

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

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs Michelle Walls and N.W.¹ by his mother and general guardian Michelle Walls (“Plaintiffs”), by and through their counsel, on their own behalf and on behalf of all others similarly situated, bring this Class Action Complaint against the Defendants Beech-Nut Nutrition Co. (“Beech-Nut”), The Hain Celestial Group, Inc. (“Hain”), Nurture, Inc. (“Nurture”) d/b/a Happy Family Organics, Gerber Products Co. (“Gerber”), and Plum Public Benefit Corp. (“Plum”) (collectively, “Defendants”).

2. Michelle Walls, like many parents of young and newborn children, places a premium on only exposing her infant son, N.W., to the safest and highest quality foods available

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

on the market. Defendants manufactured, advertised, marketed, distributed, and sold their organic baby food as the best and healthiest options available.

3. Accordingly, Plaintiff Walls purchased Defendants' organic baby food products and fed them to her son almost exclusively for the past six months. Like so many parents, Walls reasonably believed that Defendants' baby foods were safe to feed to her son.

4. But as Walls discovered two weeks ago—and as Defendants already knew—that was not the case.

5. On February 4, 2021, the United States House of Representatives' Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform ("House Subcommittee") published a bombshell report revealing that several brands of baby food—including each of the Defendants' baby food products (the "Tainted Baby Food Products")—contained significant and dangerous levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury (collectively, the "Toxic Heavy Metals"). *See* Staff of H. Subcomm. On Econ. And Consumer Policy, Comm. On Oversight and Reform, 117th Cong., *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (Feb. 4, 2021) ("Subcommittee Report" or "Rept."; attached as Exhibit A).

6. The Report noted that exposing children to toxic heavy metals causes permanent decreases in IQ, an increased risk of future criminal and antisocial behavior, and "untreatable and frequently permanent" brain damage. This exposure has real economic consequences, as one study has shown that for each IQ point lost, a child's lifetime estimated earning capacity will decrease by over \$18,000. *See* Rept. at 9.

7. Given the Defendants' deceptive business practices and the harms such practices have caused to countless children in New York and the United States, Plaintiffs have brought this action and seek to represent Proposed Classes (as defined herein), who, from February 17, 2015, to the present, (1) purchased for personal/household use and not resale any of Defendants' Tainted Baby Food Products; or (2) consumed Defendants' Tainted Baby Food Products.

8. Plaintiffs' Complaint alleges claims for Defendants' violation of New York General Business Law §§ 349 and 350, unjust enrichment, intentional misrepresentation, negligent misrepresentation, fraudulent concealment, negligence, gross negligence, strict product liability, breach of express warranty, and breach of implied warranty.

9. Plaintiffs seek injunctive and/or declaratory relief and monetary relief on behalf of the Proposed Classes including requiring the Defendants' (i) accurate disclosure of the levels of the Toxic Heavy Metals present in the baby food products sold by Defendants in their respective marketing, advertising, and labeling; (ii) testing of ingredients and final products to accurately determine the levels of Toxic Heavy Metals present in Defendants' baby food products; and (iii) restoring monies to the members of the Proposed Classes.

PARTIES

10. Plaintiff Michelle Walls is a resident of Staten Island, New York. During the applicable statute of limitations period, Ms. Walls purchased Defendants' Tainted Baby Food Products that, according to the Subcommittee Report and some Defendants' internal data and documents referenced therein, were found to contain dangerous levels of Toxic Heavy Metals.

11. Plaintiff N.W. is a one-year old child who resides with his mother and general guardian Plaintiff Michelle Walls in Staten Island, New York. N.W. consumed the Tainted Baby Food Products manufactured and produced by Defendants that, according to the Subcommittee

Report and some Defendants' internal data and documents referenced therein, were found to contain dangerous levels of Toxic Heavy Metals.

12. Defendant Beech-Nut Nutrition Co. is a New York corporation with its principal place of business and headquarters located at One Nutritious Place, Amsterdam, New York.

13. Defendant Hain Celestial Group, Inc. is a Delaware corporation with its principal place of business and headquarters located at 111 Marcus Avenue, #1, Lake Success, New York.

14. Defendant Gerber Products Co. is a Michigan corporation with its principal place of business and headquarters located at 1812 North Moore Street, Arlington, Virginia.

15. Defendant Nurture Inc., also doing business as Happy Family Organics ("Happy Family"), is a Delaware corporation with its principal place of business and headquarters at 1 Maple Avenue, White Plains, New York.

16. Defendant Plum PBC. is a Delaware public benefit corporation with its principal place of business and headquarters located at 1485 Park Avenue, Suite 200, Emeryville, California.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2). Plaintiffs are citizens of New York and Defendant Plum is a citizen of California; there are more than 100 Class Members; and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b). Three Defendants are headquartered in New York; each Defendant conducts substantial business in this State and judicial district through their sale of products and commercial websites; and a substantial part of the events and omissions giving rise to the alleged conduct occurred in, were directed to, and were emanated from this district.

FACTUAL ALLEGATIONS

I. Congress's Investigation Reveals Elevated Levels of Toxic Heavy Metals in Defendants' Baby Food.

19. On November 19, 2019, the U.S. House Subcommittee "requested internal documents and test results from seven of the largest manufacturers of baby food in the United States," including all of the Defendants. Rept. at 2.

20. Defendants Nurture, Beech-Nut, Hain, and Gerber each responded to the House Subcommittee's requests, producing "internal testing policies, test results for ingredients and/or finished products, and documentation about what the companies did with ingredients and/or finished products that exceeded their internal testing limits." *Id.*

21. Campbell Soup Co., parent corporation of Plum, refused to cooperate with the investigation. The Subcommittee Report expressed "great[] concern" about the refusal to cooperate and that it "might be obscuring the presence of even higher levels of toxic heavy metals in their baby food products than their competitors' products." *Id.*

22. As mentioned above, on February 4, 2021, the House Subcommittee published its Report, which found that baby foods produced and sold by Defendants are "tainted with significant levels" of the Toxic Heavy Metals. *Id.*

23. The Subcommittee Report showed that the levels of Toxic Heavy Metals present in the Tainted Baby Food Products are "multiples higher than allowed under existing regulations for other products." For example:

- a. The federal Food and Drug Administration ("FDA") has set a maximum allowable level of 10 parts per billion ("ppb") of arsenic in drinking water. Nurture's "Happy Baby" baby food products contained as much as 180 ppb of arsenic, with over 25% of its products containing over 100 ppb, and the "typical

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