IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MILAGROS QUIÑONES-GONZALEZ, individually on her own behalf and others similarly situated Plaintiff vs KRAFT FOODS GROUP, INC. Defendant	CIVIL 15-1892CCC (Class Action Fairness Act)

ORDER

Before the Court is defendant Kraft Foods Group, Inc.'s ("Kraft Foods") unopposed Motion for Summary Judgment (**d.e. 27**) filed on June 30, 2016 and its Motion to Stay as Pending FDA "Natural" Guidance, or in the Alternative, to Continue Trial and Pretrial Deadlines (d.e. 30) filed on October 20, 2016. Also before the Court is plaintiff's Opposition to Unqualified Order to Stay (d.e. 32) and its Supplementary Motion in Opposition to Unqualified Order to Stay (**d.e. 33**) filed on October 30, 2016 and October 31, 2016, respectively. For the reasons set forth below, the Court GRANTS defendants' Motion Stay the Case (**d.e. 30**).

I. BACKGROUND

Plaintiff Milagros Quiñones-González ("plaintiff"), on behalf of herself and of all other similarly situated persons, filed a Complaint against defendant Kraft Foods (d.e. 1) on July 4, 2015, followed by an Amended Complaint (d.e. 6) filed on July 27, 2015. The Amended Complaint alleges that defendant engaged in "deceptive and unfair marketing," breaching an express warranty, and benefitted from "unjust enrichment" by labeling its Shredded Fat Free Cheddar

Cheese as "Natural Cheese" when it contains artificial color. (d.e. 6, ¶¶ 9-11, 33-49). The Amended Complaint also asserts violations under Puerto Rico Consumer Protection Laws codified at 23 L.P.R.A. § 1014 and 24 L.P.R.A. § 729. (d.e. 6, ¶ 1). Plaintiff's entire Amended Complaint hinges on the allegation that the product at issue, Kraft's Shredded Fat Free Cheddar Cheese is improperly labeled as "natural." (d.e. 6, ¶ 13).

In its Motion to Stay, defendant moves to stay this case pending the Food and Drug Administration ("FDA's") "forthcoming guidance on 'natural' labels." (d.e. 30, p. 1). See Use of the Term "Natural" in the Labeling of Human Food Products; Request for Information and Comments, 80 FR 69905-01 (Nov. 12, 2015). In its summary to the Request for Information and Comments, the FDA states that they "are taking th[e] action in part because [they] received three citizen petitions asking that [they] define the term 'natural' for use in food labeling," and notes that "some Federal courts, as a result of litigation between private parties, have requested administrative determinations from FDA regarding whether food products containing ingredients produced using genetic engineering or foods containing high fructose corn syrup may be labeled as 'natural.'" Id. The FDA requested comments "on the use of the term 'natural' in the labeling of human food products, including when, if ever, the use of the term is false or misleading." Id. At the close of the public comment period on February 10, 2016, the FDA had received 7,690 comments. Id.

II. PRIMARY JURISDICTION DOCTRINE

The primary jurisdiction doctrine "is concerned with promoting proper relationships between the courts and administrative agencies charged with

particular regulatory duties." United States v. W. Pac. R. Co., 352 U.S. 59, 63 (1956). Under this doctrine, courts are required "to enable a 'referral' to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling." Reiter v. Cooper, 507 U.S. 258, 268 (1993). "No fixed formula exists for applying the doctrine of primary jurisdiction." W. Pac. R. Co., 352 U.S. at 64. Instead, "the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." Id. "The doctrine is intended to 'serve[ ] as a means of coordinating administrative and judicial machinery,' and to 'promote uniformity and take advantage of agencies' special expertise.'" Com. of Mass. v. Blackstone Valley Elec. Co., 67 F.3d 981, 992 (1st Cir. 1995) (quoting Mashpee Tribe v. New Seabury Corp., 592 F.2d 575, 580 (1st Cir. 1979)).

