

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Garland v. Mead Johnson & Company, LLC

Case No. 24-cv-1168-BAS-SBC (S.D. Cal. July 10, 2025) · No. 24-cv-1168-BAS-SBC · Decided July 10, 2025

SUMMARY

The United States District Court for the Southern District of California partially granted and partially denied defendants’ motion to dismiss claims challenging labeling of Enfagrow toddler nutritional drinks. The court dismissed fraud-based claims for failure to satisfy Federal Rule of Civil Procedure 9(b), dismissed a former-price advertising claim and the request for injunctive relief, but allowed claims based on alleged unlawful nutrient-content and fortification-policy violations to proceed. Plaintiffs were granted leave to amend by August 1, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cynthia Bashant
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 10, 2025
DOCKET	24-cv-1168-BAS-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought putative class claims concerning allegedly misleading labels on toddler nutritional drinks. Defendants moved to dismiss under Federal Rules of Civil Procedure 9(b) and 12(b)(6), challenged the sufficiency of the unlawful-labeling claims, asserted a First Amendment defense, and challenged standing to seek injunctive relief.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepts well-pleaded factual allegations as true, and draws reasonable inferences in favor of the nonmoving party. Fraud-based claims must also satisfy Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	Unknown; unpublished federal district court order
PARTIES	Chelsea Garland, et al. v. Mead Johnson & Company, LLC, Mead Johnson Nutrition Co., Reckitt Benckiser LLC

TOPICS

consumer protection

deceptive trade practices

motions to dismiss

standing

civil procedure

PRACTICE AREAS

consumer protection

food and drug regulation

civil procedure

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether plaintiffs pleaded fraud-based UCL, FAL, CLRA, and common-law fraud claims with the particularity required by Federal Rule of Civil Procedure 9(b).
2. Whether the challenged product-label statements plausibly constituted implied nutrient-content claims.
3. Whether plaintiffs plausibly alleged that the products were intended specifically or primarily for children under two.
4. Whether plaintiffs plausibly alleged that the product labels made relative or fortification claims violating 21 C.F.R. §§ 101.54(e)(1) and 104.20.
5. Whether applying the FDA labeling regulations to the alleged claims violated the First Amendment.
6. Whether the complaint adequately pleaded a claim under California Business and Professions Code § 17501.
7. Whether plaintiffs had standing to seek injunctive relief.

HOLDINGS

1. Fraud-based claims under the UCL, FAL, and CLRA must satisfy Rule 9(b), including allegations explaining what is false or misleading about the challenged statements and why. Plaintiffs' generalized assertion that the products harmed children under two did not satisfy that requirement.
2. Statements that couple the existence of listed nutrients with assertions that the nutrients support immune health, brain development, or growth plausibly constitute implied nutrient-content claims.
3. Allegations that the products were marketed to toddlers and children one year and older, and were placed in grocery-store baby-food aisles near infant formula, plausibly suggested that the products were specifically or primarily intended for children under two.
4. The allegation that the label stated the product had Omega-3 DHA and iron to help nourish brain development, plus prebiotics and vitamins to support immune health, plausibly alleged a fortification claim subject to the FDA fortification policy.
5. The First Amendment challenge was not suitable for resolution on a Rule 12(b)(6) motion because the complaint plausibly alleged unlawful labeling and deception, and the substantiality and tailoring of the governmental interest required assessment of additional facts.
6. The claim under California Business and Professions Code § 17501 was dismissed because plaintiffs conceded that the citation to section 17501 was a scrivener's error and that the intended provision was section 17500.

7. Plaintiffs lacked standing to seek injunctive relief because they alleged only past purchases and did not allege facts showing a likelihood of future harm or future purchase of the products.

KEY QUOTATIONS

“Plaintiffs must explain how the statements would be false or misleading to a reasonable consumer, but they do not.” (Section III.B)

“Thus, the statements are all implied nutrient content claims.” (Section III.C.1)

“Because Plaintiffs fail to allege any facts that support likelihood of future harm, the Court grants the Motion to Dismiss Plaintiffs’ request for injunctive relief for lack of standing.” (Section III.E)

FACTUAL BACKGROUND

Plaintiffs alleged that defendants used labels on Enfagrow PREMIUM Toddler Nutritional Drink and Enfagrow NeuroPro Toddler Nutritional Drink stating, among other things, “IMMUNE HEALTH,” “Supports BRAIN DEVELOPMENT,” and “22 NUTRIENTS to help support growth.” They alleged that these statements misled consumers into believing the products provided physical health benefits for children under two, although the products were allegedly nutritionally and developmentally harmful. Plaintiffs also alleged that the labels made nutrient-content and fortification claims that violated federal FDA regulations.

PROCEDURAL HISTORY

Plaintiffs filed a complaint asserting claims under the California Consumer Legal Remedies Act, California Unfair Competition Law, California False Advertising Law, common-law fraud, deceit or misrepresentation, and unjust enrichment. Defendants moved to dismiss. The court granted the motion in part, denied it in part, and granted leave to amend by August 1, 2025.

DISPOSITION

other

CASES CITED

- Navarro v. Block, 250 F.3d 729, 731 (9th Cir. 2001)
- Cahill v. Liberty Mutual Insurance Co., 80 F.3d 336, 337-38 (9th Cir. 1996)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 556, 557, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983)
- Davidson v. Sprout Foods, Inc., 106 F.4th 842, 852 (9th Cir. 2024)
- Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003)
- Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)

- *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999, 1002 (9th Cir. 2018)
- *Martinez v. Mead Johnson & Co., LLC*, No. 5:22-cv-00213-JWH-SHK, 2022 WL 15053334, at *3 (C.D. Cal. Oct. 22, 2022)
- *Grimes v. Ralphs Grocery Co.*, No. CV 23-9086 TJH (PDX), 2024 WL 5470432, at *3 (C.D. Cal. Aug. 9, 2024)
- *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)
- *In re Silicon Graphics Inc. Securities Litigation*, 183 F.3d 970, 986 (9th Cir. 1999), as amended (Aug. 4, 1999)
- *LeGrand v. Abbott Laboratories*, 655 F. Supp. 3d 871, 895 (N.D. Cal. 2023)
- *In re Apple & AT&T iPad Unlimited Data Plan Litigation*, 802 F. Supp. 2d 1070, 1075 (N.D. Cal. 2011)
- *Serrano v. Campbell Soup Co.*, 773 F. Supp. 3d 127, 162 (D.N.J. 2025)
- *Trazo v. Nestlé USA, Inc.*, No. 5:12-cv-2272 PSG, 2013 WL 4083218, at *10 (N.D. Cal. Aug. 9, 2013), on reconsideration, 113 F. Supp. 3d 1047 (N.D. Cal. 2015)
- *Victor v. R.C. Bigelow, Inc.*, No. 13-cv-02976-WHO, 2014 WL 1028881, at *14, *16-17 (N.D. Cal. Mar. 14, 2014)
- *Sanchez v. Nurture, Inc.*, 626 F. Supp. 3d 1107, 1115 (N.D. Cal. 2022); 2023 WL 6391487, at *7, *9 (N.D. Cal. Sept. 29, 2023)
- *Howard v. Gerber Products Co.*, No. 22-cv-04779-VC, 2023 WL 2716583, at *3 (N.D. Cal. Mar. 29, 2023); 2024 WL 5264036, at *1 (N.D. Cal. Dec. 31, 2024)
- *Howard v. Hain Celestial Group, Inc.*, 655 F. Supp. 3d 941, 943 (N.D. Cal. 2023), reconsideration denied, 2023 WL 5333028 (N.D. Cal. Aug. 17, 2023)
- *Vassigh v. Bai Brands LLC*, No. 14-cv-05127-HSG, 2015 WL 4238886, at *5 (N.D. Cal. July 13, 2015)
- *Starratt v. Fermented Sciences, Inc.*, No. 22-cv-03895-HSG, 2023 WL 359500, at *4 (N.D. Cal. Jan. 23, 2023)
- *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561, 566 (1980)
- *American Academy of Pain Management v. Joseph*, 353 F.3d 1099, 1107 (9th Cir. 2004)
- *In re R.M.J.*, 455 U.S. 191, 202-03 (1982)
- *Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1007 (N.D. Cal. 2020)
- *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 961, 967, 970 (9th Cir. 2018)
- *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007)

OPINION

Garland v. Mead Johnson & Company, LLC

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 CHELSEA GARLAND, et al., Case No. 24-cv-1168-BAS-SBC 11 Plaintiffs,

