

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

JAMES MAGIDSON and CHRISTOPHER MILLSON,)
Individually and on Behalf of All Others Similarly)
Situated,)
)
) Plaintiffs,)
)
) v.)
)
HEARTWARE, INC., HEARTWARE INTERNATIONAL,)
INC., SETH HARRISON, DAVID MCINTYRE,)
ROBERT THOMAS, DENIS WADE, CHRISTINE)
BENNETT, ROBERT STOCKMAN, C. RAYMOND)
LARKIN, JR., TIMOTHY J. BARBERICH, and)
DOUGLAS GODSHALL,)
)
)
) Defendants.)

Civil Action No. 11-2398-BLS2

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION
AND SETTLEMENT HEARING THEREON**

TO: ALL PERSONS WHO OWN SERIES A-1 PREFERRED STOCK AND/OR SERIES A-2 PREFERRED STOCK ISSUED BY HEARTWARE, INC. (OR BY PERPETUAL MEDICAL, INC., ITS PRIOR LEGAL ENTITY NAME). PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LAWSUIT.

The Superior Court of the Commonwealth of Massachusetts, Business Litigation Section, for Suffolk County (the "Court") authorized this Notice to be sent to you. This is not a solicitation.

Securities at Issue: Currently owned Series A-1 Preferred Stock and/or Series A-2 Preferred Stock issued by HeartWare, Inc. (or by "Perpetual Medical, Inc.," the prior legal entity name for HeartWare, Inc.).

Settlement Fund: \$1,125,000.00 in cash. Your recovery will depend on the amount of shares you own and which of the two types of shares you own. It will also depend on the number of eligible shares that participate in the settlement.

Reasons for Settlement: Provides for a substantial dollar recovery while avoiding the costs and risks associated with continued litigation, including danger of no recovery.

If the Case Had Not Settled: Continuing with the case could have resulted in dismissal or loss at trial. The two sides do not agree on the amount of money that could have been won even if Plaintiffs prevailed at trial. The parties disagree about: (1) whether any claim for payment on HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock or Series A-2 Preferred Stock is timely or could be timely; (2) whether there was any basis to toll any applicable statute of limitations with respect to claims regarding the preferred stock; (3) whether the defendants owed owners of such preferred stock any fiduciary duties; and (4) whether the owners of such preferred stock are owed, or could be owed, payment for a liquidation event or deemed liquidation event.

Fees and Expenses: Plaintiffs' Counsel have not received any payment for their work investigating the facts, conducting this litigation, and negotiating the settlement on behalf of the Plaintiffs and the Settlement Class. Plaintiffs' Counsel will ask the court for attorneys' fees not to exceed 30% of the Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$10,000 to be paid from the Settlement Fund.

Deadlines:

Submit Claim: August 24, 2012
File Objection: July 11, 2012
Court Hearing on Fairness of Settlement: July 25, 2012

More Information:

**Claims Administrator:
HEARTWARE LITIGATION SETTLEMENT FUND**

c/o Strategic Claims Services
600 North Jackson Street, Suite 3
Media, PA 19063
info@strategicclaims.net

Plaintiffs' Counsel:

GLANCY BINKOW & GOLDBERG LLP
ATTN: ANDY SOHRN
1925 Century Park East, Suite 2100
Los Angeles, CA 90067

PASTOR LAW OFFICE, LLP
ATTN: DAVID PASTOR
63 Atlantic Avenue, 3rd Floor
Boston, MA 02110

**Your legal rights are affected whether you act or do not act.
Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment from this Settlement.
OBJECT	You may write to the Court if you do not like this settlement.
GO TO A HEARING	You may ask to speak in Court about the fairness of this settlement.
DO NOTHING	Get no payment; forfeit right to sue in another action.

These rights and options - **and the deadlines to exercise them** - are explained in this Notice.

The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why Did I Get This Notice Package?

You or someone in your family may own or may have owned shares of Series A-1 Preferred Stock and/or Series A-2 Preferred Stock issued by HeartWare, Inc. (or by Perpetual Medical, Inc., the prior legal entity name for HeartWare, Inc.).

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of the Commonwealth of Massachusetts, Business Litigation Section, for Suffolk County, and the case is known as *Magidson, et al. v. HeartWare, Inc.*,

et al., Civil Action No. 11-2398-BLS2. The Persons who sued are called Plaintiffs, and the companies and the individuals the Plaintiffs sued – HeartWare, Inc., HeartWare International, Inc., Apple Tree Partners I, L.P. (“Apple Tree”), Seth Harrison, Robert Stockman, Timothy J. Barberich, Douglas Godshall, David McIntyre, Robert Thomas, Denis Wade, Christine Bennett, and C. Raymond Larkin, Jr. – are called the Defendants.

