

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARY K. JONES, Individually and on Behalf	:	Civil Action No. 1:10-cv-03864-AKH
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff	:	
	:	MEMORANDUM OF LAW IN SUPPORT
vs.	:	OF PLAINTIFFS' MOTION FOR
	:	APPROVAL OF CLASS NOTICE AND
PFIZER INC., et al.,	:	DIRECTING CLASS NOTICE
	:	PROCEDURES
Defendants.	:	
_____	X	

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## **I. INTRODUCTION**

Plaintiffs hereby respectfully request that the Court issue an order approving the form of the Notice of Pendency of Class Action (the “Notice”) and the form of the Summary Notice of Pendency of Class Action (the “Summary Notice”), attached hereto as Exhibits 1 and 2, respectively, and directing the parties to give class notice as outlined below in §§IV and V. Notice regarding the pendency of this action, via first class mail to identified purchasers of Pfizer Inc. (“Pfizer” or the “Company”) common stock during the period January 19, 2006 to January 23, 2009 (the “Class Period”) and publication in a national business periodical, pursuant to Fed. R. Civ. P. 23(c)(2), will ensure that absent class members have adequate opportunity to make a reasoned decision as to whether to remain in the class for the trial of the merits or to opt out. This notice process should be completed before the trial of this action commences on January 26, 2015. In order to ensure that identifiable absent class members receive the Notice and have a chance to opt out of the proceedings before the merits of the case are adjudicated at trial, the notice procedure outlined herein should be commenced by the end of *October 2014*.

## **II. PROCEDURAL HISTORY**

The original complaint in this action was filed on May 11, 2010, over four years ago. On March 29, 2012, the Court entered an Order certifying a class defined as: “All persons who purchased domestically or purchased on domestic exchanges Pfizer common stock between 1/19/06 and 1/23/09, inclusive, and were damaged thereby, excluding defendants and their families, directors and officers of Pfizer, and their families and affiliates” (the “Class”). On July 9, 2014, the Court set a date of January 26, 2015, for a trial of this matter.

Plaintiffs first sent defendants drafts of the Notice, Summary Notice and a proposed stipulation and order describing the process for class notice in January 2013. After receiving

comments from defendants through their counsel at the time, Williams Connolly LLP, plaintiffs discussed and incorporated the comments and recirculated revised drafts in October 2013. Counsel for defendants have not provided comments on the drafts circulated in October 2013. After plaintiffs circulated the proposed notice forms and stipulation on the notice process in October 2013, plaintiffs were notified that the Individual Defendants obtained new counsel. Plaintiffs circulated to newly substituted counsel the October 2013 drafts of the proposed notice forms and stipulation on the notice process on October 7, 2014 – the same day or before they entered an appearance in this action. Defendants have provided no basis for their delay in reviewing and approving the notice forms, attached hereto, and the notice process set forth below.<sup>1</sup>

### **III. CLASS NOTICE SHOULD BE COMMENCED BY THE END OF OCTOBER 2014**

In order to ensure that absent class members receive notice and an adequate opportunity to opt out of this proceeding before the jury trial of the merits begins on January 26, 2015, the notice process should be commenced by the end of October 2014. The parties have been meeting and conferring on the proposed form of notice and notice process since October 23, 2013. However, defendants seek to continue to delay the commencement of the notice process. This delay is unacceptable because the proposed notice process will take at least 60 days to complete, so the notice procedure outlined herein must be commenced by the end of October 2014 in order to complete it prior to the start of trial. Commencing notice as requested by plaintiffs will allow identifiable absent members of the Class sufficient time to receive notice of the pendency of the action and to decide whether they wish to remain part of the Class or opt out before the trial of the merits. Although the rule does not say when notice must be given, “Rule 23(c)(2) requires class

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<sup>1</sup> Nor have defendants indicated that they will be objecting to the proposed notice forms or notice process.

notice at least in part in order to provide potential class members with adequate information regarding the binding effect of a class judgment and the possibility of opting out. Numerous other courts have emphasized the importance of class notice *before the merits of the case are adjudicated.*” *Brecher v. Republic of Arg.*, No. 06 Civ. 15297 (TPG), 2010 U.S. Dist. LEXIS 95566, at \*5-\*6 (S.D.N.Y. Sept. 14, 2010).<sup>2</sup> Commencing the notice process described below by the end of October 2014 will ensure that the process will be completed before the jury trial of the merits begins on January 26, 2015.

#### **IV. THE PROPOSED PROCESS FOR CLASS NOTICE IS APPROPRIATE**

Plaintiffs respectfully request that the Court approve the notice procedure outlined below as adequate and direct the parties to provide notice to the Class in accordance with it. There are no “rigid rules” that apply when determining the adequacy of notice in a class action. Rather, a court should apply a “reasonableness” standard in measuring the adequacy of notice in a class action under either the Due Process Clause or the Federal Rules. *In re Merrill Lynch & Co. Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 U.S. Dist. LEXIS 9450, at \*26-\*27 (S.D.N.Y. Feb. 1, 2007). In the Second Circuit, “[n]otice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members.” *Id.* (citing *Weigner v. New York*, 852 F.2d 646, 649 (2d Cir. 1988)). In fact, notice programs such as the one proposed by plaintiffs have been approved under the Due Process Clause and Fed R. Civ. P. 23 in a multitude of class actions. *See, e.g., In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS), 2007 U.S. Dist. LEXIS 29062, at \*41-\*42 (E.D.N.Y. Apr. 19, 2007) (approving proposed notice program where notice mailed to shareholders of record listed on transfer

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<sup>2</sup> All emphasis is added and citations and footnotes are omitted, unless otherwise noted.

records and to “more than 2500 of the largest banks, brokerages, and other nominees”); *In re Luxottica Grp. S.p.A. Sec. Litig.*, No. CV 01-3285 (JBW) (MDG), 2005 U.S. Dist. LEXIS 27765, at \*5 (E.D.N.Y. Nov. 15, 2005) (approving notice program, consisting of broker mailing and summary notice publication in *The Wall Street Journal* and *The New York Times*); *In re Prudential Sec. Ltd. P’ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996) (approving proposed notice and noting mailing of notice to each identifiable class member’s last known address is “a procedure that has been given wide-spread approval in other class actions”), *aff’d sub nom., Toland v. Prudential Sec. P’ship Litig.*, 107 F.3d 3 (2d Cir. 1996).

Here, by consulting with counsel for Pfizer, its transfer agent (through Pfizer’s counsel) and the Claims Administrator, plaintiffs are ensuring that every reasonable avenue for obtaining the identity of Class members is being utilized to disseminate the Notice. The Notice will be disseminated via first class mail and published in a national business periodical. Therefore, it is reasonable to conclude that the proposed notice procedure will provide notice to the vast majority of the Class members.<sup>3</sup> The following procedure for giving notice to the Class complies with the requirements of due process and with Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances.

1. The firm Gilardi & Co. LLC (“Claim Administrator”) should be appointed to supervise and administer the notice procedure.

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<sup>3</sup> See *In re Vivendi Univeresal, S.A. Sec. Litig.*, No. 02 Civ. 5571 (RJH) (HBP), 2009 U.S. Dist. LEXIS 31198, at \*37-\*38 (S.D.N.Y. Mar. 31, 2009) (providing notice via first class mail “to all class members who can be identified with reasonable efforts” and publication in national periodicals “where the identification of class members is not possible” satisfies due process and Rule 23 as “the best notice practicable under the circumstances”); *Weigner*, 852 F. 2d at 651 (“notice by first-class mail is sufficient, . . . [p]articularly where mailing is supplemented by other forms of notice such as posting or publication, the risk of non-receipt is constitutionally acceptable”).

2. Defendants should be ordered to produce Pfizer's Class Period stock transfer records to the Claims Administrator and plaintiffs' counsel within ten days of the Order Directing Class Notice Procedures.

3. The Claims Administrator should be ordered to compile a list of names and addresses of purchasers of Pfizer common stock during the Class Period as they appear on Pfizer's stock transfer records.

4. The Claims Administrator should be ordered, not later than ten days from receipt of Pfizer's stock transfer records (the "Notice Date"), to send through the United States mail via first-class mail the Notice, substantially in the form attached hereto as Exhibit 1, to each purchaser identified on said list. The Claims Administrator should also be ordered to mail the Notice to the list of all nominees/brokers registered with the Securities and Exchange Commission.

5. Nominees who purchased the common stock of Pfizer for the beneficial ownership of members of the Class during the Class Period shall either: (i) send the Notice via first class mail to all such beneficial owners of Pfizer common stock within ten days after receipt thereof; or (ii) send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice to such beneficial owners. Plaintiffs' counsel shall, if requested, reimburse banks, brokerage houses or other nominees solely for their reasonable out-of-pocket expenses incurred in providing the Notice to beneficial owners who are members of the Class, which expenses would not have been incurred but for the sending of such Notice, subject to further order of this Court with respect to any dispute concerning such reimbursement.

6. The Claims Administrator shall cause to be published on one occasion in the national edition of *Investor's Business Daily* the Summary Notice, substantially in the form attached hereto as

Exhibit 2, not later than seven days after the Notice Date, which will give those who did not receive the Notice an opportunity to request it and to protect their rights in this action.

7. Among other things, the Notice shall provide an address for the purpose of receiving requests for exclusion from the Class and requests for additional copies of the Notice from, *inter alia*, nominee purchasers of Pfizer. Among other things, the Summary Notice shall contain information on how to obtain the Notice. After the period allowed for Class members to request exclusion has expired, plaintiffs shall promptly file a list of all such requests for exclusion and serve copies of the same on all parties.

