UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SANDRA HAGENBROCK,

Case #_____

Plaintiff,

-versus-

SUN PHARMACEUTICAL INDUSTRIES, INC., **Jury Trial Demanded**

Defendant.
_____/

COMPLAINT

Plaintiff **SANDRA HAGENBROCK**, complaining of the Defendant **SUN PHARMACEUTICAL INDUSTRIES, INC.**, by and through undersigned counsel, hereby respectfully alleges as follows:

I. PARTIES

1. Plaintiff, **SANDRA HAGENBROCK** was and still is a citizen, resident, and domiciliary of the State of Florida at the time of the incidents which forms the basis of the complaint herein.

2. At all times material, Defendant **SUN PHARMACEUTICAL INDUSTRIES, INC.** was and continues to be a foreign corporation, authorized to conduct business and conducting business in the State of Florida, with its principal place of business located at 1 Commerce Drive, Cranbury, New Jersey 08512.

II JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this Court by Article III, § 2 of the United States Constitution and 28 U.S.C. § 1331, 1345; 31 U.S.C. § 3730(h); and 29 U.S.C. § 621 et seq. as the claims set forth herein are based upon Federal law

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendant has committed acts proscribed by 31 U.S.C. § 3730(h) and 29 U.S.C. § 626 within the Middle District of Florida, and because Defendant is subject to personal jurisdiction in the Middle District of Florida and transacts business herein. .

III. FACTS COMMON TO ALL CAUSES OF ACTION

A. Background

5. Plaintiff reasonably believes that Defendant violated various provisions of the False Claims Act ("FCA") as outlined below. See 31 U.S.C. § 3729, et seq.

6. Though, upon information and belief, Plaintiff alleges that Defendant's scheme caused false claims to be submitted to the Government and further believes that the Government paid those false claims, Plaintiff does not have sufficient detail to support that allegation at this time. However, in raising those concerns to Defendant, Plaintiff was disciplined and retaliated against.

7. As such, Plaintiff brings this claim for Defendant's retaliation and constructive discharge of her after reporting these unlawful activities in violation of 31 U.S.C. § 3730(h).

8. Defendant also discriminated against Plaintiff because of her age by promoting younger, less-qualified candidates to positions for which she applied and was objectively more qualified to perform. See 29 U.S.C. § 621 et seq.

9. At all relevant times in this Complaint, Plaintiff was a National Account Director for Defendant.

10. As part of her employment, Defendant directed Plaintiff to facilitate and solicit "off-label" marketing for certain drugs.

11. Defendant acted through its agents and employees, and the actions of those agents and employees were within the course and scope of their employment.

12. Defendant's off-label marketing campaign was (and continues to be), upon information and belief, approved at the highest levels.

B. Regulatory Landscape and Governing Law

13. The Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §1395 et seq., (hereinafter "Medicare") is a Health Insurance Program administered by the Government of the United States that is funded by taxpayer revenue. The program is overseen by the United States Department of Health and Human Services through the Centers for Medicare and Medicaid Services ("CMS"). Medicare was designed to be a health insurance program and to provide for the payment of hospital services, medical services and durable medical equipment to persons over sixty-five (65) years of age and others that qualify under the terms and conditions of the Medicare Program. Payments made under the Medicare Program include payment for certain prescription drugs; among those at issue in this case, Ilumya, Yonsa, and Absorica.

14. Defendant's drug Yonsa, in particular, is a Medicare Part D product.

15. Reimbursement for Medicare claims is made by the United States through CMS which contracts with private insurance carriers to administer and pay claims from the Medicare Trust Fund. 42 U.S.C. § 1395u. In this capacity, the carriers act on behalf of CMS.

16. The Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (hereafter "Medicaid"), is a Health Insurance Program administered by the United States and the various individual States, and is funded by State and Federal taxpayer revenue. The Medicaid Program is overseen by the United States Department of Health and Human Services through CMS. The States directly pay providers, with the States obtaining the federal share of the payment from accounts which draw on the United States Treasury. 42 C.F.R. §§ 430.0-430.30 (1994). Medicaid was designed to assist participating states in providing medical

services, durable medical equipment and prescription drugs to financially needy individuals that qualify for Medicaid; among those drugs are the drugs at issue in this case, Ilumya, Yonsa, and Absorica.

17. The Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS") (now known as "TRICARE"), 10 U.S.C. §§ 1071-1106, provides benefits for health care services furnished by civilian providers, physicians, and suppliers to members of the Uniformed Services and to spouses and children of active duty, retired and deceased members. The program is administered by the Department of Defense and funded by the Federal Government. CHAMPUS pays for, among other items and services, prescription drugs for its beneficiaries; among those drugs are the drugs at issue in this case, Ilumya, Yonsa, and Absorica.

18. The federal government, through its Departments of Defense and Veterans Affairs, also maintains and operates medical facilities including hospitals, and receives and uses federal funds from prescription drugs for patients treated at such facilities and otherwise; among those drugs are the drugs at issue in this case, Ilumya, Yonsa, and Absorica. In addition, under the Public Health Service Act, the Section 340B Drug Pricing Program, and the Veterans Health Care Act of 1992, the federal government directly or indirectly provides funds to certain other federal agencies and to state and local facilities and programs, including to non-profit disproportionate share hospitals ("DSH") and Federally Qualified Health Centers ("FQHCs"). See 38 U.S.C. § 8126.

19. The Federal Employees Health Benefits Program ("FEHBP") provides health care benefits for qualified federal employees and their dependents. It pays for, among other items and services, prescription drugs for its beneficiaries; among those drugs are the drugs at issue in this case, Ilumya, Yonsa, and Absorica.

20. The Federal FCA, 31 U.S.C. § 3729(a)(1)(A), makes "knowingly" presenting or causing to be presented to the United States any false or fraudulent claim for payment or approval a violation of federal law for which the United States may recover three times the amount of the damages the government sustains and a civil monetary penalty of between $5,500 and $11,000 per claim.

21. The Federal FCA, 31 U.S.C. § 3729(a)(1)(B), makes "knowingly" making, using, or causing to be used or made a false record or statement material to a false or fraudulent claim paid or approved by the Government a violation of federal law for which the United States may recover three times the amount of the damages the Government sustains and a civil monetary penalty of $5,500 and $11,000 per claim.

22. The Federal FCA, 31 U.S.C. §. 3729(a)(1)(C), makes any person who conspires to commit a violation of the FCA liable for three times the amount of the damages the Government sustains and a civil monetary penalty of between $5,500 and $11,000 per claim.

23. The Federal FCA, 31 U.S.C. § 3729(a)(1)(G), makes any person who "knowingly" makes, uses or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, liable for three times the amount of the damages the Government sustains and a civil monetary penalty of $5,500 and $11,000 per claim.

24. The Federal FCA defines a "claim" to include any request or demand, whether under contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is

requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested. See 31 U.S.C. § 3729(b)(2).

25. Physicians and hospitals enter into Provider Agreements with CMS in order to establish their eligibility to seek reimbursement from the Medicare Program. As part of that agreement, without which the hospitals and physicians may not seek reimbursement from Federal Health Care Programs, the provider must sign the following certification:

> "I agree to abide by the Medicare laws, regulations and program instructions that apply to [me]. The Medicare laws, regulations, and program instructions are available through the [Medicare] contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the [provider's] compliance with all applicable conditions of participation in Medicare." See Form CMS-855A; Form CMS-8551.

26. In addition, the claims themselves, as submitted, contain a similar certification. See, e.g., Form CMS-1500.

27. When a provider submits a claim for payment, he or she does so subject to and under the terms of its certification to the United States that the services for which payment is sought were delivered in accordance with federal law.

28. In the case of Medicaid, each State's Medicaid Program's applicable certifications also incorporate relevant state law.

29. To be properly reimbursable by a Government Health Care Program, a prescription drug must also meet certain other requirements involving whether the drug is prescribed for an "on-label" versus an "off-label" use or indication.

30. The Federal Food, Drug and Cosmetic Act ("FFDCA"), 21 U.S.C. §§ 301, et seq., prohibits the distribution of new pharmaceutical drugs in interstate commerce unless the Food and

Drug Administration ("FDA") has determined that the drug is safe and effective for its intended use. 21 U.S.C. § 355 (a) and (d).

31. An approved drug may be prescribed by doctors for uses other than those approved by the FDA, but manufacturers are prohibited from marketing or promoting the drug for such unapproved or "off-label" uses. See 21 U.S.C. § 331(d). If the manufacturer intends to promote the drug for a new unapproved use, an application for the proposed new use must be filed with the FDA (or an exemption therefrom must be obtained) and any promotional materials concerning unapproved uses must meet strict statutory and regulatory requirements. See 21 U.S.C. §§ 360aaa, et seq.

32. Whether a drug is FDA-approved for a particular use determines whether a prescription of the drug is reimbursed under Government Health Insurance Programs, including those described above.

33. Reimbursement under Medicaid and these other programs is generally available only for "covered outpatient drugs." See 42 U.S.C. §1396b(i)(10). Covered outpatient drugs do not include drugs that are "used for a medical indication which is not a medically accepted indication." Id. §1396r-8(k)(3). A medically accepted indication includes a use "which is approved under the Federal Food Drug and Cosmetic Act" or which is included in a specified drug compendia. Id. §1396r-8(k)(6).

34. Unless a particular off-label use for a drug is included in one of the identified drug compendia, a prescription for the off-label use of that drug is not eligible for reimbursement under Medicaid or Medicare, with a limited exception. See 42 U.S.C. §1396r8(a)(3).

35. The FFDCA provides criminal penalties for the dissemination of written information to health care providers regarding the safety, effectiveness, or benefit of the use of a

drug that is not described in the FDA approved labeling of the drug (i.e. that is "off-label"), if that written information fails to conform to the law's requirements. See 21 U.S.C. §§ 331(z), 333(a)(1)-(2), 360aaa. A manufacturer may disseminate information on a new use of a drug only if it meets the specific requirements set forth in 21 U.S.C. § 360aaa.

36. The State of Florida has enacted False Claims Act legislation, which closely tracks the Federal FCA. See Florida False Claims Act, Fla. Stat. § 68.081 et seq. Florida's, other states' FCA legislation apply to the state portion of Medicaid fraud losses caused by false Medicaid claims to the jointly federal-state funded Medicaid program.

37. Furthermore, the Federal FCA, 31 U.S.C. § 3730(h), provides relief to employees who have been retaliated against in their employment because of lawful acts done by the employee in furtherance of efforts to stop one or more violations of the FCA. Such retaliation may include discharge, demotion, suspension, threats, harassment or any other type of discrimination in the terms and conditions of employment. The employee is entitled to all relief necessary to make that employee whole, including reinstatement, two times back pay, interest on the back pay, and compensation for any special damages, including litigation costs and reasonable attorney's fees.

38. Plaintiff reasonably believes that Defendant violated the Federal and State FCAs and the FFDCA by engaging in the following alleged conduct from at least 2014 to the present, involving the marketing, selling, and prescribing of Ilumya, Yonsa, and Absorica, which drugs Defendant knew was paid for, in part, by Federal Health Care Programs, and which drugs Defendant expected health plans, insurance companies, pharmacy benefit management companies, and individual providers, as well as numerous other unnamed persons around the United States to, directly or indirectly, prescribe and administer to their patients and thereafter illegally bill or cause to be billed to Federal Health Care Programs.

39. Plaintiff reasonably believes that Defendant's schemes included, but are not limited to the following actions, all of which violate the Federal and State FCAs:

a. Conspiring to create unlawful incentives to provide in exchange for patient referral and prescription business;

b. Conspiring to make and use false records and statements to get false claims paid by the Government;

c. Conspiring to defraud the Government by getting false or fraudulent claims allowed or paid by the Government in furtherance of the object of the conspiracy, which was to promote and increase the sales;

d. Knowingly making and using a false record or statement to conceal, avoid or decrease obligations to pay or transmit money or property to the Government;

e. Illegal off-label marketing of its drugs, including but not limited to those mentioned herein, to obtain increased payments from the government for non-indicated reasons; and

f. Retaliating against Plaintiff and other unlawful activities as described in this Complaint.

