

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 20-963-MWF (AFMx)

Date: October 8, 2020

Title: Larry Tran v. Beyond Meat, Inc. et al

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers):

ORDER RE: MOTION TO DISMISS
AMENDED CLASS ACTION COMPLAINT
[55]; PLAINTIFF'S MOTION TO STRIKE
PORTIONS OF REQUEST FOR JUDICIAL
NOTICE [64]

Before the Court are two motions:

The first is Defendants Beyond Meat, Inc. ("Beyond Meat"), Ethan Brown, and Mark J. Nelson's Motion to Dismiss Amended Class Action Complaint for Violation of the Federal Securities Laws, (the "Motion"), filed on July 31, 2020. (Docket No. 55). Lead Plaintiff Block Investments Corporation and named Plaintiffs Jie Ling Guo and Neeraj Tulsian filed an opposition on August 31, 2020. (Docket No. 59). Defendants filed a reply on September 15, 2020. (Docket No. 62).

The second is Plaintiffs' Motion to Strike Portions of Defendants' Request for Judicial Notice (the "MTS"), filed on September 24, 2020. (Docket No. 64). Defendants filed an opposition on September 28, 2020. (Docket No. 66).

The Court has read and considered the papers filed in connection with the motions and held a telephonic hearing on **October 6, 2020**, pursuant to General Order 20-09 arising from the COVID-19 pandemic.

The Motion is **GRANTED *with leave to amend***. The FAC does not sufficiently allege the falsity of material statements or omissions.

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I. BACKGROUND

On January 30, 2020, Plaintiff Larry Tran initiated this action with his complaint against Beyond Meat, Inc. (“Beyond Meat”), Ethan Brown, and Mark J. Nelson (the “Tran Action”). (Docket No. 1). Generally, the Tran Action concerns allegations arising from a lawsuit brought by a former supplier of Beyond Meat, Don Lee Farms in Los Angeles Superior Court, along with a lawsuit brought by one of Beyond Meat’s new manufacturing partners, ProPortion Foods, LLC (“ProPortion”), captioned *Don Lee Farms v. Savage River, Inc.*, Case No. BC662838 (Cal. Super. Ct.) (“Don Lee Farms”). (*Id.*). *Don Lee Farms* included allegations that Beyond Meat had employed lax food safety practices, that Don Lee Farms found plastics, cardboard and a metal nozzle in ingredients that Beyond Meat supplied, and that a Beyond Meat truck had arrived at a Don Lee Farms processing facility with a load contaminated with an unidentified white powder. (*Id.*).

Subsequent to the *Tran Action*, two related actions were filed against Beyond Meat concerning the same allegations, captioned *Eric Weiner v. Ethan Brown et al.*, CV 20-2524-MWF and *Kimberly Brink et al. v. Ethan Brown et al.*, CV 20- 2574-MWF. On April 1, 2020, the Court consolidated the actions and ordered the various parties to “meet and confer regarding the potential need for the appointment of a lead plaintiff, along with lead counsel.” (Docket No. 32 at 3). The Court ordered that if the parties were unable to reach an agreement, “counsel must submit short (no more than five pages) applications for lead counsel and/or lead plaintiff.” (*Id.*).

On May 18, 2020, the Court granted the Block Investments Motion, appointing Block Investments as Lead Plaintiff, Bernstein Liebhard LLP as Lead Counsel, and Kaplan Fox & Kilsheimer LLP as Liaison Counsel. (Docket No. 41). Plaintiffs filed the First Amended Complaint (“FAC”) on July 1, 2020. (Docket No. 54).

The following facts are based on the FAC, which the Court assumes are true and construes any inferences arising from those facts in the light most favorable to Plaintiff. *See, e.g., Schueneman v. Arena Pharm., Inc.*, 840 F.3d 698, 704 (9th Cir. 2016) (restating generally-accepted principle that “[o]rdinarily, when we review a

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motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), we accept a plaintiff's allegations as true 'and construe them in the light most favorable' to the plaintiff") (quoting *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 989 (9th Cir. 2009)).

Plaintiffs assert a federal securities class action brought on behalf of all other persons and entities that purchased or otherwise acquired the securities of Defendant Beyond Meat, Inc. ("Beyond Meat" or the "Company"), between May 2, 2019 and January 27, 2020 (the "Class Period"). (FAC ¶ 1).

Beyond Meat is a food company that manufactures and sells plant-based meat products using protein from peas referred to as "extrudate." (*Id.* ¶ 5). Beyond Meat does not perform all of the steps in the manufacturing process for its products. (*Id.*). Rather, the Company produces the extrudate and other pea protein-based raw ingredients and contracts with a co-manufacturer who processes the ingredients into finished products and packages them for distribution and sale by the Company. (*Id.*).

Defendant Ethan Brown served as Beyond Meat's Chief Executive Officer and President during the Class Period, and served on the Company's Board of Directors. (*Id.* ¶ 38). Defendant Mark J. Nelson served as Beyond Meat's Chief Financial Officer, Treasurer, and Secretary during the Class Period. (*Id.* ¶ 39).

