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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MELANIE SHEPARD, CIARA VARGAS,
TISHA VALDEZ, and GWYNDALINE
QUARLES,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

GERBER PRODUCTS COMPANY (d/b/a
Nestlé Nutrition, Nestlé Infant Nutrition, or
Nestlé Nutrition North America),

Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs MELANIE SHEPARD, CIARA VARGAS, TISHA VALDEZ and GWYNDALINE QUARLES, on behalf of themselves and all others similarly situated, by their undersigned attorneys, against Defendant, GERBER PRODUCTS COMPANY (d/b/a Nestlé Nutrition, Nestlé Infant Nutrition, or Nestlé Nutrition North America) (hereafter “Gerber”), allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, allege, upon information and belief and investigation of their counsel, as follows:

INTRODUCTION

1. This is a consumer class action brought individually by Plaintiffs and on behalf of all persons in the below-defined proposed Classes, all of whom purchased one or more baby foods manufactured by Gerber.¹

2. Gerber claims to be “the world’s most trusted name in baby food.” http://www.gerber.com/nestle_nutrition/default.aspx. Gerber offers more than 190 products in 80 countries, with labeling in 16 languages. Defendant purchased the Gerber brand in 2007 for \$5.5 billion in cash. Gerber reportedly controls between 70 and 80 percent of the baby food market in the United States.

3. Gerber does not list heavy metals as an ingredient on the Products’ label nor does it warn of the potential presence of heavy metals in the Products.

4. Unbeknown to Plaintiffs and members of the proposed Classes, and contrary to the representations on the Products’ label, the Products contain heavy metals, including arsenic, cadmium, and lead at levels above what is considered safe for babies, which, if disclosed to Plaintiffs and members of the proposed Classes prior to purchase, would have caused Plaintiffs and members of the proposed Classes not to purchase or consume the Products.

5. As a result, the Products’ labeling is deceptive and misleading.

¹ The purchased products are: Gerber Toddler Mashed Potatoes & Gravy with Roasted Chicken Meal, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Toddler Spaghetti Rings in Meat Sauce Meal, Gerber Toddler Spiral Pasta in Turkey, Meat Sauce Meal, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Toddler Spaghetti Rings in Meat Sauce Meal, Gerber Sitter 2nd Foods Turkey Rice Dinner Plastic Tub, Gerber Sitter 2nd Foods Vegetable Beef Dinner Plastic Tub, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Sitter 2nd Foods Apple Chicken Dinner Plastic Tub, Gerber Sitter 2nd Foods Vegetable Beef Dinner Plastic Tub, Gerber Toddler Mashed Potatoes & Gravy with Roasted Chicken Meal, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Toddler Spaghetti Rings in Meat Sauce Meal, Gerber Toddler Spiral Pasta in Turkey Meat Sauce Meal, and Gerber Sitter 2nd Foods Turkey Rice Dinner Plastic Tub (the “Products”).

6. Plaintiffs and the members of the proposed Classes, as defined below, thus bring claims for consumer fraud and seek damages, injunctive and declaratory relief, interest, costs, and attorneys' fees.

THE PARTIES

7. Plaintiff MELANIE SHEPARD is a citizen of the State of Connecticut and is a member of the proposed class defined herein. She purchased the Products, including Gerber Toddler Mashed Potatoes & Gravy with Roasted Chicken Meal, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Toddler Spaghetti Rings in Meat Sauce Meal, and Gerber Toddler Spiral Pasta in Turkey Meat Sauce Meal.

8. Plaintiff CIARA VARGAS is a citizen of the State of Connecticut and is a member of the proposed class defined herein. She purchased the Products, including Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal and Gerber Toddler Spaghetti Rings in Meat Sauce Meal.

9. Plaintiff TISHA VALDEZ is a citizen of the State of Colorado and is a member of the proposed class defined herein. She purchased the Products, including Gerber Sitter 2nd Foods Turkey Rice Dinner Plastic Tub, Gerber Sitter 2nd Foods Vegetable Beef Dinner Plastic Tub, and Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal.

10. Plaintiff GWYNDALINE QUARLES is a citizen of the State of Texas and is a member of the proposed class defined herein. She purchased the Products, including Gerber Sitter 2nd Foods Apple Chicken Dinner Plastic Tub, Gerber Sitter 2nd Foods Vegetable Beef Dinner Plastic Tub, Gerber Toddler Mashed Potatoes & Gravy with Roasted Chicken Meal, Gerber Toddler Pick-ups Chicken & Carrot Ravioli Meal, Gerber Toddler Spaghetti Rings in Meat Sauce Meal, and Gerber Toddler Spiral Pasta in Turkey Meat Sauce Meal.

11. Defendant Gerber Products Company, also doing business as Nestlé Nutrition, Nestlé Infant Nutrition, or Nestlé Nutrition North America, is a Michigan corporation with its headquarters located in Florham Park, New Jersey.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (hereinafter referred to as “CAFA”) codified as 28 U.S.C. § 1332(d)(2) because the claims of the proposed Class Members exceed \$5,000,000 and because Defendant is a citizen of a different state than most proposed Class Members.

13. This Court has personal jurisdiction over Defendant because Defendant regularly sells and markets products, and conducts business in this District and/or under the stream of commerce doctrine by allowing products to be sold in this District, including the Products.

14. Venue is proper in this Court because a substantial portion of the events complained of herein took place in this District, and this Court has jurisdiction over the Defendant. Furthermore, Defendant is headquartered in this District.

FACTUAL ALLEGATIONS

15. Defendant manufactures, distributes, promotes, offers for sale, and sells the Products, both in the past and currently. Defendant has advertised and continues to advertise the Products through television commercials, print advertisements, point-of-sale displays, product packaging, Internet advertisements, and other promotional materials.

16. An investigation by the U.S. House of Representatives Subcommittee on Economic and Consumer Policy revealed that baby foods manufactured by Gerber are “tainted with significant levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury.”²

² U.S. House of Representatives Subcommittee on Economic and Consumer Policy, Staff Report, “Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium and Mercury (Feb. 4, 2021).

17. Exposure to heavy metals 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. Lead and arsenic are heavy metals known to cause a wide spectrum of adverse outcomes in pregnancy such as abortions, retarded growth at the intrauterine cavity, skeletal deformities, malformations and retarded development especially of the nervous system.

18. Specifically, the Subcommittee found that:

- a. Gerber used high arsenic ingredients, using 67 batches of rice flour that had tested over 90 ppb inorganic arsenic;
- b. Gerber used an ingredient, conventional sweet potatoes, with 48 ppb lead. Gerber also used twelve other batches of sweet potato that tested over 20 ppb for lead, the EU's lenient upper standard. The results for its sweet potatoes and juices demonstrated its willingness to use ingredients that contained dangerous lead levels;
- c. Gerber does not test all of its ingredients for cadmium. Of those it does test, it accepts ingredients with high levels of cadmium. Gerber used multiple batches of carrots containing as much as 87 ppb cadmium, and 75% of the carrots Gerber used had more than 5 ppb cadmium—the EPA's drinking water standard;
- d. Gerber rarely tests for mercury in its baby foods.
- e. Gerber's policy is to test only ingredients, and not its final product(s). According to the Subcommittee, that policy "recklessly endangers babies and children and prevents the companies from ever knowing the full extent

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