

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**ALLISON NELSON, on Behalf of Herself and All
Others Similarly Situated,**

Plaintiff,

vs.

**MEAD JOHNSON NUTRITION COMPANY and
MEAD JOHNSON & COMPANY,**

Defendants.

CASE NO:

09-61625-CIV-COHN/SELTZER

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

_____ /

Plaintiff Allison Nelson, by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Defendants Mead Johnson Nutrition Company and Mead Johnson & Company (“Mead Johnson” or “Defendants”). Plaintiff hereby alleges, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

NATURE OF THE ACTION

1. Defendants produce, market, and sell Enfamil® brand infant formula (the “Product”), which contains LIPIL®.
2. LIPIL is Defendants’ name for a blend of two nutrients found in breast milk, docosahexaenoic acid (“DHA”) and arachidonic acid (“ARA”). Defendants claim that these nutrients promote brain and eye development in infants.
3. Defendants, whose Product enjoys significant brand recognition and sells at a hefty premium, face tough competition from lower-priced store brands and private label products.
4. Unable to meet this competition with improved quality, and unwilling to lower their prices, Defendants have sought to increase sales by falsely representing to consumers that Enfamil LIPIL is the only baby formula that contains DHA and ARA.

5. This claim is false. In fact, other brands of baby formula, including lower-priced store brands and private labels, contain DHA and ARA in amounts equal to or greater than those contained in Defendants' Products.

6. Because of Defendants' false representations regarding the nature of their Product, Plaintiff and Class members paid more for Defendants' Products than they otherwise would have, mistakenly believing that they were purchasing the only infant formula that provides certain nutrients essential to the brain and eye development of their babies. Florida consumer protection laws prohibit this conduct.

JURISDICTION AND VENUE

7. Original jurisdiction in this Court is proper pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000, and this is a class action in which members of the Plaintiff Class are citizens of a state different from Defendants.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to the alleged claims occurred in this district and because Defendants:

- are authorized to conduct business in this district and have intentionally availed themselves of the laws and markets within this district through the promotion, marketing, distribution, and sale of their Products in this district;
- do substantial business in this district; and
- are subject to personal jurisdiction in this district.

PARTIES

9. Plaintiff Allison Nelson resides in Weston, Florida. During the Class period, Plaintiff purchased the Product for her infant, suffered injury in fact, and lost money and property as a result of the unfair competition and unlawful, unfair and fraudulent business practices described herein.

10. Defendant Mead Johnson Nutrition Company is a Delaware corporation with its principal place of business in Evansville, Indiana. Mead Johnson Nutrition Company, together with

Mead Johnson & Company, markets and sells the Product to consumers throughout the United States, including tens of thousands of consumers in Florida.

11. Defendant Mead Johnson & Company is a subsidiary of Mead Johnson Nutrition Company. It is also a Delaware corporation with its principal place of business in Evansville, Indiana. Mead Johnson & Company, together with Mead Johnson Nutrition Company, markets and sells the Product to consumers throughout the United States, including tens of thousands of consumers in Florida.

DEFENDANTS' UNLAWFUL CONDUCT

12. Defendants' Enfamil LIPIL label is a leading brand of infant formula, with approximately \$2.8 billion in sales in 2008.

13. LIPIL is nothing more than Defendants' name for a blend of DHA and ARA, two fats that are naturally found in breast milk, and which Defendants claim are essential to brain and eye development in infants.

14. Recently, Defendants have seen significant competition from lower priced brands, especially store brands and private labels. This is evidenced by these statements in Defendants' 2009 Initial Public Offering (IPO) Prospectus, SEC Registration No. 333-156298, *available at* <http://www.sec.gov/Archives/edgar/data/1452575/000119312509025593/d424b4.htm>:

- “In periods of economic uncertainty, consumers tend to shift their purchases from our higher-priced premium products to lower-priced products, including private label and store brand products. We believe private label and store brand product manufacturers have continued to gain market share in the United States over the past 12 months.” (Prospectus at 16.)

- “[W]e face significant competition from domestic producers and private label, store and economy brand manufacturers.” (*Id.* at 48.)

15. Defendants sought to “sustain the strength of [their] brands” by improving “consumer perception” of the “superior nutritional benefits” of their Products. (*Id.*)

16. However, rather than actually improve those nutritional benefits and offer consumers increased value for their increased price, Defendants instead chose to engage in a smear campaign against their competitors, and to mislead consumers into believing that their Product contains a unique blend of essential nutrients, when in fact it contains the same nutrients in the same quantities as other, less expensive brands.

17. Defendants falsely assert—on their website, product labels, magazine inserts, direct mailers, and other forms of advertising—that their Product is the only infant formula available that contains DHA and ARA.

18. Defendants' Product label claims that Enfamil LIPIL is the "Only Brand CLINICALLY PROVEN To Improve VISUAL AND MENTAL DEVELOPMENT" in infants. (Ex. A, attached.)

19. A print advertisement circulated by Defendants, attached as Exhibit B, contains these statements:

- "Only Enfamil has LIPIL, our blend of DHA and ARA, important nutrients found in breast milk."
- "[I]t's the only formula shown in published independent clinical studies to [i]mprove brain development [and] [i]mprove eye development."

20. Another print advertisement, attached as Exhibit C, states: "[C]hoose Enfamil LIPIL—the only infant formula that's clinically proven to improve vision." That same advertisement contains an image labeled "Visual acuity at 12 months." The image is divided into two parts. One part is blurry, and is labeled "20/41 Vision—Without LIPIL." The other part is clear, and is labeled "20/28 Vision—With LIPIL."

21. In addition, on Defendants' website dedicated to the Product, www.enfamil.com, there is a Product FAQ link that contains these statements:

- "Q: What are fatty acids? Why are they important for my baby's development?"

- “A: . . . Only Enfamil has LIPIL, our blend of DHA and ARA, important nutrients that promote brain and eye development.”

- “Q: What are DHA and ARA?”

- “A: . . . Only Enfamil has LIPIL, our blend of DHA and ARA, important nutrients also found in breast milk that promote brain and eye development.”

- “Q: How does my baby get DHA and ARA?”

- “A: . . . After birth, DHA and ARA are found in breast milk and in Enfamil formulas. Only Enfamil has LIPIL, a blend of DHA and ARA, important nutrients that support brain and eye development.”

22. In these advertisements, Defendants suggest that because their Product is the only baby formula that contains LIPIL—which is nothing more than DHA and ARA—infants cannot get DHA and ARA from any other baby formula.

23. Defendants further discouraged consumers from purchasing less expensive brands by discrediting lower-priced brands. A direct mailer sent to consumers, attached as Exhibit D, contains these false statements:

- “En-Fact: Enfamil LIPIL’s unique formulation is not available in any store brand.”

- “It may be tempting to try a less expensive store brand, but only Enfamil LIPIL is clinically proven to improve brain and eye development.”

- “Store brands may cost less, but Enfamil gives your baby more.”

24. These representations are false. Enfamil LIPIL is not the only brand of infant formula that contains DHA and ARA. Numerous other brands, including the store brands disparaged by Defendants, contain the same quantities of DHA and ARA as Enfamil LIPIL. Despite Defendants’ assertions and implications to the contrary, Enfamil LIPIL provides no advantage with respect to infant brain and eye development over other formulas containing DHA and ARA.

25. Defendants have already been subject to three adverse decisions by the National Advertising Division of the Council of Better Business Bureaus (“NAD”) for the very advertising

claims at issue here. *See* NAD Compliance Report, Case No. 4822CIII, Feb. 12, 2009, attached as Exhibit E.

26. In June 2008 and again in November 2008, Abbott Nutrition, producer of a competing brand of infant formula, brought complaints against Defendants for, *inter alia*, their false claim that “Enfamil LIPIL is the only infant formula shown in independent clinical studies to improve baby’s brain and eye development,” and other related claims. (Ex. E. at 1.) Following its investigation into both complaints, the NAD recommended that Defendants discontinue their claims. (*Id.*)

27. Defendants refused to comply with these two recommendations, prompting Abbott to bring a third complaint in February 2009. A clearly exasperated NAD stated that it “is incredulous that after two compliance proceedings, with the second compliance proceeding making clear that *any* noncompliant advertising would result in a referral to the appropriate government agency, that the advertiser would disseminate advertising that clearly does not comply with NAD’s decision.” (*Id.* at 2.) The NAD referred to Defendants’ claim that “Only Enfamil LIPIL has been shown in published independent studies to improve BRAIN and EYE development,” and tersely concluded: “This advertisement does not comply with NAD’s decision, and NAD need look no further to determine noncompliance.” (*Id.*)

28. These NAD complaints are not the only action that has been taken against Defendants for their false advertising. In 2000, competitor PBM Products, LLC, filed suit against Defendants for representing that store brand formulas did not contain the recommended dietary intakes of calcium and folic acid. In 2002, PBM again filed suit against Defendants for creating the false impression that store brands of formula do not contain the beneficial nucleotides that are in Enfamil. In both of these cases, the court entered a temporary restraining order against Defendants, directing them to cease their misleading advertising campaign. In both cases, Defendants settled with PBM.

29. Thus, despite repeated industry self-regulatory and legal action taken against them, Defendants continue to make false representations regarding the benefits of their Product. In the past year, despite being ordered to desist three times by the Council of Better Business Bureaus,

Defendants have continued to represent to consumers that their Product is the only infant formula that contains DHA and ARA.

30. Defendants' false representations led consumers, including Plaintiff, to believe that Defendants' Product contained superior ingredients, not contained in less expensive brands, causing them to pay more for Defendants' Product than they would have had they known that in fact the Product is not the exclusive source of these ingredients.

