

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**MINUTE ORDER**     Amended on 11/13/2019

DATE: 11/13/2019

TIME: 01:47:00 PM

DEPT:

JUDICIAL OFFICER PRESIDING: David De Alba

CLERK: N. Smith

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2019-00255852-CU-PL-GDS** CASE INIT.DATE: 05/06/2019

CASE TITLE: **Kline vs. Mentor Worldwide LLC**

CASE CATEGORY: Civil - Unlimited

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**APPEARANCES**

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**TENTATIVE RULING:**

Neither the notice of motion nor the amended notice of motion provides notice of the Court's tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact the other parties and advise them of Local Rule 1.06 and the Court's tentative ruling procedure and the manner to request a hearing. If moving counsel is unable to contact the other parties prior to hearing, moving counsel is ordered to appear at the hearing in person or by telephone.

Defendant Mentor Worldwide LLC's ("Mentor") motion to sever the claims of all Plaintiffs is GRANTED.

Mentor contends that Plaintiffs' claims fail to meet the standards set forth in Code of Civ. Proc. § 378 for the joinder of plaintiffs in one action. Alternatively, Mentor requests the court exercise its discretion, pursuant to Code of Civ. Proc. § 379.5, to sever the claims.

This case involves product liability claims of four separate Plaintiffs, who reside in four separate states, who were all implanted with allegedly defective MemoryGel Silicone Breast Implants ("MemoryGel Implants") manufactured by Mentor.

Plaintiffs may join in a single action where they seek relief arising out of the same transaction, occurrence, or series of occurrences and if any question of law or fact is common to all persons. (Code Civ. Proc. § 378.)

Mentor argues that Plaintiffs' claims do not arise out of the same series of transactions. Mentor contends Plaintiffs' implant surgeries were performed by different physicians, who provided different warnings to Plaintiffs, that Plaintiffs have different ages, different medical histories, different pre-existing health conditions, different risk factors, suffered different post-operative complications and received different treatment for those complications. Mentor also notes that the implant surgeries occurred over a decade apart, over a time period from August 2005 through February 2017. Thus, Mentor argues the MemoryGel Implants were necessarily manufactured at different times in different batches.

"The purpose of section 378 is to permit joinder in one action of several causes arising out of identical or related transactions involving common issues. The statute should be liberally construed so as to permit joinder whenever possible in furtherance of this purpose." (*Coleman v. Twin Newspaper, Inc.* (1959) 175 Cal.App.2d 650, 653.) "The rules laid down by section 378 have been held to apply to actions in tort as well as in contract." (*Ibid.*) Plaintiffs have been properly joined where they allege a single scheme, depending on the same misrepresentations and leading to a series of transactions exactly similar in kind

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and manner of operation. (*Adams v. Albany*, 124 Cal.App.2d 639) or where plaintiffs are exposed to the same harmful chemicals at the same location (*Anaya v. Superior Court* (1984) 160 Cal.App.3d 228, 232). However, the Plaintiffs are not properly joined where they are merely implanted with the same protein using the same medical device during different surgeries performed by different surgeons, who had different levels of knowledge. (*David v. Medtronic* (2015) 237 Cal.App.4th 734.)

The Court agrees with Mentor that *David v. Medtronic, supra*, 237 Cal.App.4th 734 is on point. Plaintiffs reside in four separate states (Complaint at ¶ 1-4.) and underwent their implantation surgeries over a wide range of time from August 2005 through February 2017. (Complaint at ¶¶ 20, 23, 25, 27, and 30.) The complaint also fails to show that the Plaintiffs also suffered from the same defect in the MemoryGel Implants. While they all underwent explantation surgeries, Plaintiff Emma Lee Nichols suffered a rupture of her implant (Complaint at ¶ 25), while Plaintiff Anna Kline's implant became attached to her ribs. (Complaint at ¶ 22.)

Plaintiffs generally allege that Mentor failed to comply with FDA regulations for tracking and reporting adverse effects of breast implants, which resulted in Plaintiffs receiving inadequate warnings from their respective physicians concerning the risks of MemoryGel Implants. (Complaint at ¶¶ 109-133.) However, in *David v. Medtronic, supra*, 237 Cal.App.4th at p. 738 Plaintiffs alleged that the manufacturer of a medical device widely promoted off-label uses of its product, despite knowledge of the dangers of such uses. Nonetheless, the Court found that the Plaintiffs were not properly joined. (*Id.* at p. 741.) Applying *David v. Medtronic* to the facts of this case, Mentor's failure to track and report adverse effects of breast implants is not sufficient to support a finding that Plaintiffs surgeries are part of the same series of transactions. Moreover, the Court notes that, based on Plaintiffs' allegations, the duty to track and report was not the same for each Plaintiff. Plaintiff allege that on November 17, 2006, the FDA approved Mentor's breast implants on condition that Mentor conducts a six-year post-approval study to determine the safety and effectiveness of the implants. As this study was required to be conducted between 2006 and 2012, some of the Plaintiffs received implants before the study was required, some received implants during the implementation of the study, and some received implants after the study was scheduled to be complete. Under these circumstances, the Court finds that Plaintiffs have not alleged a single scheme, depending on the same misrepresentations, and leading to transactions exactly similar in kind and manner of operation. (See *David v. Medtronic, supra*, 237 Cal.App.4th at 741.) The Court finds that Plaintiffs' separate surgeries, conducted at different times by different physicians in different states, are separate and distinct transactions. Accordingly, Plaintiffs were not properly joined under Code of Civ. Proc. § 378 and severance is proper.

This case has been assigned to Department 47 for hearing. In the event that either party requests a hearing the matter will be heard at 9:30 a.m. in Department 47. Any party requesting an oral argument must contact the clerk at (916) 874-5487 and opposing counsel or parties in pro per by 4:00 p.m. on the day before the hearing.

Parties requesting a court reporter should contact the courtroom clerk at the number stated above. Please be advised that there will be a \$30.00 fee for court reporting services in civil proceedings lasting under one hour. (Govt. Code §68086(a)(1)(A).)

### **COURT'S RULING:**

The Court having read and considered the pleadings filed herein, and the tentative ruling posted on November 8, 2019 and heard counsel presented their respective arguments on November 12, 2019, the Court now affirms the tentative.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.