UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ERIKA THORNTON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	No. 4:16-CV-00158 JAR
v.	)	
PINNACLE FOODS GROUP, LLC,	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Pinnacle Foods Group, LLC's ("Pinnacle") Motion to Stay. (Doc. No. 17) Pinnacle moves to stay this action under the primary jurisdiction doctrine pending the Food and Drug Administration's ("FDA") consideration and resolution of issues related to the use of the term "natural" and similar terms on food labels. The motion is fully briefed and ready for disposition.

Background

Plaintiff Erika Thornton brought this putative class action in St. Louis City Circuit Court against Pinnacle asserting claims for violation of the Missouri Merchandising Practices Act and unjust enrichment. She alleges that Pinnacle labels its Duncan Hines Simple Mornings Blueberry Streusel Premium Muffin Mix as containing "Nothing Artificial" when in fact the Muffin Mix contains monocalcium phosphate and xanthan gum, both of which are artificial, synthetic substances. Plaintiff contends Pinnacle's alleged mislabeling of its Muffin Mix constitutes false, deceptive, and misleading merchandising practices. Plaintiff seeks to certify a class consisting of all persons in Missouri who purchased Pinnacle's Muffin Mix in the past five years. Pinnacle

timely removed the matter to this Court, pursuant to the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d).

Discussion

In November 2015, the FDA announced its initiation of a formal regulatory proceeding to determine the permissible uses of the term "natural" in food product labeling and issued a request for public comment on the issue. See Use of the Term "Natural" in the Labeling of Human Food Products; Request for Information and Comments, 80 Fed. Reg. 69,905 (Nov. 12, 2015). In the past, the FDA has not formally provided guidance regarding the meaning of "natural," but its policy has been to apply the term to products where "nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, a food that would not normally be expected to be in the food." See Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms, 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

The Ninth Circuit recently ruled in Kane v. Chobani, LLC, No. 14-15670, 2016 WL 1161782 (9th Cir. Mar. 24, 2016), that the FDA's commencement of rulemaking brings into play the primary jurisdiction doctrine.[1] Primary jurisdiction is a common law doctrine used to coordinate judicial and administrative decision making. George v. Blue Diamond Growers, No. 4:15-CV-962 (CEJ), 2016 WL 1464644, at *1 (E.D. Mo. Apr. 14, 2016) (citing City of Osceola, Ark. v. Entergy Arkansas, Inc., 791 F.3d 904, 908-09 (8th Cir. 2015) (quotation and citation omitted)). The doctrine allows a court with jurisdiction to refer a case to the appropriate administrative agency for initial decision. Id. There is no "fixed formula" for deciding whether

[1] District courts have since followed the Ninth Circuit's lead in applying the primary jurisdiction doctrine in these types of actions where the term "natural" is at issue. See, e.g.,Viggiano v. Johnson, No. CV14-7250-DMG (MRWx), 2016 WL 5110500, at *2 (C.D. Cal. June 21, 2016) (citing cases); George v. Blue Diamond Growers, No. 4:15-CV-962 (CEJ), 2016 WL 1464644, at *3 (E.D. Mo. Apr. 14, 2016).

an agency has primary jurisdiction over a case; instead courts consider whether "desirable uniformity" would result from an agency determination and whether "the expert and specialized knowledge" of the agency is needed. Id. (quoting United States v. W. Pac. R.R. Co., 352 U.S. 59, 64 (1956)). When it is determined that primary jurisdiction to resolve an issue lies with an agency, a court otherwise having jurisdiction over the case may either stay or dismiss the action pending the agency's resolution of the question. Alpharma, Inc. v. Pennfield Oil Co., 411 F.3d 934, 938 (8th Cir. 2005) (citation omitted). However, the doctrine is to be "invoked sparingly, as it often results in added expense and delay." Id. (quoting Red Lake Band of Chippewa Indians v. Barlow, 846 F.2d 474, 477 (8th Cir. 1988)).

In support of its motion to stay, Pinnacle contends that whether it is legally permissible to label its Muffin Mix as containing "Nothing Artificial" when it contains monocalcium phosphate and xanthan gum is an issue within the FDA's specific expertise and regulatory jurisdiction. Pinnacle relies on United States District Judge Jackson's recent stay order in an "all natural" case, George v. Blue Diamond Growers, 2016 WL 1464644. In that case, Judge Jackson found that in light of the FDA's ongoing examination of the appropriate regulation of the terms that formed the basis of the plaintiff's claims, it was appropriate to defer to the FDA's "expert and specialized knowledge" in order to attain "desirable uniformity." Id. at *3.

Plaintiff opposes the motion to stay because her claims do not involve a "natural" label and cites to numerous cases rejecting the argument that claims involving "natural" labels should be stayed or dismissed under the primary jurisdiction doctrine. (Doc. No. 19 at 2-3) However, these cases all predate the FDA's announcement on November 12, 2015 of its initiation of a formal regulatory proceeding to determine the permissible uses of the term "natural" in food labeling. Viggiano, 2016 WL 5110500, at *2 n.1 (citing Jones v. ConAgra Foods, Inc., 912 F.

Supp. 2d 889, 898 (N.D. Cal. 2012) ("The FDA's inaction with respect to the term "natural" implies that the FDA does not believe that the term "natural" requires "uniformity in administration.")).

The FDA has defined "natural" in terms of what is not "artificial," and uses the concepts of "natural" and "not artificial" interchangeably. See 58 Fed. Reg. at 2407. For this reason, the FDA's interpretation of "natural" will necessarily inform the definition of "artificial" and be beneficial to the Court's determination of the claims in the instant case.

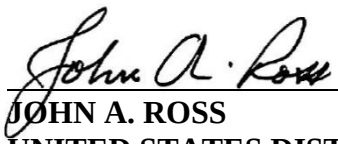
Accordingly, and for good cause shown,

IT IS HEREBY ORDERED that Defendant Pinnacle Foods Group, LLC's Motion to Stay [17] is **GRANTED**.

IT IS FURTHER ORDERED that this case is **STAYED** pending resolution of the FDA's proceedings pertaining to the term "natural." The parties shall file a status report on the FDA's proceedings within six (6) months from the date of this Order, and every six (6) months thereafter so long as the stay is in effect.

IT IS FINALLY ORDERED that the Clerk of Court shall administratively close this case. The Court will retain jurisdiction to permit a party to move to reopen the case. Any motion to reopen the case must be filed no later than thirty (30) days after conclusion of the FDC proceedings.

Dated this 30th day of September, 2016.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE