

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC

Eric H. Lubin, Esq. ID #: 012442007

Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, New Jersey 07728
Telephone: (732) 414-0300
Fax: (732) 431-4043

Attorneys for Plaintiffs, Robyn P. Winter and Wendy Schwartz

ROBYN P. WINTER and WENDY
SCHWARTZ,

Plaintiffs,

v.

SANOFI AVENTIS U.S., LLC,
JOHN DOES 1-10 and RICHARD
ROE ENTITIES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY

Docket No.: ESX-L-4013-17

CIVIL ACTION

**CERTIFICATION OF
ERIC H. LUBIN, ESQ.**

I, Eric H. Lubin, Esq., of full age, hereby certifies as follows:

1. I am a Partner with the law firm of Lomurro, Munson, Comer, Brown & Schottland, LLC, attorneys for Plaintiffs Robyn P. Winter & Wendy Schwartz (collectively "Plaintiffs") in the within matter.

2. I have been entrusted with the handling of this case and the content of this Certification is based upon my personal knowledge.

3. This Certification is submitted in support of Plaintiffs' Motion to Compel the depositions of two witnesses who Defendant Sanofi Aventis U.S., LLC ("Defendant") improperly prevented Plaintiffs from deposing during the discovery period and

upon whose testimony Defendants primarily rely in support of their pending Motion for Summary Judgment. Plaintiffs also seek to reopen discovery and an award of attorneys' fees and costs.

4. By way of background, Plaintiffs are former employees of Defendant who generally alleged Defendant violated the Conscientious Employee Protection Act ("CEPA"), *inter alia*, by unlawfully terminating them. A true and correct copy of Plaintiffs' Amended Complaint is attached hereto as Exhibit A.

5. Discovery occurred from late-2017 to February 7, 2020; interrogatory questions were answered, thousands of documents were exchanged, and multiple depositions occurred.

6. An initial trial date of April 27, 2020 was scheduled, but the Court adjourned same on its own accord to July 6, 2020 due to the ongoing pandemic.

7. On April 9, 2020, Defendant filed a Motion for Summary Judgment that greatly relies upon the Certifications of two of its employees, Hanna Duffy and Kelly Byrne, who to explain their claims that their termination of the Plaintiffs was proper. True and Correct copies of Ms. Duffy's and Ms. Byrne's Certifications submitted in support of Defendant's Motion for Summary Judgment are attached hereto as Exhibits B & C.

8. Thus, Hanna Duffy and Kelly Byrne are critical witnesses in this case. Ms. Duffy even signed the Certification to

Defendant's interrogatory answers. See Exhibit I.

9. However, Defendants engaged in improper gamesmanship to prevent Hanna Duffy and Kelly Byrne from being deposed in order to engage in one-way discovery and conceal their testimony.

10. As to Hanna Duffy, Plaintiffs have sought her deposition for well over the past year, since at least, February of 2019. A true and correct copy of my email February 4, 2019 email to Defendant's counsel Mark Saloman, Esq. is attached hereto as Exhibit D.

11. Depositions of the Plaintiffs and current/former employees of Defendant occurred generally throughout 2019. However, on October 21, 2019, Mark Saloman, Esq., counsel for Defendant, advised that Hanna Duffy was on indefinite medial leave due to a back surgery. A true and correct copy of Mr. Saloman's October 21, 2019 email is attached hereto as Exhibit E.

12. Indeed, during breaks in the depositions that occurred after Mr. Saloman's October 21, 2019 email, Mr. Saloman repeatedly confirmed that Ms. Duffy still could not be deposed because of her medical condition.

13. Having still not heard any update from Defendant as to Ms. Duffy's medical condition and deposition availability, I reached out yet again on February 13, 2020 and asked, "Mark, any update from Hanna Duffy? Is she still unavailable to be deposed?".

A true and correct copy of my email to Mr. Saloman is attached hereto as Exhibit F.

14. On February 13, 2020, Mr. Saloman, responded, "She remains on medical leave, Eric." A true and correct copy of Mr. Saloman's February 13, 2020 email is attached as Exhibit G.

15. Mr. Saloman's February 13, 2020 email was the last communication I received from him regarding Ms. Duffy's status.

16. Notwithstanding these consistent representations that Ms. Duffy was unavailable for a deposition, Defendant is primarily relying on a certification from her dated mere weeks ago in their Motion for Summary Judgment.

17. Mr. Saloman has never provided an update that Ms. Duffy was now suddenly available to participate in this case. Given the length & scope of Ms. Duffy's Certification, and the fact that Defendant's Motion for Summary Judgment heavily depends on and incorporates Ms. Duffy's Certification, it is apparent that she has been working with Mr. Saloman for some time. Ms. Duffy's convenient availability just when Defendant needs her certification for Summary Judgment is transparent; she could have been deposed months ago.

18. Obviously, if Ms. Duffy can work with counsel to review and edit a comprehensive Certification, she is more than capable to immediately sit for a remote deposition. If she is available

Defendant, she must be available to Plaintiffs.

19. Defendant should not be permitted to use Ms. Duffy's medical condition as a shield to prevent her deposition while simultaneously enjoying access to her information in order to deny Plaintiffs discovery and so that her statements would go unrebutted on a motion for summary judgment.

20. Ms. Duffy is a critical witness and Plaintiffs would be severely prejudiced if Defendant is able to use her testimony to support their motion, and then even possibly produce her at trial, while simultaneously preventing her deposition despite Plaintiffs' efforts.

21. The fact that Defendant engaged in this conduct during the current crisis, when law firms have shuttered and attorneys are working from home, is simply unfortunate.

22. The other critical witness upon which Defendants improperly rely in their Motion for Summary Judgment is Kelly Byrne.

23. Ms. Byrne was never identified as a witness or person with knowledge in the multiple interrogatory questions propounded by Plaintiff. See the true and correct copy Defendant's responses to Plaintiffs' interrogatory question Nos. 3, 5 & 6 attached hereto as Exhibit H.

24. Ms. Byrne's name is also never discussed in any of the

depositions of Defendants or Plaintiff.

25. Additionally, I have attempted a diligent search of the thousands of documents produced by Defendant in this case and her name does not appear in any of the operative documents that were discussed at the depositions or are actually relevant to this case. If Ms. Byrnes's name does appear in a document, it is a needle in a haystack of thousands of documents that were produced in wholesale by Defendant.

26. Defendant had an obligation to disclose her status as a person with knowledge in response to Plaintiff's discovery requests, failed to do so, and never amended its discovery responses. They cannot now use her Certification after the expiration of discovery.

27. It simply appears that Ms. Byrne is the typical 'surprise witness' our discovery rules were enacted to prevent.

28. This Motion was clearly necessitated by Defendant's conduct. Defendant should not be rewarded by having its key witnesses go unchallenged at Summary Judgment and trial as a result of flouting their discovery obligations. To do so would unduly prejudice Plaintiff and condone Defendant's conduct.

29. Therefore, it is respectfully requested that discovery be reopened for a period of 60 days so Plaintiff can depose these two witnesses and, if necessary, serve discovery requests based on

any new facts learned from their testimony.

30. Moreover, because Defendant heavily relies on the testimony of Ms. Duffy and Ms. Byrne in their Motion for Summary Judgment, their Motion should be denied, without prejudice, with the understanding they can refile it after the depositions occur..

31. Finally, an award of reasonable attorney fees and costs should be respectfully awarded for the time spent on the within Motion and to depose these two witnesses as a sanction pursuant to R. 4:23-1. Defendant's violation of our discovery rules and gamesmanship necessitated this Motion and Plaintiffs' need to engage in 11th-hour discovery during a pandemic.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/Eric H. Lubin, Esq.
ERIC H. LUBIN, ESQUIRE

Date: April 22, 2020

EXHIBIT A

Lomurro, Munson, Comer, Brown & Schottland, LLC
Eric H. Lubin, Esq. ID #: 012442007
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, New Jersey 07728
Telephone: (732) 414-0300
Fax: (732) 431-4043
Attorneys for Plaintiffs Robyn P. Winter and
Wendy Schwartz

ROBYN P. WINTER and WENDY
SCHWARTZ,

Plaintiffs,

v.

SANOFI AVENTIS U.S., LLC,
JOHN DOES 1-10 and RICHARD
ROE ENTITIES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ESSEX COUNTY

Docket No.: L-4013-17

CIVIL ACTION

FIRST AMENDED COMPLAINT, JURY
DEMAND & DESIGNATION OF TRIAL
COUNSEL

SUPERIOR COURT OF N.J.
CIVIL DIVISION
ESSEX COUNTY
JUL - 5 02:50

Plaintiffs, Robyn P. Winter and Wendy Schwartz
("Plaintiffs"), residing at, respectively, 41 Crestwood Drive,
Maplewood, Essex County, State of New Jersey, and 775 Albemarle
Street, Wyckoff, Bergen County, State of New Jersey, by way of
Complaint against Defendants Sanofi Aventis U.S., LLC, John Doe 1-
10 and Richard Roe Entities 1-10 ("Defendants"), says:

FACTS

1. Plaintiffs, both female, were at all times relevant
hereto, employed by Defendants as pharmaceutical salespeople until
their unlawful terminations on, respectively, March 23, 2017, and
June 9, 2017, which was immediately upon Plaintiff Schwartz's
intended return from disability.

RECEIVED JUL 24 2017

2. Defendants are a pharmaceutical company, subsidiaries/parent-companies/related-entities, and owners and employees of same, who employed Plaintiff out of its United States headquarters, located at 55 Corporate Drive, Bridgewater, New Jersey.

3. Prior to their unlawful termination, Plaintiffs had never been disciplined by Defendants in their combined 28 years of employment with Defendants. Instead, Plaintiffs have always performed their jobs for Defendants with a conscientious fervor and had been promoted many times based upon their excellent work history and pristine ethics.

4. Before their unlawful termination, Plaintiffs reported, objected to, refused to participate in and disclosed, among other things, to a supervisor, conduct of their co-employee C.H., a male, that they reasonably believed was criminal illegal, fraudulent, in violation of public policy and otherwise encompassed by New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et. seq.

5. Plaintiffs reported, disclosed, refused to participate in and objected to, among other things, to their Supervisors, that their co-employee was reporting and being paid for hours that he had not worked, was falsifying company records and converting company property. It was also reported that the co-employee improperly disposed of governmentally regulated medicine and

medical supplies, all of which Plaintiff reasonably believed was illegal, criminal, fraudulent and incompatible with a clear mandate of public policy concerning the public health, safety and welfare.

6. Notwithstanding that Plaintiffs conscientiously disclosed, reported, refused to participate in and objected to conduct that they reasonably believed was unlawful, fraudulent and in violation of public policy, Defendants gave Plaintiffs' co-employee numerous chances and a long period of time to remedy his unlawful, fraudulent, and illegal activity. After it became obvious that Defendants could no longer ignore Plaintiffs' co-employee's conduct, nor Plaintiffs' protected disclosures, Defendants terminated said co-employee, but then also unlawfully took adverse action against Plaintiffs due to their protected activity and gender.

7. In retaliation for Plaintiffs' protected activity aforesaid, and because Plaintiffs are female, Plaintiffs were terminated under a pretextual and false excuse of wrongdoing that has prevented Plaintiffs from obtaining comparable subsequent employment and enjoying other prospective economic advantages. Moreover, Defendants refused to pay Plaintiffs their full compensation to which they are entitled pursuant to the terms of their employment and that they had earned for their efforts on Defendants' behalf.

8. As a result of the aforementioned actions of the Defendants, Plaintiffs have suffered and will suffer both economic and non-economic damages, and have otherwise been irreparably harmed.

COUNT ONE

N.J.S.A. 34:19-1, et seq.

9. Plaintiffs repeat and reallege every paragraph of this Complaint as if set forth herein at length.

10. Defendants took adverse employment action against Plaintiffs because they reported, objected to, refused to participate in and disclosed to a supervisor conduct of their co-employee, that they reasonably believed was criminal illegal, fraudulent, in violation of public policy and otherwise covered by New Jersey's Conscientious Employee Protection Act.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- A. An injunction to restrain continued violations of the New Jersey Conscientious Employee Protection Act;
- B. Payment by Defendants of the reasonable costs of this action and for attorneys' fees;
- C. Compensatory damages;
- D. Punitive damages;
- E. The assessment of a Civil Penalty as allowed by law;
- F. Any other relief allowed under the Conscientious Employee Protection Act; and

G. Any other relief that the Court deems equitable and just.

COUNT TWO

UNLAWFUL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

11. Plaintiffs repeat and reallege every paragraph of this Complaint as if set forth herein at length.

12. Plaintiffs have the right and reasonable expectation to pursue a lawful business and to enjoy the fruits and advantages of their efforts and industry.

13. Defendants had knowledge of said rights and reasonable expectations and wrongfully and without justification interfered with same by falsely claiming and reporting that Plaintiffs were terminated for wrongdoing, and in the absence of such conduct, Plaintiffs would realize economic benefit and advantage.

14. As a result of the aforementioned actions of the Defendants, Plaintiffs have suffered and will suffer both economic and non-economic damages, and have otherwise be irreparably harmed.

WHEREFORE, Plaintiffs demand judgment against Defendants for economic and non-economic damages, punitive damages, injunctive relief, attorney fees and costs, and all other relief the Court deems equitable and just.

COUNT THREE

BREACH OF CONTRACT

15. Plaintiffs repeats and realleges every paragraph of this

Complaint as if set forth herein at length.

16. Plaintiffs and Defendants entered into contracts wherein Defendants agreed to pay Plaintiffs compensation and other monies for their efforts on Defendants' behalf.

17. Defendants breached said contracts by not paying Plaintiffs all of the compensation and other monies that it agreed to pay Plaintiffs, and that Plaintiffs earned for their efforts on Defendants' behalf.

18. As a result of the aforementioned actions of the Defendants, Plaintiffs have suffered and will suffer both economic and non-economic damages, and have otherwise been irreparably harmed.

WHEREFORE, Plaintiffs demand judgment against Defendants for economic and non-economic damages, punitive damages, injunctive relief, attorney fees and costs, and all other relief the Court deems equitable and just.

COUNT FOUR

DISCRIMINATION BASED ON PLAINTIFFS' GENDER

19. Plaintiffs repeat and reallege every paragraph of this Complaint as if set forth herein at length.

20. Plaintiffs, both female, were treated less favorably in the terms and conditions of their employment because of their gender.

21. Specifically, a male counterpart was given many months,

chances and opportunities to cure his illegal, unprofessional and unethical conduct that was alleged to be in violation of certain company policies, which Plaintiffs reported, while Plaintiffs were immediately terminated, without warning, chance or any episode of prior discipline, for pretextual and gender-motivated reasons in violation of New Jersey's Law Against Discrimination.

22. As a result of the aforementioned actions of the Defendants, Plaintiffs have suffered and will suffer both economic and non-economic damages, and has otherwise been irreparably harmed.

WHEREFORE, Plaintiffs demand judgment against Defendants for economic and non-economic damages, punitive damages, injunctive relief, attorney fees and costs, and all other relief the Court deems equitable and just.

COUNT FIVE

JOHN DOE AND RICHARD ROE COMPANY COUNTS

23. Plaintiffs repeat and reallege every paragraph of this Complaint as if set forth herein at length.

24. Defendants Richard Roe Entities 1-10 and John Doe 1-10 are, respectively, subsidiaries/parent-companies/related-entities of Defendant Sanofi Aventis U.S., LLC, and owners, agents and employees of same, who may have also caused, and are liable for Defendants' conduct aforesaid.

25. Plaintiffs reserve the right to Amend this Complaint to

identify and include as a specific Defendant any and all Richard Roe Entities 1-10 and John Doe 1-10 Defendants once their identity is learned.

WHEREFORE, Plaintiffs demand judgment against Defendants for economic and non-economic damages, punitive damages, injunctive relief, attorney fees and costs, and all other relief the Court deems equitable and just.

JURY DEMAND

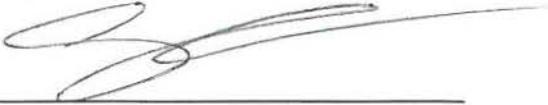
Plaintiffs hereby demands a trial by jury as to all issues.

TRIAL COUNSEL DESIGNATION

Please take notice that pursuant to the provisions of Rule 4:25-4, MICHAEL SCHOTTLAND, ESQ. & ERIC H. LUBIN is hereby designated as trial counsel on behalf of the Plaintiff.

NOTICE OF OTHER ACTIONS

I hereby certify pursuant to Rule 4:5-2 that this matter is not the subject of any other civil action pending in any Court or of a pending arbitration proceeding, and that there exists no other known parties at this time to be joined to this action.



ERIC H. LUBIN, ESQ.

Dated: 6/30/17

EXHIBIT B

Mark A. Saloman, Esq. (Bar No. 18831992)
Joanna S. Rich, Esq. (Bar No. 029152008)
FORDHARRISON LLP
300 Connell Drive, Suite 4100
Berkeley Heights, New Jersey 07922
Tel: (973) 646-7300
Fax: (973) 646-7301
Attorneys for Defendant sanofi-aventis US LLC

ROBYN P. WINTER and WENDY
SCHWARTZ,

Plaintiffs,
v.

SANOFI-AVENTIS U.S., LLC,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L-4073-17

CIVIL ACTION

**DECLARATION OF HANNAH DUFFY IN
SUPPORT OF DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT DISMISSAL OF
PLAINTIFFS’ COMPLAINT**

HANNAH DUFFY, hereby declares and says:

1. I am familiar with the facts set forth below, and submit this Declaration in support of Defendant sanofi-aventis US LLC’s (“Sanofi”) motion for summary judgment. I was not deposed prior to the close of discovery in this case.

