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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA (LAS VEGAS)**

K.M., a minor child by and through his legal  
guardian, ROBIN MAGLINTI,

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,  
INC.; GERBER PRODUCTS COMPANY;  
and WALMART, INC.

Defendants.

Case No.:

**COMPLAINT**

**(DEMAND FOR JURY TRIAL)**

Plaintiff by and through their counsel of record, and for their Complaint against  
Defendants, hereby allege as follows:

**Introduction**

1. This case involves a group of manufacturers—namely, Beech-Nut Nutrition  
Company; Walmart, Inc.; and Gerber Products Company (“Defendants” or “Defendant Baby Food  
Manufacturers”)—that *knowingly* sold baby food products (the “Baby Foods”) that contain

1 dangerous levels of toxic heavy metals—including methylmercury,<sup>1</sup> lead, and arsenic, (collectively  
2 “Toxic Heavy Metals”), all of which are well-known and severe neurotoxins. The Plaintiff is a child  
3 who ingested Defendants’ Baby Food products and as a result suffered toxic heavy metal exposures  
4 that caused and/or substantially contributed to Plaintiff developing lifelong brain damage and other  
5 neurodevelopmental disorders, including but not limited to diagnose of Autism Spectrum Disorder  
6 (“ASD”). This case seeks to hold the Defendant Baby Food Manufacturers accountable for their  
7 reprehensible conduct and ensure they are punished for permanently affecting Plaintiff’s ability to  
8 live a fulfilling life.

9  
10 2. On February 4, 2021, the United States House of Representatives Committee on  
11 Oversight and Reform’s Subcommittee on Economic and Consumer Policy (the  
12 “Subcommittee”) released a report entitled “Baby Foods Are Tainted with Dangerous Levels of  
13 Arsenic, Lead, Cadmium, and Mercury” (the “Subcommittee Report”). *See generally*,  
14 Subcommittee Report, attached hereto as Exhibit 1.<sup>2</sup> The Subcommittee Report confirmed, based  
15 on information obtained from Defendants themselves, that several of Defendants’ Baby Food  
16 products that are sold in Nevada are tainted with dangerous levels of toxic heavy metals. *See*  
17 Subcommittee Report, p. 2. The Subcommittee found that Beech-Nut manufactures its Baby Foods  
18 using ingredients containing as much as 913.4 ppb arsenic and 886.9 ppb lead and Gerber’s Baby  
19 Foods utilize ingredients containing as much as 90 ppb arsenic and 48 ppb lead. The Subcommittee  
20 determined that (according to independent third-party testing), Walmart’s Baby Foods contained as  
21 much as 108 ppb arsenic and 26.9 ppb lead. Six months after issuing its initial report, the  
22 Subcommittee issued a second report entitled “New Disclosures Show Dangerous Levels of Toxic  
23 Heavy Metals in Even More Baby Foods” (the “Subcommittee Report Addendum”). *See*

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25  
26 <sup>1</sup> To be clear, the type of organic mercury at issue here is methylmercury found in food, not ethylmercury contained in  
27 the thimerosal vaccine. Ethylmercury is rapidly excreted from the body and is not considered as toxic as methylmercury.  
Ethylmercury and vaccines are irrelevant to this litigation.

28 <sup>2</sup> Staff Report, Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform U.S. House of  
Representatives, *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* (Feb. 4,  
2021) (“Subcommittee Report”) at 59.



1 consumed Defendants' Baby Food products that contained unsafe levels of toxic heavy metals.  
2 ROBIN MAGLINTI is the legal guardian of KM and brings this action on his behalf. She is a  
3 resident of Clark County, Nevada and purchased toxic baby food from the Defendants for KM.

4 7. Defendant BEECH-NUT NUTRITION COMPANY INC. ("Beech") is a citizen of  
5 Delaware and New York with its principal place of business located at 1 Nutritious Pl., Amsterdam, NY  
6 12010. Beech produced and sells its baby food under the "Beach Nut" brand name and  
7 primarily produces Baby Foods for infants 4+ months up to 12+ months and includes a variety of  
8 cereals, "jars," and "pouches" for these age groups. At all relevant times Beech's Baby Food was sold  
9 nationwide, including throughout the State of Nevada, and Beech has conducted business and derived  
10 substantial revenue from its manufacturing, advertising, distributing, selling, and marketing of Baby  
11 Foods within the State of Nevada.

12 8. Defendant GERBER PRODUCTS COMPANY is a citizen of Michigan with its  
13 principal place of business located at 445 State Street, Fremont, MI 49413-0001. Gerber sells Baby  
14 Foods under the brand name Gerber. Gerber organizes its products into broad categories of  
15 "formula", "baby cereal", "baby food", "snacks", "meals & sides" "beverages" and "organic". At all  
16 relevant times, Gerber has conducted business and derived substantial revenue from its  
17 manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the State of  
18 Nevada.

19 9. Defendant WALMART, INC. ("Walmart") is a citizen of Delaware and Arkansas  
20 with its principal place of business located at 702 S.W. 8th St. Bentonville, AK 72716. Walmart sells  
21 Baby Foods under the brand name Parent's Choice. Parent's Choice offers a wide selection of baby  
22 foods ranging from "sweet potatoes & corn" to "toddler cookies" and "yogurt bites." At all relevant  
23 times, Walmart has conducted business and derived substantial revenue from its manufacturing,  
24 advertising, distributing, selling, and marketing of Baby Foods within the State of Nevada.

25  
26 **Jurisdiction and Venue**

27 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
28 1332(a). This is a civil action between citizens of different states and the amount in controversy

1 exceeds \$75,000, exclusive of interest and costs.

2       11. This Court has personal jurisdiction over Defendants because Defendants have  
3 purposefully availed themselves of the opportunity to conduct commercial activities in this Judicial  
4 District by providing goods for sale in this Judicial District and advertising their baby food products  
5 on their own website and third-party websites readily available to consumers in this Judicial District  
6 thereby attempting to solicit the business of customers in this Judicial District.

7       12. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391(b)(2) because  
8 the underlying acts, omissions, injuries, and related facts giving rise to Plaintiff's claims occurred  
9 within this Judicial District as Defendants have conducted business, published websites, and derived  
10 income from the sale of goods to the public within this Judicial District.

### 11 **General Allegations**

12  
13       13. In October 2019, a public health organization, known as "Healthy Babies Bright  
14 Futures" organization ("HBBF"), released a study and report captioned: "What's in my baby's food?"  
15 That report documented an HBBF investigation that involved scientific testing of early baby foods.  
16 That testing found toxic heavy metals in 95 percent of the products tested and further determined  
17 that one in four baby foods contained all three of the following dangerous metals—arsenic, lead, and  
18 mercury. As HBBF noted in its report, even "trace amounts" of these toxic contaminants "can alter  
19 the developing brain and erode a child's IQ." Moreover, because these metals bioaccumulate, "the  
20 impacts add up with each meal or snack a baby eats." A copy of this report is attached as Exhibit 3.

21       14. Following HBBF's report, the House Subcommittee launched an investigation into  
22 products sold by certain baby food manufacturers, including Beech, Gerber, and Walmart's (Parent's  
23 Choice). See Subcommittee Report, p. 2. The results of the House Subcommittee's investigation—  
24 based on the results of Defendants' own internal testing—were set forth in the Subcommittee  
25 Report, which was released on February 4, 2021. The findings of the report were as follows.

### 26 ***Arsenic in Defendants' Baby Food***

27       15. According to the Subcommittee Report, arsenic was present in all brands of baby  
28 foods subject to the House Subcommittee's investigation. Beech used ingredients that tested as high

as 913.4 ppb arsenic and used high arsenic additives that tested above 300 ppb arsenic to address product characteristics such as “crumb softness.” See Subcommittee Report, p. 3. Gerber Brand Baby Food used high arsenic ingredients, including rice flour that contained over 90 ppb arsenic. *Id.* For comparison, the FDA has set the maximum level of arsenic in bottled water at 10 ppb. See Subcommittee Report, p. 4.

16. According to the Subcommittee Report, arsenic is one the most dangerous of the toxic heavy metals at issue and poses a huge risk to human health. See Subcommittee Report, p. 10. Currently known risks of arsenic to health include respiratory, gastrointestinal, hematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system and cognitive development in children.”<sup>6</sup>

17. The report noted that one study found negative effects in cognitive development of schoolchildren exposed to concentrations of arsenic over 5 ppb. For the authors of the study, 5 ppb was an important threshold for small children. Consumer reports has recommended setting the limit of arsenic at 3 ppb.<sup>7</sup>

18. Gerber agreed to provide only limited data to the House Subcommittee, but the data it provided shows that Gerber routinely used ingredients in Gerber Brand Baby Food that contained over 90 ppb arsenic, including 67 batches of rice flour. See Subcommittee Report, p. 19.

19. Gerber used grape juice concentrate in Gerber Brand Baby Food containing 39 ppb inorganic arsenic. For apple juice concentrate, FDA has issued draft guidance requiring less than 10 ppb in organic arsenic. See Subcommittee Report, p. 52.

### ***Lead in Defendants’ Baby Food***

20. Lead was also present in all brands of baby foods subject to the House Subcommittee’s investigation. See Subcommittee Report, p. 3. In particular, Beech sold Baby Food

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<sup>6</sup> Agency for Toxic Substances and Disease Registry, ATSDR’s Substance Priority List (2019), available at <http://www.atsdr.cdc.gov/spl/index.html#2019spl>.

<sup>7</sup> Miguel Rodriguez-Barranco *et al.*, Association of Arsenic, Cadmium and Manganese Exposure with Neurodevelopment and Behavioral Disorders in Children: A Systematic Review and Meta-Analysis (June 1, 2013), available at <https://pubmed.ncbi.nlm.nih.gov/23570911/>.

1 containing as much as 886.9 ppb lead, and used many ingredients that contained high lead content.  
 2 See Subcommittee Report, p. 3. Gerber Brand Baby Food also used high-lead ingredients in Gerber  
 3 Brand Baby Food, including some that contained over 48 ppb lead. See Subcommittee Report, p. 3.

4 21. For comparison, the FDA has set the maximum level of lead in bottled water at 5 ppb.  
 5 See Subcommittee Report, p. 4.

6 22. Because lead can accumulate in the body, even small doses of lead have deleterious  
 7 effects on children, including health, behavioral, cognitive, and development issues. The FDA states  
 8 that “[h]igh levels of lead exposure can seriously harm children’s health and development,  
 9 specifically the brain and nervous system.”<sup>8</sup> There is a growing consensus that lead levels in baby  
 10 foods should not exceed 1 ppb. See Subcommittee Report, p. 21.

11 23. The Subcommittee noted that various studies have established a significant  
 12 association between early childhood exposure to lead and decreased standardized test scores,  
 13 academic achievement, and diseases such as attention-deficit/hyperactivity disorder (“ADHD”).  
 14 These effects last into adulthood according to other studies.<sup>9</sup>

15 24. Gerber agreed to provide only limited data to the House Subcommittee, but the data it  
 16 provided shows that Gerber used ingredients in Gerber Brand Baby Food that tests show contained  
 17 as much as 48 ppb lead, and Gerber used many ingredients containing over 20 ppb lead, including its  
 18 juice ingredients and sweet potatoes. See Subcommittee Report, p. 27. Gerber’s tested juice  
 19 concentrate measured an average of 11.2 ppb lead, which exceeds the 10-ppb standard for bottled  
 20 water set by FDA.  
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 22  
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24 <sup>8</sup> FDA, Lead in Food, Foodwares, and Dietary Supplements, available at: [https://www.fda.gov/food/environmental-](https://www.fda.gov/food/environmental-contaminants-food/lead-food-foodwares-and-dietary-supplements)  
 25 [contaminants-food/lead-food-foodwares-and-dietary-supplements](https://www.fda.gov/food/environmental-contaminants-food/lead-food-foodwares-and-dietary-supplements).

26 <sup>9</sup> See, e.g., Namhua Zhang *et al.*, Early Childhood Lead Exposure and Academic Achievement: Evidence From  
 27 Detroit Public Schools, available at: <http://mediad.publicbroadcasting.net/p/michigan/files/201302/AJPH.2012.pdf>;  
 Anne Evens *et al.*, The Impact of Low-Level Lead Toxicity on School Performance Among Children in the Chicago  
 Public Schools: A Population-Based Retrospective Cohort Study, available at:  
 28 <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-015-0008-9>; Maitreyi Mazumdar *et al.*, Low-Level  
 Environmental Lead Exposure in Childhood and Adult Intellectual Function: A Follow Up Study, available at:  
<https://pubmed.ncbi.nlm.nih.gov/21450073/>.

***Defendants’ Lack of Internal Testing for Mercury***

25. The House Subcommittee also sought to investigate the presence of mercury in baby food. It found that Beech did not even test for mercury in Baby Food and that Gerber “rarely” tested for mercury in Gerber Brand Baby Food. *See* Subcommittee Report, pp. 4, 32 and 33. .

***Refusal by Walmart to Cooperate in Investigation***

26. The House Subcommittee had “grave concerns” about baby foods manufactured by Walmart (Parent’s Choice) as the company refused to cooperate with the Subcommittee’s initial investigation. *See* Subcommittee Report, p. 5. Independent testing of Walmart confirmed that their baby foods contained “concerning levels of toxic heavy metals.” *See* Subcommittee Report, pp. 5, and 43.

***House Subcommittee’s Addendum Report***

27. Following publication of the Subcommittee Report, Walmart (Parent’s Choice) provided varying degrees of information to the Subcommittee, and on September 29, 2021, the House Subcommittee released a subsequent report entitled “New Disclosures Show Dangerous Levels of Toxic Heavy Metals in Even More Baby Foods” (the “Subcommittee Report Addendum”). *See* Subcommittee Report Addendum.

28. Walmart provided documents to the Subcommittee “revealing a concerning lack of attention to toxic heavy metal levels in baby food and an abandonment of its previously more protective standards.” *See* Subcommittee Report Addendum, p. 2. Walmart does not appear to conduct any testing of its baby food products for toxic heavy metals. *See* Subcommittee Report Addendum, p. 21. Walmart sets maximum arsenic and lead levels and asks the manufacturer of its private label to self-certify, but Walmart does not appear to collect any test data or check the accuracy of those certifications. *See* Subcommittee Report Addendum, pp. 21-23. Walmart does not require any mercury testing and does not set any standards for mercury levels. *See* Subcommittee Report Addendum, p. 23.

***Dangers of Toxic Heavy Metals to Babies and Children.***

29. According to the World Health Organization (“WHO”), Toxic Heavy Metals,

specifically arsenic, cadmium, lead, and mercury, pose a “major public health concern” for children.<sup>10</sup> The Occupational Safety and Health Administration (“OSHA”) has warned that these metals “may build up in biological systems and become a significant health hazard.”<sup>11</sup> Indeed, the Department of Health and Human Services’ Agency for Toxic Substances and Disease Registry (“ATSDR”) ranks arsenic as number one among substances present in the environment that pose the most significant potential threat to human health, followed by lead (second), mercury (third), and cadmium (seventh).<sup>12</sup>

30. The threat presented by Toxic Heavy Metals to children’s health is widely shared by the global scientific community. As one recent study observed, “[t]he implications of heavy metals with regards to children’s health have been noted to be more severe compared to adults. The elements’ harmful consequences on children health include mental retardation, neurocognitive disorders, behavioral disorders, respiratory problems, cancer and cardiovascular diseases. Much attention should be given to heavy metals because of their high toxicity potential, widespread use, and prevalence.”<sup>13</sup> Children and, even more so, 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%.<sup>14</sup> And, 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.<sup>15</sup> For example, liver pathways that in adulthood metabolize absorbed arsenic do not mature until mid-childhood; un-excreted arsenic thus

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<sup>10</sup> World Health Organization, *Children's Health and the Environment WHO training Package for the Health Sector* (October 2011).

<sup>11</sup> OSHA, *Toxic Metals*, available at: <https://www.osha.gov/toxic-metals>.

<sup>12</sup> ATSDR, *ATSDR's Substance Priority List* (2019), available at: [www.atsdr.cdc.gov/spl/index.html#2019spl](http://www.atsdr.cdc.gov/spl/index.html#2019spl).

<sup>13</sup> Osman, et al., *Exposure routes and health effects of heavy metals on children*, 32 BIOMET ALS 563-573 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/30941546/>

<sup>14</sup> Stein, et al., *In harm's way: toxic threats to child develop.*, 23 J DEVBEHAVPEDIATR. 1 S13-S22 (2002), available at: [https://journals.lww.com/jrnldbpf/fulltext/2002/02001/in\\_harm\\_s\\_way\\_toxic\\_threats\\_to\\_child\\_development.4.aspx](https://journals.lww.com/jrnldbpf/fulltext/2002/02001/in_harm_s_way_toxic_threats_to_child_development.4.aspx)

<sup>15</sup> Gorini, et al., *The Role of Heavy Metal Pollution in Neurobehavioral Disorders: A Focus on Autism*, 1 REV. J. AUTISM DEV. DISORD. 1, 354-372 (2014), available at: <https://link.springer.com/article/10.1007/s40489-014-0028-3>.

continues to circulate and is deposited in other organs.<sup>16</sup> According to Linda McCauley, Dean of the Nell Hodgson Woodruff School of Nursing at Emory University, who studies environmental health effects, “[n]o level of exposure to these [heavy] metals has been shown to be safe in vulnerable infants.”<sup>17</sup> Thus, “the major windows of developmental vulnerability occur during infancy and early childhood due to continuing brain development after birth.”<sup>18</sup> In short, even small amounts of exposure to Toxic Heavy Metals can have devastating health outcomes for babies and children

***Exposure to Toxic Heavy Metals Has Been Consistently Associated  
with Autism and other Neurodevelopmental Disorders in Pediatric Populations.***

31. A chorus of regulators, research agencies and independent scientists are in broad agreement that exposure to heavy metals in early life is causally associated with ASD. The Centers for Disease Control (“CDC”) in its toxicological profile of lead specifically observes that “neurodevelopmental effects in children have been associated with [lead]” at different quantities of exposure.<sup>19</sup> At doses of <10 µg/dL<sup>20</sup>, the agency observed “[a]ltered mood and behaviors that may contribute to learning deficits, including attention deficits, hyperactivity, *autistic behaviors*, conduct disorders, and delinquency.”<sup>21</sup> The U.S. National Institute of Health (“NIH”) concurs, noting that “[p]renatal and early childhood exposure to heavy metals...may be linked to autism spectrum disorder.”<sup>22</sup> And, in July 2016, a large consortium consisting of the world’s leading epidemiologists,

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<sup>16</sup> Del Rio, et al., *A comparison of arsenic exposure in young children and home water arsenic in two rural West Texas communities*, 17 BMC PUBLIC HEALTH 850 1-13 (2017), available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-017-4808-4>.

<sup>17</sup> Roni Caryn Rabin, *Some Baby Food May Contain Toxic Metals*, *US. Reports* (NY TIMES, Feb 4. 2021), available at: <https://www.nytimes.com/2021/02/04/health/baby-food-metals-arsenic.html>

<sup>18</sup> Gorini, et al. *supra*.

<sup>19</sup> ATSDR Toxicological Profile for Lead at 133, available at: <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

<sup>20</sup> This means effects observed at less than ten micrograms of lead per blood liter.

<sup>21</sup> *Id.* (emphasis added).

<sup>22</sup> NIH, *Autism Spectrum Disorder and the Environment* (April 2019), available at: [https://www.niehs.nih.gov/health/materials/autism\\_spectrum\\_disorder\\_and\\_the\\_environment\\_508.pdf](https://www.niehs.nih.gov/health/materials/autism_spectrum_disorder_and_the_environment_508.pdf)

1 autism experts, and medical organizations published a consensus statement which identified heavy  
 2 metals such as lead and mercury as “*prime examples* of toxic chemicals that can contribute  
 3 to...autism spectrum disorder[.]”<sup>23</sup>

4       32. Such conclusions are based upon a substantial body of independent, peer-reviewed  
 5 research conducted throughout various parts of the world over the last decade which has consistently  
 6 observed a positive association between exposure to Toxic Heavy Metals and the development of  
 7 ASD in children and infant populations. The literature is comprised of prospective cohort studies  
 8 where children’s metal exposure is measured in early life and their risk of subsequently developing  
 9 ASD evaluated; pre-natal studies where pregnant mothers’ metal exposure is measured prior to  
 10 assessing the risk of ASD in later born children; case-control and cross-sectional studies where  
 11 children’s metal exposure is measured contemporaneous with ASD diagnoses; as well as meta-  
 12 analyses where individual studies are grouped together to derive an overall picture of the data.

13       33. Repeatedly, the different study types evince a strong association between metal  
 14 exposure and ASD risk. For example, a 2017 NIH-funded study of twins concluded that “prenatal  
 15 and early childhood disruption (excess or deficiency) of multiple metals during critical  
 16 developmental windows is associated with ASD...[and] increases ASD risk and severity”<sup>24</sup>  
 17 Similarly, a 2019 study and a 2021 study of metal exposure in pregnant mothers and the risk of  
 18 subsequent ASD diagnosis in children respectively observed that “[arsenic] and [lead] levels in  
 19 [amniotic fluids] tend to be positively associated with ASD risk, suggesting the possible role of  
 20 prenatal exposure to toxic metals in the ASD development”<sup>25</sup> and “[r]esults from the present study  
 21 show several associations between levels of metals and elements during gestation and ASD...in  
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 25 <sup>23</sup> Bennett, et al., *Project TENDR: Targeting Environmental Neuro-Developmental Risks The TENDR Consensus*  
 26 *Statement* 124 ENVIRON. HEALTH. PERSPECT. 7 A118-A122 (2016), available at:  
 27 <https://pubmed.ncbi.nlm.nih.gov/27479987/> (emphasis added).

28 <sup>24</sup> Arora, et al., *Fetal and postnatal metal dysregulation in autism*, 8 NATURE COMM. 1-10, 1, 5 (2017), available at:  
<https://www.nature.com/articles/ncomms15493>.

<sup>25</sup> Long, et al., *Autism spectrum disorders, endocrine disrupting compounds, and heavy metals in amniotic fluid: a*  
*case-control study* 10 MOL. AUTISM 1-19, 15 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/30647876/>.

1 children. The most notable ones involved arsenic...mercury... and lead.”<sup>26</sup>

2 34. Such results have been replicated in prospective cohort studies of early life metal  
3 exposure, with a 2016 Korean study noting that “[e]ven low blood lead concentrations at 7–8 years  
4 of age are associated with more autistic behaviors at 11–12 years of age[.]”<sup>27</sup> Similarly, another  
5 prospective Korean study from 2017 “observed that higher blood mercury levels at late pregnancy,  
6 in cord blood, and at 2 and 3 years of age were positively associated with autistic behaviors among  
7 preschool-age children.”<sup>28</sup>

8 35. Furthermore, smaller human studies from around the world have observed similar  
9 results, with a 2018 Chinese study concluding: “[t]he results of this study are consistent with  
10 numerous previous studies, supporting an important role for heavy metal exposure, particularly  
11 mercury, in the etiology of ASD.”<sup>29</sup> Indeed, a 2014 Egyptian study noted that “[l]ead and mercury are  
12 considered as one of the main causes of autism.”<sup>30</sup>

13 36. On the basis of this robust body of data, several meta-analyses published in recent  
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16 <sup>26</sup> Skogheim, et al. *Metal and essential element concentrations during pregnancy and associations with autism*  
17 *spectrum disorder and attention-deficit/ hyperactivity disorder in children*, 152 ENVIRON. INTL. 1-14, 1 (2021),  
available at: <https://pubmed.ncbi.nlm.nih.gov/33765546/>.

18 <sup>27</sup> Kyoung-Nam Kim et al., *Low-level lead exposure and autistic behaviors in school-age children* 53 EURO  
19 TOXICOLOGY 193-200, 193 (2016), available at: <https://pubmed.ncbi.nlm.nih.gov/26877220/>.

20 <sup>28</sup> Jia Ryu et al., *Associations of prenatal and early childhood mercury exposure with autistic behaviors at 5 years of*  
21 *age: the Mothers and Children's Environmental Health (MOCEH) Study*, 605-606 SCI. OF THE TOTAL ENVT.  
22 251-257, 251 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28667852/>.

23 <sup>29</sup> Li, et al., *Blood Mercury, Arsenic, Cadmium, and Lead in Children with Autism Spectrum Disorder*, 181 BIOL  
24 TRACE ELEM RES 31-37, 31 (2018), available at: <https://pubmed.ncbi.nlm.nih.gov/28480499/>; see also Dickerson,  
25 et al., *Autism spectrum disorder prevalence and associations with air concentrations of lead, mercury, and arsenic*,  
188 ENVIRON MONIT. ASSESS. 407 (2016); Mohamed, et al., *Assessment of Hair Aluminum, Lead, and Mercury*  
in a Sample of Autistic Egyptian Children: Environmental Risk Factors of Heavy Metals in Autism, BEHAV.  
NEUROL. (2015), available at: <https://pubmed.ncbi.nlm.nih.gov/26508811/>; Adams, et al., *Toxicological Status of*  
Children with Autism vs. Neurotypical Children and the Association with Autism Severity, 151 BIOL. TRACE ELEM.  
RES 171-180 (2013), available at: <https://pubmed.ncbi.nlm.nih.gov/23192845/>.

26 <sup>30</sup> Yassa, H., *Autism: A form of lead and mercury toxicity*, 38 Environ. Tox. & Pharm. 1016-1024 (2014), available at:  
27 <https://pubmed.ncbi.nlm.nih.gov/25461563/> (emphasis added); see also Filon, et al., *Analysis of lead, arsenic and*  
28 *calcium content in the hair of children with autism spectrum disorder*, 20 BMC PUBLIC HEALTH 1-8 (2020),  
available at: <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-08496-w>; Fiore, et al., *Metal*  
and essential element levels in hair and association with autism severity, 57 JOURNAL OF TRACE ELEMENTS IN  
MEDICINE AND BIOLOGY 99-103 (2020), available at: <https://pubmed.ncbi.nlm.nih.gov/31630927/>.

years report consistent associations between exposure to Toxic Heavy Metals and neurodevelopmental disorders, including ASD, in children; with the authors of a 2017 meta-analysis specifically concluding: “Results of the current meta-analysis revealed that mercury is an important causal factor in the etiology of ASD.”<sup>31</sup>

37. The fact that such results have been observed in multiple studies, conducted by different researchers, at different times, in different parts of the world, in children of varying ages, and measuring a variety of end-points (including hair, blood, and urine), strongly supports a causal relationship between exposure to Toxic Heavy Metals and the development of neurodevelopmental disorders, including ASD, in children.

***Exposure to Toxic Heavy Metals Has Been Consistently Associated  
with ADHD in Pediatric Populations***

38. Exposure to Toxic Heavy Metals has also been repeatedly associated with the development of ADHD in children, as demonstrated by numerous studies.

39. No fewer than four large meta-analyses, conducted in four different continents (North America, South America, Europe and Asia), and some employing a cross-sectional design, have observed a consistent associated association between arsenic, mercury, lead and cadmium and ADHD in children.<sup>32</sup> Indeed, the authors of the meta-analysis from Spain noted that “the evidence

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<sup>31</sup> Jafari, et al., *The association between mercury levels and autism spectrum disorders: A systematic review and meta-analysis*, 44 J. Trace Elem. Med. Biol. 289-297, 289 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28965590/>; Saghzadeh & Rezai, *Systematic review and meta- analysis links autism and toxic metals and highlights the impact of country development status: Higher blood and erythrocyte levels for mercury and lead, and higher hair antimony, cadmium, lead, and mercury*, 79 PROG. NEURO-PSYCHOPHARMACOL. BIOL. PSYCHIATRY 340-368 (2017), available at: <https://pubmed.ncbi.nlm.nih.gov/28716727/>; Wang, et al., *Exposure to Inorganic Arsenic and Lead and Autism Spectrum Disorder in Children: A Systematic Review and Meta-Analysis*, 21 CHEM RES. TOXICOL. 32, 1904-1919 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/31549506/>; Sulaiman, et al., *Exposure to Aluminum, Cadmium, and Mercury and Autism Spectrum Disorder in Children: A Systematic Review and Meta-Analysis*, 33 Chem. Res. Toxicol. 11, 2699-2718 (2020), available at: <https://pubmed.ncbi.nlm.nih.gov/32990432/>; Yoshimasu, et al., *A meta-analysis of the evidence on the impact of prenatal and early infancy exposures to mercury on autism and attention deficit/hyperactivity disorder in the childhood*, 44 NEURO TOXICOL. 121-131 (2014), available at: <https://pubmed.ncbi.nlm.nih.gov/24952233/>.

<sup>32</sup> Mufioz, et al., *Attention deficit hyperactivity disorder and its association with heavy metals in children from northern Chile*, 226 INT. J. HYG. ENVIRON. HEALTH (2020), available at: <https://europepmc.org/article/med/32106053>; Yoshimasu, et al., *supra*; Donzelli, et al., *The Association between Lead* (footnote continued)

1 from the studies allowed us to establish that there is an association between lead and ADHD and that  
 2 even *low levels of lead raise the risk*.” (emphasis added).<sup>33</sup>

3 40. The findings from the meta-analyses have been replicated in several Chinese studies  
 4 from 2006, 2014 and 2018, respectively.<sup>34</sup> Notably, the authors of the 2014 Chinese study observed  
 5 that “[e]xposure to lead even at low levels correlates with attention-deficit/hyperactivity disorder  
 6 (ADHD). However, lead-contaminated environments are often *contaminated with other heavy*  
 7 *metals that could exacerbate lead-induced ADHD*.” (emphasis added).<sup>35</sup> This is particularly  
 8 relevant—and disturbing—as children who consumed Defendants' Baby Food were repeatedly  
 9 exposed to a cocktail of Toxic Heavy Metals that, synergistically, further increased their risk of  
 10 developing ADHD.

11 41. Studies also observed a dose-response relationship between exposure to Toxic Heavy  
 12 Metals and ADHD, as demonstrated by the 2016 Spanish study Donzelli, *et al.* discussed *supra*.  
 13 Another 2016 cross-sectional study from Spain was conducted on 261 children aged 6-9 to examine  
 14 the link between exposure to arsenic and ADHD.<sup>36</sup> After adjusting for potential confounders, the  
 15 authors observed a dose-response relationship between urine arsenic levels and inattention and  
 16 impulsivity scores, finding “[urine arsenic] levels were associated with impaired attention/cognitive  
 17

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 20 *and Attention-Deficit/Hyperactivity Disorder: A Systematic Review*, 16 INT. J. ENVIRON. RES. PUBLIC HEALTH  
 21 382, 1-14 (2019), available at: <https://pubmed.ncbi.nlm.nih.gov/30700018/>; Goodland, et al., *Lead and Attention-*  
 22 *Deficit/Hyperactivity Disorder (ADHD) symptoms: A meta-analysis*, 33 CUN. PSYCHOL. REV. 3, 417-242 (2013),  
 23 available at: <https://pubmed.ncbi.nlm.nih.gov/23419800/>.

24 <sup>33</sup> Donzelli et al, *supra*.

25 <sup>34</sup> Lee, et al., *Heavy Metals' Effect on Susceptibility to Attention-Deficit/Hyperactivity Disorder: Implication of Lead,*  
 26 *Cadmium, and Antimony*, 15 INT. J. ENVIRON. RES. PUBLIC HEALTH. 6, 1-2(2018), available at:  
 27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6025252/>; Liu, et al., *S100/J in heavy metal-related child attention-*  
 28 *deficit hyperactivity disorder in an informal e-waste recycling area*, 45 NEURO TmaCOL. 185-191 (2014), available  
 at: <https://pubmed.ncbi.nlm.nih.gov/25451971/>; Wong, V.C.N, *Attention-Deficit Hyperactivity Disorder and Blood*  
*Mercury Level: a Case-Control Study in Chinese Children*, 37 NEUROPEDIATRICS 4, 234-40 (2006), available at:  
<https://www.researchgate.net/publication/6623327>.

<sup>35</sup> Liu, et al. *supra*

<sup>36</sup> Rodriguez-Barranco, et al., *Postnatal arsenic exposure and attention impairment in school children*, 74 CORTEX  
 370-382 (2016), available at <https://pubmed.ncbi.nlm.nih.gov/25682472/>.

1 function, *even at levels considered safe*. These results provide additional evidence that postnatal  
 2 arsenic exposure impairs neurological function in children.” (emphasis added).<sup>37</sup>

3 ***Defendants Knowingly Sold Baby Foods Containing Dangerous Levels of Toxic Heavy Metals***  
 4 ***and Knew or Should Have Known of the Risks of Such Exposures in Children***

5 42. During the time that Defendants manufactured and sold Baby Foods in the United  
 6 States, the weight of evidence showed that Defendants’ Baby Foods exposed babies and children to  
 7 unsafe levels of Toxic Heavy Metals. Defendants failed to disclose this risk to consumers through  
 8 any means.