2. What Is This Lawsuit About?

The Complaint in this Litigation was filed on June 27, 2011. The Complaint, filed as a class action, alleges claims of breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of contract, declaratory relief, and accounting, on behalf of a class of persons who own HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock and/or Series A-2 Preferred Stock. The Complaint alleges centrally that Defendants have failed to make deemed liquidation payment to owners of HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock and/or Series A-2 Preferred Stock. For a full description of the terms and conditions of the Settlement, including the releases described herein and the claims alleged in the Complaint, please refer to the Stipulation of Settlement by visiting the Claims Administrator’s website at www.strategicclaims.net.

Defendants assert that the allegations of the complaint are without merit. All Defendants deny that they did anything wrong, and contend that if the case were to proceed to trial, they would prevail.

3. Why Is This a Class Action?

In a class action, one or more people called class representatives, in this case the proposed class representative-Plaintiffs James Magidson and Christopher Millson (“Plaintiffs”), sue on behalf of people who have similar claims. Here, all these people, together, are called a Settlement Class or Settlement Class Members. In a class action, one court resolves the issues for all Class Members at the same time, except for those who voluntarily exclude themselves from the Settlement Class. Session 2 of the Business Litigation Session of the Suffolk County Superior Court is in charge of this class action.

4. Why Is There a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement based on a compromise of the claims and defenses. That way, they avoid the cost and risk of a trial, and eligible Settlement Class Members who make a valid claim will get compensation.

The settlement was arrived at through arm’s length negotiations conducted in good faith. Plaintiffs and Plaintiffs’ Counsel agreed to the settlement terms after considering the results of their factual and legal investigation of the Settlement Class’ claims.

Based on their investigation and discovery of the claims, the experience that the Plaintiffs’ attorneys have in litigating similar complex actions, the procedural protections provided by the settlement terms, and the valuable consideration that the Settlement Class can obtain from the settlement, Plaintiffs and their attorneys believe that the settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT

To see if you will get money from this settlement, you first have to determine if you are a Settlement Class Member.

5. How Do I Know If I Am Part of the Settlement?

The Settlement Class includes all persons who **own Series A-1 Preferred Stock and/or Series A-2 Preferred Stock issued by HeartWare, Inc. (or by Perpetual Medical, Inc., the prior legal entity name for HeartWare, Inc.), except those persons and entities that are excluded, as described below.**

6. What Are The Exceptions to Being Included?

You are not a Settlement Class Member if: you are a Defendant; you are a member of the immediate family of one of the individual defendants listed in question 1; you, at any time from July 2003 through the

present, have served as an officer and/or director of HeartWare International, Inc., HeartWare, Inc., Apple Tree, and/or HeartWare Ltd., or any of their parents, subsidiaries, predecessors, or successors; you are a person, firm, trust, corporation, or entity for which any individual defendant listed in question 1 was a director, officer, and/or partner; you are a person, firm, trust, corporation, or entity in which any Defendant has a controlling interest or any entity which is related to or affiliated with any Defendant; you are an insider or affiliate as defined in the Disclosure Statement referenced in the Complaint at ¶35; or you are the legal representatives, agents, affiliates, heirs, successors and assigns of any such excluded persons listed above.

You are a Settlement Class Member only if you CURRENTLY own shares of Series A-1 Preferred Stock and/or Series A-2 Preferred Stock issued by HeartWare, Inc. (or Perpetual Medical, Inc.).

7. I'm Still Not Sure if I Am Included.

If you are still not sure whether you are included, you can ask for free help. You can call the claims administrator, Strategic Claims Services, at (866) 274-4004, for more information. Or you can fill out and return the claim form described in question 10, to see if you qualify.

THE SETTLEMENT BENEFITS - WHAT YOU GET

8. What Does the Settlement Provide?

Defendants have agreed to pay \$1.125 million (\$1,125,000.00) in cash in settlement of this case. These funds will be distributed to eligible Settlement Class Members who send in valid claim forms, after payment of court-approved legal fees and expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice.

9. How Much Will My Payment Be?

Your share of the funds will depend on (a) the number of valid claim forms that Settlement Class Members send in (the fewer the number of Settlement Class members who choose to participate in the Settlement, the larger will be the recovery for each participating Settlement Class Member) and (b) how many shares of HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock and/or Series A-2 Preferred Stock you own.

