

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARY K. JONES, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

– v. –

PFIZER INC., et al.,

Defendants.

Case No. 10-cv-03864 (AKH)

ECF Case

**STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF PFIZER'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of this Court's Local and Civil Rules, Defendant Pfizer Inc. respectfully submits the following statement of material facts as to which there is no genuine issue to be tried.

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KEY FACTS SUPPORTING SUMMARY JUDGMENT

I. LEGAL REVIEW AND ADVICE REGARDING PFIZER'S DISCLOSURES

1. During the Class Period,¹ Pfizer followed a multi-step process for producing and updating the description of the company's legal proceedings and contingencies ("Legal Proceedings disclosure") in its SEC Forms 10-K and 10-Q. The process was overseen by a senior in-house disclosure counsel and involved multiple stages of review by dozens of Pfizer legal, management, and accounting personnel; outside disclosure counsel; and Pfizer's outside auditor.²

2. Lawrence Fox was Pfizer's senior in-house disclosure counsel responsible for producing and updating Pfizer's Legal Proceedings disclosure and advising Pfizer concerning the disclosure's required contents. Mr. Fox had more than 35 years of experience advising public companies on their disclosure obligations.³ Throughout the Class Period, he oversaw the process for producing and updating Pfizer's Legal Proceedings disclosure.⁴ Mr. Fox advised his client Pfizer that all the disclosures Pfizer filed during the Class Period complied with the securities laws.⁵

¹ The Class Period is from January 19, 2006 through January 23, 2009. *See* Order Granting Plaintiffs' Motion for Class Certification ¶ 2, Mar. 29, 2012, ECF 132.

² *E.g.*, Petrosinelli Decl. Ex. H-5 (PFE-JONES 00032738 at 00032741-43) (Dec. 31, 2005 Pfizer Process Narrative Summary) (describing Pfizer disclosure process); *see also* Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep.162:4-180:21) (describing Pfizer's process for producing its Legal Proceedings disclosure); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 41:18-45:13) (same).

³ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 31:8-35:2, 231:12-15).

⁴ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 162:4-180:21).

⁵ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 31:21-25; 141:21-142:4).

3. Pfizer's outside disclosure counsel was Dennis Block, then of the law firm Cadwalader, Wickersham & Taft, LLP (Cadwalader).⁶ Mr. Block has advised public companies on their securities disclosures for more than 40 years, after spending five years early in his career performing enforcement work at the Securities and Exchange Commission.⁷ For years, he was the head of the litigation and corporate groups at Cadwalader.⁸ Mr. Block began representing Pfizer in the early 1990s, and he advised Pfizer as to adequate disclosure of government investigations and other legal matters in its securities filings before and throughout the Class Period.⁹

4. Mr. Block reviewed, edited, and approved every Pfizer securities disclosure about government investigations throughout the Class Period. He reviewed every quarterly and annual filing by Pfizer during the Class Period and formally certified in writing that each one complied with the securities laws.¹⁰

5. KPMG LLP was Pfizer's outside auditor during the Class Period. KPMG audited every one of Pfizer's annual financial statements, which included the Legal Proceedings

⁶ Petrosinelli Decl. Ex.Y-1 (Fox (Sept. 26, 2013) Dep. 167:6-14 (“Dennis was our outside disclosure counsel. And we looked to him, based on his experience and expertise, to, together with me, counsel Pfizer on what needed to be disclosed and whether our disclosures were complete and accurate.”)).

⁷ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 12:5-13:24 (describing specialization in mergers and acquisitions and securities law over his 45-year career, including five years at the SEC)).

⁸ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 24:14-18).

⁹ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 41:18-46:7).

¹⁰ Petrosinelli Decl. Ex.Y-1(Fox (Sept. 26, 2013) Dep. 167:1-5); Petrosinelli Decl. Ex. O-1(Block certification compendium) (collection of quarterly signed Block subcertifications).

disclosure, during the Class Period.¹¹ KPMG also performed interim review procedures on the financial information contained in every Pfizer quarterly filing during the Class Period.¹²

6. Each quarter, Mr. Fox would initiate the process of reviewing and updating the Legal Proceedings disclosure by personally updating the text of the previous filing. As to government investigations disclosures in particular, Mr. Fox would then follow a rigorous disclosure review process, the primary steps of which were:

- a. Review and comment by Pfizer's in-house lawyers responsible for supervising the company's government investigations matters;
- b. Regular consultation between the lawyers handling the investigations and inside and outside disclosure counsel, as well as additional consultations whenever developments warranted;
- c. Review and comment by outside disclosure counsel, Mr. Block;
- d. Review by KPMG;
- e. Review by Pfizer's Disclosure Committee;
- f. Certifications and sub-certifications attesting to the accuracy and completeness of the disclosures by the in-house lawyers and the company's outside disclosure counsel, Mr. Block; and
- g. A quarterly certification meeting attended by, among many others, Mr. Block, Mr. Fox, and KPMG, at which the company's CEO and CFO signed their own Sarbanes-Oxley certifications.¹³

¹¹ See Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K) at 34 (Feb. 24, 2006)); Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 36 (Feb. 27, 2007)); Petrosinelli Decl. Ex. F-1 (Pfizer, 2007 Annual Report (Form 10-K) at 37 (Feb. 29, 2008)); Petrosinelli Decl. Ex. J-1 (Pfizer, 2008 Annual Report (Form 10-K) at 46 (Feb. 27, 2009)).

¹² E.g., Petrosinelli Decl. Ex. C-1 (Pfizer, 2006 Q1 Form 10-Q, at 30 (May 8, 2006)) ("Based on [its interim financial information] reviews, [KPMG is not] aware of any material modifications that should be made to the condensed consolidated financial statements referred to above for them to be in conformity with U.S. generally accepted accounting principles."); Petrosinelli Decl. Ex. E-1 (Pfizer, 2007 Q1 Form 10-Q, at 22 (May 4, 2007)) (same); Petrosinelli Decl. Ex. G-1 (Pfizer, 2008 Q1 Form 10-Q, at 14-15 (May 2, 2008)) (same); Petrosinelli Decl. Ex. H-1 (Pfizer, 2008 Q2 Form 10-Q, at 16 (Aug. 8, 2008)) (same); Petrosinelli Decl. Ex. I-1 (Pfizer, 2008 Q3 Form 10-Q, at 17 (Nov. 7, 2008)) (same).

7. Through regular consultations with in-house government investigations counsel, Pfizer's inside and outside disclosure counsel and its auditors received regular updates on the status of government investigations, including the Department of Justice investigation concerning Bextra. Douglas Lankler was Pfizer's Chief Compliance Officer throughout most of the Class Period,¹⁴ and he, along with Carlton Wessel and Gary Giampetruzzi, were Pfizer's in-house lawyers responsible for overseeing government investigations.¹⁵ Messrs. Lankler, Wessel, and Giampetruzzi provided quarterly updates, via conference calls or other conversations, on the status of the Department of Justice investigations to Messrs. Fox and Block, Pfizer's controller, Loretta Cangialosi, others in the Finance Department, and KPMG.¹⁶ In addition, Messrs. Lankler, Wessel, or Giampetruzzi would provide updates between the scheduled quarterly conference calls if significant developments occurred in the investigations.¹⁷

¹³ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 162:4-180:21); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 41:18-45:13); *see also* Petrosinelli Decl. Ex. H-5 (PFE-JONES 00032738 at 00032741-43) (Dec. 31, 2005 Pfizer Process Narrative Summary) (describing Pfizer disclosure process).

¹⁴ Petrosinelli Decl. Ex. D-2 (Lankler (Aug. 17, 2010) Dep. 9:9-13).

¹⁵ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 67:12-68:6).

¹⁶ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 46:13-23 (“[W]e have had, and during the class period still have, quarterly conference calls, I and our outside disclosure counsel, Dennis at that time, with our [government investigations] attorneys to provide us updates on the status of our government investigations and separately with our civil litigation attorneys, the head of litigation and others, to provide a similar update on those matters.”), 88:4-11 (“We, Dennis and I, would, with regular periodic quarterly conference calls, separately with our GI lawyers and our civil litigation lawyers, have extended conversations, educate ourselves from—by them about the status of the litigation, get their views on likely outcomes, potential risks, and the like.”), 144:1-7 (“To the extent we had questions, we would ask them. We drilled down until we were comfortable.”); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 42:8-43:9, 197:6-11, 198:21-199:14); Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 209:7-21); *id.* at 258:19-25; Petrosinelli Decl. Ex. E-2 (Lankler Dep. (Jan. 22, 2014) 179:23-180:18); *id.* at 259:14-261:12; Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 46:1-24 (KPMG had “extensive and very in-depth discussions” with the government investigations lawyers “[e]very quarter”)); *id.* at 43:12-44:8; *id.* at; Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 154:16-25).

¹⁷ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 162:14-163:2 (“[N]ot infrequently, there were similar conference calls that were not scheduled, but took place as appropriate as developments occurred

8. Mr. Fox, for example, testified that he and Mr. Block had “extended conversations” with the government investigations lawyers to “educate” themselves “about the status of the litigation, get their views on likely outcomes, potential risks, and the like.”¹⁸ Mr. Fox also testified:

[A]s part of our very robust processes, . . . Dennis Block and I regularly consulted with and were informed by Doug Lankler and others in our GI group, and we would hear what they had to say. To the extent we had questions, we would ask them. We drilled down until we were comfortable.¹⁹

9. Mr. Lankler confirmed Mr. Fox’s account, testifying as to the Bextra investigation:

[W]e explained to [Block and Fox] that we had been advised by the government that a whistleblower complaint had been filed, that we initiated an investigation. We would have talked to them about the major meetings we would have had with the government as the case progressed, some of the key findings of the internal investigation.

We would have talked to them about, as it developed, some of the viewpoints that the government was giving us about their overall assessment of the case and some of the facts. We would have talked to them about recommendations . . . outside counsel recommended, offer proposals and the like. We would have talked to them about the Washington, D.C., meeting [with Department of Justice officials].²⁰

10. Mr. Block likewise confirmed that he and Mr. Fox spoke to Mr. Lankler or other lawyers in the government investigations group on a regular basis. Mr. Block testified that, when

in connection with any particular matter. And beyond that, there might well be one-on-one calls and sending Dennis or me or both of us various documents.”)).

¹⁸ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 88:4-11).

¹⁹ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 144:1-7).

²⁰ Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. at 260:16-261:9).

receiving an update on the Bextra matter, he “would try to flush out what the facts were, understand where they were and where they were going,” so that he could then advise Pfizer regarding whether any changes were required in its securities disclosures.²¹

11. Throughout the Class Period, and as part of the process, Pfizer and its outside professionals regularly reexamined and, when appropriate, updated the company’s disclosures to reflect significant developments in the Bextra investigation. Specifically, after review by Pfizer’s employees, Pfizer’s outside disclosure counsel, Mr. Block, and representatives from KPMG reviewed, commented on, and approved all of the company’s disclosures.²²

12. Each quarter, Mr. Block provided his comments and suggested changes to Pfizer’s disclosures, which he would then discuss with Mr. Fox.²³ Many of Mr. Block’s suggested changes were incorporated into Pfizer’s disclosures as a result of this dialogue. As Mr. Fox testified:

[Block] would handwrite the comments in literally and then send them to me. . . . I would get written comments from him. And I would get comments, written or whatever, from the head of litigation. And then I would look at them and I would talk to them. And we would, the three of us, get comfortable with what we

²¹ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 197:6-13).

²² Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 41:18-45:2 (describing the review process in which he was involved)); Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 167:1-5, 169:16-23, 172:11-17, 172:24-173:3 (describing Block’s review), 176:14-23 (describing KPMG’s review)).

