

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

LEE WALTERS, M.D.,

3:14-cv-01173-PK

Plaintiff,

ORDER

v.

VITAMIN SHOPPE INDUSTRIES, INC.,  
a Delaware corporation,

Defendant.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#44) on May 13, 2015, in which he recommends this Court grant Defendant's Motion to Dismiss as to each of Plaintiff's claims, deny as moot that portion of Defendant's Motion in which Defendant seeks to strike Plaintiff's class allegations, and dismiss Plaintiff's Second Amended Complaint

(#21) in its entirety with prejudice. The Magistrate Judge also recommends this Court enter judgment in favor of Defendant and dismiss Plaintiff's claims in their entirety. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

Plaintiff filed timely Objections to Magistrate Judge Papak's Findings and Recommendation in which Plaintiff contends the Magistrate Judge erred when he found the contract that was formed between Plaintiff and Defendant when Plaintiff purchased the vitamins at issue was not unconscionable because Defendant did not violate Federal Department of Agriculture (FDA) labeling rules. In the alternative, Plaintiff contends this matter should be stayed pending a determination by the FDA regarding the sufficiency of the labeling on the vitamin packages at issue.

This Court has carefully considered Plaintiff's Objections and concludes Plaintiff's Objections do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does

not find any error in the Magistrate Judge's Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#44) and, therefore, **GRANTS** Defendant's Motion to Dismiss as to each of Plaintiff's claims, **DENIES as moot** that portion of Defendant's Motion in which Defendant seeks to strike Plaintiff's class allegations, and **DISMISSES with prejudice** Plaintiff's Second Amended Complaint (#21) in its entirety.

IT IS SO ORDERED.

DATED this 25th day of June, 2015.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge