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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 10 2013

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

APRIL CHRISTINE CABANA,
Plaintiff,

vs.

STRYKER BIOTECH, LLC; STRYKER
CORPORATION; MEDTRONIC SOFAMOR
DANEK USA, INC., MEDTRONIC, INC.; and
DOES 1 through 100, inclusive,
Defendants.

Case No.: BC 465 313
Hon. Terry A. Green

**NOTICE OF RULING RE:
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT/
ADJUDICATION**

**Date: September 9, 2013
Time: 8:45 a.m.
Dept.: 14**

NOTICE IS HEREBY GIVEN that, on September 9, 2013 at approximately 8:45 a.m., the motions for summary judgment and alternative motions for summary adjudication of defendants Stryker Biotech, LLC and Stryker Corporation (collectively "Stryker Defendants"); Medtronic, Inc. and Medtronic Sofamor Danek USA, Inc. (collectively "Medtronic Defendants"); and Ali H. Mesiwala, M.D. ("Dr. Mesiwala") came for regular hearing in Department 14 of the above entitled court with the Honorable Judge Terry A. Green presiding. Appearances were made by Robert Connolly and James Nelson on behalf of the Stryker Defendants; Michael K. Brown on behalf of the Medtronic Defendants; Danielle Sundberg Blauvelt on behalf of Dr. Mesiwala; and Bijan Esfandiari on behalf of plaintiff April Christine Cabana ("Plaintiff").

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1 After consideration of the parties' briefing and oral argument of counsel, the **COURT ISSUED**
2 **THE FOLLOWING RULING:**

3
4 **I. COURT'S ORDER ON THE STRYKER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/ADJUDICATION**

- 5 1. The Stryker Defendants' Motion for Summary Judgment is **DENIED** for all of the reasons
6 stated on the record;
- 7 2. The Stryker Defendants' Motion for Summary Judgment based on federal preemption is
8 **DENIED** for the reasons stated on the record;
- 9 3. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Negligence Cause of
10 Action (First Cause of Action) is **DENIED** for the reasons stated on the record
- 11 4. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Strict Liability
12 "Warning Defect" claim is **DENIED** (Third Cause of Action) for the reasons stated on the
13 record;
- 14 5. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Strict Liability
15 "Design Defect" claim is **GRANTED** as plaintiff has voluntarily abandoned her strict liability
16 design defect claim;
- 17 6. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Strict Liability
18 "Manufacturing Defect" claim is **GRANTED** as plaintiff has voluntarily abandoned her strict
19 liability manufacturing defect claim;
- 20 7. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Breach of Express
21 Warranty Cause of Action (Fifth Cause of Action) is **DENIED** for the reasons stated on the
22 record;
- 23 8. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Fraud Cause of
24 Action (Seventh Cause of Action) is **DENIED** for the reasons stated on the record;
- 25 9. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's Negligence Per Se
26 Cause of Action (Ninth Cause of Action) is **DENIED** for the reasons stated on the record;
- 27
28

1 10. The Stryker Defendants' Motion for Summary Adjudication of Plaintiff's claim for Punitive
2 Damages is **DENIED** for the reasons stated on the record.

3
4 **II. COURT'S ORDER ON THE MEDTRONIC DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT/ADJUDICATION**

5 11. The Medtronic Defendants' Motion for Summary Judgment is **DENIED** for the reasons stated
6 on the record;

7 12. The Medtronic Defendants' Motion for Summary Judgment based on federal preemption is
8 **DENIED** for the reasons stated on the record;

9 13. The Medtronic Defendants' Motion for Summary Adjudication of Plaintiff's Negligence Cause
10 of Action (Second Cause of Action) is **DENIED** for the reasons stated on the record;

11 14. The Medtronic Defendants' Motion for Summary Adjudication of Plaintiff's Breach of Express
12 Warranty Cause of Action (Sixth Cause of Action) is **DENIED** for the reasons stated on the
13 record;

14 15. The Medtronic Defendants' Motion for Summary Adjudication of Plaintiff's Fraud Cause of
15 Action (Eighth Cause of Action) is **DENIED** for the reasons stated on the record;

16 16. The Medtronic Defendants' Motion for Summary Adjudication of Plaintiff's Negligence Per Se
17 Cause of Action (Ninth Cause of Action) is **DENIED** for the reasons stated on the record;

18 17. The Medtronic Defendants' Motion for Summary Adjudication of Plaintiff's claim for Punitive
19 Damages is **DENIED** for the reasons stated on the record.

20
21 **III. COURT'S ORDER ON DEFENDANT DR. MESIWALA'S MOTION FOR SUMMARY
JUDGMENT/ADJUDICATION**

22 18. Dr. Mesiwala's Motion for Summary Judgment is **DENIED** for the reasons stated on the
23 record;

24 19. Dr. Mesiwala's Motion for Summary Judgment based on statute of limitations is **DENIED** for
25 the reasons stated on the record;

26 20. Dr. Mesiwala's Motion for Summary Adjudication of Plaintiff's Medical Malpractice Cause of
27 Action (Tenth Cause of Action) is **DENIED** for the reasons state on the record.

1 **IV. COURT'S ORDER REGARDING UNSEALING OF DOCUMENTS**


2 21. The Court **ORDERED** that **ALL DOCUMENTS**, including exhibits and the expert report of
3 David A. Kessler, M.D., which plaintiff lodged conditionally under seal in opposition to
4 Stryker's Motion for Summary Judgment/Adjudication be hereby **UNSEALED**;

5 22. The Court **TOOK UNDER FURTHER CONSIDERATION** the Medtronic Defendants'
6 request to keep under seal **Exhibits 15, 17, 18, 25 and 26** attached to the Declaration of Bijan
7 Esfandiari in opposition to Medtronic's Motion for Summary Judgment.

8 23. Counsel for Plaintiff was **ORDERED** to Give Notice of the Court's Ruling.

9
10 Dated: September 10, 2013

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

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12 

13 Bijan Esfandiari, Esq.

14 *Attorneys for Plaintiff*
15 April Christine Cabana