²³ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 166:13-25); *see, e.g.*, Petrosinelli Decl. Ex. G-6 (PFE-JONES 00069502) (Jan. 12, 2006 email from L. Fox to A. Waxman with handwritten note from D. Block) (attaching a draft of the legal proceedings disclosure for the 2005 Financial Report); Petrosinelli Decl. Ex. N-5 (PFE-JONES 00042194) (Oct. 16, 2006 email from D. Block to L. Fox); Petrosinelli Decl. Ex. F-6 (PFE-JONES 00065303) (Jan. 12, 2007 email from L. Fox to S. Phillips and D. Block); Petrosinelli Decl. Ex. L-5 (PFE-JONES 00041254) (Feb. 19, 2007 email from D. Lankler to A. Waxman); Petrosinelli Decl. Ex. S-5 (PFE-JONES 00045534) (Oct. 19, 2008 email from D. Hipper to L. Fox) (with note that says “[i]f you have any questions please call Dennis Block”).

thought any—any refinements that might be needed in our disclosure to accommodate their refinements.²⁴

13. Mr. Fox “always received a handwritten markup” of Pfizer’s Legal Proceedings section “from Dennis [Block] every quarter with some comments,” and KPMG “would often have comments on it” as well.²⁵

14. Mr. Block confirmed that he would submit comments “on what I understood was a fair disclosure of what they were trying to disclose,” and that

sometimes I would ask questions. Sometimes I’d pick up the phone and call Larry [Fox] and/or he’d pick up the phone and call me, and we’d talk about how to accurately, adequately and appropriately disclose the given case.²⁶

15. KPMG also reviewed Pfizer’s disclosures as part of its audit of the company’s financial statement.²⁷ KPMG periodically suggested changes to the company’s government investigations disclosures.²⁸ In every instance during the Class Period where KPMG requested a change to the disclosure of the Department of Justice investigation, Pfizer supplemented its disclosures to address those suggestions.²⁹

²⁴ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 166:18-25). *Compare* Petrosinelli Decl. Ex. K-5 (PFE-JONES 00041249) (Feb. 20, 2007 email from L. Fox to A. Waxman) (“Dennis has suggested the following instead: ‘The company has been considering various ways to resolve these matters.’”), *with* Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 73 (Feb. 27, 2007)).

²⁵ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep.172:20-23, 176:18-23).

²⁶ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. at 44:7-14).

²⁷ *See* Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K) at 34 (Feb. 24, 2006)); Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 36 (Feb. 27, 2007)); Petrosinelli Decl. Ex.F-1 (Pfizer, 2007 Annual Report (Form 10-K) at 37 (Feb. 29, 2008)); Petrosinelli Decl. Ex. J-1 (Pfizer, 2008 Annual Report (Form 10-K) at 46 (Feb. 27, 2009)).

²⁸ Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 194:10-20 (“My recollection is that we did make requests . . . periodically during the period of any audit.”)).

²⁹ *See, e.g.*, Petrosinelli Decl. Ex. O-5 (PFE-JONES 00042203) (Feb. 15, 2006 email from L. Fox to J. Kindler); Petrosinelli Decl. Ex. I-5 (PFE-JONES 00032806) (Feb. 17, 2006 email from L. Fox to E. Riso at KPMG NYHQ) (“As requested, we will expand the legal proceedings disclosure concerning the

16. Numerous changes were made to Pfizer's disclosure of the Department of Justice investigation in its securities filings, on the recommendation of Messrs. Block and Fox, KPMG, or others who reviewed it.³⁰

17. According to Plaintiffs' proffered disclosures expert, Edward Buthusiem, the process of relying on external counsel for formal review of disclosures is not required under disclosure law but is a practice that large public companies, including his own former employer, GlaxoSmithKline, have found prudent.³¹ Mr. Buthusiem testified that Pfizer's process was "the process [he] used" when he was employed at GlaxoSmithKline, and that Pfizer "appear[ed] to

government requests for information relating to Bextra and Celebrex to specify that it concerns 'the marketing and safety of' Bextra and Celebrex."); Petrosinelli Decl. Ex. K-5 (PFE-JONES 00041249-50) (Feb. 21, 2007 email from A. Waxman to L. Fox); Petrosinelli Decl. Ex. A-6 (PFE-JONES 00059156) (Feb. 26, 2007 email from S. Lee to L. Fox) ("[t]his change was approved by . . . John Chapman and Eric Riso").

³⁰ See, e.g., Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 166:13-25); Petrosinelli Decl. Ex. G-6 (PFE-JONES 00069502) (Jan. 12, 2006 email from L. Fox to A. Waxman with handwritten note from D. Block) (attaching a draft of the legal proceedings disclosure for the 2005 Financial Report); Petrosinelli Decl. Ex. N-5 (PFE-JONES 00042194) (Oct. 16, 2006 email from D. Block to L. Fox); Petrosinelli Decl. Ex. F-6 (PFE-JONES 00065303) (Jan. 12, 2007 email from L. Fox to S. Phillips and D. Block); Petrosinelli Decl. Ex. L-5 (PFE-JONES 00041254) (Feb. 19, 2007 email from M. Levy to A. Waxman); Petrosinelli Decl. Ex. S-5 (PFE-JONES 00045534) (Oct. 19, 2008 email from D. Hipper to L. Fox) (with note that says "[i]f you have any questions please call Dennis Block"); Petrosinelli Decl. Ex. M-6 (PFE-JONES 00041565) (Jan. 19, 2007 email from L. Fox to G. Giampetrucci) (noting that language suggested by Block was added to Government Investigations section); Petrosinelli Decl. Ex. P-6 (PFE-JONES 00044564) (Feb. 12, 2008 email from A. Waxman to L. Fox and D. Lankler); Petrosinelli Decl. Ex. O-6 (PFE-JONES 00044284) (July 23, 2008 email from L. Fox to A. Schulman) (suggesting addition of phrase "which could result in the payment of a substantial fine and/or civil penalty" based on "discussions with Loretta Cangialosi and Doug Lankler" and discussing changes to 2007 Legal Proceedings Disclosure based on conversation with Block, Fox, and others); Petrosinelli Decl. Ex. O-5 (PFE-JONES 00042203) (Feb. 15, 2006 email from L. Fox to J. Kindler) (KPMG suggests the investigation be described as pertaining to "marketing and safety"); Petrosinelli Decl. Ex. I-5 (PFE-JONES 00032806) (Feb. 17, 2006 email from L. Fox to E. Riso at KPMG NYHQ) (confirming addition of language "expand[ing] the legal proceedings disclosure concerning the government requests for information relating to Bextra and Celebrex to specify that it concerns 'the marketing and safety of' Bextra and Celebrex"); Petrosinelli Decl. Ex. H-6 (PFE-JONES 00032727) (Feb. 20, 2007 email from K. Dadlani to J. Chapman) (suggesting amendments to government investigation section proposed by KPMG related to "Bextra marketing matter").

³¹ Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 329:4-331:14 (noting that he "t[ook] comfort from the fact that outside disclosure counsel was rendering an opinion on the adequacy of the disclosures that [he] participated in")).

have proper disclosure controls[.]”³² Mr. Buthusiem also described the process as “very long and lengthy and involved[.]”³³

18. After receiving advice from these numerous sources, Mr. Fox submitted the draft of Pfizer’s updated Legal Proceedings disclosure to the Disclosure Committee, a group of senior executives chaired by Pfizer’s Controller, Loretta Cangialosi. Mr. Fox or another lawyer would discuss the company’s Legal Proceedings disclosures with the Disclosure Committee.³⁴ If the Committee concluded that Pfizer’s disclosure controls and procedures were adequate and effective, the Chair would sign the Certification of the Disclosure Committee.³⁵

19. These steps culminated in a Certification Meeting at which the CEO and CFO signed their certifications as to the accuracy of the company’s securities filings. This meeting was attended by the General Counsel, the Controller, the head of Internal Audit, Mr. Block, Mr. Fox, and representatives of KPMG.³⁶ As former Pfizer CEO Jeffrey Kindler testified:

We would get a report from the disclosure committee. We’d get a report from Mr. Fox. We’d ask questions of the internal and external auditors. They would provide us with information about what was in and what was not included in the financial statements.

They would present us with information regarding all the subcertifications that had been made. We would ask them questions about what matters they had considered disclosing and decided not to and would ask them

³² Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. at 319:9, 18-20).

³³ Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. at 323:20-21).

³⁴ Petrosinelli Decl. Ex. V-6 (collection of Disclosure Committee Meeting Minutes from the Class Period) (“Disclosure Committee Meeting Minutes compendium”).

³⁵ Petrosinelli Decl. Ex. N-7 (collection of signed Disclosure Committee Certifications from the Class Period) (“Disclosure Committee Certification compendium”).

³⁶ Petrosinelli Decl. Ex. B-4 (collection of Certification Committee Meeting Minutes from the Class Period) (“Certification Committee Meeting Minutes compendium”).

why. We would ask them whether there were any disagreements among them.³⁷

20. In addition, Pfizer periodically “benchmarked” its Legal Proceedings disclosures against those of other pharmaceutical companies. Upon such reviews, Pfizer’s advisors informed it that its disclosures were comparable to those of its peers.³⁸

21. Mr. Block testified that he believed Pfizer “probably made more robust and transparent disclosure than anybody,” and he continues to hold that view today.³⁹ Mr. Block explained that he always read the government investigations disclosure, “asked questions,” “gave my best reaction to it,” and “to the extent I thought better language was useable, I did that.”⁴⁰ Based on his review, Mr. Block believed that Pfizer had a “very good disclosure” of the Department of Justice investigation:

[Pfizer] had a very robust and transparent set of disclosure documents, which . . . said there was this investigation, it’s heated up, we’re trying to resolve it, we believe we have very strong defenses to the case; however, it could result in a substantial fine.⁴¹

22. At the end of every quarter, Mr. Block formally certified that, “to the best of my knowledge,” Pfizer’s disclosures “contain[ed] all information required to be included in the Form 10-K [or Form 10-Q]”; that they did not “contain an untrue statement of a material fact”;

³⁷ Petrosinelli Decl. Ex. B-2 (Kindler (Dec. 6, 2013) Dep. 176:4-19); *see, e.g.*, Petrosinelli Decl. Ex. B-4 (Certification Committee Meeting Minutes compendium) (PFE-JONES 00036578 (Nov. 1, 2006 meeting minutes)) (noting Messrs. Waxman and Lankler “answered various questions raised by Messrs. Kindler and Levin” concerning legal proceedings, including government investigations).

³⁸ *E.g.*, Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 128:2-3); Petrosinelli Decl. Ex. M-5 (PFE-JONES 00041506–08) (Feb. 15, 2007 email from L. Fox to D. Block); Petrosinelli Decl. Ex. T-5 (PFE-JONES 00045944) (Feb. 11, 2008 email from A. Waxman to L. Fox and D. Block); Petrosinelli Decl. Ex. V-5 (PFE-JONES 00046914–16) (July 21, 2008 email from L. Fox to D. Lankler).

³⁹ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 179:9-12; *see also id.* 269:7-18).

⁴⁰ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. at 60:17-22).

⁴¹ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 179:11-12, 183:21-184:5 (noting Pfizer had a “strong” disclosure for the case)).

and that they did not “omit a material fact necessary to make the statements . . . not misleading.”⁴²

23. In his deposition, Mr. Block reaffirmed his belief that Pfizer’s disclosure of the Department of Justice investigation was adequate and appropriate:

Q. [Plaintiffs’ counsel] has asked you a number of questions today and shown you some documents. Is there anything that he’s said to you today or shown you today that changes your view as to the appropriateness of Pfizer’s disclosures during the class period?

A. No.⁴³

24. Mr. Fox also stands by his advice as to the adequacy of Pfizer’s Legal Proceedings disclosures during the Class Period, and in particular the disclosures concerning the Department of Justice investigation. Mr. Fox testified that “[t]he disclosure that we made with respect to this investigation . . . was one that was the result of the rigorous process that we have there,” which “includes outside counsel, among others,” and that “I was certainly—was then and am now comfortable with our disclosure.”⁴⁴

25. Mr. Fox testified that he advised Pfizer at the time, and continues to believe to this day, that Pfizer’s government investigations disclosures were proper under the securities laws:

Q. Now, during the class period, from 2006 through 2009, did anyone involved in this process ever express a view that they believed that the litigation proceedings disclosures were not adequate or not appropriate?

A: No.

⁴² *E.g.*, Petrosinelli Decl. Ex. O-7 (Block certification compendium).

⁴³ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. at 269:12-18).

⁴⁴ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 109:20-25, 110:3-5); *see also id.* 180:23-181:17.

Q. . . . [D]id anyone ever express such a view to you?

A. No.

Q. Were you always comfortable during the class period that the legal proceedings disclosures were appropriate, adequate and in compliance with the securities laws?

A: Yes.

Q. Sitting here today, do you believe that the company's litigation proceedings disclosures during the class period complied with the securities laws?

A. I do.⁴⁵

26. Pfizer's outside auditors, KPMG, likewise opined in each and every reporting period that the disclosures were appropriate.⁴⁶

27. KPMG audit partners John Chapman and Larry Bradley, who were responsible for the Pfizer engagement during the Class Period, also stand by their contemporaneous conclusions regarding the adequacy of Pfizer's Legal Proceedings disclosures.⁴⁷ With regard to Pfizer's 2007 Financial Report, for example, Mr. Chapman testified:

⁴⁵ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. at 180:23-181:17, 182:13-17).