When analyzing whether deferring to an agency under the primary jurisdiction doctrine is proper, courts in the First Circuit consider the following three factors:

> (1) whether the agency determination l[ies] at the heart of the task assigned the agency by Congress; (2) whether agency expertise [i]s required to unravel intricate, technical facts; and (3) whether, though perhaps not determinative, the agency determination would materially aid the court.

Id. The three factors aid the court in bringing about the purpose of the doctrine which is "to avoid the possibility that a court's ruling might disturb or disrupt the regulatory regime of the agency in question" and yield "national uniformity in the interpretation and application of a federal regulatory regime." Am. Auto. Mfrs. Ass'n v. Massachusetts Dep't of Envtl. Prot., 163 F.3d 74, 81 (1st Cir. 1998). These factors, however, "must be balanced against the

potential for delay inherent in the decision to refer an issue to an administrative agency." Id.

III. ANALYSIS

We turn to the first factor, whether the agency determination lies at the heart of the task assigned the agency by Congress. The FDA, established by the Federal Food, Drug, and Cosmetic Act of 1938 ("FDCA"), is charged with, among other things, regulating food safety and food products labeling. Janney v. Mills, 944 F. Supp. 2d 806, 814 (N.D. Cal. 2013). "If a central, factual question in a case is specifically within an agency's delegated authority to decide, courts often refer the case to the relevant agency to promote uniformity, avoid disrupting a regulatory regime, and demonstrate respect for the agency's ability to perform its core functions." In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Mktg. & Sales Practices Litig., No. 12-MD-2320-PB, 2013 WL 1124081, at *4 (D.N.H. Mar. 18, 2013). There is little doubt that whether a product is improperly labeled as "natural" is specifically within the FDA's delegated authority to decide.

We turn next to determine whether agency expertise is required to unravel intricate, technical facts. "Efficiency and the proper allocation of agencies' and courts' duties may support referral of a factual question to a federal agency." In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Mktg. & Sales Practices Litig., 2013 WL 1124081 at *6. Courts are split as to whether the FDA's expertise is necessary to determining whether a food product label is misleading. We agree with the court in In re KIND LLC "Healthy & All Natural" Litig., 2016 WL 4991471 (S.D.N.Y. Sept. 15, 2016) and

find that "in view of the split among courts and well-reasoned arguments on both sides, this factor does not weigh in favor of the FDA's primary jurisdiction."

The question as to whether the agency determination would materially aid the court is next. "Determining what chemical compounds may be advertised as natural on [ ] product labels is a particularly complicated issue that Congress has committed to the FDA." Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 761 (9th Cir. 2015) (internal quotations omitted)). FDA Regulation defining the term "natural" in the labeling of food products would decidedly aid the court in resolving the plaintiff's claims.

Recent cases support the defendant's argument that the case should be stayed pending the completion of the FDA's rulemaking process. See Kane v. Chobani, LLC, 645 F. App'x 593, 594 (9th Cir. 2016); In re KIND LLC "Healthy & All Natural" Litig., 2016 WL 4991471 at *7; Astiana, 783 F.3d at 762.

Finally, as stated above, the FDA is presently undergoing regulatory proceedings. The District Court in In re KIND LLC "Healthy & All Natural" Litig., when faced with an identical inquiry determined that "the argument for a stay is much stronger here because the FDA has already completed its notice and comment period and seems determined to address the 'all natural' labeling issue." The benefit of the FDA's expert advice and the conservation of judicial resources outweighs any harm suffered by the plaintiff if the case is stayed.

IV. CONCLUSION

For the foregoing reasons, defendant's Motion Stay the Case (**d.e. 30**) is GRANTED. The case is STAYED pending resolution of the FDA's "natural"

rulemaking. If no agency ruling is forthcoming within 180 days from the date this opinion, the parties shall notify this Court. Plaintiff's Opposition to Unqualified Order to Stay (**d.e. 32**) and its Supplementary Motion In Opposition to Unqualified Order to Stay (**d.e. 33**) are NOTED and defendant's Motion for Summary Judgment (**d.e. 27**) will be HELD IN ABEYANCE.

SO ORDERED.

At San Juan, Puerto Rico, on March 3, 2017.

S/CARMEN CONSUELO CEREZO
United States District Judge