

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CIVIL ACTION NO. 5:10-cv-446

JAMES F. BENNETT and )  
VERONICA L. BENNETT, Personal Representatives )  
of the Estate of DANIEL BENNETT, )  
 )  
Plaintiffs, )  
vs. )  
 )  
HOFFMANN –LA ROCHE INC. and )  
ROCHE LABORATORIES INC., )  
 )  
Defendants. )

**COMPLAINT**

Plaintiffs James F. Bennett and Veronica L. Bennett, in their capacity as Personal Representatives of the Estate of Daniel Bennett, state for their causes of action against Defendants as follows:

**PARTIES**

1. Daniel Bennett (hereinafter “Daniel”) is deceased.
2. Plaintiff James F. Bennett is the father of Daniel. Plaintiff Veronica L. Bennett is the mother of Daniel. James F. Bennett and Veronica L. Bennett are the Personal Representatives of the Estate of Daniel Bennett and, pursuant to North Carolina’s Wrongful Death Statute, N.C.G.S. §28A-18-2, seek to recover damages for the wrongful death of Daniel.
3. Daniel died unmarried and without children, and his parents James F. Bennett and Veronica L. Bennett are the statutory beneficiaries entitled to recover damages for the wrongful death of their son under N.C.G.S. §29-15.
4. Defendant Hoffmann-La Roche Inc. (“Hoffmann”) is and was a foreign corporation existing under the laws of the state of New Jersey, with its principal place of business in Nutley, New Jersey. Hoffmann does business in numerous states, including, but not

limited to, the state of North Carolina. At all times herein mentioned, Hoffmann manufactured, tested, analyzed, distributed, recommended, merchandised, advertised, promoted, supplied and sold to distributors and retailers for resale to physicians, hospitals, medical practitioners and the general public, including all branches of the United States military, a certain drug referred to as Lariam (mefloquine hydrochloride) (“Lariam”).

5. Defendant Roche Laboratories Inc. (“Roche Labs”) is and was a foreign corporation existing under the laws of the state of Delaware, with its principal place of business in Nutley, New Jersey. Roche Labs does business in numerous states, including, but not limited to, the state of North Carolina. At all times herein mentioned, Roche Labs manufactured, tested, analyzed, distributed, recommended, merchandised, advertised, promoted, supplied and sold to distributors and retailers for resale to physicians, hospitals, medical practitioners and the general public, including all branches of the United States military, the drug Lariam.

6. Defendants Hoffman and Roche Labs are collectively referred to as “Roche” herein.

### **VENUE AND JURISDICTION**

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2). Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a), based on diversity of citizenship. The amount in controversy exceeds \$75,000, exclusive of interest and costs, and the action is between citizens of different states.

### **FACTUAL BACKGROUND**

8. On or about February 2006, Daniel enlisted in the United States Marine Corps.

9. In 2008, Daniel was stationed at Marine Corps Base Camp Lejeune (“Camp Lejeune”), a United States military facility in Onslow County, North Carolina. He was training

for an upcoming deployment to Afghanistan to serve a tour of duty in support of Operation Enduring Freedom.

10. Roche supplied the drug Lariam to the United States military for distribution to the marines stationed at Camp Lejeune.

11. During the month prior to his deployment to Afghanistan and in preparation for that deployment, Daniel was given the drug Lariam prophylactically as an anti-malaria drug.

12. Daniel took Lariam supplied by Roche as an anti-malaria drug at Camp Lejeune and later in Afghanistan.

13. Upon information and belief, the United States Marine Corps and other branches of the military routinely give soldiers Lariam prior to deployment overseas.

14. Daniel deployed for Afghanistan on or about November 2008.

15. In January 2009, Daniel was serving a tour of duty in Afghanistan in support of Operation Enduring Freedom.

16. On or about January 11, 2009, while serving in Afghanistan and without any provocation, warning or evidence of problems, Daniel placed his issued 9mm Beretta handgun toward his head, chambered a round, inserted the muzzle into his mouth and pulled the trigger, thus committing suicide.

17. Upon information and belief, the United States military developed the drug Lariam, by and through the Walter Reed Army Institute of Research, and subsequently licensed the drug to Roche.

18. Upon information and belief, Roche manufactured, marketed and distributed the Lariam that Daniel ingested.

19. Upon information and belief, prior to Daniel's death, Roche received reports of suicides and suicide attempts by patients taking Lariam.