9 43. Plaintiff was informed and believe and on such information and belief, allege that  
 10 Defendants manufactured Baby Foods for one another, supplied ingredients for one another, and/or  
 11 packaged Baby Foods for one another.

12 44. As discussed above, both independent testing, the Defendants’ internal evaluations of  
 13 their Baby Foods, and the Defendants’ representations and disclosures to the Subcommittee and  
 14 FDA reveal the presence of substantial amounts of Toxic Heavy Metals in Defendants’ products. As  
 15 such, Defendants knew or should have known that their Baby Foods contain dangerous of Toxic  
 16 Heavy Metals.

17 45. Indeed, independent testing performed in early 2019 demonstrated elevated amounts  
 18 of such Toxic Heavy Metals in Baby Food products on the U.S. market,<sup>38</sup> and the HBBF Report  
 19 further confirmed such contamination of Defendants’ Baby Foods.<sup>39</sup> And, as the Subcommittee  
 20 found, the Defendants continued to sell their Baby Foods even after testing of both ingredients and  
 21 finished products revealed the presence of substantial amounts of Toxic Heavy Metals.<sup>40</sup>  
 22  
 23

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24  
 25 <sup>37</sup> *Id.*

26 <sup>38</sup> See Gardener, et al., *supra*.

27 <sup>39</sup> See HBBF Rpt, *supra*.

28 <sup>40</sup> See, e.g., Subcommittee Rpt. at 13-14.



1 disregard to the rights of those individuals.

2       50. Defendants' conduct is particularly despicable given that their toxic foods were  
3 directed at vulnerable babies—a population group far more susceptible than adults to the neurotoxic  
4 dangers of heavy metals.

5       51. Defendants were fully aware of the safety risks of Baby Foods, particularly the  
6 dangerous potential of their Baby Foods given the high content of Toxic Heavy Metals that have all  
7 been associated with neurodevelopmental disorders in children. Nonetheless, Defendants  
8 deliberately crafted their label, marketing, and promotion to mislead consumers. Indeed, Defendants  
9 repeatedly market their Baby Foods as safe for consumption by infants. In actual fact, as discussed  
10 above, Defendants routinely sold Baby Foods containing astronomical amounts of Toxic Heavy  
11 Metals, regularly flouted their own internal limits of Toxic Heavy Metals in Baby Foods and failed  
12 to disclose to consumers that their products contained such dangerous contaminants.

13       52. Defendants' actions were directed and/or expressly authorized by the officers,  
14 directors, and/or managing agents of Defendants. Defendants developed a corporate structure with  
15 officers and/or directors overseeing each of the relevant departments, including marketing and  
16 product development/product testing. By routine communications within each department and from  
17 department to department, officers, directors, and/or managing agents were aware of the wrongful  
18 acts of Defendants' employees and both authorized the wrongful conduct and failed to terminate or  
19 to even discipline the employees as a result of the wrongful conduct.

20       53. This was not done by accident or through some justifiable negligence. Rather,  
21 Defendants knew they could profit by convincing consumers that their Baby Foods were harmless to  
22 humans, and that full disclosure of the true risks of the Toxic Heavy Metals present in the Baby  
23 Foods would limit the amount of money Defendants would make selling the products. Defendants'  
24 object was accomplished not only through a misleading label, but through a comprehensive scheme  
25 of selective misleading research and testing, failure to test, false advertising, and deceptive  
26 omissions as more fully alleged throughout this pleading. Parents were denied the right to make an  
27 informed decision about whether to purchase and Defendants' Baby Food for their children,  
28

1 knowing the full risks attendant to that use. Such conduct was done with conscious disregard of  
 2 Plaintiff's rights.

3 54. Accordingly, Plaintiff requests punitive damages against Defendants for the harms  
 4 caused to Plaintiff.

### 5 *Plaintiff Specific Allegations*

#### 6 **I. Plaintiff KM**

7 55. Plaintiff KM's brain was damaged from consumption of the toxic baby food. KM also  
 8 suffers other neurodevelopmental injuries from the toxic baby food and was eventually diagnosed  
 9 with ASD in January 2016.

10 56. Plaintiff KM started consuming Baby Food products manufactured by Gerber, Sprout,  
 11 and Walmart in approximately May 2013 and consumed Baby Food products manufactured Gerber,  
 12 Beech, and Walmart at various times prior to his ASD diagnosis in January 2016. Plaintiff KM  
 13 continued to consume Baby Food products Baby Food products manufactured by these Defendants  
 14 until approximately January 2015.

15 57. Plaintiff KM consumed substantial quantities of Baby Food products manufactured  
 16 by Gerber, Sprout, and Walmart.

17 58. Plaintiff KM has not finished his investigation of the case. Accordingly, these  
 18 allegations concerning baby food products consumed may not be exhaustive.

19 59. Upon information and belief, the Baby Food products manufactured by Gerber,  
 20 Sprout, and Walmart and consumed by Plaintiff KM were contaminated with substantial quantities  
 21 of Toxic Heavy Metals, namely arsenic, mercury, and lead.

22 60. Upon information and belief, as a direct and proximate cause of consuming  
 23 Defendants' Baby Foods products, Plaintiff KM was exposed to substantial quantities of Toxic  
 24 Heavy Metals, namely mercury, lead, and arsenic.

25 61. As a direct and proximate cause of consuming Defendants' Baby Foods—and the  
 26 exposure to the Toxic Heavy Metals therein—Plaintiff KM suffered brain damage and other  
 27 neurodevelopmental injuries that eventually resulted in an ASD diagnosis.  
 28

***Defendants' Baby Food***

62. Defendants Beech, Gerber, and Walmart each manufacture, distribute, advertise, market, and sell brands of baby food evaluated in the Subcommittee Report.

63. Defendants Beech, Gerber, and Walmart each direct, control, and participate in the manufacturing and packaging of the brands of baby food that they sell. As part of that direction, control, and participation, Defendants each determine and are responsible for the ingredients used in their baby food products.

64. Defendants Beech, Gerber, and Walmart each know and are responsible for the ingredients in the brands of baby food that they sell to the public, including the Plaintiff.

65. Defendants Beech, Gerber, and Walmart each created, developed, reviewed, authorized, and are responsible for the textual and graphic content on the packaging of the brands of baby food that they sell. This is supported by the fact that the labels on Gerber Brand Baby Food contain Gerber's corporate logo and trademark, and note that Gerber Brand Baby Food is distributed by Gerber. Similarly, the labels on the Beech and Walmart Baby Food products contain each of the companies' registered trademarks—and note that the Baby Food product is distributed by each of the respective companies.

66. Each package of Beech's Baby Food contains standardized labeling created, developed, reviewed, and authorized by Beech. The packaging of all types of Beech's Baby Food is the same or substantially similar. The same is true for the food products of Gerber and Walmart.

67. Defendants Beech, Gerber, and Walmart each know, created, developed, reviewed and are responsible for the representations contained on each package of the baby food products that they sell.

68. The labels on some of the varieties of Beech's Baby Food—including those that Plaintiff purchased—state that the product contains "Real Food for Babies", and its packaging omitted the presence or risks associated with heavy metals. Beech intentionally omitted disclosure of the presence or risk of these substances in order to induce reasonable consumers like the Plaintiff to purchase their Baby Foods at premium prices.

1           69.     The labels on some of the varieties of Gerber Brand Baby Food—including some of  
2 those that Plaintiff purchased—state that the product contains “iron to help support learning ability.”

3           70.     The labels on some of the varieties of Walmart’s (Parent’s Choice) Brand Baby  
4 Food—including some of those that Plaintiff purchased—state that the product is “GREAT for  
5 YOU.”

6           71.     The labels on many varieties of Beech, Gerber, and Walmart (Parent’s Choice)—  
7 including some of those that Plaintiff purchased—also tout those products as being free of GMO—  
8 which stands for “genetically modified organism”—ingredients—and in many cases emphasize they  
9 are “natural.” Like BPA, GMOs are also believed to be associated with health risks, “including  
10 infertility, immune problems, accelerated aging, faulty insulin regulation and changes in major  
11 organs and the gastrointestinal system.”<sup>42</sup> As such, these varieties of Baby Food are marketed as  
12 *lacking* a particular dangerous substance that can negatively affect consumers of the product.

13  
14           72.     Despite touting the lack of certain dangerous substances in their respective brands of  
15 baby food, the Defendants Beech, Gerber, and Walmart each failed to disclose dangerous levels of  
16 toxic heavy metals in their Baby Foods.

17           73.     Similarly, despite touting the presence of “iron to help support learning ability” in  
18 Gerber Brand Baby Food, Gerber failed to disclose the fact that its baby food contains other  
19 substances—toxic heavy metals—that have the exact opposite effect.

20           74.     While Defendants’ respective omissions regarding the material fact that Baby Foods  
21 contain elevated levels of toxic heavy metals are legally significant on their own, Defendants’  
22 respective representations regarding the presence of “iron to help support learning ability” and the  
23 lack of BPA and GMOs are also significant. Although these representations may be true, a statement  
24 that is technically true may nevertheless be fraudulent where it omits qualifying material since a  
25 ‘half-truth’ is sometimes more misleading than an outright lie. *See* W. Prosser, *Law of Torts* § 106,  
26 at 696 (4th ed. 1971) (“half the truth may obviously amount to a lie, if it is understood to be the  
27

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28 <sup>42</sup> CNN, 10 Ways to Keep Your Diet GMO-Free (2014), available at  
<https://www.cnn.com/2014/03/25/health/upwave-gmo-free-diet/index.html>

1 whole.”).

2 75. For example, in representing that Beech’s Baby Food and Gerber Brand Baby Food  
3 lack BPA and GMOs, and are “natural,” Defendants represent that their respective brands of baby  
4 food lack substances that consumers would consider to be deleterious to human health. This is,  
5 however, only a “half-truth” as Beech’s Brand Baby Food and Gerber Brand Baby Food do, in fact,  
6 contain deleterious substances—*i.e.*, toxic heavy metals.

7 76. Gerber’s representations regarding the presence of “iron to help support learning  
8 ability” in Gerber Brand Baby Food is also a “half-truth,” as it fosters the understanding that the  
9 ingredients in Gerber Brand Baby Food will *promote* childhood brain development, when, in fact,  
10 Gerber Brand Baby Food contains toxic heavy metals, which are proven to *impede* childhood brain  
11 development.  
12

### 13 ***Consumer Expectations Regarding Baby Food***

14 77. Parents’ instinctive desire to protect and ensure the healthy development of their  
15 children is well-known. As such, the safety of baby food is of paramount importance, and is a  
16 material fact, to consumers such as the Plaintiff.

17 78. More specifically, given the negative effects of toxic heavy metals (such as arsenic,  
18 lead, and mercury) on child development, the presence of these substances in baby food is a material  
19 fact to consumers like the Plaintiff. Indeed, consumers—including Plaintiff—are unwilling to  
20 purchase baby food that contains elevated levels of toxic heavy metals.

21 79. Defendants know that the safety of their respective brands of baby food (as a general  
22 matter) is a material fact to consumers. This is exemplified by the fact that Beech’s Brand Baby  
23 Food and Gerber Brand Baby Food are both marketed and labeled as *lacking* certain substances (*e.g.*,  
24 BPA, GMOs) that consumers believe would be harmful to the health of children.

25 80. Defendants also know that consumers (such as Plaintiff) are unwilling to purchase  
26 their respective brands of baby food that contain elevated levels of toxic heavy metals.

27 81. As such, Defendants Beech, Gerber, and Walmart also know that the presence of  
28 toxic heavy metals in their respective brands of baby food is a material fact to consumers such as the

1 Plaintiff.

2       82. Baby food manufacturers (such as Defendants) hold a special position of public trust.  
3 Consumers believe that they would not sell baby food products that are unsafe. *See* Subcommittee  
4 Report, p. 6.

5       83. Defendants Beech, Gerber, and Walmart each knew that if the elevated levels of toxic  
6 heavy metals in their respective brands of baby food was disclosed to the Plaintiff, then Plaintiff  
7 would be unwilling to purchase their Baby Food products.

8       84. In light of Defendants' respective knowledge that consumers, including the Plaintiff  
9 would be unwilling to purchase Beech's Brand Baby Food and Gerber Brand Baby Food if they  
10 knew that those brands of baby food contained elevated levels of toxic heavy metals, Defendants  
11 intentionally and knowingly concealed this fact from Plaintiffs, and did not disclose the presence of  
12 these toxic heavy metals on the labels of Beech's Brand Baby Food and Gerber Brand Baby Food  
13 (respectively).  
14

15       85. Defendants knew that Plaintiff would rely upon the representations and omissions  
16 contained on the packages of Beech's Brand Baby Food and Gerber Brand Baby Food (respectively)  
17 and intended for them to do so.

18       86. Defendants knew that in relying upon the representations and omissions contained on  
19 the packages of Beech's Brand Baby Food and Gerber Brand Baby Food (respectively), Plaintiff and  
20 other consumers would view those products as being safe for consumption, given their represented  
21 lack of certain deleterious substances (*e.g.*, BPA, GMOs), and were "natural," and Defendants'  
22 concealment of the fact that those brands of baby food contained elevated levels of toxic heavy  
23 metals.

24       87. Prior to purchasing the Beech, Gerber, and Walmart Brand Baby Food products,  
25 Plaintiff was exposed to, saw, read, and understood Defendants' respective representations and  
26 omissions regarding the safety of their baby food, and relied upon them.

27       88. As a result of Defendants' respective representations regarding the safety of their  
28 baby food, and the lack of certain deleterious substances (*e.g.*, BPA, GMOs), and Defendants'

1 statements that the products were “natural”, and the Defendants’ concealment of the fact that those  
2 brands of baby food contained elevated levels of toxic heavy metals, Plaintiff reasonably believed  
3 that Beech’s Brand Baby Food and Gerber Brand Baby Food were free from substances that would  
4 negatively affect children’s development.

5       89. In reliance upon Defendants’ Beech, Gerber, and Walmart respective representations  
6 and omissions, Plaintiff purchased their Baby Food.

7       90. Had Plaintiff known the truth—*i.e.*, that Defendants’ Beech, Gerber, and Walmart’s  
8 respective brands of baby food contained elevated levels of toxic heavy metals, rendering them  
9 unsafe for consumption by children—Plaintiff would not have purchased them at all.

10       91. Therefore, as a direct and proximate result of Defendants’ misrepresentations and  
11 omissions concerning their respective brands of baby food, Plaintiffs purchased Beech’s Brand Baby  
12 Food and/or Gerber Brand Baby Food.

13       92. Plaintiffs were harmed in the form of the monies they paid for Defendants’ Beech,  
14 Gerber, and Walmart Baby Food products, which they would not otherwise have paid had they  
15 known the truth. Since the presence of elevated levels of toxic heavy metals in baby food renders  
16 these products unsafe for human consumption, Beech, Gerber, and Walmart Baby Food products that  
17 Plaintiff purchased is worthless and harmful.  
18

19  
20       93. Prior to purchasing baby food products from Beech, Gerber, and Walmart, Plaintiff  
21 was exposed to, saw, read, and understood Defendants’ respective representations and omissions  
22 regarding the safety of their baby food, as well as their omissions regarding the presence of elevated  
23 levels of toxic heavy metals therein, and relied upon them.

24       94. Plaintiff was only willing to purchase the baby food products of Beech, Gerber, and  
25 Walmart because Plaintiff believed that they did not contain elevated levels of toxic heavy metals.  
26 This belief was bolstered by Defendants’ representations regarding the presence of iron, and the lack  
27 of BPA and GMOs, in their respective brands of baby food, and their representations that their  
28 products were “natural.”

1           95.     In reliance upon Defendants’ respective representations and omissions, Plaintiffs  
2 purchased Beech’s Brand Baby Food and Gerber Brand Baby Food.

3           96.     Had Plaintiff known the truth—*i.e.*, that Defendants’ respective brands of baby food  
4 contained elevated levels of toxic heavy metals, rendering them unsafe for consumption by  
5 children—Plaintiff would not have purchased them.

6           97.     The presence of elevated levels of toxic heavy metals in the baby food products of  
7 Beech, Gerber, and Walmart made the baby food that Plaintiff purchased worthless, because it was  
8 unsafe for human consumption.

9           98.     Plaintiff brings this action seeking recovery of the damages he incurred as a result of  
10 Defendants’ misrepresentations, omissions, deceptions and actions.

11                               **Causes of Action**

12                               **FIRST CAUSE OF ACTION**

13                               **(Strict Liability – Failure to Warn)**

14           99.     Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 98  
15 above.