⁴⁶ *E.g.*, Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report); Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002562) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report presentation) ("Disclosure in the 10-K is appropriate."); Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638 at 018649) (Feb. 28, 2008 KPMG 2007 Audit Results and SAS 114 Report); Petrosinelli Decl. Ex. R-4 (KPMG-PFIZ-DS 019725 at 019735) (excerpt of Q2 2008 Interim Completion Document) ("Based on the procedures performed and findings noted above, KPMG concludes that Pfizer . . . assessed the accrual and disclosure requirements pursuant to SFAS No. 5 and properly presented the compliance matters in the Form 10Q, where applicable."); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 192:11-195:19); Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 9, 2013) Dep. 334:4-336:12).

⁴⁷ Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 192:11-195:19); Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 9, 2013) Dep. 334:4-14).

Q. So during the course of your audit work, you would perform procedures oriented -- or addressing whether or not these disclosures comply with the requirements of FAS 5?

A. Yes.

Q. And in the course of the audit of the 2007 financial statements, did KPMG, in fact, perform procedures to determine whether or not these disclosures complied with the requirements of FAS 5?

A. Yes, we did.

Q. And what was KPMG's conclusion?

A. We issued an unqualified opinion on the financial statements, to which these were a part of that.

Q. And is there anything that you've seen or heard today that calls into question the opinion that KPMG issued on these financial statements?

A. Nothing.⁴⁸

28. Mr. Chapman's testimony was the same for Pfizer's 2005 and 2006 Financial Statements.⁴⁹

29. Similarly, Mr. Bradley—the lead audit partner responsible for KPMG's 2008 audit—testified:

Q. Now, you've been sitting here for a day and a half and we all appreciate your patience and you've reviewed a number of documents during the course of my questioning and [Plaintiffs' counsel's] questioning.

Have any of these documents, either individually or taken collectively, caused you to believe that KPMG failed to properly plan and perform its 2008 audit?

⁴⁸ Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 193:7-21).

⁴⁹ Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 192:13-195:19); *see also* Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016594) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report); Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002562) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report presentation) (“Disclosure in the 10-K is appropriate.”).

A. No.

Q. Do you continue to stand behind the work that KPMG performed in the course of its 2008 integrated audit?

A. Yes, I do.

....

Q. Do you continue to stand behind the conclusions that KPMG reached in connection with its audit?

A. Yes, I do.⁵⁰

II. PFIZER'S FAS 5 RESERVES DETERMINATIONS

30. Pfizer followed Financial Accounting Standard No. 5 ("FAS 5") guidance with respect to its reserves disclosures, evaluating its loss contingencies every quarter during the Class Period to determine whether a reserve was required.⁵¹ Under FAS 5, a company must create a litigation loss reserve when each of two criteria is met: 1) the loss is "probable;" and 2) the loss is material and "reasonably estimable."⁵²

31. Pfizer's process for determining whether and when to create litigation loss reserves also involved input and review from several parties. In consultation with the company's Chief Financial Officer and KPMG, Pfizer's Controller, Loretta Cangialosi, was primarily responsible for determining that the company's reserves complied with Generally Accepted

⁵⁰ Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 9, 2013) at 334:15-335:14); *see also* Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report) ("Reserves related to legal and environmental exposures appear reasonable and disclosures complete."); Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002562) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report presentation) ("Disclosure in the 10-K is appropriate.").

⁵¹ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 368:6-10 ("We utilized the rules of FAS 5.")).

⁵² Petrosinelli Decl. Ex. W-3 (Statement of Financial Accounting Standards No. 5, ¶ 8 (1975)).

Accounting Principles (GAAP), particularly FAS 5.⁵³ Ms. Cangialosi was an experienced accountant and has served as Pfizer's controller for 15 years.⁵⁴ Ms. Cangialosi was also Chair of Pfizer's Disclosure Committee.⁵⁵

32. The Controller's office received monthly litigation update reports and participated in quarterly reserve review meetings attended by KPMG and Pfizer's in-house government investigations counsel responsible for the Bextra investigation regarding the status of all legal matters that were potentially material to the company, including government investigations.⁵⁶ As Ms. Cangialosi testified, the purpose of the litigation update meetings was

to get a status and an update on where these various matters were so that we could better understand whether or not something had happened that we would need to take a reserve, or whether or not something had happened that we need to consider revising disclosures.⁵⁷

⁵³ See Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 367:23-368:14 (Cangialosi "had principal responsibility for ensuring that the company's reserves were in compliance with GAAP" and utilized "rules of FAS 5" to do so)); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 40:16-24); Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 122:14-123:15).

⁵⁴ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 85:20-22).

⁵⁵ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 45:15-19).

⁵⁶ E.g., Petrosinelli Decl. Ex. G-4 (KPMG-PFIZ-DS 0002180) (Oct. 17, 2005 Minutes of Quarterly Reserve Review Meeting); Petrosinelli Decl. Ex. J-7 (PFE DERIV 01118774) (June 19, 2007 Executive Litigation Update Meeting Agenda); Petrosinelli Decl. Ex. F-5 (PFE-JONES 00041926 at 00041964) (Oct. 2006 litigation monthly financial controls report); Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 209:11-210:13 (KPMG and Lankler attended litigation update meetings), 258:16-25 (Lankler "was very upfront" on "various legal issues"), 277:6-13 ("what normally happens every month is that we have a process by which I meet with the legal team and their representatives to discuss all the open issues"), 288:5-25 (Block, Lankler updated Cangialosi regarding status of Bextra investigation), 315:8-15, 374:18-376:7 (describing purpose of executive litigation update meeting)); Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 258:17-262:23 (discussing conversations with Block and Fox regarding developments in government investigation); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 15, 2013) Dep. 43:12-44:8 (discussing KPMG interactions with Lankler), 46:1-47:14 (discussing KPMG meetings with Pfizer on legal and compliance matters), 154:20-155:1 (Chapman was informed of government investigation by Lankler).

⁵⁷ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 375:3-10).

33. The Controller's office also participated in ad hoc meetings and conversations with Pfizer's inside and outside government investigations counsel, as well as KPMG, to update themselves on developments in the Department of Justice investigation:

Any time that . . . anything happened, no matter what, . . . if there were discussions [with the government], whether [Chief Compliance Officer] Doug [Lankler] thought the discussions were going well, not going well, we evaluated this every quarter.⁵⁸

34. Every witness who testified regarding their involvement in this process described it as rigorous and effective.⁵⁹

35. At no point between the initiation of the Department of Justice investigation in 2004 and the agreement in principle between Pfizer and the Department of Justice in January 2009 did anyone at either Pfizer or KPMG view any loss that might arise out of the investigation as "reasonably estimable."⁶⁰ To the contrary, testimony and contemporaneous documents reflect

⁵⁸ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 276:13-17); *see also id.* at 380:19-382:15 (KPMG reviewed government's investigation of Bextra promotion "every single reporting period from January 2006 through the end of 2008").

⁵⁹ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 37:13-38:14 (between January 2006 and December 2008, Pfizer Controller "engaged with in-house legal counsel regarding investigations into off-label promotion"), 209:11-15 (referencing "legal meetings that [Controller has] with KPMG and the attorneys, including Doug Lankler"), 227:4-230:21 (Controller "utilized the process [it] put into place to review the[FAS-5] disclosures" in which in-house and outside counsel provided Controller with "legal advice with respect to the FAS 5 disclosures concerning the government investigations into the COX-2 drugs"), 288:16-25 (Pfizer Controller received "status of the government investigation . . . into the Bextra DOJ allegations" from Mr. Lankler and Mr. Block, who "was very much aware of what was happening")); Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 241:23-242:8 (Lankler or Cangialosi would communicate "information that was relevant in coming to a determination of an accrual under FASB 5" to KPMG), 249:20-250:4); Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 119:3-15 (KPMG communicated with Fox and Cangialosi regarding "legal proceeding disclosures" between 2006 and 2009)); Petrosinelli Decl. Ex. Z-1 (Hedley (Aug. 7, 2013) Dep. 109:12-20 ("There would be quarterly meetings and there might be meetings, it would be not uncommon to have meetings more frequent than that with people who were working actively on the [illegal act] investigations.")); Petrosinelli Decl. Ex. N-7 (Disclosure Committee Certification compendium).

⁶⁰ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 290:19-291:4; 293:8-12; 295:24-296:4; 382:4-387:12); Petrosinelli Decl. Ex. O-3 (Block (Sept. 16, 2013) Dep. 147:21-150:23); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 15, 2013) Dep. 118:23-119:8; 135:15-22); Petrosinelli Decl. Ex. P-1 (Bradley

careful attention to this issue and a unanimous agreement by all parties that the requirements of a FAS 5 reserve had not been met until the fourth quarter of 2008.⁶¹

36. On September 26, 2005, for example, members of Pfizer's legal department met with members of Legal Finance and the Controller's staff, and consulted with outside counsel, regarding the issue of whether the government investigation concerning Bextra required recording a reserve. A memorandum summarizing the result of that meeting states:

There was a consensus that a loss, if any, is not estimable at this time due, among other things, to the following factors: (1) the government is still outlining its theories and has not made any demand; nor has it spelled out the statutory remedies or the types of damages/penalties that it may seek; (2) we have not discussed with the government the substantive merits of any case that it

(Aug. 8, 2013) Dep. 101:14-104:2); Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 129:20-30:25; 228:11-229:14).

⁶¹ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 317:19-318:11 (“[I]t isn’t about what somebody demands; that is not how a reserve is taken. Again, you have to come up with a reasonable estimate. You need to be able to substantiate it. And the fact that someone demands something is not a reason to come up with that as a reserve.”), 370:9-20, 373:22-374:8); Petrosinelli Decl. Ex. O-3 (Block (Sept. 16, 2013) Dep. 149:6-150:14); Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 54:5-55:24, 68:2-17 (concurring in Pfizer’s conclusion that “it had not met the requirements under FAS 5 to record a loss contingency” for a reserve for the Bextra government investigation)); Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 202:20-203:6 (“If the requirements under FAS 5 . . . are not met, then you would not accrue a reserve.”)); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 15, 2013) Dep. 82:6-83:1) (stating that he “absolutely” believed “that the company’s position was appropriate with respect to accruing a reserve for the government investigation,” and that “when [he] signed off, [he] was convinced, based upon what [he] heard from [his] discussions with—as laid out in the document, that there was not a need under FAS 5 to record a liability at this date.”); *see also* Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61) (“Pfizer has not recognized a contingent liability related to government investigation of Bextra promotion because amounts of potential exposure are not estimable in accordance with SFAS No. 5.”); Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report) (“The facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under SFAS No.5.”); *see also* Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002562) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report presentation) (“Disclosure in the 10-K is appropriate.”); Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638 at 018649) (Feb. 28, 2008 KPMG 2007 Audit Results and SAS 114 Report) (same); Petrosinelli Decl. Ex. Z-4 (KPMG-PFIZ-DS 0004834) (Feb. 9, 2009 memorandum concluding “Pfizer appears to have appropriately assessed the accrual and disclosure requirements and recorded a charge that is consistent with SFAS No. 5”).

might have and the ultimate settlement of the merits of the case will have a direct impact on the calculation of any loss; (3) calculation of loss in a case of this nature is particularly complex and requires further definition, starting with the issues raised in (1) and (2) above.⁶²

37. KPMG played a prominent role in this process, independently determining each quarter that Pfizer's FAS 5 judgments were reasonable. After receiving updates from Pfizer's government investigations counsel, KPMG opined at each reporting period during the Class Period that it concurred with Pfizer's determination that any potential loss associated with the Department of Justice investigation did not trigger a reserve obligation under FAS 5.⁶³

⁶² Petrosinelli Decl. Ex. P-5 (PFE-JONES 00043523 at 00043524) (Oct. 17, 2007 email from C. Wessel to A. Waxman et al.) (attaching Sept. 2005 memorandum).