ORDER GRANTING IN PART AND
12 v. DENYING IN PART DEFENDANTS’
MOTION TO DISMISS

13 MEAD JOHNSON & COMPANY, LLC,

(ECF No. 8) et al., 14 Defendants. 15 16 Plaintiffs, on behalf of themselves and others similarly situated, file a Complaint 17 against Mead Johnson & Co., LLC; Mead Johnson Nutrition Co.; and Reckitt Benckiser 18 LLC (“Defendants”) alleging violations of the Consumer Legal Remedies Act, Cal. Civ. 19 Code § 1750 (“CLRA”); California Unfair Competition Law, Cal. Bus. & Prof. Code 20 § 17200 (“UCL”); California False Advertising Law, Cal. Bus. & Prof. Code § 17500, 21 (“FAL”); Common Law Fraud, Deceit, or Misrepresentation; Unjust Enrichment; and 22 California False Advertising Law, Cal. Bus. & Prof. Code § 17501. (ECF No. 1 23 (“Compl.”).)

24 I. BACKGROUND

25 The Complaint alleges that Defendants used misleading labels on two products: 26 Enfagrow PREMIUM Toddler Nutritional Drink and Enfagrow NeuroPro Toddler 27 Nutritional Drink (“Products”). According to the Complaint the labels “mislead purchasers 28 into believing that the products provide physical health benefits for children under two 1 years of age” when, in fact, “the Products are harmful both nutritionally and 2 developmentally for children under two.” (Compl. ¶ 2.) Specifically, the Products, 3 intended for toddlers, include labels stating, “IMMUNE HEALTH Dual Prebiotics & 4 Vitamins,” “Supports BRAIN DEVELOPMENT Omega-3 DHA & Iron,” and “22 5 NUTRIENTS to help support growth.” (Id. ¶¶ 20, 23.) These labels “mislead [] purchasers 6 into believing that [the] Products provide physical health benefits.” (Id. ¶ 42.) 7 The Complaint alleges the Product labels violate the nutrient content claims in 8 federal regulations including those for children under the age of two and include “more” 9 claims, which imply that a nutrient has been added to the Product, without complying with 10 the Food and Drug Administration (“FDA”) Fortification Policy. (Id. ¶¶ 42–45.) 11 Defendants move to dismiss pursuant to Federal Rule of Civil Procedure (“Rule”) 12 12(b)(6) arguing (1) the Complaint fails to state fraud-based claims for relief under Rule 9 13 because Plaintiffs fail to allege how the labeling statements are either false or misleading; 14 (2) the Complaint fails to state a claim that the labels are unlawful because (a) the labels 15 contain no nutrient content claims, (b) the Products are not specifically intended for 16 children under two, (c) the labels do not make “more” claims subject to the Fortification 17 Policy, and (d) if the FDA does regulate the Products’ labeling statements then this violates 18 the First Amendment; (3) the Complaint fails to plead a former price advertising claim 19 under the FAL; and (4) Plaintiffs lack standing to seek injunctive relief. (ECF No. 8.) 20 Plaintiffs respond (ECF No. 11) and Defendants reply (ECF No. 12). The Court finds this 21 motion suitable for determination on the papers submitted and without oral argument. See 22 Fed. R. Civ. P. 78(b); CivLR 7.1(d)(1).

23 II. LEGAL STANDARD

24 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil 25 Procedure tests

the legal sufficiency of the claims asserted in the complaint. Fed. R. Civ. 26 P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept 27 all factual allegations pleaded in the complaint as true and must construe them and draw 28 all reasonable inferences from them in favor of the nonmoving party. *Cahill v. Liberty 1 Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). To avoid a Rule 12(b)(6) dismissal, a 2 complaint need not contain detailed factual allegations, rather, it must plead “enough facts 3 to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 4 544, 570 (2007). A claim has “facial plausibility when the plaintiff pleads factual content 5 that allows the court to draw the reasonable inference that the defendant is liable for the 6 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 7 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a 8 defendant’s liability, it stops short of the line between possibility and plausibility of 9 ‘entitlement to relief.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). 10 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ 11 requires more than labels and conclusions, and a formulaic recitation of the elements of a 12 cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 13 U.S. 265, 286 (1986)). A court need not accept “legal conclusions” as true. *Iqbal*, 556 14 U.S. at 678. Despite the deference the court must pay to the plaintiff’s allegations, it is not 15 proper for the court to assume that “the [plaintiff] can prove facts that [he or she] has not 16 alleged or that defendants have violated the . . . laws in ways that have not been alleged.” 17 *Associated Gen. Contractors of Cal., Inc. v. California State Council of Carpenters*, 459 18 U.S. 519, 526 (1983). 19 Claims grounded in fraud must not only satisfy Rule 12(b)(6)’s plausibility pleading 20 standard but also the heightened pleading requirements of Rule 9(b). *Davidson v. Sprout 21 Foods, Inc.*, 106 F.4th 842, 852 (9th Cir. 2024), cert. denied, 145 S. Ct. 1922 (2025). To 22 satisfy the particularity requirement of Rule 9(b), the circumstances constituting the alleged 23 fraud must “be ‘specific enough to give defendants notice of the particular misconduct...so 24 that they can defend against the charge and not just deny that they have done anything 25 wrong.’” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting 26 *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001) (citation modified)). A 27 plaintiff’s claims must allege the “who, what, when, where, and how of the misconduct 28 1 charged, as well as what is false or misleading about the purportedly fraudulent statement, 2 and why it is false.” *Davidson*, 106 F.4th at 852 (citation modified).

