

**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.

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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