

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHAD BRAZIL,
Plaintiff,
v.
DOLE PACKAGED FOOD, LLC,
Defendant.

Case No. 12-CV-01831-LHK

ORDER TO STAY PROCEEDINGS

This case has been remanded following the Ninth Circuit’s resolution of Plaintiff’s appeal. ECF No. 252. The Ninth Circuit affirmed the Court’s decertification decision, and the Court’s dismissal of Plaintiff’s “illegal-product” claims and unjust enrichment claims. *Id.* at 4. However, the Ninth Circuit reversed the Court’s summary judgment decision, finding Plaintiff raised a material issue of fact as to the deception and unlawfulness of Defendant’s use of “All Natural Fruits” labels. *See id.* The Ninth Circuit therefore remanded to allow Plaintiff to pursue class claims for injunctive relief, as well as his individual claim for restitution. *Id.* at 8.

As the parties note in their joint case management statement, the Food and Drug Administration (FDA) issued a request for comments regarding the use of the word “natural” in food product labeling in November 2015. ECF No. 256 at 4. The comment period closed on May

1 10, 2016. *Id.*

2 The FDA’s ongoing review of this issue has already led the Ninth Circuit to order this
3 Court to enter a stay in a different suit against a food retailer for allegedly misleading consumers
4 through its use of the word “natural.” *Kane v. Chobani, LLC*, 645 F. App’x 593 (9th Cir. 2016).
5 Specifically, the Ninth Circuit remanded the action to this Court “with instructions to enter a stay
6 of proceedings under the primary jurisdiction doctrine.” *Id.* at 594.

7 “Primary jurisdiction is a prudential doctrine that permits courts to determine ‘that an
8 otherwise cognizable claim implicates technical and policy questions that should be addressed in
9 the first instance by the agency with regulatory authority over the relevant industry rather than by
10 the judicial branch.’” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015)
11 (quoting *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008)).

12 When deciding if primary jurisdiction applies, courts consider ““(1) the need to resolve an
13 issue that (2) has been placed by Congress within the jurisdiction of an administrative body having
14 regulatory authority (3) pursuant to a statute that subjects an industry or activity to a
15 comprehensive regulatory authority that (4) requires expertise or uniformity in administration.””
16 *Id.* (quoting *Syntek Semiconductor Co. v. Microchip Tech. Inc.*, 307 F.3d 775, 781 (9th Cir. 2002).
17 That said, “[c]ommon sense tells us that even when agency expertise would be helpful, a court
18 should not invoke primary jurisdiction when the agency is aware of but has expressed no interest
19 in the subject matter of the litigation. Similarly, primary jurisdiction is not required when a referral
20 to the agency would significantly postpone a ruling that a court is otherwise competent to make.”
21 *Id.* at 761.

22 The Court finds that primary jurisdiction applies to this case. Food labeling has been
23 placed by Congress under the jurisdiction of the FDA pursuant to a statute that subjects food
24 suppliers to a comprehensive regulatory authority that requires both expertise and uniformity. Nor
25 is the FDA’s interest in this area abstract—the FDA is actively examining the exact “natural”
26 labeling issue that gave rise to this case. Moreover, given that the FDA’s comment window has
27 already closed, the Court does not believe a stay would significantly postpone an ultimate decision
28 in this case. Ninth Circuit precedent also strongly supports a stay. *Kane* invoked the same FDA

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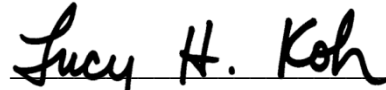
rulemaking at issue here as grounds to order this Court to enter a stay in a suit that turned on the same legal issue, namely whether it is misleading to label a food product that contains synthetic chemicals as “natural.” *Kane*, 645 F. App’x 593.

Accordingly, the Court finds that primary jurisdiction warrants staying these proceedings pending the conclusion of the FDA’s investigation of the “natural” labeling issue. Therefore, the Court stays these proceedings pending the FDA’s final decision on the matter. Plaintiff shall inform the Court within 7 days of the FDA’s final decision.¹

The Clerk shall administratively close the case file. This closure is purely an internal administrative procedure and does not affect the rights of the parties.

IT IS SO ORDERED.

Dated: October 17, 2017



LUCY H. KOH
United States District Judge

¹ As the Ninth Circuit noted in *Kane*, “[t]he duration of the stay remains within the sound discretion of the district court. If future events render the FDA’s apparently imminent resolution of the ... “natural” issue[] illusory, such events should inform the district court’s exercise of its discretion.” *Kane*, 645 F. App’x at 595.