

1. **19CV03677 North Valley Mall II, LLC v. Sangha, Amarjit Singh et al.**

*EVENT: Defense Counsel's Motion to be Relieved*

Defense Counsel's Motion to be Relieved is GRANTED. The Court will sign the proposed order.

2. **20CV01510 Ortega, Ruben et al v. Puig-Palomar, Miquel, MD et al.**

*EVENT: Defendant Enloe Medical Center's Demurrer to Plaintiff's Second Cause of Action of Plaintiff's Second Amended Complaint*

Defendant Enloe Medical Center's Demurrer to Plaintiff's Second Cause of Action of Plaintiff's Second Amended Complaint ("SAC") is SUSATINED without leave to amend.

The SAC includes two causes of action for general negligence and products liability. According to the SAC Plaintiff's deceased died as the result of a valve replacement surgery that went wrong. Ostensibly, the SAC alleges that the cardio-pulmonary bypass machine used during the procedure did not function properly. Under the products liability cause of action the SAC names the manufacturer of the machine, LivaNova USA, Inc. as well as Defendant Enloe Medical Center (hereinafter "Defendant Enloe"). As it pertains to Defendant Enloe, the products liability cause of action asserts two separate counts – negligence and breach of warranty.

As to the negligence count, Plaintiff cites *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276 for the proposition that a medical provider could be liable under a negligence theory of products liability. However, the Court finds the facts in *Bigler* to be significantly different. There, the medical provider prescribed the Plaintiff a machine that was to be used after surgery for physical therapy purposes. At trial, evidence was presented indicating that the medical provider had been made aware of problems relating to the machine prior to the prescription.

As noted, that was not the situation here. The cardio-pulmonary bypass machine appears to have been used during the course of Defendant Enloe's performance of medical services. The facts in this case are more in line with those in *Hector v. Cedars-Sinai Medical Ctr.*, (1986) 180 Cal. App. 3d 493. In *Hector* Plaintiff was implanted at the hospital with a defective pace maker. Here are some excerpts from *Hector*:

Providing medicine or supplying blood is simply a chemical aid or instrument utilized to accomplish the objective of cure or treatment. The patient who enters a hospital goes there not to buy medicine or pills, not to purchase bandages, iodine, serum or blood, but to obtain a course of treatment (*Id* at p. 502)

...

The foregoing marked distinctions compel the conclusion that a hospital is not engaged in the business of distributing blood to the public and does not put the blood as a product on the market in order to profit therefrom (Id at p. 502)

...

Hector went on to conclude that the hospital was not engaged in the business of distributing [pacemakers] to the public *Hector v. Cedars-Sinai Medical Ctr., supra* at p. 504. Further, *Hector* noted, “The hospital does not stock or recommend pacemakers or provide them to the general public, dealing with pacemakers only in the context of the courses of treatment for particular patients.” (*Ibid*)

Similar to *Hector*, the Court finds that the cardio by-pass machine is necessarily used “only in the context of the courses of treatment for particular patients.” Thus as in *Hector*, the Court finds that Enloe cannot, as a matter of law, be a distributor for products liability cases. Although *Hector* was in the context of strict liability, the Court finds in its review of products liability generally including negligence and negligent failure to warn theories that the requirement that Defendant was either a manufacturer, distributor, or seller of the product to be common to most cognizable theories under products liability. Consequently, under the circumstances presented, the Court finds that Defendant Enloe cannot be a manufacturer, distributor or seller for purposes of a products liability negligence, or negligent failure to warn theory.

As to the implied warranty count, the Court notes that after reviewing CACI 1231 it cannot envision a scenario in which this theory is viable as to Defendant Enloe.

CACI 1231 provides in part:

1. That [name of plaintiff] bought the [product] from [name of defendant];

Clearly, Plaintiff did not purchase the cardio-bypass machine, nor did Defendant Enloe sell or even lease it. Ostensibly it was used during the course of the valve replacement procedure. Thus, the warranty theory of products liability necessarily fails as well.

Defendant Enloe shall prepare and submit a form of order consistent with this ruling within 10 days.

#### **3-4. 20CV02347 Silano, Joel M v. FCA US, LLC et al**

*EVENT: (1) Plaintiff's Motion for Leave to File a Second Amended Complaint*

*(2) Plaintiff's Ex Parte Concerning the Motion for a Protective Order*

Plaintiff's Motion for Leave to File a Second Amended Complaint is GRANTED. Plaintiff shall file the proposed second amended complaint within 10 days. Pursuant to CCP § 471.5 which provides the Court with discretion in setting the time for Defendant to file a responsive pleading, Defendant's responsive pleading is due 30

days after the Court issues a ruling on the pending motion for summary judgment/adjudication.

While the Court understands Defendant FCA's arguments, the Court finds the circumstances here to be very similar to *Dagher v. Ford Motor Co.*, (2015) 238 Cal. App. 4th 905 where the Court simply found that delay was not a sufficient basis to establish prejudice.

Plaintiff shall prepare and submit a form of order consistent with this ruling.

The Court will hear from the parties as to the ex parte filed by Plaintiff.

**5. 21CV02828 Citibank NA v. Norris, Terrie**

*EVENT: Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts be Admitted*

Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts be Admitted is GRANTED. The Court will sign the proposed order.

**6. 22CV00769 In re: Mitchell, Shelly**

*EVENT: Change of name (minor)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**7. 22CV00784 In re: Selby, Chelsea Victoria**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.