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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, EX REL. DAVID M. LOUIE, ATTORNEY GENERAL, Plaintiff, vs. BRISTOL-MYERS SQUIBB COMPANY, SANOFI-AVENTIS U.S. LLC, SANOFI US SERVICES INC., formerly known as SANOFI-AVENTIS U.S. INC., SANOFI-SYNTHELABO INC., and DOE DEFENDANTS 1 to 100, Defendants.	CIVIL NO. 14-1-0708-03 LECN (Other Civil Action) COMPLAINT; SUMMONS TO ANSWER CIVIL COMPLAINT

COMPLAINT

Plaintiff, the State of Hawaii, by David M. Louie, Attorney General (the "State"), brings this Complaint against Defendants Bristol-Myers Squibb Company ("BMS"), Sanofi-Aventis

U.S. LLC, Sanofi US Services Inc., formerly known as Sanofi-Aventis U.S. Inc., and Sanofi-Synthelabo Inc. (collectively, "Defendants") and alleges, upon information and belief, as follows:

INTRODUCTION

1. This action arises from Defendants' false, deceptive, and unfair labeling and promotion of their prescription antiplatelet drug Plavix (clopidogrel bisulfate), which are actionable under Hawaii law regarding Unfair or Deceptive Acts or Practices ("UDAP"), Haw. Rev. Stat. § 480-1 *et seq.* and Hawaii's False Claims Act ("FCA"), Haw. Rev. Stat. § 661-21 *et seq.*

2. Beginning in March 1998, until the present, Defendants have engaged in a false, deceptive, and unfair marketing strategy designed to increase revenues from Plavix. Since at least March 1998, Defendants knew or should have known that Plavix has diminished or no effect on approximately 30% of the patient population and that those patients for whom Plavix would not work could be identified through a simple genetic test. Yet, Defendants failed to disclose that negative efficacy information because it would adversely affect the number of Plavix prescriptions written and, thus, sales and revenues. For such patients, Plavix does not prevent heart attacks, strokes, or vascular death, and it presents a considerable risk of gastrointestinal bleeding and other complications. After scientists began to learn that Plavix has diminished or no effect on a significant percentage of the patient population, Defendants sought to protect Plavix's sales and increase revenues by marketing higher (and more expensive) doses of Plavix for such patients, placing them at even greater risk, while triggering substantially higher pharmacy costs incurred by government payors.

3. Since March 1998, Defendants have also falsely and misleadingly sought to replace aspirin with Plavix, which costs one hundred times more than aspirin, for treatment of patients at risk for ischemic events. Defendants ignored, concealed, and minimized clinical trial data and other information showing that Plavix is only as effective as – or in some cases even less effective than – aspirin in treating such patients, and that Plavix has a higher chance of causing gastrointestinal bleeding and other complications. Despite that information, Defendants falsely and misleadingly marketed Plavix as being more effective and safer than aspirin. Defendants also falsely and misleadingly marketed Plavix as being more effective and safer than other competitor drugs. In 2010, the American Stroke Association ("ASA") confirmed what Defendants knew or by the exercise of reasonable care should have known at all relevant times: "No studies have compared clopidogrel [Plavix] with placebo, and studies comparing it with other antiplatelet agents [including aspirin] have not clearly established that it is superior or even equivalent to any one of them."

4. In addition, Defendants falsely, deceptively, and unfairly marketed Plavix as effective and safe for uses for which the drug had not been shown to be effective or safe.

5. Defendants' aggressive marketing strategy, combined with Defendants' successful cover-up of mounting adverse efficacy and safety evidence, produced billions of dollars in profits for Defendants. Plavix's sales in the United States peaked at $6.62 billion in 2011.

6. The State seeks civil penalties for Defendants' deceptive and unfair trade practices and acts in violation of the UDAP, violations of Hawaii's False Claims Act, and disgorgement of Defendants' wrongfully acquired profits from the sale of Plavix in the State of Hawaii on or after March 17, 1998 through the present, and punitive damages. The State also

seeks to enjoin Defendants from engaging in such deceptive and unfair trade practices and acts in the future.

7. The State brings this action exclusively under the law of the State of Hawaii. No federal claims are being asserted, and to the extent that any claim or factual assertion set forth herein may be construed to have stated any claim under federal law, such claim is expressly and undeniably disavowed and disclaimed by the State.

8. Nor does the State bring this action on behalf of a class or any group of persons that can be construed as a class. The claims asserted herein are brought solely by the State and are wholly independent of any claims that individual users of Plavix may have against Defendants.

PARTIES

9. The State of Hawaii is a body politic created by the Constitution and laws of the State; as such, it is not a citizen of any state. This action, brought by the State in its sovereign capacity by and through David M. Louie, the Attorney General of the State of Hawaii, is authorized under the UDAP, Haw. Rev. Stat. §§ 480-2(d), 480-3.1, 480-15, the FCA, Haw. Rev. Stat. §§ 661-21 and 661-22, and under *parens patriae* authority, on behalf of the State to enforce Hawaii law. The Attorney General has the power to bring these claims on behalf of the State under the provisions of Haw. Rev. Stat. §§ 480-3.1, 661-10, and 661-22.

10. Upon information and belief, Defendant Bristol-Myers Squibb Company ("BMS") is a Delaware corporation with its principal corporate offices at 345 Park Avenue, New York, New York 10154 and facilities throughout the State of New Jersey. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times BMS has manufactured, advertised, labeled, marketed, promoted, sold, and distributed Plavix in the United States, and

has, directly or through and in concert with its co-Defendants, systematically and continuously advertised, marketed, promoted, sold, and/or distributed Plavix within the State of Hawaii. BMS is registered to do business in Hawaii.

