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Food & Consumer Packaged Goods Litigation

Court Grants Defendants' Motion, Staying Consolidated Action Involving "Healthy and All Natural" Claim on Primary Jurisdiction Grounds

In re Kind LLC "Healthy and All Natural" Litig., No. 1:15-md-02645 (S.D.N.Y.): The Court entered an order granting in part Defendants' motion to dismiss this consolidated putative class action asserting violations of multiple states' consumer protection laws and raising claims for breach of express warranty, unjust enrichment, and negligent misrepresentation. Plaintiffs allege Defendants deceptively marketed its snack food products with labels including the words "healthy," "all natural," and/or "non GMO." Defendants moved to dismiss, or alternatively, stay the action, asserting primary jurisdiction grounds. Plaintiffs voluntarily dismissed their "healthy" labeling claims, after the FDA withdrew its objections to health claims made on Defendants' product labels, conceding its regulations regarding nutrient content claims needed to be reevaluated. The Court agreed that the primary jurisdiction doctrine applied to Plaintiffs' "all natural" claims, and relying in part on recent Ninth Circuit precedent that was the subject of [an article authored by Perkins Coie lawyers](#), including *Astiana v. Hain Celestial Grp., Inc.* and *Kane v. Chobani, LLC*, stayed the action pending the FDA's promulgation of rules on the use of the term "natural." Finally, the Court dismissed Plaintiffs' "non GMO" claims, without prejudice, after finding the consolidated complaint was insufficiently pled to determine whether Plaintiffs had standing to bring such claims. [Order](#).

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