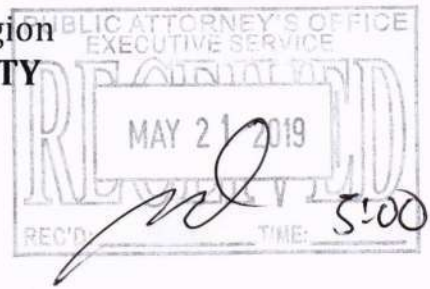


Republic of the Philippines  
**REGIONAL TRIAL COURT**  
National Capital Judicial Region  
**BRANCH 226, QUEZON CITY**



**HEIRS OF ABBIE N. HEDIA,  
namely, ARIEL A. HEDIA and  
RUBY N. HEDIA**

*Plaintiffs,*

- versus -

CIVIL CASE NO. R-QZN-18-05227-CV  
For: **Damages**

**SANOFI PASTEUR, INC., ET. AL.,**  
*Defendants.*

X-----X

**ORDER**

For resolution are the following:

- I. Motion for Additional Time filed by defendants Carlito Realuyo, Conchita Santos, and Jazel Anne Calvo on October 16, 2018 to file Reply directed against Plaintiff's Opposition to Motion to Dismiss;
- II. Motion to Dismiss filed by defendant Sanofi Pasteur, Inc. (SPI) on June 22, 2018 directed against the Complaint dated 2 May 2018;
- III. Motion to Dismiss filed by defendants Carlito Realuyo, Conchita Santos, and Jazel Anne Calvo on June 22, 2018 directed against the Complaint dated 2 May 2018;
- IV. Motion to Dismiss (Ad Cautelam) filed by defendant Pearl Grace G. Cabali on September 13, 2018 directed against the Complaint dated 2 May 2018;
- V. Motion to Dismiss filed by defendant Zuellig Pharma Corporation on November 22, 2018 directed against the Complaint dated 2 May 2018;

As there are different pending incidents, the same shall be resolved *in seriatim*.

On May 4, 2018, the plaintiffs filed a Motion to Litigate as Pauper and Be Exempted from Payment of Sheriff's Fees<sup>1</sup>. In an Order issued by

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<sup>1</sup> Dated May 3, 2018

this Court, the Motion to Litigate as Pauper was granted but the Motion to be exempted from Payment of Sheriff's Fees was denied.<sup>2</sup>

On May 11, 2018, a complaint for damages was filed by the plaintiffs. Thereafter, defendants filed several motions which the Court now resolves.

## I.

On October 16, 2018, defendants Carlito Realuyo, Conchita Santos, and Jazel Anne Calvo filed a Motion for Additional Time to file Reply directed against Plaintiffs' Opposition to Motion to Dismiss.

The Court **notes** the said Motion and the Reply<sup>3</sup> filed by the above-mentioned defendants.

## II.

On June 22, 2018, defendant Sanofi Pasteur, Inc. (SPI) filed a Motion to Dismiss directed against the Complaint dated 2 May 2018. Thereafter, on September 10, 2018, the plaintiffs filed their Comment and Opposition<sup>4</sup> to which the defendant SPI filed its Reply<sup>5</sup>.

The grounds raised in the motion shall be discussed individually.

**A)** SPI argues that the venue of the present complaint is improperly laid in the Regional Trial Court of Quezon City as neither the plaintiffs nor the principal defendants reside in the said city. Only defendant Ma. Visitacion I. Barreiro is a resident of the city who SPI claimed to be merely a nominal or formal party in this case.

In their *Comment*, plaintiffs contend that Ms. Barreiro is a real party-in-interest. She was being sued in her individual personal capacity, with the plaintiffs praying for damages for which the defendant Barreiro is principally and solidarily liable with other defendants.

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<sup>2</sup> Dated May 7, 2018

<sup>3</sup> Dated October 3, 2018

<sup>4</sup> September 10, 2018

<sup>5</sup> Dated October 3, 2018; Filed on October 16, 2018

***Upon perusal of the Records, and relevant Rules and laws, the Court finds that the venue of the instant action is properly laid.***

Section 2, Rule 4 of the Rules of Court provides:

**Section 2.** Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or **any of the principal defendants resides**, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

In the present action, Ms. Barreiro is not a nominal or formal party as claimed by defendant SPI.

A nominal or pro forma party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.<sup>6</sup>

Defendant Barreiro is a real party in interest in this case.

Section 2, Rule 3 of the Rules of Court states:

**Section 2.** Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

She was being sued in her individual personal capacity, with the plaintiffs praying for damages for which the defendant Barreiro may be principally and solidarily liable with other defendants.

Under Section 31 of the Corporation Code, it clearly provides that:

Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Per General Information Sheet for the Year 2015 of Zuellig Pharma Corporation, defendant Barreiro's position is Assistant Vice President/Controller. She was charged under the above-mentioned provision of the Corporation Code being one of those who have control of

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<sup>6</sup> Samaniego vs. Aguila, G.R. No. 125567, June 27, 2000

the Zuellig Pharma Corp, the seller of the Dengavaxia to the Philippine Government.

Consequently, she is a real party in interest in this case. Thus, **Quezon City is the proper venue.**

**B)** SPI claims that the complaint and its attachments fail to state a cause of action against defendant SPI under the following laws: Consumer Act of the Philippines, quasi-delict under the Civil Code, abuse of right under the Civil Code, Anti-Torture Act, and International Covenant on Civil and Political Rights.

In their Comment, plaintiffs maintain that the complaint states a cause of action and that hypothetical admissions extend not only to the relevant and material facts well pleaded in the complaint, but also to inferences that may be fairly deduced from them.

***The Court finds the complaint to state a cause of action against defendant SPI.***

In determining the existence of a cause of action, only the statements in the complaint may properly be considered. It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. If the allegation in a complaint furnishes sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants.<sup>7</sup>

The rule is that a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof. The test of the sufficiency of the facts found in a petition as constituting a cause of action is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof.<sup>8</sup>

Here, defendant SPI is the manufacturer of Dengvaxia subject of this case. The complaint states, *inter alia*, the following:

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<sup>7</sup> Insular Investment and Trust Corporation v. Capital One Equities Corporation, G.R. No. 183308, April 25, 2012

<sup>8</sup> Consolidated Bank and Trust Corp. v. Court of Appeals, G.R. No. 84588, May 29, 1991

- that SPI manufactured an unsafe product that is still in the clinical trial stage, which product has been noted to have risks on seronegative persons in addition to four (4) identified risks;
- that SPI failed to inform the public of risks of the product either thru safety warnings, accompanying instructions or indication on use, or product label;
- that even after reports of serious adverse and life-threatening reactions and deaths of Dengvaxia recipients, it offered no assistance to them, even by way of medical attention;
- that it manufactured, and placed in circulation, the anti-dengue vaccine Dengvaxia without ensuring that it is safe or at least informing the public of its dangerous effects, and without providing adequate instructions or indications for proper use;
- that Abbie Hedia was inoculated with Dengvaxia vaccine at the Health Center of Bayanan, Muntinlupa City;
- that prior to vaccination, neither the barangay officials of Bayanan, Muntinlupa City nor the staff that administered Dengvaxia on the Abbie explained to plaintiffs what the vaccine was and the risks it poses, or inquired what the medical condition of Abbie was;
- that prior to receiving the vaccine, she was a healthy, jolly and active kid who seldom got sick.
- that she received no notable medication other than Dengvaxia;
- that on February 10, 2018, she died;
- that sudden death caused the plaintiffs extreme pain, mental anguish, and sleepless nights;
- that Sanofi admitted while DOH recognized the danger of Dengvaxia;
- that Dengvaxia was sold to the Philippines for mass administration, for the staggering amount of 3.5 Billion pesos, while Dengvaxia was still in its clinical trial stage, and despite the critical safety concern on the vaccine;
- and that the findings of the PAO forensic examination conducted on the body of the victim are consistent with the findings on the autopsies conducted on the other Dengvaxia victims.

Hypothetically admitting the mentioned allegations together with other facts alleged in the complaint, the court can render a valid judgment upon the same.

**C)** SPI contends that plaintiffs unjustifiably failed to pay the required docket fees, preventing this Court from acquiring jurisdiction over their claims. It argues that the exemption from fees and costs of suit is only applicable to the first category of Public Attorney's Office clients – the indigent clients.

On the other hand, plaintiffs maintain that, as clients of PAO, they are exempt from payment of docket fees.

***Upon study of the Records and related issuances, the Court finds the plaintiffs to be exempt from payment of docket fees.***

The plaintiffs already presented their Certificate of Exemption, Certificate of Indigency, and Certificate of No Property to support their Motion to Litigate as Pauper dated May 3, 2018. In the May 7, 2018 Order, the Court granted the same.

Initially, Office of the Court Administrator Circular No. 67-2007 imposes certain conditions to be exempted from docket and other fees, to wit:

However, the entitlement to the exemption from the payment of docket and other fees shall be subject to the conditions prescribed under Section 19, Rule 141 of the Revised Rules of Court.

Thus, the indigent client of PAO shall execute an affidavit stating (a) that his gross income and that of his immediate family do not exceed an amount double the monthly minimum wage of an employee; and (b) that the indigent client does not own real property with a fair market value, as stated in the a ended current tax declaration, of more than three hundred thousand (P300,000.00) pesos.

The affidavit of the indigent client shall be supported by an affidavit of a disinterested person attesting to the truth of the former.

However, acting on a letter requesting reconsideration of the above-mentioned issuance, Office of the Court Administrator Circular No. 121-2007 was issued which provides:

Xxx Henceforth, the clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court, xxx, as an original proceeding or on appeal.

The conditions imposed in OCA Circular No. 67-2007 for the entitlement to the exemption is hereby **REVOKED**. Xxx

The same was recognized by the Supreme Court in the case of *Pangcatan vs. Maghuyop*<sup>9</sup>, where it held that:

The exemption of the clients of the PAO like him from the payment of the legal fees was expressly declared by law for the first time in

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<sup>9</sup> G.R. No. 194412, November 16, 2016

Republic Act No. 9406, particularly its amendment of Section 16-D of the Administrative Code of 1987, as follows:

Section 16-D. Exemption from Fees and Costs of the Suit.- **The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.** The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.

Such exemption by virtue of Republic Act No. 9406 was recognized by the Court Administrator through OCA Circular No. 67-2007, but the clients of the PAO remained required to submit relevant documentation to comply with the conditions prescribed by Section 19, Rule 141 of the Rules of Court. Later on, the Court Administrator removed the conditions prescribed under OCA Circular No. 67-2007 by issuing Circular No. 121-2007. Since then until the present, all clients of the PAO have been exempt from the payment of docket and other fees incidental to instituting an action in court whether as an original proceeding or on appeal.

It is notable that the Court has pointed out in its ruling in Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees that its acknowledgment of the exemption bowed to the clients of the PAO pursuant to Section 16D of the Administrative Code of 1987, as amended by Republic Act No. 9406, was not an abdication of its rule-making power but simply its recognition of the limits of that power; and that, in particular, such acknowledgment reflected a keen awareness that, in the exercise of its rule-making power, it may not dilute or defeat the right of access to justice of indigent litigants.

Applying the foregoing discussions, the Court cannot find any reason to reverse its May 7, 2018 Order exempting the plaintiffs from payment of docket fees.

### III.

On June 22, 2018, defendants Carlito Realuyo, Conchita Santos, and Jazel Anne Calvo filed a Motion to Dismiss directed against the Complaint dated 2 May 2018.

Similar to defendant Sanofi's, the Motion to Dismiss filed by defendants Realuyo, Santos, and Calvo questions the venue of the present case and failure of the plaintiffs to pay the required docket fees. However,

they were already resolved by this Court in the Motion to Dismiss filed by defendant Sanofi.

Thus, the only issue left to be resolved in the present Motion to Dismiss pertains to the alleged failure of the complaint to state a cause of action against defendants Realuyo, Santos, and Calvo.

The essential elements of a cause of action are a legal right of the plaintiff, a correlative obligation of the defendant, and an act or omission of the defendant violative of said legal right. The test of sufficiency of the facts to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer. As stated in *Adamos vs. J.M. Tuason & Co., Inc.*<sup>10</sup>, it is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether these allegations are true or not is beside the point, for their truth is hypothetically admitted. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer in the complaint? So rigid is the norm prescribed that if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.<sup>11</sup>

Here, defendants are the directors and officer of SPI which was the manufacturer of Dengvaxia in the Philippines subject of this case. The complaint states, *inter alia*, the following:

- that SPI manufactured an unsafe product that is still in the clinical trial stage, which product has been noted to have risks on seronegative persons in addition to four (4) identified risks;
- that SPI failed to inform the public of risks of the product either thru safety warnings, accompanying instructions or indication on use, or product label;
- that even after reports of serious adverse and life-threatening reactions and deaths of Dengvaxia recipients, it offered no assistance to them, even by way of medical attention;
- that they manufactured, and placed in circulation, the anti-dengue vaccine Dengvaxia without ensuring that it is safe or at least informing the public of its dangerous effects, and without providing adequate instructions or indications for proper use;
- that Abbie Hedia was inoculated with Dengvaxia vaccine at the Health Center of Bayanan, Muntinlupa City;
- that prior to vaccination, neither the barangay officials of Bayanan, Muntinlupa City nor the staff that administered Dengvaxia on the

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<sup>10</sup> 25 SCRA 529

<sup>11</sup> Heirs of Licaros vs. Sandiganbayan, G.R. No. 157438, October 18, 2004



Abbie explained to plaintiffs what the vaccine was and the risks it poses, or inquired what the medical condition of Abbie was;

- that prior to receiving the vaccine, she was a healthy, jolly and active kid who seldom got sick.
- that she received no notable medication other than Dengvaxia;
- that on February 10, 2018, she died;
- that sudden death caused the plaintiffs extreme pain, mental anguish, and sleepless nights;
- that Sanofi admitted while DOH recognized the danger of Dengvaxia;
- that Dengvaxia was sold to the Philippines for mass administration, for the staggering amount of 3.5 Billion pesos, while Dengavaxia was still in its clinical trial stage, and despite the critical safety concern on the vaccine;
- that the findings of the PAO forensic examination conducted on the body of the victim are consistent with the findings on the autopsies conducted on the other Dengvaxia victims; and
- that those acts constitute gross negligence which is attributable to the corporation's directors, officers and employees who act on behalf of the company.

Hypothetically admitting the mentioned allegations together with other facts alleged in the complaint, the court may render a valid judgment upon the same.

#### IV.

On September 13, 2018, defendant Pearl Grace G. Cabali filed a Motion to Dismiss (Ad Cautelam) directed against the Complaint dated 2 May 2018.

Defendant Cabali raised two grounds: 1) improper manner by which she was served with summons and 2) whether the plaintiffs have a cause of action against her.

On November 26, 2018, the plaintiffs filed their Comment and Opposition<sup>12</sup> to the Motion.

The grounds raised in the motion shall be discussed individually.

**A)** Defendant Cabali insisted that there are only two (2) failed attempts made by the process server to serve the summons contrary to the jurisprudential guidelines. Likewise, John Cabali, the one who

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<sup>12</sup> Dated November 24, 2018

received the summons, did not possess sufficient discretion as contemplated by the Rules of Court and prevailing jurisprudence.

The Court disagrees.

Section 7, Rule 14 of the Rules of Court reads:

**Section 7. Substituted service.** — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected **(a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein**, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

As can be seen from the Partial Officer's Return<sup>13</sup>, when the defendant Sanofi was served with summons, Atty. Aida Constantino told the process server that only summons for Sanofi Pastuer, Inc. will be received. Thus, the summons intended for defendant Cabali was not served. When the process server went to Cabali's address, however, John Cabali, defendant's brother, said that her sister was not around. Again on June 27, 2018, he went for the second time and the defendant was still not around. Thus, substituted service was effected through defendant's brother.

The Supreme Court, in the case of *Manotoc vs. Court of Appeals*<sup>14</sup>, explains the requirements when substituted service may be resorted to, to wit:

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. **"Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts**

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<sup>13</sup> Dated June 29, 2018

<sup>14</sup> G.R. No. 130974, August 16, 2006

**were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.**

The rule that there should at least be three (3) tries, preferably on at least two different dates before substituted service may be had is not mandatory. In the case of *Macasaet, et. al., vs Co*<sup>15</sup>, the Court held that:

There is no question that Sheriff Medina **twice attempted** to serve the summons upon each of petitioners in person at their office address, the first in the morning of September 18, 2000 and the second in the afternoon of the same date. Each attempt failed because Macasaet and Quijano were "always out and not available" and the other petitioners were "always roving outside and gathering news." After Medina learned from those present in the office address on his second attempt that there was no likelihood of any of petitioners going to the office during the business hours of that or any other day, he concluded that further attempts to serve them in person within a reasonable time would be futile. The circumstances fully warranted his conclusion. He was not expected or required as the serving officer to effect personal service by all means and at all times, considering that he was expressly authorized to resort to substituted service should he be unable to effect the personal service within a reasonable time. In that regard, what was a reasonable time was dependent on the circumstances obtaining. **While we are strict in insisting on personal service on the defendant, we do not cling to such strictness should the circumstances already justify substituted service instead. It is the spirit of the procedural rules, not their letter, that governs.**

The "several attempts" requirement has been complied with in this case. However, defendant Cabali also claims that the requirement that summons may be left at the defendant's residence with some person of suitable age and discretion residing therein was not met.

Defendant Cabali insists that her brother does not possess sufficient discretion. To substantiate her claim, defendant alleged that it took almost over two (2) months from the time her brother received the summons until the time defendant Cabali was apprised of the same. The long interval of time clearly demonstrates her brother's lack of comprehension on the significance of summons and the duty to immediately deliver the same to defendant.

The contention of the defendant has no leg to stand on. Allegations of late notification by defendant's brother bereft of any proof cannot be admitted by this Court. Assuming there is really late notification, said fact cannot be equated with lack of sufficient discretion.

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<sup>15</sup> G.R. No. 156759, June 5, 2013

***Thus, this Court validly acquired jurisdiction over the person of defendant Cabali.***

**B)** Defendant Cabali claims that the plaintiffs fail to state and/or assert a cause of action against her. She argues that she was only impleaded in the instant case because she was the incumbent Assistant Corporate Secretary of Sanofi Pasteur, Inc. for the year 2015.

The Court is not persuaded.

The familiar test for determining whether a complaint did or did not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, a judge may validly grant the relief demanded in the complaint.<sup>16</sup>

In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) **the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations;** and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.<sup>17</sup>

As Assistant Corporate Secretary, defendant-movant is empowered to act in the Secretary's stead. The Secretary performs duties which are incidental to his or her office while the Assistant may perform duties assigned to him or her by the Board of Directors, the Secretary or other officers of the Corporation.<sup>18</sup> In addition, as correctly pointed out by the plaintiffs, the contention that defendant Cabali was not in a position to either participate or influence the management decision is a matter of defense that are evidentiary in nature and cannot be resolved without full-blown trial.

As officer of Sanofi, defendant has duties under the different laws cited by the plaintiffs. Hypothetically admitting the relevant and material

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<sup>16</sup> *Insular Investment and Trust Corporation v. Capital One Equities Corporation*, G.R. No. 183308, April 25, 2012

<sup>17</sup> *Citibank, N.A. vs. Chua, et. al*, G.R. No. 102300. March 17, 1993

<sup>18</sup> Amended By-Laws of Sanofi; Annex "E" of the Complaint

facts as well as the inferences that may be fairly deduced therefrom, there are breaches in her duty, together with other officers', which caused the herein victim's death.

In determining whether allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.<sup>19</sup>

***Thus, the Court finds the complaint to state a cause of action against defendant Cabali.***

#### V.

On November 22, 2018, defendant Zuellig Pharma Corporation filed a Motion to Dismiss directed against the Complaint dated 2 May 2018. It argues that the complaint fails to state a cause of action against the corporation.

