BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: ABBOTT LABORATORIES, ET AL., PRETERM INFANT NUTRITION PRODUCT LIABILITY LITIGATION	**MDL NO. 3026**

MEAD JOHNSON & COMPANY LLC AND MEAD JOHNSON NUTRITION COMPANY'S RESPONSE IN SUPPORT OF ABBOTT LABORATORIES AND ABBOTT LABORATORIES, INC.'S MOTION TO TRANSFER RELATED CASES FOR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

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I. INTRODUCTION

Mead Johnson & Company, LLC, and Mead Johnson Nutrition Company (collectively, Mead Johnson) are co-defendants with Abbott Laboratories and Abbot Laboratories, Inc. (collectively, Abbott) in dozens of lawsuits pending in federal and state courts around the country. For all the reasons Abbott has cogently articulated, Mead Johnson supports Abbott's Motion to Transfer Related Cases for Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407. *See* ECF No. 1-1. Mead Johnson also supports Abbott's request to consolidate these cases before the Hon. Stefan R. Underhill in the District of Connecticut, given Chief Judge Underhill's significant experience managing both multidistrict litigations generally, and these preterm infant nutrition cases in particular. *Id*.

All of the cases at issue involve the most fragile of infants—those born very or extremely prematurely—who allegedly developed necrotizing enterocolitis (NEC), a gastrointestinal condition that emerges in roughly 8% of infants in neonatal intensive care units ("NICUs"), and is a leading cause of death among these tiny babies. Compounding the challenges these severely preterm infants already face, self-styled "Baby Formula attorneys" have now begun filing an avalanche of lawsuits which target these babies' access to critical nutritional products. These suits allege that premature infants should not have received the nutritional products that their doctors, nurses, and dieticians determined would best meet their needs. Instead, Plaintiffs argue that Defendants' products, premature infant formulas and human milk fortifiers which contain cow's milk protein, caused preterm babies to develop NEC. The attorney advertising campaigns fueling these lawsuits grossly misstate the relevant science and medical positions, and openly encourage parents to refuse doctors' recommendations regarding infant nutritional needs. *See, e.g.*, WGN Radio Interview with Kaveny + Kroll (posted Nov. 7, 2021), available at https://wgnradio.com/karen-conti/personal-injury-attorney-elizabeth-kaveny-on-legal-issues-

with-premature-babies/ (last visited Feb. 8, 2022) (accusing Defendants of providing preterm formula to hospitals in an attempt to cause premature babies to be "hooked, almost like cocaine"); Levin, Rojas, Camassar, & Reck, LLC, *Baby Formula linked to Necrotizing Enterocolitis and Death in Preemies*, YouTube (Sept. 7, 2021), *available at* https://www.youtube.com/watch?v=iltQ72zWxQA (last accessed Feb. 7, 2022) (claiming that peer-reviewed medical studies show baby formula is "extremely dangerous").

Mead Johnson categorically denies the allegations contained within these lawsuits and misleading advertisements. Sadly, NEC can develop in infants whether they are fed their own mother's breastmilk, human donor milk, infant formula, human milk fortifier, or some combination of all of these.

To date, Mead Johnson has been named in a total of 10 federal actions (8 of which include Abbott as a co-defendant), and in approximately 43 state cases (all of which include Abbott as a co-defendant). The federal cases against Mead Johnson have been filed in a smattering of locations around the country, including both coasts, the Midwest, and the deep South. All but one of the federal cases have been filed in or since November 2021. Mead Johnson has not even been served in every federal case in which it is named. Discovery has commenced in only one federal case, and most are now stayed as a result of Abbott's MDL Motion.

All but one of the state actions against Mead Johnson have been filed in Illinois. However, virtually none of these Plaintiffs are Illinois citizens, and only one Illinois action involves an infant who allegedly consumed a Mead Johnson product within the Illinois border. Plaintiffs have apparently filed cases in Illinois under the mistaken beliefs (1) that Mead Johnson is subject to general jurisdiction in Illinois—it is not, and (2) that by joining multiple plaintiffs,

and naming Abbott in every case, they can prevent removal under 28 U.S.C. §1441(a). Plaintiffs are wrong. In virtually all of these cases, Mead Johnson has filed, or will file, motions to dismiss based on lack of personal jurisdiction and/or *forum non conveniens.* If Mead Johnson prevails on these motions, Plaintiffs' state actions will likely be refiled in numerous federal courts around the country in the states where the infants actually received Mead Johnson's products.

