



2. Earlier this month, the United States House of Representatives released a report on levels of heavy metals in baby foods by various manufacturers (the “House Report”). The report showed that Earth’s Best rice cereal, in particular, consistently contained inorganic arsenic in excess of FDA action levels of 100 parts per billion (“ppb”). The FDA defines an action level as “limits at or above which FDA will take legal action to remove products from the market.”<sup>1</sup>

3. These levels of arsenic represent a health hazard to infants who consume this cereal. The House Report noted that, “The known health risks of arsenic exposure include ‘respiratory, gastrointestinal, haematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system and cognitive development in children.’”<sup>2</sup> (citations omitted)

4. The House Report further notes that the FDA set the action level for inorganic arsenic at 100 ppb because the “FDA was focused on the level of inorganic arsenic that would cause cancer.”<sup>3</sup> At minimum, Earth’s Best continues to market and sell Earth’s Best rice cereal knowing that it contains dangerously high levels of a known carcinogen subject to FDA action.

5. However, the House Report further indicates that not only was Earth’s Best aware of the unacceptably high levels of arsenic, but specifically tested its product in such a way as to undercount the arsenic present in its product, by testing only the ingredients in its rice cereal rather than the finished product. The House Report noted that “Hain’s finished baby foods had more arsenic than their ingredients 100% of the time—28-93% more inorganic arsenic. That

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<sup>1</sup> <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-action-levels-poisonous-or-deleterious-substances-human-food-and-animal-feed>, last accessed Feb. 8, 2021.

<sup>2</sup> <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> at 10, last accessed Feb. 8, 2021

<sup>3</sup> *Id.* at 52.

means that only testing ingredients gives the false appearance of lower-than actual toxic heavy metal levels.”<sup>4</sup>

6. As a result, Earth’s Best rice cereal consistently contains levels of inorganic arsenic in excess of the action levels set by the FDA. This fact is a concealment, suppression, or omission of material fact under the Illinois Consumer Fraud and Deceptive Business Practices Act as well as a breach of the implied warranty of merchantability.

### **JURISDICTION AND VENUE**

7. The Court has original subject matter jurisdiction over the case under 28 U.S.C. § 1332(d) because the case is brought as a class action under Fed. R. Civ. P. 23, at least one proposed Class member is of diverse citizenship from Defendant, the proposed Class includes more than 100 members, and the aggregate amount in controversy exceeds five million dollars, excluding interest and costs.

8. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant engaged in substantial conduct relevant to Plaintiffs’ claims within this District, has its principal place of business in this District, and has caused harm to Class members residing within this District.

### **PARTIES**

9. Plaintiff Sally Bredberg is a citizen of the State of Illinois, residing in Cook County. On or about August 17, 2019, Plaintiff Bredberg purchased a box of Earth’s Best rice cereal from a Target in Orland Park, Illinois paying \$3.49. Had Plaintiff Bredberg known of Defendant’s deceptive and misleading practices, she would not have bought the Product, or she would have paid less for it.

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<sup>4</sup> *Id.* at 57.

10. Plaintiff Rebecca Bromberg is a citizen of the State of Illinois, residing in Cook County. On or about April 24, 2020, Plaintiff Bromberg purchased two boxes of Earth's Best rice cereal at a Target in Skokie, Illinois, paying \$3.49 each. Had she known of Defendant's deceptive and misleading practices, she would not have bought the Product, or she would have paid less for them.

11. Defendant The Hain Celestial Group, Inc. is a Delaware limited liability corporation with its principal place of business at 1111 Marcus Avenue, Lake Success, New York, 11042. At all relevant times, Defendant has owned, marketed, and sold the Product at issue.

### **FACTUAL ALLEGATIONS**

12. Defendant markets and sells Earth's Best rice cereal, which it markets as being "the perfect first food for your little one."<sup>5</sup>

13. Defendant's packaging, as shown below, shows infants playing in a field of grain and prominently states, "ORGANIC" and "Grown without Potentially Harmful Pesticides or Herbicides."

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<sup>5</sup> <https://www.earthsbest.com/product/organic-baby-rice-cereal/>, last accessed Feb. 8, 2021



14. Additionally, Defendant’s website contains “Our Promise”, prominently labelled, which states that it produces “[P]ure, quality products you can trust.”<sup>6</sup>

15. Additionally, Defendant’s “Our Promise” page states, “Organic foods are produced without the use of potentially harmful chemicals, pesticides, genetically engineered ingredients, or growth hormones from animal-derived products.”<sup>7</sup>

<sup>6</sup> <https://www.earthsbest.com/why-earths-best/our-promise/>, last accessed Feb. 8, 2021.

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