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6 Attorneys for Defendants
ZELTIQ AESTHETICS, INC.,
7 ABBVIE INC., and ALLERGAN
8 HOLDCO US, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12
13 PHORNPAN LISA CHUBCHAI,

14 Plaintiff,

15 v.

16 ABBVIE, INC.; ALLERGAN HOLDCO US,
17 INC., f/k/a ALLERGAN PLC; ZELTIQ
AESTHETICS, INC., and JOHN DOE
18 CORPORATIONS 1-10.

19 Defendants.
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Case No. 4:22-cv-06309-YGR

**DEFENDANTS' NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

Judge: Yvonne Gonzalez Rogers

Date: January 10, 2023
Time: 2:00 PM
Crt. Rm. 1

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether Plaintiff’s FDCA-based claims (Counts 1 and 2 of the Complaint) are preempted by federal law.
2. Whether Plaintiff has stated a plausible claim—whether sounding in strict liability, negligence, or fraud (Counts 3–7)—that Defendants failed to warn, misled, or concealed information from CoolSculpting providers.
3. Whether California recognizes a cause of action for strict liability design defect.
4. Whether Plaintiff has stated a plausible claim based on negligent design defect.
5. Whether Plaintiff has stated a plausible claim for manufacturing defect.
6. Whether Plaintiff’s claims for express warranty (Count 3), implied warranty (Count 4), negligent acts/omissions of agents (Count 6), and negligent misrepresentation and fraud (Count 7) are just repackaged failure-to-warn claims that should be dismissed for the same reasons her failure-to-warn claim fails.
7. If reached, whether Plaintiff’s re-packaged failure-to-warn claims (Counts 3, 4, 6, and 7) independently fail to state a plausible claim.
8. Whether Plaintiff’s “claim” for punitive damages (Count 8) should be dismissed because her other claims fail.

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STATEMENT OF ISSUES TO BE DECIDED 3

PROCEDURAL HISTORY 1

BACKGROUND 2

ARGUMENT 4

I. PLAINTIFF’S FDCA-BASED CLAIMS (COUNTS 1 AND 2) ARE PREEMPTED. 4

II. PLAINTIFF FAILS TO STATE A CLAIM FOR FAILURE TO WARN (COUNTS 3–7). 6

 A. THE LEARNED INTERMEDIARY DOCTRINE APPLIES TO CLAIMS BASED ON MEDICAL WARNINGS. 7

 1. The learned intermediary doctrine applies under California law. 7

 2. Federal law preempts any imposition of a duty to warn consumers. 10

 B. PLAINTIFF PLEADS THAT ZELTIQ WARNED HER PROVIDER ABOUT THE RISK OF PH. 11

III. ANY CLAIM BASED ON THE DESIGN OF THE DEVICE FAILS. 13

IV. ANY CLAIM BASED ON A MANUFACTURING DEFECT FAILS. 14

V. PLAINTIFF’S REPACKAGED WARNINGS-BASED CLAIMS ALSO FAIL INDEPENDENTLY. 15

 A. PLAINTIFF’S EXPRESS-WARRANTY CLAIM (COUNT 3) FAILS. 15

 B. PLAINTIFF’S CLAIM FOR BREACH OF IMPLIED WARRANTY (COUNT 4) FAILS. 16

 C. PLAINTIFF’S CLAIM FOR NEGLIGENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT FAILS. 16

 D. ZELTIQ IS NOT RESPONSIBLE FOR THE ACTIONS OF HEALTHCARE PROVIDERS (COUNT 6). 17

VI. PLAINTIFF’S PUNITIVE DAMAGES “CLAIM” (COUNT 8) SHOULD BE DISMISSED. 18

CONCLUSION 19

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