⁶³ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. at 223:11-17 (quarterly reserve meetings were held every quarter with KPMG during Class Period), 387:13-19 (“Q. Did anyone at KPMG ever express a view -- up until the point that there actually was a settlement in principle, that a SFAS 5 reserve should be booked for the Bextra government investigation? A. No.”)); *see also, e.g.*, Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report); Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638 at 018649) (Feb. 28, 2008 KPMG 2007 Audit Results and SAS 114 Report); Petrosinelli Decl. Ex. U-4 (KPMG-PFIZ-DS 0004281) (KPMG workpaper “Bextra—Consideration of SFAS No. 5 (FAS 5), *Loss Contingencies*”) (“We performed the procedures and noted that all evidence obtained and evaluated supported Management’s assertion that the facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under F AS 5. As such, we believe that Management's conclusion that no accrual pursuant to FAS 5 as of December 31, 2007 is appropriate.”); Petrosinelli Decl. Ex. W-4 (KPMG-PFIZ-DS 0005889 at 0005897-98) (Feb. 20, 2007 KPMG workpaper “2006 Compliance Overview Memo”) (describing conversations between Pfizer counsel and KPMG regarding Bextra investigation and concluding Pfizer “has assessed the accrual and disclosure requirements pursuant to SFAS No. 5 and has properly presented the [Bextra investigation] in the Form 10-K”); Petrosinelli Decl. Ex. E-5 (KPMG-PFIZ-DS 019951A at 019954A) (Oct. 30, 2008 KPMG workpaper “Q3 2008 Legal Review Summary”) (describing Pfizer discussions with KPMG regarding possible reserve for Bextra investigation and concluding Pfizer has “assessed the accrual and disclosure requirements pursuant to SFAS No. 5 and properly presented the compliance matters in the Form 10-Q”).

38. For example, after discussing the Bextra government investigation in January 2006 with Pfizer's then-head of litigation Allen Waxman, KPMG's lead audit partner, John Chapman, noted in a workpaper, "no FAS 5 accrual at 12/31 necessary based on facts to date."⁶⁴

39. Further, in connection with its 2006 audit, KPMG concluded:

Pfizer has not recognized a contingent liability related to the government's investigation of Bextra promotion as the facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under SFAS No. 5. Disclosure in the 10-K is appropriate.⁶⁵

40. Pfizer's legal department, Legal Finance, the Controller's Staff, and outside counsel revisited this issue continuously, including at a meeting in October 2007 with outside disclosure counsel Mr. Block, who reached the same conclusion that any potential loss was not reasonably estimable.⁶⁶

41. In connection with its 2007 audit, KPMG concurred with Pfizer's determination that any potential loss associated with the Department of Justice investigation did not trigger a reserve obligation under FAS 5:

Pfizer has not recognized a contingent liability related to the government's investigation of Bextra promotion because amounts of potential exposure are not estimable in accordance with SFAS No. 5. The facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under SFAS No. 5. This was further emphasized by the Bextra white paper, which Pfizer submitted to the

⁶⁴ Petrosinelli Decl. Ex. F-4 (KPMG-PFIZ-DS 0001776) (Jan. 19, 2006 Q4 Legal Update Discussion workpaper); *see also* Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61) ("Pfizer has not recognized a contingent liability related to government investigation of Bextra promotion because amounts of potential exposure are not estimable in accordance with SFAS No. 5.").

⁶⁵ Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002562) (2006 Audit Results and SAS 61 Report presentation).

⁶⁶ Petrosinelli Decl. Ex. C-6 (PFE-JONES 00060496, PFE-JONES 00060497) (Oct. 18, 2007 email from D. Block to C. Wessel et al.) ("There was a consensus that a loss, if any, is not estimable at this time[.]").

Department of Justice detailing its defenses to various allegations.⁶⁷

42. In accordance with Generally Accepted Accounting Standards, KPMG also requested legal letters from Covington & Burling, Pfizer's outside counsel for the Bextra investigation, to assist it in ascertaining whether Pfizer was complying with FAS 5. For the years ended 2005, 2006, and 2007, Covington & Burling responded in writing, stating that in its professional judgment it had not concluded that a loss contingency related to the Bextra investigation was either "probable" or "remote." These letter responses were retained in KPMG's audit documentation files.⁶⁸

43. In January 2009, only weeks before the ultimate agreement in principle to resolve the matter, the status was still uncertain. Mr. Block drafted a memorandum memorializing the current thinking on the reserve issue, which stated that "no such reserve has been taken and KPMG has not disagreed with this decision nor made any recommendations to the contrary."⁶⁹ The memorandum concludes that "a reserve has not been taken because," in part, "the amount of the loss could not be reasonably estimated in light of the above facts and the uncertainty over whether the matter can be settled and at what amount. To date, the Boston U.S. Attorney has not

⁶⁷ Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638 at 018649) (2007 Audit Results and SAS 114 Report)); *see also* Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report) ("The facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under SFAS No.5.").

⁶⁸ Petrosinelli Decl. Ex. N-4 (KPMG-PFIZ-DS 017647A at 47A); Petrosinelli Decl. Ex. D-4 (KPMG-PFIZ-DS 000596A-600A); Petrosinelli Decl. Ex. Y-4 (KPMG-PFIZ-DS 056016-21); Petrosinelli Decl. Ex. T-4 (KPMG-PFIZ-DS 004609A-13A).

⁶⁹ Petrosinelli Decl. Ex. G-5 (PFE-JONES 00059201 at 00059202) (Jan. 12, 2009 email from D. Block to G. Giampetruzzi and attached memorandum).

indicated that he is willing to settle the matter for an amount in a range and other conditions of settlement that Pfizer would accept.”⁷⁰

44. Throughout the Class Period, the Pfizer employees and advisors believed that the wide disparities between the positions of Pfizer and the Department of Justice with respect to the monetary and non-monetary aspects of a potential resolution made it impossible to foresee whether a settlement could be reached and, if so, what the material terms would be.⁷¹

45. In particular, the non-monetary conditions discussed by Pfizer and the government included, *inter alia*, whether the agreement would include a criminal plea, what criminal charge would be included in any plea, whether a non-operating Pfizer entity would enter the plea, whether non-Bextra related open investigations would be included in the resolution, and whether Pfizer would be subject to ongoing monitoring by the government.⁷² As Mr. Bradley of KPMG testified:

It was my understanding that Pfizer was seeking an agreement on all the components or multiple components, one of which was monetary and a number of others which were the non-monetary items that I referred to.⁷³

⁷⁰ Petrosinelli Decl. Ex. G-5 (PFE-JONES 00059201 at 00059202) (Jan. 2009 draft memorandum to KPMG).

⁷¹ Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 382:22-387:3); Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 101:14-104:2); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 106:19-107:11 (“[B]etween the non-monetary matters as well as the monetary matters, there was no agreement.”)), 135:15-22 (“Between the non-monetary and monetary, you just can’t get to a range.”)); Petrosinelli Decl. Ex. O-3 (Block (Sept. 16, 2013) Dep. 203:24-204:6 (“I would have said that the ... probability was somewhat remote or, at best, possible. And to put a range of 4 billion versus somewhere above zero would have been meaningless because the 4 billion was not real . . . Pfizer people weren’t going to have a discussion about \$4 billion.”)).

⁷² Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 88:11-89:1).

⁷³ Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 89:2-12).

46. KPMG’s audit partners stated in their depositions, consistent with their workpapers,⁷⁴ that they concluded, and advised Pfizer, that up until the fourth quarter of 2008, the Department of Justice investigation had not met both requirements of FAS 5 and thus the company could not accrue a reserve for the investigation. Moreover, the KPMG audit partners reaffirmed during their depositions their belief that no reserve was required throughout the Class Period.⁷⁵

47. Immediately upon reaching an agreement in principle with the government as to the material terms of a settlement on January 23, 2009, which made a loss both probable and reasonably estimable, Pfizer established a reserve for the investigation.⁷⁶

⁷⁴ Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61); Petrosinelli Decl. Ex. H-4 (KPMG-PFIZ-DS 0002510 at 0002519) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report); Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638 at 018649) (Feb. 28, 2008 KPMG 2007 Audit Results and SAS 114 Report); Petrosinelli Decl. Ex. U-4 (KPMG-PFIZ-DS 0004281) (KPMG workpaper “Bextra—Consideration of SFAS No. 5 (FAS 5), *Loss Contingencies*”) (“We performed the procedures and noted that all evidence obtained and evaluated supported Management’s assertion that the facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under F AS 5. As such, we believe that Management’s conclusion that no accrual pursuant to PAS 5 as of December 31, 2007 is appropriate.”); Petrosinelli Decl. Ex. W-4 (KPMG-PFIZ-DS 0005889 at 0005897-98) (Feb. 20, 2007 KPMG workpaper “2006 Compliance Overview Memo”) (describing conversations between Pfizer counsel and KPMG regarding Bextra investigation and concluding Pfizer “has assessed the accrual and disclosure requirements pursuant to SFAS No. 5 and has properly presented the [Bextra investigation] in the Form 10-K”); Petrosinelli Decl. Ex. E-5 (KPMG-PFIZ-DS 019951A at 019954A) (Oct. 30, 2008 KPMG workpaper “Q3 2008 Legal Review Summary”) (describing Pfizer discussions with KPMG regarding possible reserve for Bextra investigation and concluding Pfizer has “assessed the accrual and disclosure requirements pursuant to SFAS No. 5 and properly presented the compliance matters in the Form 10-Q”).

⁷⁵ Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 129:20-130:11); *see also* Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 82:6-10, 118:25-119:8, 192:13-195:19); Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 9, 2013) Dep. 334:15-335:14).

⁷⁶ Petrosinelli Decl. Ex. K-1 (Pfizer, Form 8-K (Jan. 26, 2009)) (press release issued by company titled “Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance”); *see also* Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 92:23-93:2 (“[M]anagement had made a proper determination to record the accrual in its 2008 financial statements.”)); Petrosinelli Decl. Ex. Z-4 (KPMG-PFIZ-DS 0004834 at 0004837) (Feb. 9, 2009 KPMG workpaper) (concluding that Pfizer “appropriately assessed the accrual and disclosure requirements and recorded a charge that is consistent with SFAS No. 5”).

48. On January 26, 2009 Pfizer filed a Form 8-K stating that “Fourth quarter 2008 results were impacted by a \$2.3 billion pre-tax and after-tax charge resulting from an agreement in principle ... to resolve previously disclosed investigations regarding allegations of past off-label promotional practices concerning Bextra, as well as other open investigations.” The disclosure did not mention the names of the products at issue in the other “open investigations.”⁷⁷

49. In February 2009, KPMG conducted an analysis to “evaluate the timing and the propriety of the charge being recorded in the fourth quarter of 2008.” Consistent with the testimony of the KPMG deponents, the memorandum concluded, “Based on the procedures performed and findings noted above, KPMG concludes that Pfizer appears to have appropriately assessed the accrual and disclosure requirements and recorded a charge that is consistent with SFAS No. 5.”⁷⁸

III. THE BEXTRA INVESTIGATION: FEBRUARY 2004 NOTICE TO PFIZER AND EARLY STAGES

50. Bextra is a non-steroidal anti-inflammatory medication that was manufactured and marketed jointly by Pharmacia Corporation (Pharmacia) and Pfizer. In November 2001, the Food and Drug Administration (FDA) approved Bextra to treat pain associated with osteoarthritis, rheumatoid arthritis, and primary dysmenorrhea. Pharmacia and Pfizer began selling Bextra in February 2002.⁷⁹ In April 2005, Pfizer voluntarily withdrew Bextra from the

⁷⁷ Petrosinelli Decl. Ex. K-1 (Pfizer, Form 8-K at 6 (Jan. 26, 2009)) (press release issued by company titled “Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance”).

⁷⁸ Petrosinelli Decl. Ex. Z-4 (KPMG-PFIZ-DS 0004834 at 0004837) (Feb. 9, 2009 KPMG workpaper).

⁷⁹ Pfizer acquired Pharmacia in 2003, and from that point forward Pfizer was the sole manufacturer and seller of Bextra.

market for reasons unrelated to the government investigation (in response to a serious skin condition developed by a small percentage of users).⁸⁰

51. In February 2004, prior to Bextra's withdrawal from the market, the United States Attorney's Office (USAO) in Boston informed Pfizer that it had begun investigating the company's marketing practices regarding Bextra.⁸¹ One focus of the investigation, which stemmed from the filing of a sealed *qui tam* lawsuit by a former Pfizer sales representative, was whether Pfizer sales representatives promoted Bextra for the treatment of pain other than that associated with osteoarthritis, rheumatoid arthritis, and primary dysmenorrhea (i.e., the FDA-approved conditions indicated on Bextra's label).⁸² The lead prosecutor later described the theories underlying the government's investigation as "nuanced."⁸³

52. When it was notified of the Boston USAO's investigation of its Bextra marketing practices, Pfizer hired outside counsel—the law firm Covington & Burling (Covington)—to conduct an internal investigation and to represent the company in the government investigation.⁸⁴

53. Pfizer also immediately disclosed the investigation to its outside auditors at KPMG⁸⁵ and to the market in the "Legal Proceedings" section of its 2003 Form 10-K (filed on

⁸⁰ *Pfizer halts arthritis drug after warning on risks*. N.Y. Times (Apr. 8, 2005), available at http://www.nytimes.com/2005/04/07/business/worldbusiness/07iht-pfizer.html?_r=0.