8. The deadline for exclusion from the Class shall be 45 days after the Notice Date.

## **V. THE PROPOSED FORM OF CLASS NOTICE IS APPROPRIATE**

### **A. The Proposed Form of Class Notice Is Adequate**

Plaintiffs further respectfully request that the Court approve the proposed Notice and Summary Notice. The content of a notice is “adequate if it may be understood by the average class member.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). Here, in plain language that is readily comprehensible to the average person, the Notice and Summary Notice set forth essential information, including the background and status of the action, the various rights of Class members and clear instructions on how to be excluded from the Class. The proposed form of class notice is thus reasonable.

### **B. The Class Definition Is Proper**

The Class definition contained in plaintiffs’ proposed Notice is identical to the Class definition already certified by this Court’s Order dated March 29, 2012. Accordingly, there should be no dispute that for the purposes of giving notice, the Class should be defined as follows:

All persons who purchased domestically or purchased on domestic exchanges Pfizer common stock between 1/19/06 and 1/23/09, inclusive, and were damaged thereby,



excluding defendants and their families, directors and officers of Pfizer, and their families and affiliates.

Plaintiffs respectfully request that the proposed Notice and Summary Notice containing the above Class definition be approved by the Court.

## **VI. CONCLUSION**

In order to ensure that Class members have reasonable and sufficient time to receive notice and make an intelligent decision about whether they wish to be part of the Class or opt out before the trial of the merits begins on January 26, 2015, plaintiffs respectfully request that their motion be granted. The proposed notice procedure also ensures that this action, which has been pending for nearly five years proceeds to trial on time, as scheduled.

Accordingly, plaintiffs respectfully request that this Court enter the accompanying order approving the notice procedure and form of class notice forthwith.

DATED: October 15, 2014

Respectfully submitted,

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, 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 October 15, 2014.

s/ HENRY ROSEN

HENRY ROSEN

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& DOWD LLP

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## Manual Notice List

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# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
MARY K. JONES, Individually and on Behalf	:	Civil Action No. 1:10-cv-03864-AKH
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff	:	
	:	NOTICE OF PENDENCY OF CLASS
vs.	:	ACTION
	:	
PFIZER INC., et al.,	:	
	:	
Defendants.	:	
_____	X	



TO: ALL PERSONS WHO PURCHASED PFIZER INC. COMMON STOCK DURING THE PERIOD JANUARY 19, 2006 THROUGH JANUARY 23, 2009, INCLUSIVE

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an order of the United States District Court for the Southern District of New York. This Notice is being sent to you because you may be a member of the Class described below. The purpose of this Notice is to inform you of the pendency of this lawsuit, how it might affect your rights and what steps you may take in relation to it. To date, no findings of fault or liability have been made as to any of the parties. Depending on the eventual outcome of this action, Class members may or may not recover money damages on the claims asserted. This Notice is not an admission by defendants or an expression of any opinion by the Court as to the merits of any of the claims asserted by plaintiffs in this litigation. Defendants have denied plaintiffs' claims and maintain that they are not liable for the injury by plaintiffs. If you do not meet the Class definition, this Notice does not apply to you and you may disregard it.

Beginning on May 11, 2010, a number of class action lawsuits were filed against Pfizer Inc. ("Pfizer") and certain Pfizer officers (collectively, the "defendants") by current or former Pfizer stockholders alleging violations of the federal securities laws. The cases were consolidated before the Honorable Alvin K. Hellerstein in the United States District Court for the Southern District of New York, and the case is presently styled *Mary K. Jones, Individually and on Behalf of All Others Similarly Situated v. Pfizer Inc., et al.*, Civil Action No. 1:10-cv-03864-AKH (the "Litigation"). By an order dated November 4, 2010, the Court appointed Stichting Philips Pensioenfonds as "lead plaintiff" pursuant to the requirements of the Private Securities Litigation Reform Act of 1995.

On March 29, 2012, the Court issued an order appointing Stichting Philips Pensioenfonds and Mary K. Jones as class representatives and certifying a "Class" that consists of:

All persons who purchased domestically or purchased on domestic exchanges Pfizer common stock between 1/19/06 and 1/23/09, inclusive, and were damaged thereby, excluding defendants and their families, directors and officers of Pfizer, and their families and affiliates.

