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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT BLAIR,	)	Case No. 3:15-cv-01678-SC
	)	
Plaintiff,	)	ORDER GRANTING MOTION TO
	)	<u>DISMISS</u>
v.	)	
	)	
MEDTRONIC, INC., and DOES 1	)	
through 50, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	

**I. INTRODUCTION**

Now before the Court is Defendants' motion to dismiss the above captioned case. The matter is fully briefed<sup>1</sup> and appropriate for resolution without oral argument under Civil Local Rule 7-1(b). For the reasons set forth below, the motion to dismiss is GRANTED. Plaintiff, however, is given LEAVE TO AMEND.

**II. FACTS**

This case was originally filed in the Superior Court of California, County of San Francisco ("state court") on April 2, 2015. See ECF 1, Ex A ("Compl.") Plaintiff Robert Blair ("Plaintiff") used a form complaint for personal injury, property damage, and wrongful death, with only a single paragraph of non-

<sup>1</sup> See ECF Nos. 14 ("Mot."); 15 ("MJN"); 16 ("Opp'n"); 17 ("Reply").

1 formulaic text. Accordingly, the Court has very few facts alleged  
2 before it within the Complaint, set forth below in their entirety.

3 Plaintiff identifies the Defendants as Medtronic, Inc.  
4 ("Medtronic") and Does 1-50 (collectively, "Defendants"). Id. at  
5 ¶¶ 5, 6, 8. Plaintiff alleges that Medtronic has a place of  
6 business in San Francisco, California. Id. (Per the Notice of  
7 Removal, Defendants disagree.<sup>2</sup>) Plaintiff also alleges that Does  
8 1-50 are agents or employees acting within the scope of their  
9 duties or whose capacities are otherwise unknown. Id. at ¶ 6.

10 By the boxes checked, the Court deduces Plaintiff brings suit  
11 for products liability and general negligence, having suffered wage  
12 loss, loss of use of property, hospital and medical expenses,  
13 general damage, property damage, loss of earning capacity, and  
14 other damage consisting of pre-judgment interest. Compl. at ¶¶ 10-  
15 11. Plaintiff accordingly seeks compensatory damages, punitive  
16 damages, and damages in an amount according to the proof.

17 Again, through boxes checked, the Court deduces that Plaintiff  
18 brings its suit for products liability because on or about April 7,  
19 2013, Plaintiff was injured by Medtronic M110901AAB, which the  
20 Court presumes is a device. Id. at ¶ Prod. L-1. Per the form  
21 language and boxes checked, "[e]ach of the defendants knew the  
22 product would be purchased and used without inspection for defects.  
23 The product was defective when it left the control of each  
24 defendant. The product at the time of injury was being" used in  
25 both of two ways offered by the form. Id. at ¶ Prod. L-2. First,  
26 it was "used in the manner intended by the defendants." Id.

27 \_\_\_\_\_  
28 <sup>2</sup> The Court hears this case via diversity jurisdiction. Relevant  
thereto, Medtronic is a Minnesota corporation whose principal place  
of business is Minneapolis. See ECF Nos. 1 at ¶ 6; 1-1 at ¶ 2.

1 Second, it was "used in a manner that was reasonably foreseeable by  
2 defendants as involving a substantial danger not readily apparent.  
3 Adequate warnings of the danger were not given." Id. Plaintiff  
4 was a purchaser and user of the product. Id. at ¶ Prod. L-3.

5 Plaintiff's injury was the proximate result of three checked-  
6 box counts: Strict liability, negligence, and breach of warranty.  
7 Id. at ¶¶ Prod. L-4; Prod. L-5; Prod. L-6. Strict liability  
8 resulted because Defendants "manufactured or assembled the  
9 product," "designed and manufactured component parts supplied to  
10 the manufacturer," and "sold the product to the public." Id. at ¶¶  
11 Prod. L-4(a)-(c). Negligence resulted because Defendants "owed a  
12 duty to [P]laintiff." Id. at ¶ Prod. L-5. Breach of warranty is  
13 alleged to exist because Defendants "breached an implied warranty"  
14 and "breached an express warranty which was" "written" (vice oral).  
15 Id. at ¶ Prod. L-6.