20. In 2002, faced with the numerous reports of suicide and suicide attempts, Roche modified its warning labeling for Lariam, stating that "Rare cases of suicidal ideation and suicide have been reported though no relationship to drug administration has been confirmed," effectively denying that Lariam causes suicidal tendencies.

21. In 2003, the U.S. Food and Drug Administration began requiring Roche to provide warnings directly to consumers and users of Lariam through a Medication Guide which had to be provided to anyone to whom Lariam was administered.

22. Roche stated in the Lariam Medication Guide that "Some patients taking Lariam think about killing themselves, and there have been rare reports of suicides. It is not known whether Lariam was responsible for these suicides," again denying that Lariam causes suicidal tendencies.

23. Upon information and belief, after Roche revised the warning labeling for Lariam and issued the Lariam Medication Guide, there were additional reports of suicides and suicide attempts related to the use of Lariam.

24. Upon information and belief, Lariam caused some or all of the reported suicides and suicide attempts.

25. Upon information and belief, Lariam causes suicidal ideation and suicide in some persons who take the drug as directed.

26. Upon information and belief, in June of 2009, Roche informed the U.S. Food and Drug Administration that it was no longer selling Lariam in the United States.

27. Daniel was provided the Lariam Medication Guide when he was administered Lariam as alleged above.

28. Upon information and belief, Roche failed to adequately warn Daniel and others that Lariam causes suicide and suicidal tendencies and failed to adequately warn him and others of the risks associated with taking Lariam.

29. As a direct and proximate result of Roche's negligent manufacture, sale and distribution of Lariam to Daniel, he ingested Lariam as directed and suffered suicidal tendencies that resulted in him committing suicide on or about January 11, 2009.

30. At the time of his death on January 11, 2009 Daniel was 23 years old and pursuant to N.C.G.S. § 8-46 had a life expectancy of 54.1 more years.

**COUNT I  
(NEGLIGENT FAILURE TO WARN  
PURSUANT TO NORTH CAROLINA LAW)**

31. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

32. At the time of the manufacture, sale and distribution of Lariam, Roche had a duty of care to manufacture, sell and distribute a safe product and to warn of any dangers from using the product.

33. At all times material to this Complaint, the U.S. Food and Drug Administration required Roche to give Daniel and other persons taking Lariam direct warnings and instructions about Lariam through a Lariam Medication Guide.

34. At the time Lariam left the control of Roche, Lariam was defective, not merchantable, not reasonably suited for its intended use, and unreasonably dangerous when put to its reasonably anticipated use in that it had inadequate warnings and instructions about its risks

for suicide and suicide ideations and posed a substantial risk of harm to Daniel and other persons taking the drug as directed by causing suicide and suicidal ideations.

35. At the time Lariam left the control of Roche, Roche knew, or in the exercise of ordinary care should have known, that Lariam, without adequate warnings and instructions about its risks for suicide and suicide ideations, posed a substantial risk of harm to Daniel and other persons taking the drug as directed by causing suicide and suicidal ideations.

36. After the Lariam left the control of Roche, Roche became aware of or in the exercise of ordinary care should have known that Lariam posed a substantial risk of harm to Daniel and other persons taking the drug as directed by causing suicide and suicidal ideations and failed to take reasonable steps to give adequate warnings and instructions or to take other reasonable action under the circumstances.

37. At all times material to this Complaint, Daniel took Lariam for anti-malarial prophylaxis, the purpose for which it was intended.

38. Roche acted unreasonably by failing to provide adequate warnings and instructions about its risks for suicide and suicide ideations.

39. As a direct and proximate result of the inadequate warnings and instructions about its risks for suicide and suicide ideations, Daniel committed suicide on or about January 11, 2009.

40. As a direct and proximate result of the death of Daniel, James F. Bennett and Veronica L. Bennett, personal representatives of the Estate of Daniel Bennett, and statutory beneficiaries under N.C.G.S. § 28A-18-2, are entitled to recover of the Defendants, jointly and severally, pursuant to N.C.G.S. § 28A-18-2(b), the present monetary value of the decedent Daniel Bennett to his parents, including, but not limited to, his services, protection, care and

assistance; his society and companionship, security, guidance, advice, comfort and kindly offices; and compensation for the loss of the reasonably expected net income Daniel Bennett would have earned during his normal life expectancy; and funeral expenses, in an amount to be determined by the jury, but in any event, an amount in excess of \$75,000.00.

**COUNT II**  
**(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**PURSUANT TO NORTH CAROLINA LAW)**

41. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

42. Prior to the filing of the instant action, Plaintiffs notified Roche of Plaintiffs' claims for breach of the implied warranty of merchantability.

43. Pursuant to N.C.G.S. § 25-2-314, Roche impliedly warranted that Lariam was merchantable and fit for the ordinary purposes for which it was to be used.

44. When Roche manufactured, sold and distributed Lariam, it was not fit for use as an anti-malaria drug, in that it caused extraordinary risk of harm, including suicidal tendencies and ideations, which lead to death.

45. At the time Lariam left the control of Roche, it was not fit for use as an anti-malaria drug in that it had inadequate warnings and instructions about its risks for suicide and suicide ideations, which Roche knew or should have known existed and posed a substantial risk of harm to Daniel and others.

46. The unfit and unmerchantable condition and risks of Lariam existed while being used by Daniel in a manner in which it was intended.

47. Roche conducted an improper act by failing to adequately warn Daniel and others that Lariam was not fit for its intended use.

48. As a result of the breach of implied warranty of merchantability by Roche, Daniel suffered severe damages as set forth herein, including personal injury and death.

49. As a direct and proximate result of the death of Daniel, James F. Bennett and Veronica L. Bennett, personal representatives of the Estate of Daniel Bennett, and statutory beneficiaries under N.C.G.S. § 28A-18-2, are entitled to recover of the Defendants, jointly and severally, pursuant to N.C.G.S. § 28A-18-2(b), the present monetary value of the decedent Daniel Bennett to his parents, including, but not limited to, his services, protection, care and assistance; his society and companionship, security, guidance, advice, comfort and kindly offices; and compensation for the loss of the reasonably expected net income Daniel Bennett would have earned during his normal life expectancy; and funeral expenses, in an amount to be determined by the jury, but in any event, an amount in excess of \$75,000.00.

**COUNT III  
(BREACH OF EXPRESS WARRANTY PURSUANT  
TO NORTH CAROLINA LAW)**

50. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

51. Prior to the filing of the instant action, Plaintiffs notified Roche of Plaintiffs' claims for breach of express warranty.

52. Roche expressly warranted by affirmation, promise and description to Daniel and others that there was no relationship between the use of Lariam and suicidal tendencies and incidents of suicide.

53. Roche expressly warranted by affirmation, promise and description to Daniel and others that Lariam was of a quality and of a character suitable for use in Daniel's body and was safe for use.

54. At the time Lariam left the control of Roche, it was defective in that it caused extraordinary risk of harm, including suicidal tendencies and ideations, which led to death.

55. At the time Lariam left the control of Roche, it was defective in that it had inadequate warnings and instructions about its risks for suicide and suicide ideations, which Roche knew, or should have known existed and posed a substantial risk of harm to Daniel and others.

56. Such representations and omissions made by Roche were meant to induce Daniel and others to use Lariam.

57. Lariam did not conform to the representations made by Roche in many ways, including, but not limited to, the fact that (a) there was a causal relationship between the use of Lariam and suicidal tendencies and incidents of suicide; and (b) upon information and belief there were additional incidents of suicide tendencies, suicide attempts and deaths as a result of suicide of individuals using Lariam after Roche made its representations in its warning label in 2002.

58. Prior to the death of Daniel, Roche had notice of numerous incidents of suicide tendencies, suicide attempts and completed suicides by and associated with the use of Lariam.

59. Roche breached the express warranty it provided with Lariam in violation of the N.C.G.S. § 25-2-313.

60. As a direct result of Roche's breach of express warranty, Daniel suffered severe damages as set forth herein, including personal injury and death.

61. As a direct and proximate result of the death of Daniel, James F. Bennett and Veronica L. Bennett, personal representatives of the Estate of Daniel Bennett, and statutory beneficiaries under N.C.G.S. § 28A-18-2, are entitled to recover of the Defendants, jointly and

severally, pursuant to N.C.G.S. § 28A-18-2(b), the present monetary value of the decedent Daniel Bennett to his parents, including, but not limited to, his services, protection, care and assistance; his society and companionship, security, guidance, advice, comfort and kindly offices; and compensation for the loss of the reasonably expected net income Daniel Bennett would have earned during his normal life expectancy; and funeral expenses, in an amount to be determined by the jury, but in any event, an amount in excess of \$75,000.00.

