

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

IN RE ABBOTT LABORATORIES INFANT)
FORMULA SHAREHOLDER) Case No. 22 CV 5513
DERIVATIVE LITIGATION) Hon. Manish S. Shah
)

DECLARATION OF JOSHUA RABINOVITZ

I, Joshua Rabinovitz, pursuant to 28 U.S.C. § 1746, hereby declare as follows: I am a partner with the law firm of Kirkland & Ellis LLP and counsel for Defendants in the above-captioned action. I submit this Declaration in support of Defendants' motion to dismiss dated December 18, 2023. Specifically, I submit this Declaration to place before the Court certain documents that are referenced in Defendants' motion to dismiss and are either referenced in the amended complaint (Dkt. #92), are of public record, and/or are part of the pre-suit books and records production of Abbott Laboratories that Plaintiffs and Abbott agreed may be used on a motion to dismiss.

1. Attached hereto as **Exhibit 1** is a true and correct copy of Abbott Laboratories' SEC Form 10-K for the fiscal year ending on December 31, 2022, filed on Feb. 17, 2023. It is referenced in the complaint at paragraphs 260-262. It is publicly available on the SEC's EDGAR website, at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1800/000162828023004026/abt-20221231.htm>.

2. Attached hereto as **Exhibit 2** is a true and correct copy of a publication by the U.S. Food and Drug Administration entitled *Cronobacter Sakazakii*. It is publicly available on the FDA's website, at: <https://www.fda.gov/media/167688/download>.

3. Attached hereto as **Exhibit 3** is a true and correct copy of a publication by the U.S. Centers for Disease Control and Prevention entitled *Cronobacter sakazakii Infections in Two Infants Linked*

to Powdered Infant Formula and Breast Pump Equipment — United States, 2021 and 2022, 72 CDC Morbidity & Mortality Weekly Report 223 (Mar. 3, 2023). It is publicly available on the CDC's website, at: <https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7209a2-h.pdf>.

4. Attached hereto as **Exhibit 4** is a true and correct copy of a publication by the CDC entitled *Cronobacter Infection and Infants*. It is publicly available on the CDC's website, at: <https://www.cdc.gov/cronobacter/infection-and-infants.html>.

5. Attached hereto as **Exhibit 5** is a true and correct copy of the transcript of May 25, 2022, testimony before the U.S. House of Representatives' Committee on Energy and Commerce, Subcommittee on Oversight and Investigations. It is publicly available on the FDA's website, at: <https://www.fda.gov/media/158739/download>.

6. Attached hereto as **Exhibit 6** is a true and correct copy of a web page from the CDC's website entitled *Cronobacter and Powdered Infant Formula Investigation*. It is publicly available, at: <https://www.cdc.gov/cronobacter/outbreaks/infant-formula.html>.

7. Attached hereto as **Exhibit 7** is a true and correct copy of a press release issued by the U.S. Department of Justice on March 16, 2022, entitled *Justice Department Files Complaint and Proposed Consent Decree to Ensure Safety of Abbott Laboratories' Infant Formula*. It is publicly available on the Justice Department's website, at: <https://www.justice.gov/opa/pr/justice-department-files-complaint-and-proposed-consent-decree-ensure-safety-abbott>.

8. Attached hereto as **Exhibit 8** is a true and correct copy of a publication by the FDA entitled *FDA Form 483 Frequently Asked Questions*. It is publicly available on the FDA's website, at: <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/inspection-references/fda-form-483-frequently-asked-questions>.

9. Attached hereto as **Exhibit 9** is a true and correct copy of a publication of the FDA entitled *Inspection Observations*. It is publicly available on the FDA's website, at: <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/inspection-references/inspection-observations>.

10. Attached hereto as **Exhibit 10** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 35-36. It is referenced in the complaint at paragraphs 151 and 224.

