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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANA J. SCHULER and MELISA SCHULER, husband and wife; JAMES WADSWORTH, an individual; LISA SMITH, an individual; DEANNA PERKINS, an individual;	)	CASE NO. CV 14-00241-R
	)	
Plaintiffs,	)	ORDER GRANTING DEFENDANT MEDTRONIC, INC.'S MOTION TO DISMISS
	)	
v.	)	
	)	
MEDTRONIC, INC., and DOES 1–50, inclusive,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs, on December 6, 2013, filed a suit in state court naming as defendant Medtronic, Inc. (“Medtronic”). Medtronic was served with the Complaint on December 11, 2013. The action was removed to this Court on January 10, 2014. Medtronic filed a motion to dismiss Plaintiffs’ Complaint on January 17, 2013. Having been thoroughly briefed by both parties, this Court took the matter under submission on February 18, 2014.

On a motion to dismiss, the trial court takes all well-pleaded facts in the Complaint to be true and determines whether, based upon those facts, the Complaint states a claim upon which

1 relief may be granted. Fed. R. Civ. P. 12(b)(6). *See Alperin v. Vatican Bank*, 410 F.3d 532, 541  
2 (9th Cir. 2005). To state a claim, the Complaint must contain factual assertions that make the  
3 claimed relief not merely possible, but “plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009);  
4 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although factual assertions are taken as  
5 true, the court does not accept legal conclusions as true. *Id.*

6 A motion to dismiss tests the legal sufficiency of the claims alleged in the complaint. *See*  
7 *Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1023 (C.D. Cal. 1998). A claim is properly  
8 dismissed for “lack of a cognizable legal theory,” “absence of sufficient facts alleged under a  
9 cognizable legal theory,” or seeking remedies to which plaintiff is not entitled as a matter of law.  
10 *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *King v. California*, 784 F.2d  
11 910, 913 (9th Cir. 1986).

12 Title 21 U.S.C. § 360k(a) explicitly preempts state law and provide that no State:  
13 may establish or continue in effect with respect to a device intended for human use  
14 any requirement—  
15 (1) which is different from, or in addition to, any requirement applicable  
16 under this chapter to the device, and  
17 (2) which relates to the safety or effectiveness of the device or to any other  
18 matter included in a requirement applicable to the device under this chapter.

17 Title 21 U.S.C. § 360k(a). Section 360k(a) expressly preempts any state law cause of action that  
18 would impose requirements respecting the safety or effectiveness of a premarket approved-device  
19 that are “different from, or in addition to” the requirements imposed by federal law. *Riegel v.*  
20 *Medtronic, Inc.*, 552 U.S. 312, 321 (2008).

21 Plaintiffs’ claims are all based on state law that would require additional disclosure. Both  
22 Plaintiffs’ failure-to-warn and fraud claims are premised off inadequate disclosure by Medtronic.  
23 Plaintiffs’ design defect claim is also expressly preempted by section 360k(a). *See Houston v.*  
24 *Medtronic, Inc.*, 957 F. Supp. 2d 1166, 1174–75 (C.D. Cal. 2013); *Burns v. Medtronic, Inc.*, 2013  
25 WL 5596122 (C.D. Cal. Oct. 8, 2013).

26 Further, although Plaintiffs’ aver that Medtronic violated federal law through off-label  
27 promotion of its device, Plaintiffs have failed to identify any federal prohibition on such activity.  
28 Because federal law does not bar off-label promotion, Medtronic’s alleged off-label promotion

1 cannot give rise to a state-law claim that is not preempted. *U.S. v. Caronia*, 703 F.3d 149, 160 (2d  
2 Cir. 2012); *see also Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341, 353 (2001).

3 Dismissal with prejudice is appropriate when further amendment would be futile.  
4 *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Because all of  
5 Plaintiffs' claims are preempted, further amendment would be futile. Thus dismissal with  
6 prejudice is appropriate.

7 IT IS HEREBY ORDERED that defendant Medtronic's motion to dismiss is GRANTED  
8 with prejudice.

9 Dated: March 12, 2014.

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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE