

1 UMBERG ZIPSER LLP
Dean J. Zipser (SBN 94680)
2 dzipser@umbergzipser.com
ADINA W. STOWELL (SBN 211719)
3 astowell@umbergzipser.com
1920 Main Street, Suite 750
4 Irvine, CA 92614
Telephone: (949) 679-0052
5 Fax: (949) 679-0461

6 MORRIS, MANNING & MARTIN, LLP
Robert P. Alpert (Pro Hac Vice)
7 rpa@mmmlaw.com
Jeffrey K. Douglass (Pro Hac Vice)
8 jdouglass@mmmlaw.com
1600 Atlanta Financial Center
9 3343 Peachtree Road, NE
Atlanta, GA 30326
10 Telephone: (404) 233-7000
Fax: (404) 365-9532

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12 Attorneys for Defendant
Home Depot U.S.A., Inc.
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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16

17 JAMES WEEKS, individually and
on behalf of all others situated,

18 Plaintiff,

19 vs.

20 HOME DEPOT U.S.A., INC., a
21 Delaware corporation, and DOES 1
through 100, inclusive,

22 Defendants.
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Case No.: 2:19-cv-06780-FMO-AS

ASSIGNED TO:
Hon. Fernando M. Olguin

**DEFENDANT HOME DEPOT U.S.A.,
INC.'S NOTICE OF MOTION TO
DISMISS**

Date: March 12, 2020
Time: 10:00 a.m.
Courtroom: 6D

Complaint Filed: August 5, 2019
Amended Complaint Filed: November 22,
2019

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28 {196153.1}

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 12, 2020, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 6D of the Central District
4 Court – Western Division, located at 350 W. 1st Street, 6th Floor, Los Angeles,
5 CA 90012, the Honorable Fernando M. Olguin presiding, defendant Home Depot
6 U.S.A., Inc. (“Home Depot”) will and hereby does move for an order dismissing
7 the claims of plaintiff James Weeks (“Plaintiff”) for failure to state a claim upon
8 which relief can be granted. This Motion is made pursuant to Federal Rules of
9 Civil Procedure Rule 12(b)(6) and based on the following grounds:

10 1. Plaintiff’s claim is expressly preempted by the Federal Insecticide,
11 Fungicide, and Rodenticide Act (“FIFRA”), which bars any state-law
12 requirements for product labeling or packaging “in addition to or different from”
13 FIFRA’s requirements;

14 2. Plaintiff’s claim is preempted under the doctrine of impossibility
15 preemption;

16 3. Plaintiff’s claim fails because he admits that Home Depot has “no
17 control” over the product labels and did not participate in, control, or adopt the
18 alleged unlawful practices;

19 4. Plaintiff’s claim, which in substance is a Proposition 65 claim, is
20 barred by his failure to comply with Proposition 65’s notice requirements and the
21 current statewide injunction preventing the enforcement of a cancer warning for
22 glyphosate;

23 5. Plaintiff’s claim is based on Home Depot’s purported fraudulent
24 omissions, but Plaintiff fails to meet the heightened pleading requirements for
25 fraud-based claims under Rule 9(b) of the Federal Rules of Civil Procedure; and
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1 6. Plaintiff lacks standing to pursue his claims for injunctive relief
2 because his own allegations confirm that he is not likely to suffer any future
3 injury.

4 This motion is made following the conferences of counsel pursuant to
5 Local Rule 7-3, which took place on December 6, 2019, and January 27, 2020.

6 This motion is based on this Notice, the attached Memorandum of Points and
7 Authorities, the accompanying Request for Judicial Notice, all pleadings and
8 records on file in this action, and any argument presented to the Court in
9 connection with the hearing on this motion.

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Dated: February 3, 2020

UMBERG ZIPSER LLP

/s/ Adina W. Stowell

Adina W. Stowell
Attorneys for Defendant Home Depot
U.S.A., Inc.