For the reasons set forth in Abbott's Motion, the federal preterm infant nutrition lawsuits filed against Abbott and Mead Johnson satisfy the requirements of § 1407 in that they present common questions of fact (as well as common questions of law), and centralization would significantly reduce discovery burdens and duplicative litigation. Mead Johnson therefore supports (1) Abbott's Motion for an order centralizing before the Hon. Stefan R. Underhill in the District of Connecticut the eight federal cases in which Abbott and Mead Johnson have been joined as co-defendants (ECF Nos. 1, 16, and 38); (2) consolidating the two tag along cases in which only Mead Johnson is named (ECF No. 11); and (3) consolidating any subsequent cases involving similar facts and claims in which Abbott and/or Mead Johnson are sued.

II. FACTUAL AND PROCEDURAL BACKGROUND

Premature babies have unique and complex nutritional needs that are overseen by neonatologists and other trained healthcare professionals serving in neonatal intensive care units around the country. Every day, these trained medical professionals recommend preterm formulas and fortifiers in order to maximize the chance that premature babies will grow and thrive despite their severely incomplete development. Frequently, and especially when breastmilk is either not available, or requires supplementation to support healthy infant growth, neonatologists recommend that premature babies receive supplemental nutrition consisting of premature infant formulas or human milk fortifiers. These products contain ingredients derived from cow's milk, and provide additional calories and nutrients to permit preterm infants to grow as they would *in*

utero. These products also allow medical staff to titrate the calories, protein, minerals, and vitamins that preterm infants need as their digestive systems and caloric needs mature. The Food and Drug Administration has reviewed and approved Mead Johnson's products, and found them safe and suitable for preterm infants. *See* 21 U.S.C. § 350a(b)(1) (outlining the quality requirements for infant formula, which must be "consistent with current scientific knowledge") and 21 C.F.R. §§ 106-7 (outlining the quality factors and other regulations applicable to infant formula).

Despite the safety of and need for these products, Plaintiffs attempt to blame them for causing NEC. In reality, these products are life-sustaining and vital for premature babies. Not all mothers can or will supply breast milk, and even when they can, and even when donor milk may be available for supplementation, premature infant formulas and fortifiers play a vital role in neonatal care.

Plaintiffs first began filing these cases over two years ago in the District of Connecticut in *Ferry v. Mead Johnson & Co., et al.*, 3:20-cv-00099-SRU (D. Conn. Apr. 1, 2021) (Underhill, J.). Eager to exploit the tragedy of NEC, numerous law firms have now joined the fray, and are engaged in the widespread advertising and filing of nearly identical lawsuits in federal courts around the country, as well as in Madison County, Illinois.

Twenty-five different law firms have now brought a total of approximately 23 federal cases and approximately 47 state cases relating to roughly 153 premature infants. In December, the Illinois state court Plaintiffs filed a motion asking the Illinois Supreme Court to centralize all state cases in Madison County, which Mead Johnson opposed because none of the cases against Mead Johnson belong in Illinois. Mead Johnson argued that centralization was premature until the Circuit Court ruled on its motions to dismiss. On February 8, 2022, the Illinois Supreme

Court ruled in favor of Mead Johnson and denied Plaintiffs' motion. Order, *In re: Jupiter v. Mead Johnson & Company, LLC*, 2022 IL 127992 (Ill. Feb. 8, 2022).

Currently, plaintiffs have filed ten federal lawsuits against Mead Johnson in seven federal districts:

1) **Middle District of Florida**

- *Sanchez v. Abbott Laboratories, Inc. et al.,* 6:21-cv-00502 (M.D. Fla. Filed Mar. 18, 2021), assigned to Hon. Roy B. Dalton, Jr. ***Status:*** The court denied the defendants' motion to dismiss on August 2, 2021. Trial set for January 2023. A Case Management Order has been entered, and discovery has commenced. Stay entered pending MDL briefing.

2) **Northern District of Florida**

- *Crawford v. Mead Johnson & Company LLC, et al.,* 21-cv-00201 (N.D. Fla. Filed Dec. 10, 2021), assigned to Hon. Allen C. Winsor. ***Status:*** No Case Management Order has been entered. Discovery has not commenced. Trial date has not been set. Stay entered pending MDL briefing.

3) **Central District of California**

- *Littles v. Abbott Laboratories, Inc., et al.*, 5:21-cv-02146 (C.D. Cal. Filed Dec. 27, 2021), assigned to Hon. Jesus G. Bernal. ***Status:*** No trial date has been set. No Case Management Order has been entered. Discovery has not commenced. Stay entered pending MDL briefing.

- *Richardson v. Abbott Laboratories, Inc., et al.*, 2:21-cv-09932 (C.D. Cal. Filed Dec. 27, 2021), assigned to Hon. Jesus G. Bernal. ***Status:*** No trial date has been set. No Case Management Order has been entered. Discovery has not commenced. Stay entered pending MDL briefing.