C. The Formulary: A Practice That Overrides the Policy

40. Plaintiff reallege paragraphs 1-39 as if fully set forth here.

41. In and around 2014, Defendant developed and distributed policies that purported to prohibit unlawful conduct.

42. In particular, Defendant's "policies" prohibited sales associates from discussing off-label uses for their drugs. Rather, Defendant's "policy" required a written solicitation from a third party in order any off-label information. Upon receiving the written solicitation, Defendant's clinical team would meet with the requestor to provide any clinical information beyond that on label, as indicated.

43. Requestors could be health plans, insurance companies, physicians, pharmacy benefit management companies, and others with decision-making authority to prescribe, recommend, promote and/or add to a company's formulary the Defendant's drugs.

44. In addition, Defendant's "policy" required written material provided to third parties be approved and unmodified by its clinical team. According to Defendant, this "policy" was designed to prevent unlawful marketing and promotion of its drugs. The "policy" purportedly promoted public safety by not introducing a new drug or use into commerce without Government approval.

45. In and around 2014 to present, Defendant developed and implemented practices that directly contravened its written policies.

D. Directions to Plaintiff to Solicit, Facilitate, and Cover Up

46. Defendant's practice includes soliciting health plans, insurance companies, physicians, pharmacy benefit management companies, and others with decision-making authority to prescribe, recommend, promote and/or add to a company's formulary the Defendant's drugs.

47. Throughout her tenure, Plaintiff was expressly directed to solicit and facilitate presentations for health plans, clients, potential clients, and any decision-maker that could purchase or promote Defendant's drugs.

48. Particularly in April 2019, Plaintiff's supervisor, Defendant's Senior Vice President of Sales, Janet Sharp, told the plan – in Plaintiff's presence – to check data to see if there were opportunities for Yonsa, a Medicare Part D product, for off-label indications; specifically, conditions other than prostate cancer.

49. Ms. Sharp repeatedly directed Plaintiff to solicit clinical team presentations to "talk off label" and "sell" drugs for off-label indications.

50. Defendant's practice was not to require any unsolicited request. In fact, Defendant's practice was to aggressively solicit opportunities to present off-label information to decision-makers about its drugs.

51. To avoid detection, Defendant, via Ms. Sharp and others, instructed its sales members not to put such solicitations in writing, but to make the pitch in person, over the phone, or in any untraceable manner.

52. On several occasions, Ms. Sharp reprimanded Plaintiff and told her to "stop putting things in writing."

53. In fact, Defendant would sometimes "drag" someone from its clinical team to a client meeting to present off-label material in the absence of any request.

54. After sales members successfully solicited a decision-maker, Defendant instructed its employees to "create" a document that made it appear as though the request was unsolicited.

55. Following suit, Defendant provided instructions about this unlawful off-label and unsolicited marketing during teleconferences and in one-on-one meetings.

56. Further, Defendant's practice was not to exclusively utilize pre-approved marketing material. Rather, Plaintiff witnessed selective inclusion and exclusion of certain material within the pre-approved slide decks. The purpose of such inclusion and exclusion was expressly to persuade the decision-maker/health plan administrator to prescribe, promote, or give certain formulary status to Defendant's drugs.

57. Defendant's bonus system compensated its sales members, in part, for success in soliciting and facilitating unsolicited clinical presentations.

58. The converse was also true.

59. Ms. Sharp repeatedly reprimanded Plaintiff, who is a Registered Nurse, for not being "more clinical" with customers. However, Plaintiff's sales role prohibited her from making clinical presentations.

E. Retaliation and Malicious Intent

60. Plaintiff did not follow Ms. Sharp's direction to obtain data in an attempt to obtain off-label sales.

61. Plaintiff, and her colleague Damian Frantz, both objected to these unlawful practices.

62. Plaintiff and Mr. Frantz noted that the Defendant's policy complied with the law but the practice violated several. Plaintiff objected to Defendant's solicitation and off-label marketing practices and told Defendant that they believed the practices violated the FCA and Anti-Kickback Statute.