All nominees who purchased or acquired Pfizer common stock during the period beginning on January 19, 2006 through and including January 23, 2009 for the beneficial ownership of another are requested to send this Notice to all such beneficial owners no later than ten days after receipt of this Notice. Additional copies of this Notice will be provided to such nominees upon written request sent to:

Pfizer Inc. Securities Litigation  
c/o Gilardi & Co. LLC  
Post Office Box 8040  
San Rafael, CA 94912-8040

In the alternative, all nominees are requested to send a list of the names and addresses of such beneficial owners to Gilardi & Co. LLC at the above address no later than ten days after receipt of this Notice. Gilardi & Co. LLC will thereafter mail copies of this Notice directly to all such beneficial owners. Counsel offers to prepay the reasonable costs of preparing a list of the names and addresses of such beneficial owners or of forwarding this Notice to beneficial owners in those cases where a nominee elects to forward notice, rather than provide a list of names and addresses to Gilardi & Co. LLC.

This Notice is sent to you in the belief that you may be a Class member in this Litigation; however, mere receipt of the Notice should not be construed to indicate that a determination has been made that you are a member of the Class. To remain a Class member, you are not required to do anything. If you remain a Class member you will be bound by any judgment in this Litigation, whether it is favorable or unfavorable. If you choose to remain a Class member, you may not pursue

a lawsuit on your own with regard to any of the claims assessed or issues decided in this Litigation. If you wish, you may enter an appearance through your own counsel at your own expense.

If you want to be excluded from the Class, you must state your request in writing (including your full name and address) and sign your name. If you are signing on behalf of a Class member (such as an estate, corporation or partnership), please indicate your full name and the basis of your authority. Your request for exclusion must be mailed to Pfizer Inc. Securities Litigation, c/o Gilardi & Co. LLC, Post Office Box 8040, San Rafael, California 94912-8040. To be effective, your request for exclusion must comply with all of the above and be postmarked no later than \_\_\_\_\_, 2014 [45 days after the Notice Date]. Facsimile and email requests for exclusion are not acceptable. Requests for exclusion that do not comply with the above requirements will be invalid.

If you do properly exclude yourself from the Class, you will not be bound by any judgment in this Litigation, but you will also not be entitled to share any recovery that may result from it. If you properly request exclusion, you will be entitled to pursue any individual lawsuit, claim or remedy which you may have, at your own expense.

This Notice does not fully describe all of the claims and contentions of the parties. Complete copies of the pleadings, orders and other documents filed in this litigation may be examined and copied at any time during regular office hours at the office of the Clerk of Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, under Civil Action No. 1:10-cv-03864-AKH.

If you have any questions concerning the matter raised in this Notice, you may address them in writing to: Henry Rosen, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, California 92101.

If you have any corrections or changes of name or address, you may address them in writing to: Pfizer Inc. Securities Litigation, c/o Gilardi & Co. LLC, Post Office Box 8040, San Rafael, California 94912-8040.

PLEASE DO NOT TELEPHONE OR CONTACT THE CLERK OF THE COURT REGARDING THIS NOTICE.

DATED: \_\_\_\_\_

BY ORDER OF THE COURT

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
MARY K. JONES, Individually and on Behalf	:	Civil Action No. 1:10-cv-03864-AKH
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff	:	
	:	SUMMARY NOTICE OF PENDENCY OF
vs.	:	CLASS ACTION
	:	
PFIZER INC., et al.,	:	
	:	
Defendants.	:	
_____	X	

TO: ALL PERSONS WHO PURCHASED PFIZER INC. COMMON STOCK DURING THE PERIOD JANUARY 19, 2006 THROUGH JANUARY 23, 2009, INCLUSIVE

Currently pending in the United States District Court for the Southern District of New York, is a class action brought against Pfizer Inc. (“Pfizer”) and certain individuals to recover damages for those who purchased Pfizer common stock between January 19, 2006 and January 23, 2009 (the “Class Period”). The lawsuit is captioned *Mary K. Jones, Individually and on Behalf of All Others Similarly Situated v. Pfizer Inc., et al.*, Civil Action No. 1:10-cv-03864-AKH. Plaintiffs have been certified by the Court to represent the following “Class”:

All persons who purchased domestically or purchased on domestic exchanges Pfizer common stock between 1/19/06 and 1/23/09, inclusive, and were damaged thereby, excluding defendants and their families, directors and officers of Pfizer, and their families and affiliates.

On \_\_\_\_\_, 2014, a Notice of Pendency of Class Action (the “Notice”) was mailed to persons who purchased Pfizer common stock during the Class Period, as reflected on the books and records of Pfizer and its transfer agent. The Notice contains important information regarding the rights of Class members, including the right to seek exclusion from the Class. If you believe you are a member of the Class as defined above, and if you have not received a copy of the Notice by mail, you are urged to request a copy free of charge by mailing your request to Pfizer Inc. Securities Litigation, c/o Gilardi & Co. LLC, Post Office Box 8040, San Rafael, California 94912-8040. You may download a copy of the Notice at [www.gilardi.com](http://www.gilardi.com).

Lead Counsel for plaintiffs and the Class are:

ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, California 92101

DATED: \_\_\_\_\_

BY ORDER OF THE COURT