

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)
Sean L. Litteral (State Bar No. 331985)
Julia K. Venditti (State Bar No. 332688)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: ltfisher@bursor.com
slitteral@bursor.com
jvenditti@bursor.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FAITH NORMAN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

GERBER PRODUCTS COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Faith Norman (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant Gerber Products Company (“Gerber” or “Defendant”).
3 Plaintiff makes the following allegations pursuant to the investigation of her counsel and based
4 upon information and belief, except as to the allegations specifically pertaining to herself, which is
5 based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a putative class action lawsuit against Defendant for cheating consumers by
8 uniformly advertising, marketing, and selling nutritional food products under the brand name
9 “Gerber” (collectively, the “Products,” enumerated below), each of which prominently features the
10 representations “Non-GMO,” or similar claims related to the absence of ingredients derived from
11 genetically modified organisms (“GMO”) (collectively, the “Non-GMO Claims”). However,
12 contrary to Defendant’s claims, each of the purportedly “Non-GMO” Products do, in fact, contain
13 ingredients that are derived from genetically modified food sources and therefore constitute GMOs.

14 2. Defendant prominently labels every Product sold in the United States as “Non-
15 GMO.” Defendant does this because consumers perceive all natural foods as better, healthier, and
16 more wholesome. Indeed, in recent years, consumers have become significantly more aware and
17 sensitive to genetically modified organisms (“GMOs”) in their food. Many consumers want to
18 avoid GMOs for a variety of reasons, including, but not limited to, the following: (1) health risks
19 associated with ingesting foods derived from genetically modified (“GM”) crops;¹ (2) concerns of
20 the ingestion of pesticides and other toxins; (3) interest in promoting sustainable living and local
21 farming; and (4) negative environmental effects associated with growing GM crops. As a result,
22 many consumers, including Plaintiff, try to buy products that are not derived from GMOs, and a
23 movement has developed demanding consumer products that are non-GMO products. Thus, the
24 market for all natural foods has grown rapidly in recent years, and Defendant seeks to take
25 advantage of this trend through false advertising.

26 ¹ GM crops such as canola, corn, and soy, are crops whose genetic material has been altered by
27 humans using genetic engineering techniques. The World Health Organization defines GMOs,
28 which include GM crops, as “organisms in which the genetic material (DNA) has been altered in a
way that does not occur naturally.” Accordingly, GM crops are not natural, but man-made.

1 3. But Defendant's Non-GMO Claims concerning the Products are false, misleading,
2 and deceptive to consumers, who reasonably understand such claims to mean that a product was
3 produced without genetic engineering and its ingredients are not derived from GMOs.
4 Specifically, Plaintiff and consumers reasonably understand Defendant's Non-GMO Claims to
5 mean that Defendant's Products are 100% free of ingredients derived from GM crops or food
6 sources, genetically engineered in a laboratory setting through the use of biotechnologies, or
7 sourced from animals that have been raised on GMO feed. Yet, contrary to Defendant's claims,
8 Defendant's Products are in fact loaded with ingredients derived from GM-crops such as corn and
9 soy, and many of Defendant's Products also contain protein and/or dairy sources derived from
10 cows raised on GMO feed. Defendant's Products also contain numerous artificial ingredients that
11 were genetically engineered in a laboratory setting using biotechnologies. Accordingly,
12 Defendant's Non-GMO Claims are misleading and highly deceptive to reasonable consumers.

13 4. The Products at issue include all Gerber-branded food or drink products that purport
14 to be "NON GMO" on the labeling and/or packaging, including, without limitation, Gerber
15 Products from the following product lines, products, and/or flavors: Gerber Good Start Soy 2
16 Powder Infant & Toddler Formula; Gerber Good Start Soy Infant Formula (including powder,
17 ready to feed, and concentrated liquid formats); Gerber Good Start Gentle Infant Formula; Gerber
18 Good Start GentlePro Infant Formula (including powder, ready to feed, and concentrated liquid
19 formats); Gerber Good Start GentlePro 2 Powder Infant Formula; Gerber Good Start SoothePro
20 Powder Infant Formula; Gerber Good Start Gentle Supreme A2 Powder Infant Formula; Gerber
21 Good Start Gentle Supreme A2 Toddler Drink; Gerber Good Start Extensive HA Powder Infant
22 Formula; Gerber Good Start Grow Powder Toddler Drink; Gerber Supported Sitter 1st Foods,
23 DHA & Probiotic Baby Cereal; Gerber Sitter 2nd Foods, Probiotic Baby Cereals (including
24 Oatmeal Banana, Oatmeal Peach Apple, Rice Banana Apple, and Powerblend varieties); Gerber
25 Oatmeal & Barley Toddler Cereals (including Apple Cinnamon and Bananas & Cream varieties);
26 Gerber Toddler Pouches (various flavors); Gerber Lil' Crunchies (various flavors); Gerber
27 Teether Wheels, Apple Harvest Crawler Snack; and Gerber Mealtime Harvest Bowls (including
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1 Garden Tomato, Spanish Style Sofrito, and Pesto varieties) (collectively, the “Products”). As
2 noted above, each of these purportedly “Non-GMO” Products contain GMOs.

3 5. By prominently featuring the Non-GMO Claims on the labeling and/or packaging of
4 its Products, Defendant intends to induce consumers to pay more than they would pay for other
5 comparable products that are not falsely labeled with Non-GMO Claims, and consumers are so
6 induced as a result of these claims. Thus, although (as discussed below) the Products have been a
7 marketing sensation and an unmitigated financial success, Defendant’s success has been the result
8 of fraudulent, unlawful, and unfair business practices in the marketing and sale of the Products.
9 Defendant’s misleading representations and unfair business practices described herein are plainly
10 improper and unacceptable—particularly for a company that touts that “You asked, we listened.
11 GERBER GOOD START formulas are now all non-GMO.”²

12 6. For the foregoing reasons, Plaintiff brings this action individually and on behalf of
13 similarly situated individuals against Defendant for: (i) violation of California’s Unfair
14 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq.; (ii) violation of California’s
15 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, et seq.; (iii) violation of
16 California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, et seq.; (iv)
17 breach of express warranty; (v) breach of the implied warranty of merchantability; (vi) unjust
18 enrichment / restitution; (vii) negligent misrepresentation; (viii) fraud; and (ix) fraudulent
19 misrepresentation.

20 PARTIES

21 7. Plaintiff Faith Norman is a natural person and a citizen of California who resides in
22 San Jose, California. At multiple points during 2021, Ms. Norman purchased Defendant’s Gerber
23 Good Start 2 from a brick-and-mortar Safeway retail store and a brick-and-mortar Walmart retail
24 store located in San Jose. Prior to her purchase, Ms. Norman reviewed the labeling, packaging,
25 and marketing materials of her Products and saw the false and misleading claims that, among other

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27 ² Layla Katirae and Kavin Senepathy, “Gerber Formula Goes Non-GMO, But Not Really,”
28 *Forbes* (Feb. 22, 2016), <https://www.forbes.com/sites/kavinsenapathy/2016/02/22/gerber-formula-goes-non-gmo-but-not-really/?sh=60d556437e79> (last accessed Dec. 20, 2021).

1 things, the Products are purportedly “Non-GMO” infant formulas. Ms. Norman understood these
2 claims to be representations and warranties by Defendant that the Products are free of all traces of
3 GMOs, do not contain ingredients derived from GM crops, and do not contain any other synthetic
4 ingredients created in a laboratory through the use of biotechnologies. Ms. Norman reasonably
5 relied on these representations and warranties in deciding to purchase the Products, and these
6 representations were part of the basis of the bargain in that she would not have purchased the
7 Products, or would not have purchased them on the same terms, if the true facts had been known.
8 As a direct result of Defendant’s material misrepresentations and omissions, Ms. Norman suffered,
9 and continues to suffer, economic injuries.

10 8. Defendant Gerber Products Company (“Defendant” or “Gerber”) is a Michigan
11 corporation with its principal place of business in Arlington, Virginia. Defendant sells its baby
12 food and infant formulas under the eponymous “Gerber” brand name. Gerber’s baby food products
13 and infant formulas are sold nationwide, including throughout the State of California.

14 **JURISDICTION AND VENUE**

15 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
16 1332(d) because there are more than 100 class members and the aggregate amount in controversy
17 exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a
18 citizen of a state different from Defendant.

19 10. This Court has personal jurisdiction over Defendant because Defendant
20 purposefully availed itself of this forum by conducting substantial business within California such
21 that Defendant has significant, continuous, and pervasive contacts with the State of California.

22 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
23 does substantial business in this District and a substantial part of the events giving rise to Plaintiff’s
24 claims took place within this District, as Plaintiff purchased the Products in this District and is a
25 citizen and resident of this District.

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