3 III. ANALYSIS

4 A. Request for Judicial Notice 5 Defendants request judicial notice of their Exhibit A, a copy of the Nutrition Facts 6 also on the Products’ labels. (ECF No. 8-2.) In their request, Defendants aver the label is 7 “a proper subject for judicial notice because the document is admissible under the 8 incorporation by-reference-doctrine [sic].” (Id. at 1.) This argument conflates two distinct 9 concepts: judicial notice and incorporation-by-reference. 10 Judicial notice. Judicial notice is established by Federal Rule of Evidence 201 and 11 permits the court to notice an adjudicative fact

if it is “not subject to reasonable dispute.” 12 Fed. R. Evid. 201(b). Therefore, a court may take judicial notice of matters of public 13 record, but not of any disputed facts contained in such public records. *Khoja v. Orexigen 14 Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018). “A high degree of indisputability is 15 the essential prerequisite.” Fed. R. Evid. 201 advisory committee’s note to subdivision (a) 16 of the 1972 proposed rules. Unlike public records and government documents, 17 Defendants’ private records are not a source whose accuracy cannot reasonably be 18 questioned. See, e.g., *Martinez v. Mead Johnson & Co., LLC*, No. 5:22-cv-00213-JWH- 19 SHK, 2022 WL 15053334, at *3 (C.D. Cal. Oct. 22, 2022) (denying a request for judicial 20 notice of nutrition labels on the grounds that “[p]ackaging labels are not court documents. 21 Labels can and do change from time to time, so the Court cannot conclude that the 22 renditions that [the defendant] provides are unquestionably accurate representations of the 23 labels that appeared on shelves across California during the relevant period”); see also 24 *Grimes v. Ralphs Grocery Co.*, No. CV 23-9086 TJH (PDX), 2024 WL 5470432, at *3 25 (C.D. Cal. Aug. 9, 2024) (denying a request for judicial notice where “the contents of the 26 label are neither generally known within the territorial jurisdiction of the Court nor can 27 they be accurately and readily determined from sources whose accuracy cannot be 28 reasonably questioned”). Therefore, judicial notice does not apply here.

1 Incorporation-by-reference. The Court next turns to incorporation-by-reference. 2 “Unlike rule-established judicial notice, incorporation-by-reference is a judicially created 3 doctrine that treats certain documents as though they are part of the complaint itself. The 4 doctrine prevents plaintiffs from selecting only portions of documents that support their 5 claims, while omitting portions of those very documents that weaken—or doom—their 6 claims.” *Khoja*, 899 F.3d at 1002. This doctrine permits a court, when considering a Rule 7 12(b)(6) motion, to “take into account documents ‘whose contents are alleged in a 8 complaint and whose authenticity no party questions’” *Kniesel v. ESPN*, 393 F.3d 9 1068, 1076 (9th Cir. 2005) (quoting *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 10 986 (9th Cir. 1999), as amended (Aug. 4, 1999)). Here, Plaintiffs do not question the 11 authenticity of Defendants’ proposed Exhibit A. (See generally ECF No. 11.) Further, 12 Plaintiffs discuss the nutritional attributes of the Products at length in the Complaint. (See 13 generally Compl.) Accordingly, the Court shall consider Defendants’ Exhibit A under the 14 doctrine of incorporation by reference. 15

