



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: BABY FOOD PRODUCTS
LIABILITY LITIGATION

Case No. 24-md-03101-JSC

This Document Relates To:
ALL ACTIONS

**PRETRIAL ORDER NO. 5
DIRECT FILING ORDER**

I. Direct Filing of Cases in MDL 3101

A. Direct Filing. To eliminate delays associated with transfer of cases filed in or removed from other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer as a tag-along action to MDL No. 3101 may file their case directly in MDL No. 3101 in the United States District Court for the Northern District of California in accordance with the procedures set forth herein. Nothing in this Order shall constitute a determination by the Court or an admission by any party that venue in this or any other jurisdiction is proper. Any references to “defendants” or “all defendants” herein shall not constitute an appearance by or for any defendant not properly served.

B. Claims Subject to Direct Filing. A case is subject to direct filing under this order if it qualifies as a tag-along action to MDL No. 3101 because the plaintiff alleges personal injuries and alleges that he or she was “exposed to elevated quantities of toxic heavy metals (namely, arsenic, lead, cadmium, and mercury) from consuming defendants’ baby food products and, as a result, suffered brain injury that manifested in diagnoses of autism spectrum disorder (ASD) and/or attention deficit hyperactivity disorder (ADHD).” *In re Baby Food Mktg., Sales Pracs. & Prod. Liab. Litig. (No. II)*, No. MDL 3101, 2024 WL 1597351, at *1 (J.P.M.L. Apr. 11, 2024). With the exception of any complaint that includes plaintiffs who are members of the same household or who assert derivative claims, no multi-plaintiff complaint may be directly filed in MDL No. 3101 absent prior Court order. Complaints including more than one non-derivative or non-household claimant shall not be dismissed, provided that any plaintiff to such complaint files an amended complaint

1 within 30 days of being informed of this provision. Amendments to sever multi-plaintiff complaints
2 shall not require leave of Court. Class actions or claims solely for economic injury may not be
3 directly filed in MDL 3101.

4 **C. Process for Direct Filing.** Directly filed complaints should *not* be filed under the MDL case
5 number. To directly file an action, the plaintiff must open a new case and pay the standard filing
6 fee. Filing a complaint in this District requires completion of a Civil Cover Sheet, which can be
7 found here: [https://www.cand.uscourts.gov/wp-content/uploads/forms/civil-forms/JS-CAND-](https://www.cand.uscourts.gov/wp-content/uploads/forms/civil-forms/JS-CAND-44_fillable_10-2020.pdf)
8 [44_fillable_10-2020.pdf](https://www.cand.uscourts.gov/wp-content/uploads/forms/civil-forms/JS-CAND-44_fillable_10-2020.pdf). When filing a complaint in this District under this Order, each plaintiff's
9 counsel must identify the MDL case name and number in Section VIII of the Civil Cover Sheet to
10 ensure the case is included as a member case of the MDL.

11 **D. Designation in Complaint.** For cases filed pursuant to this Order, the complaint must use
12 the caption set forth in Paragraph J below and include (1) a statement indicating that it is being filed
13 in accordance with Case Management Order No. ___ (Direct Filing Order); (2) a designation of
14 venue ("Original Venue"), which will be the presumptive place of remand absent a showing by the
15 plaintiff in the action or any defendant that the place of remand should be elsewhere, pursuant to
16 Section E below. Should the Court enter a pretrial order governing the filing of short form
17 complaints after the entry of this Order, the directly filed complaints will be subject to those
18 provisions, which may modify this paragraph.

19 **E. Failure to Designate Original Venue.** If a plaintiff fails to designate an Original Venue,
20 any defendant to the action may provide notice to the plaintiff and the plaintiff shall have 30 days
21 to designate an Original Venue through a notice filed with the Court and served on all parties in the
22 action. If the plaintiff fails to do so, defendants shall provide notice to the Court and request that the
23 Court enter an order to show cause why the case should not be dismissed for failure to comply with
24 this Order. The plaintiff shall have 30 days to respond to the order to show cause.