⁸¹ Petrosinelli Decl. Ex. L-4 (KPMG-PFIZ DS 0006122 at 0006133-34) (excerpt from Feb. 2004 letter from J. Kindler to J. Chapman regarding pending significant litigation).

⁸² Petrosinelli Decl. Ex. L-4 (KPMG-PFIZ-DS 0006122 at 0006133-34) (excerpt from Feb. 2004 letter from J. Kindler to J. Chapman regarding pending significant litigation).

⁸³ Petrosinelli Decl. Ex. X-3 (Rx Compliance Report 1-2 (Sept. 30, 2009), "Lead prosecutor in Pfizer's \$2.3 billion settlement says off-label promotion issues are becoming 'broader and more complex.'").

⁸⁴ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 94:5-7); Petrosinelli Decl. Ex. S-4 (KPMG-PFIZ-DS 0000406 at 0000407) (Jan. 17, 2005 letter from E. Posner to KPMG).

⁸⁵ Petrosinelli Decl. Ex. L-4 (KPMG-PFIZ DS 0006122 at 0006133-34) (excerpt from Feb. 2004 letter from J. Kindler to J. Chapman regarding pending significant litigation).

March 10, 2004). The filing stated, “The Company recently was notified that the U.S. Department of Justice is conducting investigations relating to the marketing and sale of *Genotropin* and *Bextra*, as well as certain managed care payments” and that Pfizer was “cooperating in these investigations.”⁸⁶

54. Pfizer cooperated with the government’s investigation. In July 2004, Covington made a 49-slide presentation to the government outlining the methodology and initial results of its internal investigation.⁸⁷ Covington’s presentation indicated that it had interviewed more than 40 Pfizer employees and reviewed over 500,000 pages of documents. In a subsequent presentation in November 2004, by which time the firm had conducted more than 70 interviews, Covington reported in a 180-slide presentation that it had found isolated instances of non-compliance with Pfizer’s policies regarding proper promotion of *Bextra*, but that there were no widespread promotional issues and no evidence of a headquarters-based strategy or involvement of senior management.⁸⁸

55. In December 2004, the government issued a formal subpoena for *Bextra*-related documents.⁸⁹ The company complied and produced millions of pages of documents.⁹⁰

⁸⁶ Petrosinelli Decl. Ex. A-1 (Pfizer 2003 Annual Report (Form 10-K), 2003 Financial Report at 50 (Mar. 10, 2004)).

⁸⁷ Petrosinelli Decl. Ex. A-7 (PFE DERIV 00066668) (July 15, 2004 Covington presentation).

⁸⁸ Petrosinelli Decl. Ex. Z-6 (PFE DERIV 00066488) (Nov. 16-17, 2004 Covington presentation); Petrosinelli Decl. Ex. X-2 (Pfizer’s Dec. 3, 2013 Supplement and Verification to Pfizer’s Suppl. Int. Resp. Ex. B, at 3-4).

⁸⁹ Petrosinelli Decl. Ex. X-6 (PFE DERIV 00008533 at 00008540-41) (Feb. 16, 2005 memorandum from J. Kindler to Pfizer Board of Directors regarding significant legal updates).

⁹⁰ Petrosinelli Decl. Ex. B-5 (KPMG-PFIZ-DS 033897 at 033913) (Nov. 28, 2007 letter from E. Posner to S. Bloom); *see also* Petrosinelli Decl. Ex. K-2 (O’Connor (Sept. 20, 2010) Dep. 36:7-19 (referencing Pfizer’s production of “millions of documents”)).

56. In the course of its internal investigation, Covington discovered that in 2004, in violation of Pfizer's policies as well as a litigation document hold memorandum that had been widely circulated at the company, a field-based sales manager in one district of one region of one of Pfizer's sales divisions had asked three sales personnel to delete a small number of Bextra-related documents from their computers. (The documents were recovered from the computers.) Pfizer investigated the matter and voluntarily disclosed the issue and the results of its investigation to the government. Pfizer terminated the employees involved.⁹¹

57. The government ultimately prosecuted one of the former employees (who had directed the attempted deletion) for obstruction of justice. Pfizer assisted the government in the prosecution, which occurred in March 2009, after the Class Period, including permitting one of its outside lawyers to testify in the government's case at trial. The former employee was convicted of obstruction of justice.⁹²

58. Following Covington's presentations to the USAO in 2004, Pfizer heard virtually nothing from the government regarding the substance of its Bextra investigation for approximately two years.⁹³

59. Pfizer and its investigations counsel regarded the government investigation as one relating broadly to the "marketing" of Bextra. For example, during the February 26, 2004

⁹¹ Petrosinelli Decl. Ex. C-7 (PFE DERIV 00066719 at 00066727) (Sept. 27, 2005 letter from E. Posner to S. Bloom).

⁹² Petrosinelli Decl. Ex. B-5 (KPMG-PFIZ-DS 033897 at 033913) (Nov. 28, 2007 letter from E. Posner to S. Bloom) (Pfizer's "lawyers have voluntarily disclosed the results of an internal investigation and the Company more recently offered its own lawyers to testify for the Government to allow the Government to pursue charges against former Pfizer employees for possible obstruction of justice."); Petrosinelli Decl. Ex. T-2 (Mar. 12, 2009 Farina Trial Tr. (Day Four) 65:5-14 (testimony of Covington & Burling attorney Stephen Anthony), 112:23-24 ("[T]he company made that conscious decision to pass information along to the government.")).

⁹³ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. A, at 1) (referencing four meetings or calls between November 2004 and July 2006).

meeting of the Board of Directors, then-general counsel Jeffrey Kindler reported that the government had recently disclosed its investigation relating to the “marketing and sale” of Bextra.⁹⁴

60. The government itself described its investigation as one relating to “marketing.”⁹⁵ For example, in an April 2008 letter to Pfizer’s outside investigation counsel, the government described key elements of a “proposed resolution of the United States’ investigation of the marketing of Bextra.”⁹⁶

61. Allen Waxman, Pfizer’s head of litigation and later general counsel from August 2006 through March 2008, testified that “we called [the Bextra investigation] the marketing investigation by the Government. . . . I think at various points in time the Government . . . had various theories about relating to concerns they had with the marketing of Bextra.”⁹⁷ Pfizer’s

⁹⁴ Petrosinelli Decl. Ex. B-7 (PFE DERIV A 00000350 at 00000357) (minutes of Feb. 26, 2004 Board of Directors meeting) (“Mr. Kindler reported that the Company recently was notified of a U.S. Department of Justice investigation relating to the marketing and sale of Genotropin and Bextra as well as certain managed care payments.”); *see also* Petrosinelli Decl. Ex. S-4 (KPMG-PFIZ-DS 0000406 at 0000407) (Jan. 17, 2005 letter from E. Posner to KPMG) (describing Bextra investigation as stemming from “requests for information and documents from the U.S. Department of Justice and a coalition of state attorneys general relating to the marketing of drugs sold under the trade names BEXTRA and CELEBREX”); Petrosinelli Decl. Ex. N-4 (KPMG-PFIZ-DS 017647A at 017648A) (Jan. 25, 2006 letter from E. Posner to KPMG) (describing investigation as “relating to the marketing and safety of drugs sold under the trade names Bextra and Celebrex”); Petrosinelli Decl. Ex. X-6 (PFE DERIV 00008533 at 00008540) (Feb. 16, 2005 memorandum from J. Kindler to Pfizer Board of Directors); Petrosinelli Decl. Ex. C-7 (PFE DERIV 00066719 at 00066719) (Sept. 27, 2005 letter from E. Posner to S. Bloom); Petrosinelli Decl. Ex. V-6 (Disclosure Committee Meeting Minutes compendium) (minutes of Aug. 5, 2008 Disclosure Committee meeting).

⁹⁵ *E.g.*, Petrosinelli Decl. Ex. Y-6 (PFE DERIV 00066378 at 00066378) (April 4, 2008 letter from S. Bloom to E. Posner); Petrosinelli Decl. Ex. U-6 (PFE JONES 00103831 at 00103831) (May 22, 2006 letter from S. Bloom to E. Posner) (tolling agreement for claims relating to “the sale, marketing, promotion and distribution in interstate commerce of the drugs Bextra”).

⁹⁶ Petrosinelli Decl. Ex. Y-6 (PFE DERIV 00066378 at 00066378) (April 4, 2008 letter from M. Sullivan and S. Bloom to E. Posner).

⁹⁷ Petrosinelli Decl. Ex. R-2 (Waxman (Nov. 14, 2013) Dep. 53:11-54:1).

outside counsel, Dennis Block confirmed that “whether it was the SEC or the US Attorneys, [the investigation] was always discussed as marketing and safety.”⁹⁸

62. Mr. Fox, when asked about the use of this term in Pfizer’s securities disclosures to describe the investigation, stated, “I was then and am now entirely of the view that the term ‘marketing’ was accurate and I’m comfortable with it,” and that his view was that a “reasonable investor” would understand that term to have included potential off-label promotion.⁹⁹

63. As described above, Pfizer updated its securities disclosures regarding the government’s investigation of Bextra marketing practices many times over the next several years, on the advice of its disclosure counsel and auditors.¹⁰⁰

⁹⁸ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 126:24-127:4); *see also id.* 126:2-11 (“[m]arketing would be an understandable term to people who look at” the disclosures, and would be understood as including off-label promotion).

⁹⁹ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 146:10-13); *see also id.* at 138:7-14 (Fox was “completely comfortable” with the term, and a “reasonable investor” would have understood it to include off-label marketing); *id.* at 140:5-10 (“[I]f you’re asking whether I believe that the investing public was informed, by our disclosure, that the investigation included off-label promotions, I believe the answer is yes.”).

¹⁰⁰ *See, e.g.*, Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 166:13-25); Petrosinelli Decl. Ex. G-6 (PFE-JONES 00069502) (Jan. 12, 2006 email from L. Fox to A. Waxman with handwritten note from D. Block) (attaching a draft of the legal proceedings disclosure for the 2005 Financial Report); Petrosinelli Decl. Ex. N-5 (PFE-JONES 00042194) (Oct. 16, 2006 email from D. Block to L. Fox); Petrosinelli Decl. Ex. F-6 (PFE-JONES 00065303) (Jan. 12, 2007 email from L. Fox to S. Phillips and D. Block); Petrosinelli Decl. Ex. L-5 (PFE-JONES 00041254) (Feb. 19, 2007 email from M. Levy to A. Waxman); Petrosinelli Decl. Ex. S-5 (PFE-JONES 00045534) (Oct. 19, 2008 email from D. Hipper to L. Fox) (with note that says “[i]f you have any questions please call Dennis Block”); Petrosinelli Decl. Ex. M-6 (PFE-JONES 00041565) (Jan. 19, 2007 email from L. Fox to G. Giampetruzzi) (noting that language suggested by Block was added to Government Investigations section); Petrosinelli Decl. Ex. P-6 (PFE-JONES 00044564) (Feb. 12, 2008 email from A. Waxman to L. Fox and D. Lankler); Petrosinelli Decl. Ex. O-6 (PFE-JONES 00044284) (July 23, 2008 email from L. Fox to A. Schulman) (suggesting addition of phrase “which could result in the payment of a substantial fine and/or civil penalty” based on “discussions with Loretta Cangialosi and Doug Lankler” and discussing changes to 2007 Legal Proceedings Disclosure based on conversation with Block, Fox, and others); Petrosinelli Decl. Ex. O-5 (PFE-JONES 00042203) (Feb. 15, 2006 email from L. Fox to J. Kindler) (KPMG suggests the investigation be described as pertaining to “marketing and safety”); Petrosinelli Decl. Ex. I-5 (PFE-JONES 00032806) (Feb. 17, 2006 email from L. Fox to E. Riso at KPMG NYHQ) (confirming addition of language “expand[ing] the legal proceedings disclosure concerning the government requests for information relating to Bextra and Celebrex to specify that it concerns ‘the marketing and safety of’ Bextra and Celebrex”); Petrosinelli

64. Pfizer's disclosures throughout the Class Period informed investors regarding the risks of litigation generally, and the risks attending government investigations in particular.

Pfizer's 2005 Form 10-K, dated February 28, 2006, was the first filing of the Class Period and stated:

[M]any of our activities are subject to the jurisdiction of various other federal regulatory and enforcement departments and agencies, such as the Department of Health and Human Services, the Federal Trade Commission and the Department of Justice. . . . We are subject to possible administrative and legal proceedings and actions by these various regulatory bodies (see Note 18 to our consolidated financial statements, *Legal Proceedings and Contingencies*, in our 2005 Financial Report). Such actions may include product recalls, seizures and other civil and criminal sanctions.¹⁰¹

65. Pfizer's 2005 Form 10-K also stated, with regard to the risks of litigation:

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; **government investigations**; and other legal proceedings that arise from time to time in the ordinary course of our business. Litigation is inherently unpredictable, and **excessive verdicts do occur**. Although we believe we have substantial defenses in these matters, **we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period**. . . .¹⁰²

. . . .

Many claims involve highly complex issues relating to causation, label warnings, scientific evidence, actual damages and other

Decl. Ex. H-6 (PFE-JONES 00032727) (Feb. 20, 2007 email from K. Dadlani to J. Chapman) (suggesting amendments to government investigation section proposed by KPMG related to "Bextra marketing matter").

¹⁰¹ Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K) at 12 (Feb. 28, 2006)).

¹⁰² Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K) at 18 (Feb. 28, 2006)) (emphases added); *see also* Petrosinelli Decl. Ex. J-1 (Pfizer, 2008 Annual Report (Form 10-K) at 18 (Feb. 27, 2009)); Petrosinelli Decl. Ex. F-1 (Pfizer, 2007 Annual Report (Form 10-K) at 17 (Feb. 29, 2008)); Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 17 (Feb. 27, 2007)).

matters. Often these issues are subject to substantial uncertainties and, therefore, the probability of loss and an estimation of damages are difficult to ascertain. Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. These assessments can involve a series of complex judgments about future events and can rely heavily on estimates and assumptions Our assessments are based on estimates and assumptions that have been deemed reasonable by management. ***Litigation is inherently unpredictable, and excessive verdicts do occur. Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.***¹⁰³

66. Pfizer's SEC filings in which the above language appears all stated that Pfizer's forward-looking statements could be identified by the use of words such as "believe," and that they addressed, among other things, "the outcome of contingencies, such as legal proceedings."¹⁰⁴

67. Note 18 to Pfizer's 2005 consolidated financial statement, the 2005 Legal Proceedings disclosure, contained a new, separate section titled "Government Investigations and Requests for Information." As a prelude to its discussions of specific investigations, Pfizer informed investors:

Like other pharmaceutical companies, we are subject to extensive regulation by national, state and local government agencies in the U.S. and in the other countries in which we operate. As a result, we have interactions with government agencies on an ongoing basis. The principal pending investigations and requests for information by government agencies are as follows:

¹⁰³ Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K), 2005 Financial Report at 32 (Feb. 28, 2006)) (emphases added).

¹⁰⁴ See, e.g., Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K), 2005 Financial Report at 15 (Feb. 28, 2006)) (stating that "forward-looking statements" include "statements relating to future actions, prospective products or product approvals, future performance or results of current and anticipated products, sales efforts, expenses, interest rates, foreign exchange rates, the outcome of contingencies, such as legal proceedings, and financial results").

.....
In 2003 and 2004, we received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and a group of state attorneys general.¹⁰⁵

68. Each quarter during this 2004-2006 timeframe, Pfizer's Finance group (led by its Controller, Loretta Cangialosi) and its outside auditors at KPMG evaluated whether the status of the Department of Justice investigation required Pfizer to record a reserve under FAS 5. They concluded that no reserve was required.¹⁰⁶

IV. AUGUST 2006 TO DECEMBER 2007: PFIZER UPDATES ITS WARNINGS TO INVESTORS

69. After over two years of investigation, in August and September 2006 the government presented for the first time, in two meetings with Pfizer representatives, its view of the Pfizer documents it had received concerning the marketing of Bextra. Together with outside counsel Covington & Burling, Pfizer's Chief Compliance Officer Mr. Lankler, a former federal prosecutor in the Southern District of New York, and Pfizer's head of government investigations Carlton Wessel, also a former federal prosecutor, attended.¹⁰⁷ The government contended that Pfizer sales personnel had improperly marketed Bextra on a regular basis, and that headquarters-based personnel had developed a strategy to promote Bextra for general acute pain, as opposed to

¹⁰⁵ Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K), 2005 Financial Report at 67 (Feb. 28, 2006)).

¹⁰⁶ Petrosinelli Decl. Ex. F-4 (KPMG-PFIZ-DS 0001776 at 0001776) (Q4 Legal Update – KPMG workpaper) (lead KPMG audit partner's handwritten note stating “no FAS5 accrual . . . necessary based on facts to date”); Petrosinelli Decl. Ex. M-4 (KPMG-PFIZ-DS 016594 at 016605) (Feb. 23, 2006 KPMG 2005 Statements on Auditing Standards (SAS) No. 61).

¹⁰⁷ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 6-35).

the specific types of pain for which it had been approved. The government made clear, however, that its investigation was continuing, and it invited Pfizer to respond to its presentations.¹⁰⁸

70. Pfizer's internal government investigation lawyers informed Messrs. Fox and Block, the company's Finance personnel, and KPMG of the government meetings, so that the company could evaluate whether to modify either its securities disclosures or its loss contingency reserves.¹⁰⁹

71. Based on advice from Mr. Block, Mr. Fox, and KPMG,¹¹⁰ Pfizer again updated its warnings to investors concerning government investigations in general, and the Bextra

¹⁰⁸ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 35).

¹⁰⁹ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 205:5-16 (“[W]e would be told about what we indicated to the government and what the government indicated to us was the current thinking about the case, . . . [and] anything else that our GI attorneys who attended the meeting thought was appropriate to bring to our attention to make sure that we were in a position to make an informed judgment with respect to potential disclosure.”)); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 84:18-22); Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 260:16-261:9 (“We would have talked to them about the major meetings we would have had with the government as the case progressed.”)); Petrosinelli Decl. Ex. W-5 (PFE-JONES 00047098) (Oct. 9, 2006 email from L. Fox to D. Lankler et al.) (noting Messrs. Block and Fox would be speaking to Mr. Wessel “regarding any updates to the governmental proceedings section”); Petrosinelli Decl. Ex. F-5 (PFE-JONES 00041926 at 00041964) (Oct. 2006 litigation monthly financial controls report) (“During these meetings the government presented its version of the factual issues surrounding the alleged off-label promotion of Bextra and the Company's interactions with physicians in the form of advisory boards, mentorships, CME and publication strategies.”); Petrosinelli Decl. Ex. O-4 (KPMG-PFIZ-DS 018424A at 018443A) (Nov. 3, 2006 letter from A. Waxman to J. Chapman regarding pending significant litigation) (“In August, we met with federal prosecutors on the Bextra matter. During these meetings the government presented its version of the factual issues surrounding the alleged off-label promotion of Bextra and the Company's interactions with physicians in the form of advisory boards, mentorships, CME, and publication strategies.”).

¹¹⁰ Petrosinelli Decl. Ex. J-6 (PFE-JONES 00041337 at 00041337) (Oct. 12, 2006 email from L. Fox to D. Lankler) (noting “Carl [Wessel], Dennis [Block], and I had a conference call this afternoon to discuss government investigations,” and the “only development that has to be reported” concerned an unrelated issue); Petrosinelli Decl. Ex. N-5 (PFE-JONES 00042194) (Oct. 16, 2006 email from D. Block to L. Fox); Petrosinelli Decl. Ex. I-6 (PFE-JONES 00032844) (Oct. 20, 2006 email from L. Fox to J. Chapman); Petrosinelli Decl. Ex. O-7 (PFE-JONES 00042166) (Nov. 1, 2006 Dennis Block subcertification); Petrosinelli Decl. Ex. O-4 (KPMG-PFIZ-DS 018424A at 018443A) (Nov. 3, 2006 letter from A. Waxman to J. Chapman regarding pending significant litigation); Petrosinelli Decl. Ex. M-6 (PFE-JONES 00041565 at 00041565) (Jan. 19, 2007 email from L. Fox to G. Giampetruzzi); Petrosinelli Decl. Ex. M-5 (PFE-JONES 00041506) (Feb. 15, 2007 email from L. Fox to D. Block); Petrosinelli Decl.

investigation in particular. In its Form 2006 10-K, filed on March 1, 2007, Pfizer amended the Government Investigations section of the disclosures to state (new language in bold):

It is possible that criminal charges and fines and/or civil penalties could result from pending government investigations.

Since 2003, we have received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and a group of state attorneys general. **We have been considering various ways to resolve these matters.** Since 2005, we have received requests for information and documents from the Department of Justice concerning certain physician payments budgeted to our prescription pharmaceutical products.¹¹¹

72. In response to the government's allegations at the August and September 2006 meetings, Pfizer's lawyers made detailed presentations to the government on January 30, 2007, January 31, 2007, March 23, 2007, and June 20, 2007. Pfizer explained its disagreement with the government's theories and its interpretation of certain documents and contested the factual basis of any claims the government might consider bringing.¹¹²

Ex. L-5 (PFE-JONES 00041254, PFE-JONES 00041255) (handwritten comments from D. Block to L. Fox); Petrosinelli Decl. Ex. R-6 (PFE-JONES 00046246 at 00046246) (Feb. 19, 2007 email from L. Fox to D. Block); Petrosinelli Decl. Ex. K-5 (PFE-JONES 00041249 at 00041249) (Feb. 20, 2007 email from L. Fox to A. Waxman) (noting call on which Messrs. Block and Fox agreed to the addition of the phrase, "The Company has been considering various ways to resolve these matters."); Petrosinelli Decl. Ex. H-6 (PFE-JONES 00032727 at 00032727) (Feb. 21, 2007 email from L. Fox to J. Chapman); Petrosinelli Decl. Ex. A-6 (PFE-JONES 00059156) (Feb. 26, 2007 email from L. Fox to S. Lee).

¹¹¹ Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 73 (Feb. 27, 2007)) (updates in bold).

¹¹² Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. A, at 1).

73. On September 14, 2007, the parties met again. The government indicated that it continued to disagree with Pfizer's view of the facts and suggested that Pfizer make a financial proposal for a resolution.¹¹³

74. In response, Covington & Burling submitted lengthy "white papers" setting forth the potential legal and factual defenses Pfizer could raise to criminal or civil charges. On October 1, 2007, Covington provided a detailed analysis of the government's "intended loss" theory of damages, which no court has ever recognized in analogous circumstances and which Pfizer argued could not be maintained in a case against the company.¹¹⁴ The government later abandoned this damages theory.

75. In November 2007 Covington also submitted a 75-page, single-spaced legal brief discussing numerous liability and damages defenses Pfizer would have to any charges. Those defenses included, among others, that even assuming instances of improper promotion had occurred, (1) the misbranding and unapproved drug provisions of the Food Drug and Cosmetic Act ("FDCA") focus only on statements in a medication's label, meaning internal company documents about the medication are not sufficient to establish an FDCA violation; (2) truthful statements made in product detailing, even if off-label, were protected by the First Amendment and thus could not be criminal; (3) there was no proof that Pfizer acted willfully or with specific intent to defraud; (4) the government could not criminalize conduct subject to FDA regulation

¹¹³ Petrosinelli Decl. Ex. K-4 (KPMG-PFIZ-DS 0003496 at 0003513) (excerpts from Nov. 2, 2007 letter from Pfizer to KPMG).

¹¹⁴ Petrosinelli Decl. Ex. B-6 (PFE-JONES 00059186) (Oct. 1, 2007 letter from Covington & Burling to AUSA S. Bloom).

and to which the FDA had not objected; and (5) there were no safety or efficacy issues implicated in the investigation.¹¹⁵ The Covington memo concluded:

In the more than three years that the USAO has spent investigating this case, it still has no evidence of a corporate strategy to promote Bextra to physicians for acute pain disconnected from arthritis or PD. There are no badges of fraud in this case—no concealment of promotional activities or data from the FDA, from Company lawyers, or from superiors within the Company. Indeed, no single employee at any level of the Company acted willfully to violate the FDCA, or acted with the specific intent to defraud. Thus, there is no person whom the Government has charged or can charge with a felony, much less a person whose violation can be attributed to Pfizer for purposes of charging the Company with a felony.¹¹⁶

76. During this timeframe, Pfizer’s disclosure counsel and outside auditors were kept advised of these developments by the company’s in-house litigators.¹¹⁷

77. After discussing Covington’s memoranda and Pfizer’s latest communications with the government, the disclosure lawyers and accountants advised Pfizer that the company’s securities disclosures—which already noted that the Bextra investigation could result in “criminal charges and fines and/or civil penalties,” “excessive verdicts,” and “settlements of

¹¹⁵ Petrosinelli Decl. Ex. C-4 (KPMG-PFIZ-DS 033924) (Nov. 28, 2007 Covington & Burling brief).