16           100.    Defendants’ baby food was defective and unreasonably dangerous in that Defendants  
17 failed to provide warnings about elevated levels of dangerous, toxic metals in their Baby Food  
18 products, the existence of which Defendants either knew or should have known about.

19           101.    If adequately warned, Plaintiff would have taken precautions to avoid the injury.

20           102.    As a direct and proximate result of the defective nature of the Defendants’ lack of  
21 warning instructions on their baby food products, Plaintiff has suffered substantial, adverse health  
22 consequences, including brain damage and/or a diagnosis with autism of the minor plaintiff, which is  
23 a neurological developmental disorder.

24           103.    As a direct and proximate result of the minor Plaintiff’s consumption of Defendants’  
25 toxic heavy metals in their baby food products, they now require medical monitoring to evaluate,  
26 test, and/or remedy the neurological developmental disorders caused by said consumption and  
27 exposure, with costs for the same in excess of Seventy-Five Thousand Dollars (\$75,000.00).  
28

1           104. The equitable remedy of medical monitoring is appropriate equitable relief in light of  
2 Defendants' conduct since the prospective medical evaluation, testing and medical for neurological  
3 developmental disabilities would have been completely unnecessary had the Defendants warned  
4 Plaintiff of toxic heavy metals in their baby food products.

5           105. As a direct and proximate result of these acts and omissions, Plaintiff has incurred,  
6 and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars  
7 (\$75,000.00).

8           106. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff  
9 minor child has incurred permanent injuries, in excess of Seventy-Five Thousand Dollars  
10 (\$75,000.00).

11           107. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
12 child will suffer future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

13           108. Defendants knew that the presence of toxic heavy metals in the Baby Foods would  
14 likely cause lifelong brain damage and/or neurodevelopmental disorders in the children ingesting  
15 their Baby Foods.

16           109. Defendants intentionally misrepresented that their Baby Foods did not contain  
17 dangerous substances and/or intentionally concealed that their Baby Foods contained toxic heavy  
18 metals, thereby intentionally deceiving Plaintiff.

19           110. Upon information and belief, each Defendant employed one or more managing agents  
20 that expressly authorized or ratified the knowing sale of Baby Foods containing toxic heavy metals  
21 by failing to use their discretionary authority to prevent such sales.

22           111. Accordingly, Defendants acted with fraud with the intent to injury Plaintiff or acted  
23 with conscious disregard of Plaintiff's safety through express malice, implied malice, or oppression.

24           112. As a direct and proximate result of the conduct of Defendants, Nevada law entitles  
25 Plaintiff to punitive damages.

26           113. Plaintiff has been required to retain legal counsel to prosecute this action and is  
27 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.  
28

**SECOND CAUSE OF ACTION**

**(Breach of Implied Warranty of Merchantability)**

114. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 113 above.

115. An implied warranty of merchantability existed between Plaintiff and Defendants under Nevada Law, i.e., NRS 104.2314.

116. The Defendants sold toxic baby food products to Plaintiff.

117. The Defendants breached the implied warranty of merchantability when they sold toxic baby food products to Plaintiff.

118. As a direct result of the Defendants' breach of implied warranty of merchantability, Plaintiff has been damaged.

119. As a direct and proximate result of the breach of warranty, Plaintiff has suffered substantial, adverse health consequences, including brain damage and/or a diagnosis with autism, which is a neurological developmental disorder.

120. As a direct and proximate result of the minor Plaintiff consumption of Defendants' toxic heavy metals in their baby food products, they now require medical monitoring to evaluate, test, and/or remedy the neurological developmental disorders caused by said consumption and exposure, with costs for the same in excess of Seventy-Five Thousand Dollars (\$75,000.00).

121. The equitable remedy of medical monitoring is appropriate equitable relief in light of Defendants' conduct since the prospective medical evaluation, testing and medical care for neurological developmental disabilities would have been completely unnecessary had Defendants warned Plaintiff of toxic heavy metals in their baby food.

122. As a direct and proximate result of the breach of warranty, Plaintiff has incurred, and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

123. As a direct and proximate result of the breach of warranty, Plaintiff minor child has incurred permanent injuries, in excess of Seventy-Five Thousand Dollars (\$75,000.00).



1           133. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
2 child suffered substantial, adverse medical consequences in the form of brain damage and/or  
3 contracting a neurological developmental disorder, specifically autism.

4           134. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
5 child consumed and were therefore exposed to toxic heavy metals in the baby food products and now  
6 require medical monitoring to evaluate, test, and/or remedy the neurological developmental  
7 disorders caused by said consumption and exposure, with costs for the same far in excess of  
8 Seventy-Five Thousand Dollars (\$75,000.00).

9           135. The equitable remedy of medical monitoring is appropriate equitable relief in light of  
10 Defendants' conduct since the prospective medical evaluation, testing and medical for neurological  
11 developmental disabilities would have been completely unnecessary had Plaintiff minor child not  
12 been exposed to toxic heavy metals caused by Defendants' conduct.

13           136. As a direct and proximate result of these acts and omissions, Plaintiff has incurred,  
14 and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars  
15 (\$75,000.00).

16           137. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff  
17 minor child has incurred permanent injuries, in excess of Seventy-Five Thousand Dollars  
18 (\$75,000.00).

19           138. As a direct and proximate result of these acts and omissions, Plaintiff minor child will  
20 suffer future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

21           139. Plaintiff has been required to retain legal counsel to prosecute this action, and is  
22 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

23  
24 **FOURTH CAUSE OF ACTION**

25 **(Negligence)**

26           140. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through  
27 139 above.

28           141. Defendants owed a duty of care to Plaintiff in the design, manufacture, construction,

1 assembly, testing, labeling, distribution, marketing and sale of their baby food products and breached  
2 that duty of care.

3 142. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
4 child suffered substantial, adverse medical consequences in the form of brain damage and/or  
5 contracting a neurological developmental disorder, specifically autism.

6 143. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
7 child consumed and was therefore exposed to toxic heavy metals in the baby food products he  
8 consumed, and now require medical monitoring to evaluate, test, and/or remedy the neurological  
9 developmental disorders caused by said consumption and exposure, with costs for the same far in  
10 excess of Seventy-Five Thousand Dollars (\$75,000.00).

11 144. The equitable remedy of medical monitoring is appropriate equitable relief in light of  
12 Defendants' conduct since the prospective medical evaluation, testing and medical care for  
13 neurological developmental disabilities would have been completely unnecessary had the Plaintiff  
14 minor child not been exposed to toxic heavy metals caused by Defendants' negligent and reckless  
15 conduct.

16 145. As a direct and proximate result of these negligent acts and omissions, Plaintiff has  
17 incurred, and will incur, present and future medical expenses, in excess of Seventy-Five Thousand  
18 Dollars (\$75,000.00).

19 146. As a direct and proximate result of the acts and omissions of Defendants, the Plaintiff  
20 minor child has incurred permanent injuries, in excess of Seventy Five Thousand Dollars  
21 (\$75,000.00).

22 147. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
23 child will suffer future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

24 148. Plaintiff has been required to retain legal counsel to prosecute this action, and is  
25 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.  
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**FIFTH CAUSE OF ACTION**

**(Gross Negligence)**

149. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 148 above.

150. Defendants owed a duty of care to Plaintiff in the design, manufacture, construction, assembly, testing, labeling, distribution, marketing and sale of their baby food products and breached that duty of care—failing to exercise even the slightest degree of care.

151. Defendants acts and omissions were of an aggravated character such that their conduct could be deemed reckless and/or the want of even scant care.

152. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor child suffered substantial, adverse medical consequences in the form of brain damage and/or contracting a neurological developmental disorder, specifically autism.

153. As a direct and proximate result of these negligent acts and omissions, Plaintiff's minor child consumed and was therefore exposed to toxic heavy metals in the baby food products they consumed, and now require medical monitoring to evaluate, test, and/or remedy the neurological developmental disorders caused by said consumption and exposure, with costs for the same far in excess of Seventy-Five Thousand Dollars (\$75,000.00).).

154. The equitable remedy of medical monitoring is appropriate equitable relief in light of Defendants' conduct since the prospective medical evaluation, testing and medical care for neurological developmental disabilities would have been completely unnecessary had the Plaintiff minor child not been exposed to toxic heavy metals caused by Defendants' negligent and reckless conduct.

155. As a direct and proximate result of these negligent acts and omissions, Plaintiff has incurred, and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

156. As a direct and proximate result of the acts and omissions of Defendants, the Plaintiff minor child has incurred permanent injuries, in excess of Seventy-Five Thousand Dollars

1 (\$75,000.00).