31. PLAINTIFF'S ALLEGATIONS

32. Plaintiff purchased Enfamil LIPIL for her infant during the relevant time period.

33. Plaintiff read the representations on the Product container and had viewed Defendants' advertisements. Plaintiff purchased the Product, and paid a premium price for it, because she believed LIPIL was a unique blend of DHA and ARA that was found only in Defendants' Product.

34. Plaintiff purchased the Product at a premium price and gave it to her infant, unaware that other, less expensive brands of infant formula contain the same quantities of DHA and ARA as those found in Defendants' Product.

35. In or around September 2009, Plaintiff learned that Defendants' Product is not the only brand of infant formula that contains DHA and ARA.

36. Plaintiff has suffered injury in fact and lost money and property as a result of Defendants' wrongful conduct, in that she paid more for the Product than she would have had she known that the same essential nutrients were available in the same quantities in other less expensive brands of formula. She has suffered damages in the amount she paid for the Product over and above what she would have paid had she known that the Product was not in fact the exclusive source of DHA and ARA.

37. Plaintiff reasonably relied on Defendants' representations in making her purchasing decisions. Plaintiff's reliance was justified given Defendants' reputations as reliable companies.

38. Had Plaintiff known the Product was not the only infant formula available that contains DHA and ARA, she would not have paid as much as she did pay for the product and would have bought one of the less expensive brands available on the market.

CLASS ALLEGATIONS

39. Plaintiff brings this action on behalf of herself and all similarly situated Florida consumers pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class of persons whom Plaintiff seeks to represent is defined as:

All persons in Florida who, within the applicable statute of limitations, purchased Enfamil LIPIL (the "Class" or "Class members").

Excluded from the Class are the Defendants, any parent, subsidiary or affiliate of the Defendants, any entity in which the Defendants have a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

40. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

41. There are questions of law and fact common to the Class.

42. Plaintiff's claims are typical of the claims of the members of the Class. The named Plaintiff is a member of the Class of victims described herein.

43. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the Class.

44. The self interests of the named Class representative are co-extensive with, and not antagonistic to, those of the absent Class members. The proposed representative will undertake to represent and protect the interests of the absent Class members.

45. The named Plaintiff has engaged the services of counsel indicated below. Counsel are experienced in complex class action litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise will represent the named Class representative and absent Class members.

46. This action is appropriate as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

47. This action involves questions of law and fact common to Plaintiff and all members of the Class. These common questions predominate over any issues affecting individual members of the Class and include:

- whether Defendants engaged in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of their labeling and advertising practices business;
- whether Defendants materially misrepresented that their Product is the only infant formula available that contains DHA and ARA;
- whether Defendants knew that their Product was not the only infant formula that contained these nutrients;
- whether Plaintiff and Class members are entitled to injunctive relief enjoining Defendants from continuing to advertise their Product as being the only infant formula available that contains DHA and ARA;
- whether Defendants should be made to engage in a corrective advertising campaign advising consumers that other, less expensive products are available that contain the same quantities of DHA and ARA as those contained in Defendants' Product; and
- whether Plaintiff and Class Members have been harmed and the proper measure of relief.

48. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

49. There is no plain, speedy or adequate remedy other than by maintenance of this lawsuit as a class action because individual damages are relatively small, making it economically infeasible for Class members to pursue remedies individually. The prosecution of separate actions by individual members of the Class, even if theoretically possible, would create a risk of inconsistent

or varying adjudications with respect to individual Class members against Defendants and would establish incompatible standards of conduct for Defendants.

50. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendants committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;

- when Defendants' liability has been adjudicated, claims of all Class members can be determined by the Court;

- this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and

- without a class action, many Class members would continue to suffer injury, and Defendants' violations of law will continue without redress while Defendants continue to reap and retain the substantial proceeds of their wrongful conduct.

51. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

52. Defendants have acted on grounds applicable to the Class generally; therefore, Plaintiff seeks equitable and injunctive relief on behalf of the entire Class on grounds generally applicable to the entire Class.

COUNT I

For Violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201 *et seq.*

53. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

54. Defendants violated and continue to violate Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of their business.

55. The material misstatements and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public into believing that Defendants' Product is the only infant formula available that contains DHA and ARA, when in fact other, less expensive infant formulas also contain these nutrients.

56. Plaintiff and Class members relied upon these statements in deciding to purchase the Product. Plaintiff's reliance was reasonable because of Defendants' reputations as reliable companies.

57. Had Plaintiff known that other, less expensive brands of infant formula also contained DHA and ARA, she would not have paid as much as she did for Defendants' Product and would have bought one of the less expensive brands.

58. As a result of Defendants' deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount of the difference between the premium price paid for the Product and the price they would have paid had they not been led to believe, through Defendants' misleading advertising, that Defendants' Product was the only infant formula that provided DHA and ARA.

