

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SANOFI-AVENTIS U.S., LLC,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 3:21-cv-634

PLAINTIFF’S RESPONSE TO MOTION TO INTERVENE

Plaintiff Sanofi-Aventis U.S., LLC (“Sanofi”) takes no position on the motion to intervene filed by the American Hospital Association and other covered entities, *see* Dkt. 34, in light of the following points.

First, because the movant-intervenors assert that their “interest in this lawsuit relates only to Sanofi’s claims regarding the Advisory Opinion” issued on December 30, 2020, Dkt. 34-1, Mem. in Supp. of Mot. to Intervene, at 7, their participation in this lawsuit should be limited to those claims. Indeed, the movant-intervenors do not claim any interest in the separate Administrative Dispute Resolution (“ADR”) Rule that is the subject of Sanofi’s motion for a preliminary injunction, *see* Dkt. 19, nor do they seek to respond to that motion, *see* Dkt. 34-1, Mem. in Supp. of Mot. to Intervene, at 10. Because the only interest that movant-intervenors claim in this lawsuit relates to the Advisory Opinion, their participation should be limited accordingly.

Second, the movant-intervenors have stated that they “are prepared to participate” in briefing regarding the Advisory Opinion “on whatever schedule the Court sets.” *Id.* The parties have reached a mutually agreeable briefing schedule for dispositive motions, subject to the Court’s approval, and that schedule should not be delayed due to movant-intervenors. *See* Dkt. 46, Joint Scheduling Motion.

Finally, although Sanofi disputes many of the characterizations in the motion to intervene—including statements regarding Sanofi’s 340B integrity initiative—the Court need not (indeed, cannot) resolve these factual disputes in adjudicating the motion to intervene. *See Palladino v. Corbett*, No. 13-cv-5641, 2014 WL 830046, at *1 n.1 (E.D. Pa. Mar. 4, 2014) (courts “must accept as true the non-conclusory allegations made in support of the motion to intervene”); *Endoheart AG v. Edwards Lifesciences Corp.*, No. 14-cv-1473, 2015 WL 6956603, at *2 & n.2 (D. Del. Nov. 6, 2015) (collecting cases), *report and recommendation adopted*, 2016 WL 1317203 (D. Del. Mar. 31, 2016). By taking no position on the motion to intervene, Sanofi thus does not concede the accuracy of the movant-intervenors’ assertions in any respect—and, in fact, denies them.

To the extent that the movant-intervenors disagree with any of the three points above, Sanofi opposes the motion to intervene.

Dated: March 22, 2021

Respectfully submitted,

s/ Jennifer L. Del Medico

Jennifer L. Del Medico

Toni-Ann Citera

(application *pro hac vice* pending)

Rajeev Muttreja

(application *pro hac vice* pending)

JONES DAY

250 Vesey Street

New York, New York 10281

Telephone: (212) 326-3939

Facsimile: (212) 755-7306

Brett A. Shumate

(application *pro hac vice* pending)

Megan Lacy Owen

(application *pro hac vice* pending)

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

Telephone: (202) 879-3939

Facsimile: (202) 626-1700

Counsel for Plaintiff

Sanofi-Aventis U.S. LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021 a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

March 22, 2021

s/ Jennifer L. Del Medico