

such as Plaintiff and members of the Class (defined below)—are unwilling to purchase baby food that contains unsafe levels of toxic heavy metals.

3. Defendants knew that the presence of toxic heavy metals in their baby food was a material fact to consumers, yet omitted and concealed that fact from consumers.

4. Accordingly, Plaintiff brings this suit on behalf of herself and a Class of similarly situated individuals for damages resulting from Defendants' sale of baby food that contained unsafe levels of toxic heavy metals.

PARTIES

5. Plaintiff AILEEN GARCES is a natural person and resident and citizen of Illinois.

6. Defendant GERBER PRODUCTS CO. is a Michigan corporation with its principal place of business in Virginia. Gerber sells its baby food under the eponymous "Gerber" brand name ("Gerber Brand Baby Food"). Gerber Brand Baby Food is sold nationwide, including throughout the state of Illinois.

7. Defendant THE HAIN CELESTIAL GROUP, INC. is a Delaware corporation with its principal place of business in New York. Hain sells its baby food under the "Earth's Best Organic" brand name ("Earth's Best Brand Baby Food"). Earth's Best Brand Baby Food is sold nationwide, including throughout the state of Illinois.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

9. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d). As set forth below, the proposed Class involves more than 100 individuals, and the amount of controversy, in the aggregate, exceeds the sum of \$5,000,000 exclusive of interest and costs, given Defendants’ market reach and the approximate number of potential Class members in the United States. Some members of the proposed Class are citizens of states different from Defendants.

10. Venue is proper in this district under 28 U.S.C. § 1391, because a substantial part of the events and omissions giving rise to the claims occurred in this district.

FACTUAL ALLEGATIONS

The Subcommittee Report

11. Inorganic arsenic, lead, cadmium, and mercury are toxic heavy metals. The United States Food and Drug Administration (“FDA”) and the World Health Organization (“WHO”) have declared these toxic heavy metals dangerous to human health. Specifically, the FDA states that these toxic heavy metals have “no established health benefit,” “lead to illness, impairment, and in high doses, death,” and because of bioaccumulation, “even low levels of harmful metals from individual food sources, can sometimes add up to a level of concern.”¹

12. The dangerous effects of these toxins are exacerbated and can be indelible in developing and vulnerable bodies and brains of babies and children, who FDA explains are at the greatest risk of harm. Subcommittee Report, p. 2. Exposure, such as ingestion, of toxic heavy metals by babies and children leads to untreatable and permanent brain damage, resulting in reduced intelligence and behavioral problems. For instance, scientific studies have connected

¹ FDA, *Metals and Your Food*, available at: <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food>.

exposure to lead to a substantial decrease in children’s total IQ points and their lifetime earning capacity. Subcommittee Report, p. 9.

13. “Exposure to toxic heavy metals [such as arsenic, lead, cadmium, and mercury] causes permanent decreases in IQ, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children. Toxic heavy metals endanger infant neurological development and long-term brain function.” *See*, Subcommittee Report, p. 2.

14. Given these risks, and in response to reports alleging high levels of toxic heavy metals in baby foods sold in the United States, the House Subcommittee launched an investigation into the presence of toxic heavy metals in certain brands of baby foods, including Gerber Brand Baby Food and Earth’s Best Brand Baby Food. *See*, Subcommittee Report, p. 2. The results of the House Subcommittee’s investigation were set forth in the Subcommittee Report, which was released on February 4, 2021.

Arsenic in Defendants’ Baby Food

15. According to the Subcommittee Report, arsenic was present in all brands of baby foods subject to the House Subcommittee’s investigation. *See*, Subcommittee Report, p. 3. In particular, Earth’s Best Brand Baby Food was found to contain as much as 129 parts per billion—abbreviated as “ppb”—arsenic, and was made with ingredients that contained as high as 309 ppb arsenic. *See*, Subcommittee Report, p. 3. Gerber Brand Baby Food used high-arsenic ingredients, including rice flour that contained over 90 ppb arsenic. *See*, Subcommittee Report, p. 3.

16. For comparison, the FDA has set the maximum level of arsenic in bottled water at 10 ppb. *See*, Subcommittee Report, p. 4.

17. Arsenic is the most dangerous of the toxic heavy metals at issue and poses the most significant risk to human health. *See*, Subcommittee Report, p. 10. Currently known risks of

arsenic to health include respiratory, gastrointestinal, haematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system and cognitive development in children.”²

18. One study found negative effects in cognitive development of schoolchildren exposed to concentrations of arsenic over 5 ppb. For the authors of the study, 5 ppb was an important threshold for small children.³ Consumer reports has recommended setting the limit of arsenic at 3 ppb.

19. Hain sold finished baby food products using ingredients (such as organic brown rice flour) containing as much as 309 ppb arsenic, finished products contained as much as 129 ppb arsenic. Subcommittee Report, p. 3.

20. Hain exceeded its own unreasonable and excessive internal standards. For many ingredients in Earth’s Best Brand Baby Food, Hain set a standard for certain ingredients of 100 and up to 200 ppb for arsenic. Subcommittee Report, p. 16. Nevertheless, it approved and used a vitamin pre-mix with arsenic levels of 223 ppb, more than twice the specific limit Hain itself set at 100 ppb for this ingredient, which is itself way too high. *See*, Subcommittee Report, p. 16. Numerous other ingredients were used in Earth’s Best Brand Baby Food that contained excessive levels of arsenic according to Hain’s own testing, including organic whole raisins, organic soft white wheat flour, organic spelt flour, organic barley malt extract, organic yellow split pea powder, medium grain whole rice, organic brown rice flour, organic blueberry puree, organic barley flour, organic cinnamon powder, and organic butternut squash puree.

² Agency for Toxic Substances and Disease Registry, *ATSDR’s Substance Priority List* (2019), available at <http://www.atsdr.cdc.gov/spl/index.html#2019spl>.

³ Miguel Rodríguez-Barranco et al., Association of Arsenic, Cadmium and Manganese Exposure with Neurodevelopment and Behavioural Disorders in Children: A Systematic Review and Meta-Analysis (June 1, 2013) (online at <https://pubmed.ncbi.nlm.nih.gov/23570911/>).

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