63. Defendant, through Ms. Sharp, retaliated against Plaintiff for her failure to engage in what Plaintiff reasonably believed was unlawful conduct.

64. In response, Ms. Sharp engaged in name calling, including remarks that Plaintiff was not a "team player."

65. Ms. Sharp also responded by making insulting comments about Plaintiff's weight, body type, her physical disability, her mobility, and age.

66. Around this time, while Plaintiff was on restricted duty (unable to travel) because of a disability and workers' compensation covered injury, Ms. Sharp made similar remarks about Plaintiff to several others in the Company.

67. Plaintiff had no performance issues while with the Company.

68. As a direct result of the protected activity, Plaintiff was deprived of compensation.

69. Defendant, through Ms. Sharp and others, passed Plaintiff over for promotion on multiple occasions.

70. Defendant promoted those that were less qualified and did not raise concerns about what Plaintiff believed were Defendant's unlawful off-label marketing practices.

71. As a result of her protected activity, Plaintiff was deprived of advancement and the requisite monetary increases.

72. Plaintiff's bonuses were negatively impacted because of her protected activity.

73. Plaintiff provided notice about her concerns and intention to leave if the matter was not remedied.

74. Plaintiff reasonably believed that she could be held liable, civilly and criminally, if she conformed with Defendant's off-label marketing scheme.

75. As such, Plaintiff was constructively discharged from her employment in July 2019.

F. Age Discrimination

76. Plaintiff is 58 years old.

77. From March of 2015 until her termination, Plaintiff applied for or otherwise indicated her interest in several promotions.

78. Plaintiff was qualified for each of these promotions.

79. On each occasion, Defendant hired someone that was younger and less-qualified than Plaintiff.

80. Plaintiff complained to Defendant about this practice each time it occurred.

81. Defendant, via Ms. Sharp, responded by telling Plaintiff to "shut up" and "stop talking about it [the discrimination]."

82. After making complaints of age discrimination, Plaintiff was not provided opportunities to interview for promotional positions for which she was qualified on multiple occasions.

83. Those positions were, again, awarded to candidates that were younger and less qualified than Plaintiff.

IV. LEGAL CLAIMS

FIRST CAUSE OF ACTION - RETALIATION / FALSE CLAIMS ACT

84. Plaintiff realleges each allegation contained in paragraphs 5 through 75 as if fully set forth here.

85. Plaintiff reasonably believed, and still believes, that Defendant's conducted violated the FCA and other federal and state laws.

86. Plaintiff refused to comply with Defendant's Senior Vice President of Sales, Ms. Sharp's directives to engage in unlawful conduct.

87. Plaintiff's refusal and reporting was her effort to stop violations of the FCA.

88. As a result, Plaintiff was deprived of compensation, passed over for promotion, harassed, and constructively discharged.

89. Plaintiff was constructively discharged in July 2019.

90. Defendant's conduct violated the anti-retaliation provision of the FCA. See 31 U.S.C. 3730(h)(1).

91. As a result, Plaintiff is entitled to relief as outlined in Section 3730(h)(2), including back pay, double damages, compensatory damages, front pay, special damages, and attorneys' fees and costs.

SECOND CAUSE OF ACTION - AGE DISCRIMINATION AND RETALIATION

92. Plaintiff realleges each allegation contained in paragraphs 5 through 83 as if fully set forth here.

93. At all relevant times, Plaintiff was in a protected category as outlined in the ADEA; she was 55, 56, and 57 years old at times that she sought promotion with Defendant.

94. Each and every time, Plaintiff was not selected for the promotional opportunity.

95. Instead, a younger candidate with less experience than Plaintiff was selected.

96. Ms. Sharp made age-based comments to/about Plaintiff.

97. Plaintiff complained about being passed over due to her age.

98. Because of these complaints, Plaintiff was retaliated against.

99. Defendant's conduct was willful.

100. Plaintiff filed a Charge of Discrimination, alleging violations of the ADEA and retaliation, which was lodged with the EEOC on September 4, 2019. See EEOC Charge No. 524-2019-00182, attached as Exhibit 1.

101. Plaintiff was issued her Right to Sue on September 11, 2019. See Right to Sue, dated September 11, 2019, attached as Exhibit 2.

102. Plaintiff has exhausted her administrative remedies.

103. As a result, Plaintiff is entitled to relief as outlined in Section 621, including back pay, front pay, lost benefits, liquidated damages, and attorneys' fees and costs.

V. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests judgment upon each cause of action in this Complaint and the following relief:

A. An award of damages to be proven at trial, in all categories, as specified in Section 3730 of the FCA;

B. An award of damages to be proven at trial for Defendant's violations of the ADEA, including her back pay, front pay, and lost benefits;

C. An award of liquidated damages in an amount appropriate to the proof adduced at trial;

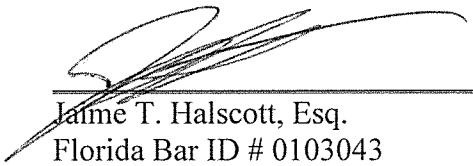
D. Attorneys' fees and costs;

E. Pre- and post-judgment interest; and

F. Such other and further

Dated: November 5, 2019

Respectfully Submitted,



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Counsel for Plaintiff

EXHIBIT 1

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

- [ ] FEPA
- [X] EEOC **524-2019-01182**

Florida Commission On Human Relations and EEOC

State or local Agency, if any

Name *(indicate Mr., Ms., Mrs.)*	Home Phone *(Incl. Area Code)*	Date of Birth
Ms. Sandra Hagenbrock	**(412) 973-7223**	

Street Address / City, State and ZIP Code

18090 Wooden Skiff Court, Nokomis, FL 34275

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. *(Include Area Code)*
SUN PHARMACEUTICALS	**15 - 100**	**(609) 720-9200**

Street Address / City, State and ZIP Code

2 Independence Way, Princeton Twp, NJ 08540

Name	No. Employees, Members	Phone No. *(Include Area Code)*

Street Address / City, State and ZIP Code

DISCRIMINATION BASED ON *(Check appropriate box(es).)*

- [ ] RACE
- [ ] COLOR
- [ ] SEX
- [ ] RELIGION
- [ ] NATIONAL ORIGIN
- [ ] RETALIATION
- [X] AGE
- [ ] DISABILITY
- [ ] GENETIC INFORMATION
- [ ] OTHER *(Specify)*

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
08-18-2018	**05-07-2019**

- [X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I was hired by the above-named employer, Respondent, on or about March of 2015, for the position of National Account Director. I am a 57 year old woman.

After repeatedly requesting opportunities to advance my career in positions that were available and for which I was qualified, those opportunities were given to younger, less qualified employees who were paid a much higher salary. I expressed my concern to Respondent each time I was passed over and yet no explanation was given nor was I considered for even so much as an interview. After being repeatedly passed over for positions and paid significantly less than my similarly situated counterparts, I was constructively discharged.

Based on the above information I believe I have been discriminated against on the basis of age (57) in violation of the Age Discrimination in Employment Act, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date *Charging Party Signature*

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(*month, day, year*)

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).

2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.

3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

U.S. Equal Employment Opportunity Commission
Newark Area Office

283-299 Market Street
Two Gateway Center, Suite 1703
Newark, NJ 07102
(973) 645-4684
TTY (973) 645-3004
Fax: (973) 645-4524

Respondent: SUN PHARMACEUTICALS
EEOC Charge No.: 524-2019-01182
FEPA Charge No.:

September 4, 2019

Sandra Hagenbrock
18090 Wooden Skiff Court
Nokomis, FL 34275

Dear Ms. Hagenbrock:

This is with reference to your recent written correspondence or intake questionnaire in which you alleged employment discrimination by the above-named respondent. The information provided indicates that the matter complained of is subject to the statute(s) checked off below:

[ ] Title VII of the Civil Rights Act of 1964 (Title VII)

[X] The Age Discrimination in Employment Act (ADEA)

[ ] The Americans with Disabilities Act (ADA)

[ ] The Equal Pay Act (EPA)

[ ] The Genetic Information Nondiscrimination Act (GINA)

The attached EEOC Form 5, Charge of Discrimination, is a summary of your claims based on the information you provided. Because the document that you submitted to us constitutes a charge of employment discrimination, we have complied with the law and notified the employer that you filed a charge. Before we investigate your charge, however, you must sign and return the enclosed Form.

