

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**GARY W. QUALLS and EDDY D. REBER,  
individually, and on behalf of a class of others  
similarly situated,**

**Plaintiffs,**

**v.**

Case No. \_\_\_\_\_

**SANOFI-AVENTIS U.S. LLC  
a foreign Limited Liability Company,**

**Serve: CSC – Lawyers Incorporating Service Co.  
221 Bolivar  
Jefferson City, MO 65101**

**Defendant.**

**COMPLAINT**

Plaintiffs Gary W. Qualls and Eddy D. Reber, individually and on behalf of a class of other similarly situated plaintiffs, by and through their counsel, for their Complaint against Defendant Sanofi-Aventis U.S. LLC (hereinafter referred to as “Defendant” or “Sanofi-Aventis”) hereby state and allege as follows:

**JURISDICTION AND VENUE**

1. The Fair Labor Standards Act of 1938, (“FLSA”), as amended, 29 U.S.C. § 201 *et. seq.*, in relevant part, authorizes court actions by private parties to recover damages for violations of the FLSA’s minimum wage and overtime provisions and to enforce the prohibition against retaliation. Jurisdiction over Plaintiffs’ FLSA claims is based upon Section 16(b) of the FLSA, 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337.

2. This Court has jurisdiction over Plaintiffs’ claims for breach of contract pursuant to: (1) 28 U.S.C. §§ 1332 and 1367 because the Plaintiffs are residents of a different state than

the Defendant and the amount in controversy exceeds \$5 million; and (2) 28 U.S.C. § 1367 because the state claims are so related to the FLSA claims that they form part of the same case or controversy.

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c), because this is a district in which Defendant does business and this is a district in which a substantial part of the unlawful conduct giving rise to the claims occurred.

### **PARTIES**

4. Defendant Sanofi-Aventis is a foreign limited liability company formed under the laws of Delaware, with its principal place of business and headquarters in Bridgewater, New Jersey. Defendant's parent company, The Sanofi-Aventis Group, has its global headquarters in Paris, France. Sanofi-Aventis does business in the State of Missouri and nationwide.

5. Individually-named plaintiff Gary W. Qualls ("Qualls") is a resident of Kansas City, Missouri and is currently employed as a manufacturing operator at Defendant's Kansas City, Missouri facility. Qualls' consent to become a party plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit A.

6. Individually-named plaintiff Eddy D. Reber ("Reber") is a resident of Kansas City, Kansas and is currently employed as a manufacturing operator at Defendant's Kansas City, Missouri facility. Reber's consent to become a party plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit B.

7. The overtime claims identified in this Complaint are brought under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as a nationwide "opt-in" collective action consisting of all current and former Sanofi-Aventis hourly employees whose job duties are performed in the "White Zone" (i.e., the sterile production area where Defendant's pharmaceuticals are

manufactured and processed) who have worked for the Defendant at any time during the last three years. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendant's practice of requiring work off the clock without pay and failing to pay overtime compensation.

8. The class of employees on behalf of whom Plaintiffs bring this nationwide "opt-in" collective action are similarly situated because they have been or are employed in the same or similar positions as individually-named plaintiffs, and were subject to the same or similar unlawful practices as the individually-named plaintiffs. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from the records of Defendant and potential class members may easily and quickly be notified of the pendency of this action.

9. The breach of contract claims identified in this Complaint are brought under Rule 23 of the Federal Rules of Civil Procedure as a Missouri state-wide class action consisting of all current and former Sanofi-Aventis hourly employees whose job duties are performed in the White Zone—otherwise known as the Manufacturing and Production Floor—who have worked for the Defendant at any time during the last five years. Plaintiffs, individually and on behalf of other similarly situated employees seek relief on a class basis challenging Defendant's failure to pay the class for all hours worked and for its failure to pay overtime.

### **GENERAL ALLEGATIONS**

10. Sanofi-Aventis is the world's third largest pharmaceutical company and the largest in Europe. In 2004, Sanofi-Aventis generated €25.4 billion in sales. Sanofi-Aventis employs approximately 14,000 employees in the United States with 14 geographical locations

throughout the country, including a pharmaceutical manufacturing facility in Kansas City, Missouri.

11. Sanofi-Aventis conducts manufacturing operations in the United States in Kansas City, Missouri. The Kansas City manufacturing site features small, freestanding, process-centered units called Primary Process Units (PPUs). The PPU's have the authority, responsibility and available resources to take rapid, accurate and decisive action in order to meet the company's demanding manufacturing objectives.

12. At its Kansas City, Missouri location, Defendant employs manufacturing operators—also known as pharmaceutical technicians or production workers—who are responsible for processing Defendant's pharmaceutical product within the White Zone. Virtually all of the manufacturing operators employed by Defendant at its Kansas City, Missouri facility are employed full time and work 40 hours per week.

13. At its Kansas City, Missouri facility, Defendant also employs other employees who perform their job duties in the White Zone, which include, but are not limited, to packaging operators and maintenance personnel. Virtually all of these employees employed by Defendant at its Kansas City, Missouri facility are employed full time and work 40 hours per week.

14. Throughout their shifts, Plaintiffs and other White Zone employees perform work for which they are not paid. Specifically, Plaintiffs and other White Zone employees are not paid for the time spent donning and doffing protective sterile scrubs and safety suits and the time spent walking to and from various locker rooms/gowning areas and their work stations.

15. Plaintiffs and other similarly situated employees swipe a security badge to enter Defendant's parking lot and then swipe the badge again to enter the facility. Once inside the facility, Plaintiffs and other similarly situated employees report directly to male and female

locker rooms where they are required to remove all of their street clothes, down to their underwear, and don sterile scrubs and transition shoes, both of which are provided by, laundered by, and kept inside Defendant's Kansas City facility.

16. Once Plaintiffs and other similarly situated employees have changed into their sterile scrubs, they then must walk a substantial distance to a second locker room area called the gowning room. There, Plaintiffs and other similarly situated employees must don a protective jumpsuit over their sterile scrubs, safety glasses, hair nets, beard guards, and protective booties over their transition shoes. After donning this additional protective gear, Plaintiffs and other similarly situated employees must then walk another substantial distance to their work stations.

17. Sanofi-Aventis utilizes a time-keeping system and labor reporting process called LEAP (Labor Entry and Attendance Process). Defendant instructs Plaintiffs and similarly situated employees that they are not to "LEAP" in to their systems until after they have donned their sterile scrubs and protective safety suits and accessories and they arrive at their work station.

18. Defendant also requires Plaintiffs and other similarly situated employees to "LEAP" out of the system at their work station when their shift ends but before they have doffed their protective gear. After they have "LEAPED" out of Defendant's time-keeping system, Plaintiffs and other similarly situated employees must then walk to the gowning room to remove their protective safety suits and accessories and then walk to the male and female locker rooms to remove their sterile scrubs and change back into their street clothes.

19. Defendant does not compensate Plaintiffs and other similarly situated employees for all time spent donning and doffing their specialized protective clothing and accessories and

does not compensate Plaintiffs and other similarly situated employees for all the time spent walking to and from the locker room, gowning room, and their work stations.

20. The donning, doffing, and walk time all constitute work activities for which Plaintiffs and other similarly situated employees are not paid, and which are integral and indispensable to their principal job duties and/or are themselves principal duties.

21. The walking time for which Plaintiffs and other similarly situated employees are not paid occurs after the beginning of the employee's first principal activity and before the end of the employee's last principal activity.

22. The required sterile scrubs, transition shoes, protective safety suits, and safety accessories that Plaintiffs and other similarly situated employees must wear, and for which they are not paid for donning and doffing, are required by Sanofi-Aventis and/or by government regulation. Plaintiffs and other similarly situated employees perform work that is part of the pharmaceutical manufacturing process, which involves serious health and safety risks for employees and the consuming public if Plaintiffs and other similarly situated employees are not outfitted in sterile scrubs and protective safety gear. Plaintiffs must don and doff the sterile scrubs and protective safety suits and accessories on Sanofi-Aventis' premises.

23. These donning, doffing and walking duties all add up to a significant amount of time every day for which Plaintiffs and other similarly situated employees are not paid.

### **COLLECTIVE AND CLASS ALLEGATIONS**

24. Plaintiffs reassert and re-allege the allegations set forth in paragraphs 1 through 23 above.

25. Plaintiffs bring Count I, the FLSA claim, as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b). Plaintiffs, individually and on behalf of other similarly situated

employees, seek relief on a collective basis challenging Sanofi-Aventis' practice of requiring work off the clock and without pay and failing to pay Plaintiffs and other similarly situated employees for all overtime hours worked. The class for the FLSA claims is defined as:

All current and former Sanofi-Aventis hourly employees whose job duties are performed in the "White Zone" (i.e., the sterile production area where Defendant's pharmaceuticals are manufactured and processed) and who have worked for Defendant at any time during the last three years.

26. The FLSA claims may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

27. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendants' practice of failing to accurately record all hours worked and failing to pay employees for all hours worked, including overtime compensation. The number and identity of other Plaintiffs yet to opt-in and consent to be party Plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

28. Plaintiffs bring Count II, the Missouri state law breach of contract claim, as class action pursuant to Rule 23. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a class basis challenging Sanofi-Aventis' practice of requiring work off the clock and without pay and failing to pay Plaintiffs and other similarly situated employees for all overtime hours worked. The Rule 23 class is defined as:

All current and former Sanofi-Aventis hourly employees of the Kansas City, Missouri facility whose job duties are performed in the "White Zone" (i.e., the sterile production area where Defendant's pharmaceuticals are manufactured and processed) and who have worked for Defendant at any time during the last five years.

29. Plaintiffs' state law claim satisfies the numerosity, commonality, typicality, adequacy and superiority requirements of a class action.

30. The class satisfies the numerosity standards. The class is believed to number in the many hundreds. As a result, joinder of all class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail.

31. There are questions of fact and law common to the class that predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendant's actions include, without limitation, the following:

- a. Whether class members were compensated for time spent donning and doffing sterile scrubs and protective safety gear and walking to and from their work stations;
- b. Whether class members were entitled to compensation for time spent donning and doffing clothing and protective gear and walking to and from their work stations;
- c. Whether class members' donning, doffing and walking time is integral and indispensable to their principal activities;
- d. Whether Defendant's compensation policy and practice accounts for the time class members are actually working;
- e. Whether Defendant had a policy and practice of failing to record and compensate class members for all time worked.

32. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of the state law claims.

33. The claims of Gary W. Qualls and Eddy D. Reber (hereinafter “Class Representatives”) are typical of those of the Class in that class members have been employed in the same or similar positions as the Class Representatives and were subject to the same or similar unlawful practices as the Class Representatives.

34. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

35. The Class Representatives are adequate representatives of the class because they are members of the class and their interests do not conflict with the interests of the members of the class they seek to represent. The interests of the members of the class will be fairly and adequately protected by the Class Representatives and their undersigned counsel, who have extensive experience prosecuting complex wage and hour, employment and class action lawsuits.

36. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

**COUNT I**

**Violation of the Fair Labor Standards Act of 1938 -  
Off the Clock Wage and Overtime Claims**

**(Brought on Behalf of All Individual Plaintiffs and All Others Similarly Situated)**

37. Plaintiffs reassert and re-allege the allegations set forth in Paragraphs 1 through 35 above.

38. At all time material herein, Plaintiffs and other similarly situated employees have been entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*

39. The FLSA regulates, among other things, the payment of minimum wage and overtime pay by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

40. Defendant was, and is, subject to the minimum wage and overtime pay requirements of the FLSA because it is an enterprise engaged in commerce and its employees are engaged in commerce.

41. Defendant violated the FLSA by failing to pay employees for hours worked and failing to pay employees for overtime. In the course of perpetrating these unlawful practices, Defendant has also willfully failed to keep accurate records of all hours worked by employees.

42. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from the overtime pay obligations set forth under Section 7(a)(1) of the FLSA. None of the FLSA exemptions apply to the Plaintiffs or other similarly situated employees. Accordingly, Plaintiffs and other similarly situated employees must be paid overtime pay in accordance with Section 7 of the FLSA.

43. Plaintiffs and all similarly situated employees are victims of a uniform and company-wide compensation policy. This uniform policy, in violation of the FLSA, has been and continues to be applied in Defendant's Kansas City, Missouri manufacturing facility.

44. Plaintiffs and all similarly situated employees are entitled to damages equal to amount of unpaid wages for the time worked off the clock and for overtime premium pay within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendant acted willfully and knew or showed reckless disregard for the matter of whether its conduct was prohibited by Section 6(a) of the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 255(a).

45. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described above, pursuant to Section 16(b) of the FLSA. Alternatively, should the Court find Defendant did not act willfully in failing to pay overtime pay, Plaintiffs and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

46. As a result of the aforesaid willful violations of the FLSA's wage and overtime provisions, wages and overtime compensation have been unlawfully withheld by Defendant from Plaintiffs and other similarly situated employees for which Defendant is liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees and costs of this action.

WHEREFORE, individually-named Plaintiffs, and all similarly situated employees, demand judgment against Defendant and pray for: (1) compensatory damages; (2) liquidated

damages; (3) attorneys' fees and costs as allowed by Section 16(b) of the FLSA; (4) for pre-judgment and post-judgment interest as provided by law; and (5) for such other relief the Court deems fair and equitable.

## **COUNT II**

### **Breach of Contract**

#### **(Brought Against Defendant By All Individually-Named Plaintiffs and by Class Representatives on Behalf of the Class)**

47. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs 1 through 45.

48. An employment agreement exists between each Plaintiff and Defendant and each similarly situated employee and Defendant, the terms and conditions of which include, but are not limited to, an agreement by Plaintiff and other similarly situated employees to perform services for Defendant and an agreement by Defendant to pay Plaintiffs and other similarly situated employees at an agreed hourly rate for all work performed.

49. The agreements were made between parties capable of contracting and contained mutual obligations and valid consideration. Plaintiffs and other similarly situated employees have performed all conditions precedent, if any, required of Plaintiffs and other similarly situated employees under the agreement.

50. Defendant failed and refused to perform its obligations in accordance with the terms and conditions of the agreement by failing to pay Plaintiffs and other similarly situated employees for all time worked on behalf of Defendant.

51. Plaintiffs and other similarly situated employees were thereby damaged in an amount to be determined at trial.

