

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Bodunde v. Walgreens Boots Alliance, Inc.

Bodunde v. Walgreens Boots Alliance, Inc. · No. 1:24-cv-00985-JLT-SAB · Decided December 15, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted the magistrate judge’s findings and recommendations in an action brought by Olabisi Bodunde and Monica Bolyard against Walgreens Boots Alliance, Inc. The court granted Walgreens’s motion to dismiss under Rules 9(b) and 12(b)(6), finding that the plaintiffs’ failure-to-warn theory was preempted and that their parallel state-law theories were insufficiently pleaded. The dismissal was with leave to amend within 30 days, while the remaining grounds for dismissal were denied as moot.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jennifer L. Thurston
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 15, 2025
DOCKET	1:24-cv-00985-JLT-SAB
DISPOSITION	other
PROCEDURAL POSTURE	The district court conducted de novo review of a magistrate judge's findings and recommendations concerning Defendant's motion to dismiss the first amended complaint for lack of standing and failure to state a claim.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1)(C).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Olabisi Bodunde, Monica Bolyard v. Walgreens Boots Alliance, Inc.

TOPICS

- motions to dismiss
- standing
- pleadings
- fda regulation
- health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiffs adequately pleaded standing for claims based on alleged economic harm from the risk of benzoyl peroxide degradation.
2. Whether Plaintiffs' failure-to-warn and failure-to-disclose claims were preempted by the Food, Drug, and Cosmetic Act and the applicable over-the-counter acne-drug monograph.
3. Whether Plaintiffs adequately stated claims alleging that Defendant sold adulterated or misbranded products in violation of state duties parallel to the Food, Drug, and Cosmetic Act and current good manufacturing practices.
4. Whether the first amended complaint should be dismissed under Federal Rules of Civil Procedure 9(b) and 12(b)(6), with leave to amend.

HOLDINGS

1. Plaintiffs had standing to assert claims for economic harm based on the alleged risk of benzoyl peroxide degradation, although they failed to plead those claims sufficiently.
2. Claims based on a theory that Defendant failed to warn or disclose the risk of benzoyl peroxide degradation were categorically preempted by the Food, Drug, and Cosmetic Act, including the applicable over-the-counter acne-drug monograph.
3. Plaintiffs failed to adequately plead claims alleging that Defendant sold adulterated or misbranded products based on state duties parallel to the Food, Drug, and Cosmetic Act, the acne-drug monograph, and current good manufacturing practices.

KEY QUOTATIONS

“As noted by the Magistrate Judge, Plaintiffs have standing to assert claims for economic harm raised by the alleged risk of BPO degradation but fail sufficiently to do so.” (at 2)

“The motion to dismiss pursuant to Rules 9(b) and 12(b)(6) is GRANTED with leave to amend by not later than 30 days following service of this order.” (at 3)

FACTUAL BACKGROUND

Plaintiffs alleged that benzoyl peroxide products purchased from Walgreens were or could become contaminated with benzene through degradation. They asserted claims based on economic harm, failure to warn or disclose the risk of degradation, and the alleged sale of adulterated or misbranded products. The court found that Plaintiffs had standing to assert economic-harm claims based on the alleged risk of degradation but had not adequately pleaded the underlying product contamination or a failure to comply with current good manufacturing practices or parallel state duties.

PROCEDURAL HISTORY

Plaintiffs filed the action on March 26, 2024, and Defendant moved to dismiss the first amended complaint on November 25, 2024. The matter was referred to a magistrate judge, who recommended granting the motion on May 15, 2025. Plaintiffs objected, Defendant responded, and the district court adopted the findings and recommendations in full, granting dismissal under Rules 9(b) and 12(b)(6) with leave to amend within 30 days.

DISPOSITION

other

CASES CITED

- Navarro v. Walgreens Boots Alliance, Inc., No. 1:24-cv-00290-JLT-SAB
- Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 OLABISI BODUNDE and MONICA Case No. 1:24-cv-00985-JLT-SAB BOLYARD,
individually and on behalf of all 11 others similarly situated, ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS AND GRANTING 12 Plaintiffs, DEFENDANT’S MOTION TO
DISMISS 13 v. 14 WALGREENS BOOTS ALLIANCE, INC., 15 Defendant.

