

1 AIMEE H. WAGSTAFF (SBN 278480)  
2 WAGSTAFF LAW FIRM  
3 940 N. Lincoln Street  
4 Denver, Colorado 80203  
5 Telephone: 303.376.6360  
6 Facsimile: 303.376.6361  
7 awagstaff@wagstafflawfirm.com

8 *Co-Lead Counsel for Plaintiffs in MDL 3101*

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 IN RE: BABY FOOD PRODUCTS  
12 LIABILITY LITIGATION

Case No. 24-md-03101-JSC

13 This Document Relates To:  
14 ALL ACTIONS

15 **PLAINTIFF’S STATEMENT REGARDING DIRECT FILING ORDER**

16 Pursuant to PTO 3, the parties have met and conferred regarding a proposed Direct Filing  
17 Order. While the parties have worked to narrow the issues of dispute before the Court, one  
18 outstanding issue remains.<sup>1</sup>

19 **A. Defendants’ Proposed Limitation on Multi-plaintiff Complaints.**

20 Defendants seek to include language in the Direct Filing Order which would categorically  
21 prohibit the filing of multi-plaintiff complaints and would essentially require the dismissal of such  
22 complaints if not amended within 30 days of filing (See Ex. B, at ¶ I.B). Plaintiff opposes including  
23 this language.  
24

25  
26  
27  
28 <sup>1</sup> A copy of the Plaintiff’s Proposed Direct Filing Order is attached as Exhibit A. A copy of the  
redlined version with the language in dispute in attached as Exhibit B.

1 The Direct Filing Order should not adjudicate whether multi-plaintiff complaints are, or are  
2 not, appropriate. This is a complex issue that should not be resolved in the Direct Filing Order and  
3 Plaintiff believes that the Order should simply be silent on this issue. The language Defendants seek  
4 to add to the Direct Filing Order is as follows:

5  
6 With the exception of any complaint that includes plaintiffs who  
7 assert solely derivative claims, no multi-plaintiff complaint may be  
8 filed in MDL NO. 3101. Complaints including more than one non-  
9 derivative claimant shall not be dismissed, provide that any plaintiff  
to such complaint files an amended complaint within 30 days of being  
informed of this provision. Amendments to sever multi-plaintiff  
complaints shall not require leave of Court. (See Ex. B, at ¶ I.B).

10 Defendants seek a blanket prohibition of multi-plaintiff complaints, or if such a complaint  
11 is filed, Defendants seek to impose mandatory amendments to that complaint within 30 days. This  
12 language is simply not necessary in the Direct Filing Order, and Plaintiff believes it is not  
13 appropriate to categorically adjudicate any such issues now, without the context of the specific facts  
14 of each case. To the extent a Plaintiff wishes to file a multi-plaintiff complaint, and Defendants  
15 want to sever that complaint, that issue can be litigated at that time, under the specific facts of that  
16 situation, rather than being adjudicated in a vacuum in this Direct Filing Order. The merits and  
17 logistics of each case should be considered individually, rather than adjudicated wholesale in this  
18 Order. Any nuances and complexities of such cases should be appropriately scrutinized under the  
19 facts of that specific case, rather than in a vacuum at this time. In short, multi-plaintiff complaints  
20 (if any) that are later filed should be handled with a case-specific analysis and do not need to be  
21 included in this Order. Any procedural complexities presented by a later-filed multi-plaintiff  
22 complaint are not insurmountable and do not necessitate a prohibition (or required amendments) in  
23 this Order.  
24  
25

26 The Northern District of California does not prohibit multi-plaintiff complaints and Plaintiff  
27 believes that dealing with these cases on a case-by-case basis is a more efficient and more flexible  
28

1 approach. On the other hand, Defendants' rigid approach of banning these complaints and strictly  
2 requiring amendments within 30 days would not allow for the facts of a given plaintiff's case to be  
3 considered. And MDL Courts routinely sever multi-plaintiff complaints for various reasons,  
4 including procedural misjoinder, rather than banning such complaints up front. Indeed, Direct  
5 Filings Orders in many other recent MDLs are silent on this issue and contain no language limiting  
6 multi-plaintiff complaints. *See, e.g.* Ex C (Direct Filing Order from *In Re: Uber Technologies, Inc.,*  
7 *Passenger Sexual Assault Litigation* (N.D. CA. Hon. Charles R. Breyer).

9 Multi-plaintiff complaints may involve complex issues of venue and joinder and those issues  
10 are individualized to each case and to the extent any multi-plaintiff complaints are later filed, they  
11 are best dealt with at that time and the language Defendants seek is not necessary in this Direct  
12 Filing Order.

14 Plaintiff respectfully requests that the Court enter the Direct Filing Order *without* including  
15 Defendants' proposed limitations on multi-plaintiff complaints. If any multi-plaintiff complaints  
16 are filed, and Defendants move to serve those complaints, those issues can be swiftly and efficiently  
17 handled at that time, and should not be adjudicated in a vacuum in this Order.

18 Plaintiff respectfully requests that if the Court is not inclined strike this language from the  
19 Direct Filing Order, that the parties may submit further briefing on this issue.

21 Dated: June 13, 2024

Respectfully submitted,

**WAGSTAFF LAW FIRM**

23 By: /s/ Aimee H. Wagstaff  
24 AIMEE H. WAGSTAFF (SBN 278480)  
25 940 N. Lincoln Street  
26 Denver, Colorado 80203  
27 Telephone: 303.376.6360  
28 Facsimile: 303.376.6361  
awagstaff@wagstafflawfirm.com

*Co-Lead Counsel for Plaintiffs in MDL 3101*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ Timothy E. Jackson  
Timothy Edouard Jackson  
**Wallace Miller**  
150 N. Wacker, Suite 1100  
Chicago, IL 60606  
312-261-6193  
tej@wallacemiller.com

*Plaintiffs' Steering Committee Member*

/s/ Diane K. Watkins  
Diane K. Watkins  
**Wagstaff & Cartmell**  
4740 Grande Ave., Ste. 300  
Kansas City, MO 64112  
816-701-1140  
dwatkins@wcllp.com

*Plaintiffs' Steering Committee Member*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the United States District for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

*/s/ Aimee H. Wagstaff*

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: BABY FOOD PRODUCTS  
LIABILITY LITIGATION

Case No. 24-md-03101-JSC

**[PROPOSED]**

This Document Relates To:  
ALL ACTIONS

**PRETRIAL ORDER NO. \_\_\_\_\_**  
**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 Practs. & Prod. Liab. Litig. (No. II)*, No. MDL 3101, 2024 WL 1597351, at \*1 (J.P.M.L. Apr. 11, 2024). Class actions or claims solely for economic injury may not be directly filed in MDL 3101.

**C. Process for Direct Filing.** Directly filed complaints should *not* be filed under the MDL case number. To directly file an action, the plaintiff must open a new case and pay the standard filing fee. Filing a complaint in this District requires completion of a Civil Cover Sheet, which can be

1 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)  
2 [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  
3 counsel must identify the MDL case name and number in Section VIII of the Civil Cover Sheet to  
4 ensure the case is included as a member case of the MDL.

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

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

19 **F. Objections to Inclusion of Directly Filed Cases in MDL No. 3101.** Plaintiffs, through Co-  
20 Lead Counsel, and defendants in the applicable directly filed case, shall have 30 days to object to the  
21 inclusion of any directly filed case in MDL No. 3101. Defendants shall lodge their objection by  
22 filing a "Notice of Objection to Inclusion of Directly Filed Case" with the Court. The Notice must  
23 be served on all parties to the applicable directly filed case. Upon filing of a Notice of Objection to  
24 Inclusion of Directly Filed Case, the parties shall have 14 days to meet and confer. If the parties are  
25 able to resolve the objection, defendants shall file and serve a notice of withdrawal of the objection.  
26 If the parties are unable to resolve the objection, the plaintiff shall have 30 days to refile the action  
27 in an appropriate District Court. If the action is refiled within 30 days, defendants agree not to raise  
28



1 as a defense any statute of limitations that lapsed between the day of filing and the day of refiling.  
2 Defendants expressly retain all statute of limitations defenses that existed prior to the initial filing.

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

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

19 **I. Choice of Law.** The fact that a case was filed pursuant to this Order will have no impact on  
20 choice of law, including the statute of limitations, that would otherwise apply to an individual case  
21 had it been filed in another district court and transferred to this Court pursuant to 28 U.S.C. § 1407.  
22 This Paragraph does not limit or foreclose plaintiffs’ rights to amend their venue selection as  
23 permitted under the law or this Order. The parties’ agreement to this Order shall also have no effect  
24 on the substantive law applicable to a plaintiff’s case.

