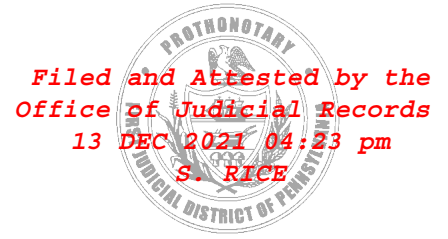


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*Attorneys for Plaintiffs*

**MICHELLE GARDNER**, Individually and as  
Parent and Natural Guardian of **S.J.**, a minor  
5802 Florence Avenue  
Philadelphia, PA 19143

*Plaintiffs,*

v.

**GERBER PRODUCTS COMPANY**  
1812 North Moore Street  
Rosslyn Virginia 22209.

And

**NESTLE USA, INC.**  
1812 North Moore Street  
Rosslyn, VA 22209.

And

**BEECH-NUT NUTRITION COMPANY**  
1 Nutritious Place  
Amsterdam, NY 12010

And

**BROWN'S SUPER STORES, INC.**  
1575 N. 52<sup>nd</sup> Street  
Philadelphia, PA 19131

And

**SHOPRITE OF ISLAND AVENUE**  
2946 Island Avenue  
Philadelphia, PA 19153

And

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

**DECEMBER TERM, 2021**

**NO.**

**JURY TRIAL DEMANDED**

**CIVIL ACTION –  
PERSONAL INJURY**

**NOTICE TO PLEAD AND  
COMPLAINT**

**BROWN'S IA, LLC**  
2946 Island Avenue  
Philadelphia, PA 19153

And

**ACME MARKETS INC.**  
527 E. Baltimore Pike  
Media, PA 19063

And

**TARGET CORPORATION**  
1 Mifflin Street  
Philadelphia, PA 19148

*Defendants.*

**CIVIL ACTION COMPLAINT - NOTICE TO PLEAD**

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below to find out where you can get legal help.

Lawyer Referral Service  
Philadelphia Bar Association  
1101 Market Street, 11<sup>th</sup> Floor  
Philadelphia, PA 19107  
(215) 238-6338

ADVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted. Lleve esta demanda a un abogado inmediatamente, si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio, vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

**CIVIL ACTION – COMPLAINT**  
**PARTIES**

1. Plaintiff, Michelle Gardner (“Parent-Plaintiff”), is an adult citizen and resident of the Commonwealth of Pennsylvania, residing therein at 5802 Florence Avenue Philadelphia, Pennsylvania 19143.

2. At all times relevant hereto, Parent-Plaintiff, was and is the parent and legal guardian of Minor-Plaintiff, S.J.

3. Minor-Plaintiff, S.J., is a citizen and resident of the Commonwealth of Pennsylvania, residing therein at 5802 Florence Avenue Philadelphia, Pennsylvania 19143.

5. Defendant, Gerber Products Company (“Gerber”), is a corporation organized, existing, and incorporated under the laws of the Commonwealth of Virginia with its principal place of business located at 1812 North Moore Street, Rosslyn, Virginia 22209.

6. At all times relevant hereto, Gerber, regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Gerber baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

7. Gerber sells baby foods under the brand name Gerber. Gerber organizes its products into broad categories of “formula,” “cereal,” “baby food,” “snacks,” “meals & sides,” “beverages,” “juices,” and “organic.” At all relevant times, Gerber has conducted business and derived substantial revenue from its manufacturing, advertising, distributing, selling, and marketing of baby foods, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, within the Commonwealth of Pennsylvania and Philadelphia County.

8. At all times relevant hereto, Gerber sold, distributed, marketed, advertised, and shipped Gerber's baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, into and throughout the Commonwealth of Pennsylvania. These Gerber baby food products that Minor-Plaintiff ate and consumed in the Commonwealth of Pennsylvania injured and harmed Minor-Plaintiff and Parent-Plaintiff in the Commonwealth of Pennsylvania.

9. At all times relevant hereto, Gerber contracted with, entered agreements with, sold, shipped, and distributed Gerber's baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation.

10. At all relevant times, Gerber created, manufactured, comprised the ingredients of, assembled, mixed, and made the baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed.

11. Defendant, Nestle USA, Inc., is a corporation organized, existing, and incorporated under the laws of the State of Delaware with its principal place of business located in the Commonwealth of Virginia at 1812 North Moore Street, Rosslyn, Virginia 22209.

12. At all times relevant hereto, Nestle USA, Inc., regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Gerber baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies

and businesses that are located within and/or provide goods or services within Philadelphia County.

13. Nestle USA, Inc., jointly with defendant Gerber, at all times sold baby foods under the brand name Gerber. Nestle USA, Inc., jointly with Gerber, organizes its products into broad categories of “formula,” “cereal,” “baby food,” “snacks,” “meals & sides,” “beverages,” and “organic.” At all relevant times, Nestle USA, Inc. has conducted business and derived substantial revenue from its manufacturing, advertising, distributing, selling, and marketing of baby foods, including those Gerber baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, within the Commonwealth of Pennsylvania and Philadelphia County.

14. At all times relevant hereto, Nestle USA, Inc. sold, distributed, marketed, advertised, and shipped Gerber’s baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, into and throughout the Commonwealth of Pennsylvania. These Gerber baby food products that Minor-Plaintiff ate and consumed in the Commonwealth of Pennsylvania injured and harmed Minor-Plaintiff and Parent-Plaintiff in the Commonwealth of Pennsylvania.

15. At all times relevant hereto, Nestle USA, Inc. contracted with, entered agreements with, sold, shipped, and distributed Gerber’s baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to defendants, Brown’s Super Stores, Inc., ShopRite of Island Avenue, Brown’s IA, LLC, Acme Markets, Inc., and Target Corporation.

16. At all relevant times, Nestle USA, Inc. created, manufactured, comprised the ingredients of, assembled, mixed, and made the baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed.

17. Defendant, Beech-Nut Nutrition Company (“Beech-Nut”) is a corporation organized, existed, and incorporated under the laws of the State of Delaware with its principal place of business located at 1 Nutritious Place, Amsterdam, New York 12010.

18. At all times relevant hereto, Beech-Nut, regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County

19. Beech-Nut sells baby foods under the brand name Beech-Nut. Beech-Nut produces baby foods aimed at infants and babies, and includes a variety of cereals, “jars,” and “pouches” for these age groups. At all relevant times, Beech-Nut has conducted business and derived substantial revenue from its manufacturing, advertising, distributing, selling, and marketing of baby foods, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, within the Commonwealth of Pennsylvania and Philadelphia County.

20. At all times relevant hereto, Beech-Nut sold, distributed, marketed, advertised, and shipped Beech-Nut’s baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, into and throughout the Commonwealth of Pennsylvania. These Beech-Nut baby food products that Minor-Plaintiff ate and consumed in the

Commonwealth of Pennsylvania injured and harmed Minor-Plaintiff and Parent-Plaintiff in the Commonwealth of Pennsylvania.

21. At all times relevant hereto, Beech-Nut contracted with, entered agreements with, sold, shipped, and distributed Beech-Nut's baby food products, including those baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation.

22. At all relevant times, Beech-Nut created, manufactured, comprised the ingredients of, assembled, mixed, and made the baby food products Parent-Plaintiff purchased and that Minor-Plaintiff ate and consumed.

23. Defendant, Brown's Super Stores, Inc., is a corporation organized existing, and incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business and a registered address located at 1575 North 52<sup>nd</sup> Street, Philadelphia, Pennsylvania 19131.

24. At all times relevant hereto, Brown's Super Stores, Inc., regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products and Gerber baby food products at grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

25. At all times relevant hereto, Brown's Super Stores, Inc. conducted business at and under the name of ShopRite at grocery stores that sold, marketed, advertised and distributed

Beech-Nut baby food products and Gerber baby food products in Philadelphia County, including ShopRite of Island Avenue.

26. Defendant, Brown's IA, LLC is a corporation organized existing, and incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business and a registered address located at 2946 Island Avenue, Philadelphia, Pennsylvania 19153.

27. At all times relevant hereto, Brown's IA, LLC, regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products and Gerber baby food products at grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

28. At all times relevant hereto, Brown's IA, LLC conducted business at and under the name of ShopRite at grocery stores that sold, marketed, advertised and distributed Beech-Nut baby food products and Gerber baby food products in Philadelphia County, including ShopRite of Island Avenue.

29. Defendant, ShopRite of Island Avenue, is a corporation organized existing, and incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business and a registered address located at 2946 Island Avenue, Philadelphia, Pennsylvania 19153.

30. At all times relevant hereto, ShopRite of Island Avenue, regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products and Gerber baby food products at grocery stores, and other food outlets, as well as by entering into contracts and agreements for



pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

31. Defendant, Acme Markets Inc. is a corporation organized existing, and incorporated under the laws of the State of Delaware, with its principal place of business located at 75 Valley Stream Parkway, Malvern, Pennsylvania 19355, and registered addresses located at 527 East Baltimore Pike, Media, PA 19063, 1001 South Street, Philadelphia, PA 19147, and 1901 Johnston Street, Philadelphia, PA 19145.

32. At all times relevant hereto, Acme Markets, Inc., regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products and Gerber baby food products at grocery stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

33. At all times relevant hereto, Acme Markets, Inc., conducted business at and under grocery stores that sold, marketed, advertised and distributed Beech-Nut baby food products and Gerber baby food products in Philadelphia County.

34. Defendant, Target Corporation is a corporation organized existing, and incorporated under the laws of the State of Minnesota, with its principal place of business located at 1000 Nicollet Mall, TPS-3155, Minneapolis, MN 55403, and registered addresses located at 1 Mifflin Street, Philadelphia, Pennsylvania 19148.

35. At all times relevant hereto, Target Corporation, regularly conducted business in Philadelphia County by, *inter alia*, generating substantial revenue, profit and sales from selling, shipping, and distributing Beech-Nut baby food products and Gerber baby food products at grocery

stores, and other food outlets, as well as by entering into contracts and agreements for pecuniary gain with companies and businesses that are located within and/or provide goods or services within Philadelphia County.

36. At all times relevant hereto, Target Corporation conducted business at and under grocery stores that sold, marketed, advertised and distributed Beech-Nut baby food products and Gerber baby food products in Philadelphia County.

### **VENUE AND JURISDICTION**

37. At all times relevant hereto, defendants, Gerber Products Company, Nestle USA, Inc., Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, were jointly engaged in the business of manufacturing, making, distributing, creating, dispensing, selling, shipping, advertising, transporting, and marketing Gerber baby food products which contained dangerous and harmful amounts of toxic heavy metals and substances, including dangerous and harmful amounts of arsenic, lead, cadmium and mercury.

38. At all times relevant hereto, defendants, Beech-Nut, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, were jointly engaged in the business of manufacturing, making, distributing, creating, dispensing, selling, shipping, advertising, transporting, and marketing Beech-Nut baby food products which contained dangerous and harmful amounts of toxic heavy metals and substances, including dangerous and harmful amounts of arsenic, lead, cadmium and mercury

39. At all times relevant hereto, Gerber had, and continues to have, regular and systematic contacts with and conducts business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed itself of the laws of the Commonwealth and can reasonably expect to both sue and be sued in Pennsylvania. Additionally, Gerber's presence in the

Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, Gerber has consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business in the Commonwealth of Pennsylvania.

40. At all times relevant hereto, Gerber has transacted business in the Commonwealth of Pennsylvania including by: (1) selling and distributing products and merchandise, including Gerber baby food products, in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including Gerber and Beech-Nut baby food products, directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or (4) owning, using and/or possessing real property situated in the Commonwealth of Pennsylvania.

41. At all times relevant hereto, Gerber has contracted to supply services or things, including Gerber baby food products, in the Commonwealth of Pennsylvania.

42. At all times relevant hereto, Beech-Nut had, and continues to have, regular and systematic contacts with and conducts business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed itself of the laws of the Commonwealth and can reasonably expect to both sue and be sued in Pennsylvania. Additionally, Beech-Nut's presence in the Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, Beech-Nut has consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business in the Commonwealth of Pennsylvania.

43. At all times relevant hereto, Beech-Nut has transacted business in the Commonwealth of Pennsylvania including by: (1) selling and distributing products and

merchandise, including Beech-Nut baby food products, in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including Beech-Nut baby food products, directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or (4) owning, using and/or possessing real property situated in the Commonwealth of Pennsylvania.

44. At all times relevant hereto, Beech-Nut has contracted to supply services or things, including Beech-Nut baby food products, in the Commonwealth of Pennsylvania

45. At all times relevant hereto, Nestle USA, Inc. had, and continues to have, regular and systematic contact with and conducts business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed itself of the laws of the Commonwealth of Pennsylvania and can reasonably expect to both sue and be sued in Pennsylvania. Additionally, Nestle USA, Inc.'s presence in the Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, Nestle USA, Inc. has consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business from the Commonwealth of Pennsylvania.

46. At all times relevant hereto, Nestle has transacted business in the Commonwealth of Pennsylvania including by: (1) selling and distributing products and merchandise, including Gerber baby food products, in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including, placing Gerber baby food products directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or (4) owning, using, and/or possessing real property situated in the Commonwealth of Pennsylvania.

47. At all times relevant hereto, Nestle USA, Inc. has contracted to supply services or things, including Gerber's baby food products, in the Commonwealth of Pennsylvania.

48. At all times relevant hereto, defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, each had, and continues to have, regular and systematic contact with and conducts business in and from the Commonwealth of Pennsylvania, such that each such defendant has purposefully availed itself of the laws of the Commonwealth of Pennsylvania and can reasonably expect to both sue and be sued in Pennsylvania. Additionally, each of these defendant's presence in the Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, each of these defendants has consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business from the Commonwealth of Pennsylvania.

49. At all times relevant hereto, each defendant, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, has transacted business in the Commonwealth of Pennsylvania including by: (1) selling and distributing products and merchandise, including Gerber baby food products and Beech-Nut baby food products, in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including, placing Gerber baby food products and Beech-Nut baby food products directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or (4) owning, using, and/or possessing real property situated in the Commonwealth of Pennsylvania.

50. As described throughout the entirety of this complaint, each defendant caused tortious injury by acts and omissions in the Commonwealth of Pennsylvania.

51. Venue is proper in Philadelphia County for each of the following reasons: (1) each defendant regularly conducts business in Philadelphia County; (2) multiple defendants, as alleged *supra*, have a registered office in Philadelphia County; (3) multiple defendants, as alleged *supra*, has a principal place of business in Philadelphia County; (4) the cause of action arose in Philadelphia County; and (5) Philadelphia County is a county where a transaction or occurrence took place out of which the cause of action arose.

52. The amount in controversy exceeds the local rules for amounts in controversy requiring arbitration.

### **OPERATIVE FACTS**

53. The preceding paragraphs are incorporated by reference as if fully set forth herein.

54. Defendants, Gerber and Nestle USA, Inc., collectively, jointly, and in conjunction with Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, manufacture, sell, ship, and distribute some of the most recognizable brands of baby food products in the United States: Gerber baby food products.

55. Defendant, Beech-Nut, collectively, jointly, and in conjunction with Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, manufacture, sell, ship, and distribute Beech-Nut baby food products.

56. Defendants, Beech-Nut, Gerber and Nestle USA, Inc., have cultivated an image with the public of producing high quality, nutritious, and safe products for infants and toddlers.

57. The nutritional intake of infants and children is of utmost importance to their health, safety, and wellbeing.

58. At all times relevant hereto, Parent-Plaintiff purchased Gerber baby food products and Beech-Nut baby food products from stores owned and operated by defendants, Brown's Super

Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, which her child, Minor-Plaintiff, S.J., regularly and consistently ate and ingested in Philadelphia County. These Beech-Nut baby food products and Gerber baby food products that Minor-Plaintiff, S.J., regularly and consistently ate and ingested contained dangerous and harmful levels of toxic heavy metals and substances, including arsenic, cadmium, lead, and mercury.

59. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., represented to and reassured parents of the safety of their Gerber baby food products through the use of statements made in their marketing and advertising including but not limited to:

- “We Know Babies Better than Anyone”;
- “baby food purees with wholesome ingredients”;
- “Nestlé and Gerber have helped achieve many nutrition breakthroughs. In 2007,

Nestlé introduced the first infant formula in the United States with probiotics—beneficial B. Lactis cultures similar to the type found in breastmilk—designed to help support baby’s healthy immune system and digestive health. We also reformulated our meals & snacks for toddlers by reducing trans fats, reducing the sodium content, and using healthier fat sources.”

60. Defendants, Gerber and Nestle USA, Inc., have also represented at all times relevant hereto that their Gerber baby food products do not contain harmful ingredients through the use of various statements including but not limited to:

- “At Gerber, we believe little ones deserve the very best. That’s why we have stringent quality and food safety standards for all our foods. Not to brag, but many of our food safety and quality standards even exceed government requirements”;
- “#1 Pediatrician Recommended Brand for Infant Cereals”;

- The label on Gerber and Nestle USA, Inc.'s rice cereal states "Iron to help support learning ability;"

- "Nestlé and Gerber have helped achieve many nutrition breakthroughs. In 2007, Nestlé introduced the first infant formula in the United States with probiotics—beneficial B. Lactis cultures similar to the type found in breastmilk—designed to help support baby's healthy immune system and digestive health. We also reformulated our meals & snacks for toddlers by reducing trans fats, reducing the sodium content, and using healthier fat sources."

- One of Nestle USA, Inc. and Gerber's researchers, Ashley Lewis, is quoted on Gerber's website as representing as follows: "Research is a key part of our heritage and an essential element for our future. We know there's still lots to discover about the role of food in our lives, and we continue to search for answers that deliver Nestlé's promise of Good Food, Good Life."

61. At all times relevant hereto, defendant, Beech-Nut, represented to and reassured parents of the safety of their Beech-Nut baby food products through the use of statements made in their marketing and advertising.

62. Defendant, Beech-Nut, has also represented at all times relevant hereto that their Gerber baby food products do not contain harmful ingredients through the use of various statements.

63. The reality is quite different as multiple studies over recent years have found high levels of toxic heavy metals in Beech-Nut's baby food products and Gerber's baby food products.

64. Lead, arsenic, cadmium, and mercury are toxic heavy metals.

65. All known health organizations have declared arsenic, lead, cadmium, and mercury to be dangerous to human health and, specifically, dangerous to babies and children.



66. Due to their young age and developmental stage, infants, babies, and children are more susceptible and vulnerable to harm and injury from exposure to toxic heavy metals such as lead, mercury, cadmium, and arsenic. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

67. Even low levels of exposure to lead can cause serious and irreversible brain damage to infants, babies, and children. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

68. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc.'s Gerber baby food products have been tainted with significant and dangerous levels of toxic heavy metals, including lead, cadmium, arsenic, and mercury. At all times relevant hereto, defendants, Gerber and Nestle knew and subjectively appreciated this fact.

69. At all times relevant hereto, defendant, Beech-Nut's baby food products have been tainted with significant and dangerous levels of toxic heavy metals, including lead, cadmium, arsenic, and mercury. At all times relevant hereto, defendant, Beech-Nut knew and subjectively appreciated this fact.

70. Exposure of infants, children, and babies to lead, arsenic, mercury, and cadmium causes permanent decreases in intelligence quotient ("IQ"), diminished future economic productivity, and increases the risk of future antisocial behavior in children.

71. Exposure of infants, children, and babies to lead, arsenic, mercury, and cadmium causes infants, children, and babies to suffer permanent brain damage, developmental deficits delays, cognitive deficits and delays, neurological damage, speech deficits and delays, hearing deficits, and various learning disabilities.

72. Because infants, babies and children are small and have other developing organ systems, they are highly vulnerable to chemical toxicity from lead, mercury, cadmium, and arsenic. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

73. There is no safe level of lead for an infant, child, or baby to be exposed to. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

74. There is no safe level of mercury for an infant, child, or baby to be exposed to. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

75. There is no safe level of arsenic for an infant, child, or baby to be exposed to. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

76. There is no safe level of cadmium for an infant, child, or baby to be exposed to. At all times relevant hereto, defendants, Beech-Nut Gerber and Nestle knew and subjectively appreciated this fact.

77. The toxic heavy metals in defendants, Gerber and Nestle's Gerber baby food products—lead, mercury, arsenic and cadmium—have no established health benefit. At all times relevant hereto, defendants, Gerber and Nestle knew and subjectively appreciated this fact.

78. The toxic heavy metals in defendant, Beech-Nut's baby food products—lead, mercury, arsenic and cadmium—have no established health benefit. At all times relevant hereto, defendant, Beech-Nut knew and subjectively appreciated this fact

79. Exposure to the toxic heavy metals in defendants, Gerber and Nestle's Gerber baby food products—lead, mercury, arsenic and cadmium—leads to illness, impairment, and in high doses, death. At all times relevant hereto, defendants, Gerber and Nestle knew and subjectively appreciated this fact.

80. Exposure to the toxic heavy metals in defendants' Beech-Nut's baby food products—lead, mercury, arsenic and cadmium—leads to illness, impairment, and in high doses, death. At all times relevant hereto, defendant, Beech-Nut, subjectively appreciated this fact

81. Out of all groups of people, infants and children are at the greatest risk of harm from toxic heavy metal exposure. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

82. According to the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry, arsenic is the foremost substance in the environment that poses the most significant potential threat to human health. Arsenic causes respiratory, gastrointestinal, hematologic, renal, skin, hepatic, neurological harm, immunological harm, and damaging effects on the central nervous system and cognitive development in children. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts.

83. Arsenic exposure in children has a significant negative effect on their neurodevelopment. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

84. According to the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry, lead is the number two ranked substance in the environment that poses the most significant potential threat to human health. Lead causes a number of problems to babies and children exposed to lead, including but not limited to, behavioral problems, decreased

cognition, delayed puberty, reduced postnatal growth, and brain damage. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts.

85. Neurological damage and injuries to children exposed to lead include learning disabilities, lower IQ, and behavioral disorders. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

86. According to the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry, cadmium is the number seven ranked substance in the environment that poses the most significant potential threat to human health. Cadmium causes a number of problems to babies and children exposes to it, including but not limited to, decreased IQ and development of ADHD. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts.

87. According to the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry, mercury is the number three ranked substance in the environment that poses the most significant potential threat to human health. Mercury exposure causes a number of problems to babies and children exposes to it, including but not limited to decreased IQ, cognitive issues, and neurodevelopment delays and deficits. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts.

88. At all times relevant hereto, defendants Gerber and Nestle USA, Inc., routinely used ingredients that make up their Gerber baby food products that contained dangerous and excessive levels of inorganic arsenic, at least as high as 98 parts per billion inorganic arsenic. At all times relevant hereto, defendants, Gerber and Nestle knew and subjectively appreciated these facts.

89. At all times relevant hereto, defendant, Beech-Nut, routinely used ingredients that make up their Gerber baby food products that contained dangerous and excessive levels of

inorganic arsenic, at least as high as 913.4 parts per billion inorganic arsenic. At all times relevant hereto, defendant, Beech-Nut, knew and subjectively appreciated these facts.

90. At all times relevant hereto, the American Academy for Pediatrics has called for a level of no more than 1 part per billion of lead in the foods and drinks that babies and children consume. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts.

91. Internal testing that defendants, Gerber and Nestle USA, Inc., performed on their Gerber baby foods products revealed that these Gerber baby food products contain significant and dangerous amounts of lead.

92. Specifically, results of Gerber and Nestle USA, Inc.'s internal testing revealed that Gerber and Nestle USA, Inc. have willingly used ingredients in their Gerber baby food products that contain dangerous lead levels, at least as high as forty-eight (48) parts per billion lead.

93. Internal testing that defendant, Beech-Nut, performed on their Beech-Nut baby food products revealed that these Beech-Nut baby food products contain significant and dangerous amounts of lead.

94. Specifically, results of Beech-Nut's internal testing revealed that Beech-Nut willingly used ingredients in their Beech-Nut baby food products that contained as much as 886.9 parts per billion lead.

95. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., consciously decided to not test all its Gerber baby foods ingredients for cadmium. Defendants, Gerber and Nestle USA, Inc., consciously decided to not test all their baby food ingredients for cadmium despite knowing and subjectively appreciating that cadmium is a toxic heavy metal that is extremely dangerous to babies and children when consumed.

96. At all times relevant hereto, defendant, Beech-Nut, consciously decided to use twenty (20) ingredients registering over 100 parts per billion cadmium, including cinnamon containing 344.5 parts per billion cadmium. At least 105 ingredients that Beech-Nut tested and used in their Beech-Nut baby food products registered at or over 20 parts per billion cadmium.

97. At all times relevant hereto, defendant, Beech-Nut, consciously decided to use and accept ingredients with dangerous levels of cadmium, a toxic heavy metal, including but not limited to, organic garlic with 186 parts per billion cadmium, oregano with 176 parts per billion cadmium, dehydrated potato with 148.4 parts per billion cadmium, spinach puree with 142.3 parts per billion cadmium, and spinach with 117 parts per billion cadmium.

98. At all times relevant hereto, when Gerber and Nestle USA, Inc. did employ testing on their Gerber baby food products, these defendants only tested the ingredients—not the final product that is sold to stores and put on the shelves. This policy employed by defendants, Gerber and Nestle USA, Inc., prevented Gerber and Nestle USA, Inc. at all times from knowing the full extent of the danger posed by their Gerber baby food products. Defendants, Gerber and Nestle USA, Inc., employed this policy knowing that they were purposefully and consciously deciding to not know of and learn the full dangers posed to babies and children by their Gerber baby food products.

99. At all times relevant hereto, when Beech-Nut did employ testing on their Beech-Nut baby food products, these defendants only tested the ingredients—not the final product that is sold to stores and put on the shelves. This policy employed by defendants, Beech-Nut, prevented Beech-Nut at all times from knowing the full extent of the danger posed by their Beech-Nut baby food products. Defendant, Beech-Nut, employed this policy knowing that they were purposefully

and consciously deciding to not know of and learn the full dangers posed to babies and children by their Beech-Nut baby food products

100. At all times relevant hereto, rice and rice flour are heavily tainted with dangerous and harmful levels of inorganic arsenic. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated these facts. Despite knowing that rice and rice flours are ingredients that are tainted with dangerous and harmful levels of inorganic arsenic, defendants, Gerber and Nestle USA, Inc., at all times relevant hereto, consciously and knowingly decided to purchase and utilize massive amounts of rice and rice flour as a main staple ingredient in their Gerber baby food products.

101. At all times relevant hereto, certain ingredients, like cinnamon, amylase, BAN 800, and vitamin premix defendant, consistently contained high levels of toxic heavy metals. Defendant, Beech-Nut, knew and subjectively appreciated these facts. Despite knowing that certain ingredients, like cinnamon, amylase, BAN 800, and vitamin premix, consistently contain high levels of toxic heavy metals, defendant, Beech-Nut, at all times relevant hereto, consciously and knowingly decided to purchase and utilize in Beech-Nut baby food products massive amounts of cinnamon, amylase, BAN 800, vitamin premix, and other ingredients that consistently contain high levels of toxic heavy metals.

102. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle subjectively appreciated the fact that safety can only be discerned by testing finished products. Despite subjectively appreciating these facts, defendants, Beech-Nut, Gerber, and Nestle, at all times relevant hereto, consciously and knowingly decided to not test their final respective baby food products.

103. On February 4, 2021, the U.S. House of Representatives' Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform published a Staff Report titled "Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury."

104. According to this Staff Report, internal documents were obtained from Gerber regarding their baby food products and testing procedures.

105. According to this Staff Report, commercial baby foods, including Gerber's baby foods, "are tainted with significant levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury."

106. According to this Staff Report, arsenic is present in the baby foods made by Gerber.

107. According to this Staff Report, "Gerber used high-arsenic ingredients, using 67 batches of rice flour that had tested over 90 ppb inorganic arsenic."

108. According to this Staff Report, lead is present in the baby foods made by Gerber.

109. According to this Staff Report, "Gerber used ingredients that tested as high as 48 ppb lead; and used many ingredients containing over 20 ppb lead."

110. According to this Staff Report, cadmium is present in the baby foods made by Gerber.

111. According to this Staff Report, "[s]eventy-five percent of Gerber's carrots contained cadmium in excess of 5 ppb, with some containing up to 87 ppb cadmium."

112. According to this Staff Report, "Gerber rarely tests for mercury in its baby foods."

113. According to this Staff Report, "[b]aby food manufacturers hold a special position of public trust."



114. According to this Staff Report, “[c]onsumers believe that [baby food manufacturers] would not sell products that are unsafe.”

115. According to this Staff Report, internal testing from Gerber revealed that Gerber has “sold products or used ingredients with significant amounts of lead.”

116. According to this Staff Report, Gerber “sold baby foods even when they or their ingredients contained unsafe levels of lead.”

117. According to this Staff Report, Gerber’s testing results have “demonstrated a willingness to use ingredients that contained dangerous lead levels.”

118. According to this Staff Report, of those ingredients Gerber does test for cadmium, Gerber “accepts ingredients with high levels of cadmium.”

119. According to this Staff Report, Gerber only tests certain ingredients—carrots, sweet potatoes, and lemon juice concentrate—for mercury.

120. According to this Staff Report, Gerber’s policy of only testing ingredients—and not the final product—for toxic heavy metals including lead, cadmium, arsenic, and mercury, “recklessly endangers babies and children and prevents [Gerber] from even knowing the full extent of the danger presented by their products.”

121. According to this Staff Report, Beech-Nut used ingredients containing as much as 913.4 parts per billion arsenic.

122. According to this Staff Report, Beech-Nut routinely used additives that tested over 300 parts per billion arsenic to achieve “crumb softness.”

123. According to this Staff Report, Beech-Nut used organic rice flour with 570 parts per billion arsenic.

124. According to this Staff Report, Beech-Nut does not test for arsenic in its finished products.

125. According to this Staff Report, Beech-Nut used at least 14 ingredients containing over 300 parts per billion arsenic.

126. According to this Staff Report, Beech-Nut used at least 45 ingredients containing over 100 parts per billion arsenic.

127. According to this Staff Report, the 6 Beech-Nut ingredients with the highest arsenic levels – Amylase, BAN 800, Alpha Amylase, and Sebamyl 100 – are all enzymes that Beech-Nut adds to its products.

128. BAN 800 is an enzyme that reportedly “[i]ncreases crumb softness” in baked goods.

129. Amylase is an enzyme additive used in bread-making to improve the conversion of complex sugars into simple sugars so that yeast can feed on it and produce alcohol and CO<sub>2</sub>.

130. According to this Staff Report, Beech-Nut used cinnamon that contained 886.9 parts per billion lead.

131. According to this Staff Report, Beech-Nut tested and used 57 ingredients that contained over 20 parts per billion lead.

132. According to this Staff Report, Beech-Nut accepted 89 ingredients that tested at or above 15 parts per billion lead.

133. According to this Staff Report, Beech-Nut tested and used 483 ingredients that tested at or above 5 parts per billion lead.

134. According to this Staff Report, Beech-Nut used 20 ingredients that tested over 100 parts per billion cadmium, including cinnamon that contained 344.5 parts per billion cadmium.

135. According to this Staff Report, Beech-Nut tested and used at least 105 ingredients that were at or above 20 parts per billion cadmium.

136. According to this Staff Report, Beech-Nut used Ingredients that contained as much as 886.9 parts per billion lead, 483 contained over 5 parts per billion lead, 89 contained over 15 parts per billion lead, and 57 contained over 20 parts per billion lead.

137. According to this Staff Report, Beech-Nut does not test its ingredients nor finished products for mercury.

138. According to this Staff Report, Beech-Nut's internal standard for additives, like vitamin mix, is set at 3,000 parts per billion cadmium and arsenic. For ingredients like BAN 800, Beech-Nut set its internal standard at 5,000 parts per billion lead.

139. According to this Staff Report, Beech-Nut's internal standard for additives, like vitamin mix, is set at 3,000 parts per billion for cadmium and arsenic. For ingredients like BAN 800, Beech-Nut set its internal standard at 5,000 parts per billion lead.

140. According to this Staff Report, Beech-nut set an internal limit of 3,000 parts per billion inorganic arsenic for certain ingredients, including vitamin mix.

141. According to this Staff Report, Beech-Nut used ingredients containing 710.9, 465.2, and 401.4 parts per billion arsenic respectively.

142. According to this Staff Report, Beech-Nut set internal guidelines of 3,000 parts per billion cadmium and 5,000 parts per billion for lead for certain ingredients.

143. According to this Staff Report, Beech-Nut sold 11 products that surpassed its own internal cadmium limits which are higher than any regulatory standard in existence. For example, Beech-Nut's internal limit is 90 parts per billion for dehydrated potatoes but accepted dehydrated potatoes containing 119.6, 143.5, and 148.4 parts per billion cadmium respectively.

144. On September 29, 2021, the Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform published a second Staff Report titled “New Disclosures Show Dangerous Levels of Toxic Heavy Metals in Even More Baby Foods” (hereinafter “2<sup>nd</sup> Staff Report”).

145. According to the 2<sup>nd</sup> Staff Report, prior testing conducted by the State of Alaska on randomly selected samples of Nestle USA, Inc. and Gerber’s baby food products on store shelves revealed that Nestle USA, Inc. and Gerber’s baby food products contained dangerous levels of toxic inorganic arsenic. Specifically, this testing revealed that Gerber baby food products infant rice cereals contained more than 100 parts per billion inorganic arsenic. Despite knowing of these test results, defendants Gerber and Nestle USA, Inc. have refused to take any action to minimize this safety risk, including by failing to recall these products.

146. Per these testing results, Nestle USA, Inc. and Gerber’s rice cereal tested up to 116 parts per billion inorganic arsenic, and their average rice cereal product contained 87.43 parts per billion inorganic arsenic. Despite knowing of these test results, defendants Gerber and Nestle USA, Inc. have taken no action to protect consumers, including by failing to recall these products.

147. Per these testing results, Gerber’s “organic” rice cereal baby food product contains dangerous levels of inorganic arsenic.

148. Despite including dangerous levels of inorganic arsenic in its “organic” rice cereal products, Gerber and Nestle USA, Inc. charge consumers 36.4% more for their “organic” rice cereal than for the standard non-organic rice cereal product.

149. Per these testing results, Gerber’s probiotic banana apple cereal contained 62.9 parts per billion inorganic arsenic.

150. Beech-Nut has stated that it accepted ingredients over its own internal limits “rarely” and the ingredients were “generally restricted to a 20% variance of BNN’s allowable limits.” However, in fact, Beech-Nut accepted certain ingredients that contained over 20% more cadmium than their internal limits. A 20% variance permits Beech-Nut to accept dehydrated potatoes containing up to 108 parts per billion cadmium. Perhaps it goes without saying, but 119.6, 143.5, and 148.4 are all greater than 108.

151. According to the 2<sup>nd</sup> Staff Report, Beech-Nut rice cereal tested up to 125 parts per billion inorganic arsenic and averaged 85.47 parts per billion inorganic arsenic.

152. According to the 2<sup>nd</sup> Staff Report, the State of Alaska tested 26 Beech-Nut rice cereal products and beyond eight samples.

153. According the 2<sup>nd</sup> Staff Report, Beech-Nut’s practice of testing ingredients and not finished products contributed to its failure to detect dangerous levels of inorganic arsenic in its recalled products.

154. Despite numerous test results showing dangerous levels of toxic heavy metals, Beech-Nut ignored the Staff Report and continued to sell and profit from its tainted baby food products and only decided to “discontinue its rice cereal product after Alaska’s test results forced the company to recall two products.” Chillingly, the 2<sup>nd</sup> Staff Report highlights that “[i]n those four months, Beech-Nut was knowingly harming babies.”

155. Per the 2<sup>nd</sup> Report, Beech-Nuts departure from selling infant rice cereal will “make babies safer because those products were harmful to infant neurological development.”

156. Defendants, Gerber and Nestle, continue to sell infant rice cereal tainted with toxic heavy metals.

157. Defendants' Beech-Nut baby food products and Gerber baby food products contain dangerous levels of arsenic, lead, mercury, and cadmium, in part, because of the ingredients used by defendants to manufacture the baby food products, dangerously inflated internal limits which defendants willingly did not adhere to, and corporate policies which failed to test finished products before distribution.

158. Astonishingly, despite the significant health risks posed by the toxic heavy metals in their Beech-Nut baby food products and Gerber baby food products, defendants knowingly sell these products to unsuspecting parents, in spite of internal company standards and test results, and without any warning label whatsoever.

159. In 2011, Swedish scientists from the renowned Karolinska Institute noted that high levels of arsenic in infant rice-based foods are of concern.

160. In October 2019, scientists at the University of Miami and the Clean Label Project conducted a study that examined lead and cadmium concentrations in a large convenience sample of US baby foods. The study detected lead in 37% of samples, and cadmium in 57%. Those findings were consistent with findings from other researchers examining baby food products in other parts of the world. For example, in December 2019, Brazilian researchers observed that inorganic contaminants, including those commonly known as heavy metals (cadmium, arsenic, lead and mercury) may be present in baby foods such as infant formulas, cereals, snacks, prepared meals, and jarred fruits and vegetables.

161. According to the World Health Organization ("WHO"), Toxic Heavy Metals, particularly arsenic, cadmium, lead, and mercury, present a "major public health concern for children."

162. The Occupational Safety and Health Administration (“OSHA”) warns that these metals “may build up in biological systems and become a significant health hazard.”

163. The safety threat that toxic heavy metals, such as lead, cadmium, mercury, and arsenic, pose to children is well established.

164. It is well established that heavy metals, such as lead, mercury, cadmium, and arsenic affect children more severely than adults. These effects include mental retardation, neurocognitive disorders, behavioral disorders, respiratory problems, cancer and cardiovascular diseases.

165. Children, and, especially, babies have higher exposure to metals compared to adults because they consume more food in relation to their body weight and absorb metals more readily than adults by 40 to 90%. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle knew and subjectively appreciated this fact.

166. The mechanisms needed to metabolize and eliminate heavy metals are comparatively undeveloped in childhood, with babies having weaker detoxifying mechanisms and poorer immune systems than adults. The conduct of defendants, Beech-Nut, Gerber and Nestle USA, Inc., as alleged herein, was done recklessly with a conscious disregard for the health and safety of millions of babies and children, including Minor-Plaintiff, who routinely and regularly ingested dangerous amounts of toxic heavy metals in Beech-Nut’s baby food products and Gerber’s baby food products.

167. The conduct of defendants, Beech-Nut, Gerber and Nestle USA, Inc., is particularly reprehensible and egregious given that their toxic baby foods were directed at babies, a population group more vulnerable and susceptible than adults to the neurotoxic dangers of heavy metals like

arsenic, cadmium, lead and mercury, which defendants, Beech-Nut, Gerber and Nestle USA, Inc. knew and subjectively appreciated.

168. Defendants, Beech-Nut, Gerber and Nestle USA, Inc., were fully aware of the safety risks of their Beech-Nut baby foods and Gerber baby foods—specifically the dangerous potential of their Beech-Nut baby foods and Gerber baby foods to cause severe, permanent, and irreversible brain damage, neurological harm, and brain injuries in babies and children due to the presence of toxic heavy metals lead, mercury, cadmium, and arsenic. Despite this knowledge, defendants, Beech-Nut, Gerber and Nestle USA, Inc., continued to sell these dangerous products while deliberately crafting their labeling, marketing, and promotion to mislead consumers into believing the Beech-Nut baby foods and Gerber baby foods were safe and free from any toxins.

169. Defendants, Beech-Nut, Gerber and Nestle USA, Inc., routinely sold baby foods, including to Plaintiff and Minor-Plaintiff, that contained unconscionable amounts of toxic heavy metals lead mercury, arsenic, and cadmium, and failed to disclose to consumers, including Plaintiff and Minor-Plaintiff, that their products contained toxic heavy metals lead, arsenic mercury, and cadmium.

170. At all times relevant hereto, defendants, Beech-Nut, Gerber and Nestle USA, Inc., knew they could procure substantial profit by convincing consumers, including Plaintiff, that their Beech-Nut baby foods and Gerber baby foods were safe and free from any toxins.

171. At all relevant times, defendants, Beech-Nut, Gerber and Nestle USA, Inc., knew that full and complete disclosure of the fact that their Beech-Nut baby foods and Gerber baby foods contain dangerous amounts of toxic heavy metals, including lead, mercury, arsenic, and cadmium, would limit the amount of money defendants, Beech-Nut, Gerber and Nestle USA, Inc., would make selling these Beech-Nut baby foods and Gerber baby food products because, obviously, such



a disclosure would result in a decrease in sales of Beech-Nut baby foods and Gerber baby foods. Defendants, Beech-Nut, Gerber and Nestle USA, Inc.'s goal of concealing the existence of toxic heavy metals lead, mercury, cadmium, and arsenic in Beech-Nut baby foods and Gerber baby foods was accomplished not only through a misleading label, but also through a comprehensive scheme of selective misleading research and testing, deliberate failures to test, false advertising, and deceptive omissions as alleged throughout the entirety of this complaints. As such, parents, including Parent-Plaintiff, were denied the right to make an informed decision about whether to purchase and use defendants' Beech-Nut baby foods and Gerber baby foods for their children, including Minor-Plaintiff, while knowing the full risks attendant to that use. Such conduct was done with conscious disregard to the safety and wellbeing of millions of children and babies, including Minor-Plaintiff.

172. For numerous months during Minor-Plaintiff's infancy and childhood, during a time period when the defendants were producing, selling, and distributing Beech-Nut baby foods and Gerber baby foods that contained high and dangerous levels of toxic heavy metals, including lead, arsenic, cadmium, and mercury, Minor-Plaintiff regularly and routinely ate these dangerous and defective Beech-Nut baby food products and Gerber baby food products, which exposed Minor-Plaintiff to the excessive and dangerous levels of these toxic heavy metals within the defendants' products.

173. At all times relevant hereto, the defendants failed to implement sufficient controls to limit and/or eliminate the use of ingredients tainted with inorganic arsenic, lead, cadmium, and mercury and consequently, millions of children, and the general public, including Plaintiff, Minor-Plaintiff were exposed to known toxic metals, that greatly increases the likelihood of developing,

cognitive problems such as but not limited to developmental disorders, speech delays and cognitive deficits.

174. As a direct factual and proximate cause and result of plaintiff Minor-Plaintiff's repeated exposure to lead, mercury, cadmium, and arsenic through consumption of excessive amounts of inorganic arsenic, lead, cadmium, and mercury found within defendants' defective and unreasonably dangerous Beech-Nut baby food products over numerous months Minor-Plaintiff was exposed to a risk of developing cognitive deficits, developmental disorders, behavioral disorders, neurological damage, brain damage, and speech delays that was higher than the average Pennsylvanian's or American's risk.

175. As a direct factual and proximate cause and result of plaintiff Minor-Plaintiff's repeated exposure to lead, mercury, cadmium, and arsenic through consumption of excessive amounts of inorganic arsenic, lead, cadmium, and mercury found within defendants' defective and unreasonably dangerous Gerber baby food products over numerous months Minor-Plaintiff was exposed to a risk of developing cognitive deficits, developmental disorders, behavioral disorders, neurological damage, brain damage, and speech delays that was higher than the average Pennsylvanian's or American's risk.

176. The negligence, carelessness, strict liability, fraud, fraudulent concealment, negligent misrepresentation, breach of warranties, and recklessness in the acts and omissions of the defendants, as outlined and averred throughout the entirety of this complaint, was a factual cause of and/or placed Minor-Plaintiff at an increased risk of harm for and/or was a substantial factor in causing and did in fact directly and proximately cause the severe, permanent and grievous personal injuries and damages to Minor-Plaintiff previously described herein which include:

- a. Neurologic damage to the brain;

- b. Neurotoxicity;
- c. Developmental delays;
- d. Developmental deficits;
- e. Cognitive delays;
- f. Cognitive deficits;
- g. Injury to the central nervous system;
- h. Speech deficits and delays;
- i. Behavioral disorders;
- j. Neurodevelopmental disorders;
- k. Brain damage;
- l. Impairment of motor skills;
- m. Increased risk of development of cancer;
- n. Past and future physical pain and suffering;
- o. Past and future mental and psychological pain and suffering;
- p. Past and future medical expenses;
- q. Past and future mental anguish;
- r. Future loss of earning capacity;
- s. Future loss of income and wages;
- t. Past and future loss of life's pleasures;
- u. Past and future embarrassment; and
- v. Past and future humiliation.

177. Minor-Plaintiff, S.J., regularly and routinely ate and consumed the Beech-Nut baby foods and Gerber baby foods described throughout this complaint that contained dangerous levels

of the toxic heavy metals lead, mercury, cadmium, and arsenic. These Beech-Nut baby foods and Gerber baby foods that Minor-Plaintiff, S.J., regularly and routinely ate were manufactured, designed, advertised, and distributed by defendants, Beech-Nut, Gerber and Nestle USA, Inc., respectively, and sold to Plaintiff by defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation. Minor-Plaintiff consumed the defective and unreasonably dangerous Beech-Nut and Gerber baby foods for numerous months as an infant, baby and child.

178. The Beech-Nut baby food products and Gerber baby food products that were consumed by Minor-Plaintiff were all contaminated with substantial quantities of toxic heavy metals, namely arsenic, mercury, lead, and cadmium.

179. Had any defendant warned or notified Parent-Plaintiff that defendants' Gerber baby foods contained lead, Parent-Plaintiff would never have purchased the Gerber baby foods and never would have fed these Gerber baby foods to Minor-Plaintiff.

180. Had any defendant warned or notified Parent-Plaintiff that defendants' Gerber baby foods contained mercury, Parent-Plaintiff would never have purchased the Gerber baby foods and never would have fed these Gerber baby foods to Minor-Plaintiff.

181. Had any defendant warned or notified Parent-Plaintiff that defendants' Gerber baby foods contained cadmium, Parent-Plaintiff would never have purchased the Gerber baby foods and never would have fed these Gerber baby foods to Minor-Plaintiff.

182. Had any defendant warned or notified Parent-Plaintiff that defendants' Gerber baby foods contained arsenic, Parent-Plaintiff would never have purchased the Gerber baby foods and never would have fed these Gerber baby foods to Minor-Plaintiff.

183. Had any defendant warned or notified Parent-Plaintiff that defendants' Gerber baby foods contained any toxic heavy metal, Parent-Plaintiff would never have purchased the Gerber baby foods and never would have fed these Gerber baby foods to Minor-Plaintiff.

184. Had any defendant warned or notified Parent-Plaintiff that defendants' Beech-Nut baby foods contained lead, Parent-Plaintiff would never have purchased the Beech-Nut baby foods and never would have fed these Beech-Nut baby foods to Minor-Plaintiff.

185. Had any defendant warned or notified Parent-Plaintiff that defendants' Beech-Nut baby foods contained mercury, Parent-Plaintiff would never have purchased the Beech-Nut baby foods and never would have fed these Beech-Nut baby foods to Minor-Plaintiff.

186. Had any defendant warned or notified Parent-Plaintiff that defendants' Beech-Nut baby foods contained cadmium, Parent-Plaintiff would never have purchased the Beech-Nut baby foods and never would have fed these Beech-Nut baby foods to Minor-Plaintiff.

187. Had any defendant warned or notified Parent-Plaintiff that defendants' Beech-Nut baby foods contained arsenic, Parent-Plaintiff would never have purchased the Beech-Nut baby foods and never would have fed these Beech-Nut baby foods to Minor-Plaintiff.

188. Had any defendant warned or notified Parent-Plaintiff that defendants' Beech-Nut baby foods contained any toxic heavy metal, Parent-Plaintiff would never have purchased the Beech-Nut baby foods and never would have fed these Beech-Nut baby foods to Minor-Plaintiff.

**COUNT I – STRICT LIABILITY**

**(Plaintiffs v. Gerber Products Company, Nestle USA, Inc., Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

189. The preceding paragraphs are incorporated by reference as if fully set forth herein.

190. The above defendants are in the business of selling Gerber baby food products.

191. The above defendants had a nondelegable duty to place into the stream of commerce only those products that were free of defects and dangers and, further, to refrain from placing into the stream of commerce products that were in a defective condition, were unreasonably dangerous, that fail to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, and/or for which, on balance, the risks of their design outweigh the benefits of the same.

192. Defendants, Gerber and Nestle USA, Inc., expected their Gerber baby food products would reach consumers and other persons coming into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those products were designed and produced and that it would be used without inspection for defects of any danger to Plaintiff or Minor-Plaintiff.

193. Defendants, Gerber and Nestle USA, Inc., did in fact sell their Gerber baby food products to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, knowing that those Gerber baby food products would reach consumers, users, and other persons coming into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those Gerber baby food products were designed and manufactured.

194. Defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, in turn, sold those Gerber baby food products to consumers, users and other persons who came into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those Gerber baby food products were designed and manufactured.

195. At all relevant times, those Gerber baby food products were in a defective condition, were unreasonably dangerous, failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, and/or on balance, the risks of their design outweighed the benefits of the same, once those products reached consumers, users, and other persons who came into contact with them, including Parent-Plaintiff and Minor-Plaintiff.

196. The above defendants' failure to provide warnings, made Gerber Baby Food unreasonably safe for its intended use.

197. At all times relevant hereto, Parent-Plaintiff used and Minor-Plaintiff used and consumed defendants' Gerber baby food products in an intended or reasonably foreseeable manner without knowledge of the Gerber baby foods products' dangerous characteristics.

198. Neither Parent-Plaintiff nor Minor-Plaintiff could have reasonably discovered the defects and risks associated with the above defendants' Gerber baby food products, including their presence of lead, mercury, cadmium, or arsenic, before or at the time of exposure to the above defendants' Gerber baby food products.

199. The harm caused by Gerber baby food products far outweighed their benefits, rendering the Gerber baby food products dangerous to an extent beyond that which an ordinary consumer would contemplate. The Gerber baby food products were and are more dangerous than alternatively available baby food products and defendants could have avoided selling the Gerber baby food products in such a dangerous form as they were. Indeed, at the time defendants placed these Gerber baby food products into the stream of commerce, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

200. Placing the Gerber baby food products into the stream of commerce amounts to willful, wanton, and/or reckless conduct by defendants.

201. Despite their knowledge of the dangers associated with the use of Gerber baby food products, defendants designed, manufactured, marketed, promoted, distributed, and sold the Gerber baby food products without adequate information and data by which potential consumers could be reasonably warned.

202. As a direct and proximate result of the defective design and manufacture of defendants' Gerber baby food products, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

203. Therefore, as a result of the unreasonably dangerous and defective condition of the Gerber baby food products that Minor-Plaintiff used and consumed and that Parent-Plaintiff purchased, defendants are strictly liable to Plaintiffs.

204. The defects in the Gerber baby food products were substantial and contributing factors in causing Minor-Plaintiff's injuries and Parent-Plaintiff's damages and, but for defendants' misconduct and omissions, Minor-Plaintiff would not have sustained these injuries and Parent-Plaintiff would not have sustained the damages as alleged throughout the entirety of the complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.



**COUNT II – STRICT LIABILITY**

**(Plaintiffs v. Defendants, Beech-Nut Nutrition Company, Brown’s Super Stores, Inc., ShopRite of Island Avenue, Brown’s IA, LLC, Acme Markets, Inc., and Target Corporation)**

205. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

206. The above defendants are in the business of selling Beech-Nut baby food products.

207. The above defendants had a nondelegable duty to place into the stream of commerce only those products that were free of defects and dangers and, further, to refrain from placing into the stream of commerce products that were in a defective condition, were unreasonably dangerous, that fail to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, and/or for which, on balance, the risks of their design outweigh the benefits of the same.

208. Defendant, Beech-Nut, expected their Beech-Nut baby food products would reach consumers and other persons coming into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those products were designed and produced and that it would be used without inspection for defects of any danger to Plaintiff or Minor-Plaintiff.

209. Defendant, Beech-Nut, did in fact sell their Beech-Nut baby food products to defendants, Brown’s Super Stores, Inc., ShopRite of Island Avenue, Brown’s IA, LLC, Acme Markets, Inc., and Target Corporation, knowing that those Beech-Nut baby food products would reach consumers, users, and other persons coming into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those Beech-Nut baby food products were designed and manufactured.

210. Defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, in turn, sold those Beech-Nut baby food products to consumers, users and other persons who came into contact with them, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition from when those Gerber baby food products were designed and manufactured.

211. At all relevant times, those Beech-Nut baby food products were in a defective condition, were unreasonably dangerous, failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, and/or on balance, the risks of their design outweighed the benefits of the same, once those products reached consumers, users, and other persons who came into contact with them, including Parent-Plaintiff and Minor-Plaintiff.

212. The above defendants' failure to provide warnings made Beech-Nut baby food unreasonably safe for its intended use.

213. At all times relevant hereto, Parent-Plaintiff used and Minor-Plaintiff used and consumed defendants' Beech-Nut baby food products in an intended or reasonably foreseeable manner without knowledge of the Beech-Nut baby foods products' dangerous characteristics.

214. Neither Parent-Plaintiff nor Minor-Plaintiff could have reasonably discovered the defects and risks associated with the above defendants' Beech-Nut baby food products, including their presence of lead, mercury, cadmium, or arsenic, before or at the time of exposure to the above defendants' Beech-Nut baby food products.

215. The harm caused by Beech-Nut baby food products far outweighed their benefits, rendering the Beech-Nut baby food products dangerous to an extent beyond that which an ordinary consumer would contemplate. The Beech-Nut baby food products were and are more dangerous

than alternatively available baby food products and defendants could have avoided selling the Beech-Nut baby food products in such a dangerous form as they were. Indeed, at the time defendants placed these Beech-Nut baby food products into the stream of commerce, the state of the industry's scientific knowledge was such that a less risky design or formulation was attainable.

216. Placing the Beech-Nut baby food products into the stream of commerce amounts to willful, wanton, and/or reckless conduct by defendants.

217. Despite their knowledge of the dangers associated with the use of Beech-Nut baby food products, defendants designed, manufactured, marketed, promoted, distributed, and sold the Beech-Nut baby food products without adequate information and data by which potential consumers could be reasonably warned.

218. As a direct and proximate result of the defective design and manufacture of defendants' Beech-Nut baby food products, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

219. Therefore, as a result of the unreasonably dangerous and defective condition of the Beech-Nut baby food products that Minor-Plaintiff used and consumed and that Parent-Plaintiff purchased, defendants are strictly liable to Plaintiffs.

220. The defects in the Beech-Nut baby food products were substantial and contributing factors in causing Minor-Plaintiff's injuries and Parent-Plaintiff's damages and, but for defendants' misconduct and omissions, Minor-Plaintiff would not have sustained these injuries and Parent-Plaintiff would not have sustained the damages as alleged throughout the entirety of the complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally,

including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT III – STRICT LIABILITY**  
**FOR DEFECTIVE MANUFACTURE AND DESIGN**  
**(Plaintiffs v. Defendants, Gerber Products Company and Nestle USA, Inc.)**

221. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

222. Plaintiffs bring this strict liability claim against defendants, Gerber and Nestle USA, Inc., for defective manufacture and design.

223. All times relevant hereto, defendants, Gerber and Nestle USA, Inc., engaged in the business of testing developing, designing, manufacturing, marketing, selling, distributing and promoting Gerber baby food products, which are defective and unreasonably dangerous to consumers, users and other persons consuming them, including Minor-Plaintiff, thereby placing Gerber baby food products into the stream of commerce. These actions were under the ultimate control and supervision of Gerber and Nestle USA, Inc.

224. At all relevant times hereto, Defendants, Gerber and Nestle USA, Inc., designed, researched, developed, formulated, manufactured, produced, tested, assembled, labeled, advertised, marketed, sold and distributed the defective and unreasonably dangerous Gerber baby foods products consumed by Minor-Plaintiff, and/or to which Minor-Plaintiff was exposed, as described above.

225. At all relevant times hereto, defendants, Gerber and Nestle USA, Inc.'s Gerber baby food products were manufactured, designed, and labeled in an unsafe, defective and inherently and unreasonably dangerous manner that was dangerous for use by, consumption or exposure to the public, and in particular, to Minor-Plaintiff.

226. At all times relevant to this litigation, defendants, Gerber and Nestle USA, Inc.'s Gerber baby food products reached the intended consumers, handlers, and users or other persons coming into contact with these products in Pennsylvania and throughout the United States, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by defendants, Gerber and Nestle USA, Inc..

227. Defendants Gerber and Nestle USA, Inc.'s Gerber baby food products, as researched, tested, developed, designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold, and marketed by defendants were defectively manufactured and designed by defendants, Gerber and Nestle USA, Inc., in that when they left the hands of the defendants' manufacturers, sellers, and/or suppliers, including but not limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, the Gerber baby food products were unreasonably dangerous because they were not as safe as an ordinary consumer would expect when eaten, consumed or used in an intended or reasonably foreseeable manner.

228. Defendants Gerber and Nestle USA, Inc.'s Gerber baby foods products, as researched, tested, developed, designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold, and marketed by defendants, were defective in manufacture, design, and formulation in that when they left the hands of defendants Gerber and Nestle USA, Inc. and their manufacturers, sellers and/or suppliers, including but not limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, the foreseeable risks associated with these Gerber baby foods products' reasonably foreseeable uses, exceeded the alleged benefits associated with their design and formulation.

229. At all times relevant hereto, defendants Gerber and Nestle USA, Inc.'s Gerber baby food products created significant risks to the health and safety of consumers and others who were exposed to the products that far outweigh the risks posed by other products on the market used for the same or similar purpose.

230. Therefore, at all times relevant hereto, defendants Gerber and Nestle USA, Inc.'s Gerber baby food products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold and marketed by defendants, were defective in design and formulation, in one or more of the following ways:

- a) When placed in the stream of commerce, the Gerber baby food products were defective in design and formulation, and, consequently, dangerous to an extent beyond that which an ordinary consumer would expect;
- b) When placed in the stream of commerce, the Gerber baby food products were unreasonably dangerous in that they were hazardous and posed a grave risk of brain damage, brain injury, neurological damage, cognitive deficits, developmental delays, neurodevelopmental disorders, and other serious illnesses when used in a reasonably anticipated manner;
- c) When placed in the stream of commerce, the Gerber baby food products contained unreasonably dangerous design defects in that they contained toxic heavy metals lead, mercury, cadmium, and arsenic, and were not reasonably safe when used in a reasonably anticipated or intended manner;
- d) Defendants Gerber and Nestle USA, Inc. did not sufficiently test, investigate, or study its Gerber baby food products;
- e) Defendants Gerber and Nestle USA, Inc. failed to test, investigate, or study its formulated Gerber baby food products;
- f) Consumption of Gerber baby food products, which contain toxic heavy metals such as lead, mercury, cadmium, and arsenic, presents a risk of harmful side effects that outweighs any potential utility stemming from the use of these toxic Gerber baby food products;
- g) Defendants, Gerber and Nestle USA, Inc., knew or should have known at the time of marketing its Gerber baby food products that consumption of Gerber baby food products containing toxic heavy metals lead, arsenic, mercury, and cadmium could cause speech delays, developmental delays,

neurodevelopmental disorders, brain damage, injury to the central nervous system, and cognitive deficits;

- h) Defendants, Gerber and Nestle USA, Inc., did not conduct adequate post-marketing surveillance of its Gerber baby food products; and
- i) Defendants, Gerber and Nestle USA, Inc., could have employed safer alternative designs and formulations to their Gerber baby food products.

231. At all times relevant hereto, Minor-Plaintiff used, consumed and/or was exposed to defendants' Gerber baby food products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

232. Minor-Plaintiff could not have reasonably discovered the defects and risks associated with Gerber baby food products including the fact that these products contain the toxic heavy metals arsenic, lead, cadmium and mercury before or at the time of exposure.

233. The harm caused by defendants' Gerber baby food products far outweighed their benefit, rendering defendants' Gerber baby food products dangerous to an extent beyond that which an ordinary consumer would contemplate.

234. Defendants, Gerber and Nestle USA, Inc.'s defective design of Gerber baby food products amounts to willful, wanton, and/or reckless conduct by defendants Gerber and Nestle USA, Inc..

235. As a direct and proximate result of the defective design and manufacture of defendants' Gerber baby food products, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

236. Therefore, as a result of the unreasonably dangerous and defective condition of the Gerber baby food products that Minor-Plaintiff used and consumed and that Parent-Plaintiff purchased, defendants are strictly liable to Plaintiffs.

237. The defects in the Gerber baby food products were substantial and contributing factors in causing Minor-Plaintiff's injuries and Parent-Plaintiff's damages and, but for defendants' misconduct and omissions, Minor-Plaintiff would not have sustained these injuries and Parent-Plaintiff would not have sustained the damages as alleged throughout the entirety of the complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT IV – STRICT LIABILITY**  
**FOR DEFECTIVE MANUFACTURE AND DESIGN**  
**(Plaintiffs v. Defendant, Beech-Nut Nutrition Company)**

238. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

239. Plaintiffs bring this strict liability claim against defendant, Beech-Nut, for defective manufacture and design.

240. All times relevant hereto, defendant, Beech-Nut, engaged in the business of testing developing, designing, manufacturing, marketing, selling, distributing and promoting Beech-Nut baby food products, which are defective and unreasonably dangerous to consumers, users and other persons consuming them, including Minor-Plaintiff, thereby placing Beech-Nut baby food products into the stream of commerce. These actions were under the ultimate control and supervision of Beech-Nut.

241. At all relevant times hereto, Defendant, Beech-Nut, designed, researched, developed, formulated, manufactured, produced, tested, assembled, labeled, advertised, marketed,



sold and distributed the defective and unreasonably dangerous Beech-Nut baby foods products consumed by Minor-Plaintiff, and/or to which Minor-Plaintiff was exposed, as described above.

242. At all relevant times hereto, defendant, Beech-Nut's baby food products were manufactured, designed, and labeled in an unsafe, defective and inherently and unreasonably dangerous manner that was dangerous for use by, consumption or exposure to the public, and in particular, to Minor-Plaintiff.

243. At all times relevant to this litigation, defendants, Beech-Nut's baby food products reached the intended consumers, handlers, and users or other persons coming into contact with these products in Pennsylvania and throughout the United States, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by defendant, Beech-Nut.

244. Defendant, Beech-Nut's baby food products, as researched, tested, developed, designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold, and marketed by defendants were defectively manufactured and designed by defendant, Beech-Nut in that when they left the hands of the defendants' manufacturers, sellers, and/or suppliers, including but not limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, the Beech-Nut baby food products were unreasonably dangerous because they were not as safe as an ordinary consumer would expect when eaten, consumed or used in an intended or reasonably foreseeable manner.

245. Defendant, Beech-Nut's baby foods products, as researched, tested, developed, designed, licensed, formulated, manufactured, packaged, labeled, distributed, sold, and marketed by defendants, were defective in manufacture, design, and formulation in that when they left the hands of defendant Beech-Nut and their manufacturers, sellers and/or suppliers, including but not

limited to defendants, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation, the foreseeable risks associated with these Beech-Nut baby foods products' reasonably foreseeable uses, exceeded the alleged benefits associated with their design and formulation.

246. At all times relevant hereto, defendant Beech-Nut's baby food products created significant risks to the health and safety of consumers and others who were exposed to the products that far outweigh the risks posed by other products on the market used for the same or similar purpose.

247. Therefore, at all times relevant hereto, defendants Beech-Nut's baby food products, as researched, tested, developed, designed, licensed, manufactured, packaged, labeled, distributed, sold and marketed by defendants, were defective in design and formulation, in one or more of the following ways:

- a) When placed in the stream of commerce, the Beech-Nut baby food products were defective in design and formulation, and, consequently, dangerous to an extent beyond that which an ordinary consumer would expect;
- b) When placed in the stream of commerce, the Beech-Nut baby food products were unreasonably dangerous in that they were hazardous and posed a grave risk of brain damage, brain injury, neurological damage, cognitive deficits, developmental delays, neurodevelopmental disorders, and other serious illnesses when used in a reasonably anticipated manner;
- c) When placed in the stream of commerce, the Beech-Nut baby food products contained unreasonably dangerous design defects in that they contained toxic heavy metals lead, mercury, cadmium, and arsenic, and were not reasonably safe when used in a reasonably anticipated or intended manner;
- d) Defendant, Beech-Nut, did not sufficiently test, investigate, or study its Beech-Nut baby food products;
- e) Defendants, Beech-Nut, failed to test, investigate, or study its formulated Beech-Nut baby food products;

- f) Consumption of Beech-Nut baby food products, which contain toxic heavy metals such as lead, mercury, cadmium, and arsenic, presents a risk of harmful side effects that outweighs any potential utility stemming from the use of these toxic Beech-Nut baby food products;
- g) Defendant, Beech-Nut, knew or should have known at the time of marketing its Beech-Nut baby food products that consumption of Beech-Nut baby food products containing toxic heavy metals lead, arsenic, mercury, and cadmium could cause speech delays, developmental delays, neurodevelopmental disorders, brain damage, injury to the central nervous system, and cognitive deficits;
- h) Defendant, Beech-Nut, did not conduct adequate post-marketing surveillance of its Beech-Nut baby food products; and
- i) Defendant, Beech-Nut, could have employed safer alternative designs and formulations to their Beech-Nut baby food products.

248. At all times relevant hereto, Minor-Plaintiff used, consumed and/or was exposed to defendants' Beech-Nut baby food products in an intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

249. Minor-Plaintiff could not have reasonably discovered the defects and risks associated with Beech-Nut baby food products including the fact that these products contain the toxic heavy metals arsenic, lead, cadmium and mercury before or at the time of exposure.

250. The harm caused by defendants' Beech-Nut baby food products far outweighed their benefit, rendering defendants' Beech-Nut baby food products dangerous to an extent beyond that which an ordinary consumer would contemplate.

251. Defendant, Beech-Nut's defective design of Beech-Nut baby food products amounts to willful, wanton, and/or reckless conduct by defendant, Beech-Nut.

252. As a direct and proximate result of the defective design and manufacture of defendants' Beech-Nut baby food products, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

253. Therefore, as a result of the unreasonably dangerous and defective condition of the Beech-Nut baby food products that Minor-Plaintiff used and consumed and that Parent-Plaintiff purchased, defendants are strictly liable to Plaintiffs.

254. The defects in the Beech-Nut baby food products were substantial and contributing factors in causing Minor-Plaintiff's injuries and Parent-Plaintiff's damages and, but for defendants' misconduct and omissions, Minor-Plaintiff would not have sustained these injuries and Parent-Plaintiff would not have sustained the damages as alleged throughout the entirety of the complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT V: STRICT LIABILITY FOR FAILURE TO WARN**  
**(Plaintiffs v. Gerber Products Company, Nestle USA, Inc., Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

255. Plaintiffs incorporate by reference each and every other paragraph of this Complaint as if each were set forth fully and completely herein.

256. Plaintiffs bring this strict liability claim against defendants for failure to warn.

257. At all relevant times, defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Gerber baby food products, which are defective and unreasonably dangerous to consumers, including Minor-Plaintiff because they do not contain adequate warnings or instructions concerning the dangerous characteristics of the products' toxic heavy metals, including arsenic, lead, cadmium and mercury. These actions were under the ultimate control and supervision of all defendants.

258. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and/or otherwise released into the stream of commerce their Gerber baby food products, and in the course of same, directly advertised or marketed the products to consumers and end users, including Parent-Plaintiff and Minor-Plaintiff and persons responsible for consumers like Minor-Plaintiff, and defendants therefore had a duty to warn of the risks associated with the reasonably foreseeable uses of Gerber baby food products, namely that these products contain dangerous toxic heavy metals, including arsenic, lead, cadmium and mercury and the dangers and health risks associated with these products and these toxic heavy metals.

259. At all times relevant to this litigation, defendants had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply, provide proper warnings, and take such steps as necessary to ensure that their Gerber baby food products did not cause users and consumers to suffer from unreasonable and dangerous risks, including by exposure to dangerous toxic heavy metals lead, mercury, cadmium, and arsenic. Defendants had a continuing duty to warn consumers, like Parent-Plaintiff and Minor-Plaintiff, of the dangers associated with Gerber food products, and had a continuing duty to instruct on the proper, safe use of these products. Defendants, as manufacturers, sellers, and/or distributors of baby food, are held to the knowledge of experts in the field.

260. At the time of manufacture and sale, defendants could and should have provided warnings or instructions regarding the full and complete risks and health dangers, and the severity and frequency of the risks and health dangers, of Gerber baby food products, including the presence in these products of toxic and dangerous heavy metals, arsenic, lead, cadmium and mercury, because defendants knew or should have known of the unreasonable risks of harm and

danger associated with the use of and/or exposure to these Gerber baby food products, including permanent brain damage, neurodevelopmental disorders, cognitive deficits, neurological deficits, and brain injury.

261. At all times relevant to this litigation, defendants failed to adequately investigate, study, test, or promote the safety of their Gerber baby food products. Defendants also failed to minimize the dangers to users and consumers of their Gerber baby food products and to those who would foreseeably use or be harmed by Defendants' products, including Minor-Plaintiff.

262. Despite the fact that defendants knew or should have known that Gerber baby food products posed a grave risk of harm and danger to infants, babies, and children, defendants failed to warn of the dangerous risks associated with their consumption and exposure. The dangerous propensities of defendants' Gerber baby food products, as described throughout the entirety of this complaint, were known to defendants or scientifically knowable to defendants through appropriate research and testing by known methods, at the time they distributed, supplied, and/or sold the Gerber baby food products, and not known to end users and consumers, including Parent-Plaintiff and Minor-Plaintiff.

263. Defendants knew or should have known that their Gerber baby food products created significant risks of serious bodily harm to consumers, as alleged throughout the entirety of this complaint, and defendants failed to adequately warn consumers, including Parent-Plaintiff and Minor-Plaintiff, and reasonably foreseeable users of the risks of exposure to these products. Defendants have wrongfully concealed information concerning the dangerous nature of Gerber baby food products including the presence in these products of dangerous and harmful toxic heavy metals lead, mercury, cadmium, and arsenic, and have further made false and/or misleading statements concerning the safety and nutritional value of Gerber baby food products.

264. At all times relevant to this litigation, defendants' Gerber baby food products reached the intended consumers, handlers, and users or other persons coming into contact with these products throughout Pennsylvania and the United States, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.

265. At all times relevant to this litigation, Minor-Plaintiff used and/or was exposed to the use of Defendants' Gerber baby food products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

266. Neither Parent-Plaintiff nor Minor-Plaintiff could have reasonably discovered the defects and risks associated with Gerber baby food products before or at the time of exposure. Parent-Plaintiff and Minor-Plaintiff relied upon the skill, superior knowledge, and judgment of Defendants.

267. Defendants knew or should have known that the warnings disseminated with their Gerber baby food products were inadequate, but they failed to communicate adequate information on the dangers and safe use/exposure of the products, and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses, including consumption by infants, toddlers and children.

268. The information that Defendants did provide or communicate, failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Parent-Plaintiff and Minor-Plaintiff to altogether avoid consumption of Gerber baby food products. Instead, Defendants disseminated information about Gerber baby food products that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the

comparative severity, duration, and extent of the risk of injuries associated with consumption of and/or exposure to Gerber baby food products, continued to aggressively promote the nutritional value and safety of their Gerber baby food products, even after they knew or should have known of the unreasonable risks and safety hazards from consumption, use or exposure of Gerber baby food products; and/or concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Gerber baby food products, including the presence in these products of dangerous toxic heavy metals lead, mercury, cadmium, and arsenic.

269. To this day, defendants have failed to adequately and accurately warn of the true risks and injuries associated with the use and consumption of Gerber baby food products.

270. To this day, Defendants have failed to adequately test, investigate, or study their formulated Gerber baby food products.

271. As a direct factual and proximate result of the defendants' inadequate and defective warnings, defendants' Gerber baby food products were defective and unreasonably dangerous when they left the possession and/or control of defendants, were distributed and sold by defendants, and eaten and used by consumers including Parent-Plaintiff and Minor-Plaintiff.

272. Defendants are strictly liable to Plaintiffs for injuries and damages caused by defendants' failure to warn, as described, to provide adequate warnings or other clinically relevant information and data regarding the appropriate use of their Gerber baby food products and the risks associated with the consumption of or exposure to Gerber baby food products including all those risks, and their severity and frequency, associated with consumption of the toxic and dangerous heavy metals lead, mercury, cadmium, and arsenic.



273. The defects in defendants' Gerber baby food products were substantial and contributing factors in causing Plaintiffs' damages and Minor-Plaintiff's injuries and, but for Defendants' misconduct and omissions and failure to warn, Plaintiffs would not have sustained these damages and Minor-Plaintiff would not have sustained the injuries alleged.

274. Had defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with its Gerber baby food products, Minor-Plaintiff could have avoided the risk of developing injuries as alleged herein and Minor-Plaintiff and Parent-Plaintiff could have obtained alternative food sources that were not unreasonably dangerous and defective.

275. As a direct and proximate result of Defendants failing to warn Parent-Plaintiff and Minor-Plaintiff, as described throughout this complaint, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT VI: STRICT LIABILITY FOR FAILURE TO WARN**  
**(Plaintiffs v. Beech-Nut Nutrition Company, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

276. Plaintiffs incorporate by reference each and every other paragraph of this Complaint as if each were set forth fully and completely herein.

277. Plaintiffs bring this strict liability claim against defendants for failure to warn.

278. At all relevant times, defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Beech-Nut baby food

products, which are defective and unreasonably dangerous to consumers, including Minor-Plaintiff because they do not contain adequate warnings or instructions concerning the dangerous characteristics of the products' toxic heavy metals, including arsenic, lead, cadmium and mercury. These actions were under the ultimate control and supervision of all defendants.

279. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and/or otherwise released into the stream of commerce their Beech-Nut baby food products, and in the course of same, directly advertised or marketed the products to consumers and end users, including Parent-Plaintiff and Minor-Plaintiff and persons responsible for consumers like Minor-Plaintiff, and defendants therefore had a duty to warn of the risks associated with the reasonably foreseeable uses of Beech-Nut baby food products, namely that these products contain dangerous toxic heavy metals, including arsenic, lead, cadmium and mercury and the dangers and health risks associated with these products and these toxic heavy metals.

280. At all times relevant to this litigation, defendants had a duty to properly test, develop, design, manufacture, inspect, package, label, market, promote, sell, distribute, maintain supply, provide proper warnings, and take such steps as necessary to ensure that their Beech-Nut baby food products did not cause users and consumers to suffer from unreasonable and dangerous risks, including by exposure to dangerous toxic heavy metals lead, mercury, cadmium, and arsenic. Defendants had a continuing duty to warn consumers, like Parent-Plaintiff and Minor-Plaintiff, of the dangers associated with Beech-Nut food products, and had a continuing duty to instruct on the proper, safe use of these products. Defendants, as manufacturers, sellers, and/or distributors of baby food, are held to the knowledge of experts in the field.

281. At the time of manufacture and sale, defendants could and should have provided warnings or instructions regarding the full and complete risks and health dangers, and the severity and frequency of the risks and health dangers, of Beech-Nut baby food products, including the presence in these products of toxic and dangerous heavy metals, arsenic, lead, cadmium and mercury, because defendants knew or should have known of the unreasonable risks of harm and danger associated with the use of and/or exposure to these Beech-Nut baby food products, including permanent brain damage, neurodevelopmental disorders, cognitive deficits, neurological deficits, and brain injury.

282. At all times relevant to this litigation, defendants failed to adequately investigate, study, test, or promote the safety of their Beech-Nut baby food products. Defendants also failed to minimize the dangers to users and consumers of their Beech-Nut baby food products and to those who would foreseeably use or be harmed by Defendants' products, including Minor-Plaintiff.

283. Despite the fact that defendants knew or should have known that Beech-Nut baby food products posed a grave risk of harm and danger to infants, babies, and children, defendants failed to warn of the dangerous risks associated with their consumption and exposure. The dangerous propensities of defendants' Beech-Nut baby food products, as described throughout the entirety of this complaint, were known to defendants or scientifically knowable to defendants through appropriate research and testing by known methods, at the time they distributed, supplied, and/or sold the Beech-Nut baby food products, and not known to end users and consumers, including Parent-Plaintiff and Minor-Plaintiff.

284. Defendants knew or should have known that their Beech-Nut baby food products created significant risks of serious bodily harm to consumers, as alleged throughout the entirety of this complaint, and defendants failed to adequately warn consumers, including Parent-Plaintiff and

Minor-Plaintiff, and reasonably foreseeable users of the risks of exposure to these products. Defendants have wrongfully concealed information concerning the dangerous nature of Beech-Nut baby food products including the presence in these products of dangerous and harmful toxic heavy metals lead, mercury, cadmium, and arsenic, and have further made false and/or misleading statements concerning the safety and nutritional value of Beech-Nut baby food products.

285. At all times relevant to this litigation, defendants' Beech-Nut baby food products reached the intended consumers, handlers, and users or other persons coming into contact with these products throughout Pennsylvania and the United States, including Parent-Plaintiff and Minor-Plaintiff, without substantial change in their condition as designed, manufactured, sold, distributed, labeled, and marketed by Defendants.

286. At all times relevant to this litigation, Minor-Plaintiff used and/or was exposed to the use of Defendants' Beech-Nut baby food products in their intended or reasonably foreseeable manner without knowledge of their dangerous characteristics.

287. Neither Parent-Plaintiff nor Minor-Plaintiff could have reasonably discovered the defects and risks associated with Beech-Nut baby food products before or at the time of exposure. Parent-Plaintiff and Minor-Plaintiff relied upon the skill, superior knowledge, and judgment of Defendants.

288. Defendants knew or should have known that the warnings disseminated with their Beech-Nut baby food products were inadequate, but they failed to communicate adequate information on the dangers and safe use/exposure of the products, and failed to communicate warnings and instructions that were appropriate and adequate to render the products safe for their ordinary, intended, and reasonably foreseeable uses, including consumption by infants, toddlers and children.

289. The information that Defendants did provide or communicate, failed to contain relevant warnings, hazards, and precautions that would have enabled consumers such as Parent-Plaintiff and Minor-Plaintiff to altogether avoid consumption of Beech-Nut baby food products. Instead, Defendants disseminated information about Beech-Nut baby food products that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries associated with consumption of and/or exposure to Beech-Nut baby food products, continued to aggressively promote the nutritional value and safety of their Beech-Nut baby food products, even after they knew or should have known of the unreasonable risks and safety hazards from consumption, use or exposure of Beech-Nut baby food products; and/or concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of exposure to Beech-Nut baby food products, including the presence in these products of dangerous toxic heavy metals lead, mercury, cadmium, and arsenic.

290. To this day, defendants have failed to adequately and accurately warn of the true risks and injuries associated with the use and consumption of Beech-Nut baby food products.

291. To this day, Defendants have failed to adequately test, investigate, or study their formulated Beech-Nut baby food products.

292. As a direct factual and proximate result of the defendants' inadequate and defective warnings, defendants' Beech-Nut baby food products were defective and unreasonably dangerous when they left the possession and/or control of defendants, were distributed and sold by defendants, and eaten and used by consumers including Parent-Plaintiff and Minor-Plaintiff.

293. Defendants are strictly liable to Plaintiffs for injuries and damages caused by defendants' failure to warn, as described, to provide adequate warnings or other clinically relevant

information and data regarding the appropriate use of their Beech-Nut baby food products and the risks associated with the consumption of or exposure to Beech-Nut baby food products including all those risks, and their severity and frequency, associated with consumption of the toxic and dangerous heavy metals lead, mercury, cadmium, and arsenic.

294. The defects in defendants' Beech-Nut baby food products were substantial and contributing factors in causing Plaintiffs' damages and Minor-Plaintiff's injuries and, but for Defendants' misconduct and omissions and failure to warn, Plaintiffs would not have sustained these damages and Minor-Plaintiff would not have sustained the injuries alleged.

295. Had defendants provided adequate warnings and instructions and properly disclosed and disseminated the risks associated with its Beech-Nut baby food products, Minor-Plaintiff could have avoided the risk of developing injuries as alleged herein and Minor-Plaintiff and Parent-Plaintiff could have obtained alternative food sources that were not unreasonably dangerous and defective.

296. As a direct and proximate result of Defendants failing to warn Parent-Plaintiff and Minor-Plaintiff, as described throughout this complaint, Minor-Plaintiff was catastrophically injured as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT VII: VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES  
ACT AND CONSUMER PROTECTION LAW, 73 P.S. §§201-1 et seq.**  
**(Plaintiffs v. Defendants Gerber Products Company and Nestle USA, Inc.)**

297. Plaintiffs incorporate by reference each and every other paragraph of this Complaint as if each were set forth fully and completely herein.

298. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., knew or should have known of the unreasonably dangerous and toxic nature of Gerber baby food products.

299. At all relevant times, defendants, Gerber and Nestle USA, Inc., through labeling, advertisements, public representations and marketing of Gerber baby food products, intentionally used deception, fraud, false pretenses, false promises, misrepresentations, misleading statements, and unfair trade practices in order to mislead consumers that Gerber Baby Food products are safe for human consumption.

300. At all relevant times, defendants, Gerber and Nestle USA, Inc., also engaged in the concealment, suppression and/or omission of material facts in connection with the sale and/or advertisement of Gerber baby food products in trade or commerce, including concealment of the fact that the Gerber baby food products contained dangerous toxic heavy metals lead, mercury, cadmium, and arsenic. Defendants, Gerber and Nestle USA, Inc., failed to disclose to the public that Gerber baby food products are unsafe and pose serious health hazards, particularly brain damage, brain injury, neurodevelopmental disorders, cognitive deficits and delays, and developmental deficits and delays, such as those which afflict Minor-Plaintiff. Defendants, Gerber and Nestle USA, Inc., were aware of the hazardous risks posed by Gerber baby food products and yet failed to inform the public of these risks through their advertisements, labeling, or other means available to them. Defendants Gerber and Nestle USA, Inc.'s failure to disclose material facts about Gerber baby food products constitutes a violation of 73 P.S. §§ 201-1 *et seq.*

301. Defendants, Gerber and Nestle USA, Inc., were aware of the hazardous risks posed by Gerber baby food products and yet failed to inform the public of these risks through their advertisements, labeling, or other means available to them. The failure of defendants Gerber and

Nestle USA, Inc. to state and disclose material facts about Gerber baby food products constitutes a violation of 73 P.S. §§ 201-1 *et seq.*

302. At all relevant times, plaintiffs were deceived by defendants Gerber's and Nestle USA, Inc.'s intentional misrepresentations and omissions including by the orchestrated claims made on or in television commercials, advertising materials, websites, and on product labels and packaging regarding the usage, safety, and nutritional value of eating Gerber baby food products.

303. At all relevant times, plaintiffs acted in reasonable reliance upon the unlawful trade practices of defendants, Gerber and Nestle USA, Inc.. Had defendants, Gerber and Nestle USA, Inc., not engaged in the deceptive conduct described herein, Parent-Plaintiff would not have purchased Gerber baby food products and Minor-Plaintiff would not have used or consumed Gerber baby food products.

304. As a direct and proximate result of defendants Gerber's and Nestle USA, Inc.'s unlawful trade practices, Minor-Plaintiff and Plaintiffs suffered the injuries and damages as described throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT VIII: VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES ACT  
AND CONSUMER PROTECTION LAW, 73 P.S. §§201-1 et seq.**  
**(Plaintiffs v. Defendant, Beech-Nut Nutrition Company)**

305. Plaintiffs incorporate by reference each and every other paragraph of this Complaint as if each were set forth fully and completely herein.



306. At all times relevant hereto, defendant, Beech-Nut, knew or should have known of the unreasonably dangerous and toxic nature of Beech-Nut baby food products.

307. At all relevant times, defendant, Beech-Nut, through labeling, advertisements, public representations and marketing of Beech-Nut baby food products, intentionally used deception, fraud, false pretenses, false promises, misrepresentations, misleading statements, and unfair trade practices in order to mislead consumers that Beech-Nut baby food products are safe for human consumption.

308. At all relevant times, defendant, Beech-Nut, also engaged in the concealment, suppression and/or omission of material facts in connection with the sale and/or advertisement of Beech-Nut baby food products in trade or commerce, including concealment of the fact that the Beech-Nut baby food products contained dangerous toxic heavy metals lead, mercury, cadmium, and arsenic. Defendant, Beech-Nut, failed to disclose to the public that Beech-Nut baby food products are unsafe and pose serious health hazards, particularly brain damage, brain injury, neurodevelopmental disorders, cognitive deficits and delays, and developmental deficits and delays, such as those which afflict Minor-Plaintiff. Defendants, Beech-Nut, were aware of the hazardous risks posed by Beech-Nut baby food products and yet failed to inform the public of these risks through their advertisements, labeling, or other means available to them. Defendant, Beech-Nut's failure to disclose material facts about Beech-Nut baby food products constitutes a violation of 73 P.S. §§ 201-1 *et seq.*

309. Defendant, Beech-Nut, was aware of the hazardous risks posed by Beech-Nut baby food products and yet failed to inform the public of these risks through their advertisements, labeling, or other means available to them. The failure of defendant, Beech-Nut to state and

disclose material facts about Beech-Nut baby food products constitutes a violation of 73 P.S. §§ 201-1 *et seq.*

310. At all relevant times, plaintiffs were deceived by defendant, Beech-Nut's intentional misrepresentations and omissions including by the orchestrated claims made on or in television commercials, advertising materials, websites, and on product labels and packaging regarding the usage, safety, and nutritional value of eating Beech-Nut baby food products.

311. At all relevant times, plaintiffs acted in reasonable reliance upon the unlawful trade practices of defendants, Beech-Nut. Had defendant, Beech-Nut, not engaged in the deceptive conduct described herein, Parent-Plaintiff would not have purchased Beech-Nut baby food products and Minor-Plaintiff would not have used or consumed Beech-Nut baby food products.

312. As a direct and proximate result of defendant, Beech-Nut's unlawful trade practices, Minor-Plaintiff and Plaintiffs suffered the injuries and damages as described throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgement interest, delay damages and costs on all counts.

**COUNT IX – NEGLIGENCE**

**(Plaintiffs v. Gerber Products Company, Nestle USA, Inc., Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

313. Plaintiffs hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

314. At all times relevant hereto defendants breached their duty to Plaintiff and Minor-Plaintiff and are otherwise liable due to their negligent designing, manufacturing, selling, developing, distributing, inspecting, marketing, selling, and testing of Gerber baby food products.

315. At all times relevant hereto, defendants, directly or indirectly, caused Gerber baby food products to be purchased and/or used by Parent-Plaintiff and Minor-Plaintiff.

316. At all relevant times hereto, defendants had a duty to exercise reasonable care in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and distribution of Gerber baby food products, including the duty to take all reasonable steps necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers, users, and other persons coming into contact with the product.

317. At all times relevant hereto, defendants had a duty to exercise reasonable care in the marketing, advertisement, and sale of Gerber baby food products. Defendants' duty of care owed to consumers and the general public, including plaintiffs, included providing accurate, true, and correct information concerning the risks of consuming Gerber baby food products and appropriate, complete, and accurate warnings concerning the potential adverse effects of consuming Gerber baby food products and, in particular, the fact that Gerber baby food products contain dangerous levels of the toxic heavy metals, arsenic, lead, cadmium and mercury.

318. At all relevant times hereto, defendants knew or, in the exercise of reasonable care, should have known of the hazards and dangers of Gerber baby food products and, specifically, the toxic properties of the Gerber baby food products which contain and have always contained dangerous levels of arsenic, lead, cadmium and mercury.

319. Accordingly, at all times relevant to this litigation, defendants knew or, in the exercise of reasonable care, should have known that consumption, use and exposure to Gerber baby food products could cause Minor-Plaintiff's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Minor-Plaintiff.

320. At all times mentioned herein, defendants were under a duty to exercise reasonable care in designing, manufacturing, selling, developing, distributing, inspecting, marketing, selling, and testing of Gerber baby food products.

321. Defendants at all times knew or, in the exercise of reasonable care, should have known that users and consumers of Gerber baby food products, including parents and children such as Parent-Plaintiff and Minor-Plaintiff, were unaware of the risks and the magnitude of the risks associated with the use of and/or exposure to Gerber baby food products, including being unaware of the fact that these Gerber baby food products contain and contained dangerous and toxic heavy metals arsenic, lead, cadmium and mercury.

322. Defendants at all times breached their duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and distribution of Gerber baby food products, in that defendants manufactured, produced, and sold defective baby food containing, dangerous levels of the toxic heavy-metals, arsenic, lead, cadmium and mercury, knew or had reason to know of the defects inherent in these products, knew or had reason to know that a user's or consumer's exposure to the products created a significant risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.

323. Defendants acted negligently in one or more of the following ways:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Gerber baby food products without thorough and adequate pre- and post-market testing;
- b. Failing to disclose or warn that Gerber baby food products contain toxic heavy metals;
- c. Failing to disclose or warn that Gerber baby food products contain lead
- d. Failing to disclose or warn that Gerber baby food products contain mercury;

- e. Failing to disclose or warn that Gerber baby food products contain arsenic;
- f. Failing to disclose or warn that Gerber baby food products contain cadmium;
- g. Failing to disclose or warn of the risks and dangers associated with consumption of Gerber baby food products, including but not limited to brain damage, brain injury, injury to the central nervous system, developmental delays, developmental deficits, cognitive delays, cognitive deficits, speech delays, speech deficits, motor skill deficits, neurodevelopmental disorders, autism, ADHD, behavioral disorders, hearing deficits;
- h. Failing properly and adequately test the ingredients designed to go into Gerber baby food products to determine whether they were safe for consumption;
- i. Failure to properly and adequately test all the ingredients designed to go into the Gerber baby food products for presence of any toxins, including but not limited to arsenic, lead, mercury, and cadmium;
- j. Designing Gerber baby food products to contain toxic and dangerous metals lead, mercury, cadmium, and arsenic;
- k. Manufacturing, selling, and distributing the Gerber baby food products when these products contained contain toxic and dangerous metals lead, mercury, cadmium, and arsenic;
- l. Failing to design and select only ingredients to be put into the Gerber baby food products that do not contain toxic heavy metals, including lead, mercury, cadmium, and arsenic;
- m. Failure to properly vet, interview, examine, and audit the farms and sources from where defendants purchased and procured foods and ingredients to be in into Gerber baby foods to ensure that none of those foods or ingredients procured contained any toxins such as mercury, lead, cadmium, and arsenic;
- n. Failing to design and select only ingredients to be put into the Gerber baby food products that do not contain dangerous or harmful levels of toxic heavy metals, including lead, mercury, cadmium, and arsenic;
- o. Selecting and designing Gerber baby food products containing rice and rice flour despite knowing that rice and rice flour often contain arsenic that is harmful and dangerous to infants, babies and children when consumed;
- p. Failing to test, investigate, or study formulated Gerber baby food products;

- q. Failure to test the finished and final Gerber baby food products before they were shipped and distributed for consumption to ensure the finished and final Gerber baby food products did not contain any toxic heavy metals such as lead, mercury, cadmium, or arsenic;
- r. Failing to undertake sufficient studies and conduct necessary tests to determine the safety of “inert” ingredients contained within Gerber baby food products, and the propensity of these ingredients to render Gerber baby foods toxic or dangerous, increase the toxicity of Gerber baby foods, whether these ingredients are toxic, magnify the toxic properties of Gerber baby food products, and whether or not “inert” ingredients were safe for use;
- s. Failing to use reasonable and prudent care in the design, research, manufacture, formulation, and development of Gerber baby food products so as to avoid the risk of serious harm associated with the prevalent use of Gerber baby food products as a consumable for infants, toddlers and children;
- t. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who defendants could reasonably foresee would consume, eat and/or be exposed to Gerber baby food products;
- u. Failing to disclose to users, consumers, and the general public that the use, consumption of and exposure to Gerber baby food products created increased risks of cancer and other grave illnesses;
- v. Systematically suppressing and downplaying contrary evidence about the risks, incidence, and prevalence of the risks and dangers inherent in Gerber baby food products, including these products’ presence of the toxic heavy metals arsenic, lead, cadmium and mercury;
- w. Representing that Gerber baby products were safe for their intended use when, in fact, defendants knew or should have known that the products were not safe for their intended use;
- x. Declining to make or propose any changes to Gerber baby food products’ labeling or other promotional materials that would alert the consumers and the general public of the risks of Gerber baby food products including the presence of arsenic, lead, cadmium and mercury in the Gerber baby food products;
- y. Failure to recall the Gerber baby food products;
- z. Advertising, marketing, and recommending the use and consumption of Gerber baby food products, while concealing and failing to disclose or warn of the dangers known by defendants to be associated with or caused by the use of or exposure to Gerber baby food products, including due to the

presence of arsenic, lead, cadmium and mercury in the Gerber baby food products;

- aa. Continuing to disseminate information to its consumers, which indicate or imply that Gerber baby food products are safe for consumption by infants, toddlers and children;
- bb. Continuing the manufacture and sale of Gerber baby food products with the knowledge that the products are unreasonably unsafe and dangerous for human consumption;

324. Defendants' negligence was the factual and proximate cause of the injuries, harm and damages suffered and sustained by Minor-Plaintiff and Parent-Plaintiff as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT X – NEGLIGENCE**

**(Plaintiffs v. Beech-Nut Nutrition Company, Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

325. Plaintiffs hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

326. At all times relevant hereto defendants breached their duty to Plaintiff and Minor-Plaintiff and are otherwise liable due to their negligent designing, manufacturing, selling, developing, distributing, inspecting, marketing, selling, and testing of Beech-Nut baby food products.

327. At all times relevant hereto, defendants, directly or indirectly, caused Beech-Nut baby food products to be purchased and/or used by Parent-Plaintiff and Minor-Plaintiff.

328. At all relevant times hereto, defendants had a duty to exercise reasonable care in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale, and distribution of Beech-Nut baby food products, including the duty to take all reasonable steps necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous to consumers, users, and other persons coming into contact with the product.

329. At all times relevant hereto, defendants had a duty to exercise reasonable care in the marketing, advertisement, and sale of Beech-Nut baby food products. Defendants' duty of care owed to consumers and the general public, including plaintiffs, included providing accurate, true, and correct information concerning the risks of consuming Beech-Nut baby food products and appropriate, complete, and accurate warnings concerning the potential adverse effects of consuming Beech-Nut baby food products and, in particular, the fact that Beech-Nut baby food products contain dangerous levels of the toxic heavy metals, arsenic, lead, cadmium and mercury.

330. At all relevant times hereto, defendants knew or, in the exercise of reasonable care, should have known of the hazards and dangers of Beech-Nut baby food products and, specifically, the toxic properties of the Beech-Nut baby food products which contain and have always contained dangerous levels of arsenic, lead, cadmium and mercury.

331. Accordingly, at all times relevant to this litigation, defendants knew or, in the exercise of reasonable care, should have known that consumption, use and exposure to Beech-Nut baby food products could cause Minor-Plaintiff's injuries and thus created a dangerous and unreasonable risk of injury to the users of these products, including Minor-Plaintiff.

332. At all times mentioned herein, defendants were under a duty to exercise reasonable care in designing, manufacturing, selling, developing, distributing, inspecting, marketing, selling, and testing of Beech-Nut baby food products.



333. Defendants at all times knew or, in the exercise of reasonable care, should have known that users and consumers of Beech-Nut baby food products, including parents and children such as Parent-Plaintiff and Minor-Plaintiff, were unaware of the risks and the magnitude of the risks associated with the use of and/or exposure to Beech-Nut baby food products, including being unaware of the fact that these Beech-Nut baby food products contain and contained dangerous and toxic heavy metals arsenic, lead, cadmium and mercury.

334. Defendants at all times breached their duty of reasonable care and failed to exercise ordinary care in the design, research, development, manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and distribution of Beech-Nut baby food products, in that defendants manufactured, produced, and sold defective baby food containing, dangerous levels of the toxic heavy-metals, arsenic, lead, cadmium and mercury, knew or had reason to know of the defects inherent in these products, knew or had reason to know that a user's or consumer's exposure to the products created a significant risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.

335. Defendants acted negligently in one or more of the following ways:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling, and/or distributing Beech-Nut baby food products without thorough and adequate pre- and post-market testing;
- b. Failing to disclose or warn that Beech-Nut baby food products contain toxic heavy metals;
- c. Failing to disclose or warn that Beech-Nut baby food products contain lead;
- d. Failing to disclose or warn that Beech-Nut baby food products contain mercury;
- e. Failing to disclose or warn that Beech-Nut baby food products contain arsenic;
- f. Failing to disclose or warn that Beech-Nut baby food products contain cadmium;

- g. Failing to disclose or warn of the risks and dangers associated with consumption of Beech-Nut baby food products, including but not limited to brain damage, brain injury, injury to the central nervous system, developmental delays, developmental deficits, cognitive delays, cognitive deficits, speech delays, speech deficits, motor skill deficits, neurodevelopmental disorders, autism, ADHD, behavioral disorders, hearing deficits;
- h. Failing properly and adequately test the ingredients designed to go into Beech-Nut baby food products to determine whether they were safe for consumption;
- i. Failure to properly and adequately test all the ingredients designed to go into the Beech-Nut baby food products for presence of any toxins, including but not limited to arsenic, lead, mercury, and cadmium;
- j. Designing Beech-Nut baby food products to contain toxic and dangerous metals lead, mercury, cadmium, and arsenic;
- k. Manufacturing, selling, and distributing the Beech-Nut baby food products when these products contained contain toxic and dangerous metals lead, mercury, cadmium, and arsenic;
- l. Failing to design and select only ingredients to be put into the Beech-Nut baby food products that do not contain toxic heavy metals, including lead, mercury, cadmium, and arsenic;
- m. Failure to properly vet, interview, examine, and audit the farms and sources from where defendants purchased and procured foods and ingredients to be in into Beech-Nut baby foods to ensure that none of those foods or ingredients procured contained any toxins such as mercury, lead, cadmium, and arsenic;
- n. Failing to design and select only ingredients to be put into the Beech-Nut baby food products that do not contain dangerous or harmful levels of toxic heavy metals, including lead, mercury, cadmium, and arsenic;
- o. Selecting and designing Beech-Nut baby food products containing rice and rice flour despite knowing that rice and rice flour often contain arsenic that is harmful and dangerous to infants, babies and children when consumed;
- p. Failing to test, investigate, or study formulated Beech-Nut baby food products;
- q. Failure to test the finished and final Beech-Nut baby food products before they were shipped and distributed for consumption to ensure the finished and final Beech-Nut baby food products did not contain any toxic heavy metals such as lead, mercury, cadmium, or arsenic;

- r. Failing to undertake sufficient studies and conduct necessary tests to determine the safety of “inert” ingredients contained within Beech-Nut baby food products, and the propensity of these ingredients to render Beech-Nut baby foods toxic or dangerous, increase the toxicity of Beech-Nut baby foods, whether these ingredients are toxic, magnify the toxic properties of Beech-Nut baby food products, and whether or not “inert” ingredients were safe for use;
- s. Failing to use reasonable and prudent care in the design, research, manufacture, formulation, and development of Beech-Nut baby food products so as to avoid the risk of serious harm associated with the prevalent use of Beech-Nut baby food products as a consumable for infants, toddlers and children;
- t. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who defendants could reasonably foresee would consume, eat and/or be exposed to Beech-Nut baby food products;
- u. Failing to disclose to users, consumers, and the general public that the use, consumption of and exposure to Beech-Nut baby food products created increased risks of cancer and other grave illnesses;
- v. Systematically suppressing and downplaying contrary evidence about the risks, incidence, and prevalence of the risks and dangers inherent in Beech-Nut baby food products, including these products’ presence of the toxic heavy metals arsenic, lead, cadmium and mercury;
- w. Representing that Beech-Nut baby products were safe for their intended use when, in fact, defendants knew or should have known that the products were not safe for their intended use;
- x. Declining to make or propose any changes to Beech-Nut baby food products’ labeling or other promotional materials that would alert the consumers and the general public of the risks of Beech-Nut baby food products including the presence of arsenic, lead, cadmium and mercury in the Beech-Nut baby food products;
- y. Failure to promptly recall all Beech-Nut baby food products tainted with toxic heavy metals;
- z. Advertising, marketing, and recommending the use and consumption of Beech-Nut baby food products, while concealing and failing to disclose or warn of the dangers known by defendants to be associated with or caused by the use of or exposure to Beech-Nut baby food products, including due to the presence of arsenic, lead, cadmium and mercury in the Beech-Nut baby food products;

- aa. Continuing to disseminate information to its consumers, which indicate or imply that Beech-Nut baby food products are safe for consumption by infants, toddlers and children;
- bb. Continuing the manufacture and sale of Beech-Nut baby food products with the knowledge that the products are unreasonably unsafe and dangerous for human consumption.

336. Defendants' negligence was the factual and proximate cause of the injuries, harm and damages suffered and sustained by Minor-Plaintiff and Parent-Plaintiff as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT XI – FRAUD**

**(Plaintiffs v. Defendants Gerber Products Company and Nestle USA, Inc.)**

337. The preceding paragraphs are incorporated by reference as if fully set forth herein.

338. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., falsely and fraudulently represented and continue to represent to plaintiffs, and general public who purchase Gerber baby foods for consumption, that Gerber baby food products are safe for their intended purpose and poses no risk to the health and wellbeing of those who eat the products.

339. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., falsely and fraudulently represented to plaintiffs and the general public, that nothing used in producing Gerber baby food products, is toxic, hazardous, or carcinogenic. These representations made by defendants, Gerber and Nestle USA, Inc., were, in fact, false. When the defendants, Gerber and Nestle USA, Inc., made these representations, defendants, Gerber and Nestle USA, Inc., knew and/or had reason to know that those representations were false and defendants, Gerber and Nestle

USA, Inc., willfully, wantonly, and recklessly disregarded the inaccuracies in their representations and the dangers and health risks to those persons in the general public, including plaintiffs.

340. These representations were made by defendants, Gerber and Nestle USA, Inc., with the intent of defrauding and deceiving plaintiffs, and all those in the general public who purchased Gerber baby food products, such that these persons had no knowledge that they were continuing to consume and feed their children toxic and harmful chemicals, including arsenic, lead, cadmium and mercury, all of which evinced a callous, reckless, willful, and depraved indifference to the health, safety, and wellbeing of the persons in the general public who purchased the Defendants' Gerber baby food products, including plaintiffs.

341. In representations to plaintiffs, and all other who used or purchased the defendants' Gerber baby food products, defendants, Gerber and Nestle USA, Inc., fraudulently concealed and intentionally withheld the following material information:

- a. That Gerber baby food products were made and designed to include toxic and dangerous heavy metals arsenic, lead, cadmium, and mercury;
- b. That arsenic, lead, cadmium, and mercury are toxic and dangerous;
- c. That arsenic causes serious brain damage and the various forms and manifestations of various neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- d. That lead causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- e. That mercury causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- f. That cadmium causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- g. That the toxic heavy metals in defendants' Gerber baby food products—lead, mercury, arsenic, cadmium—each pose a greater harm and risk of harm to infants, babies, and children when compared to adults because infants, babies, and children are more susceptible and vulnerable to the

dangers of toxic heavy metals, including lead, mercury, cadmium, and arsenic; and

- h. That the injuries and damage caused by consumption of arsenic, lead, cadmium, and mercury are life-long lasting and irreversible.

342. At all times relevant hereto, defendants, Gerber and Nestle USA, Inc., were obligated to disclose to plaintiffs, individuals in the general public who purchased Gerber baby food products, and all potential consumers of defendants' products, the dangerous, hazardous, and toxic nature of the ingredients in Gerber baby food products, including the presence of lead, mercury, cadmium, and arsenic.

343. At all times relevant hereto, defendants had sole access to the material facts concerning the dangerous, hazardous, and carcinogenic nature of defendants' use of ingredients that contained dangerous heavy metals arsenic, lead, cadmium, and mercury.

344. Defendants Gerber and Nestle USA, Inc.'s concealment and omissions of material facts concerning the dangerous, hazardous, and carcinogenic nature of defendants' Gerber baby food products, were made purposefully, willfully, wantonly, and/or recklessly to mislead plaintiffs, individuals who purchased defendants' Gerber baby food products, into justifiably relying on these misrepresentations, concealment, and omissions, and thereby believing they were not at risk of any harmful health effects from the food they were eating, including increased risk of various forms of cognitive deficiencies.

345. At the time these representations were made by defendants, and at the times plaintiffs were consuming Gerber baby food products, plaintiffs were unaware of the falsehood of these representations, and reasonably believed them to be true.

346. At the time these representations were made by defendants Gerber and Nestle USA, Inc., defendants, Gerber and Nestle USA, Inc., knew these representations were false and/or

displayed a recklessness as to whether or not these representations were false. In justifiable reliance on these representations made by defendants, Parent-Plaintiff and Minor-Plaintiff were induced to, and did in fact, eat, use, purchase, and consume Gerber baby food products, which factually and proximately caused all of the injuries and damages sustained and suffered by Parent-Plaintiff and Minor-Plaintiff as alleged throughout the entirety of this complaint.

347. Plaintiffs at all times had no reason to know or reason to uncover the truth behind defendants Gerber and Nestle USA, Inc.'s material omissions of fact surrounding the dangers of Gerber baby food products, including the presence in these products of arsenic, lead, cadmium, and mercury.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT XII – FRAUD**  
**(Plaintiffs v. Defendant, Beech-Nut Nutrition Company)**

348. The preceding paragraphs are incorporated by reference as if fully set forth herein.

349. At all times relevant hereto, defendant, Beech-Nut, falsely and fraudulently represented and continue to represent to plaintiffs, and general public who purchase Beech-Nut baby foods for consumption, that Beech-Nut baby food products are safe for their intended purpose and poses no risk to the health and wellbeing of those who eat the products.

350. At all times relevant hereto, defendant, Beech-Nut, falsely and fraudulently represented to plaintiffs and the general public, that nothing used in producing Beech-Nut baby food products, is toxic, hazardous, or carcinogenic. These representations made by defendant, Beech-Nut, were, in fact, false. When the defendant, Beech-Nut, made these representations,

defendant, Beech-Nut, knew and/or had reason to know that those representations were false and defendant, Beech-Nut, willfully, wantonly, and recklessly disregarded the inaccuracies in their representations and the dangers and health risks to those persons in the general public, including plaintiffs.

351. These representations were made by defendants, Beech-Nut, with the intent of defrauding and deceiving plaintiffs, and all those in the general public who purchased Beech-Nut baby food products, such that these persons had no knowledge that they were continuing to consume and feed their children toxic and harmful chemicals, including arsenic, lead, cadmium and mercury, all of which evinced a callous, reckless, willful, and depraved indifference to the health, safety, and wellbeing of the persons in the general public who purchased the defendants' Beech-Nut baby food products, including plaintiffs.

352. In representations to plaintiffs, and all other who used or purchased the defendants' Beech-Nut baby food products, defendant, Beech-Nut, fraudulently concealed and intentionally withheld the following material information:

- a. That Beech-Nut baby food products were made and designed to include toxic and dangerous heavy metals arsenic, lead, cadmium, and mercury;
- b. That arsenic, lead, cadmium, and mercury are toxic and dangerous;
- c. That arsenic causes serious brain damage and the various forms and manifestations of various neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- d. That lead causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- e. That mercury causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;
- f. That cadmium causes serious injuries and neurodevelopmental deficits, as alleged throughout the entirety of this complaint, when consumed;



- g. That the toxic heavy metals in defendants' Beech-Nut baby food products—lead, mercury, arsenic, cadmium—each pose a greater harm and risk of harm to infants, babies, and children when compared to adults because infants, babies, and children are more susceptible and vulnerable to the dangers of toxic heavy metals, including lead, mercury, cadmium, and arsenic; and
- h. That the injuries and damage caused by consumption of arsenic, lead, cadmium, and mercury are life-long lasting and irreversible.

353. At all times relevant hereto, defendant, Beech-Nut, were obligated to disclose to plaintiffs, individuals in the general public who purchased Beech-Nut baby food products, and all potential consumers of defendants' products, the dangerous, hazardous, and toxic nature of the ingredients in Beech-Nut baby food products, including the presence of lead, mercury, cadmium, and arsenic.

354. At all times relevant hereto, defendants had sole access to the material facts concerning the dangerous, hazardous, and carcinogenic nature of defendants' use of ingredients that contained dangerous heavy metals arsenic, lead, cadmium, and mercury.

355. Defendant Beech-Nut's concealment and omissions of material facts concerning the dangerous, hazardous, and carcinogenic nature of defendants' Beech-Nut baby food products, were made purposefully, willfully, wantonly, and/or recklessly to mislead plaintiffs, individuals who purchased defendants' Beech-Nut baby food products, into justifiably relying on these misrepresentations, concealment, and omissions, and thereby believing they were not at risk of any harmful health effects from the food they were eating, including increased risk of various forms of cognitive deficiencies.

356. At the time these representations were made by defendants, and at the times plaintiffs were consuming Beech-Nut baby food products, plaintiffs were unaware of the falsehood of these representations, and reasonably believed them to be true.

357. At the time these representations were made by defendant, Beech-Nut, defendant, Beech-Nut, knew these representations were false and/or displayed a recklessness as to whether or not these representations were false. In justifiable reliance on these representations made by defendants, Parent-Plaintiff and Minor-Plaintiff were induced to, and did in fact, eat, use, purchase, and consume Beech-Nut baby food products, which factually and proximately caused all of the injuries and damages sustained and suffered by Parent-Plaintiff and Minor-Plaintiff as alleged throughout the entirety of this complaint.

358. Plaintiffs at all times had no reason to know or reason to uncover the truth behind defendant Beech-Nut's material omissions of fact surrounding the dangers of Beech-Nut baby food products, including the presence in these products of arsenic, lead, cadmium, and mercury.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts

**COUNT XIII – BREACH OF EXPRESS AND IMPLIED WARRANTIES**  
**(Plaintiffs v. Gerber Products Company, Nestle USA, Inc., Brown's Super Stores, Inc., ShopRite of Island Avenue, Brown's IA, LLC, Acme Markets, Inc., and Target Corporation)**

359. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

360. At all times relevant hereto, defendants engaged in the business of testing, developing, designing, formulating, manufacturing, marketing, selling, distributing, and promoting their Gerber baby food products, which are defective and unreasonably dangerous to users, and consumers including, Parent-Plaintiff and Minor-Plaintiff, thereby placing Gerber baby food products into the stream of commerce. These actions were under the ultimate control and supervision of defendants.

361. Defendants, in connection with their business activities described above, made both express and implied warranties with regard to Gerber baby food products, warranting that Gerber baby food products were safe, fit for their intended use, fit for plaintiff's particular purpose, and of merchantable quality.

362. Defendants were aware that plaintiff was relying on defendants to provide a product for consumer purposes, thereby impliedly warranting that Gerber baby food products would in fact be safe and suitable for plaintiffs' purpose and use.

363. In reliance upon the defendants' skill and judgment and the implied warranties of fitness for that purpose, plaintiffs used, purchased and consumed Gerber baby food products.

364. The warranties described and made by defendants, as outlined in the defendants' statements and representations cited throughout the entirety of this complaint were false, misleading, and inaccurate in that Gerber baby food products were at all times unsafe, unfit for their intended use, unfit for plaintiff's particular purpose, and not of merchantable quality.

365. As a direct result of defendants' breaches of express warranty and breaches of implied warranties of merchantability and fitness for a particular purpose, Parent-Plaintiff and Minor-Plaintiff suffered and sustained all the injuries and damages as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendants Gerber Products Company and Nestle USA, Inc., in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

**COUNT XIV – BREACH OF EXPRESS AND IMPLIED WARRANTIES**  
**(Plaintiffs v Beech-Nut Nutrition Company, Brown’s Super Stores, Inc., ShopRite of Island Avenue, Brown’s IA, LLC, Acme Markets, Inc., and Target Corporation)**

366. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

367. At all times relevant hereto, defendants engaged in the business of testing, developing, designing, formulating, manufacturing, marketing, selling, distributing, and promoting their Beech-Nut baby food products, which are defective and unreasonably dangerous to users, and consumers including, Parent-Plaintiff and Minor-Plaintiff, thereby placing Beech-Nut baby food products into the stream of commerce. These actions were under the ultimate control and supervision of defendants.

368. Defendants, in connection with their business activities described above, made both express and implied warranties with regard to Beech-Nut baby food products, warranting that Beech-Nut baby food products were safe, fit for their intended use, fit for plaintiff’s particular purpose, and of merchantable quality.

369. Defendants were aware that plaintiff was relying on defendants to provide a product for consumer purposes, thereby impliedly warranting that Beech-Nut baby food products would in fact be safe and suitable for plaintiffs’ purpose and use.

370. In reliance upon the defendants’ skill and judgment and the implied warranties of fitness for that purpose, plaintiffs used, purchased and consumed Beech-Nut baby food products.

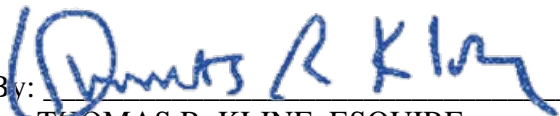
371. The warranties described and made by defendants, as outlined in the defendants’ statements and representations cited throughout the entirety of this complaint were false, misleading, and inaccurate in that Beech-Nut baby food products were at all times unsafe, unfit for their intended use, unfit for plaintiff’s particular purpose, and not of merchantable quality.

372. As a direct result of defendants' breaches of express warranty and breaches of implied warranties of merchantability and fitness for a particular purpose, Parent-Plaintiff and Minor-Plaintiff suffered and sustained all the injuries and damages as alleged throughout the entirety of this complaint.

**WHEREFORE**, Plaintiffs demand damages against all defendants, jointly and severally, including punitive damages against defendant, Beech-Nut, in an amount in excess of the prevailing arbitration limits, exclusive of pre-judgment interest, delay damages and costs on all counts.

Respectfully submitted,

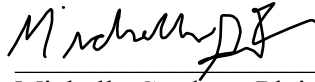
**KLINE & SPECTER, P.C.**

By:   
THOMAS R. KLINE, ESQUIRE  
THOMAS E. BOSWORTH, ESQUIRE  
*Attorneys for Plaintiffs*

**VERIFICATION**

I,Michelle Gardner, hereby verify that I am the plaintiff in the foregoing action; that the attached Complaint is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not of affiant. I have read the Complaint and to the extent that the allegations therein are based upon information I have given counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: 12/10/21



\_\_\_\_\_  
Michelle Gardner, Plaintiff