

cadmium, and mercury.¹ Both the Food and Drug Administration and the World Health Organization agree that these metals are not only dangerous to human health in general but are particularly dangerous to infants and young children, who are highly vulnerable to their neurotoxic effects. Specifically, studies have shown that infants and children exposed to high levels of these toxic metals have a high risk of developing serious neurological and developmental disorders. In short, “[t]oxic heavy metals endanger infant neurological development and long-term brain function.”²

2. The Hain Celestial Group, Inc. (“Hain”) sells organic baby food nationwide under the “Earth’s Best Organic” brand name. As the Report points out, Hain knew that its baby food contained high levels of toxic metals yet chose to continue to sell its products to children while hiding the true nature of their contents.

3. Plaintiffs Grant and Sarah Palmquist were innocent consumers who purchased the Earth’s Best Organic products convinced that they were buying the highest quality and safest nutrition available for their infant child E.P. Sadly, Hain’s products have severely and permanently damaged E.P.’s brain and neurological function. Plaintiffs bring this suit for damages they have suffered due to Defendants’ production, marketing, distribution, and sale of baby food that contained unsafe levels of toxic heavy metals that have permanently injured E.P.

¹ See Exhibit 1: “Baby Foods Are Tainted with Dangerous Levels of Arsenic, Cadmium, and Mercury,” Staff Report, Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform U.S. House of Representatives, February 4, 2021.

² *Id.* at 2.

II.

JURISDICTION

4. Plaintiffs assert that this case was improperly removed and that this Court does not have jurisdiction under 28 U.S.C. §§ 1441 and 1446. Plaintiffs are filing a motion to remand. Defendant Whole Foods Market Rocky Mountain/Southwest, L.P. and Plaintiffs are Texas residents, therefore, the properly joined and served parties are not completely diverse for purposes of federal diversity jurisdiction. Further, Plaintiffs have not made any federal claims and there is no other basis for federal jurisdiction over this state court action.

III.

PARTIES

5. Plaintiff Sarah Palmquist resides in Texas and is E.P.'s natural mother. Sarah Palmquist brings claims individually and on behalf of and as next friend of her minor child E.P.

6. Plaintiff Grant Palmquist resides in Texas and is E.P.'s natural father.

7. The Hain Celestial Group, Inc., is a Delaware corporation with its principal place of business in New York. Hain sells its baby food under the "Earth's Best Organic" brand name. Earth's Best Brand baby food is sold nationwide, including throughout the state of Texas. Hain Celestial Group, Inc. has appeared in this case through counsel.

8. Defendant Whole Foods Market Rocky Mountain/Southwest, L.P. is a Texas limited partnership with its principal place of business in Austin, Texas. Whole Foods Market Rocky Mountain/Southwest, L.P. owns and operates the Whole Foods stores in

Texas. For purposes of diversity, Whole Foods Market Rocky Mountain/Southwest, L.P. is a citizen of Texas because it takes on the citizenship of its partners. Whole Foods Market Rocky Mountain/Southwest, L.P. has a general partner: Whole Foods Market Rocky Mountain/Southwest I, Inc. Whole Foods Market Rocky Mountain/Southwest I, Inc. is a Delaware corporation that maintains its principal office in Texas. Whole Foods Market Rocky Mountain/Southwest, L.P. has appeared in this case through counsel.

IV.

FACTS

The February 4, 2021 Committee Report

9. In August 2019, the FDA received a secret slide presentation from Hain, the maker of Earth's Best Organic baby food, that revealed the presence of high levels of toxic heavy metals in Hain's finished baby food products. The presentation, entitled "FDA Testing Results Investigation" revealed that half of Hain's finished rice products tested contained 100 ppb (parts per billion) or more of organic arsenic with one product registering as high as 129 ppb. This represents a level that matches or exceeds the FDA's "dangerously high" 100 ppb level for inorganic arsenic for infant rice cereal.

10. The FDA learned that Hain's policy to test ingredients severely underrepresented the levels of heavy toxic metals in Hain's finished baby food products. In fact, Hain's finished baby food products contained between 28% and 93% more inorganic arsenic than Hain estimated it would find based on Hain's ingredient testing method. Hain tested several products for the FDA presentation and found that all of its finished baby food products contained higher levels of arsenic than were reflected in tests

of Hain's individual raw ingredients. These tests put the FDA on notice that Hain's finished baby foods posed a high risk to babies that consumed Hain products.

11. Armed with this knowledge, the United States House of Representatives Committee on Oversight and Reform's Subcommittee on Economic and Consumer Policy investigated Hain and several other organic baby food providers and subsequently released a report entitled "Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury." The Report gathered findings regarding the presence of heavy toxic metals in organic baby food products like Hain's Earth's Best Organic line. Hain provided the Subcommittee with its internal testing policies, test results for both its ingredients and finished products, and documentation regarding Hain's policies as to its ingredients and finished products that exceeded its internal testing limits. The Report outlines several disturbing findings regarding the level of dangerous heavy metals in Hain's organic baby food products.

Hain products contain high levels of toxic metals.

12. Inorganic arsenic, lead, cadmium, and mercury are toxic heavy metals that are extremely dangerous to human health and particularly dangerous to babies and children especially when consumed in high levels. Babies and children are most vulnerable to the damaging neurotoxic effects these metals can have on the neurological system where even low levels of exposure can cause irreversible brain damage.

13. According to the Report, Hain distributed and sold its organic baby food products despite these products containing dangerously high amounts of arsenic, lead, cadmium, and mercury. Hain's internal company standards permitted sale of its products

despite these dangerously high levels of these toxic metals. Hain's internal policies set a standard of 200 ppb for arsenic, lead, and cadmium (the Report found that Hain did not test for mercury) in some of its ingredients. Sadly, Hain far exceeded its internal standards and used ingredients containing 353 ppb lead and 309 ppb arsenic. To compound matters, Hain likely added additional ingredients, like its vitamin/mineral pre-mix, that also contained high levels toxic heavy metals.

Heavy toxic metals like those in Hain's baby food products are a danger to young children.

14. When babies and young children are exposed to heavy toxic metals, the effects can be devastating. "Babies' developing brains are 'exceptionally sensitive to injury caused by toxic chemicals, and several developmental process have been shown to be highly vulnerable to chemical toxicity.'"³ The risk of injury and developmental issues is particularly high in infants due to babies' inability to absorb heavy toxic metals in high amounts. Exposure to heavy toxic metals in early developmental stages can lead to untreatable and permanent brain damage. Studies have shown that exposure to high amounts of lead, for example, can cause IQ loss, brain tumors, and traumatic brain injuries.

15. The FDA has declared that inorganic arsenic, lead, cadmium, and mercury can cause severe harmful effects to infants and children and that exposure to these metals can lead to serious illness, severe impairment, and in high doses death. The FDA has cautioned that infants and children face the greatest risk of harm from toxic heavy metal exposure.

³ Ex. 1: Report, at 9.

16. “Arsenic is ranked number one among substances present in the environment that pose the most significant potential threat to human health . . .”⁴ Arsenic is particularly damaging to the central nervous system and can have devastating effects on cognitive development in children. Boys in particular are more susceptible to arsenic’s neurotoxicity. Studies have shown that exposure to arsenic levels greater than 5 ppb poses a significant threat to cognitive development in young children. In fact, exposure past this “important threshold” leads to decreased global motor, gross motor, and fine motor function scores in young children.

17. Lead is the number two most dangerous substance present in the environment that poses a significant threat to human health. Even small doses of exposure are hazardous to young children and is associated with a broad range of serious health problems. “Lead is associated with a range of bad health outcomes including behavioral problems, decreased cognitive performance, delayed puberty, and reduced postnatal growth.”⁵ Infants and young children that are exposed to high levels of lead often experience negative neurological effects and decreased brain and nervous system development. Children who have been exposed to lead often suffer from learning disabilities, behavioral disabilities, and low IQ. The cognitive effects of lead exposure to infants and young children are often permanent.

⁴ Ex. 1: Report, at 10.

⁵ Ex. 1: Report, at 11.

18. Cadmium is number seven on the list of dangerous substances present in the environment. Cadmium is associated with IQ loss and development of ADHD. Boys, in particular, suffer higher rates of IQ loss when exposed to high levels of cadmium.

19. Mercury is number three on the list of dangerous substances present in the environment. Higher blood mercury levels in young children has been associated with developmental and cognitive injuries and other behavioral problems.

Hain products contain high levels of arsenic.

20. Inorganic arsenic consumption by babies is unsafe at any level. The FDA has set a maximum inorganic arsenic level of 10 ppb for bottled water. Testing showed that Hain's baby food products contain as much as 129 ppb inorganic arsenic. And that Hain uses ingredients that tested as high as 309 ppb arsenic. Hain also uses a vitamin pre-mix that contains 223 ppb arsenic, and raisin and wheat flour containing 200 ppb arsenic. At least 24 ingredients used by Hain in its organic baby food products tested at more than 100 ppb arsenic. Hain set its own internal standard for arsenic at 200 ppb which allowed it to justify accepting wheat flour and rice that contained between 150-200 ppb arsenic. And Hain's finished baby food products contained more arsenic than the ingredients 100% of the time. In fact, arsenic levels of Hain's finished products were found to be 28-93% higher than the ingredients alone.

Hain products contain high levels of lead.

21. Health experts agree that lead levels in baby food should not exceed 1 ppb. Hain has used ingredients containing as much as 352 ppb lead. A total of 88 ingredients used by Hain tested at levels over 20 ppb lead with six ingredients testing as high as 200

ppb lead. At least 27% of Hain ingredients tested at over 5 ppb lead. And not a single ingredient tested showed levels below 1 ppb lead. Hain set an internal limit of 200 ppb for lead in five of its ingredients. These levels are 40 times higher than the FDA's guidance for lead ppb in bottled water. These standards surpass every existing regulatory standard for lead.

Hain products contain high levels of cadmium.

22. The World Health Organization has set a standard of 3 ppb cadmium while Consumer Reports advises a limit of 1 ppb cadmium in fruit juices. Testing showed that Hain used ingredients in its baby food products containing up to 260 ppb cadmium. And testing revealed that 102 Hain ingredients tested over 20 ppb cadmium—20 times the level recommended by Consumer Reports.

Hain products contain high levels of mercury.

23. The EPA has capped mercury in drinking water at 2 ppb. Consumer advocates urge even stricter standards for baby food products from companies like Hain. Some groups have called for a goal of no measurable amount of mercury in baby food. From the documents produced to the Subcommittee by Hain, there is no indication that Hain even tests for mercury in its finished products.

Hain distributes its products nationwide, including to Texas Whole Foods stores.

24. Hain distributes and sells its Earth's Best Organic baby food products throughout the country using large retail chains including Whole Foods, Target, Smiths Food and Drug, Walgreens, CVS Pharmacy, and Randalls Food Market. Hain's products are also available through online retailers like Amazon, Instacart, and Walmart.

Plaintiffs purchased Earth's Best products for their son E.P.

25. Dr. Sarah Palmquist, as a board-certified radiologist and Assistant Professor with M.D. Anderson, and Grant Palmquist, as a Logistics Analyst, understand that what a child eats lays the foundation for their development and their future. Plaintiffs, Sarah and Grant Palmquist, conducted significant research into the food that they would provide their son. After reviewing the products on the market, the Palmquists decided that Earth's Best was the best organic baby food on the market and believed that they were providing their son with the highest quality and safest nutrition possible. Dr. Sarah and Grant Palmquist were loyal Earth's Best customers and purchased these products from Whole Foods because of Whole Foods' express representations about the quality of the products it sold—including Earth's Best Baby Food.

E.P. consumed primarily Earth's Best products throughout his developmental years.

26. As a newborn infant, E.P. was placed on Earth's Best Organic Dairy Infant Formula with Iron to supplement the breast milk being provided by his mother. From E.P.'s birth until eight months of age, E.P. would consume approximately 2-3 cans of Organic Dairy Infant Formula per month. E.P. drank Earth's Best formula nearly exclusively. At the age of six months, E.P. was introduced to Earth's Best Organic Rice Cereal and then quickly introduced to other Earth's Best baby foods that included Earths' Best Whole Grain Oatmeal Cereal, Earth's Best Whole Grain Oatmeal Cereal, Earth's Best Stage 1 foods, which included Sweet Potatoes, First Peas, First Bananas, First Prunes, First Apples, and First Pears.

27. E.P. was switched fully over to the Earth's Best formula when Dr. Sarah Palmquist had to cease breastfeeding at the age of eight months. At this point, E.P.'s consumption of Earth's Best Organic Dairy Infant Formula increased to 4-5 canisters per month in addition to his eating of the Earth's Best cereals and Stage 1 foods. Shortly after learning to eat Stage 1 foods, E.P. graduated to Stage 2 foods that included Earth's Best Winter Squash, Earth's Best Sweet Potato & Chicken Dinner, Earth's Best Pears & Mangos, Earth's Best Vegetable Turkey Dinner, Earth's Best Spinach & Potato, and Earth's Best Sweet Potatoes. When E.P. was developmentally ready and of age, he again graduated to the next level of foods. The Earth's Best Stage 3 foods that E.P. ate included Earth's Best Tender Chicken & Stars, Earth's Best Apple Cinnamon Oatmeal, Earth's Best Vegetable Soup, Earth's Best Spring Vegetables & Pasta, Earth's Best Sweet Peas & Creamed Spinach Medley, and Earth's Best Zucchini Broccoli Medley.

28. As E.P. approached ten to eleven months until approximately three years old, E.P. also ate the pouches made by Earth's Best that includes Earth's Best Organic Beef Medley with Vegetables, Earth's Best Organic Chicken Pot Pie, Earth's Best Organic Turkey Quinoa Apple Sweet Potato, Earth's Best Organic Pear Carrot Apricot, and Earth's best Organic Fruit Yogurt Smoothies. Being a toddler, E.P. also devoured snacks, these snacks included Earth's Best Sunny Days Snack Bars (Apple), Earth's Best Organic Garden Veggie Straws, Earth's Best Organic Crunchin' Crackers, and Earth's Best Organic Sunny Days Snack Bars (Strawberry). E.P. consumed Earth's Best baby food nearly exclusively.

***As a result of high levels of toxic metals in his system,
E.P. now suffers from severe brain and bodily injuries.***

29. E.P. was born on September 27, 2014, to Sarah and Grant Palmquist after a healthy and uneventful pregnancy by his mother, Dr. Sarah Palmquist. Following routine postnatal care, E.P. was released home into the care of his parents. E.P. was a healthy, happy, and social baby boy and was excelling at meeting his developmental milestones until shortly before he turned three years old when he began to exhibit symptoms of brain damage. E.P. went from a vibrant, active, and talkative toddler to suffering from concrete and sustained abnormalities that would be diagnosed as brain damage resulting from confirmed heavy metal toxicity. E.P., at the current age of 6, now requires round-the-clock care, is not toilet trained, suffers from gastrointestinal issues, has a significant loss of fine and gross motor skills, has aggression issues, and is unable to communicate with his parents and caregivers. E.P. requires constant monitoring to ensure that he does not injure himself or elope.

30. In the period between May to August 2017, at 2 years and 8 months old, E.P. demonstrated a rapid regression in all areas of development. The loquacious two-year-old was now unable to communicate and became clumsy, slow, and demonstrated severely regressed gross and fine motor function. E.P. additionally developed chronic diarrhea which often occurred up to 6-8 times per day, and a severely bloated stomach.

31. From August 2017 through December 2017, Plaintiffs Sarah and Grant Palmquist, visited with several doctors and therapists in an attempt to diagnose, treat, and manage the rapid regression that E.P. was experiencing. In December 2017, the Palmquists

consulted with a developmental pediatrician with MAPS (Medical Academy of Pediatric Special Needs) certification. After taking an extensive clinical history, evaluating, and observing, E.P., the doctor initiated a medical workup that included testing for heavy metal toxicity, standard bloodwork, MTHFR genetic variant analysis and a stool sample. The two tests ordered to evaluate for heavy metal toxicity were a hair sample, which analyzes the amount of excreted heavy metals, and a urine porphyrins test, which analyzes ratios of abnormal porphyrins excreted in the urine. In a urine porphyrin test, the presence and concentration of various abnormal porphyrins correspond to levels of heavy metals in the body.

32. E.P. was found to have severe heavy metal toxicity. Both tests showed a high level of heavy metals, notably greater than the 99th percentile on the hair test. The doctor said that it was one of the worst cases the doctor had ever seen. At this time, the reports of high metal toxicity in Earth's Best baby foods were not known to the general public. To address the heavy metal toxicity, the doctor recommended low-dose frequent oral chelation. A method of chelation that involves taking a low-dose oral chelator based on the patient's weight and is taken at 4-hour intervals for 72 hours, followed by 4 days off. This low-dose chelation method continued for months where E.P.'s family members were required to wake every few hours three days a week to administer the medication. E.P. then started transdermal chelation for continued efforts to lower E.P.'s heavy metal load.

33. The stool test demonstrated an abnormal bacterial overgrowth of yeast and Clostridia bacteria. Plaintiffs were told that the presence of heavy metal toxicity can result in gastrointestinal tract dysbiosis. For this dysbiosis, or microbial imbalance, E.P. was

treated with antibiotics and antifungals for three months and then placed on maintenance medication.

34. In December 2017, Plaintiffs, Dr. Sarah Palmquist and Grant Palmquist, requested a 23-hour electroencephalogram (EEG) to rule out a seizure disorder as the reason for E.P.'s unexplained regression. Plaintiffs were aware that sometimes seizure activity can be present without the typical clinical presentations and that sometimes the only symptom is the loss of language. This EEG was interpreted as negative for a seizure disorder. Again, the Plaintiffs were left without a diagnosis for their son's decline and extreme heavy metal toxicity.

35. E.P. was again tested for heavy metals with a urine porphyrin test in August 2018, and again E.P. demonstrated an extremely high toxic load. The physician who ordered the test is another MAPS physician who specializes in pediatric acute onset neuropsychiatric syndrome. The doctor stated that it was one of the worst cases he had ever seen and was baffled by the high load of heavy metals and that he was "loaded with mercury." Blood work was ordered by another of E.P.'s treating physicians to test for infectious or autoimmune causes for epilepsy. Again, no other definitive cause of E.P.'s severe toxic heavy metal load was found.

36. Further testing and treatment that Plaintiffs endured in their search for a cause of E.P.'s brain damage and developmental regression included whole exome genetic sequencing ordered by a pediatric neurologist. This genetic sequencing was ordered on E.P., as well as Dr. Sarah Palmquist and Grant Palmquist. No genetic abnormalities tested for on that exam were found in E.P., Sarah Palmquist, or Grant Palmquist. The doctor

performed additional testing, and this included genetic testing for chromosomal deletions and translocations, inherited mitochondrial disorders, and metabolic disorders; all of which were negative. Due to newly discovered genetic mutations, in January 2021, an additional query was made on E.P.'s genetic data and this too was negative.

37. In April 2019, another 23-hour EEG was ordered after E.P. developed a further loss of language after the age of 3 in combination with Sarah Palmquist witnessing what she thought may be signs of a clinical seizure, notably uncontrollable writhing movements on the floor as well as abnormal movements of the facial muscles. The April 2019 EEG was abnormal, consistent with diffuse bilateral frontotemporal epileptiform discharges, diffuse slowing, and mild encephalopathy. This result of the EEG was not consistent with any known childhood epilepsy disorder. Research demonstrates that heavy metal toxicity can induce seizures. E.P. was then placed on an anti-epileptic drug in which he remains on today. During the time seizure activity was suspected by Dr. Sarah Palmquist and treatment for seizures was initiated, chelation therapy was stopped for safety reasons. Once the seizures were diagnosed and treated with anti-epileptic medication, E.P. had a follow-up EEG that demonstrated no seizure activity in September 2019. Chelation was reinitiated until treatment was started for his gastrointestinal injuries.

38. From September 2019 through December 2019, Plaintiffs consulted with two physicians specializing in gastrointestinal (GI) disorders in children. These doctors were able to diagnose diffuse inflammation throughout the GI tract. While E.P. was initially placed on a systemic steroid and saw improvement in his GI issues, steroids are not a long-term answer to a chronic injury. Effort was then turned to healing his GI tract since a large

portion of detoxification occurs through the bile excreted from the liver. E.P. was placed on several antibiotics to eradicate the dysbiotic bacteria, and then high doses of probiotics. After treatment, some of E.P.'s GI issues have improved in terms of consistency and frequency of bowel movements. However, the brain damage resulting in profound developmental delay and intellectual impairment remains.

39. Extensive diagnostic testing, including lab work, genetic sequencing, EEGs, a brain MRI, and expert clinical assessment by multiple physicians have ruled out numerous potential other causes of E.P.'s brain damage. Abnormal pregnancy, birth trauma, genetic causes, structural brain abnormalities, childhood epilepsy disorder, metabolic, and infectious causes have also been excluded. Further, E.P. has never experienced trauma to his head nor any other region of his body. While some of E.P.'s gastrointestinal issues have improved, E.P. remains profoundly brain damaged. E.P. functions at the level of a child aged two years or younger. His communication skills are in the <1 percentile for his age and he is not even able to undergo IQ testing due to his severe impairments. Numerous peer reviewed authoritative articles have evidenced the association between brain damage and GI issues in infants when chronically exposed to heavy metals in infancy. E.P. has been irreparably harmed from his chronic heavy metal exposure during his pivotal development as an infant and young child due to Earth's Best baby formula and baby food.

V.

CAUSES OF ACTION

A. Negligence against All Defendants

40. Plaintiffs incorporate by reference the facts and allegations of the preceding paragraphs.

41. Plaintiffs were injured because of Defendants' negligence and gross negligence when Defendants negligently:

- a. designed, produced, marketed, and distributed baby food products with dangerous levels of heavy toxic metals;
- b. failed to warn Plaintiffs regarding the dangerous amounts of heavy toxic metals present in Hain's Earth's Best Organic baby food products;
- c. failed to properly label its products knowing that the products contained dangerous levels of heavy toxic metals;
- d. failed to comply with applicable standards, rules, and regulations regarding safe levels of arsenic, lead, cadmium, and mercury;
- e. failed to adequately take steps to identify the harmful levels of arsenic, lead, cadmium, and mercury in Earth's Best Baby Food;
- f. failed to adequately test its ingredients and its final products for dangerous levels of heavy toxic metals;
- g. committed other acts deemed negligent and grossly negligent.

42. Defendants owed Plaintiffs a duty to provide safe products and to adequately warn them of the levels of heavy toxic metals contained in those products. As outlined above, Defendants breached those duties. These breaches were both the cause in fact and proximate cause of Plaintiffs' injuries. As a result of Defendants' negligence, Plaintiff E.P. sustained severe injuries to his body, including severe brain damage and neurological injuries from which he will never fully recover. His injuries have resulted in physical pain, mental anguish, and other medical problems. Plaintiffs Grant and Sarah Palmquist have suffered severe pain, mental anguish, and emotional distress due to their son's injuries. Plaintiffs have incurred and will continue to incur pharmaceutical and medical expenses in connection with E.P.'s injuries. Plaintiffs are entitled to recover for their injuries. Defendants' actions were done with reckless disregard to a substantial risk of bodily injury. Accordingly, Plaintiffs are entitled to punitive damages.

43. Furthermore, Plaintiffs are entitled to punitive damages because Defendants' actions were grossly negligent. Defendants acted with flagrant and malicious disregard for Plaintiff E.P.'s health and safety. Defendants knew the extreme risks posed by the high levels of heavy toxic metals in their baby food products but ignored those risks and intentionally sold the products knowing of the dangers to babies and children like Plaintiff. Further, Defendants failed to warn Plaintiffs of the extreme risk and hazard Earth's Best Organic baby foods posed to Plaintiff. Defendants had actual, subjective awareness of the risk and consciously disregarded such risk by allowing Plaintiffs to buy the Earth's Best Organic products and to feed them to E.P. Defendants knew consumers like Plaintiffs

would rely on Hain's claims, purchase the baby food based on those claims, and feed it to children like E.P. These acts were willful, wanton, and grossly negligent.

B. Products Liability against The Hain Celestial Group, Inc.

44. Plaintiffs incorporate by reference the facts and allegations of the preceding paragraphs.

45. Plaintiffs are "persons" as defined in Texas Business and Commerce Code § 17.45(3).

46. As defined in Texas Business and Commerce Code §§ 17.45(9) and (13), Hain knowingly and intentionally engaged in false, misleading, and deceptive acts that caused Plaintiffs' injuries.

47. Specifically, Hain knowingly, that is with actual awareness of the falsity, deception, and unfairness of its acts, sold its Earth's Best Organic baby food products with high, dangerous levels of heavy toxic metals. Hain intentionally did so with the specific intent that Plaintiffs would act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness of Hain's claims. Plaintiffs bought and fed E.P. Hain's Earth's Best Organic baby food products almost exclusively due to them being widely available and due to Hain's claims that its products were high quality and safe. E.P.'s injuries are a direct result of Hain's deceptive practices.

48. Further, Hain designed, tested, manufactured, marketed, distributed, and/or sold its Earth's Best baby food products with design, manufacturing, and/or marketing defects.

49. **Manufacturing Defect:** Hain's baby food products were designed,

manufactured, distributed, and/or sold with one or more manufacturing defects.

Specifically:

- a. Hain provided its products to consumers like Plaintiffs in a defective condition with high levels of heavy toxic metals that rendered the products unreasonably dangerous and unsafe for use by babies and small children;
- b. Hain's products deviated in quality from suggested industry standards and were produced with ingredients that contained high toxic levels of arsenic, lead, cadmium, and mercury;
- c. Hain failed to properly test its final products to ensure that the levels of heavy toxic metals contained in them were below levels established by applicable regulations and accepted by industry standards;
- d. When the products left Hain's custody or control they had been manufactured defectively;
- e. The design, manufacturing, and/or marketing defects rendered the baby food products in question unreasonably dangerous.

50. The manufacturing defects that rendered the baby food products unreasonably dangerous were the producing, proximate, and contributing cause of Plaintiffs' injuries.

51. **Design Defect:** Hain's Earth's Best baby food products were designed, manufactured, distributed, and sold with one or more design defects.

- a. Hain designed its Earth's Best Organic baby food products in an

unreasonably dangerous manner while safer alternative designs were available at the time of the design and production of the food products in question. Specifically, Hain used ingredients that contained high levels of heavy toxic metals that were not removed during production. Better, safer ingredients were available for Hain to use in its products.

- b. Hain either knew or should have known that safer ingredients were available that would reduce the level of heavy toxic metals in their final products to levels that are considered safe by health experts and that comply with federal regulations and industry standards.
- c. The safer alternative designs would have prevented or significantly reduced the previously mentioned risks without substantially impairing the products. In fact, had Hain used safer ingredients it would have served the purpose of ensuring that the final products matched the claims Hain made about them.
- d. The safer alternative design was economically and technologically feasible at the time the baby food products left Hain's control. Safer ingredients are readily available as are testing methods to ensure the safety of the baby food products.
- e. Hain either knew or should have known that the design, manufacturing, and marketing defects deviated from the planned specifications for the baby food products in question.
- f. The design defects rendered the baby food products unreasonably

dangerous.

52. The baby food products' defective design was the producing, proximate, and contributing cause of Plaintiffs' injuries.

53. **Marketing Defects and Failure to Warn**: The baby food products in question were designed, manufactured, distributed, and sold with one or more marketing defects.

- a. There was an unreasonable risk in the intended or reasonably foreseeable use of Hain's Earth's Best Organic baby food products. Specifically,
- b. Hain failed to adequately warn Plaintiffs of the risk relating to feeding their child baby food containing high levels of heavy toxic metals. Specifically, Hain did not provide adequate warning labels indicating that consuming the baby food products could cause severe neurological injuries. Hain failed to instruct Plaintiffs regarding the risks and failed to instruct Plaintiffs on how to avoid the dangers.
- c. Including appropriate warnings and providing complete information regarding the contents of its products would have been both technologically and economically feasible for Hain when the products left its custody and control.
- d. The marketing defects rendered the baby food products unreasonably dangerous.

54. Hain's failure to warn and the marketing defects relating to the products in

question were the producing, proximate, and contributing cause of Plaintiffs' injuries.

55. As a direct and proximate result of Hain's conduct, Plaintiff E.P. sustained severe injuries to his body and mind that resulted in severe, permanent cognitive and neurological injuries, physical pain, mental anguish, and other medical problems. E.P. will never fully recover from his injuries and will continue to suffer the debilitating effects of his neurological injuries throughout the remainder of his life. E.P. will be severely limited and unable to function normally. Additionally, Plaintiffs Grant and Sarah Palmquist have suffered mental anguish, emotional trauma, and financial loss due to E.P.'s injuries. Plaintiffs have incurred and will continue to incur pharmaceutical and medical expenses in connection with E.P.'s injuries.

56. Plaintiffs are also entitled to exemplary damages because of Hain's actions and inactions. Hain's conduct rises to the level of gross negligence. Hain was subjectively aware that its baby food products contained high levels of heavy toxic metals and were subjectively aware that these neurotoxins would likely injure infants and young children. Hain's actions and inactions when viewed objectively, subjected Plaintiffs to an extreme degree of risk.

C. Breach of Warranties, Negligence, and Negligent Undertaking against Whole Foods Market Rocky Mountain/Southwest, L.P.

57. Plaintiffs incorporate by reference the facts and allegations of the preceding paragraphs.

58. Whole Foods Market Rocky Mountain/Southwest, L.P. ("Whole Foods") sold Hain's Earth's Best Organic baby food products and in doing so warranted and

expressly represented to the public generally, and specifically to Plaintiffs, that the products were safe for consumption by infants and young children.

59. Whole Foods' stated purpose is to "nourish people and the planet."⁶ As a seller of "natural and organic foods," Whole Foods specifically represents to its customers that it only sells products that are of the "highest quality."⁷ Whole Foods further represents to the public that it "carefully vet[s] our products to make sure they meet our high standards by researching ingredients, reading labels and auditing sourcing practices."⁸ And it promises its customers that "if it doesn't meet our standards, we don't sell it."⁹ In short, "Whole Foods" claims to "take pride in what we do sell and even more in what we don't" by refusing to sell products with harmful ingredients.¹⁰ Whole foods made these express factual representations about Hain's Earth's Best Baby Food.

60. Given Whole Foods' specific and material representations, Whole Foods knew or had reason to know that consumers like Plaintiffs would purchase the Hain products due to their being advertised as safe and high-quality organic baby food.

61. Whole Foods' warranties and express representations were incorrect given the high levels of heavy toxic metal Hain's baby food products contained.

62. Plaintiffs relied on Whole Foods' express factual representations that Hain's

⁶ See "Whole Foods: Mission & Values," last accessed on Apr. 22, 2021 at <https://wholefoodsmarket.com/mission-values>.

⁷ See "Whole Foods: Core Values," last accessed on Apr. 22, 2021, at <https://www.wholefoodsmarket.com/mission-values/core-values>.

⁸ *Id.*

⁹ *Id.*

¹⁰ See "Whole Foods: Quality Standards," accessed on Apr. 22, 2021, at <https://www.wholefoodsmarket.com/quality-standards> ("We don't allow 100+ ingredients in our foods . . .").

Earth's Best Organic baby food products were safe and of the highest quality.

63. If Hain's products were as advertised (and as expressly represented by Whole Foods), Plaintiffs would not have been injured by the product. Hain and Whole Foods markets the Earth's Best Organic baby food products as safe, natural, and organically produced. If the products had been in a condition as advertised, E.P. would not have been exposed to extremely high, toxic levels of arsenic, lead, cadmium, and mercury and would not have suffered cognitive brain injuries as a result.

64. Additionally, as a seller of health food products, including baby food, Whole Foods had a duty to take reasonable steps to investigate the safety of the products it sold. This is especially true when Whole Foods made express, factual representations about the quality of the products it sells—including Earth's Best Baby Food. Plaintiffs relied on Whole Foods to make correct representations and to warn Plaintiffs if products Whole Foods was selling did not meet Whole Foods' standards. Whole Foods failed to warn Plaintiffs of the dangers with Earth's Best Baby Food. If Plaintiffs had been warned of the dangers of heavy metals in Earth's Best Baby Food, Plaintiffs would not have fed E.P. the baby food and E.P. would not have the injuries he has sustained.

65. As a seller of products, including baby food, Whole Foods has a duty to exercise reasonable care to ensure that the products it sells are as advertised. Whole Foods failed to live up to that duty, and as a direct result, Plaintiffs were harmed.

66. Whole Foods is also liable under a negligent undertaking theory. Specifically, Whole Foods undertook to investigate the products it sells. Specifically, Whole Foods "carefully vet[s] our products to make sure they meet our high standards by

researching ingredients, reading labels and auditing sourcing practices.”¹¹ And it promises its customers that “if it doesn’t meet our standards, we don’t sell it.”¹² In short, “Whole Foods” claims to “take pride in what we do sell and even more in what we don’t” by refusing to sell products with harmful ingredients.¹³

67. If Whole Foods had adequately vetted Earth’s Best Baby Food, it should have found the dangerous nature of the ingredients. Whole Foods either failed to do so, or did so and failed to warn Plaintiffs. Even if Whole Foods did not have a duty to investigate the sourcing practices and ingredients of the products Whole Foods chooses to sell, Whole Foods undertook that duty voluntarily in an effort to distinguish itself as a brand that can be relied on. Plaintiffs specifically relied on Whole Foods represented efforts to vet products to ensure that they are safe, including Earth’s Best Baby Food.

68. Plaintiffs’ injuries were sustained because of Whole Foods’ negligent conduct as alleged in this complaint.

VI.

DAMAGES

69. Plaintiffs seek damages in excess of \$1,000,000.00. Specifically, as a direct and proximate result of Defendants’ acts and omissions, Plaintiff E.P. has suffered serious, permanent, and disabling injuries. As a further result of such injuries, Plaintiff has also suffered physical pain, discomfort, disfigurement, physical impairment and extraordinary

¹¹ *Id.*

¹² *Id.*

¹³ See “Whole Foods: Quality Standards,” accessed on Apr. 22, 2021, at <https://www.wholefoodsmarket.com/quality-standards> (“We don’t allow 100+ ingredients in our foods . . .”).

emotional pain and mental anguish. Plaintiff will continue to suffer such damages into the future, if not for the balance of his natural life.

70. In addition, as a direct and proximate result of Defendants' acts and omissions, Plaintiffs Grant and Sarah Palmquist have incurred reasonable and necessary medical and healthcare expenses, which expenses will continue to be incurred in the future. All of these damages which have been suffered by Plaintiffs herein have a monetary value which greatly exceeds the minimum jurisdictional limits of this Court. Plaintiffs pray for relief and judgment as follows:

- Compensatory damages against Defendants;
- Actual damages;
- Loss of services and earnings of an un-emancipated minor;
- Consequential damages;
- Pain and suffering;
- Exemplary damages;
- Past and future mental anguish;
- Past and future impairment;
- Past and future disfigurement;
- All other damages allowable under Texas law;
- Interest on damages (pre and post-judgment) in accordance with the law;
- Costs of Court;
- Expert witness fees;

- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

VII.

JURY TRIAL DEMANDED

71. Plaintiffs hereby request a trial by jury on all claims and submit their jury fee herewith.

VIII.

PRAYER

Plaintiffs pray that this citation issue and be served upon Defendants in a form and manner prescribed by law, requiring that Defendants appear and answer, and that upon final hearing, Plaintiffs have judgment against Defendants in a total sum in excess of the minimum jurisdictional limits of this Court, pre-judgment and post-judgment interests, all costs of Court, exemplary damages, and all such other and further relief, to which they may show themselves justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record by CM/ECF and/or another means in accordance with the Federal Rules of Civil Procedure on this 26th day of April, 2021.

/s/ Kurt Arnold

Kurt Arnold