2 157. As a direct and proximate result of these negligent acts and omissions, Plaintiff minor  
3 child will suffer future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

4 158. Plaintiff has been required to retain legal counsel to prosecute this action, and is  
5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

6 **SIXTH CAUSE OF ACTION**

7 **(Violation of Nevada Deceptive Trade Practices Act – NRS §§ 598.0903 to 598.0999)**

8 159. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through  
9 158 above.

10 160. At all times relevant herein, Defendants violated the Nevada Deceptive Trade  
11 Practices Act, §§ 598.0903 to 598.0999, by representing to its Nevada baby food customers and  
12 consumers that their manufactured and sold baby food products were safe, and failed to take into  
13 consideration the damages consumers of their unsafe products would sustain throughout Nevada.

14 161. Defendants made false or misleading statements of fact concerning the safety of their  
15 products and intentionally omitted reference to the dangerous metals contained in their products in  
16 violation of NRS 598.0915(5) and otherwise knowingly made false representations in their  
17 communications with Nevada consumers by representing that their products were “natural and  
18 healthy.”

19 162. As a direct result of the Defendants’ conduct, Plaintiff has been deprived of fair and  
20 adequate baby food products for which they paid, and to which they were fairly and lawfully  
21 entitled.

22 163. As a direct and proximate result of these acts and omissions, Plaintiff’s minor child  
23 suffered substantial, adverse medical consequences in the form of brain damage and/or contracting a  
24 neurological developmental disorder, specifically autism.

25 164. As a direct and proximate result of these acts and omissions, Plaintiff’s minor child  
26 consumed and was therefore exposed to toxic heavy metals in the baby food products and now  
27 require medical monitoring to evaluate, test, and/or remedy the neurological developmental  
28

1 disorders caused by said consumption and exposure, with costs for the same far in excess of  
2 Seventy-Five Thousand Dollars (\$75,000.00).

3 165. The equitable remedy of medical monitoring is appropriate equitable relief in light of  
4 Defendants' conduct since the prospective medical evaluation, testing and medical for neurological  
5 developmental disabilities would have been completely unnecessary had Plaintiff's minor child not  
6 been exposed to toxic heavy metals caused by Defendants' conduct.

7 166. As a direct and proximate result of these acts and omissions, Plaintiff has incurred,  
8 and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars  
9 (\$75,000.00).

10 167. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff  
11 minor child has incurred permanent injuries, in excess of Seventy-Five Thousand Dollars  
12 (\$75,000.00).

13 168. As a direct and proximate result of these negligent acts and omissions, Plaintiff's  
14 minor child will suffer future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

15 169. Plaintiff has been required to retain legal counsel to prosecute this action and is  
16 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

17  
18 **SEVENTH CAUSE OF ACTION**

19 **(Strict Liability – Unreasonably Dangerous)**

20 170. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through  
21 169 above.

22 171. Defendants' baby food products are further defective and unreasonably dangerous  
23 because their elevated levels of the dangerous toxic metals render them unsuited to perform  
24 reasonably as expected in light of their nature and intended function.

25 172. Defendants' baby food products are more dangerous than would be contemplated by  
26 the ordinary user having the ordinary knowledge available in the community given the presence of  
27 toxic heavy metals therein.

28 173. Plaintiff minor child was exposed to Defendants' baby food products through retail

1 purchases and consumption of the same, as was intended by Defendants.

2 174. Safer alternative ingredients, materials, and/or designs were available at all relevant  
3 times, beginning when Plaintiff first purchased Defendants' baby food products.

4 175. As a direct and proximate result of the elevated levels of toxic heavy metals in  
5 Defendants' baby food products, Plaintiff has suffered substantial, adverse health consequences,  
6 including brain damage and/or a diagnosis with autism, which is a neurological developmental  
7 disorder.

8 176. As a direct and proximate result of the Plaintiff's minor child consumption of  
9 Defendants' toxic heavy metals, which were in their baby food products, Plaintiff now requires  
10 medical monitoring to evaluate, test, and/or remedy the neurological developmental disorders caused  
11 by said consumption and exposure, with costs for the same in excess of Seventy-Five Thousand  
12 Dollars (\$75,000.00).

13 177. The equitable remedy of medical monitoring is appropriate equitable relief in light of  
14 Defendants' conduct since the prospective medical evaluation, testing and medical for neurological  
15 developmental disabilities would have been completely unnecessary had Plaintiff not been exposed  
16 to toxic heavy metals in Defendants' baby food products.

17 178. As a direct and proximate result of these acts and omissions, Plaintiff has incurred,  
18 and will incur, present and future medical expenses, in excess of Seventy-Five Thousand Dollars  
19 (\$75,000.00).

20 179. As a direct and proximate result of the acts and omissions of Defendants, the Plaintiff  
21 minor child incurred permanent injuries, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

22 180. As a direct and proximate result of these acts and omissions, the Plaintiff minor child  
23 will suffered future lost wages, in excess of Seventy-Five Thousand Dollars (\$75,000.00).

24 181. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff  
25 will incur medical expenses and been required to provide care and comfort, in excess of Seventy-  
26 Five Thousand Dollars (\$75,000.00).

27 182. In carrying out its responsibilities for the design, manufacture, testing, labeling,  
28

1 distribution, marketing, and sale of their baby food products, Defendants acted with fraud, malice,  
2 express or implied, oppression and/or conscious disregard of the safety of others. As a direct and  
3 proximate result of the conduct of Defendants, the Plaintiff is entitled to punitive damages.

4 183. Defendants knew that the presence of toxic heavy metals in the Baby Foods would  
5 likely cause lifelong brain damage and/or neurodevelopmental disorders in the children ingesting  
6 their Baby Foods.

7 184. Defendants willfully and deliberately failed to avoid these probable harmful  
8 consequences by failing to use safer ingredients, materials, or designs that were available.

9 185. Upon information and belief, each Defendant employed one or more managing agents  
10 that expressly authorized or ratified the knowing sale of Baby Foods containing toxic heavy metals  
11 by failing to use their discretionary authority to prevent such sales.

12 186. Accordingly, Defendants acted with fraud with the intent to injury Plaintiff or acted  
13 with conscious disregard of Plaintiff's safety through express malice, implied malice, or oppression.

14 187. As a direct and proximate result of the conduct of Defendants, Nevada law entitles  
15 Plaintiff to punitive damages.

16 188. Plaintiff has been required to retain legal counsel to prosecute this action, and is  
17 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

18  
19 **EIGHTH CAUSE OF ACTION**

20 **(Unjust Enrichment)**

21 189. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through  
22 188 above.

23 190. Plaintiff conferred a monetary benefit upon Defendants by purchasing their baby food  
24 products, which monetary benefit the Defendants substantially.

25 191. Defendants have accepted and retained these monetary benefits despite knowing that  
26 the sale of their baby food products containing elevated levels of toxic heavy metals to unknowing  
27 consumers, such as Plaintiff, which Defendants entirely failed to warn about.

28 192. In light of Defendants' egregious conduct, it would be inequitable for Defendants to

1 retain the value of Plaintiff conferred monetary benefits without paying Plaintiff for the value of the  
2 same.

3 193. As a direct and proximate result of Defendants' retention of said monetary benefits,  
4 the Plaintiff has expended significant sums of money on routine retail purchases of Defendants' baby  
5 food products in an amount to be determined at trial, all of which rightfully belong to Plaintiff.

6 194. As a direct and proximate result of the Defendants being unjustly enriched, Plaintiff  
7 has been required to retain the services of an attorney and is entitled to an award of reasonable  
8 attorneys' fees and costs incurred in the litigation of this claim.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 11 1. Order the equitable remedy of medical monitoring to evaluate, test, treat, and  
12 Remedy the minor Plaintiff's neurological developmental disorders;  
13 2. Award compensatory damages to Plaintiff for the Defendants' wrongful conduct  
14 detailed above in excess of Seventy-Five Thousand dollars;  
15 3. Award punitive damages in an amount to be determined at trial;  
16 4. Award costs of suit, attorney fees and prejudgment interest; and  
17 5. Award such other relief as the Court deems just and appropriate.  
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19  
20 DATED this 22<sup>nd</sup> day of December, 2023.

MORRIS, SULLIVAN & LEMKUL, LLP

21  
22 By: /s/ Will Lemkul

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