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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA ABIGAIL LEAK, and BRIAN
JEROME CUNNINGHAM, Individually
and as next of friends of L. J. C., a minor,

Plaintiffs,

v.

ABBOTT LABORATORIES, INC.,

Defendant.

No.

COMPLAINT FOR A CIVIL CASE

JURY TRIAL REQUESTED

COME NOW, Plaintiffs, JESSICA ABIGAIL LEAK, and BRIAN JEROME
CUNNINGHAM, Individually and as parent of L. J. C., a minor, by and through the
undersigned counsel, for causes of action against the above-named Defendant, and hereby
allege as follows:

I. PARTIES

Plaintiffs

1. Plaintiffs, JESSICA ABIGAIL LEAK, the mother of L.J.C. (hereinafter
“Mother” or collectively as “Plaintiffs”), and BRIAN JEROME CUNNINGHAM, the father

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1 of L.J.C., a minor, (hereinafter “Father” or collectively as “Plaintiffs”), are citizens of the
2 State of Washington, and reside in Edmonds in Snohomish County, Washington.

3 2. Plaintiff L.J.C. was born prematurely at Swedish Medical Center – First Hill
4 Campus in Seattle, Washington (hereinafter “Swedish Medical”) on [REDACTED] 2012. L.J.C.
5 developed necrotizing enterocolitis (hereinafter “NEC”) after being fed Similac Special Care
6 Advance 20 calorie, 22 calorie, and 24 calorie Defendant’s cow’s milk-based products
7 (hereinafter “Cow’s Milk-Based Formula,” “Cow’s Milk-Based Fortifier,” or collectively
8 “Cow’s Milk-Based Products”) while in the newborn intensive care unit (hereinafter
9 “NICU”) at Swedish Medical. At all times material hereto, L.J.C. is a resident a citizen of the
10 State of Washington and resides with her parents in Edmonds in Snohomish County,
11 Washington.
12

13 **Defendant**

14 3. Defendant, ABBOTT LABORATORIES, INC. (hereinafter “Abbott” or
15 “Defendant”) was at all times material hereto and is now a corporation duly organized, and
16 existing under the laws of the State of Illinois, with its principal place of business and
17 headquarters located at 100 Abbott Park Road, Abbott Park, IL 60064-350 and is thus a
18 resident, citizen, and domiciliary of the State of Illinois. Abbott may be served via its
19 registered agent at:
20

21 **CT Corporation System**
22 **711 Capitol Way S., Suite 204**
23 **Olympia, WA 98501-1267**

24 4. Abbott manufactures, designs, formulates, prepares, tests, provides
25 instructions for, markets, labels, packages, sells, and/or places into the stream of commerce
26 in all fifty (50) states, including the State of Washington, and sells premature infant formula

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1 products including but not limited to Similac Sensitive, Similac NeoSure, and Similac
2 Special Care Advance 20 calorie, 22 calorie, and 24 calorie.

3 **II. JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over Defendant and this action pursuant to
5 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest
6 and costs and, because there is complete diversity of citizenship between Plaintiffs and
7 Defendant.
8

9 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391; at all times
10 material, plaintiff was a resident of Washington State and Defendants at all times material
11 transacted business in Washington selling, marketing, and/or distributing Cow's Milk-Based
12 Products.
13

14 **III. STATEMENT OF FACTS**

15 *The Science and Scope of the Problems*

16 7. According to the World Health Organization (“WHO”), babies born
17 prematurely, or “preterm,” are defined as being born alive before 37 weeks of pregnancy are
18 completed. L.J.C. was born prematurely at 32.5 weeks. The WHO estimates that
19 approximately 15 million babies are born preterm every year and that this number is rising.

20 8. Nutrition for preterm babies, especially those who have a very low birth
21 weight (under 1500 grams) or extremely low birth weight (under 1000 grams), is critical.
22 Since the United States ranks in the top ten countries in the world with the greatest number of
23 preterm births, the market of infant formula and fortifiers is particularly vibrant.

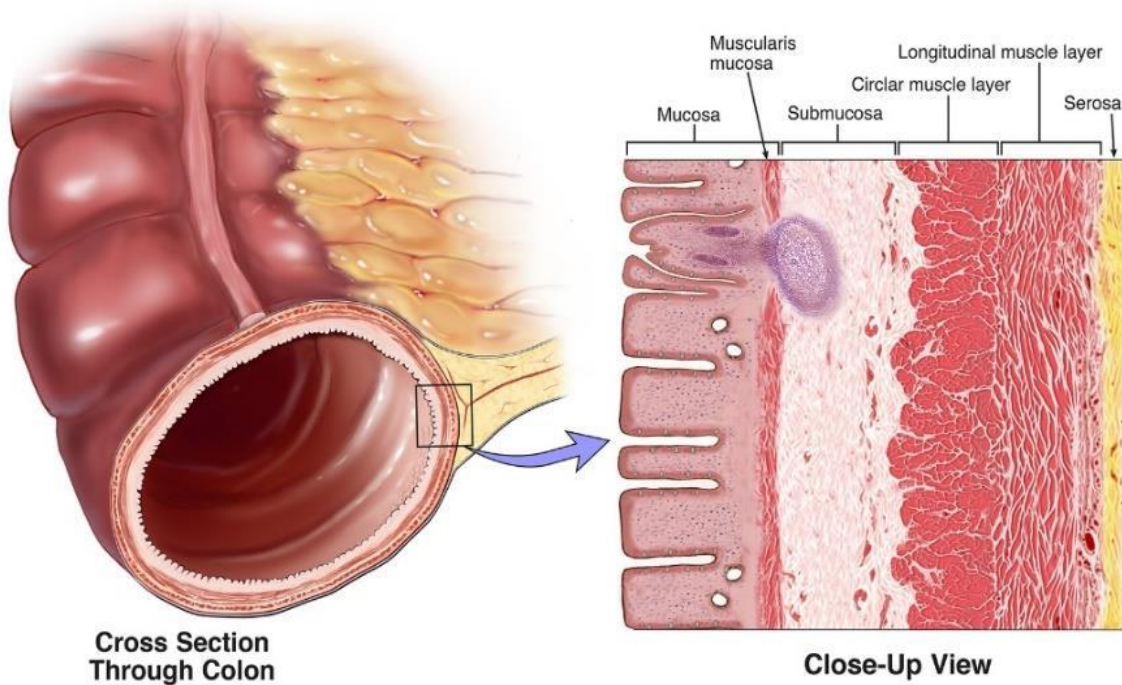
24 9. Science and research have advanced in recent years confirming strong links
25 between cow's milk-based products and NEC causing and/or substantially contributing to
26