25 **F. Objections to Inclusion of Directly Filed Cases in MDL No. 3101.** Plaintiffs, through Co-
26 Lead Counsel, and defendants in the applicable directly filed case, shall have 30 days to object to the
27 inclusion of any directly filed case in MDL No. 3101. Defendants shall lodge their objection by
28 filing a "Notice of Objection to Inclusion of Directly Filed Case" with the Court. The Notice must

1 be served on all parties to the applicable directly filed case. Upon filing of a Notice of Objection to
2 Inclusion of Directly Filed Case, the parties shall have 14 days to meet and confer. If the parties are
3 able to resolve the objection, defendants shall file and serve a notice of withdrawal of the objection.
4 If the parties are unable to resolve the objection, the plaintiff shall have 30 days to refile the action
5 in an appropriate District Court. If the action is refiled within 30 days, defendants agree not to raise
6 as a defense any statute of limitations that lapsed between the day of filing and the day of refileing.
7 Defendants expressly retain all statute of limitations defenses that existed prior to the initial filing.

8 **G. No *Lexecon* Waiver.** Each case filed pursuant to this Order will be centralized for pretrial
9 proceedings only, consistent with the Judicial Panel on Multidistrict Litigation's April 11, 2024
10 Transfer Order. Nothing in this Order constitutes a waiver of any party's rights under *Lexecon, Inc.*
11 *v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) or right to challenge personal or
12 subject matter jurisdiction, the effectiveness of service, choice of law, statutes of limitations, *forum*
13 *non conveniens*, venue, the location of any trials to be held, or any other legal rights and remedies.

14 **H. Transfer for Trial to Federal District Court of Proper Venue.** Upon completion of all
15 pretrial proceedings applicable to a case filed directly before this Court in MDL 3101 pursuant to
16 this Order, this Court, pursuant to 28 U.S.C. § 1404(a), will transfer that case to the identified
17 Original Venue, absent an objection by one or more parties or unless the plaintiff and defendants in
18 that action jointly advise the Court that the case should be transferred to another District in which
19 venue and jurisdiction is proper. Objections regarding a plaintiff's designated Original Venue may
20 be raised by motion and/or stipulation by the parties, or other means permitted by the Court, within
21 30 days following notification by the Court of a pending transfer or as otherwise agreed by the
22 parties. The inclusion of any action in this MDL shall not constitute a determination by this Court
23 that venue is proper in this district.

24 **I. Choice of Law.** The fact that a case was filed pursuant to this Order will have no impact on
25 choice of law, including the statute of limitations, that would otherwise apply to an individual case
26 had it been filed in another district court and transferred to this Court pursuant to 28 U.S.C. § 1407.
27 This Paragraph does not limit or foreclose plaintiffs' rights to amend their venue selection as
28

1 permitted under the law or this Order. The parties’ agreement to this Order shall also have no effect
2 on the substantive law applicable to a plaintiff’s case.

3 **J. Caption.** The caption for any complaint that is directly filed in MDL No. 3101 pursuant to
4 this Order shall bear the following caption:

5 **UNITED STATES DISTRICT COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**

<p>8 IN RE: BABY FOOD PRODUCTS 9 LIABILITY LITIGATION</p>	<p>Case No. 24-MD-3101-JSC MDL 3101</p>
<p>10 This Document Relates To:</p> <p>11 [Plaintiff’s name], 12 <i>Plaintiff,</i> 13 v. 14 [List of all Defendants] 15 <i>Defendants.</i></p>	<p>Hon. Jacqueline Scott Corley</p> <p>COMPLAINT AND JURY DEMAND</p> <p>Case No. [INSERT CASE NUMBER]</p>

16 **K. Filing Under this Order.** When utilizing and invoking this Order to file a case directly in
17 this MDL, Plaintiff shall assert the following paragraph in their complaint, as it relates to
18 allegations of venue:

19 Plaintiff(s) file this Complaint pursuant to CMO No. ____, and are to be bound by the rights,
20 protections, and privileges, and obligations of that CMO and other Order of the Court. Further,
21 in accordance with CMO No. ____, Plaintiff(s) hereby designate the United States District
22 Court for the [District and Division] as Plaintiff’s designated venue (“Original Venue”).

23 Plaintiff makes this selection based upon one (or more) of the following factors (check the
24 appropriate box(es))

25 ____ Plaintiff currently resides in _____ (City/State);

26 ____ Plaintiff purchased and consumed Defendant(s) products in _____ (City/State).

27 ____ The Original Venue is a judicial district in which Defendant _____ resides, and all
28 Defendants are residents of the State in which the district is located (28 U.S.C. 1391(b)(1)).

1
2 _____The Original Venue is a judicial district in which a substantial part of the events or
omissions giving rise to the claim occurred, specially (28 U.S.C. 1391 (b)(2)):

3 _____
4 _____There is no district in which an action may otherwise be brought under 28 U.S.C. 1391,
5 and the Original Venue is a judicial district in which Defendant _____ is subject
to the Court’s personal jurisdiction with respect to this action (28 U.S.C. 1391 (b)(3)).

6 _____Other reason (please explain): _____
7

8 **L. Electronic Filing.** Prior to filing a complaint in this District pursuant to this Order, the
9 filing attorney must register for an/or have a Northern District of California ECF user ID and
10 password.

11 **II. Service of Process**

12 **A. No Summons Required for Specified Defendants.** As to defendants Beech-Nut Nutrition
13 Company, Gerber Products Company, Hain Celestial Group, Inc., Nurture, LLC (formerly Nurture,
14 Inc), Plum, PBC, Sprout Foods, Inc., and Walmart, Inc. (“Specified Defendants”), plaintiffs are not
15 be required to request issuance of a summons or to serve a summons to initiate actions filed pursuant
16 to this Order. The Clerk’s office is directed not to issue summonses to the Specified Defendants in
17 cases directly filed in MDL 3101. Summons must be issued and served as to any defendant other
18 than the Specified Defendants.

19 **B. Accomplishing Service.** To expedite and streamline the service process for cases filed
20 pursuant to this Order, the Specified Defendants have agreed to establish, maintain, and monitor an
21 email address for each Specified Defendant for the express purpose of accepting service of
22 complaints directly filed in MDL 3101. Service may be accomplished through this Paragraph once
23 a case has been transferred to this MDL. Plaintiffs who directly file a case in this MDL may
24 effectuate service via email on the following email addresses:

- 25
- Beech-Nut Nutrition Company: BeechnutBabyFoodMDL3101Service@kslaw.com
 - 26 • Gerber Products Company: GerberBabyFoodMDL3101Service@whitecase.com
 - 27 • Hain Celestial Group, Inc.: HainNoticeofService@cov.com
 - 28 • Nurture, LLC: NurtureBabyFoodMDL3101Service@us.dlapiper.com

- 1 • Plum PBC: PlumMDLservice@dechert.com
- 2 • Sprout Foods, Inc.: SproutBabyFoodMDL3101Service@grsm.com
- 3 • Walmart, Inc.: WalmartBabyFoodMDL3101Service@kslaw.com

4 The subject line of the email should include the caption and civil action number of the case being
5 served. The Specified Defendants shall send a responsive email via auto-reply accepting service and
6 include the statement: “Service of this responsive email shall serve as proof that Defendant is
7 waiving service as set out in CMO No. ___, has received actual notice of the legal action brought
8 against it, and service of process is complete.” If the auto-reply is not received by the plaintiff, then
9 the plaintiff shall so notify counsel of record for the applicable Specified Defendant. No default
10 shall be entered where a defendant did not receive actual notice of the complaint and the plaintiff
11 cannot provide evidence of the auto-reply notification.

12 **C. Service on Other Defendants.** Service of potential additional Defendants other than the
13 Specified Defendants, including Amazon.com Services LLC, Campbell Soup Co., Danone S.A.,
14 Nestle S.A., and Whole Foods Market Services, Inc., shall be the subject of a future Pretrial Order.

15
16 **IT IS SO ORDERED.**

17 Dated: June 24, 2024

18
19 
20 JACQUELINE SCOTT CORLEY
21 United States District Judge
22
23
24
25
26
27
28