To enable proper handling of this action by the Commission you should:

(1) Review the enclosed charge form and make corrections.

(2) Sign and date the charge in the bottom left hand block where I have made an "X". For purposes of meeting the deadline for filing a charge, the date of your original signed document will be retained as the original filling date.

(3) Return the signed charge to this office.

Before we initiate an investigation, we must receive your signed Charge of Discrimination (EEOC Form 5). Please sign and return the charge within thirty (30) days from the date of this letter. Under EEOC procedures, if we do not hear from you within 30 days or receive your signed charge within 30 days, we are authorized to dismiss your charge and issue you a right to sue letter allowing you to pursue the matter in federal court. Please be aware that after we receive your signed Form 5, the EEOC will send a copy of the charge to Florida Commission On Human Relations 4075 Esplanade Way Room 110 Tallahassee, FL 32399 as required by our procedures. If that agency processes the charge, it may require the charge to be signed before a notary public or an agency official. The agency will then investigate and resolve the charge under their statute.

Please use the "EEOC Charge No." listed at the top of this letter whenever you call us about this charge. Please also notify this office of any change in address or of any prolonged absence from home. Failure to cooperate in this matter may lead to dismissal of the charge.

Please also read the enclosed brochure, "What You Should Know Before You File A Charge With EEOC," for answers to frequently asked questions about employee rights and the EEOC process. If you have any questions, please call me at the number listed below. If you have to call long distance, please call collect.

Sincerely,

_____

William P. McGovern
Investigator
(973) 645-2624

Office Hours: Monday – Friday, 8:30 a.m. - 5:00 p.m.
www.eeoc.gov

Enclosure(s)
Copy of EEOC Form 5, Charge of Discrimination
Copy of EEOC Uniform Brochure, "What You Should Know Before You File A Charge With EEOC."

EXHIBIT 2

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Sandra Hagenbrock**
18090 Wooden Skiff Court
Nokomis, FL 34275

From: **Newark Area Office**
283-299 Market Street
Two Gateway Center, Suite 1703
Newark, NJ 07102

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
524-2019-01182	**Rayba Watson, Enforcement Supervisor**	**(973) 645-6021**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

John Waldinger, Area Office Director

SEP 11 2019
(Date Mailed)

Enclosures(s)

cc:

Humans Resource Manager
SUN PHARMACEUTICALS
2 Independence Way
Princeton Twp, NJ 08540

Enclosure with EEOC
Form 161 (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

FACTS ABOUT FILING AN EMPLOYMENT DISCRIMINATION SUIT IN FEDERAL COURT IN NEW JERSEY

You have received a document which is the final determination or other final action of the Commission. This ends our handling of your charge. The Commission's action is effective upon receipt. Now, you must decide whether you want to file a private lawsuit in court. This fact sheet answers several commonly asked questions about filing a private lawsuit.

WHERE SHOULD I FILE MY LAWSUIT?

Federal District Courts have strict rules concerning where you may file a suit. You may file a lawsuit against the respondent (employer, union, or employment agency) named in your charge. The appropriate court is the district court which covers either the county where the respondent is located or the county where the alleged act of discrimination occurred. New Jersey has three federal districts:

The United States District Courts for the District of New Jersey are located at:

Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, New Jersey 07101
973-645-3730

Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, New Jersey 08608
609-989-2065

Mitchell H. Cohen Building & U.S. Courthouse
Fourth & Coopers Streets, Room 1050
Camden, New Jersey 08101
609-757-5021

WHEN MUST I FILE MY LAWSUIT?

Your private lawsuit must be filed in U.S. District Court within 90 days of the date you receive the enclosed final action. Once this 90 day period is over, unless you have filed suit, you will have lost your right to sue.