2. I am a Human Resources Business Partner at Sanofi and have held that position since 2016.

3. In my role, I am responsible for, among other things, employee disciplinary matters, including terminations.

4. Robyn Winter and Wendy Schwartz were “at will” employees of Sanofi.

I. Sanofi Has A Long-Standing Practice Of Terminating The Employment Of Any Sales Professional Known To Commit Call Falsification.

5. Recording an interaction as a “sales call” that does not meet Sanofi’s definition constitutes call falsification.

6. Call falsification violates Sanofi policy and is grounds for termination of employment.

7. I have been involved in terminating the employment of 37 Sanofi Sales Professionals, of whom 17 (or 46%) were male.

8. I am unaware of any Sanofi Sales Professional known to management to have engaged in call falsification whose employment was not terminated.

9. In 2017, following consultation with Sanofi's Head of Employee Relations Kelly Byrne and Sanofi in-house legal counsel, I terminated the employment of Sanofi Sales Professionals Winter, Schwartz, Charlie Happel, and Gabriel Orpaz.

II. Sanofi Investigates And Terminates The Former Sanofi Sales Professional Charlie Happel For His Admitted Call Falsification.

10. In December 2016, now former Sanofi Area Business Leader Michael Gammino contacted me with concerns about Happel's call activity.

11. Mr. Gammino never told me who prompted his concerns.

12. Following Mr. Gammino's separation during the course of a regional restructuring, I worked with Happel's new manager, Area Business Leader Matthieu Edelman, to continue the investigation of Happel's call activity.

13. As part of the ongoing investigation, a Help Me Understand meeting ("HMU") was held in February 2017 with Happel.

14. A HMU is an investigatory tool used by Sanofi to obtain information from an employee when a manager has questions about an employee's actions or performance.

15. Ms. Byrne and I reviewed Happel's responses to the questions posed by Mr. Edelman during the HMU and concluded Happel's admission that he recorded as sales calls instances where a face-to-face interaction with a prescriber did not occur violated Sanofi policy.

16. Based on Happel's admissions during the HMU, I was satisfied no further investigation into his sales activity was needed.

17. Following consultation with Ms. Byrne and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, I determined Happel's substantiated call falsification warranted termination of his employment.

18. Based on the facts presented, I stand by my termination decision.

19. Sanofi terminated Happel's employment effective March 24, 2017, and I directed Mr. Edelman to notify Happel.

III. Mr. Edelman Discovers Three Other Sales Professionals Entered Sales Calls On Physicians Happel Identified As "No See" Providers.

20. Following Happel's HMU, Mr. Edelman advised me his investigation uncovered instances where other Sales Professionals, specifically, Winter, Schwartz, and former employee Anke Guether (whose employment was terminated in the late 2016 restructuring), entered Sales Calls on physicians Happel identified as having "no see" policies.

21. A physician with a "no see" policy will not meet with Sales Professionals during the business day, though the physician may meet with Sales Professionals for certain pre-planned events, such as lunches or educational programs.

22. Following Mr. Edelman's discovery, I worked with Winter's and Schwartz's new manager, Sidhartha Chauhan, and later, Schwartz's subsequent manager, Carlos Reyes, to investigate and conduct HMUs with Winter and Schwartz to allow them to explain how they logged so many sales calls on "no see" physicians.

IV. Sanofi Investigates And Terminates Robyn Winter's Employment For Admitted Call Falsification.

23. In March 2017, an HMU was held to further investigate Winter's call activity.

24. Ms. Byrne and I reviewed Winter's responses to the questions posed by Mr. Chauhan during the HMU and concluded Winter's admission that she recorded as sales calls interactions with non-prescribers and instances where she merely saw a prescriber in passing violated Sanofi policy.

25. Based on Winter's admissions during her HMU, I was satisfied no further investigation into her sales activity was needed.

26. Following consultation with Ms. Byrne and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, I determined Winter's call falsification warranted termination of her employment.

27. Based on the facts presented, I stand by my termination decision.

28. Sanofi terminated Winter's employment effective March 24, 2017, and I directed Mr. Chauhan to notify Winter.

V. Sanofi Investigates And Terminates Former Sanofi Sales Professional Gabriel Orpaz's Employment For His Admitted Call Falsification.

29. Also in March 2017, a HMU was held to further investigate former Sanofi Sales Professional Gabriel Orpaz's call activity, based on concerns identified by Mr. Orpaz's manager, Mr. Chauhan.

30. Ms. Byrne and I reviewed Mr. Orpaz's responses to questions posed by Mr. Chauhan during the HMU and concluded Mr. Orpaz's admission that he recorded as sales calls instances where he merely introduced himself to a prescriber violated Sanofi's policy.

31. Based on Mr. Orpaz's admissions during his HMU, I was satisfied no further investigation into his sales activity was needed.

32. Following consultation with Ms. Byrne and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, I determined Mr. Orpaz's call falsification warranted termination of his employment.

33. Based on the facts presented, I stand by my termination decision.

34. Sanofi terminated Mr. Orpaz's employment effective March 28, 2017, and I directed Mr. Chauhan to notify Mr. Orpaz.

VI. Sanofi Investigates And Terminates Wendy Schwartz's Employment For Her Admitted Call Falsification.

35. In June 2017, an HMU was held to further investigate Schwartz's call activity in 2016.

36. Schwartz's HMU would have been held sooner but she was out of work on an approved medical leave of absence for a broken wrist.

37. Ms. Byrne and I reviewed Schwartz's responses to the questions posed by Mr. Reyes during the HMU and concluded Schwartz's admission that she recorded as sales calls instances where she had not seen the prescriber but knew he or she was "in the building" violated Sanofi's policy.

38. Based on Schwartz's admissions during her HMU, I was satisfied no further investigation into her sales activity was needed.

