UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In re Abbott Laboratories	)	FTC File No. 221-0168

Abbott Laboratories' Petition to Limit Civil Investigative Demand, Dated January 27, 2023

March 16, 2023

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Counsel for Petitioner

Introduction

Abbott files this Petition to Limit the CID to preserve its rights while it continues to seek a negotiated resolution with FTC staff and, in the alternative, to modify the CID's substantive and temporal scope.[1] Abbott has acted reasonably to produce—and continues to produce—responsive documents relating to Abbott's involvement with the WIC program, which is the stated subject of the investigation. The CID, however, also requests irrelevant data and materials related to non-WIC activities, and requests documents dating back to 2016. Without modification, these extremely broad non-WIC requests could be read to encompass virtually every document and email relating to Abbott's Infant Nutrition business for the last seven years, which would be unduly burdensome, especially given that those materials have little or no relevance to the question being investigated, as set out on the face of the CID.

At staff's request, Abbott provided its objections to these specifications over two weeks ago. To date, staff have not offered a credible explanation about the relevance or scope of what it seeks on the non-WIC side. Because the stated subject of the CID is limited to WIC, and because staff have not said what it needs—or demonstrated why—on the non-WIC side, Abbott cannot even fashion its own proposal about what might be a reasonable approach to the burdensome non-WIC requests. Without better understanding which non-WIC documents staff want for purposes of their investigation, Abbott cannot put forward a reasonable proposal regarding this separate set of information. Staff's refusal to further extend Abbott's time to petition to quash or limit the CID to allow for further negotiation and clarification of these issues left Abbott with a Hobson's Choice: forever waive its legal rights and risk being asked to comply with the CID's currently

[1] In this petition, "Abbott" or the "Company" means Petitioner Abbott Laboratories; "FTC" or "Commission" means the Federal Trade Commission; "the CID" means the Civil Investigative Demand issued to Abbott on January 27, 2023; "WIC" means the Special Supplemental Nutrition Program for Women, Infants, and Children; and "non-WIC" means the part of Abbott's Infant Nutrition business that does not involve the WIC program.

boundless requests as to its infant formula business or file this Petition. While Abbott believes this filing is premature, given today's deadline, it has no realistic alternative.

The FTC and Abbott remain in disagreement over two topics: (1) the relevance and burden of the CID's non-WIC requests and (2) Abbott's obligation to provide information prior to January 1, 2020. Abbott has concluded that it is not at a point of unresolvable impasse, and hopes that additional discussions may yield a negotiated resolution. On March 14, 2023, Abbott respectfully requested that the FTC further extend Abbott's petition to quash deadline to allow time to resolve areas of disagreement or at least narrow them. Following that discussion, hours later, staff informed Abbott that no further extensions would be granted, but that they were purportedly open to a proposal from Abbott. In response, on March 15, 2023, Abbott reiterated its request to extend this deadline so that discussions could continue on this topic, and explained that Abbott is continuing to move forward with producing documents and making proposals regarding additional productions. By the time of this filing, staff have not responded to this repeated request.

Accordingly, pursuant to 16 C.F.R. § 2.10(a), Abbott requests a 21-day extension of the deadline to file this Petition. If the Commission grants this request, then no further consideration of this Petition is needed at this time. In the alternative, Abbott requests that the Commission modify the CID by limiting the non-WIC-related specifications identified below and by limiting the time period to January 1, 2020, to January 27, 2023.

Statement of Facts and Argument

On January 27, 2023, the FTC issued a CID to Abbott, stating that the Commission is investigating "collusion or coordination . . . ***regarding bidding for any WIC Infant Formula Contract***." CID, attached as Appendix A. Despite the CID's explicit focus on WIC contracting, the CID seeks information across Abbott's entire infant formula business, which consists of thousands of employees, scores of facilities, and more than 50 infant formula products. These

overly broad non-WIC requests seek all documents from 2016 forward about every aspect of Abbott's manufacturing, marketing, operations, pricing, distribution, strategy, and sales of infant formula, unrelated to Abbott's involvement with any WIC bidding or contracts. For example, the CID requests:

- "[A]ll documents relating to competition in the manufacture, marketing, or sale of any Infant Formula Product" (Specification 6), which includes non-WIC information and is exceptionally broad as a general matter;
- All "strategies or plans relating to any Infant Formula product" (Specification 7);
- "[A]ll documents relating to the Company's or any other person's actual or contemplated pricing plans or policies (including suggested retail pricing), price lists, pricing strategies, pricing forecasts, price structures, and pricing decisions for any Infant Formula Product sold or provided in any channel or market segment" (Specification 8);
- "[A]ll documents prepared, created, or distributed by any person other than the Company that reports sales statistics, data, pricing, market shares, or market analysis for any Infant Formula Product" (Specification 9);
- Data regarding non-WIC sales, costs, and other financial information (Specification 11); and
- Information regarding market share for "non-WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business" (Specification 13).

The CID further seeks all of these materials and information for a time period of over seven years.

Abbott is unaware of any factual basis to support the WIC-related investigation, and staff have not identified any reason to believe that Abbott or any of its competitors have coordinated or colluded regarding any WIC contract. Abbott has nevertheless agreed to respond to the CID, despite the significant burden and cost to the Company, in order to reassure the FTC that the Company's bids for WIC contracts are free of coordination or collusion.

To that end, Abbott began making rolling productions related to WIC contracting on March 10, and continues to do so. Abbott has already collected and is producing documents from responsive non-custodial sources. It has produced over a thousand pages of documents and anticipates producing thousands more tomorrow. Abbott also has already agreed to review and produce documents from ten employees involved with WIC contracting, including senior management responsible for the WIC contracting business. At this point, Abbott has received no feedback that its proposed compliance plan for the WIC specifications is insufficient other than with respect to the disputed date range.[2] As such, Abbott does not challenge the substantive scope of the CID to the extent it seeks information relating to the articulated basis for the FTC's investigation—WIC contracting. Instead, given today's deadline and to preserve its rights, Abbott files this Petition to Limit the scope of the CID in two respects.[3]

First, Abbott objects to the CID's requests for documents and information relating to Abbott's non-WIC business. Staff have not offered any explanation that would justify such exceptionally burdensome non-WIC information being required from Abbott when the investigation's stated purpose is whether there was collusion in connection with WIC bidding. As

[2] Abbott further notes that the Parties have not yet discussed specific search terms related to the WIC contracting business, though it expects to provide such terms to the staff shortly.

[3] Abbott further objects to particular Specifications in the CID as laid out in Exhibit 1 to the enclosed Appendix B (Statement of Counsel). Staff have not yet responded to these proposed modifications.

the CID makes clear, the investigation is focused on a single issue—namely, whether manufacturers of infant formula have colluded or coordinated in bidding for any contract under WIC. And the FTC will receive the documents it needs to assess this issue, including documents from senior executives who oversee Abbott's infant formula business. The existence of collusion or coordination in bidding for any WIC infant formula contract cannot be answered by data and documents relating to the non-WIC side of Abbott's business that have nothing to do with WIC bids. And yet the most burdensome specifications in the CID focus on this subject matter.[4]

The burden of these requests is not proper when weighed "in relation to the nature, purposes, and scope of the inquiry." *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 209 (1946). Accordingly, the non-WIC information sought in the CID is not reasonably relevant to the investigation, and such requests in the CID should be limited or quashed. *F.T.C. v. Turner*, 609 F.2d 743, 746 (5th Cir. 1980) (rejecting the Commission's petition to enforce an investigative subpoena "[b]ecause the subpoenaed information in this case is not reasonably relevant to any authorized F.T.C. inquiry").

From a burden perspective, absent modifications or other assurances from the FTC, Abbott must presume for purposes of this petition that staff will expect it to comply in full with the CID according to its broadest, literal interpretation. Doing so would require the Company to produce terabytes of data associated with the sale of non-WIC infant formula and "all documents"—i.e., millions of documents—relating to non-WIC products, pricing, strategies, manufacturing, plans, production, management, marketing, sales, distribution, and more. Such compliance would cost Abbott millions of additional dollars in attorneys' fees and costs. It would also require substantial

[4] Specifically, as described in Exhibit 1 to Appendix B, Specifications 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, and 19 seek information in whole or in part that is not reasonably relevant to the investigation.

company resources to complete—diverting time and attention from the Company's main focus on operating its business in order to timely provide families and consumers with the necessary supply of infant formula to feed their children.

Such burden could be justified, if at all, only by significant probative value to the question at issue in the investigation, namely whether any coordination or collusion occurred in bidding for WIC contracts. But staff have not explained how their insistence on non-WIC materials, which do not otherwise touch on WIC, will shed light on that question. Compliance with the CID without modification is thus an unduly burdensome fishing expedition into all of Abbott's Infant Nutrition business and "threatens to unduly disrupt or seriously hinder normal operations of [Abbott's] business," *see F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977), and at a time when Abbott would first and foremost like to focus on getting infant formula to those who need it.

Second, on both the WIC and non-WIC requests, the CID seeks information that goes back seven years to January 1, 2016, which exceeds the bounds of any reasonable inquiry. This expansive time period would inflict substantial burden on Abbott, requiring the Company to identify legacy systems and predecessor custodians. Without modification, the Company would need to expend significant resources in both expenses and employee time to comply with portions of the CID calling for older documents and information, which would be unlikely to provide the Commission with additional information relevant to its investigation.[5] Abbott is willing to produce information relating to its WIC business going back more than three years to January 1, 2020, which, however burdensome, is a more than reasonable amount of time.

[5] Indeed, the FTC has limited enforcement power to file suit in federal court against past conduct. *FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147, 159 (3d. Cir. 2019) ("[T]he FTC must make a showing that a defendant is violating or is about to violate the law"); *see also FTC v. AbbVie, Inc.*, 976 F.3d 327, 376 (3d Cir. 2020) ("[I]f a violator's conduct is neither imminent nor ongoing, there is nothing to enjoin, and the FTC cannot sue under Section 13(b).").

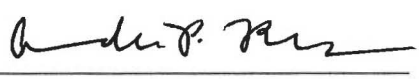
Conclusion

Forcing Abbott to file and litigate this petition now to preserve its rights to object to the overly broad CID, and prior to potential complete resolution of its concerns, is an inefficient use of resources. Abbott first requests that the Commission grant an extension of the time to file this petition so that Abbott and staff can continue negotiating the reasonable scope of CID. Alternatively, Abbott requests that the FTC limit responses to the CID to the subject of the investigation (information relating to WIC bidding) and to a reasonable time period from January 1, 2020, to the issuance of the CID.

Respectfully submitted,

Dated: March 16, 2023

LATHAM & WATKINS LLP



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Counsel for Petitioner

Certificate of Service

I hereby certify that, on March 16, 2023, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary**:

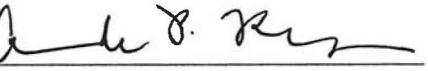
April Tabor
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580

One electronic copy to **Counsel for the Commission**:

Edward Takashima
Federal Trade Commission
Constitution Center
400 7th St. SW
Washington, DC 20024

Additionally, I hereby certify that, on March 16, 2023, an original and twelve paper copies of the foregoing and the exhibits thereto were served by hand delivery upon the following:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, D.C. 20580



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APPENDIX A

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Abbott Laboratories
c/o Hubert L. Allen, General Counsel
100 Abbott Park Road
Abbott Park, IL 60064

1a. MATTER NUMBER

FTC File No. 221-0168

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

No appearance required.

DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

☐ You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

February 27, 2023 by 5pm ET

3. SUBJECT OF INVESTIGATION

See Attached Schedule (Statement of Investigation), Omnibus Resolution Directing Use of Compulsory Process In Nonpublic Investigations of Collusive Practices, and Omnibus Resolution Directing Use of Compulsory Process Regarding Acts or Practices Affecting Healthcare Markets

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Geoffrey M. Green, Assistant Director
Patricia M. McDermott, Deputy Assistant Director

5. COMMISSION COUNSEL

Edward H. Takashima
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 876-5704 | etakashima@ftc.gov

DATE ISSUED

01/27/2023

COMMISSIONER'S SIGNATURE

Rebecca Kelly Slaughter

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at http://bit.ly/FTCSRulesofPractice. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CIVIL INVESTIGATIVE DEMAND ISSUED TO ABBOTT LABORATORIES

File No. 2210168

Unless modified by agreement with the staff of the Federal Trade Commission (the "Commission" or the "FTC"), each specification of this Civil Investigative Demand ("CID") requires a complete search of the Company as defined in the definitions, which appear after the following specifications. A Company representative must confer with the Commission representative identified in the final instruction of this CID within the time period set forth in the Commission's Rules of Practice, 16 C.F.R. § 2.7(k). If the Company believes that the required search or any other part of this CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative. All modifications to this CID must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(l).

SUBJECT OF THE INVESTIGATION

Whether any company that manufactures, markets, or sells Infant Formula Products has engaged or is engaging in any unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any statutes or rules enforced by the Commission, by inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant regarding bidding for any WIC Infant Formula Contract. *See also* the attached resolutions.

SPECIFICATIONS

1. List each Infant Formula Product manufactured, marketed, or sold by the Company in the United States and, separately for each:

    a. provide a detailed description of the product, including any brand name, number, code, stock keeping unit ("SKU"), or other unique identifier used by the Company, and all product specifications, characteristics, and forms (*e.g.*, powdered, concentrate, ready-to-feed);

    b. identify all actual or intended customer types and end users;

    c. submit a representative sample contract for each non-government customer type (*e.g.*, supermarkets, hypermarkets, online retailers, pharmacies, group purchasing organizations, hospitals); and

    d. submit one copy of all marketing materials, promotional materials, and selling or educational aids.

2. *Identify, and submit all documents relating to, each occasion that the Company submitted a bid, or declined to submit a bid, for any WIC Infant Formula Contract. For each such occasion, state or provide:

a. the date the request for proposal, request for quotation, request for information, inquiry, or other solicitation to bid was received by the Company;

b. the identity of the state agency, alliance, or Indian Tribal Organization that requested the bid;

c. the identity of the incumbent Infant Formula Product provider, if any;

d. the request for proposal, request for quotation, request for information, inquiry, or other solicitation to bid, including any proposed specifications, bidding rules, or requirements;

e. the reason(s) the Company declined to bid, if applicable;

f. the terms of any bid submitted by the Company;

g. all sources of data, pricing methodologies, algorithms, models, or calculations used by the Company in preparing the bid, and all factors considered in determining the bid price and other terms;

h. the name, title, and responsibilities of any Company employee involved in preparing the bid and the name, title, and responsibilities of any employee, group, or committee with authority to review, analyze, or approve the bid;

i. an itemized breakdown of the Company's estimated or projected total, fixed, and variable costs, estimated or projected gross and net sales, and gross and net margins relating to the bid;

j. the identity of each person that submitted a competing bid and the terms of each competing bid, including any information, market intelligence, forecast, or assessment of any Competitor's actual or potential bid;

k. the date that the contract was awarded, the identity of the person to whom the contract was awarded, the terms of the winning bid, and the terms of the contract; and

l. any communication with any state agency, Competitor, or other person outside of the Company concerning any actual or potential bid by any person.

3. Submit all documents relating to any forecast, analysis, evaluation, projection, estimate, model, or report regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales in any State.

4. Describe in detail the Company's policies and practices relating to communications with Competitors. State:

a. any restrictions, guidelines, or policies concerning communications with Competitors; and

b. the identity of each person authorized to communicate with Competitors, and the subject matter for which each person is so authorized.

5. *Submit all documents relating to any communication between the Company and any Competitor, including Mead Johnson, Gerber, or Perrigo, concerning any Infant Formula Product or any actual or potential WIC Infant Formula Contract or bid by any person.

6. Submit all documents relating to competition in the manufacture, marketing, or sale of any Infant Formula Product, including, but not limited to, market studies, forecasts and surveys, market intelligence reports, and all other documents relating to:

   a. the sales, market shares, business performance, or competitive positions of the Company or any of its Competitors;

   b. bidding for WIC Infant Formula Contracts;

   c. the relationship between any WIC Infant Formula Contract and non-WIC Infant Formula Product sales;

   d. the identification of key or strategically important customers or States;

   e. plans by any person to enter, not enter, expand, retrench, or exit the production, sale, or distribution of any Infant Formula Product in any State;

   f. supply and demand conditions, including, but not limited to, any forecast or estimate of the demand or price for any Infant Formula Product as a result of competition from any other possible substitute product; and

   g. attempts to win customers from other persons and losses of customers to other persons.

7. With respect to the Company's strategies or plans relating to any Infant Formula Product, submit the final (or the most current) draft of all:

   a. regularly prepared strategic, business, or marketing plan documents;

   b. regularly prepared financial statements, profit and loss statements, budgets, cost center reports, profitability reports, financial projections, and other financial reports;

   c. production plans, capacity utilization forecasts or plans, expansion or retrenchment plans, or plans to construct any new facility, to expand or modify any existing facility, or to close or idle any facility relating to any Infant Formula Product;

   d. documents prepared for or provided to any management committee, executive committee, or the Company's Board of Directors; and

e. documents memorializing any actions taken by or decisions made, ratified, or approved by any management committees, executive committees, or the Company's Board of Directors, including minutes or other recordings of meetings of the Company's Board of Directors.

8. Submit all documents relating to the Company's or any other person's actual or contemplated pricing plans or policies (including suggested retail pricing), price lists, pricing strategies, pricing forecasts, price structures, and pricing decisions for any Infant Formula Product sold or provided in any channel or market segment, including studies, analyses, or assessments of the pricing or profitability of any Infant Formula Product.

9. Submit all documents prepared, created, or distributed by any person other than the Company that reports sales statistics, data, pricing, market shares, or market analysis for any Infant Formula Product.

10. Identify all databases maintained by the Company that contain information relating to WIC Infant Formula Contract bids or Infant Formula Product sales or supply to customers, including all financial, accounting, cost, contracting, chargeback, reimbursement, rebating, discounting, or sampling databases. For each such database, submit a data dictionary that includes a list of all field names, a definition of each such field, and the meaning of each code that appears as a field value.

11. *Submit one or more Data Sets that provide, on a monthly basis:

a. for each Infant Formula Product SKU identified in response to Specification 1, the Company's:

i. total gross and net sales, in units and dollars, stated separately for WIC and non-WIC sales, and stated separately for each State, and for the United States as a whole;

ii. total rebates paid pursuant to each WIC Infant Formula Contract, in units and dollars, stated separately for each State and for the United States as a whole;

iii. the actual and projected total, fixed, and variable costs (with a breakdown by component) attributable to the manufacture, marketing and sale of the product, stated separately for WIC and non-WIC sales, and stated separately for each State and for the United States as a whole;

iv. the number and dollar value of units sampled;

b. for each WIC Infant Formula Contract identified in response to Specification 2 that the Company won, separately by Infant Formula Product SKU, the Company's:

i. total gross and net sales to all customers in units and dollars;

ii. wholesale average price and net price;

iii. discounts, rebates, charge backs, or other price adjustments or reductions provided; and

iv. gross and net margins.

12. Identify each Company facility that produces, formerly produced, or plans to produce any Infant Formula Product, and for each such facility state:

a. the location of the facility and the date of the facility's opening or acquisition;

b. for each quarter the facility was in operation,

i. the nameplate capacity and practical capacity of the facility for the production of each Infant Formula Product, specifying all factors used to calculate capacity;

ii. the capacity utilization rate for the production of each Infant Formula Product manufactured at the facility;

iii. actual production quantities reported in sales units for each Infant Formula Product;

c. for any time when the facility was closed or idled as to any Infant Formula Product:

i. the dates when the Company decided to close or idle the facility, when the Company closed or idled the facility, and, if applicable, when the Company restarted production;

ii. the reason(s) why the facility was closed or idled; and

iii. the Infant Formula Products for which the facility was closed or idled.

13. State the market share of the Company and each of the Company's Competitors in the manufacture, marketing, and sale of each Infant Formula Product, by quarter, for:

a. all sales in the United States and in each State the Company regularly tracks in the ordinary course of business;

b. WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business;

c. non-WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business; and

d. any other market segment the Company regularly tracks in the ordinary course of business.

Submit and identify by Bates number documents sufficient to support the Company's response.

14. Describe with specificity how, in the ordinary course of business, the Company determines its market share and the market shares of its Competitors for each market segment the Company regularly tracks, including each segment in Specification 13.

15. Submit one copy of:

a. each organizational chart, personnel directory, and corporate diagram in effect at any time from January 1, 2016 through the present for the Company as a whole and for each of the Company's parents, subsidiaries, affiliates, or divisions engaged in any activity relating to any Infant Formula Product; and

b. a current Data Map for the Company.

16. Identify and describe the steps the Company has taken or will take to preserve documents related to this CID. Submit, and identify by Bates number, documents sufficient to show and, to the extent not reflected in such documents, describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

17. Identify and describe the steps the Company has taken or will take to preserve, collect, and produce materials responsive to this CID.

18. Identify and describe:

a. all communication systems or messaging applications on any device in the possession, custody, or control of the Company that could be used to store or transmit documents responsive to this CID at any time on or after January 1, 2016, including, but not limited to, communication systems or messaging applications used to store, discuss, or share information concerning (i) bidding on any WIC Infant Formula Contract; (ii) analyses regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales (iii) sales; (iv) prices; (v) margins; (vi) costs, including, but not limited to, standard costs, expected costs, and opportunity costs; (vii) communications with competitors; (viii) customers; (ix) sales, rebates, production capacity, and market share data; and (x) capital investments or proposals; and

b. document storage, internal distribution, and maintenance practices used by the Company for all communication systems or messaging applications on any device in the possession, custody, or control of the Company that could be used to store or transmit documents responsive to this CID at any time on or after January 1, 2016, including, but not limited to, communication systems or messaging applications used to store, discuss, or share information concerning (i)

bidding on any WIC Infant Formula Contract; (ii) analyses regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales; (iii) sales; (iv) prices; (v) margins; (vi) costs, including, but not limited to, standard costs, expected costs, and opportunity costs; (vii) communications with competitors; (viii) customers; (ix) sales, rebates, production capacity, and market share data; and (x) capital investments or proposals.

19. For each communication system or messaging application identified in response to Specification 18:

    a. state when each communication system or messaging application was installed, downloaded, deleted, or utilized;

    b. describe any steps taken to preserve or maintain any material on each communication system or messaging application, including describing any Company routine deletion or preservation policies;

    c. for each communication system or messaging application identified that is no longer in use by the Company, state any steps taken to maintain or preserve material from each communication system or messaging application; and

    d. describe any steps taken and steps that will be taken to preserve, collect, and produce materials responsive to this CID from any such system or application.

