

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MICHELLE WALLS, on behalf of herself and all others similarly situated; and N.W., a minor child, by his parent and general guardian Michelle Walls, on behalf of himself and all others similarly situated;

Plaintiffs,

v.

BEECH-NUT NUTRITION COMPANY;  
THE HAIN CELESTIAL GROUP, INC.;  
NURTURE, INC. D/B/A HAPPY FAMILY  
ORGANICS; GERBER PRODUCTS  
COMPANY; and PLUM PBC.;

Defendants.

Civil Action No.: 1:21-cv-00870

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO  
STEWART PLAINTIFFS' MOTION TO CONSOLIDATE**

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## **INTRODUCTION**

Plaintiffs Michelle Walls and N.W.<sup>1</sup> (by his mother and general guardian Michelle Walls) (“*Walls* Plaintiffs”), respectfully oppose movants Nicole Stewart, Elizabeth Agramonte, and Summer Apicella’s (the “*Stewart* Plaintiffs”) motion for consolidation and to set deadlines, *see Stewart* Mot. to Consolidate (ECF No. 6). The *Walls* Plaintiffs recognize, and are in no way opposed, to the courts imposing some order over the now 43 lawsuits, including 38 class actions, filed in 12 jurisdictions, against several different baby-food manufacturers who only recently disclosed to Congress that their products contain dangerously high levels of four heavy metals: arsenic, lead, cadmium, and mercury. The issue, rather, is that the *Stewart* Plaintiffs’ request, which is limited to only the 12 lawsuits currently pending in the Eastern District of New York, has been usurped by the since-filed motion to transfer and consolidate all 43 cases—including the *Stewart* and *Walls* cases—currently pending before the Judicial Panel on Multidistrict Litigation. *See In re: Baby Food Marketing, Sales Practices and Production Liability Litig.*, No. 2997, ECF No. 1 (J.P.M.L. Mar. 8, 2021). Briefing on that motion will be completed April 6, 2021, and there will be little prejudice, if any, to the *Stewart* Plaintiffs if this Court were to wait for a decision from the Panel.

Even were it not for this pending decision from the Panel, when considering the merits of the *Stewart* Plaintiffs’ motion, a review of the two cases’ allegations and claims shows that consolidation is inappropriate. The *Stewart* Plaintiffs have sued a single defendant, Hain Celestial Group, Inc. (“Hain”); alleged four causes of action based around a single legal theory; and sought to represent a class of purchasers of Hain baby food products only. In contrast, the *Wells*

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<sup>1</sup> Plaintiff N.W. is a minor and is identified here by his initials. *See* Fed. R. Civ. P. 5.2.

Plaintiffs have sued five defendant baby food manufacturers—i.e., Beech-Nut Nutrition Co., Hain, Gerber Products Co., Nurture Inc., and Plum PBC; alleged 11 claims against each Defendant; and seek to represent both a purchaser class and a consumer class of each Defendant’s products.

In short, the *Stewart* Plaintiffs’ motion fails to show why consolidation is appropriate in light of the Panel’s anticipated decision, or as between the *Walls* and *Stewart* cases. Accordingly, this Court should deny (or at a minimum refrain from ruling on) the *Stewart* Plaintiffs’ motion at this time.

### **STATEMENT OF FACTS**

#### **I. The *Walls* Complaint.**

The *Walls* Plaintiffs are Michelle Walls, a resident of Staten Island, and her infant son N.W. *Walls et al. v. Beech-Nut Nutrition Co. et al.*, No. 1:21-cv-00870, ECF No. 1 (“*Walls* Compl.”), ¶¶ 10–11 (E.D.N.Y. Feb. 17, 2021). The *Walls* Complaint alleges 11 causes of action against five defendants—Beech-Nut, Hain, Gerber, Nurture, and Plum. *Id.* ¶¶ 12–16. These allegations are based on the *Walls* Plaintiffs own purchases and/or consumption of the *Walls* Defendants’ baby food products, the revelations of a Report published by the U.S. House of Representatives’ Subcommittee on Economic and Consumer Policy (“House Subcommittee Report”), as well as independent research into representations made by the *Walls* Defendants in their product labeling, advertising, communications, and websites. *See id.* ¶¶ 19–45.

The *Walls* Plaintiffs allege the following theories of liability across their claims: (1) the *Walls* Defendants engaged in deceptive, fraudulent, and/or misrepresentative practices by advertising and selling baby food products that represented (a) they were healthy, (b) that they were safe, (c) that they were appropriate to feed to children, (d) that the *Walls* Defendants’ testing protocols excluded dangerous ingredients with elevated toxic heavy metals levels, and/or (e) that

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