

such as Plaintiff and members of the Class (defined below)—are unwilling to purchase baby food that contains unsafe levels of toxic heavy metals.

3. Defendants knew that the presence of toxic heavy metals in their baby food was a material fact to consumers, yet omitted and concealed that fact from consumers.

4. Accordingly, Plaintiff brings this suit on behalf of herself and a Class of similarly situated individuals for damages resulting from Defendants' sale of baby food that contained unsafe levels of toxic heavy metals.

PARTIES

5. Plaintiff AILEEN GARCES is a natural person and resident and citizen of Illinois.

6. Defendant GERBER PRODUCTS CO. is a Michigan corporation with its principal place of business in Virginia. Gerber sells its baby food under the eponymous "Gerber" brand name ("Gerber Brand Baby Food"). Gerber Brand Baby Food is sold nationwide, including throughout the state of Illinois.

7. Defendant THE HAIN CELESTIAL GROUP, INC. is a Delaware corporation with its principal place of business in New York. Hain sells its baby food under the "Earth's Best Organic" brand name ("Earth's Best Brand Baby Food"). Earth's Best Brand Baby Food is sold nationwide, including throughout the state of Illinois.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), section 2-209(a)(7) (the making or performance of any contract or promise substantially connected with this State), section 2-209(b)(4) (corporation doing business within this State), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

9. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d). As set forth below, the proposed Class involves more than 100 individuals, and the amount of controversy, in the aggregate, exceeds the sum of \$5,000,000 exclusive of interest and costs, given Defendants' market reach and the approximate number of potential Class members in the United States. Some members of the proposed Class are citizens of states different from Defendants.

10. Venue is proper in this district under 28 U.S.C. § 1391, because a substantial part of the events and omissions giving rise to the claims occurred in this district.

FACTUAL ALLEGATIONS

The Subcommittee Report

11. Inorganic arsenic, lead, cadmium, and mercury are toxic heavy metals. The United States Food and Drug Administration ("FDA") and the World Health Organization ("WHO") have declared these toxic heavy metals dangerous to human health. Specifically, the FDA states that these toxic heavy metals have "no established health benefit," "lead to illness, impairment, and in high doses, death," and because of bioaccumulation, "even low levels of harmful metals from individual food sources, can sometimes add up to a level of concern."¹

12. The dangerous effects of these toxins are exacerbated and can be indelible in developing and vulnerable bodies and brains of babies and children, who FDA explains are at the greatest risk of harm. Subcommittee Report, p. 2. Exposure, such as ingestion, of toxic heavy metals by babies and children leads to untreatable and permanent brain damage, resulting in reduced intelligence and behavioral problems. For instance, scientific studies have connected

¹ FDA, *Metals and Your Food*, available at: <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food>.

exposure to lead to a substantial decrease in children’s total IQ points and their lifetime earning capacity. Subcommittee Report, p. 9.

13. “Exposure to toxic heavy metals [such as arsenic, lead, cadmium, and mercury] causes permanent decreases in IQ, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children. Toxic heavy metals endanger infant neurological development and long-term brain function.” *See*, Subcommittee Report, p. 2.

14. Given these risks, and in response to reports alleging high levels of toxic heavy metals in baby foods sold in the United States, the House Subcommittee launched an investigation into the presence of toxic heavy metals in certain brands of baby foods, including Gerber Brand Baby Food and Earth’s Best Brand Baby Food. *See*, Subcommittee Report, p. 2. The results of the House Subcommittee’s investigation were set forth in the Subcommittee Report, which was released on February 4, 2021.

Arsenic in Defendants’ Baby Food

15. According to the Subcommittee Report, arsenic was present in all brands of baby foods subject to the House Subcommittee’s investigation. *See*, Subcommittee Report, p. 3. In particular, Earth’s Best Brand Baby Food was found to contain as much as 129 parts per billion—abbreviated as “ppb”—arsenic, and was made with ingredients that contained as high as 309 ppb arsenic. *See*, Subcommittee Report, p. 3. Gerber Brand Baby Food used high-arsenic ingredients, including rice flour that contained over 90 ppb arsenic. *See*, Subcommittee Report, p. 3.

16. For comparison, the FDA has set the maximum level of arsenic in bottled water at 10 ppb. *See*, Subcommittee Report, p. 4.

17. Arsenic is the most dangerous of the toxic heavy metals at issue and poses the most significant risk to human health. *See*, Subcommittee Report, p. 10. Currently known risks of

arsenic to health include respiratory, gastrointestinal, haematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system and cognitive development in children.”²

18. One study found negative effects in cognitive development of schoolchildren exposed to concentrations of arsenic over 5 ppb. For the authors of the study, 5 ppb was an important threshold for small children.³ Consumer reports has recommended setting the limit of arsenic at 3 ppb.

19. Hain sold finished baby food products using ingredients (such as organic brown rice flour) containing as much as 309 ppb arsenic, finished products contained as much as 129 ppb arsenic. Subcommittee Report, p. 3.

