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New York federal courts split on whether baby food purchasers have Article III standing in toxic metals baby food class actions

by Stephanie N. Bedard

We previously wrote about the Northern District of New York's recent dismissal of a consolidated class action against Beech-Nut Nutrition Company ("Beech-Nut"), the manufacturer of baby food allegedly containing toxic levels of heavy metals, for failure to plausibly allege an economic injury-in-fact sufficient to establish Article III standing. *In re: Beech-Nut Nutrition Co. Baby Food Litig.*, --- F. Supp. 3d ----, Nos. 1:21-CV-133, etc., 2025 WL 862382 (N.D.N.Y. Mar. 19, 2025).

A week later, the Southern District of New York reached a different conclusion in another toxic metals baby food class action against a different manufacturer, Nurture LLC f/k/a Nurture, Inc. ("Nurture"), which sells baby food under the brand name Happy Baby Organics. *In re Nurture Baby Food Litigation*, No. 1:21-cv-01217-MKV, 2025 WL 918927, at *1 (S.D.N.Y. Mar. 26, 2025).

In February 2021, the Subcommittee on Economic and Consumer Policy of the House Committee on Oversight and Reform issued a congressional report about toxic metal levels in the products of the seven largest baby food manufacturers in the U.S., including Nurture. 2025 WL 918927, at *2. The congressional report found significant levels of arsenic, lead, cadmium, and mercury in certain products manufactured by Nurture. *Id.*

In 2021, purchasers of Nurture's baby food products filed a complaint alleging consumer protection claims and then moved to consolidate the action with other actions raising similar claims against Nurture. *Id.* at *4. The district court granted the motion to consolidate and ordered the filing of a consolidated class action complaint ("CCAC"). *Id.* Nurture moved to dismiss, and the court dismissed the CCAC for failure to allege subject matter jurisdiction under the Class Action Fairness Act ("CAFA"), granting leave to file an amended complaint that cured the jurisdictional objections. *Id.*

The plaintiffs then filed an Amended Consolidated Class Action Complaint ("FAC"), asserting claims for violations of various state laws, including California's Consumers Legal Remedies Act, False Advertising Law,

and Unfair Competition Law; fraudulent misrepresentation by omission under Illinois and Minnesota state law; fraud by omission under state law; and unjust enrichment under state law. *Id.* The district court found plaintiffs adequately had cured the jurisdictional defects under CAFA. *Id.*

Nurture again moved to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. *Id.* at *5. The district court found the plaintiffs had standing to assert their claims and determined that the majority of the claims survived the pleadings challenge.

First, the district court held that the plaintiff purchasers had sufficiently alleged Article III standing under a "price premium theory," which requires a showing that a defendant paid more for a product than he or she otherwise would have paid. *Id.* at *6-7. The Southern District of New York held that the plaintiffs' allegations were sufficient to plead injury in fact in the Second Circuit, distinguishing *Beech-Nut* and other cases as applying the Third Circuit's more stringent standard for pleading economic harm. *Id.* at *7-8 & n.6.

Second, the court declined to dismiss the plaintiffs' claims under the "primary jurisdiction doctrine," noting that the continued viability of the doctrine had been called into question after the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). *Id.* at *9. Regardless, the parties in the case agreed that the FDA has not yet established final action levels for toxic metals in baby food, so the court declined to defer to FDA action. *Id.* at *10.

Third, the court held that federal law did not preempt the consumers' state law claims for similar reasons: the FDA had not proposed, much less finalized, action levels for the presence of most heavy metals in baby food products. *Id.* at *10-11.

Fourth, the court considered whether the plaintiff purchasers had adequately pled an injury as to each of their claims. The court declined to dismiss the plaintiffs' state law and common law fraud claims on the pleadings, finding they adequately pleaded economic injury because they alleged that they would not have bought the baby food and/or would not have paid a premium price but for Nurture's alleged omissions. *Id.* at *12-13.

The district court did narrow the remaining claims, dismissing the unjust enrichment claims as duplicative of other claims and dismissing the California statutory False Advertising Law and Unfair Competition Law claims because the plaintiff purchasers could not show that their remedies at law were inadequate. *Id.* at *16.

Takeaway: The *Beech-Nut* and *Nurture* cases show that New York federal courts are divided on the showing required to determine whether alleged economic injuries are sufficient to establish Article III standing using a price premium theory. According to the *Nurture* decision, the decision of the *Beech-Nut* court to apply the Third Circuit's standard was "in conflict with Second Circuit precedent." *Id.* at *8 n.6.