

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BURSOR & FISHER, P.A.
L. Timothy Fisher (State Bar No. 191626)
Sean L. Litteral (State Bar No. 331985)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
 slitteral@bursor.com

Attorneys for Plaintiff

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

BRIAN BLASSINGAME, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

B&G FOODS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Brian Blassingame (“Plaintiff”), individually and on behalf of all others similarly
2 situated, allege the following against Defendant B&G Foods, Inc. (“B&G” or “Defendant”) on
3 information and belief, except that Plaintiff’s allegations as to his own actions are based on personal
4 knowledge.

5 **NATURE OF THE ACTION**

6 1. This action seeks to recover damages and remedy Defendant’s continuing failure to
7 warn individuals that certain B&G Foods, Inc. herbs and spices sold under the brand names “Spice
8 Islands” and “Tone’s,” including Spice Islands’ Sweet Basil, Spice Island’s Ground Ginger, and
9 Tone’s Ground Thyme (collectively, the “Products”) expose consumers to heightened levels of toxic
10 heavy metals, including lead, arsenic, and cadmium.

11 2. A November 2021 report by Consumer Reports reveals that certain brands of herbs
12 and spices, including Defendant’s Products, are tainted with significant levels of toxic heavy metals.

13 3. Heightened levels of toxic heavy metals in foods can cause cancer and serious and
14 often irreversible damage to brain development as well as other serious health problems. Although
15 this action does not allege a claim under California’s Safe Drinking Water and Toxic Enforcement
16 Act of 1986 (“Proposition 65”), the amount of toxic heavy metals found in the Products violates that
17 statute too.

18 4. As described more fully below, consumers who purchase the Products are injured by
19 Defendant’s acts and omissions concerning the presence of heightened levels of toxic heavy metals.
20 No reasonable consumer would know, or have reason to know, that the Products contain heightened
21 levels of heavy metals. Worse, as companies across the industry have adopted methods to limit
22 heavy metals in their herbs and spices, Defendant has stood idly by with a reckless disregard for its
23 consumers’ health and well-being. As such, Plaintiff seeks relief in this action individually and as a
24 class action on behalf of all similarly situated purchasers of the Products.

25 ///

26 ///

27 ///

28

PARTIES

1
2 5. Plaintiff Brian Blassingame is a resident of Santa Cruz, California and a citizen of the
3 State of California. Mr. Blassingame purchased Defendant’s Spice Islands’ Sweet Basil in
4 approximately the spring of 2020 from a Safeway located in Santa Cruz, California. Had Defendant
5 disclosed on the label that the Product contained unsafe levels of toxic heavy metals, Mr.
6 Blassingame would have been aware of that fact and would not have purchased the Product. After
7 learning of the high levels of toxic heavy metals, Ms. Blassingame stopped purchasing the Product.
8 However, Mr. Blassingame regularly visits stores where Defendant’s products are sold and remains
9 interested in purchasing healthy, safe herbs and spices for he and his family. He remains very much
10 interested in purchasing Defendant’s herbs and spices.

11 6. Defendant B&G Foods is a foreign corporation with its headquarters in Parsippany,
12 New Jersey. Defendant manufactures, markets, and sells herbs and spices under various brand
13 names, including Spice Islands’ and Tone’s throughout California and the United States.

JURISDICTION AND VENUE

14
15 7. This Court has subject matter jurisdiction over this action pursuant to the Class Action
16 Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*, amends 28 U.S.C. §
17 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as here: (a)
18 there are 100 or more members in the proposed classes; (b) some members of the proposed classes
19 have a different citizenship from Defendant; and (c) the claims of the proposed class members exceed
20 the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2) and
21 (6).

22 8. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant transacts
23 significant business within this District, Plaintiff resides within this District, and a substantial part of
24 the events giving rise to Plaintiff’s claims took place within this District.

25 ///

26 ///

27 ///

FACTS COMMON TO ALL CAUSES OF ACTION

I. Lead And Arsenic Are Toxic

9. Lead, arsenic, and cadmium are heavy metals. The harmful effects of heavy metals are well-documented, particularly on children. Exposure puts children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals also pose risks to adults. Even modest amounts of heavy metals can increase the risk of cancer, cognitive and reproductive problems, and other adverse conditions. Because the average person comes into contact with heavy metals many times and from many sources, it is important to limit exposure.

10. “No amount of lead is known to be safe.”¹ Exposure to lead may cause anemia, weakness, and kidney and brain damage.² Lead can affect almost every organ and system in the body. Lead accumulates in the body over time, and can lead to health risks and toxicity, including inhibiting neurological function, anemia, kidney damage, seizures, and in extreme cases, coma and death. Lead can also cross the fetal barrier during pregnancy, exposing the mother and developing fetus to serious risks, including reduced growth and premature birth. Lead exposure is also harmful to adults as more than 90 percent of the total body burden of lead is accumulated in the bones, where it is stored. Lead in bones may be released into the blood, re-exposing organ systems long after the original exposure.³

11. Arsenic is also dangerous to humans. “Arsenic is ranked first among toxicants posing a significant potential threat to human health based on known or suspected toxicity.”⁴ Long term

¹ See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health> (last accessed Jan. 17, 2022).

² Centers for Disease Control and Prevention, “Health Problems Caused by Lead,” *The National Institute for Occupational Safety and Health (NIOSH)*, <https://www.cdc.gov/niosh/topics/lead/health.html#:~:text=Exposure%20to%20high%20levels%20of,a%20developing%20baby's%20nervous%20system>. (last accessed Jan. 17, 2022).

³ State of New York Department of Health, “Lead Exposure in Adults: A Guide for Health Care Providers,” <https://www.health.ny.gov/publications/2584.pdf> (last accessed Jan. 17, 2022).

⁴ Christina R. Tyler and Andrea M. Allan, “The Effects of Arsenic Exposure on Neurological and Cognitive Dysfunction in Human and Rodent Studies: A Review,” *Curr Environ Health Rep.* 2014; 1(2): 132-147, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4026128/> (last accessed Jan. 17, 2022).

1 exposure is linked to cardiovascular disease. Arsenic can also cause bladder, lung, liver, and skin
2 cancer, and strokes and diabetes. Recent studies have suggested that arsenic may cause IQ deficits
3 in children and may be harmful to fetal development as “even low concentrations of arsenic impair
4 neurological function[.]”⁵ There is “essentially no safe level” of arsenic.⁶

5 12. Cadmium is similarly harmful. “[A]ny cadmium exposure should be avoided.”⁷
6 Exposure to cadmium may lead to damage to kidneys, lungs, and bones.⁸ “Even relatively low
7 chronic exposure can cause irreversible renal tubule damage, potentially progressing to glomerular
8 damage and kidney failure” and “bone loss often is seen in concert with these effects.”⁹ This metal
9 is also known to cause cancer and targets the body’s cardiovascular, renal, gastrointestinal,
10 neurological, reproductive, and respiratory systems.¹⁰

11 13. The People of the State of California declared by initiative under Proposition 65 their
12 right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
13 reproductive harm.” Proposition 65, § 1(b). To effectuate this goal, California’s Proposition 65,
14 Health & Safety Code § 25249.5, *et seq.*, prohibits exposing people to chemicals listed by the State
15 of California as known to cause cancer, birth defects or other reproductive harm above certain levels
16 without a “clear and reasonable warning,” unless the business responsible for the exposure can prove
17 that it fits within a statutory exemption.

18
19
20 _____
⁵ *Id.*

21 ⁶ See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/>
22 (last accessed Jan. 17, 2022).

23 ⁷ M. Nathaniel Mead, “Cadmium Confusion: Do Consumers Need Protection,” *Environ Health*
Perspect. 2010 Dec; 118(12): A528-A534,
24 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/> (last accessed Jan. 17, 2022).

25 ⁸ See Agency for Toxic Substances and Disease Registry, “ToxFAQs for Cadmium,” Toxic
Substances Portal,
26 <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15> (last accessed
Jan. 17, 2022).

27 ⁹ Mead, *supra* note 9.

28 ¹⁰ See Occupational Safety & Health, “Cadmium,” <https://www.osha.gov/cadmium> (last accessed
Jan. 17, 2022).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.