

**FILED
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11:19 am, Sep 06, 2017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

-----X
JASON SCHOLDER, on behalf of himself and all others
similarly situated,

Plaintiff,

~~-against-~~

Order
16-cv-6028(ADS)(GRB)

TOPCO HOLDINGS, INC., and TOPCO ASSOCIATES,
LLC,

Defendant.

-----X
APPEARANCES:

Gabrielli Levitt LLP
Attorneys for the Plaintiff
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By: Michael J. Gabrielli, Esq., Of Counsel

Ettelman & Hochheiser
Attorneys for the Defendants
100 Quentin Roosevelt Blvd., Suite 401
Garden City, NY 11530

By: Joshua S. Stern, Esq., Of Counsel

SPATT, District Judge:

This is one of several putative class actions that the Plaintiff Jason Scholder has brought under New York’s consumer protection statute challenging the legality of branding food products as “natural” when they contain or have been derived from allegedly unnatural sources.

Consistent with its prior determinations in substantially similar actions, and without reaching the merits of the Defendants’ motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), the Court finds that a stay of this matter is justified pending the outcome of the federal Food and Drug Administration’s rulemaking process regarding the permissible uses of the term “natural” in food labeling. *See Scholder v. Riviana Foods Inc.*, No. 16-cv-6002, 2017 U.S. Dist. LEXIS

98330 (E.D.N.Y. June 23, 2017) (Spatt, J.); *Scholder v. Sioux Honey Assoc., Cooperative*, Case No. 2:16-cv-05369(ADS)(GRB), June 27, 2017 Electronic Order.

Accordingly, the Defendant's motion to dismiss, DE [13], is denied without prejudice and with leave to renew upon the present stay being lifted. In the interim, the parties are directed to promptly apprise the Court of any material developments in the FDA's rulemaking process, and, in any event, to submit a joint status report on ECF no later than February 26, 2018.

It is **SO ORDERED**:

Dated: Central Islip, New York
September 6, 2017

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge