UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAMES WEEKS, individually and on behalf of all others similarly situated, Plaintiff, v. HOME DEPOT U.S.A., INC., Defendant.	Case No. CV 19-6780 FMO (ASx) **ORDER RE: MOTION TO DISMISS**

Having reviewed and considered the briefing filed with respect to defendant Home Depot U.S.A., Inc.'s ("defendant") Motion to Dismiss First Amended Class Action Complaint ("FAC") (Dkt. 38, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78(b); Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

"Roundup is sold at Home Depot retail locations throughout the United States, including California, and on Home Depot's website." (Dkt. 18, FAC at ¶ 16). Plaintiff James Weeks ("plaintiff") "routinely purchased a Roundup Ready-to-Use Weed & Grass Killer III product . . . from at least one Home Depot store located in Ventura County, California." (Id. at ¶¶ 8 & 60). Plaintiff alleges that defendant "did not provide [him] with any information regarding the carcinogenic nature of Roundup[,]" (id. at ¶ 61), and that he would not have purchased Roundup if he had known of its alleged carcinogenic properties. (See id. at ¶ 63). According to plaintiff, defendant

"could have, but failed to provide [information about Roundup's alleged carcinogenicity] by, for example, displaying it on the shelves where Roundup was sold (or, for some consumers, on the product pages online)." (Id. at ¶ 62).

"Although Defendant is not involved in the manufacture and design of the Roundup products, Defendant is responsible for passing Roundup down the line to consumers by making it available for purchase, and thus plays an integral role in placing Roundup into the stream of commerce." (Dkt. 18, FAC at ¶ 57). Plaintiff alleges that defendant "was and is aware of the present and substantial danger to consumers while using Roundup in an intended and reasonably foreseeable way and has not alerted consumers of its potential health risks." (Id. at ¶ 59). In support of this claim, plaintiff points to: (1) the International Agency for Research on Cancer's ("IARC") conclusion that glyphosate is "probably carcinogenic to humans," (id. at ¶ 22) (emphasis omitted); (2) the U.S. Environmental Protection Agency's ("EPA") 1985 memorandum classifying glyphosate as a "Category C oncogen[,"] i.e., a possible human carcinogen, (id. at ¶ 26) (internal quotation marks omitted); (3) Monsanto's 1996 settlement of false advertising claims with the state of New York, (see id. at ¶ 30); (4) various studies on the effects of glyphosate, (see id. at ¶¶ 31-36 & 38); (5) the decisions of several foreign governments to ban glyphosate, (see id. at ¶¶ 40-47); (6) three California jury verdicts finding Monsanto liable for failure to warn, (see id. at ¶¶ 49-51); and (7) the decision by the California Office of Environmental Health Hazard Assessment ("OEHHA") to list glyphosate as a chemical known to cause cancer, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"). (See id. at ¶ 52).

On November 22, 2019, plaintiff filed the operative FAC, in which he alleged a single cause of action pursuant to California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code. §§ 17200, et seq. (See Dkt. 18, FAC at ¶¶ 78-90). Plaintiff "brings this claim under the 'unfair' prong of" the UCL. (Id. at ¶ 79).

LEGAL STANDARD

A motion to dismiss for failure to state a claim should be granted if plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly (Twombly), 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007); Ashcroft v. Iqbal (Iqbal), 556 U.S.

662, 678, 129 S.Ct. 1937, 1949 (2009); Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949; Cook, 637 F.3d at 1004; Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010). Although the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do," Twombly, 550 U.S. at 555, 127 S.Ct. at 1965; Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949; see also Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.") (citations and internal quotation marks omitted), "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200 (2007) (per curiam) (citations and internal quotation marks omitted); Twombly, 550 U.S. at 555, 127 S.Ct. at 1964.

In considering whether to dismiss a complaint, the court must accept the allegations of the complaint as true, Erickson, 551 U.S. at 93-94, 127 S.Ct. at 2200; Albright v. Oliver, 510 U.S. 266, 267, 114 S.Ct. 807, 810 (1994) (plurality opinion), construe the pleading in the light most favorable to the pleading party, and resolve all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

DISCUSSION

Defendant argues that the court should dismiss plaintiff's UCL claim for several reasons. (See Dkt. 38-1, Memorandum of Points and Authorities in Support of Home Depot U.S.A., Inc.'s

Motion to Dismiss the [FAC] ("Memo.") at 1-2). The court addresses defendant's contentions in turn.

I. PREEMPTION.

Defendant first contends that plaintiff's UCL claim is preempted by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136, et seq. (See Dkt. 38-1, Memo. at 7-12). FIFRA, originally enacted in 1947, was amended in 1972 to convert it "from a labeling law into a comprehensive regulatory statute." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 991, 104 S.Ct. 2862, 2867 (1984). "As amended, FIFRA regulate[s] the use, as well as the sale and labeling, of pesticides; regulate[s] pesticides produced and sold in both intrastate and interstate commerce; [and] provide[s] for review, cancellation, and suspension of registration[.]" Id. at 991-92, 104 S.Ct. at 2867.

"The Supremacy Clause of the Constitution provides that any state law conflicting with federal law is preempted by the federal law and is without effect." Nathan Kimmel, Inc. v. DowElanco, 275 F.3d 1199, 1203 (9th Cir. 2002) (citing U.S. Const. art. VI, cl. 2). Courts look to congressional intent to determine whether state law is preempted by a federal statute. See id. "[B]ecause the States are independent sovereigns in our federal system, [courts] have long presumed that Congress does not cavalierly pre-empt state-law causes of action." Medtronic, Inc. v. Lohr, 518 U.S. 470, 485, 116 S.Ct. 2240, 2250 (1996). "Federal preemption occurs when: (1) Congress enacts a statute that explicitly pre-empts state law; (2) state law actually conflicts with federal law; or (3) federal law occupies a legislative field to such an extent that it is reasonable to conclude that Congress left no room for state regulation in that field." Chae v. SLM Corp., 593 F.3d 936, 941 (9th Cir. 2010) (internal quotation marks omitted). Here, defendant argues that both express and conflict preemption apply. (See Dkt. 38-1, Memo. at 7-13).

A. Express Preemption.

FIFRA contains an express preemption provision which provides:

(a) In general

> A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.
>
> (b) Uniformity
>
> Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. §§ 136v(a)-(b).

"For a particular state rule to be pre-empted [by FIFRA], it must satisfy two conditions." Bates v. Dow Agrosciences, LLC, 544 U.S. 431, 444, 125 S.Ct. 1788, 1798 (2005). "First, it must be a requirement for labeling and packaging; rules governing the design of a product, for example, are not preempted." Id. (emphasis and internal quotation marks omitted). "Second, it must impose a labeling or packaging requirement that is in addition to or different from those required under [FIFRA]." Id. (emphasis and internal quotation marks omitted). "[A] state-law labeling requirement is not pre-empted by § 136v(b) if it is equivalent to, and fully consistent with, FIFRA's misbranding provisions." Id. at 447, 125 S.Ct. at 1800. In addition, FIFRA registration does not provide "a defense for the commission of any offense under th[e statute]." 7 U.S.C. § 136a(f)(2).

In Bates, the Supreme Court made clear that FIFRA allowed "[p]rivate remedies that enforce [FIFRA's] misbranding requirements[.]" 544 U.S. at 451, 125 S.Ct. at 1802. For example, the Bates Court allowed state-law failure-to-warn claims to go forward as long as those claims were consistent with FIFRA, id. at 452-53, 125 S.Ct. at 1803, even though the EPA had approved the insecticide label at issue. Id. at 434-35, 125 S.Ct. at 1793. Bates thus "established that mere inconsistency between the duty imposed by state law and the content of a manufacturer's labeling approved by the EPA at registration did not necessarily mean that the state law duty was preempted." Hardeman v. Monsanto Co., 216 F.Supp.3d 1037, 1038 (N.D. Cal. 2016) (internal quotation marks omitted).

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