No. 20-5094

In The

Supreme Court of the United States

ANITA LAUX, Petitioner

vs.

MENTOR WORLDWIDE, LLC, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Anita Laux respectfully petitions for rehearing of this Court's October 5, 2020 Order denying her petition for a writ of certiorari. Ms. Laux's petition for rehearing is filed within 25 days after the date of the order of denial, and complies with the filing requirements of paragraph 1 and Paragraph 2 of Rule 44. This petition is presented in good faith and not for delay.

REASONS FOR GRANTING THE PETITION

1. Intervening circumstances warrant rehearing of the denial of Anita Laux's petition for a writ of certiorari.

Rule 44.2 of the Rules of the Supreme Court of the United States allows petitioners to file a rehearing of the denial of a petition for a writ of certiorari and permits rehearing on the basis of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

The intervening circumstance in Laux's product liability case is the recent **precedent decision in the appellate court on July 2, 2020: Rexina Mize v. Mentor Worldwide, LLC, No. B295829, 51 Cal. App. 5th 850 (2020).** The Court of Appeal of The State of California Second Appellate District Division Six, REVERSED PREEMPTION, on the trial court's judgment and entered an order overruling the

demurrer to the third amended complaint. The court concluded "that the tort claims in this case survive preemption because they are premised on conduct that both (1) violates the Medical Device Amendments [MDA] and (2) would give rise to recovery under state law even in the absence of the [MDA]."" [Citation]" (Glennen v. Allergan, Inc. (2016) 247 Cal.App.4th 1, 11-12 (Glennen).) We further conclude that Mize and Nguyen pled the requisite "'casual connection"' between their injuries and Mentor's tortious acts to survive a demurrer. (Rannard v. Lockheed Aircraft Corp. (1945) 26 Cal.2d 149, 156 (Rannard).) Because the trial court reached contrary conclusions, we reverse. DISPOSITION: "The judgment is reversed, and the matter is remanded to the trial court with directions to enter an order overruling the demurrer to the third amended complaint. Mize and Nguyen shall recover their costs on appeal." Mize v. Mentor, 51 Cal. App. 5th 850 (2020). Certified For Publication, filed July 2, 2020. [Citation]. The recent precedent decision in the Mize court overruling preemption is a substantial controlling effect and persuasive authority on Laux's case to survive preemption. Laux is showing a good-faith reason of intervening circumstances in the Mize v. Mentor Worldwide LLC, which warrants the Supreme Court of the United States to grant Laux's petition for rehearing.

The recent precedent decision on preemption reversed in Mize v. Mentor Worldwide, LLC, has several similar issues as cited in Laux v. Mentor. Both Mize and Laux have similar Causes of Action for Negligence and Strict Product Liability-Manufacturing Defect Claims, and have cited several of the same rules of law under the MDA, FDCA, Title 21 U.S. Code 360k(a) State and local requirement respecting devices, Parallel State-Law Claims, California Tort Law, the FDA's Quality System Regulations and Current Good Manufacturing Practices, 21 C.F.R. Codes of Federal Regulations 820.1, et seq., which requires each manufacturer to put in place processes to test products for compliance with product specifications before products are accepted for sale and use, and to identify and control nonconforming products. Both Mize and Laux have similar legal circumstances in the Class III medical devices that both Mize and Laux received from the same manufacturer known as Mentor Worldwide, LLC. Both Mize and Laux alleged that Mentor had a duty under Federal law, and a parallel duty under California law, to exercise reasonable care in developing, manufacturing, testing, inspecting and selling their product to ensure that it was safe and made in conformity with the manufacturing and design specifications mandated by the FDA. Under California law and similar circumstances between the two separate cases in Mize and Laux, can be examined for similarities on their filed Complaints, respectively.

See Appendices attached hereto for Mize's Third Amended Complaint as **Appendix B.** For reference purposes, a copy of Laux's Complaint can be viewed on **Appendix G** in Laux's petition for writ of certiorari, in order to exam the similarities between Mize v. Mentor Worldwide, LLC and Laux v. Mentor Worldwide, LLC.

Mize v. Mentor and Laux v. Mentor are with similar issues on the same legal issue of preemption: Whether state-law claims against a medical device manufacturer, based on duties that parallel federal requirements, preempted by the Medical Device Amendments ("MDA"), 21 U.S.C. 360 et seq., to the Food, Drug, and Cosmetics Act ("FDCA"), 21 U.S.C. 301 et seq.? In the Mize v. Mentor appellate court decision on July 2, 2020, concluded that the tort claims in the Mize case survive preemption. Laux presented the above question on preemption in her petition for a writ of certiorari.

The tort law claims in Laux's case are similar with Mize's case because they are premised on conduct that both (1) violates the Medical Device Amendments [MDA] and (2) would give rise to recovery under state law even in the absence of the [MDA]. The precedent decision in Mize v. Mentor Worldwide, LLC, has persuasive authority in the Laux v. Mentor Worldwide, LLC case. Documented in the Appellate Court Order concluded Mize's case survives

preemption **(attached hereto as Appendix A)**, and Mize's Third Amended Complaint **(attached hereto as Appendix B).**

On Mize's Appellate Court ORDER, attached hereto in **Appendix A, App.9**, "The MDA expressly preempts any state requirement that: (1) "is different from, or in addition to, any requirement applicable under [the FDCA]," and (2) "relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under [FDCA]." 360k(a).) The MDA "does not prevent a [s]tate from providing a remedy for claims premised on a violation of FDA regulations," however because "the state [requirements] in such a case 'parallel,' rather than add to, federal requirement." (Riegel, supra, 552 U.S. at p. 330.) A state requirement parallels a federal requirement if the two are '"'generally equivalent'"' (Glennen, supra, 247 Cal.App.4th at p.10)." [CITATION in Mize's Appellate Court decision on July 2, 2020, concluded Mize survives preemption], in which Laux has cited the same parallel state-law claims throughout her filed documents at trial court.

Similarly, here in Laux v. Mentor Worldwide, and in Mize v. Mentor Worldwide, both cases pleaded similar causes of action for strict product liability claims for manufacturing defects claims and negligence, for a Class III Medical Device, Under the same California Law.

CONCLUSION

Petitioner Laux respectfully requests that the Supreme Court of the United States to grant this petition for rehearing based on the recent intervening circumstances of preemption reversed in the recent precedent decision in Mize v. Mentor Worldwide, LLC.

Respectfully submitted,

Anita Laux 10/29/2020

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October 29, 2020