59. Defendants' conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

60. Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the difference between the premium price paid for Defendants' Product and the price charged for other, less expensive brands of formula that also contain DHA and ARA.

61. Defendants should also be ordered to cease their deceptive advertising, and should be made to engage in a corrective advertising campaign, to inform consumers that their Product is not the only brand of infant formula that contains DHA and ARA, and that other, less expensive brands of formula also contain these nutrients.

COUNT II

**For False and Misleading Advertising,
Fla. Stat. § 817.41**

62. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

63. On their website, on product labels, in print advertisements, in direct mailers, and in other forms of advertisements, Defendants made numerous misrepresentations of material fact, including:

- That their Product is the only infant formula that has been clinically proven to improve brain and eye development in infants;
 - That their Product is the only infant formula that contains DHA and ARA;
- and

- That DHA and ARA are not found in store brands and private labels.

64. Defendants knew that these statements were false.

65. Defendants made these statements for the purpose of selling property, and intended that consumers rely upon them in purchasing infant formula.

66. Plaintiff and Class members did in fact rely upon these statements in purchasing formula. Reliance was reasonable and justified because of Defendants' reputations as reliable companies.

67. As a result of Defendants' representations, Plaintiff and Class members suffered damages in the amount of the excess price paid for the Product, over and above what they would have paid had Defendants not led them to believe that their Product was the only formula that contained DHA and ARA.

68. Plaintiff and Class members are entitled to damages and injunctive relief as set forth in Paragraphs 59 and 60 above.

COUNT III

Unjust Enrichment

69. Plaintiff incorporates by reference each of the preceding allegations as though fully set forth herein.

70. Plaintiff and Class members conferred a benefit on Defendants by purchasing the Products at a premium price.

71. Defendants received the moneys paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

72. Defendants accepted and retained the benefit in the amount of the profits they earned from sales of the Product to Plaintiff and Class members.

73. Defendants have profited from their unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendants to be permitted to retain the benefit.

74. Plaintiff does not have an adequate remedy at law against Defendants.

75. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product, over and above what they would have paid had they known that less expensive alternative products were available, and disgorgement of the profits Defendants derived from sales of the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- A. Certify this action as a Plaintiff class action;
- B. Award compensatory and punitive damages as to all Counts where such relief is permitted;
- C. Enjoin Defendants' conduct and order Defendants to engage in a corrective advertising and labeling/disclosure campaign;
- D. Award equitable monetary relief, including restitution;
- E. Award pre-judgment and post-judgment interest at the legal rate;

F. Award Plaintiff and Class members the costs of this action, including reasonable attorneys' fees and expenses; and

G. Award such other and further legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: October 13, 2009



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Only Brand
CLINICALLY PROVEN
To Improve

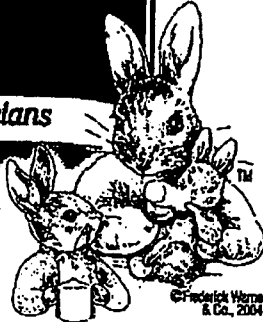
VISUAL & MENTAL DEVELOPMENT
Improvements Shown Beyond Baby's First Year Up To 18 Months!

