

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JEREMIAH FELICIANO, a minor, by MICHELLE LEAL, individually as parent and next friend of Jeremiah Feliciano; ABIGAIL ERPELDING, a minor, CLOE ERPELDING, a minor, and GABRIELLE ERPELDING, a minor, by AMANDA ERPELDING, individually as parent and next friend of Abigail Erpelding, Cloe Erpelding, and Gabrielle Erpelding; NATHAN GRIFFIN, a minor, by AMY GRIFFIN, individually as parent and next friend of Nathan Griffin; LINDSEY JAMES; LEAH LANGER, a minor, by JACLYN LANGER, individually as parent and next friend of Leah Langer; BAILY LEMMOND, a minor, and CHRISTOPHER LEMMOND, a minor, by JULIE LEMMOND, individually as guardian and next friend of Baily Lemmond and Christopher Lemmond; GABRIELLA LOSOYA, a minor, by and through JAIME BAILEY, individually as parent and next friend of Gabriella Losoya; ANNA MARIE MARGARITO, a minor, by RENEE LEE, individually as parent and next friend of Anna Marie Margarito; KIMBERLY MELNICK, a minor, by CLAUDIA MELNICK, individually as parent and next friend of Kimberly Melnick; PATRICK MODLING, a minor, by and through LISA MODLING, individually as parent and next friend of Patrick Modling; DESTINY NEWSOM, a minor, by HEIDI DENNEY, individually as parent and next friend of Destiny Newsom; AMY OBERMANN, individually and as personal representative of DANNY OAKLEY, deceased; CHLOE PETTWAY, a minor, by and through ANGELA PETTWAY, individually as parent and next friend of Chloe Pettway; NATASHA PLAZA RODRIGUEZ, a minor, by and through VELMARIE RODRIGUEZ ACEVEDO, individually as parent and next friend of Natasha Plaza Rodriguez; BLAISE RAMIRO; JAYDEN ROJAS, a minor, by DAWN FLINDERS, individually as parent and next friend of Jayden Rojas; JOSHUA SELL, a minor, by and through TERESA TUTTLE, individually as parent and next friend of Joshua Sell; ASHLEY SHAMBLIN;

Case No.

2011L008508
CALENDAR/ROOM D
TIME 00:00
Product Liability

2011 AUG 15 PM 3:11
Circuit Court of Cook County
Law Division

TYLER SMITH; SANDRA SNOW, a minor, by ERIKA SNOW, individually as parent and next friend of Sandra Snow; SONDR A STEINMETZ, a minor, by ALISHA STEINMETZ, individually as parent and next friend of Sondra Steinmetz; SAMANTHA STILL, a minor, by ELIZABETH STILL, individually as parent and next friend of Samantha Still; JOSHUA THOMAS, a minor, by and through JANICE THOMAS, individually as parent and next friend of Joshua Thomas; JAMES TILLEY, a minor, by AMY LAMBERT, individually as parent and next friend of James Tilley; CATHERINE VU, a minor, by MARY VU, individually as parent and next friend of Catherine Vu,

Plaintiffs,

v.

ABBOTT LABORATORIES, INC.,

Defendant.

PLAINTIFFS' ORIGINAL COMPLAINT

Come now PLAINTIFFS, minors, by their respective parent(s) and next friend of Plaintiffs, by and through their undersigned attorneys, for their Complaint against Defendant Abbott Laboratories, Inc. ("Abbott" or "Defendant") relative to its sale and distribution and manufacturing of Depakote and Depakote ER products ("Depakote") in the United States, and in support thereof would show the following:

PARTIES AND JURISDICTION

Plaintiffs

1. Jeremiah Feliciano, a minor, by Michelle Leal, individually as parent and next friend of Jeremiah Feliciano, are citizens and residents of Chicago, Illinois. Plaintiff was born on February 7, 2007. His injuries were caused by his mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Jeremiah Feliciano

avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

2. Plaintiffs Abigail Erpelding, a minor, Plaintiff Cloe Erpelding, a minor, and Plaintiff Gabrielle Erpelding, a minor, by Amanda Erpelding, individually as parent and next friend of Abigail Erpelding, Cloe Erpelding, and Gabrielle Erpelding, are citizens and residents of Dike, Indiana. Plaintiff Abigail Erpelding was born on February 15, 2005. Plaintiff Cloe Erpelding was born on September 4, 2002. Plaintiff Gabrielle Erpelding was born on February 15, 2005. Plaintiffs Abigail Erpelding, Cloe Erpelding, and Gabrielle Erpelding's injuries were caused by their mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiffs Abigail Erpelding, Cloe Erpelding, and Gabrielle Erpelding aver that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

3. Plaintiffs Nathan Griffin, a minor, by Amy Griffin, individually as parent and next friend of Nathan Griffin, are citizens and residents of Corpus Christi, Texas. Plaintiff was born on May 23, 2000. His injuries were caused by his mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Nathan Griffin avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

4. Plaintiff Lindsey James is a citizen and resident of Calhoun City, Mississippi. Plaintiff Lindsey James would show that was born on December 28, 1990. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy and/or thereafter. Plaintiff Lindsey James avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

5. Plaintiffs Leah Langer, a minor, by Jaclyn Langer, individually as parent and next friend of Leah Langer, are citizens and residents of Little Falls, Minnesota. Plaintiff was born on March 1, 2011. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Leah Langer avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

6. Plaintiffs Baily Lemmond, a minor, and Christopher Lemmond, a minor, by Julie Lemmond, individually as guardian and next friend of Baily Lemmond and Christopher Lemmond, are citizens and residents of Springfield, Illinois. Plaintiff Baily Lemmond was born on August 15, 2006. Plaintiff Christopher Lemmond was born on September 9, 2008. Plaintiff Baily Lemmond and Plaintiff Christopher Lemmond's injuries were caused by their mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiffs Baily Lemmond and Christopher Lemmond aver that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked

proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

7. Plaintiffs Gabriella Losoya, a minor, by and through Jaime Bailey, individually as parent and next friend of Gabriella Losoya, are citizens and residents of Union City, Michigan. Plaintiff would show that Gabriella Losoya was born on January 11, 2006. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Gabriella Losoya avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

8. Plaintiffs Anna Marie Margarito, a minor, by Renee Lee, individually as parent and next friend of Anna Marie Margarito, are citizens and residents of Lancaster, Pennsylvania. Plaintiff Anna Marie Margarito was born on May 5, 2005. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Anna Marie Margarito avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

9. Plaintiffs Kimberly Melnick, a minor, by Claudia Melnick, individually as parent and next friend of Kimberly Melnick, are citizens and residents of Huntington Beach, California. Plaintiff Kimberly Melnick was born on December 8, 1998. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Kimberly Melnick avers that Defendant's Depakote was defectively

designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

10. Plaintiffs Patrick Modling, a minor, by and through Lisa Modling, individually as parent and next friend of Patrick Modling, are citizens and residents of LaGrange, Georgia. Plaintiff would show that Patrick Modling was born on May 15, 2003. His injuries were caused by his mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Patrick Modling avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiff suffered injury as a result of his exposure to Depakote.

11. Plaintiffs Destiny Newsom, a minor, by Heidi Denney, individually as parent and next friend of Destiny Newsom, are citizens and residents of Mesa, Arizona. Plaintiff was born on May 15, 1997. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Destiny Newsom avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

12. Plaintiffs Amy Obermann, individually and as personal representative of Danny Oakley, deceased, is a citizen and resident of Chaffee, Missouri. Amy Obermann would show that Danny Oakley died in utero on March 13, 2009. His injuries and wrongful death were caused by his mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiffs aver that Defendant's Depakote was defectively designed,

inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

13. Plaintiffs Chloe Pettway, a minor, by and through Angela Pettway, individually as parent and next friend of Chloe Pettway, are citizens and residents of Vicksburg, Mississippi. Plaintiff would show that Chloe Pettway was born on August 19, 2005. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Chloe Pettway avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

