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Contact: Matt Baca -- (505) 270-7148

Attorney General Balderas Files Suit against Baby-Food Makers and Retailers for Selling Products Containing Toxic Heavy Metals

Major companies acknowledge that foods made for the littlest and most vulnerable consumers contain high levels of neurotoxic contaminants known to be associated with developmental injuries; lawsuit follows congressional investigation and published report on baby-food toxins

SANTA FE, NM—Attorney General Hector Balderas filed suit today against a number of baby-food makers and major retail chains, alleging that they market and sell products in the State that are tainted with dangerous levels of arsenic, lead, mercury, and cadmium. Filed in First Judicial District Court in Santa Fe, the Attorney General’s complaint asserts that defendants including Beech-Nut, Nurture, Hain Celestial, WalMart, and Kroger have violated consumer protection laws by promoting and selling certain contaminated products as safe and appropriate for babies, infants, and young children, “precisely the population most vulnerable to the serious adverse neurodevelopmental effects and other adverse health effects known to be associated with exposure to or consumption of” toxic chemicals and heavy metals.

“Any company that harms New Mexican children will be held accountable,” said Attorney General Balderas. “Knowingly marketing toxic products to children in a state that already has the worst child welfare outcomes in the nation is unacceptable and outrageous, and so we are taking this action on behalf of all New Mexican families.”

The complaint charges the defendants with violating New Mexico’s Unfair Practices and False Advertising Acts and public nuisance statutes, and also asserts claims for negligence, failure to warn, and design/manufacturing defect. The State is seeking damages, restitution, civil penalties, and other remedies.

The Attorney General’s lawsuit follows a report published in February 2021 by a subcommittee of the U.S. House of Representatives Oversight and Reform Committee, titled “Baby Foods Are Tainted With Dangerous Levels Of Arsenic, Lead, Cadmium, And Mercury.” The product of a year-long investigation, the report noted that Nurture, Hain, and Beech-Nut complied with congressional document requests, but WalMart did not—leading investigators to express concern that its “lack of cooperation might be obscuring the presence of even higher levels of toxic heavy metals in their baby food products than their competitors’ products.”

The report stated that concentrations of lead, arsenic, mercury, and cadmium acknowledged by the food-makers to be in their baby products “are multiples higher than allowed under existing regulations for other products.” For example, the FDA, EPA, and WHO have set allowable levels of toxins in bottled and drinking water, but, congressional investigators write, “The test results of baby foods and their ingredients eclipse those levels: including results up to 91 times the arsenic level, up to 177 times the lead level, up to 69 times the cadmium level, and up to 5 times the mercury level.”

According to the Agency for Toxic Substances and Disease Registry (ATSDR), a division of the U.S. Dept. of Health and Human Services, arsenic, lead, and mercury, respectively, are the top three most dangerous environmental toxins to human health. Along with cadmium (number 7 on the ATSDR list), they have long been known to cause a wide range of deleterious health effects on babies and young children, notably in cognitive, behavioral, and neurological development.

The Attorney General's complaint lists a number of individual products manufactured or sold by the defendants that, according to their own internal documents, contain potentially dangerous concentrations of lead, arsenic, mercury, and/or cadmium:

- Beech-Nut, based in New York, disclosed at least 38 such products or ingredients;
- New York-based Nurture, which sells in New Mexico under the brand name Happy Baby, disclosed 16;
- Hain, also based in New York and selling products in New Mexico called Earth's Best and Earth's Best Sesame Street, disclosed 22.

International retailer WalMart, based in Arkansas, has more than 100 outlets in New Mexico, including seven under the Sam's Club name. It manufactures baby food labeled Parent's Choice. Kroger and its affiliates operate more than 2,700 markets nationwide under a variety of local names. They make and distribute a baby food in stores and online called Simple Truth Organic that has been shown to be contaminated with the above-mentioned toxins.

In their advertising and marketing materials, these manufacturers variously promote their foods as safe, healthy, impurity-free, "rigorously tested," and "made with love." Nurture publicizes one of its food lines as "mom-founded and -operated."

A copy of the complaint, as filed, is attached.

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