

# Conflict Within the Southern District of Florida: Should the Primary Jurisdiction Doctrine Be Applied to Stay Class Actions Relating to CBD?

May 01, 2020

Judge Robert Scola refused to apply the primary jurisdiction doctrine to stay a class action based on the alleged misrepresentation of the amount of CBD in products sold by Diamond CBD, diverging from Judge Ursula Ungaro's recent decision in *Snyder v. Green Roads of Florida LLC* on the same issue.

In *Potter v. Potnetwork Holdings Inc.*, the plaintiff filed a class action lawsuit raising unjust enrichment, Florida Deceptive and Unfair Trade Practices Act, and breach of express warranty claims premised on the allegation that a number of products sold by Diamond CBD contain a "significantly lower amount of CBD than represented." In accordance with Judge Ungaro's ruling in *Snyder*, Judge Scola dismissed the claims raised by the plaintiff related to products she had not bought, finding that she had not suffered an injury in fact with regard to those products and therefore lacked standing to bring those claims. Judge Scola also agreed with Judge Ungaro in holding that the plaintiff could not obtain injunctive relief because she had not alleged that she was likely to suffer an injury in the future but rather that her allegations made it clear that she would not continue to purchase the products and therefore would not be injured. The two further agreed in their refusal to dismiss the plaintiff's FDUTPA and unjust enrichment claims.

The harmony ended, however, when the judges arrived at the defendants' motions to stay based on the primary jurisdiction doctrine. As described in our [prior article](#), Judge Ungaro found that the claims raised by the plaintiff in *Snyder* implicated the doctrine and issued the stay. Judge Scola saw things differently. While recognizing that the Food and Drug Administration "is currently crafting regulations to govern CBD products," and further that the "FDA also is under pressure from

Congress to expedite the rulemaking process,” he agreed with the plaintiff that “the forthcoming regulations will likely not have any effect on the issues in this case.”

While the FDA is “eager” to determine a number of issues regarding the safety of CBD products, the “FDA has not expressed interest in modifying the disclosure requirements for nutrients or additives,” nor had the defendants pointed to any proposed regulation that may affect the specific food labeling requirements implicated by this case. As a result, Judge Scola refused to issue a stay based on the primary jurisdiction doctrine, in contrast with Judge Ungaro’s ruling in *Snyder*.

## Authored By



Benjamin E. Stearns

## Related Practices

[Cannabis Law](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.