11. Upon information and belief, Defendant Sanofi-Aventis U.S. LLC is a Delaware limited liability company with headquarters and research facilities located at 55 Corporate Drive, Bridgewater, New Jersey 08807. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times Sanofi-Aventis U.S. LLC has engaged in the business of manufacturing, developing, advertising, labeling, marketing, promoting, selling, and/or distributing Plavix in the United States, and has, directly or through and in concert with its co-Defendants, systematically and continuously advertised, marketed, promoted, sold, and/or distributed Plavix within the State of Hawaii.

12. Upon information and belief, Defendant Sanofi US Services Inc., formerly known as Sanofi-Aventis U.S. Inc., is a Delaware corporation with offices located at 55 Corporate Drive, Bridgewater, New Jersey 08807. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times Defendant Sanofi US Services Inc. fka Sanofi-Aventis U.S., Inc. has engaged in the business of manufacturing, developing, advertising, labeling, marketing, promoting, selling, and/or distributing Plavix in the United States, and has, directly or through and in concert with its co-Defendants, systematically and continuously advertised, marketed, promoted, sold, and/or distributed Plavix within the State of Hawaii.

13. Upon information and belief, Defendant Sanofi-Synthelabo Inc. is a Delaware corporation. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times Sanofi-Synthelabo Inc. has engaged in the business of manufacturing, developing, advertising, labeling, marketing, promoting, selling, and/or distributing Plavix in the United

States, and has, directly or through and in concert with its co-Defendants, systematically and continuously advertised, marketed, promoted, sold, and/or distributed Plavix within the State of Hawaii.

14. Defendants Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., formerly known as Sanofi-Aventis U.S., Inc., and Sanofi-Synthelabo Inc. are collectively referred to as "Sanofi" in this Complaint.

15. At all relevant times, Defendants have packaged, distributed, supplied, sold, placed into the stream of commerce, labeled, described, marketed, advertised, promoted, and purported to warn or purported to inform users regarding the benefits and risks associated with the use of the prescription drug Plavix.

16. DOE DEFENDANTS 1 to 100 are sued herein under fictitious names for the reason that after diligent and good faith efforts their names, identities, and capacities, where individual, corporate, associate, or otherwise, are presently unknown to Plaintiff. Plaintiff will make the names or identities of said Defendants known to the Court by filing a motion for certification after the same have been ascertained. Plaintiff is informed and believes, and based thereupon alleges, that each of the Defendants designated herein as a DOE DEFENDANT has taken part in and participated with, and/or aided and abetted, some or all of the other Defendants in some or all of the matters referred to herein and has been in some manner responsible for some or all of the deceptive and unfair acts and practices and violations of Hawaii's False Claims Act alleged herein.

17. Plaintiff is informed and believes, and based thereupon alleges, that at all relevant times, each Defendant has occupied agency, employment, joint venture, or other relationships with each of the other named and DOE DEFENDANTS; that at all times herein mentioned each

Defendant has acted within the course and scope of said agency, employment, joint venture, and/or other relationship; that each other Defendant has ratified, consented to, and approved the acts of its agents, employees, joint venturers, and representatives; and that each has actively participated in, aided and abetted, or assisted one another in the commission of the wrongdoing alleged in this Complaint.

18. At all relevant times, Defendants, and each of them, have engaged in the business of, or were successors in interest to, entities engaged in the business of researching, licensing, designing, formulating, developing, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging, advertising, distributing, and/or selling the prescription drug Plavix as an antiplatelet medication to individuals and entities in the State of Hawaii, including the City and County of Honolulu, State of Hawaii.

19. At all relevant times, Defendants have been authorized to do business within the State of Hawaii and have in fact sold and supplied Plavix to individuals and entities located within every county of the State of Hawaii.

JURISDICTION & VENUE

20. Subject matter jurisdiction for this case is conferred upon this Court pursuant to Haw. Rev. Stat. § 603-21.5(3). Defendants are subject to personal jurisdiction in this Court pursuant to Haw. Rev. Stat. § 634-35(a) , (b) because the causes of actions asserted herein arose from Defendants' transaction of business in Hawaii and commission of tortious acts in Hawaii, including the City and County of Honolulu, State of Hawaii. Accordingly, Defendants are deemed to be doing business in the State of Hawaii, including the City and County of Honolulu, State of Hawaii, and are thereby subject to personal jurisdiction in this Court.

21. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332, as the State is not a citizen of any state and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by the Complaint, as it sets forth herein exclusively viable state law claims against Defendants. Nowhere herein does Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in the allegations of this Complaint do not implicate any substantial federal issues and do not turn on the necessary interpretation of federal law. Specifically, Plaintiff expressly avers that the only causes of action claimed, and the only remedies sought herein, are founded upon the positive statutory, common, and decisional laws of Hawaii. Further, the assertion of federal jurisdiction over the claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities. Accordingly, any exercise of federal jurisdiction is without basis in law or fact.

22. Venue is proper in this Court pursuant to Haw. Rev. Stat. §§ 661-10 and 480-21(b), because the Office of the Attorney General and the seat of the State Government are situated in the City and County of Honolulu, State of Hawaii, and the claims for relief asserted herein arose in large part in the City and County of Honolulu, State of Hawaii.

FACTUAL BACKGROUND

I. DEFENDANTS' FALSE, DECEPTIVE, AND UNFAIR MARKETING OF PLAVIX

23. Plavix is an oral tablet formulation of clopidogrel bisulfate manufactured by BMS and jointly marketed in the United States by Defendants. All marketing and pricing decisions for Plavix have been made and implemented jointly by Defendants. Since March 17, 1998, Plavix

has been exclusively marketed in the United States by Defendants under the registered trademark "Plavix®."

