

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JANET MAKINEN, et al.,

Plaintiffs,

v.

STIPULATED SCHEDULING  
ORDER AND DISCOVERY  
PLAN

06 Civ. 1762 (LLS)

SANOFI-AVENTIS U.S. LLC, et al.,

Defendants.  
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Plaintiffs Janet Makinen, Judith Lasswell, Christina Brothers and Kathleen Callahan ("plaintiffs") and Defendant sanofi-aventis U.S. LLC ("sanofi-aventis") hereby stipulate to the following Scheduling Order and Discovery Plan for the initial class certification phase of this lawsuit.

1. **Parties' Conference:** As required by the Court's March 10, 2006 Order for Conference Pursuant to Rule 16(b), Susan Chana Lask, counsel for plaintiffs, and Harvey L. Kaplan and John F. Kuckelman, counsel for sanofi-aventis, conferred by telephone on May 30, 2006 regarding this Stipulated Scheduling Order and Discovery Plan.

2. **Background and Statement of Issues:** On March 3, 2006, plaintiffs Janet Makinen, Judith Lasswell, Christina Brothers and Kathleen Callahan filed a putative class action complaint in this Court. Plaintiffs filed an Amended Complaint on April 24, 2006. Sanofi-aventis waived service of process on May 12, 2006; accordingly, its response is due on or before June 20, 2006.

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Sanofi-aventis manufactures and sells Ambien® (zolpidem tartrate) (hereinafter referred to as “Ambien®”). Ambien® is a non-benzodiazepine hypnotic of the imidazopyridine class that has been approved by the United States Food and Drug Administration (“FDA”) for short-term treatment of insomnia only on the prescription of a licensed physician.

The four plaintiffs purport to serve as class representatives for a class of persons who “purchased and ingested Ambien from 2000 to the present and experienced the side effects of amnesic nocturnal eating behavior and/or Sleep-Related Nocturnal Eating Disorder (NS-RED) (excessive eating while asleep) and somnambulism (sleepwalking) in which they were injured or damaged as a result of these side effects.” See Amended Complaint, ¶ 57.

As for the individual claims of the purported class representatives, Makinen, a Florida resident, claims that she ate in her sleep and has experienced substantial weight gain, food regurgitation and an ulcer as a result. Lasswell, a Florida resident, claims that she was arrested for shoplifting while under the influence of Ambien®. Brothers, a Texas resident, claims she drove a car while under the influence of Ambien® and was involved in a hit and run accident. Callahan, a New York resident, claims that she engaged in sleep-eating and that she was twice sexually assaulted while under the influence of Ambien®.

Plaintiffs allege seven separate theories of recovery: negligence, strict liability, breach of implied warranties, fraud, unfair trade practices, express warranty, and consumer fraud violations.

3. **Staged Proceedings:** Plaintiffs seek to maintain this case as a class action. Fed. R. Civ. P. 23(c) requires this Court to initially determine whether to certify this action as a class action. Accordingly, the initial stage of this litigation shall focus exclusively on class certification discovery and briefing. This Stipulated Scheduling Order and Discovery Plan shall govern this litigation through the Court's ruling on class certification. After the Court makes that ruling, the parties anticipate that the Court will schedule another status conference to address further scheduling issues not addressed in this Order, including discovery concerning the merits of whatever claims remain, a pre-trial order, a date for a final pre-trial conference, and a date for trial, as well as the anticipated length of trial, which will be to a jury.

4. **Amended Pleadings:** Plaintiffs have filed an Amended Complaint. Plaintiffs shall have until July 14, 2006, to seek leave to file and serve a second amended complaint and, if leave is granted, sanofi-aventis shall have thirty days from the date of service to answer, respond, or otherwise object. No further amendment shall be permitted without leave of court for good cause shown.

5. **Scope of Discovery:** During the initial class certification phase of this case, discovery shall be limited to those matters that are necessary for the Court to determine whether or not this case may be maintained as a class action under Fed. R. Civ. P. 23. Such class-certification discovery shall be limited in both scope and volume. The class-certification discovery permitted by this Order shall be deemed to satisfy the initial disclosure requirement of Rule 26(a)(1) at this stage of the proceedings. All other discovery is stayed until the Court rules on plaintiffs' motion for class certification, which is scheduled to be filed as indicated below.