From the moment Beyond Meat went public in May 2019, Defendants materially misrepresented to investors that a pending lawsuit against the Company brought by its former co-manufacturer, Don Lee Farms ("DLF"), lacked validity, and that its risks from the lawsuit were not extraordinary. (*Id.* ¶ 3). This lawsuit was filed in the California Superior Court, County of Los Angeles, *Don Lee Farms v. Savage River, Inc. d/b/a Beyond Meat*, Case No. BC662838 (the "DLF Litigation"). (*Id.*). Defendants knew or recklessly disregarded that their risk of liability was a near certainty. Defendants' fraudulent actions ensured that Beyond Meat's May 2019 Initial Public Offering ("IPO") went off without a hitch, becoming the largest popping U.S. IPO in nearly two decades, and artificially inflated Beyond Meat's stock price throughout the Class Period. (*Id.*).

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Unbeknownst to investors, however, years before the IPO, Defendants executed a scheme to get out of an exclusive supply agreement it had with DLF before the end of the contract term — a scheme that would ultimately form the basis of DLF’s legal claims against the Company. (*Id.* ¶ 4). In 2014, Beyond Meat and DLF entered into a contract whereby, DLF became Beyond Meat’s exclusive co-manufacturer. (*Id.* ¶ 6). In its role as exclusive co-manufacturer, DLF significantly contributed to Beyond Meat’s rise. (*Id.*). Prior to entering its relationship with DLF, Beyond Meat did not know how to mass-produce its product and had essentially been making the products by hand. (*Id.*). DLF was responsible for engineering the process to scale production of Beyond Meat’s plant-based meat products, allowing the Company to grow. (*Id.*).

DLF also developed the “Batch Making Protocols” for producing several of the Company’s products, including the “Beyond Burger” — Beyond Meat’s most popular product. (*Id.* ¶ 7). DLF’s Batch Making Protocols detailed the method and process for mass-producing the Beyond Burger, including critical components like ingredient amounts, mixing times, and equipment layouts. (*Id.*). However, in late January 2016, prior to DLF completing development of the Beyond Burger, Beyond Meat’s relationship with DLF was deteriorating, in part, because DLF had lost confidence in Beyond Meat’s food safety protocols after discovering foreign objects in the raw materials provided by Beyond Meat on multiple occasions. (*Id.* ¶ 8).

At that time, maintaining the Company’s relationship with DLF was critical, as DLF was still perfecting the Beyond Burger. (*Id.* ¶ 9). Accordingly, Beyond Meat conducted an independent food safety audit of the Company’s facility in an attempt to address DLF’s concerns. (*Id.*). Thereafter, Beyond Meat provided DLF with an independent safety audit report that identified no food safety concerns. (*Id.* ¶ 10). DLF has since alleged that Beyond Meat executives deleted significant portions of the safety audit report, concealing the consultant’s findings of contamination. (*Id.*).

Satisfied by the purported clean audit, on April 11, 2016, DLF agreed to amend the exclusive supply agreement, extending the contract with Beyond Meat through April 11, 2019. (*Id.* ¶ 11). The amendment also more than doubled Beyond Meat’s minimum required purchases under the agreement to 4,000,000 pounds of product in

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the first year, escalating to 6,000,000 pounds in the third year. (*Id.*). One month later, in May 2016, Beyond Meat launched the Beyond Burger, which sold out almost immediately and became the Company's flagship product. (*Id.* ¶ 12). Since its launch, the Beyond Burger has been the Company's most successful product, accounting for approximately 60% of the Company's revenue leading up to its IPO. (*Id.*).

With the Beyond Burger launched and DLF's Batch Making Protocol for its new core product in hand, Defendants no longer had to rely on DLF and began to shop for a less costly replacement co-manufacturer. (*Id.* ¶ 13). To that end, Defendants secretly arranged a test with CLW Foods, LLC ("CLW") to potentially replace DLF as the Company's co-manufacturer. The test was scheduled for February 3, 2017. (*Id.* ¶ 14). Before the test could take place, DLF was alerted to Defendants' plans when a Beyond Meat employee accidentally copied DLF on an email chain discussing CLW. (*Id.*).

Defendant Brown attempted to address the accidental email by representing to DLF that the Company would pull the test at CLW in the hope that the two companies could put the matter behind them. (*Id.* ¶ 15). However, despite Brown's assurances to the contrary, Beyond Meat continued to covertly negotiate with CLW. (*Id.*). Beyond Meat's former Vice President of Operations and Supply Chain testified that by late March 2017, he had been negotiating with CLW for a while, including discussing price, capabilities and quantities, and had taken a tour of CLW's facility. (*Id.* ¶ 16).

Beyond Meat was looking for an alternative to DLF, in part because Beyond Meat executives believed that the excessive minimum purchases required under the parties' agreement were too costly. (*Id.* ¶ 17). Rather than attempt to renegotiate the terms with DLF, Beyond Meat decided to find a way out of the contract. (*Id.*). After ensuring that CLW was ready to take over as co-manufacturer, Beyond Meat set in motion its plan to change its co-manufacturer, in violation of the Company's exclusive supply agreement with DLF. (*Id.* ¶ 18).

On April 12, 2017, Beyond Meat sent DLF a Notice of Breach alleging multiple material breaches of the exclusive supply agreement related to purported food safety concerns, including discovering Salmonella at DLF's facility, allegations DLF claims

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