

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAURA PEEK, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

Case No. 1:21-cv-0167 (TJM/ML)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. Plaintiff Laura Peek (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned attorneys, brings this Class Action Complaint against Defendant Beech-Nut Nutrition Company (“Beech-Nut” or “Defendant”), for its negligent, reckless, and/or intentional practice of misrepresenting and failing to fully disclose the presence (or material risk of) heavy metals in its baby food sold throughout the United States. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Class (as defined herein), including requiring full disclosure of all such substances in its marketing, advertising, and labeling and restoring monies to the members of the proposed Class. Plaintiff alleges the following based upon personal knowledge as well as investigation by her counsel, and as to all other matters, upon information and belief (Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery).

NATURE OF THE ACTION

2. Parents like Plaintiff trust manufacturers like Defendant to sell baby food that is safe, nutritious, and free from harmful toxins, contaminants, and chemicals. They certainly expect

the food they feed their infants and toddlers to be free from Heavy Metals and Perchlorate, substances known to have significant and dangerous health consequences.¹

3. Consumers lack the scientific knowledge necessary to determine whether the Defendant's products do in fact contain (or have a material risk of) Heavy Metals and Perchlorate or to know or ascertain the true nature of the ingredients and quality of the Products. Reasonable consumers therefore must and do rely on Defendant to honestly report what its products contain.

4. A recent report by the U.S. House of Representatives' Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform reveals that parents' trust has been violated (the "Subcommittee's investigation"). Ex. 1. The Subcommittee's investigation of the seven largest baby food manufacturers in the United States, including Defendant, was spurred by "reports alleging high levels of toxic heavy metals in baby foods" and the knowledge that "[e]ven low levels of exposure can cause serious and often irreversible damage to brain development." Ex. 1 at 2.

5. As the Subcommittee noted, its investigation disclosed Defendant's "reckless disregard for the health of babies." *Id.* at 43.

6. Defendant knows that its customers trust the quality of its products and that they expect Defendant's products to be free of Heavy Metals and Perchlorate. It also knows that certain consumers seek out and wish to purchase premium baby foods that possess high quality ingredients free of toxins, contaminants, or chemicals and that these consumers will pay more for baby foods they believe possess these qualities than for baby foods they do not believe possess these qualities.

7. As such, Defendant's promises, warranties, pricing, statements, claims, packaging, labeling, marketing, advertising, and material nondisclosures (hereinafter collectively referred to

¹ As used herein, the phrase "Heavy Metals" is defined as arsenic, cadmium, lead, and mercury.

as “Marketing” or “Claims”) (hereinafter collectively referred to as “Marketing” or “Claims”) center on representations and pictures that are intended to, and do, convey to consumers that their baby food, including its Contaminated Baby Foods,² possess certain qualities and characteristics that justify a premium price.

8. No reasonable consumer seeing Defendant’s Marketing would expect the Contaminated Baby Foods to contain Heavy Metals, Perchlorate, or other undesirable toxins or contaminants. Furthermore, reasonable consumers, like Plaintiff, would consider the mere inclusion of Heavy Metals, Perchlorate, or other undesirable toxins or contaminants a material fact when considering what baby food to purchase.

9. Defendant intended for consumers to rely on its Marketing, and reasonable consumers did in fact so rely. However, Defendant’s Marketing is deceptive, misleading, unfair, and/or false because, among other things, the Contaminated Baby Foods include undisclosed Heavy Metals, Perchlorate, or other undesirable toxins or contaminants.

10. Defendant’s Contaminated Baby Foods do not have a disclaimer regarding the presence of Heavy Metals or other undesirable toxins or contaminants that would inform consumers that the Contaminated Baby Food contain Heavy Metals and Perchlorate and/or that Heavy Metals and Perchlorate can accumulate over time in a child’s body to the point where poisoning, injury, and/or disease can occur.

² The phrase “Contaminated Baby Foods” collectively refers to products sold under the “Beech-Nut Naturals,” “Beech-Nut Organics,” and “Beech-Nut” brands, including but not limited to the products listed in paragraph 20. These products include purees of fruit, vegetables, meat broths, cereals, fruit and vegetable purees, bars, crisps, and dissolving snacks marketed as “melties.” Plaintiff reserves her right to include in this action any products sold by Defendant deemed to contain Heavy Metals and Perchlorate following discovery.

11. Defendant's wrongful Marketing, which includes misleading, deceptive, unfair, and false Marketing and omissions, allowed it to capitalize on, and reap enormous profits from, consumers who paid the purchase price or a price premium for Contaminated Baby Food that was not sold as advertised. And Defendant continues to wrongfully induce consumers to purchase its Contaminated Baby Food that are not as advertised.

12. Plaintiff brings this proposed consumer class action individually and on behalf of all other members of the Class (as defined herein) who, from the applicable limitations period up to and including the present, purchased for use and not resale any of Defendant's Contaminated Baby Foods.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over all causes of action asserted herein under the Class Fairness Act, 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value or \$5,000,000 exclusive of interest and costs and more than two-thirds of the Class resides in states other than the state 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)(2) do not apply.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Plaintiff 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, and Defendant conducts substantial business in this district and is headquartered 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.

THE PARTIES

15. Plaintiff is, and at all times relevant hereto has been, a citizen of the state of Wisconsin. She purchased the Contaminated Baby Foods, various flavors of Defendant's organic jarred purees, such as the Beech-Nut Organics Banana & Cinnamon & Granola, and of

Defendant's pouches, such as the Beech-Nut Organic Apple, Sweet Potato, Pineapple & Oat, for her children generally from Target. Plaintiff first purchased the Contaminated Baby Foods in approximately 2009 and last purchased the Contaminated Baby Foods in approximately May 2019.

16. Plaintiff believed she was feeding her children healthy, nutritious food during the time she purchased and fed her children the Contaminated Baby Foods. Due to the false and misleading claims and omissions by Defendant, she was unaware the Contaminated Baby Foods contained any level of Heavy Metals or Perchlorate and would not have purchased the food if that information had been fully disclosed.

17. As the result of Defendant's negligent, reckless, and/or knowingly deceptive conduct as alleged herein, Plaintiff was injured when she paid the purchase price or a price premium for the Contaminated Baby Foods that did not deliver what they promised. She paid the purchase price on the assumption that the labeling of the Contaminated Baby Foods was accurate and that it was free of Heavy Metals and Perchlorate and safe to ingest. Plaintiff would not have paid the money had she known that the Contaminated Baby Foods contained excessive degrees of Heavy Metals and Perchlorate. Further, should Plaintiff encounter the Contaminated Baby Foods in the future, she could not rely on the truthfulness of the Marketing, absent corrective changes to the packaging and advertising of the Contaminated Baby Foods. Damages can be calculated through expert testimony at trial.

18. Defendant Beech-Nut Nutrition Company is incorporated in Delaware with its principal place of business located at 1 Nutritious Place, Amsterdam, New York. Defendant formulates, develops, manufactures, labels, distributes, markets, advertises, and sells the Contaminated Baby Foods under the Beech-Nut name throughout the United States. Defendant

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