

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<i>In re Abbott Laboratories Infant Formula Shareholder Derivative Litigation</i>	Case No. 1:22-cv-5513 Hon. Sunil R. Harjani Hon. Laura K. McNally
MATTHEW STEELE, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, v. LORI J. RANDALL, <i>et al.</i> , Defendants, and ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:25-cv-3669 Hon. Charles P. Kocoras

**LEAD PLAINTIFFS' UNOPPOSED MOTION FOR REASSIGNMENT
OF CASE AS RELATED**

Lead Plaintiffs International Brotherhood of Teamsters Local No. 710 Pension Fund and Southeastern Pennsylvania Transportation Authority (collectively “Lead Plaintiffs”) respectfully move this Court to reassign the recently-filed *Steele v. Randall et al.* action, Case No. 1:25-cv-3669, to Judge Harjani’s docket given its relatedness to the above-captioned matter, Case No. 1:22-cv-5513. Defendants do not oppose this motion.

INTRODUCTION

This Motion involves the consolidated shareholder derivative action, Case No. 1:22-cv-5513 (“Consolidated Action”), pending in this Court, and a newly filed, related derivative action, *Steele v. Randall et al.*, Case No. 1:25-cv-03669, (“*Steele II*”), pending before Judge Kocoras. Both actions allege breaches of fiduciary duty and violations of the federal securities laws resulting from misconduct by the officers and directors of Abbott Laboratories, Inc. (“Abbott”) with respect to infant formula contamination that is alleged to have caused injuries and fatalities to infants, thus harming Abbott. Despite the fact that this Court previously consolidated all derivative actions making these same claims—including a derivative action previously filed by Steele (Case No. 1:23-cv-850, (“*Steele I*”))—and denied Steele’s earlier application to become lead plaintiff, Steele is now embarking on *yet another attempt* to inject himself into this derivative litigation, which is currently being led by Court-appointed co-lead counsel and in active discovery. Because *Steele II* involves the same legal and factual issues as the above-captioned Consolidated Action, under principles of relatedness and Local Rule 40.4 and in the interest of efficiency and avoiding potentially inconsistent judgments, *Steele II* should be deemed related to the pending Consolidated Action, and reassigned to Judge Harjani’s docket.

BACKGROUND

Six derivative actions were previously filed in 2022 and 2023 involving these same issues (including *Steele I*), all alleging a theory of demand futility. *Steele I* was terminated when Judge Shah, to whom the actions had previously been assigned,

consolidated all these related derivative actions and selected Lead Plaintiffs and the undersigned counsel to spearhead this litigation. *See* ECF No. 86.

Just over a month later—and mere days after Lead Plaintiffs filed their consolidated amended complaint—Steele tried a new approach to insert himself into the case, demanding that he either be named in the new complaint or be permitted to continue his litigation separately. ECF No. 96. The Court denied Steele’s request for either form of relief, explaining that “[a] shareholder derivative action need not name other plaintiffs to vindicate the interests of shareholders seeking relief for the benefit of the company.” ECF No. 106. The Court made clear that “[i]t is not unusual that a contested leadership fight has resulted in some plaintiffs disagreeing with lead plaintiffs’ approach,” but that “consolidation of all cases and leadership from the court-designated lead plaintiffs and counsel is the most appropriate method of case management,” so “[a]ll stakeholders must learn to work within this structure.” ECF No. 106.

Despite all of this, Steele’s counsel recently filed yet another shareholder derivative complaint on behalf of Steele, again alleging harm as a result of the 2022 infant formula shortage and *Cronobacter* infection at the Sturgis plant. *Steele II*, ECF No. 1 at 2. Despite the wholly overlapping factual and legal arguments in the *Steele II* complaint to that of the Consolidated Action—including references to many of the exact same *Cronobacter* instances, like the “scoop hopper”; inspection reports; and press statements—Steele has taken no steps to reassign the case and rectify that *Steele II* is assigned to a different judge. Notably, though, Steele has now switched

his legal theory at the starting gate from demand futility to demand refused—even though the Court already found that a demand was futile at the motion to dismiss stage, ECF No. 141, and the derivative claims are now properly in the hands of and are being litigated by court-appointed co-lead counsel.¹

LEGAL STANDARD

Under Local Rule 40.4(b), reassignment is appropriate when two cases are “related.” And under the Local Rule 40.4(a), cases are “related” where, among other possibilities, “the cases involve some of the same issues of fact or law[.]” If cases are found to be related, they must meet four additional requirements before they can be reassigned: (1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case

¹ Working “within this structure,” Lead Plaintiffs have vigorously litigated the Consolidated Action. Lead Plaintiffs defeated Defendants’ motion to dismiss, wherein the Court held that Lead Plaintiffs sufficiently pled demand futility and allowed claims of breach of fiduciary duty and violations of the federal securities laws to proceed. ECF No. 141. Lead Plaintiffs also overcame Defendants’ motion for reconsideration on same; ECF No. 185; thwarted the Special Litigation Committee’s effort to stay this litigation altogether, ECF No. 222; and are in the midst of heavy party and non-party discovery.

substantially; and (4) the cases are susceptible of disposition in a single proceeding. L.R. 40.4(b).

With these requirements in mind, a district court has the sound discretion whether to reassign a case under Local Rule 40.4. *Clark v. Ins. Car Rentals Inc.*, 42 F. Supp. 2d 846, 847 (N.D. Ill. 1999).

ARGUMENT

A. Relatedness

The Consolidated Action and *Steele II* are related as they involve not only the “same issues of fact or law,” but *identical* issues of fact and law. L.R. 40.4(a) (emphasis added). Both cases assert causes of actions against Abbott’s Board of Directors under Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder as well as for breach of fiduciary duty relating to the closure of Abbott’s Sturgis plant after the Cronobacter bacteria infected the plant’s infant formula, and the cases are based on virtually identical allegations. *Compare* the Consolidated Action Compl., ECF No. 91, *with* Ex. 1, *Steele II* Compl. The two Actions are even more similar than others that have been deemed related in this district, which also involved similar underlying factual allegations and resolution of each required answering the same legal question. *See Portis v. McKinney*, No. 21-CV-2842, 2021 WL 4125107, at *2 (N.D. Ill. Sept. 9, 2021) (reassigning and consolidating related cases premised on multiple instances of racial animus by the same defendant).

The only difference between the two Actions is that the Consolidated Action is based on demand-futility while *Steele II* is a demand-refusal case. *Compare* ECF No. 91 at 147–56, with *Steele II*, ECF No. 1 ¶¶ 212–14. But this difference does not make

the Actions so different as to preclude reassignment. *See In re Broiler Chicken Antitrust Litig.*, No. 16-CV-8637, 2023 BL 308697, at *18–19 (N.D. Ill. Apr. 13, 2023) (rejecting request for reassignment where the two actions were “as different as ‘night and day’” because one case was about price-fixing and one case was about contract arbitration).

What is more, as noted, Steele originally brought a demand-futility case premised on the same allegations as presented in *Steele II*, but *Steele I*—like the other then-pending derivative actions—was consolidated into the above-captioned Consolidated Action, as is par for the course when multiple plaintiffs seek to lead the same case. *See* ECF No. 86. The *Steele II* complaint ignores this recent history, presenting his claims as a fresh action, ostensibly to circumvent the Court’s prior consolidation order. Not only does Steele fail to acknowledge the Consolidated Action in the *Steele II* complaint, but the filing of the *Steele II* complaint also disregards Judge Shah’s unambiguous instruction that “[a]ll stakeholders must learn to work within this structure” because “consolidation of all cases and leadership from the court-designated lead plaintiffs and counsel is the most appropriate method of case management[.]” ECF No. 106.

As was the case with *Steele I*, the Consolidated Action and *Steele II* are based on the same underlying factual allegations and resolution of each involves answering

the same legal question. Accordingly, these two cases are “related” within the meaning of Local Rule 40.4.

B. Reassignment

Not only are the cases related, but they also satisfy all four Local Rule 40.4(b) reassignment requirements.

Both Actions are pending in the Northern District of Illinois, L.R. 40.4(b)(1), and the handling of both cases by Judge Harjani is likely to save substantial judicial time and effort, L.R. 40.4(b)(2). Judge Harjani has handled the Consolidated Action for over a year now. *See* ECF No. 139 (transferring the above-captioned matter to Judge Harjani in April 2024). Having ruled on motions to dismiss, for reconsideration of the partial dismissal, and to stay the litigation (ECF Nos. 141, 185, and 222), and having overseen the initial stages of both party and non-party discovery, Judge Harjani is extremely familiar with the facts giving rise to the Consolidated Action, as well as the parties’ legal arguments. *See Urb. 8 Fox Lake Corp. v. Nationwide Affordable Hous. Fund 4, LLC*, No. 18-CV-6109, 2019 WL 2515984, at *3 (N.D. Ill. June 18, 2019) (reassignment would save “significant judicial resources” because the court had already invested time and effort to learn about the parties’ relationship and the allegations at issue and, absent reassignment, another court would “be required to invest similar time and effort”). There is nothing to be gained, other than inefficiencies, by having two judges separately oversee these Actions involving

identical issues, particularly where doing so may lead to inconsistent rulings. *See id.*; *see also Portis*, 2021 WL 4125107, at *2.

For the same reasons discussed above, both Actions are susceptible to disposition in a single proceeding. *See* L.R. 40.4(b)(4). The Actions involve the same defendants, the same potential witnesses, and the same factual underpinnings. *See Portis*, 2021 WL 4125107, at *3.

Lastly, as *Steele II* was just filed, reassigning *Steele II* will not delay either of the proceedings. *See* L.R. 40.4(b)(3). No party has answered or otherwise engaged with that complaint, and it is unclear how the *Steele II* defendants will respond given the pending Consolidated Action and this Court's prior orders. In light of the preliminary stage of *Steele II*, reassignment of that case for consistent adjudication by Judge Harjani will not hamper Judge Harjani's (or Magistrate Judge McNally's) ability to continue to oversee discovery in the Consolidated Action.

Because all four of the Local Rule 40.4(b) criteria are satisfied, reassignment of *Steele II* is warranted.

CONCLUSION

Accordingly, the Court should deem the two Actions related, and reassign *Steele II* to Judge Harjani's docket.

Dated: April 18, 2025

Respectfully submitted,

/s/ Carol V. Gilden

Carol V. Gilden

COHEN MILSTEIN SELLERS

& TOLL, PLLC

190 South LaSalle Street, Suite 1705

Chicago, Illinois 60603

IL Bar No. 6185530
Tel: 312-357-0370
cgilden@cohenmilstein.com

Richard A. Speirs
Amy Miller
COHEN MILSTEIN SELLERS
& TOLL, PLLC
88 Pine Street, 14th Floor
New York, NY 10005
Tel: 212-828-7791
rspeirs@cohenmilstein.com
amiller@cohenmilstein.com

Steven J. Toll
Molly Bowen
Margaret (Emmy) Wydman
COHEN MILSTEIN SELLERS
& TOLL, PLLC
1100 New York Ave., NW, 8th Floor
Washington, DC 20005
Tel: 202-408-4646
stoll@cohenmilstein.com
mbowen@cohenmilstein.com
ewydman@cohenmilstein.com

Co-Lead Counsel for Lead Plaintiffs

/s/Justin O. Reliford
Justin O. Reliford
Elizabeth K. Dragovich
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
222 Delaware Ave., Suite 1050
Wilmington, Delaware 19801
Tel: 302-578-7345
jreliford@scott-scott.com
edragovich@scott-scott.com

Maxwell Huffman
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
600 W. Broadway, Suite 3300
San Diego, CA 92101

Tel: 619-233-4565
mhuffman@scott-scott.com

Jing-Li Yu
Melissa May
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 24th Floor
New York, NY 10169
Tel: 212-223-6444
jyu@scott-scott.com
mmay@scott-scott.com

Geoffrey M. Johnson
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
12434 Cedar Road, Suite 12
Cleveland Heights, OH 44106
Tel: 216-229-6088
gjohnson@scott-scott.com

Co-Lead Counsel for Lead Plaintiffs

John A. Kehoe
KEHOE LAW FIRM, P.C.
2001 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: 215-792-6676
jkehoe@kehoelawfirm.com

*Additional Counsel for Lead Plaintiff
Southeastern Pennsylvania Transportation
Authority*