11. Attached hereto as **Exhibit 11** is a true and correct copy of a publication by the FDA entitled *About Warning and Close-Out Letters*. It is publicly available on the FDA's website, at: <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/about-warning-and-close-out-letters>.

12. Attached hereto as **Exhibit 12** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6853-6891.

13. Attached hereto as **Exhibit 13** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 37-39. It is referenced in the complaint at paragraphs 188 and 224.

14. Attached hereto as **Exhibit 14** is a true and correct copy of a confidentiality agreement between International Brotherhood of Teamsters Local No. 710 and Abbott Laboratories, executed in January 2023.

15. Attached hereto as **Exhibit 15** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10591-10614. It is referenced in the complaint at paragraph 170.

16. Attached hereto as **Exhibit 16** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10615-10638.

17. Attached hereto as **Exhibit 17** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10503-10525.

18. Attached hereto as **Exhibit 18** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10558-10583. It is referenced in the complaint at paragraphs 144-145.

19. Attached hereto as **Exhibit 19** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10533-10557. It is referenced in the complaint at paragraph 181.

20. Attached hereto as **Exhibit 20** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 10465-10497.

21. Attached hereto as **Exhibit 21** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 1712-1727.

22. Attached hereto as **Exhibit 22** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2005-2029.

23. Attached hereto as **Exhibit 23** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2662-2674.

24. Attached hereto as **Exhibit 24** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2988-3023.

25. Attached hereto as **Exhibit 25** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3666-3678. It is referenced in the complaint at paragraph 147.

26. Attached hereto as **Exhibit 26** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4023-4052.

27. Attached hereto as **Exhibit 27** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4715-4728. It is referenced in the complaint at paragraph 171.

28. Attached hereto as **Exhibit 28** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5205-5246.

29. Attached hereto as **Exhibit 29** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5951-5968. It is referenced in the complaint at paragraphs 183 and 185.

30. Attached hereto as **Exhibit 30** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6432-6485. It is referenced in the complaint at paragraph 195.

31. Attached hereto as **Exhibit 31** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 7952-8000. It is referenced in the complaint at paragraph 252.

32. Attached hereto as **Exhibit 32** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 1376-1377.

33. Attached hereto as **Exhibit 33** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 1871R-1878R.

34. Attached hereto as **Exhibit 34** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2000-2004.

35. Attached hereto as **Exhibit 35** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2238R-2241R.

36. Attached hereto as **Exhibit 36** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2651-2661.

37. Attached hereto as **Exhibit 37** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2715R-2719R.

38. Attached hereto as **Exhibit 38** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2979-2987.

39. Attached hereto as **Exhibit 39** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3204R-3207R.

40. Attached hereto as **Exhibit 40** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3659-3665. It is referenced in the complaint at paragraph 146.

41. Attached hereto as **Exhibit 41** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3708R-3714R. It is referenced in the complaint at paragraph 148.

42. Attached hereto as **Exhibit 42** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3891-3895. It is referenced in the complaint at paragraph 157.

43. Attached hereto as **Exhibit 43** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4101R-4105R. It is referenced in the complaint at paragraph 162.

44. Attached hereto as **Exhibit 44** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4704-4714.

45. Attached hereto as **Exhibit 45** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4999R-5004R. It is referenced in the complaint at paragraph 172.

46. Attached hereto as **Exhibit 46** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5199-5204.

47. Attached hereto as **Exhibit 47** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5491R-5497R. It is referenced in the complaint at paragraph 177.

48. Attached hereto as **Exhibit 48** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6208R-6218R.

49. Attached hereto as **Exhibit 49** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 6426-6431.

50. Attached hereto as **Exhibit 50** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6552R-6557R.

51. Attached hereto as **Exhibit 51** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 1375.

52. Attached hereto as **Exhibit 52** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 1757R.

53. Attached hereto as **Exhibit 53** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 1915.

54. Attached hereto as **Exhibit 54** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2065R-2066R.

55. Attached hereto as **Exhibit 55** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2285-2286.

56. Attached hereto as **Exhibit 56** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 2713R-2714R.

57. Attached hereto as **Exhibit 57** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 2852.

58. Attached hereto as **Exhibit 58** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3056R-3057R.

59. Attached hereto as **Exhibit 59** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 3265.

60. Attached hereto as **Exhibit 60** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 3706R-3707R. It is referenced in the complaint at paragraph 147.

61. Attached hereto as **Exhibit 61** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates number ABT-SHDR 3890. It is referenced in the complaint at paragraph 156.

62. Attached hereto as **Exhibit 62** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4099R-4100R. It is referenced in the complaint at paragraph 161.

63. Attached hereto as **Exhibit 63** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4374-4375. It is referenced in the complaint at paragraph 166.

64. Attached hereto as **Exhibit 64** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 4773R-4774R. It is referenced in the complaint at paragraph 171.

65. Attached hereto as **Exhibit 65** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5053-5054. It is referenced in the complaint at paragraph 175.

66. Attached hereto as **Exhibit 66** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 5286R-5287R. It is referenced in the complaint at paragraph 176.

67. Attached hereto as **Exhibit 67** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6014R-6015R. It is referenced in the complaint at paragraph 183.

68. Attached hereto as **Exhibit 68** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6285-6286. It is referenced in the complaint at paragraph 189.

69. Attached hereto as **Exhibit 69** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 6550R-6551R. It is referenced in the complaint at paragraph 195.

70. Attached hereto as **Exhibit 70** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 7950-7951. It is referenced in the complaint at paragraph 214.

71. Attached hereto as **Exhibit 71** is a true and correct copy of a confidential email from Brad Masters to Carol V. Gilden, dated January 25, 2023.

72. Attached hereto as **Exhibit 72** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 7528R-7538R. It is referenced in the complaint at paragraph 214.

73. Attached hereto as **Exhibit 73** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 7944-7949. It is referenced in the complaint at paragraph 254.

74. Attached hereto as **Exhibit 74** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 7936-7943. It is referenced in the complaint at paragraphs 234, and 240-242.

75. Attached hereto as **Exhibit 75** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 8041-8065. It is referenced in the complaint at paragraphs 234-238.

76. Attached hereto as **Exhibit 76** is a true and correct copy of a confidential document from Abbott's books and records production, bearing the bates numbers ABT-SHDR 8039-8040. It is referenced in the complaint at paragraph 253.

77. Attached hereto as **Exhibit 77** is a true and correct copy of the Amended And Restated Articles Of Incorporation of Abbott Laboratories. It is referenced in the complaint at paragraph 420. It is publicly available on the SEC's EDGAR website, at:

https://www.sec.gov/Archives/edgar/data/1800/000110465921054917/tm2114110d1_ex3-1.htm.

78. Attached hereto as **Exhibit 78** is a true and correct copy of Nancy McKinstry's SEC Form 4 dated February 25, 2022. It is publicly available on the SEC's EDGAR website, at:

https://www.sec.gov/Archives/edgar/data/1800/000141588922001883/xslF345X03/form4-02252022_020241.xml.

79. Attached hereto as **Exhibit 79** is a true and correct copy of Daniel Starks's SEC Form 4 dated May 5, 2022. It is publicly available on the SEC's EDGAR website, at:

https://www.sec.gov/Archives/edgar/data/1800/000141588922004696/xslF345X03/form4-05052022_020512.xml.

80. Attached hereto as **Exhibit 80** is a true and correct copy of Daniel Starks's SEC Form 4 dated July 28, 2022. It is publicly available on the SEC's EDGAR website, at:

https://www.sec.gov/Archives/edgar/data/1800/000141588922008020/xslF345X03/form4-07282022_020728.xml.

07282022_020750.xml.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 18, 2023

/s/ Joshua Z. Rabinovitz
Joshua Z. Rabinovitz