24. Plavix was first approved by the FDA on November 17, 1997 for the reduction of atherosclerotic events, *i.e.*, myocardial infarction (also known as a heart attack), stroke, and vascular death, in patients with atherosclerosis documented by recent stroke, recent myocardial infarction, or established peripheral arterial disease ("PAD"). On February 27, 2002, the FDA approved Plavix for the treatment of patients with a certain type of Acute Coronary Syndrome (unstable angina/non-ST-elevation myocardial infarction), also known as "NSTEMI." On August 17, 2006, the FDA approved Plavix for the treatment of patients with another type of Acute Coronary Syndrome (ST-elevation myocardial infarction), also known as "STEMI."

A. Failure to Disclose Plavix's Diminished Effectiveness in a Significant Percentage of the Patient Population

25. On March 25, 2010, Defendants added a black box warning to Plavix's label that states that Plavix does not become effective until it is metabolized into its active form by the CYP2C19 liver enzyme. Individuals with particular CYP2C19 genotypes are CYP2C19 poor metabolizers. The black box warning added in March 2010 cautions that Plavix has diminished effectiveness in patients who are CYP2C19 poor metabolizers, and recommends alternative therapies in such patients.

26. It is believed that approximately 30% of the patient population consists of CYP2C19 poor metabolizers. East Asians and Pacific Islanders are particularly prone to be CYP2C19 poor metabolizers. It has been reported that 55% of East Asians and up to 79% of Pacific Islanders are CYP2C19 poor metabolizers. According to the 2010 U.S. Census, Asians constitute 38.6% of Hawaii's population, Pacific Islanders constitute 10% of Hawaii's population, and 23.6% of Hawaii's population consists of individuals with a mixed racial

background. Thus, Plavix's diminished effectiveness is especially prevalent among Hawaii consumers.

27. The black box warning added in March 2010 also states that patients who are CYP2C19 poor metabolizers treated with Plavix have higher cardiovascular event rates than patients with normal CYP2C19 function. The black box warning further states that tests are available to identify a patient's CYP2C19 genotype and aid in determining prescribing decisions, and to consider alternative treatment in patients identified as CYP2C19 poor metabolizers.

28. Plaintiff is informed and believes, and based thereupon alleges, that since at least March 1998, 12 years before the black box warning was added, Defendants knew or by the exercise of reasonable care should have known that Plavix has diminished or no effect on patients who are CYP2C19 poor metabolizers. Upon information and belief, Defendants, however, failed to disclose that information in order to protect Plavix's sales and revenues.

29. Plaintiff is also informed and believes, and based thereupon alleges, that since at least 2003, Defendants knew or by the exercise of reasonable care should have known that Plavix has diminished or no effect on patients who are also taking drugs that are CYP2C19 inhibitors. Upon information and belief, Defendants, however, failed to disclose that information in order to protect Plavix's sales and revenues.

30. Plaintiff is further informed and believes, and based thereupon alleges, that when information about Plavix's lack or utter absence of efficacy in patients who are poor CYP2C19 metabolizers became known in the scientific community through other channels, Defendants attempted to undermine that information and protect Plavix's sales and increase its revenues by urging physicians to prescribe higher (and more expensive) doses of Plavix to such patients,

putting them at a higher risk of gastrointestinal bleeding and other complications associated with Plavix.

31. Scientific literature available years before Defendants submitted Plavix's new drug application ("NDA") in 1997 described the genetic variations of the CYP2C19 enzyme that cause it to metabolize poorly in a significant percentage of the patient population, and the prevalence of those genetic variations in certain populations (e.g., Caucasian, African, and Asian). Such literature also described the effect of those genetic variations on drugs dependent on the CYP2C19 enzyme. An article in the Journal of Biological Chemistry concluded in 1994 that a defect in the CYP2C19 enzyme interfered with metabolization of numerous drugs. However, and importantly, the article's authors stated that they were able to test for the defect through a simple genetic test.

32. When Defendants submitted their NDA for Plavix in 1997, they relied on a very small data set and claimed not to understand exactly how the drug was metabolized. However, Defendants indicated that they knew that Plavix was metabolized in the liver, and that the CYP2C19, CYP2B6, and CYP3A4 enzymes of the cytochrome P450 system were principally involved.

33. In 2002 and 2003, published studies distinguished between responders and non-responders to Plavix. In 2002, individual variations in responsiveness to Plavix were reported.

34. Several articles published in 2004 and 2005 confirmed that Plavix has diminished or no effect on a significant portion of Plavix patients because they metabolize the drug poorly.

35. In 2005, the Journal of the American College of Cardiology published the results of a study, which Defendants sponsored, examining the effectiveness of 544 individuals to Plavix, concluding that "there is a very large range of responsiveness to ex vivo testing" in

patients using Plavix, and that "it is likely that a small but significant portion of patients are receiving inadequate protection from thrombotic events despite currently standard antiplatelet therapy, whereas a similar proportion may be at higher risk for bleeding complications."

36. In February 2006, the Journal of the American College of Cardiology published an abstract concluding that patients with a CYP2C19*2 allele are associated with a diminished response to Plavix, which may also explain why patients had previously reported variability in response to the drug.

37. In June 2006, the American Society of Hematology published the results of a study in an article stating that "pharmacodynamic response to [Plavix] varies widely from subject to subject, and about 25% of patients treated with standard [Plavix] doses display low ex vivo inhibition of ADP-induced platelet aggregation." The authors concluded that "response to [Plavix] was strongly influenced by the CYP2C19 genotypic status."

