

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

Jenna Johnson, on behalf of herself
and all others similarly situated,

Plaintiffs,

vs.

Beech-Nut Nutrition Company,
Campbell Soup Company (Plum Organics),
Gerber Products Company,
Hain Celestial Group (Earth's Best Organics,
Nurture, Inc. (d/b/a HappyFamily Organics),
North Castle Partners (d/b/a Sprout Foods, Inc.),
Walmart, Inc. (Parent's Choice)

Civil Action No.

Defendants.

CLASS ACTION COMPLAINT

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I. INTRODUCTION

1. The crime of food fraud, as it is known, is widely recognized as a major problem that siphons millions of dollars from unsuspecting consumers.¹

2. In 1906, Upton Sinclair published a novel, The Jungle, to expose the horrors that were occurring in the American meat-packing industry, including the sickness and death of children caused by food fraud and contamination during manufacturing and processing.

3. Unfortunately, more than a century later, food fraud remains a major problem. In particular, baby food contamination during the manufacturing and production is a major issue that is concealed and misrepresented to the purchasers of baby food products.

4. America remains mired in coordinated, criminal corporate behavior that puts the health and safety of America's infants and toddlers at severe risk and defrauds their parents out of money paid for premium products.

5. The greed of executives at baby food companies has caused them to engage long-running, ongoing schemes to defraud involving premium baby food. Several companies have promised and reassured parents that their baby food products are pure, natural, safe, and healthy; in reality, these products contain heavy metals that are not pure, unnatural, unsafe, and pose a major risk to babies and infants.

¹ See, e.g., Arun Chauhan, *Food Fraud—an evolving crime with profit at heart*, NEW FOOD, Apr. 23, 2020 (“Food fraud refers to the deliberate and intentional substitution, addition, tampering with, or misrepresentation of food, ingredients or packaging at some stage of a product’s distribution or production cycle. It also refers to false or misleading statements made about a food or drink product for economic gain.”); Gary C. Smith, *What Is Food Fraud?*, FOOD SAFETY NET SERVICES, Dec. 13, 2016 (“Food fraud is the act of purposely altering, misrepresenting, mislabeling, substituting or tampering with any food product at any point along the farm-to-table food supply-chain. Fraud can occur in the raw material, in an ingredient, in the final product or in the food’s packaging.”).

6. Had parents (or guardians)² been fully informed about the contents of what they were purchasing, they would not have made these purchases of premium baby food—or would have paid far less for less-than-premium contents.

7. The food fraud has occurred in multiple stages. Executives not only devised a scheme to cut corners and not make the food they produce and manufacture safe for consumption, but they also engaged in additional fraudulent acts to cover-up and conceal their food fraud crimes once they were exposed.

8. The mail and wire fraud statutes have a long-established meaning: each mailing and each use of the wires *in furtherance of* a scheme to defraud is a separate criminal act. In turn, given the scope of the advertising and marketing and use of the Internet and email, each Defendant has engaged in a pattern of wire and mail fraud since at least January 2019, when Defendants formed and began using the Baby Food Council as a vessel for fraud.

9. This ongoing fraud was only recently revealed. On February 4, 2021, the U.S. House of Representatives Committee on Oversight and Reform dropped the explosive report, “*Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*” (hereinafter “the Report”), exposing rampant fraud, misrepresentations, half-truths, and fraud by omission committed by the nation’s seven (7) leading baby food manufacturers in selling food to the most vulnerable in our population: infants and toddlers.³

² This Complaint uses the term “parents” at times instead of “guardians”; any purchaser of baby food within the scope of the class definition is a class member.

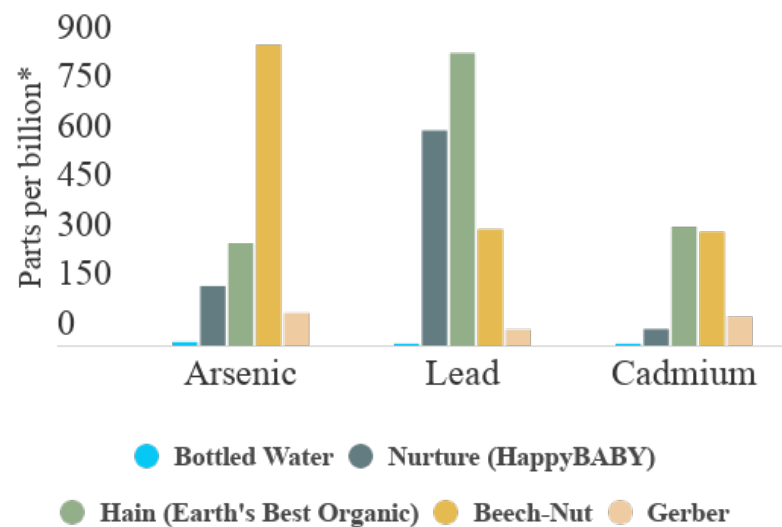
³ Staff Report, Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform, U.S. House of Representatives, *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* (February 4, 2021) <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (last visited February 19, 2021) See Exh. A.

10. The Report highlighted the high levels of toxic heavy metals present in numerous baby foods produced by Defendants, namely the four Defendants (Beech-Nut, Gerber, Hain, and Nurture) who cooperated with Congress's investigation.

11. The three others (Campbell, Sprout Organic and Walmart) refused cooperation,⁴ suggesting their misconduct was even more nefarious (particularly because it is unusual for corporations not to cooperate with federal regulators).

12. Although no federal regulations yet exist vis-à-vis most baby foods, the FDA sets the maximum allowable levels of these toxic heavy metals in water bottles safe for consumption at 10 ppb inorganic arsenic, 5 ppb lead and 5 ppb cadmium.⁵

13. The baby food at issue, examined in the Report, showed levels as high as **91 times** as much arsenic, **177 times** as much lead, **69 times** as much cadmium, and **5 times** as much mercury than that allowed in bottled water.⁶



14.

*represents highest levels of PPB found in single ingredients

⁴ *Id.* at 2.

⁵ *Id.* at 4.

⁶ *Id.*

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