4) **Northern District of Illinois**

- *Grosshuesch v. Mead Johnson & Company LLC, et al.*, 1:22-cv-00363 (N.D. Ill. Filed Oct. 18, 2021), assigned to Jorge L. Alonso. Originally filed in Illinois Circuit Court for Madison County on Oct. 18, 2021, removed to the Southern District of Illinois on Nov. 19, 2021. Remand denied on Jan. 20, 2022, *Grosshuesch v. Mead Johnson & Co., LLC*, No. 21-CV-1461-SPM, 2022 WL 179041 (S.D. Ill. Jan. 20, 2022), and transferred to the Northern District of Illinois on January 21, 2022. ***Status:*** No trial date has been set. No Case Management Order has been entered. Discovery has not commenced.

- *Koeth v. Mead Johnson & Company LLC, et al.*, 1:21-cv-06234 (N.D. Ill. Filed Nov. 16, 2021), assigned to Hon. Joan H. Lefkow. Originally filed in Illinois state court on Nov. 16, 2021 and removed on Nov. 19, 2021. ***Status:*** Plaintiff's motion to remand and Defendants' Motion to Transfer to the District of Nevada are pending. If Plaintiff's motion to remand is denied, Plaintiff does not oppose Defendant's Motion to Transfer. Exhibit A, Plaintiff's Letter Response, *Koeth v. Mead Johnson & Company LLC, et al.*, 1:21-cv-06234 (N.D. Ill. Jan. 20, 2022), Dkt. No. 22. No trial date has been set. No Case Management Order has been entered. Discovery has not commenced.

5) Middle District of Louisiana

- *Brown, Sr. et al v. Abbott Laboratories, Inc. et al.*, 3:21-cv-00687 (M.D. La. Filed Nov. 28, 2021), assigned to Hon. Shelly D. Dick, ***Status:*** No Case Management Order has been entered. Discovery has not commenced. Trial date has not been set. Stay entered pending MDL briefing.

6) Eastern District of Missouri

- *Clarke v. Abbott Laboratories, et al.*, 4:22-cv-00144 (E.D. Mo. Filed Feb. 7, 2022), assigned to Hon. Ronnie L. White, ***Status***: No trial date has been set. No Case Management Order has been entered. Discovery has not commenced.

7) Western District of Missouri

- *Bookhart, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-cv-00032 (W.D. Mo. Filed Jan. 18, 2022), assigned to Brian C. Wimes. ***Status:*** No trial date has been set. No Case Management Order has been entered. Discovery has not commenced.

- *Lincoln, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-CV-00033 (W.D. Mo. Filed Jan. 18, 2022), assigned to Stephen R. Bough. ***Status:*** No trial date has been set. No Case Management Order has been entered. Discovery has not commenced. Request to stay pending decision on MDL denied.

These cases are listed in the attached Schedule of Actions.

These suits, and their state counterparts, share important characteristics. Each Plaintiff has sued Abbott, Mead Johnson, or both. Many of the facts and legal theories asserted are highly repetitive between cases, following a template with little individualized information alleged. Each suit asserts statutory or common law tort and/or product liability claims. Plaintiffs contend

that preterm infant formula and fortifier containing cow's milk are unreasonably dangerous and caused NEC in the preterm infants. All of the infants suing Mead Johnson allegedly became ill in a NICU setting. All cases are in their early stages. Limited discovery has been exchanged in only one Mead Johnson matter—*Sanchez-Juan*, No. 6:21-cv-00502-RBD-EJK (M.D. Fla. Aug. 2, 2021)—which has now been stayed pending resolution of the instant Motion to Transfer, *see id*. at ECF No. 67. With the exception of *Sanchez-Juan*, all cases against Mead Johnson have been recently filed, on or after November 2021.

Chief Judge Underhill is well-suited to manage these preterm infant nutrition cases because he has skillfully done so for the past two years. In addition to presiding over the *Ferry* case (in which both Abbott and Mead Johnson were co-defendants) for almost 15 months before plaintiffs voluntarily dismissed it (Notice of Voluntary Dismissal, *Ferry v. Mead Johnson & Co., et al.*, No. 20-cv-00099 (D. Conn. Apr. 1, 2021) at ECF No. 116), he has also been presiding over the *Hunte* case filed against Abbott in October 2020, *Hunte v. Abbott Laboratories, Inc.*, No. 3:20-CV-1626 (SRU) (D. Conn. Filed Oct. 28, 2020).

Chief Judge Underhill has developed familiarity with the factual and legal issues involved in these cases, writing detailed opinions on the motions to dismiss in *Ferry* and *Hunte*, and an additional opinion analyzing and certifying to the Connecticut Supreme Court questions about (1) the applicability of the learned intermediary doctrine to NICU medical personnel who administer preterm nutritional products, and (2) whether these cases rightly allege a cause of action for the loss of filial consortium under Connecticut law. *See Hunte v. Abbott Laboratories, Inc.*, __ F. Supp. 3d. __, No. 3:20-CV-1626 (SRU), 2021 WL 5039130 (D. Conn. Oct. 29, 2021). In contrast, the majority of other suits filed in other districts were newly filed in the six weeks prior to Abbott's Motion to Transfer, and had not progressed past the filing of the complaint.

Many of those suits have now been stayed pending the Panel's resolution of the instant Motion. In short, given Chief Judge Underhill's considerable experience with these infant formula cases, especially when combined with his history of expertly managing multidistrict litigation, and the general efficiency with which cases are overseen in the District of Connecticut, Chief Judge Underhill's courtroom is the logical forum for centralization of these suits.

III. LEGAL ARGUMENT

If civil actions sharing common questions of fact are filed in multiple federal districts, transfer and centralization is appropriate when doing so will serve "the convenience of parties and witnesses" and promote "the just and efficient conduct of such actions." 28 U.S.C. § 1407. Those standards are plainly met here.

A. The NEC Lawsuits Filed Against Abbott & Mead Johnson Involve Important Common Questions of Fact and Law.

All of these actions have been brought by the representatives or estates of preterm infants who (1) allegedly developed NEC, and (2) at the direction of treating neonatologists in the NICU, purportedly received Abbott or Mead Johnson's cow's milk formula or fortifier. Indeed, many of Plaintiffs' complaints, even though brought by different law firms, contain identical allegations. *Compare, e.g.,* Complaint, *Bookhart, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-cv-00032-BCW (W.D. Mo. Jan. 18, 2022) (¶¶ 13, 14, 20, 21 – 30) (filed by Wagstaff & Cartmell LLP) *with* Complaint, *Payne, et al. v. Abbott Laboratories*, 4:22-cv-00230 (S.D. Tex. Jan. 21, 2022) (¶¶ 10, 11, 13, 14 – 22) (filed by Levin Rojas Camassar Reck LLC).

While transfer under § 1407 does not require complete identity, or even a majority, of common factual questions (let alone legal issues) as a prerequisite to transfer, here, there can be little dispute that common factual questions exist. *In re: Rembrandt Techs., L.P.*, 493 F. Supp. 2d 1367, 1369 (J.P.M.L. 2007) (majority of common factual or legal issues not a prerequisite to

transfer); *In re: Blue Cross Blue Shield Antitrust Litig.*, 908 F. Supp. 2d 1373, 1376 (J.P.M.L. 2012) (presence of different facts or legal theories "is not significant when the actions still arise from a common factual core."). For example, the pretrial stages of these actions will require development of many common factual questions, including around the standards of care and feeding for very-low-birthweight preterm infants; the science and data surrounding the nutritional value, safety, benefits, and other features of breastmilk and cow's milk pre-term formula and fortifier, both when provided separately and when combined; NEC and its causes and treatment; and neonatologists' understanding of the benefits and potential risks of alternative feeding regimens.

Several common and important legal questions also exist. For instance, all actions raise common legal issues surrounding the applicability and impact of FDA regulations governing the labeling and contents of the preterm products. *See, e.g., In re: Eliquis (Apixaban) Prods. Liab. Litig.*, 282 F. Sup. 3d. 1354, 1356 (J.P.M.L. 2017) (centralizing multiple actions against multiple drug manufacturers because all suits implicated "regulatory approval, labeling, and marketing" issues). While the common law of the transferor states will vary, as they always do in product liability MDL proceedings, these cases will present similar legal issues relating to standards for defectiveness and affirmative defenses based on the learned intermediary doctrine, statutes of limitation, and consent. And because so many scientific and technical questions surround the general issues of NEC causation and treatment, expert testimony will require centralized *Daubert* rulings.

B. For Product Identification and Other Reasons, All of the Preterm Infant Nutrition Suits Should Be Centralized in a Single, Unified MDL.

There is no question that the cases involving Mead Johnson should be included in the MDL sought by Abbott. Numerous federal and state complaints allege only consumption of *some*

type of premature formula product, without any attempt to identify the actual product consumed or the relevant manufacturer. *See, e.g.,* Compl., *Bookhart*, 4:22-cv-00032-BCW ¶ 78 ("Z.B. was fed Defendants' Cow's Milk Products, including, but not limited to, Similac [Abbott's product] and/or Enfamil [Mead Johnson's product], starting shortly after her birth."). And four of the eight federal cases in which both Mead Johnson and Abbott are named allege consumption of *both* Defendants' products. *See* Compl., *Littles*, No. 21-cv-02146 ¶ 11 (alleging consumption of Similac Special Care, Enfamil Premature, and Enfamil Human Milk Fortifier); *Brown*, No. 21-cv-00687 ¶ 6 (alleging consumption of Similac Special Care, Enfacare, and Enfamil Human Milk Fortifier); *Sanchez,* No. 21-cv-00502 ¶ 5 (alleging consumption of Similac and Enfamil); *Richardson*, No. 21-cv-09932 ¶ 10 (same).

Consolidating all cases filed against both Abbott and Mead Johnson jointly, as well as individually, will promote significant efficiencies in the factual discovery both sides must undertake to address these product identification issues. *See In re: Incretin Mimetics Prods. Liab. Litig.*, 968 F. Supp. 2d 1345, 1346-47 (J.P.M.L. 2013) ("substantial efficiencies" gained from centralization of cases in which several plaintiffs took more than one diabetic medicine alleged to have caused cancer, as "discovery specific to those plaintiffs . . . will involve many of the same or substantially similar documents and witnesses."); *In re: Am. Med. Sys., Inc., Pelvic Repair Sys. Prod. Liab. Litig.*, 844 F. Supp. 2d 1359, 1361 (J.P.M.L. 2012) (noting efficiency benefits "for a particular action involving claims against multiple manufacturers to remain whole and proceed as one action").

This Panel routinely joins different defendants in a single MDL when efficiency and other concerns so warrant. *See, e.g.*, *In re: Walgreens Herbal Supplements Marketing and Sales Prac. Litig.*, 109 F. Supp. 3d. 1373, 1375-76 (J.P.M.L. 2015) (finding that "a single MDL

encompassing all four retailers is necessary to ensure the just and efficient conduct" of the litigation in light of significant overlap of central factual issues, parties, and claims); *In re: 100% Grated Parmesan Cheese Marketing and Sales Prac. Litig.*, 201 F. Supp. 3d 1375, 1378 (J.P.M.L. 2016) (consolidating into one MDL lawsuits filed against six separate defendants and products, given the "significant overlap in the central factual issues, parties, and claims"). *See also In re: Frito-Lay North America, Inc. "All Natural" Litig.*, 908 F. Supp. 2d 1379, 1380 (J.P.M.L. 2012) (despite existence of different primary ingredients and different consumers, one MDL presented more efficiencies than two MDLs organized around separate food products).

Specific causation issues will of course exist in each lawsuit, as each case will require consideration of each infant's medical circumstances and risk factors, and the availability of mother's own milk, among other issues. However, these individual issues do "not negate the common ones," and "the existence of individual issues . . . is relatively commonplace in products liability MDLs." *In re: ZF-TRW Airbag Control Units Products Liab. Litig.*, 410 F. Supp. 3d 1357, 1360 (J.P.M.L. 2019). This is especially true here, where none of the complaints appear to turn on either the unique content or confidentiality of Abbott or Mead Johnson's manufacturing methods or product formulations.

C. Centralization of All Suits Into One MDL Will Facilitate "The Convenience of the Parties and Witnesses" and "Promote the Just and Efficient Conduct of the Actions."

Centralization is justified here not only because of the many cases already filed in federal courts across the country, but also because of the many others that will be re-filed in federal court following the expected dismissals of the Illinois state cases. As noted above, Mead Johnson is and will seek the dismissal of almost all of the Illinois state cases based on lack of personal jurisdiction and/or *forum non conveniens.* Only a single infant suing Mead Johnson has allegedly received a Mead Johnson product in the State of Illinois; all the other Plaintiffs are litigation

tourists to Illinois. Moreover, Mead Johnson is not subject to general jurisdiction in Illinois—while Mead Johnson did maintain its corporate headquarters in Illinois from approximately 2009 to May, 2017, it no longer does so. In May 2017, Reckitt Benckiser PLC acquired Mead Johnson Nutrition, and management functions moved back to Evansville, Indiana; Parsippany, New Jersey; or Slough, United Kingdom. Exhibit B, Declaration of Amy Cook, *Koeth v. Mead Johnson & Company LLC, et al.*, 1:21-cv-06234 (N.D. Ill. Dec. 9, 2021), ECF No 9-6 ¶¶ 1, 3. *See also Grosshuesch v. Mead Johnson & Co., LLC*, No. 21-CV-1461-SPM, 2022 WL 179041, at *2 (S.D. Ill. Jan. 20, 2022) ("This Court has no doubt that the Mead defendants have shown they are citizens of Delaware and Indiana, not Illinois.").[1]

Mead Johnson thus anticipates that the Circuit Courts of Madison and St. Clair County, Illinois will dismiss the actions filed against it there. If Plaintiffs in those cases elect to refile their actions, they will likely do so in their home states, where federal diversity jurisdiction will exist under 28 U.S.C. §1332(a). The resulting geographical spread of cases will then be extensive, as Mead Johnson currently faces claims from infants born in Arizona, California, Delaware, Florida, Georgia, Indiana, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington.

Thus, centralization of these preterm infant nutrition suits in one location will promote convenience for the parties, witnesses, and the disparate transferor courts. For instance, centralization will significantly streamline discovery productions and duplicative depositions.

[1] Although Mead Johnson Nutrition did not officially designate Evansville as its principle place of business in its Delaware annual franchise tax report until September 1, 2021, Illinois ceased to operate as Mead Johnson's "corporate nerve center" several years ago. *Id.*; Exhibit C, Declaration of Cindy Hasseberg, *Grosshuesch v. Mead Johnson & Company LLC*, 1:22-cv-00363 (N.D. Ill. Dec. 6, 2021), ECF No. 18-1 ¶ 5.

See, e.g., *In re: Incretin Mimetics Prods. Liab. Litig.*, 968 F. Supp. 2d at 1347 (highlighting the "substantial efficiencies" gained from one, industry-wide MDL, and noting that the "transferee judge, of course, has substantial discretion to employ any number of pretrial techniques in the structuring of pretrial proceedings in order to accommodate any individual issues that may arise."). It will also significantly reduce costly expert discovery and "conserve the resources of the parties, their counsel, and the judiciary." *Id*. at 1346 (centralizing product liability cases filed against manufacturers of four anti-diabetic medications that allegedly caused cancer). Centralization will also allow one judge to formulate an efficient pretrial program and spare other judges from having to "repetitiously resolve . . . an undetermined number of federal actions[.]" *In re: Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003) (centralization prevents judges from having "to needlessly replicate other judges' work" on "medical monitoring claims, the structuring of confidentiality and other discovery orders, the scheduling of depositions and other discovery, rulings on motions to dismiss, and so forth."). As these cases continue to be filed, these expense and convenience concerns will only multiply.[2]

D. Centralization Should Occur before The Hon. Stefan R. Underhill in the District of Connecticut.

Chief Judge Underhill is best suited to serve as the transferee judge for these cases for several reasons. First, as the Judge presiding over the earliest filed federal case, and having both ruled on motions to dismiss and certified multiple questions to the Connecticut Supreme Court in *Hunte*,[3] Chief Judge Underhill is intimately familiar with the key factual and legal issues

[2] Informal coordination of these actions does not offer a realistic alternative to centralization. Approximately 8 different law firms represent Plaintiffs in 23 federal cases pending in 10 separate districts. The breadth and complexity of these cases, combined with the large number of parties and lawyers, pose significant obstacles to the informal coordination of discovery and other pretrial matters.

[3] Judge Underhill also ruled on motions to dismiss and was poised to certify multiple questions to the Connecticut Supreme Court in *Ferry* when Plaintiff opted to voluntarily dismiss the action.

involved in preterm infant nutrition litigation. *See, e.g.*, *In re: Bank of America Credit Protection Marketing and Sales Practices Litig.,* 804 F. Supp. 2d 1372, 1373 (J.P.M.L. 2011) (the location "where the first-filed and relatively most procedurally advanced action is pending [] stands out as an appropriate transferee forum," particularly where the judge "is an experienced transferee judge who has become familiar with the contours of [the] litigation by virtue of having ruled on defendants' motion to dismiss").

Second, Chief Judge Underhill is an experienced MDL jurist, having presided over no fewer than *five* multidistrict litigations over more than a decade. *See In re: Helicopter Crash Near Wendle Creek, British Columbia*, MDL No. 1649 (D. Conn. 2009); *In re: Etylene Propylene Diene Monomer (EDPM) Antitrust Litig.*, MDL No. 1542 (D. Conn. 2010); *In re: Polychloroprene Rubber (CR) Antitrust Litigation*, MDL No. 1642 (D. Conn. 2010); *In re: Publication Paper Antitrust Litigation*, MDL No. 1631 (D. Conn. 2011); *In re: Aggrenox Antitrust Litigation*, MDL No. 2516 (D. Conn. 2019). This Panel has previously described Judge Underhill as "a jurist well versed in the nuances of complex and multidistrict litigation" who can be relied upon "to steer [a] matter on a prudent course." *In re: Aggrenox Antitrust Litig.*, 11 F. Supp. 3d 1342, 1343 (J.P.M.L. 2014).

In addition, Chief Judge Underhill does not appear to be currently presiding over any MDLs. *See Pending MDLs by District*, Judicial Panel on Multidistrict Litigation (Jan. 19, 2021), https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-January-19-2022.pdf. By contrast, complex MDLs are already pending before several of the other judges presiding over the preterm infant formula cases filed against Mead Johnson and Abbott. *Id.*

See Order Granting in Part Defendants' Motions to Dismiss, ECF No. 87, and Notice of Voluntary Dismissal, ECF No. 116, *Ferry v. Mead Johnson & Co., et al.*, No. 20-cv-00099 (D. Conn.).

(identifying MDLs pending before Judge Johnson Coleman[4] (*In re: Clearview AI, Inc., Consumer Privacy Litigation*, MDL 2967 (N.D. Ill. Filed Jan. 8, 2020)), Judge Dalton[5] (*In re: Tasigna (Nilotinib) Products Liability Litigation*, MDL 3006 (M.D. Fla. Filed Apr. 14, 2021)), Judge Wimes[6] (*In re: T-Mobile Customer Data Security Breach Litigation*, MDL 3019 (W.D. Mo. Filed Aug. 23, 2021)), and Judge Bough[7] (*In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Marketing, Sales Practices and Products Liability Litigation*, MDL 2936 (W.D. Mo. Filed Feb. 11, 2020))).

Next, Bridgeport, Connecticut is located close to several major airports, including both of New York City's airports, Westchester County Airport, and Bradley International Airport in Winsor Locks, Connecticut. It is on the Metro North and Amtrak rail lines. It is also close to Levin, Rojas, Camassar, and Reck LLC—a firm representing Plaintiffs in twelve of the twenty-three pending federal preterm infant nutrition cases—*more than half of all the pending federal cases at issue*, including *Hunte*.[8] In addition, the District of Connecticut appears particularly well

[4] *Taylor v. Abbott Laboratories*, 1:22-cv-00203 (N.D Ill. Filed Jan. 12, 2022).
[5] *Sanchez Juan v. Abbott Laboratories, Inc. et al.*, 6:21-cv-00502 (M.D. Fla. Filed 3/18/2021).
[6] *Bookhart, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-cv-00032-BCW (W.D. Mo. Filed 1/18/2022).
[7] *Lincoln, et al. v. Abbott Laboratories, Inc., et al.*, 4:22-CV-00033 (W.D. Mo. Filed 1/18/2022).
[8] *Koeth v. Mead Johnson & Company LLC,* 1:21-cv-06234 (N.D. Ill. Removed Nov. 19, 2021); *Grosshuesch v. Mead Johnson & Company LLC,* 1:22-cv-00363 (N.D. Ill. Transferred Jan. 21, 2022)); *Sanchez v. Abbott Laboratories, Inc. et al.*, 6:21-cv-00502 (M.D. Fla. Filed Mar. 18, 2021); *Hunte v. Abbott Laboratories, Inc.*, 3:20-cv-01626 (D. Conn. Filed 10/28/2020); *George v. Abbott Laboratories, Inc.*, 1:20-cv-02537 (D.D.C. Filed 8/3/2020 (D.C. Super. Ct.), Removed 9/11/2020); *Gshwend et al v. Abbott Laboratories et al.*, 1:22-cv-00197 (N.D. Ill. Filed 01/12/2022); *Mar ex rel. Estate of Railee Mar v. Abbott Laboratories*, 1:22-CV-00232 (N.D. Ill., Filed 1/14/2022); *Rhodes ex rel. Rhodes v. Abbott Laboratories*, 1:22-CV-00239 (N.D. Ill., Filed 1/14/2022); *Rinehart, et. al v. Abbott Laboratories, et. al.*, 1:22-cv-00192 (N.D. Ill., Filed 1/10/2022 (Cir. Ct. Cook Cty., Ill.), Removed 1/12/2022); *Stuper, et al. v. Abbott Laboratories, et al.*, 1:22-cv-00204 (N.D. Ill. Filed 01/12/2022); *Taylor, et al. v. Abbott Laboratories, et a.l*, 1:22-cv-00203 (N.D. Ill. Filed 01/12/2022); *Payne v. Abbott Laboratories*, 4:22-cv-00230 (S.D. Tex. Filed 1/21/2022).

suited to the efficient resolution of a large, complex MDL, as the chart below containing federal filing statistics through September 2021 reflects:

	D. Conn.	E.D. Mo.	M.D. La.	C.D. Cal.	W.D. Mo.	N.D. Ill.	M.D. Fla.	N.D. Fla.[9]
Pending Cases Per Judge	366	426	454	510	551	566	578	68,706
Pending Cases Overall	2,928	3,409	1,361	14,285	3,307	12,441	8,676	274,823
Number and Percentage of Civil Cases Over 3 Years Old	139 (6.5%)	102 (5.4%)	145 (13.1%)	874 (8.1%)	141 (8.6%)	1,761 (17.5%)	425 (6.2%)	56 (.0%)
Number of Current MDLs	0	3	0	5	6	14	2	2

E. No Other Federal District Presents a Comparative Advantage for Centralization.

None of the other districts in which federal suits are pending present a superior alternative to the District of Connecticut for centralization. Contrary to Plaintiffs' erroneous and tired refrain, and as one federal district court recently found, neither of the Mead Johnson entities are located in Illinois.[10] Exhibit C ¶ 6; *see also Grosshuesch v. Mead Johnson & Co., LLC*, No. 21-CV-1461-SPM, 2022 WL 179041 (S.D. Ill. Jan. 20, 2022) ("This Court has no doubt that the Mead defendants have shown they are citizens of Delaware and Indiana, not Illinois."). The only

[9] The Northern District of Florida is home to the 3M MDL, which accounts for the uncharacteristically high number of pending cases. *In re 3M Combat Arms Earplug Products Liability Litigation*, MDL 2885 (N.D. Fla. Filed Jan. 25, 2019).

[10] Since filing its Answer in the *Sanchez Juan* case, Mead Johnson has submitted an Amended Annual Franchise Tax Report in Delaware to reflect the reality that Evansville, Indiana is its principal place of business, Exhibit C ¶ 6, and has consistently argued that its principal place of business is and has been in Evansville, Indiana since no later than the end of 2018. *See also* Exhibit D, Declaration of Justin Griner, *Grosshuesch v. Mead Johnson & Company LLC*, 1:22-cv-00363 (N.D. Ill. Dec. 6, 2021), ECF No. 18-5.

two cases pending against Mead Johnson in the Northern District of Illinois are *Koeth* and *Grosshuesch*. ECF No. 11-1. However, *Koeth* should be transferred to the District of Nevada at Mead Johnson's request (a request that Plaintiff does not oppose), since the Plaintiff and birthing hospital are located in Nevada. *See* Motion to Transfer, *Koeth v. Mead Johnson & Company LLC, et al.*, 1:21-cv-06234 (N.D. Ill. Dec. 9, 2021), ECF No. 7; Exhibit A, Plaintiff's Letter Response, *Koeth v. Mead Johnson & Company LLC, et al.*, 1:21-cv-06234 (N.D. Ill. Jan. 20, 2022), Dkt. No. 22. In *Grosshuesch*, no trial date has been set, no case management order has been entered, and discovery has not commenced, placing it significantly behind *Hunte* in the evaluation and resolution of pertinent factual and legal issues.

Likewise, out of the eight cases pending in the Northern District of Illinois against Abbott, plaintiffs have not yet served Abbott in six of them. *See* ECF Nos. 1-1 at 7-8. In the one case in which plaintiffs have served Abbott, *Hall v. Abbott Laboratories, Inc.*, 1:22-cv-00071 (N.D. Ill., Filed 1/5/2022) (Tharp, J.), no trial date has been sent, no case management order has been entered, and discovery has not commenced. *Id*. at 7. Thus, the federal cases pending in the Northern District of Illinois against Abbott and Mead Johnson are all in their infancy.

Nor do the number of Illinois state court cases weigh in favor of consolidation in the Northern District of Illinois. Mead Johnson successfully opposed Plaintiffs' motion to transfer and consolidate over thirty Illinois state cases filed against Mead Johnson, arguing that Mead Johnson's motions to dismiss for lack of personal jurisdiction and *forum non conveniens* should be decided in advance of any potential consolidation given the lack of Plaintiffs' ties to Illinois. Order, *In re: Jupiter v. Mead Johnson & Company, LLC*, 2022 IL 127992 (Ill. Feb. 8, 2022). It is unclear how many, if any, of these cases will remain in Illinois unless they involve the use of

formula within the state. At the moment, only three residents of Illinois have identified the use of a Mead Johnson product, *but only one involves events occurring inside the state*.

Other potential districts pose similar impracticalities. The cases pending against Mead Johnson are scattered across the Central District of California, Middle District of Louisiana, Northern District of Florida, and Eastern and Western Districts of Missouri, and are all in their infancy. In the Middle District of Florida, where *Sanchez Juan* is pending, some discovery had commenced before the recent stay order was entered. However, the Judge in that matter, the Hon. Roy B. Dalton, is already presiding over a complex products liability MDL containing twenty-three cases. *See In Re: Tasigna (Nilotinib) Products Liability Litigation,* MDL No. 3006 (M.D. Fla. Filed Apr. 14, 2021). In short, the District of Connecticut is the most logical choice for pretrial centralization of these cases.

IV. CONCLUSION

Mead Johnson agrees with Abbott's request to centralize the cases set out in Mead Johnson's attached Schedule of Actions, as well as those set forth in Abbott's Schedule of Actions and the Notices of Related Cases filed to date (ECF Nos. 1-1, 11, 16, 24, 35, and 38). Centralization will further "the convenience of the parties and witnesses and will promote the just and efficient conduct of [the] actions." 28 U.S.C. § 1407(a). Mead Johnson also agrees that centralization before Chief Judge Stefan R. Underhill in the District of Connecticut will promote the most streamlined resolution of these cases, given Chief Judge Underhill's familiarity with the relevant factual and legal issues, extensive experience with multidistrict litigation, absence of any pending MDL in his courtroom, and the District of Connecticut's general efficiency in

resolving matters filed there.

Dated: February 9, 2022

Respectfully submitted,

By: */s/ Rachel M. Cannon*

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