UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARTINA MOYE, on her own behalf and as the proposed representative to the estate of MAUNIE MOYE, deceased,

Plaintiff,

vs.

ABBOTT LABORATORIES,

SERVE:
CT Corporation System
208 So. Lasalle Street, Suite 814
Chicago, IL 60604

Defendant.

Civil Action No. 1:22-cv-06027

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff brings this Complaint and Demand for Jury Trial (the "Complaint") against Abbott Laboratories. Plaintiff alleges the following upon personal knowledge as to Plaintiff's own acts and experiences and upon information and belief, including investigation conducted by Plaintiff's attorneys, as to all other matters:

NATURE OF THE ACTION

1. This action arises out of the injuries suffered by premature infant Maunie Moye ("Baby Maunie") who was given Defendant's cow's milk-based infant feeding products. Defendant's products caused Baby Maunie to develop necrotizing enterocolitis ("NEC"), a life-altering and potentially deadly disease that largely affects premature babies who are given cow's milk-based feeding products. As a result, Baby Maunie was seriously injured, resulting in her death and harm to Plaintiff.

2. Plaintiff brings these causes of action against Defendant to recover for injuries that are the direct and proximate result of Baby Maunie's consumption of Defendant's unreasonably dangerous cow's milk-based infant feeding products.

PARTIES

3. Plaintiff Martina Moye is a natural person and a resident of Tennessee. Ms. Moye brings this suit in her personal capacity and as the Proposed Representative of the Estate of Maunie Moye, deceased.

4. Defendant Abbott Laboratories ("Abbott") is a corporation, incorporated under the laws of the State of Illinois. Its principal place of business is in Illinois. Abbott is a manufacturer of cow's milk-based infant feeding products and markets many of its products under the "Similac" brand name.

JURISDICTION AND VENUE

5. This Court has general jurisdiction over this action because Abbott Laboratories maintains its principal place of business in Illinois and because Abbott Laboratories is incorporated in Illinois. 735 Ill. Comp. Stat. Ann. 5/2-209; *see also Rios v. Bayer Corp.*, 2020 IL 125020, ¶ 19 (June 4, 2020) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Abbott is subject to personal jurisdiction in this District and regularly conducts business in this District.

FACTUAL ALLEGATIONS

Maunie Moye's NEC Diagnosis

7. Maunie Moye was born prematurely at the University of Tennessee Medical Center in Knoxville, Tennessee on September 6, 2017.

8. Maunie was fed Similac Special Care 20 and Similac Special Care 24 products,

cow's milk-based products, shortly after her birth.

9. Shortly after she first ingested Defendant's products, Maunie developed NEC.

10. Maunie ultimately succumbed to her injuries following her ingestion of Defendant's products and passed away on September 18, 2017.

Cow's Milk-Based Feeding Products Are Known To Cause NEC

11. NEC is a devastating disease that is the most frequent and lethal gastrointestinal disorder affecting preterm infants. NEC develops when harmful bacteria breach the walls of the intestine, causing portions of the intestine 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.

12. 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.

13. For example, in one randomized, multicenter study of 926 preterm infants, NEC was ***six to ten*** times more common in exclusively cow's milk formula-fed babies than in exclusively breast milk-fed babies and ***three times*** more common in babies who received a combination of formula and breast milk. For babies born at more than 30 weeks gestation, NEC was ***20 times more common*** in those only fed cow's milk formula than in those fed breast milk.

14. Another randomized controlled trial showed that preterm babies fed an exclusive breast milk-based diet were ***90% less likely*** to develop surgical NEC (NEC that requires surgical treatment), compared to preterm babies fed a diet that included some cow's milk-based products.

15. Yet another study that analyzed the data from a 12-center randomized trial concluded that fortification of breast milk with a cow's milk-based fortifier resulted in a 4.2-fold increased risk of NEC and a 5.1-fold increased risk of surgical NEC or death, compared to fortification with a breast milk-based fortifier.

16. A Surgeon General report, *The Surgeon General's Call to Action to Support Breastfeeding*, warns that, "for vulnerable premature infants, formula feeding is associated with higher rates of necrotizing enterocolitis." The report also states that premature infants who are not breastfed are ***138% more likely*** to develop NEC.

17. The American Academy of Pediatrics, "an organization of 67,000 pediatricians committed to the optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults," has advised that ***all*** premature infants should be fed either their mother's milk or, if their mother's milk is unavailable, pasteurized human donor milk. This recommendation is based on the "potent benefits of human milk," including "lower rates of . . . NEC."

18. A multicenter, randomized, controlled trial found that premature and low-birth-weight infants fed an exclusive breast milk-based diet suffered NEC only 3% of the time while premature and low-birth-weight infants receiving cow's milk-based formula suffered NEC ***21% of the time***.

19. Another study conducted a randomized comparison of extremely preterm infants who were given either (a) a diet of breast milk fortified with a breast milk-based fortifier or (b) a diet containing variable amounts of cow's milk-based products. The babies given exclusively breast milk products suffered NEC 5% of the time. The babies given cow's milk products suffered NEC 17% of the time.

