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November 19, 2013

ELECTRONICALLY FILED/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:

Defendants' November 18, 2013 letter to the Court advances their "how dare you" defense, but nothing else. Once again, defendants do not deny that Pfizer Inc. ("Pfizer" or the "Company") paid a lawyer to submit to United States District Judge Douglas P. Woodlock a false factual basis for a shell entity so it could plead guilty to a crime that it did *not* commit, but rather Pfizer did. That defendants enlisted a number of former Assistant U.S. Attorneys ("AUSAs") to assist them does not alter this reality or entitle them to hide it. After all, at least one former AUSA has to be wrong here because undersigned counsel also served as an AUSA. Though defendants do not deny that Pfizer and its agents orchestrated this charade, they refuse to admit it. More importantly, they refuse to admit that Pfizer committed the crime to which the shell entity pled, which is the crime that underlies this entire case. *That* is the so-called "leverage" plaintiffs seek here: the substantive proof of the conduct underlying the disclosures at issue here.

Regarding defendants' "Confidential information" designation for the parties' November 8, 2013 joint letter and the *entire* deposition transcript of Brien O'Connor, defendants have failed to do what the Protective Order in this case expressly requires: "With respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record or within fourteen days of the deposition *that a question calls for Confidential information*, in which case the transcript of the *designated testimony* shall be bound in a separate volume and marked 'Confidential Information Governed by Protective Order' by the reporter." Dkt. No. 92, ¶3 (emphasis added). At no point during or since Mr. O'Connor's October 2, 2013 deposition have

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defendants identified a single question that called for “Confidential Information” or a single answer that reflected such information. Nor have they done so with respect to the parties’ November 8, 2013 joint letter. Defendants’ November 18, 2013 letter fails to identify any portions of these documents that reflect “Confidential Information,” let alone explain why any specific language qualifies for this designation. Defendants’ sweeping rhetoric is no substitute for the substance that this Court’s Protective Order requires.

Rhetoric, however, is all defendants have. The Court’s review of the November 8, 2013 letter will confirm that no portion of it reflects any of the categories of Confidential Information set forth in the Court’s Protective Order (Dkt. No. 92, ¶2), nor any other type of information that is exempt from the public’s First Amendment right of access to the details of this discovery dispute, as well as the truth behind defendants’ “shell game.” *Lugosch v. Pyramid Co.*, 435 F.3d 110, 126 (2d Cir. 2006) (“Because the First Amendment presumption gives rise to a higher burden on the party seeking to prevent disclosure than does the common law presumption, the presumption of access here can be overcome only by specific, on-the-record findings that higher values necessitate a narrowly tailored sealing.”).

Defendants’ unsubstantiated request to seal should be denied, and the November 8, 2013 letter, as well as the Brien O’Connor transcript, should be stripped of defendants’ improper “Confidential Information” designation, unsealed forthwith and provided to Judge Woodlock.

Respectfully,

s/ Jason A. Forge

JASON A. FORGE
ROBBINS GELLER RUDMAN & DOWD

JAF:dlh

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 19, 2013.

s/ JASON A. FORGE
JASON A. FORGE

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