

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Stephanie Soto, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Nurture, Inc.,

Defendant

Case No. 1:21-cv-01271

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Nurture, Inc. (“defendant”) manufactures, distributes, labels and sells flavored rice puffs to babies in numerous varieties (“Products”).



I. The Products are Marketed to Developing Children

2. Defendant's front and back labels tout its health attributes, through the following:

- Pictures of fruits and vegetables
- "Organics"
- "Happy Baby"
- "Superfood"
- "Gluten Free"
- We are a team of real parents, pediatricians & nutritionists on a mission to bring health and happiness to our little ones and the planet.
- We create nutritious meals and snacks that make eating enlightened, effortless, and delicious. From our happy family to yours!
- Come meet our dedicated team and learn more about our carefully crafted products at happyfamilyorganics.com.
- Our enlightened nutrition philosophy.
- 25 mg choline per serving to support brain & eye health.
- Antioxidant vitamins c & e 10% per serving.
- Vitamin b12 20% dv per serving.
- Made without cane syrup.

3. Defendant's online and print marketing further tout the Products' suitability for developing children:

- Superfood Puffs: Parents, meet your pantry's unsung hero Happy Baby Puffs are a melt-in-your-mouth Organic Snack fortified with Choline for eye & brain health;
- Irresistible in taste & texture, they're perfect for teaching babies tactility & self-

feeding!

- Organic Snacks For Baby: Happy Baby goes beyond baby food with delicious, Superfood Puffs;
- Babies may be ready for our delicious snacks when they can crawl on their hands and knees, without their tummy touching the ground;
- At Happy Baby Organics, we provide organic and delicious options for your baby's nutritional journey;
- We develop premium organic recipes perfectly matched with your child's age and stage This is enlightened nutrition for every family;
- Mindfully Made: We develop premium organic recipes perfectly matched with your child's age and stage;
- Explore our snacks & meals for growing babies, toddlers & kids, from baby food pouches to freeze-dried yogurt treats, organic Cereals & Toddler Snacks.

4. However, nowhere in the labeling, advertising, statements, warranties, and/or packaging does defendant disclose that the Products contains significant levels of arsenic, mercury, lead, cadmium, and perchlorate¹ – all known to pose health risks to humans and especially infants.

5. Parents trust manufacturers like defendant to sell baby food that is safe, nutritious, and free from harmful toxins, contaminants, and chemicals.

6. They certainly expect the food they feed their infants and toddlers to be free from heavy metals, substances known to have significant and dangerous health consequences.

7. However, consumers lack the scientific knowledge necessary to determine whether

¹ Healthy Babies Bright Future, What's In My Baby's Food?, [What's In My Baby's Food?](#), (January 10, 2021).

the defendant's products do in fact contain heavy metals or to know or ascertain the true nature of the ingredients and quality of the products.

8. Reasonable consumers therefore must and do rely on defendant to honestly report what its products contain.

9. 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.

10. The Subcommittee's investigation 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."

11. The report revealed that "[i]nternal company standards permit dangerously high levels of toxic heavy metals, and... that the manufacturers have often sold foods that exceeded these levels."

12. The Food and Drug Administration ("FDA") and the World Health Organization ("WHO") declared arsenic, lead, cadmium, and mercury "dangerous to human health, particularly to babies and children, who are most vulnerable to their neurotoxic effects."²

13. These four heavy metals "can harm a baby's developing brain and nervous system" and cause negative impacts such as the "permanent loss of intellectual capacity and behavioral problems like attention-deficit hyperactivity disorder (ADHD)."³

14. Even in trace amounts found in food, these heavy metals can alter the developing

² See *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, Staff Report ("House Report"), Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform, at 2, February 4, 2021, available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf>.

³ Healthy Babies Bright Futures Report, at 6.

brain and erode a child's IQ and increase risk of future criminal and antisocial behavior in children.⁴

15. Research continues to confirm that exposures to food containing arsenic, lead, mercury, and cadmium causes “trouble risks for babies, including cancer and lifelong deficits in intelligence.”⁵

A. Arsenic

16. When children are exposed to arsenic early in life, it causes “cognitive deficits among school-age children exposed early in life, and neurological problems in adults who were exposed to arsenic-poisoned milk as infants.”⁶

17. Arsenic exposure also creates a risk of “respiratory, gastrointestinal, hematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system.”⁷

18. The FDA has set the maximum allowable arsenic levels in bottled water at 10 ppb of inorganic arsenic and is also considering limiting the action level of arsenic in rice cereal for infants to 100 ppb.⁸

19. The FDA has set 100 ppb inorganic arsenic as the limit in infant rice cereal, though Defendant's internal standard is 15% higher than the FDA limit, at 115 ppb.

20. Defendant's products contain as much as 180 parts per billion (ppb) inorganic arsenic

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ House Report, at 10 (quoting Miguel Rodríguez-Barranco et al., *Association of Arsenic, Cadmium and Manganese Exposure with Neurodevelopment and Behavioural Disorders in Children: A Systematic Review and Meta-Analysis* (June 1, 2013) (online at <https://pubmed.ncbi.nlm.nih.gov/23570911/>)).

⁸ FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level (Apr.2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM493152.pdf>.

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