Safer, Nutritionally Superior Alternatives To Cow's Milk-Based Products Exist

20. A range of options are available that allow preterm and low-birth-weight infants to be fed exclusively human milk-based nutrition. For example, in addition to the mother's own milk, an established network delivers pasteurized donor breast milk to hospitals nationwide. Moreover, hospitals have access to shelf-stable formula and milk fortifiers derived from pasteurized breast milk.

21. A diet based exclusively on breast milk and breast milk fortifiers provides all the nutrition necessary to support premature and low-birth-weight infants without the elevated risk of NEC associated with cow's milk-based products. For example, in a study analyzing preterm infants who were fed an exclusive breast milk-based diet until they reached 34 weeks, all 104 infants exceeded standard growth targets and met length and head-circumference growth targets, demonstrating that infants can achieve and mostly exceed targeted growth standards when receiving an exclusive breast milk-based diet. This is particularly true given the ability of breast milk-based fortifiers to provide the additional nutritional supplements necessary for adequate growth while receiving the protective benefits of a breast milk diet.

22. Defendant's products not only pose a threat to infants' health, but also displace the breast milk they could otherwise receive. This displacement only increases infants' vulnerability to NEC, as studies show that breast milk protects against the disease. For example, a study analyzing 1,587 infants across multiple institutions concluded that an exclusive breast milk-based diet is associated with significant benefits for extremely premature infants and that it produced no feeding-related adverse outcomes.

23. For the above reasons, experts acknowledge that breast milk is the best source of nutrition for preterm infants and those at risk for NEC. Breast milk-based nutrition nourishes infants while creating a significantly lower risk of NEC.

24. At the time Baby Maunie was fed Defendant's products, Similac Special Care 20 and Similac Special Care 24, the science clearly demonstrated to Defendant that these products cause and greatly increase the likelihood that a baby will develop NEC, leading to severe injury and often death.

25. Despite the scientific consensus that Defendant's cow's milk-based products present a dire threat to the health and development of preterm infants, Defendant has made no changes to its products or the products' packaging, guidelines, instructions, or warnings. Instead, Defendant has continued to sell its unreasonably dangerous products to unsuspecting parents and healthcare providers, generating huge profits as a result.

Defendant's False And Misleading Marketing Regarding Cow's Milk Based Infant Products

26. Abbott has aggressively marketed its cow's milk-based products as medically endorsed and nutritionally equivalent alternatives to breast milk, including prior to Baby Maunie's birth.

27. Abbott's marketing approach includes targeting the parents of preterm infants while they are still in the hospital with messages that Defendant's cow's milk formulas and fortifiers are necessary for the growth and development of their vulnerable children. Often these tactics implicitly discourage mothers from breastfeeding, which reduces the mother's supply of breast milk. *None* of Defendant's marketing materials, including its promotional websites, reference the science showing how significantly its products increase the risk of NEC.

28. Numerous studies have shown the detrimental impact of formula advertising on the rates of initiation and continuation of breastfeeding, including studies that show that as "hand feeding" (non-breastfeeding) advertisements increase, reported breastfeeding rates decrease in the following year.

29. Undoubtedly aware of the impact of its advertising, Defendant, along with other formula manufacturers, are willing to spend massive sums to disseminate its message, with one study estimating that formula manufacturers collectively spent $4.48 billion on marketing and promotion in 2014 alone.

30. Recognizing the abuse and dangers of infant formula marketing, in 1981, the World Health Assembly—the decision-making body of the World Health Organization—developed the International Code of Marketing of Breast-milk Substitutes ("the Code"), which required companies to acknowledge the superiority of breast milk, the negative effect on breastfeeding of introducing partial bottle-feeding, and the difficulty of reversing the decision not to breastfeed. The Code also forbade advertising or other forms of promotion of formula to the general public, as well as providing sample products to mothers or members of their families.

31. While Abbotts acknowledges the Code on its websites and claim to support the effort to encourage mothers to breastfeed for as long as possible, this is little more than lip service. Instead, Defendant's aggressive marketing exploits new parents' darkest fears—that the nutrition they are supplying to their child will not provide the best chance of survival—while wholly failing to warn that its products come with a significantly increased risk of NEC.

32. For example, Abbott's website, on a paged titled "Infant Formula Marketing," states: "We agree with the World Health Organization that breastfeeding provides the best nutrition for babies, and we support its goal to increase breastfeeding. We also recognize that for

infants who aren't breastfed—for medical reasons or otherwise—**infant formula is the only appropriate, safe alternative** to meet babies' nutritional needs." This statement ignores the existence of donor milk, as well as human milk-based formula.

33. Abbott markets and sells multiple products specifically targeting preterm and low-birth-weight infants, including Liquid Protein Fortifier, Similac NeoSure, Similac Human Milk Fortifiers, Similac Special Care 20, Similac Special Care 24, Similac Special Care 24 High Protein, and Similac Special Care 30. In advertising these products, Abbott emphasizes the products' purported ability to assist underdeveloped babies in reaching its growth targets. For example, on the since-edited webpage regarding Similac NeoSure, Abbott noted: "Your premature baby didn't get her full 9 months in the womb, so her body is working hard to catch up. During her first full year, feed her Similac NeoSure, a nutrient-enriched formula for babies who were born prematurely, and help support her development." Yet, no mention was made of the accompanying significantly increased risk of NEC. At some point, the website was edited to remove this statement. However, upon information and belief, the statement remained on the website until at least December 2020.