16 The information provided in the Complaint that was not  
17 described above and strictly the result of filling in a generalized  
18 form was Plaintiff's description of its cause of action for general  
19 negligence. There, Plaintiff alleged that Defendants were "the  
20 legal proximate cause of damages to plaintiff" "on (date): or about  
21 April 7, 2013" and "at (place): or around [sic]" by the following:

22 Plaintiff was recipient of a neurostimulator device that  
23 was surgically placed in his back. This subject device  
24 was the product of Medtronic, Inc. As such, Defendant  
25 Medtronic, Inc. owed a duty to Plaintiff to inspect,  
26 maintain and insure that the device was functioning  
27 properly and safely. Defendant Medtronic, Inc. breached  
28 this duty of care to Plaintiff. As a direct and legal  
result of this breach of the duty of care owed to  
Plaintiff. [sic] Plaintiff has suffered damages,  
including special damages and general damages. Plaintiff  
has sustained damage in an amount in excess of the  
jurisdictional minimum of the Superior Court.

1 Id. at ¶ GN-1. Plaintiff's Opposition brief contains no section on  
2 the factual background of this case, no additional information  
3 related to this case, and no motion (or response to Defendants'  
4 motion) for judicial notice. See generally Opp'n. Therefore, the  
5 Court is bound to these highly limited facts.

6  
7 **III. LEGAL STANDARD**

8 A motion to dismiss under Federal Rule of Civil Procedure  
9 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
10 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based  
11 on the lack of a cognizable legal theory or the absence of  
12 sufficient facts alleged under a cognizable legal theory."  
13 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
14 1988). "When there are well-pleaded factual allegations, a court  
15 should assume their veracity and then determine whether they  
16 plausibly give rise to an entitlement to relief." Ashcroft v.  
17 Iqbal, 556 U.S. 662, 664 (2009). However, "the tenet that a court  
18 must accept as true all of the allegations contained in a complaint  
19 is inapplicable to legal conclusions. Threadbare recitals of the  
20 elements of a cause of action, supported by mere conclusory  
21 statements, do not suffice." Id. at 678 (citing Bell Atl. Corp. v.  
22 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a  
23 complaint must be "sufficient allegations of underlying facts to  
24 give fair notice and to enable the opposing party to defend itself  
25 effectively" and "must plausibly suggest an entitlement to relief"  
26 such that "it is not unfair to require the opposing party to be  
27 subjected to the expense of discovery and continued litigation."  
28 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

1           While normally a Court would be limited to the complaint,  
2 certain additional documents may be considered. Documents  
3 referenced in a complaint may be attached to a Rule 12(b)(6) motion  
4 or incorporated by reference into the complaint by the Court for  
5 purposes of deciding a 12(b)(6) motion. See Rubio v. Capital One  
6 Bank, 613 F.3d 1195, 1199 (9th Cir. 2010) (permitting a court to  
7 consider a document submitted "'whose contents are alleged in [the]  
8 complaint and whose authenticity no party questions[.]' Branch v.  
9 Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other  
10 grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119 (9th  
11 Cir. 2002)."); Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152,  
12 1159-60 (9th Cir. 2012) ("the district court may, but is not  
13 required to incorporate documents by reference," and doing so will  
14 be reviewed for abuse of discretion). Stated more succinctly, if  
15 the complaint "necessarily relies" on a document, the Court may  
16 consider that document if: "(1) the complaint refers to the  
17 document; (2) the document is central to the plaintiff's claim; and  
18 (3) no party questions the authenticity of the copy attached to the  
19 12(b)(6) motion." Marder v. Lopez, 450 F.3d 445, 448 (9th Cir.  
20 2006) (citations omitted).

21           In some instances, per Fed. R. Civ. P. 12(d), a court may sua  
22 sponte convert a Rule 12(b)(6) motion to dismiss to a Rule 56  
23 motion for summary judgment if "matters outside the pleadings are  
24 presented to and not excluded by the court." In re Mortgage Elec.  
25 Registration Sys., Inc., 754 F.3d 772, 781 (9th Cir. 2014)  
26 (refusing to make the conversion where a district court based its  
27 dismissal of a case entirely on deficiencies in the pleadings).

28    ///

1 **IV. DISCUSSION**

2 Defendants ask this Court to find the Complaint deficient on  
3 four main grounds, including failure to adequately plead this type  
4 of case (given treatment by other federal courts in California and  
5 elsewhere), federal preemption of the claims at issue, bars by  
6 California law to bringing certain causes of action, and failure to  
7 plead with specificity sufficient to satisfy Fed. R. Civ. P. Rules  
8 8 and 12(b)(6). Defendants argue that given the law on preemption  
9 and the state of the law in California, the case should be  
10 dismissed with prejudice. Plaintiffs oppose on all counts.

11 The Court is surprised that Plaintiff would file such a  
12 threadbare Complaint, but also recognizes that Plaintiff originally  
13 filed under the laws and standards applicable in state court rather  
14 than those for Federal Court per the Federal Rules of Civil  
15 Procedure. The Court does not make any attempt to compare the  
16 standards or deduce if the Complaint might be adequate in its  
17 original jurisdiction -- what is clear and matters now is that the  
18 Complaint is clearly insufficient for maintaining a federal case.