***The contention raised in the Motion is not impressed with merit.***

Here, defendant Zuellig is the distributor of Dengvaxia in the Philippines subject of this case. The complaint states, *inter alia*, the following:

- that defendant Zuellig sold an unsafe product that is still in the clinical trial stage, which product has been noted to have risks on seronegative persons in addition to four (4) identified risks;
- that defendant Zuellig failed to inform the public of risks of the product either thru safety warnings, accompanying instructions or indication on use, or product label;
- that even after reports of serious adverse and life-threatening reactions and deaths of Dengvaxia recipients, it offered no assistance to them, even by way of medical attention;
- that it sold, and placed in circulation, the anti-dengue vaccine Dengvaxia without ensuring that it is safe or at least informing the

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<sup>19</sup> Paranaque Kings Enterprises, Inc. vs. CA, G.R. No. 111538. February 26, 1997

- public of its dangerous effects, and without providing adequate instructions or indications for proper use;
- that Abbie Hedia was inoculated with Dengvaxia vaccine at the Health Center of Bayanan, Muntinlupa City;
  - that prior to vaccination, neither the barangay officials of Bayanan, Muntinlupa City nor the staff that administered Dengvaxia on the Abbie explained to plaintiffs what the vaccine was and the risks it poses, or inquired what the medical condition of Abbie was;
  - that prior to receiving the vaccine, she was a healthy, jolly and active kid who seldom got sick.
  - that she received no notable medication other than Dengvaxia;
  - that on February 10, 2018, she died;
  - that sudden death caused the plaintiffs extreme pain, mental anguish, and sleepless nights;
  - that Sanofi admitted while DOH recognized the danger of Dengvaxia;
  - that Dengvaxia was sold to the Philippines for mass administration, for the staggering amount of 3.5 Billion pesos, while Dengavaxia was still in its clinical trial stage, and despite the critical safety concern on the vaccine; and
  - that the findings of the PAO forensic examination conducted on the body of the victim are consistent with the findings on the autopsies conducted on the other Dengvaxia victims.

In the case of *Aquino vs. Quiazon*<sup>20</sup>, the Court elaborated on the established standard on whether the complaint states a cause of action in the following manner:

The rule is that a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof. The test of the sufficiency of the facts found in a petition as constituting a cause of action is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof (*Consolidated Bank and Trust Corp. v. Court of Appeals*, 197 SCRA 663 [1991]).

In determining the existence of a cause of action, only the statements in the complaint may properly be considered. It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. If the allegation in a complaint furnish sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants (*supra*).

Thus, in determining the existence of a cause of action, only the allegations in the complaint may properly be considered. For the court

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<sup>20</sup> G.R. No. 201248, March 11, 2015

to do otherwise would be a procedural error and a denial of the plaintiff's right to due process.

Hypothetically admitting the mentioned allegations together with other facts alleged in the complaint, the court may render a valid judgment upon the same.

**WHEREFORE**, in light of the foregoing discussions, the Court hereby resolves to **DENY** the following:

- I. Motion to Dismiss filed by defendant Sanofi Pasteur, Inc. (SPI) on June 22, 2018 directed against the Complaint dated 2 May 2018;
- II. Motion to Dismiss filed by defendants Carlito Realuyo, Conchita Santos, and Jazel Anne Calvo on June 22, 2018 directed against the Complaint dated 2 May 2018;
- III. Motion to Dismiss (Ad Cautelam) filed by defendant Pearl Grace G. Cabali on September 13, 2018 directed against the Complaint dated 2 May 2018;
- IV. Motion to Dismiss filed by defendant Zuellig Pharma Corporation on November 22, 2018 directed against the Complaint dated 2 May 2018;

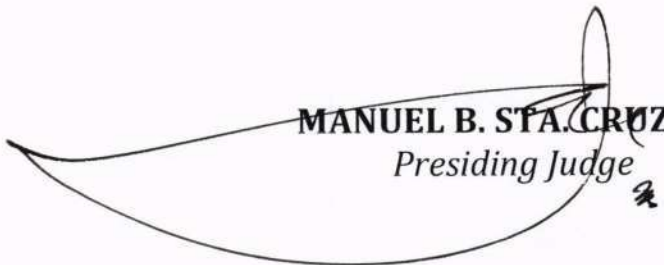
The defendants are afforded at least five (5) days from receipt of this Order within which to file their answers pursuant to Section 4, Rule 16 of the Rules of Court.

