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United States District Court
Central District of California

MIGUEL RODRIGUEZ, on behalf of himself and others similarly situated,

Plaintiff,

v.

JUST BRANDS USA, INC., JUST BRANDS, INC., and SSGI FINANCIAL SERVICES, INC.,

Defendants.

Case № 2:20-CV-04829-ODW (PLAx)

ORDER DENYING MOTION TO STAY [65], AND GRANTING MOTION TO DISMISS [63]

I. INTRODUCTION

Plaintiff Miguel Rodriguez filed this putative class action against Defendants Just Brands USA, Inc., Just Brands, Inc., and SSGI Financial Services, Inc. (First Am. Compl. ("FAC"), ECF No. 60.) Defendants now move to (1) stay the case pending regulatory guidance from the Food and Drug Administration ("FDA"), and (2) alternatively, to dismiss the FAC. (Mot. Stay ("MTS"), ECF No. 65; Mot. Dismiss ("MTD"), ECF No. 63; *see also* Opp'n MTS, ECF No. 68; Reply ISO MTS, ECF No. 70; Opp'n MTD, ECF No. 67; Reply ISO MTD, ECF No. 69.) For the following reasons, the Motion to Stay is **DENIED**, and the Motion to Dismiss is **GRANTED**.[1]

[1] After carefully considering the papers filed in connection with the Motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

Defendants sell cannabidiol ("CBD") products under the brand "JustCBD," which includes CBD-infused "compounds, tinctures, and edibles." (FAC ¶¶ 1, 7–10.) On October 2, 2018, and March 17, 2019, Plaintiff purchased JustCBD vape cartridges, gummies, and dog treats after reviewing and relying on the "product packaging, which promised specific quantities of CBD." (*Id.* ¶¶ 5–6.) Plaintiff claims that he later discovered, through independent lab testing commissioned by counsel, that JustCBD products contained between 10% to 100% less CBD content than promised on its labels. (*Id.* ¶ 20.) Accordingly, Plaintiff complains that he "paid a substantial premium due to the false and misleading CBD claims . . . [and] did not receive the benefit of his bargain. (*Id.* ¶ 6.)

Plaintiff commenced this putative class action on May 29, 2020, against Defendants collectively as the manufacturers, distributors, and sellers of JustCBD products, each responsible for its "advertising, marketing, and packaging." (*Id.* ¶¶ 7–9.) Plaintiff asserts seven causes of action against Defendants for: (1) breach of express warranty; (2) unjust enrichment; (3) fraud; (4) violation of the California Consumers Legal Remedies Act ("CLRA"), California Civil Code sections 1750, *et seq.*; (5) violation of California's Unfair Competition Law ("UCL"), California Business & Professions Code sections 17200, *et seq.*; (6) violation of California's False Advertising Law ("FAL"), California Business & Professions Code sections 17500, *et seq.*; and (7) violation of Florida's Deceptive & Unfair Practices Act ("FDUTPA"), Florida Statutes Annotated sections 501.201, *et seq.* (*See generally id.*) Now, Defendants move to stay the case under the primary jurisdiction doctrine or, alternatively, to dismiss the FAC. (MTS 1; MTD 1–2.)

III. MOTION TO STAY

First, the Court addresses Defendants' Motion to Stay under the primary jurisdiction doctrine, pending regulatory guidance from the FDA.[2] (MTS 1.) "The primary jurisdiction doctrine allows courts to stay proceedings or to dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency." *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008). This doctrine is "a prudential one," and permits the courts to stay "an otherwise cognizable claim [if it] implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry rather than by the judicial branch." *Id.* However, primary jurisdiction only "applies in a limited set of circumstances." *Id.* at 1115. The doctrine "is to be used only if a claim requires resolution of an issue of first impression, or of a particularly complicated issue that Congress has committed to a regulatory agency." *Id.* at 1114. Not all claims within an agency's purview need be decided by the agency, and the doctrine is not "intended to secure expert advice for the courts from regulatory agencies every time a court is presented with an issue conceivably within the agency's ambit." *Syntek Semiconductor Co. v. Microchip Tech. Inc.*, 307 F.3d 775, 780 (9th Cir. 2002).

