

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN O'NEIL,

Plaintiff,

3:17-CV-640
(DNH/TWD)

-v-

ARGON MEDICAL DEVICES, INC. and
REX MEDICAL, L.P.,

Defendants.

APPEARANCES:

OF COUNSEL:

MARC J. BERN & PARTNERS LLP
Attorneys for Plaintiff
60 East 42nd Street
Suite 950
New York, NY 10165

DEBRA J. HUMPHREY, ESQ.

SEGAL MCCAMBRIDGE SINGER
& MAHONEY, LTD.
Attorneys for Defendants
850 Third Avenue
Suite 1100
New York, NY 10022

HOWARD A. FRIED, ESQ

LEWIS BRISBOIS BISGAARD & SMITH, LLP
Attorneys for Defendants
550 East Swedesford Road
Suite 270
Wayne, PA 19087

WALTER H. SWAYZE, ESQ.
MEGAN E. GROSSMAN, ESQ

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff Kevin O'Neil brought this civil action against defendants Argon Medical Devices, Inc. and Rex Medical, L.P. On February 13, 2020, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion to dismiss the Second Amended Complaint be granted in part and denied in part. She further recommended that defendants' Rule 12(f) motion to strike be denied. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

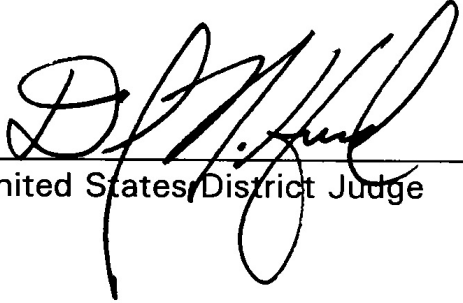
Therefore, it is

ORDERED that

1. Defendants' motion to dismiss is GRANTED in part and DENIED in part;
2. Defendants' motion to dismiss is GRANTED with respect to plaintiff's claims for failure to warn, breach of express warranty, breach of the implied warranty of fitness for a particular purpose, fraudulent misrepresentation, and negligent misrepresentation, and those claims are DISMISSED WITH PREJUDICE;
3. Defendants' motion to dismiss is DENIED with respect to plaintiff's claims for negligence, defective design, manufacturing defect, and breach of the implied warranty of merchantability and request for punitive damages;
4. Defendants' Rule 12(f) motion to strike is DENIED;
5. The following claims remain: negligence, defective design, manufacturing defect, and breach of the implied warranty of merchantability; and

6. Defendants are directed to answer the remaining claims in plaintiff's Second Amended Complaint (ECF No. 47) within twenty (20) days of the date of this Decision and Order.

IT IS SO ORDERED.



United States District Judge

Dated: March 9, 2020
Utica, New York.