B. Fraud-based Claims 16 Defendants argue Plaintiffs’ fraud claims are insufficient because they fail to meet 17 the particularity requirement of Rule 9(b). The Court agrees. “Rule 9(b)’s heightened 18 pleading standard applies to UCL, FAL and CLRA causes of action that ‘are grounded in 19 fraud or sound in fraud.’” *LeGrand v. Abbott Lab’s*, 655 F. Supp. 3d 871, 895 (N.D. Cal. 20 2023) (quoting *In re Apple & AT & T iPad Unlimited Data Plan Litig.*, 802 F. Supp. 2d 21 1070, 1075 (N.D. Cal. 2011)). 22 Here, Plaintiffs fail to successfully allege “what is false or misleading about the 23 purportedly fraudulent statement, and why it is false.” *Davidson*, 106 F.4th at 852 (citation 24 modified). It is not enough that the claims on a product’s label violate labeling law. 25 *Serrano v. Campbell Soup Co.*, 773 F. Supp. 3d 127, 162 (D.N.J. 2025) (collecting

cases 26 analyzing the role of regulatory requirements in California consumer fraud cases related to 27 food labeling). This Court agrees that FDA regulations alone are insufficient to meet the 28 Rule 9(b) pleading standard. See, e.g., *Trazo v. Nestlé USA, Inc.*, No. 5:12-cv-2272 PSG, 1 2013 WL 4083218, at *10 (N.D. Cal. Aug. 9, 2013), on reconsideration, 113 F. Supp. 3d 2 1047 (N.D. Cal. 2015) (“While regulatory violations might suggest that these statements 3 might be misleading to a reasonable consumer, that alone is not enough to plead a claim 4 under the FAL, CLRA, or the misleading/false advertising prongs of the UCL.”); *Victor v. 5 R.C. Bigelow, Inc.*, No. 13-cv-02976-WHO, 2014 WL 1028881, at *16–17 (N.D. Cal. 6 Mar. 14, 2014) (siding with the court in *Trazo* that, where a plaintiff fails to allege that a 7 reasonable consumer would be deceived or that they themselves were deceived, the 8 plaintiff fails to plead fraud with sufficient particularity); *Howard v. Gerber Prods. Co.*, 9 No. 22-cv-04779-VC, 2023 WL 2716583, at *3 (N.D. Cal. Mar. 29, 2023) (“Even relying 10 on the FDA’s guidance, it’s a step too far to say that a plaintiff can bring a claim sounding 11 in fraud any time a product includes a prohibited nutrient content claim.”) Plaintiffs must 12 explain how the statements would be false or misleading to a reasonable consumer, but 13 they do not. 14 Plaintiffs apparently attempt to allege what is false or misleading about the Products’ 15 claims, and why, by claiming the Products’ nutrient content claims “deceive and mislead 16 reasonable consumers into believing that the Products provide physical health benefits for 17 their child when in fact, the Products are harmful for children under two both nutritionally 18 and developmentally.” (Compl. ¶ 24.) However, Plaintiffs do not allege how the Products 19 are harmful for children under the age of two and therefore fail to allege the claims’ 20 misleading or false nature. 21 The Ninth Circuit has rejected similarly vague fraud-based claims. In *Davidson*, 106 22 F.4th 842, the Ninth Circuit affirmed the district court’s dismissal for failing to satisfy not 23 only the heightened pleading requirements of Rule 9(b) but also Rule 12(b)(6)’s 24 plausibility pleading standard when the plaintiff alleged only that the products contained a 25 high amount of sugar and sugars can lead to health issues. The district court rightly noted 26 that plaintiffs do not explain at what level sugars become harmful or why levels of sugar 27 in these products could cause harm. *Id.* at 852; see also *Sanchez v. Nurture, Inc.*, No. 5:21- 28 CV-08566-EJD, 2023 WL 6391487, at *7 (N.D. Cal. Sept. 29, 2023) (“[M]any courts in 1 this district have rejected theories of fraud where Plaintiffs alleged the presence of added 2 sugars rendered a general health-related claim fraudulent.”) (citing cases)). 3 It is not clear what the basis is for Plaintiffs’ allegation that the Products’ claims are 4 misleading because they harm instead of help. How do they harm? Is it because the 5 Products do not contain all the nutrients they are alleged to have? Plaintiffs seem to make 6 this claim in the Response, but not in the Complaint. (See ECF No. 11 at 12.) Is it because 7 these nutrients are not healthy for children? If so, then Plaintiffs must explain what makes 8 the nutrients unhealthy. Is it because the Products have two grams of added sugar? (Compl. 9 ¶ 60.) If so, this too is insufficient without more. Cf. *Howard v. Gerber Prods. Co.*, No. 22- 10 cv-04779-VC, 2024 WL 5264036, at *1 (N.D. Cal. Dec. 31, 2024) (analyzing a complaint 11 under

