

NO. _____
IN THE SUPREME COURT OF ILLINOIS

DESTIN JUPITER and DANA JUPITER,
et al.,

Plaintiffs,

v.

**MEAD JOHNSON & COMPANY, LLC,
MEAD JOHNSON NUTRITION
COMPANY, ABBOTT LABORATORIES,**

Defendants.

Madison County No: 2021-L-000560

MOTION TO TRANSFER AND CONSOLIDATE CASES FOR PRE-TRIAL PURPOSES
ONLY UNDER ILLINOIS SUPREME COURT RULE 384

Pursuant to Illinois Supreme Court Rule 384, Plaintiffs in the above-captioned actions, by their attorneys, move this court for entry of an order: (1) transferring for consolidated pretrial proceedings (and only for pretrial proceedings) the above-caption actions and all other pending actions alleging that infant formula and/or fortifier products sold by Defendants Abbott Laboratories, Mead Johnson & Company, LLC, and/or Mead Johnson Nutrition Company caused premature infants to develop necrotizing enterocolitis (“NEC”), a life-altering and potentially deadly disease, and (2) designating the first-filed case in Madison County as the lead case for such consolidated pretrial proceedings and order that the Hon. Dennis R. Ruth preside over such consolidated proceedings.¹ In support of this motion, Plaintiffs submit a supporting record and state as follows.

¹ Plaintiffs will move for “tag-along” transfer and consolidation of any later-filed cases involving the same counsel and claims.

Introduction and Summary of Argument

1. There are now multiple cases, in different counties in Illinois, seeking relief for injuries caused by Defendants' infant nutrition products. This situation warrants relief by this Court under Rule 384 to eliminate duplicative discovery and pretrial litigation, prevent inconsistent pretrial rulings, promote judicial economy, and conserve judicial resources. Further, coordination will serve the convenience of the parties and witnesses by allowing the parties to better coordinate document discovery and depositions of key witnesses. In addition, because a Rule 384 order is intended to achieve the benefits of having a single judge preside over all related actions and to preclude later attempts to defeat consolidation (*e.g.*, by substitution-of-judge motions) Plaintiffs request the Court designate *Jupiter*, the first-filed action in Madison County, as the lead case for all such actions.

Background

2. The above-captioned actions arise out of the injuries suffered by premature infants (collectively, the "Injured Infants") who were given Defendants' cow's milk-based infant feeding products. Defendants' products caused the Injured Infants to develop NEC, leading to serious long-term health consequences or death.

3. NEC is a devastating disease that develops when harmful bacteria breach the walls of the intestine, causing portions of it to become inflamed and, often, to die. Once NEC develops, the condition can progress rapidly from mild feeding intolerance to systemic and fatal sepsis. Up to 30 percent of NEC-diagnosed infants die from the disease.

4. Preterm and low-birth-weight infants are especially susceptible to NEC because of their underdeveloped digestive systems. Extensive scientific research, including numerous randomized controlled trials, has confirmed that cow's milk-based feeding products cause NEC in

preterm and low-birth-weight infants, which in turn may lead to other medical complications, surgeries, long-term health problems, and death.

5. Plaintiffs’ claims against Defendants include strict liability for design defect, strict liability for failure to warn, negligence, intentional misrepresentation, and negligent misrepresentation.

6. The 33 actions in which Plaintiffs filed those claims are the following:

	<u>Name and Case No.</u>	<u>County</u>	<u>Date Filed</u>
1.	<i>Jamie Simmons v. Abbott Laboratories, Inc.</i> , 2021-L-00000144 (Complaint, SR-000001)	Lake	2/18/2021
2.	<i>Destin Jupiter, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000560 (Ruth) (Complaint, SR-000034)	Madison	5/7/2021
3.	<i>Takia Smith v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000571 (Ruth)	Madison	5/10/2021
4.	<i>Angela Ogle and Desiree Ogle v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000588 (Threlkeld)	Madison	5/14/2021
5.	<i>Jahaana Dillard, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000621 (Ruth)	Madison	5/24/2021
6.	<i>Elizabeth Miller, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000662 (Smith)	Madison	6/3/2021
7.	<i>Lisa Bagnall v. Abbott Laboratories, Inc.</i> , 2021-L-000680 (Ruth)	Madison	6/11/2021
8.	<i>Emma Baker, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000738 (Threlkeld)	Madison	6/25/2021
9.	<i>Brandy Weaver v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000767 (Smith)	Madison	7/1/2021
10.	<i>Valerie Flores, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-00804 (Smith)	Madison	7/12/2021
11.	<i>Tikeshia Whatley and Ze’Marques Elder v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000823 (Smith)	Madison	7/14/2021

