

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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NICOLE STEWART, ELIZABETH
AGRAMONTE and SUMMER APICELLA,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

-against-

CASE NO.
2:21-cv-00678-JS-AYS

HAIN CELESTIAL GROUP, INC.,

Defendant.

----- X
SALLY BREDBERG and REBECCA
BROMBERG, individually and on behalf of
all others similarly situated,

Plaintiffs,

-against-

2:21-cv-00758

THE HAIN CELESTIAL GROUP, INC.,

Defendant.

----- X
ALYSSA MAYS, individually and on behalf
of all others similarly situated,

Plaintiffs,

-against-

2:21-cv-00805

HAIN CELESTIAL GROUP, INC.,

Defendant.

----- X

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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,

-against-

1:21-cv-00870

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

Defendants.

----- X
LEE BOYD, individually and on behalf of all
others similarly situated,

Plaintiff,

-against-

2:21-cv-00884

HAIN CELESTIAL GROUP, INC.,

Defendant.

----- X
KELLY MCKEON, RENEE BRYAN, and
MARILYN CARSON, individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

2:21-cv-00938

HAIN CELESTIAL GROUP, d/b/a Earth's
Best Organics,

Defendant.

----- X

----- X
LEIBA BAUMGARTEN, individually and on
behalf of all others similarly situated,

Plaintiff,

-against-

2:21-cv-00944

THE HAIN CELESTIAL GROUP, INC.,

Defendant.

----- X
CHARLOTTE WILLOUGHBY,

Plaintiff,

-against-

2:21-cv-00970

HAIN CELESTIAL GROUP, d/b/a Earth's
Best Organics,

Defendant.

----- X

**MEMORANDUM OF LAW IN SUPPORT OF THE STEWART PLAINTIFFS'
MOTION FOR CONSOLIDATION AND TO SET DEADLINES**

I. INTRODUCTION

Plaintiffs Nicole Stewart, Elizabeth Agramonte and Summer Apicella (“the *Stewart* Plaintiffs”), by and through their undersigned counsel, respectfully submit this memorandum of law in support of their motion for consolidation of the above-captioned actions against Hain Celestial Group, Inc. (“Defendant” or “Hain”), as well as any subsequently filed or transferred related actions, for all purposes, including pretrial proceedings and trial, pursuant to Federal Rule of Civil Procedure 42(a) (“Rule 42(a)”), and to set certain deadlines regarding the filing of motions for interim class counsel and a consolidated amended complaint should the Court grant consolidation.. The *Stewart* Action was the first-filed, and is thus the low-numbered case, in this District.¹

Eight similar actions (the “Related Actions”)² concerning similar facts and allegations are currently pending before this Court. The Related Actions each allege that certain of Hain’s baby

¹ Defendant stated in a letter filed with the Court on February 26, 2021 (ECF No. 18) that it sought a 45-day extension of its deadline to file a responsive pleading so it could “have additional time to investigate the factual allegations set forth in Plaintiffs’ complaint and consider whether, and how, this lawsuit should be coordinated with the numerous other lawsuits pending in federal courts around the country” against Hain, stating that the *Stewart* Plaintiffs consented to the extension. While the *Stewart* Plaintiffs did consent to an extension for Defendant’s responsive pleading, they had informed Defendant that they were making a motion for consolidation and twice sought Defendant’s position on this Motion. While Defendant has not yet responded, the *Stewart* Plaintiffs did not consent to allow Defendant 45 days to consider how to handle the very few other lawsuits against Hain filed outside this District. As noted below, eight such lawsuits are pending in this District and only three elsewhere. Notably, Defendant Hain is a citizen of the State of New York with its principal place of business in Lake Success, New York in the Eastern District of New York, Central Islip Division.

² *Stewart v. Hain Celestial Group, Inc.*, Case No. 2:21-cv-00678-JYS (E.D.N.Y.); *Bredberg v. The Hain Celestial Group, Inc.*, Case No. 2:21-cv-00758 (E.D.N.Y.); *Mays v. Hain Celestial Group, Inc.*, Case No. 2:21-cv-00805 (E.D.N.Y.); *Walls et al v. Beech-Nut Nutrition Corp. et al*, Case No. 1:21-cv-00870 (E.D.N.Y.); *Boyd v. Hain Celestial Group, Inc.*, Case No. 2:21-cv-00884 (E.D.N.Y.); *McKeon v. Hain Celestial Group, d/b/a Earth’s Best Organics*, Case No. 2:21-cv-00938 (E.D.N.Y.); *Baumgarten v. The Hain Celestial Group, Inc. et al*, Case No. 2:21-cv-00944 (E.D.N.Y.); and *Willoughby v. Hain Celestial Group, d/b/a Earth’s Best Organics*, Case No. 2:21-cv-00970 (E.D.N.Y.).

food products (the “Tainted Baby Foods”) are and were tainted with significant and dangerous levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury (the “Heavy Metals”), and that Hain misrepresented or omitted disclosure of this fact from consumers. Each Related Action seeks, *inter alia*, injunctive relief barring Hain from continuing to misrepresent the truth about its products as well as monetary damages compensating for the purchase of the Tainted Baby Foods. The Related Actions present similar factual and legal issues and will involve the same or similar discovery. Accordingly, consolidation of the actions into a single action is called for under Fed. R. Civ. P. 42(a).³ Through their respective class actions, plaintiffs in the Related Actions allege a combination of various state consumer protection statutes and other common law causes of action against Defendant Hain.⁴

The *Stewart* Plaintiffs respectfully request that the Related Actions be consolidated into a single action under their lowest numbered action.⁵ The power to consolidate related actions falls

³ In addition to the Related Actions, the following substantially similar cases were filed against Hain in other federal district courts: *Garces v. Gerber Products Co. et al*, Case No. 1:21-cv-00719 (N.D. Ill.), *Wallace et al v. Gerber Products Co. et al*, Case No. 2:21-cv-02531 (D.N.J.), *Johnson v. Beech-Nut Nutrition Company et al*, Case No. 2:21-cv-02096 (D. Kan.), and *Mays v. Hain Celestial Group, Inc.*, Case No. 1:21-cv-01185 (S.D.N.Y.). The *Mays* case has since been voluntarily dismissed and refiled in the E.D.N.Y. and is one of the Related Actions included herein. Thus, at this time, there appear to be three cases against Hain pending in other jurisdictions. All such cases name multiple defendants, including Hain.

⁴ The causes of action alleged include: violations of, among others, New York, California, Illinois, Ohio, Minnesota, and Florida state consumer protection act statutes, unjust enrichment, fraudulent concealment, intentional misrepresentation, negligent misrepresentation, breach of express warranty, breach of implied warranty of merchantability, negligence, gross negligence, strict product liability, fraudulent misrepresentation, and fraud by omission.

⁵ The *Walls* action, *Walls et al v. Beech-Nut Nutrition Corp. et al*, Case No. 1:21-cv-00870 (E.D.N.Y.), is the sole case filed in this District to name several defendants in the complaint in addition to Defendant Hain. However, given that the *Walls* complaint is substantially the same as the other Related Action complaints as to Defendant Hain, the *Stewart* Plaintiffs propose that the *Walls* action be consolidated at this time to the extent it names Hain as a defendant therein, which can be revisited and revised following appearances by those defendants other than Hain and the Court’s examination and any rulings regarding how that case will be handled in light of the multiple defendants. *See* Fed. R. Civ. P. 42(a)(3) (“If actions before the court involve a common

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