"No fixed formula exists for applying the doctrine of primary jurisdiction." *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 64 (1956). "[T]he question is a matter for the court's discretion," and the Ninth Circuit has typically invoked the doctrine where there is "(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive

[2] The Court **GRANTS** Defendants' Request for Judicial Notice of documents published by the FDA and legislative authorities regarding the pending FDA guidelines. (Req. Judicial Not. ISO MTS, ECF No. 66.) *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (granting judicial notice for "matters of public record" that are not "subject to reasonable dispute"); *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (granting judicial notice for "records and reports of administrative bodies").

regulatory authority that (4) requires expertise and uniformity in administration." *Syntek*, 307 F.3d at 781 (citing *United States v. Gen. Dynamics Corp.*, 828 F.2d 1356, 1362 (9th Cir. 1987)). At bottom, "efficacy is the deciding factor in whether to invoke primary jurisdiction," and it need not be invoked "when a referral to the agency would significantly postpone a ruling that a court is otherwise competent to make." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760–61 (9th Cir. 2015).

Here, Defendants contend that each relevant factor is met because (1) the FDA has regulatory authority over CBD products under the Agricultural Improvement Act of 2018 ("2018 Farm Bill"), Public Law No. 115–334; (2) pending FDA guidelines are necessary to resolve a material issue because the FDA is developing "validated testing . . . to support the manufacturing of safe and consistent CBD products"; and (3) there is a need for uniform application of forthcoming FDA guidelines on CBD products. (MTS 8–11.) In opposition, Plaintiff contends that the Court is competent to resolve this matter without the pending FDA guidelines. (Opp'n MTS 4.) Plaintiff is correct.

The heart of Plaintiff's claim is that Defendants "overstate[d] the quantity of CBD contained in their [p]roducts." (FAC ¶ 2.) For the FDA to have primary jurisdiction over this matter, its forthcoming guidelines must affect labeling standards for disclosing CBD content. However, the pending FDA guidelines mainly concern the sale of CBD products as medicine or dietary supplements with "unsubstantiated therapeutic claims," which violates the law and puts patients at risk. (Not. of Public Hr'g 12970.) It is unlikely that these safety guidelines would change labeling standards such that Defendants could overstate and underfill the CBD content in their products to the extent that "some [p]roducts contained no CBD whatsoever." (FAC ¶ 2); *see also Ballard v. Bhang Corp.*, No. EDCV 19-2329 JGB (KKx), 2020 WL 6018939, at *5 (C.D. Cal. Sept. 25, 2020) (declining to stay a case for alleged underfilling of CBD in chocolates because it was unlikely "that possible FDA regulations on the safety of CBD will clarify whether [defendants'] advertising lines

up with its product"). Similarly, the "validated testing" that Defendants claim to be necessary for this matter focuses on testing standards for *manufacturing processes*, not CBD concentration. (Not. of Public Hr'g 12972.) At most, these guidelines might provide some "expert advice" to the courts; however, this alone is not enough to invoke the primary jurisdiction doctrine. *See Syntek*, 307 F.3d at 780. The Court is thus competent to resolve this matter without guidance from the pending FDA regulations, and primary jurisdiction does not apply. *Astiana*, 783 F.3d at 760–61.

Additionally, the cases upon which Defendants rely to invoke the primary jurisdiction doctrine are inapposite, as those cases involved the legality of labeling CBD products as safe for sale in the United States or for use as medicine or dietary supplements. *See, e.g.*, *Adam Dasilva v. Infinite Prod. Co. LLC,* No. CV 16-10148-DMG (Ex), 2020 WL 900642, at *2 (C.D. Cal. Mar. 3, 2021) (alleging that defendants illegally marketed CBD products as safe for medical use); *Colette v. CV Sci. Inc.*, No. 2:19-cv-10227-VAP-JEM(x), 2020 WL 2739861, at *4 (C.D. Cal. May 22, 2020) (claiming defendants illegally mislabeled CBD products as dietary supplements); *Glass v. Global Widget, LLC*, 2020 WL 3174688, at *2 (E.D. Cal. June 15, 2020) (claiming defendants misrepresented that CBD was "legal to sell in the United States"). Here, in contrast, Plaintiff does not contest the legal status of JustCBD products; he simply alleges that JustCBD products contained less CBD than advertised. (FAC ¶ 2.)

In short, this case is not within the "limited set of circumstances" under which primary jurisdiction applies. The Court need not rely on the pending FDA guidelines to determine whether Defendants may misrepresent the CBD content in its products. *See Astiana*, 783 F.3d at 761. Thus, the Motion to Stay is **DENIED**.

IV. MOTION TO DISMISS

The Court now turns to Defendants' Motion to Dismiss. Defendants move to dismiss Plaintiff's claims for lack of standing under Rule 12(b)(1), lack of personal

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