IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUDY GUSKY,	)	
	)	
Plaintiff,	)	2:24-cv-01113-CB
	)	
v.	)	Judge Cathy Bissoon
	)	
MEDTRONIC, INC., *et al.*,	)	
	)	
Defendants.	)	

ORDER

Defendants' Motion to Dismiss (Doc. 5) will be granted, with prejudice regarding her claims for strict liability and breach of warranty. The Motion will be granted on her negligence claim, without prejudice to amendment.

Plaintiff concedes that her strict liability and breach of warranty claims are preempted. Doc. 8 at ECF-header pg. 5 of 16. Her arguments against taking judicial notice of the FDA premarket approval of Defendants' product lack merit. This Court joins the others to have done so. *See, e.g.*, Vincent v. Medtronic, Inc., 221 F.Supp.3d 1005, 1009 & n.4 (N.D. Ill. 2016); Leroy v. Medtronic, Inc., 2015 WL 4600880, *1, *5 (N.D. Fla. Jul. 29, 2015); Sons v. Medtronic Inc., 915 F.Supp.2d 776, 778, 781 (W.D. La. 2013).

As pleaded, Plaintiff's negligence claim is preempted. There is a "narrow gap" through which a parallel state claim may survive express and implied preemption. The parameters are explained in McPhee v. DePuy Orthopedics, Inc., 2013 WL 5462762 (W.D. Pa. Sept. 30, 2013) and Gross v. Stryker Corp., 858 F.Supp.2d 466, 493 (W.D. Pa. 2012). Plaintiff's arguments are rejected to the extent they are inconsistent with those decisions, and the Court will assess Plaintiff's amended pleading, should she file one, under the standards therein.

Defendant's Motion to Dismiss (**Doc. 5**) is **GRANTED**, and Plaintiff may file an amended complaint by **March 17, 2025**. Should Plaintiff choose to amend, she must make last, best efforts to state a viable claim, because additional leave will not be granted. If an amended complaint is not timely filed, Plaintiff will be deemed to stand on her current pleadings, and final judgment will be entered.

IT IS SO ORDERED.

March 5, 2025

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record