¹¹⁶ Petrosinelli Decl. Ex. C-4 (KPMG-PFIZ-DS 033924 at 034002) (Nov. 28, 2007 Covington & Burling brief).

¹¹⁷ *See, e.g.*, Petrosinelli Decl. Ex. X-5 (PFE-JONES 00047120) (Oct. 18, 2007 email from L. Fox to D. Lankler) (reflecting results of “a conference call about governmental investigations” between G. Giampetruzzi, C. Wessel, D. Block and L. Fox); Petrosinelli Decl. Ex. Q-5 (PFE-JONES 00044512) (Jan. 15, 2008 email from L. Fox to D. Lankler) (stating “Gary [Giampetruzzi], Carl [Wessel], Dennis and I [Larry Fox] had a conference call yesterday to get an update on government investigations. After our discussion, it was determined that have to be made to the government investigations section of the draft legal proceedings disclosure.”); Petrosinelli Decl. Ex. K-4 (KPMG-PFIZ-DS 0003496 at 0003513) (Nov. 2, 2007 letter from Pfizer to KPMG) (stating that “[o]n September 14, 2007 [Pfizer] met with the Department of Justice lawyers handling the Bextra investigation.”); Petrosinelli Decl. Ex. C-4 (KPMG-PFIZ-DS 033924) (Nov. 28, 2007 Covington & Burling brief) (showing KPMG signatures and tick marks); Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 251:24-252:17 (KPMG received and reviewed Covington & Burling white paper)); Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 69:19-70:12 (same)).

claims that could have a material adverse effect on our results of operations in any particular period”—were proper.¹¹⁸

78. Plaintiffs’ proffered disclosures expert Edward Buthusiem was an in-house lawyer at the pharmaceutical company GlaxoSmithKline (GSK) when GSK, like Pfizer, was the subject of a large, years-long Department of Justice investigation regarding promotion of its products. GSK, like Pfizer, eventually resolved the investigation through a criminal plea by one of its subsidiaries and payment of a multi-billion dollar fine and penalty. And GSK, like Pfizer, did not disclose in any of its securities filings that its employees had, in fact, engaged in the type of unlawful promotion that the Department of Justice was investigating.¹¹⁹

79. Covington also provided audit response letters to KPMG and Pfizer, advising that Covington had not concluded that the prospect of an unfavorable outcome in the government investigation regarding the marketing of Bextra was probable.¹²⁰

80. On October 9, 2007, after the September meeting with the government, Pfizer Finance met with Messrs. Block, Lankler, and Wessel to discuss the question of whether a reserve was required under FAS 5. Mr. Block “confirmed that the Company [was] not in a

¹¹⁸ Petrosinelli Decl. Ex. O-7 (Block certification compendium) (PFE-JONES 00040456 (Oct. 31, 2007 certification), PFE-JONES 00044634 (Feb. 25, 2008 certification)); Petrosinelli Decl. Ex. U-2 (PFE DERIV 01041273) (Nov. 1, 2007 email from L. Fox to group attaching final draft legal proceedings disclosure for 2006 3Q 10-Q); Petrosinelli Decl. Ex. Q-6 (PFE-JONES 00045626) (Feb. 20, 2008 email from L. Fox to group attaching final draft legal proceedings disclosure for 2007 Form 10-K); Petrosinelli Decl. Ex. F-1 (Pfizer, 2007 Annual Report (Form 10-K) at 69, 76 (Feb. 29, 2008)).

¹¹⁹ Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 190:5-12).

¹²⁰ Petrosinelli Decl. Ex. N-4 (KPMG-PFIZ-DS 017647A) (Jan. 25, 2006 Audit Response Letter from Covington & Burling to KPMG); Petrosinelli Decl. Ex. D-4 (KPMG-PFIZ-DS 000596A) (Feb. 16, 2007 Audit Response Letter from Covington & Burling to KPMG); Petrosinelli Decl. Ex. Y-4 (KPMG-PFIZ-DS 056016) (Jan. 25, 2008 Audit Response Letter from Covington & Burling to KPMG) (stating Covington had “not concluded that the prospect of an unfavorable outcome in these matters” was “probable.”).

position to record a reserve” at that time.¹²¹ A memorandum documenting this meeting, edited by Mr. Block, concludes that “[t]here was a consensus that a loss, if any, is not estimable at this time.”¹²² During this time, Mr. Chapman of KPMG met with Ms. Cangialosi and Mr. Block to discuss the issue as well.¹²³

81. These professionals all concluded that no loss contingency reserve was required because the amount of any potential loss was not “reasonably estimable,” a requirement under FAS5 to record a reserve. In a February 28, 2008 workpaper on the subject, KPMG recorded that it had “read and evaluate[d] the Company’s correspondence with the Department of Justice (specifically, a white paper submitted to the DOJ in November/December 2007)” and concluded that “all evidence obtained and evaluated supported Management’s assertion that the facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under FAS 5.” Thus, KPMG stated, “we believe that Management’s conclusion that no accrual pursuant to FAS 5 as of December 31, 2007 is appropriate.”¹²⁴

82. KPMG’s 2007 SAS 114 Report concluded:

The facts and circumstances surrounding this matter have not yet developed to the point whereby an estimated range of loss can be determined under SFAS No. 5. This was further emphasized by

¹²¹ Petrosinelli Decl. Ex. N-6 (PFE-JONES 00043522) (Oct. 17, 2007 email from P. Brockie to K. Dadlani).

¹²² Petrosinelli Decl. Ex. C-6 (PFE-JONES 00060496 at 00060497) (Oct. 18, 2007 email from D. Block to C. Wessel et al.).

¹²³ Petrosinelli Decl. Ex. L-6 (PFE-JONES 00039485) (Oct. 17, 2007 email from J. Chapman to F. D’Amelio).

¹²⁴ Petrosinelli Decl. Ex. U-4 (KPMG-PFIZ-DS 0004281) (KPMG workpaper “Bextra—Consideration of SFAS No. 5 (FAS 5), *Loss Contingencies*”).

the Bextra white paper, which Pfizer submitted to the Department of Justice detailing its defenses to various allegations.¹²⁵

83. Frank D'Amelio, who became Pfizer's CFO in September 2007, testified, "KPMG has a responsibility to determine what they believe needs to be recorded as a reserve because they've got to sign an opinion letter for the company," and he "took comfort" from the fact that KPMG agreed with Pfizer's conclusion that no loss reserve was appropriate.¹²⁶ Alan Levin, the company's CFO for the first half of the Class Period, also relied on KPMG's evaluation because KPMG was "an independent set of eyes that had a fiduciary responsibility to evaluate the same kinds of things that we were evaluating within the management group."¹²⁷ David Shedlarz, Mr. Levin's predecessor, confirmed that he too had relied upon "KPMG's representation that FAS-5 had been followed."¹²⁸

84. In 2007, apart from the Bextra investigation, the government also issued document subpoenas to Pfizer relating to the promotion of additional medications, including Lyrica (subpoena issued in July 2007) and Geodon and Zyvox (subpoena issued in December 2007).¹²⁹

85. Lyrica is an anticonvulsant medication. In December 2004, the FDA approved Lyrica to treat epilepsy, diabetic peripheral neuropathy, and postherpetic neuralgia. Pfizer began

¹²⁵ Petrosinelli Decl. Ex. J-4 (KPMG-PFIZ-DS 018638, at 018649) (2007 Audit Results and SAS 114 Report).

¹²⁶ Petrosinelli Decl. Ex. U-1 (D'Amelio (Dec. 4, 2013) Dep.33:23-34:2, 277:11).

¹²⁷ Petrosinelli Decl. Ex. F-2 (Levin (Dec. 10, 2013) Dep. 301:23-302:2).

¹²⁸ Petrosinelli Decl. Ex. Q-2 (Shedlarz (Feb. 14, 2014) Dep. 81:2-6).

¹²⁹ Petrosinelli Decl. Ex. J-5 (PFE-JONES 00033812 at 00033813) (July 12, 2007 subpoena *duces tecum* re: Lyrica); Petrosinelli Decl. Ex. W-6 (PFE-JONES 00041167 at 00041168) (December 12, 2007 subpoena *duces tecum* re: Detrol, Geodon, Zolofit and Zyvox).

selling Lyrica in 2005. In June 2007, the FDA approved Lyrica for the treatment of fibromyalgia.

86. Geodon is an atypical antipsychotic medication. In February 2001, the FDA approved Geodon to treat schizophrenia. Pfizer began selling Geodon that year. The FDA approved Geodon for the treatment of acute episodes of bipolar disorder in 2004.

87. Zyvox is an antimicrobial treatment. In April 2000, the FDA approved Zyvox to treat various bacterial infections. Pfizer began selling Zyvox in 2000.

88. Pfizer hired Davis, Polk & Wardwell to conduct an internal investigation concerning Lyrica and report its findings to the government.¹³⁰

89. With respect to Geodon and Zyvox, Pfizer already had hired DLA Piper and Ropes & Gray, respectively, to conduct internal investigations, and those firms reported the results to the government.¹³¹

90. Messrs. Block and Fox were informed of these new subpoenas and evaluated whether the subpoenas and the medications involved should be specifically identified in the company's securities disclosures.¹³² They advised that no such disclosure was required, because the investigations were at an early stage, and the subpoenas were encompassed by the introductory language of the Government Investigations section in the Form 10-K,¹³³ which was

¹³⁰ Petrosinelli Decl. Ex. G-7 (PFE DERIV 00065928) (cover page of Sept. 11, 2007 Davis Polk presentation).

¹³¹ Petrosinelli Decl. Ex. I-7 (PFE DERIV 00068267) (cover page of Nov. 14, 2008 DLA Piper presentation); Petrosinelli Decl. Ex. H-7 (PFE DERIV 00067514) (cover page of Oct. 24, 2008 Ropes & Gray presentation).

¹³² Petrosinelli Decl. Ex. J-5 (PFE-JONES 00033812) (July 17, 2007 email from C. Wessel to L. Fox and D. Block attaching subpoena); Petrosinelli Decl. Ex. W-6 (PFE-JONES 00041167) (December 17, 2007 email from C. Wessel to L. Fox and D. Block attaching subpoena).

¹³³ Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K) at 73 (Feb. 27, 2007)) (“Among the investigations and requests for information by government agencies are those discussed below.”);

amended to state, “It is possible that criminal charges and fines and/or civil penalties could result from pending government investigations, **including but not limited to those discussed below.**”¹³⁴

91. An email from Mr. Fox explains the rationale behind the decision:

Dennis, Carl [Wessel, Pfizer’s lead in-house government investigations attorney], and I had a conference call in December 2007, when the subpoenas were served. At that time, we decided that we didn’t know enough to determine that this was a material matter that had to be disclosed. . . . It was in connection with these subpoenas that we decided to beef up the introductory paragraph in the Government Investigations section of the 2007 Financial Report; that paragraph now refers to pending government investigations in general, including but not limited to the ones specifically disclosed, and notes that they could result in criminal charges and fines and/or civil penalties.¹³⁵

V. 2008: PFIZER FURTHER UPDATES ITS WARNINGS TO INVESTORS AS THE PARTIES FAIL TO AGREE ON TERMS OF A RESOLUTION

92. In early 2008, in response to the government’s suggestion that Pfizer propose terms for a resolution of the Bextra matter, Covington & Burling informed the government that it was prepared to recommend to Pfizer a \$50 to 70 million civil settlement of the Bextra investigation.¹³⁶ It quickly became apparent that the parties were far apart in what they viewed as an appropriate resolution of the matter. On February 5, 2008, the government delivered to

Petrosinelli Decl. Ex. R-5 (PFE-JONES 00044700) (July 22, 2008 email from L. Fox to G. Giampetruzzi, D. Block, C. Wessel).

¹³⁴ Petrosinelli Decl. Ex. F-1 (Pfizer, 2007 Annual Report (Form 10-K) at 76 (Feb. 29, 2008)) (emphasis added).

¹³⁵ Petrosinelli Decl. Ex. R-5 (PFE-JONES 00044700) (July 22, 2008 email from L. Fox to G. Giampetruzzi, D. Block, C. Wessel).

¹³⁶ Petrosinelli Decl. Ex. X-2 (Pfizer’s Dec. 3, 2013 Supplement and Verification to Pfizer’s Suppl. Int. Resp. at 5).

