million,
7 or \$0.89 diluted EPS and sales of \$383 million for the same period a year ago.
8

9 52. In the press release, the Company stated the following in relevant part:

10 "Thoratec had another excellent year in 2011, driven by strong adoption of HeartMate
11 II® for the Destination Therapy indication. Our growth came primarily from utilization
12 increases at existing VAD programs, driven largely by our investment in market
13 development initiatives, but also from continued expansion of the therapy to new
14 centers," said Gary F. Burbach, President and Chief Executive Officer.

15 "Our fourth quarter performance was particularly encouraging, highlighted by mid-teens
16 volume growth of HeartMate II in both the U.S. and our direct European markets,"
17 Burbach noted. "Internationally, HeartMate II had its best quarter in history, and in the
18 U.S., we estimate that the Destination Therapy (DT) indication climbed to over 40% of
19 HeartMate II implants, providing us with solid momentum as we enter 2012."

20 53. On February 21, 2012, the Company filed an annual report with the SEC on a Form 10-K
21 for the year ended December 31, 2011 which was signed by, among others, Defendants Burbach and
22 Oulman. In addition, the Form 10-K contained certifications pursuant to SOX signed by Defendants
23 Burbach and Oulman, stating that the financial information contained in the Form 10-K was accurate
24 and disclosed any material changes to the Company's internal control over financial reporting.

25 54. The 10-K represented the following in relevant part concerning HeartMate II:

26 The HeartMate II is an implantable, electrically powered, continuous flow, left
27 ventricular assist device consisting of a rotary blood pump designed to provide
28 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
quality of life for a broad range of advanced HF patients. Significantly smaller than the
HeartMate XVE and with only one moving part, the HeartMate II is simpler and
designed to operate more quietly than pulsatile devices.

1 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation ("BTT")
2 and received FDA approval for use in HF patients who are not eligible for heart
3 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
4 the HeartMate II received CE Mark approval, allowing for its commercial sale in
5 Europe. In May 2009, the HeartMate II was approved in Canada.

6 During the third quarter of 2009, we launched our new HeartMate external peripherals
7 (GoGear), including new batteries, charger and power module, which are designed to
8 provide an enhanced quality of life for HeartMate patients by providing them more
9 freedom and mobility and the ability to more easily resume many aspects of a normal
10 lifestyle.

11 **THE TRUTH BEGINS TO EMERGE**

12 55. On April 4, 2012, U.S. regulators ordered a recall for the company's HeartMate II heart
13 pumps for a potentially deadly defect. In a regulatory posting by the Food and Drug Administration, it
14 was stated that the recall, "was initiated after Thoratec found that a component of the implanted device,
15 which pumps blood for heart failure patients, may sometimes be improperly attached to the HeartMate
16 II."

17 56. In a note to investors, analyst Steven Lichtman, at Oppenheimer & Co in New York wrote
18 that, "the positioning of the component, called a bend relief, has been a concern tied to an increase in
19 blood clots seen with HeartMate II."

20 57. On the news, shares of Thoratec shares tumbled \$1.52 or almost 4.5% to close at \$32.83
21 on volume of 5,441,400 shares.

22 58. On May 1, 2012, the Company issued a press release reporting financial results for the
23 first quarter ended March 31, 2012. Specifically, the Company reported net income of \$25.5 million, or
24 \$0.43 diluted EPS and sales of \$126.8 million, as compared to net income of \$16.5 million, or \$0.27
25 diluted EPS and sales of \$99.5 million for the same period a year ago.

26 59. In the press release, the Company stated the following in relevant part:

27 "Thoratec had an excellent first quarter, highlighted by strong growth across both the
28 HeartMate II and CentriMag® product lines," said Gary Burbach, President and Chief
Executive Officer. "Our HeartMate II performance was broad-based, with unit growth of

1 32% in both the U.S. and international markets. Internationally, France and Germany
2 delivered robust results, and in the U.S., the Destination Therapy (DT) indication
continued to drive the majority of our growth."

3 "I am encouraged by the ongoing success of our market development initiatives,"
4 Burbach added. "In particular, we believe our first quarter results reflect continued
5 progress in generating referrals of well-qualified candidates for HeartMate II therapy, as
6 well as in facilitating program expansion across a broad group of centers, including the
increasingly important open heart center segment."

7 The company ended the first quarter of 2012 with 299 HeartMate II centers globally,
8 including 154 in the U.S. and 145 internationally. In the U.S., there are now 109 centers
with Joint Commission certification for DT reimbursement.

9 Thoratec also commented on the initial results from the DT post-approval study, which
10 show encouraging trends toward improvement since the clinical trial. These initial
11 results were presented at the International Society for Heart and Lung Transplantation by
12 Dr. Ulrich Jorde from Columbia University. The DT post-approval study includes the
13 first 247 DT patients enrolled into INTERMACS from 61 U.S. centers following FDA
14 approval. The study is still ongoing and will reach full two-year follow-up for all
15 patients this Fall. One-year survival for these patients reached 75%, demonstrating
16 continuing improvement relative to the published results from the pivotal trial cohort as
17 well as the DT Continued Access Protocol (CAP). *In terms of critical adverse events,*
18 *HeartMate II continued to demonstrate a low level of thromboembolic complications,*
19 *while length of stay, bleeding, and infection are all showing favorable trends relative to*
20 *the clinical trial.*

21 *"HeartMate II continues to deliver excellent real-world clinical outcomes for patients*
22 *with advanced heart failure, and we were excited to treat our 10,000th patient during*
23 *the first quarter. We look forward to building upon this important milestone by*
24 *continuing to invest in both our market development activities as well as our innovative*
25 *pipeline of new technologies,"* Burbach commented.

26 [Emphasis added.]

27 60. On May 8, 2012, the Company filed a quarterly report with the SEC on a Form 10-Q for
28 the first quarter ended March 31, 2012 which was signed by Defendants Burbach and Oulman. In
addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
any material changes to the Company's internal control over financial reporting.

61. The 10-Q represented the following in relevant part concerning HeartMate II:

1 The HeartMate II is an implantable, electrically powered, continuous flow, left
2 ventricular assist device consisting of a rotary blood pump designed to provide
3 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
4 quality of life for a broad range of advanced HF patients. Significantly smaller than the
HeartMate XVE and with only one moving part, the HeartMate II is simpler and
designed to operate more quietly than pulsatile devices.

5 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
6 (“BTT”) and received FDA approval for use in HF patients who are not eligible for heart
7 transplantation (“Destination Therapy” or “DT”) in January 2010. In November 2005,
the HeartMate II received CE Mark approval, allowing for its commercial sale in
Europe. In May 2009, the HeartMate II was approved in Canada.

8 During the third quarter of 2009, we launched our new HeartMate external peripherals
9 (GoGear), including new batteries, charger and power module, which are designed to
10 provide an enhanced quality of life for HeartMate patients by providing them more
11 freedom and mobility and the ability to more easily resume many aspects of a normal
lifestyle.

12 62. On August 1, 2012, the Company issued a press release reporting financial results for the
13 second quarter ended June 30, 2012. Specifically, the Company reported net income of \$20.8 million,
14 or \$0.35 diluted EPS and sales of \$118.7 million, as compared to net income of \$21.8 million, or \$0.36
15 diluted EPS and sales of \$111.2 million for the same period a year ago.

16
17 63. In the press release, the Company stated the following in relevant part:

18 "We achieved solid growth during the second quarter, driven by continued development
19 of the Destination Therapy (DT) opportunity, and delivered the strongest six-month
20 financial performance in the company's history," said Gary F. Burbach, President and
21 Chief Executive Officer. "We were particularly pleased with HeartMate II unit growth of
22 13 percent during the second quarter and 22 percent for the first half of 2012,
demonstrating healthy underlying market trends and HeartMate II's strong competitive
position," he added.

23 ***

24 "Based on the strength of our performance in the first half of the year, the underlying
25 momentum in the VAD market, and our confidence in Thoratec's ongoing competitive
26 position, we are increasing our revenue and earnings guidance for 2012," Burbach
27 commented. "Looking forward, we remain focused on driving continued adoption of
28 HeartMate II in the under-penetrated DT market through our range of market
development initiatives, as well as on advancing our pipeline of exciting new
technologies, with a goal of initiating pivotal trials for two major new product platforms,
HeartMate III and HeartMate PHP, during 2013."