Davidson and finding the plaintiffs' claims were insufficiently alleged where they 12 claimed "at what level sugars become harmful" but did not suggest that the levels in the 13 products at issue were "likely to cause harm if babies eat the products once or a few times"). 14 Is it based on the allegation that the exposure to these drinks might lead to less healthy 15 eating habits, a failure to develop gross and fine motor skills, or a failure to develop taste 16 preferences for a mixed diet? (Compl. ¶ 59.) If so, this is insufficient without any 17 allegation that the Products have actually caused any of these harms. 18 Defendants must have sufficient notice of how the statements are allegedly false or 19 misleading. Plaintiffs claim, "the Products are harmful for children under two both 20 nutritionally and developmentally." (Id. ¶ 24.) But without more this fails to meet the 21 requirements of Rule 9(b). Hence, the Court GRANTS the Motion to Dismiss to the extent 22 the alleged claims sound in fraud. But, because Plaintiffs may be able to amend to allege 23 additional facts supporting their fraud claims, the Court gives leave to amend. See Fed. R. 24 Civ. P. 15(a). 25 C. Unlawful Claims 26 1. Nutrient Content Claims 27 Defendants argue Plaintiffs fail to state a claim that the labels are unlawful. (ECF

28 No. 8.) "Under the FDA regulations, the general rule is that 'nutrient content claims' are 1 not permitted on food labels." *Reid v. Johnson & Johnson*, 780 F.3d 952, 959 (9th Cir. 2 2015). In addition, "[t]he FDA prohibits most 'nutrient content claims' on food 'intended 3 specifically' for infants and children under two." *Howard v. Hain Celestial Grp., Inc.*, 655 4 F. Supp. 3d 941, 943 (N.D. Cal. 2023) (citing 21 C.F.R. § 101.13(b)(3)), reconsideration 5 denied, No. 22-CV-00527-VC, 2023 WL 5333028 (N.D. Cal. Aug. 17, 2023). "The FDA 6 is wary of these claims because 'many consumers have . . . limited knowledge' about the 7 quantity of nutrients they should consume every day, so statements 'declaring' that a 8 product contains a certain amount of nutrients can be 'misleading.'" *Howard*, 655 F. Supp. 9 3d at 943 (citing 56 Fed. Reg. 60421, 60426 (Nov. 27, 1991)). This is "all the more true if 10 the food is intended for young children." *Howard*, 655 F. Supp. 3d at 943. Thus, "[c]laims 11 [on labels] are unlawful if they constitute a nutrient content claim and do not comply with 12 the applicable regulations for such claims." *Victor*, 2014 WL 1028881, at *14. 13 A nutrient content claim is a statement about a food product that directly, or by 14 implication, characterizes the level of a nutrient in the food. *Reid*, 780 F.3d at 959; 21 15 C.F.R. § 101.13(b). "'An expressed nutrient content claim is any direct statement about 16 the level (or range) of a nutrient the food, e.g., 'low sodium' or 'contains 100 calories.'" 17 *Sanchez v. Nurture, Inc.*, 626 F. Supp. 3d 1107, 1115 (N.D. Cal. 2022). An implied 18 "nutrient content claim" is one that "[s]uggests that the food, because of its nutrient content, 19 may be useful in maintaining healthy dietary practices and is made in association with an 20 explicit claim or statement about a nutrient (e.g., 'healthy, contains 3 grams [] of fat')." *Id.* 21 (citing 21 C.F.R. § 101.13(b)(2)). 22 However, a simple statement that a product has certain nutrients or has antioxidants 23 is not sufficient to show unlawfulness. *Vassigh v. Bai Brands LLC*, No. 14-cv-05127-HSG, 24 2015 WL 4238886, at *5 (N.D. Cal. July 13, 2015) ("Nutrient content claim requirements 25 only apply where a product label characterizes the level (as opposed to existence)

of a 26 nutrient.”); *Starratt v. Fermented Scis., Inc.*, No. 22-cv-03895-HSG, 2023 WL 359500, at 27 *4 (N.D. Cal. Jan. 23, 2023) (“Statements about the mere existence of nutrients are not 28 regulated.”). 1 Defendants argue first that the statements complained of: “IMMUNE HEALTH 2 Dual Prebiotics & Vitamins,” “Supports BRAIN DEVELOPMENT Omega-3 DHA & 3 Iron,” and “22 NUTRIENTS to help support growth” merely state the existence of the 4 nutrients not the level of the nutrients. However, all three statements couple the existence 5 of nutrients with some claim that the listed nutrients are helpful for health. The first couple 6 “prebiotics and vitamins” with the suggestion that this will support “Immune health.” The 7 second suggests that the existence of “Omega-3 DHA and Iron” will “support brain 8 development.” And the third couples a statement about the existence of “22 nutrients” with 9 the suggestion that this will “help support growth.” Thus, the statements are all implied 10 nutrient content claims. 11 2. Intended for Children under the Age of Two 12 Defendants argue next that the Products are not specifically intended for children 13 under two years of age. The Complaint alleges the Products are specifically targeted for 14 “toddlers” and children “1+ Years.” (Compl. ¶ 20.) Defendants agree that the “well- 15 understood meaning of a toddler is a child ‘between one and three years old.’” (ECF No. 16 8 at 16.) In addition, the Complaint alleges the Products are primarily found in the baby 17 food aisles of grocery stores next to the infant formula (at Defendants’ direction). (Compl. 18 ¶ 41.) These are sufficient facts to plausibly suggest the products are specifically or 19 primarily for children under two. Although there may be some children included over the 20 age of two in the definition of “toddlers,” this is not sufficient to defeat the claims at this 21 stage of the proceedings.¹ 22 3. Fortification Policy 23 Defendants argue there are insufficient allegations to support the claim that the labels 24 violate the FDA’s fortification policy. “A relative claim using the terms ‘more,’ ‘fortified,’ 25 26 1 To the extent Defendants argue Plaintiffs’ children will age out of the allegations regarding children under the age of two, this Court agrees with Judge Davila that “such an argument would appear 27 to run afoul of the ‘capable of repetition, yet evading review’ exception.” *Sanchez*, 2023 WL 6391487, at *9 (quoting *Fed. Election Comm’n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462 (2007)). 28 1 enriched,’ ‘added,’ ‘extra,’ and ‘plus’” may be used only if it is in keeping with the FDA 2 fortification policy. 21 C.F.R. § 101.54(e)(1). The FDA expressly discourages the 3 indiscriminate addition or fortification of nutrients to foods, which “could result in over-or 4 underfortification in consumer diets.” *Starratt*, 2023 WL 359500, at *4 (citing 21 C.F.R. 5 § 104.20). 6 The Court agrees the statement “[it] has Omega-3 DHA and Iron to help nourish 7 your toddler’s brain development, plus dual prebiotics and vitamins, including vitamin C 8 and zinc to help support immune health,” (Compl. ¶ 44; Compl., Ex. 2), suggests that the 9 Products have been fortified with these nutrients. Therefore, the Complaint sufficiently 10 alleges that the labels are unlawful because they fail to comply with the FDA’s fortification 11 policy. 12 4. First Amendment Claims 13 Defendants argue that the alleged nutrient content claims are only potentially 14 misleading, not actually deceptive, and, therefore, restriction of the claims violates 15 Defendants’ First Amendment rights. The First Amendment

protects commercial speech 16 from unwarranted governmental regulation, although it is a lesser protection than other 17 constitutionally guaranteed expression. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv.* 18 *Comm’n of New York*, 447 U.S. 557, 561 (1980). If the speech concerns lawful activity 19 and is not misleading then it falls within the ambit of the First Amendment. *Id.* at 566. 20 The Court must then assess whether the governmental regulation advances a governmental 21 interest, whether that governmental interest is substantial, and whether the regulation is not 22 more extensive than is necessary to serve that interest. *Id.* 23 “[T]he Supreme Court has distinguished between ‘inherently misleading’ speech 24 and ‘potentially misleading’ speech.” *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 25 1107 (9th Cir. 2004) (citing *In re R. M. J.*, 455 U.S. 191, 202–03 (1982)). If the advertising 26 is inherently likely to deceive, or where the record indicates the particular method of 27 advertising has been deceptive, there is no First Amendment protection. *Am. Acad. of Pain* 28 *Mgmt.*, 353 F.3d at 1107. However, if the advertising is only “potentially misleading,” “in 1 other words, ‘if the information also may be presented in a way that is not deceptive,’ the 2 speech regulation must satisfy the remaining three factors specified in *Central Hudson*.” 3 *Id.* (quoting *In re R. M. J.*, 455 U.S. at 203). 4 This argument is ill-suited to a Motion to Dismiss under Rule 12(b)(6). As discussed 5 above, Plaintiffs have adequately alleged that the statements were unlawful in violation of 6 Federal Regulations. Additionally, Plaintiffs allege the labels deceived the named 7 Plaintiffs. (Compl. ¶¶ 72–75, 78–81, 84–87.) Whether this is sufficient to constitute 8 “inherently misleading speech” is better suited to a Motion for Summary Judgment. 9 Furthermore, whether the policy furthers a substantial governmental interest and is 10 narrowly tailored to this interest requires assessment of additional facts. The Complaint 11 alleges a substantial governmental interest in protecting young children from unsupported 12 claims. (*Id.* ¶¶ 52, 54.) At this stage of the proceedings, the Court finds this is sufficient. 13 Therefore, the Court denies the Motion to Dismiss to the extent it asserts the FDA 14 rules relevant to Plaintiffs’ claims violate the First Amendment. 15 D. Former Price Advertising Claim 16 Defendants claim the Complaint fails to plead a former price advertising claim under 17 California Business and Professions Code § 17501. (ECF No. 8 at 23.) Plaintiffs concede 18 there is a scrivener’s error in the Complaint and that they “should have listed the code 19 section as Bus. & Prof. Code § 17500, not § 17501.” (ECF No. 11 at 24–25.) Hence, the 20 Court dismisses the Sixth Cause of Action for a violation of California Business and 21 Professions Code Section 17501 with leave to amend. 22 E. Standing for Injunctive Relief 23 “When a plaintiff seeks injunctive relief, she must have standing to do so.” *Anderson* 24 *v. Apple Inc.*, 500 F. Supp. 3d 993, 1007 (N.D. Cal. 2020) (citing *Davidson v. Kimberly-* 25 *Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018)). “[M]isled consumers may properly allege 26 a threat of imminent or actual harm sufficient to confer standing to seek injunctive relief.” 27 *Kimberly-Clark*, 889 F.3d at 961. Consumers may do so with a “plausible allegation[] that 28 [plaintiff] will be unable to rely on the product’s advertising or labeling in the future, and 1 ||so will not purchase the product although she would like to.” *Jd.* at 970. Similarly, the 2 || threat of future harm might

be the consumer's plausible allegations that she might purchase 3 ||the products in the future if she reasonably but incorrectly assumes the product was 4 ||improved. /d. If plaintiffs allege they are likely to purchase the products in the future, that 5 likely sufficient for standing. Anderson, 500 F. Supp. 3d at 1007. 6 However, in this case, Plaintiffs make no representation about their likelihood of 7 || purchasing the Products in the future. In fact, all of the allegations pertain to past harm. 8 || (See Compl. ¶¶ 75, 81, 87 ("Had Defendants not unlawfully and misleadingly labeled the 9 || Products, Plaintiff... would not have purchased them, or, at a very minimum, she would 10 || have paid less for the products.")).) Because Plaintiffs fail to allege any facts that support 11 likelihood of future harm, the Court grants the Motion to Dismiss Plaintiffs' request for 12 ||injunctive relief for lack of standing.

13 CONCLUSION

14 For the reasons stated above, the Court: 15 1. GRANTS the Motion to Dismiss Count Four of the Complaint, alleging 16 common-law fraud, deceit, or misrepresentation; 17 2. GRANTS the Motion to Dismiss Count Six of the Complaint; 18 3. GRANTS the Motion to Dismiss the remaining counts to the extent they rely on 19 allegations of fraud; 20 4. DENIES the Motion to Dismiss the remaining counts to the extent they rely on 21 allegations of unlawfulness; 22 5. GRANTS the Motion to Dismiss the request for injunctive relief for lack of 23 standing. 24 Pursuant to Rule 15(a)(2), the Court grants Plaintiffs leave to amend. Any amended 25 || pleading must be filed on or before August 1, 2025. 26 IT IS SO ORDERED. 27 28 || DATED: July 10, 2025 yatta Bahan Hden. Cynthia Bashant, Chief Judge ~19_ TUnited States District Court