

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

LAURIE THOMAS, ALISON KAVULAK,
JEN MACLEOD, MARY NARVAEZ,
ALISON FLEISSNER, EMILY
BIGAOUETTE, LAURA EGGNATZ,
TERESA HAGMAIER, and NICOLE
FALLON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Case No. 1:21-CV-0133 (TJM/CFH)

INTRODUCTION

1. Plaintiffs Laurie Thomas, Alison Kavulak, Jen MacLeod, Mary Narvaez, Alison Fleissner, Emily Bigaouette, Laura Eggatz, Teresa Hagmaier, and Nicole Fallon, individually and on behalf of all others similarly situated, by and through their undersigned attorneys, bring this Class Action Complaint against Defendant Beech-Nut Nutrition Company for its negligent, reckless, and/or intentional practice of misrepresenting and failing to fully disclose the heavy metals and/or perchlorate or other ingredients that do not conform to the labels, packaging, advertising, and statements of Defendant's products sold throughout the United States, including this District. Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Class and Sub-Classes (as defined below) including: (i) requiring full disclosure of all such substances and ingredients in Defendant's marketing, advertising, and labeling; (ii) requiring testing of all ingredients and final products for such substances; and (iii) restoring monies to the members of

the proposed Class. Plaintiffs allege the following based upon personal knowledge as well as investigation by their counsel and, as to all other matters, upon information and belief. Plaintiffs believe that a reasonable opportunity for discovery will reveal substantial evidentiary support for the allegations set forth herein.

**DEFENDANT MARKETS ITSELF AS SELLING ONLY PREMIUM BABY FOOD
THAT IS SAFE FOR HUMAN CONSUMPTION**

2. Defendant manufactures, markets, advertises, labels, distributes, and sells baby food products under the brand name Beech-Nut throughout the United States, including in this District.

3. Defendant states that it offers natural and organic baby foods “that are free from artificial preservatives, colors and flavors.” Defendant touts that it “conduct[s] over 20 rigorous tests on our purees, testing for up to 255 pesticides and heavy metals (like lead, cadmium, arsenic and other nasty stuff). Just like you would, we send the produce back if it’s not good enough.”¹

4. Defendant’s packaging and labels further emphasize quality and safe ingredients and even declares that the products are “100% Natural.”

5. Defendant’s packaging and labels further emphasize that its baby food products are natural, organic, and safe for human infant consumption.

6. Yet nowhere in the labeling, advertising, statements, warranties, and/or packaging does Defendant disclose that the Baby Foods (as listed in paragraph 27 below) include and/or have a high risk of containing heavy metals or other ingredients that do not conform to the labels, packaging, advertising, and statements.

¹ <https://www.beechnut.com/our-story/>.

7. Indeed, the Baby Foods have been shown to contain significant levels of arsenic, mercury, lead, cadmium, and/or perchlorate²—all known to pose health risks to humans and particularly infants. *See* Ex. A.

8. Despite this, Defendant warrants, promises, represents, misleads, labels, and/or advertises that the Baby Foods are free of any heavy metals, perchlorate, and/or unnatural ingredients by making assurances that the foods are natural and safe for infant consumption.

9. Defendant asserts that its foods are “real food for babies,”³ that its foods are tested for heavy metals, and that Defendant is “aware of no higher standards in the industry than the ones we employ,”⁴ in direct contradiction to the true nature of its contents, which include, but are not limited to, heavy metals and/or perchlorate.

10. Defendant also asserts that the Baby Foods are safe and appropriate for consumption by babies through its “Stage” representations, which identify the appropriate age range that should consume the Baby Food. For example, “Stage 1, 4 months+,” “Stage 2, 6 months+,” etc. Each of the Baby Foods contain this “Stage” designation, identifying that it is suitable and appropriate for consumption by a baby or child.

11. It was recently revealed on information and belief that Defendant was knowingly, recklessly, and/or negligently selling the Baby Foods containing arsenic, mercury, cadmium, lead, and/or perchlorate.

² HEALTHY BABIES BRIGHT FUTURES, *What’s In My Baby’s Food?*, https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReport_FULLREPORT_ENGLISH_R5b.pdf (hereinafter, “Healthy Babies Bright Futures Report”).

⁴ <https://www.beechnut.com/food-quality-safety/>.

12. Plaintiffs bring this action individually and on behalf of all consumers who purchased the Baby Foods, to cause the disclosure of the presence and/or risk of the presence of heavy metals, perchlorate, and/or unnatural or other ingredients that do not conform to the labels, packaging, advertising, and statements in the Baby Foods; to correct the false and misleading perception Defendant has created in the minds of consumers that the Baby Foods are high quality, healthy, and safe for infant consumption; and to obtain redress for those who have purchased the Baby Foods.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the Class reside in states other than the states in which Defendant is a citizen and in which this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

14. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiffs have suffered injury as a result of Defendant's acts in this district, many of the acts and transactions giving rise to this action occurred in this District, Defendant conducts substantial business in this district, Defendant has intentionally availed itself of the laws and markets of this district, and Defendant is subject to personal jurisdiction in this district.

PARTIES

15. Plaintiff Alison Kavulak is a resident of Avoca, Iowa, and purchased Defendant's Baby Foods for her son. Plaintiff Kavulak purchased Beech-Nut Naturals (pear & blueberry; carrots; green beans; and sweet potatoes). Plaintiff Kavulak purchased the Baby Foods from a Walmart store in Council Bluffs, Iowa and online at Walmart.com on or around June 2019 and

continued to purchase until August 2019. Prior to purchasing the Baby Foods, Plaintiff Kavulak saw Defendant's nutritional claims on the packaging, including "natural[],"the "Stage" representations, and "real food for babies," which she relied on in deciding to purchase the Baby Foods. During that time, based on Defendant's material omissions and the false and misleading claims, warranties, representations, advertisements and other marketing by Defendant, Plaintiff Kavulak was unaware that the Baby Foods contained any level of heavy metals, chemicals, or toxins, and would not have purchased the food if that was fully disclosed, or she would not have paid as much for the Baby Foods if that information was fully disclosed. Plaintiff Kavulak was injured by paying a premium for the Baby Foods that have no or *de minimis* value—or whose value was at least less than what she paid for the Baby Food—based on the presence of the alleged heavy metals, chemicals, and toxins.

16. Plaintiff Laurie Thomas is a resident of Petersburg, Illinois, and purchased Defendant's Baby Foods for her children. Plaintiff Thomas purchased Beech-Nut Naturals (sweet potato; mango; sweet corn and green beans; bananas; carrots; and spinach, green beans and peas) as well as Beech-Nut Organic (sweet potato; pears; pumpkin; apple and avocado; apple; banana, cinnamon and granola; carrots; apple, kiwi and spinach; flake oatmeal cereal; flake rice cereal). Plaintiff Thomas purchased the Baby Foods from Hy-Vee, Walmart, County Market, and other grocery stores over the past six years. Prior to purchasing the Baby Foods, Plaintiff Thomas saw Defendant's nutritional claims on the packaging, including "natural[],"the "Stage" representations, and "real food for babies," which she relied on in deciding to purchase the Baby Foods. During that time, based on Defendant's omissions and the false and misleading claims, warranties, representations, advertisements and other marketing by Defendant, Plaintiff Thomas was unaware that the Baby Foods contained any level of heavy metals, chemicals or toxins, and would not have

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