14. Plaintiffs Natasha Plaza Rodriguez, a minor, by and through Velmarie Rodriguez Acevedo, individually as parent and next friend of Natasha Plaza Rodriguez, are citizens and residents of Philadelphia, Pennsylvania. Plaintiff would show that Natasha Plaza Rodriguez was born on July 12, 1994. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Natasha Plaza Rodriguez avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

15. Plaintiffs Jayden Rojas, a minor, by Dawn Flinders, individually as parent and next friend of Jayden Rojas, are citizens and residents of Modesto, California. Plaintiff Jayden Rojas, was born on July 6, 2009. His injuries were caused by his mother's ingestion of Depakote

during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Jayden Rojas, avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

16. Plaintiff Blaise Romeo is a citizen and resident of Cairo, New York. Plaintiff was born on March 31, 1993. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Blaise Romeo avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

17. Plaintiffs Joshua Sell, a minor, by and through Teresa Tuttle, individually as parent and next friend of Joshua Sell, are citizens and residents of Adrian, Michigan. Plaintiff would show that Joshua Sell was born on June 18, 2002. His injuries were caused by his mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Joshua Sell avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

18. Plaintiff Ashley Shamblin is a citizen and resident of Hartford, West Virginia. Plaintiff Ashley Shamblin would show that she was born on December 18, 1991. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Ashley Shamblin avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked

proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

19. Plaintiff Tyler Smith is a citizen and resident of Piggott, Arkansas. Plaintiff Tyler Smith was born on July 18, 1993. His injuries were caused by his mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Tyler Smith avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiff suffered injury as a result of the mother's ingestion of Depakote.

20. Plaintiffs Sandra Snow, a minor, by Erika Snow, individually as parent and next friend of Sandra Snow, are citizens and residents of Spencer, Iowa. Plaintiff Sandra Snow, was born on July 30, 2003. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Sandra Snow, avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

21. Plaintiffs Sondra Steinmetz, a minor, by Alisha Steinmetz, individually as parent and next friend of Sondra Steinmetz, are citizens and residents of Sherman, Texas. Plaintiff Sondra Steinmetz, was born on December 27, 1996. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Sondra Steinmetz, avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the

true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

22. Plaintiffs Samantha Still, a minor, by Elizabeth Still, individually as parent and next friend of Samantha Still, are citizens and residents of Bossier City, Louisiana. Plaintiff Samantha Still, was born on November 9, 1994. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Samantha Still, avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

23. Plaintiffs Joshua Thomas, a minor, by and through Janice Thomas, individually as parent and next friend of Joshua Thomas, are citizens and residents of Talladega, Alabama. Plaintiff would show that Joshua Thomas was born on July 3, 2003. His injuries were caused by his mother's ingestion of Depakote during pregnancy, specifically during her first trimester of pregnancy. Plaintiff Joshua Thomas avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

24. Plaintiffs James Tilley, a minor, by Amy Lambert, individually as parent and next friend of James Tilley, are citizens and residents of Wolf Lake, Illinois. Plaintiff James Tilley was born on July 31, 2003. His injuries were caused by his mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff James Tilley avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to

human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

25. Plaintiffs Catherine Vu, a minor, by Mary McAllen Vu, individually as parent and next friend of Catherine Vu, are citizens and residents of Buffalo Grove, Illinois. Plaintiff Catherine Vu, was born on June 20, 1996. Her injuries were caused by her mother's ingestion of Depakote during pregnancy, and specifically, during her first trimester of pregnancy. Plaintiff Catherine Vu, avers that Defendant's Depakote was defectively designed, inadequately tested, dangerous to human health and unborn, and lacked proper warnings as to the true danger associated with its use, and Plaintiffs suffered injury as a result of the mother's ingestion of Depakote.

26. Hereinafter, the injured children listed above will be collectively referred to as "Plaintiffs" or "Injured Children."