The Plan of Allocation shall be as follows. An Authorized Claimant's recognized loss ("Recognized Loss") is determined by the quantities owned of Series A-1 Preferred Stock and/or Series A-2 Preferred Stock issued by HeartWare, Inc. (or Perpetual Medical, Inc.), and the corresponding liquidation preference of each of those shares, as set forth below:

- A. For each unique share of HeartWare, Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock owned, the Recognized Loss is \$10 per share.
- B. For each unique share of HeartWare, Inc. (or Perpetual Medical, Inc.) Series A-2 Preferred Stock owned, the Recognized Loss is \$21 per share.

The payment you get will reflect your pro rata share of the amount in the relevant settlement fund (as a fraction, your recognized loss divided by the total of all recognized losses for the relevant fund) after deduction of court-approved fees and expenses. The number of claimants who send in claims varies widely from case to case. And because the payment you get will depend on the number of eligible shares that participate in the settlement, you could get more or less money per share than described above.

HOW YOU GET A PAYMENT - SUBMITTING A CLAIM FORM

10. How Will I Get a Payment?

To qualify for payment, you must be an eligible Settlement Class Member and you must send in a claim form. A claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than August 24, 2012.

11. When Will I Get My Payment?

The Court will hold a hearing on July 25, 2012, to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a claim form will be informed of the determination with respect to their claim. Please be patient.

12. What Am I Giving Up as Part of the Settlement?

As part of the settlement, you are agreeing that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the same legal and factual issues in this case. It also means that all of the Court's orders will apply to you and legally bind you and, in return for your participation in the Settlement, you will release your claims in this case against the Defendants. The terms of the release are included in the claim form that is enclosed. You cannot exclude yourself, or opt out, of this settlement.

THE LAWYERS REPRESENTING YOU

13. Do I Have a Lawyer in This Case?

The Court appointed the law firms of Glancy Binkow & Goldberg LLP and Pastor Law Office, LLP to represent you and other Settlement Class Members.

These lawyers are called Plaintiffs' Counsel. You will not be charged for these lawyers' work. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How Will the Lawyers Be Paid?

Plaintiffs' Counsel will ask the Court for attorneys' fees not to exceed 30% of the Settlement Fund and for reimbursement of out-of-pocket expenses up to \$10,000 which were advanced in connection with the Litigation. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested, to the extent they are awarded by the Court, will be the only payment to Plaintiffs' Counsel for their efforts in achieving this settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this litigation on behalf of Plaintiffs and the Settlement Class or for their out-of-pocket expenses. The fee requested, if awarded, will compensate Plaintiffs' Counsel for their work and risk in achieving the settlement and is well within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

15. How Do I Tell the Court that I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in *Magidson, et al. v. HeartWare, Inc., et al.*, Civil Action No. 11-2398-BLS2. Be sure to include your name, address, telephone number, your signature, the number of shares of HeartWare Series A-1 Preferred Stock and/or Series A-2 Preferred Stock you own, and the reasons you object to the settlement. Any objection to the settlement must be mailed or delivered such that it is received by each of the following no later than July 11, 2012:

(1) The Court, addressed to:	(2) Plaintiffs' Counsel, addressed to:	(3) Defendants' Counsel, addressed to:
CIVIL CLERK'S OFFICE Suffolk Superior Court County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108	GLANCY BINKOW & GOLDBERG LLP Attn: Andy Sohrn 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 PASTOR LAW OFFICE, LLP Attn: David Pastor 63 Atlantic Avenue, 3rd Floor Boston, MA 02110	SHEARMAN & STERLING LLP Attn: Kirsten Nelson Cunha Stuart J. Baskin William J.F. Roll, III 599 Lexington Avenue New York, NY 10022 PROSKAUER ROSE LLP Attn: Daniel B. Winslow Justin J. Daniels One International Place Boston, MA 02110

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

16. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a fairness hearing at 2 p.m., on July 25, 2012, at 3 Pemberton Square, Boston, Massachusetts in Courtroom 1017. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also consider how much to pay to Plaintiffs' Counsel and the extent to which counsel will be reimbursed for their costs and expenses. The Court may decide these issues at the hearing or take them under consideration and decide them at a later time. We do not know how long these decisions will take.