20. Hain exceeded its own unreasonable and excessive internal standards. For many ingredients in Earth’s Best Brand Baby Food, Hain set a standard for certain ingredients of 100 and up to 200 ppb for arsenic. Subcommittee Report, p. 16. Nevertheless, it approved and used a vitamin pre-mix with arsenic levels of 223 ppb, more than twice the specific limit Hain itself set at 100 ppb for this ingredient, which is itself way too high. *See*, Subcommittee Report, p. 16. Numerous other ingredients were used in Earth’s Best Brand Baby Food that contained excessive levels of arsenic according to Hain’s own testing, including organic whole raisins, organic soft white wheat flour, organic spelt flour, organic barley malt extract, organic yellow split pea powder, medium grain whole rice, organic brown rice flour, organic blueberry puree, organic barley flour, organic cinnamon powder, and organic butternut squash puree.

² Agency for Toxic Substances and Disease Registry, *ATSDR’s Substance Priority List* (2019), available at <http://www.atsdr.cdc.gov/spl/index.html#2019spl>.

³ Miguel Rodríguez-Barranco et al., Association of Arsenic, Cadmium and Manganese Exposure with Neurodevelopment and Behavioural Disorders in Children: A Systematic Review and Meta-Analysis (June 1, 2013) (online at <https://pubmed.ncbi.nlm.nih.gov/23570911/>).

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

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

Lead in Defendants' Baby Food

23. Lead was also present in all brands of baby foods subject to the House Subcommittee's investigation. *See*, Subcommittee Report, p. 3. In particular, Earth's Best Brand Baby Food was found to contain as much as 352 ppb lead, and was made with ingredients that contained as high as 200 ppb lead. *See*, Subcommittee Report, p. 3. Gerber Brand Baby Food also used high-lead ingredients in Gerber Brand Baby Food, including some that contained over 48 ppb lead. *See*, Subcommittee Report, p. 3

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

25. Lead is the second most dangerous of the toxic heavy metals at issue. Because lead can accumulate in the body, even small doses of lead have deleterious effects on children, including health, behavioral, cognitive, and development issues. The FDA states that “[h]igh levels of lead exposure can seriously harm children’s health and development, specifically the brain and nervous system.”⁴ There is a growing consensus that lead levels in baby foods should not exceed 1 ppb.

⁴ FDA, *Metals and Your Food*, available at: <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food>.

26. Two studies have established a significant association between early childhood exposure to lead and decreased standardized test scores, academic achievement, and diseases such as attention-deficit/hyperactivity disorder (“ADHD”). These effects last into adulthood according to other studies.⁵

27. Hain, under its Earth’s Best Organic label, used ingredients (such as vitamin pre-mix) containing as much as 352 ppb lead. 88 different ingredients in Earth’s Best Brand Baby Food tested over 20 ppb lead and six ingredients tested over 200 ppb lead, including organic whole wheat fine flour, organic quick oats, organic barley flour, organic cinnamon powder, and organic date paste. Subcommittee Report, p. 26.

28. All of Hain’s ingredients contained 1 or more ppb of lead, the limit recommended by some groups.

29. Gerber agreed to provide only limited data to the House Subcommittee, but the data it provided shows that Gerber used ingredients in Gerber Brand Baby Food that tests show contained as much as 48 ppb lead, and Gerber used many ingredients containing over 20 ppb lead, including its juice ingredients and sweet potatoes. Subcommittee Report, p. 27. Gerber’s tested juice concentrate measured an average of 11.2 ppb lead, which exceeds the 10 ppb standard for bottled water set by FDA.

⁵ Nanhua Zhang et al., *Early Childhood Lead Exposure and Academic Achievement: Evidence From Detroit Public Schools*, available at: <http://mediad.publicbroadcasting.net/p/michigan/files/201302/AJPH.2012.pdf>; Anne Evens et al., *The Impact of Low-Level Lead Toxicity on School Performance Among Children in the Chicago Public Schools: A Population-Based Retrospective Cohort Study*, available at: <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-015-0008-9>; Maitreyi Mazumdar et al., *Low-Level Environmental Lead Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study*, available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC3072933/.

Cadmium in Defendants' Baby Food

30. Cadmium was another toxic heavy metal found to be present in all brands of baby foods subject to the House Subcommittee's investigation. *See*, Subcommittee Report, p. 3. In particular, Earth's Best Brand Baby Food used 102 ingredients that contained over 20 ppb cadmium, with some of those ingredients containing up to 260 ppb cadmium. *See*, Subcommittee Report, p. 3.

31. Certain Gerber Brand Baby Foods were made with ingredients that contained over 87 ppb cadmium. *See*, Subcommittee Report, p. 4.

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

33. Cadmium is the seventh most dangerous heavy metal toxin according to the ATSDR. Exposure to cadmium is linked with decreases in IQ and development of ADHD. The EPA and FDA set the limit at 5 ppb of cadmium in drinking water and bottled water, respectively. The WHO limits cadmium in drinking water at 3 ppb. Certain experts recommend an upper limit of 1 ppb of cadmium in fruit juices.

34. In Earth's Best Brand Baby Food, Hain used 102 ingredients with 20 ppb cadmium or higher. Some ingredients (such as organic barley flour) tested as high as 260 ppb cadmium. Subcommittee Report, pp. 30–31. Other individual ingredients in Earth's Best Brand Baby Food containing excessive cadmium include: a product described as IQF⁶ organic chopped broccoli, organic date past, organic cinnamon powder, organic brown flax milled, organic yellow papaya puree, organic whole wheat fine flour, organic red lentils, organic oat flakes, and organic oat flour.

⁶ IQF likely means individually quick-frozen, a method for freezing foods that prevents ice crystals.

