

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. FIGY,
Plaintiff,

v.

LIFEWAY FOODS, INC.,
Defendant.

Case No. 13-cv-04828-TEH

**ORDER REQUIRING
SUPPLEMENTAL BRIEFING AND
RE-SETTING HEARING ON
MOTION TO DISMISS**

Presently before the Court is Defendant Lifeway Foods, Inc.'s ("Defendant") motion to dismiss Plaintiff Robert Figy's ("Plaintiff") First Amended Complaint, which is set for hearing on March 24, 2014. On March 19, 2014, Defendant filed a letter advising the Court and Plaintiff of a March 5, 2014 announcement by the Food and Drug Administration ("FDA") in the Federal Register, which reopened the period for requesting comment, data, and information regarding the FDA's 2009 draft guidance with respect to evaporated cane juice. (Docket No. 32.) Defendant requests the opportunity to file supplemental briefing on and address at oral argument the FDA's announcement. Plaintiff likewise joins in the request. (Docket No. 33.)

The Court, having considered the requests of the parties, and for good cause shown, orders as follows:

- The **March 24, 2014** hearing on the motion to dismiss is vacated;
- By **March 27, 2014**, Defendant shall file a supplemental brief not to exceed six pages in length addressing the significance of the March 5, 2014 FDA announcement;
- By **April 3, 2014**, Plaintiff shall file a brief not to exceed six pages responding to Defendant's supplemental brief;

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- Any reply to Plaintiff's brief shall be filed by Defendant no later than **April 7, 2014**, and shall not exceed three pages in length; and
- The hearing on the motion to dismiss shall occur on **April 14, 2014 at 10 AM**.

IT IS SO ORDERED.

Dated: 03/20/14



THELTON E. HENDERSON
United States District Judge