20. Identify the persons responsible for preparing the response to this CID and submit a copy of all instructions relating to the steps taken to respond. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the persons to whom the instructions were given. For each specification, identify the persons who assisted in the preparation of the response and identify the locations and persons whose files were searched.

DEFINITIONS

For the purposes of this CID, including the instructions, the following definitions apply:

A. The terms "**Company**," "**Abbott Laboratories**," "**you**," or "**your**" mean Abbott Laboratories, and its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

B. The terms "**and**," as well as "**or**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification all information that otherwise might be construed to be outside the scope of the specification.

C. The terms "**any**" shall be construed to include "all," and "**all**" shall be construed to include "any."

D. The terms "**communication**" or "**communicate**" mean any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, internal or external, and all discussions, meetings, telephone communications, text messages, instant messenger messages, or email messages.

E. The term "**Competitor**" means any person, other than the Company, that actually or potentially produces, manufactures, markets, sells, or imports any Infant Formula Product for sale within the United States.

F. The term "**contract**" means any oral, written, or implied contract, arrangement, understanding, or plan, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

G. The term "**customer**" means any person that purchases or has purchased or may purchase any Infant Formula Product from the Company.

H. The term "**Data Map**" means an organized list, schematic, diagram, or other representation sufficient to show where and how the Company stores all physical and electronic information in its possession, custody, or control, including but not limited to, information systems (*e.g.*, electronic-mail messages, voice-mail messages, communication logs, enterprise content management, instant messaging, database applications); locations where information is stored (*e.g.*, physical Company facility, third-party vendor location, cloud); and the physical and logical network topology of the Company's computer systems.

I. The term "**Data Set**" means data held by, or accessible to, the Company in the ordinary course of business that is provided by the Company to respond to any specification in this CID, in the form and with the accompanying information called for in Instruction I.7(c).

J. The term "**documents**" means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic files, including those created, shared, edited, or exchanged through collaboration or document management platforms such as, but not limited to, Microsoft 365, Google Workspace, and Quip; email messages; audio files; any communications created, shared or exchanged through messaging applications or other communication systems, including ephemeral and non-ephemeral messaging applications such as, but not limited to, Slack, Confide, Signal, WhatsApp, Wickr, iMessage, Telegram, Microsoft Teams, or Google Hangouts Chat; instant messages; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company. Employee-owned personal electronic devices used to store or transmit documents responsive to this CID are considered in the possession, custody, or control of the Company.

The term "document" includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original.

The term "other data compilations" includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations as set out in Instruction 4.

If the name of the person or persons who prepared, reviewed, or received the document and the date of preparation, review, or receipt are not clear on the face of any document, such information should be provided separately.

Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature.

Documents shall be produced in accordance with the instructions set out in Instruction 4.

K. The term "**documents sufficient to show**" means both documents that are necessary and documents that are sufficient to provide the specified information.

L. The terms "**each**" shall be construed to include "every," and "**every**" shall be construed to include "each."

M. The term "**Gerber**" means Gerber Products Company, and its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, parents (including Nestlé S.A.), predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

N. The term "**Infant Formula Product**" means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk, as defined in 21 U.S.C. § 321(z).

O. The term "**Mead Johnson**" means Mead Johnson Nutrition Company, and its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, parents (including Reckitt Benckiser Group plc), predecessors, divisions, subsidiaries (including Mead Johnson & Company, LLC), affiliates, partnerships, and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

P. The term "**Perrigo**" means Perrigo Company plc, and its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, parents, predecessors, divisions, subsidiaries (including Perrigo Company), affiliates, partnerships, and joint

ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

Q. The term "**person**" includes the Company, and shall mean any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.

R. The terms "**relate(s) to,**" "**relating to,**" or "**regarding**" mean, in whole or in part, constituting, containing, concerning, embodying, reflecting, discussing, explaining, describing, analyzing, identifying, stating, reporting, forecasting, referring to, dealing with, or in any way pertaining to.

S. The term "**State**," when used as a noun, means any state in the United States; any U.S. territory, including the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or Virgin Islands; or any geographic area in the United States served by any Indian Tribal Organization.

T. The term "**Technology Assisted Review**" means any process that utilizes a computer algorithm to limit the number of potentially responsive documents subject to manual review. A keyword search of documents with no further automated processing is not a Technology Assisted Review.

U. The term "**WIC Infant Formula Contract**" means any actual or potential contract for the provision of Infant Formula Products under the Special Supplemental Food Program for Women, Infants and Children administered by the United States Department of Agriculture through its Food and Nutrition Service and state and local agencies, that provides supplemental foods, including infant formula, and nutrition education to women, infants, and children with income levels that put them at nutritional risk, as described in 42 U.S.C. § 1786 *et. seq*.

V. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of a verb includes the past tense, and vice versa.

INSTRUCTIONS

For the purposes of this CID, the following instructions apply:

1. All references to year refer to calendar year. Unless otherwise specified, each of the specifications in this CID covers documents and information dated, created, generated, modified, sent, received, or in effect from January 1, 2016 to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the 12-month period covered, and provide the Company's best estimate of calendar year data.

2. Unless otherwise specified, each specification calls for information limited to the United States.

3. Unless otherwise specified, this CID requires the production of all responsive documents, data, and other information in your possession, custody, or control on the date that this CID was issued.

    a. If you comply fully with this CID within 120 days of issuance, then only specifications marked with an asterisk ("*") are continuing in nature. If you comply fully with this CID more than 120 days after it was issued, then all of the specifications in this CID are continuing in nature.

    b. Specifications that are continuing in nature require production of documents, data, and information you created or obtained up to 30 calendar days before you comply fully with this CID, except for materials that require translation into English. Materials that must be translated into English must be produced if they are created, altered, or received up to 45 calendar days before you comply fully.

4. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

    The term "Sensitive Personally Identifiable Information" means an individual's Social Security Number alone; or an individual's name, address, or phone number in combination with one or more of the following:

    - date of birth
    - driver's license number or other state identification number, or a foreign country equivalent
    - passport number
    - financial account number
    - credit or debit card number

The term "Sensitive Health Information" includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

5. Form of Production: You must submit documents as instructed below absent written modification.

    a. Except for privileged material, the Company shall produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The Company shall submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, the Company will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

    b. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

        i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata.

        ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.

Metadata/Document Information	Description
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

iii. Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.

Metadata/Document Information	Description
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC000309.xlsx
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

iv. Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

v. Submit documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

Metadata/Document Information	Description
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
Custodian	Name of person from whom the file was obtained.

vi. Submit redacted documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 7.

c. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions. All terms, allocations, calculations, and methods of calculation must be clearly explained and defined; costs must be disaggregated to the lowest level of detail possible and fully allocated. Further, for each Data Set, identify the specific Company databases from which these data were obtained and provide (i) a list of field names and a definition for each field contained in the Data Set; (ii) the meaning of each code that appears as a field value in the Data Set; (iii) the primary key in the Data Set or table that defines a unique observation; and (iv) any programming code used to calculate any of the data provided.

d. Produce electronic file and TIFF submissions as follows:

i. For productions over 15 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.

ii. For productions under 15 gigabytes (zipped and compressed), you may use Accellion via Kiteworks.

iii. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of your compliance with this CID.

iv. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.

e. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

f. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

6. Before using software or technology (including search terms, predictive coding, de-duplication, email threading or similar technologies) to identify or eliminate documents, data, or information potentially responsive to this CID you must submit a written description of such software or technology and any related processes and workflows. In addition:

a. if you use Technology Assisted Review to identify documents and information responsive to this CID or to exclude documents and information from further review describe your collection and review methodology, including: (a) how any software is used to identify responsive documents or exclude nonresponsive documents; (b) the process to identify and validate any seed set documents, if applicable; (c) the process to determine and validate accuracy of the automatic determinations of responsiveness and nonresponsiveness; and (d) the collection and review process for foreign language documents, whether reviewed manually or by some technology-assisted method;

b. if you use search terms to identify documents and information responsive to this CID or to exclude documents and information from further review: for each custodian, search location, or document population provide (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the number of documents containing each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company acronyms and terminology;

c. provide prevalence, recall, precision, validation, and confidence-level statistics;

d. provide access to randomized, statistically significant samples of non-privileged documents excluded from review or production by use of keyword search terms, Technology Assisted Review software, or any other means; and

e. identify the person(s) able to testify on your behalf about information known or reasonably available to the organization relating to your use of software or technology in responding to this CID.

7. All documents responsive to this CID:

   a. shall be produced in complete form, un-redacted unless privileged or containing nonresponsive PII or SHI, and in the order in which they appear in your files;

   b. shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC-00000001);

   c. if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

   d. shall be produced in color;

   e. shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that, Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and

   f. shall be accompanied by an affidavit of a Company officer stating that the copies are true, correct, and complete copies of the original documents.

8. If any documents or parts of documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes, in separate fields, a privilege identification number; beginning and ending document control numbers; parent document control numbers; attachments document control numbers; family range; number of pages; all authors; all addressees; all blind copy recipients; all other recipients; all custodians; date of the document; the title or subject line; an indication of whether it is redacted; the basis for the privilege claim (e.g., attorney-client privilege), including the underlying privilege claim if subject to a joint-defense or common-interest agreement; and a description of the document's subject matter. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document or part of a document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based.

Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this Instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third party, such as internal law firm memoranda, may be omitted from the log. Provide the log in Microsoft Excel readable format.

9. In order for your Response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

10. Any question you have relating to the scope or meaning of anything in this CID, or suggestions for possible modifications thereto, should be directed to **Edward H. Takashima at (202) 876-5704 or etakashima@ftc.gov**. Please contact to obtain instructions for your delivery of responsive documents and information.

CERTIFICATION OF COMPLIANCE

Pursuant to 28 U.S.C. § 1746

I, _____, certify the following with respect to the Federal Trade Commission's ("FTC") Civil Investigative Demand directed to Intrepid Potash, Inc. (FTC File No. 221-0131) (the "CID"):

1. The Company has identified all documents, information, and/or tangible things ("responsive information") in the Company's possession, custody, or control responsive to the CID and either:
    a. provided such responsive information to the FTC; or
    b. for any responsive information not provided, given the FTC written objections setting forth the basis for withholding the responsive information.
2. I verify that the responses to the CID are complete and true and correct to my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

_____
Signature

_____
Printed Name

_____
Title

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATIONS OF COLLUSIVE PRACTICES

File No. P859910

Nature and Scope of Investigation:

To investigate whether any persons, partnerships, corporations, or others have engaged or are engaging in inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant, whether through private communications, public statements, sharing information, or other actions, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any other statutes or rules enforced by the Commission; and to determine the appropriate action or remedy, including whether injunctive and monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with any inquiry within the nature and scope of this resolution for a period not to exceed ten years. The expiration of this ten-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the ten-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b- 1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq*., and supplements thereto.

By direction of the Commission.