35. Gerber used carrots in Gerber Brand Baby Food, 75% of which contained between 5 and 87 ppb cadmium. Subcommittee Report, p. 4.

Defendants' Internal Testing

36. The House Subcommittee also sought to investigate the presence of mercury in baby food, but found that Hain did not even test for mercury in Earth's Best Brand Baby Food, and that Gerber "rarely" tested for mercury in Gerber Brand Baby Food. *See*, Subcommittee Report, p. 4.

37. The Subcommittee Report also noted that Hain routinely exceeded its own internal limits relative to the use of ingredients with arsenic, lead, and cadmium in Earth's Best Brand Baby Food. *See*, Subcommittee Report, p. 4. Although Hain attempted to justify these deviations from its internal standards, it "admitted to FDA that its testing underestimated final product toxic heavy metal levels." *See*, Subcommittee Report, pp. 4-5.

Defendants' Baby Food

38. Defendants each manufacture, distribute, advertise, market, and sell brands of baby food evaluated in the Subcommittee Report. Gerber manufactures, distributes, advertises, markets, and sells Gerber Brand Baby Food, and Hain manufactures, distributes, advertises, markets, and sells Earth's Best Brand Baby Food.

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

40. Defendants each know and are responsible for the ingredients in the brands of baby food that they sell.

41. Defendants each created, developed, reviewed, authorized, and are responsible for the textual and graphic content on the packaging of the brands of baby food that they sell. This is supported by the fact that the labels on Gerber Brand Baby Food contain Gerber’s corporate logo and trademark, and note that Gerber Brand Baby Food is distributed by Gerber. Similarly, the labels on Earth’s Best Brand Baby Food contain the Earth’s Best trademark—which is one of Hain’s federally registered trademarks—and note that Earth’s Best Brand Baby Food is distributed by Hain.

42. Each package of Earth’s Best Brand Baby Food contains standardized labeling created, developed, reviewed, and authorized by Hain. The packaging of all types of Earth’s Best Brand Baby Food is the same or substantially similar.

43. Each package of Gerber Brand Baby Food contains standardized labeling created, developed, reviewed, and authorized by Gerber. The packaging of all types of Gerber Brand Baby Food is the same or substantially similar.

44. Defendants each know, created, developed, reviewed and are responsible for the representations contained on each package of baby food that they sell.

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

46. The labels on some of the varieties of Earth’s Best Brand Baby Food—including some of those that Plaintiff and Class members purchased—state that the product contains used “non-BPA packaging.” BPA stands for bisphenol A, “an industrial chemical that has been used to make certain plastics and resins since the 1960s” that is linked to certain health issues.⁷ In other

⁷ Mayo Clinic, *What is BPA, and What Are the Concerns About BPA?*, available at: <https://www.mayoclinic.org/healthy-lifestyle/nutrition-and-healthy-eating/expert-answers/bpa/faq-20058331> (“Some

words, these varieties of Earth's Best Brand Baby Food are marketed as *lacking* a particular dangerous substance that can negatively affect brain development and children's behavior.

47. The labels on many varieties of Gerber Brand Baby Food and Earth's Best Brand Baby Food—including some of those that Plaintiff and Class members purchased—also tout those products as being free of GMO—which stands for “genetically modified organism”—ingredients. Like BPA, GMOs are also believed to be associated with health risks, “including infertility, immune problems, accelerated aging, faulty insulin regulation and changes in major organs and the gastrointestinal system.”⁸ As such, these varieties of Gerber Brand Baby Food and Earth's Best Brand Baby Food are marketed as *lacking* a particular dangerous substance that can negatively affect consumers of the product.

48. Despite touting the lack of certain dangerous substances in their respective brands of baby food, Defendants each fail to disclose elevated levels of toxic heavy metals on the labels of Earth's Best Brand Baby Food and Gerber Brand Baby Food.

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

50. While Defendants' respective omissions regarding the material fact that their brands of baby food contain elevated levels of toxic heavy metals are legally significant on their own, Defendants' respective representations regarding the presence of “iron to help support learning ability” and the lack of BPA and GMOs are also significant. Although these

research has shown that BPA can seep into food or beverages from containers that are made with BPA,” which “is a concern because of possible health effects of BPA on the brain and prostate gland of fetuses, infants and children. It can also affect children's behavior. Additional research suggests a possible link between BPA and increased blood pressure.”).

⁸ CNN, *10 Ways to Keep Your Diet GMO-Free*, available at: <https://www.cnn.com/2014/03/25/health/upwave-gmo-free-diet/index.html>.

representations may be true, “a statement that is technically true may nevertheless be fraudulent where it omits qualifying material since a ‘half-truth’ is sometimes more misleading than an outright lie.” *Abazari v. Rosalind Franklin Univ. of Med. & Sci.*, 2015 IL App (2d) 140952, ¶ 33 (citing cases); *see also Heider v. Leewards Creative Crafts, Inc.*, 245 Ill.App.3d 258, 265 (2nd Dist. 1993) (“A statement which is technically true as far as it goes may nonetheless be fraudulent if it is misleading because it does not state matters which materially qualify that statement.”); W. Prosser, *Law of Torts* § 106, at 696 (4th ed. 1971) (“half the truth may obviously amount to a lie, if it is understood to be the whole.”).

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

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

Consumer Expectations Regarding Baby Food

53. Parents’ instinctive desire to protect and ensure the healthy development of their children is well-known. As such, the safety of baby food is of paramount importance, and is a material fact, to consumers (such as Plaintiff and Class members).

