

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AMY MAXWELL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNILEVER UNITED STATES, INC., et al.,

Defendants.

Case No. [5:12-cv-01736-EJD](#)

ORDER STAYING CASE

Re: Dkt. No. 112

On March 30, 2016, the Court issued an order to show cause why this action should not be stayed under the primary jurisdiction doctrine until the U.S. Food and Drug Administration completes its proceedings regarding use of the term “natural” in food labeling. Dkt. No. 112; see also Kane v. Chobani, LLC, 645 F. App’x 593, 594 (9th Cir. 2016) (staying case pending FDA proceedings regarding the term “natural”).

On April 6, 2016, Defendant PepsiCo, Inc. filed its response to the order to show cause. Dkt. No. 113. PepsiCo argues that the Court should not stay Plaintiff’s claims against PepsiCo because those claims do not involve use of the term “natural.” Id. at 3. PepsiCo also argues that claims against the other Defendants should be stayed because those claims do involve use of the term “natural.” Id.

Plaintiff filed her response on the same day. Dkt. No. 114. Plaintiff agrees that claims

Case No.: [5:12-cv-01736-EJD](#)
ORDER STAYING CASE

United States District Court
Northern District of California

1 against PepsiCo should proceed, while the remained of the claims should be stayed. Id.

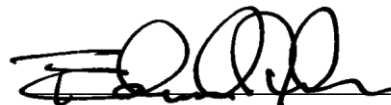
2 Accordingly, the Court STAYS this action with respect to Plaintiff’s claims against
3 Unilever United States, Inc. and Pepsi Lipton Tea Partnership pending completion of FDA
4 proceedings regarding use of the term “natural” in food labeling.

5 At this time, the claims against PepsiCo are also STAYED. However, the court will
6 permit an exception to the stay in order to accommodate PepsiCo’s Motion to Dismiss, which
7 PepsiCo shall refile and notice for hearing at **9:00 a.m. on March 15, 2018**. Briefing on the
8 motion shall thereafter re-occur according to the deadlines provided by Civil Local Rule 7-3. The
9 court will reassess the necessity of the stay of claims against PepsiCo subsequent ruling on the
10 anticipated Motion to Dismiss.

11 The parties shall file a joint status report with an update on the relevant proceedings before
12 the FDA on April 6, 2017, and continuing every four months thereafter.

13
14 **IT IS SO ORDERED.**

15 Dated: December 8, 2017



EDWARD J. DAVILA
United States District Judge