38. In January 2009, a study in the New England Journal of Medicine concluded that among persons treated with Plavix, "carriers of a reduced-function CYP2C19 allele had significantly lower levels of the active metabolite of [Plavix], diminished platelet inhibition, and a higher rate of major adverse cardiovascular events, including stent thrombosis, than did noncarriers." That study found that approximately 30% of the study participants had at least one reduced-function CYP2C19 allele. A different study published in 2009 estimated that the presence of such an allele is even more prevalent in African-American and Asian populations.

39. Plaintiff is informed and believes, and based thereupon alleges, that Defendants have known or should have known of additional information regarding Plavix's diminished or complete lack of effectiveness in many patients since at least March 1998.

40. There is no indication that Defendants brought any of the foregoing information about Plavix's lack of effectiveness to the public's attention until after the FDA notified Defendants in March 2009 of "new safety information" that should be included in Plavix's labeling; Defendants knew or should have known of information regarding Plavix's diminished or complete lack of effectiveness in many patients for over a decade.

41. Plaintiff is further informed and believes, and based thereupon alleges, that Defendants have misrepresented and failed to adequately disclose that Plavix is less effective in elderly patients than in younger patients, which Defendants knew or in the exercise of reasonable care should have known since at least August 2001.

42. By making statements about Plavix's efficacy and/or safety without disclosing information regarding Plavix's diminished or complete lack of effectiveness in many patients, Defendants made false and misleading statements and representations when marketing the drug, including in its labeling, sales materials, and other promotional materials and efforts.

43. Upon information and belief, at all relevant times, Defendants made the foregoing statements and omissions concerning Plavix's efficacy and safety to healthcare providers and the general public throughout the nation, including Hawaii.

B. False, Deceptive, and Unfair Superiority Claims

44. Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have sought to increase Plavix sales and market share by making false and misleading superiority claims about Plavix relative to aspirin, the traditional treatment for patients with or at risk for atherosclerosis. Aspirin costs approximately $.04 per pill, while Plavix costs approximately $4.00 per pill.

45. The efficacy and safety of Plavix and aspirin for treatment of patients at risk for ischemic events were studied in the *Clopidogrel vs. Aspirin in Patients at Risk for Ischemic Events* ("CAPRIE") clinical trial, the results of which were published in 1996. The CAPRIE trial studied 19,185 patients who were divided into three subgroups of approximately 6,300 patients. The three subgroups were respectively comprised of: (1) patients who experienced a recent stroke; (2) patients who experienced recent myocardial infarction; and (3) patients who experienced symptomatic PAD. Half of the patients in each subgroup were given 325 mg of aspirin once daily and the other half were given 75 mg of Plavix once daily. The primary objective of the study was to compare the rates of ischemic stroke, myocardial infarction, and vascular death between patients taking Plavix and patients taking aspirin.

46. The CAPRIE trial results showed an absolute risk reduction of only 0.5%. In other words, out of every 1,000 patients, a mere 5 patients experienced a benefit from treatment with Plavix in comparison to treatment with aspirin. While Plavix showed a slightly significant relative risk reduction of 8.7%, that figure was based in large part on the results in the PAD subgroup, which demonstrated a relative risk reduction of 23.8%. In the subgroups comprised of patients who had a recent stroke or myocardial infarction, the trial results did not show that Plavix had a statistically significant risk reduction; in fact, aspirin had a greater relative risk reduction than Plavix in patients who had a recent myocardial infarction. Plaintiff is informed and believes, and based thereupon alleges, that notwithstanding those results, since Plavix's product launch in March 1998, Defendants have falsely and misleadingly marketed Plavix as being superior to aspirin in treating stroke and heart attack patients in order to take market share away from aspirin medications.

47. Plaintiff is also informed and believes, and based thereupon alleges, that since March 1998, Defendants have falsely and misleadingly promoted Plavix and the CAPRIE trial results by not fully disclosing the results of the trial's subgroups, and by minimizing and failing to provide all of the data concerning adverse events occurring in the CAPRIE trial and other clinical trials involving Plavix.

48. Relatedly, Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have falsely and misleadingly promoted Plavix for primary prevention of disease, including primary prevention of strokes and myocardial infarctions, in all patients at risk for atherosclerosis. Plavix has not been approved for primary prevention, and it is not the standard of care. Generic aspirin remains the standard of care for patients with or at risk for atherosclerosis.

49. Similarly, Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have also falsely and misleadingly promoted Plavix as being more effective and safer than other competitors, such as Aggrenox, in order to increase Plavix's sales and market share. On information and belief, Defendants' strategy with respect to such competitors was similar to its strategy regarding aspirin in that Defendants made false and misleading statements about clinical trials involving those competitors when the trial results did not support Defendants' marketing messages.

50. Plaintiff is also informed and believes, and based thereupon alleges, that Defendants falsely and misleadingly promoted Plavix at much higher dosages than those approved by the FDA in order to compensate for the drug's low efficacy, while failing to disclose that Plavix is associated with hemorrhagic adverse events at its recommended dosage

and that higher dosages of Plavix increase the risk of those and other adverse events associated with Plavix.

51. Further, Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have also increased Plavix's sales and market share by falsely and misleadingly promoting the drug as being effective and safe for uses for which it had not been demonstrated to be effective or safe.

52. In 2010, the ASA confirmed what Defendants knew or should have known all along when the ASA amended its *Guidelines for the Prevention of Stroke in Patients with Ischemic Stroke or Transient Ischemic Attack* (the "2010 ASA *Guidelines*") and stated that "[n]o studies have compared clopidogrel with placebo, and studies comparing it with antiplatelet agents have not clearly established that it is superior or equivalent to any one of them."

53. The 2010 ASA *Guidelines* also stated that "there have been no clinical trials to indicate that switching antiplatelet agents reduces the risk for subsequent events." Plaintiff is informed and believes, and based thereupon alleges, that Defendants knew or should have known that switching patients from another antiplatelet medication to Plavix had not been shown to reduce the risk for subsequent events, yet Defendants have falsely, deceptively, and unfairly misrepresented and promoted such medication changes at all relevant times in order to increase Plavix's sales and market share.

54. In addition, Plaintiff is informed and believes, and based thereupon alleges, that Defendants have falsely, deceptively, and unfairly marketed Plavix by failing to timely disclose the results of the *Clopidogrel for High Atherothrombotic Risk and Ischemic Stabilization, Management, and Avoidance* ("CHARISMA") trial that showed no benefit of combination therapy in patients taking Plavix and aspirin versus patients taking aspirin alone. The

CHARISMA trial also showed a significant increase in bleeding symptoms in patients taking Plavix and aspirin versus patients taking aspirin alone.

55. Defendants' marketing efforts also encompassed their labeling of Plavix, as indicated above. At all relevant times, Defendants made false or misleading statements and representations about Plavix's efficacy in the drug's labeling, including its package insert or label, as well as in sales materials, and other promotional materials and efforts.

56. Upon information and belief, at all relevant times, Defendants made the foregoing statements and omissions about Plavix's purported efficacy and superiority to healthcare providers and the general public throughout the nation, including Hawaii.

C. Additional False, Deceptive, and Unfair Conduct Concerning Important Safety Information

57. With respect to safety, the CAPRIE trial results showed less gastrointestinal bleeding in patients taking Plavix than in patients taking aspirin. But, the dosage of aspirin used in the trial—325 mg daily—is more than four times higher than the average dosage physicians advise for their patients. Physicians' average recommended dosage of 81 mg daily is just as effective as the 325 mg daily dosage but much less likely to lead to gastrointestinal bleeding. Plaintiff is informed and believes, and based thereupon alleges, that Defendants knew or should have known of the misleading nature of the CAPRIE trial results since at least March 1998, yet Defendants falsely and misleadingly marketed Plavix as being as safe or safer than aspirin based on the CAPRIE trial results. Plaintiff is also informed and believes, and based thereupon alleges, that since March 1998, Defendants have misrepresented and failed to adequately disclose important safety information about Plavix revealed in the CAPRIE trial, other clinical trials, and other sources of adverse event information, including information showing that Plavix is less safe than aspirin.

58. Although Defendants have never compared Plavix to a lower dosage of aspirin in a clinical trial, in *Clopidogrel versus Aspirin and Esomepraxole to Prevent Recurrent Ulcer Bleeding*, a study published in the New England Journal of Medicine in January 2005, Plavix was demonstrated to cause appreciably more gastrointestinal bleeding than aspirin taken in conjunction with Prilosec, an inexpensive over-the-counter drug, in patients with a history of aspirin-induced ulcers. The study demonstrated that switching patients who had aspirin-induced ulcers from aspirin to Plavix is neither safe nor anywhere near as cost-effective as adding Prilosec to aspirin therapy. Plaintiff is informed and believes, and based thereupon alleges, that Defendants were aware of that circumstance many years before that study was published, and did not disclose the results of that study to healthcare professionals or the general public after the study was published, but rather continued to falsely and misleadingly market Plavix as being as safe or safer than aspirin.

59. Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have falsely and misleadingly marketed Plavix as having a lower risk of gastrointestinal bleeding than aspirin in patients with an increased risk of gastrointestinal bleeding.

60. Plaintiff is informed and believes, and based thereupon alleges, that since at least March 1998, Defendants knew or should have known that Plavix causes more gastrointestinal bleeding and other complications than other antiplatelet medications, yet Defendants misrepresented and failed to adequately disclose that information to healthcare providers and the general public.

61. Plaintiff is informed and believes, and based thereupon alleges, that since March 1998, Defendants have misrepresented and failed to adequately disclose that patients are at a

higher risk of gastrointestinal bleeding and other complications when taking aspirin in conjunction with Plavix than when taking aspirin alone.

62. Plaintiff is informed and believes, and based thereupon alleges, that since at least August 2001, Defendants have misrepresented and failed to adequately disclose that elderly patients taking Plavix have an increased risk of gastrointestinal bleeding as compared to younger patients taking Plavix.

63. As noted above, Defendants' marketing efforts also encompassed their labeling of Plavix. At all relevant times, Defendants made false or misleading statements and representations about Plavix's safety in the drug's labeling, including its package insert or label, sales materials, and other promotional materials and efforts.

64. Upon information and belief, at all relevant times, Defendants made the foregoing statements and omissions about Plavix's safety to healthcare providers and the general public throughout the nation, including Hawaii.

D. The FDA's Repeated Objections to Defendants' False, Deceptive, and Unfair Marketing

65. As discussed more fully above, Defendants have systematically and deliberately promoted Plavix through false and misleading marketing that overstates the drug's efficacy, advances unsubstantiated superiority claims, and minimizes critical adverse event and risk information. As a result, the FDA has repeatedly admonished Defendants' promotion of Plavix.

66. For example, on November 23, 1998, the FDA's Division of Drug Marketing, Advertising, and Communications ("DDMAC") reprimanded Sanofi, stating that Defendants' dissemination of a letter, purportedly authored by a physician, violated the Federal Food, Drug, and Cosmetic Act ("FDCA") because it promoted Plavix for an unapproved use (immediately prior to coronary artery stent placement) and an unapproved dose (300 mg loading dose), as well

as because it lacked fair balance in failing to disclose safety risks associated with the use of Plavix. In particular, the letter explained as follows: "Because Plavix is associated with hemorrhagic adverse events at recommended 75 mg/day dose, promotion of Plavix in patients receiving coronary artery intervention, at four times the recommended dose, in combination with other agents known to increase the risk of bleeding, raises significant patient safety concerns."

67. On December 18, 1998, DDMAC again admonished Sanofi, stating that multiple promotion materials it disseminated—a brochure, a journal advertisement, and a video—contained promotional claims that were false or misleading and lacking in fair balance because they made unsubstantiated superiority claims about Plavix relative to aspirin, overstated Plavix's efficacy, and minimized or failed to adequately present adverse event and risk information.

68. On May 9, 2001, DDMAC alerted Sanofi that its dissemination of a particular visual aid for Plavix contained false or misleading promotional claims because it overstated the drug's efficacy, included an unsubstantiated superiority claim about Plavix relative to aspirin, and included a misleading efficacy presentation. In particular, the Warning Letter stated:

> On page 4 of the visual aid you present the claim, "Significant overall risk reduction vs. aspirin 325 mg in CAPRIE, a 3 year study of 19,185 patients." This claim is misleading because it suggests that Plavix is superior to aspirin when such has not been demonstrated by substantial evidence. ***As previously stated in our December 18, 1998, untitled letter, the CAPRIE trial does not provide substantial evidence to support the implication that Plavix has superior efficacy over aspirin. Therefore, claims suggesting that Plavix is significantly better than aspirin are misleading*** because they are not based on substantial evidence.

69. On June 9, 2001, DDMAC again reprimanded Sanofi, stating that the dissemination of a direct-to-consumer television advertisement for Plavix was misleading and violated regulatory requirements because it minimized the role of physicians in determining

whether Plavix is the appropriate therapy for a patient's condition, and because it did not ensure adequate provision for disseminating Plavix's approved product labeling.

70. On March 26, 2009, DDMAC again reprimanded Sanofi, stating that three of its internet advertisements were misleading because they made representations or suggestions about the efficacy of Plavix but failed to communicate any risk information associated with the use of the drug, thereby indicating that Plavix is safer than has been demonstrated.

E. The Impact of Defendants' False, Deceptive, and Unfair Marketing of Plavix

71. As discussed above, Defendants launched and maintained a massive promotional campaign to increase Plavix's sales and market share. Plavix's blockbuster sales were driven by Defendants' decision to put marketing, sales, and corporate profits ahead of science and patient safety. Plaintiff is informed and believes, and based thereupon alleges, that Defendants knew that the dissemination of information about Plavix's true efficacy and safety profile would devastate Plavix's sales and make Plavix unable to compete with other established, cheaper, and safer atherosclerosis therapies. Thus, Defendants chose, and continue to choose, to put their corporate profits ahead of patients' safety and repeatedly failed, and continued to fail, to disclose critical efficacy and safety information about Plavix, including information about diminished or no responsiveness to Plavix that has led to the need for a black box warning on Plavix's label.

72. As shown above, Defendants' corporate strategy and business model is dictated not by science, but by sales and marketing. Plaintiff is informed and believes, and based thereupon alleges, that Defendants' marketing and commercial personnel exert extensive control over scientific and medical decisions, such as the initiation of clinical trials, the types of trials done, the design of those trials, and the reporting and publication of trial data, all with the

ultimate goal of producing further support for Defendants' marketing messages and bolstering sales of Plavix.

73. On information and belief, Defendants also obscured or failed to report important safety information, including information relating to Plavix's risk of gastrointestinal bleeding, because doing so would jeopardize Plavix's sales and would be inconsistent with Defendants' key marketing and sales messages, as discussed above. Defendants' top priority is neither science nor safety, but rather marketing. Marketing concerns infected and distorted Defendants' entire Plavix scientific program and continue to do so to this today.

74. Further, Plaintiff is informed and believes, and based thereupon alleges, that Defendants maintained a marketing-based publication strategy designed to misleadingly influence medical and scientific literature by promoting the publication of medical and scientific articles that would support their marketing messages about Plavix's efficacy and safety and/or suggest dissatisfaction with competing therapies. On information and belief, that strategy included practices such as ghostwriting articles and hiring outside ghostwriting companies, giving Defendants' marketing personnel editorial and substantive input into decisions about what scientific studies to publish and the actual content of such publications, and forming misleading financial and promotional relationships with authors, "opinion leaders," and other physicians. On information and belief, Defendants gave their marketing departments extensive control over Defendants' research and publication decisions so that medical and scientific publications could be used as tools to promote Defendants' Plavix marketing messages.

75. In short, Defendants have profited tremendously by making false and misleading statements and representations regarding Plavix's efficacy and safety, as detailed above.

76. Plaintiff is informed and believes, and based thereupon alleges, that Defendants' conduct described herein is only a fraction of their false and misleading Plavix marketing.

77. Defendants failed to adequately disclose facts sufficient to arouse suspicion of the existence of the claims that Plaintiff now asserts. Plaintiff was not alerted to the existence and scope of Defendants' wrongful conduct and the claims arising from such conduct, and could not have acquired such knowledge earlier through the exercise of reasonable diligence. Through their public statements, marketing, and advertising, Defendants' self-concealing scheme and affirmative conduct to perpetuate that scheme deprived Hawaii patients, their insurers, public healthcare providers, public entities, and government payors of actual or presumptive knowledge of facts sufficient to put them on notice of potential claims.

COUNT I
VIOLATION OF HAWAII LAW ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES, HAW. REV. STAT. § 480-1 *ET SEQ.*

78. Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint as if set forth fully herein.

79. The UDAP sets forth that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Haw. Rev. Stat. § 480-2(a).

80. Among other things, Haw. Rev. Stat. § 481A-3(a) defines actions that constitute a "deceptive trade practice" as including, but not limited to, the following:

> (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> * * *
>
> (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ;
>
> * * *

> (9) Advertises goods or services with the intent not to sell them as advertised;
>
> * * *
>
> (12) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Haw. Rev. Stat. § 481A-3(a)(5), (9), (12).

81. As set forth herein, Defendants' actions of labeling and promoting Plavix fit within the definitions and scope of the UDAP.

82. The Attorney General of the State of Hawaii is authorized to bring an action to redress unfair or deceptive acts or practices under Haw. Rev. Stat. §§ 661-10 and 480(2)(d). The Attorney General is specifically charged with the administration of the UDAP, and may act *sua sponte* as the agent and legal representative of the State in civil proceedings to enforce the statute.

83. Defendants' unfair or deceptive acts or practices described above constitute multiple, separate violations of the UDAP.

84. For example, Defendants engaged in unfair or deceptive acts or practices by failing to disclose, in Plavix's labeling and otherwise, that Plavix has diminished or no effect on a significant percentage of the patient population.

85. Defendants also engaged in unfair or deceptive acts or practices by making statements about Plavix's efficacy and/or safety, in Plavix's labeling and otherwise, without disclosing that Plavix has diminished or no effect on a significant percentage of the patient population.

86. Defendants also engaged in unfair or deceptive acts or practices by falsely and misleadingly marketing Plavix as being more effective and safer than aspirin in Plavix's labeling and otherwise.

87. Defendants also engaged in unfair or deceptive acts or practices by failing to disclose, in Plavix's labeling and otherwise, that Plavix has a greater chance of causing gastrointestinal bleeding and other complications than aspirin.

88. Defendants also engaged in unfair or deceptive acts or practices by falsely and misleadingly marketing Plavix as more effective and safer than other competitor drugs in Plavix's labeling and otherwise.

89. Defendants also engaged in unfair or deceptive acts or practices by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as effective and safe for uses for which the drug had not been shown to be effective and safe.

90. Defendants also engaged in unfair or deceptive acts or practices by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as having a lower risk of gastrointestinal bleeding than aspirin in patients with an increased risk of gastrointestinal bleeding.

91. Defendants also engaged in unfair or deceptive acts or practices by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as being as safe and effective in elderly patients as in younger patients.

92. In addition, Defendants engaged in unfair or deceptive acts or practices by failing to adequately disclose Plavix's true efficacy and safety profile in the drug's labeling, sales materials, and other promotional materials and efforts.

93. Those false and misleading representations and omissions were likely to mislead Hawaii healthcare providers and patients acting reasonably under the circumstances, and were made by Defendants in connection with their promotion and sale of Plavix in their regular

conduct of their trade or business within Hawaii, directly or indirectly affecting the people of the State of Hawaii.

94. Those false and misleading representations and omissions were material because they involve information that would be important to consumers and, therefore, likely their choice of, or conduct regarding, Plavix.

95. Those false and misleading representations and omissions were unfair because they offend public policy and were immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

96. Plaintiff is informed and believes, and based thereupon alleges, that Defendants knew or should have known at the time of making those representations or omissions, or causing those representations or omissions to be made, that such representations or omissions were material and likely to mislead the public. In addition, Defendants knew or should have known that their marketing and promotional efforts were creating an untrue and misleading impression of the benefits and risks of Plavix.

97. Defendants' violations of the UDAP justify penalties of up to $10,000, per Defendant, for each violation.

COUNT II
VIOLATION OF THE UDAP, CONSUMER FRAUDS AGAINST ELDERS
HAW. REV. STAT. § 480-13.5

98. Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint as if set forth fully herein.

99. The UDAP sets forth that "[i]f a person commits a violation under section 480-2 which is directed toward, targets, or injures an elder, a court, in addition to any other civil

penalty, may impose a civil penalty not to exceed $10,000 for each violation." Haw. Rev. Stat. § 480-13.5(a).

100. Defendants have knowingly marketed Plavix specifically to elderly patients, many of whom are retired, through the above-described unfair and deceptive acts and practices.

101. As a result of Defendants' unfair or deceptive acts or practices directed specifically towards elders, Defendants' violation justify assessing additional penalties of up to $10,000, per Defendant, for each violation of the UDAP that was directed toward or targeted elders.

COUNT III
VIOLATION OF HAWAII'S FALSE CLAIMS ACT, HAW. REV. STAT. § 661-21 *et set.*

102. Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint as if set forth fully herein.

103. Under Haw. Rev. Stat. § 661-21(a), a person is liable for civil penalties, *inter alia*, for:

(1) Knowingly present[ing], or caus[ing] to be presented, a false or fraudulent claim for payment or approval; and

(2) Knowingly mak[ing], us[ing], or caus[ing] to be made or used, a false record or statement material to a false or fraudulent claim.

Haw. Rev. Stat. § 66-21(1), (2).

104. The Attorney General of the State of Hawaii is authorized to bring an action to redress violations of Haw. Rev. Stat. § 661-21. The Attorney General may act *sua sponte* as the agent and legal representative of the State in civil proceedings to enforce Hawaii's False Claims Act.

105. Defendants' false and misleading acts or practices described above constitute multiple, separate violations of Haw. Rev. Stat. §§ 661-21(a)(1) and 661-21(a)(2).

106. For example, Defendants "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by failing to disclose, in Plavix's labeling and otherwise, that Plavix has diminished or no effect on a significant percentage of the patient population.

107. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by making statements about Plavix's efficacy and/or safety, in Plavix's labeling and otherwise, without disclosing that Plavix has diminished or no effect on a significant percentage of the patient population.

108. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by falsely and misleadingly marketing Plavix as being more effective and safer than aspirin in Plavix's labeling and otherwise.

109. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by failing to disclose, in Plavix's labeling and otherwise, that Plavix has a greater chance of causing gastrointestinal bleeding and other complications than aspirin.

110. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by falsely and

misleadingly marketing Plavix as more effective and safer than other competitor drugs in Plavix's labeling and otherwise.

111. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as effective and safe for uses for which the drug had not been shown to be effective and safe.

112. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as having a lower risk of gastrointestinal bleeding than aspirin in patients with an increased risk of gastrointestinal bleeding.

113. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by falsely and misleadingly marketing Plavix, in Plavix's labeling and otherwise, as being as safe and effective in elderly patients as in younger patients.

114. Defendants also "knowingly," as defined in Haw. Rev. Stat. § 661-21(e), caused false or fraudulent claims for payment or approval to be presented and made, used, or caused to be made or used false records or statements material to false or fraudulent claims by failing to adequately disclose Plavix's true efficacy and safety profile in the drug's labeling, sales materials, and other promotional materials and efforts.

115. By "knowingly" engaging in the above-described conduct, Defendants acted:

(a) With actual knowledge of the information; or

(b) In deliberate ignorance of the truth or falsity of the information; or

(c) With reckless disregard of the truth or falsity of the information.

116. Defendants' violations of Hawaii's False Claims Act justify penalties of up to $11,000, per Defendant, for each violation.

COUNT IV
UNJUST ENRICHMENT

117. Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint as if set forth fully herein.

118. Individuals and entities in Hawaii conferred a benefit on Defendants in the form of the profits Defendants obtained because of sales of Plavix in Hawaii.

119. Defendants knowingly accepted such profits, to which they were not entitled.

120. Defendants' acceptance and retention of such profits under these circumstances was and is unjust and inequitable.

121. As a matter of equity, Defendants should be required to disgorge their unjustly obtained profits from purchases of Plavix in Hawaii.

COUNT V
PUNITIVE DAMAGES

122. Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint as if set forth fully herein.

123. By engaging in the above-described unfair or deceptive acts or practices, Defendants acted wantonly or oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations.

124. By engaging in the above-described unfair or deceptive acts or practices, Defendants also engaged in willful misconduct and exhibited that entire want of care that would raise the presumption of a conscious indifference to consequences.

125. Accordingly, Plaintiff should be awarded punitive damages under Haw. Rev. Stat. § 661-10.

RELIEF

WHEREFORE, the State of Hawaii, by and through its Attorney General, respectfully requests that this Court grant the following relief:

1. Entering Judgment in favor of the State in a final order against each of the Defendants;

2. Enjoining the Defendants and their employees, officers, directors, agents, successors, assignees, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in unfair or deceptive acts or practices in the marketing of Plavix in Hawaii and ordering temporary, preliminary, or permanent injunction;

3. Declaring that each act and omission of each of the Defendants described in this Complaint constitute multiple, separate violations of the UDAP;

4. Imposing civil penalties of up to $10,000, per Defendant, for each repeated violation of the UDAP;

5. Imposing additional civil penalties of up to $10,000, per violation, per Defendant, for each repeated and willful violation of the UDAP that was directed toward or targeted elders;

6. Imposing civil penalties of not less than $5,500 and up to $11,000, per Defendant, for each repeated violation of Hawaii's False Claims Act, plus three times the amount of damages that the State has sustained as a result of the acts of Defendants;

7. Awarding judgment against Defendants requiring disgorgement of all profits obtained as a result of Plavix sales in Hawaii under Haw. Rev. Stat. § 661-10, the *parens patriae* doctrine, the general equitable powers of this Court, the doctrine of unjust enrichment, and any other authority;

8. Awarding judgment against Defendants requiring Defendants to pay punitive damages.

9. Granting the State:

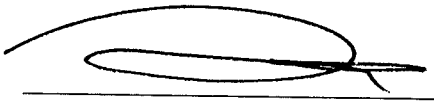
   a. The reasonable attorneys' fees and the costs of suit, as authorized by the UDAP;

b. Pre-judgment and post-judgment interest, and,

c. All other relief as provided by law and/or as the Court deems appropriate and just.

Plaintiff asserts claims herein in excess of the minimum jurisdictional requirements of this Court.

DATED: Honolulu, Hawaii, March 19, 2014.



L. RICHARD FRIED, JR.
PATRICK F. McTERNAN

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, EX REL. DAVID M. LOUIE, ATTORNEY GENERAL, Plaintiff, vs. BRISTOL-MYERS SQUIBB COMPANY, SANOFI-AVENTIS U.S. LLC, SANOFI US SERVICES INC., formerly known as SANOFI-AVENTIS U.S. INC., SANOFI-SYNTHELABO INC., and DOE DEFENDANTS 1 to 100, Defendants.	CIVIL NO. _____ (Other Civil Action) SUMMONS

SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to file with the court and serve upon L. Richard Fried, Jr. and/or Patrick F. McTernan, plaintiff's attorneys, whose address is 600 Davies Pacific Center, 841 Bishop Street, Honolulu, Hawaii, 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing to this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATE ISSUED: MAR 19 2014.

CLERK

In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.