Enfamil LIPIL

Trusted by Moms & Pediatricians

Infant Formula
Milk-Based Powder
with Iron

129 OZ (366 g) Babies 0-12 Months



© Frederick Wertz & Co., 2004


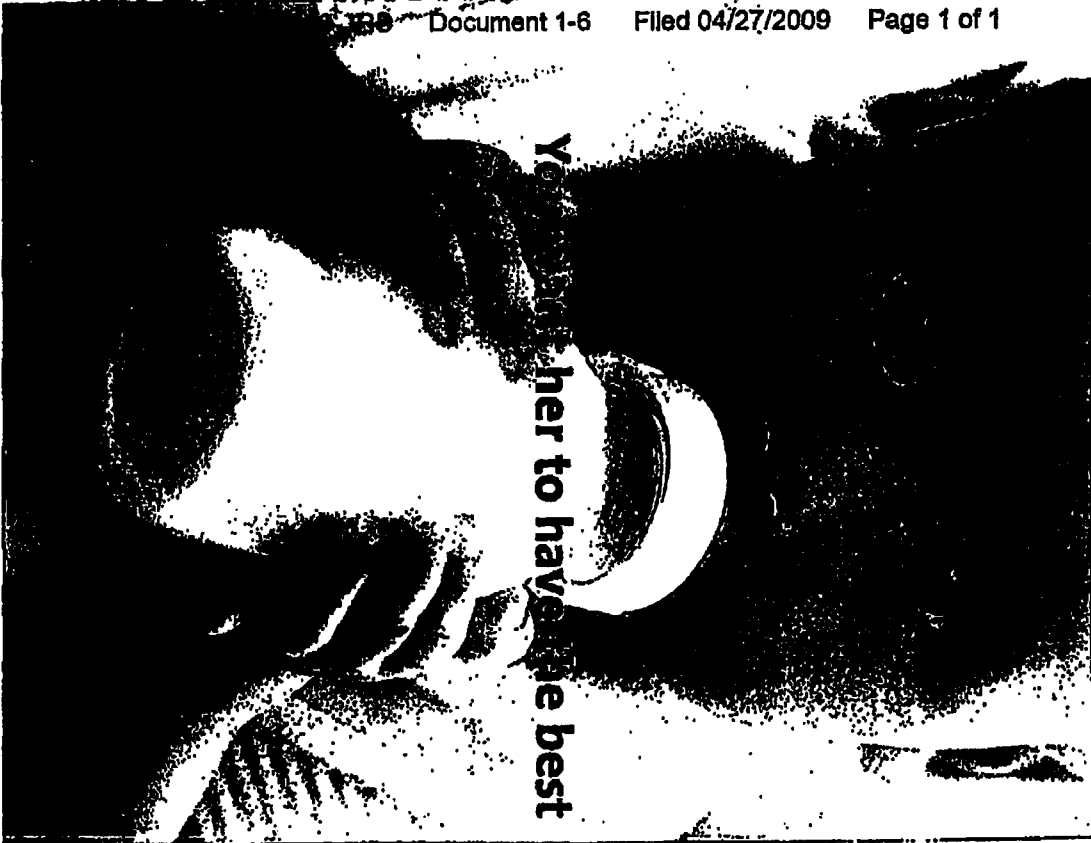
NUTRIENTS (Normal Dilution)		Per 100 Calories (6 fl oz)	INGREDIENTS: HONEY MILK, LACTOSE, VEGETABLE OIL (PALM OLEIN, SOY COCOA), AND HIGH OLEIC SUNFLOWER OILS), WHEY PROTEIN CONCENTRATE, AND LESS THAN 1% MONTERELLA ALPHA OIL*, CRYPTOCOCCUM COENII OIL**, VITAMIN A PALMATE, VITAMIN D ₃ , VITAMIN E ACETATE, VITAMIN K ₃ , THIAMIN HYDROCHLORIDE, RIBOFLAVIN, VITAMIN B ₆ HYDROCHLORIDE, VITAMIN B ₁₂ , INOSITOL, FOLIC ACID, CALCIUM PANTOTHENATE, BIOTIN, ASCORBIC ACID, CHOLEINE CHLORIDE, IRON(II) OXIDE, CALCIUM CARBOXYLATE, MAGNESIUM OXIDE, PERNIOUS SULFATE, ZINC SULFATE, MANGANESE SULFATE, CUPROUS SULFATE, POTASSIUM CALCIUM POTASSIUM CITRATE, POTASSIUM HYDROXIDE, SODIUM Selenite, VALERIANE, L-CARNITINE, NUCLEOTIDES GUANOSINE GUANOSINE 5'-MONOPHOSPHATE, DISODIUM URIDINE 5'-MONOPHOSPHATE.
PROTEIN	g	2.1	LEAD JOHNSON & COMPANY EVANSHVILLE, IN 47721 U.S.A. ©2008 Lead Johnson & Company
FAI	g	5.3	*A SOURCE OF APACHEDONIC ACID (APA)
CARBOHYDRATE	g	10.9	**A SOURCE OF DOCOHEXAENOIC ACID (DHA) 118412349
WATER	g	134	Filed by weight, not by volume; mass feeding only brand.
LACTIC ACID	mg	850	Makes 94 fl oz
VITAMINS			<p>This exclusive formula is available only from the Enfamil® brand</p>  <p>3 0087 1273 41 2</p>
A	IU	300	
D	IU	60	
E	IU	8	
K	mcg	8	
VITAMIN (B ₁)	mcg	80	
RIBOFLAVIN (B ₂)	mcg	140	
B ₆	mcg	80	
B ₁₂	mcg	0.3	
BIOTIN	mcg	1000	
FOLIC ACID (POLYACID)	mcg	16	
PANTOTHENIC ACID	mcg	500	
BIOTIN	mcg	3	
D (ASCORBIC ACID)	mg	12	
CHOLEINE	mg	24	
INOSITOL	mg	6	
MINERALS			
CALCIUM	mg	78	
PHOSPHORUS	mg	43	
MAGNESIUM	mg	6	
IRON	mg	1.6	
ZINC	mg	1	
MANGANESE	mcg	15	
COPPER	mcg	75	
IODINE	mcg	10	
SELENIUM	mcg	2.8	
SODIUM	mg	27	
POTASSIUM CHLORIDE	mg	83	

EXHIBIT
A

EXHIBIT
H



You want her to have the best

- home
- friendships
- education
- stories
- experiences
- start.
- memories
- imagination
- birthdays
- childhood
- goals

No other formula gives your baby a better start in life.™

Only Enfamil® has LPTC, our blend of DHA and ARA, important nutrients found in breast milk. And with workable breast milk percentage levels* of these nutrients, it's the only formula shown in published independent clinical studies to:

- Improve brain development!
- Improve eye development!
- Improve eye-hand coordination!

In addition, the blend of nutrients in Enfamil LPTC supports the developing immune system.

Give your baby the best start in life with Enfamil LPTC.

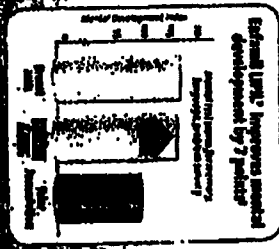
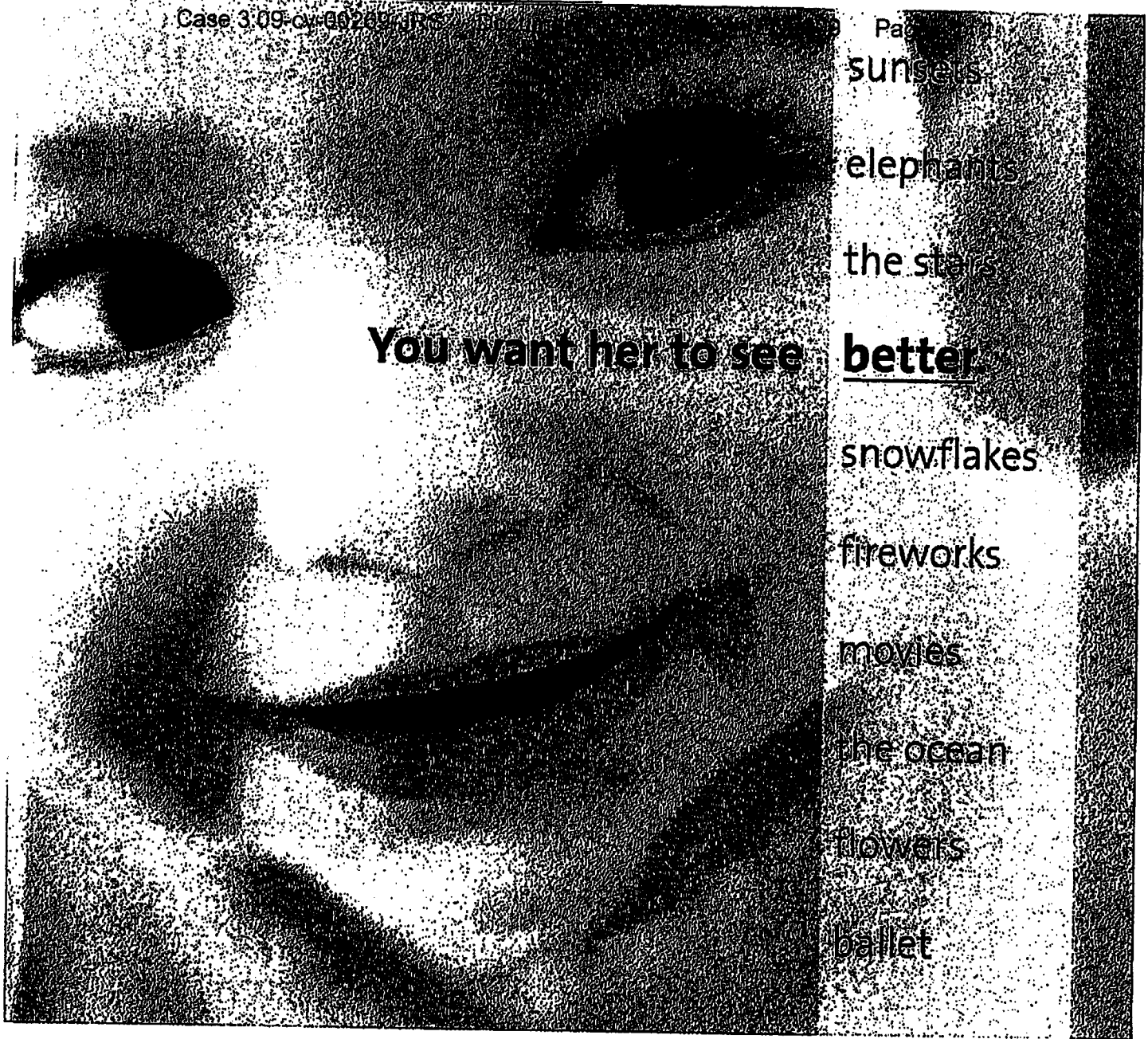


