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**UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Caremark Rx, LLC,
Zinc Health Services, LLC,
Express Scripts, Inc.,
Evernorth Health, Inc.,
Medco Health Services, Inc.,
Ascent Health Services LLC,
OptumRx, Inc.,
OptumRx Holdings, LLC, and
Emisar Pharma Services LLC,
Respondents.**

Docket No. 9437

**Complaint Counsel's Opposition to Nonparty Sanofi-Aventis U.S. LLC's Motion to Extend
the Deadline to File Motions to Quash and/or Limit Subpoenas *Ad Testificandum***

Complaint Counsel respectfully requests that the Court deny Sanofi's Motion for failure to show good cause for another extension. If, however, the Court grants Sanofi's Motion, Complaint Counsel requests that the Court grant this motion with prejudice to Sanofi's right to seek a further extension of time to file a motion to limit or quash Complaint Counsel's subpoenas *ad testificandum* ("SATs") to ensure discovery proceeds efficiently in this matter.

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BACKGROUND

On November 20, 2025, Complaint Counsel formally issued SATs directed to Shawn Jacot-Guillarmod and Martin Bick, both affiliated with Sanofi, a manufacturer of insulin products. Decl. ¶ 14. But Complaint Counsel has been conferring with Sanofi regarding the SATs for about ten months. *See* Decl. ¶¶ 3-4, 6-10, 12-18. During this time, Sanofi has repeatedly avoided scheduling these depositions. Decl. ¶¶ 7, 9-10, 13. On November 20, Sanofi finally offered deposition dates for one of Sanofi's witnesses, Mr. Jacot-Guillarmod. Decl. ¶ 15. After consulting with Respondents, Mr. Jacot-Guillarmod's deposition was scheduled for January 30, 2026. Decl. ¶¶ 16-18.

On December 2, 2025, Complaint Counsel and Respondents jointly moved the Commission for a June 17, 2026 hearing date. Decl. ¶ 20. The parties also agreed on proposed revisions to Amended Scheduling Order #2 to submit to the Court if the Commission granted the motion. Decl. ¶ 21. These proposed revisions included a fact discovery deadline of February 25, 2026. Decl. ¶ 21. During calls on December 10 and December 15, Sanofi informed Complaint Counsel that it was taking Mr. Jacot-Guillarmod's previously scheduled deposition off the calendar due to the change of the fact discovery deadline from early to late February. Decl. ¶¶ 22, 24. Sanofi did not claim that Mr. Jacot-Guillarmod was no longer available for the deposition on January 30. Decl. ¶ 22; *see* Decl. ¶ 24. Instead, Sanofi asserted that it was unilaterally cancelling the deposition based on its position that all depositions of Sanofi witnesses should be deferred until the end of fact discovery to avoid the potential burden of sitting for a deposition if Respondents' pending motion to dismiss was ultimately granted. Decl. ¶¶ 22, 24.

On the afternoon of December 15—the day that its motion to limit or quash the SATs was due—Sanofi requested for the first time that Complaint Counsel agree to another extension

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of the deadline to limit or quash Complaint Counsel's SATs. Decl. ¶ 25. At this point, Sanofi was still refusing to provide dates for one witness and had retracted a previously agreed-upon date for the other. Decl. ¶ 24. Complaint Counsel nonetheless offered to consent to a shorter extension, if Sanofi agreed to proceed with the previously scheduled deposition of Mr. Jacot-Guillarmod and to provide available dates for Mr. Bick. Decl. ¶ 27. Sanofi refused and filed its Motion.¹

ARGUMENT

Under FTC Rule 3.34(c), subpoena recipients have ten days after service to move to quash or limit the subpoena. 16 C.F.R. § 3.34(c). The Administrative Law Judge can extend this time limit "[f]or good cause shown." *See* 16 C.F.R. § 4.3(b). Numerous extensions of time to quash or limit subpoenas *duces tecum* have been granted in this case when the subpoena recipients are making reasonable progress toward compliance and the requested extension does not delay the progress of this proceeding. *See, e.g.*, Order Granting Unopposed Motion by Mercer (US) LLC for Further Extension of Time to Move to Quash or Limit Subpoenas *Duces Tecum* (Dec. 5, 2025); Order Granting Unopposed Motion for Further Extension of Time for Third Party Kaiser Foundation Health Plan, Inc. to Move to Quash or Limit Subpoenas (Nov. 21, 2025).

In this case, Sanofi has failed to demonstrate good cause for its extension request. First, Sanofi is not making reasonable progress on complying with Complaint Counsel's SATs. Since December 1, when Sanofi requested the first extension, Sanofi has taken Mr. Jacot-Guillarmod's previously scheduled deposition off the calendar and refused to share Mr. Bick's availability.

¹ Contrary to Sanofi's conference statement, no agreement was reached between Complaint Counsel and Sanofi on December 15.

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Decl. ¶ 22. Retracting a previously agreed-upon scheduled deposition date indicates the opposite of progress.

Second, Sanofi's requested extension to move to quash or limit the SATs delays the reasonable expedition of discovery in this case. Complaint Counsel has issued 21 SATs for the personal testimony of non-party witnesses (in addition to noticing 32 party depositions). Decl. ¶ 29. Respondents have issued SATs to additional non-party witnesses and have indicated their intention to issue more non-party SATs in the future. *See* Nonparty Eli Lilly and Company's Unopposed Motion to Extend the Deadline to File Motion to Quash and/or Limit Subpoenas *ad Testificandum* (Dec. 11, 2025), at 1; Nonparty Sanofi-Aventis U.S. LLC's Unopposed Motion to Extend the Deadline to File Motions to Quash and/or Limit Subpoenas *ad Testificandum* (Dec. 1, 2025), at 2. Only one non-party deposition has already occurred, Decl. ¶ 30, and the upcoming holidays provides a further impediment to scheduling depositions. While Complaint Counsel is willing to work cooperatively with all relevant parties regarding deposition scheduling, Complaint Counsel also needs to be able to plan discovery. It is not possible to conduct the depositions of every insulin manufacturer witness during the final week of fact discovery.

Sanofi has tried to justify its delay tactics by pointing to Respondents' pending motion to dismiss and the purported undue burden of Sanofi's witnesses appearing for depositions when the case may ultimately be dismissed. Decl. ¶¶ 22, 24.² This argument is demonstrably improper. The Commission has repeatedly made clear that pending dispositive motions do not pause the

² Sanofi has never disputed the relevance of Mr. Jacot-Guillarmod's or Mr. Bick's testimony, despite having ample time to raise the issue. *Accord In re Civil Investigative Demand to Liberty Auto City, Inc.*, FTC File No. 222-3077, 2022 WL 2287933 (June 13, 2022), at *3 (noting that "Liberty does not seriously dispute the relevance of the document and information the CID seeks" when denying a motion to extend time to petition to quash or limit a CID or, in the alternative, quash the CID in a Part 2 proceeding).

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adjudicative proceeding or discovery, unless the Commission orders otherwise. *See* 16 C.F.R. § 3.22(b) (“A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders or unless otherwise provided by an applicable rule.”); Order Lifting Stay of Administrative Adjudication, at 2 (Aug. 27, 2025) (“The Commission’s Rules of Practice instruct that adjudications must ‘proceed with all reasonable expedition,’ and unless the Commission orders otherwise, dispositive motions pending before the Commission do not stay proceedings before the Administrative Law Judge.” (first quoting 16 C.F.R. § 3.41(b); and then citing 16 C.F.R. § 3.22(b)). The Commission specifically declined to pause discovery in this case. Order Denying Stay Pending Motion to Dismiss, at 2 (Dec. 8, 2025) (“Rule 3.22(b) was intended ‘to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions.’” (quoting 16 C.F.R. Parts 3 and 4: Rules of Practice, 74 Fed. Reg. 1804, 1810 (Jan. 13, 2009))). Respondents’ pending motion to dismiss should not adversely affect Complaint Counsel’s ability to obtain discovery.

If Sanofi intends to move to quash Complaint Counsel’s SATs based on undue burden or any other grounds, Complaint Counsel would like to brief the merits of those motions and obtain a resolution from the Court sooner rather than later so that discovery proceeds expeditiously.

CONCLUSION

Complaint Counsel respectfully requests that the Court deny Sanofi’s Motion or, alternatively, grant the Motion *with* prejudice to Sanofi’s right to seek a further adjustment of the deadline to file motions to quash or limit Complaint Counsel’s SATs.

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Dated: December 19, 2025

Respectfully submitted,

/s/ Rebecca L. Egeland

Rebecca L. Egeland

Evan J. Cartagena

Alpa G. Davis

Federal Trade Commission

600 Pennsylvania Avenue, NW

Washington, DC 20580

Tel: (202) 326-2990

Fax: (202) 326-3384

Email: regeland@ftc.gov

Counsel Supporting the Complaint

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Docket No. 9437

**Declaration in Support of Complaint Counsel's Opposition to Nonparty Sanofi-Aventis
U.S. LLC's Motion to Extend the Deadline to File Motions to Quash and/or Limit
Subpoenas *Ad Testificandum***

1. My name is Evan J. Cartagena. I am an attorney admitted to practice law in Pennsylvania.

I am employed by the Federal Trade Commission and am Complaint Counsel in this action.
2. I have personal knowledge of the facts set forth in this declaration.

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3. Complaint Counsel first informed counsel for Sanofi-Aventis U.S. LLC (“Sanofi”) of its intention to take the deposition of two witnesses associated with Sanofi, including former Sanofi employee Martin Bick, during a February 27, 2025 teleconference.
4. Following discussions with counsel for Sanofi, on March 26, 2025, Complaint Counsel identified Sanofi employee Shawn Jacot-Guillarmod as the second Sanofi witness Complaint Counsel intended to subpoena for testimony.
5. The case was stayed from April 1, 2025 until August 27, 2025, when the Commission issued an order lifting the stay.
6. On September 4, 2025, Complaint Counsel emailed Sanofi to request a meeting to resume discussions related to discovery.
7. During a teleconference on September 12, 2025, Complaint Counsel requested possible dates for scheduling the depositions of Mr. Bick and Mr. Jacot-Guillarmod. Sanofi did not follow up to provide any dates.
8. On September 19, 2025, Complaint Counsel emailed Sanofi to inquire again about deposition dates for Mr. Bick and Mr. Jacot-Guillarmod and requested to meet. Sanofi offered to meet on September 29 or 30, 2025.
9. On September 24, 2025, Complaint Counsel emailed Sanofi with Complaint Counsel’s availability for Mr. Bick’s and Mr. Jacot-Guillarmod’s depositions. Sanofi did not respond.
10. During a September 30, 2025 teleconference, Complaint Counsel again requested dates that Mr. Bick and Mr. Jacot-Guillarmod could be available for depositions. Sanofi stated that they did not yet have any potential deposition dates to share.

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11. The case was stayed during the government shutdown, which lasted from October 1, 2025 until November 13, 2025.
12. On November 13, 2025, Complaint Counsel contacted Sanofi to resume discussions regarding fact discovery.
13. During a November 18, 2025 teleconference, Complaint Counsel provided Sanofi with its updated availability for Mr. Bick's and Mr. Jacot-Guillarmod's depositions. The following day, on November 19, 2025, Complaint Counsel again emailed to inquire about the witnesses' availability. Sanofi did not respond.
14. On November 20, 2025, Complaint Counsel issued SATs to Mr. Bick and Mr. Jacot-Guillarmod. The SATs specified dates but also noted that the depositions could occur on "such other date/time as may be agreed upon."
15. Later on November 20, 2025, Sanofi emailed Complaint Counsel stating that Mr. Jacot-Guillarmod was available to sit for a deposition between January 27 and January 30, 2026 and inviting Complaint Counsel to "[p]lease let us know which day that week works on your end." Sanofi also indicated that they would "share Martin Bick's availability as soon as we are able."
16. On November 21, 2025, Complaint Counsel emailed Sanofi, confirming that January 30, 2026 worked for Mr. Jacot-Guillarmod's deposition and informing Sanofi that Complaint Counsel would coordinate with Respondents.
17. On November 24, 2025, Respondents confirmed their availability for Mr. Jacot-Guillarmod's deposition on January 30, 2026.
18. Later, on November 24, 2025, Complaint Counsel emailed Sanofi that January 30, 2026 was confirmed by all parties for Mr. Jacot-Guillarmod's deposition.

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19. On December 1, 2025, the deadline for Sanofi to file a Motion to Limit or Quash Complaint Counsel's SATs, Sanofi requested Complaint Counsel agree to not oppose Sanofi's motion for a two-week extension to the deadline to limit or quash the SATs. Complaint Counsel agreed to not oppose.
20. On December 2, 2025, Complaint Counsel and Respondents jointly moved the Commission to set a new evidentiary hearing date of June 17, 2026. In the motion, the parties noted that the proposed June 17 date extends the hearing date to account for the length of the stay and an additional nineteen days.
21. Separately, the parties also agreed on proposed revisions to Amended Scheduling Order #2 to submit to the Court if the Commission granted the motion for a June 17 hearing date. The proposed revisions included a fact discovery deadline of February 25, 2026.
22. On a December 10, 2025 teleconference, Sanofi insisted on taking Mr. Jacot-Guillarmod's already-scheduled deposition off the calendar and indicated they would not share Mr. Bick's availability until they knew with certainty the date fact discovery would close. Sanofi stated they did not want to sit for depositions before the case is potentially dismissed and insisted on postponing the depositions to an unidentified future date. At no point during this teleconference did Sanofi indicate that Mr. Jacot-Guillarmod was now unavailable for the January 30, 2026 deposition.
23. On December 11, 2025, Complaint Counsel emailed Sanofi to schedule a follow-up call. Sanofi indicated that they were not available until December 15, 2025.
24. On December 15, 2025, Complaint Counsel and Sanofi met via teleconference. Sanofi inquired about the deadline for fact discovery in the case. Complaint Counsel informed Sanofi that under the parties' agreed-upon schedule, fact discovery would close on

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February 25, 2026. Complaint Counsel reiterated its intent to proceed with Mr. Jacot-Guillarmod's deposition on the agreed-upon January 30, 2026 date, and to schedule Mr. Bick's deposition for a mutually convenient date. Sanofi asserted that it had agreed to the January 30 date based on the assumption that fact discovery would close in early February and that, given the "material change" in the fact discovery deadline, all Sanofi depositions should be deferred until the "tail end" of discovery, to avoid sitting for a deposition before the case is potentially dismissed. Sanofi also stated their concern about additional SATs from Respondents, as well as the need to assess the cumulative burden on Sanofi from SATs issued in this case.

25. On December 15, 2025, the deadline for Sanofi to file a Motion to Limit or Quash Complaint Counsel's SATs, Sanofi informed Complaint Counsel for the first time of their intent to file a motion seeking an additional extension to the deadline to quash or limit SATs issued by Complaint Counsel and Respondents and inquired whether Complaint Counsel would oppose.
26. On December 15, 2025, Complaint Counsel represented to Sanofi by email that we would not oppose Sanofi's motion for an extension of the deadline if Sanofi agreed to proceed with Mr. Jacot-Guillarmod's deposition on January 30, 2026 and to provide available dates for Mr. Bick's deposition prior to the end of the three-week extension period. Sanofi responded that they did not "have authorization today to commit that we will not request to move the date currently scheduled for Shawn Jacot-Guillarmod's deposition."
27. Complaint Counsel then offered to not oppose a brief two-day extension of the deadline to file a motion to limit or quash, to provide Sanofi with sufficient time to consider

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whether to produce Mr. Jacot-Guillarmod for the previously agreed-upon January 30, 2026 deposition, in addition to providing dates for Mr. Bick. Sanofi declined.

28. On December 17, 2025, two days after Sanofi filed its motion, Sanofi contacted Complaint Counsel. Sanofi confirmed that Mr. Jacot-Guillarmod would not sit for his deposition on January 30, 2026. Sanofi offered February 5, 2026 as a possible alternative but would not commit to keeping the date if there were further changes to the fact discovery deadline.

29. Complaint Counsel has issued 21 SATs for the personal testimony of non-party witnesses. Complaint Counsel has noticed 32 party depositions. Respondents have issued SATs to additional non-party witnesses.

30. The parties conducted the deposition of a witness from Best Buy on December 17, 2025. No other non-party depositions have been conducted to date.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 19, 2025, in Washington, DC.

/s/ Evan J. Cartagena
Evan J. Cartagena

PUBLIC**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2025, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Jay L. Himes
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-110
Washington, DC 20580
OALJ@ftc.gov

*Secretary of the Commission
Clerk of the Court*

Administrative Law Judge

I certify that no portion of the filing was drafted by generative artificial intelligence ("AI") (such as ChatGPT, Microsoft Copilot, Harvey.AI, or Google Gemini). I also certify that I caused the foregoing document to be served via email to:

Enu Mainigi
Craig D. Singer
Steven M. Pyser
WILLIAMS & CONNOLLY
LLP
680 Maine Avenue SW
Washington, DC 20024
emainigi@wc.com
csinger@wc.com
spyser@wc.com

Mike Cowie
Rani A. Habash
DECHERT LLP
1900 K Street NW
Washington, DC 20006
mike.cowie@dechert.com
rani.habash@dechert.com

*Counsel for Respondents
Caremark Rx LLC; Zinc
Health Services, LLC*

Daniel J. Howley
Charles F. (Rick) Rule
Margot Campbell
Justin T. Heipp
RULE GARZA HOWLEY
901 7th Street NW, Suite 600
Washington, DC 20006
howley@rulegarza.com
rule@rulegarza.com
campbell@rulegarza.com
heipp@rulegarza.com

Jennifer Milici
Perry A. Lange
John W. O'Toole
WILMERHALE
2100 Penn. Ave. NW
Washington, DC 20037
jennifer.milici@wilmerhale.com
perry.lange@wilmerhale.com
john.otoole@wilmerhale.com

*Counsel for Respondents
Express Scripts, Inc.; Evernorth
Health, Inc.; Medco Health
Services, Inc.; Ascent Health
Services LLC*

Sophia A. Hansell
Michael J. Perry
Matthew C. Parrott
GIBSON, DUNN & CRUTCHER LLP
1700 M Street NW
Washington, DC 20036
shansell@gibsondunn.com
mjerry@gibsondunn.com
mparrott@gibsondunn.com

*Counsel for Respondents OptumRx, Inc.;
OptumRx Holdings, LLC; Emisar Pharma
Services LLC*

Julia E. McEvoy
Lin W. Kahn
Melissa Lim Patterson
Daria K. Bejan
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
jmcevoy@jonesday.com
lkahn@jonesday.com
mpatterson@jonesday.com
dbejan@jonesday.com

*Counsel for Nonparty Sanofi-Aventis U.S.
LLC*

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/s/ Rebecca L. Egeland

Rebecca L. Egeland
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2290
regeland@ftc.gov

Counsel Supporting the Complaint