April J. Tabor
Secretary

Issued: July 1, 2022
Expires: July 1, 2032

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS REGARDING ACTS OR PRACTICES AFFECTING HEALTHCARE MARKETS

File No. P210100

Nature and Scope of Investigation:

To investigate whether any persons, partnerships, corporations, or others have engaged or are engaging in unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices in, or affecting commerce related to healthcare markets, including those regarding pharmaceuticals, pharmacies, pharmacy benefit managers, medical devices, hospitals, or other healthcare facilities or services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended or any statutes or rules enforced by the Commission; and to determine the appropriate action or remedy, including whether monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it, including subpoenas and orders to file special reports, be used in connection with any inquiry within the nature and scope of this resolution for a period not to exceed ten years. The expiration of this ten-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the ten-year period..

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq*., and supplements thereto.

By direction of the Commission.

April J. Tabor
Secretary

Issued: July 1, 2021
Expires: July 1, 2031

APPENDIX B

Statement of Counsel under 16 C.F.R. § 2.10(a)(2)

I, Amanda P. Reeves, hereby state as follows:

1. I am a partner at Latham & Watkins LLP, and one of the lawyers who represent Abbott Laboratories ("Abbott" or the "Company") in connection with the investigation by the Federal Trade Commission into whether the Company has engaged in an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by "inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant regarding bidding for any WIC Infant Formula Contract" (the "Investigation").

2. I make this statement upon personal knowledge.

3. I conferred on numerous occasions with Commission staff—in particular, but not exclusively, with the lead FTC staff attorney assigned to this matter, Edward Takashima of the Anticompetitive Practices Division of the FTC's Bureau of Competition—pursuant to 16 C.F.R. § 2.7(k) in good faith in an effort to resolve by agreement the issues raised by the associated petition and have been unable to reach such an agreement as of the date of this Petition.

4. On January 27, 2023, Mr. Takashima notified Hubert Allen, General Counsel of Abbott, that the Commission had issued a Civil Investigative Demand (the "CID") to Abbott in connection with the Investigation. The CID was not formally served on Abbott until January 31, 2023.

5. On February 6, 2023, I contacted Mr. Takashima by telephone to inform him that Abbott had retained Latham & Watkins LLP to represent it for this investigation. We discussed the FTC's initial requests, including requests for organizational charts and an understanding of

non-custodial documents relating to WIC bids. I also requested a better understanding of the FTC's theory, and Mr. Takashima told me that was reflected in the text of the CID.

6. Following this initial conversation, Mr. Takashima provided by email an initial set of requests, which sought information and documents including organizational charts, the identities of individuals involved in the WIC contracting process, and non-custodial document sources responsive to certain specifications of the CID. Mr. Takashima further requested to schedule another conference with counsel. This conference was held on February 14, 2023.

7. To facilitate the discussion on the February 14 conference, Abbott provided current organizational charts related to its Abbott Nutrition business unit in advance of the meeting.

8. During the February 14 conference,[1] counsel provided an overview of the organizational charts that were provided, including identifying the individuals primarily involved in the WIC contracting process, and preliminary information regarding non-custodial files.

9. On February 16, Mr. Takashima sent a letter setting forth numerous additional requests, including additional detail on the original set of priority requests. Mr. Takashima further requested that Abbott: (1) provide any requests to clarify or modify the CID; (2) provide a proposed list of custodians; (3) provide a statement as to whether Abbott proposes to use Technology Assisted Review or search terms in connection with its review of documents; (4) produce non-custodial documents responsive to Specification 2 and Specification 7(b); and (5) submit in writing all grounds for any potential petition to limit or quash and specify which CID specifications or portions thereof Abbott would potentially petition to limit or quash. As detailed below, Abbott

[1] The February 14 meet and confer occurred via video conference beginning at 4:00 pm ET. Attendees representing Abbott included Tara Tavernia, Chris Brown, and myself of Latham & Watkins LLP. Attendees representing the Commission included Mr. Takashima, Shira Steinberg, and Daniel Blauser.

has since provided all of the requested information and has initiated rolling productions of the non-custodial documents.

10. On February 20, Abbott provided staff with historic versions of the Abbott Nutrition organizational charts, dating back to 2020.

11. During video conferences on February 14 and 21, and again on March 1, counsel provided information about the individuals involved in the WIC contracting process and provided additional responses to questions posed by staff regarding Abbott personnel in writing on February 24, March 3, and March 9.

12. During the February 21 telephone conference,[2] Abbott also provided information regarding central files containing documents responsive to staff's priority requests, namely (1) a central file containing invitations to bid for WIC contracts issued by government agencies, and (2) a central file containing Abbott's final bid submissions in response. On February 24, Abbott committed to begin rolling productions of non-privileged materials from these files for the period from January 1, 2020 forward on or before March 10. Staff also sought financial analyses regarding WIC contracts stored in a central file, and on February 27, Abbott agreed that it would also prioritize production of such non-privileged materials. On March 10, as promised, Abbott submitted an initial production of more than 1,000 pages of documents, and committed to send an additional production the week of March 13.

13. In parallel to providing the non-custodial materials that staff asked the Company to prioritize, Abbott has begun the process of preparing to produce custodial materials. During the

[2] The February 21 meet and confer occurred via video conference beginning at 4:30 pm ET. Attendees representing Abbott included Tara Tavernia, Chris Brown, and myself of Latham & Watkins LLP. Attendees representing the Commission included Mr. Takashima, Shira Steinberg, and Daniel Blauser.

March 1 meet and confer,[3] Abbott identified six employees as custodians. These six employees are integrally involved in the WIC contracting process, which is the stated focus of staff's investigation. During the March 1 call, staff requested that Abbott add as custodians four additional custodians, all of whom are senior executives of the Company with various responsibilities including with respect to WIC. On the morning of March 3, Abbott agreed to add these additional custodians. On the March 1 call, Abbott also confirmed to staff that it intends to conduct a search term-based review to identify responsive documents (as opposed to relying on Technology Assisted Review). Abbott committed to provide search terms to the Commission during the week of March 13 and has been working to develop a proposed set of search terms.

14. Alongside Abbott's efforts to ensure that staff received the information that staff identified as central to the early stages of their investigation, Abbott sought to work productively with staff to narrow the scope of the CID. During each of our meet and confers, on February 14, February 21, and March 1, I set forth our objections to the substantive and temporal scope of the CID. On each call, I also continued to request a better understanding of the nature of the FTC's investigation, including whether it had a working hypothesis as to what conduct occurred, so that Abbott could assess whether it could reasonably provide information responsive to the FTC's non-WIC requests. In response, Mr. Takashima informed me that the FTC was interested in non-WIC information because it wanted to know if there were spillover effects from conduct relating to WIC bidding to non-WIC contracts. I explained that it was premature for Abbott to gather non-WIC information on hypothetical effects until the FTC had identified the conduct at issue in the CID.

[3] The March 1 meet and confer occurred via video conference beginning at 4:00 pm ET. Attendees representing Abbott included Tara Tavernia, Chris Brown, and myself of Latham & Watkins LLP. Attendees representing the Commission included Mr. Takashima, Shira Steinberg, and Daniel Blauser.

15. On February 27, in response to a request by staff, Abbott provided a written statement of its anticipated grounds for a Petition to Quash or Modify the CID, as well as a detailed list of objections and requested modifications to the individual specifications of the CID. *See* Exhibit 1. Although these materials were provided to staff more than two weeks before the date of the Petition that accompanies this Statement, Abbott has not received any substantive feedback on any of the modifications requested in this submission. Staff have not indicated whether they agree with any of Abbott's specific proposed modifications or sought to negotiate regarding any particular topic. Instead, staff have indicated that Abbott's position regarding non-WIC materials and temporal scope are improper.

16. In light of the ongoing discussions regarding the CID's scope, challenging the scope of the CID seems premature until staff can more specifically articulate which non-WIC documents they need to complete their investigation. Staff also have not countered Abbott's suggestion that documents should be collected from January 1, 2020, forward and Abbott does not know if staff are willing to modify the CID's temporal scope.

17. On February 16, staff agreed to extend the original filing deadline for a petition to quash or limit the CID until March 16.

18. On March 13, I contacted Mr. Takashima and left a voicemail in an effort to negotiate a further extension of the petition deadline given the progress described herein.

19. I followed up with Mr. Takashima by email the morning of March 14 when he did not return my call, and he provided a one-hour window during which we could speak. *See* Exhibit 2. I adjusted my schedule to accommodate Mr. Takashima's limited availability, and we had a productive conversation in which I explained that Abbott and staff had made good progress on the WIC requests, but that absent agreement or modification, on the remaining areas of disagreement,

I would need to file a petition. Given that the FTC's stated interest in non-WIC documents was to determine if there were spillover effects from conduct relating to WIC bidding to non-WIC contracts, I again explained that it was premature to burden Abbott with gathering non-WIC information until the FTC had identified the conduct at issue in the CID. I noted that Abbott was not unwilling to provide this information if it was relevant, but that in the absence of the FTC explaining that it had some evidence of coordinated or collusive conduct in the WIC part of Abbott's business, it was premature for Abbott to collect information on secondary effects in the non-WIC part of Abbott's business. I requested a further extension of the petition deadline so that we could continue to work through these issues. Mr. Takashima asked that I send the proposal in writing.

20. After that conversation, Mr. Takashima sent an email several hours later stating that, rather than continue to discuss the substantive or temporal scope of the CID, "we are at an impasse," and if Abbott needs to preserve its rights, "then Abbott should file a petition to quash or limit the CID by the current deadline, March 16, 2023." Exhibit 3.

21. On March 15, I responded to Mr. Takashima's email by reiterating Abbott's request for an extension of time to file its petition to quash or limit the CID and requested a 21-day extension. I explained that, without further guidance from the FTC on its expectations as to the non-WIC specifications, Abbott was not in a position to make its own proposal. As of the time of the filing of this petition, staff have not responded to this request. *See* Exhibit 4.

22. Without a further extension of the petition deadline and without an understanding of any anticipated modifications to the CID's non-WIC requests and the stated time frame, the Company thus was left with no option but to file the accompanying petition by today's deadline.

March 16, 2023

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EXHIBIT 1

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LATHAM & WATKINS LLP

February 27, 2023

CONFIDENTIAL
VIA EMAIL

Edward Takashima
United States Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Email: etakashima@ftc.gov

Re: Abbott Laboratories (FTC File No. 221-0168) – Statement of Objections to January 27, 2023, Civil Investigative Demand

Dear Mr. Takashima:

On behalf of Abbott Laboratories ("Abbott" or the "Company"), we write regarding the Civil Investigative Demand issued on January 27, 2023 (the "CID"), and in response to your letters dated February 16 and 22, 2023 (the "Letters"). Your February 16 Letter requested that we "submit in writing all grounds for any potential petition to limit or quash, including the factual basis for any claims of undue burden, and specify which CID specifications or portions thereof Abbott would potentially petition to limit or quash."[1] February 16 Letter at 2. It further sought "any requests to clarify or modify the CID." *Id.* at 4. We submit this letter and the enclosed appendix in response.

As a threshold point, we appreciate Staff's reasonableness to date in negotiating the Company's response to the CID. We hope to continue working productively and cooperatively with Staff to resolve the Commission's investigation as efficiently as possible. Nevertheless, as it presently stands, the CID is overbroad and unduly burdensome. Among other things, it seeks information that is not probative as to the existence of any alleged collusion in bidding and contracting for the provision of Infant Formula Products under the Special Supplemental Food Program for Women, Infants and Children ("WIC Contracts"). Although the Commission issued no resolution to authorize this specific investigation (an issue as to which the Company reserves all future rights), the CID itself makes clear that the "subject of the investigation" is limited to alleged coordination or collusion with respect to bidding for WIC Contracts alone.

[1] Abbott continues to evaluate whether it will be necessary to file a petition to limit the CID following completion of the meet and confer process. We appreciate that, in an effort to negotiate an agreeable resolution, the Commission granted the Company an extension of the deadline for filing such petition until March 16, 2023.

Abbott is concerned that, given the CID's broad scope and demands for information well beyond WIC Contracts, if it does not petition to limit the CID, the Commission might later argue that the Company waived any objections as to burden, scope, relevance, and more. As a result, absent (1) adequate modification of the CID, (2) recurring extensions of the petition deadline tied to good-faith engagement with Staff, or (3) written assurances from Staff as to the absence of waiver, Abbott must consider not only Staff's reasonable current posture, but also the broadest possible reading of the CID that the Commission might advance in the future. Given our cooperative work to date, that may be unlikely. But the Company must fairly consider the possibility of the Commission asserting a future claim of waiver.

Of course, more constructive paths to resolving this investigation than litigating the scope of the CID, as written, surely exist. We look forward to continuing to discuss those avenues with you. In the meantime, we provide the information that you requested in the Letters as to undue burden and related objections.

We are unaware of *any* evidence that creates even a hint of collusion or coordination. Despite repeated asks, Staff have not directed us to any such evidence. We thus remain at a loss to understand the factual predicate for this investigation. But even if one were to hypothesize some collusion with respect to WIC Contracts, information regarding the non-WIC space would not be relevant to the Commission for any valid purpose.

First, the CID seeks documents and information that are not reasonably relevant to the stated issues in the investigation and would unduly burden the Company to provide. For a CID request to be proper, "[t]he information requested by the subpoena must be relevant to the legitimate purpose of the issuing agency, and, in this case, relevance is measured by comparing the specifications of the subpoenas with the resolutions of the Commission, which announced the purpose and scope of the inquiry." *F.T.C. v. Rockefeller*, 441 F. Supp. 234, 240–41 (S.D.N.Y. 1977), *aff'd*, 591 F.2d 182 (2d Cir. 1979); *see also F.T.C. v. Turner*, 609 F.2d 743, 746 (5th Cir. 1980) (rejecting the Commission's petition to enforce an investigative subpoena "[b]ecause the subpoenaed information in this case is not reasonably relevant to any authorized F.T.C. inquiry").

As noted, the CID states that the Commission is investigating "inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant regarding bidding for any WIC Infant Formula Contract."[2] Nevertheless, the CID seeks a significant amount of information about the Company's *non-WIC* infant formula business. In fact, the majority of the CID seeks information broader than or unrelated to the WIC program. For example, the CID requests:

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[2] The full Subject of the Investigation states: "Whether any company that manufactures, markets, or sells Infant Formula Products has engaged or is engaging in any unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any statutes or rules enforced by the Commission, by inviting, initiating, participating in, or facilitating collusion or coordination in any way with any other market participant regarding bidding for any WIC Infant Formula Contract. *See also* the attached resolutions."

The attached resolutions claim to broadly authorize investigations regarding collusive practices and "acts or practices affecting healthcare markets."

- "[A]ll documents relating to competition in the manufacture, marketing, or sale of any Infant Formula Product" (Specification 6), which includes non-WIC information and is exceptionally broad as a general matter;

- All "strategies or plans relating to any Infant Formula product" (Specification 7);

- "[A]ll documents relating to the Company's or any other person's actual or contemplated pricing plans or policies (including suggested retail pricing), price lists, pricing strategies, pricing forecasts, price structures, and pricing decisions for any Infant Formula Product sold or provided in any channel or market segment" (Specification 8);

- "[A]ll documents prepared, created, or distributed by any person other than the Company that reports sales statistics, data, pricing, market shares, or market analysis for any Infant Formula Product" (Specification 9);

- Data regarding non-WIC sales, costs, and other financial information (Specification 11); and

- Information regarding market share for "non-WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business" (Specification 13).

Your February 16 Letter contends that non-WIC information is relevant because "WIC and non-WIC sales of infant formula appear interrelated," and "[a]ny collusive or coordinated practices regarding bidding for WIC Infant Formula Contracts would affect, and would likely be aimed at, non-WIC sales." February 16 Letter at 2. But the Commission is not investigating alleged collusion outside of WIC Contracts. The CID itself says so.

Even if these non-WIC requests had some tenuous relevance, they would unduly burden the Company. As the Supreme Court has recognized, burden is weighed "in relation to the nature, purposes, and scope of the inquiry." *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 209 (1946). Here, the burden of these overbroad requests substantially outweighs any legitimate purpose of the inquiry. It may be possible that the parties can negotiate and mutually agree to a more narrowly tailored production of some non-WIC information that would provide Staff with sufficient insight into that non-WIC information, while appropriately balancing the purpose, burden, and scope of the inquiry. But at present, the CID's expansive non-WIC requests impose a significant and unreasonable burden on the Company.

Second, the CID is unduly burdensome and seeks information that is not reasonably relevant for another reason—it requests documents and information dating back over *seven* years, which exceeds the bounds of any reasonable inquiry. The Commission's request for information dating back to January 1, 2016, appears arbitrary and untethered to any allegation or theory articulated by Staff. Staff has not explained why materials from over half a decade ago would be relevant to their inquiry.

More generally, the FTC cannot seek relief in federal court for past conduct. *FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147, 159 (3d. Cir. 2019) ("[T]he FTC must make a showing that a defendant is violating or is about to violate the law."); *see also FTC v. AbbVie, Inc.*, 976 F.3d 327, 376 (3d Cir. 2020) ("[I]f a violator's conduct is neither imminent nor ongoing, there is nothing to enjoin, and the FTC cannot sue under Section 13(b).").

To the extent that there was hypothetical evidence of coordination in 2016, but none in the many years since, any administrative proceeding in Part III would be directed to an event in the distant past. This would not be a good use of the Commission's limited resources, not least because it would not address any recent, existing, or likely future conduct. In light of burden and attenuation, of course, there must be *some* temporal limit on the scope of the FTC's investigation. No one would suggest that an inquiry into possible collusion decades ago would be a sound or defensible use of compulsory process, for example. In our view, three years would be a reasonable period for the Commission to investigate any possible collusion or coordination in bidding for WIC.

To reduce disputes and come to an amicable solution, the Company respectfully requests that Staff modify the CID to limit the time scope to January 1, 2020 to present. This modification would spare the Company the significant expense of collecting and reviewing what are likely to be tens or even hundreds of thousands of documents that are of marginal relevance at best. It would also reduce the Company's need to identify legacy systems and predecessor custodians. Without such modification, the Company likely would need to expend significant resources in order to comply with portions of the CID that are not likely to provide reasonably relevant information.

In addition to these general objections, Abbott provides the enclosed appendix detailing specific objections and modification requests with respect to the CID. For those reasons, among others, we appreciate Staff's consideration of our request to limit the scope of compliance with the CID in order to limit burden on the Company and to focus instead on the WIC Contract documents and information that are central to the investigation.

We look forward to continuing to work toward that end, and to doing what we can to facilitate Staff's timely resolution of this matter.

* * *

Abbott expressly designates this submission and all attached, enclosed, or forthcoming materials (the "Submission"), as highly confidential. The Company customarily and actually treats these documents and information as private and expects that the Federal Trade Commission (the "Commission") will accord the Submission protection against disclosure to the fullest extent available under all applicable statutes, regulations, and rules, including, but not limited to, the Antitrust Civil Process Act, the Freedom of Information Act, and the Commission's Rules of Practice (16 C.F.R. §§ 4.9 et seq). Without prejudice to the Abbott's rights, if the Commission should at any time contemplate disclosing any such materials to the public or to any third party for any reason and for any use—including, but not limited to, quoting from, attaching or otherwise referring to such documents in a court or administrative proceeding

whether filed under seal or publicly—Abbott requests an opportunity of no fewer than three days' advanced notice to allow sufficient time to object and, if necessary, seek protections against disclosure from a court of competent jurisdiction.

Please feel free to contact me at (202) 637-2183 or Amanda.Reeves@lw.com with any questions.

Sincerely,

/s/ Amanda P. Reeves

Amanda P. Reeves, Esq.
LATHAM & WATKINS LLP

Enclosure

Abbott Laboratories: Objections and Proposed Modifications to January 27, 2023, Civil Investigative Demand[1]

In addition to the positions described in the accompanying February 27, 2023, letter, Abbott sets forth the following general objections:

1. The Company objects to the Commission's use of overly broad and non-specific omnibus resolutions that do not specifically authorize staff, with a vote of the Commission, to investigate the Company for violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

2. The Company objects to the CID as unduly burdensome, overly broad, and duplicative. Abbott further objects to the extent that the CID seeks documents, data, information, and other materials that are not relevant to the Commission's stated investigation.

3. The Company objects to the extent that the CID seeks documents, data, information, or other materials that are not within the Company's possession, custody, or control.

4. The Company objects to the CID to the extent that it seeks documents, data, information, or other materials not maintained in the ordinary course of business. Abbott further objects to the CID to the extent that it purports to require the Company to make calculations or formulate or compile documents, data, information, or other materials that the Company does not maintain in the ordinary course of its business.

5. The Company objects to the CID to the extent that it calls for documents, data, information, or other materials that is, or upon receipt of other materials responsive to the CID will be, equally available to the Commission.

6. The Company objects to the CID to the extent that it seeks the production of documents, data, information, or other materials that may be protected by the attorney-client privilege or work product doctrine.

7. The failure to object on any particular ground(s) shall not be construed as a waiver of the Company's right to object on any additional ground(s) in responding to specifications at the time of such response. Abbott reserves the right to amend or supplement these objections at a later time as it continues to develop its response.

[1] Abbott reserves the right to seek additional modifications during the course of any subsequent negotiations regarding the scope of the January 27, 2023, Civil Investigative Demand ("CID").

8. In responding to any portion of the CID and providing the documents, data, information, or other materials requested, Abbott does not waive any objections set forth herein, nor does it waive any right to contend that any such documents, data, information, or materials are inadmissible in any subsequent administrative or judicial proceeding.

Abbott incorporates each of its General Objections into its Specific Objections below as if fully set forth below:

No.	Description	Specific Objections & Proposed Modifications
N/A	Time period for CID (e.g., Instruction 1).	• Abbott objects to the time period for the CID (i.e., from January 1, 2016 to present) as unduly burdensome, overly broad, duplicative, and not reasonably necessary to the investigation. • Limit time period for the CID to the period from January 1, 2020 to January 27, 2023.
N/A	Requests seeking "all" documents.	• Abbott objects to any requests seeking "all" documents as unduly burdensome, overly broad, duplicative, and not reasonably necessary to the investigation. • Limit each "all" documents request to documents that are (1) in the files of agreed custodians, and (2) identified as responsive, non-privileged, and within the agreed scope of the CID response (i.e., the "Document Production").

No.	Description	Specific Objections & Proposed Modifications
1	List each Infant Formula Product manufactured, marketed, or sold by the Company in the United States and, separately for each:	• Specification 1 seeks information regarding "each Infant Formula Product manufactured, marketed, or sold by the Company," and seeks detailed information regarding the same. Many Infant Formula Products exist, or have existed in the past, and it would be overly broad and unduly burdensome for the Company to identify and describe "each" for the time period covered by the CID. These objections also apply to each sub-part of this Specification. • Limit scope of the response to Specification 1 to Infant Formula Products currently marketed or sold in the United States.
1(a)	provide a detailed description of the product, including any brand name, number, code, stock keeping unit ("SKU"), or other unique identifier used by the Company, and all product specifications, characteristics, and forms (*e.g.*, powdered, concentrate, ready-to-feed);	• The Company objects to this sub-part as unduly burdensome to the extent that it seeks "a detailed description of the product[s]" beyond the information maintained by Abbott in a centralized manner in the ordinary course of business. Abbott may not track the requested information at the level of detail requested by the CID. • Limit response to information readily available in the ordinary course of business.

No.	Description	Specific Objections & Proposed Modifications
1(b)	identify all actual or intended customer types and end users;	• The Company objects to this sub-part as vague, overly broad, and unduly burdensome. The CID defines neither "customer type" nor "end user," and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Abbott may not track the requested information at the level of detail requested by the CID. • Limit response to information readily available in the ordinary course of business.
1(c)	submit a representative sample contract for each non-government customer type (*e.g.*, supermarkets, hypermarkets, online retailers, pharmacies, group purchasing organizations, hospitals); and	• The Company objects to this sub-part as vague, overly broad, and unduly burdensome. First, this sub-part identifies by parenthetical several, undefined "customer types" that may not align with the Company's classification (if any) of its customers. Second, even to the extent that Abbott delineates "customer types" in the ordinary course, Abbott may not have entered into contracts with all types of customers. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to contracts (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
1(d)	submit one copy of all marketing materials, promotional materials, and selling or educational aids.	• The Company objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 1(d) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests "all" such materials for a period of over seven years. Such materials may not be maintained in a central file, to the extent they are maintained at all, for the entire period. Moreover, even to the extent such materials are maintained, it would be unduly burdensome to collect and produce "all" such materials. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to materials (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
2	*Identify, and submit all documents relating to, each occasion that the Company submitted a bid, or declined to submit a bid, for any WIC Infant Formula Contract. For each such occasion, state or provide:	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to Specification 2 to the extent that it requires the Company to produce information or documents that are not in its possession, custody, or control. Moreover, Abbott may not track the information requested by this Specification in a centralized manner and, even to the extent that it maintains a subset of this information in a centralized manner, it may not maintain such information for the extensive time period covered by the CID, meaning that this Specification is overly broad and unduly burdensome. Specification 2 seeks information not only for bidding opportunities, but for occasions on which Abbott declined to bid, which may not be maintained in the ordinary course, even where bidding activities are tracked. These objections also apply to each sub-part of this Specification. • Limit response to submitted bid packages for the period from January 1, 2020, to January 27, 2023. Abbott will identify such documents by Bates range.

No.	Description	Specific Objections & Proposed Modifications
2(a)	the date the request for proposal, request for quotation, request for information, inquiry, or other solicitation to bid was received by the Company;	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(a) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. • Limit response to information readily available in the ordinary course of business.
2(b)	the identity of the state agency, alliance, or Indian Tribal Organization that requested the bid;	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(b) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. • Limit response to information readily available in the ordinary course of business.
2(c)	the identity of the incumbent Infant Formula Product provider, if any;	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(c) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. • Limit response to information readily available in the ordinary course of business.

No.	Description	Specific Objections & Proposed Modifications
2(d)	the request for proposal, request for quotation, request for information, inquiry, or other solicitation to bid, including any proposed specifications, bidding rules, or requirements;	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(d) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to materials (if any) produced as part of Abbott's Document Production.
2(e)	the reason(s) the Company declined to bid, if applicable;	• Abbott objects to this sub-part as overly broad and unduly burdensome. This sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. • Limit response to information readily available in the ordinary course of business.
2(f)	the terms of any bid submitted by the Company;	• Since the Document Production will contain documents memorializing the requested information, it would be overly broad and unduly burdensome to require Abbott to summarize this information. • Limit response to documents containing bid terms (if any) produced as part of Abbott's Document Production. Abbott will not separately "state or provide . . . the terms of any bid submitted by the Company."

No.	Description	Specific Objections & Proposed Modifications
2(g)	all sources of data, pricing methodologies, algorithms, models, or calculations used by the Company in preparing the bid, and all factors considered in determining the bid price and other terms;	• Abbott objects to this sub-part as overly broad and unduly burdensome. First, Specification 2(g) seeks "all sources of data, pricing methodologies, algorithms, models, or calculations" used by the Company to prepare the bid, and "all factors considered in determining the bid price and other items" (emphasis added). Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to documents (if any) produced as part of Abbott's Document Production.
2(h)	the name, title, and responsibilities of any Company employee involved in preparing the bid and the name, title, and responsibilities of any employee, group, or committee with authority to review, analyze, or approve the bid;	• Abbott objects to this sub-part as overly broad and unduly burdensome. Specification 2(h) seeks information regarding "any Company employee" and "any employee, group, or committee" involved in a bid. Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. • Abbott provided its response to this request to Staff by video conference on February 21, 2023.

No.	Description	Specific Objections & Proposed Modifications
2(i)	an itemized breakdown of the Company's estimated or projected total, fixed, and variable costs, estimated or projected gross and net sales, and gross and net margins relating to the bid;	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(i) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to documents (if any) produced as part of Abbott's Document Production.
2(j)	the identity of each person that submitted a competing bid and the terms of each competing bid, including any information, market intelligence, forecast, or assessment of any Competitor's actual or potential bid;	• Abbott objects to this sub-part as overly broad and unduly burdensome. First, Specification 2(j) seeks information about *competitors'* bids, including information that is outside the possession, custody, or control of Abbott. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response regarding "the identity of each person that submitted a competing bid" to information readily available in the ordinary course of business. Limit request for "the terms of each competing bid" to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
2(k)	the date that the contract was awarded, the identity of the person to whom the contract was awarded, the terms of the winning bid, and the terms of the contract; and	• Abbott objects to this sub-part as vague, overly broad, and unduly burdensome. First, certain terms in sub-part 2(k) are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Second, this sub-part requests information that may not be maintained in a central file, to the extent it is maintained at all. Third, this request is duplicative of materials likely to be produced as part of the Document Production. • Limit response to information readily available in the ordinary course of business. Limit request for "the terms of the winning bid, and the terms of the contract" to documents (if any) produced as part of Abbott's Document Production.
2(l)	any communication with any state agency, Competitor, or other person outside of the Company concerning any actual or potential bid by any person.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "any communication" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification as overly broad and unduly burdensome to the extent it seeks information outside the scope of the Company's possession, custody, and control. Abbott further objects to this Specification as overly broad to the extent that it seeks documents that may not exist. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
3	Submit all documents relating to any forecast, analysis, evaluation, projection, estimate, model, or report regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales in any State.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification as vague and ambiguous on the ground that it seeks information regarding "the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales" when it is not clear what "impact" means here, among other terms used in this Specification. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
4	Describe in detail the Company's policies and practices relating to communications with Competitors. State: (a) any restrictions, guidelines, or policies concerning communications with Competitors; and (b) the identity of each person authorized to communicate with Competitors, and the subject matter for which each person is so authorized.	• Abbott objects to Specification 4 to the extent it requires the production of information or documents that are privileged or subject to work product protection. Abbott also objects to Specification 4 insofar as it seeks information that does not exist. Abbott further objects to this Specification 4 as overly broad and unduly burdensome to the extent that it seeks information regarding topics outside the scope of the investigation, including to the extent that it seeks information about the entire Company. • Limit response to non-privileged documents or information sufficient to show the Company's "policies and practices relating to communications with Competitors" in response to Specification 4(a). Limit response to Specification 4(b) to information (if any) related to WIC contracting and readily available in the ordinary course of business.

No.	Description	Specific Objections & Proposed Modifications
5	*Submit all documents relating to any communication between the Company and any Competitor, including Mead Johnson, Gerber, or Perrigo, concerning any Infant Formula Product or any actual or potential WIC Infant Formula Contract or bid by any person.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification to the extent that it seeks documents "concerning any Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Abbott further objects to this Specification as overly broad and unduly burdensome to the extent that it seeks information outside the scope of the Company's possession, custody, and control. Abbott further objects to this Specification as overly broad to the extent that it seeks documents that may not exist. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
6	Submit all documents relating to competition in the manufacture, marketing, or sale of any Infant Formula Product, including, but not limited to, market studies, forecasts and surveys, market intelligence reports, and all other documents relating to: (a) the sales, market shares, business performance, or competitive positions of the Company or any of its Competitors; (b) bidding for WIC Infant Formula Contracts; (c) the relationship between any WIC Infant Formula Contract and non-WIC Infant Formula Product sales; (d) the identification of key or strategically important customers or States; (e) plans by any person to enter, not enter, expand, retrench, or exit the production, sale, or distribution of any Infant Formula Product in any State; (f) supply and demand conditions, including, but not limited to, any forecast or estimate of the demand or price for any Infant Formula Product as a result of competition from any other possible substitute product; and (g) attempts to win customers from other persons and losses of customers to other persons.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification to the extent that it seeks documents related to "any Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Abbott further objects to this Specification as vague and ambiguous on the ground that it seeks information regarding "the relationship between any WIC Infant Formula Contract and non-WIC Infant Formula Product sales" when it is not clear what "relationship between" means here, among other terms used in this Specification. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
7	With respect to the Company's strategies or plans relating to any Infant Formula Product, submit the final (or the most current) draft of all: (a) regularly prepared strategic, business, or marketing plan documents; (b) regularly prepared financial statements, profit and loss statements, budgets, cost center reports, profitability reports, financial projections, and other financial reports; (c) production plans, capacity utilization forecasts or plans, expansion or retrenchment plans, or plans to construct any new facility, to expand or modify any existing facility, or to close or idle any facility relating to any Infant Formula Product; (d) documents prepared for or provided to any management committee, executive committee, or the Company's Board of Directors; and (e) documents memorializing any actions taken by or decisions made, ratified, or approved by any management committees, executive committees, or the Company's Board of Directors, including minutes or other recordings of meetings of the Company's Board of Directors.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification to the extent that it seeks documents related to "any Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Abbott further objects to Specification 7 as overly broad and unduly burdensome to the extent that it seeks information regarding topics outside the scope of the investigation. Moreover, Abbott objects to this Specification to the extent that it seeks "the final (or most current) draft" of such documents when such documents may not be maintained by Abbott in a centralized location. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
8	*Submit all documents relating to the Company's or any other person's actual or contemplated pricing plans or policies (including suggested retail pricing), price lists, pricing strategies, pricing forecasts, price structures, and pricing decisions for any Infant Formula Product sold or provided in any channel or market segment, including studies, analyses, or assessments of the pricing or profitability of any Infant Formula Product.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification to the extent that it seeks documents related to "any Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Certain terms in Specification 8 are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. Abbott further objects to this Specification as overly broad and unduly burdensome to the extent that it seeks information outside the scope of the Company's possession, custody, and control. Abbott further objects to this Specification as overly broad to the extent that it seeks documents that may not exist. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
9	Submit all documents prepared, created, or distributed by any person other than the Company that reports sales statistics, data, pricing, market shares, or market analysis for any Infant Formula Product.	• Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott objects to this Specification to the extent that it seeks "all documents" as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott further objects to this Specification to the extent that it seeks documents related to "any Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Abbott further objects to this Specification as overly broad and unduly burdensome to the extent that it seeks information outside the scope of the Company's possession, custody, and control. Abbott further objects to this Specification as overly broad to the extent that it seeks documents that may not exist. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
10	Identify all databases maintained by the Company that contain information relating to WIC Infant Formula Contract bids or Infant Formula Product sales or supply to customers, including all financial, accounting, cost, contracting, chargeback, reimbursement, rebating, discounting, or sampling databases. For each such database, submit a data dictionary that includes a list of all field names, a definition of each such field, and the meaning of each code that appears as a field value.	• Abbott objects to Specification 10 as irrelevant. By its express terms, the CID limits the subject matter of the investigation to any collusion or coordination on bids for WIC contracts. Databases cannot provide information probative as to the existence or absence of any such collusion or coordination. Moreover, Abbott objects to this Specification as vague, overly broad, and unduly burdensome. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Furthermore, identifying "all" databases and the requested information for "each such database" would be unduly burdensome. Abbott further objects to this Specification to the extent that it seeks information related to "Infant Formula Product sales or supply." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Abbott further objects to this Specification as overly broad to the extent that it seeks data that may not exist. • Abbott will not identify "all databases" in response to Specification 10 as such an exercise would be unduly burdensome and irrelevant to the issues under investigation.

11	*Submit one or more Data Sets that provide, on a monthly basis: (a) for each Infant Formula Product SKU identified in response to Specification 1, the Company's: i. total gross and net sales, in units and dollars, stated separately for WIC and non-WIC sales, and stated separately for each State, and for the United States as a whole; ii. total rebates paid pursuant to each WIC Infant Formula Contract, in units and dollars, stated separately for each State and for the United States as a whole; iii. the actual and projected total, fixed, and variable costs (with a breakdown by component) attributable to the manufacture, marketing and sale of the product, stated separately for WIC and non-WIC sales, and stated separately for each State and for the United States as a whole; iv. the number and dollar value of units sampled; (b) for each WIC Infant Formula Contract identified in response to Specification 2 that the Company won, separately by Infant Formula Product SKU, the Company's: i. total gross and net sales to all customers in units and dollars; ii. wholesale average price and net price;	• Abbott objects to Specification 11 as irrelevant. By its express terms, the CID limits the subject matter of the investigation to any collusion or coordination on bids for WIC contracts. Data Sets cannot provide information probative as to the existence or absence of any such collusion or coordination. And, to the extent that Data Sets could have any conceivable probative value to the issues under investigation, they would be even more attenuated with respect to non-WIC sales. In addition, Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott reiterates its objections to providing SKU-level information as set forth in response to Specification 1, above. The Company further objects to the extent that this Specification requires information that the Company does not maintain in the ordinary course of business. Abbott further objects to this Specification as overly broad to the extent that it seeks data that may not exist. • Abbott will not submit Data Sets in response to Specification 11 as such an exercise would be unduly burdensome and irrelevant to the issues under investigation.

No.	Description	Specific Objections & Proposed Modifications
	iii. discounts, rebates, charge backs, or other price adjustments or reductions provided; and iv. gross and net margins.	
12	Identify each Company facility that produces, formerly produced, or plans to produce any Infant Formula Product, and for each such facility state: (a) the location of the facility and the date of the facility's opening or acquisition; (b) for each quarter the facility was in operation, i. the nameplate capacity and practical capacity of the facility for the production of each Infant Formula Product, specifying all factors used to calculate capacity; ii. the capacity utilization rate for the production of each Infant Formula Product manufactured at the facility; iii. actual production quantities reported in sales units for each Infant Formula Product; (c) for any time when the facility was closed or idled as to any Infant Formula Product: i. the dates when the Company decided to close or idle the facility, when the Company closed or idled the facility, and, if applicable, when the Company restarted production; ii. the reason(s) why the facility was closed or idled; and	• Abbott objects to Specification 12 as vague, overly broad, and unduly burdensome. Abbott further objects to this Specification to the extent that it seeks information related to the *production* of Infant Formula Products. Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. Certain terms in Specification 12 are not defined, and Abbott will thus reasonably interpret these terms according to their ordinary meaning. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Abbott further objects to this Specification as overly broad to the extent that it seeks data that may not exist. • Defer responding to this Specification 12.

No.	Description	Specific Objections & Proposed Modifications
	iii. the Infant Formula Products for which the facility was closed or idled.	
13	State the market share of the Company and each of the Company's Competitors in the manufacture, marketing, and sale of each Infant Formula Product, by quarter, for: (a) all sales in the United States and in each State the Company regularly tracks in the ordinary course of business; (b) WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business; (c) non-WIC sales in the United States and in each State the Company regularly tracks in the ordinary course of business; and (d) any other market segment the Company regularly tracks in the ordinary course of business. Submit and identify by Bates number documents sufficient to support the Company's response.	• Abbott objects to Specification 13 to the extent that it calls for a legal conclusion as to any relevant market in which to compute a "share." Abbott also objects to this Specification because the Company's share of any relevant market is irrelevant as to the existence or absence of any collusion or coordination in bidding for WIC contracts—the sole issue under investigation per the express terms of the CID itself. Additionally, Abbott objects to this Specification as vague, overly broad, and unduly burdensome. Abbott further objects to this Specification to the extent that it seeks documents related to "each Infant Formula Product." Such request far exceeds the bounds of information reasonably relevant to the investigation at issue. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Abbott further objects to this Specification as vague and ambiguous on the ground that it seeks information regarding "each State" and "any other market segment" that "the Company regularly tracks in the ordinary course of business" when it is not clear what "regularly tracks" means here, among other terms used in this Specification. • Abbott will not provide the market share data requested by Specification 13 as such an exercise would be unduly burdensome and irrelevant to the issues under investigation.

No.	Description	Specific Objections & Proposed Modifications
14	Describe with specificity how, in the ordinary course of business, the Company determines its market share and the market shares of its Competitors for each market segment the Company regularly tracks, including each segment in Specification 13.	• Abbott objects to Specification 14 to the extent that it calls for information that is privileged or protected by the work-product doctrine. Abbott further objects to this Specification because it is irrelevant. How the Company determines its share of any relevant market is irrelevant as to the existence or absence of any collusion or coordination in bidding for WIC contracts—the sole issue under investigation per the express terms of the CID itself. Abbott also objects to this Specification as vague, overly broad, and unduly burdensome. Abbott further objects to this Specification 14 as overly broad and unduly burdensome to the extent that it seeks information regarding topics outside the scope of the investigation. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Abbott further objects to this Specification as vague and ambiguous on the ground that it seeks information regarding "each market segment" that "the Company regularly tracks" when it is not clear what "regularly tracks" means here, among other terms used in this Specification. • Limit response to documents (if any) produced as part of Abbott's Document Production.

No.	Description	Specific Objections & Proposed Modifications
15(a)	Submit one copy of: each organizational chart, personnel directory, and corporate diagram in effect at any time from January 1, 2016 through the present for the Company as a whole and for each of the Company's parents, subsidiaries, affiliates, or divisions engaged in any activity relating to any Infant Formula Product; and	• Abbott objects to this Specification as overly broad and unduly burdensome. Abbott objects to this Specification 15(a) as overly broad and unduly burdensome to the extent that it seeks information regarding topics outside the scope of the investigation. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. The Company does not maintain detailed records over the organizational structure of all its subsidiaries or affiliates, and coordinating with each to obtain the information from these separately managed entities would be unduly burdensome, time-consuming, and expensive. • Limit response to those organizational charts provided on February 14 and February 20, 2023 (i.e., charts detailing the Pediatric Nutrition business, the finance team supporting that business, and the senior executives responsible for that business for the period from 2020 to present). Dismiss request for personnel directories (which are duplicative of the organizational charts) and corporate diagrams (which are not relevant to the investigation).

No.	Description	Specific Objections & Proposed Modifications
15(b)	Submit one copy of: a current Data Map for the Company.	• Abbott objects to this Specification because it is irrelevant. By its express terms, the CID limits the subject matter of the investigation to any collusion or coordination on bids for WIC contracts. The Company's Data Map cannot provide information probative as to the existence or absence of any such collusion or coordination. The Company further objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Furthermore, a full map of every database would be unduly burdensome. • Abbott will not provide a Data Map covering the entire Company as such an exercise would be unduly burdensome and irrelevant to the issues under investigation.
16	Identify and describe the steps the Company has taken or will take to preserve documents related to this CID. Submit, and identify by Bates number, documents sufficient to show and, to the extent not reflected in such documents, describe in detail the Company's policies and procedures relating to the retention and destruction of documents.	• Abbott objects to Specification 16 to the extent it requires the production of information or documents that are privileged or subject to work product protection. • Limit response to non-privileged documents or information sufficient to show the Company's "policies and procedures relating to the retention and destruction of documents."

No.	Description	Specific Objections & Proposed Modifications
17	Identify and describe the steps the Company has taken or will take to preserve, collect, and produce materials responsive to this CID.	• Abbott objects to Specification 17 to the extent it requires the production of information or documents that are privileged or subject to work product protection. • The Company will respond to this request to the extent that the response can be provided without disclosing information that is protected by the attorney-client privilege or work product protection.

18	Identify and describe: (a) all communication systems or messaging applications on any device in the possession, custody, or control of the Company that could be used to store or transmit documents responsive to this CID at any time on or after January 1, 2016, including, but not limited to, communication systems or messaging applications used to store, discuss, or share information concerning (i) bidding on any WIC Infant Formula Contract; (ii) analyses regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales (iii) sales; (iv) prices; (v) margins; (vi) costs, including, but not limited to, standard costs, expected costs, and opportunity costs; (vii) communications with competitors; (viii) customers; (ix) sales, rebates, production capacity, and market share data; and (x) capital investments or proposals; and (b) document storage, internal distribution, and maintenance practices used by the Company for all communication systems or messaging applications on any device in the possession, custody, or control of the Company that could be used to store or transmit documents responsive to this CID at any time on or after January 1, 2016, including, but not limited to, communication systems or messaging applications used to store, discuss, or share information concerning (i) bidding on any WIC	• Abbott objects to Specification 18 as vague, overly broad, and unduly burdensome. The Company further objects to this specification as overly broad and not reasonably necessary to the investigation to the extent that it seeks information beyond those systems actually used by the agreed-upon custodians. Moreover, this request is overly broad in that it seeks information about systems that "could be used" to communicate. The Company further objects to this Specification to the extent it purports to seek information regarding "(iii) sales; (iv) prices; (v) margins; (vi) costs, including, but not limited to, standard costs, expected costs, and opportunity costs; (vii) communications with competitors; (viii) customers; (ix) sales, rebates, production capacity, and market share data; and (x) capital investments or proposals" unrelated to Infant Formula Contracts. The Company objects to the extent this Specification requires information that the Company does not maintain in the ordinary course of business. Abbott further objects to the extent that this Specification seeks information that is outside the possession, custody, or control of the Company. • Defer responding to this Specification 18.