**COUNT IV**  
**(NEGLIGENT MISREPRESENTATION PURSUANT TO NORTH CAROLINA LAW)**

62. Plaintiffs reallege and incorporate by reference all paragraphs above as if fully set forth herein.

63. Roche is engaged in the course of business of manufacturing, marketing, distributing and selling Lariam, and has a pecuniary interest therein.

64. While engaged in the course of manufacturing, marketing, distributing and selling Lariam, Roche supplied false information pertaining to Lariam, including, but not limited to, stating there was no relationship between the use of Lariam and suicidal tendencies and ideations and incidents and/or reports of suicidal attempts and deaths by suicide.

65. At the time Lariam left the control of Roche, it was defective in that it had inadequate warnings and instructions about its risks for suicide and suicide ideations, which Roche knew, or should have known existed and posed a substantial risk of harm to Daniel and others.

66. Roche supplied the above-referenced false information for the guidance of Daniel and others in a business transaction.

67. Roche supplied the above-referenced false information without exercising reasonable care in obtaining or communicating the information.

68. Daniel and others were among those intended to receive the false information.

69. Daniel and others justifiably relied on the information to Daniel's detriment causing serious injury.

70. As a direct and proximate result of Roche's misrepresentation, Daniel suffered severe damages as set forth herein, including serious personal injury and death.

71. As a direct and proximate result of the death of Daniel, James F. Bennett and Veronica L. Bennett, personal representatives of the Estate of Daniel Bennett, and statutory beneficiaries under N.C.G.S. § 28A-18-2, are entitled to recover of the Defendants, jointly and severally, pursuant to N.C.G.S. § 28A-18-2(b), the present monetary value of the decedent Daniel Bennett to his parents, including, but not limited to, his services, protection, care and assistance; his society and companionship, security, guidance, advice, comfort and kindly offices; and compensation for the loss of the reasonably expected net income Daniel Bennett would have earned during his normal life expectancy; and funeral expenses, in an amount to be determined by the jury, but in any event, an amount in excess of \$75,000.00.

### **JURY TRIAL DEMAND**

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES OF FACT SO TRIABLE.

**WHEREFORE**, the Plaintiffs, James F. Bennett and Veronica L. Bennett, in their capacity as Personal Representatives of the Estate of Daniel Bennett, pray that they have and recover from Defendant Hoffmann-La Roche Inc. and Defendant Roche Laboratories Inc., jointly and severally, as follows:

1. Compensatory damages in an amount to be determined by the jury, but in any event, in an amount in excess of \$75,000.00;

2. The costs of this action, including interest and reasonable attorneys' fees as provided by law; and,

3. Any other relief which the Court deems equitable, just and proper.

This the 19th day of October, 2010.

/s/ Donald R. Strickland  
Attorney for Plaintiffs  
strickland@nctrial.com  
N.C. State Bar No. 12570

/s/ Jesse H. Rigsby, IV  
Attorney for Plaintiffs  
rigsby@nctrial.com  
N.C. State Bar No. 35538  
Twiggs, Beskind, Strickland & Rabenau,  
P.A.  
150 Fayetteville St., Ste. 1100  
Raleigh, NC 27601  
(919) 828-4357  
Fax (919) 833-7924

Richard A. Bussey  
Attorney for Plaintiffs  
rbussey@steinmitchell.com  
Washington, D.C. Bar No. 249672  
(Special Appearance Attorney)

Robert L. Bredhoff  
Attorney for Plaintiffs  
rbredhoff@steinmitchell.com  
Washington, D.C. Bar No. 338103  
(Special Appearance Attorney)  
Stein Mitchell & Muse, LLP  
1100 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 737-7777  
Fax (202) 296-8312

Brian S. Franciskato  
Attorney for Plaintiffs  
bfranciskato@nashfranciskato.com  
Missouri Bar No. 41634

(Special Appearance Attorney)  
Nash & Franciskato Law Firm  
2300 Main Street, Suite 170  
Kansas City, Missouri 64108  
(816) 221-6600  
Fax: (816) 221-6612