34. Formula manufacturers have long used their relationships with hospitals and the discharge process to encourage parents to substitute formula for breast milk. They offer free formula, coupons, and even entire gift baskets to parents in hospitals, medical clinics, and residential charities where out-of-town families stay while their babies receive long-term treatment in the NICU.

35. Through this early targeting, Defendant creates brand loyalty under the guise of a "medical blessing," in hopes that new parents continue to use formula after they leave the hospital, resulting in increased expense for parents, significantly increased risk for babies, and increased

profit for Defendant. Defendant's gift baskets send confusing signals to mothers who are simultaneously being encouraged to breastfeed by their health care professionals, and they have been shown to negatively impact breastfeeding rates.

36. Further, when Defendant recognized a shift in the medical community towards an exclusive breast milk-based diet for premature infants, Abbott developed a product called "Similac Human Milk Fortifier." The name is misleading in that it suggests that the products are derived from breast milk, when, in fact, they are cow's milk-based products. One study, for example, found that only 8.8 percent of parents surveyed in the NICU interpreted "human milk fortifier" as potentially meaning a cow's milk-based product. The packaging appears as:

37. Defendant has designed powerful misleading marketing campaigns to deceive parents into believing that: (1) cow's milk-based products are safe, including for preterm infants; (2) cow's milk-based products are equal, or even superior, substitutes to breast milk; (3) cow's milk-based products are necessary for proper growth and development of preterm infants; and (4) physicians consider Defendant's cow's milk-based products a first choice. This marketing scheme is employed despite Defendant knowing of and failing to warn of the extreme risk of NEC and death that cow's milk-based products pose to preterm infants like Baby Maunie.

Defendant's Inadequate Warnings

38. Abbott promotes an aggressive marketing campaign designed to make parents believe that its products are safe and necessary for the growth of premature infants, despite the products in fact being extremely dangerous for premature infants. Abbott's products significantly increase the chances of a premature infant getting potentially fatal NEC.

39. The products Abbott markets specifically for premature infants are available at retail locations and online. No prescription is necessary.

40. Despite knowing of the risk of NEC, Abbott did not warn of the significantly increased risk of NEC (and resulting medical conditions, and/or death) associated with its products, or of the magnitude of this increased risk. Abbott likewise did not provide instructions or guidance for how to avoid NEC.

41. Abbott deceived the public, parents, physicians, other medical professionals, and medical staff into believing that its products were a safe and necessary alternative, supplement and/or substitute to breast milk.

42. Despite knowing that its products were being fed to premature infants, often without the parents' informed consent, Abbott failed to require or recommend that medical professionals or hospitals inform parents of the significant risk of NEC or to require that parental consent be obtained prior to the products being fed to their babies.

Safer Alternative Designs

43. Defendant's cow's milk-based products made specifically for premature infants are unreasonably unsafe for those infants. Defendant could have used pasteurized breast milk instead of cow's milk in its products, which would have produced a safer product.

44. Prolacta Bioscience manufactures and sells breast milk-based feeding products, specifically designed for preterm infants, which contain no cow's milk. This alternative design provides all the necessary nutrition for growth and development that cow's milk-based products provide, without the same unreasonably dangerous and deadly effects.

45. On information and belief, Abbott was aware of the significantly increased risk of NEC and death associated with its cow's milk-based products, and instead of warning of the dangers, or removing them altogether, Abbott has continued to use cow's milk as the foundation of its products.

COUNT I: STRICT LIABILITY FOR DESIGN DEFECT

46. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

47. Abbott, as the manufacturer and/or seller of the products at issue in this litigation, owed a duty to the consuming public in general, and Plaintiffs in particular, to manufacture, sell, and distribute its products in a manner that was not unreasonably dangerous.

48. Abbott also owed a duty to the consuming public in general, and Plaintiff in particular, to manufacture, sell, and distribute its products in a manner that was merchantable and reasonably suited for the intended use.

49. Abbott knew that its products would be used to feed premature infants like Baby Maunie and knew (or reasonably should have known) that use of its cow's milk-based products significantly increased the risk of NEC, serious injury, and death, and that such use was therefore unreasonably dangerous to premature infants, not reasonably suited for the use intended, not merchantable, and had risks that exceeded a reasonable buyer's expectations. Nonetheless, Defendant continued to sell and market its defective products as appropriate for premature infants.

50. Baby Maunie ingested Abbott's unreasonably dangerous cow's milk-based products. The risks of feeding those products to Baby Maunie outweighed the benefits. An ordinary consumer would not expect those products to carry a significant risk of serious injury and death from NEC.

51. Abbott knew (or reasonably should have known) that breast milk-based nutrition did not carry the same risks of NEC, serious injury, and death that Defendant's products do.

52. Abbott's products contained cow's milk at the time they left the manufacturing facility.

53. Abbott did not develop a human-milk based product that was safer for premature infants and did not reformulate its products to reduce the risk of NEC, serious injury, and death, even though doing so was economically and technologically feasible and even though pasteurized breast milk was an available alternative.

54. Abbott's products were fed to Baby Maunie, which directly and proximately caused her NEC and led to surgery and death.

55. As a further direct result, Plaintiff incurred medical expenses and suffered significant emotional distress, loss of income, loss of consortium, and other harms. Her life has been significantly affected by Baby Maunie's injuries and death.

COUNT II: STRICT LIABILITY FOR FAILURE TO WARN

56. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

57. Abbott, as the manufacturer and/or seller of the infant products at issue in this litigation, owed a duty to the consuming public in general, and Plaintiff in particular, to provide adequate warnings or instructions about the dangers and risks associated with the use of its

products with preterm infants, specifically including but not limited to the risk of NEC, serious injury, and death.

58. Abbott's duty to warn is part of its general duty to design, manufacture, and sell its infant products in a manner that is reasonably safe for their foreseeable uses. By designing its products with cow's milk-based ingredients, Abbott undertook a duty to warn of the unreasonable risk of harm posed by those ingredients, specifically including the significantly increased risk of NEC, severe injury, and death. The failure to warn makes the products at issue in this litigation unreasonably dangerous.

59. Specifically, Abbott breached its duty to warn of the foreseeable risks of the infant products at issue in this litigation because it knew or should have known that its cow's milk-based premature infant products would be fed to premature infants like Baby Maunie, and that its products might cause those infants to develop NEC, severe injury, or death, yet it failed to provide adequate warnings of those risks. Among other risks, Defendant:

a. Failed to warn that cow's milk-based products significantly increase the risk of NEC, severe injury, and death in those babies; and/or

b. Failed to warn that cow's milk-based products are unsafe and/or contra-indicated for premature infants like Baby Maunie; and/or

c. Carried warnings and instructions that are severely inadequate, vague, confusing, and provide a false sense of security in that they warn and instruct specifically on certain conditions, but do not warn of the significantly increased risk of NEC and death; and/or

d. Failed to carry a large and prominent "black box"-type warning that its cow's milk-based products are known to significantly increase the risk of NEC and death when compared to breast milk in premature infants; and/or

e. Failed to disclose well-researched and well-established studies that linked cow's milk-based products to NEC and death in premature infants; and/or

f. Failed to insert a warning or instruction to healthcare professionals and other medical staff in the hospital that parents should be provided information necessary to make an informed choice about whether to allow their babies to be fed Defendant's products, notwithstanding their substantial risks; and/or

g. Failed to provide a warning in a method reasonably calculated or expected to reach the baby's parents; and/or

h. Failed to provide statistical evidence showing the magnitude of increased risk of NEC in premature infants associated with cow's milk-based products.

60. Abbott's products contained cow's milk at the time they left the manufacturing facility.

61. As a direct and proximate result of the inadequacy of the warnings and the pervasive marketing campaigns suggesting the safety and necessity of its products, Baby Maunie was fed cow's milk-based products, Similac Special Care 20 and Similac Special Care 24, which caused her to develop NEC.

62. The unwarned of risks are not of a kind that an ordinary consumer would expect. Had physicians and healthcare providers known of the extreme risk associated with feeding premature infants cow's milk-based formula, they would not have fed Baby Maunie those

products. Had Plaintiff known of the significant risks of feeding Baby Maunie cow's milk-based formula, she would not have allowed such products to be fed to Baby Maunie.

63. As a further direct result, Plaintiff incurred medical expenses and suffered significant emotional distress, loss of income, loss of consortium, and other harms. Her life has been significantly affected by Baby Maunie's injuries and death.

COUNT III: NEGLIGENCE

64. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

65. Abbott, as the manufacturer and/or seller of the products at issue in this litigation, owed a duty to the consuming public in general, and Plaintiff in particular, to exercise reasonable care to design, test, manufacture, inspect, and distribute a product free of unreasonable risk of harm to users, when such products are used in their intended manner and for their intended purpose.

66. At all times relevant to this action, Baby Maunie's health care providers used the products at issue in their intended manner and for their intended purpose.

67. Abbott, directly or indirectly, negligently, and/or defectively made, created, manufactured, designed, assembled, tested, marketed, sold, and/or distributed the cow's milk-based infant products at issue in this litigation and thereby breached its duty to the general public and Plaintiff.

