

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL CASE NO. 1:11cv159**

<b>KIMBERLY S. SISK, Individually and as Mother</b>	)	
<b>and Natural Guardian of S.A.S., a Minor,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>ABBOTT LABORATORIES, an Illinois</b>	)	
<b>Corporation,</b>	)	
<b>Defendant.</b>	)	
<hr style="border: 0.5px solid black;"/>		)

**ORDER**

**THIS MATTER** is before the Court on the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [Doc. 77].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider this Motion and to submit recommendations for its disposition.

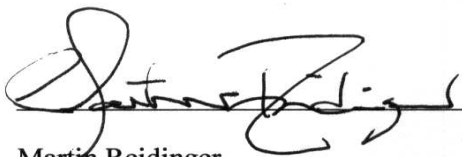
On June 19, 2012, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 89] in which he recommended granting the motion to dismiss in part and denying it in part. The parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were

to be filed in writing within fourteen days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Id., at 21]. The period within which to file Objections expired on July 6, 2012 and no Objections to the Memorandum and Recommendation have been filed.

Having conducted a careful review, the Court concludes that the Magistrate Judge's recommendation is supported by the facts of record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation and denies the Defendant's Motion to Dismiss as to Count One of the Second Amended Complaint and grants the motion as to Counts Two, Three, Four and Five.

**IT IS, THEREFORE, ORDERED** that Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint [Doc. 77] is hereby **DENIED** in part as to Count One of the Second Amended Complaint and is hereby **GRANTED** as to Counts Two, Three, Four and Five of the Second Amended Complaint.

Signed: August 2, 2012

  
Martin Reidinger  
United States District Judge