The Court notes that some of the defendants are not yet served with summons despite earnest effort on the part of the Sheriff/Process Server of the Branch.

The Plaintiffs are directed to coordinate with the Sheriff/Process Server of the Branch within sixty (60) days from receipt of this Order for the service of summons to the other defendants.

SO ORDERED.

Quezon City, Philippines, March 20, 2019.

  
**MANUEL B. STA. CRUZ, JR.**  
Presiding Judge

Copy Furnished:

1. **PUBLIC ATTORNEY'S OFFICE** – Counsel for Plaintiffs Ramil R. Pestillos and Liza M. Makilan - DOJ Agencies Building, NIA Road corner East Avenue, Diliman, Quezon City
2. **[x] ARIEL A. HEDIA AND RUBY N. HEDIA**
3. **ANGARA ABELLO CONCEPCION REGALA & CRUZ** - Counsel for Defendants Sanofi Pasteur, Inc.; Conchita Santos and Jazel Anne Calvo - 22<sup>nd</sup> Floor, ACCRALAW Tower, Second Avenue corner 30<sup>th</sup> Street, Crescent Park West, Bonifacio Global City 1635 Taguig, Metro Manila
4. **ATTY. JOSHUA GILBERT F. PARAISO/ATTY. FIDEL T. VALEROS, JR./ATTY. ROBERTO MIGUEL D. RAMIRO/ATTY. SERGIO ILDEFONSO FELIPE O. PINLAC and ATTY. ANA GRACIELLA S. MASCENON- PUYAT JACINTO & SANTOS** -Counsel for Defendant Pearl Grace G. Cabali - 10<sup>th</sup> Floor, 8 Rockwell, Hidalgo corner Plaza Drive, Rockwell center, Makati City
5. **[x] SANOFI PASTEUR, INC.** -21, 22 and 23 Floors One World Place, 32<sup>nd</sup> Street, Bonifacio Global City 1634 Taguig City
6. **[x] RAMIL R. PESTILLOS and LIZA M. MAKILAN** -
7. **[x] CARLITO REALUYO** – No. 10 Kingston St., Phase 2, vermont Royale Sudivision, Antipolo City
8. **[x] STANISLAS CAMART** – c/o Sanofi-Aventis Philippines, Inc. - 3<sup>rd</sup> Floor Feliza Bldg., 108 V.A. Rufino St., Legaspi Village, Makati City and/or 21 Floor One World Place - 32<sup>nd</sup> St., Bonifacio Global City 1634
9. **[x] JEAN LOUIS GRUNWALD** – c/o 21, 22 and 23 Floors One World Place, 32<sup>nd</sup> Street, Bonifacio Global City 1634 Taguig City
10. **[x] JEAN-FRANCOIS VACHERAND** – c/o 21, 22 and 23 Floors One World Place, 32<sup>nd</sup> Street, Bonifacio Global City 1634 Taguig City
11. **[x] CONCHITA SANTOS** – No. 39 Abello St., Mayuga, BF Homes, Parañaque City
12. **[x] JAZEL ANNE CALVO** – 602 Glenn St., Moonwalk Village, Phase 2, Parañaque City
13. **[x] PEARL GRACE G. CABALI** -No. 21 Juliana Drive, Casimiro Village, Las Piñas City
14. **[x] MARIA ESTER V. DE ANTONI** – 9H East Tower One Serenada, Taguig City
15. **[x] ZUELLIG PHARMA CORP.** - Km 14 West Service Road, South Superhighway corner Edison St., Sun Valley, Parañaque City
16. **ROMULO MABANTA BUENAVENTURA SAYOC & DELOS ANGELES**- Counsel for Defendant Zuellig Pharma Corporation – 21<sup>st</sup> Floor, Philamlife Tower 8767 Paseo de Roxas St., Makati City 1226
17. **[x] KASIGOD V. JAMIAS** -202 Macopa Drive, Ayala Alabang, Muntinlupa City
18. **[x] MICHAEL BECKER** - 205 Nipa corner Buri Sts., Ayala Alabang, Muntinlupa City
19. **[x] RICARDO J. ROMULO** – 2386 Mabolo St., Dasmariñas Village, Makati City
20. **[x] IMRAN BABAR CHUGHTAI** – c/o ZUELLIG PHARMA CORP. - Km 14 West Service Road, South Superhighway corner Edison St., Sun Valley, Parañaque City
21. **[x] RAYMUND T. AZURIN** – 14 Date Palm Street, Palms Pointe, Filinvest, Alabang, Muntinlupa City
22. **[x] NILO P. BADILA** – No. 16 Trese Martirez St., Alabang Hills, Muntinlupa City
23. **[x] JOHN STOKES DAVISON** – c/o ZUELLIG PHARMA CORP. - Km 14 West Service Road, South Superhighway corner Edison St., Sun Valley, Parañaque City
24. **[x] MARC FRANCK** – Fraser Place, Valero Street, Salcedo Village, Makati City
25. **[x] ASHLEY GERARD S. ANTONIO** – 921 E Two Serenada, Bonifacio Global City, Taguig City
26. **[x] ANA LIZA A. PERALTA** – 17 Magallanes Avenue, Magallanes Village, Makati City



27. [x] **ROSA MARIA M. CHUA** – 20 Mushroom St., Valle Verde 5, Pasig City
28. [x] **DANILO J. CAHOY** – 416 Alma Street, Buenavida Homes, Merville Subd., Parañaque City
29. [x] **MANUEL J. CONCIO III** – Lot Block 2 Antipolo Bend, Phase II Greenwoods Executive Villae, Pasig City
30. [x] **ROLAND GOCO** -Unit 9B Tower 2, St. Francis Place, Shangri-La, Pasig City
31. [x] **MA. VISITACION I. BARREIRO** – 37 Tomas Morato Street, Quezon City
32. [x] **DOH Secretary FRANCISCO T. DUQUE III** – DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila
33. [x] **Former DOH Secretary JANETTE L. GARIN, M.D.** - Pescadores Street, Guimbal, Iloilo 5022
34. [x] **Resigned DOH Undersecretary VICENTE BELIZARIO, JR.** -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
35. [x] **Resigned DOH Undersecretary KENNETH HARTIGAN-GO** - -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
36. [x] **Retired DOH Undersecretary GERARDO BAYUGO** - c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
37. [x] **DOH Assistant Secretary LYNDON L. LEE SUY** - -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
38. [x] **DOH Director IRMA L. ASUNCION** - -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
39. [x] **PCMC Director JULIUS A. LECCIONES** -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
40. [x] **DOH OIC Director JOYCE DUCUSIN** -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
41. [x] **DOH Division Chief ROSALIND VIANZON** -c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
42. [x] **DOH Director IV MARIO S. BAQUILOD**-c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
43. [x] **DR. MARIA LOURDES C. SANTIAGO** – c/o Food and Drug Administration Central Office, Civic Drive, Filinvest Corporate, Alabang, Muntinlupa City and/or - c/o DOH Main Office, San Lazarro Compound, Tayuman, Sta. Cruz, Manila 1003
44. [x] **MS. MELODY ZAMUDIO** – c/o Food and Drug Administration Central Office, Civic Drive, Filinvest Corporate, Alabang, Muntinlupa City
45. [x] **RITM DIRECTOR DR. SOCORRO P. LUPISAN** – Research Institute for Tropical Medicine – 9002 Research Drive, Filinvest Corporate, Alabang 1781 Muntinlupa City
46. [x] **DR. MARIA ROSARIO Z. CAPEPING** – Research Institute for Tropical Medicine – 9002 Research Drive, Filinvest Corporate, Alabang 1781 Muntinlupa City
47. [x] **OTHER SENIOR GOVERNMENT OFFICIALS RESPONSIBLE FOR PURCHASING DENG VAXIA and SPREADING THE IMPLEMENTATION OF THE MASS VACCINATION PROGRAM (JOHN DOES)**