No.	Description	Specific Objections & Proposed Modifications
	Infant Formula Contract; (ii) analyses regarding the impact of any WIC Infant Formula Contract on non-WIC Infant Formula Product sales; (iii) sales; (iv) prices; (v) margins; (vi) costs, including, but not limited to, standard costs, expected costs, and opportunity costs; (vii) communications with competitors; (viii) customers; (ix) sales, rebates, production capacity, and market share data; and (x) capital investments or proposals.	
19	For each communication system or messaging application identified in response to Specification 18: (a) state when each communication system or messaging application was installed, downloaded, deleted, or utilized; (b) describe any steps taken to preserve or maintain any material on each communication system or messaging application, including describing any Company routine deletion or preservation policies; (c) for each communication system or messaging application identified that is no longer in use by the Company, state any steps taken to maintain or preserve material from each communication system or messaging application; and (d) describe any steps taken and steps that will be taken to preserve, collect, and produce materials responsive to this CID from any such system or application.	• Abbott objects to Specification 19 as vague, overly broad, and unduly burdensome, for the reasons set forth in response to Specification 18, above. Abbott further objects to Specification 19 to the extent it requires the production of information or documents that are privileged or subject to work product protection. • Defer responding to this Specification 19.

No.	Description	Specific Objections & Proposed Modifications
20	Identify the persons responsible for preparing the response to this CID and submit a copy of all instructions relating to the steps taken to respond. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the persons to whom the instructions were given. For each specification, identify the persons who assisted in the preparation of the response and identify the locations and persons whose files were searched.	• Abbott objects to this Specification as overly broad and unduly burdensome to the extent that it seeks information regarding all persons "responsible for" or "assisted in" preparing this response. Abbott objects to Specification 20 to the extent it requires the production of information or documents that are privileged or subject to work product protection. • The Company will respond to this request to the extent the response can be provided without disclosing information that is protected by the attorney-client privilege or work product protection.
Definition A	The terms "Company," "Abbott Laboratories," "you," or "your" mean Abbott Laboratories, and its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.	• The defined term includes, among others, "consultants," "predecessors," "affiliates, partnerships, and joint ventures." As defined, this term could be read to encompass parties that would not be under Abbott's control. Accordingly, Abbott will limit its response to those entities and individuals with documents, information, or data that are within Abbott's possession, custody, or control.
Definition D	The terms "communication" or "communicate" mean any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, internal or external, and all discussions, meetings, telephone communications, text messages, instant messenger messages, or email messages.	• Abbott objects to the CID's definition of "Communication" to the extent that it seeks information that is outside the possession, custody, or control of the Company.

No.	Description	Specific Objections & Proposed Modifications
Definition E	The term "Competitor" means any person, other than the Company, that actually or potentially produces, manufactures, markets, sells, or imports any Infant Formula Product for sale within the United States.	• Abbott objects to the CID's definition of "Competitor" as overly broad to the extent that it seeks information regarding persons that "potentially produce[], manufacture[], market[], sell[], or import[] any Infant Formula Product for sale within the United States."
Definition G	The term "customer" means any person that purchases or has purchased or may purchase any Infant Formula Product from the Company.	• The Company objects to the CID's definition of "customer" to the extent that it purports to include end users who do not purchase Infant Formula Product from the Company as "customers." The Company does not typically sell Infant Formula Product to end users, but instead sells to intermediaries that, in turn, sell to end users. Abbott further objects to this definition as vague as it places no time limitation on when a person "has purchased" Infant Formula Product. The Company also objects to the definition as vague and calls for speculation to the extent that the definition of "customer" includes any person who "may purchase any Infant Formula Product."

Definition J	The term "documents" means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic files, including those created, shared, edited, or exchanged through collaboration or document management platforms such as, but not limited to, Microsoft 365, Google Workspace, and Quip; email messages; audio files; any communications created, shared or exchanged through messaging applications or other communication systems, including ephemeral and non-ephemeral messaging applications such as, but not limited to, Slack, Confide, Signal, WhatsApp, Wickr, iMessage, Telegram, Microsoft Teams, or Google Hangouts Chat; instant messages; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company. Employee-owned personal electronic devices used to store or transmit documents responsive to this CID are considered in the possession, custody, or control of the Company. The term "document" includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original.	• Abbott objects to the CID's definition of "documents" to the extent that it seeks information that is not in the possession, custody, or control of the Company, including to the extent that it seeks information from "[e]mployee-owned personal electronic devices." Abbott further objects to the CID's definition of "documents" to the extent that it seeks duplicative materials. Abbott further objects to the CID's definition of "documents" to the extent it requires the production of information or documents that are privileged or subject to work product protection.

No.	Description	Specific Objections & Proposed Modifications
	The term "other data compilations" includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations as set out in Instruction 4. If the name of the person or persons who prepared, reviewed, or received the document and the date of preparation, review, or receipt are not clear on the face of any document, such information should be provided separately. Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature. Documents shall be produced in accordance with the instructions set out in Instruction 4.	

No.	Description	Specific Objections & Proposed Modifications
Instruction 3	Unless otherwise specified, this CID requires the production of all responsive documents, data, and other information in your possession, custody, or control on the date that this CID was issued. (a) If you comply fully with this CID within 120 days of issuance, then only specifications marked with an asterisk ("*") are continuing in nature. If you comply fully with this CID more than 120 days after it was issued, then all of the specifications in this CID are continuing in nature. (b) Specifications that are continuing in nature require production of documents, data, and information you created or obtained up to 30 calendar days before you comply fully with this CID, except for materials that require translation into English. Materials that must be translated into English must be produced if they are created, altered, or received up to 45 calendar days before you comply fully.	• Abbott objects to this instruction as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. • Abbott reserves the right to seek modifications of Instruction 3.
Instructions 4-8	Technical specifications regarding document productions.	• Abbott objects to this request as unduly burdensome, unreasonably cumulative, duplicative, and not reasonably necessary to the investigation. Abbott objects to Instruction 5(c) to the extent that it seeks information that the Company does not maintain in the ordinary course of business. • Abbott reserves the right to make further objections and seek modifications of Instructions 4-8.

EXHIBIT 2

From: Takashima, Edward <etakashima@ftc.gov>
Sent: Tuesday, March 14, 2023 9:41 AM
To: Reeves, Mandy (DC)
Subject: RE: Call today

Hi Mandy,

I'm available between 1:30 and 2:30 pm today; let me know if that works for you.

Thanks,

Ed

Edward H. Takashima
Anticompetitive Practices Division
Bureau of Competition
Federal Trade Commission
etakashima@ftc.gov
202-876-5704 (mobile)

From: Amanda.Reeves@lw.com <Amanda.Reeves@lw.com>
Sent: Tuesday, March 14, 2023 8:22 AM
To: Takashima, Edward <etakashima@ftc.gov>
Subject: Call today

Hi Ed,

I left a voicemail on your cell phone yesterday, which is the number I have from your emails. Let me know if there is a good time for us to connect today and/or if there is a better number to reach you at.

Best,
Mandy

EXHIBIT 3

From: Takashima, Edward <etakashima@ftc.gov>
Sent: Tuesday, March 14, 2023 6:09 PM
To: Reeves, Mandy (DC); Tavernia, Tara (DC); Brown, Chris (DC)
Cc: Steinberg, Shira; Blauser, Daniel
Subject: Infant Formula, FTC File No. 221-0168 - Abbott

Mandy,

I am writing to follow up on our discussion today.

On our call this afternoon, you proposed that we defer the issue of Abbott's objections to producing documents and information that do not relate to WIC. You indicated that Abbott is not taking the position that it would *never* produce non-WIC documents. Rather, you suggested that Abbott could produce documents relating to WIC and if staff believed it required additional documents, Abbott might be willing to produce further documents at that time. We did not specifically discuss Abbott's objections to producing documents and information that predate January 1, 2020; however, my understanding is that your proposal applies to that issue as well. If that is not the case, or if I have misunderstood your position, please let us know promptly.

You agreed to send a proposal in writing, and we will consider anything you send. However, in the interests of time, I want to make our position clear: If Abbott intends to withhold documents or information responsive to the CID on the grounds that (1) they do not relate to WIC, or (2) they predate January 1, 2020, then Abbott should file a petition to quash or limit the CID by the current deadline, March 16, 2023.

As we have previously discussed, both non-WIC and pre-2020 documents and information are relevant to our investigation. We addressed the relevance of non-WIC documents in our February 16, 2023 letter. Documents from 2016 through 2019 are likewise relevant. For example, because there are a limited number of WIC bidding events each year (our understanding is that there were only five in 2020), and because each state generally only solicits bids once every 3-4 years, the timeframe of 2016 through the present is necessary to capture documents and data that will reasonably allow staff to analyze and understand Abbott's current and ongoing bidding practices.

As we have previously said, we are willing to discuss the scope of Abbott's document collection, review, and production. However, we will not agree to conduct our investigation in stages. If Abbott will not produce the documents and information discussed above, we are at an impasse.

We will write separately to address Abbott's other objections to the CID and requests for modification, custodians, search terms, and a production schedule.

Regards,

Ed

Edward H. Takashima
Anticompetitive Practices Division
Bureau of Competition
Federal Trade Commission
etakashima@ftc.gov
202-876-5704 (mobile)

EXHIBIT 4

From: Reeves, Mandy (DC)
Sent: Wednesday, March 15, 2023 7:28 PM
To: Takashima, Edward; Tavernia, Tara (DC); Brown, Chris (DC)
Cc: Steinberg, Shira; Blauser, Daniel
Subject: RE: Infant Formula, FTC File No. 221-0168 - Abbott

Ed,

As a follow-up to your email, we welcome the opportunity to continue negotiating and narrowing the scope of disagreement. We have made good progress on the WIC side, having agreed to custodians and begun our non-custodial productions. We will have a search term proposal to you this week, as we committed to do.

The challenge is that the FTC has taken the position that if we want to preserve our rights, we need to go ahead and file a petition to quash tomorrow. In our view, a petition to quash or limit the CID is premature because the FTC has not provided a response to any of the specific modification requests that we provided more than two weeks ago in response to your request. As such, we do not know what the FTC would consider as responsive if we were to narrow the CID or what a reasonable proposal would look like from your perspective. We do not know what staff will ultimately want or where our areas of agreement and disagreement are when it comes to the non-WIC portions of the CID and we do not know if there is any flexibility on the time range.

To address these areas of difference, we think it would be more productive to extend the petition-to-quash deadline and continue to negotiate, while we roll in WIC-related materials (as we have already begun to do). Per your request below, we therefore reiterate our proposal as I conveyed on the phone, which was a request for an extension of the petition to question deadline. We believe a 21-day extension is appropriate as it will allow us to continue the meet and confer process in hopes of avoiding areas of disagreement and hopefully avoid unnecessary briefing. Our understanding from the email below is that staff rejected that request, so there is nothing further to discuss on this issue at this time, but if I have that wrong, please let me know.

I am available to discuss at your convenience.

Best,
Mandy

From: Takashima, Edward <etakashima@ftc.gov>
Date: Tuesday, Mar 14, 2023 at 6:08 PM
To: Reeves, Mandy (DC) <Amanda.Reeves@lw.com>, Tavernia, Tara (DC) <Tara.Tavernia@lw.com>, Brown, Chris (DC) <Chris.Brown@lw.com>
Cc: Steinberg, Shira <ssteinberg1@ftc.gov>, Blauser, Daniel <dblauser@ftc.gov>
Subject: Infant Formula, FTC File No. 221-0168 - Abbott

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Regards,

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Edward H. Takashima
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