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1 death in preterm and severely preterm, low-weight infants, along with many other health
 2 complications and long-term risks to these babies. Additionally, advances in science have
 3 created alternative fortifiers that are derived from human milk and non-cow’s milk-based
 4 products. However, the manufacturers of the Cow’s Milk-Based Products continue to
 5 promote and sell the Cow’s Milk-Based Product versions.

7 10. To illustrate the danger posed to preterm infants, this image below is a
 8 diagram of the normal layers of the baby’s intestinal wall¹:

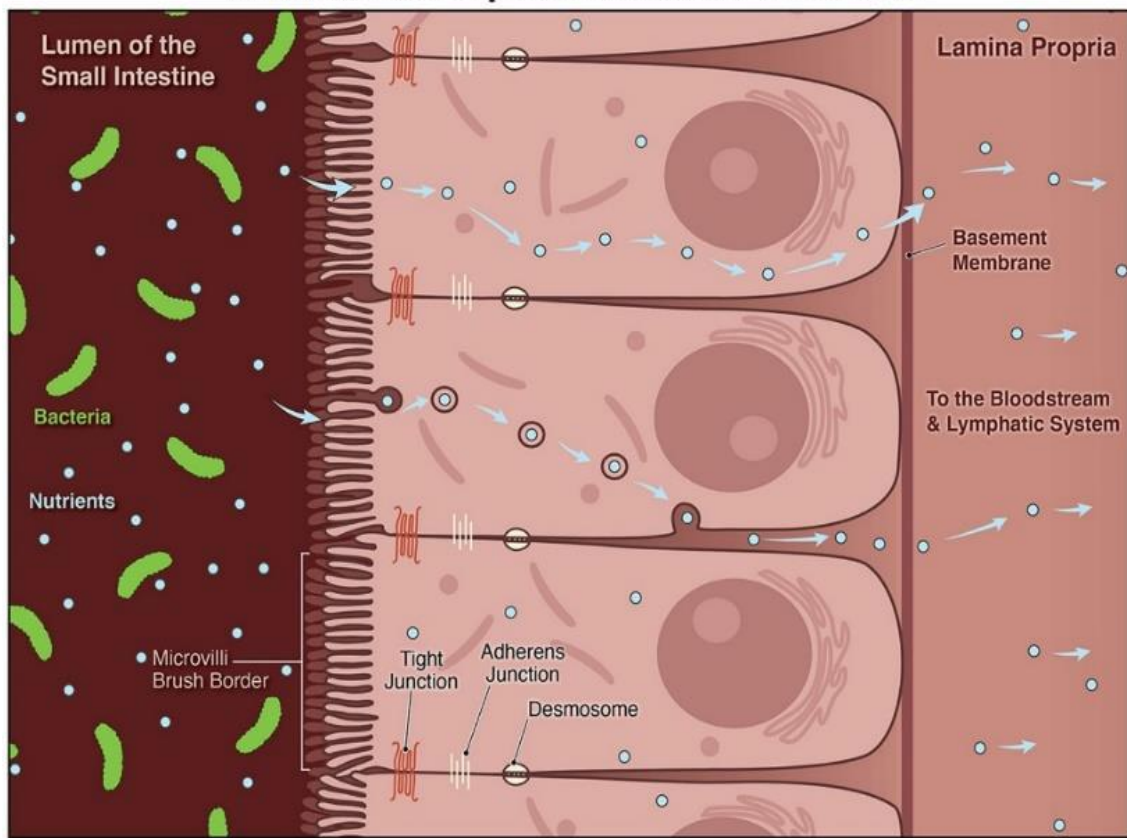
Layers of the Intestinal Wall



1 All of the medical illustrations are provided to assist the Court in understanding this devastating disease and are subject to a copyright by MediVisuals, Inc. As such, they cannot be reproduced, reprinted, or used without permission of the copyright holder.

1 11. Normal absorption in the small intestine looks like the diagram below. The
 2 cells lining the lumen of the intestines have microvilli that magnify the surface area available
 3 for uptake. Nutrients, which are color-coded in light blue, are absorbed by these cells, then
 4 transported through the cells, and released where they are then transported to the rest of the
 5 body through the bloodstream and lymphatic system. The cells keep out the bacteria and
 6 toxins that are present in the intestines which would be harmful if absorbed into the other
 7 tissues of the body. The tight junctions between each cell play a major role in preventing the
 8 bacteria and toxins from entering the body. The tight junctions between each cell play a major role in preventing the
 9 bacteria and toxins from entering the body.

Normal Absorption in Small Intestine



12. The diagram below shows how the absorption is significantly altered following the intake of Cow's Milk-Based Products:

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