17. Do I Have to Come to the Hearing?

No. Plaintiffs' Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

18. May I Speak at the Hearing?

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that it is your intention to appear in *Magidson, et al. v. HeartWare, Inc., et al.*, Civil Action No. 11-2398-BLS2. Be sure to include your name, address, telephone number, your signature, and the number of shares of HeartWare, Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock and/or HeartWare Series A-2 Preferred Stock you own. Your notice of intention to appear must be received no later than July 11, 2012 and be sent to the Civil Clerk of the Court, Plaintiffs' Counsel, and Defendants' counsel, at the addresses listed in question 15.

IF YOU DO NOTHING

19. What Happens if I Do Nothing at All?

If you do nothing, you will get no money from this settlement. In addition, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the same legal or factual issues in this case.

GETTING MORE INFORMATION

20. Are There More Details About the Settlement?

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement dated as of March 22, 2012. You can get a copy of the Stipulation of Settlement from the Civil Clerk's Office at the Suffolk Superior Court County Courthouse, 12th Floor, Three Pemberton Square, Boston, MA 02108, during regular business hours.

25. How Do I Get More Information?

For further information regarding this Settlement you may contact: Andy Sohrn, Glancy Binkow & Goldberg LLP, 1925 Century Park East, Suite 2100, Los Angeles, California 90067, telephone: (310) 201-9150. Please do not call any representative of Defendants.

PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: March 26, 2012

BY ORDER OF THE SUPERIOR COURT FOR
SUFFOLK COUNTY, MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

JAMES MAGIDSON and CHRISTOPHER MILLSON,)
Individually and on Behalf of All Others Similarly)
Situating,)

Plaintiffs,)

v.)

HEARTWARE, INC., HEARTWARE INTERNATIONAL,)
INC., SETH HARRISON, DAVID MCINTYRE,)
ROBERT THOMAS, DENIS WADE, CHRISTINE)
BENNETT, ROBERT STOCKMAN, C. RAYMOND)
LARKIN, JR., TIMOTHY J. BARBERICH, and)
DOUGLAS GODSHALL,)

Defendants.)

Civil Action No. 11-2398-BLS2

I. GENERAL INSTRUCTIONS

1. To recover as a Member of the Class based on your claims in the action entitled *Magidson, et al. v. HeartWare, Inc., et al.*, Civil Action No. 11-2398-BLS2 (the "Litigation"), you must complete and, on page 13 hereof, sign this Proof of Claim and Release. If you fail to timely file a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the proposed settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of settlement in the Litigation.

3. **YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE POSTMARKED ON OR BEFORE AUGUST 24, 2012, ADDRESSED AS FOLLOWS:**

HeartWare Litigation Settlement Fund
c/o Strategic Claims Services
600 North Jackson Street – Suite 3
Media, PA 19063

The toll free number for the Claims Administrator is (866) 274-4004.

If you are NOT a Member of the Settlement Class (as defined in the "Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing Thereon") DO NOT submit a Proof of Claim and Release form.

4. If you are a Member of the Class, you are bound by the terms of any judgment entered in the Litigation, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE.

II. DEFINITIONS

Terms as defined in the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing Thereon shall also apply herein.

III. CLAIMANT IDENTIFICATION

1. Use Part I of the form entitled “Claimant Identification” to identify each owner of HeartWare Inc. Series A-1 Preferred Stock and/or Series A-2 Preferred Stock, which forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL OWNER, OR THE LEGAL REPRESENTATIVE OF SUCH OWNER, OF THE SHARES OF HEARTWARE INC. SERIES A-1 PREFERRED STOCK AND/OR SERIES A-2 PREFERRED STOCK UPON WHICH THIS CLAIM IS BASED.**
2. All joint owners must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

IV. CLAIM FORM

1. Use Part II of the form entitled “Schedule of HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 and/or A-2 Preferred Stock” to supply the details of your ownership in HeartWare Series A-1 Preferred Stock and/or Series A-2 Preferred Stock.
2. Documentation of your ownership in HeartWare Series A-1 Preferred Stock and/or Series A-2 Preferred Stock must be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

Superior Court of the Commonwealth of Massachusetts
 Suffolk County, Business Litigation Session, Session 2
Magidson, et al. v. HeartWare, Inc., et al.
 Civil Action No. 11-2398-BLS2

PROOF OF CLAIM AND RELEASE

Must be Postmarked on or Before:
 August 24, 2012

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

Owner's Name (First, Middle, Last)		
Street Address 1		
Street Address 2 (if applicable)		
City	State or Province	Zip Code or Postal Code
Country		
Social Security Number or Taxpayer Identification Number	_____ _____ _____ _____ _____ _____ _____ _____	Individual Corporation UGMA Custodian IRA Partnership Estate Trust Other: _____
Area Code	Telephone Number (work)	
Area Code	Telephone Number (home)	
Area Code	Telephone Number (fax)	
Email Address		

