

CAUSE NO. ~~494-08253-2026~~ \_\_\_\_\_

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|-----------------------------|---|--------------------------|
| THE STATE OF TEXAS,         | § | IN THE DISTRICT COURT OF |
| <i>Plaintiff,</i>           | § |                          |
|                             | § |                          |
| v.                          | § | COLLIN COUNTY, TEXAS     |
|                             | § |                          |
| GERBER PRODUCTS COMPANY and | § | _____ JUDICIAL DISTRICT  |
| NESTLÉ USA, INC.,           | § |                          |
| <i>Defendants.</i>          | § | JURY TRIAL DEMANDED      |

**TEXAS’S VERIFIED ORIGINAL PETITION AND REQUEST FOR  
INJUNCTIVE RELIEF**

Gerber Products Company (“Gerber”) and Nestlé USA, Inc. (“Nestlé USA”) (together, “Defendants”) engaged in false, misleading, and deceptive acts and practices by representing to Texas consumers that Gerber baby food is safe, pure, rigorously tested, and recommended by medical professionals when, in fact, the products and their ingredients contained dangerous levels of toxic heavy metals—arsenic, lead, mercury, and cadmium.

These metals are neurotoxins. Federal health agencies rank arsenic, lead, mercury, and cadmium first, second, third, and seventh on the national priority list of substances posing the most significant potential threat to human health, and there is no established safe level of inorganic arsenic or lead for a baby.

From 2017 through 2019, Gerber’s internal testing showed that it used 67 batches of rice flour containing more than 90 parts per billion of inorganic arsenic, sweet potatoes containing up to 48 parts per billion of lead, and carrots containing up to 87 parts per billion of cadmium. Gerber rarely tested for mercury. For most of this period, Gerber tested selected ingredients rather than finished products, a method that understates the metals in the food a baby actually eats. To place Gerber’s numbers in context: the federal government limits inorganic arsenic in bottled water to

10 parts per billion, lead and cadmium to 5 parts per billion each, and mercury in drinking water to 2 parts per billion.<sup>1</sup> These facts became public in 2021, when a congressional subcommittee obtained and published Gerber’s internal documents and concluded that baby food manufacturers “knowingly sell these products to unsuspecting parents.”<sup>2</sup>

Defendants’ conduct after these disclosures confirms the deception was knowing. In 2021, a state public-health laboratory tested infant rice cereal from store shelves and reported the results to the manufacturers and to FDA. Two Gerber samples exceeded the only federal limit that existed—100 parts per billion of inorganic arsenic—and Gerber’s cereal averaged 87.43 parts per billion. Beech-Nut, whose cereal averaged less, recalled its product and exited the infant rice cereal business. Gerber issued no recall, no warning, and no disclosure. Gerber has recalled products over the years for glass, clumping, plastic, and choking hazards, but it has never recalled a product because of heavy metals.<sup>3</sup>

Throughout this period and to the present day, Defendants’ marketing has not changed. Gerber tells parents that every jar passes “over 100 quality checks”; that “the ingredients we use and our final products are both specifically tested for heavy metals”; that its “Clean Field Farming” practices reduce heavy metals; and, as of a national campaign launched in May 2026—nine months after Texas announced this investigation—that Gerber is “the #1 pediatrician

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<sup>1</sup> *Substance Priority List*, Agency for Toxic Substances & Disease Registry (April 13, 2026), <https://www.atsdr.cdc.gov/programs/substance-priority-list.html>; Press Release, U.S. House Comm. On Oversight & Reform, Subcomm. on Econ. & Consumer Pol’y, *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* (Feb. 4, 2021) <https://oversightdemocrats.house.gov/news/press-releases/oversight-subcommittee-staff-report-reveals-top-baby-foods-contain-dangerous>; 21 C.F.R. § 165.110(b); 40 C.F.R. § 141.62.

<sup>2</sup> U.S. House Comm. On Oversight & Reform, Subcomm. on Econ. & Consumer Pol’y, Staff Report, *New Disclosures Show Dangerous Levels of Toxic Heavy Metals in Even More Baby Foods* (Sept. 29, 2021), <https://oversightdemocrats.house.gov/imo/media/doc/ECP%20Second%20Baby%20Food%20Report%209.29.21%20FINAL.pdf> [hereinafter September 2021 Staff Report].

<sup>3</sup> *Id.* at 2–3, 6–7, 12–14.

recommended baby and toddler food brand.” These representations induce Texas parents to buy Gerber products, and to pay premium prices for them, in reliance on a level of safety and testing that Defendants have not delivered.<sup>4</sup>

In 2025, to comply with California law, Gerber began printing a QR code on its labels through which consumers can look up heavy-metal test results for products manufactured after January 1, 2025. The code does not cure the deception, for three reasons this petition explains. First, under settled law, a disclosure cannot cure a false claim; if the representation on the label is false, the claim itself must be corrected. Second, the code discloses nothing about the conduct described above—the years of contaminated ingredients, untested finished products, and unexamined mercury. Third, the levels of heavy metals in the products themselves did not change. The disclosure changed. The food did not.<sup>5</sup>

Consequently, the State of Texas (“Texas” or the “State”), acting by and through the Attorney General of Texas, Ken Paxton, brings this enforcement action against Defendants under the Texas Deceptive Trade Practices–Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41–.63.

## DEFENDANTS

1. Defendant Gerber Products Company is incorporated in Michigan and maintains its principal place of business in Arlington, Virginia. Gerber manufactures, markets, distributes, and sells baby food throughout the United States, including in Texas. Gerber has been a wholly

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<sup>4</sup> Press Release, Gerber, *Gerber Is the #1 Pediatrician Recommended Baby and Toddler Food Brand*, (May 29, 2026), <https://news.gerber.com/news/gerberR-is-the>.

<sup>5</sup> Federal Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*, (2013) <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>; see Tex. Bus. & Com. Code § 17.46(c)(1).

owned subsidiary of Nestlé S.A. since September 1, 2007.<sup>6</sup> Gerber may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

2. Defendant Nestlé USA, Inc. is incorporated in Delaware and maintains its principal place of business in Arlington, Virginia. Nestlé USA is the principal United States operating company of Nestlé S.A., the world's largest food and beverage company. Nestlé USA has been registered to do business in Texas since 1936.<sup>7</sup> Nestlé USA may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

3. This action is brought by the Attorney General of Texas, through his Consumer Protection Division, in the name of the State of Texas and in the public interest, under the authority granted by Tex. Bus. & Com. Code § 17.47.

4. Venue is proper in Collin County, Texas, because a substantial part of the events or omissions giving rise to Texas's claims occurred in Collin County, because Defendants have done business in Collin County, and because transactions occurred in Collin County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1); Tex. Bus. & Com. Code § 17.47(b). Defendants advertised their products to consumers in Collin County, distributed and caused their products to be distributed to retailers in Collin County, and sold and caused their products to be sold in Collin County.

5. In October 2026, investigators with the Consumer Protection Division purchased Gerber baby food products—including Gerber rice cereal and Gerber 2nd Foods purées—at retail

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<sup>6</sup> *Nestle Buying Gerber Baby Food Maker for \$5.5B US*, CBC News (Apr. 12, 2007), <https://www.cbc.ca/news/business/nestle-buying-gerber-baby-food-maker-for-5-5b-us-1.661972>.

<sup>7</sup> *Nestle USA to Relocate Headquarters*, Food Business News (Feb. 1, 2017), <https://www.foodbusinessnews.net/articles/8846-nestle-usa-to-relocate-headquarters>.

stores in Collin County, Texas. The products bore the Gerber Baby trademark and the representations described below. The receipts and product packaging are attached as Exhibit A.

6. Jurisdiction is proper because Defendants have established minimum contacts with Texas such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice, *see Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945), and because Defendants transact business in Texas and are therefore subject to Texas's long-arm statute, *see* Tex. Civ. Prac. & Rem. Code §§ 17.041–.045. Defendants have conducted continuous business operations in Texas for decades, sell millions of dollars of products annually in Texas, employ and contract with Texans, and maintain physical facilities in Texas, including a roughly 524,252-square-foot distribution facility at 13600 Independence Parkway, Fort Worth, Texas 76177.<sup>8</sup>

7. The Court has general jurisdiction over Defendants because their contacts and affiliations with Texas are so continuous and systematic as to render them essentially at home in Texas. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 797 (Tex. 2002). Defendants maintain a presence in Texas through their Texas facilities, Texas employees and contractors, and the distribution and sale of their products through thousands of Texas distributors, wholesalers, and retailers.

8. The Court also has general jurisdiction over Defendants because they registered to do business in Texas. *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023); Tex. Bus. Orgs. Code § 9.203.

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<sup>8</sup> *Nestle USA signs 524,252-sf industrial lease renewal in North Fort Worth*, REBusinessOnline (June 4, 2026), <https://rebusinessonline.com/nestle-usa-signs-524252-sf-industrial-lease-renewal-in-north-fort-worth/>.

9. Alternatively, the Court has specific jurisdiction over Defendants because they purposefully availed themselves of the privilege of conducting activities in Texas and the causes of action in this suit arise out of or relate to Defendants' Texas contacts. *State v. Volkswagen Aktiengesellschaft*, 669 S.W.3d 399, 412–13 (Tex. 2023); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 9 (Tex. 2021). Those contacts include disseminating advertising containing the misrepresentations described below to Texans; selling millions of units of baby food in Texas; contracting with Texas retailers and distributors; operating interactive websites through which Defendants exchange information with Texas consumers; and operating distribution facilities in Texas.

### **DISCOVERY**

10. Discovery should be conducted under Level 3. Tex. R. Civ. P. 190.4.

11. This case is not subject to the restrictions on expedited discovery under Tex. R. Civ. P. 169 because Texas seeks nonmonetary injunctive relief.

12. Texas claims monetary relief of more than \$1,000,000, including civil penalties, reasonable attorney's fees, litigation expenses, and costs.

### **PRE-SUIT NOTICE**

13. The Consumer Protection Division notified Defendants of the general nature of the unlawful conduct alleged herein at least seven days before filing suit, as contemplated by Tex. Bus. & Com. Code § 17.47(a).

### **FACTUAL ALLEGATIONS**

14. Defendants violated the DTPA by marketing and selling baby food to Texas parents as safe, pure, rigorously tested, and expert-endorsed when testing—including Defendants' own

testing, as well as testing by Congress, federal and state regulators, and independent laboratories—showed that the products and their ingredients contained toxic heavy metals. Defendants never disclosed those results to Texas consumers. The batch postings Defendants began in 2025 do not disclose them now.

15. Defendants’ conduct is continuing and this petition challenges all of it—before and after Defendants began posting batch results in 2025. The 2025 postings are themselves part of the conduct at issue: Defendants responded to the findings described below by publishing test results; they did not change the products or the challenged representations.

#### **I. Commercial Baby Food Began with a Promise: That Industry Could Feed a Baby as Well as a Mother Could.**

16. For most of human history there was no such thing as baby food. Infants were fed at the breast—by their mothers or by wet nurses—and met solid food at roughly nine to twelve months.<sup>9</sup>

17. Industry’s first attempt to replace a mother came in 1865 when the German chemist Justus von Liebig marketed “Liebig’s Soluble Food for Babies,” a mixture of wheat flour, cow’s milk, malt flour, and potassium bicarbonate. In 1867, a Parisian physician fed Liebig’s product to four newborns. All four died.<sup>10</sup>

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<sup>9</sup> Amy Bentley, *Inventing Baby Food: Taste, Health, and the Industrialization of the American Diet* (2014).

<sup>10</sup> *What Did People Do Before Infant Formula Was Invented?*, HowStuffWorks (Mar. 18, 2022), <https://health.howstuffworks.com/pregnancy-and-parenting/baby-health/infant-health/infant-formula-history.htm>; “They Perished in the Cause of Science”: Justus von Liebig’s Food for Infants, 58 J. Hist. Med. & Allied Scis. 219 (2024).

18. That same year, the world's first infant food company was born in Vevey, Switzerland.<sup>11</sup> A Swiss pharmacist's assistant named Henri Nestlé blended cow's milk, wheat flour, and sugar into "farine lactée Nestlé" and sold it as a complete substitute for breast milk—marketing it on the story of an infant whose life it had saved. Nestlé's product crossed the Atlantic within a decade. By 1883, at least 27 brands of manufactured infant food competed for the trust of American mothers.<sup>12</sup>

19. From its origin, manufactured infant food has been sold on the proposition that a company can be trusted to feed a baby. Nestlé, which began the industry in 1867, acquired Gerber, which has led the American market since 1928. Gerber and Nestlé USA, the Nestlé organization's principal United States operating company, are the Defendants how Defendants violated that trust with Texas consumers.

## **II. Gerber Created the American Baby Food Industry and Built Its Market on Consumer Trust.**

20. The American industry began in Fremont, Michigan. In the summer of 1927, Dorothy Gerber—following her pediatrician's advice to start her seven-month-old daughter Sally on strained fruits and vegetables—grew weary of the peeling, steaming, scraping, and straining. She asked her husband Dan why the work could not be done at the Fremont Canning Company, the family's fruit-and-vegetable cannery. It could.<sup>13</sup>

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<sup>11</sup> Marta Busquets, *Beyond the Infant Formula Business There Is Resistance*, AIMS Journal (2018), <https://www.aims.org.uk/journal/item/nestle>; *Nestlé's Milk Food or Lacteous Farina*, Nat'l Museum of Am. History, [https://americanhistory.si.edu/collections/object/nmah\\_1298589](https://americanhistory.si.edu/collections/object/nmah_1298589) (last visited Aug. 10, 2026).

<sup>12</sup> *What Did People Do*, *supra* note 10.

<sup>13</sup> *About Us and Our History*, Gerber, <https://www.gerber.com/about-us> (last visited Aug. 10, 2026); *Gerber Products Company*, Encyclopedia.com, (May 23, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/gerber-products-company>.

21. Workers at the plant began asking for samples for their own babies. In late 1928, after testing, consultation with nutrition experts, and market research, the company launched five varieties of “Gerber’s” strained baby food: peas, prunes, carrots, spinach, and beef vegetable soup. Within six months they were sold nationwide.<sup>14</sup>

22. Gerber advertised in *Good Housekeeping* and in physicians’ journals. It offered mothers six cans for a dollar in exchange for the name of their grocer. It commissioned research on the health benefits of canned baby food and published it in the *Journal of the American Dietetic Association*.<sup>15</sup>

23. In 1928 the company held a contest for a face. The artist Dorothy Hope Smith submitted an unfinished charcoal sketch of a neighbor’s baby, Ann Turner Cook, and offered to complete it if she won. The company preferred it unfinished. Registered as a trademark in 1931, the Gerber Baby became one of the most recognized commercial images in the world. Gerber sold reproductions of the image, marketed as “suitable for framing,” for ten cents.<sup>16</sup>

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<sup>14</sup> *Gerber Baby Food*, Encyclopedia.com, <https://www.encyclopedia.com/history/culture-magazines/gerber-baby-food> (last visited Aug. 10, 2026).

<sup>15</sup> *Gerber Baby*, Wikipedia, (June 6, 2026) [https://en.wikipedia.org/wiki/Gerber\\_Baby](https://en.wikipedia.org/wiki/Gerber_Baby); Fremont MI History, *Gerber Guest House*, <https://thegerberguesthouse.com/history/>; see also Bentley, *supra* note 9.

<sup>16</sup> *About Us and Our History*, *supra* note 13; *The Invention of Baby Food*, Eat This Podcast (Feb. 5, 2024), <https://eatthispodcast.com/baby-food/>.



*Figure 1: The Gerber Baby, trademarked in 1931, as it appeared in Gerber's earliest national advertising.*

24. In 1938 Gerber institutionalized the trust it advertised, opening a Consumer Relations Department with Dorothy Gerber personally answering mothers' letters. It would grow to field roughly 800,000 consumer questions a year.<sup>17</sup>

25. In 1941 the Fremont Canning Company renamed itself the Gerber Products Company and adopted the slogan that defined it for the next half century: "Babies are our business . . . our only business."<sup>18</sup>

### **III. Baby Food Remade the American Household—and Made Gerber Its Gatekeeper.**

26. Commercial baby food changed American feeding practices. Before 1900, infants first ate solid food at nine to twelve months. By the 1950s and 1960s—driven by industry marketing and a pediatric establishment that embraced early solids—American babies were being fed commercial solid food at four to six weeks of age, sometimes within the first month of life.<sup>19</sup>

27. Commercial baby food offered convenience, and it carried an assurance of scientific rigor that home preparation could not match.<sup>20</sup>

<sup>17</sup> *Gerber Baby Food*, *supra* note 14.

<sup>18</sup> *Gerber Products Company*, *supra* note 13.

<sup>19</sup> Bentley, *supra* note 9; *The Invention of Baby Food*, *supra* note 16.

<sup>20</sup> *See Bentley*, *supra* note 9.

28. Gerber captured that market and held it. By the mid-1990s Gerber controlled roughly 70 percent of American baby food sales and made 149 separate products for children under one year old; its nearest competitors held roughly 14 percent each.<sup>21</sup>

29. The market is larger today than it has ever been. Roughly 3.6 million babies are born in the United States each year, and the North American baby food market was valued at approximately \$7 billion in 2024.<sup>22</sup> Gerber remains the leading American baby food brand, its line long since expanded from five strained vegetables to purées, cereals, pouches, snacks, juices, and toddler meals sold in every major grocery chain in Texas.<sup>23</sup>

30. A parent's decision to buy commercial baby food is made almost entirely on trust. Arsenic, lead, and cadmium have no taste, no color, and no smell. No parent can detect them in the aisle, at the high chair, or anywhere else—and she is feeding a child who cannot tell her that anything is wrong. The market therefore depends on the accuracy of manufacturers' representations about safety, and Defendants' premium pricing reflects that reliance.

31. Some Gerber baby food products are approved foods under the Texas Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), and Texas families redeem state-administered WIC benefits to purchase Gerber products for their infants. Gerber actively markets its products and services to the WIC program and its participants.

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<sup>21</sup> *Advocacy Group Disputes Gerber's Nutrition Claims*, Spokesman-Review (Mar. 13, 1996), <https://www.spokesman.com/stories/1996/mar/13/advocacy-group-disputes-gerbers-nutrition-claims/>; *Swiss Drugmaker to Acquire Gerber*, Wash. Post (May 24, 1994), <https://www.washingtonpost.com/archive/business/1994/05/24/swiss-drugmaker-to-acquire-gerber/7d5c64e3-daff-434b-881b-7126e38a74eb/>.

<sup>22</sup> Nat'l Ctr. for Health Statistics, Agency for Toxic Substances and Disease Registry, *Births: Provisional Data for 2024* (Apr. 2025); *North America Baby Food Market Size*, Grand View Research, <https://www.grandviewresearch.com/industry-analysis/north-america-baby-food-market> (last visited Aug. 10, 2026).

<sup>23</sup> *Gerber*, *supra* note 4.

#### IV. The Industry Has Faced Ingredient-Safety Controversies Before.

32. Manufacturers historically added monosodium glutamate, salt, and sugar to please the adult palate doing the purchasing, not the infant doing the eating.<sup>24</sup>

33. In October 1969, after Dr. John Olney's research showed that monosodium glutamate caused brain lesions in infant mice, and under congressional and public pressure, the three major manufacturers announced they would suspend its use. Gerber's chief executive publicly doubted that MSG posed any potential harm to people.<sup>25</sup>

34. In 1979, a competitor's chairman acknowledged that American babies consumed an average of 8.2 pounds of sugar from commercially prepared baby food in their first twelve months.<sup>26</sup> It was only after a competitor removed salt and most added sugar in 1977 and consumers responded, that Gerber followed suit.<sup>27</sup>

35. In 1996, the Center for Science in the Public Interest petitioned FDA over Gerber's practice of adding sugar to 52—and modified food starch to 42—of its 149 baby foods, while Gerber advertised: "Nutritionally, you can't buy a better baby food than Gerber."<sup>28</sup>

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<sup>24</sup> *Do-It-Yourself Trend Jars Baby Food Industry*, Wash. Post (Mar. 23, 1983), <https://www.washingtonpost.com/archive/lifestyle/food/1983/03/23/do-it-yourself-trend-jars-baby-food-industry/707ff661-0d36-4d6d-81cf-34cb626fa9dd/>.

<sup>25</sup> *Baby Food Manufacturers Will Suspend Use of MSG*, Harv. Crimson (Oct. 27, 1969), <https://www.thecrimson.com/article/1969/10/27/baby-food-manufacturers-will-suspend-use/>.

<sup>26</sup> *Baby Food Producer Removes Most Sugar*, Wash. Post (June 15, 1979), <https://www.washingtonpost.com/archive/politics/1979/06/15/baby-food-producer-removes-most-sugar/946299eb-5cb8-47a6-92e4-b3fbe335309c/>.

<sup>27</sup> *Do-It-Yourself Trend*, *supra* note 24.

<sup>28</sup> *Advocacy Group Disputes Gerber's Nutrition Claims*, *supra* note 21.

36. In February 1986, consumers in at least ten states reported glass fragments in jars of Gerber baby food. Maryland officials confirmed glass in jars of Gerber strained peaches bearing identical or consecutive lot numbers and ordered the product off Maryland shelves.<sup>29</sup>

37. Gerber did not recall the product. Instead, it sued the Governor of Maryland and other state officials for \$150 million, asserting that the State had frightened consumers.<sup>30</sup> Thirty-five years later, when the contaminant was heavy metals rather than glass, Gerber's response followed the same pattern: no recall, no warning, and continued sales.

## **V. Nestlé Acquired Gerber in 2007.**

38. In 2007, Nestlé S.A.—the world's largest food company and the world's largest maker of infant formula—paid \$5.5 billion for Gerber and its 79 percent share of the American baby food market. Nestlé's chairman called it “the perfect complementary fit.”<sup>31</sup>

39. The acquisition placed under common ownership the company that began the commercial infant-food industry in 1867 and the company that has led the American baby food market since 1928.

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<sup>29</sup> *Glass in Gerber Baby Food Prompts FDA to Issue Caution*, Wash. Post (Feb. 21, 1986), <https://www.washingtonpost.com/archive/politics/1986/02/21/glass-in-gerber-baby-food-prompts-fda-to-issue-caution/2a8728b3-2e49-41d5-8de5-3947329503d5/>; *Gerber Sues Md. for Banning Sale of Strained Peaches*, Wash. Post (Feb. 25, 1986), <https://www.washingtonpost.com/archive/local/1986/02/25/gerber-sues-md-for-banning-sale-of-strained-peaches/33841c71-b641-49c7-bd8b-b3bc2d5e6d82/>.

<sup>30</sup> *Gerber Sues Md. for Banning Sale of Strained Peaches*, *supra* note 29; *Wall Street Praises Gerber's Actions*, Wash. Post (Feb. 25, 1986), <https://www.washingtonpost.com/archive/business/1986/02/25/wall-street-praises-gerbers-actions/69b6d640-a37d-4285-97ad-863b16f44988/>.

<sup>31</sup> *Nestle Buying Gerber Baby Food Maker for \$5.5B US* *supra* note 6.



*Figure 2: Exemplar of Gerber packaging sold in Texas today, bearing the Gerber Baby trademark and milestone designation.*

## **VI. Defendants’ Representations: Safety, Purity, Rigorous Testing, and Medical Endorsement.**

40. Throughout the relevant period, Defendants marketed Gerber baby food to Texas consumers as safe, healthy, nutritious, and appropriate for infants—through product labels and packaging, national advertising, digital marketing, retail displays, and the accumulated goodwill of the Gerber Baby itself. Each package sold in Texas bears the Gerber Baby trademark and Gerber’s

“milestone” system, signaling that the product inside is suitable and safe for a child at a specific stage of development.<sup>32</sup>

41. Gerber tells parents its standards are among “the strictest . . . in the world” and that “we go through over 100 quality checks for every jar.”<sup>33</sup>

42. Gerber speaks to parents’ heavy-metal concerns directly. On its website, Gerber promotes a “Clean Field Farming” strategy that it says reduces “heavy metals which you don’t want,” assuring parents that “our agriculture team knows exactly how to grow food for babies.”<sup>34</sup>

43. Gerber also tells parents that “the ingredients we use and our final products are both specifically tested for heavy metals.”<sup>35</sup> As set out below, when Gerber’s testing practices were examined under subpoena, that was not true: Gerber tested selected ingredients, not finished products, and for some metals it barely tested at all.<sup>36</sup>

44. Many Gerber products are advertised as supporting babies’ growth, brain development, and “learning ability.”<sup>37</sup> Gerber also sells an “organic” line at premium prices—36.4 percent more than its standard rice cereal—implying to consumers a purer, safer product.<sup>38</sup>

45. Gerber also markets medical endorsement. On May 29, 2026—nine months after the State of Texas announced its investigation into Gerber—Gerber launched a national campaign

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<sup>32</sup> *Shop Baby Food Purees: #1 Choice of Today’s Parents*, Gerber, <https://www.gerber.com/shop-by-product/baby-food> (last visited Aug. 11, 2026); *see also* Exhibit A, (Collin County product packaging).

<sup>33</sup> *An Important Message from Gerber*, Gerber Newsroom (Feb. 18, 2021), [https://news.gerber.com/in\\_the\\_news/an-important-message-from-gerber-6834056](https://news.gerber.com/in_the_news/an-important-message-from-gerber-6834056).

<sup>34</sup> *Keeping Soil in the Family*, Gerber, <https://www.gerber.com/keeping-soil-in-the-family> (last visited Aug. 11, 2026).

<sup>35</sup> *Heavy Metals FAQs*, Gerber Parent Talk, <https://www.gerber.com/parenttalk/heavy-metals-faqs> (last visited Aug. 11, 2026).

<sup>36</sup> *See* February 2021 Staff Report, at 26–33; September 2021 Staff Report, at 16.

<sup>37</sup> *Shop Baby Food*, *supra* note 32; *see also* Exhibit A.

<sup>38</sup> September 2021 Staff Report, at 14–15.

announcing itself as “the #1 pediatrician recommended baby and toddler food brand,” a “trusted leader in early childhood nutrition,” delivering “high-quality, nutritious and safe baby food parents can trust.”<sup>39</sup>



*Figure 3: Gerber’s answer to the State’s investigation: a new endorsement campaign.*

46. No federal law or regulation required Defendants to make any of these statements.

Having chosen to make them, Defendants were obligated to make them truthfully.

## **VII. Arsenic, Lead, Mercury, and Cadmium Are Toxic to Infants.**

47. Arsenic, lead, mercury, and cadmium are toxic heavy metals. The Food and Drug Administration (“FDA”) and the World Health Organization have declared them dangerous to

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<sup>39</sup> Gerber, *supra* note 4.

human health, particularly to babies and children.<sup>40</sup> Arsenic ranks first, lead second, mercury third, and cadmium seventh on the federal Agency for Toxic Substances and Disease Registry's priority list of substances posing the most significant threat to human health.<sup>41</sup>

48. Babies are uniquely vulnerable. Their organ systems are still developing; their food intake is enormous relative to their body weight; and they absorb ingested metals at rates 40 to 90 percent higher than adults, so that even low exposures can cause serious and lasting harm to the developing brain.<sup>42</sup>

49. The scientific literature associates early-life exposure to these metals with permanent decreases in IQ, and some studies suggest associations with attention-deficit/hyperactivity disorder and other behavioral and neurodevelopmental disorders.<sup>43</sup> One study of Detroit schoolchildren found early childhood lead exposure negatively associated with academic achievement in elementary and junior high school even after adjusting for confounders.<sup>44</sup> The Congressional report described below put it plainly: children's exposure to toxic heavy metals "causes permanent decreases in IQ, diminished future economic activity, and increased risk of criminal and antisocial behavior."<sup>45</sup>

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<sup>40</sup> *En*, U.S. Food & Drug Admin., <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food> (last visited Aug. 11, 2026).

<sup>41</sup> *Substance Priority List* *supra* note 1.

<sup>42</sup> Emily C. Bair, *A Narrative Review of Toxic Heavy Metal Content of Infant and Toddler Foods and Evaluation of United States Policy*, 9 *Frontiers in Nutrition* 919913 (2022).

<sup>43</sup> M.J. Lee et al., *Heavy Metals' Effect on Susceptibility to Attention-Deficit/Hyperactivity Disorder*, 15 *Int'l J. Env't Rsch. & Pub. Health* 1221 (2018); Philippe Grandjean & Philip J. Landrigan, *Neurobehavioural Effects of Developmental Toxicity*, 13 *Lancet Neurology* 330 (2014); 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*, 454 *Sci. Total Env't* 562, 454-455 (2013);

<sup>44</sup> N. Zhang et al., *Early Childhood Lead Exposure and Academic Achievement: Evidence from Detroit Public Schools, 2008-2010*, 103 *Am. J. Pub. Health* e72 (2013).

<sup>45</sup> February 2021 Staff Report, at 9.

50. There is broad scientific consensus that no level of lead exposure is safe for children, and the Congressional report found “no established safe level of inorganic arsenic consumption for babies.”<sup>46</sup>

51. Federal benchmarks for other products supply a measuring stick. FDA caps inorganic arsenic in bottled water at 10 parts per billion (“ppb”), and lead and cadmium at 5 ppb each; the Environmental Protection Agency caps mercury in drinking water at 2 ppb.<sup>47</sup> As set out below, Defendants’ ingredients and products eclipsed those benchmarks many times over.

52. Those water standards supply the yardstick, and Congress adopted them. The Baby Food Safety Act of 2021 would have capped inorganic arsenic at 10 ppb, lead at 5 ppb, cadmium at 5 ppb, and mercury at 2 ppb in baby food—the same numbers the federal government already applies to water—with a modest upward adjustment for cereal: 15 ppb inorganic arsenic and 10 ppb each for lead and cadmium. The bill would also have required manufacturers to test finished products rather than ingredients, because ingredient testing understates what a baby actually eats. The bill did not pass. Measured against the standard the federal government applies to water an adult drinks by choice, and against the standard Congress proposed for the food an infant eats exclusively, Gerber’s ingredients were not close.

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<sup>46</sup> *Preventing Childhood Lead Poisoning*, Centers for Disease Control & Prevention, <https://www.cdc.gov/lead-prevention/prevention/index.html> (last visited Aug. 11, 2026); February 2021 Staff Report, at 51.

<sup>47</sup> 21 C.F.R. § 165.110(b) (bottled water quality standards); 40 C.F.R. § 141.62 (mercury MCL).

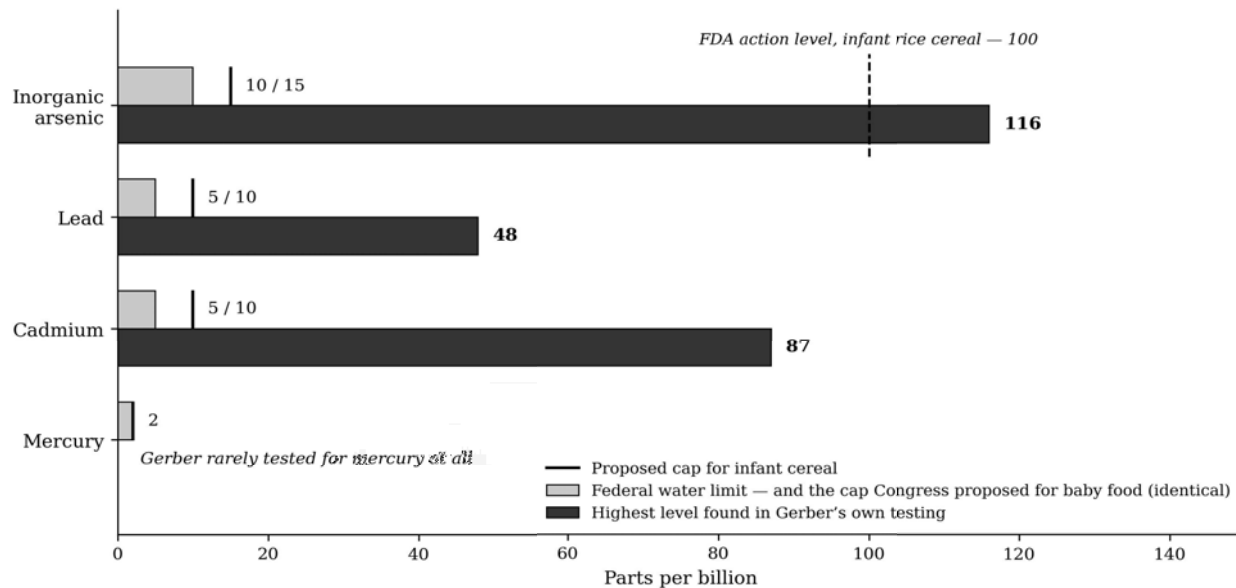


*Figure 4: The yardstick. What the federal government permits in water, what Congress proposed for baby food, and what Gerber's own testing found. Sources: 21 C.F.R. § 165.110(b); 40 C.F.R. § 141.62; February 2021 Staff Report, at 3–4, 26–33; September 2021 Staff Report, at 12–13.*

53. Texas is not required to allege—and does not allege—that any particular Gerber product injured any particular child. The DTPA claims in this suit involve the false, misleading, and deceptive acts or practices by Defendants in trade or commerce. But no parent weighing these risks would call the information immaterial. That is why parents pay premiums to avoid heavy metals, why Gerber markets “Clean Field Farming,” and why the concealment described below induced purchases that informed parents would not have made.

## VIII. Gerber's Own Testing Showed the Contamination.

54. In October 2019, the nonprofit alliance Healthy Babies Bright Futures published laboratory testing of 168 containers of baby food spanning 61 brands. Ninety-five percent contained at least one toxic heavy metal; one in four contained all four.<sup>48</sup>

<sup>48</sup> Healthy Babies Bright Futures, *What's in My Baby's Food?* at 1-6 (Oct. 2019), [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReport\\_FULLREPORT\\_ENGLISH\\_R5b.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReport_FULLREPORT_ENGLISH_R5b.pdf).

55. The following month, the Subcommittee on Economic and Consumer Policy of the U.S. House Committee on Oversight and Reform requested internal documents and test results from the seven largest baby food manufacturers. Gerber produced documents. On February 4, 2021, the Subcommittee published what it found: the largest baby food manufacturers, Gerber among them, knowingly sold baby food containing dangerous levels of toxic heavy metals. Its conclusion was unequivocal: “Manufacturers knowingly sell these products to unsuspecting parents, in spite of internal company standards and test results, and without any warning labeling whatsoever.”<sup>49</sup>

56. Gerber’s own internal documents, produced to Congress, showed that from 2017 to 2019 Gerber used 67 batches of rice flour that had tested over 90 ppb inorganic arsenic—nine times the bottled-water limit.<sup>50</sup>

57. Gerber used ingredients containing as much as 48 ppb lead, including sweet potatoes, and used many other ingredients containing over 20 ppb lead. Gerber’s tested juice concentrates averaged 11.2 ppb lead—more than double FDA’s limit for lead in bottled water—and over 83 percent of them exceeded 1 ppb.<sup>51</sup>

58. Seventy-five percent of the carrots Gerber used contained cadmium in excess of the 5 ppb bottled-water limit; some batches contained up to 87 ppb cadmium—seventeen times that limit.<sup>52</sup>

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<sup>49</sup> February 2021 Staff Report, at 2, 59.

<sup>50</sup> February 2021 Staff Report, at 3, 26–27.

<sup>51</sup> February 2021 Staff Report, at 3, 28; *Healthy Babies Bright Futures*, *supra* at 21.

<sup>52</sup> February 2021 Staff Report, at 4, 32.

59. Gerber rarely tested for mercury at all. Of the results Gerber produced to the Subcommittee, it had tested only carrots, sweet potatoes, and lemon juice concentrate.<sup>53</sup>

60. The Subcommittee also examined the industry's testing methods. Gerber, like most manufacturers, tested selected individual ingredients rather than finished products—a method that systematically understates contamination. One manufacturer's internal comparison showed that ingredient-based estimates underestimated finished-product heavy-metal levels 100 percent of the time, by 28 to 93 percent.<sup>54</sup> Gerber produced no finished-product test results to Congress at all.<sup>55</sup>

#### **IX. A State Laboratory Caught Gerber Over the Federal Limit, a Competitor Recalled, and Gerber Kept Selling.**

61. In August 2020, FDA finalized the only heavy-metal action level then applicable to baby food: 100 ppb inorganic arsenic in infant rice cereal.<sup>56</sup> The Subcommittee found even that level dangerously high, because FDA set it against cancer risk while disregarding neurological damage, which occurs at much lower exposures.<sup>57</sup>

62. Through an FDA-funded program, Alaska's state environmental health laboratory collected infant rice cereal from store shelves in the spring of 2021 and reported the results to FDA—and to the manufacturers—on May 6, May 18, and May 24, 2021.<sup>58</sup>

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<sup>53</sup> February 2021 Staff Report, at 33.

<sup>54</sup> September 2021 Staff Report, at 16.

<sup>55</sup> February 2021 Staff Report, at 26–33.

<sup>56</sup> *Inorganic Arsenic in Rice Cereals for Infants: Action Level; Guidance for Industry*, 85 Fed. Reg. 47,797 (Aug. 6, 2020).

<sup>57</sup> September 2021 Staff Report, at 9–10.

<sup>58</sup> September 2021 Staff Report, at 5.

63. Beech-Nut’s rice cereal tested as high as 125 ppb inorganic arsenic and averaged 85.47 ppb. Fifteen days after Alaska’s last report, Beech-Nut recalled the affected product codes and announced it would exit the infant rice cereal business entirely.<sup>59</sup>

64. Two Gerber rice cereal samples exceeded the federal limit—at 116 ppb and 101 ppb—and Gerber’s rice cereal averaged 87.43 ppb inorganic arsenic, higher than the Beech-Nut average that produced a recall and a market exit. That average is nearly six times the 15 ppb cereal cap Congress proposed after reviewing this very record. Alaska’s complete results for Gerber’s standard rice cereal were as follows:<sup>60</sup>

| Gerber Product      | Inorganic Arsenic (ppb) | Reported to FDA |
|---------------------|-------------------------|-----------------|
| Rice Cereal (8 oz)  | 116                     | May 24, 2021    |
| Rice Cereal (8 oz)  | 101                     | May 6, 2021     |
| Rice Cereal (8 oz)  | 95                      | May 18, 2021    |
| Rice Cereal (16 oz) | 94.9                    | May 24, 2021    |
| Rice Cereal (8 oz)  | 93.8                    | May 24, 2021    |
| Rice Cereal (16 oz) | 93.1                    | May 6, 2021     |
| Rice Cereal (16 oz) | 92.3                    | May 6, 2021     |
| Rice Cereal (16 oz) | 90.8                    | May 24, 2021    |
| Rice Cereal (16 oz) | 89.5                    | May 24, 2021    |
| Rice Cereal (16 oz) | 88.3                    | May 24, 2021    |
| Rice Cereal (8 oz)  | 87.5                    | May 24, 2021    |
| Rice Cereal (16 oz) | 86.7                    | May 24, 2021    |
| Rice Cereal (8 oz)  | 83.4                    | May 6, 2021     |
| Rice Cereal (8 oz)  | 83.2                    | May 18, 2021    |
| Rice Cereal (8 oz)  | 82.7                    | May 6, 2021     |

<sup>59</sup> September 2021 Staff Report, at 2–3, 6–7; *Beech-Nut Nutrition Company Issues a Voluntary Recall*, U.S. Food & Drug Admin. (June 8, 2021), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/beechnut-nutrition-company-issues-voluntary-recall-one-lot-beech-nut-single-grain-rice-cereal-and>.

<sup>60</sup> September 2021 Staff Report, at 12–13 (describing Alaska State Environmental Health Laboratory results and product codes identified therein).

| Gerber Product      | Inorganic Arsenic (ppb) | Reported to FDA |
|---------------------|-------------------------|-----------------|
| Rice Cereal (8 oz)  | 82.7                    | May 6, 2021     |
| Rice Cereal (16 oz) | 82.5                    | May 24, 2021    |
| Rice Cereal (8 oz)  | 79.5                    | May 6, 2021     |
| Rice Cereal (16 oz) | 77.5                    | May 24, 2021    |
| Rice Cereal (8 oz)  | 76.5                    | May 18, 2021    |
| Rice Cereal (16 oz) | 59.1                    | May 18, 2021    |
| <b>Average</b>      | <b>87.43</b>            |                 |

65. Gerber’s premium-priced organic rice cereal was cleaner, but not clean. It averaged 65.6 ppb inorganic arsenic and ran as high as 76 ppb—more than four times the proposed cereal cap—more than six times what FDA permits in bottled water, and more than four times the cap Congress was then considering for infant cereal. Gerber charged 36.4 percent more for it. A parent who paid the premium for the word “organic” bought a modest reduction in arsenic, not the absence of it, and Gerber never told her which she was getting:<sup>61</sup>

| Gerber Product             | Inorganic Arsenic (ppb) | Reported to FDA |
|----------------------------|-------------------------|-----------------|
| Organic Rice Cereal (8 oz) | 76                      | May 18, 2021    |
| Organic Rice Cereal (8 oz) | 69.2                    | May 18, 2021    |
| Organic Rice Cereal (8 oz) | 63.3                    | May 18, 2021    |
| Organic Rice Cereal (8 oz) | 53.9                    | May 18, 2021    |
| <b>Average</b>             | <b>65.6</b>             |                 |

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<sup>61</sup> September 2021 Staff Report, at 14–15.

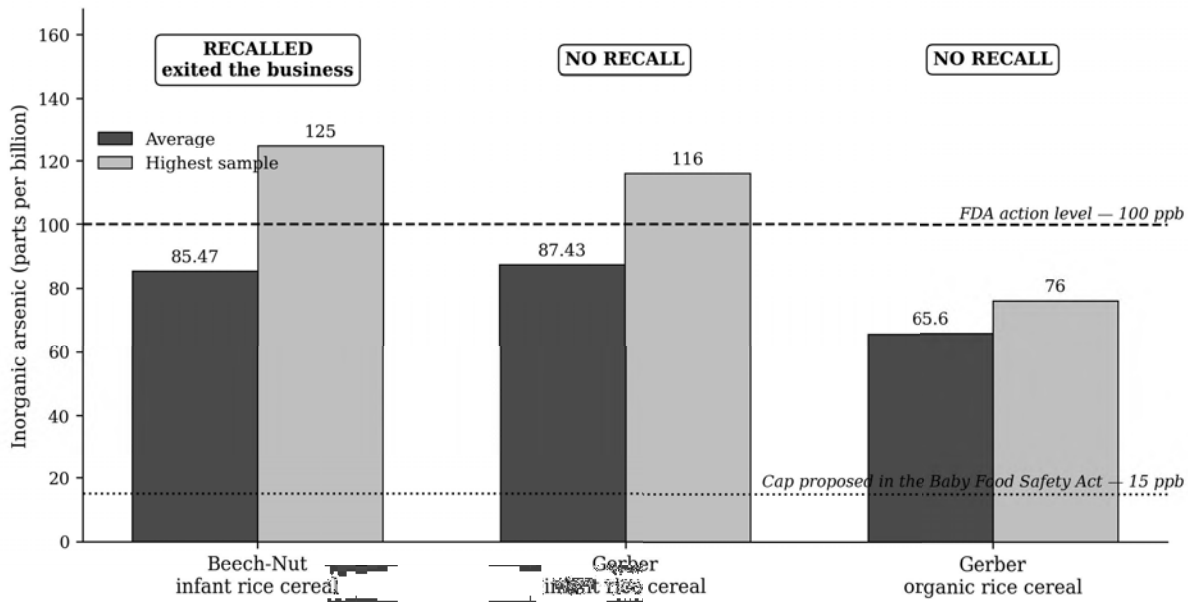


*Figure 5: Alaska’s 2021 testing, side by side. Beech-Nut recalled and left the infant rice cereal business. Gerber, whose cereal averaged more inorganic arsenic, did neither. Source: September 2021 Staff Report, at 6–7, 12–15.*

66. The Subcommittee’s September 29, 2021 report laid the comparison bare: “The results were nearly identical. In fact, the average Gerber product tested higher in inorganic arsenic than the average Beech-Nut product.” It found “no excuse for Gerber’s delay,” called on Gerber to recall the two violative product codes and to consider discontinuing rice cereal sales, and observed: “It has been more than 115 days since Alaska’s last report, and Gerber has still taken no action.”<sup>62</sup>

67. Gerber has publicly asserted that FDA later retested and could not confirm Alaska’s results. The Subcommittee reviewed the complete record afterward and found no excuse for Gerber’s inaction. And whatever FDA concluded about two lots, that conclusion does not address the ingredient test results described above, which Gerber did not disclose.<sup>63</sup>

<sup>62</sup> September 2021 Staff Report, at 12–14.

<sup>63</sup> September 2021 Staff Report, at 12–14 (recounting Gerber’s response and finding “no excuse for Gerber’s delay”).

68. A month later, Consumer Reports wrote directly to Gerber’s chief executive, urging Gerber to follow Beech-Nut’s lead and suspend infant rice cereal sales because “infant rice cereal is responsible for more than half of all exposure to inorganic arsenic in infants and toddlers.” Consumer Reports noted that of the 275 batches of rice flour for which Gerber produced 2017–2019 testing data, more than 27 percent contained inorganic arsenic at 90 ppb or higher.<sup>64</sup>

69. Gerber did not recall either product code, did not discontinue its rice cereal, and did not warn Texas consumers.

70. Gerber has recalled cereal for clumping that posed a choking hazard; recalled and discontinued its Soothe N Chew teething sticks after choking reports; and in January 2026 recalled batches of its Arrowroot Biscuits over plastic and paper contamination.<sup>65</sup> **Gerber has never recalled a product for toxic heavy metals.**

#### **X. Federal Limits Remained Unfinished While States Enacted Testing and Disclosure Requirements.**

71. The congressional reports prompted federal planning, though not binding rules. In April 2021, FDA announced its “Closer to Zero” action plan, setting timelines to propose and finalize limits for arsenic, lead, mercury, and cadmium in baby foods.<sup>66</sup> The timelines slipped. Not until January 6, 2025—nearly four years after Congress published the industry’s own test results—did FDA issue final guidance on lead in processed baby food, and even that guidance sets

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<sup>64</sup> Letter from Brian Ronholm, Dir. of Food Pol’y, Consumer Reports, to Bill Partyka, President & CEO, Gerber Products Co. (Oct. 20, 2021), <https://advocacy.consumerreports.org/wp-content/uploads/2021/10/Gerber-Infant-Rice-Cereal-Letter.pdf>.

<sup>65</sup> Gerber Recalls Baby Rice, Oatmeal Due to Choking Hazard, Fox News (Jan. 13, 2015); FDA, Recall Reminder: Gerber Soothe N Chew Teething Sticks (Apr. 18, 2025); Gerber Products Company Announces Voluntary Recall of Limited Batches of Arrowroot Biscuits, Gerber Newsroom (Jan. 26, 2026), <https://news.gerber.com/news>.

<sup>66</sup> September 2021 Staff Report, at 24.

nonbinding “action levels,” not enforceable limits. FDA’s arsenic and cadmium guidance remains unfinished.<sup>67</sup>

72. Congress has twice considered—but never passed—the Baby Food Safety Act, which would impose enforceable caps and mandate finished-product testing.<sup>68</sup> In October 2021, a coalition of 23 state attorneys general petitioned FDA to adopt interim protective levels without further delay.<sup>69</sup>

73. States began legislating. California’s AB 899 requires baby food manufacturers to test representative samples of finished products for arsenic, lead, mercury, and cadmium every month and to disclose the results publicly, including through on-label QR codes. Three more states have followed. Maryland’s law, House Bill 97 (2024), took effect for testing on January 1, 2025. Virginia’s Baby Food Protection Act, Va. Code § 3.2-5125.1, took effect January 1, 2026. Illinois followed by Public Act 104-0345, adding 410 ILCS 620/11.7. Each requires monthly testing of a representative sample of each production aggregate of the finished product—not of ingredients—and three of the four prohibit selling baby food that exceeds federal heavy-metal levels at all.<sup>70</sup>

74. The compelled disclosures confirm the problem persists. A Reuters analysis of 1,757 test results published under California’s law found 102 results over California’s lead limit—

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<sup>67</sup> FDA Issues Final Guidance for Industry on Action Levels for Lead in Processed Food Intended for Babies and Young Children, U.S. Food & Drug Admin. (Jan. 6, 2025), <https://www.fda.gov/food/hfp-constituent-updates/fda-issues-final-guidance-industry-action-levels-lead-processed-food-intended-babies-and-young>.

<sup>68</sup> Baby Food Safety Act of 2021, H.R. 2229, 117th Cong. § 3 (2021) (proposing, inter alia, a 15 ppb inorganic-arsenic cap for infant cereal).

<sup>69</sup> Press Release, Rob Bonta, Cal. Att’y Gen., Attorney General Bonta: FDA Must Act Swiftly to Reduce Dangerous Concentrations of Heavy Metals in Baby Foods (Oct. 21, 2021), <https://oag.ca.gov/node/546699>.

<sup>70</sup> Cal. Health & Safety Code §§ 124935.5–.7; Va. Code Ann. § 3.2-5145.7:1.

and flagged Gerber products, including its 2nd Foods carrots, among them.<sup>71</sup> Testing results Gerber published under the California regime in 2025 showed rice cereal containing 67 ppb arsenic and 38 ppb cadmium.<sup>72</sup>

75. Gerber's response was disclosure, not reformulation. Gerber now tests finished products monthly, posts batch results, and prints a code on the label. Gerber did not lower the metals, recall a lot, or withdraw a product. It did not modify a single one of the safety, purity, testing, or endorsement claims that this petition challenges. It changed what a diligent parent could look up. The heavy-metal levels in the products, and the representations on the packaging, remained the same.

76. Gerber has thereby proven that finished-product testing and public disclosure are feasible, affordable, and operational today. Gerber runs the program every month. What Gerber has not done is bring its products into line with its safety representations, or bring its representations into line with its products.

77. On August 26, 2025, the Attorney General of Texas announced an investigation into Gerber and Plum Organics for potentially false, deceptive, and misleading marketing of baby food products containing heavy metals, and issued civil investigative demands.<sup>73</sup> Following the States investigation, Plum Organics agreed to adopt limits of 40 ppb for cadmium and 20 ppb for

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<sup>71</sup> Jessica DiNapoli & M.B. Pell, *Baby Food Makers Are Failing California's Lead Standards*, Reuters Review Shows (Apr. 16, 2025), <https://www.usnews.com/news/top-news/articles/2025-04-16/baby-food-makers-are-failing-californias-lead-standards-reuters-review-shows>.

<sup>72</sup> Gerber Baby Food & Heavy Metals, Consumer Notice (Aug. 2025), <https://www.consumernotice.org/products/baby-food-heavy-metals/gerber/> (reporting Gerber's published AB 899 test results).

<sup>73</sup> Press Release, Ken Paxton, Tex. Att'y Gen., *Paxton Launches Investigation into Baby Food Manufacturers for Deceptively Marketing Products Containing Dangerous Levels of Heavy Metals* (Aug. 26, 2025); see also *Texas Investigates Gerber, Plum Organics for Heavy Metals in Baby Food*, Just Food (Aug. 27, 2025), <https://www.just-food.com/news/texas-gerber-plum-organics-baby-food-investigation/>.

inorganic arsenic, the limits established under the European Commission for baby food products, and a mercury standard of 10 ppb until the FDA’s action levels are published.<sup>74</sup> Gerber’s response, nine months later, was the “#1 Pediatrician Recommended” campaign—a fresh national assertion of safety, quality, and expert endorsement, launched while the State’s investigation was pending.<sup>75</sup>

## **XI. The Deception Continues in Texas Today.**

78. Defendants’ representations—safety, purity, rigorous testing, expert endorsement—appear on nearly every Gerber package on every Texas shelf, on Gerber’s Texas-accessible websites and social channels, and in national advertising disseminated into Texas, continuously and through the present.<sup>76</sup>

79. Throughout the period at issue, Defendants disseminated national advertising campaigns promoting Gerber baby food as safe, wholesome, pure, and appropriate for infants, in print, broadcast, digital, and social media, and directed that advertising into Texas. The statements quoted in this petition are exemplars, not an exhaustive account.

80. Each of Defendants’ misrepresentations, and each failure to disclose, was material: it concerned the safety of food for infants, the one subject on which no parent will knowingly compromise. Defendants’ own marketing shows the same: Gerber advertises heavy-metal reduction because heavy metals matter to parents’ purchasing decisions. Consumers, including Texas consumers, would not have purchased Defendants’ products, or would not have paid the prices charged, had Defendants told the truth.

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<sup>74</sup> *Gerber*, *supra* note 4; *The State of Texas v. Plum, PBC d/b/a Plum Organics*, No. 494-07202-2026 (949<sup>th</sup> Dist. Ct., Collin County, Tex. Sept. 8, 2026);

<sup>75</sup> *Gerber*, *supra* note 4.

<sup>76</sup> Exhibit A (Collin County purchases, October 2026); *Shop by Product: Baby Food*, *supra* note 32; *Gerber*, *supra* note 4.

81. Upon information and belief, Defendants sell millions of units of Gerber baby food in Texas each year, and Defendants continued to sell in Texas, without recall or disclosure, products from the rice-cereal lots that Alaska's testing showed exceeded the federal arsenic limit.

82. Upon information and belief, Defendants' testing and disclosure program is designed and calibrated to satisfy the minimum requirements of other states' statutes rather than to substantiate the safety, purity, and testing representations Defendants make to Texas consumers, and Defendants' published results rely on averaging and batch-selection practices that understate contamination in individual lots.<sup>77</sup>

## **XII. A QR Code on the Back of the Jar Does Not Cure a False Promise on the Front.**

83. Defendants will answer that they now disclose. That answer fails as a matter of law.

84. The Legislature has instructed that in construing Section 17.46(a), courts "to the extent possible will be guided by" the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act. Tex. Bus. & Com. Code § 17.46(c)(1). Those interpretations are settled. A disclosure may qualify or limit a claim to avoid a misleading impression, but it "cannot cure a false claim"; where the disclosure contradicts the claim, the claim itself must be modified.<sup>78</sup> Nor does a formulaic disclaimer rescue a deceptive message: "Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices."<sup>79</sup>

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<sup>77</sup> See DiNapoli, *Baby Food Makers Are Failing*, *supra* note 71 (describing manufacturers' batch-averaging practices and the dispute over whether averaging complies with California law).

<sup>78</sup> *FTC Disclosures*, *supra* note 5, at 6.

<sup>79</sup> FTC Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-84 (1984), [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

85. Where the first contact between seller and buyer is deceptive, the law may be violated even if the buyer learns the truth afterward.<sup>80</sup> The Texas consumer decides at the shelf, against the front of the package. Whatever a portal may reveal later, the representation has already induced the transaction.

86. Nor does the portal give a parent any standard by which to judge what she finds. FDA has set no enforceable limit for arsenic, mercury, or cadmium in these foods, and its lead action levels are nonbinding guidance.<sup>81</sup> A consumer who retrieves a result receives a number without an applicable standard against which to judge it, while the label continues to represent the product as tested, clean, and pediatrician-recommended.



<sup>80</sup> *Id.* (subsequent disclosure does not necessarily correct a deceptive representation).

<sup>81</sup> *FDA Issues Final Guidance*, *supra* note 67.



*Figure 6: What the parent is told, and what the parent must go find.*

87. Upon information and belief, only a small fraction of Texas purchasers scan the code, retrieve the batch result, and interpret it before buying; Defendants know that; and Defendants continue to make the safety, purity, testing, and endorsement claims described above because those claims, and not the portal, drive the purchase.

88. Defendants face the choice the law has always given an advertiser. They may conform the product to the representation, or conform the representation to the product. What the law does not permit is to sell food that does not meet the represented standard, continue making the representation, and treat an after-the-fact disclosure as a substitute for its truth.

### **XIII. Nestlé USA Directly Participates in the Marketing and Sale of Gerber Baby Food.**

89. Nestlé USA is a direct participant in the manufacture, marketing, and sale of Gerber baby food to Texas consumers, and it is liable for its own conduct.

90. In 2017, Nestlé USA moved its U.S. headquarters to 1812 North Moore Street in Arlington, Virginia—a building housing Nestlé USA’s corporate functions and its Center for Marketing Excellence.<sup>82</sup> In 2018, Gerber relocated its own headquarters into the same building, into Nestlé USA’s space; the two companies share a 250,000-square-foot footprint, and the lease is Nestlé’s.<sup>83</sup> Gerber’s chief executive said the move to Nestlé USA’s building “will provide efficiencies.”<sup>84</sup>

91. Gerber operates on Nestlé USA’s systems and under its identity. Gerber personnel use “@us.nestle.com” email addresses; Gerber recruits through nestlejobs.com; and Gerber holds itself out to institutional customers from Nestlé USA’s address.<sup>85</sup>

92. Nestlé USA presents Gerber to the public as its own brand, publishes Gerber announcements through its own press channels, and integrates Gerber into its own marketing, e-business, and nutrition-science operations, including the Feeding Infants and Toddlers Study research program that Defendants tout as the scientific foundation of Gerber’s products.<sup>86</sup> And

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<sup>82</sup> *Nestle USA to Relocate Headquarters*, *supra* note 7

<sup>83</sup> Governor Northam Announces Gerber to Relocate U.S. Headquarters to Arlington County, Va. Econ. Dev. P’ship (Apr. 2018), <https://www.vedp.org/press-release/2018-04/gerber>.

<sup>84</sup> *Gerber Moving Headquarters to DC Area from New Jersey*, *supra* note 83 (quoting Gerber President & CEO Bill Partyka).

<sup>85</sup> Gerber Products Company, Nat’l CACFP Ass’n Exhibitor Directory (2026–27) (noting a Gerber contact at @us.nestle.com and headquarters at 1812 North Moore Street); Gerber: About us LinkedIn, <https://www.linkedin.com/company/nestlegerber> (noting careers are hosted at nestlejobs.com/gerber).

<sup>86</sup> Gerber to Move U.S. Headquarters to Northern Virginia, Nestlé USA (Apr. 15, 2018), <https://www.nestleusa.com/media/pressreleases/gerber-to-move-us-headquarters-to-northern-virginia>; Feeding Infants and Toddlers Study (FITS), Gerber Medical Hub, gerber.com (last visited Aug. 11, 2026) (detailing Nestlé USA/Gerber research publications).

when Gerber’s heavy-metals testing and disclosure program launched in January 2025, the executive who announced it to the national press spoke as president of Nestlé Nutrition North America.<sup>87</sup>

93. Upon information and belief, Nestlé USA directs, reviews, approves, and finances Gerber’s marketing—including the safety, purity, testing, and endorsement claims described above and the May 2026 “#1 Pediatrician Recommended” campaign—and directed or approved Gerber’s response to the 2021 congressional findings and Alaska test results, including the decisions not to recall and not to disclose.

94. Upon information and belief, Gerber products reach Texas consumers through Nestlé USA’s distribution network, including Nestlé USA’s Fort Worth, Texas distribution facility, and Nestlé USA derives revenue from every Gerber sale in Texas.

95. At all relevant times, Gerber acted as Nestlé USA’s agent, with actual or apparent authority, in the marketing, distribution, and sale of Gerber baby food in Texas, and Nestlé USA ratified Gerber’s conduct by accepting its benefits with knowledge of the material facts.

96. In the alternative, Gerber is the alter ego of Nestlé USA. Upon information and belief, Nestlé USA dominates and controls Gerber’s operations, finances, and policies; the two share offices, officers, systems, and functions; Gerber’s revenues are consolidated into and swept to the Nestlé organization; and observing the corporate fiction between them would work an injustice by allowing the enterprise that directed and profited from the deception of Texas consumers to escape responsibility for it.

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<sup>87</sup> Sandee LaMotte, *Baby Food Labels Will Reveal Levels of Lead and Other Heavy Metals for First Time*, CNN (Jan. 7, 2025) <https://www.cnn.com/2025/01/04/health/baby-food-qr-codes-wellness> (statements of Chandra Kumar, President, Nestlé Nutrition North America, describing Gerber’s testing and QR-code disclosure).

## CAUSES OF ACTION

97. Texas incorporates the foregoing allegations as if set forth fully in each count below. Defendants' acts and practices occurred in the conduct of trade and commerce as defined by Tex. Bus. & Com. Code § 17.45(6).

### COUNT I

#### **False, Misleading, or Deceptive Acts or Practices. Tex. Bus. & Com. Code § 17.46(a).**

98. Section 17.46(a) declares unlawful any “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” An act is false, misleading, or deceptive if it has the capacity to deceive an ignorant, unthinking, or credulous person. *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 479–80 (Tex. 1995).

99. As described above, Defendants engaged in false, misleading, and deceptive acts and practices by marketing and selling baby food to Texas consumers as safe, pure, rigorously tested, and expert-endorsed when, in fact, the products and their ingredients contained toxic heavy metals at levels far exceeding the federal benchmarks described above. Defendants did not disclose that information to Texas consumers.

### COUNT II

#### **Causing Confusion or Misunderstanding as to Approval or Certification, and as to Affiliation or Association. Tex. Bus. & Com. Code § 17.46(b)(2), (3).**

100. The DTPA prohibits “causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services,” § 17.46(b)(2), and “causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another,” § 17.46(b)(3). *See Webster College v. Speier*, 605 S.W.2d 712 (Tex. Civ. App.—Eastland 1980), *aff’d*

*in part, rev'd in part*, 616 S.W.2d 617 (Tex. 1981) (false representations of accreditation and recognition).

101. Defendants' "#1 Pediatrician Recommended" campaign, milestone symbols, and pediatric-endorsement marketing cause confusion and misunderstanding as to the approval, certification, and endorsement of Gerber baby food by the medical profession—conveying to Texas parents that pediatricians have vetted and vouched for the safety of products whose heavy-metal content Defendants concealed. In context, those approval claims are false, misleading, and deceptive.

### COUNT III

#### **Representing that Goods Have Characteristics, Ingredients, Uses, or Benefits That They Do Not Have. Tex. Bus. & Com. Code § 17.46(b)(5).**

102. The DTPA prohibits "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have." § 17.46(b)(5); *see Pennington v. Singleton*, 606 S.W.2d 682, 687 (Tex. 1980); *Dal-Chrome Co. v. Brenntag Sw., Inc.*, 183 S.W.3d 133, 138–39 (Tex. App.—Dallas 2006, no pet.) (supplier promised quality-control measures it did not perform).

103. Defendants represented that Gerber baby food is safe and suitable for infants; that it is "specifically tested for heavy metals" in both ingredients and finished products; that "Clean Field Farming" reduces the heavy metals "you don't want"; that every jar passes "over 100 quality checks"; and that premium "organic" products are purer still. The products did not have those characteristics, ingredients, and benefits: their ingredients carried arsenic, lead, and cadmium at multiples of federal benchmarks, finished products went untested for years, mercury went largely untested, and the organic line averaged 65.6 ppb inorganic arsenic.

#### COUNT IV

##### **Representing that Goods Are of a Particular Standard, Quality, or Grade When They Are of Another. Tex. Bus. & Com. Code § 17.46(b)(7).**

104. The DTPA prohibits “representing that goods or services are of a particular standard, quality, or grade . . . if they are of another.” § 17.46(b)(7).

105. Defendants represented that Gerber baby food meets “the strictest standards in the world,” is of premium and organic quality, and is manufactured to a standard of safety appropriate for infants. The goods were of another standard, quality, and grade: made from ingredient lots that repeatedly failed the benchmarks Defendants invoked, under a testing regime that could not substantiate the standard represented.

#### COUNT V

##### **Advertising Goods with Intent Not to Sell Them as Advertised. Tex. Bus. & Com. Code § 17.46(b)(9).**

106. The DTPA prohibits “advertising goods or services with intent not to sell them as advertised.” § 17.46(b)(9); *see Innovative Office Sys., Inc. v. Johnson*, 906 S.W.2d 940, 947 (Tex. App.—Tyler 1995, writ granted w.r.m.).

107. Defendants advertised safe, pure, rigorously tested, expert-endorsed baby food, intending to sell—and selling—products that were none of those things. Defendants’ knowledge of their own test results, and their persistence in the advertising after Congress, Alaska, Consumer Reports, and the State of Texas put them on notice, establish that intent.

## COUNT VI

### **Failure to Disclose Information Known at the Time of the Transaction, Intended to Induce the Transaction. Tex. Bus. & Com. Code § 17.46(b)(24).**

108. The DTPA prohibits “failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.” § 17.46(b)(24); *see American Commercial Colls., Inc. v. Davis*, 821 S.W.2d 450, 452–53 (Tex. App.—Eastland 1991, writ denied).

109. At the time of every Texas transaction, Defendants knew—from their own testing—that Gerber ingredients and products contained arsenic, lead, and cadmium at the levels described above; knew that finished products went untested; and knew that mercury went largely untested. Defendants disclosed none of it, on any label, advertisement, or display, intending the concealment to induce purchases that informed consumers would not have made.

110. The batch results Defendants began posting in 2025 do not answer this count. They postdate the great majority of the transactions at issue; they disclose nothing about the ingredient testing, the years in which finished products went untested, or the mercury Gerber did not test; and they are not disclosed to the consumer at the time of the transaction, which is what § 17.46(b)(24) requires. Information a consumer must go find, after the representation has induced her to reach for the jar, is not information Defendants disclosed.

### **DEFENDANTS’ CONDUCT WARRANTS THE MAXIMUM CIVIL PENALTIES**

111. Texas incorporates the foregoing allegations. Texas is not required to allege injury to any consumer to recover civil penalties under the DTPA. Tex. Bus. & Com. Code § 17.47(a); *Holzman v. State*, No. 13-11-00168-CV, 2013 WL 398935, at \*3 (Tex. App.—Corpus Christi Feb.

1, 2013, pet. denied); *Texas v. Colony Ridge, Inc.*, No. 4:24-cv-0941, 2024 WL 4553111, at \*8 (S.D. Tex. Oct. 22, 2024).

112. No limitations period bars this action. Section 17.565 governs actions brought under Subchapter E, not the State’s enforcement action under Section 17.47. The two-year limitation in Section 17.47(d) applies by its terms to damages and is silent as to the restoration of money or property, so it does not reach the restitution Texas seeks. *Thomas v. State*, 226 S.W.3d 697, 710 (Tex. App.—Corpus Christi 2007, no pet.). And the State, in its sovereign capacity, is not subject to the defenses of limitations, laches, or estoppel. *State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993); *Thomas*, 226 S.W.3d at 710–11. Defendants’ conduct is therefore before the Court in full, from their earliest representations through today.

113. Texas is entitled to recover up to \$10,000 for each violation of the DTPA, Tex. Bus. & Com. Code § 17.47(c)(1).

114. Section 17.47(g) directs that, in determining the amount of penalty, the trier of fact “shall consider”: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice; (2) the history of previous violations; (3) the amount necessary to deter future violations; (4) the economic effect on the person against whom the penalty is to be assessed; (5) knowledge of the illegality of the act or practice; and (6) any other matter that justice may require.

115. The facts alleged throughout this petition shall be considered by the jury in determining the civil penalties to impose. *See* Tex. Bus. & Com. Code § 17.47(g)(1)–(6). The victims here are infants in their first years of life—consumers who cannot read a label, weigh a risk,

or protect themselves—purchased for by parents whom Defendants systematically deprived of the ability to do so, in many cases with state-administered WIC benefits. *See id.* § 17.47(g)(1), (6).

**A. 1986: Glass in the Jars—Deny, Litigate, and Keep Selling.**

116. The jury must consider Gerber’s history of responding to contamination reports when determining the civil penalties to impose. *See Tex. Bus. & Com. Code* § 17.47(g)(1), (2), (5), (6).

117. Texas incorporates the allegations concerning the 1986 contamination reports, Gerber’s refusal to recall, and Gerber’s suit against the State of Maryland. That history bears on the penalty because it shows a pattern rather than an isolated lapse: when a contaminant surfaced, Gerber’s response was to dispute the government that warned parents and to continue selling. Gerber’s response to the heavy-metal findings thirty-five years later followed the same pattern.

**B. 1997: The FTC Orders Gerber to Stop Making Unsubstantiated Pediatrician Claims.**

118. The jury must consider Gerber’s history of previous enforcement actions when determining the civil penalties to impose. *See Tex. Bus. & Com. Code* § 17.47(g)(2), (5).

119. In 1997, the Federal Trade Commission charged Gerber with false and misleading advertising for claiming that “4 out of 5 pediatricians recommend Gerber.” The study Gerber relied on showed that only 12 percent of pediatricians surveyed recommended Gerber. Gerber resolved the charges by consent order, which prohibits Gerber from representing the extent to which doctors or other health professionals recommend its baby and toddler foods without competent and reliable substantiation, and from misrepresenting any survey or research.<sup>88</sup> The order imposed no monetary penalty.

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<sup>88</sup> *In re Gerber Prods. Co.*, 123 F.T.C. 1365 (1997); Press Release, Fed Trade Comm’n, *FTC Accuses Gerber of False and Misleading Advertising* (Mar. 12, 1997), <https://www.ftc.gov/node/39529>.

120. Twenty-nine years later—with the State of Texas’s investigation pending—Gerber launched a national campaign announcing itself as “the #1 pediatrician recommended baby and toddler food brand,” based on a survey of 247 pediatricians. The claim family the FTC ordered Gerber to substantiate in 1997 is the claim family Gerber leads with today.<sup>89</sup>

**C. 2014–2019: The FTC Sues Gerber Again—for False Safety Claims About Infants.**

121. The jury must consider Gerber’s second federal enforcement action when determining the civil penalties to impose. *See* Tex. Bus. & Com. Code § 17.47(g)(2), (5).

122. In October 2014, the FTC sued Gerber in federal court for deceptively advertising that its Good Start Gentle infant formula reduces the risk that infants will develop allergies, and for misrepresenting that the claim was FDA-approved. The campaign the FTC challenged began in 2011—while Gerber remained bound by the 1997 substantiation order. On July 15, 2019, the court entered a stipulated order permanently enjoining the claims. Again, no monetary penalty.<sup>90</sup>

**D. Nonmonetary Orders Do Not Deter Defendants.**

123. The jury must consider the amount necessary to deter future violations. *See* Tex. Bus. & Com. Code § 17.47(g)(3).

124. Twice, federal regulators found reason to charge Gerber with deceiving parents about the safety and endorsement of infant food. Twice, the matter ended in an injunction and a combined civil penalty of zero dollars. Each time, the next campaign followed. The jury may

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<sup>89</sup> *Gerber*, *supra* note 4 (IQVIA ProVoice survey of 247 practicing pediatricians, fielded February 1–28, 2026).

<sup>90</sup> Press Release, FTC Charges Gerber with Falsely Advertising Its Good Start Gentle Formula Protects Infants from Developing Allergies, Federal Trade Comm’n (Oct. 30, 2014), <https://www.ftc.gov/news-events/news/press-releases/2014/10/ftc-charges-gerber-falsely-advertising-its-good-start-gentle-formula-protects-infants-developing>; Press Release, FTC Approves Stipulated Order Settling Charges Against Gerber Products Company, Federal Trade Comm’n (July 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-approves-stipulated-order-settling-charges-against-gerber-products-company>; *FTC v. Gerber Prods. Co.*, No. 2:14-cv-06771 (D.N.J. Oct. 31, 2014).

conclude from this history that injunctions without monetary consequences have not deterred Defendants, and that meaningful deterrence requires penalties at or near the statutory maximum for each violation counted below.

125. The jury must also consider the economic effect of any penalty on Defendants. *See* Tex. Bus. & Com. Code § 17.47(g)(4). Gerber is the leading baby food maker in the United States; its parent organization, of which Nestlé USA is the principal U.S. operating company, is the largest food and beverage enterprise in the world, with annual revenues measured in the tens of billions of dollars.<sup>91</sup> A penalty must be large enough to be felt by an enterprise of this size before it can deter.

**E. Defendants’ Own Compliance Apparatus Proves Knowledge of the Illegality of their Acts and Practices.**

126. The jury must consider Defendants’ knowledge of the illegality of their acts and practices. *See* Tex. Bus. & Com. Code § 17.47(g)(5).

127. Defendants tested their ingredients, set internal limits, and recorded the results—including the 67 batches of rice flour over 90 ppb arsenic and the carrots at up to 87 ppb cadmium described above—and sold the products anyway.<sup>92</sup> Defendants boast publicly that they screen for “more than 500 toxins and contaminants” and run “more than 100 individual quality checks.”<sup>93</sup> A testing and compliance apparatus of that sophistication establishes that Defendants acted with full knowledge of the heavy-metal content of their ingredients and products when they made the representations described in this petition.

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<sup>91</sup> *Gerber, supra* note 4; *Nestlé Annual Review 2025*, Nestlé S.A. (2026), <https://www.nestle.com/sites/default/files/2026-02/annual-review-2025-en.pdf>.

<sup>92</sup> February 2021 Staff Report, at 3–4, 26–33.

<sup>93</sup> *Texas Investigates Gerber, supra* note 73 (quoting Gerber’s response to the Texas investigation).

## **NUMBER OF VIOLATIONS**

128. Each of the following constitutes a separate violation of the DTPA, and Texas pleads each methodology in the alternative and in combination: each sale of a Gerber baby food product in Texas effected by the false, misleading, or deceptive acts and practices alleged herein; each unit of product bearing the misrepresentations, offered for sale or sold in Texas; each dissemination of an advertisement containing the misrepresentations into Texas, including each digital impression delivered to a Texas consumer; each day on which Defendants failed to disclose the information described above while offering products for sale in Texas; and each transaction induced by that failure to disclose.

129. Defendants possess the transactional, distribution, and advertising records from which the precise number of violations will be established, and to the extent Defendants failed to keep or produce such records, Texas will prove the number of violations through statistical sampling, expert analysis, and reasonable estimation.

## **TEMPORARY INJUNCTION**

130. Texas incorporates the foregoing allegations.

131. Section 17.47(a) supplies the standard for this application. It authorizes this Court to restrain a deceptive trade practice—by temporary restraining order, temporary injunction, or permanent injunction—on two showings: the Consumer Protection Division has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice the DTPA declares unlawful, and the proceedings would be in the public interest. Tex. Bus. & Com. Code § 17.47(a); *West v. State*, 212 S.W.3d 513, 518–20 (Tex. App.—Austin 2006, no pet.). The statute’s express language supersedes the common-law elements of imminent harm, irreparable injury, and

inadequate remedy at law, *id.* at 519, and the doctrine of balancing the equities has no application, *State v. Texas Pet Foods, Inc.*, 591 S.W.2d 800, 805 (Tex. 1979).

132. The Attorney General has reason to believe Defendants are engaging in, have engaged in, and are about to engage in acts and practices declared unlawful by the DTPA, and that these proceedings are in the public interest. The conduct is ongoing: the representations appear on products offered for sale in Texas today, and Defendants launched a new national endorsement campaign on May 29, 2026, during the State’s investigation.

133. A defendant’s decision to stop “shall not render moot” the State’s action. Tex. Bus. & Com. Code § 17.47(a). And the status quo an injunction preserves is “the last actual, peaceable, noncontested status which preceded the pending controversy”—the lawful condition, not the violation. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). An injunction restoring the last lawful status therefore preserves, rather than disturbs, the status quo.

134. The requested order does not ask this Court to set a food-safety standard; it conditions specified representations on existing benchmarks. Texas requests an order restraining Defendants from representing to Texas consumers that Gerber baby food is safe, clean, pure, rigorously tested, or pediatrician-recommended—including that its ingredients and finished products are “specifically tested for heavy metals,” that “Clean Field Farming” reduces heavy metals, and that every jar passes “over 100 quality checks”—unless the product so represented has been tested as a finished product and contains no more than 10 parts per billion inorganic arsenic, 5 parts per billion lead, 5 parts per billion cadmium, and 2 parts per billion mercury—or, for infant cereal, 15 parts per billion inorganic arsenic and 10 parts per billion each of lead and

cadmium—or such lower level as Defendants’ own internal specification requires for that metal in that ingredient or product.

135. That order leaves the choice with Defendants, which is where the law places it. Defendants may sell baby food exceeding those levels. Defendants may advertise their baby food as safe, clean, and tested. They may not do both. Nothing in the order requires Defendants to say anything; it requires only that what they choose to say be true.

136. Texas asks this Court to impose nothing Gerber has not already promised. Gerber told parents its food is safe, that it tests for heavy metals, and that its standards are among the strictest in the world. Texas asks only that those statements be made true. Every level proposed above is the federal government’s own. Ten parts per billion inorganic arsenic, five parts per billion lead, five parts per billion cadmium, and two parts per billion mercury are the limits FDA and EPA already enforce for water an adult drinks by choice. 21 C.F.R. § 165.110(b); 40 C.F.R. § 141.62. They are also the limits Congress proposed for baby food after reviewing this very record, with a modest upward adjustment for cereal. Baby Food Safety Act of 2021, H.R. 2229, 117th Cong. Texas asks this Court to require nothing of Gerber that the United States does not already require of a bottler of water, and nothing Gerber has not already promised parents it delivers. A defendant cannot be heard to complain that it is held to its own word. If Defendants’ products cannot meet these levels, Defendants may say so; what they may not do is represent the opposite.<sup>94</sup>

137. Prospective relief alone will not answer what has already happened. Defendants sold years of product on representations Texas alleges were false, and an order governing only future advertising would provide those purchasers no remedy. Texas therefore asks the Court to

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<sup>94</sup> February 2021 Staff Report, at 26–33 (describing Gerber’s internal standards and testing).

order Defendants to restore the money acquired by means of the unlawful acts and practices, including the premium charged for products marketed as organic, purer, or more rigorously tested. Tex. Bus. & Com. Code § 17.47(d).

138. Texas further asks the Court to order corrective disclosure: direct notice to Texas purchasers, and notice at the point of sale, stating the heavy-metal levels Defendants' own testing found in the products sold during the period at issue. The remedy is factual and remedial: it supplies the information Defendants did not disclose at the time of sale.

139. Texas requests that the Court set its application for temporary injunction for hearing at the earliest available date, and after notice and hearing, enter a temporary injunction granting the relief described above pending trial. Tex. R. Civ. P. 681, 683.

140. Texas is exempt from any bond or other security. Tex. Civ. Prac. & Rem. Code § 6.001; Tex. Bus. & Com. Code § 17.47(b).

### **PERMANENT INJUNCTION**

141. Upon final trial, Texas asks the Court to permanently enjoin Defendants from the unlawful acts and practices described herein and to order the corrective measures described above, including finished-product testing and Texas-facing disclosure, on the same statutory standard. Tex. Bus. & Com. Code § 17.47(a), (d).

### **TRIAL BY JURY**

142. Texas asserts its rights under the Texas Constitution, demands a jury trial, and will tender the jury fee to the District Clerk. Tex. R. Civ. P. 216.

## **PRAYER**

143. For these reasons, Texas respectfully requests that Defendants be cited to appear and answer, and that the Court:

- a. issue a temporary injunction and after notice and hearing granting the relief described in Texas's application above;
- b. upon final trial, adjudge that Defendants violated the DTPA as alleged;
- c. permanently enjoin Defendants from representing that Gerber baby food sold in Texas is safe, clean, pure, rigorously tested, or pediatrician-recommended unless the product so represented has been tested as a finished product and contains no more than 10 ppb inorganic arsenic, 5 ppb lead, 5 ppb cadmium, and 2 ppb mercury—or, for infant cereal, 15 ppb inorganic arsenic and 10 ppb each of lead and cadmium—or such lower level as Defendants' own internal specification requires;
- d. order Defendants to test finished products sold in Texas and disclose the results to Texas consumers;
- e. order Defendants to provide corrective disclosure to Texas purchasers, by direct notice and at the point of sale, of the heavy-metal levels Defendants' testing found in the products sold during the period at issue;
- f. award civil penalties of up to \$10,000 for each violation of the DTPA, Tex. Bus. & Com. Code § 17.47(c)(1), which in the aggregate exceed \$10,000,000;
- g. order Defendants to restore all money or other property acquired by means of the unlawful acts and practices, Tex. Bus. & Com. Code § 17.47(d);
- h. award pre-judgment and post-judgment interest on all awards of restitution or civil penalties as provided by law;
- i. award Texas its costs of court, costs of investigation, and reasonable attorney's fees, Tex. Gov't Code § 402.006(c); and
- j. grant all further relief to which Texas is justly entitled.

Dated: October 8, 2026

Respectfully submitted,

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Attorney General of Texas

**BRENT WEBSTER**

First Assistant Attorney General

**RALPH MOLINA**

Deputy First Assistant Attorney General

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Deputy Attorney General for Civil Litigation

*/s/Johnathan Stone*

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**ATTORNEYS FOR THE STATE OF  
TEXAS**

CAUSE NO. \_\_\_\_\_

|                             |   |                          |
|-----------------------------|---|--------------------------|
| THE STATE OF TEXAS,         | § | IN THE DISTRICT COURT OF |
| <i>Plaintiff,</i>           | § |                          |
|                             | § |                          |
| v.                          | § | COLLIN COUNTY, TEXAS     |
|                             | § |                          |
| GERBER PRODUCTS COMPANY and | § |                          |
| NESTLÉ USA, INC.,           | § |                          |
| <i>Defendants.</i>          | § | _____ JUDICIAL DISTRICT  |

**VERIFICATION OF DANIELLA HILL**

Pursuant to Texas Civil Practice and Remedies Code Section 132.001(f), I, Daniella Hill, submit this unsworn verification in lieu of a written sworn declaration, verification, certification, oath, or affidavit:

1. My name is Daniella Hill. I am over 18 years of age, of sound mind, and capable of making this declaration. I am an employee of the following governmental agency: Office of the Attorney General of Texas. I am executing this verification as part of my assigned duties and responsibilities.
2. The facts stated within this verification are within my personal knowledge and are true and correct.
3. I have read the foregoing document titled “*Texas’s Verified Original Petition and Request for Injunctive Relief*” and the factual allegations stated therein are true and correct.
4. I verify and declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 8<sup>th</sup> day of October, 2026.

\_\_\_\_\_  
/s/Daniella Hill  
Daniella Hill  
Investigator

# EXHIBIT A



**NEW  
PACKAGE!**  
same  
recipe



**6+**  
**MONTHS**  
Sitter  
1st Foods®

**NO**  
ARTIFICIAL  
Flavors or  
Colors



**Gerber®**

**RICE**

**cereal**

**60% DV iron to support  
brain development**



**NET WT 8 OZ (227g)** ®

**90%**  
**LESS PLASTIC**  
compared to  
previous bottle

## Nutrition Facts

15 servings per container

Serving size ¼ cup (15g)

Amount per serving

**Calories**

**60**

% Daily Value

**Total Fat** 0.5g 2%

Saturated Fat 0g

Trans Fat 0g

**Cholesterol** 0mg

**Sodium** 10mg

**Total Carbohydrate** 12g 12%

Dietary Fiber 0g

Total Sugars <1g

Includes <1g Added Sugars

**Protein** 1g 3%

Vitamin D 0mcg 0%

Calcium 0mg 0%

Iron 6.75mg 60%

Potassium 45mg 6%

Vitamin C 8.7mg 15%

Vitamin E 0.6mg 10%

Thiamin 0.075mg 25%

Riboflavin 0.1mg 25%

Niacin 1mg 25%

Vitamin B<sub>6</sub> 0.075mg 25%

Folate 12mcg DFE 15%

(7mcg folic acid)

Vitamin B<sub>12</sub> 0.125mcg 25%

Zinc 1mg 30%

**INGREDIENTS:** RICE FLOUR, SOY LECITHIN, POTASSIUM PHOSPHATE,

**VITAMINS AND MINERALS:** IRON (FERROUS FUMARATE), VITAMIN C (ASCORBIC ACID), VITAMIN E (ALPHA TOCOPHERYL ACETATE), ZINC SULFATE, NIACINAMIDE, VITAMIN B<sub>2</sub> (RIBOFLAVIN), VITAMIN B<sub>1</sub> (THIAMINE MONONITRATE), VITAMIN B<sub>6</sub> (PYRIDOXINE HYDROCHLORIDE), FOLIC ACID, VITAMIN B<sub>12</sub>.

**CONTAINS: SOY.**

**MAY CONTAIN: WHEAT.**

MADE FOR GERBER PRODUCTS CO.,  
FREMONT, MI 49413, USA

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Vevey, Switzerland or used with  
permission. © 2025 Nestlé.



We are leading the way  
in quality and testing  
standards for baby.

**10** essential vitamins  
and minerals

wholesome, high-quality  
ingredients

rice cereal, perfect for  
baby's first bites

transparent heavy metal  
test results on [Gerber.com](http://Gerber.com)



Your baby may be ready  
for this cereal if they:

- sit independently
- pick up and hold small  
objects in hands
- reach for food or spoon  
when hungry
- use upper lip to help  
clear food off of spoon

**90%**  
**LESS PLASTIC**  
compared to  
previous bottle



For information about toxic element  
testing on this product, scan the QR code.

**1-800-4-GERBER**  
visit [gerber.com](http://gerber.com)



how2recycle.info

  
erboer<sup>®</sup>

RICE

cereal

BEST IF USED BY:

6141565501 23:11  
BB: 21 AUG 2027

Crawler  
10 months



Gerber®

puffs

sweet potato

NATURALLY FLAVORED WITH OTHER NATURAL FLAVORS

puffed grain snack

5g whole grains  
per serving



NET WT 1.48 OZ (42g) ©



## Nutrition Facts

About 6 servings per container  
Serving size 60 pieces  
(7g/about 1/2 cup)

Amount per serving

**Calories 25**

|                          | Infants through<br>12 months<br>% DV* | Children<br>1-3 years<br>% DV* |
|--------------------------|---------------------------------------|--------------------------------|
| Total Fat 0g             | 0%                                    | 0%                             |
| Sodium 0mg               |                                       | 0%                             |
| Total Carbohydrate 6g    | 6%                                    | 4%                             |
| Total Sugars 1g          |                                       |                                |
| Includes 1g Added Sugars |                                       | 4%                             |
| Protein <1g              | 0%                                    | 0%                             |
| Iron 2.2mg               | 20%                                   | 30%                            |
| Potassium 20mg           | 2%                                    | 0%                             |
| Vitamin E 0.8mg          | 15%                                   | 10%                            |
| Thiamin 0.05mg           | 15%                                   | 10%                            |
| Niacin 0.6mg             | 15%                                   | 10%                            |
| Vitamin B6 0.05mg        | 15%                                   | 10%                            |
| Choline 30mg             | 20%                                   | 15%                            |

Not a significant source of saturated fat,  
trans fat, cholesterol, dietary fiber, vitamin D  
and calcium.

\*% DV = % Daily Value

**INGREDIENTS:** WHOLE GRAIN SORGHUM FLOUR, CANE SUGAR, NATURAL SWEET POTATO FLAVOR (INCLUDES DRIED SWEET POTATO), MIXED TOCOPHEROLS (TO MAINTAIN FRESHNESS), ANNATTO EXTRACT COLOR, **VITAMINS AND MINERALS:** CHOLINE BITARTRATE, IRON (ELECTROLYTIC), VITAMIN E (ALPHA TOCOPHERYL ACETATE), NIACINAMIDE (A B VITAMIN), VITAMIN B6 (PYRIDOXINE HYDROCHLORIDE), VITAMIN B1 (THIAMINE HYDROCHLORIDE).

**MADE FOR GERBER PRODUCTS CO.,  
FREMONT, MI 49413, USA**



44429733

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FEED ONLY TO INFANTS  
KEEP PROPERLY STORED

STORE IN A COOL, DRY PLACE  
AFTER OPENING, USE WITHIN 24 HOURS  
DO NOT USE IF SEAL IS BROKEN  
THIS PACKAGE IS NOT A MEAL  
APPEAR FULL FOR FEEDING



Wholesome ingredients and purposeful nutrition in every serving. Watch your little one grow with love.

Support your little one's self-feeding journey with our nutritious snacks. Made for small hands and growing bodies. Gerber® Puffs dissolve easily and taste great! Smiles guaranteed.

**yes to:** • 6 vitamins and minerals  
• 20% DV choline & iron

**no to:** • artificial flavors  
• artificial sweeteners



Gerber® baby-led feeding snacks are crafted to be easy to pick up and encourage your little one's independence as they explore new tastes and textures.



**Crawler**  
8+ months

Your baby may be ready for Puffs if they:

- crawl without tummy on the floor
- start using fingers to eat
- start using jaw to mash food



We are leading the way in quality and testing standards for baby.

For information about toxic element testing on this product, scan the QR code.

1-800-4-GERBER • visit [gerber.com](http://gerber.com)

**FEED ONLY TO A SEATED, SUPERVISED CHILD.  
KEEP PACKAGE AWAY FROM CHILD.**

STORE IN A COOL, DRY PLACE.  
AFTER OPENING, USE WITHIN 14 DAYS FOR OPTIMAL FRESHNESS.  
DO NOT USE IF SEAL IS MISSING OR PACKAGE IS DAMAGED.  
THIS PACKAGE IS SOLD BY WEIGHT, NOT BY VOLUME, AND MAY NOT  
APPEAR FULL DUE TO SETTLING OF CONTENTS.



  
**Sitter**  
2nd Foods®

  
**Gerber.**  
sweet potato

2 PACKS OF 4 OZ (113g) NET WT 8 OZ (226g)



Inner units not  
labeled for retail sale.

Packaging made with NO BPA

INGREDIENTS: SWEET POTATOES, WATER, VITAMIN C  
(ASCORBIC ACID).



GERBER PRODUCTS CO., FREMONT, MI 49413, USA

**Nutrition  
Facts**

2 servings  
Serv. size  
1 tub

Calories **70**  
per serving

| Amount/serving         | % DV       |
|------------------------|------------|
| <b>Total Fat</b> 0g    | <b>0%</b>  |
| <b>Sodium</b> 10mg     |            |
| <b>Total Carb.</b> 16g | <b>17%</b> |

| Amount/serving        | % DV      |
|-----------------------|-----------|
| Fiber 1g              |           |
| Total Sugars 9g       |           |
| Incl. 0g Added Sugars |           |
| <b>Protein</b> 1g     | <b>5%</b> |

Calcium 6% • Iron 2% • Potas. 40% • Vit. A 50% • Vit. C 15%  
Not a significant source of sat. fat, trans fat, cholest. and vit. D.

READ BELOW BEFORE SERVING:

FEED ONLY TO A SEATED, SUPERVISED  
CHILD. ALWAYS USE A CLEAN,  
NON-METAL SPOON AND BOWL.

Refrigerate after opening.  
Use within 1 day.

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BEST BY 31 MAY 27  
Sweet Potato

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Wholesome ingredients  
and purposeful nutrition  
in every tiny bite. Watch  
your little one grow with love.



Let your little one discover a world of nutritious veggies -  
selected and made with strict quality standards, just for babies.

**yes**  
to:

- Clean Label Project® Purity Award
- growing and sourcing only high-quality ingredients

**no**  
to:

- artificial flavors or colors
- added salt

$\frac{2}{3}$   
sweet  
potato



in each  
tub

  
**Gerber®**

We are  
leading the  
way in quality  
and testing  
standards  
for baby.

For information about  
toxic element testing  
on this product, scan  
the QR code.

1-800-4-GERBER • visit [gerber.com](http://gerber.com)

See inside sleeve for feeding and microwave directions.  
Do not use if package or seal is damaged or seal is missing.

Sitter  
2nd Foods®



New

Gerber®

 nourishing blends

sweet potato carrot  
beef & tomato

veggie puree, savory beef  
& whole grains

product of mexico

10% DV of protein  
1/4 cup of vegetables



NET WT 3.5 OZ (99g)

# Nutrition Facts

Serving size 1 pouch

Amount per serving  
**Calories** 70

% Daily Value

Total Fat 2.5g 8%

Saturated Fat 0.5g

Trans Fat 0g

Cholesterol 4mg

Sodium 35mg

Total Carb. 9g 9%

Dietary Fiber 2g

Total Sugars 4g

Incl. 0g Added Sugars

Protein 2g 10%

Vit. D 0mcg 0% • Calcium 16mg 6%

Iron 0.3mg 2% • Potas. 170mg 25%

Vit. A 140mcg 25% • Magnesium 8mg 10%

Zinc 0.5mg 15%

INGREDIENTS: WATER, SWEET POTATOES, CARROTS, GROUND BEEF, OAT FLOUR (CONTAINS WHEAT), TOMATO PASTE, SUNFLOWER OIL. CONTAINS: WHEAT.

MADE FOR GERBER PRODUCTS CO., FREMONT, MI 49413, USA

Produced by Nestlé México SA de CV, in Epigmenio González 58, San Pablo Querétaro 76159

PRODUCT OF MEXICO

FEED ONLY TO A SEATED, SUPERVISED CHILD.  
DO NOT MICROWAVE. KEEP CAP AWAY FROM CHILD.

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grow  
with  
love

A nourishing blend of hearty veggies, savory beef & whole grains, carefully crafted to support baby's growth and development.

yes

to:

- growing and sourcing only high-quality ingredients
- transparent heavy metal test results on Gerber.com

no

to:

- artificial colors or artificial flavors
- artificial sweeteners

1/4 cup  
of veggies



in each pouch

1 1/2 tsp  
beef



3/4 tsp  
oats



Gerber.



44382730



We are leading the way in quality and testing standards for baby. For information about toxic element testing on this product, scan the QR code.

1-800-4-GERBER • visit gerber.com

Usage directions: squeeze into a clean bowl or onto a clean spoon • refrigerate after opening and use within 1 day • do not use if cap seal is broken or pouch is damaged or swollen • separation is natural in pouch

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**Nutrition Facts** Serv. size: 1 jar, Amount per serving: **Calories 35**,  
**Total Fat** 0g (0% DV), Sat. Fat 0g, *Trans Fat* 0g, **Cholest.** 0mg, **Sodium** 70mg,  
**Total Carb.** 6g (7% DV), Fiber 2g, Total Sugars 4g (Incl. 0g Added Sugars),  
**Protein** <1g (Not a significant source of protein), Vitamin D (0% DV), Calcium (0% DV),  
Iron (2% DV), Potassium (20% DV), Vitamin A (100% DV).

**INGREDIENTS: CARROTS, WATER.**

GERBER PRODUCTS CO., FREMONT, MI 49413, USA

1-800-4-GERBER  
Visit [Gerber.com](http://Gerber.com)



Crawler  
9+ months



Gerber®

**lil' crunchies®**

apple sweet potato

NATURALLY FLAVORED WITH OTHER NATURAL FLAVORS

baked grain snack



NET WT 1.48 OZ (42g)

2g whole grains  
per serving



# Nutrition Facts

About 6 servings per container  
Serving size 16 pieces (7g)

Amount per serving

**Calories**

**35**

|                       | Infants through<br>12 months<br>% DV* | Children<br>1-3 years<br>% DV* |
|-----------------------|---------------------------------------|--------------------------------|
| Total Fat 2g          | 6%                                    | 4%                             |
| Sodium 5mg            |                                       | 0%                             |
| Total Carbohydrate 4g | 4%                                    | 3%                             |
| Protein 0g            | 0%                                    | 0%                             |
| Calcium 15mg          | 6%                                    | 2%                             |
| Iron 1.7mg            | 15%                                   | 25%                            |
| Potassium 10mg        | 0%                                    | 0%                             |
| Vitamin E 1mg         | 20%                                   | 15%                            |

Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, total sugars, added sugars and vitamin D.

\*% DV = % Daily Value

**INGREDIENTS:** WHOLE GRAIN SORGHUM MEAL, DEGERMED YELLOW CORN MEAL, HIGH OLEIC SUNFLOWER OIL, APPLE SWEET POTATO SEASONING (BROWN SUGAR, MALTODEXTRIN, SUGAR, NONFAT DRY MILK, DRIED SWEET POTATO, DRIED APPLE PUREE, SALT, PAPRIKA EXTRACT COLOR, CINNAMON, NATURAL FLAVOR), CALCIUM CARBONATE, MIXED TOCOPHEROLS (TO MAINTAIN FRESHNESS),

**VITAMINS AND MINERALS:** IRON (ELECTROLYTIC), VITAMIN E (ALPHA TOCOPHERYL ACETATE).

**CONTAINS:** MILK.

MADE FOR GERBER PRODUCTS CO., FREMONT, MI 49413, USA

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KEEP PACKAGE AWAY FROM CHILD.**

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BEST IF USED BY DATE ON BOTTOM  
AFTER OPENING, USE WITHIN 24 HOURS FOR  
OPTIMAL FRESHNESS.  
DO NOT USE IF SEAL IS DAMAGED OR  
IF CONTENTS ARE DAMAGED. STORE IN A COOL, DRY PLACE.

THIS PACKAGE IS SOLD BY WEIGHT. NET WEIGHT  
MAY NOT APPEAR FULL DUE TO SETTING.



1-800-4-GERBER • Visit gerber.com



44407155



NOT FORCED BY DATE ON BOTTOM OF CAN.  
OPENING, USE WITHIN 5 DAYS FOR  
OPTIMAL FRESHNESS.  
CHECK DATE & SEAL IS MISSING OR PACKAGE  
DAMAGED. STORE IN A COOL, DRY PLACE.

PRODUCT IS SOLD BY WEIGHT, NOT BY VOLUME, AND  
MAY APPEAR FULL DUE TO SETTLING OF CONTENTS.



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way in quality and  
testing standards  
for baby.

For information about toxic  
element testing on this product,  
scan the QR code.

1-800-4-GERBER • visit [gerber.com](http://gerber.com)



grow  
with  
love

Wholesome ingredients and  
purposeful nutrition in every  
serving. Watch your little  
one grow with love.

Gerber® Lil' Crunchies® are  
made with whole grain  
sorghum. They dissolve  
quickly and taste great!  
Smiles guaranteed.



Gerber® baby-led feeding snacks are  
crafted to be easy to pick up and encourage  
your little one's independence as they  
explore new tastes and textures.

yes  
to:

- 15% DV of iron
- 20% DV of vitamin E

no  
to:

- artificial flavors
- GMO ingredients

Crawler  
8+ months

Your baby may be ready for Lil' Crunchies® if they

- crawl without tummy on the floor
- start using fingers to eat
- start using jaw to mash food



### Automated Certificate of eService

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Zeilic Contreras on behalf of Johnathan Stone

Bar No. 24071779

zeilic.contreras@oag.texas.gov

Envelope ID: 120980467

Filing Code Description: Plaintiff's Original Petition (OCA)

Filing Description: Texas's Verified Original Petition and Request for Injunctive Relief

Status as of 10/9/2026 9:45 AM CST

#### Case Contacts

| Name              | BarNumber | Email                           | TimestampSubmitted   | Status |
|-------------------|-----------|---------------------------------|----------------------|--------|
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| Johnathan Stone   | 24071779  | johnathan.stone@oag.texas.gov   | 10/9/2026 9:04:30 AM | SENT   |
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