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U.S. DISTRICT COURT
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DISTRICT OF UTAH
BY: _____
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NATISHA PIERCE, Individually and as
Personal Representative of the Estate of
RONALD PIERCE,

Plaintiff,

v.

MYLAN LABORATORIES, INC. n/k/a
MYLAN INC.; MYLAN TECHNOLOGIES,
INC.; and MYLAN TECHNOLOGIES,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

Case No. 1:10-cv-00104-TC

Judge Tena Campbell

On May 4, 2011, the Motion to Dismiss for and on behalf of Defendants Mylan Inc., Mylan Technologies Inc., and Mylan Pharmaceuticals Inc. (collectively "Mylan") came before the Court for hearing. The Honorable Tena Campbell, United States District Judge, presided.

Nancy Mismash of Robert J. Debry & Associates appeared on behalf of Plaintiff Natisha Pierce ("Plaintiff"). Kamie F. Brown of Ray Quinney & Nebeker, P.C. appeared on behalf of Mylan. Based upon the motions, supporting memoranda, opposing memoranda, the record herein and arguments of counsel, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. Mylan's Motion to Dismiss Plaintiff's claim for strict liability design defect is granted. The Court strikes all references to design defect in paragraphs 20 and 23 of Plaintiff's Complaint.


2. Mylan's Motion to Dismiss Plaintiff's claim for punitive damages is granted. The Court has reviewed its decision in *Grange v. Mylan Laboratories, Inc.*, 2008 WL 4813311 (D. Utah). This Court finds that its decision in *Grange* is not changed by the subsequent decision in *Wyeth v. Levine*, 129 S. Ct. 1187 (2009), or the holdings in *Lake-Allen v. Johnson & Johnson*, 2009 WL 2252198 (D. Utah 2009) or *Stanley v. Mylan, Inc.*, 2010 WL 3718589 (D. Utah 2010).

This Court finds that Plaintiff's claim for punitive damages is tantamount to a showing that Defendant committed fraud-on-the-FDA. Fraud-on-the-FDA claims are preempted by the United States Supreme Court decision *Buckman Co. v. Plaintiff's Legal Comm'n.*, 531 U.S. 341, 348 (2000).

3. Mylan's Motion to Dismiss Plaintiff's claim for gross negligence and intentional misconduct is denied.

SO ORDERED THIS 17th day of May, 2011.

BY THE COURT


Tena Campbell
United States District Judge

Approved as to form:

/s/ Nancy A. Mismash (by permission)

Nancy A. Mismash
Robert J. Debry & Associates