12.	<i>Draegan Chattam, et al. v. Abbott Laboratories, et al.</i> , 2021-L-000874 (Threlkeld)	Madison	7/26/2021
13.	<i>Youlisha Bundy, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000893 (Threlkeld)	Madison	7/28/2021
14.	<i>Latrenda Leslie v. Abbott Laboratories, et al.</i> , 2021-L-000894 (Smith)	Madison	7/29/2021
15.	<i>Jennifer Cherry, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-000986 (Ruth)	Madison	8/13/2021
16.	<i>Larhonda Turner and Alicia Wyrick v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001042 (Ruth)	Madison	8/27/2021
17.	<i>Ariana Adorno v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001060 (Smith)	Madison	9/1/2021
18.	<i>Laura Stinson v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001064 (Threlkeld)	Madison	9/2/2021
19.	<i>Mercedes Newell v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001065 (Ruth)	Madison	9/2/2021
20.	<i>Brittany Walker, et al. v. Abbott Laboratories, et al.</i> , 2021-L-001067 (Smith)	Madison	9/2/2021
21.	<i>Shavonda Brantley, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001077 (Ruth)	Madison	9/3/2021
22.	<i>Jennifer Mahoney, et al v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001158 (Ruth)	Madison	9/24/2021
23.	<i>Juanita Jolly, et al. v. Abbott Laboratories</i> , 2021-L-001169 (Threlkeld)	Madison	9/28/2021
24.	<i>Katelyn LaCour v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001174 (Smith)	Madison	9/29/2021
25.	<i>Nakia Taylor v. Abbott Laboratories, et al.</i> , 2021-L-001186 (Ruth)	Madison	9/30/2021
26.	<i>Natasha Thomas, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001209 (Ruth)	Madison	10/5/2021
27.	<i>Amanda Toles v. Mead Johnson & Company, LLC, et al.</i> , 21-L-0981 (Kolker) (Complaint, SR-000066)	St. Clair	10/12/2021

28.	<i>Kristen Brunson, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001237 (Ruth)	Madison	10/13/2021
29.	<i>Jasmine Watson, on her own behalf, and as representative of the estate of Chance Dean</i> , 2021-L-001032 (Complaint, SR-000091)	St. Clair	10/28/2021
30.	<i>Jessica Hirschenhofer, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001318 (Ruth)	Madison	10/29/2021
31.	<i>Steven Binkowitz, et al. v. Mead Johnson & Company, LLC, et al.</i> , 2021-L-001397	Madison	11/19/2021
32.	<i>Gabrielle Armstrong v. Mead Johnson & Company, LLC, et al.</i> , 2021-L0001484	Madison	12/10/2021
33.	<i>Shawwntevia Wells, et al. v. Mead Johnson & Company, LLC, et al.</i> , Case Number Pending	Madison	12/13/2021

7. Thirty of those thirty-three cases were filed in Madison County. The first-filed complaint in Madison County is *Destin Jupiter and Dana Jupiter, et al. v. Abbott Laboratories, et al.*, which was filed on May 7, 2021 and assigned to the Hon. Dennis R. Ruth. Before the first case management conference, multiple other complaints were filed in Madison County asserting substantially similar claims against Defendants. The Court ordered the parties to those cases to meet and confer regarding preliminary procedural and discovery issues.

8. Pursuant to that order and in accordance with 735 ILCS 5/2-1006, the parties negotiated a Joint Motion to Reassign and Consolidate related cases for pretrial purposes before the Hon. Dennis R. Ruth. *See* SR-000118. The parties to the Joint Motion agreed that the related cases would retain their original judicial assignment for trial, unless the parties later requested a special trial assignment to one or more particular judges. On August 16, 2021, the court granted that Joint Motion. *See id.*

9. Supreme Court Rule 218 conferences were held in the *Jupiter* case on September 3, 2021 and September 14, 2021 and an individual trial date of March 20, 2023 was entered for

the *Jupiter* case. The court, however, directed the parties to think comprehensively regarding how to manage all the related cases pending before it.

10. Plaintiffs and Defendants therefore negotiated a Case Management Order to guide all of the cases pending in Madison County which: (1) establishes a procedure for the orderly filing of Plaintiff Profile Forms, (2) provides for the creation of a Discovery Pool of 30 Madison County plaintiffs to be selected by the parties and from which the parties will ultimately select the first five Madison County cases to be tried, (3) sets the dates for the first five Madison County trials, and (4) establishes deadlines for dispositive and *Frye* motions, among other things. The Court entered that order on November 15, 2021. *See* SR-000122.

11. In addition, Plaintiffs and Defendants have negotiated foundational discovery documents applicable to all cases currently pending in Madison County, including a stipulated order regarding the disclosure of privileged information (CMO #2), a protocol for the production of electronically stored information (CMO #3), and a protective order governing the production and use of confidential and highly confidential information. *See* SR-000128, SR-000135, SR-000171. The parties in Madison County began serving discovery in late June and the exchange of relevant documents has already begun.

12. Of the three cases filed outside Madison County, only one was filed in advance of the *Jupiter* case. That case, *Simmons v. Abbott Laboratories*, is the only case on file in Lake County.

Discussion

13. The above-captioned cases, currently pending in different counties, should be transferred for consolidated pretrial proceedings under Rule 384 to eliminate duplicative discovery and pretrial litigation, prevent inconsistent pretrial rulings, promote judicial economy, and

conserve judicial resources. Further, coordination will serve the convenience of the parties and witnesses by allowing the parties to better coordinate document discovery and depositions of key witnesses. To facilitate the efficient handling of these cases and to prevent motions or maneuvers to undermine the purpose of a Rule 384 order, Plaintiffs also request that the Court designate the *Jupiter* action, which is the first-filed action in Madison County, as the lead action for these cases given its advanced posture.

14. Rule 384(a) provides that “[w]hen civil actions involving one or more common questions of fact or law are pending in different judicial circuits” and this Court “determines that consolidation would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions,” the Court may “transfer all such actions to one judicial circuit for consolidated pretrial, trial, or post-trial proceedings.”

15. The multiple cases, currently pending in three different counties, present a quintessential example of the circumstances in which relief under Rule 384 is warranted. The above-captioned cases all present common questions of law and fact concerning the risks of Defendants’ infant formula products, the warnings given by Defendants concerning those products, and the manner in which Defendants marketed and promoted their products. Pretrial coordination will eliminate duplicative written and deposition discovery of Defendants relating to those matters. What’s more, ensuring that all discovery proceeds according to the same ESI protocol and under the same protective order—both of which have already been negotiated and entered in the *Jupiter* action—will prevent the need to re-produce or re-classify documents in individual cases pending before different judges.

16. Pretrial coordination will also aid in managing the significant written discovery Plaintiffs expect will be directed to them. A single template Plaintiff Profile Form and Plaintiff

Fact Sheet—like those developed and contemplated, respectively, in the *Jupiter* action—will ensure that Plaintiffs can efficiently assemble the medical and other records likely to be at issue.

17. Consolidation of these cases for pretrial purposes would also promote the just and efficient administration of claims and issues raised and avoid potentially inconsistent rulings and relief that will effect the course of this litigation from the beginning—such as the appropriate application of discovery rule tolling to claims like those at issue, whether the learned intermediary doctrine is applicable to these claims, and even whether or which claims ought to be dismissed.

18. Indeed, as Abbott Laboratories, one of the Defendants in this case, pointed out in an earlier motion to this Court to consolidate other litigation, courts have consistently found pretrial coordination to be appropriate in similar cases:

“[T]he Supreme Court Rules Committee has noted [that] Rule 384 is based on 28 U.S.C. § 1407, the analogous federal statute governing multidistrict litigation. [Ill. Sup. Ct. R. 384 at Committee Comments.] The federal Judicial Panel on Multidistrict Litigation has recognized that multi-forum cases involving common questions regarding the “development, testing, manufacturing, and *marketing*” of pharmaceutical products are appropriate candidates for pretrial consolidation. *In re Accutane Prods. Liab. Litig.*, 343 F. Supp. 2d 1382 (J.P.M.L. 2004) (emphasis added); *see also, e.g., In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357 (J.P.M.L. 2008) (consolidating actions regarding the safety profile of a drug and the adequacy of the drug manufacturer’s warnings); *In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378 (J.P.M.L. 2008) (consolidating actions involving common questions about the use and marketing of two pharmaceutical drugs); *In re Paxil Prods. Liab. Litig.*, 296 F. Supp. 2d 1374 (J.P.M.L. 2003) (consolidating actions in which plaintiffs alleged that defendants knew of the side-effects of a drug and concealed, misrepresented, or failed to warn of them).

Defendants’ Explanatory Suggestions in Support of their Motion to Transfer and Consolidate Pursuant to Supreme Court Rule 384, *The People of the State of Illinois and Kankakee County, Illinois v. Purdue Pharma, et al.*, SR-000152 at 3; *see also* Order Granting Consolidation, *The People of the State of Illinois and Kankakee County, Illinois v. Purdue Pharma, et al.*, SR-000166.

19. So too, here. Although Defendants’ infant formula products are not subject to the same federal regulations as pharmaceuticals, the claims in this litigation will involve similar factual and legal questions to those presented in a pharmaceutical litigation.

20. In prior Rule 384 proceedings, the Court has sometimes needed to clarify that its orders were intended to have a single judge preside over all affected cases, so that a party could not defeat the purpose of consolidation by filing a substitution-of-judge motion. *See Bemis v. State Farm Fire & Casualty Co.*, 919 N.E. 2d 349, No. 108283 (Ill. Jan 14, 2010) (SR-000170). To avoid any need for such clarification here, Plaintiffs request that the Court designate *Jupiter*, the first-filed Madison County case, as the “lead case” for all cases consolidated for pretrial purposes asserted related claims and order that the Hon. Dennis R. Ruth preside over such consolidated proceedings.

Conclusion

For the foregoing reasons, the Court should enter an order: (1) transferring for consolidated proceedings all actions . . . and (2) designating the *Jupiter* case as the lead case for such consolidated proceedings.

Dated: December 14, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via USPS on December 14, 2021

to the following:

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Additionally, I hereby certify that a copy of the foregoing was and served upon the following attorneys on December 14, 2021 via email ONLY:

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