68. Specifically, although Abbott knew or reasonably should have known at the time of production that its cow's milk-based infant products significantly increased the risk of NEC, serious injury, and death, it failed to act in a reasonably prudent manner and breached its duty by:

a. Failing to warn that cow's milk-based products significantly increase the risk of NEC, severe injury, and death in those babies; and/or

b. Failing to warn that cow's milk-based products are unsafe and/or contra-indicated for premature infants like Baby Maunie; and/or

c. Carrying warnings and instructions that are severely inadequate, vague, confusing, and provide a false sense of security in that they warn and instruct specifically on certain conditions, but do not warn of the significantly increased risk of NEC and death; and/or

d. Failing to carry a large and prominent "black box"-type warning that its cow's milk-based products are known to significantly increase the risk of NEC and death when compared to breast milk in premature infants; and/or

e. Failing to provide well-researched and well-established studies that linked cow's milk-based products to NEC and death in premature infants; and/or

f. Failing to insert a warning or instruction to healthcare professionals and other medical staff in the hospital that parents should be provided information necessary to make an informed choice about whether to allow their babies to be fed Defendant's products, notwithstanding their substantial risks; and/or

g. Failing to provide a warning in a method reasonably calculated/expected to reach the baby's parents; and/or

h. Failing to provide statistical evidence showing the magnitude of increased risk of NEC in premature infants associated with cow's milk-based products.

69. In addition, although Abbott knew or reasonably should have known at the time of production that its cow's milk-based products significantly increased the risk of NEC, serious

injury, and death, they failed to act in a reasonably prudent manner and breached its duty by failing to perform the necessary process of data collection, detection, assessment, monitoring, prevention, and reporting or disclosure of adverse outcomes in infants who ingest its products.

70. As a direct and proximate result of Defendant's failure to act in a reasonably prudent manner and its breach of duty, Baby Maunie was fed cow's milk-based products, Similac Special Care 20 and Similac Special Care 24, which caused her to develop NEC.

71. Had Abbott satisfied its duties to the consuming public in general, Baby Maunie would not have been exposed to its unreasonably dangerous cow's milk-based products.

72. As a further direct result, Plaintiff incurred medical expenses and suffered significant emotional distress, loss of income, loss of consortium, and other harms. Her life has been significantly affected by Baby Maunie's injuries and death.

COUNT IV: INTENTIONAL MISREPRESENTATION

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. At all times relevant to this action, Baby Maunie (and her caretakers) used the products at issue in their intended manner and for their intended purpose.

75. Abbott, as the manufacturer and/or seller of the infant products at issue in this litigation, owed a duty to the consuming public in general, and Plaintiff in particular, to provide truthful, accurate, fulsome information about the risks and benefits of using its products when used in the intended manner and for the intended purpose.

76. Abbott breached its duty through misrepresentations made to consumers, physicians, and medical staff in its advertising and promotional materials, as described in previous

paragraphs and incorporated herein, each of whom were foreseeable and intended recipients of this information.

77. Specifically, upon information and belief, Abbott made the following false statements of material fact on an ongoing and repeated basis and prior to the time Baby Maunie was fed its products:

a. That its cow's milk-based products were safe and beneficial for premature infants when it knew or should have known that its products were unreasonably dangerous and cause NEC, serious injury, and death in premature infants; and/or

b. That its cow's milk-based products were necessary to the growth and nutrition of premature infants, when it knew or should have known that its products were not necessary to achieve adequate growth; and/or

c. That its products have no serious side effects, when it knew or should have known the contrary to be true; and/or

d. That cow's milk-based products were safe for premature infants; and/or

e. That cow's milk-based products were necessary for optimum growth; and/or

f. That cow's milk-based products were similar or equivalent to breast milk; and/or

g. That its products were safe and more like breast milk than other infant products and that it had removed the harmful ingredients of cow's milk when, in fact, the cow's milk in its products was still capable of causing NEC, serious injury, and death; and/or

h. That its products were based on up-to-date science, which made them safe for premature infants; and/or

i. Omitting the material fact that its products significantly increased the risk of NEC in premature infants.

78. Abbott knew or reasonably should have known those misrepresentations to be false.

79. Defendant's misrepresentations were intended to, and in fact did, induce hospitals and health care providers, including Baby Maunie's hospital and health care providers, to provide its infant products to babies, including to Baby Maunie.

80. Plaintiff was not aware that these misrepresentations were false and justifiably relied on them. Defendant's misrepresentations induced Plaintiff to allow Baby Maunie to be fed Abbott's infant products, in reliance on all the messaging she received about formula feeding, including, directly, or indirectly, Defendant's messaging. Had Abbott not committed these intentional misrepresentations, Baby Maunie would not have been exposed to its unreasonably dangerous cow's milk-based products.

81. As a direct and proximate result, Abbott's products were fed to Baby Maunie causing her NEC and the subsequent health impacts and death.

82. As a further direct result, Plaintiff has incurred medical expenses and suffered significant emotional distress, loss of income, loss of consortium, and other harms. Her life has been significantly affected by Baby Maunie's injuries and death.

COUNT V: NEGLIGENT MISREPRESENTATION

83. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

84. At all times relevant to this action, Baby Maunie used the products at issue in their intended manner and for their intended purpose.

85. Abbott, as the manufacturer and/or seller of the products at issue in this litigation, owed a duty to the consuming public in general, and Plaintiff in particular, to provide truthful, accurate, and complete information about the risks and benefits of using its products when used in the intended manner and for the intended purpose.

86. In the course of its business, Abbott breached its duty through misrepresentations made to consumers, physicians, and medical staff in its advertising and promotional materials, as described in previous paragraphs and incorporated herein, each of whom were foreseeable recipients of this information.

87. Specifically, upon information and belief, Abbott made the following false statements of material fact on an ongoing and repeated basis and prior to the time Baby Maunie was fed its products:

a. That its cow's milk-based products were safe and beneficial for premature infants when it knew or should have known that its products were unreasonably dangerous and cause NEC, serious injury, and death in premature infants; and/or

b. That its cow's milk-based products were necessary to the growth and nutrition of premature infants, when it knew or should have known that its products were not necessary to achieve adequate growth; and/or

c. That its products have no serious side effects, when it knew or should have known the contrary to be true; and/or

d. That cow's milk-based products were safe for premature infants; and/or

e. That cow's milk-based products were necessary for optimum growth; and/or

f. That cow's milk-based products were similar or equivalent to breast milk; and/or

g. That its products were safe and more like breast milk than other infant products and that it had removed the harmful ingredients of cow's milk when, in fact, the cow's milk in its products was still capable of causing NEC, serious injury, and death; and/or

h. That its products were based on up-to-date science, which made them safe for premature infants; and/or

i. Omitting the material fact that its products significantly increased the risk of NEC in premature infants.

88. Abbott was negligent or careless in not determining those representations to be false.

89. Defendant's misrepresentations were intended to and did in fact induce hospitals and health care providers, including Baby Maunie's hospital and health care providers, to provide its products to babies, including to Baby Maunie.

90. Defendant's misrepresentations induced, and were intended to induce, Plaintiff to allow Baby Maunie to be fed Abbott's infant products, in justifiable reliance on all the messaging she received about formula feeding, including, directly, or indirectly, Defendant's messaging. Had Abbott not committed these negligent misrepresentations, Baby Maunie would not have been exposed to its unreasonably dangerous cow's milk-based products.

91. As a direct and proximate result, Abbott's products were fed to Baby Maunie, causing her NEC and the subsequent health impacts and death.

92. As a further direct result, Plaintiff incurred medical expenses and suffered significant emotional distress, loss of income, and other harms. Her life has been significantly affected by Baby Maunie's injuries and related expenses.

COUNT VI: BREACH OF EXPRESS WARRANTY

93. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

94. At all relevant times, Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold, distributed, and/or has acquired the designer, researcher, manufacturer, tester, advertiser, promoter, marketer, seller, and distributer of its infant products as herein above described that were fed to Baby Maunie.

95. At all relevant times, Defendant expressly warranted to Plaintiff Martina Moye, and the University of Tennessee Medical Center, that its baby products were safe for ingestion by preterm infants such as Baby Maunie.

96. At all relevant times, Defendant expressly warranted to Plaintiff Martina Moye, and the University of Tennessee Medical Center that the effectiveness of its Infant Products outweighed any potential dangers and/or risks.

97. The aforementioned express warranties were made to Plaintiff Martina Moye, and the University of Tennessee Medical Center, by way of Abbott's labels, direct advertisement and/or marketing.

98. Upon information and belief, the aforementioned express warranties were made to Plaintiff Martina Moye's physicians by way of Abbott's labels, information from Defendant's sales advertising, and promotional materials.

99. Upon information and belief, the healthcare providers at the University of

Tennessee Medical Center obtained the information regarding the efficacy and safety of Defendant's Infant Products from its labels.

100. Upon information and belief, Defendant expressly warranted to the healthcare providers at the University of Tennessee Medical Center by way of the product's label that its Infant Products were safe for ingesting by infants such as Baby Maunie.

101. On or about September 6, 2017 through September 18, 2017, when Plaintiff Martina Moye permitted the University of Tennessee Medical Center to use Defendant's Infant Products and throughout Baby Maunie's ingestion of said products, Defendant expressly warranted to her, by way of the product's label, that its Infant Products were safe and effective.

102. On or about September 6, 2017 through September 18, 2017, when Plaintiff Martina Moye permitted the University of Tennessee Medical Center to use Defendant's Infant Products and throughout Baby Maunie's ingestion of said products, Defendant expressly warranted to her, by way of the product's label, that its Infant Products were safe for infant ingestion.

103. As a result of Defendant's express warranties to the University of Tennessee Medical Center, physicians were induced to recommend feeding Plaintiff Baby Maunie Defendant's Infant Products, and Plaintiff Martina Moye was induced to permit Baby Maunie's ingestion of said Infant Products from September 6, 2017 through September 18, 2017.

104. At all relevant times, Defendant reasonably anticipated and expected that individuals, such as the Plaintiff Martina Moye, would permit the use and/or ingestion of said Infant Products based upon its express warranties.

105. At all relevant times, Defendant reasonably anticipated and expected that health care workers, such as the Plaintiff Baby Maunie's health care providers at the University of

Tennessee Medical Center would recommend and/or dispense said Infant Products based upon its express warranties.

106. At all relevant times Abbott knew or reasonably should have known that its cow's milk-based products significantly increased the risk of NEC, serious injury, and death.

107. At all relevant times Abbott knew or reasonably should have known that its cow's milk-based products were not safe for ingestion by preterm infants such as Baby Maunie.

108. At all relevant times, Defendant knew or should have known that its cow's milk-based products were unreasonably dangerous because the safety risk outweighed any benefit of other nutrition options available.

109. The unreasonably dangerous characteristics of these cow's milk-based products were beyond that which would be contemplated by the ordinary user, such as Plaintiff Martina Moye, with the ordinary knowledge common to the public as to the said infant products characteristics and safety.

110. The unreasonably dangerous characteristics of cow's milk-based products were beyond that which would be contemplated by Plaintiff Baby Maunie's healthcare providers, with the ordinary knowledge common to the public as to the cow's milk-based product's characteristics.

111. At the time the cow's milk-based infant products left the Defendant's control, these products did not conform to Defendant's express warranties because they were not safe to use as a source for preterm infants, in that it was associated with NEC, severe injury, or death,

112. At the time the cow's milk-based infant formulas left the Defendant's control, these cow's milk-based infant formulas did not conform to Defendant's express warranties because the effectiveness of said cow's milk-based formulas does not outweigh any of the dangers and/or risks

associated with the use of these formulas in preterm infants.

113. The express warranties made by Defendant regarding the safety and efficacy of cow's milk-based infant formula were made with the intent to induce Plaintiff Martina Moye to use the product and/or Baby Maunie's health care providers, the University of Tennessee Medical Center, to dispense the product.

114. Defendant knew and/or should have known that by making the express warranties to Plaintiff Martina Moye and/or Baby Maunie's healthcare providers, the University of Tennessee Medical Center, it would be the natural tendency of Plaintiff to use cow's milk-based infant formula and/or Baby Maunie's healthcare providers to recommend feeding preterm infants cow's milk-based formula.

115. Plaintiff and Baby Maunie's healthcare providers, the University of Tennessee Medical Center, as well as members of the medical community, relied on the express warranties of the Defendant identified herein.

116. The express warranties made by Defendant regarding the safety and efficacy of cow's milk-based infant formula induced Plaintiff Martina Moye to use the product in feeding Baby Maunie and/or Baby Maunie's healthcare providers to recommend using the product.

117. Plaintiff Martina Moye's and Baby Maunie's injuries and damages were directly caused by Defendant's breach of the aforementioned express warranties.

118. Plaintiff Martina Moye's and Baby Maunie's injuries and damages arose from a reasonably anticipated use of the product by Plaintiff Martina Moye and ingestion of the product by Baby Maunie.

119. Accordingly, Defendant is liable as a result of its breach of express warranties to Plaintiff Martina Moye and Baby Maunie.

120. As a result of the foregoing breaches, Plaintiff Martina Moye was caused to incur medical expenses and suffered significant emotional distress, loss of income, loss of consortium, and other harms, Baby Maunie was caused to incur serious injuries including NEC and ultimately death.

121. By reason of the foregoing, Plaintiff Martina Moye and Baby Maunie have been severely and permanently injured. As a result of the foregoing acts and omissions the Plaintiff Martina Moye requires and/or will require more health care and services and did incur medical, health, incidental, and related expenses.

COUNT VII: BREACH OF IMPLIED WARRANTIES

122. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

123. At all relevant times, Defendant designed, researched, manufactured, tested, advertised, promoted, marketed, sold, distributed, and/or has acquired the designer, researcher, manufacturer, tester, advertiser, promoter, marketer, seller, and distributer of its cow's milk-based infant formula as hereinabove described that was used by Plaintiff Martina Moye and Baby Maunie.

124. At the time Defendant marketed, sold, and distributed cow's milk-based infant formula for use by Plaintiff Martina Moye and Baby Maunie, Defendant knew of the use for which cow's milk-based infant formula and impliedly warranted the product to be of merchantable quality and safe and fit for ordinary use.

125. At all relevant times, Defendant reasonably anticipated and expected that individuals, such as Plaintiff Martina Moye and Baby Maunie, would use and/or consume cow's milk-based infant formula for the infant's nutrition.

126. At all relevant times, Defendant reasonably anticipated and expected that healthcare providers, such as Plaintiff Baby Maunie's providers, the University of Tennessee Medical Center, dispense cow's milk-based infant formula for the feeding of preterm infants such as Baby Maunie.

127. At all relevant times, Defendant impliedly warranted to Plaintiff Martina Moye, Baby Maunie's healthcare providers, the University of Tennessee Medical Center, and the medical community that cow's milk-based infant formula was of merchantable quality and safe and fit for ordinary use in that it was safe to feed preterm infants such as Baby Maunie.

128. At all relevant times, Defendant impliedly warranted to Plaintiff Martina Moye, Baby Maunie's healthcare providers, the University of Tennessee Medical Center, and the medical community that cow's milk-based infant formula was of merchantable quality and safe and fit for ordinary use in that it was effective to use as a food source for preterm infants such as Baby Maunie.

129. At all relevant times, Defendant impliedly warranted to Plaintiff Martina Moye, Baby Maunie's healthcare providers, the University of Tennessee Medical Center, and the medical community that cow's milk-based infant formula was of merchantable quality and safe and fit for ordinary use in that the effectiveness of cow's milk-based infant formula outweighed any potential dangers and/or risks.