1 64. On August 2, 2012, the Company filed a quarterly report with the SEC on a Form 10-Q for
2 the second quarter ended June 30, 2012 which was signed by Defendants Burbach and Oulman. In
3 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
4 Oulman, stating that the financial information contained in the Form 10-Q was accurate and disclosed
5 any material changes to the Company's internal control over financial reporting.
6

7 65. The 10-Q represented the following in relevant part concerning HeartMate II:

8 The HeartMate II is an implantable, electrically powered, continuous flow, left
9 ventricular assist device consisting of a rotary blood pump designed to provide
10 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
11 quality of life for a broad range of advanced HF patients. Significantly smaller than
previous ventricular assist devices and with only one moving part, the HeartMate II is
simpler and designed to operate more quietly than pulsatile devices.

12 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
13 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
14 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
the HeartMate II received CE Mark approval, allowing for its commercial sale in
15 Europe. In May 2009, the HeartMate II was approved in Canada.

16 66. On November 1, 2012, the Company issued a press release reporting financial results for
17 the third quarter ended September 29, 2012. Specifically, the Company reported net income of \$24.3
18 million, or \$0.41 diluted EPS and sales of \$117.8 million, as compared to net income of \$18 million, or
19 \$0.30 diluted EPS and sales of \$102.6 million for the same period a year ago.

20 67. In the press release, the Company stated the following in relevant part:

21 "Thoratec delivered excellent results during the third quarter, demonstrating continued
22 momentum in the global VAD market as well as HeartMate II's strong competitive
23 position," said Gary F. Burbach, President and Chief Executive Officer. "HeartMate II
24 unit volume expanded by 27% during the third quarter and 23% for the first nine months
of the year, driven by the U.S. Destination Therapy indication and healthy underlying
25 trends in international markets," he added.

26 ***

27 "I am highly encouraged by the outlook for the investments we are making in both
28 market development and product development," Burbach commented. "Our market
development efforts continue to drive strong performance in our HeartMate II product
line, and with respect to our product development portfolio, we remain on track to

1 initiate pivotal clinical trials for both HeartMate III and HeartMate PHP™ during
2 2013."

3 68. On November 2, 2012, the Company filed a quarterly report with the SEC on a Form 10-Q
4 for the third quarter ended September 29, 2012 which was signed by Defendants Burbach and Harris.
5 In addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
6 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
7 any material changes to the Company's internal control over financial reporting.

8 69. The 10-Q represented the following in relevant part concerning HeartMate II:

9 The HeartMate II is an implantable, electrically powered, continuous flow, left
10 ventricular assist device consisting of a rotary blood pump designed to provide
11 intermediate and long-term MCS. The HeartMate II is designed to improve survival and
12 quality of life for a broad range of advanced HF patients. Significantly smaller than
13 previous ventricular assist devices and with only one moving part, the HeartMate II is
14 simpler and designed to operate more quietly than pulsatile devices.

15 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
16 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
17 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
18 the HeartMate II received CE Mark approval, allowing for its commercial sale in
19 Europe. In May 2009, the HeartMate II was approved in Canada.

20 70. On February 5, 2013, the Company issued a press release reporting financial results for the
21 fourth quarter and year ended December 29, 2012. For the quarter, the Company reported net loss of
22 \$14.4 million, or (\$0.25) diluted EPS and sales of \$128.5 million, as compared to net income of \$15.3
23 million, or \$0.25 diluted EPS and sales of \$109.4 million for the same period a year ago. For the year,
24 the Company reported net income of \$56.2 million, or \$0.94 diluted EPS and sales of \$491.7 million, as
25 compared to net income of \$71.5 million, or \$1.19 diluted EPS and sales of \$422.7 million for the same
26 period a year ago.

27 71. In the press release, the Company stated the following in relevant part:

28 "Thoratec had an impressive year in 2012, with sales growth of 16 percent driven by our
HeartMate II® and CentriMag® product lines, highlighting our leadership positions in
chronic and acute mechanical circulatory support," said Gary F. Burbach, President and
Chief Executive Officer. "We were particularly pleased to finish the year with strong

1 fourth quarter results, including 20 percent unit growth for HeartMate II on a worldwide
2 basis, reflecting continued adoption in the U.S. Destination Therapy indication as well as
in international markets."

3 72. On February 20, 2013, the Company filed an annual report with the SEC on a Form 10-K
4 for the year ended December 29, 2012 which was signed by, among others, Defendants Burbach and
5 Harris. In addition, the Form 10-K contained certifications pursuant to SOX signed by Defendants
6 Burbach and Harris, stating that the financial information contained in the Form 10-K was accurate and
7 disclosed any material changes to the Company's internal control over financial reporting.
8

9 73. The 10-K represented the following in relevant part concerning HeartMate II:

10 HeartMate II is an implantable, electrically powered, continuous flow, left ventricular
11 assist device ("LVAD") consisting of a rotary blood pump designed to provide
12 intermediate and long-term MCS. HeartMate II is designed to improve survival and
13 quality of life for a broad range of advanced HF patients. Significantly smaller than
HeartMate XVE and with only one moving part, HeartMate II is simpler and designed to
operate more quietly than pulsatile devices.

14 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation ("BTT")
15 and received FDA approval for use in HF patients who are not eligible for heart
16 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
17 HeartMate II received CE Mark approval. HeartMate II is the most widely used and
standard LVAD.

18 ***

19 On January 20, 2010, we received approval to market HeartMate II for DT in patients
20 with New York Heart Association Class III B and IV end-stage left ventricular failure
21 who have received optimal medical therapy for at least forty-five of the last sixty days,
and who are not candidates for cardiac transplantation. In 2012, we completed the FDA-
required post-market study of 247 patients who received the HeartMate II for DT.

22 74. On May 2, 2013, the Company issued a press release reporting financial results for the
23 first quarter ended March 30, 2013. Specifically, the Company reported net income of \$18.2 million, or
24 \$0.31 diluted EPS and sales of \$117.7 million, as compared to net income of \$25.5 million, or \$0.43
25 diluted EPS and sales of \$126.8 million for the same period a year ago.
26

27 75. On May 3, 2013, the Company filed a quarterly report with the SEC on a Form 10-Q for
28 the first quarter ended March 30, 2013 which was signed by Defendants Burbach and Oulman. In

1 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
2 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
3 any material changes to the Company's internal control over financial reporting.

4 76. The 10-Q represented the following in relevant part concerning HeartMate II:

5 HeartMate II is an implantable, electrically powered, continuous flow, left ventricular
6 assist device ("LVAD") consisting of a rotary blood pump designed to provide
7 intermediate and long-term MCS. HeartMate II is designed to improve survival and
8 quality of life for a broad range of advanced HF patients. Significantly smaller than
9 previous ventricular assist devices and with only one moving part, the HeartMate II is
10 simpler and designed to operate more quietly than pulsatile devices.

11 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
12 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
13 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
14 HeartMate II received CE Mark approval. The HeartMate II is the most widely used
15 LVAD.

16 77. On July 31, 2013, the Company issued a press release reporting financial results for the
17 second quarter ended June 29, 2013. Specifically, the Company reported net income of \$23.2 million,
18 or \$0.40 diluted EPS and sales of \$130.5 million, as compared to net income of \$20.8 million, or \$0.35
19 diluted EPS and sales of \$118.7 million for the same period a year ago.

20 78. In the press release, the Company stated the following in relevant part:

21 "Thoratec delivered strong results during the second quarter, supported by our leadership
22 positions with HeartMate II[®] and CentriMag[®], as well as our intense focus on driving
23 continued growth in the global MCS market," said Gary F. Burbach, President and Chief
24 Executive Officer. "HeartMate II unit volume increased by nine percent on a global
25 basis, highlighted by sequential growth in the U.S. market and robust growth
26 internationally, driven in part by our successful initial launch in Japan," he added.

27 ***

28 "We recently celebrated the 15,000th implant of HeartMate II, a significant milestone for
Thoratec, the broader field of mechanical circulatory support, and the patients that we
serve," Burbach commented. "HeartMate II has set a new standard for clinical
performance and has facilitated broader adoption of VAD therapy. We remain
committed to continuing to drive the field forward through our significant investments in
market and product development."

1 79. On August 1, 2013, the Company filed a quarterly report with the SEC on a Form 10-Q for
2 the second quarter ended June 29, 2013 which was signed by Defendants Burbach and Harris. In
3 addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and
4 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
5 any material changes to the Company's internal control over financial reporting.
6

7 80. The 10-Q represented the following in relevant part concerning HeartMate II:

8 HeartMate II is an implantable, electrically powered, continuous flow, left ventricular
9 assist device ("LVAD") consisting of a rotary blood pump designed to provide
10 intermediate and long-term MCS. HeartMate II is designed to improve survival and
11 quality of life for a broad range of advanced HF patients. Significantly smaller than
12 previous ventricular assist devices and with only one moving part, the HeartMate II is
13 simpler and designed to operate more quietly than pulsatile devices.

14 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
15 ("BTT") and received FDA approval for use in HF patients who are not eligible for heart
16 transplantation ("Destination Therapy" or "DT") in January 2010. In November 2005,
17 HeartMate II received CE Mark approval. The HeartMate II is the most widely used
18 LVAD.

19 81. On October 30, 2013, the Company issued a press release reporting financial results for
20 the third quarter ended September 28, 2013. Specifically, the Company reported net income of \$18.9
21 million, or \$0.32 diluted EPS and sales of \$126.4 million, as compared to net income of \$24.3 million,
22 or \$0.41 diluted EPS and sales of \$117.8 million for the same period a year ago.
23

24 82. In the press release, the Company stated the following in relevant part:

25 "Thoratec generated strong results during the third quarter, highlighted by continued
26 growth in our HeartMate II[®] and CentriMag[®] product lines," said Gary F. Burbach,
27 President and Chief Executive Officer. "We continue to drive expansion of the
28 worldwide market for MCS therapy and delivered international revenue growth of 32%
during the quarter," he added.

83. On October 31, 2013, the Company filed a quarterly report with the SEC on a Form 10-Q
for the third quarter ended September 28, 2013 which was signed by Defendants Burbach and Harris.
In addition, the Form 10-Q contained certifications pursuant to SOX signed by Defendants Burbach and

1 Harris, stating that the financial information contained in the Form 10-Q was accurate and disclosed
2 any material changes to the Company’s internal control over financial reporting.

3 84. The 10-Q represented the following in relevant part concerning HeartMate II:

4 HeartMate II is an implantable, electrically powered, continuous flow, left ventricular
5 assist device (“LVAD”) consisting of a rotary blood pump designed to provide
6 intermediate and long-term MCS. HeartMate II is designed to improve survival and
7 quality of life for a broad range of advanced HF patients. Significantly smaller than
8 previous ventricular assist devices and with only one moving part, the HeartMate II is
9 simpler and designed to operate more quietly than pulsatile devices.

10 HeartMate II received FDA approval in April 2008 for bridge-to-transplantation
11 (“BTT”) and received FDA approval for use in HF patients who are not eligible for heart
12 transplantation (“Destination Therapy” or “DT”) in January 2010. In November 2005,
13 HeartMate II received CE Mark approval. The HeartMate II is the most widely used
14 LVAD.

15 85. The statements referenced in ¶¶ 23-54, and 58-84 above were materially false and/or
16 misleading because they misrepresented and/or failed to disclose that the Company’s HeartMate II Left
17 Ventricular Assist Device had significant risk of pump thrombosis.

18 86. Defendants’ attempts to further mislead investors regarding the safety of the HeartMate II
19 came to an abrupt end, when on November 27, 2013, after the market closed, the New England Journal
20 of Medicine published an article describing the high incidence of adverse events associated with
21 Thoratec’s HeartMate II. The article disclosed the following in relevant part:

22 Background

23 We observed an apparent increase in the rate of device thrombosis among patients who
24 received the HeartMate II left ventricular assist device, as compared with preapproval
25 clinical-trial results and initial experience. We investigated the occurrence of pump
26 thrombosis and elevated lactate dehydrogenase (LDH) levels, LDH levels presaging
27 thrombosis (and associated hemolysis), and outcomes of different management strategies
28 in a multi-institutional study.

Methods

We obtained data from 837 patients at three institutions, where 895 devices were
implanted from 2004 through mid-2013; the mean (\pm SD) age of the patients was 55 \pm 14
years. The primary end point was confirmed pump thrombosis. Secondary end points

were confirmed and suspected thrombosis, longitudinal LDH levels, and outcomes after pump thrombosis.

Results

A total of 72 pump thromboses were confirmed in 66 patients; an additional 36 thromboses in unique devices were suspected. Starting in approximately March 2011, the occurrence of confirmed pump thrombosis at 3 months after implantation increased from 2.2% (95% confidence interval [CI], 1.5 to 3.4) to 8.4% (95% CI, 5.0 to 13.9) by January 1, 2013. Before March 1, 2011, the median time from implantation to thrombosis was 18.6 months (95% CI, 0.5 to 52.7), and from March 2011 onward, it was 2.7 months (95% CI, 0.0 to 18.6). The occurrence of elevated LDH levels within 3 months after implantation mirrored that of thrombosis. Thrombosis was presaged by LDH levels that more than doubled, from 540 IU per liter to 1490 IU per liter, within the weeks before diagnosis. Thrombosis was managed by heart transplantation in 11 patients (1 patient died 31 days after transplantation) and by pump replacement in 21, with mortality equivalent to that among patients without thrombosis; among 40 thromboses in 40 patients who did not undergo transplantation or pump replacement, actuarial mortality was 48.2% (95% CI, 31.6 to 65.2) in the ensuing 6 months after pump thrombosis.

Conclusions

The rate of pump thrombosis related to the use of the HeartMate II has been increasing at our centers and is associated with substantial morbidity and mortality.

87. On this news, Thoratec shares declined \$2.75 per share or 6.5%, to close at \$39.37 per share on November 29, 2013.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

88. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Thoratec securities during the Class Period (the “Class”); and were damaged thereby. Excluded from the Class are defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

89. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Thoratec securities were actively traded on the NASDAQ. While the

1 exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through
2 appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the
3 proposed Class. Record owners and other members of the Class may be identified from records
4 maintained by Thoratec or its transfer agent and may be notified of the pendency of this action by mail,
5 using the form of notice similar to that customarily used in securities class actions.
6

7 90. Plaintiff's claims are typical of the claims of the members of the Class as all members of
8 the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is
9 complained of herein.

10 91. Plaintiff will fairly and adequately protect the interests of the members of the Class and
11 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no
12 interests antagonistic to or in conflict with those of the Class.
13

14 92. Common questions of law and fact exist as to all members of the Class and predominate
15 over any questions solely affecting individual members of the Class. Among the questions of law and
16 fact common to the Class are:

- 17 • whether the federal securities laws were violated by defendants' acts as alleged
18 herein;
- 19 • whether statements made by defendants to the investing public during the Class
20 Period misrepresented material facts about the business, operations and management
21 of Thoratec;
- 22 • whether the Individual Defendants caused Thoratec to issue false and misleading
23 financial statements during the Class Period;
- 24 • whether defendants acted knowingly or recklessly in issuing false and misleading
25 financial statements;
- 26 • whether the prices of Thoratec securities during the Class Period were artificially
27 inflated because of the defendants' conduct complained of herein; and
- 28 • whether the members of the Class have sustained damages and, if so, what is the
proper measure of damages.

1 93. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
3 damages suffered by individual Class members may be relatively small, the expense and burden of
4 individual litigation make it impossible for members of the Class to individually redress the wrongs
5 done to them. There will be no difficulty in the management of this action as a class action.
6

7 94. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-
8 the-market doctrine in that:

- 9 • defendants made public misrepresentations or failed to disclose material facts during
10 the Class Period;
- 11 • the omissions and misrepresentations were material;
- 12 • Thoratec securities are traded in efficient markets;
- 13 • the Company’s shares were liquid and traded with moderate to heavy volume during
14 the Class Period;
- 15 • the Company traded on the NASDAQ, and was covered by multiple analysts;
- 16 • the misrepresentations and omissions alleged would tend to induce a reasonable
17 investor to misjudge the value of the Company’s securities; and
- 18 • Plaintiff and members of the Class purchased and/or sold Thoratec securities
19 between the time the defendants failed to disclose or misrepresented material facts
20 and the time the true facts were disclosed, without knowledge of the omitted or
21 misrepresented facts.

22 95. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
23 presumption of reliance upon the integrity of the market.

24 **COUNT I**

25 **(Against All Defendants for Violations of
Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

26 96. Plaintiff repeats and realleges each and every allegation contained above as if fully set
27 forth herein.
28

1 97. This Count is asserted against defendants and is based upon Section 10(b) of the Exchange
2 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

3 98. During the Class Period, defendants engaged in a plan, scheme, conspiracy and course of
4 conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and
5 courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the
6 Class; made various untrue statements of material facts and omitted to state material facts necessary in
7 order to make the statements made, in light of the circumstances under which they were made, not
8 misleading; and employed devices, schemes and artifices to defraud in connection with the purchase
9 and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive
10 the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially
11 inflate and maintain the market price of Thoratec securities; and (iii) cause Plaintiff and other members
12 of the Class to purchase Thoratec securities at artificially inflated prices. In furtherance of this unlawful
13 scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.
14

15 99. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
16 defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and
17 annual reports, SEC filings, press releases and other statements and documents described above,
18 including statements made to securities analysts and the media that were designed to influence the
19 market for Thoratec securities and options. Such reports, filings, releases and statements were
20 materially false and misleading in that they failed to disclose material adverse information and
21 misrepresented the truth about Thoratec's finances and business prospects.
22

23 100. By virtue of their positions at Thoratec, defendants had actual knowledge of the materially
24 false and misleading statements and material omissions alleged herein and intended thereby to deceive
25 Plaintiff and the other members of the Class, or, in the alternative, defendants acted with reckless
26 disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal
27
28

1 the materially false and misleading nature of the statements made, although such facts were readily
2 available to defendants. Said acts and omissions of defendants were committed willfully or with
3 reckless disregard for the truth. In addition, each defendant knew or recklessly disregarded that
4 material facts were being misrepresented or omitted as described above.

5 101. Information showing that defendants acted knowingly or with reckless disregard for the
6 truth is peculiarly within defendants' knowledge and control. As the senior managers and/or directors
7 of Thoratec, the Individual Defendants had knowledge of the details of Thoratec's internal affairs.
8

9 102. The Individual Defendants are liable both directly and indirectly for the wrongs
10 complained of herein. Because of their positions of control and authority, the Individual Defendants
11 were able to and did, directly or indirectly, control the content of the statements of Thoratec. As
12 officers and/or directors of a publicly-held company, the Individual Defendants had a duty to
13 disseminate timely, accurate, and truthful information with respect to Thoratec's businesses, operations,
14 future financial condition and future prospects. As a result of the dissemination of the aforementioned
15 false and misleading reports, releases and public statements, the market price of Thoratec securities was
16 artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning
17 Thoratec's business and financial condition which were concealed by defendants, Plaintiff and the other
18 members of the Class purchased Thoratec securities at artificially inflated prices and relied upon the
19 price of the securities, the integrity of the market for the securities and/or upon statements disseminated
20 by defendants, and were damaged thereby.
21

22 103. During the Class Period, Thoratec securities were traded on an active and efficient market.
23 Plaintiff and the other members of the Class, relying on the materially false and misleading statements
24 described herein, which the defendants made, issued or caused to be disseminated, or relying upon the
25 integrity of the market, purchased shares of Thoratec securities at prices artificially inflated by
26 defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they
27
28

1 would not have purchased said securities or would not have purchased them at the inflated prices that
2 were paid. At the time of the purchases by Plaintiff and the Class, the true value of Thoratec securities
3 were substantially lower than the prices paid by Plaintiff and the other members of the Class. The
4 market price of Thoratec securities declined sharply upon public disclosure of the facts alleged herein to
5 the injury of Plaintiff and Class members.

6
7 104. By reason of the conduct alleged herein, defendants knowingly or recklessly, directly or
8 indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

9
10 105. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other
11 members of the Class suffered damages in connection with their respective purchases and sales of the
12 Company's securities during the Class Period, upon the disclosure that the Company had disseminated
13 false financial statements to the investing public related to its prospects for FDA approval.

14 **COUNT II**

15 **(Violations of Section 20(a) of the**
16 **Exchange Act Against The Individual Defendants)**

17 106. Plaintiff repeats and realleges each and every allegation contained in the foregoing
18 paragraphs as if fully set forth herein.

19 107. During the Class Period, the Individual Defendants participated in the operation and
20 management of Thoratec, and conducted and participated, directly and indirectly, in the conduct of
21 Thoratec's business affairs. Because of their senior positions, they knew the adverse non-public
22 information regarding Thoratec..

23
24 108. As officers and/or directors of a publicly owned company, the Individual Defendants had a
25 duty to disseminate accurate and truthful information with respect to Thoratec's financial condition and
26 results of operations, and to correct promptly any public statements issued by Thoratec which had
27 become materially false or misleading.
28

1 109. Because of their positions of control and authority as senior officers, the Individual
2 Defendants were able to, and did, control the contents of the various reports, press releases and public
3 filings which Thoratec disseminated in the marketplace during the Class Period concerning Thoratec's
4 financial prospects. Throughout the Class Period, the Individual Defendants exercised their power and
5 authority to cause Thoratec to engage in the wrongful acts complained of herein. The Individual
6 Defendants therefore, were "controlling persons" of Thoratec within the meaning of Section 20(a) of
7 the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially
8 inflated the market price of Thoratec securities.
9

10 110. Each of the Individual Defendants, therefore, acted as a controlling person of Thoratec.
11 By reason of their senior management positions and/or being directors of Thoratec, each of the
12 Individual Defendants had the power to direct the actions of, and exercised the same to cause, Thoratec
13 to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants
14 exercised control over the general operations of Thoratec and possessed the power to control the
15 specific activities which comprise the primary violations about which Plaintiff and the other members
16 of the Class complain.
17

18 111. By reason of the above conduct, the Individual Defendants are liable pursuant to Section
19 20(a) of the Exchange Act for the violations committed by Thoratec.
20

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff demands judgment against defendants as follows:

23 A. Determining that the instant action may be maintained as a class action under Rule 23 of
24 the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

25 B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of
26 the acts and transactions alleged herein;
27
28

1 C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment
2 interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

3 D. Awarding such other and further relief as this Court may deem just and proper.
4

5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff hereby demands a trial by jury.

7 Dated: January 24, 2014

GLANCY BINKOW & GOLDBERG LLP

8
9 By: s/ Lionel Z. Glancy
10 Lionel Z. Glancy
11 Michael Goldberg
12 Robert V. Prongay
13 1925 Century Park East, Suite 2100
14 Los Angeles, CA 90067
15 Telephone: (310) 201-9150
16 Facsimile: (310) 201-9160
17 Email: info@glancylaw.com

18 **POMERANTZ LLP**
19 Jeremy A. Lieberman
20 Lesley F. Portnoy
21 600 Park Avenue, 20th Floor
22 New York, New York 10016
23 Telephone: 212-661-1100
24 Facsimile: 212-661-8665

25 **POMERANTZ LLP**
26 Patrick V. Dahlstrom
27 10 South LaSalle Street, Suite 3505
28 Chicago, IL 60603
Telephone: 312-377-1181
Facsimile: 312-377-1184

Counsel for Plaintiff

**CERTIFICATION PURSUANT
TO FEDERAL SECURITIES LAWS**

1. I, Bradley Cooper, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.
2. I have reviewed a Complaint against Thoratec Corporation. ("Thoratec" or the "Company"), and authorize the filing of a comparable complaint on my behalf.
3. I did not purchase or acquire Thoratec securities at the direction of plaintiffs counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.
4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Thoratec securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.
5. To the best of my current knowledge, the attached sheet lists all of my transactions in Thoratec securities during the Class Period as specified in the Complaint.
6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.
7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed 1/22/14
(Date)


(Signature)

Bradley Cooper
(Type or Print Name)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BRADLEY COOPER, Individually and On Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff New York Co., NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Lionel Z. Glancy (#134180), Glancy Binkow & Goldberg LLP 1925 Century Park East, Suite 2100, Los Angeles, CA 90067 Telephone: (310) 201-9150

DEFENDANTS

THORATEC CORPORATION, GERHARD F. BURBACH, TAYLOR C. HARRIS, and ROXANNE OULMAN

County of Residence of First Listed Defendant Alameda County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Private Securities Litigation Reform Act, 15 U.S.C. §§78j(b) and 78t(a); and 17 C.F.R. §240.10b-5. Brief description of cause: Securities Fraud - Violations of Sections 10(B) and 20(A) of the Exchange Act and SEC Rule 10B-5

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/24/2014 SIGNATURE OF ATTORNEY OF RECORD s/ Lionel Z. Glancy

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

- (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.