39. Following consultation with Ms. Byrne and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, I determined Schwartz's call falsification warranted termination of her employment.

40. Based on the facts presented, I stand by my termination decision.

41. Sanofi terminated Schwartz's employment effective June 9, 2017, and I directed Mr. Reyes to notify Schwartz.

VII. I Had No Idea Winter Or Schwartz Reported Concerns About Happel.

42. I decided to terminate the employments of Winter, Schwartz, Happel, and Orpaz, following consultation with Ms. Byrne and Sanofi in-house legal counsel.

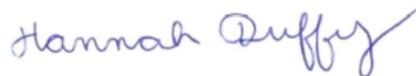
43. My decisions were based on Sanofi's history and practice of terminating Sales Professionals—male and female—who engage in call falsification.

44. When my decisions were made to terminate the employment of Winter, Schwartz, Happel, and Orpaz, I had no knowledge Winter or Schwartz ever reported any concerns about Happel to anyone in Sanofi management.

45. It is appropriate for Sanofi to investigate any Sales Professional suspected of call falsification, even if the Sales Professional's potential misconduct came to light following the investigation of another Sales Professional.

46. My decision to terminate the employment of any Sales Professional for call falsification, including Winter and Schwartz, was not based on the Sales Professional's sex or whether he or she complained to management about anything.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements are willfully false, I am subject to punishment.



HANNAH DUFFY

Dated: Bridgewater, New Jersey
April 7, 2020

EXHIBIT C

Mark A. Saloman, Esq. (Bar No. 18831992)
Joanna S. Rich, Esq. (Bar No. 029152008)
FORDHARRISON LLP
300 Connell Drive, Suite 4100
Berkeley Heights, New Jersey 07922
Tel: (973) 646-7300
Fax: (973) 646-7301
Attorneys for Defendant sanofi-aventis US LLC

ROBYN P. WINTER and WENDY
SCHWARTZ,

Plaintiffs,
v.

SANOFI-AVENTIS U.S., LLC,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L-4073-17

CIVIL ACTION

**DECLARATION OF KELLY BYRNE IN
SUPPORT OF DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT DISMISSAL OF
PLAINTIFFS’ COMPLAINT**

KELLY BYRNE, hereby declares and says:

1. I am familiar with the facts set forth below, and submit this Declaration in support of Defendant sanofi-aventis US LLC’s (“Sanofi”) motion for summary judgment. I was not deposed during the course of discovery in this case.

2. I am Head of Employee Relations at Sanofi and have held that position since 2008.

3. In my role, I am responsible for, among other things, consulting with Sanofi Human Resources Business Partners on employee disciplinary matters, including terminations.

4. Robyn Winter and Wendy Schwartz were “at will” employees of Sanofi.

I. Sanofi Has A Long-Standing Practice Of Terminating Any Sales Professional Known To Commit Call Falsification.

5. Recording an interaction as a “sales call” that does not meet Sanofi’s definition constitutes call falsification.

6. Call falsification violates Sanofi policy and is grounds for termination of employment.

7. Over the years, Sanofi terminated the employment of numerous Sales Professionals, both male and female, for even one instance of call falsification.

8. For example, in only the three years preceding Winter's and Schwartz's terminations, Sanofi terminated the employment of 62 Sales Professionals for call falsification, of whom 25 (or 40%) are male.

9. I am unaware of any Sanofi Sales Professional known to management to have engaged in call falsification whose employment was not terminated.

10. In 2017, Sanofi terminated the employment of 13 Sales Professionals for call falsification, including Winter, Schwartz, Charlie Happel, and Gabriel Orpaz. Another eight Sales Professionals resigned before their employment could be terminated.

II. Sanofi Investigates And Terminates Former Sanofi Sales Professional Charlie Happel For His Admitted Call Falsification.

11. As part of an ongoing Sanofi investigation, a Help Me Understand meeting ("HMU") was held in February 2017 concerning former Sanofi Sales Professional Charlie Happel's call activity.

12. Ms. Duffy and I reviewed Happel's responses to the questions posed by his new manager during the HMU meeting and concluded Happel's admission that he recorded as sales calls instances where a face-to-face interaction with a prescriber did not occur violated Sanofi policy.

13. Based on Happel's admissions during the HMU meeting, I was satisfied no further investigation into his sales activity was needed.

14. Following consultation with me and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, Ms. Duffy determined Happel's substantiated call falsification warranted termination of his employment.

15. I agreed (and still agree) with Ms. Duffy's determination.

16. Sanofi terminated Happel's employment effective March 24, 2017.

III. Sanofi Investigates And Terminates Robyn Winter For Admitted Call Falsification.

17. In March 2017, a HMU meeting was held to further investigate Winter's call activity.

18. Ms. Duffy and I reviewed Winter's responses to the questions posed by her new manager during the HMU meeting and concluded Winter's admission that she recorded as sales calls interactions with non-prescribers and instances where she merely saw a prescriber in passing violated Sanofi policy.

19. Based on Winter's admissions during the HMU meeting, I was satisfied no further investigation into her sales activity was needed.

20. Following consultation with me and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, Ms. Duffy determined Winter's call falsification warranted termination of her employment.

21. I agreed (and still agree) with Ms. Duffy's determination.

22. Sanofi terminated Winter's employment effective March 24, 2017.

IV. Sanofi Investigates And Terminates Former Sanofi Sales Professional Gabriel Orpaz For His Admitted Call Falsification.

23. Also in March 2017, a HMU meeting was held to further investigate former Sanofi Sales Professional Gabriel Orpaz's call activity.

24. Ms. Duffy and I reviewed Mr. Orpaz's responses to the questions posed by his manager during the HMU meeting and concluded Mr. Orpaz's admission he recorded as sales calls instances where he merely introduced himself to a prescriber violated Sanofi's policy.

25. Based on Mr. Orpaz's admissions during the HMU meeting, I was satisfied no further investigation into his sales activity was needed.

26. Following consultation with me and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, Ms. Duffy determined Mr. Orpaz's call falsification warranted termination of his employment.

27. I agreed (and still agree) with Ms. Duffy's determination.

28. Sanofi terminated Mr. Orpaz's employment effective March 28, 2017.

V. Sanofi Investigates And Terminates Wendy Schwartz For Her Admitted Call Falsification.

29. In June 2017, a HMU meeting was held to further investigate Schwartz's call activity in 2016.

30. Schwartz's HMU would have been held sooner but she was out of work on an approved medical leave of absence for a broken wrist.

31. Ms. Duffy and I reviewed Schwartz's responses to the questions posed by her manager during the HMU meeting and concluded Schwartz's admission that she recorded as sales calls instances where she had not seen the prescriber but knew he or she was "in the building" violated Sanofi's policy.

32. Based on Schwartz's admissions during the HMU meeting, I was satisfied no further investigation into her sales activity was needed.

33. Following consultation with me and Sanofi in-house legal counsel, and based on Sanofi's long-standing practice that call falsification is a terminable offense, Ms. Duffy determined Schwartz's call falsification warranted termination of her employment.

34. I agreed (and still agree) with Ms. Duffy's determination.

35. Sanofi terminated Schwartz's employment effective June 9, 2017.

VI. I Had No Idea Winter or Schwartz Reported Concerns About Happel.

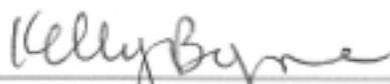
36. Ms. Duffy made all four decisions to terminate the sales professionals employment, following consultation with me and Sanofi in-house legal counsel.

37. Ms. Duffy's decisions were based on Sanofi's history and practice of terminating Sales Professionals—male and female—who engage in call falsification.

38. When the decisions were made to terminate the employment of Winter, Schwartz, Happel, and Orpaz, I had no knowledge nor suspicion Winter or Schwartz ever reported any concerns about Happel to anyone in Sanofi management.

39. It is appropriate for Sanofi to investigate any Sales Professional suspected of call falsification, even if the Sales Professional's potential misconduct came to light following the investigation of another Sales Professional.

I hereby certify that the foregoing statements made by me are true. I am aware that if the foregoing statements are willfully false, I am subject to punishment.


KELLY BYRNE

Dated: Bridgewater, New Jersey
April 8, 2020

WSACTIVE LLP:11413521.1

EXHIBIT D

Eric Lubin

From: Eric Lubin
Sent: Monday, February 4, 2019 10:34 AM
To: Mark A. Saloman
Cc: Joanna Rich; Nancy Reader
Subject: Schwartz/Winter v. Sanofi

Mark/Joanna: Are we confirmed for Wendy Schwartz's deposition on 2/12? Ms. Winter can do 2/25 & 2/26 in person. (I assume you still need two sequential days).

Also, I will be paying the court reporter for the adjourned deposition. One of my daughters woke up with a temperature above 104.5, so it was a little scary. Finally, I will be scheduling the subpoena deposition of Mike Gamino, and will be issuing deposition notices for a representative and for Sidhartha Chauhan, Carlos Reyes, Matthieu Edelman, Hannah Duffy. You can provide me convenient dates or I can just notice them. Finally, I will also be obtaining expert reports.

Do I have your consent to extend the discovery end date via motion? Thanks

ERIC H. LUBIN
Attorney at Law



LOMURROLAW
T R I A L L A W Y E R S

Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, NJ, 07728

✉ Elubin@lomurrolaw.com

☎ Main: [732-414-0300](tel:732-414-0300)

☎ Direct: [732-414-0311](tel:732-414-0311)

☎ Fax: [732-431-4043](tel:732-431-4043)

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EXHIBIT E

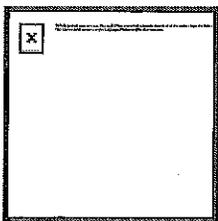
Eric Lubin

From: Mark A. Saloman <Msaloman@fordharrison.com>
Sent: Monday, October 21, 2019 10:49 AM
To: Eric Lubin
Subject: RE: Winter/Schwartz v. Sanofi [IWOV-WSACTIVELLP.FID1776264]

It did, Eric, though I'm holding **Nov. 14, 15, and 19** for the depositions. I assume those dates are still good for you.

One complication, though: I learned on Friday that Hannah Duffy is out on an indefinite medical leave because she requires back surgery. As of today, she has no return to work date. Obviously, you have our consent for another joint motion to extend.

Assuming the four remaining witnesses are free on the above dates, please let me know if you have a preference for two dates to go forward. Thanks.



Mark A. Saloman - Attorney at Law

FordHarrison LLP - Ius Laboris USA | Global HR Lawyers
300 Connell Drive, Suite 4100 | Berkeley Heights, NJ 07922
Msaloman@fordharrison.com | P: 973-646-7305 | C: 973-342-0106

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From: Eric Lubin [mailto:ELubin@lomurrolaw.com]
Sent: Monday, October 21, 2019 10:27 AM
To: Mark A. Saloman <Msaloman@fordharrison.com>
Subject: RE: Winter/Schwartz v. Sanofi [IWOV-WSACTIVELLP.FID1776263]

Mark, did your trial settle? Just trying to get depositions locked down. Thanks,

ERIC H. LUBIN
Attorney at Law



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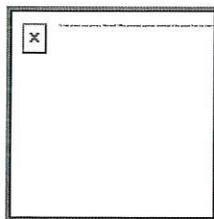
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Freehold, NJ, 07728
✉ Elubin@lomurrolaw.com
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From: Mark A. Saloman <Msaloman@fordharrison.com>
Sent: Thursday, September 26, 2019 1:52 PM
To: Eric Lubin <ELubin@lomurrofirm.com>
Subject: RE: Winter/Schwartz v. Sanofi [IWOV-WSACTIVE LLP.FID1776263]

October 21 in Essex, expected to last 6-8 days.



Mark A. Saloman - Attorney at Law 

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From: Eric Lubin [<mailto:ELubin@lomurrofirm.com>]
Sent: Thursday, September 26, 2019 1:51 PM
To: Mark A. Saloman <Msaloman@fordharrison.com>
Subject: RE: Winter/Schwartz v. Sanofi [IWOV-WSACTIVE LLP.FID1776263]

Can you give me some info about your current trial (when it begins, where, est length) so I can include it in a motion to extend the DED? Thanks,

ERIC H. LUBIN
Attorney at Law



Monmouth Executive Center
4 Paragon Way, Suite 100

Freehold, NJ, 07728

✉ Elubin@lomurrolaw.com

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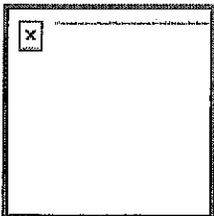
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From: Mark A. Saloman <Msaloman@fordharrison.com>
Sent: Thursday, September 26, 2019 1:49 PM
To: Eric Lubin <ELubin@lomurrofirm.com>
Subject: RE: Winter/Schwartz v. Sanofi [IWOV-WSACTIVE LLP.FID1776263]

Eric, as of today I have **November 14, 15, and 19**. If those work, we can slot in some witnesses. If my October trial settles, I'll have a few more dates in late October.



Mark A. Saloman - Attorney at Law

FordHarrison LLP - Ius Laboris USA | Global HR Lawyers
300 Connell Drive, Suite 4100 | Berkeley Heights, NJ 07922
Msaloman@fordharrison.com | P: 973-646-7305 | C: 973-342-0106

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From: Eric Lubin [<mailto:ELubin@lomurrofirm.com>]
Sent: Tuesday, September 24, 2019 5:40 PM
To: Mark A. Saloman <Msaloman@fordharrison.com>
Subject: RE: Winter/Schwartz v. Sanofi

ERIC H. LUBIN
Attorney at Law



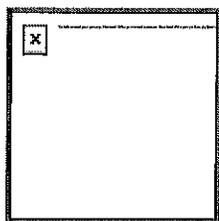
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From: Mark A. Saloman <Msaloman@fordharrison.com>
Sent: Tuesday, September 24, 2019 4:17 PM
To: Eric Lubin <ELubin@lomurrofirm.com>
Subject: RE: Winter/Schwartz v. Sanofi

Thanks, Eric. Please remind me who you want to depose again. Thanks.



Mark A. Saloman - Attorney at Law

FordHarrison LLP - Ius Laboris USA | Global HR Lawyers
300 Connell Drive, Suite 4100 | Berkeley Heights, NJ 07922
Msaloman@fordharrison.com | P: 973-646-7305 | C: 973-342-0106

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From: Eric Lubin [<mailto:ELubin@lomurrofirm.com>]
Sent: Tuesday, September 24, 2019 11:20 AM
To: Mark A. Saloman <Msaloman@fordharrison.com>
Subject: Winter/Schwartz v. Sanofi

Mark, enclosed is the audio and transcribed statement from Mike Gammino. A hard copy CD is being sent by regular mail. Nothing contained therein shall be an adoptive admission.

Can you please provide some dates for the previously discussed depositions of your clients?

Thank you.

ERIC H. LUBIN
Attorney at Law



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Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, NJ, 07728

✉ Elubin@lomurrolaw.com

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EXHIBIT F

Eric Lubin

From: Eric Lubin
Sent: Thursday, February 13, 2020 8:24 AM
To: Mark A. Saloman
Subject: Winter/Schartz v. Duffy

Mark, any update from Hanna Duffy? Is she still unavailable to be deposed?

ERIC H. LUBIN
Attorney at Law



Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, NJ, 07728

✉ Elubin@lomurrolaw.com

☎ Main: [732-414-0300](tel:732-414-0300)

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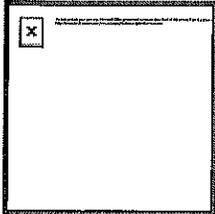
EXHIBIT G

Eric Lubin

From: Mark A. Saloman <Msaloman@fordharrison.com>
Sent: Thursday, February 13, 2020 12:44 PM
To: Eric Lubin
Subject: RE: Winter/Schartz v. Duffy [IWOV-WSACTIVELLP.FID1776264]

External Email

She remains on a medical leave, Eric.



Mark A. Saloman - Attorney at Law 

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300 Connell Drive, Suite 4100 | Berkeley Heights, NJ 07922
Msaloman@fordharrison.com | P: 973-646-7305 | C: 973-342-0106

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From: Eric Lubin [mailto:ELubin@lomurrolaw.com]
Sent: Thursday, February 13, 2020 8:24 AM
To: Mark A. Saloman <Msaloman@fordharrison.com>
Subject: Winter/Schartz v. Duffy

Mark, any update from Hanna Duffy? Is she still unavailable to be deposed?

ERIC H. LUBIN
Attorney at Law



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4 Paragon Way, Suite 100
Freehold, NJ, 07728
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EXHIBIT H

Mark A. Saloman, Esq. (Bar No. 18831992)
Joanna S. Rich, Esq. (Bar No. 29152008)
FORD HARRISON LLP
300 Connell Drive, Suite 4100
Berkeley Heights, New Jersey 07922
Tel: (973) 646-7300
Fax: (973) 646-7301
Attorneys for Defendant sanofi-aventis US LLC

ROBYN P. WINTER and WENDY
SCHWARTZ,

Plaintiffs,

v.

SANOFI-AVENTIS U.S., LLC, JOHN
DOES 1-10 and RICHARD ROE
ENTITIES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY

DOCKET NO. ESX-L-4013-17

**DEFENDANT'S OBJECTIONS AND
ANSWERS TO PLAINTIFF ROBYN P.
WINTER'S INTERROGATORIES**

TO: Eric H. Lubin, Esq.
Lomurro, Munson, Comer, Brown & Schottland, LLC
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, New Jersey 07728

Defendant sanofi-aventis US LLC (improperly pled as "Sanofi-Aventis U.S., LLC") ("Defendant"), by and through its counsel, FordHarrison LLP, hereby provides its Objections and Answers to Plaintiff Robyn Winter's Interrogatories ("Interrogatories"). Defendant reserves the right to supplement these responses if it obtains further information between the time these responses are served and the time of trial.

Dated: April 3, 2018

FORDHARRISON LLP

By: /s/ Mark A. Saloman
Mark A. Saloman, Esq.

**DEFENDANT'S OBJECTIONS AND ANSWERS
TO PLAINTIFF'S INTERROGATORIES**

1. State your full name and address.

Answer and Objection to Interrogatory No. 1:

Defendant states that these Interrogatories are being answered by Defendant sanofi-aventis US LLC, located at 55 Corporate Drive, Bridgewater, New Jersey 08807, with assistance of counsel.

2. Were any admissions made by or on behalf of Plaintiff? If so, identify any writings relating or referring in any way to such admissions. If such admissions were oral, set forth the substance of each admission, the person to whom the admission was made, the date and place of the admission. If written, attach the documents containing the admissions.

Answer and Objection to Interrogatory No. 2:

Defendant objects to this Interrogatory as vague, ambiguous, overly broad, not reasonably limited in time or geographic scope, and thus rendered unduly burdensome. Defendant objects to this Interrogatory to the extent it seeks a legal conclusion and/or intrudes upon the work product privilege. Subject to these objections and without waiving any objections, and pursuant to Rule 4:17-4(d), Defendant refers Plaintiff to the documents provided.

3. If you have knowledge of any conversations, statements or admissions of any parties to this suit or any other person as to the manner of the happening of the occurrence or incidents complained of, or as to the injuries or damages claimed, set forth:

- (a) The name and address of each party who made the admission or gave the statement, etc.;
- (b) The exact substance thereof;
- (c) When they were made or taken;
- (d) To whom they were made;
- (e) The names and addresses of the persons present when made or taken; and
- (f) Whether such statements were written, and if so, attach copies to these answers to interrogatories.

Answer and Objection to Interrogatory No. 3:

Defendant objects to this Interrogatory as vague, ambiguous, confusing, overly broad, not reasonably limited in time or geographic scope, and thus rendered unduly burdensome. Defendant

objects to this Interrogatory to the extent it seeks a legal conclusion and/or intrudes upon the attorney-client, work product, and/or litigation privileges. Subject to these objections and without waiving any objections, and pursuant to Rule 4:17-4(d), Defendant refers Plaintiff to the documents provided.

4. Attach to these answers to interrogatories all documents upon which you intend to rely at the time of trial. [If said documents have been supplied in response to notice to produce, duplicates need not be supplied. Identification said documents by name and number of demand to which it was produced, will suffice.]

Answer and Objection to Interrogatory No. 4:

Defendant objects to this Interrogatory as premature, as it has not completed discovery or determined which documents it will rely upon at any trial of this matter. Defendant objects to this Interrogatory to the extent it seeks documents and/or information protected from disclosure by the attorney-client, work product, and/or litigation privileges. Subject to these objections and without waiving any objections, and pursuant to Rule 4:17-4(d), Defendant refers Plaintiff generally to the documents provided.

5. Set forth the names and addresses of all eyewitnesses to every occurrence or incident referred to in the complaint (by numbered paragraph in the Complaint) and their location at the time of the occurrence. If you assert you have no knowledge of the occurrence, and therefore no knowledge of the witnesses, so state as to each such occurrence.

Answer and Objection to Interrogatory No. 5:

Defendant objects to this Interrogatory as vague, ambiguous, confusing, overly broad, not reasonably limited in time or geographic scope, and thus rendered unduly burdensome. Defendant objects to this Interrogatory as vague and confusing to the extent it seeks identification of eyewitnesses to “every occurrence or incident referred to in the complaint” without further description or identification of what is meant by the term. Subject to these objections and without waiving any objections, and pursuant to Rule 4:17-4(d), Defendant refers Plaintiff to the individuals identified in the documents provided.

6. Set forth the names and addresses of each and every witness having knowledge of any facts or circumstances regarding:

- (a) The happening of any incident or occurrence set forth in the complaint;
- (b) Any admissions of the parties;
- (c) As to damages claimed with respect to personal injury.

Answer and Objection to Interrogatory No. 6:

Defendant objects to this Interrogatory as vague, ambiguous, overbroad, and not reasonably calculated to lead to the discovery of relevant and admissible evidence. Defendant objects to this Interrogatory as unduly burdensome, as it covers all individuals with knowledge regarding Defendant's employment policies, including without limitation its anti-discrimination, anti-harassment, and anti-retaliation policies, which includes all of Defendant's current and former employees, and Defendant's sales and business policies and practices for sales representatives, the identification of all such individuals is unduly burdensome and oppressive and would not lead to the discovery of relevant and admissible evidence. Defendant objects to this Interrogatory as vague and confusing to the extent it seeks identification of witnesses to "any incident or occurrence set forth in the complaint" without further description or identification of what is meant by the term. Defendant objects to this Interrogatory as overbroad as no personal injuries are at issue in this matter. Defendant objects to this Interrogatory as not reasonably limited in time or geographic scope. Subject to this objection and without waiving any objections, and pursuant to Rule 4:17-4(d), individuals believed to have knowledge or information relevant to Plaintiff's claims are identified in documents provided by Defendant in response to Plaintiff's Requests for Production of Documents.

7. Identify each expert whom you have consulted or retained in the past 7 years with regard to any complaint or charge of discrimination, harassment, hostile work environment, retaliation, and/or whistleblowing asserted against you by any employee.

CERTIFICATION

I, Hannah Duffy, certify that I am an HR Business Partner for sanofi-aventis US LLC, and am authorized to execute this Certification. I have reviewed the foregoing Defendant's Objections Answers to Plaintiff Winter's Interrogatories. I am informed and believe that the information contained in Defendant's Answers is true and correct to the best of my knowledge and information.

Dated: April 3, 2018

Hannah Duffy
HANNAH DUFFY