130. At all relevant times, Defendant knew or should have known that cow's milk-based infant formula was unreasonably dangerous because of its increased risk of causing NEC, serious injury, and death when used in the form and manner as provided by Defendant.

131. At all relevant times, Defendant knew or should have known that cow's milk-based formula was unreasonably dangerous because its safety risk outweighed any efficacy the formula

may have.

132. The unreasonably dangerous characteristics of cow's milk-based infant formula were beyond that which would be contemplated by the ordinary user such as Plaintiff Martina Moye, with the ordinary knowledge common to the public as to the product's characteristics.

133. The unreasonably dangerous characteristics of cow's milk-based infant formula were beyond that which would be contemplated by healthcare providers, such as Plaintiff Baby Maunie's healthcare providers, the University of Tennessee Medical Center, with the ordinary knowledge common to the public as to the product's characteristics.

134. At all relevant times and at the time cow's milk-based infant formula left the Defendant's control, the implied warranties made by Defendant were false, misleading, and inaccurate because cow's milk-based infant formula was not safe to use as a food source for preterm infants such as Baby Maunie, in that it carried with it an increased risk of NEC, serious injury, and death.

135. At all relevant times and at the time cow's milk-based infant formula left the Defendant's control, the implied warranties made by Defendant were false, misleading and inaccurate because the effectiveness of cow's milk-based infant formula did not outweigh any the dangers and/or risks associated with these formulas in feeding preterm infants such as Baby Maunie.

136. Plaintiff Martina Moye relied on Defendant's implied warranties of merchantability and fitness for the ordinary use and purpose relating to cow's milk-based infant formula.

137. Plaintiff Martina Moye reasonably relied upon the skill and judgment of Defendant as to whether cow's milk-based infant formula was of merchantable quality and safe and fit for its

intended use.

138. Upon information and belief, Plaintiff Baby Maunie's healthcare providers, the University of Tennessee Medical Center, relied on Defendant's implied warranties of merchantability and fitness for the ordinary use and purpose relating to cow's milk-based infant formula.

139. Upon information and belief, Plaintiff Baby Maunie's healthcare providers, the University of Tennessee Medical Center, reasonably relied upon the skill and judgment of Defendant as to whether cow's milk-based infant formula was of merchantable quality and safe and fit for its intended use.

140. Cow's milk-based infant formula was introduced into the stream of commerce by the Defendant in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to and did reach users, handlers, and persons coming into contact with said products without substantial change in the condition in which they were sold.

141. Defendant herein breached the aforesaid implied warranties, as its cow's milk-based infant formula was not merchantable nor fit for its intended purposes and uses.

142. Plaintiff Martina Moye would not have used cow's milk-based infant formula and/or, upon information and belief, Baby Maunie's healthcare providers, the University of Tennessee Medical Center, would not have provided cow's milk-based infant formula but for the aforesaid implied warranties.

143. Plaintiff Martina Moye's and Baby Maunie's injuries and damages were directly caused by Defendant's breach of the aforementioned implied warranties.

144. Plaintiff Martina Moye's and Baby Maunie's injuries and damages arose from a customary, usual, reasonably foreseeable use of the product by Plaintiff Martina Moye.

145. As a result of the foregoing breaches, Plaintiff Baby Maunie was caused to suffer serious and dangerous injuries including NEC and Death, and Plaintiff Martina Moye was caused to suffer other severe and personal injuries which are permanent and lasting in nature, physical and mental anguish, including diminished enjoyment of life.

COUNT VIII: LOSS OF CONSORTIUM

146. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

147. Loss of filial consortium is a derivative claim. It is derivative of each of the claims and allegations above.

148. At all relevant times Plaintiff was Baby Maunie's lawful parent.

149. As a result of Defendant's tortious conduct, Plaintiff suffered a loss of affection, companionship, society, and consortium of her child.

COUNT IX: SURVIVAL ACTIONS

150. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

151. Plaintiff, as parent and proposed representative of Baby Maunie and her estate, is entitled to damages for the harms inflicted upon the decedent, as provided under applicable state law.

COUNT X: WRONGFUL DEATH ACTIONS

152. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

153. Plaintiff, as parent and proposed representative of Baby Maunie and her estate, is entitled to damages for the harms inflicted upon the decedent, and for the harms inflicted upon her, as provided under applicable state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

154. For compensatory damages in an amount to be proven at trial;

155. For damages for past, present, and future emotional distress, loss of enjoyment of life, pain and suffering, mental anguish, loss of consortium, and other non-economic losses sustained as a result of Defendant's conduct;

156. For past, present, and future out-of-pocket costs, lost income and/or lost revenue, and/or lost profits, and/or lost business opportunity, lost earning capacity, and costs related to medical or mental health treatment which have or may be recommended;

157. For interest as permitted by law;

158. For attorney's fees, expenses, and recoverable costs incurred in connection with this action; and

159. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims triable.

Dated: November 1, 2022.

Respectfully submitted,

MORGAN & MORGAN

/s/Panagiotis V. Albanis

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