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Buyers Hit Abbott Labs With Baby Food Suit Amid FDA Probe

By **Mike Curley**

Law360 (February 18, 2022, 6:09 PM EST) -- A proposed class of baby formula buyers accused Abbott Laboratories Inc. in Florida federal court on Friday of allowing tainted formula to make it to the market, one day after the U.S. Food and Drug Administration announced it was investigating the company's facility in Sturgis, Michigan, after receiving reports of infant hospitalizations and one death after consuming the formula.

In the complaint, named plaintiff Luis Alfredo Suarez alleges that his daughter, identified in the suit as A.S., ingested formula from one of the tainted batches, and developed symptoms of gastrointestinal distress as a result.

He aims to represent a nationwide class of buyers who experienced personal injuries as a result of the allegedly tainted baby formula, with claims of strict product liability and breach of warranty.

The suit cites much of the FDA's announcement, which states that the agency is investigating the facility after receiving consumer complaints that infants have experienced Cronobacter sakazakii and Salmonella Newport infections after consuming formula from the Sturgis facility.

In the announcement, the FDA urged consumers not to use Similac, Alimentum or EleCare powdered infant formula if the first two digits of its code are between 22 and 37, the code on the container includes "K8," "SH" or "Z2" and the expiration date is April 1 or later.

Suarez said in his complaint that he purchased Alimentum baby formula on Jan. 30 that had a lot number and expiration date that matched what the FDA identified in its release as the tainted lots, and his daughter continues to experience symptoms of gastrointestinal distress weeks later.

The FDA said it had received complaints of four infant illnesses in three states, and that Cronobacter sakazakii may have contributed to death in one case. The agency added that it has begun on-site inspections, and have found positive Cronobacter sakazakii results from environmental samples, as well as internal records that indicate Abbott has disposed of product because of such contamination in the past.

"As this is a product used as the sole source of nutrition for many of our nation's newborns and infants, the FDA is deeply concerned about these reports of bacterial infections," Frank Yiannas, FDA deputy commissioner for food policy and response, said in the agency's press release. "We want to reassure the public that we're working diligently with our partners to investigate complaints related to these products, which we recognize include infant formula produced at this facility, while we work to resolve this safety concern as quickly as possible."

According to the FDA, Cronobacter bacteria can cause severe and life-threatening infections, including inflammation of the membranes that protect the brain and spine, and can cause bowel damage.

An FDA spokesperson told Law360 on Friday that the agency is continuing to investigate and will provide additional consumer safety information when it becomes available.

A spokesperson for Abbott Laboratories said the company conducts routine testing for Cronobacter sakazakii and other pathogens in its facilities as part of its quality assurance process, and no

products distributed from the Sturgis facility has tested positive for Cronobacter or salmonella. The spokesperson also said all infant formula products are tested and must test negative for pathogens before they are released.

"We are very sympathetic to families in these situations," the company said. "We value the trust parents and caregivers place in us and ensuring the quality and safety of our products is our top priority."

Representatives for Suarez could not immediately be reached for comment.

Suarez is represented by Rafael De La Grana and Ryan A. Jurney of Jurney & De La Grana PA.

Counsel information for Abbott Laboratories was not available Friday.

The case is Suarez v. Abbott Laboratories Inc., case number 1:22-cv-20506, in the U.S. District Court for the Southern District of Florida.

--Editing by Nicole Bleier.