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

55. Defendants each know that the safety of their respective brands of baby food (as a general matter) is a material fact to consumers. This is exemplified by the fact that Earth's Best Brand Baby Food and Gerber Brand Baby Food are both marketed and labeled as *lacking* certain substances (*e.g.*, BPA, GMOs) that consumers believe would be deleterious to the health of children.

56. Defendants each also know that consumers (such as Plaintiff and members of the Class) are unwilling to purchase their respective brands of baby food that contain elevated levels of toxic heavy metals.

57. As such, Defendants also know that the presence of toxic heavy metals in their respective brands of baby food is a material fact to consumers (such as Plaintiff and Class members).

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

59. Defendants each knew that if the elevated levels of toxic heavy metals in their respective brands of baby food was disclosed to Plaintiff and Class members, then Plaintiff and Class members would be unwilling to purchase Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

60. In light of Defendants' respective knowledge that Plaintiff and Class members would be unwilling to purchase Earth's Best Brand Baby Food and/or Gerber Brand Baby Food if they knew that those brands of baby food contained elevated levels of toxic heavy metals, Defendants intentionally and knowingly concealed this fact from Plaintiff and Class members, and did not disclose the presence of these toxic heavy metals on the labels of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively).

61. Defendants knew that Plaintiff and Class members would rely upon the representations and omissions contained on the packages of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively), and intended for them to do so.

62. Defendants knew that in relying upon the representations and omissions contained on the packages of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively), Plaintiff and Class members would view those products as being safe for consumption, given their represented lack of certain deleterious substances (*e.g.*, BPA, GMOs), and Defendants' concealment of the fact that those brands of baby food contained elevated levels of toxic heavy metals.

63. Prior to purchasing Earth's Best Brand Baby Food and Gerber Brand Baby Food, Plaintiff and Class members were exposed to, saw, read, and understood Defendants' respective representations and omissions regarding the safety of their baby food, and relied upon them.

64. As a result of Defendants' respective representations regarding the safety of their baby food, and the lack of certain deleterious substances (*e.g.*, BPA, GMOs), and Defendants' concealment of the fact that those brands of baby food contained elevated levels of toxic heavy metals, Plaintiff and Class members reasonably believed that Earth's Best Brand Baby Food and

Gerber Brand Baby Food were free from substances that would negatively affect children's development.

65. In reliance upon Defendants' respective representations and omissions, Plaintiff and Class members purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

66. Had Plaintiff and Class members known the truth—*i.e.*, that Defendants' respective brands of baby food contained elevated levels of toxic heavy metals, rendering them unsafe for consumption by children—they would not have been willing to purchase them at all.

67. Therefore, as a direct and proximate result of Defendants' misrepresentations and omissions concerning their respective brands of baby food, Plaintiff and Class members purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

68. Plaintiff and Class members were harmed in the form of the monies they paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food which they would not otherwise have paid had they known the truth. Since the presence of elevated levels of toxic heavy metals in baby food renders it unsafe for human consumption, the Earth's Best Brand Baby Food and/or Gerber Brand Baby Food that Plaintiff and Class members purchased is worthless.

Facts Relevant to Plaintiff

69. Between November 2020 and February 4, 2021, Plaintiff purchased several different varieties of Earth's Best Brand Baby Food and Gerber Brand Baby Food from Amazon.com and Target. Many of the varieties of Earth's Best Brand Baby Food and Gerber Brand Baby Food contained ingredients (and contaminants) discussed in the Subcommittee Report. Plaintiff's relevant purchases include:

- a. Earth's Best Brand Baby Food from Hain containing organic raisins, organic rice flour, organic blueberry puree, organic whole grain barley flour, organic brown flax milled, organic cinnamon, organic whole grain oat flour with excessive levels of arsenic, including: Earth's Best Organic

Blueberry Banana Flax & Oat Wholesome Breakfast Puree on February 4, 2021; Earth's Best Organic Apple Peach Oatmeal Wholesome Breakfast Puree on January 23, 2021; Earth's Best Apple Raisin Flax & Oat Wholesome Breakfast Puree on January 1, 9, 15 and 21, 2021; Earth's Best Sweet Potato Cinnamon Flax & Oat Wholesome Breakfast Puree on January 9, 15, 21 and 23, 2021; and Earth's Best Organic Rice Cereal on November 22, 2020.

- b. Earth's Best Brand Baby Food from Hain containing organic raisins, organic barley flour, organic cinnamon powder, and vitamin pre-mix with excessive levels of lead, including: Earth's Best Organic Blueberry Banana Flax & Oat Wholesome Breakfast Puree on February 4, 2021; Earth's Best Apple Raisin Flax & Oat Wholesome Breakfast Puree on January 1, 9, 15 and 21, 2021; and Earth's Best Sweet Potato Cinnamon Flax & Oat Wholesome Breakfast Puree on January 15, 21 and 23, 2021.
- c. Earth's Best Brand Baby Food from Hain containing organic barley flour, organic cinnamon powder, and organic brown flax with excessive levels of cadmium, including: Earth's Best Apple Raisin Flax & Oat Wholesome Breakfast Puree on January 1, 9, 15 and 21, 2021; and Earth's Best Sweet Potato Cinnamon Flax & Oat Wholesome Breakfast Puree on January 15, 21 and 23, 2021.
- d. Gerber's Teethers Strawberry Apple Spinach Wafers containing dried apple juice with excessive levels of lead on February 2, 2021.
- e. Gerber's Teethers Banana Peach Wafers and Strawberry Apple Spinach Wafers containing rice flour with excessive levels of toxic heavy metals on February 2, 2021.

70. Prior to purchasing Earth's Best Brand Baby Food and Gerber Brand Baby Food, Plaintiff and Class members were exposed to, saw, read, and understood Defendants' respective representations and omissions regarding the safety of their baby food, as well as the presence of elevated levels of toxic heavy metals therein, and relied upon them.

71. Plaintiff was only willing to purchase Earth's Best Brand Baby Food and Gerber Brand Baby Food because she believed that they did *not* contain elevated levels of toxic heavy metals. This belief was bolstered by Defendants' representations regarding the presence of iron, and the *lack* of BPA and GMOs, in their respective brands of baby food.

72. In reliance upon Defendants' respective representations and omissions, Plaintiff purchased Earth's Best Brand Baby Food and Gerber Brand Baby Food.

73. Had Plaintiff known the truth—*i.e.*, that Defendants' respective brands of baby food contained elevated levels of toxic heavy metals, rendering them unsafe for consumption by children—she would not have been willing to purchase them at all.

74. The presence of elevated levels of toxic heavy metals in Earth's Best Brand Baby Food and Gerber Brand Baby Food renders the baby food that Plaintiff purchased worthless, as it is unsafe for human consumption.

75. Therefore, as a direct and proximate result of Defendants' misrepresentations and omissions concerning their respective brands of baby food, Plaintiff was harmed in the form of the monies she paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food which she would not otherwise have paid had she known the truth.

76. Plaintiff brings this action on behalf of herself, and a Class of similar situated individuals, seeking recovery of the damages they incurred as a result of Defendants' deception.

CLASS ALLEGATIONS

77. **Class Definition:** Plaintiff brings this action pursuant to Fed. R. Civ. P. 23, on behalf of a nationwide class of similarly situated individuals and entities ("the Class"), defined as follows:

All persons in the United States who purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

Excluded from the Class are: (1) Defendants, Defendants' agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

78. **Illinois Subclass Definition:** Plaintiff also brings this action pursuant to Fed. R. Civ. P. 23, on behalf of a subclass of similarly situated individuals and entities (“Illinois Subclass”), defined as follows:

All persons in Illinois who purchased Earth’s Best Brand Baby Food and/or Gerber Brand Baby Food.

Excluded from the Illinois Subclass are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Illinois Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

79. **Numerosity:** The Class and Illinois Subclass are each so numerous that joinder of individual members would be impracticable. While the exact number of Class members and Illinois Subclass members is presently unknown and can only be ascertained through discovery, Plaintiff believes that there are thousands of Class and Illinois Subclass members, if not more, as Gerber and Hain are two of the seven largest manufacturers of baby food in the United States. *See*, Subcommittee Report, p. 2.

80. **Commonality and Predominance:** There are several questions of law and fact common to the claims of the Plaintiff and members of the Class, which predominate over any individual issues, including:

- a. Whether the Earth’s Best Brand Baby Food and/or Gerber Brand Baby Food contain unsafe levels of toxic heavy metals;
- b. Whether Defendants misrepresented to Plaintiff and Class members that Earth’s Best Brand Baby Food and/or Gerber Brand Baby Food was safe for human consumption and did not contain elevated levels of toxic heavy metals;
- c. Whether Defendants omitted and concealed the fact that Earth’s Best Brand Baby Food and/or Gerber Brand Baby Food contained elevated levels of toxic heavy metals;

- d. Whether the presence of elevated levels of toxic heavy metals in Earth's Best Brand Baby Food and/or Gerber Brand Baby Food was a material fact to Plaintiff and Class members;
- e. The extent and amount of Plaintiff's and Class members' damages;
- f. Whether Defendants' conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- g. Whether Defendants violated the Consumer Fraud and Deceptive Trade Practices Acts of the fifty states and the District of Columbia;
- h. Whether Defendants' conduct constitutes fraudulent concealment;
- i. Whether Defendants' conduct violates the Illinois Food, Drug, and Cosmetic Act;
- j. Whether Defendants' conduct resulted in Defendants unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

81. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues, to wit: Defendants' misrepresentations and omissions concerning the presence of elevated levels of toxic heavy metals in Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

82. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the proposed Class, and Plaintiff does not have any interests antagonistic to those of the proposed Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation.

83. **Superiority:** A class action can best secure the economies of time, effort and expense, and promote uniformity. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. Individual actions are not economically feasible and it is unlikely that individual

members of the Class will prosecute separate actions. The trial and the litigation of Plaintiff's claims are manageable.

COUNT I
(on Behalf of Plaintiff and the Illinois Subclass)
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS 505/1, *et seq.*)

84. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-83 with the same force and effect as though fully set forth herein.

85. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

86. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS 505/2.

87. The ICFA applies to Defendants’ acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

88. Defendants are each a “person,” as defined by 815 ILCS 505/1(c).

89. Plaintiff and each member of the Illinois Subclass are “consumers,” as defined by 815 ILCS 505/1(e), because they purchased Earth’s Best Brand Baby Food and/or Gerber Brand Baby Food.

90. Earth’s Best Brand Baby Food and Gerber Brand Baby Food are “merchandise,” as defined by 815 ILCS 505/1(b).

91. Defendants each made false and fraudulent statements, and misrepresented, concealed, and omitted material facts regarding Earth's Best Brand Baby Food and/or Gerber Brand Baby Food, including the misrepresentation that their brands of baby food were safe for human consumption and the omission that their brands of baby food contained unsafe levels of toxic heavy metals.

92. Defendants' respective misrepresentations and omissions regarding Earth's Best Brand Baby Food and Gerber Brand Baby Food constitute deceptive and unfair acts or practices prohibited by the ICFA.

93. Defendants' aforementioned misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of consumer confusion. *Unique Concepts, Inc. v. Manuel*, 669 F. Supp. 185, 191 (N.D. Ill. 1987).

94. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) to Plaintiff and the Illinois Subclass.

95. Defendants' aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and/or cause substantial injury to consumers. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 417-18 (2002).

96. Defendants' aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the IFDCA.

97. Defendants intended that Plaintiff and Illinois Subclass members rely on their respective aforementioned false statements, misrepresentations, and omissions of material fact in purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

98. Plaintiff and Illinois Subclass members reasonably relied on Defendants' respective misrepresentations and omissions when they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

99. Acting as reasonable consumers, had Plaintiff and Illinois Subclass members been aware of the true facts regarding the presence of toxic heavy metals in Earth's Best Brand Baby Food and Gerber Brand Baby Food, they would have declined to purchase Earth's Best Brand Baby Food and Gerber Brand Baby Food.

100. Plaintiff and Illinois Subclass members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food under the belief that they were safe for human consumption and did not contain unsafe levels of toxic heavy metals.

101. Acting as reasonable consumers, Plaintiff and Illinois Subclass members could not have avoided the injuries suffered by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they did not have any reason to suspect that those brands of baby food contained elevated levels of toxic heavy metals. Moreover, the detection of toxic heavy metals in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not readily available to Plaintiff and Illinois Subclass members at the time they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

102. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Illinois Subclass suffered damages by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they would not have purchased

those brands of baby food had they known the truth, and they received a product that was worthless because it contains unsafe levels of toxic heavy metals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AILEEN GARCES, individually, and on behalf of the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Illinois Subclass and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

(on Behalf of Plaintiff and the Class)

Violation of the Consumer Fraud and Deceptive Trade Practices Acts of the Various States and District of Columbia

103. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-83 with the same force and effect as though fully set forth herein.

104. Plaintiff brings this Count individually, and on behalf of all similarly situated residents of each of the 50 states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8-19-1, *et seq.*;

- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, *et seq.*;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, *et seq.*;
- e. the California Unfair Competition Law, Bus. & Prof. Code §§17200, *et seq.* and 17500 *et seq.*;
- f. the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*;
- g. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- h. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;
- i. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- j. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- k. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- l. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- m. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;
- n. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- o. the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- p. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- q. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- r. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- s. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- t. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- u. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- v. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;

- w. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- x. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- y. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- z. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- aa. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- bb. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- cc. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- dd. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- ee. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ff. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- gg. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- hh. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- ii. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- jj. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- kk. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- ll. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;
- mm. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- nn. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- oo. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;

- pp. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- qq. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- rr. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- ss. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- tt. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- uu. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- vv. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- ww. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- xx. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- yy. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- zz. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

105. Earth's Best Brand Baby Food and Gerber Brand Baby Food are each a consumer good.

106. Defendants each made false and fraudulent statements, and misrepresented, concealed, and omitted material facts regarding Earth's Best Brand Baby Food and/or Gerber Brand Baby Food, including the misrepresentation that their brands of baby food were safe for human consumption and the omission that their brands of baby food contained unsafe levels of toxic heavy metals.

107. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) to Plaintiff and the Class.

108. Defendants' aforementioned misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of confusion.

109. Defendants' aforementioned misrepresentations and omissions are unfair and unlawful business practices because they offend public policy and cause substantial injury to consumers.

110. Defendants intended that Plaintiff and Class members rely on the aforementioned false statements, misrepresentations, and omissions of material fact in purchasing Earth's Best Brand Baby Food and Gerber Brand Baby Food.

111. Plaintiff and Class members reasonably relied on Defendants' misrepresentations and omissions when they purchased Earth's Best Brand Baby Food and Gerber Brand Baby Food.

112. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Earth's Best Brand Baby Food and Gerber Brand Baby Food, they would have declined to purchase those brands of baby food.

113. Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food under the belief that they were safe for human consumption and did not contain unsafe levels of toxic heavy metals.

114. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they did not have any reason to suspect that those brands of baby food contained elevated levels of toxic heavy metals. Moreover, the detection of toxic heavy metals in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not readily

available to Plaintiff and Class members at the time they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

115. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they would not have purchased those brands of baby food had they known the truth, and they received a product that was worthless because it contains unsafe levels of toxic heavy metals.

116. Plaintiff and Class members reasonably relied on Defendants' respective misrepresentations and omissions when they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AILEEN GARCES, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendants;
- D. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
(on Behalf of Plaintiff and the Class)
Fraudulent Concealment

117. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-83 with the same force and effect as though fully set forth herein.

118. “The elements needed to prove fraudulent concealment are (1) concealment of a material fact, (2) intent to induce a false belief where there exists a duty to speak, (3) that the other party could not have discovered the truth through reasonable inquiry and relied upon the silence as an indication that the concealed fact did not exist, (4) that the other party would have acted differently had it known of the concealed information, and (5) that its reliance resulted in its injury.” *Vandenberg v. Brunswick Corp.*, 2017 IL App (1st) 170181, ¶ 31 (citing *Schrager v. North Community Bank*, 328 Ill.App.3d 696, 706-07 (1st Dist. 2002).

119. As noted above, the presence of elevated levels of toxic heavy metals in baby food is a material fact to consumers.

120. Defendants each knew that the presence of elevated levels of toxic heavy metals in Earth’s Best Brand Baby Food and Gerber Brand Baby Food (respectively) was a material fact to consumers, such as Plaintiff and members of the Class.

121. Because Defendants are each responsible for, and control, the manufacturing, marketing, distribution, and sale of Earth’s Best Brand Baby Food and Gerber Brand Baby Food (respectively), Defendants knew and intended that their omissions and concealment of the presence of elevated levels of toxic heavy metals in their respective brands of baby food would mislead Plaintiff and Class members, and induce them to buy products that they would otherwise not have been willing to purchase.

122. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Earth's Best Brand Baby Food and Gerber Brand Baby Food, they would have declined to purchase those brands of baby food.

123. Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food under the belief that they were safe for human consumption and did not contain unsafe levels of toxic heavy metals.

124. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they did not have any reason to suspect that those brands of baby food contained elevated levels of toxic heavy metals. Moreover, the detection of toxic heavy metals in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not readily available to Plaintiff and Class members at the time they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

125. As a direct and proximate result of Defendants' fraudulent concealment, Plaintiff and members of the Class suffered damages by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they would not have purchased those brands of baby food had they known the truth, and they received a product that was worthless because it contains unsafe levels of toxic heavy metals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AILEEN GARCES, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;

- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendants;
- D. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV
(on Behalf of Plaintiff and the Illinois Subclass)
Violation of the Illinois Food, Drug and Cosmetic Act
(410 ILCS 620/1, *et seq.*)

126. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-83 with the same force and effect as though fully set forth herein.

127. At all relevant times, the Illinois Food, Drug, and Cosmetic Act (“IFDCA”)—codified as 410 ILCS 620/1, *et seq.*—was in full force and effect.

128. The IFDCA prohibits the “manufacture, sale or delivery, holding or offering for sale of any food...that is adulterated or misbranded,” the “adulteration or misbranding of any food,” and “the delivery or proffered delivery thereof for pay or otherwise.” 410 ILCS 620/3 (incorporating 410 ILCS 620/3.1, 410 ILCS 620/3.2, and 410 ILCS 620/3.3).

129. Under the IFDCA, “a food is adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health...if the quantity of such substance in such food [would] render it injurious to health.” 410 ILCS 620/10.

130. Defendants each violated the IFDCA by manufacturing, distributing, marketing, and selling Gerber Brand Baby Food and Earth’s Best Brand Baby Food (respectively) because

the presence of unsafe levels of toxic heavy metals in those brands of baby food render them injurious to health.

131. Plaintiff and Illinois Subclass members reasonably relied on Defendants' respective misrepresentations and omissions when they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

132. Acting as reasonable consumers, had Plaintiff and Illinois Subclass members been aware of the true facts regarding the presence of toxic heavy metals in Earth's Best Brand Baby Food and Gerber Brand Baby Food, they would have declined to purchase Earth's Best Brand Baby Food and Gerber Brand Baby Food.

133. Plaintiff and Illinois Subclass members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food under the belief that they were safe for human consumption and did not contain unsafe levels of toxic heavy metals.

134. Acting as reasonable consumers, Plaintiff and Illinois Subclass members could not have avoided the injuries suffered by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they did not have any reason to suspect that those brands of baby food contained elevated levels of toxic heavy metals. Moreover, the detection of toxic heavy metals in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not readily available to Plaintiff and Illinois Subclass members at the time they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

135. As a direct and proximate result of Defendants' violations of the IFDCA, Plaintiff and members of the Illinois Subclass suffered damages by purchasing Earth's Best Brand Baby

Food and/or Gerber Brand Baby Food because they would not have purchased those brands of baby food had they known the truth, and they received a product that was worthless because it contains unsafe levels of toxic heavy metals.

136. Therefore, Plaintiff and members of the Illinois Subclass were damaged as a direct result of Defendants' violation of the IFDCA.

137. "A private cause of action is found to exist under a statute where: (1) the plaintiff falls within the class of persons sought to be protected; (2) the plaintiff's injury is one intended to be prevented; (3) the cause of action is consistent with the underlying purpose of the statute; and (4) the private cause of action is necessary to effectuate the purpose of the statute, *i.e.*, a civil remedy is needed." *Reuben H. Donnelley Corp. v. Brauer*, 275 Ill.App.3d 300, 311 (1st Dist. 1995).

138. Plaintiff and Illinois Subclass members fall within the class of persons sought to be protected by the IFDCA because they unknowingly purchased adulterated baby food as a result of Defendants' respective misrepresentations and omissions. The IFDCA was designed to regulate the manner in which food, drugs, and cosmetics could be manufactured, prepared, advertised, and sold to consumers. Specifically, section 620/10 of the IFDCA was designed to prohibit food manufacturers and sellers from selling food to consumers which contain unsafe levels of "any poisonous or deleterious substance which may render it injurious to health." The sale of adulterated food is prohibited under the IFDCA so that consumers, such as Plaintiff and Illinois Subclass members, do not purchase and/or ingest foods that are be injurious to their health.

139. Plaintiff's and Illinois Subclass members' common injury is one intended to be prevented by the IFDCA. Section 620/10 of the IFDCA prohibits food manufacturers and sellers from selling food to consumers which contain unsafe levels of "any poisonous or deleterious

substance which may render it injurious to health.” The sale of adulterated food is prohibited under the IFDCA so that consumers, such as Plaintiff and Illinois Subclass members, do not purchase and/or ingest foods that are injurious to their health.

140. Granting Plaintiff and Illinois Subclass members a private right of action under the IFDCA is consistent with the underlying purpose of the IFDCA. The underlying purpose of section 620/10 of the IFDCA is to prevent consumers from purchasing and/or ingesting foods that will be injurious to their health. Allowing Plaintiff and Illinois Subclass members to hold Defendants liable for their violations of the IFDCA is consistent with that purpose.

141. Granting Plaintiff and Illinois Subclass members a private right of action under the IFDCA is necessary to effectuate the purpose of the IFDCA because the statute would be rendered meaningless if it could not be enforced. There would be no incentive keeping food manufacturers and sellers from selling adulterated food products to consumers if they could not be held liable to consumers for their actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AILEEN GARCES, individually, and on behalf of the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Illinois Subclass and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Illinois Subclass attorneys’ fees and costs, including interest thereon, as allowed or required by law; and

- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V
(on Behalf of Plaintiff and the Class)
Unjust Enrichment

142. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-83 with the same force and effect as though fully set forth herein.

143. When a specific contract does not govern the relationship of the parties, and, therefore, no adequate remedy at law is applicable, an equitable remedy under a theory of unjust enrichment is available. *See, e.g., Guinn v. Hoskins Chevrolet*, 361 Ill.App.3d 575, 604 (1st Dist. 2005) (internal citations omitted).

144. Unjust enrichment “is a condition that may be brought about by unlawful or improper conduct as defined by law[.]” *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

145. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) “that the defendant has unjustly retained a benefit to the plaintiff’s detriment,” and (2) “that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience.” *See, e.g., Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

146. As noted above, the presence of elevated levels of toxic heavy metals in baby food is a material fact to consumers.

147. Defendants each knew that the presence of elevated levels of toxic heavy metals in Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) was a material fact to consumers, such as Plaintiff and members of the Class.

148. Because Defendants are each responsible for, and control, the manufacturing, marketing, distribution, and sale of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively), Defendants knew and intended that their omissions and concealment of the presence of elevated levels of toxic heavy metals in their respective brands of baby food would mislead Plaintiff and Class members, and induce them to buy products that they would otherwise not have been willing to purchase.

149. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding the Earth's Best Brand Baby Food and Gerber Brand Baby Food, they would have declined to purchase those brands of baby food.

150. Acting as reasonable consumers, Plaintiff and Class members could not have avoided the injuries suffered by purchasing Earth's Best Brand Baby Food and/or Gerber Brand Baby Food because they did not have any reason to suspect that those brands of baby food contained elevated levels of toxic heavy metals. Moreover, the detection of toxic heavy metals in food requires rigorous and specialized scientific testing that goes well beyond the level of inquiry a reasonable consumer would make into the issue, and, in any event, such testing was not readily available to Plaintiff and Class members at the time they purchased Earth's Best Brand Baby Food and/or Gerber Brand Baby Food.

151. As a direct and proximate result of Defendants' misrepresentations and omissions, Plaintiff and members of the Class conferred a benefit on Defendants—*i.e.*, the money that they

paid for Earth's Best Brand Baby Food and/or Gerber Brand Baby Food under the belief that they were safe for human consumption and did not contain unsafe levels of toxic heavy metals.

152. Defendants each acquired and retained money belonging to Plaintiff and the Class as a result of their wrongful conduct—*i.e.*, misrepresenting that Earth's Best Brand Baby Food and/or Gerber Brand Baby Food were safe for human consumption, and concealing the fact that those brands of baby food contained unsafe levels of toxic heavy metals. Defendants profited at the expense of Plaintiff and Class members in connection with each individual sale of Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) because Plaintiff and Class members paid money for products that were worthless due to the fact that they are not safe for human consumption.

153. Defendants each have unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendants unlawfully acquired their profits for worthless (and unsafe) baby food products while appreciating and knowing that Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) was unsafe for human consumption, contrary to their misrepresentations and omissions.

154. Defendants' retention of that benefit violates the fundamental principles of justice, equity, and good conscience because Defendants misled Plaintiff and the Class into falsely believing that Earth's Best Brand Baby Food and Gerber Brand Baby Food (respectively) was safe and did *not* contain unsafe levels of toxic heavy metals in order to unjustly receive and retain a benefit.

155. Under the principles of equity, Defendants should not be allowed to keep the money belonging to Plaintiff and the members of the Class because Defendants have unjustly received it as a result of Defendants' unlawful actions described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AILEEN GARCES, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23, and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendants;
- D. Ordering disgorgement of any of Defendants' ill-gotten gains and awarding those amounts to Plaintiff and the Class members as compensatory damages;
- E. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff AILEEN GARCES, individually, and
on behalf of all others similarly situated,

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