19 Plaintiff argues the Complaint is sufficient, claiming that a  
20 complaint simply "must contain factual matter, accepted as true, to  
21 'state a claim to relief that is plausible on its face.'" See  
22 Opp'n at 5 (quoting Iqbal, 556 U.S. at 678 (quoting Twombly, 550  
23 U.S. at 570)). Yet even making all assumptions that would be  
24 favorable to the Complaint, see Iqbal, 556 U.S. at 664, the  
25 Complaint is the epitome of "[t]hreadbare recitals of the elements  
26 of a cause of action, supported by mere conclusory statements,"  
27 which simply "do not suffice." Twombly, 550 U.S. at 578. For the  
28 sake of clarity to Plaintiff, the Court reiterates that the

1 allegations must be more than threadbare recitals and must be  
2 "sufficient allegations of underlying facts to give fair notice and  
3 to enable the opposing party to defend itself effectively" and  
4 "must plausibly suggest an entitlement to relief" such that "it is  
5 not unfair to require the opposing party to be subjected to the  
6 expense of discovery and continued litigation." Starr v. Baca, 652  
7 F.3d 1202, 1216 (9th Cir. 2011). The Complaint here utterly fails  
8 to meet these standards, as none of the claims have pleaded  
9 sufficient facts to state a claim. Therefore, the claims must be  
10 DISMISSED. Defendants' motion is accordingly GRANTED.

11 However, the Court is not inclined to dismiss with prejudice.  
12 Certainly, it is not an improper request to ask the Court to take  
13 judicial notice of such matters as are referenced and relied upon  
14 in the Complaint. See Rubio, 613 F.3d at 1199; Marder, 450 F.3d at  
15 448. It is also not unreasonable to ask the Court to consider  
16 preemption law or other legal bars to a claim. See Mot. at 8-18.  
17 However, even a preliminary review of cases likely relevant to the  
18 Court's analysis of preemption suggest that a close factual  
19 analysis will be required to determine if this is a case where  
20 claims run parallel to or are preempted by relevant federal law.  
21 See, e.g., Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996), Stengel v.  
22 Medtronic, Inc., 704 F.3d 1224 (9th Cir. 2013) (en banc); see also  
23 Perez v. Nidek Co., 711 F.3d 1109, 1117-20 (9th Cir. 2013);  
24 Gilstrap v. United Air Lines, Inc., 709 F.3d 995, 1006 (9th Cir.  
25 2013); McClellan v. I-Flow Corp., 776 F.3d 1035, 1040-41 (9th Cir.  
26 January 23, 2015). Other district courts within this Circuit have  
27 engaged in a careful, claim-by-claim analysis in deciding whether  
28 and how these cases should apply. See, e.g., Seedman v. Cochlear

1 Americas, No. SACV 15-00366 JVS (JCGx), 2015 WL 4768239, at \*8  
2 (C.D. Cal. Aug. 10, 2015); Eidson v. Medtronic, Inc., 40 F. Supp.  
3 3d 1202, 1231-33 (N.D. Cal. 2014); Ramirez v. Medtronic Inc., 961  
4 F. Supp. 2d 977, 996 (D. Ariz. 2013), clarified on denial of  
5 reconsideration (Oct. 24, 2013). The Court is therefore loathe to  
6 embark on a legal analysis with such a sparsely developed Complaint  
7 where Plaintiff has yet to amend or be given any chance to fairly  
8 present its case. The Court thus declines the invitation to  
9 dismiss with prejudice.

10

11 **V. CONCLUSION**

12 Defendants' motion to dismiss is GRANTED. The Complaint is  
13 DISMISSED WITHOUT PREJUDICE. Plaintiff may file a First Amended  
14 Complaint within 30 days of the date of this Order. If still  
15 applicable, Defendants are permitted to again raise the same  
16 arguments brought forth in its current motion to dismiss.  
17 Plaintiff is advised that the Court will not forgo analysis of  
18 preemption or legal bars to this suit a second time if the  
19 Complaint remains similarly threadbare or fails to consider the  
20 information submitted in the motion for judicial notice. The  
21 motion for judicial notice is DENIED WITHOUT PREJUDICE.

22 Parties have been referred to private mediation. ECF No. 24.  
23 The deadline for mediation is hereby extended 30 days to permit  
24 Plaintiff an opportunity to file a First Amended Complaint.

25 IT IS SO ORDERED.

26

27 Dated: September 30, 2015

28

  
UNITED STATES DISTRICT JUDGE