Defendant

27. Defendant Abbott Laboratories, Inc. now is, and at all times relevant to this action was, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business and its headquarters in the State of Illinois. Abbott may be served by delivering the citation to its registered agent for service, CT Corporation System, 208 So. LaSalle St., Suite 814, Chicago, IL, 60604. Abbott engaged in the business of designing, licensing, manufacturing, testing, advertising, warranting, distributing, supplying, selling, and introducing into the stream of commerce certain products known as Depakote and Depakote ER. Abbott sold its Depakote and Depakote ER products in this County and throughout the United States.

28. Venue in this action is proper in this District pursuant to 735 ILCS 5/2-101 because the transaction or part of the transaction made the basis of this lawsuit occurred in this District. One or more Plaintiffs suffered injuries in this State and in Cook County as a result of ingestion of or exposure to Depakote. Defendant promoted and sold Depakote in this State and in Cook County. Also, Defendant maintains a registered agent in Cook County. Accordingly, venue is appropriate in this Court.

UNDERLYING COMMON FACTS

29. This lawsuit seeks compensation, damages and other relief for injuries Plaintiffs have suffered as a result of Abbott's anti-convulsant drug commonly known as "Depakote". Plaintiffs herein are properly joined pursuant to 735 ILCS 5/2-404. As detailed in this complaint and is true in fact, the claims of the Plaintiffs are logically related to each other. Plaintiffs' claims and the rights of relief arise out of the same transactions and series of transactions, including but not limited to, the Defendant's creating, developing, researching, studying, testing, licensing, manufacturing, promoting, advertising, warranting, marketing, selling and distributing the drug Depakote. Furthermore, as alleged in this complaint, the Plaintiffs' claims and right to relief, if brought separately, present common questions of law or fact.

30. Abbott is and at all relevant times has been engaged in the business of formulating, designing, manufacturing, licensing, testing, advertising, marketing, warranting, selling, distributing, and introducing into the stream of commerce a drug compound known as "divalproex sodium," "valproic acid," or "valproate," which Abbott has sometimes marketed under brand names such as "Depakote," "Depakote ER," "Depakene," and "Depacon." Regardless of the name under which Abbott marketed, sold, and distributed the drug, all of its forms were and are, for all purposes relevant to Plaintiffs' claims, chemically and

pharmacologically identical. For purposes of this Complaint, these various forms and names of the drug compound will all be referred to by the common brand name, "Depakote."

31. In approximately 1978, after Abbott received approval to market Depakote in the United States for treatment of certain forms of epilepsy, Abbott began marketing and placing Depakote into the stream of commerce throughout the United States. Depakote was promoted as an effective anti-epileptic drug ("AEDs").

32. Depakote as formulated, designed, manufactured, licensed, tested, advertised, marketed, warranted, sold, distributed, and introduced into the stream of commerce by Abbott was and is defective and unreasonably dangerous for its intended use. In particular, the primary compound in Depakote – valproic acid – has been established to cause severe birth defects if taken during the first trimester of pregnancy, especially during the first twenty-eight days of gestation when neural tube closure and other critical mid-line formations are taking place in the cellular structure of the developing embryo.

33. Among the "major congenital anomalies" (*i.e.*, birth defects) known to result directly from first-trimester exposure to Depakote are, either singly or in some combination with each other, spina bifida, cleft palate, cleft lip, limb and digital deformities, facial dysmorphism, mental developmental delays, genitourinary malformations, and heart defects.

34. Medical researchers have confirmed that while Depakote is effective at controlling seizures, it is also riskier than other modern AEDs for women who are pregnant or who may become pregnant.

35. Abbott has been aware of the birth defects associated with Depakote on early-term pregnancies on or before the date it began marketing and distributing Depakote in the United States.

36. By the mid-1990's, scientific articles began to single out Depakote as among the most – if not the most – teratogenic of all AEDs. One study in 1995 reported an incidence rate of neural tube defects (such as spina bifida) *ten times greater* than with other AEDs. Another study found major congenital abnormalities in eleven percent of all infants exposed to Depakote during the earliest weeks of pregnancy.

37. As pharmaceutical research and development progressed through the 1980's and 1990's, new and better AEDs were developed and approved, which proved as effective as Depakote at controlling most seizures in most epileptic patients, but which bore far less risk of causing birth defects.

38. Despite this emerging scientific consensus, Abbott refused to communicate the true nature and extent of the risk in its product labeling and warnings to physicians and consumers.

39. Instead of working to warn doctors and women of childbearing age about the sharply heightened risks of ingesting Depakote during the early weeks of pregnancy, Abbott has sought to minimize the risk and downplay the dangers in its product labeling of Depakote.

40. Medical science has proven that one out of every eight or ten babies whose mothers take Depakote during the first weeks of pregnancy will suffer some form of major congenital anomaly.

41. Depakote was and is a defective product, unreasonably dangerous in light of its nature and intended use. That defect existed when the product left Abbott's control and has been the proximate cause of injuries to Plaintiffs, whose injuries were caused by the use of Depakote in its intended or foreseeable manner or in the manner recommended by Abbott.

42. Abbott knew or should have known of the dangerous condition of its product, Depakote, but failed to adequately warn or instruct physicians and consumers of the risks, dangers, and proper uses of the drug.

43. Abbott has breached its duty of reasonable care and its express and implied warranties, and has made affirmative misrepresentations as well as misrepresentations by omission, all in connection with the design, testing, manufacture, marketing, and/or labeling of Depakote.

44. As a direct and proximate result of the acts and omissions of Defendant, the Injured Child has been born with spina bifida and neural tube defects, among other congenital malformations and birth defects. The Injured Child continues to suffer permanent injury, pain, loss of normal life, and other non-economic damages

45. As a direct and proximate result of the aforesaid acts of and/or omissions by the Defendant, Injured Child has:

- (a) suffered severe and permanent injuries, which they will be forced to endure for the remainder of their lives;
- (b) suffered physical impairment and disfigurement;
- (c) suffered physical pain and suffering;
- (d) suffered mental pain and suffering;
- (e) suffered loss of enjoyment of life;
- (f) incurred substantial costs for medical care in the past, and will in reasonable medical probability incur substantial costs for medical care in the future;
- (g) suffered a loss of earnings and of future earning capacity; and,

EQUITABLE TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

46. Defendant failed to disclose a known defect and affirmatively misrepresented that Depakote was safe for its intended use. Further, Defendant actively concealed the true risks associated with the use of Depakote. Plaintiffs, the parents of the Injured Children, and/or the prescribing physicians had no knowledge that Defendant was engaged in the wrongdoing alleged herein. Because of Defendant's concealment of and misrepresentations regarding the true risks associated with Depakote, Plaintiffs, the parent of the Injured Children, and/or the prescribing physicians could not have reasonably discovered Defendant's wrongdoing at any time prior to the commencement of this action.

47. Thus, because Defendant fraudulently concealed the defective nature of Depakote and the risks associated with its use, the running of any statute of limitations has been tolled. Likewise, Defendant is estopped from relying on any statute of limitations.

COUNT I

Strict Products Liability

48. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

49. It was the duty of Abbott to manufacture, test, market, advertise, label, distribute, and sell Depakote so that it was reasonably safe for its foreseeable use.

50. At the time Depakote left the control of Abbott and was sold, it contained one or more conditions which rendered it defective and unreasonably dangerous in light of its nature and intended use.

51. At all times, Depakote was used in the manner intended, recommended, or reasonably foreseeable by Abbott. There were and are no other reasonable, secondary causes of Plaintiffs' injuries and damages other than the use of Depakote.

52. The Depakote manufactured and/or supplied by Abbott and to which Plaintiffs were exposed was defective in design, manufacture, and/or formulation in that when it left the hands of Abbott, the foreseeable risks exceeded the benefits associated with the design and/or formulation of this product.

53. The Depakote marketed, sold, and supplied by Abbott and to which Plaintiffs were exposed was defective in its marketing and labeling in that Abbott knew or should have known of its dangers and risks when taken during the first trimester of pregnancy, but failed to adequately warn or instruct physicians, consumers, and the general public of the nature and extent of those risks.

