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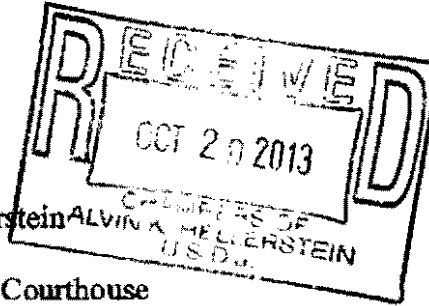
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October 28, 2013



VIA FACSIMILE

The Honorable Alvin K. Hellerstein  
 United States District Judge  
 Daniel Patrick Moynihan U.S. Courthouse  
 500 Pearl Street  
 New York, NY 10007

Re: *Jones v. Pfizer Inc., et al.*  
 Civil Action No. 1:10-cv-03864-AKH (S.D.N.Y.)

Dear Judge Hellerstein,

We write on behalf of Defendants, concerning certain exhibits that were submitted along with the parties' October 18, 2013 joint letter in the above-captioned matter. In accordance with the parties' Stipulation and Protective Order in this case, *see* Dkt. No. 93 (the "Protective Order"), the parties jointly submitted the letter under seal, as well as certain exhibits containing information designated "Confidential" under the terms of the Protective Order (Plaintiffs' exhibits C-R and Defendants' exhibits U-V). To avoid burdening the Court with a document-by-document ruling on sealing, Defendants respectfully request that the Court direct Plaintiffs to withdraw their exhibits C through N, and R—as the Court did in March 2011—as they are not necessary to the Court's decision on the issues raised in the letter. In the alternative, as described

*Leave as granted to withdraw Exhibits C-R and Def's 945. U-V. 10-31-13*  
*Alvin K. Hellerstein*  
*Sealing of Documents*  
*Alth*

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below, Defendants respectfully request that the Court maintain the letter, as well as Plaintiffs' exhibits C through N, and exhibit R, under seal.

**A. Exhibits C through N, and R Should Be Withdrawn.**

In March 2011, the Court was presented with a similar sealing issue, in which the parties had submitted briefing on class certification, along with various exhibits. Because the exhibits were not necessary to decide the then-pending motion, the Court directed Plaintiffs to withdraw certain exhibits as to which Defendants were requesting a seal. *See* 3/26/2012 Tr. at 35:18-21. Here again, the parties' joint letter provides the Court with the information necessary to rule on the parties' disputed issues. The parties have incorporated the relevant aspects of their exhibits in the letter itself—the exhibits themselves need not be included as part of the Court's file. Accordingly Defendants respectfully request that the Court direct Plaintiffs to withdraw their exhibits C through N, and exhibit R.

**B. Alternatively, Plaintiffs' Exhibits C through N, and R, Should Remain Under Seal.**

Alternatively, in the event that the Court is inclined to issue a document-by-document ruling on sealing issues, Defendants respectfully request that the Court maintain the letter, as well as Plaintiffs' exhibits C through N, and exhibit R, under seal.

Pursuant to this Court's Individual Rule 4(A), Paragraph 7 of the Protective Order, and applicable law, court records and docket sheets may be sealed "upon demonstration that suppression is essential to preserve higher values and is narrowly tailored to serve that interest." *The Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) (internal quotation marks and citations omitted). The Second Circuit has held that "the decision whether to seal court records requires weighing the importance of the presumption of public access, depending

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upon the type of judicial function at issue, against the interests sought to be protected by sealing.” *Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 610-11 (S.D.N.Y. 1998) (citing *United States v. Amodeo*, 71 F.3d 1044, 1047-51 (2d Cir. 1995)). For example, “[c]ourts may deny access to records that are ‘sources of business information that may harm a litigant’s competitive standing.’” *In re Parmalat Sec. Litig.*, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

Exhibits C, D, and E are non-public letters from Pfizer to its external auditors, KPMG LLP, in connection with KPMG’s audits of Pfizer’s financial statements and internal controls. These letters reflect Pfizer’s representations to KPMG on a number of topics in connection with its quarterly securities filings. Any information that is not carried through to Pfizer’s public securities filings remains Pfizer’s confidential business information. Disclosure of this confidential information would certainly be of interest to Pfizer’s competitors, and could be leveraged to Pfizer’s disadvantage.

