IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SCOTT KOLLER,

Plaintiff,

v.

DEOLEO USA, INC. and MED FOODS, INC.,

Defendants.

_____/

No. C 14-02400 RS

ORDER DIRECTING THE PARTIES TO MEET AND CONFER

This is a case concerning the labeling and contents of products sold by defendants Deoleo USA, Inc. and Med Foods, Inc. under various brand names and labels as "extract virgin olive oil." On July 17, 2014, defendants moved to dismiss the complaint in its entirety pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Among other grounds for dismissal, defendants argue the complaint is implausible because plaintiff claims certain of the challenged products are bottled in clear glass that allows the oil to degrade when, in fact, those products are bottled in green glass, which plaintiff himself avers protects against such degradation. Along with his response to the motion, plaintiff filed an "errata" to the complaint, adding an additional challenged product to the complaint and changing the definition of "Mock EVOO Products" as defined in the complaint.

According to defendants, these changes were an attempt by plaintiff to overcome defendants' argument concerning packaging. Defendants now move to strike the errata in its entirety as an impermissible attempt to amend the complaint without consent or leave to amend.

Without deciding the motion to strike, it does not serve the aim of judicial efficiency to address the motion to dismiss while there are disputed amendments pending to the complaint that may negate some of defendants' asserted grounds for dismissal. The parties are therefore directed to meet and confer regarding either (1) consent to amend the complaint and withdraw the pending motions without prejudice to defendants refiling a motion to dismiss the amended complaint; or (2) a briefing schedule on a motion for leave to amend. On or before September 17, 2014, plaintiff shall file either an amended complaint (with defendants' consent) or a motion for leave to amend. The hearings set for September 11, 2014 on the motion to dismiss (ECF No. 14) and October 9, 2014 on the motion to strike (ECF No. 29) are hereby vacated. In the event plaintiff files a motion for leave to amend, the pending motions shall be held in abeyance until a decision is issued thereon.

IT IS SO ORDERED.

DATED: September 3, 2014

RICHARD SEEBORG
United States District Judge