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

27 **UNITED STATES DISTRICT COURT**  
28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>IN RE: BABY FOOD PRODUCTS LIABILITY LITIGATION</p> <hr/> <p>This Document Relates To:</p> <p>[Plaintiff's name], <i>Plaintiff,</i> v. [List of all Defendants] <i>Defendants.</i></p>
--

Case No. 24-MD-3101-JSC  
MDL 3101  
Hon. Jacqueline Scott Corley  
**COMPLAINT AND JURY DEMAND**  
**Case No. [INSERT CASE NUMBER]**

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

Plaintiff(s) file this Complaint pursuant to CMO No. \_\_\_\_, and are to be bound by the rights, protections, and privileges, and obligations of that CMO and other Order of the Court. Further, in accordance with CMO No. \_\_\_\_, Plaintiff(s) hereby designate the United States District Court for the [District and Division] as Plaintiff's designated venue ("Original Venue").

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

- Plaintiff currently resides in \_\_\_\_\_ (City/State);
- Plaintiff purchased and consumed Defendant(s) products in \_\_\_\_\_ (City/State).
- The Original Venue is a judicial district in which Defendant \_\_\_\_\_ resides, and all Defendants are residents of the State in which the district is located (28 U.S.C. 1391(b)(1)).
- 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)):  
\_\_\_\_\_.
- There is no district in which an action may otherwise be brought under 28 U.S.C. 1391, 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)).
- Other reason (please explain): \_\_\_\_\_.

1  
2       **L. Electronic Filing.** Prior to filing a complaint in this District pursuant to this Order, the  
3 filing attorney must register for an/or have a Northern District of California ECF user ID and  
4 password.

5       **II. Service of Process**

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

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

- 19               • Beech-Nut Nutrition Company: [Will supplement]  
20               • Gerber Products Company: [GerberBabyFoodMDL3101Service@whitecase.com](mailto:GerberBabyFoodMDL3101Service@whitecase.com)  
21               • Hain Celestial Group, Inc.: [HainNoticeofService@cov.com](mailto:HainNoticeofService@cov.com)  
22               • Nurture, LLC: [NurtureBabyFoodMDL3101Service@us.dlapiper.com](mailto:NurtureBabyFoodMDL3101Service@us.dlapiper.com)  
23               • Plum PBC: [PlumMDLservice@dechert.com](mailto:PlumMDLservice@dechert.com)  
24               • Sprout Foods, Inc.: [SproutBabyFoodMDL3101Service@grsm.com](mailto:SproutBabyFoodMDL3101Service@grsm.com)  
25               • Walmart, Inc.: [Will supplement]

26 The subject line of the email should include the caption and civil action number of the case being  
27 served. The Specified Defendants shall send a responsive email via auto-reply accepting service and  
28

1 include the statement: “Service of this responsive email shall serve as proof that Defendant is  
2 waiving service as set out in CMO No. \_\_\_\_, has received actual notice of the legal action brought  
3 against it, and service of process is complete.” If the auto-reply is not received by the plaintiff, then  
4 the plaintiff shall so notify counsel of record for the applicable Specified Defendant. No default  
5 shall be entered where a defendant did not receive actual notice of the complaint and the plaintiff  
6 cannot provide evidence of the auto-reply notification.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: BABY FOOD PRODUCTS  
LIABILITY LITIGATION

Case No. 24-md-03101-JSC

**[PROPOSED]**

This Document Relates To:  
ALL ACTIONS

**PRETRIAL ORDER NO. \_\_\_\_\_**  
**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 Practs. & 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 assert solely derivative claims, no multi-plaintiff complaint may be directly filed in MDL No. 3101. Complaints including more than one non-derivative claimant shall not be dismissed, provided that any plaintiff to such complaint files an amended complaint within 30 days of being informed of this provision. Amendments to sever~~

1 ~~multi plaintiff complaints shall not require leave of Court.~~ Class actions or claims solely for  
 2 economic injury may not be directly filed in MDL 3101.

Commented [TJ1]: This is the language that is disputed.

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

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

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

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

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

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

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

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



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

3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN FRANCISCO DIVISION**

6 IN RE: BABY FOOD PRODUCTS  
7 LIABILITY LITIGATION

Case No. 24-MD-3101-JSC

MDL 3101

8 This Document Relates To:

Hon. Jacqueline Scott Corley

9 [Plaintiff's name],

**COMPLAINT AND JURY DEMAND**

10 *Plaintiff,*

**Case No. [INSERT CASE NUMBER]**

11 v.

[List of all Defendants]

12 *Defendants.*

13  
14 **K. Filing Under this Order.** When utilizing and invoking this Order to file a case directly in  
15 this MDL, Plaintiff shall assert the following paragraph in their complaint, as it relates to  
16 allegations of venue:

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

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

23 \_\_\_\_Plaintiff currently resides in \_\_\_\_\_ (City/State);

24 \_\_\_\_Plaintiff purchased and consumed Defendant(s) products in \_\_\_\_\_ (City/State).

25 \_\_\_\_The Original Venue is a judicial district in which Defendant \_\_\_\_\_ resides, and all  
26 Defendants are residents of the State in which the district is located (28 U.S.C. 1391(b)(1)).

1        \_\_\_The Original Venue is a judicial district in which a substantial part of the events or  
2 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  
6 to the Court’s personal jurisdiction with respect to this action (28 U.S.C. 1391 (b)(3)).

7        \_\_\_Other reason (please explain): \_\_\_\_\_.

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: [Will supplement]
- 26        • Gerber Products Company: [GerberBabyFoodMDL3101Service@whitecase.com](mailto:GerberBabyFoodMDL3101Service@whitecase.com)
- 27        • Hain Celestial Group, Inc.: [HainNoticeofService@cov.com](mailto:HainNoticeofService@cov.com)
- 28        • Nurture, LLC: [NurtureBabyFoodMDL3101Service@us.dlapiper.com](mailto:NurtureBabyFoodMDL3101Service@us.dlapiper.com)

- 1 • Plum PBC: [PlumMDLservice@dechert.com](mailto:PlumMDLservice@dechert.com)
- 2 • Sprout Foods, Inc.: [SproutBabyFoodMDL3101Service@grsm.com](mailto:SproutBabyFoodMDL3101Service@grsm.com)
- 3 • Walmart, Inc.: [Will supplement]

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.

# **EXHIBIT C**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Case No. 3:23-md-03084-CRB

**IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION**

**STIPULATED ~~[PROPOSED]~~  
PRETRIAL ORDER NO. 6: DIRECT  
FILING**

\_\_\_\_\_  
This Document Relates to:  
  
ALL ACTIONS

**I. SCOPE OF ORDER**

This Order shall govern all actions in the above-captioned MDL proceeding to the extent set forth herein that are directly filed in this District as a member case of the MDL after the date of this Order.

**II. DIRECT FILING OF ACTIONS INTO THE MDL**

**A. Direct Filing.** To eliminate potential delays associated with transfer to this Court of actions filed in or removed to other federal district courts, and to promote judicial efficiency, any Plaintiff who alleges that Uber paired them with a driver who sexually assaulted them before, during, or after a trip, and the alleged incident occurred in the United States, may, subject to the

1 provisions set forth below, file his or her action against one or more Defendants hereto directly in  
2 this District as a member case of the MDL rather than in the federal district court in which the  
3 Plaintiff would have filed their case in the absence of this direct filing order.

4 **B. Pretrial Proceedings Only; No *Lexecon* Waiver.** Each action filed directly in this  
5 District will be deemed related to and become a member case in the MDL for pretrial proceedings  
6 only, consistent with the JPML’s October 4, 2023 Transfer Order (ECF No. 1). Plaintiffs’ and  
7 Defendants’ agreement to this Order does not constitute a waiver of any party’s rights under  
8 *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). However, nothing  
9 in this Order shall preclude the parties from agreeing to such waivers in the future. Further, for  
10 avoidance of doubt, any case directly filed into the MDL shall be subject to the provisions of all  
11 prior or subsequent orders of the Court.

12 **C. Designated Forum.** Each case filed directly in this District as a member case of the  
13 MDL must identify the federal district court in which the Plaintiff would have filed his or her case  
14 in the absence of direct filing. This designation shall not, standing alone, constitute a  
15 determination by this Court that jurisdiction or venue is proper in the designated forum. Nothing  
16 in this order precludes Defendants from moving to transfer a member case from either the venue  
17 in which the case was filed or the venue the Plaintiff designated following the direct filing of their  
18 complaint in this MDL. If at the completion of all pretrial proceedings, and subject to any prior  
19 determinations by the Court as to the proper forum for a particular action, and subject to any  
20 agreement that may be reached concerning a waiver of the requirements for transfer pursuant to  
21 *Lexecon*, this Court will transfer such cases to a federal district court of proper venue as defined  
22 by 28 U.S.C. § 1391. The parties reserve all rights with respect to the proper venue for remand  
23 and any post-remand jurisdictional, venue, or forum challenges or motions, including pursuant to  
24 28 U.S.C. § 1404(a).

25 **D. Choice of Law.** Filing an action as a member case of the MDL pursuant to this Order  
26 will not determine the applicable choice of law, including the choice of law for any of the claims  
27 in the action and for statute of limitations purposes. The parties’ agreement to this Order shall not  
28 constitute a waiver of or agreement to the application of any choice of law principles or

1 substantive choice of law to a particular Plaintiff's action. The fact that an action was filed in this  
2 District as a member case of the MDL pursuant to this Order will have no impact on choice of  
3 law. Choice of law issues are reserved and shall be briefed, as appropriate, at a later date.

4 **E. Electronic Filing of Complaints.** All complaints must be filed electronically. Filing  
5 of a complaint in this District requires the completion of a Civil Cover Sheet which can be found  
6 here: <https://www.cand.uscourts.gov/forms/civil-forms/>. When filing a complaint in this District  
7 pursuant to this Order, Plaintiff's counsel must identify the MDL Case name and number in  
8 Section VIII of the Civil Cover Sheet to ensure the case is included as a member case of the  
9 MDL. Before any Plaintiff's attorney files a complaint in this District pursuant to this Order, that  
10 attorney must become a Northern District of California ECF User and must be assigned a  
11 Northern District of California ECF login name and password in accordance with Pretrial Order  
12 No. 1 entered on October 6, 2023. All forms and instructions may be found on the Court's  
13 website at [www.cand.uscourts.gov/cm-ecf](http://www.cand.uscourts.gov/cm-ecf).

14 **F. Attorney Admission.** Immediately after filing a complaint in this District pursuant to  
15 this Order, counsel for Plaintiffs who are not admitted to practice in the Northern District of  
16 California must file an application to be admitted *pro hac vice* in accordance with instructions  
17 provided in Pretrial Order No. 1 entered on October 6, 2023, as well as Northern District of  
18 California Civil Local Rule 11-3. The *pro hac vice* application shall be filed only in the  
19 underlying member case, and not in the main MDL Docket. Any attorney whose *pro hac vice*  
20 application is granted in a member case has permission to appear in MDL proceedings and file in  
21 the main MDL Docket. Once a counsel is admitted *pro hac vice* for any case in this litigation, that  
22 admission will suffice for any future cases filed in this MDL. Defendants' counsel who have  
23 been admitted *pro hac vice* in this MDL shall be deemed admitted *pro hac vice* in any case  
24 directly filed in this Court pursuant to this order.

25 **G. Service of Process.** For Complaints that are properly filed in, removed to, or  
26 transferred to this MDL, Uber Technologies, Inc., Rasier, LLC, and Raiser-CA, LLC agree to  
27 waive formal service of summons pursuant to Rule 4 of the Federal Rules of Civil Procedure.  
28 Service upon these entities will be deemed complete upon (1) providing copies of the Complaint,

1 Summons, Civil Cover Sheet, and this Order to the following email address: MDL3084-service-  
2 Uber@paulweiss.com; and (2) the filing of a Notice of the Filing of a New Action on the MDL  
3 docket (3:23-md-03084-CRB) within 7 days of service via email.

4 Defendants' email system will generate an automated response to the sender upon receipt  
5 of an e-mail to the designated address. The automated response will confirm receipt of the e-mail  
6 and shall, together with the filing of a Notice of the Filing of a New Action, constitute proof of  
7 service upon Uber Technologies, Inc., Rasier, LLC, and Raiser-CA, LLC, respectively.

8 Defendants will not otherwise respond to emails sent to the above e-mail address. Plaintiffs shall  
9 make proof of electronic service to the Court as required by Rule 4(1) of the Federal Rules of  
10 Civil Procedure. For all Complaints filed in, removed to, or transferred to this MDL: (i) all  
11 requests for issuance of summons shall be made in the underlying member case, and not through  
12 the MDL case; (ii) all proofs of service shall be filed only in the underlying member case and not  
13 in the MDL Docket. Acceptance of electronic service shall not constitute a waiver of any defense.

14 If any Plaintiff does not receive an automated response after serving MDL3084-service-  
15 Uber@paulweiss.com, that Plaintiff or their attorney may contact Defendants' counsel at uber-  
16 mdl-liaison-counsel@paulweiss.com and copy Plaintiffs' Liaison Counsel at slondon@lchb.com.

17 **H. Filing Fees.** Internet credit card payments shall be required for all electronically filed  
18 complaints and made online through pay.gov. Plaintiff's counsel will be prompted to pay the  
19 required filing fee. Information regarding filing fees may be found at  
20 <https://www.cand.uscourts.gov/ecf/payments>.

21 **I. Response to Complaint.** Defendants need not move, plead, or otherwise respond to  
22 any Complaint directly filed in this District as a member case of the MDL until so ordered by the  
23 Court.

24  
25 **IT IS SO ORDERED.**

26 Dated: January 2, 2024



HON. CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE