

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

IN RE ABBOTT LABORATORIES INFANT
FORMULA SHAREHOLDER DERIVATIVE
LITIGATION

Case No. 1:22-cv-5513

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

**Declaration of Francis A. Bottini, Jr. in Support of Plaintiff Matthew Steele's Motion for
an Order Requiring Lead Plaintiffs to Add Mr. Steele to the Consolidated Amended
Complaint or, Alternatively, for Relief From the Order of Consolidation**

I, Francis A. Bottini, Jr., declare as follows:

1. I am an attorney with the law firm of Bottini & Bottini, Inc., counsel for Plaintiff Matthew Steele in this action. I submit this declaration in support of Plaintiff Matthew Steele's Motion for an Order Requiring Lead Plaintiffs to Add Mr. Steele to the Consolidated Amended Complaint or, Alternatively, for Relief From the Order of Consolidation. I have personal knowledge of the facts stated in this declaration. I could and would competently testify to these facts, if called upon to do so.

2. On September 18, 2023 the Court ordered the related shareholder derivative actions pending before the Court consolidated, appointed two lead plaintiffs and two co-lead counsel, and ordered that a consolidated complaint be filed by October 16, 2023. Dkt. No. 86. Lead Plaintiffs failed to do so. Dkt. No. 91. The so-called "Consolidated Amended Complaint" is not a consolidated complaint because it does not include any of the *six other plaintiffs* as parties. Those other plaintiffs excluded by Lead Counsel from the CAC are Leon Martin, Ilene Lippman, Larry Huetteman, Matthew Steele, David Hamilton, and Thomas P. DiNapoli, Comptroller of the State of New York as Administrative Head of the New York State and Local Retirement System. The two Lead Plaintiffs (International Brotherhood of Teamsters Local No. 710 Pension Fund and Southeastern Pennsylvania Transportation Authority) are the only two plaintiffs in the amended complaint. *See* Dkt. No. 91 at ¶¶24-25.

3. Co-Lead Counsel never contacted my firm about the filing of the consolidated complaint. As a result, approximately a week and a half before the CAC was due, I reached out to Carol Gilden of Cohen Milstein to discuss the CAC. That call occurred on October 4, 2023. On the call, I indicated to Ms. Gilden that Plaintiff Steele desired to be included in the Consolidated Amended Complaint.

4. On the call with Ms. Gilden, I also indicated that Mr. Steele had recently been successful in defeating Abbott's motion to dismiss in his Lake County, Illinois *mandamus* action, where he is seeking a broader scope of document production than what Lead Plaintiffs had obtained. I also sent a copy of that favorable ruling to Ms. Gilden, which is attached hereto as **Exhibit A.**

5. On that call, Ms. Gilden expressed willingness to include Mr. Steele in the CAC and agreed that Mr. Steele's efforts in the Lake County action could provide a significant benefit to the case by providing the opportunity to obtain a broader scope of documents than what other stockholders had obtained.

6. I later had a call with both Ms. Gilden and Mr. Geoff Johnson on or about October 10, 2023, during which the same topic was discussed and both agreed that they were in favor of adding Mr. Steele to the CAC. I also inquired as to whether Co-Lead Counsel intended to add the other plaintiffs. Ms. Gilden and Mr. Johnson responded that they had not spoken to the other plaintiffs or asked them if they wanted to be included in the CAC.

7. But just one business day before the CAC was due to be filed, on October 13, 2023, Co-Lead Counsel abruptly changed their position and stated they would not include Mr. Steele in the CAC and also did not plan on including any of the other plaintiffs. I objected on behalf of Mr. Steele, but Co-Lead Counsel disregarded the objection and said they intended to file the CAC without Mr. Steele as a plaintiff. The only justification offered by Co-Lead Counsel was that they did not believe Mr. Steele could verify the CAC unless he had full access to the "inspection demand" documents Lead Plaintiffs had obtained. I indicated to Ms. Gilden and Mr. Johnson that Mr. Steele was willing to sign and be bound by the same confidentiality order that the Lead Plaintiffs had signed. Notwithstanding such offer by Mr. Steele, Co-Lead Counsel still refused to

include Mr. Steele in the CAC.

8. I responded to Ms. Gilden and Mr. Johnson, indicating that if Lead Plaintiffs or Defendants objected to Mr. Steele reviewing the documents themselves or an unredacted version of the complaint, then Co-Lead Counsel could send me a *public, redacted version* of the CAC and Mr. Steele would provide a verification to such.

9. Even after making this concession, however, Ms. Gilden and Mr. Johnson refused to send Mr. Steele or his counsel any draft of the CAC and stated they would not include him or any other plaintiff in the CAC.

I declare under penalty of perjury that the foregoing statements are true and correct. Executed on October 19, 2023, at La Jolla, California.

s/ Francis A. Bottini, Jr.

Francis A. Bottini, Jr.

CERTIFICATE OF SERVICE

I, Rowena T. Parma, an attorney, hereby certify that the foregoing **Declaration of Francis A. Bottini, Jr. in Support of Plaintiff Matthew Steele's Motion for an Order Requiring Lead Plaintiffs to Add Mr. Steele to the Consolidated Amended Complaint or, Alternatively, for Relief From the Order of Consolidation** was filed electronically via the ECF filing system and served upon counsel for all parties via the same.

Dated: October 19, 2023

/s/ Rowena T. Parma