54. The Depakote marketed, sold, and supplied by Abbott and to which Plaintiffs were exposed was defective in its marketing and labeling in that Abbott knew or should have known of its dangers and risks when taken during the first trimester of pregnancy, as well as the means for reducing or eliminating those dangers and risks, but failed to adequately warn or instruct physicians, consumers, and the general public of those means of reducing or eliminating the risks.

55. The Depakote marketed, sold, and supplied by Abbott was defective in marketing in that Abbott represented to the consuming public that the product was safe and had qualities that it, in fact, did not have.

56. The Depakote manufactured and/or supplied by Abbott was defective in design and formulation in that it was more dangerous than an ordinary consumer would expect when used in its intended or reasonably foreseeable manner.

57. The Depakote manufactured and/or distributed by Abbott was defective in that Abbott failed to adequately test this product before placing it into the stream of commerce.

58. As a direct and proximate result of the defective condition of Depakote as manufactured by Abbott, Plaintiffs suffered the injuries and damages described herein.

COUNT II

Negligence

59. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

60. Abbott had a duty to exercise reasonable care in the design, manufacture, testing, sale, labeling and/or distribution of Depakote it placed into the stream of commerce, including a duty to assure that the product did not cause unreasonable or unnecessary injury.

61. Abbott breached its duty of care to the Plaintiffs through its negligent acts and omissions. Abbott did not exercise reasonable care in the warning, design, manufacture, sale, testing, labeling and/or distribution into the stream of commerce of the Depakote in that Abbott knew or should have known that Depakote could cause serious birth defects if taken by pregnant women.

62. Abbott was negligent in the design, manufacture, sale, testing, and/or distribution of Depakote in that it: (a) failed to use due care in designing, formulating, developing, testing, and manufacturing Depakote so as to avoid or warn against the described risks to consumers who used Depakote; (b) placed an unsafe product into the stream of commerce; and (c) failed to

discover or warn of the dangers associated with the use of Depakote despite having actual and/or constructive knowledge of such dangers.

63. Abbott knew or should have known that Plaintiffs could foreseeably suffer injuries as a result of Abbott's failure to exercise ordinary care as described above.

64. As a direct and proximate result of Abbott's negligence, Plaintiffs suffered the injuries and damages described herein.

DAMAGES

65. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if fully set forth in the following paragraphs.

66. The facts set out above demonstrate that, as a direct and proximate result of Abbott's conduct, Plaintiffs have suffered severe economic and non-economic losses and injuries for which they are entitled to recover damages, including without limitation the following:

- (a) disfigurement, conscious pain, suffering, mental anguish, mental suffering, embarrassment, shame, loss of enjoyment of life, loss of association, loss of earnings, loss of profits, loss of salary;
- (b) the reasonable and necessary expenses for the medical treatment rendered to Plaintiffs in the past and that will be medically probable in the future;
- (c) compensation for Plaintiffs permanent mental and physical impairment;
- (d) all other actual damages available under applicable law;
- (e) future economic damages during the age of minority and beyond the age of 18, including lost wages of Plaintiffs;
- (f) costs of this suit.

PRAYER

WHEREFORE, Plaintiff asks that Defendant Abbott Laboratories, Inc. be cited to appear and answer herein. That upon final trial, Plaintiffs have judgment against Defendant Abbott

Laboratories, Inc. for actual damages, costs of court, and any other relief to which Plaintiffs may be entitled.

Respectfully submitted,

BY: _____

ATTORNEY FOR PLAINTIFFS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JEREMIAH FELICIANO, a minor, by MICHELLE)
LEAL, individually as parent and next friend)
of JEREMIAH FELICIANO, et al.,)

Plaintiffs,)

vs.)

No.

ABBOTT LABORATORIES, INC.,)

Defendant.)

AFFIDAVIT OF DAMAGES
SUPREME COURT RULE 222

The undersigned being first duly sworn upon oath, deposes and states that he is the attorney representing the Plaintiff in the above entitled cause of action seeking money damages or collection of taxes and states that this cause of action does exceed \$50,000.00.

Attorney for the Plaintiff

SUBSCRIBED AND SWORN to before
me on this, 15 day of August, 2011.

Nidia Cardenas
NOTARY PUBLIC



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