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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No.	CV 13-01456- BRO (MANx)	Date	March 21, 2014
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Title	Robert Martin v. FRS Company et al
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Present: The Honorable	BEVERLY REID O’CONNELL, United States District Judge
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Renee A. Fisher

Not Present

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS)

**ORDER RE DEFENDANT ARMSTRONG’S MOTION TO
DISMISS OR IN ALTERNATIVE TO STRIKE[21]**

**DEFENDANT FRS’S MOTIONS TO DISMISS AND TO
STRIKE [22, 25]**

I. BACKGROUND**A. The Parties**

This is a putative class action on behalf of a nationwide class. (FAC ¶ 1.) Jennifer Hyle, Jessica Graham, and Robert Martin are representative Class Members (collectively “Plaintiffs”). (FAC at 2.) The class time period (“Class Period”) covers Defendant Armstrong’s involvement with Defendant FRS from April 11, 2007 through October 17, 2012. (FAC ¶ 1.)

FRS Company (“Defendant FRS”) is based in Torrance, California. (FAC ¶ 2.) It manufactures, sells, advertises, and markets energy and sports drinks, concentrates, chews, and powders (“FRS products”) throughout the United States and abroad. (FAC ¶ 2.)

Lance Armstrong (“Defendant Armstrong”) was a famous and idolized athlete, the winner of seven Tour de France titles before he admitted to using performance enhancing

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drugs. (FAC ¶ 3.) Plaintiffs allege that during the Class Period, Defendant Armstrong was an equity owner of Defendant FRS. (FAC ¶ 4.) Prior to his resignation, he served as both a member of the Board of Directors and an “FRS Ambassador.” (FAC ¶ 4.) As a part of the management team, Defendant Armstrong participated in the formation and execution of Defendant FRS’s marketing and advertising strategy. (FAC ¶ 4.)

B. Procedural History

On February 28, 2013, Plaintiffs filed a Class Action Complaint against Defendants Armstrong, FRS, and Oak Investment Partners.¹ (Dkt. No. 1.) On April 24, 2013, Plaintiffs filed a First Amended Complaint. (Dkt. No. 9.) On July 3, 2013, Defendant Armstrong filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure 8, 9(b), and 12(b)(6) or in the alternative to strike the class action allegations pursuant to 12(f). (Dkt. No. 21.) On July 3, 2013, Defendant FRS filed a Motion to Dismiss pursuant to Rules 12(b)(6) and 9(b) and a Motion to Strike the Class Action Allegations. (Dkt. Nos. 22, 25.) Because Plaintiffs filed an Omnibus Opposition to Defendants’ Motions, the Court analyzed the Motions together. (Dkt. No. 41.) On February 25, 2014, the Court granted the Defendants’ Armstrong and FRS’ Motions to Dismiss. (Dkt. No. 50.)

II. DISCUSSION

The Court granted Defendants' Motions to Dismiss with leave to amend. Plaintiffs were instructed to file a Second Amended Complaint by March 18, 2014 or they would face dismissal with prejudice. Plaintiffs did not file a Second Amended Complaint. Instead, Plaintiffs filed a notice of appeal to the Ninth Circuit Court of Appeals. (Dkt. No. 51.)

Accordingly, the Court **GRANTS** Defendants’ Motions to dismiss with prejudice.
IT IS SO ORDERED.

¹ Defendant Oak Investment Partners was terminated on August 22, 2013.