U.S. FOOD & DRUG ADMINISTRATION

ANDA 207735

ANDA TENTATIVE APPROVAL

BPI Labs, LLC
6911 Bryan Dairy Road
Largo, FL 33777
Attention: Sandhya Rani Kosuri
Regulatory Affairs Manager

Dear Madam:

This letter is in reference to your abbreviated new drug application (ANDA) received for review on June 17, 2014, submitted pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) for Cabazitaxel Injection, 60 mg/1.5 mL (40 mg/mL) Single-dose Vial.

Reference is also made to the complete response letter issued by this office on December 15, 2017, and to any amendments thereafter.

We have completed the review of this ANDA, and have concluded that adequate information has been presented to demonstrate that the drug is safe and effective for use as recommended in the submitted labeling. The Office of Bioequivalence has determined your Cabazitaxel Injection, 60 mg/1.5 mL (40 mg/mL) Single-dose Vial, to be bioequivalent and, therefore, therapeutically equivalent to the reference listed drug (RLD), Jevtana Injection, 60 mg/1.5 mL, of Sanofi-Aventis U.S. LLC (Sanofi).

However, we are unable to grant final approval to your ANDA at this time because of the patent issue noted below. Therefore, the ANDA is **tentatively approved**. This determination is based upon information available to the Agency at this time (e.g., information in your ANDA and the status of current good manufacturing practices (cGMPs) of the facilities used in the manufacturing and testing of the drug product). This determination is subject to change on the basis of new information that may come to our attention. This letter does not address issues related to the 180-day exclusivity provisions under section 505(j)(5)(B)(iv) of the FD&C Act.

The RLD upon which you have based your ANDA, Sanofi's Jevtana Injection, 60 mg/1.5 mL, is subject to periods of patent protection. The following patents and expiration dates (with pediatric exclusivity added) are currently listed in the Agency's publication titled *Approved Drug Products with Therapeutic Equivalence Evaluations* (the "Orange Book"):

U.S. Patent Number	Expiration Date
5,847,170 (the '170 patent)	September 26, 2021
7,241,907 (the '907 patent)	June 10, 2026
8,927,592 (the '592 patent)	April 27, 2031

Your ANDA contains paragraph IV certifications to each of the patents[1] under section 505(j)(2)(A)(vii)(IV) of the FD&C Act stating that the patents are invalid, unenforceable, or will not

be infringed by your manufacture, use, or sale of Cabazitaxel Injection, 60 mg/1.5 mL (40 mg/mL) Single-dose Vial, under this ANDA. You have notified the Agency that BPI Labs, LLC (BPI) complied with the requirements of section 505(j)(2)(B) of the FD&C Act, and that litigation was initiated within the statutory 45-day period against BPI for infringement of the '170 patent in the United States District Court for the District of New Jersey [Sanofi-Aventis U.S. LLC, Aventis Pharma S.A. and Sanofi v. BPI Labs, LLC, and Belcher Pharmaceuticals, LLC, Civil Action No. 3:14-cv-08081]. You have also notified the Agency that on March 5, 2018, the court entered a final judgment in favor of Sanofi finding that BPI would infringe claims 1 and 2 of the '170 patent. In this decision, the court ordered that, "[p]ursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any final approval by the United States Food and Drug Administration of ANDA No. 207735 under § 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355(j)) shall be a date not earlier than the date of expiration of the '170 patent together with the period of Pediatric Exclusivity awarded to Plaintiffs."[2] Therefore, final approval cannot be granted until the '170 patent expires, currently September 26, 2021.

Please note that if FDA requires a Risk Evaluation and Mitigation Strategy (REMS) for a listed drug, an ANDA citing that listed drug also will be required to have a REMS. See section 505-1(i) of the FD&C Act.

RESUBMISSION

To request final approval, please submit an amendment titled "FINAL APPROVAL REQUESTED" with enough time to permit FDA review prior to the date you believe that your ANDA will be eligible for final approval. A request for final approval that contains no new data, information, or other changes to the ANDA generally requires a period of 90 days for Agency review. Accordingly, such a request for final approval should be submitted no later than 90 days prior to the date on which you seek approval. A request for final approval that contains substantive changes to this ANDA or changes in the status of the manufacturing and testing facilities' compliance with cGMPs will be classified and reviewed according to OGD policy in effect at the time of receipt. Applicants should review available agency guidance for industry related to amendments under the generic drug user fee program to determine the duration of Agency review needed to review the changes submitted. The submission of multiple amendments prior to final approval may also result in a delay in the issuance of the final approval letter.

The amendment requesting final approval should provide the legal/regulatory basis for your request for final approval and should include a copy of a court decision, settlement or licensing agreement, or other information described in 21 CFR 314.107, as appropriate. It should also identify changes, if any, in the conditions under which the ANDA was tentatively approved, e.g., updated information such as final-printed labeling, chemistry, manufacturing, and controls data as appropriate. This amendment should be submitted even if none of these changes were made, and it should be designated clearly in your cover letter as a "FINAL APPROVAL REQUESTED."

In addition to the amendment requested above, the Agency may request, at any time prior to the date of final approval, that you submit an additional amendment containing information as specified by the Agency. Failure to submit either or, if requested, both types of amendments described above may result in a delay in the issuance of the final approval letter.

This drug product may not be marketed without final Agency approval under section 505(j) of the FD&C Act. The introduction or delivery for introduction into interstate commerce of this drug product before the final approval date is prohibited under section 301 of the FD&C Act. Also, until

the Agency issues the final approval letter, this drug product will not be deemed approved for marketing under section 505(j) of the FD&C Act, and will not be listed in the Orange Book. Should you believe that there are grounds for issuing the final approval letter prior to September 26, 2021[3], you should amend your ANDA accordingly.

ANNUAL FACILITY FEES

The Generic Drug User Fee Amendments of 2012 (GDUFA) (Public Law 112-144, Title III) established certain provisions[4] with respect to self-identification of facilities and payment of annual facility fees. Your ANDA identifies at least one facility that is subject to the self-identification requirement and payment of an annual facility fee. Self-identification must occur by June 1st of each year for the next fiscal year. Facility fees must be paid each year by the date specified in the *Federal Register* notice announcing facility fee amounts. All finished dosage forms (FDFs) or active pharmaceutical ingredients (APIs) manufactured in a facility that has not met its obligations to self-identify or to pay fees when they are due will be deemed misbranded. This means that it will be a violation of federal law to ship these products in interstate commerce or to import them into the United States. Such violations can result in prosecution of those responsible, injunctions, or seizures of misbranded products. Products misbranded because of failure to self-identify or pay facility fees are subject to being denied entry into the United States.

In addition, we note that GDUFA requires that certain non-manufacturing sites and organizations listed in generic drug submissions comply with the self-identification requirement. The failure of any facility, site, or organization to comply with its obligation to self-identify and/or to pay fees when due may raise significant concerns about that site or organization and is a factor that may increase the likelihood of a site inspection prior to approval. FDA does not expect to give priority to completion of inspections that are required simply because facilities, sites, or organizations fail to comply with the law requiring self-identification or fee payment.

Additionally, we note that the failure of any facility referenced in the application to self-identify and pay applicable fees means that FDA will not consider the GDUFA application review goal dates to apply to that application.

The Electronic Common Technical Document (eCTD) is CDER's standard format for electronic regulatory submissions. Beginning May 5, 2017, ANDAs must be submitted in eCTD format and beginning May 5, 2018, drug master files must be submitted in eCTD format. Submissions that do not adhere to the requirements stated in the eCTD Guidance will be subject to rejection. For more information please visit: www.fda.gov/ectd.

For further information on the status of this ANDA or upon submitting an amendment to the ANDA, please contact Gwendolyn Murphy, Regulatory Project Manager, at (240) 402-9624.

Sincerely yours,

{See appended electronic signature page}

For Vincent Sansone, PharmD
Deputy Director
Office of Regulatory Operations
Office of Generic Drugs
Center for Drug Evaluation and Research

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[1] The Agency notes that the '592 patent was submitted to the Agency after submission of your ANDA. Litigation, if any, with respect to this patent would not create a statutory stay of approval.

[2] Final Judgment Order, *Sanofi-Aventis U.S. LLC, Aventis Pharma S.A. and Sanofi v. BPI Labs, LLC, and Belcher Pharmaceuticals, LLC,* Civil Action Nos. 3:14-cv-08081 and 3:15-cv-02521, at 9 (Mar. 5, 2018).

[3] We note that this ANDA currently is eligible for approval the day after expiration of the pediatric exclusivity period. See Section 505A(b)(1)(B) of the FD&C Act. If this day falls on a Saturday, Sunday, or Federal holiday, it will be eligible for approval the next business day.

[4] Some of these provisions were amended by the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Public Law 115-52, Title III).

Priya Shah

Digitally signed by Priya Shah
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