EXHIBIT
11

EXHIBIT
B



You want her to see **better**

sunsets

elephants

the stars

snowflakes

fireworks

movies

the ocean

flowers

ballet

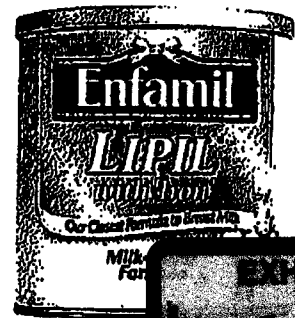
Enfamil LIPIL® improves infant vision.*



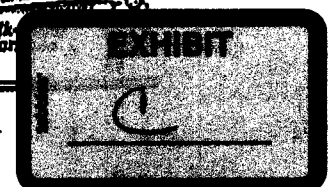
Seeing is believing. So choose Enfamil LIPIL — the only infant formula that's clinically shown to improve vision.* Babies fed Enfamil LIPIL see more clearly, and their vision is similar to that of breastfed infants.*

To learn more, call 1-800-BABY123 or visit enfamil.com

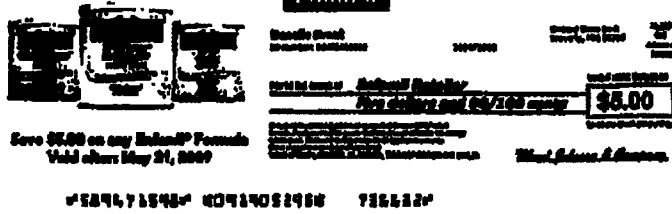
**vs. same routine formula without DHA and ARA. Measured at 12 months.*



No other formula gives your baby a better start in life.™



©2008 Mead Johnson & Company.



Store brands may cost less, but Enfamil® gives your baby more.

When it comes to nutrition and development, you want a product you can rely on.

You may have seen other products on the store shelves that look or even sound like Enfamil LIPIL. But look closer and you'll realize these store brands lack our level of clinical support. Enfamil LIPIL is backed by extensive clinical trials — and it's been proven to result in IQ scores similar to breastfed babies and enhance visual development.* Nobody puts more love, effort and resources into every can. And that's something you can't put a price on.

	Store Brand	Enfamil LIPIL®
Meets minimum FDA requirements	✓	✓
Extensive clinical testing		✓
Proven to result in IQ scores similar to breastfed babies		✓
Proven to enhance visual development*		✓
Nearly 100 years of experience		✓

* IQ and visual development scores are similar to breastfed babies.

Learn more about the benefits of LIPIL at enfamil.com/lipil

Enfamil Family Beginnings®
 177 Route 100
 Deerfield, WI 53015-0002
 1-800-445-3838

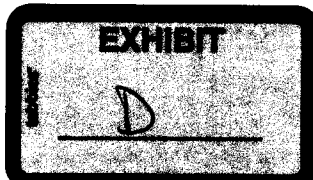
Indec's Tip to help keep your baby's development on track, plus ideas to soothe.

© 2009 Nestlé Nutrition & Health



Dreams don't stop at 3 months.

Enfamil Family Beginnings®



Case #4822CIII (02/12/2009)

MEAD JOHNSON NUTRITIONALS

Enfamil LIPIL

Compliance Proceeding from NAD Case Report #4822

Advertising Agency: *Undisclosed*

Challenger: *Abbott Nutrition*

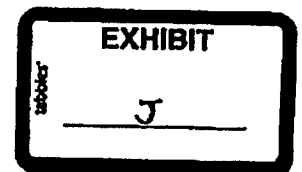
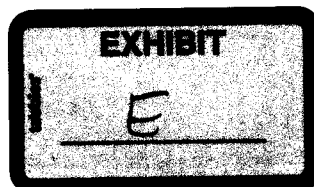
This is the third compliance report stemming from a challenge in which print, packaging and point of sale advertising claims made by Mead Johnson Nutritionals for its Enfamil LIPIL infant formula were challenged by Abbott Nutrition, a manufacturer of a competing infant formula. The following claims were representative are representative of those at issue: "Enfamil@ LIPIL® is the only infant formula shown in independent clinical studies to improve baby's brain and eye development.* [*vs. same routine formula without DHA and ARA. Studied to 18 months.]; "Enfamil LIPIL* improves mental development by 7 points vs. same formula without LIPIL [†vs.

same routine formula without LIPIL. Studied at 18 months for brain and 12 months for eye. Longer term impact not measured.]; "shown in independent clinical studies to improve baby's brain and eye development" versus unsupplemented Enfamil."

Background

In its underlying decision, NAD recommended that the advertiser either discontinue its "improve brain and eye development" claims—or modify them by making clear that (a) the advertised improvements are limited to only the first 18 months of an infant's life; and (b) the touted "improve[ment]" is with respect to a discontinued, or prior, version of the product. With respect to the consumer-directed coupon featuring a comparison to breastfed babies, NAD recommended that the advertiser either discontinue the advertising, or modify it by making clear that the advertised improvement is not shown at four years, and that the comparison is with respect to the now-discontinued Enfamil product. NAD further recommended that the advertiser make clear that Enfamil Lipil has not been shown to outperform Similac Advance with respect to mental and/or visual development. With respect to the consumer-directed coupon that features a chart that invites consumers to "compare the differences" between Enfamil Lipil and Similac Advance, NAD recommended that the advertiser either discontinue this comparative advertisement, or modify it by removing the comparison to Similac Advance.

With respect to the advertiser's compositional comparison to median levels of DHA and ARA in breast milk, NAD determined that there was no basis for it to examine this claim anew. With respect to the health-care provider-directed claims, NAD recommended that the advertiser discontinue side-by-side IQ graphs, and modify the materials to ensure that they no longer convey the unsupported message that Enfamil Lipil outperforms Similac with respect to the formulas' effects on IQ. NAD further recommended that the advertiser discontinue any express or implied claims that based on the four-year data, Enfamil Lipil makes a "difference" (as compared to unsupplemented Enfamil.) Likewise, NAD recommended that the advertiser no longer claim that "new 4-year follow-up data" shows an "impact" of Enfamil Lipil on cognitive development. NAD did find, however, that the advertiser had a reasonable basis to claim a similar performance to breastfed babies at four years. Finally, NAD noted that nothing in this decision prevents the advertiser from presenting health care professionals with clinical results from the Birch four-year data, provided that it is done in an accurate and non-misleading manner.



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Enfamil LIPIL
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In June 2008, the challenger contacted the NAD to raise concerns about advertising which it believed did not comply with NAD's underlying decision. The advertiser explained that all of the website materials submitted by the challenger were printed prior to NAD's decision and that it had already begun modifying this page prior to the receipt of the challenger's compliance inquiry. The advertiser notified NAD that the claim, as revised, would now read: "The only infant formula clinically shown to promote baby's brain and eye development*" "(*Versus prior formulation of same product without DHA and ARA, with improvement demonstrated to 18 months.)" The advertiser further noted that it is in the process of comprehensively reviewing its entire website to ensure all relevant language has been modified and that all new materials would comply with NAD's decision. Based on the advertiser's assurances, NAD closed its compliance review.

In November 2008, the challenger again contacted NAD about concerns it had about advertising it alleged to be noncompliant with NAD's decision. The advertiser informed NAD that the professional advertisement in question was distributed in error and will no longer be disseminated. The advertiser noted that it has taken substantial steps to comply with NAD's decision. While expressing its deep disappointment that noncompliant advertising had continued to be disseminated, NAD noted that the current advertisements comply with NAD's recommendations but cautioned that *any* noncompliant advertisements that are brought to its attention after the issuance of the instant decision will result in an automatic referral to the appropriate government agency for possible law enforcement action pursuant to section 4.1(B) of the *NAD/NARB Procedures*.

In February 2009, the challenger contacted NAD with concerns it had about advertising for Enfamil LIPIL which it believed contravened NAD's decision.

Decision

NAD is incredulous that after two compliance proceedings, with the second compliance proceeding making explicit that *any* noncompliant advertising would result in a referral to the appropriate government agency, that the advertiser would disseminate advertising that clearly does not comply with NAD's decision. For example, in its underlying decision, NAD noted that with respect to the consumer-directed coupon that features a chart that invites consumers to "compare the differences" between Enfamil LIPIL and Similac Advance, NAD recommended that the advertiser either discontinue this comparative advertisement or modify it by removing the comparison to Similac Advance. In one of the current advertisements, the advertiser features the claim "Enfamil LIPIL is now clinically shown to support cognitive development* and immune balance†" next to which is a chart with one column for Similac Advance and one for Enfamil LIPIL and has a check mark for Enfamil Lipil and "NO" for Similac for, among other things, "Only Enfamil LIPIL has been shown in published independent clinical studies to improve BRAIN and EYE development*" The faint asterisks refer to a inconspicuous disclosure to the left of the claim and chart which states "vs. the prior version of the product without DHA and ARA with improvement shown to 18 months." This advertisement does not comply with NAD's decision, and NAD need look no further to determine noncompliance. The self-regulatory process cannot function properly when advertisers state, on the one hand, that they

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respect the process and will comply with NAD's decision, and then do the opposite. Accordingly, NAD has no choice but to refer this matter to the appropriate government agency for possible law enforcement action pursuant to section 4.1(B) of the *NAD/NARB Procedures*. (#4822 AMU, closed 02/12/2009)

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed**

Oct. 13, 2009

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

I. (a) PLAINTIFFS
Allison Nelson, on Behalf of Herself and All Others Similarly Situated,

DEFENDANTS
Mead Johnson Nutrition Company, and

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
William C. Wright, Esq. - Leopold Kuvin, P.A.
2925 PGA Blvd, Suite 200, Palm Beach Gardens, FL 33410
Telephone: 561-515-1400

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.
Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)
09CV61625 JIC/BSS

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
Citizen of This State PTF 1 DEF 1 Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-- Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):
a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332
False Representation of product.
LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD: W. C. Wright DATE: October 13, 2009

FOR OFFICE USE ONLY
AMOUNT: 350 RECEIPT #: 726420 IFP _____