PART II: SCHEDULE OF HEARTWARE INC. (OR PERPETUAL MEDICAL, INC.) SERIES A-1 AND/OR A-2 PREFERRED STOCK

A. Number of shares of HeartWare, Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock Owned as of Today:

B. Number of shares of HeartWare, Inc. (or Perpetual Medical, Inc.) Series A-2 Preferred Stock Owned as of Today:

Number of Shares	Stock Certificate Number	Type of Share: A-1 or A-2
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.		
YOU MUST READ THE RELEASE AND SIGN ON PAGE 13.		

V. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the Superior Court of the Commonwealth of Massachusetts, Suffolk County, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any Judgment that may be entered in the Litigation. I (We) agree to furnish additional information such as transactions in HeartWare Inc. (or Perpetual Medical, Inc.) preferred stock to the Claims Administrator to support this claim if required to do so. I (We) have not submitted any other claim covering the same ownership of HeartWare Inc. (or Perpetual Medical, Inc.) Series A-1 Preferred Stock and/or Series A-2 Preferred Stock and know of no other Person having done so on my (our) behalf.

VI. RELEASE

1. I (we) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Parties and each and all of their “Corresponding Released Parties,” defined as each and every past and current Defendant¹, each Defendant’s past or present directors, officers, employees, partners, member firms or affiliates, principals, agents, predecessors, successors, parents, subsidiaries, divisions, joint ventures, attorneys, investment bankers, commercial bankers, underwriters, financial or investment advisors, consultants, accountants, insurers, reinsurers, assigns, spouses, heirs, associates, related or affiliated entities, or any members of their immediate families, or any trusts for which any of them are trustees, settlers, or beneficiaries.
2. “Released Claims” shall mean all claims (including “Unknown Claims” as defined below in paragraph 3), demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, that were alleged in the Action, or that could have been alleged in the Action, or any other proceeding (including, but not limited to, any claims arising under federal, state, or common law) relating to any right to receive a payment on HeartWare Inc. Series A-1 Stock and/or Series A-2 Stock upon any liquidation event and/or any deemed liquidation event that have arisen, could have arisen, arise now, or may arise in the future.
3. “Unknown Claims” shall collectively mean all claims, demands, rights, liabilities, and causes of action of every nature and description which Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment and Order of Dismissal With Prejudice to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

¹ As defined in the Stipulation, “Defendants” mean the defendants named in this Action, consisting of: HeartWare, Inc., HeartWare International, Inc., Apple Tree Partners I, L.P., Seth Harrison, Robert Stockman, Timothy J. Barberich, Douglas Godshall, David McIntyre, Robert Thomas, Denis Wade, Christine Bennett, and C. Raymond Larkin, Jr.

4. This release shall only be in force when the Court approves the Stipulation of Settlement and the Stipulation (which contains releases made by Defendants in favor of the Settlement Class Members) becomes effective on the Effective Date (as defined in the Stipulation).

5. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

I (We) have read the foregoing Proof of Claim and Release and declare under penalty of perjury under the laws of the United States of America that all of the information contained herein, and in the documents attached hereto, is true, correct and complete to the best of my (our) knowledge, information and belief and that this form was executed on the ____ day of _____, 2012 in

(City) (State) (Country)

Signature of Claimant

Signature of Joint Claimant, If Any

(Print Your Name Here)

(Print Your Name Here)

Signature of person signing on behalf of Claimant

Capacity of person signing on behalf of Claimant

(Print Your Name Here)

THIS PROOF OF CLAIM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTAGE PREPAID, POSTMARKED BY AUGUST 24, 2012 ADDRESSED AS FOLLOWS:

HeartWare Litigation Settlement Fund
c/o Strategic Claims Services
600 N. Jackson Street, Suite 3
Media, PA 19063

**ACCURATE CLAIMS PROCESSING TAKES A
SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation.
3. Keep a copy of your claim form for your records.
4. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
5. If you move, please send the Claims Administrator, Strategic Claims Services, your new address.

HeartWare Litigation Settlement Fund
c/o Strategic Claims Services
600 N. Jackson Street, Suite 3
Media, PA 19063

PLEASE FORWARD

FIRST CLASS MAIL

PLEASE FORWARD-IMPORTANT LEGAL NOTICE