Covington a letter formally stating that Pfizer was a “target” of the investigation.¹³⁷ At a meeting on the same day, the government stated that Covington’s proposal was “not close to acceptable.”¹³⁸

93. Pfizer connected the government’s decision to issue the target letter with its rejection of Covington’s initial prepared-to-recommend offer. As Mr. Waxman explained, “all along we knew we were a focus of the grand jury investigation, but I believe the Government was upset . . . by the initial recommendation from our outside counsel on resolution of the matter,” and the target letter was therefore perceived “as an effort by [the government] to posture in connection with the negotiations.”¹³⁹

94. Pfizer nonetheless immediately communicated receipt of the target letter to Messrs. Block and Fox and sought advice on whether it should be disclosed in the company’s securities filings.¹⁴⁰

95. Messrs. Block and Fox advised that no such disclosure was required. Mr. Fox advised that “there’s absolutely no obligation in the securities laws to disclose a target letter,” and “[i]n coordination with Dennis Block, our outside securities counsel, we concluded that the disclosures that were already in our SEC reports fully complied with the securities laws and that the receipt of the target letter in and of itself did not meaningfully add to the facts such that the disclosures that we made needed to be changed.” He further stated, “We had already told the

¹³⁷ Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 191:5-7); Petrosinelli Decl. Ex. X-2 (Pfizer’s Dec. 3, 2013 Supplement and Verification to Pfizer’s Suppl. Int. Resp. Ex. B, at 39).

¹³⁸ Petrosinelli Decl. Ex. X-2 (Pfizer’s Dec. 3, 2013 Supplement and Verification to Pfizer’s Suppl. Int. Resp. at 5).

¹³⁹ Petrosinelli Decl. Ex. R-2 (Waxman (Nov. 14, 2013) Dep. 212:2-10).

¹⁴⁰ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 108:14-18); Petrosinelli Decl. Ex. U-5 (PFE-JONES 00046903) (Feb. 5, 2008 email from D. Block to C. Wessel).

world criminal charges were possible and that substantial criminal fines and/or civil penalties could result.”¹⁴¹

96. In response to questions posed by Mr. Waxman, Pfizer’s General Counsel, the disclosure lawyers suggested an addition to the company’s 2007 Form 10-K, filed on February 29, 2008, to state that the government’s investigation “continued” to be “active,” to reflect that the government had indicated it would continue to pursue the case despite the company’s presentation of what the company viewed as substantial defenses to any theories of liability and damages.¹⁴²

97. With respect to securities disclosures generally, Mr. Buthusiem testified that “[t]here isn’t a bright-line rule in any of this,” and a decision regarding what information to disclose, or even what language to use, is ultimately “all judgment.”¹⁴³

98. In March 2008, Covington increased its “prepared to recommend” proposal to \$250 million.¹⁴⁴ In a letter dated April 4, 2008, the Boston USAO responded to Covington’s proposed recommendation with its own “prepared to recommend” proposal. Describing the investigation—consistent with Pfizer’s securities disclosures—as one involving the “marketing of Bextra,” the Boston USAO proposal included a demand of a \$5 billion payment, along with

¹⁴¹ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 138:15-17, 141:21-142:8).

¹⁴² Petrosinelli Decl. Ex. T-6 (PFE-JONES 00064546) (Feb. 12, 2008 email from L. Fox to A. Waxman).

¹⁴³ Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 237:8-19). For instance, he stated that target letters need not be disclosed in securities filings unless “the contents would have somehow altered or modified . . . prior disclosures such as—so as to trigger a disclosure obligation. I don’t think you can make any general[] statements one way or the other.” Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 368:9-14).

¹⁴⁴ Petrosinelli Decl. Ex. Y-6 (PFE DERIV 00066378 at 00066378) (April 4, 2008 letter from M. Sullivan and S. Bloom to E. Posner).

demands that Pharmacia Inc. (a large operating subsidiary of Pfizer) plead guilty to felony misbranding and a further “criminal disposition” as to Pfizer Inc.¹⁴⁵

99. Mr. Lankler, Pfizer’s Chief Compliance Officer, immediately reported the government’s proposal to senior management and Mr. Block, and confirmed that the lawyers handling the investigation viewed the government’s demand as “absurdly high and not even close to anything we would ever consider.” He further stated that the demand was “clearly posturing on [the government’s] part, and part of the process.”¹⁴⁶

100. Pfizer discussed the government’s demand with Messrs. Block and Fox to determine whether it required updates to the securities disclosures.¹⁴⁷ Messrs. Block and Fox advised that no additional disclosure was needed.¹⁴⁸

¹⁴⁵ Petrosinelli Decl. Ex. Y-6 (PFE DERIV 00066378 at 00066379) (April 4, 2008 letter from M. Sullivan and S. Bloom to E. Posner).

¹⁴⁶ Petrosinelli Decl. Ex. Y-5 (PFE-JONES 00047290) (April 7, 2008 email from D. Lankler to J. Kindler).

¹⁴⁷ Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 262:2-6 (“Obviously after we got the demand, we talked to [Fox, Block, and KPMG] about the demand and the implications for the company and the way the case was going to proceed in the wake of that demand.”)); Petrosinelli Decl. Ex. Y-5 (PFE-JONES 00047290) (April 7, 2008 email from D. Lankler email to D. Block *et al.*).

¹⁴⁸ Petrosinelli Decl. Ex. Z-5 (PFE-JONES 00059116) (April 11, 2008 from D. Lankler to H. Donnelly) (“We got a demand from the gov’t, but have cleared with Dennis that it shouldn’t require any disclosure or other obligations at this point.”); *see also* Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 184:7-185:5 (“It’s unusual to disclose—and I can’t think of two illustrations of companies disclosing the government’s demand in a case. Typically if it’s a demand that you believe is both irresponsible and unlikely to happen, and indeed since you had defense and were considering fighting, under those circumstances, I must tell you the government’s demand is no different than any other plaintiff’s demand for a lot of money when you’re saying none. And you don’t see disclosure documents that talk about the ask and the offer, period, because it’s not material until it becomes real. . . . [I]t’s equally misleading to suggest higher than lower.”)).

Even Plaintiffs’ proffered disclosure expert agrees; he admitted that offers (whether final or only prepared-to-recommend), demands, and counteroffers in the context of discussing a resolution with the government need not be disclosed in securities filings. Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 91:22-25, 142:8-11).

101. In addition, Pfizer's Finance personnel and KPMG determined that no range of possible loss could be reasonably estimated, given the disparity between Pfizer's position and the government's with respect to both monetary and non-monetary components of a resolution.¹⁴⁹

102. In the summer of 2008, in response to the government's demand, Covington informed the government that it was prepared to recommend that Pfizer resolve the Bextra matter with a felony plea by a non-operating subsidiary and a payment of \$750 million. The government, however, rejected this proposal and continued to insist on a criminal resolution as to Pfizer Inc. and an amount in excess of \$4 billion.¹⁵⁰

103. Based on its disagreement with the government and its belief that it had substantial defenses, as demonstrated by contemporaneous documents,¹⁵¹ Pfizer was prepared to litigate.¹⁵²

¹⁴⁹ *See, e.g.*, Petrosinelli Decl. Ex. V-4 (KPMG-PFIZ-DS 0005507) (June 19, 2008 KPMG Compliance Meeting Minutes) (noting that the government "had not changed its initial demand for \$5 billion to settle this matter"); Petrosinelli Decl. Ex. R-4 (KPMG-PFIZ-DS 019725) (excerpt of June 29, 2008 Pfizer Interim Completion Document); *see also* Petrosinelli Decl. Ex. P-2 (Riso (Aug.1, 2013) Dep. 126:17-130:11 ("[I]t becomes very, very difficult to get to a reasonable estimate based on that outrageous claim.")); Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 9, 2013) Dep. 331:1-332:11 ("[I]t would be necessary for each of those matters to be settled or agreed upon to the satisfaction of both the Government and Pfizer before we believe[d] that there would be a triggering point that would result in an accrual of a liability.")); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 203:24-204:6 ("I would have said that the ... probability was somewhat remote or, at best, possible. And to put a range of 4 billion versus somewhere above zero would have been meaningless because the 4 billion was not real ... Pfizer people weren't going to have a discussion about \$4 billion.")).

¹⁵⁰ Petrosinelli Decl. Ex. D-6 (PFE-JONES 00007061) (Sept. 11, 2008 letter from C. Wray to M. Filip, at 7062).

¹⁵¹ *E.g.*, Petrosinelli Decl. Ex. K-7 (PFE DERIV A 00003427 at 00003429) (Dec. 1, 2005 Audit Committee Government Investigations Pre-Read) ("In early November, we met with the government to discuss the substantial defenses that we believe the Company has with respect to the issues raised in the complaint."); Petrosinelli Decl. Ex. S-6 (PFE-JONES 00046661 at 00046662) (Oct. 18, 2007 email from D. Townsend to C. Wessel and attached memorandum regarding Bextra) ("Should the matter proceed, we believe we have substantial defenses to the merits of the potential claims.").

¹⁵² *See, e.g.*, Petrosinelli Decl. Ex. D-2 (Lankler (Aug. 17, 2010) Dep. 113:14-23 ("We were having significant disagreements with the Boston U.S. Attorney's Office over whether or not the law actually provided a basis to charge the company with a crime, and we were having considerable concerns that the

104. In its 2008 Second Quarter Form 10-Q (filed August 8, 2008), and on the advice of Messrs. Block and Fox, Pfizer further updated its disclosure regarding the various Department of Justice investigations:

It is possible that criminal charges and fines and/or civil penalties could result from pending government investigations.

....

The Department of Justice continues to actively investigate the marketing and safety of our COX-2 medicines, particularly Bextra, and **more recently has begun to investigate the marketing of certain other drugs**. These investigations have included requests for information and documents. We have been considering various ways to resolve the COX-2 matter, **which could result in the payment of a substantial fine and/or civil penalty.**¹⁵³

105. KPMG and Pfizer's Finance personnel again evaluated whether any FAS 5 reserve was required, and concluded that it was not, because a loss was not "reasonably estimable."¹⁵⁴

106. Henry A. McKinnell, Pfizer's CEO at the beginning of the Class Period, testified that

the allegations and the defenses were thoroughly discussed within our legal, accounting organizations internally and outside advisors,

demand that they made to us ... was not in any way proportionate to the conduct that occurred, to the extent that any conduct that had occurred was in fact illegal."); Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 120:3-6 ("[T]he company was saying, 'We're not going to ... pay that, we're not going to accept those terms, which is another way of saying, We will defend it.'")); Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 217:5-13 ("[T]he government had a view and Pfizer had a very different view. And I, quite frankly, didn't think they were going to get together.... I think they were very serious about fighting.")).

¹⁵³ Petrosinelli Decl. Ex. H-1 (Pfizer, 2008 Q2 Form 10-Q, at 40 (Aug. 8, 2008)) (updates in bold).

¹⁵⁴ Petrosinelli Decl. Ex. R-4 (KPMG-PFIZ-DS 019725) (excerpt of June 29, 2008 Pfizer Interim Completion Document); Petrosinelli Decl. Ex. D-5 (KPMG-PFIZ-DS 019836) (July 23, 2008 KPMG Pfizer Q2 2008 Legal Review Summary at 019845); Petrosinelli Decl. Ex. S-1 (Cangialosi (June 21, 2013) Dep. 382:4-21).

outside law firms, outside lawyers, individuals, and the . . . audit firm. And the conclusion from that group was that, yes, we had substantial defenses.¹⁵⁵

107. Mr. Lankler testified that, based on Covington’s analysis, Pfizer believed “that to the extent that there was any off-label promotion, that it wasn’t illegal or that there were a variety of different defenses that could be put forth.”¹⁵⁶ Mr. Waxman, who recalled that Covington’s white paper had “in some detail outlined the factual and legal defenses with respect to the Government’s theories, both on liability and on damages,”¹⁵⁷ specifically noted that prosecutions of off-label promotion raised significant “First Amendment issues,” and that “this is an area that . . . is still very much in flux in the law.”¹⁵⁸

108. Mr. Block testified that leading up to the ultimate settlement, Pfizer “thought the [government’s] case was very, very weak. They thought they had very strong defenses on the liability issue.”¹⁵⁹

109. Mr. Fox testified that the determination that Pfizer had substantial defenses to the government’s allegations was “made by our experts, our [government investigations] attorneys, . . . and I and Dennis look to them for advice on these matters.”¹⁶⁰ Mr. Fox testified that he was

¹⁵⁵ Petrosinelli Decl. Ex. I-2 (McKinnell (Sept. 19, 2014) Dep. 48:10-16); *see also* Petrosinelli Decl. Ex. F-2 (Levin (Dec. 10, 2013) Dep. 115:10-14 (“I was guided by our attorneys in that regard. And they told me that we had strong defenses with regard to the government investigation on Bextra”)); