

1 MORRIS LAW GROUP
Steve Morris, Bar No. 1543
2 Email: sm@morrislawgroup.com
3 Robert McCoy, Bar No. 9121
Email: rrm@morrislawgroup.com
4 Joni A. Jamison, Bar No. 11614
5 Email: jaj@morrislawgroup.com
900 Bank of America Plaza
6 300 South Fourth Street
Las Vegas, Nevada 89101
7 Telephone: (702) 474-9400
8 Facsimile: (702) 474-9422

9 Attorneys for Defendant
10 sanofi-aventis, U.S., LLC

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

| | | |
|-------------------------------------|---|--------------------------------|
| 13 JENNIFER KWASNIEWSKI, |) | Case No: 2:12-cv-00515-GMN-RJJ |
| individually and as Special |) | |
| 14 Administrator of the ESTATE OF |) | |
| ANDREW A. KWASNIEWSKI; |) | STIPULATED PROTECTIVE |
| 15 TAYLOR L. KWASNIEWSKI; and |) | ORDER OF |
| 16 DYLAN A. KWASNIEWSKI, a |) | CONFIDENTIALITY |
| minor, by and through Jennifer |) | |
| 17 Kwasniewski, his mother and |) | |
| 18 guardian, |) | |
| |) | |
| 19 Plaintiffs, |) | |
| 20 v. |) | |
| |) | |
| 21 SANOFI-AVENTIS, U.S., LLC, a |) | |
| Delaware limited liability company; |) | |
| 22 NADINE LEONE, MFT; |) | |
| 23 BEHAVIORAL HEALTHCARE |) | |
| OPTIONS, INC., a Nevada |) | |
| 24 corporation, |) | |
| |) | |
| 25 Defendants. |) | |
| 26 |) | |

27 This is a product liability case that plaintiffs allege involves
28 Ambien CR®, an FDA-approved prescription drug. Disclosure and
discovery in this proceeding will involve the production of confidential

1 information that includes trade secrets, proprietary information, and other
2 proprietary research. Certain discovery will also contain confidential
3 information about third parties, such as social security numbers, names,
4 addresses, and protected health information, that sanofi-aventis is required
5 to collect as part of its research, development, and post-marketing
6 surveillance of prescription pharmaceuticals. To adequately protect this
7 information and expedite the flow of discovery material, Plaintiffs and the
8 Defendant sanofi-aventis have stipulated and the Court finds that good
9 cause is shown to protect this information from being disclosed. Therefore,
10 IT IS HEREBY ORDERED THAT the following provisions shall govern the
11 documents, materials or other things or portions thereof (and the
12 information contained therein) produced in discovery by any party to this
13 litigation.

14 By stipulating to this Protective Order (the "Order"), the parties
15 have agreed to be bound by its terms and to request its entry by the
16 presiding district or magistrate judge. It is hereby **ORDERED** as follows:

17 **A. DISCOVERY PHASE**

18 1. For purposes of this Order, the following definitions shall apply:
19 (a) the term "document" shall have the full meaning ascribed to it by the
20 Federal Rules of Civil Procedure ("Fed. R. Civ. P."); (b) the term "producing
21 party" shall be defined as any party or non-party who is required to produce
22 or provide materials or testimony and (c) the term "receiving party" shall
23 mean any party (including a party's counsel) or any consultant or other
24 person to whom confidential information is furnished.

25 2. A producing party may designate as "**CONFIDENTIAL**" any
26 material the producing party believes in good faith constitutes or discloses
27 information that qualifies for protection pursuant to Fed. R. Civ. P. 26(c),
28 specifically information that is trade secret or other confidential research,

1 development, or commercial information, and materials that are deemed
2 confidential under Federal Drug Administration ("FDA") regulations and
3 Health Insurance Portability and Accountability Act ("HIPAA") statutes and
4 regulations.

5 3. The receiving party shall bear the reasonable cost of
6 reproduction of all documents, materials, or other things, whether in paper
7 or electronic format.

8 4. *Challenges to Designations or Redacted Information:* Any party may
9 at any time challenge the redaction or the designation of information as
10 **CONFIDENTIAL** by providing written notice of its objection to the
11 designating party, or, in the case of a deposition, either on the record at a
12 deposition or in writing later. If, after a meet-and-confer process, the parties
13 cannot reach agreement, the challenging party may, on reasonable notice,
14 apply for an appropriate ruling from the Court. The disputed material shall
15 continue to be treated as confidential until the Court orders otherwise.

16 5. No person or party subject to this Order shall distribute,
17 transmit, or otherwise divulge any material marked **CONFIDENTIAL**,
18 except in accordance with this Order, with the exception that this Protective
19 Order does not limit the producing party's ability to use its own confidential
20 data in the manner it sees fit.

21 6. *Use of Confidential Material Limited to this Action:* Any document
22 or other material which is marked **CONFIDENTIAL**, or the contents
23 thereof, may be used by a party, or a party's attorney, expert witness,
24 consultant, or other person to whom disclosure is made, only for the
25 purpose of this action. Nothing contained in this Order shall prevent the use
26 of any document or the contents thereof, at any deposition taken in this
27 action.
28

- 1 7. *Access to Confidential Material:* If a party or attorney wishes to
2 disclose any document or other material which is marked
3 **CONFIDENTIAL**, or the contents thereof, to any person actively, or
4 retained to, work on this action (e.g., expert witness, paralegal, associate,
5 consultant), the person making the disclosure shall do the following:
- 6 a. Provide a copy of this Order to the person to whom
7 disclosure is made;
 - 8 b. Inform the person to whom disclosure is made that s/he is
9 bound by this Order;
 - 10 c. Require the person to whom disclosure is made to sign the
11 acknowledgment and receipt of this Order, attached as Exhibit A;
 - 12 d. Instruct the person to whom disclosure is made to return
13 or, in the alternative and with permission of the producing party, at the
14 conclusion of the case to destroy any document or other material which is
15 marked **CONFIDENTIAL**, including notes or memoranda made from
16 **CONFIDENTIAL** material;
 - 17 e. Maintain a list of persons to whom disclosure was made
18 and the **CONFIDENTIAL** materials which were disclosed to that person;
 - 19 f. At the conclusion of this action, gather the
20 **CONFIDENTIAL** materials, copies thereof, and related notes and
21 memoranda, and return them to the party or attorney who originally
22 disclosed them, or destroy them, providing a certificate of compliance with
23 the terms of this Protective Order.
- 24 8. *Redaction of Confidential Material:* The parties recognize that
25 certain FDA, other governmental agencies, and certain federal statutes
26 require redaction of certain information prior to production of certain
27 information by Defendants and that Defendants will comply with those
28 requirements and redact such information as directed. Any party

1 challenging information that has been redacted may do so in accordance
2 with Paragraph A.4 of this Protective Order, or otherwise in accordance
3 with the Federal Rules of Civil Procedure.

4 9. *Use of Confidential Material at Depositions:* All transcripts and
5 exhibits shall be treated as if designated **CONFIDENTIAL** for a period of
6 thirty (30) days after the transcript is available from the court reporter.
7 Counsel for any party may designate during the deposition or during the
8 thirty day period after the transcript is available from the court reporter any
9 portion of the transcript as **CONFIDENTIAL** by denominating by page and
10 line, and by designating any exhibits, that are to be considered
11 **CONFIDENTIAL** pursuant to the criteria set forth in this Order. Such
12 designation shall be communicated to all parties. Transcript portions and
13 exhibits designated in accordance with this paragraph shall be disclosed
14 only in accordance with this Order. A party may challenge any
15 **CONFIDENTIAL** designations in accordance with the provisions of
16 Paragraph A.4 above.

17 10. *Inadvertent Failure to Properly Designate Confidential Material:*
18 Inadvertent production of any document or information without a
19 designation of **CONFIDENTIAL** will not be deemed to waive a party's
20 claim to its confidential nature or estop said party from designating said
21 document or information as **CONFIDENTIAL** at a later date. Disclosure of
22 said document or information by another party prior to such later
23 designation shall not be deemed a violation of the provisions of this Order.

24 11. *Inadvertent Disclosure of Privileged Documents, "Clawback"*
25 *Procedure:* Inadvertent production of documents or electronically stored
26 information ("ESI") (collectively "Inadvertently Produced Documents")
27 subject to work-product or attorney-client privilege, or other legal privilege
28 protecting information from discovery, shall not constitute a waiver of the

1 privilege, provided that the producing party shall notify the receiving party
2 in writing as set forth herein. In the event that a party inadvertently
3 produces documents or ESI subject to a claim of privilege, the producing
4 party shall, within ten (10) days of the discovery of the inadvertent
5 disclosure, notify the other party in writing of the inadvertent disclosure.
6 The producing party may, in the notice, request a "clawback" of the
7 inadvertently disclosed material. The party receiving such clawback notice
8 shall immediately and diligently act to retrieve the inadvertently produced
9 documents, and all copies, including any loaded to databases, and return
10 them to the producing party or destroy them as agreed between the parties.
11 All notes or other work product of the receiving party reflecting the contents
12 of such materials shall be destroyed and not used.

13 12. *If the receiving party elects to file a motion as set forth below, the*
14 *receiving party, subject to the requirements below, may retain possession of*
15 *the Inadvertently Produced Documents as well as any notes or other work*
16 *product of the receiving party reflecting the contents of such materials*
17 *pending the resolution by the Court of the motion below, but shall segregate*
18 *and not use them pending resolution of the motion. If the receiving party's*
19 *motion is denied, the receiving party shall promptly comply with the*
20 *immediately preceding provisions of this paragraph. No use shall be made*
21 *of such Inadvertently Produced Documents during depositions or at trial,*
22 *nor shall they be disclosed to anyone who was not given access to them*
23 *prior to the request to return or destroy them unless otherwise ordered by*
24 *the Court.*

25 The party receiving such Inadvertently Produced Documents may,
26 after receipt of the producing party's notice of inadvertent production, move
27 the Court to dispute the claim of privilege.
28

1 **B. SUBMISSION OF CONFIDENTIAL MATERIAL**

2 1. *If any party or attorney wishes to file with the Court a pleading,*
3 *motion, or memorandum* that contains **CONFIDENTIAL** material, whether as
4 an exhibit or excerpted in the motion, the filing party or attorney shall give
5 the producing party reasonable notice prior to filing and provide copies of
6 the documents or excerpts containing **CONFIDENTIAL** material that it
7 intends to file with the Court. If the producing party decides that the
8 material should be filed under seal, it will notify the filing party within
9 seven days of receiving notice of the filing party's intent to file
10 **CONFIDENTIAL** material. The filing party shall file the motion and
11 **CONFIDENTIAL** material in sealed envelopes (in accordance with LR 10-5)
12 with the caption, title of court, name of the case, an indication of nature of
13 the contents, the word "Confidential," and the following statement:

14 This envelope containing documents which are filed
15 in this case by (name of party) is not to be opened
16 nor the contents thereof to be revealed except by
17 Court order; provided, however, that counsel of this
18 Court and there inspect the contents hereof, without
19 order of the Court, and upon completion of each
20 inspection by counsel, the envelope containing such
21 documents shall be resealed.

19 The producing party will then be responsible for filing a motion for leave to
20 seal the documents to be filed concurrently or shortly after the filing of the
21 motion, pleading, or memorandum.