Exhibit F contains excerpts of the deposition testimony of Dennis Block, Pfizer’s outside disclosure counsel during the class period. Mr. Block testified pursuant to Pfizer’s limited waiver of its attorney-client privilege, as reflected in this Court’s Rule 502(d) Order, *see* Dkt. 150, but his testimony nevertheless remains confidential and should not be entered into the public record. By way of example, over the course of just six pages, Mr. Block testified as to (i) the content of his discussions with Pfizer regarding probability of loss and reserve issues, (ii) the roles of Pfizer’s internal personnel regarding reserves, as well as his assessment of their abilities, and (iii) his communications with Pfizer regarding the government investigations.

Exhibit G is a Pfizer internal narrative summary prepared as part of Pfizer’s legal proceedings disclosure process. This document describes Pfizer’s internal procedures for legal

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disclosures, including how Pfizer's internal and external legal counsel, as well as its internal and external auditors, communicate and coordinate to prepare the company's disclosures. The report identifies (i) the individuals involved in the legal disclosure process, (ii) their responsibilities throughout the process, (iii) the timeline of their communications in developing disclosures, and (iv) the comments they supply. Pfizer's final disclosures are, of course, public, but its process in drafting and finalizing them is the company's own confidential business information; it should not be disclosed to the public or to competitors.

Exhibit H is a report issued by Pfizer's Corporate Internal Audit group. The report focuses on Pfizer's internal controls, sales force practices, and applicable Pfizer policies and procedures. The report names internal and external legal counsel, as well as internal auditors, and describes the methods developed and used by Pfizer's Internal Audit group. The report also provides confidential recommendations that stem from Internal Audit's review.

Exhibits I, J, K, and L include the deposition testimony of Hugh Donnelly, Pfizer's Vice President of Internal Audit, deposition testimony of Loretta V. Cangialosi, Pfizer's Controller, and emails among Pfizer's Internal Audit personnel. These documents reflect business discussions and analysis regarding Pfizer's internal audits and their results, Pfizer's internal controls, and business interactions with senior Pfizer management. The non-public business activities of Pfizer's Internal Audit group and Pfizer's Controller, and their communications with Pfizer personnel, should not be disclosed to Pfizer's competitors.

Exhibit M and N include deposition testimony of Dee L. Mahoney and Richard Burch, former Pfizer employees. Their testimonies provide details of Pfizer's promotional activities meetings, including annual sales force meetings, product launch meetings, and operating plans meetings. They also discuss communications to Pfizer's sales force and materials presented

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during those meetings as well as Pfizer's motivations and objectives for such meetings. The details of those meetings and materials presented are part of Pfizer's business strategy and confidential information. In a portion of the excerpt Plaintiffs attached, Ms. Mahoney, a third-party witness, also testified as to the reasons for her separation from Pfizer. This is personal and private information that could render a non-party witness embarrassment under Fed. R. Civ. P. 26(c)(1). See, e.g., *Travelers Indem. Co. v. Excalibur Reinsurance Corp.*, No. 3:11-CV-1209 CSH, 2013 WL 4012772, at \*3 (D. Conn. Aug. 5, 2013) (citing *In re New York Times Co.*, 828 F.2d 110, 114-16 (2d Cir.1987)) (materials should be filed under seal to protect "a third party's privacy interests."). Accordingly, such testimony should be maintained under seal.

Exhibit R is an email between and among Pfizer personnel regarding a press release that had not yet been issued. The email reflects Pfizer's internal discussions about the upcoming press release, including its discussion of subjects not included in the press release itself. Such internal Pfizer discussions and business analysis should be maintained under seal.

Defendants request that the Court maintain the joint letter under seal as it refers to, and characterizes, the aforementioned exhibits.

Respectfully,



Steven M. Farina (*pro hac vice*)  
Joseph G. Petrosinelli (*pro hac vice*)  
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cc: Henry Rosen, Esq.

Judge wrote:

“Leave is granted to withdraw Plaintiff Exs. C-R, and Defendants Exs. U-V..

10-31-13

Alvin K. Hellerstein”