16 17 Olabisi Bodunde and Monica Bolyard began this action on March 26, 2024, against
Walgreens 18 Boots Alliance, Inc. On November 25, 2024, Defendant moved to dismiss the first
amended complaint 19 for lack of standing and failure to state a claim (Doc. 54).

In support of the motion, the defendants 20 requested judicial notice of (1) the March 4, 2024
Valisure Citizen Petition on Benzene in Benzoyl 21 Peroxide Drug Products upon which Plaintiffs
rely (Doc. 55-1), and (2) the U.S. Food & Drug 22 Administration’s August 28, 2024 letter
response to the Valisure Citizen Petition (Doc. 55-2).1 The 23 Court referred the motion to the
assigned Magistrate Judge for the preparation of findings and 24 recommendations.

(Doc. 57). On May 15, 2025, the Magistrate Judge issued findings and 25 recommendations that
the motion to dismiss be granted. (Doc. 69). The findings and recommendations 26 were served on
the parties and contained notice that any objections to the findings and 27 1 recommendations
were to be filed within fourteen (14) days from the date of service. (Id. at 31).

On 2 May 29, 2025, Plaintiffs filed objections. (Doc. 70). On June 12, 2025, Defendant filed a
response to 3 Plaintiffs’ objections. (Doc. 71; see E.D. Cal. Local Rule 304(d)). 4 As noted by the
Magistrate Judge, Plaintiffs have standing to assert claims for economic harm 5 raised by the
alleged risk of BPO degradation but fail sufficiently to do so.

For example, claims based 6 on a theory of failure to warn/disclose BPO degradation risk are
categorically preempted by the Food, 7 Drug, and Cosmetic Act (FDCA) including the OTC drug

monograph for topical acne drug products 8 (Acne Monograph). (See Doc. 69 at 3-4, 17-18, citing Doc. 50 at 23-24 regarding 75 FR 9776, OTC 9 Monograph M006 [Part 333, subpart D, Topical Acne Drug Products for OTC Human Use]).

Even if 10 Plaintiffs could show standing to assert claims alleging the sale of adulterated and misbranded product 11 contaminated with benzene based on the theory Defendant failed to comply with state duties parallel to 12 the FDCA including the Acne Monograph and Current Good Manufacturing Practices (cGMP), they 13 fail sufficiently to do so. 14 Plaintiffs' objections are not persuasive.

Mere disagreement with the Magistrate Judge's 15 analysis and conclusions is not a basis for objection. Plaintiffs' joinder in and incorporation and 16 adoption of the objections to findings and recommendations and supporting arguments filed in the 17 related matter *Navarro v. Walgreens Boots Alliance, Inc.*, No. 1:24-cv-00290-JLT-SAB (see Doc. 70 at 18 4 & n.2) is unavailing given the Court's rejection of those objections and arguments.

(See Doc. 43 in 19 *Navarro*).² Here, as in *Navarro*, Plaintiffs allege parallel state duties unsupported by any facially 20 plausible showing the product they purchased from Defendant contained benzene due to a failure to 21 follow cGMP or otherwise. Plaintiffs' argument of authorities both considered by the Magistrate Judge 22 and newly proffered is not a basis upon which to advance any un-preempted allegation beyond mere 23 speculation.

(See e.g., Doc. 70 at 6-8). Plaintiffs' incorporation of argument on issues the Magistrate 24 Judge declined to reach as premature does not aid them. (*Id.* at 8-9). 25 According to 28 U.S.C. § 636(b) (1)(C), this Court has conducted a de novo review of this case. 26 27 2 The Court takes judicial notice of the filing in the related case. *Fed. R. Evid.* 201; *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir.

2006) (a court may "take judicial 1 | Having carefully reviewed the entire file, the Court finds the findings and recommendations are 2 | supported by the record and by proper analysis. Thus, the Court ORDERS: 3 1. The findings and recommendations (Doc. 69) issued on May 15, 2025, are ADOPTED 4 IN FULL. 5 2.

The motion to dismiss pursuant to Rules 9(b) and 12(b)(6) is GRANTED with leave to 6 amend by not later than 30 days following service of this order. 7 3. The motion to dismiss otherwise is DENIED as moot. 8 4. Any failure by Plaintiffs to abide by the deadline above may result in summary 9 dismissal of the action without further notice. 10 i IT IS SO ORDERED.

12| Dated: _December 15, 2025 Cerin | Tower TED STATES DISTRICT JUDGE 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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