6. **Class Certification Discovery:** Discovery related to class-certification issues shall be completed as follows:

- June 30, 2006** Plaintiffs shall furnish signed authorizations for the release of all medical, prescription, psychiatric, psychological, employment, insurance, and military records and a list of all treating physicians and medical facilities where plaintiffs received treatment. Plaintiffs reserve the right to assert any applicable privileges or objections.
- Present through October 6, 2006** The parties may engage in written discovery regarding class certification issues, provided that written requests must be submitted by August 11, 2006 so that written discovery will be completed by October 6, 2006.
- October 6, 2006 through December 18, 2006** Sanofi-aventis may depose the named plaintiffs, their prescribing and treating physicians, and fact witnesses regarding class certification issues.
- September 18, 2006** Plaintiffs shall serve on sanofi-aventis any expert reports and supporting materials plaintiffs intend to use in support of their motion for class certification. Such reports shall be prepared in compliance with Fed. R. Civ. P. 26(a)(2). Plaintiff anticipates offering testimony from experts in the fields of *sleep disorders and pharmacology.* LLS
- December 4, 2006 through February 5, 2007** Sanofi-aventis may depose plaintiffs' class certification experts.
- February 19, 2007** Sanofi-aventis shall serve on plaintiffs any expert reports and supporting materials that it intends to use in opposition to plaintiffs' motion for class certification. Such reports shall be prepared in compliance with Fed. R. Civ. P. 26(a)(2). Sanofi-aventis anticipates offering testimony from experts in the fields of psychiatry, psychology, neurology, sleep disorders, pharmacology and toxicology.

February 19, 2007 through April 20, 2007 Plaintiffs may depose sanofi-aventis' class certification experts.

April 20, 2007 Close of class certification discovery.

7. Class Certification Briefing:

A. Plaintiffs shall file their motion and suggestions in support of their motion for class certification, not to exceed ~~50~~<sup>35</sup> pages, no later than April 20, 2007, along with any supporting affidavits, depositions, or other materials that plaintiffs intend to rely upon in moving for class certification. LLS

B. Sanofi-aventis shall file its suggestions in opposition to class certification, not to exceed ~~50~~<sup>35</sup> pages, by May 21, 2007, along with any supporting affidavits, depositions, or other materials that sanofi-aventis intends to rely upon in opposing class certification. LLS

C. Plaintiffs shall file their reply suggestions in support of class certification, not to exceed 15 pages, by June 4, 2007.

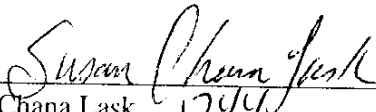
D. Sanofi-aventis shall file its surreply suggestions in opposition to class certification, not to exceed 15 pages, by June 18, 2007.

8. Further Proceedings and Status Conference: Within thirty days after the Court rules on plaintiffs' motion for class certification, the Court will, at its convenience, conduct a status conference to discuss, to the extent necessary, any remaining scheduling and discovery matters in this case, including discovery concerning the merits of whatever claims remain, a pre-trial order, a date for a final pre-trial conference, and a date for trial, as well as the anticipated length of trial, which will be to a jury..

9. Amendment of Scheduling Order and Discovery Plan: This Scheduling Order and Discovery Plan may be amended only on a showing of good cause not foreseeable at the time of this conference or when justice so requires.

DATED this 2<sup>nd</sup> day of June, 2006

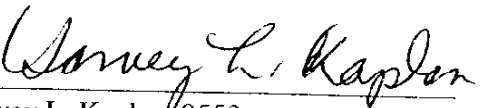
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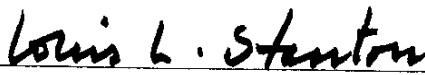
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**ATTORNEYS FOR DEFENDANT SANOFI-  
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**IT IS SO ORDERED.**

  
Louis L. Stanton  
United States District Court Judge

DATED: June 2, 2006