

**IN THE FIRST JUDICIAL DISTRICT COURT, COUNTY OF SANTA FE
STATE OF NEW MEXICO**

STATE OF NEW MEXICO, *ex rel.*

HECTOR H. BALDERAS, Attorney General,

Plaintiff,

v.

**NURTURE, INC., BEECH-NUT NUTRITION CO.,
THE HAIN CELESTIAL GROUP, INC., WALMART
INC., THE KROGER CO., SMITH'S FOOD & DRUG
CENTERS, INC., and FRED MEYER, INC.,**

Defendants.

No. _____

COMPLAINT WITH JURY DEMAND

TABLE OF CONTENTS

SUMMARY OF THE ACTION	1
I. PARTIES	6
A. Plaintiff	6
B. Defendants	6
1. Nurture, Inc.	6
2. Beech-Nut Nutrition Co.	7
3. The Hain Celestial Group, Inc.	7
4. Walmart Inc.	7
5. The Kroger Defendants	8
II. JURISDICTION AND VENUE	9
III. FACTUAL ALLEGATIONS	10
A. Arsenic, Lead, Cadmium, And Mercury Pose Severe Threats to Human Health, Particularly When Ingested By Babies And Children	11
1. Arsenic	11
2. Lead	12
3. Mercury	13
4. Cadmium	13
B. The Dangers Posed By Lead, Arsenic, Cadmium, And Mercury Have Long Been Recognized As Such By Regulators and Health Experts	14
C. Defendants' Contaminated Products	16
1. Contamination Revealed in the House Report	16
2. Contamination Revealed by the HBBF Report	22
3. Contamination Revealed in Defendants' Internal Documents	26
D. Defendants' Policies And Practices With Respect To Toxic Metals Are Responsible For The Contaminated Products	28

E.	Defendants’ Unfair And Misleading Marketing And Advertising Of The Contaminated Products	32
F.	Defendants’ Marketing And Sales Of Contaminated Products In New Mexico	42
1.	Nurture	44
2.	Beech-Nut	50
3.	Hain.....	52
4.	Walmart.....	57
5.	The Kroger Defendants.....	60
COUNT I: VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT, NMSA 1978, SECTIONS 57-12-1 TO -26 (AGAINST ALL DEFENDANTS).....		63
COUNT II: VIOLATIONS OF THE NEW MEXICO FALSE ADVERTISING ACT, NMSA 1978, SECTIONS 57-15-1 TO -10 (AGAINST ALL DEFENDANTS).....		68
COUNT III: NEGLIGENCE (AGAINST ALL DEFENDANTS)		71
COUNT IV: DESIGN AND/OR MANUFACTURING DEFECT (AGAINST ALL DEFENDANTS).....		72
COUNT V: FAILURE TO WARN/INSTRUCT (AGAINST ALL DEFENDANTS)		75
COUNT VI: VIOLATIONS OF THE NEW MEXICO PUBLIC NUISANCE STATUTE, NMSA 1978, SECTIONS 30-8-1 TO -14 (AGAINST ALL DEFENDANTS).....		78
COUNT VII: COMMON LAW PUBLIC NUISANCE (AGAINST ALL DEFENDANTS).....		80
IV.	JURY DEMAND	81
V.	PRAYER FOR RELIEF	81

SUMMARY OF THE ACTION

1. The State of New Mexico, by and through its Attorney General Hector Balderas (“Plaintiff,” “New Mexico,” or the “State”), brings this civil action against Defendants Nurture, Inc. (“Nurture”), Beech-Nut Nutrition Co. (“Beech-Nut”), The Hain Celestial Group, Inc. (“Hain”), Walmart Inc. (“Walmart”), The Kroger Co. (“Kroger”), Smith’s Food & Drug Centers, Inc. (“Smith”), and Fred Meyer, Inc. (“Fred Meyer”) (collectively, the “Defendants”) to obtain declaratory and equitable relief, damages, restitution, disgorgement, and civil penalties for violations of New Mexico law in connection with Defendants’ practices in manufacturing, designing, distributing, supplying, marketing, promoting, advertising, and/or selling baby food products contaminated with dangerous levels of toxic heavy metals (the “Contaminated Products,” as defined more fully below) to New Mexico residents in retail stores and online.

2. Defendants’ Contaminated Products contain hazardous concentrations of lead, arsenic, cadmium, and mercury, such that those products should never have been marketed or sold as safe and appropriate for consumption by babies, infants, and children in the State of New Mexico.

3. Defendants knew or, at a minimum, should have known that the Contaminated Products contained elevated, dangerous, and unhealthy levels of lead, arsenic, cadmium, and/or mercury, but nevertheless marketed and sold those products in the State of New Mexico in retail stores and online, in violation of their state statutory and common-law duties.

4. The Contaminated Products were designed, manufactured, marketed, distributed, and sold for the express purpose of being consumed by babies, infants, and children—precisely the population most vulnerable to the serious adverse neurodevelopmental effects and other adverse health effects known to be associated with exposure to or consumption of lead, arsenic, cadmium, and mercury.

5. Three Defendants—Nurture, Beech-Nut, and Hain—submitted to an investigation conducted by a subcommittee of the U.S. House of Representatives’ Committee on Oversight and Reform. That investigation resulted in the February 4, 2021 publication of a report entitled, “Baby Foods Are Tainted With Dangerous Levels Of Arsenic, Lead, Cadmium, And Mercury” (the “House Report”).

6. The House Report concluded that commercial baby foods, in particular those sold by the three participating Defendants as well as a fourth non-party, Gerber Products Co. (“Gerber”), are tainted with significant levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury. The House Report observed that exposure to toxic heavy metals causes permanent decreases in IQ, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children, and endangers infant neurological development and long-term brain function, among other harms.

7. One other Defendant—Walmart—declined to participate in the investigation. The House Report notes that “[t]he Subcommittee [on Economic and Consumer Policy] is greatly concerned that [Walmart’s] lack of cooperation might be obscuring the presence of even higher levels of toxic heavy metals in their baby food products than their competitors’ products.”

8. The remaining Defendants—Kroger, Smith, and Fred Meyer (together, the “Kroger Defendants”)—were not included in the House investigation, but independent laboratory analyses of their products, as well as of products manufactured and sold by Walmart, have confirmed the presence of elevated and potentially dangerous concentrations of toxic heavy metals, similar to those concentrations detected in products manufactured and sold by Nurture, Beech-Nut, and Hain.

9. The manufacturers' internal company policies and standards regarding tolerance of these toxins are at the heart of the issues raised in this Complaint.

10. No federal standard requires baby food producers to limit the amount of toxic heavy metals in most of their products. The sole exception is a U.S. Food and Drug Administration ("FDA") standard providing that infant rice cereals must have less than 100 parts per billion ("ppb") of inorganic arsenic. (The FDA has also proposed restrictions on the amounts of lead and arsenic in certain fruit juices, but there is not yet an enforceable standard.) The claims asserted in this Complaint expressly do not arise out of inorganic arsenic contamination of any infant rice cereals subject to this standard, and the State expressly disclaims any such claim. However, as used in this Complaint, the Contaminated Products do include infant rice cereals insofar as they are contaminated with lead, cadmium, and/or mercury, and such claims as arise out of lead, cadmium, and/or mercury contamination of infant rice cereal products are included within the scope of this lawsuit.

11. Human toxicology data strongly demonstrates the toxicity of lead, arsenic, cadmium, and mercury.

12. Lead is widely known to damage the central nervous system (including the brain and spinal cord) and red blood cells, and to cause cancer. According to the Agency for Toxic Substances and Disease Registry ("ATSDR"), "exposure to [lead] is associated with toxicity to every organ system," principally because lead interferes with functions common to all cell types.

13. The ATSDR's toxicological profile on lead explains that, "[n]eurological effects of [lead] are of greatest concern because effects are observed in infants and children; furthermore, these effects may result in life-long decrements in neurological function."

14. Arsenic is a potent poison that, when ingested orally, has long been known to cause death, as well as serious adverse cardiovascular, respiratory, gastrointestinal, hematological (blood), hepatic (liver), endocrinal (pancreas), reproductive, and neurological effects. Arsenic is a known carcinogen.

15. Cadmium, too, is a known carcinogen. Oral ingestion of cadmium is known to cause death, as well as serious adverse cardiovascular, gastrointestinal, hematological, musculoskeletal, renal (kidney), neurological, reproductive, and developmental effects.

16. Mercury may cause cancer or death following high-level exposure. At lower levels, oral ingestion of mercury is known to be associated with a range of systemic effects, including serious adverse cardiovascular, gastrointestinal, renal, endocrinal, immunological, and neurological effects.

17. All Defendants had a duty under state law to prevent potentially dangerous concentrations of lead, arsenic, cadmium, and mercury from contaminating their products and to prevent exposing New Mexico residents, especially babies, infants, and children, to potentially dangerous levels of those contaminants.

18. At a minimum, all Defendants had a duty under state law to adequately disclose and warn New Mexico consumers that the Contaminated Products contained potentially dangerous concentrations of lead, arsenic, cadmium, and mercury.

19. Defendants breached their duties under New Mexico statutory and common law, resulting in injury to the State, including in its capacity as a purchaser of the Contaminated Products and its capacity as *parens patriae*.

20. By engaging in the conduct set forth below, Defendants have violated: (a) the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -26 (1967, as amended through

2018) (the “Unfair Practices Act” or “UPA”); (b) the New Mexico False Advertising Act, NMSA 1978, Sections 57-17-1 to -10 (1965, as amended through 1967) (the “False Advertising Act” or “FAA”); (c) the New Mexico Public Nuisance Statute, NMSA 1978, Sections 30-8-1 to -14 (1963, as amended through 2018) (the “Public Nuisance Statute”) as well as their common law duties of care. In addition, the State asserts claims against Defendants for (a) general negligence; (b) design and/or manufacturing defect; (c) failure to warn/instruct; and (d) creating, maintaining, and/or contributing to a common law public nuisance.

21. Consequently, the State seeks all available damages, including compensatory, consequential, and punitive damages; restitution; disgorgement of revenues; civil penalties; and all other available relief, including but not limited to injunctive relief necessary to abate the public nuisance, to remedy Defendants’ violations of law.

22. The State brings this action exclusively under the laws of the State of New Mexico. No federal claims are being asserted. No issue of federal Constitutional, statutory, or regulatory law is raised herein—not directly, indirectly, or by implication. All issues raised herein relate to the State of New Mexico, its laws, and its programs; therefore, this case does not have national systemic importance or impact, and no issue raised in this case affects the federal system as a whole. To the extent that any claim or factual assertion set forth herein may be construed to have stated any claim under federal law, such federal claim is expressly and undeniably disavowed and disclaimed by the State. As alleged above, no federal standard applies with respect to lead, arsenic, cadmium, or mercury in baby food products, other than inorganic arsenic concentrations in infant rice cereals—a standard with no relevance to this case.

I. PARTIES

A. PLAINTIFF

23. The State of New Mexico is a body politic created by the Constitution and laws of the State; as such, it is not a citizen of any state.

24. The State of New Mexico, by the Honorable Hector H. Balderas, the Attorney General of the State of New Mexico, brings this suit on its own behalf and pursuant to its inherent *parens patriae* authority to remedy an injury to its quasi-sovereign interest in the physical and economic health and well-being of a substantial segment of its population.

25. The Attorney General is authorized to act on behalf of the State in all actions when the interests of the State require action in his judgment, and is further empowered to prosecute all actions and proceedings brought by any State officer or head of a State department, board, or commission, or any employee of the State in his official capacity. NMSA 1978, Sections 8-5-2(B)-(C) (1933, as amended through 1975).

26. Further, the Attorney General has the authority to enforce the Unfair Practices Act and the False Advertising Act to ensure the protection of New Mexico residents and consumers.

B. DEFENDANTS

1. Nurture, Inc.

27. Defendant Nurture, Inc. (“Nurture”) is a Delaware corporation with its principal place of business located at 40 Fulton Street, 17th Floor, New York, New York 10038-1850. Its registered agent for service of process in Delaware is Corporate Creations Network Inc., 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, Delaware 19810.

28. Nurture manufactures, designs, distributes, supplies, markets, promotes, advertises, and/or sells the Contaminated Products to New Mexico residents in retail stores and online under the brand name Happy Baby.

2. Beech-Nut Nutrition Co.

29. Defendant Beech-Nut is a Delaware corporation with its principal place of business located at One Nutritious Place, Amsterdam, New York 12010. Its registered agent for service of process in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

30. Beech-Nut manufactures, designs, distributes, supplies, markets, promotes, advertises, and/or sells the Contaminated Products to New Mexico residents in retail stores and online under the brand name Beech-Nut.

3. The Hain Celestial Group, Inc.

31. Defendant Hain is a Delaware corporation with its principal place of business located at 1111 Marcus Avenue, Lake Success New York 11042. Its registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

32. Hain manufactures, designs, distributes, supplies, markets, promotes, advertises, and/or sells the Contaminated Products to New Mexico residents in retail stores and online under the brand name Earth's Best and Earth's Best Sesame Street.

4. Walmart Inc.

33. Defendant Walmart is a Delaware corporation with its principal place of business located at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Walmart is authorized to conduct business in New Mexico, and its registered agent for service of process in the State is 726 East Michigan, Suite 330, Hobbs, New Mexico 88240. Its registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

34. Walmart has at least 53 retail centers, 34 supercenters, 2 discount stores, 9 neighborhood markets, 7 Sam's Clubs and 1 distribution center in New Mexico. Walmart conducts business within the State, including at dozens of retail centers and supercenters, and at several discount stores, neighborhood markets, Sam's Clubs, and distribution centers.

35. Walmart manufactures, designs, distributes, supplies, markets, promotes, advertises, and/or sells the Contaminated Products to New Mexico residents in retail stores and online under the brand names Parent's Choice and Parent's Choice Organic.

5. The Kroger Defendants

36. Defendant Kroger is an Ohio corporation with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202. Its registered agent for service of process in Ohio is Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, Ohio 43215-3301.

37. Kroger has at least 2,757 supermarkets under a variety of local banner names in thirty-five states, including in New Mexico.

38. Defendant Smith's is a Delaware corporation with its principal place of business located at 1550 S. Redwood Road, Salt Lake City, Utah 84104. Smith's registered agent for service of process in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Smith is a subsidiary of Defendant Fred Meyer, Inc.

39. Defendant Fred Meyer is a Delaware corporation with its principal place of business located at 3800 SE 22nd Avenue, Portland, Oregon 97202. Fred Meyer's registered agent for service of process in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

40. In New Mexico, Kroger operates under the name Smith's Food and Drug. In this Complaint, Kroger, Smith's, and Fred Meyer are jointly referred to as the "Kroger Defendants."

41. The Kroger Defendants manufacture, design, distribute, supply, market, promote, advertise, and/or sell the Contaminated Products to New Mexico residents in retail stores and online under the brand name Simple Truth Organic.

II. JURISDICTION AND VENUE

42. This Court has subject matter jurisdiction over this case pursuant to N.M. Const. Art. VI, Sec. 13.

43. This Court has personal jurisdiction over Defendants pursuant to both NMSA 1978, Section 38-1-16(A) (1978) and New Mexico's "sufficient minimum contacts" test. *Sproul v. Rob & Charlies, Inc.*, 2013-NMCA-072, 304 P.3d 18.

44. Defendants supplied, marketed, sold, promoted, advertised, failed to warn, and/or distributed Contaminated Products in New Mexico, and committed the wrongful acts and omissions described herein in New Mexico, including specifically in Santa Fe County.

45. This Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332. The State of New Mexico brings this action as the sole plaintiff, and no class or mass action is raised herein. Any alleged class or mass action is expressly disavowed, and to the extent that anything in this Complaint is alleged to be to the contrary, this paragraph is controlling.

46. Similarly, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by this Complaint, as it sets forth exclusively state law claims against Defendants. The State of New Mexico does not plead, expressly or implicitly, any cause of action or request any remedy, which is based on federal law. The issues presented in this Complaint do not implicate significant federal issues, turn on the substantial federal interpretation of federal law, or raise a substantial federal question. Moreover, no federal question is possibly or necessarily raised in this Complaint that is potentially significant to the federal system as a whole,

as required for substantial federal question jurisdiction. *See Gunn v. Minton*, 568 U.S. 251, 258, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013). The only causes of action claimed, and the only remedies sought by the State of New Mexico herein, are for those based upon the statutory, common, and decisional laws of the State of New Mexico. Any alleged federal claim or federal question is expressly disavowed, and to the extent that anything in this Complaint is alleged to be to the contrary, this paragraph is controlling.

47. Venue is proper in this Court pursuant to NMSA 1978, Section 38-3-1 (1975), because the Office of the Attorney General for the State of New Mexico and the seat of the State Government are located in Santa Fe County, New Mexico, and Defendants are foreign corporations.

III. FACTUAL ALLEGATIONS

48. There is no health benefit to the inclusion of inorganic arsenic, lead, cadmium, or mercury in baby foods.

49. To the contrary, even low levels of these harmful metals from individual food sources can add up to a level of concern—particularly for babies and young children. Each of these metals is known to be strongly associated with neurodevelopmental toxicity in babies and young children.

50. As more fully alleged in this Complaint, inorganic arsenic, lead, cadmium, and mercury are particularly dangerous for infants and children and can lead to illness and permanent or life-long impairment. These toxic heavy metals simply have no place in any product intended for consumption by babies, infants, or children.

51. While a reasonably prudent baby food manufacturer would take all necessary steps to reduce or eliminate the presence of toxic heavy metals from their products to avoid endangering the health and well-being of infants and children who consume them, Defendants not only failed

to take such steps—they added unnecessary contamination through proprietary enzyme and vitamin mixes laced with toxic metals, and/or established internal tolerances for metals and often ignored even those standards.

52. Thus, Defendants were, at minimum, grossly negligent in causing New Mexico residents to purchase potentially dangerous baby food products and in causing New Mexico residents to be exposed to potentially dangerous concentrations of lead, arsenic, cadmium, and mercury through consumption of baby food products.

53. Defendants' conduct has caused or contributed to interference with rights common to the New Mexico public, including by, among others, causing or contributing to neurodevelopmental and behavioral effects that are widely distributed across the population, causing or contributing to impairments that are known to be associated with increased antisocial or criminal behavior, interfering with the integrity of the New Mexico marketplace, interfering with New Mexico parents' and caregivers' ability to make informed decisions about nutritional choices for the children under their care, and undermining the public's trust in the health and safety of products available in the New Mexico market.

A. ARSENIC, LEAD, CADMIUM, AND MERCURY POSE SEVERE THREATS TO HUMAN HEALTH, PARTICULARLY WHEN INGESTED BY BABIES AND CHILDREN

1. Arsenic

54. According to the ATSDR, arsenic is ranked number one among substances present in the environment that pose the most significant potential threat to human health. Inorganic arsenic is the most toxic form of arsenic.

55. The known health risks of arsenic exposure 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.

56. Studies have concluded that arsenic exposure has a significant negative effect on neurodevelopment in children. This negative effect is most pronounced in impact on a child's intelligence quotient (IQ), and more specifically, in verbal and performance domains as well as memory.

57. A 2013 study published in the peer-reviewed journal *Science of the Total Environment* demonstrated that for every 50% increase in arsenic levels, there is an approximately 0.4 decrease in the IQ of children. This damage is permanent and the effects do not appear to be reversible.

58. Increasing arsenic exposure has further been shown to lead to a decrease in children's global motor, gross motor, and fine motor function scores.

59. Boys in particular appear to be more susceptible to arsenic's neurotoxicity.

2. Lead

60. Lead is number two on ATSDR's list of substances present in the environment that pose the most significant potential threat to human health.

61. Lead is associated with a range of adverse health outcomes, including behavioral problems, decreased cognitive performance, delayed puberty, and reduced postnatal growth.

62. As the FDA has recognized, neurological effects from high levels of lead exposure during early childhood include learning disabilities, behavioral difficulties, and lowered IQ.

63. Because lead can accumulate in the body, even low-level chronic exposure can be hazardous over time. Indeed, small doses of lead exposure have been shown to be hazardous, particularly to children and especially to infants and young children.

64. Lead exposure severely affects academic achievement in children. Multiple studies have confirmed a strong inverse relationship between lead exposure and test scores, associating early childhood lead exposure and decreased standardized test performance. One

study of Chicago school students found that higher blood lead concentrations were associated with lower reading and math scores in 3rd grade children. Increased blood lead concentrations were further correlated with a 32% increase in the risk of failing reading and math.

65. The cognitive effects of early childhood lead exposure appear to be permanent.

3. Mercury

66. Mercury is a neurotoxin and number three on ATSDR's list of substances present in the environment that pose the most significant potential threat to human health.

67. Studies of mercury's effect on childhood development have primarily been conducted by considering the mother's exposure to mercury while pregnant. In these instances, pre-natal mercury exposure has been consistently associated with adverse subsequent neuro-development.

68. Children exposed to mercury while they are in the womb can have impacts to their cognitive thinking, memory, attention, language, fine motor skills, and visual spatial skills.

69. Beyond prenatal exposure, higher blood mercury levels at 2 and 3 years of age were positively associated with autistic behaviors among preschool-age children.

4. Cadmium

70. Cadmium is number seven on ATSDR's list of substances present in the environment that pose the most significant potential threat to human health.

71. Cadmium is associated with decreases in cognitive ability, as well as the development of attention deficit hyperactivity disorder.

72. Cadmium appears to affect cognitive development of children, particularly of boys, with studies showing that boys exhibiting higher amounts of cadmium exposure had seven fewer IQ points than those exhibiting less cadmium exposure.

73. A 2018 study linked cadmium exposure to ADHD, finding that the disorder was more common among children with the highest levels of cadmium exposure as compared to a control group.

B. THE DANGERS POSED BY LEAD, ARSENIC, CADMIUM, AND MERCURY HAVE LONG BEEN RECOGNIZED AS SUCH BY REGULATORS AND HEALTH EXPERTS

74. Although there currently are no regulatory standards governing inorganic arsenic, lead, cadmium, and mercury levels in baby foods (with the one exception of a cap on inorganic arsenic levels in infant rice cereals, which is not relevant to this case), the severe health hazards posed by these toxic heavy metals have been recognized through the adoption of regulatory limits in environmental media and food products other than baby food.

75. *Inorganic Arsenic.* The FDA has set maximum inorganic arsenic levels at 10 ppb for bottled water. The Environmental Protection Agency (EPA) has similarly set a 10 ppb inorganic arsenic cap on drinking water, as have the European Union (EU) and the World Health Organization (WHO).

76. Further, a study of Maine schoolchildren who had been exposed to arsenic in drinking water found that children exposed to water with an arsenic concentration level greater than 5 ppb showed significant reductions in full-scale IQ, working memory, perceptual reasoning, and verbal comprehension scores and thus the study's authors pegged 5 ppb as an important threshold.

77. Other reputable organizations call for even lower regulatory levels for inorganic arsenic, with *Consumer Reports* advocating levels as low as 3 ppb and *Healthy Babies Bright Futures* ("HBBF") seeking a goal of no measurable amount of inorganic arsenic in baby food.

78. *Lead.* Lead ingestion by humans has long been subject to regulatory scrutiny. Indeed, the FDA has set a 5 ppb lead standard for bottled water, WHO has set 10 ppb lead as a

provisional guideline for drinking water, and EPA has set an action level of 15 ppb for lead in drinking water. FDA has also issued non-binding guidance for lead in certain juices (50 ppb) and candy (100 ppb). The EU has set the maximum lead level in infant formula to 20 ppb.

79. Importantly, there is a growing consensus among health experts that lead levels in baby foods should not exceed 1 ppb: The American Academy for Pediatrics, the Environmental Defense Fund, and *Consumer Reports* have all called for a 1 ppb maximum level in food and drinks that babies and children consume.

80. *Cadmium*. Outside the context of baby food, some regulatory action has already been taken action with respect to cadmium. The EPA has established a limit of 5 ppb in drinking water, and FDA has set a limit of 5 ppb in bottled water. The WHO has issued a limit of 3 ppb for cadmium in drinking water and the EU has set a limit ranging from 5–20 ppb cadmium for infant formula.

81. HBBF advocates for a goal of no measurable amount of cadmium in baby food and *Consumer Reports* has called for a limit of 1 ppb cadmium in fruit juices.

82. *Mercury*. Like inorganic arsenic, lead, and cadmium, mercury has long been recognized as a hazardous substance when ingested. For example, the EPA has capped mercury in drinking water at 2 ppb and nationwide, regulators have implemented advisories concerning the consumption of fish contaminated with mercury.

83. There is no reason to believe that mercury is any safer when ingested through baby food instead of water or fish tissue, and health experts call for a goal of no measurable mercury in baby food.

C. DEFENDANTS' CONTAMINATED PRODUCTS

84. New Mexico parents and caregivers rely heavily on each of the Defendants to supply safe, nutritious food to their children, and to provide accurate information about the contents of food products they sell.

85. Unknown to New Mexico consumers and the State, however, Defendants have long been marketing, distributing, and selling food products intended for consumption by babies, infants, and children that are tainted with significant, elevated concentrations of highly toxic metals.

1. Contamination Revealed in the House Report

86. The House Report and documents obtained from Nurture, Beech-Nut, and Hain were published on February 4, 2021.

87. According to Nurture's internal documents, at least the following products manufactured, designed, marketed, distributed, and sold by Nurture contain potentially dangerous concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Apple and Broccoli Puffs
- b. Banana and Pumpkin Puffs
- c. Strawberry and Beet Puffs
- d. Kale and Spinach Puffs
- e. Purple Carrot and Blueberry Puffs
- f. Sweet Potato and Carrot Puffs
- g. Apple Rice Cakes
- h. Blueberry Beet Rice Cakes
- i. Blueberry Purple Carrot
- j. Multi-Grain Cereal Canister

- k. Apple, Spinach, Pea & Kiwi Creamies
- l. Blueberry Beet Rice Cakes
- m. Pea Spinach Teether
- n. Strawberry, Raspberry & Carrot Creamies
- o. Brown Rice Cereal Canister
- p. Banana Sweet Potato Teether

88. The average amount of inorganic arsenic in the baby foods that Nurture tested and sold was 59.54 ppb, far in excess of any existing or recommended standards concerning this chemical, including the EPA's water limits of 10 ppb.

89. At least one of Nurture's products, Apple and Broccoli Puffs, contained a whopping 180 ppb of inorganic arsenic. Nurture sold it to the public anyway.

90. Further, of the 206 finished products that Nurture tested for lead, 16 products registered at over 20 ppb, and 39 products, or 18.9%, tested over 10 ppb. Nurture sold products that tested as high as 641 ppb lead. Nurture also sold five other products after they tested over 50 ppb lead.

91. Nurture also sold multi-grain cereal containing 49 ppb cadmium and another 125 products that had tested over 5 ppb.

92. Finally, Nurture sold a finished baby food product that contained 10 ppb mercury, and two others that contained 9.8 and 7.3 ppb. In total, Nurture sold 56 products that contained over 2 ppb mercury.

93. Other than Nurture, none of the Defendants routinely tests finished food products for toxic heavy metals.

94. Beech-Nut and Hain only occasionally test finished food products for toxic heavy metals. They do, however, routinely test ingredients used in the production of their foods

intended for consumption by babies, infants, and children for heavy metals, and the results are similarly startling as those for Nurture's finished products.

95. According to Beech-Nut's internal documents, at least the following ingredients utilized by Beech-Nut contain potentially dangerous concentrations of lead, arsenic, cadmium, and/or mercury:

- a. Enzymes added to products: Amylase, BAN 800, Alpha Amylase, Sebamyl 100
- b. Organic rice flour
- c. Organic cumin
- d. Organic rice
- e. Rice flour
- f. Cumin
- g. Oregano
- h. Rice
- i. Vitamin mix
- j. Cinnamon
- k. Organic coriander
- l. Organic lemon
- m. Turmeric
- n. Sunflower lecithin
- o. Sweet potato
- p. Quinoa flour
- q. Lemon
- r. Prune puree
- s. Organic turmeric
- t. Dehydrated potato

- u. Mango
- v. Prune
- w. Organic prune
- x. Apricot
- y. Organic quinoa flour
- z. Organic quinoa seeds
- aa. Blueberry
- bb. Organic pears
- cc. Carrots
- dd. Organic cinnamon
- ee. Spinach puree
- ff. Fresh spinach

96. Beech-Nut's documents show that it used ingredients containing as much as 913.4 ppb arsenic.

97. Test results further show that Beech-Nut used at least fourteen other ingredients containing over 300 ppb arsenic and at least 45 ingredients containing over 100 ppb arsenic.

98. Beech-Nut also used ingredients in its baby foods that contained high lead levels. For instance, Beech-Nut used cinnamon that contained 886.9 ppb lead, as well as 57 ingredients that contained over 20 ppb lead, 89 ingredients that tested at or over 15 ppb lead, and 483 ingredients that tested at or over 5 ppb lead.

99. The ingredients used by Beech-Nut also contained excessive levels of cadmium. Indeed, Beech-Nut used twenty ingredients registering over 100 ppb cadmium, including cinnamon containing 344.5 ppb cadmium, and at least 105 ingredients that registered at or over 20 ppb cadmium.

100. At least based on the documents Beech-Nut made available to the House it appears that the company did not test its ingredients for mercury.

101. According to Hain's internal documents, at least the following ingredients utilized by Hain contain potentially dangerous concentrations of lead, arsenic, cadmium, and/or mercury:

- a. Organic brown rice flour
- b. Vitamin pre-mix
- c. Organic whole raisins
- d. Organic soft white wheat flour
- e. Organic spelt flour
- f. Organic barley malt extract
- g. Organic yellow split pea powder
- h. Medium grain whole rice
- i. Organic brown rice flour
- j. Organic butternut squash puree
- k. Organic blueberry puree
- l. Organic barley flour
- m. Organic cinnamon powder
- n. Organic whole wheat fine flour
- o. Organic quick oats
- p. Organic date paste
- q. Organic chopped broccoli
- r. Organic brown flax
- s. Organic yellow papaya puree
- t. Organic red lentils
- u. Organic oat flakes

v. Organic oat flour

102. Based on Hain's internal documents provided to the House, Hain routinely used ingredients with high levels of arsenic. Hain used brown rice flour that had tested at 309 ppb arsenic, a vitamin pre-mix containing 223 ppb arsenic, and raisin and wheat flour containing 200 ppb arsenic. The data provided further shows that Hain used at least 24 ingredients after testing found that they contained more than 100 ppb arsenic.

103. The vitamin pre-mix Hain used in its baby food also contained as much as 352 ppb lead.

104. Hain also used six ingredients that tested above 200 ppb lead and 88 ingredients with lead levels at or over 20 ppb. Hain accepted 115 ingredients that registered at or over 15 ppb and at least 27% of Hain ingredients tested at or over 5 ppb lead.

105. Hain used 14 ingredients that contained more than 100 ppb cadmium, including barley flour that registered at 260 ppb cadmium. Hain further tested and used 102 ingredients that registered at or above 20 ppb cadmium.

106. Like Beech-Nut, Hain appears not to test its ingredients for mercury.

107. The presence of harmful amounts of toxic heavy metals in baby food products has long been known to the industry and to all Defendants.

108. Indeed, in a December 2019 letter to the Chairman of the Subcommittee on Economic and Consumer Policy, Beech-Nut maintains that it has conducted contaminant testing since the 1970s, and has been testing ingredients for heavy metals since the 1980s.

109. Correspondence and documents produced to Congress by Beech-Nut, Nurture, and Hain demonstrate that each of those Defendants is conducting some form of supply chain monitoring with respect to arsenic, lead, cadmium, and mercury in their ingredients and/or products.

2. Contamination Revealed by the HBBF Report

110. Consumer advocacy groups and public health advocates have conducted laboratory analyses examining baby food products for toxic heavy metals since at least 2011. On information and belief, third-party testing results demonstrating the potentially dangerous presence of lead, arsenic, cadmium, and/or mercury in Defendants' products have been known or available to Defendants since at least 2011.

111. In October 2019, *Healthy Babies Bright Futures* (HBBF, as defined above), a network of nonprofit organizations assembled to analyze and report on the safety of products and foods intended for babies, published a report entitled, "What's in my baby's food?" (the "HBBF Report").

112. The HBBF Report presents a national investigation of hazardous chemicals, namely arsenic, lead, cadmium, and mercury, found in baby food products, and concludes that 95% of foods tested contain potentially dangerous levels of such chemicals. The HBBF Report includes analyses of products manufactured or sold by Nurture, Beech-Nut, Hain, Walmart, and the Kroger Defendants, among others.

113. Of 168 baby food products tested, the HBBF Report indicates that 26% contained all four hazardous chemicals; 40% contained three of the chemicals; 21% contained two of the chemicals; and 8% contained one of the chemicals. Only 5% contained none of the metals.

114. Lead was found in 94% of the products tested; arsenic was found in 73% of the products tested; cadmium was found in 75% of the products tested; and mercury was found in 32% of the products tested.

115. Additionally, the HBBF Report presents an assessment, conducted by Abt Associates, of IQ loss attributed to lead and arsenic contamination in baby food products. Rice and rice dishes, apple, grape, and mixed fruit juices, sweet potato baby food, puffs and teething

biscuits, and oat rings are among the most significantly impactful foods, according to this assessment.

116. The HBBF/Abt IQ analysis shows, among other things, that rice-based foods and snacks contribute nearly one-fifth of the total estimated IQ loss associated with lead and arsenic contamination in baby foods.

117. The HBBF Report included analyses of baby food products manufactured, marketed, distributed, and sold by all Defendants.

118. According to the HBBF Report's laboratory test results, the following Nurture products showed elevated concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Oats and Quinoa Baby Cereal Organic Whole Grains with Iron
- b. Clearly Crafted Oatmeal Baby Cereal – Organic Whole Grains
- c. Organics Sweet Potatoes
- d. Sweet Potatoes
- e. Organic Pears
- f. Clearly Crafted Prunes Organic Baby Food
- g. Simple Combos Apple, Spinach and Kale
- h. Clearly Crafted Apples, Sweet Potatoes and Granola Organic Baby Food
- i. Superfoods Puffs – Apple and Broccoli Organic Grain Snack
- j. Superfood Puffs – Sweet Potato and Carrot Organic Grain Snack
- k. Organic Rice Cakes Puffed Rice Snack – Apple
- l. Organic Teethers Blueberry and Purple Carrot

119. According to the HBBF Report's laboratory test results, the following Beech-Nut products showed elevated concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Rice Single Grain Baby Cereal

- b. Oatmeal Whole Grain Baby Cereal
- c. Classics Sweet Carrots
- d. Organics Just Carrots
- e. Naturals Just Sweet Potatoes
- f. Organics Just Sweet Potatoes
- g. Classics Sweet Potatoes
- h. Classics Sweet Peas
- i. Beechnut Naturals Just Butternut Squash
- j. Organic Just Pumpkin
- k. Naturals Beets, Pear and Pomegranate
- l. Classics Mixed Vegetables

120. According to the HBBF Report's laboratory test results, the following Hain products showed elevated concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Whole Grain Rice Cereal
- b. Whole Grain Oatmeal Cereal
- c. Carrots Organic Baby Food
- d. First Carrots Organic Baby Food
- e. Sweet Potatoes Organic Baby Food
- f. Winter Squash Organic Baby Food
- g. First Peas Organic Baby Food
- h. Apples Organic Baby Food
- i. First Pears
- j. Spinach and Potato Organic Baby Food
- k. Chicken and Brown Rice Organic Baby Food
- l. Organic Turkey Quinoa Apple Sweet Potato Homestyle Meal Puree

- m. Organic Chicken Pot Pie Homestyle Meal Puree
- n. Organic Sweet Potato Cinnamon Flax and Oat – Wholesome Breakfast Puree
- o. Sesame Street Organic Peanut Butter Baked Corn Puffs
- p. Sesame Street Organic Fruit Yogurt Smoothie
- q. Sunny Days Snack Bars

121. According to the HBBF Report’s laboratory test results, the following Walmart products showed elevated concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Carrot
- b. Sweet Potato
- c. Organic Butternut Squash Vegetable Puree
- d. Organic Strawberry Carrot and Quinoa Fruit and Vegetable Puree
- e. Organic Strawberry Rice Rusks
- f. Little Hearts Strawberry Yogurt Cereal Snack

122. According to the HBBF Report’s laboratory test results, the following Kroger products showed elevated concentrations of arsenic, lead, cadmium, and/or mercury:

- a. Comforts Little Puffs Cereal Snack
- b. Simple Truth Organic Whole Grain Puffs
- c. Simple Truth Organic Mini Rice Cakes

123. Products and product lines identified in this Section C, as well as any other products designed, manufactured, marketed, distributed, and/or sold by Defendants with concentrations of arsenic, lead, cadmium, and/or mercury that may pose a health risk to any consumer of such products, are referred to as “Contaminated Products.”

124. No claim asserted in this lawsuit concerns inorganic arsenic levels in any regulated infant rice cereal product. Insofar as any infant rice cereal product contains potentially dangerous

levels of lead, cadmium, and/or mercury, however, it is subject to the claims set forth in this lawsuit.

3. Contamination Revealed in Defendants' Internal Documents

125. As alleged above, Defendants added unnecessary contamination through proprietary enzyme and vitamin mixes laced with toxic metals, and/or established unreasonably high internal tolerances for metals, and often ignored even those standards.

126. By way of example only, according to Nurture's internal finished product testing data from January 1, 2019 through January 21, 2021, it sold multiple baby food products in the United States containing inorganic arsenic levels in excess of 100 ppb. The same finished product testing data shows that Nurture sold multiple baby food products in the United States containing over 30 ppb lead, including products with as much as 55 ppb lead.

127. According to an internal document produced by Beech-Nut, there was no vendor specification for the levels of arsenic in Fungal Alpha Amylase, and the vendor specification for lead in this product was ≤ 300 ppb. One lot of Fungal Alpha Amylase from January 11, 2017 contained 1652.8 ppb arsenic and 81.4 ppb lead. This same internal document showed another lot of Fungal Alpha Amylase from April 19, 2017 contained 1221.6 ppb arsenic and 91.5 ppb lead. A lot of the same product from August 6, 2018 contained 1118.708 ppb arsenic and 110 ppb lead. Arsenic levels for Fungal Alpha Amylase used by Beech-Nut ranged from 442.3 ppb to 1652.8 ppb, and lead levels for this product ranged from 47.3 ppb to 114.5 ppb, with 5 lots exceeding 100 ppb. The August 2016 lot of Fungal Amylase reflected on Beech-Nut's internal document also contained ≤ 300 ppb lead.

128. No information available to the State indicates that these lots were rejected or not used in the manufacture of baby food products.

129. Similarly, there was no vendor specification for arsenic in Sebamyl 100, and the vendor specification for lead in this product was ≤ 300 ppb. A lot of Beech-Nut's Sebamyl 100 from August 2019 contained 583.6 ppb arsenic and 30.6 ppb lead. A lot of the same product from November 2019 contained 543.22 ppb arsenic and 40.96 ppb lead. According to this document, arsenic levels in Beech-Nut's Sebamyl 100 ranged from 110.37 ppb to 583.6 ppb, and lead levels ranged from 2.5 ppb to 87.9 ppb. No information available to the State indicates that these lots were rejected or not used in the manufacture of baby food products.

130. According to Hain's internal raw material pre-shipment test data history, although the arsenic spec limit was 100 ppb and the lead spec limit was 100 ppb, it had a "deviation approved" for its vitamin premix after November 2019 lab results demonstrated 223 ppb arsenic and 352 ppb lead in this product.

131. Hain's internal documentation also reflected it had a "deviation approved" for "Org Cinnamon Powder" where the cadmium spec limit was 100 ppb, and the February 2019 lab result indicated 102 ppb cadmium in this product.

132. In other instances, where the product Hain was testing exceeded the specs, Hain "calculated the heavy metal levels on consumed basis." For example, Hain accepted lab test results from July 2018 on "org[anic] whole raisins" containing 200 ppb arsenic where the spec was 100 ppb, and noted "calculated levels on consumed basis."

133. By way of further example, Hain also "calculated heavy metals on consumed basis" in response to June 2018 lab results finding 102 ppb cadmium in "org[anic] oat flour" to a spec of 100 ppb cadmium; in response to thirteen other January 2018 lab results finding as much as 260 ppb cadmium and 250 ppb lead (to a spec of 100 ppb lead) in various products; and in

response to several 2017 lab results finding levels of arsenic, cadmium, and lead exceeding the spec limits.

D. DEFENDANTS' POLICIES AND PRACTICES WITH RESPECT TO TOXIC METALS ARE RESPONSIBLE FOR THE CONTAMINATED PRODUCTS

134. The Defendants that provided documentation to the House Subcommittee in connection with the investigation underlying the House Report—Nurture, Beech-Nut, and Hain—disclosed several internal corporate policies regarding metals contamination. These documents confirm that those Defendants have established unreasonably high tolerances for lead, arsenic, cadmium, and mercury in products intended for consumption by babies, infants, and children—and that, despite setting such standards, each routinely ignored them.

135. Beech-Nut's internal standards permit, for instance, arsenic and cadmium concentrations of 3,000 ppb in certain ingredients, and lead concentrations of 5,000 ppb.

136. Notably, Beech-Nut's astronomically high tolerances for arsenic, cadmium, and lead apply to additives, such as vitamin mixes and enzymes like BAN 800—ingredients intentionally added to its products to, e.g., increase softness.

137. Beech-Nut's ingredient testing shows that it used ingredients containing as much as 887 ppb of lead and routinely used ingredients known to be high in lead, including 483 ingredients with over 5 ppb of lead, 89 ingredients with over 15 ppb of lead, and 57 ingredients with over 20 ppb of lead.

138. Beech-Nut's testing also showed that it used ingredients containing as much as 913 ppb of arsenic and routinely used ingredients known to be high in arsenic, including at least 14 ingredients containing over 300 ppb of arsenic, and at least 45 ingredients with over 100 ppb of arsenic.

139. Beech-Nut's testing further revealed that it used many ingredients with dangerous cadmium concentrations, including twenty ingredients with over 100 ppb of cadmium (and up to 345 ppb of cadmium), and at least 105 ingredients containing 20 ppb of cadmium or more.

140. Beech-Nut does no routine mercury testing of its ingredients or products.

141. Hain's internal standards permit arsenic, lead, and cadmium concentrations of 200 ppb in certain ingredients. Even these unreasonably high tolerances, however, have not stopped Hain from selling products with concentrations above 200 ppb of arsenic, lead, or cadmium. As documents provided by Hain show, Hain violated its own internal policies by using ingredients containing as much as 353 ppb of lead and 309 ppb of arsenic.

142. Hain's testing showed lead concentrations of up to 352 ppb in vitamin pre-mix. Hain also used at least six ingredients containing more than 200 ppb of lead, at least 88 ingredients containing 20 ppb of lead or more, and at least 115 ingredients containing 15 ppb of lead or more. Hain's testing showed that at least 27% of its ingredients contained 5 ppb of lead or more. None of Hain's testing showed lead concentrations at or below 1 ppb.

143. Hain's limited product testing showed concentrations of as much as 129 ppb of inorganic arsenic. Its routine ingredient testing also showed that Hain routinely used ingredients containing high arsenic levels, including brown rice flour containing 309 ppb of arsenic, a vitamin pre-mix containing 223 ppb of arsenic, and raisin and wheat flour containing 200 ppb of arsenic. Hain used at least 24 ingredients known to contain more than 100 ppb of arsenic, such as flours, powders, extracts, and purees of various vegetables and grains.

144. Hain's testing further revealed that it used many ingredients with dangerous cadmium concentrations, including 14 ingredients with over 100 ppb of cadmium (and up to 260 ppb of cadmium), and at least 102 ingredients containing 20 ppb of cadmium or more.

145. Hain does no routine mercury testing of its ingredients or products.

146. Nurture has devised a metals testing protocol that has never posed an impediment to sales. For example, according to documents provided by the company, Nurture sold all products tested, regardless of the quantities of heavy metals detected, because its testing practices are for informational purposes only and not intended to protect consumers.

147. Nurture sold baby food products known to contain as much as 641 ppb of lead, and at least five products known to contain over 50 ppb of lead. Sixteen products tested by Nurture showed lead concentrations exceeding 20 ppb, and 39 products, representing approximately 19% of products tested, showed lead concentrations exceeding 10 ppb. As the House Report notes, “[i]t is not clear that even one of Nurture’s baby food products registered at or below 1 ppb lead, which should be the upper limit for lead content according to health experts at *Consumer Reports*, the Environmental Defense Fund, and the American Academy of Pediatrics.”

148. Similarly, Nurture sold products known to contain as much as 180 ppb of inorganic arsenic, and routinely sold products containing more than 100 ppb of arsenic. By Nurture’s own admission, over 25% of the products it tested for inorganic arsenic and which were sold to the public containing inorganic arsenic levels in excess of 100 ppb. At least 89 of its final products, representing nearly 80% of products tested by the company, showed 9 ppb of inorganic arsenic or greater. On average, Nurture’s final products contain 59.54 ppb of inorganic arsenic.

149. Nurture’s testing further revealed that it sold many products with dangerous cadmium concentrations, including a multi-grain cereal with 49 ppb of cadmium and at least 125 other products containing 5 ppb of cadmium or more.

150. Nurture's mercury testing showed that it sold at least one line of products containing 10 ppb of mercury and at least two others containing between 7 and 10 ppb. Nurture's testing shows that it sold at least 56 products containing 2 ppb of mercury or more.

151. Documents and information concerning internal testing protocols and internal policies regarding tolerance of toxic heavy metals in effect at Walmart and Kroger are not yet available. However, independent laboratory testing of Walmart and Kroger products demonstrates that each of those Defendants' standards or policies with respect to heavy metals are inadequate.

152. The HBBF Report shows lead concentrations in Walmart products as high as 26.9 ppb; arsenic concentrations as high as 108 ppb; and cadmium concentrations as high as 26.1 ppb.

153. The HBBF Report shows lead concentrations in Kroger products as high as 9.8 ppb; arsenic concentrations as high as 307 ppb; cadmium concentrations as high as 36.9 ppb; and mercury concentrations as high as 3.68 ppb.

154. Accordingly, all Defendants have implemented deficient policies and practices with unreasonably high tolerances for known contamination of products intended for consumption by babies, infants, and children.

E. DEFENDANTS' UNFAIR AND MISLEADING MARKETING AND ADVERTISING OF THE CONTAMINATED PRODUCTS

155. In Nurture's Happy Baby Organics advertisement, Nurture tells parents:¹



156. Nurture further tells parents:

Happy Family Organics has been on a mission to change the trajectory of children's health through nutrition since we launched on Mother's Day in 2006.

We provide organic nutrition and support for you & your baby's feeding journey from day one, whether that's breast or formula feeding all the way through starting solids and picky eating. We thoughtfully craft organic meals and snacks with curated ingredients that are appropriate for each baby, toddler, and kid's age and stage to help support a lifetime of wellness.²

¹ <https://www.mops.org/happy-family/>, last visited May 19, 2021.

² Happy Baby Organics Starting Solids 101 For You & Your Little One, available at https://hfoprod-18c6d.kxcdn.com/wp-content/uploads/2020/09/20200929_StartingSolids_Booklet_WEB_LR.pdf, last visited May 17, 2021 (emphasis in original).

157. On its Happy Baby Organics’ website, Nurture touts the “QUALITY & SAFETY OF OUR PRODUCTS,” and tells parents:

We are aware of the recent Congressional report which has been released that shares testing data from different baby food brands in the industry. As a company run by parents who are proud to feed our children the products that we make every day, we take this topic very personally and seriously.

We can say with the utmost confidence that all Happy Family Organics products are safe for babies and toddlers to enjoy and we are proud to have best-in-class testing protocols in our industry. We only sell products that have been rigorously tested and we do not have products in-market with contaminant ranges outside of the limits set by the FDA. We pride ourselves on being at the forefront of implementing strict quality standards in providing nutritious offerings for families. The safety, health and wellness of our little ones is, and has always been, an intrinsic part of our DNA (emphasis added).³

158. In Beech-Nut’s TV commercial “Natural,” Beech-Nut tells parents “[h]omemade is our inspiration. Just real whole fruits and vegetables go into our jars and nothing else. This is not baby food; this is real food for babies.”⁴ In fact, as alleged above, Beech-Nut uses food additives known to contain potentially dangerous levels of toxic heavy metals to its baby food products.

159. In its commercial, “Turn the Labels Around,” Beech-Nut uses the tagline “Real Food for Babies.”⁵ It tells parents to “turn the labels around” ... “because real food with simple

³ Nurture Happy Family Organics, “Quality & Safety of Our Products,” available at <https://www.happyfamilyorganics.com/quality-and-safety-of-our-products/>, last visited May 17, 2021.

⁴ Beech-Nut tv commercial, “Natural,” available at <https://www.ispot.tv/ad/7pVS/beechnut-natural>, last visited May 10, 2021.

⁵ Beech-Nut TV Commercial, “Turn the Labels Around,” available at <https://www.ispot.tv/ad/A9Om/beechnut-turn-the-labels-around>, last visited May 10, 2021.

ingredients can never be wrong.”⁶ As alleged above, however, Beech-Nut used food additives known to contain potentially dangerous levels of toxic heavy metals to its baby food products.

160. Beech-Nut creates the image of manufacturing nutritious, impurity-free, and safe baby food by stating on its website: “Beech-Nut® has been around since 1891, making baby food since 1931. ... Making high quality, safe, and nutritious foods for babies and toddlers will always be our #1 priority.”⁷

161. Beech-Nut’s purpose is: “We champion real food for a healthier world.”⁸

162. Beech-Nut’s website also tells parents:⁹



163. Beech-Nut’s website touts the health benefits of its baby food products generally with an article “Food Quality Standards You Can Trust.” This article tells consumers, *inter alia*:

We start by carefully choosing high quality fruits and vegetables...

⁶ *Id.*

⁷ Beech-Nut’s “Our Story,” available at <https://www.beechnut.com/our-story/#:~:text=Beech%2DNut%C2%AE%20has%20been,making%20baby%20food%20since%201931.&text=In%20fact%2C%20engineers%20from%20Beech,safety%20standard%20in%20the%20industry>, last visited May 17, 2021.

⁸ *Id.*

⁹ Beech-Nut’s “Our Story,” available at <https://www.beechnut.com/our-story/>, last visited May 19, 2021.

We take our responsibility very seriously to find the purest, cleanest fruits and vegetables out there, while adhering to rigorous quality standards.

* * *

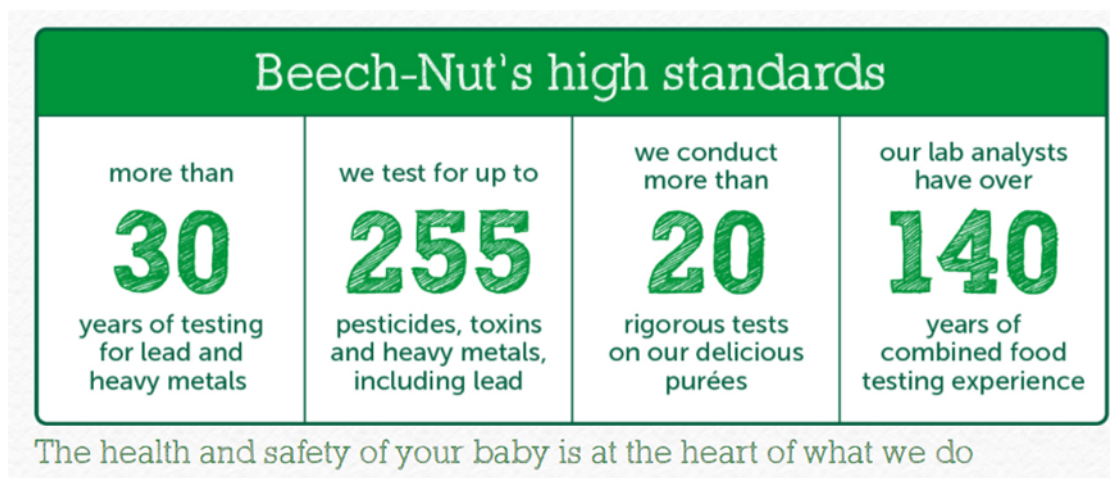
We've been testing our ingredients for contaminants, such as heavy metals and pesticides since 1985. Beech-Nut prides itself on its partnerships with farmers to help ensure that they understand, and can meet, the level of quality we require. We continuously improve our food safety and quality standards based on the most up to date scientific technology. We also seek guidance from sources such as the Food and Drug Administration (FDA), Environmental Protection Agency (EPA), the European Food Safety Authority (EFSA) and the World Health Organization (WHO).

Going above and beyond the “standard”: Baby Food Council Partnership

The EPA, U.S. Department of Agriculture (USDA) and other government bodies have baseline standards for limits on pesticides and organic certification. Yet, our pesticide standards are the same or stricter than government requirements.

* * *

We are committed to delivering these high standards and here's how we do it:



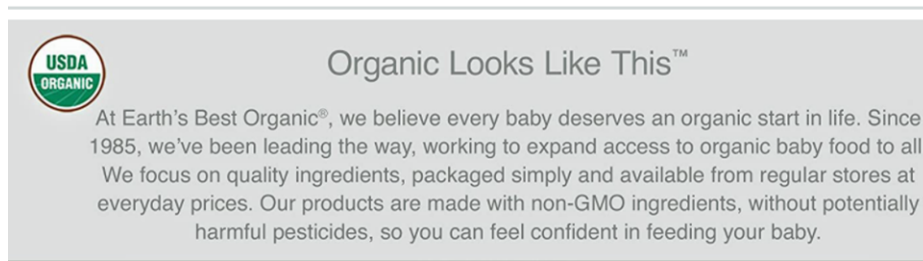
We know moms, dads and caregivers depend on our commitment to help keep their children healthy and thriving. As a company of parents who are proud to feed our own children Beech-Nut, we take the responsibility to provide safe, nutritious food as our highest purpose for over 130 years.

Since we know you don't have an Inductively Coupled Plasma–Mass Spectrometer or a Gas Chromatograph to conduct these food quality tests in your own kitchen, we conduct more than 20 rigorous tests on our delicious purées alone to ensure that

the safety, quality and flavors are just right. That way, when our foods reach your little one's highchair, you can feel confident you're giving your baby the best.¹⁰

164. Beech-Nut nowhere discloses the known presence of potentially hazardous concentrations of toxic heavy metals in any of its products.

165. Hain advertisements for its Earth's Best Organic baby food on Amazon tells parents:¹¹



166. Hain's Earth's Best Organic Amazon store advertisement also reassures parents that its "Infant Foods" are "[f]ortified with iron, these easy to digest cereals are a perfect first food as your little one transitions to solids;" its "Toddler Foods" are "[w]holesome foods including breakfast, entrees, and snacks," and its "[k]ids' foods" are "[o]n-the-go options perfect for busy kids."¹²

¹⁰ Beech-Nut Food Quality Standards You Can Trust, available at <https://www.beechnut.com/food-quality-safety/>, last visited May 10, 2021.

¹¹ Hain's Earth's Best Organic Amazon Store, available at https://www.amazon.com/stores/Earth%27s+Best/page/45E06714-9C64-40B9-A170-427F73BFAB9E?ref=ast_bln, last visited May 11, 2021.

¹² *Id.*

167. Hain's Earth's Best Organic Amazon store advertisement tells parents:

Why Earth's Best?

As your little one grows, there are many important decision to be made. With Earth's Best Organic® products choosing quality is easy because for more than 30 years we have been dedicated to providing wholesome infant nutrition. Our products are made with non-GMO ingredients, without potentially harmful pesticides so you can feel confident in feeding your baby.¹³

168. Hain's purpose "is to create and inspire A Healthier Way of Life™."¹⁴ Its "mission is to be the leading marketer, manufacturer and seller of organic and natural better-for-you products."¹⁵

169. Hain's Earth's Best's website tells parents:

MADE WITH LOVE FROM THE GROUND UP

Earth's Best® is the first complete line of organic infant nutrition and natural baby care products. Time-trusted and safe, we strive to provide better-for-you baby, toddler, and kid products made from pure ingredients to help children grow up strong and healthy. Our products are grounded in a humble appreciation for the earth, and are produced without the use of potentially harmful pesticides, which allows us to protect the environment for generations to come.¹⁶

170. The product description for Hain's Earth's Best Organic State 2 Breakfast Baby Food, Blueberry Banana Flax & Oat wholesome breakfast touts that these products are safe and healthy for little ones:

Product Description

¹³ Hain's Earth's Best Amazon store, available at https://www.amazon.com/Earths-Best-Organic-Blueberry-Breakfast/dp/B00TZITZPO/ref=sr_1_7?dchild=1&keywords=earth%27s+best&qid=1621293195&rnid=2941120011&s=baby-products&sr=1-7, last visited May 17, 2021.

¹⁴ Hain's Company page, available at <http://www.hain.com/company/>, last accessed May 17, 2021.

¹⁵ *Id.*

¹⁶ Hain's Earth's Best website, available at <http://www.hain.com/ourbrands/earths-best/>, last visited May 17, 2021.

Earth's Best Organic Baby Food Pouches feature yummy combinations of pureed fruits, veggies, meat and whole grains that your little one is sure to love. With multiple stages of purees available for different ages, there's an Earth's Best baby food for every step along the way. Simply choose the appropriate puree based on your baby's age: Stage 2 is for little ones 6 months and older, and Stage 3 is for 9 months and older. Packaged in BPA-free resealable pouches, Earth's Best baby food is perfect for on-the-go families. All Earth's Best baby food pouches are USDA-Certified Organic, made with non-GMO ingredients, and contain no artificial flavors, or colors. They are also unsweetened, unsalted, and have no added modified starches. From the day that Earth's Best was founded in 1985, we've been recognized as a brand dedicated to offering wholesome, safe products for little ones. We believe that babies deserve nutritious fruits handpicked from organic orchards, vegetables grown in nature's soil, and foods that are made without genetically engineered ingredients. Offering a wide range of safe and gentle baby care products as well as nourishing foods, Earth's Best products are created with care, using simple ingredients found in nature. Made with love from the ground up, you can trust Earth's Best products to be safe for your baby.¹⁷

171. Hain nowhere discloses the known presence of potentially hazardous concentrations of toxic heavy metals in any of its products.

172. Walmart's advertisement for its Parent's Choice products tells parents: "Healthy babies start with Parent's Choice:"¹⁸



¹⁷ Hain's Earth's Best Amazon Store, available at https://www.amazon.com/Earths-Best-Organic-Blueberry-Breakfast/dp/B00TZITZPO/ref=sr_1_7?dchild=1&keywords=earth%27s+best&qid=1621293195&rnid=2941120011&s=baby-products&sr=1-7, last visited May 17, 2021.

¹⁸ <https://www.pinterest.com/pin/349169777355764168/>, last visited May 19, 2021.

173. In its advertisement for Parent's Choice Just Mango fruit puree, Walmart shows pictures of mangos, and claims "[n]o mess, no fuss baby food."¹⁹



174. In its advertisement for Parent's Choice Mixed Vegetables, Walmart tells parents to "[h]elp your infant achieve a balanced diet with Parent's Choice Mixed Vegetable Baby Food," and that it is a "[n]utritious meal for your infant of 6 months or older."²⁰

175. In advertising its Parent's Choice baby food products, Walmart tells parents: "Since 1998, Walmart's Parent's Choice has been trusted by parents across the country to provide quality, affordable baby products."²¹

¹⁹ <https://www.pinterest.com/pin/55591376636031145/>, last visited May 19, 2021.

²⁰ Walmart Parent's Choice Mixed Vegetables, available at <https://www.walmart.com/ip/Parent-s-Choice-Baby-Food-Mixed-Vegetables-Stage-2-4-oz/710388980>, last visited May 17, 2021.

²¹ See, e.g., Parent's Choice Stage 2 Apple Strawberry Baby Food, available at <https://www.walmart.com/ip/Parent-s-Choice-Stage-2-Apple-Strawberry-Baby-Food-4-oz-2-Count/736255304>, last visited May 17, 2021.

176. Walmart also describes its Parent's Choice baby food products as:
- a. Organic
 - b. Naturally Flavored
 - c. Gluten-Free
 - d. Great Taste
 - e. Easily Dissolves in Baby's Mouth
 - f. No Artificial Colors
 - g. USDA ORGANIC
 - h. Designed to be the ideal size and texture for your child's developing hands, mouth, and teeth
 - i. Formulated for children who are 6 months and older
 - j. With a quality guarantee to back up all its baby, toddler, infant and newborn products, Parent's Choice takes care of your little one's needs for less.

177. Walmart nowhere discloses the known presence of potentially hazardous concentrations of toxic heavy metals in any of its products.

178. On its website, Kroger advertises its Comforts Little Puffs Strawberry Apple Cereal Snack as being “a great way to introduce your child to new tastes and textures.”²² It also touts the following benefits of this product:

- a. Vitamin D, E, iron, zinc, and 5 B vitamins
- b. Dissolves easily
- c. No artificial colors or flavors
- d. Easy to pick up
- e. Made with whole grains

²² Kroger Comforts Little Puffs Strawberry Apple Cereal Snack, available at <https://www.kroger.com/p/comforts-little-puffs-strawberry-apple-cereal-snack/0004126037731?fulfillment=PICKUP>, last visited May 11, 2021.

- f. Kosher
- g. Non GMO

Nutrition Facts	
6.0 servings per container	
Serving size	
Amount per serving	
Calories	25
% Daily value*	
Total Fat 0g	
Saturated Fat 0g	
Trans Fat 0g	
Cholesterol 0mg	
Sodium 0mg	
Total Carbohydrate 5g	
Dietary Fiber 0g	
Sugar 0.5g	
Protein 0g	
*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.	



179. Kroger also advertises that its Little Puffs contain the following ingredients:²³

Other Ingredients : Whole Grain Brown Rice Flour , Whole Wheat Flour , Pregelatinized Wheat Starch , White Grape Juice Concentrate , Whole Oat Flour , Tricalcium Phosphate , Less Than 2% Of : Apple Powder , Natural Flavors , Calcium Carbonate , Strawberry Juice Concentrate , Mixed Tocopherols (for freshness) , Ferrous Fumarate , Zinc Sulfate , Niacinamide (Vitamin B3) , DL-Alpha Tocopheryl Acetate (Vitamin E) , Cholecalciferol (Vitamin D) , Thiamine Mononitrate (Vitamin B1) , Riboflavin (Vitamin B2) , Pyridoxine Hydrochloride (Vitamin B6) , Cyanocobalamin (Vitamin B12).

180. Kroger nowhere discloses the known presence of potentially hazardous concentrations of toxic heavy metals in any of its products.

²³ *Id.*

F. DEFENDANTS' MARKETING AND SALES OF CONTAMINATED PRODUCTS IN NEW MEXICO

181. Each Defendant marketed, promoted, and sold the Contaminated Products in New Mexico through the use of unfair and deceptive trade practices, and unconscionable trade practices, including by marketing and selling unreasonably dangerous products, and misrepresenting or omitting material facts concerning the safety of such products.

182. The Contaminated Products exposed New Mexico consumers, including babies, infants, and children, to potentially dangerous levels of lead, arsenic, cadmium, and/or mercury, and/or to the adverse health effects associated with toxic heavy metal exposure and ingestion, including neurodevelopmental impacts causing permanent or life-long impairments, and other systemic effects.

183. Millions of units of the Contaminated Products have been sold in New Mexico and continue to be sold in New Mexico, both in retail stores and online.

184. In addition, the State has purchased or paid for substantial quantities of Contaminated Products through a variety of State-funded programs for the benefit of New Mexico consumers during the relevant period.

185. As further described herein, all Defendants knew or, at a minimum, should have known that the Contaminated Products contained potentially dangerous levels of lead, arsenic, cadmium, and mercury based on the test results for heavy metals in their products and/or in the ingredients used in the production of their products.

186. For example, Nurture knew or should have known that the Contaminated Products contained potentially dangerous levels of lead, arsenic, cadmium, and mercury based on the test results for heavy metals for at least the products described herein that it manufactured, designed, marketed, distributed and sold.

187. By way of further example, Beech-Nut and Hain knew or should have known that the Contaminated Products contained potentially dangerous levels of lead, arsenic, cadmium, and mercury based on the test results for heavy metals showing several ingredients described herein used in the production of their foods intended for consumption by babies, infants, and children contained potentially dangerous concentrations of lead, arsenic, cadmium, and/or mercury. Such ingredients include unnecessary food additives contaminated with toxic metals that were intentionally introduced into products by Beech-Nut and Hain.

188. The Kroger Defendants and Walmart knew or should have known that their Contaminated Products contained potentially dangerous levels of lead, arsenic, cadmium, and mercury based on their own testing for heavy metals on (a) their finished products and/or (b) the ingredients used in their finished products confirming the presence of elevated and potentially dangerous concentrations of lead, arsenic, cadmium and/or mercury.

189. Yet, each of the Defendants have sold, are selling, and continue to sell the Contaminated Products.

190. Further, none of the Defendants disclosed that the consumption of its products would expose babies, infants and children to potentially dangerous levels of lead, arsenic, cadmium, and mercury.

191. Each Defendant had the opportunity to make such disclosures on the packaging of every Contaminated Product sold or offered for sale.

192. Each Defendant had the opportunity to make such disclosures in other statements, including all statements made to promote its Contaminated Products.

193. Each Defendant could have disclosed, but knowingly failed to disclose on its product packaging of its Contaminated Products that the consumption of its Contaminated

Products would expose babies, infants and children—the population most vulnerable to the serious adverse neurodevelopmental effects and other adverse health effects known to be associated with exposure to or consumption of lead, arsenic, cadmium, and mercury—to potentially dangerous levels of lead, arsenic, cadmium, and mercury.

194. Each Defendant made public promotional statements in New Mexico, or to New Mexico residents, about their Contaminated Products other than product packaging that similarly knowingly failed to disclose that their products exposed consumers to potentially dangerous levels of lead, arsenic, cadmium, and mercury.

195. Through the acts described in this Complaint, Defendants have violated New Mexico law by knowingly engaging in unfair or deceptive trade practices and/or unconscionable trade practices in the regular course of their trade or commerce by selling unreasonably dangerous products and by making oral and/or written statements or other representations that were false or misleading in connection with the sale of their Contaminated Products in an attempt to influence New Mexico and its residents to believe that such dangerously misrepresented products were safe for consumption.

1. Nurture

196. For example, Nurture proclaims the health benefits of its Apple & Broccoli Puffs on the label of this product through the following:





Nutrition Facts	
Serving Size: About 1/2 cup (7g)	
Servings Per Container: About 9	
Amount Per Serving	
Calories	25
Total Fat	0g
Trans Fat	0g
Sodium	0mg
Potassium	30mg
Total Carbohydrate	6g
Dietary Fiber	0g
Sugars	1g
Protein	0g
% Daily Value	
Protein	0% • Vitamin A 8%
Vitamin C	10% • Calcium 8%
Iron	8% • Vitamin D 8%
Vitamin E	15% • Thiamin 8%
Riboflavin	10% • Niacin 8%
Vitamin B6	10% • Vitamin B12 20%
Pantothenic Acid	20% • Phosphorus 6%
Zinc	8% •

INGREDIENTS: ORGANIC BROWN RICE FLOUR, ORGANIC WHITE RICE FLOUR, ORGANIC APPLE JUICE CONCENTRATE, CONTAINS 2% OR LESS OF THE FOLLOWING: ORGANIC BROCCOLI POWDER, ORGANIC APPLE POWDER, MIXED TOCOPHEROLS (TO PRESERVE FRESHNESS), **VITAMINS AND MINERALS:** DICALCIUM PHOSPHATE, CHOLINE BITARTRATE (CHOLINE), POTASSIUM CHLORIDE, CALCIUM CARBONATE, SODIUM ASCORBATE (VITAMIN C), TRICALCIUM PHOSPHATE, FERRIC PYROPHOSPHATE (IRON), DL-ALPHA-TOCOPHERYL ACETATE (VITAMIN E), VITAMIN A ACETATE, CHOLECALCIFEROL (VITAMIN D3), CALCIUM D-PANTOTHENATE (PANTOTHENIC ACID (VITAMIN B5)), ZINC OXIDE, NIACINAMIDE (VITAMIN B3), THIAMINE MONONITRATE (VITAMIN B1), RIBOFLAVIN (VITAMIN B2), PYRIDOXINE HYDROCHLORIDE (VITAMIN B6).

- Pictures of fruits and vegetables
- “Organic”
- “Happy Baby”
- “Superfood”
- “Gluten Free”
- “USDA Organic”
- “Certified USDA organic”
- “Organic is Always NON-GMO”
- “Made without the use of GMO Ingredients”

j. “WE ARE REAL MOMS, PEDIATRICIANS & NUTRITIONISTS on a mission to bring happiness and health to our little ones and the planet. Our team creates nutritious meals and snacks that make eating enlightened, effortless, and delicious. From our Happy Family to yours!”

k. “COME MEET OUR DEDICATED TEAM and learn more about our carefully crafted products at happyfamilybrands.com”

l. “Our ENLIGHTENED NUTRITION PHILOSOPHY”

m. “25mg Choline per Serving to support brain & eye health”

n. “Antioxidant Vitamins C & E 10% DV per serving”

o. “Vitamin B12 20% DV per serving”

p. “Made Without Cane Syrup”

q. “Your child may be ready for organic superfood puffs when she or he: eats thicker solids with larger pieces; crawls without tummy touching the ground; uses jaws to mash food between gums; picks up food to eat with thumb and forefinger.”

197. Nurture’s online and print marketing further proclaim its Apple & Broccoli Puffs’ suitability for developing children:

a. “Parents, meet your pantry’s unsung hero. Happy Baby Puffs are a melt-in-your-mouth organic snack fortified with Choline for eye and brain health. Irresistible in taste and texture, they’re perfect for teaching babies tactility and self-feeding! (from happyfamily)”²⁴

b. “Claims: Organic; Gluten Free”

c. “Irresistible in taste & texture, they’re perfect for teaching babies tactility & self-feeding!”²⁵

d. “Happy Family is a mom-founded and -operated premium organic food company that’s changed the way we feed our children. When Founder and CEO Shazi Visram saw her friend, a new mom, struggle to find healthy food options for her baby, she found her purpose: give babies their healthiest, happiest beginning by offering parents organic, thoughtfully-made food. She

²⁴

https://www.freshdirect.com/pdp.jsp?productId=gro_hpbby_orgpf_grn&catId=gro_baby_tod_snck_puff

²⁵ <https://www.sears.com/happy-family-happy-baby-organic-superfood-puffs-assortment/p-A087937712>

didn't just envision a business—she saw a social imperative to address the health issues linked to childhood nutrition.”²⁶

e. “ORGANIC SNACKS FOR BABY: Happy Baby goes beyond baby food with delicious, superfood puffs and freeze-dried yogurt snacks. Babies may be ready for our delicious snacks when they can crawl on their hands and knees, without their tummy touching the ground.”²⁷

f. “HAPPY BABY: At Happy Baby Organics, we provide organic and delicious options for your baby’s nutritional journey. We develop premium organic recipes perfectly matched with your child’s age and stage. This is enlightened nutrition for every family.”²⁸

g. “MINDFULLY MADE: We develop premium organic recipes perfectly matched with your child’s age and stage. Explore our snacks & meals for growing babies, toddlers & kids, from baby food pouches to freeze-dried yogurt treats, organic cereals & toddler snacks.”²⁹

198. As another example, Nurture touts the benefits of its Happy Baby Clearly Crafted Prunes Organic Baby Food on the label of this product through the following:



²⁶ <https://bargainbabe.com/happy-baby-organic-superfood-puffs-assortment-variety-packs-2-1-ounce-pack-6-14-09/>

²⁷ <https://bargainbabe.com/happy-baby-organic-superfood-puffs-assortment-variety-packs-2-1-ounce-pack-6-14-09/>

²⁸ <https://bargainbabe.com/happy-baby-organic-superfood-puffs-assortment-variety-packs-2-1-ounce-pack-6-14-09/>

²⁹ <https://bargainbabe.com/happy-baby-organic-superfood-puffs-assortment-variety-packs-2-1-ounce-pack-6-14-09/>

Nutrition Facts	
Serving Size: 1 pouch (99g)	
Amount Per Serving	
Calories	60
Total Fat	0g
Trans Fat	0g
Sodium	5mg
Potassium	100mg
Total Carbohydrate	13g
Dietary Fiber	1g
Sugars	9g
Protein	0g
% Daily Value	
Protein	0% • Vitamin A 0%
Vitamin C	0% • Calcium 0%
Iron	0% • Phosphorus 2%

INGREDIENTS: WATER, ORGANIC PRUNE PUREE (ORGANIC DRIED PRUNES, WATER), <0.5% OF: ORGANIC LEMON JUICE CONCENTRATE.

- a. Organic baby food
 - b. Non GMO Project Verified
 - c. 3 2/3 prunes ¼ cup of water for a happy belly!
 - d. Ingredients: Water, organic prune puree (organic dried prunes, water), 0.5% of: organic lemon juice concentrate
 - e. Learn more about how we source our quality ingredients at HAPPYFARMS.COM
199. In the December 13, 2017 press release announcing Happy Family’s “Founder, Chief Mom and CEO,” Shazi Visram was transitioning from her role as CEO, Happy Family stated, *inter alia*:

With a simple idea in 2003 to change the way babies were fed in the U.S. by creating convenient, organic food parents can trust under a warm, modern brand,

Happy Family was born. Since that time, Visram and her leadership team have built a meaningful business that has never veered from the original mission to improve children's health through nutrition.

* * *

Launched on Mother's Day 2006, Happy Family is one of the largest and fastest growing organic food brands to offer a comprehensive line of nutritious foods for babies, toddlers, kids and their parents. Beginning with baby's first few years of life, Happy Family provides an enlightened assortment of organic meals and snacks to help support a lifetime of wellness. Constantly innovating and improving, Happy Family strives to offer families the right nutrition for every stage of development.³⁰

2. Beech-Nut

200. For example, Beech-Nut touts the health benefits of its Rice Single Grain Baby Cereal on the label of this product through the following:



³⁰ <https://www.prnewswire.com/news-releases/happy-family-organics-founder--ceo-shazi-visram-transitions-to-chairmom-of-the-board-and-chief-visionary-300570829.html#:~:text=Launched%20on%20Mother's%20Day%202006,toddlers%2C%20kids%20and%20their%20parents.>

- a. #1 Pediatrician Recommended Brand for Infant Cereal
- b. IRON—to help support—LEARNING ABILITY
- c. NON GMO Project Verified
- d. Supported Sitter 1st Foods

201. Beech-Nut proclaims the health benefits of its Beech-Nut Naturals Butternut Squash on the label of this product through the following:



- a. NON GMO Project verified
- b. “real food for babies”
- c. “naturals”

202. Its website further extols the health benefits of this product through the following:

Beech-Nut Naturals® baby food is made with real ingredients, gently cooked™. Encourage colorful eating with this vibrant Beech-Nut Naturals® butternut squash jar. As a Stage 1 puree, this is ideal as a first solid food for babies starting around 4 months. Our Non-GMO Project verified butternut squash puree is a perfect first veggie as your little one starts moving off formula or breast milk and onto solid foods. Try mixing in Beech-Nut® oatmeal Cereal to add iron and nutrients. All Beech-Nut® baby food jars are vacuum-sealed for freshness. This jar can be stored in the refrigerator for up to 2 days after opening.³¹

- Real ingredients, gently cooked™
- Non-GMO Project verified
- Nothing artificial added
- Made with real butternut squash

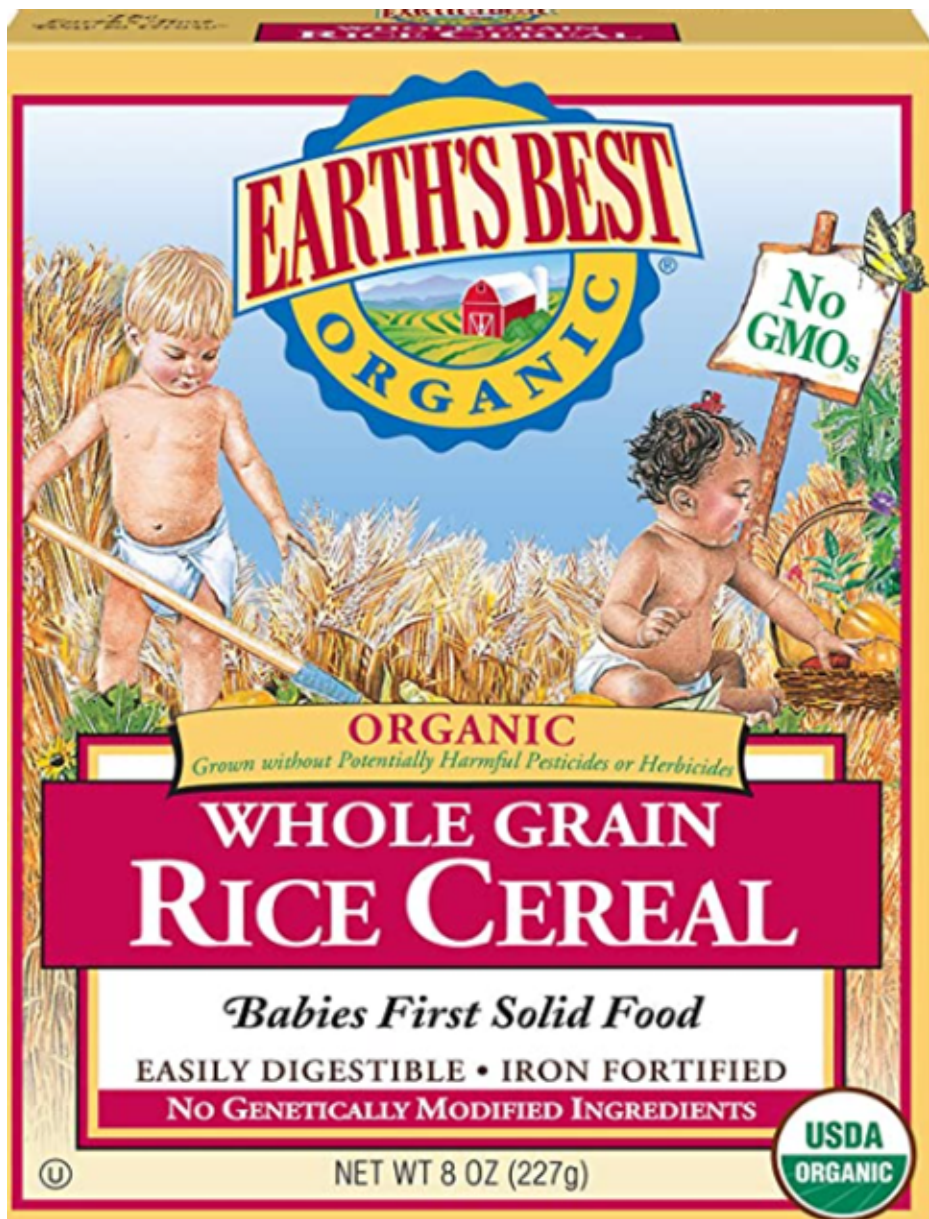
Nutrition Facts	
1 servings per container	
Serv. size	1 Jar (113g)
Amount per serving	
Calories	35
% Daily Value	
Total Fat 0g	0%
Sat. Fat 0g	
Trans Fat 0g	
Cholest. 0mg	
Sodium 0mg	
Total Carb. 8g	8%
Fiber 1g	
Total Sugars 3g	
Includes 0g Added Sugars	
Protein <1g	not a significant source of protein
Vit. D 0mcg	0%
Calcium 28mg	10%
Iron 1.1mg	10%
Potas. 188mg	25%

Ingredients: Butternut Squash.

3. Hain

203. For example, Hain advertises the health benefits of its Earth's Best Organic Whole Grain Rice cereal on the label of this product through the following:

³¹ Beech-Nut Naturals® Butternut Squash Jar, available at <https://www.beechnut.com/product/naturals-just-butternut-squash-jar/>, last visited May 11, 2021.



All Babies Begin Life ... Feed Them Accordingly

From the first spoonful on, you can be sure your baby's rapidly developing little body is getting only organic nutrition. We take extra steps with our cereal and all our baby foods.

- ✧ Certified Organic Grown without Potentially Harmful Pesticides or Herbicides
- ✧ Made with No Genetically Modified Ingredients
- ✧ Unsalted & Unsweetened
- ✧ Only Whole Grain
- ✧ No Artificial Colors or Flavors

Organic & Made with No Genetically Modified Ingredients

The long term effects of potential pesticide residues are not fully understood, but we do know that the risks are real, especially for infants and children. That's why Earth's Best Organic® Brand brings you only organic foods grown without potentially harmful pesticides or herbicides. Earth's Best Organic® Brand is also never made with genetically modified ingredients.

We fortify our cereals with key nutrients including Iron, Zinc & B Vitamins

- ✧ 6 B-complex vitamins that help support a healthy nervous system to help your baby convert food into energy to power their day!
- ✧ Zinc is an important mineral for infants, as it plays a key role during this time of rapid growth and development.
- ✧ Pediatricians recommend the introduction of iron-rich foods, including fortified cereals, to help maintain adequate iron levels for both breast fed and formula fed infants.*

Whole Grain Goodness

Unlike processed grains, whole grains are not stripped of nutrients, giving your baby a gentle, digestible cereal.



- a. Organic
- b. Grown without Potentially Harmful Pesticides or Herbicides
- c. No GMOs
- d. Babies First Solid Food
- e. Easily Digestible
- f. Iron Fortified
- g. No Genetically Modified Ingredients
- h. USDA Organic
- i. ***All Babies Begin Life ... Feed Them Accordingly.*** From the first spoonful on, you can be sure your baby's rapidly developing little body is getting only organic nutrition. We take extra steps with our cereal and all our baby foods.

- j. Certified Organics Grown without Potentially Harmful Pesticides or Herbicides
- k. Made with No Genetically Modified Ingredients
- l. Unsalted & Unsweetened
- m. Only Whole Grain
- n. No Artificial Colors or Flavors
- o. ***Organic & Made with No Genetically Modified Ingredients.*** The long term effects of potential pesticide residues are not fully understood, but we do know that the risks are real, especially for infants and children. That's why Earth's Best Organic® Brand brings you only organic foods grown without potentially harmful pesticides or herbicides. Earth's Best Organic® Brand is also never made with genetically modified ingredients.
- p. We fortify our cereals with key nutrients including Iron, Zinc & B Vitamins.
- q. 6 B-complex vitamins that help support a healthy nervous system to help your baby convert food into energy to power their day!
- r. Zinc is an important mineral for infants, as it plays a key role during this time of rapid growth and developments.
- s. Pediatricians recommend the introduction of iron-rich foods, including fortified cereals, to help maintain adequate iron levels for both breast fed and formula fed infants.
- t. ***Whole Grain Goodness.*** Unlike processed grains, whole grains are not stripped of nutrients, giving your baby a gentle, digestible cereal.

204. In addition, Hain advertised the health benefits of its Sesame Street Organic Peanut Butter Baked Corn Puffs on the label of this product through the following:



Nutrition Facts		
about 10 servings per container		
Serving size 7g		
Amount per serving		
Calories		40
		% Daily Value*
Total Fat 2.5g		6%
Saturated Fat 0g		3%
Trans Fat 0g		
Cholesterol 0mg		0%
Sodium 15mg		1%
Total Carbohydrates 3g		2%
Dietary Fiber 0g		1%
Total Sugars 0g		
Includes 0g Added Sugars		0%
Protein 1g		5%
Vitamin D 0mcg	0% • Calcium 0mg	0%
Iron 0mg	0% • Potassium 0mg	0%
* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 1,000 calories a day is used for general nutrition advice.		

Ingredients

Organic Peanut Butter (organic roasted peanuts), Organic Cornmeal, Organic Vegetable Oil (Organic Sunflower and/or Organic Safflower Oil), Organic Peanut Flour, Sea Salt.

205. Its website also touts the benefits of its Sesame Street Organic Peanut Butter Baked Corn Puffs on the label of this product through the following:

- No artificial flavors or colors
- USDA Certified Organic
- Made with non-GMO ingredients
- Gluten Free

4. Walmart

206. For example, Walmart proclaims the health benefits of its Parent's Choice Organic Strawberry Rice Rusks on the label of this product through the following:



Nutrition Facts	
6 servings per container	
Serving size	4 rusks (8g)
Amount per serving	
Calories	30
% Daily Value	
Total Fat 0g	0%
Saturated Fat 0g	
Trans Fat 0g	
Cholesterol 0mg	
Sodium 20mg	
Total Carbohydrate 7g	7%
Dietary Fiber 0g	
Total Sugars <1g	
Includes <1g Added Sugars	
Protein 0g	not a significant source of protein
Vitamin D 0mcg	
Calcium 0mg	
Iron 0mg	
Potassium 7mg	
Calories per gram:	
Fat 9 • Carbohydrate 4 • Protein 4	
INGREDIENTS: ORGANIC RICE FLOUR, ORGANIC SUGAR, SALT, ORGANIC STRAWBERRY FLAVOR, ORGANIC STRAWBERRY POWDER.	

- a. Parent's Choice
- b. Organic
- c. Naturally Flavored
- d. Gluten-Free Baked Rice Snack
- e. Great Taste
- f. Easily Dissolves in Baby's Mouth
- g. No Artificial Colors
- h. USDA ORGANIC
- i. Certified Organic by Ecocert SA
- j. Ingredients: Organic rice flour, organic sugar, salt, organic strawberry flavor, organic strawberry powder

207. Walmart also promotes the health benefits of this product on its website through the following:

Parent's Choice Organic Strawberry Rice Rusks, Stage 2, 6+ Months, are a delicious, handy snack for children who are beginning to feed themselves and for when the family is on the move. The strawberry-flavored rusks, which contain no artificial colors, not only taste great but also will dissolve easily in your little one's mouth. These gluten-free organic snacks are designed to be the ideal size and texture for your child's developing hands, mouth, and teeth. They are formulated for children who are 6 months and older. ... Since 1998, Walmart's Parent's Choice has been trusted by parents across the country to provide quality, affordable baby products. ... With a quality guarantee to back up all its baby, toddler, infant and newborn products, Parent's Choice takes care of your little one's needs for less. Stage 2 6+ months.

Parent's Choice Organic Rice Rusks, Strawberry, Stage 2, 1.76 oz: ...

Gluten-free

Made with organic rice

No artificial colors

208. As another example, Walmart proclaims the health benefits of its Parent's Choice sweet potatoes on the label of this product through the following:



Nutrition Facts			
2 servings per container			
Serving size		1 tub	
Calories		60	
per serving			
Amount/serving	% DV	Amount/serving	% DV
Total Fat 0g	0%	Fiber 1g	
Sodium 35mg		Total Sugars 10g	
Total Carb 15g	16%	Incl 0g Added Sugars	
		Protein 1g	4%
Calcium 6% • Iron 4% • Potas. 30% • Vit A 40%. Not a significant source of sat fat, <i>trans</i> fat, cholest, and vit D.			

INGREDIENTS: SWEET POTATOES, WATER, ASCORBIC ACID TO MAINTAIN COLOR.

- Non GMO Project Verified
- Parent's Choice
- Ingredients: sweet potatoes, water, ascorbic acid to maintain color

209. Walmart also promotes the health benefits of this product on its website through the following:

Introduce new flavors while making meal time easier with Parent's Choice Sweet Potato Stage 2 Baby Food. Made with real fruits and vegetables, this baby food stage 2 recipe includes sweet potato to delight your little one's taste buds. This puree food is made with non-GMO ingredients and contains no added sugar for simple nutrition. The fruit and vegetable puree texture is ideal for babies ages six months and up with new flavor combinations to introduce different tastes. ... Treat your baby to the taste and nutrition they deserve with Parent's Choice Sweet Potato Stage 2 Baby Food.

Since 1998, Walmart's Parent's Choice has been trusted by parents across the country to provide quality, affordable baby products. ... With a quality guarantee

to back up all its baby, toddler, infant and newborn products, Parent's Choice takes care of your little one's needs for less.

Parent's Choice Stage 2 Sweet Potato Baby Food, 4 oz, 2 Count:

- Made with real fruits and vegetables
- No artificial flavors and colors
- BPA-free packaging
- Stage 2: 6+ months ...
- Ingredients: Sweet Potatoes

5. The Kroger Defendants

210. For example, the Kroger Defendants proclaim the health benefits of their Simple Truth Organic Whole Grain Puffs – Broccoli & Spinach on the label of this product through the following:



- a. 11 essential vitamins and minerals
- b. Gluten free
- c. USDA organic
- d. Non-GMO
- e. Excellent source of iron

211. Kroger's website further touts the health benefits of this product through the following:

A Snacking Superstar!

Our Organic Whole Grain Puffs are the perfect snack for tiny tummies and caring mommies. These Whole Grain Puffs are a great way to introduce your child to new tastes and textures.

- Dissolves Easily
- Organically Grown
- Excellent Source of Iron
- 11 Essential Vitamins & Minerals
- Sweetened with Fruit Juice Concentrate
- Gluten Free
- Non-GMO
- USDA Organic

212. For example, the Kroger Defendants proclaim the health benefits of their Simple Truth Organic Apple Mini Rice Cakes on the label of this product through the following:



- a. Organically grown.
 - b. No preservatives.
 - c. Gluten free.
 - d. TWO KINDS OF RICE IS TWICE AS NICE! Our Organic Mini Rice Cakes are the perfect snack for tiny tummies and caring mommies. Made with both white and brown puffed rice and sweetened with fruit juice concentrate, these are a great choice for your little one and an easy choice for you.
 - e. We promise products you can trust as high quality and delicious every time....
 - f. Ingredients: organic white rice, organic brown rice, organic apple juice concentrate, thiamine mononitrate (Vitamin B1).
213. Kroger's website also includes the same ingredients list and nutritional facts.
214. The foregoing exemplar promotional representations offered by Defendants in New Mexico and elsewhere are not intended to be exhaustive.

215. At no time, and in no medium, did any Defendant truthfully disclose to New Mexico or New Mexico residents the known presence of potentially dangerous concentrations of lead, arsenic, cadmium, or mercury in their Contaminated Products.

216. Instead, Defendants promoted such products as healthy, safe, appropriate food products for consumption by babies, infants, and children, knowing, or having reason to know, that they were not healthy, safe, or appropriate, and would substantially increase the risk of adverse health effects such as neurodevelopmental effects and disorders.

217. Defendants' conduct has caused or contributed to interference with rights common to the New Mexico public, including by, among others, causing or contributing to neurodevelopmental and behavioral effects that are widely distributed across the population, causing or contributing to impairments that are known to be associated with increased antisocial or criminal behavior, interfering with the integrity of the New Mexico marketplace, interfering with New Mexico parents' and caregivers' ability to make informed decisions about nutritional choices for the children under their care, and undermining the public's trust in the health and safety of products available in the New Mexico market.

218. Consequently, New Mexico and its residents have been harmed by Defendants' conduct.

COUNT I:
VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT, NMSA 1978,
SECTIONS 57-12-1 TO -26
(AGAINST ALL DEFENDANTS)

219. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

220. This is a claim against all Defendants for restitution, disgorgement, injunctive relief, and civil penalties under the Unfair Practices Act. NMSA 1978, Sections 57-12-1 to -26 (1967, as amended through 2018).

221. Under the Unfair Practices Act, “[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.” NMSA 1978, Section 57-12-3.

222. An “unfair or deceptive trade practice” is an act “specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale ... of goods ... by a person in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person.” NMSA 1978, Section 57-12-2(D). Omissions of material information, such as potential adverse safety or health risks associated with product use or the presence of undisclosed and potentially dangerous ingredients, are actionable under the UPA.

223. Unfair or deceptive trade practices include representing that goods, *i.e.*, the Contaminated Products, have characteristics, ingredients, uses, or benefits that they do not have; representing that goods, *i.e.*, the Contaminated Products, are of a particular standard, quality, or grade if they are of another; and failing to state a material fact if doing so deceives or tends to deceive. NMSA 1978, Sections 57-12-2(D)(5), (7), (14).

224. An “[u]nconscionable trade practice” means an act or practice in connection with the sale ... or in connection with the offering for sale ... of any goods ... that to a person’s detriment: [] takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree.” NMSA 1978, Sections 57-12-2(E)(1).

225. By designing, manufacturing, packaging, distributing, supplying, marketing, promoting, advertising and/or selling Contaminated Products in New Mexico, the Defendants have willfully engaged in unfair or deceptive trade practices and unconscionable trade practices in violation of the Unfair Practices Act.

226. Defendants' acts and omissions in violation of the Unfair Practices Act include, *inter alia*:

a. Misrepresenting that Contaminated Products have characteristics, uses or benefits that they do not have in violation of NMSA 1978, Section 57-12-2(D)(5);

b. Misrepresenting that Contaminated Products are of a particular standard, quality or grade when, in fact, they were not of that standard, quality or grade in violation of NMSA 1978, Section 57-12-2(D)(7); and

c. Failing to state that Contaminated Products would expose consumers to potentially dangerous levels of lead, arsenic, cadmium, and/or mercury or to the adverse health effects associated with exposure to and ingestion of toxic heavy metals, including neurodevelopmental defects and other systemic effects, when failing to do so deceives or tends to deceive New Mexico and the residents of New Mexico in violation of NMSA 1978, Section 57-12-2(D)(14).

227. Each Defendant unfairly or deceptively marketed Contaminated Products as safe, healthy, and appropriate for consumption by babies, infants, and children, knowing such products were not safe, healthy, and appropriate for consumption by babies, infants, and children, but contained potentially hazardous concentrations of lead, arsenic, cadmium, and/or mercury.

228. In addition, the Defendants' knowing misrepresentations in violation of the Unfair Practices Act include, *inter alia*:

a. knowingly concealing from New Mexico and the residents of New Mexico the dangerous health effects of lead, arsenic, cadmium, and/or mercury contained in Contaminated Products even though the Defendants knew or should reasonably have known of the dangerous health effects of lead, arsenic, cadmium, and/or mercury in Contaminated Products;

b. representing to New Mexico and the residents of New Mexico through the design, product packaging, promotion, distribution and/or sale of Contaminated Products that the benefits of such products in providing convenient nutrition to babies, infants, and children could outweigh the adverse health risks to babies, infants, and children, even though the Defendants knew or

should reasonably have known of the dangerous health effects of lead, arsenic, cadmium, and/or mercury in Contaminated Products;

c. representing to New Mexico and the residents of New Mexico through the design, product packaging, promotion, distribution and/or sale of Contaminated Products that such products did not contain lead, arsenic, cadmium, and/or mercury at levels a reasonable consumer would find objectionable and dangerous, even though the Defendants knew or should reasonably have known that the levels of lead, arsenic, cadmium, and/or mercury in Contaminated Products are potentially dangerous to babies, infants, and children;

d. representing to New Mexico and the residents of New Mexico through the design, product packaging, promotion, distribution and/or sale of Contaminated Products that babies, infants, and children who consumed Contaminated Products would not be exposed to dangerous levels of lead, arsenic, cadmium, and/or mercury, even though the Defendants knew or should reasonably have known that the consumption of Contaminated Products, including over time and on multiple occasions, caused consumers including babies, infants, and children to be exposed to dangerous amounts of lead, arsenic, cadmium, and/or mercury;

e. knowingly concealing from New Mexico and the residents of New Mexico that the levels of lead, arsenic, cadmium, and/or mercury to which consumers of Contaminated Products would be exposed exceeds levels of lead, arsenic, cadmium, and/or mercury understood to be non-toxic by the State, nutritionists, toxicologists, international public health agencies, and reasonable consumers, even though the Defendants knew or should reasonably have known that it did;

f. representing to New Mexico and the residents of New Mexico through the product packaging, promotion, distribution and/or sale of Contaminated Products that such products were safe for human consumption, and consumption by babies, infants, and children in particular, even though the Defendants knew or should reasonably have known that the Contaminated Products were not safe for human consumption or, in particular, consumption by babies, infants, and children;

g. packaging, marketing, and promoting Contaminated Products without adequately or truthfully disclosing to New Mexico and the residents of New Mexico the material safety risks of ingesting the Contaminated Products, particularly the risk of adverse health and developmental effects resulting from ingestion of lead, arsenic, cadmium, and/or mercury, even though the Defendants knew or should reasonably have known of the safety risks of ingesting the Contaminated Products; and

h. packaging, marketing, and promoting Contaminated Products without disclosing to New Mexico and the residents of New Mexico that consumption of the Contaminated Products poses a material risk of adverse health effects, including neurodevelopmental defects and other systemic effects due to the presence of lead, arsenic, cadmium, and/or mercury.

229. Defendants made, orally and in writing, unfair or deceptive representations in advertisements, promotions, marketing materials, statements, and product packaging for

Contaminated Products to New Mexico and the residents of New Mexico regarding the true health risks associated with Contaminated Products in the regular course of their business in violation of NMSA 1978, Sections 57-12-2(D)(5), (7).

230. Defendants concealed and failed to disclose that the Contaminated Products would expose consumers, including babies, infants, and children, to dangerous levels of lead, arsenic, cadmium, and/or mercury, or to the adverse health effects associated with toxic heavy metal exposure and ingestion, including neurodevelopmental defects and other systemic effects, and failing to state these material facts deceived or had a tendency to deceive New Mexico and the residents of New Mexico in violation of NMSA 1978, Section 57-12-2(D)(14).

231. By way of example only, each misleading and/or deceptive product label that contained a false or deceptive representation regarding a Contaminated Product; each misleading and/or deceptive piece of information provided directly or indirectly by the Defendants regarding Contaminated Products; each misleading and/or deceptive television, print, or other advertisement that reached New Mexico that contained false or deceptive representations regarding Contaminated Products; and each piece of marketing material, including product packaging, used or disseminated in New Mexico that contained false or deceptive representations regarding Contaminated Products constitutes a separate violation of the Unfair Practices Act pursuant to NMSA 1978, Section 57-12-11.

232. Each such statement or omission and each sale of any Contaminated Product constitutes a separate violation of the Unfair Practices Act pursuant to NMSA 1978, Section 57-12-11.

233. Defendants' unfair or deceptive trade practices were knowingly and willfully made because the Defendants were actually aware that their products were unreasonably dangerous to

their intended consumers, including babies, infants, and children, and that their statements were unfair or deceptive when made, and/or in the exercise of reasonable diligence, the Defendants should have been aware that their statements were unfair and/or deceptive.

234. Defendants' unfair or deceptive and/or unconscionable representations in advertisements, promotions, marketing materials, statements and/or product packaging for Contaminated Products are of the type that tended to deceive and/or mislead New Mexico and the residents of New Mexico into believing the Contaminated Products were safe for their intended uses by their intended populations.

235. The State of New Mexico seeks all available remedies under NMSA 1978, Section 57-12-11 for violations of the Unfair Practices Act.

**COUNT II:
VIOLATIONS OF THE NEW MEXICO FALSE ADVERTISING ACT,
NMSA 1978, SECTIONS 57-15-1 TO -10
(AGAINST ALL DEFENDANTS)**

236. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

237. The State brings this claim against all Defendants under the False Advertising Act, NMSA 1978, Sections 57-15-1 to -10 (1965, as amended through 1967), which prohibits "[f]alse advertising in the conduct of any business, trade or commerce."

238. The False Advertising Act defines "false advertising" as "advertising, including labeling, which is misleading in any material respect." The False Advertising Act instructs that "in determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates

under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.” NMSA 1978, Section 57-15-2.

239. As described herein, each Defendant has engaged in false advertising in the conduct of its business, trade or conduct in violation of the False Advertising Act.

240. Each Defendant engaged in false advertising in the course of its marketing of one or more of the Contaminated Products in New Mexico, in violation of NMSA 1978, Section 57-15-1.

241. Specifically, as described herein, each Defendant’s advertising in New Mexico of Contaminated Products was and is misleading because not once in any of the Defendants’ marketing, promotional, or advertising statements described herein, including product packaging, nor in any of the other print, television, digital, or any other form of advertisements, that each Defendant created, developed, funded and ran did any Defendant disclose that ingestion of its products would expose consumers, including babies, infants, and children, to potentially dangerous levels of lead, arsenic, cadmium, and/or mercury, or to the adverse health effects associated with toxic heavy metal exposure, including neurodevelopmental defects and other systemic effects.

242. Each Defendant’s advertising in New Mexico of its Contaminated Products was and is misleading because not once on any of the materials affixed to or included with these products or used to market and promote such products did any Defendant disclose that ingestion of its products would expose consumers, including babies, infants, and children, to potentially dangerous levels of lead, arsenic, cadmium, and/or mercury, or to the adverse health effects associated with toxic heavy metal exposure, including neurodevelopmental defects and other systemic effects.

243. Pursuant to NMSA 1978, Section 57-15-5, the State of New Mexico seeks injunctive relief in the form of corrective advertising requiring each Defendant to disseminate truthful information about the risks to which New Mexico residents who have consumed Contaminated Products are exposed.

244. The False Advertising Act provides that, “[a]ny person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practice made unlawful by the [False Advertising Act] shall be liable to a civil penalty of not more than five hundred dollars (\$500) for each violation.” NMSA 1978, Section 57-15-4.

245. Each and every time a Defendant created, developed, funded and ran in New Mexico a print, television, digital, or any other form of advertisement for any Contaminated Product without disclosing that ingestion of its products would expose consumers, including babies, infants, and children, to dangerous levels of lead, arsenic, cadmium, and/or mercury, or to the adverse health effects associated with toxic heavy metal exposure, including neurodevelopmental defects and other systemic effects, the Defendant committed a separate and independent violation of the False Advertising Act.

246. Each Defendant has engaged in violations of the False Advertising Act by making misleading statements and by omitting material information from its advertisements and product packaging for Contaminated Products, as alleged above.

247. Each Defendant should therefore be assessed a civil penalty in the amount of \$500 for each violation of the False Advertising Act.

248. The State notified each Defendant, in compliance with NMSA 1978, Section 57-15-3 by certified mail, prior to initiating this action.

**COUNT III:
NEGLIGENCE
(AGAINST ALL DEFENDANTS)**

249. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

250. The State brings this claim against all Defendants under the New Mexico common law of negligence and in its *parens patriae* capacity.

251. Defendants failed to exercise ordinary care because a reasonably careful company that knew or learned of the presence of potentially dangerous levels of toxic heavy metals such as lead, arsenic, cadmium, and mercury in its products would not sell or distribute those products or, at minimum, would take all steps necessary to minimize, reduce, or eliminate the presence of toxic heavy metals from their products.

252. Defendants failed to exercise ordinary care because a reasonably careful company would not continue to sell or distribute such products in mass quantities, directed or intended for ingestion by the most vulnerable population imaginable (babies, infants, and children), to the extent and degree that Defendants sold and distributed the Contaminated Products in New Mexico.

253. Defendants were grossly negligent because they failed to exercise even slight care, placing revenue and profit generation above human health and safety and the long-term flourishing of New Mexico children, as evidenced by, *e.g.*, the unnecessary addition of food additives known to be contaminated with high levels of toxic metals as well as the disregard of internal tolerances or standards regarding metals contamination, as alleged above.

254. Defendants owed the State and its residents a duty of care in the manufacture, design, marketing, promotion, sale and distribution of the Contaminated Products.

255. Defendants' negligent conduct has caused and continues to cause injury to New Mexico and to the physical and economic health and well-being of New Mexico residents.

256. The State has purchased or paid for Contaminated Products through a variety of State-funded programs, but would not have done so had Defendants satisfied their duty of care. Instead, alternative products not contaminated with potentially dangerous concentrations of lead, arsenic, cadmium, or mercury would have been selected by the State.

257. As a result of the foregoing, the State seeks monetary damages in amounts to be proven at trial, as well as punitive damages sufficient to punish Defendants for their malicious, willful, reckless, and/or wanton misconduct and deter others from engaging in similar misconduct in the future.

**COUNT IV:
DESIGN AND/OR MANUFACTURING DEFECT
(AGAINST ALL DEFENDANTS)**

258. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

259. The State brings this claim against all Defendants based on its inherent *parens patriae* authority.

260. In the ordinary course of business Defendants designed, manufactured, marketed, distributed, sold and/or placed into the stream of commerce the Contaminated Products for the express purpose of being consumed by babies, infants, and children such that the Contaminated Products reached the State by the acts of Defendants.

261. Defendants intended the Contaminated Products to be consumed by babies, infants, and children, including those in the State.

262. The Contaminated Products were used in a manner reasonably anticipated by Defendants.

263. At the time the Contaminated Products were consumed by babies, infants, and children in the State, such products were not substantially changed from the condition in which they were designed, manufactured, marketed, distributed, sold and/or placed into the stream of commerce by Defendants. In other words, the Contaminated Products were in substantially the same condition at the time they were consumed as when they left Defendants' control.

264. The Contaminated Products, when used in the manner recommended, intended, and/or reasonably foreseeable to Defendants, were defective and unreasonably dangerous due to the risk of exposure to dangerous levels of toxic heavy metals from consuming such Contaminated Products.

265. Technologically and commercially feasible safer alternative designs or formulations were and are available to Defendants for the Contaminated Products, which would have reduced the levels of heavy metals in such products without seriously impairing the usefulness of such products or making them unduly expensive.

266. The Contaminated Products did not meet the reasonable expectations of safety and were not reasonably fit for the purposes for which they would foreseeably be used.

267. To the extent the Contaminated Products did not have the defects and unreasonably dangerous characteristics and propensities described above, the likelihood of the State and its residents' injuries, and the damages resulting therefrom, would have been greatly mitigated, reduced, or eliminated.

268. As a direct and proximate result of the design and/or manufacturing defects in Defendants' Contaminated Products, the State and its residents have been injured and continue to be injured.

269. Defendants' conduct has caused, and continues to cause, injury to the physical and economic health and well-being of New Mexico's residents, including subjecting New Mexico residents to permanent neurodevelopmental impairments such as decreases in IQ, mental health impairments and ailments, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children, and endangering infant neurological development and long-term brain function, among other harms.

270. The State has purchased or paid for Contaminated Products through a variety of State-funded programs, but would not have done so had Defendants satisfied their duty of care. Instead, alternative products not contaminated with potentially dangerous concentrations of lead, arsenic, cadmium, or mercury would have been selected by the State.

271. New Mexico has suffered, and will continue to suffer, injuries as a result of the Defendants' conduct in the State.

272. As a direct and proximate result of the design and/or manufacturing defects in Defendants' Contaminated Products, New Mexico children who consumed Defendants' products have sustained a significantly increased risk of permanent neurodevelopmental impairments such as decreases in IQ, mental health impairments and ailments, diminished future economic productivity, and increased risk of future criminal and antisocial behavior, and Defendants have endangered infant neurological development and long-term brain function, among other harms.

273. Defendants are strictly liable for all damages arising out of their design and/or manufacturing defects, as alleged above.

274. As a result of the foregoing, the State seeks monetary damages in amounts to be proven at trial.

275. Because Defendants' conduct was malicious, willful, reckless, and/or wanton, the State is entitled to seek, and does seek, punitive damages sufficient to punish Defendants and to deter Defendants and others from engaging in similar conduct in the future.

**COUNT V:
FAILURE TO WARN/INSTRUCT
(AGAINST ALL DEFENDANTS)**

276. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

277. The State brings this claim against all Defendants based on its inherent *parens patriae* authority.

278. In the ordinary course of business, Defendants designed, manufactured, marketed, distributed, sold and/or placed into the stream of commerce the Contaminated Products for the express purpose of being consumed by babies, infants, and children such that the Contaminated Products reached the State by the acts of Defendants.

279. Defendants intended the Contaminated Products to be consumed by babies, infants and children, including those in the State.

280. The Contaminated Products were used in a manner reasonably anticipated by Defendants.

281. At the time the Contaminated Products were consumed by babies, infants and children in the State, such products were not substantially changed from the condition in which they were designed, manufactured, marketed, distributed, sold and/or placed into the stream of commerce by Defendants. In other words, the Contaminated Products were in substantially the same condition at the time they were consumed as when they left Defendants' control.

282. The Contaminated Products, when used in the manner recommended, intended, and/or reasonably foreseeable to Defendants, were defective and unreasonably dangerous due to

the risk of exposure to dangerous levels of toxic heavy metals from consuming such Contaminated Products.

283. Under New Mexico law, a manufacturer has a duty “to warn of dangers of which it knew or should have known in the exercise of reasonable care.” *Michael v. Warner/Chilcott*, 1978-NMCA-043, ¶ 21, 91 N.M. 641, 654, 579 P.2d 183, 186. A manufacturer has a duty of reasonable care under the circumstances, of the existence and seriousness of the danger, sufficient to enable the consumer to protect himself against it, and sufficient to accomplish the purpose intended by the seller in the light of present conditions. *Id.* ¶ 32, 91 N.M. at 654, 579 P.2d at 186.

284. Under New Mexico law, for warnings to be adequate:

- (1) It must be in a form that can reasonably be expected to catch the attention of the reasonably foreseeable user of the product;
- (2) It must be understandable to the reasonably foreseeable user of the product; and
- (3) It must disclose the nature and extent of the danger. In this regard, there must be specified any harmful consequence which a reasonably foreseeable user would not understand from a general warning of the product’s danger [or] from a simple directive to use or not to use the product for a certain purpose or in a certain way.

Magoffe v. JLG Indus., Inc., 2008 WL 2967653, at *11 (D.N.M. May 7, 2008), *aff’d*, 375 Fed. Appx. 848, 2010 WL 1340401 (10th Cir. 2010) (citing New Mexico Uniform Jury Instruction (“NMUII”) 14 1418).

285. Each Defendant breached this duty in connection with the Contaminated Products.

286. Each of Defendant’s Contaminated Products failed to include any warnings of the risk of exposure to dangerous levels of toxic heavy metals from consuming such Contaminated Products. Thus, no Defendant provided adequate warnings to put the State and/or its residents on notice of the dangers and adverse effects caused by consuming the Contaminated Products.

287. The State and its residents would have read and followed these warnings had they been included with the Contaminated Products.

288. Had such warnings been provided, the State and its residents would have been aware of the risks of exposure to dangerous levels of toxic heavy metals from consuming the Contaminated Products.

289. Defendants' lack of adequate warnings were a substantial factor in causing the State and its residents' injuries.

290. As a direct and proximate result of Defendants' failure to provide an adequate warning of the risks of the Contaminated Products, the State and its residents have been injured and continue to be injured.

291. Defendants' conduct has caused, and continues to cause, injury to the physical and economic health and well-being of New Mexico's residents, including subjecting New Mexico residents to permanent neurodevelopmental impairments such as decreases in IQ, mental health impairments and ailments, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children, and endangering infant neurological development and long-term brain function, among other harms.

292. The State has purchased or paid for Contaminated Products through a variety of State-funded programs, but would not have done so had Defendants satisfied their duty of care. Instead, alternative products not contaminated with potentially dangerous concentrations of lead, arsenic, cadmium, or mercury would have been selected by the State.

293. New Mexico has suffered, and will continue to suffer, injuries as a result of the Defendants' conduct in the State.

294. As a direct and proximate result of Defendants' failure to provide an adequate warning of the risks and hazards associated with the Contaminated Products, New Mexico children who consumed Defendants' products have sustained a significantly increased risk of

permanent decreases in IQ, diminished future economic productivity, and increased risk of future criminal and antisocial behavior, and Defendants have endangered New Mexico infant neurological development and long-term brain function, among other harms.

295. Defendants are strictly liable for all damages arising out of their failure to provide adequate warnings as alleged above.

296. As a result of the foregoing, the State seeks monetary damages in amounts to be proven at trial.

297. Because Defendants' conduct was malicious, willful, reckless, and/or wanton, the State is entitled to seek, and does seek, punitive damages sufficient to punish Defendants and to deter Defendants and others from engaging in similar conduct in the future.

**COUNT VI:
VIOLATIONS OF THE NEW MEXICO PUBLIC NUISANCE STATUTE,
NMSA 1978, SECTIONS 30-8-1 TO -14
(AGAINST ALL DEFENDANTS)**

298. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

299. The State brings this claim against all Defendants under the Public Nuisance Statute, NMSA 1978, Sections 30-8-1 to -14 (1963, as amended through 2018).

300. The statute renders unlawful "knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either (A) injurious to public health, safety, morals or welfare; or (B) interferes with the exercise and enjoyment of public rights." NMSA 1978, Section 30-8-1(A)-(B).

301. The Attorney General is authorized to enforce the statute in court by seeking abatement from "any person, corporation or association of persons who shall create, perform or maintain a public nuisance." NMSA 1978, Section 30-8-8.

302. Each Defendant has knowingly created, performed, or maintained a public nuisance injurious to public health, safety, and welfare, which interferes with the New Mexico Public's right, especially babies, infants, and children's right, to avoid exposure to potentially dangerous levels of lead, arsenic, cadmium and mercury and/or to the adverse health effects associated with toxic heavy metal exposure and ingestion, including neurodevelopmental impacts causing permanent or life-long impairments, and other systemic effects.

303. Further, Defendants' conduct has caused or contributed to interference with rights common to the New Mexico public, including by, among others, causing or contributing to neurodevelopmental and behavioral effects that are widely distributed across the population, causing or contributing to impairments that are known to be associated with increased antisocial or criminal behavior, interfering with the integrity of the New Mexico marketplace, interfering with New Mexico parents' and caregivers' ability to make informed decisions about nutritional choices for the children under their care, and undermining the public's trust in the health and safety of products available in the New Mexico market.

304. As alleged above, the adverse health effects associated with toxic heavy metal exposure ingestion include neurodevelopmental impacts causing permanent or life-long impairments, and other systemic effects.

305. By marketing, promoting, distributing, and selling the Contaminated Products in New Mexico, and not only failing to take all necessary steps to reduce or eliminate the presence of toxic heavy metals from their products to avoid endangering the health and well-being of infants and children who consume them, but also adding unnecessary contamination through proprietary enzyme and vitamin mixes, or establishing unreasonably high internal tolerances for

metals, and often ignoring those standards, Defendants interfered with rights common to the New Mexico public.

306. The State seeks injunctive relief, including an order requiring Defendants to abate the public nuisance, and all other relief available under the Public Nuisance Statute.

**COUNT VII:
COMMON LAW PUBLIC NUISANCE
(AGAINST ALL DEFENDANTS)**

307. The State re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

308. The State brings this claim against all Defendants under the New Mexico common law of public nuisance and in its *parens patriae* capacity.

309. A common law public nuisance is an unreasonable interference with a right common to the general public.

310. Each Defendant is liable for public nuisance because its conduct at issue has caused an unreasonable interference with a right common to the general public. *City of Albuquerque v. State ex rel. Village of Los Ranchos de Albuquerque*, 1991-NMCA-015, ¶ 17, 111 N.M. 608, 808 P.2d 58 (“A public nuisance is a wrong that arises by virtue of an unreasonable interference with a right common to the general public.”) (citations omitted).

311. Defendants’ conduct described herein significantly interference with public health, safety, peace, comfort, and convenience.

312. Defendants’ conduct has caused or contributed to interference with rights common to the New Mexico public, including by, among others, causing or contributing to neurodevelopmental and behavioral effects that are widely distributed across the population, causing or contributing to impairments that are known to be associated with increased antisocial or criminal behavior, interfering with the integrity of the New Mexico marketplace, interfering

with New Mexico parents' and caregivers' ability to make informed decisions about nutritional choices for the children under their care, and undermining the public's trust in the health and safety of products available in the New Mexico market.

313. Defendants' actions were a substantial factor in the Contaminated Products becoming widely available in the State. In addition, Defendants' actions were a substantial factor in causing New Mexico residents to be exposed to potentially dangerous concentrations of lead, arsenic, cadmium, and mercury through consumption of baby food products.

314. By marketing, promoting, distributing, and selling the Contaminated Products in New Mexico, and not only failing to take all necessary steps to reduce or eliminate the presence of toxic heavy metals from their products to avoid endangering the health and well-being of infants and children who consume them, but also adding unnecessary contamination through proprietary enzyme and vitamin mixes, or establishing unreasonably high internal tolerances for metals, and often ignoring those standards, Defendants interfered with rights common to the New Mexico public.

315. The State seeks injunctive relief, including an order requiring Defendants to abate the public nuisance, and all other relief available under the common law of public nuisance.

IV. JURY DEMAND

316. New Mexico respectfully requests trial by jury on all claims so triable.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of New Mexico, requests that judgment be entered against the Defendants, as follows:

317. Damages according to proof;

318. Award of punitive damages sufficient to punish Defendants' malicious, willful, reckless, and/or wanton misconduct and deter others from engaging in similar misconduct in the future;

319. A declaration that each Defendant engaged in conduct in violation of the New Mexico Unfair Practices Act, the New Mexico False Advertising Act, the Public Nuisance Statute, and acted in violation of their New Mexico common law duties;

320. An order requiring each Defendant to make restitution as allowed by law

321. An order requiring each Defendant to disgorge revenues obtained as a result of violations of law, as described herein;

322. An order requiring Defendants to abate the public nuisance;

323. An order requiring each Defendant to pay a civil penalty of \$5,000 for each willful violation of the Unfair Practices Act, NMSA 1978, Section 57-12-11;

324. An order requiring each Defendant to pay a civil penalty of \$500 for each violation of the False Advertising Act, NMSA 1978, Section 57-15-4;

325. An order requiring each Defendant to pay all interest due and owing under law, including pre-judgment interest and post-judgment interest, on any funds unlawfully detained; and

326. Such other and further relief as the Court deems just and proper.

Dated: June 7, 2021

Respectfully submitted,
HECTOR H. BALDERAS
ATTORNEY GENERAL OF NEW MEXICO

/s/ P. Cholla Khoury

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STATE OF NEW MEXICO, *ex rel.*
HECTOR H. BALDERAS, Attorney General,

Plaintiff,

v.

NURTURE, INC., BEECH-NUT NUTRITION CO.,
THE HAIN CELESTIAL GROUP, INC., WALMART
INC., THE KROGER CO., SMITH'S FOOD & DRUG
CENTERS, INC., and FRED MEYER, INC.,

Defendants.

STATE OF NEW MEXICO)
) S.S.
COUNTY OF SANTA FE)

1. I am an Assistant Attorney General in the New Mexico Attorney General's Office.

The State of New Mexico (“Plaintiff”), by the Honorable Hector H. Balderas, the Attorney General of the State of New Mexico, has filed the above-captioned action pursuant to its inherent *parens patriae* authority, as well as pursuant to its statutory authority. I am authorized to make this Verification pursuant to NMSA 1978, Section 30-8-8 (1978) on behalf of Plaintiff.

2. Plaintiff has retained counsel in connection with this litigation. To the extent the allegations in the Complaint concern facts related to Plaintiff, I know those allegations to be true. To the extent the allegations in the Complaint concern facts and actions of parties other than Plaintiff, I believe those allegations to be true and correct, to the best of my knowledge, information and belief.

I make this Verification under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of June, 2021.

/s/ P. Cholla Khoury

Assistant Attorney General

New Mexico Attorney General's Office