

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

MYLAN PHARMACEUTICALS INC.,
MYLAN SPECIALTY L.P., and MYLAN
INC.,

Plaintiffs,

v.

SANOFI-AVENTIS U.S. LLC, SANOFI S.A.,
AVENTIS PHARMA S.A., and SANOFI-
AVENTIS PUERTO RICO INC.

Defendants.

No. 2:23-cv-00836-MRH

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY**

Mylan's latest notice of supplemental authority (ECF 80) belatedly flags a three-month-old summary judgment order ("Order") from *Regeneron Pharmaceuticals Inc. v. Amgen Inc.*, No. 1:22-cv-00697 (D. Del.). (It also attaches a judgment following a jury trial in the same case, without explaining its significance, if any.) The contrast between this case and *Regeneron* is readily apparent, both from the summary judgment order and from an earlier order denying Amgen's motion to dismiss. *See Regeneron Pharms., Inc. v. Amgen Inc.*, 2023 WL 1927544 (D. Del. Feb. 10, 2023). Indeed, *Regeneron* only serves to further underscore why Mylan's bundled-discount allegations are insufficient and should be dismissed.

First, as Sanofi explained, Mylan does not allege that Sanofi bundled products in separate markets, as necessary to state a claim for bundling. ECF 50 (Mot.) at 5-6; ECF 66 (Reply) at 3-4. Rather, it alleges Lantus and Toujeo are "therapeutically indistinguishable." Compl. ¶ 3. Consequently, Mylan does not need a "diverse" portfolio, because its product, Semglee, already competes with both drugs. *Regeneron*, by contrast, first alleged and then at summary judgment proffered evidence that Amgen bundled drugs in distinct markets. 2023 WL 1927544, at *1-2 ("PSCK9 inhibitor market," "psoriasis market," "rheumatoid arthritis market"); Order 2.

Second, Mylan has not pleaded that it lacks a "diverse" enough portfolio to compete with a two-drug Lantus-Toujeo bundle. Mot. 7-8; Reply 4-5. *Regeneron*, by contrast, alleged that it did not manufacture "comparable products" and therefore could not "make a comparable rebate offer." 2023 WL 1927544, at *7. Then, at summary judgment, it "presented evidence" that it "did not have an equally diverse drug portfolio." Order 1.

Third, Mylan does not plausibly allege that Sanofi conditioned bundled discounts on excluding Semglee. Mot. 8-9; Reply 5. *Regeneron*, by contrast, alleged specific "deals with ESI Commercial and UHC/Optum" in which it "condition[ed] rebates on other drugs in exchange for

Repatha exclusivity.” *Regeneron*, 2023 WL 1927544, at *5. And it “presented evidence” to that effect at summary judgment. Order 1.

The differences between Mylan’s allegations and the allegations in *Regeneron* are stark. Mylan’s complaint should be dismissed.

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