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ORIGINAL FILED
Superior Court of California
County of Los Angeles
OCT 15 2014
Sherri R. Carter, Executive Officer/Clerk
By Jeannine Lorenz, Deputy

6 Attorneys for Defendant
Medtronic Sofamor Danek USA, Inc.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

11 TINA RENEE SLUSS (FORMERLY TINA
RENFRO) and WILLIAM SLUSS,
12
13 Plaintiff,
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15 vs.
16 MEDTRONIC SOFAMOR DANEK USA, INC.;
PHYSICIANS OF MIDWAY, INC.; OLYMPIA
MEDICAL CENTER; CARL LAURYSSSEN,
17 M.D. PROF. CORP.; CARL LAURYSSSEN, M.D.
dba TOWER ORTHOPAEDICS and DOES 1-
200, Inclusive,
18
19 Defendants.

Case No. BC 496524

**~~PROPOSED~~ ORDER ON DEFENDANT
MEDTRONIC SOFAMOR DANEK USA,
INC.'S DEMURRER TO PLAINTIFFS'
FOURTH AMENDED COMPLAINT**

Honorable Terry Green

Compl. Filed: November 30, 2012
FAC Filed: January 31, 2013
SAC Filed: November 14, 2013
TAC Filed: March 17, 2014
FAC Filed: June 16, 2014

1 The Demurrer filed by Defendant Medtronic Sofamor Danek USA, Inc. (“Medtronic”)
2 concerning Plaintiffs’ Fourth Amended Complaint came on regularly for hearing before this Court,
3 on August 12, 2014, at 8:45 a.m., in Department 14 of the above-entitled Court. Anthony Crawford
4 and Jeffrey C. Bogert appeared on behalf of Plaintiffs Tina and William Sluss, Michael K. Brown
5 appeared on behalf of Medtronic, and Scott R. Diamond appeared on behalf of Defendant Olympia
6 Medical Center.

7 After full consideration of the pleadings and evidence on file herein, and argument of
8 counsel, and good cause appearing:

9 **IT IS ORDERED** that Medtronic’s demurrer is **SUSTAINED WITHOUT LEAVE TO**
10 **AMEND** as to the First Cause of Action of Products Liability – Negligence, to the extent that it is
11 based on a negligent failure to warn doctors, on the grounds that the claim is expressly preempted;

12 **IT IS ORDERED** that Medtronic’s demurrer is **SUSTAINED WITHOUT LEAVE TO**
13 **AMEND** as to the First Cause of Action of Products Liability – Negligence, to the extent that it is
14 based on negligent design, on the grounds that the claim is expressly preempted;

15 **IT IS ORDERED** that Medtronic’s demurrer is **OVERRULED** as to the First Cause of
16 Action of Products Liability – Negligence, to the extent that it is a failure to warn claim due to off-
17 label promotion;

18 **IT IS ORDERED** that Medtronic’s demurrer is **OVERRULED** as to the First Cause of
19 Action of Products Liability – Negligence, to the extent that it is based on a negligent failure to
20 report adverse events to the FDA;

21 **IT IS ORDERED** that Medtronic’s demurrer is **SUSTAINED WITHOUT LEAVE TO**
22 **AMEND** as to the Second Cause of Action of Strict Products Liability Defective Design, on the
23 grounds that the claim is expressly preempted;

24 **IT IS ORDERED** that Medtronic’s demurrer is **SUSTAINED WITHOUT LEAVE TO**
25 **AMEND** as to the Third Cause of Action of Strict Products Liability – Failure to Warn, to the extent
26 that it is based on a failure to warn doctors, on the grounds that the claim is expressly preempted;

27 **IT IS ORDERED** that Medtronic’s demurrer is **SUSTAINED WITHOUT LEAVE TO**
28 **AMEND** as to the Third Cause of Action of Strict Products Liability – Failure to Warn, to the extent

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that it is based on off-label promotion, on the grounds that the claim is expressly preempted;

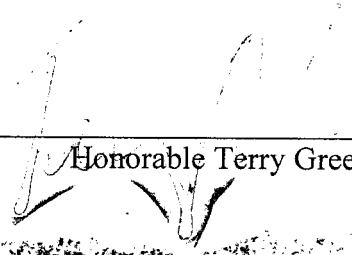
IT IS ORDERED that Medtronic's demurrer is **OVERRULED** as to the Third Cause of Action of Strict Products Liability – Failure to Warn, to the extent that it is based on a failure to report adverse events to the FDA;

IT IS ORDERED that Medtronic's demurrer as to the Sixth Cause of Action for Loss of Consortium is **OVERRULED**.

IT IS SO ORDERED.

DATED: 10/15, 2014

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Honorable Terry Green