22 **C. POST-DISCOVERY PHASE**

23 1. *If any party or attorney wishes to use as an exhibit or as testimonial*
24 *evidence at a hearing or trial, any* **CONFIDENTIAL** material, such party must
25 provide reasonable notice to the producing party of the intended use of
26 such information. The parties shall then attempt to resolve the matter of
27 continued confidentiality by either (a) removing the **CONFIDENTIAL**
28

1 marking, (b) creating a mutually acceptable redacted version that suffices
2 for purposes of the case, or (c) conferring about methods to avoid or limit
3 public disclosure of such information during testimony. If an amicable
4 resolution proves unsuccessful, the parties may present the issue to the
5 Court for resolution.

6 2. *Survival of Protective Order:* Throughout and after the conclusion
7 of this litigation, including any appeals, the restrictions on communication
8 and disclosure provided for herein shall continue to be binding upon the
9 parties and all other persons to whom **CONFIDENTIAL** material has been
10 communicated or disclosed pursuant to the provisions of this Order or any
11 other order of the Court.

12 3. Return or Destruction of Confidential Material Upon
13 Termination of Litigation: Within sixty (60) days after the final termination
14 of this action or upon such time as the parties agree, each party, upon
15 request of the other party, shall either return to the producing party, or
16 destroy, all **CONFIDENTIAL** material designated by any other party
17 (including any such material disclosed to third persons), except for any
18 attorneys' work product for the party returning the material, and shall
19 provide confirmation in writing to opposing counsel if such materials are
20 destroyed.

21 4. Modification of this Order: Nothing in this Order shall prevent
22 any other party from seeking amendments broadening or restricting the
23 rights of access to or the use of **CONFIDENTIAL** material or otherwise
24 modifying this Order; and this Order may be amended without leave of the
25 Court by the agreement of the undersigned attorneys for the parties in the
26 form of a Stipulation that shall be filed in this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MURDOCK & ASSOCIATES,
CHTD.

FRED KENNEDY

By /s/ Robert E. Murdock
Robert E. Murdock
520 South Fourth Street
Las Vegas, Nevada 89101

By /s/ Fred Kennedy
Fred Kennedy
628 South Casino Center Blvd.
Suite 310
Las Vegas, Nevada 89101

ECKLEY M. KEACH, CHTD.
Eckley M. Keach
520 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant Nadine
Leone, MFT

MORRIS LAW GROUP

Attorneys for Plaintiff

LEWIS BRISBOIS BISGAARD &
SMITH, LLP

By /s/ Robert McCoy
Steve Morris
Robert McCoy
Joni A. Jamison
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

By /s/ Keith A. Weaver
Keith A. Weaver
400 South Fourth Street
Suite 500
Las Vegas, Nevada 89101

Attorneys for Defendant sanofi-
aventis, U.S., LLC

Attorneys for Defendant Behavioral
Healthcare Options, Inc.

ORDER

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

Dated: October 24, 2012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JENNIFER KWASNIEWSKI,) Case No: 2:12-cv-00515-GMN-RJJ
individually and as Special)
Administrator of the ESTATE OF)
ANDREW A. KWASNIEWSKI;) **AGREEMENT TO BE BOUND**
TAYLOR L. KWASNIEWSKI; and) **BY PROTECTIVE ORDER**
DYLAN A. KWASNIEWSKI, a)
minor, by and through Jennifer)
Kwasniewski, his mother and)
guardian,)
)
Plaintiffs,)
v.)
)
SANOFI-AVENTIS, U.S., LLC, a)
Delaware limited liability company;)
NADINE LEONE, MFT;)
BEHAVIORAL HEALTHCARE)
OPTIONS, INC., a Nevada)
corporation,)
)
Defendants.)

I have read and understand the Protective Order entered in
Kwasniewski v. Sanofi-Aventis U.S., LLC, Case No. 2:12-cv-00515-GMN-RJJ (D.
Nev.), and I agree to be bound by its terms. Specifically, and without
limitation upon such terms, I agree not to use or disclose any Confidential
material made available to me other than in accordance with this Protective
Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby agree to submit to the jurisdiction of the United States
District Court for the District of Nevada for enforcement of the undertaking
I have made herein.

Dated: _____

SIGNED NAME

PRINTED NAME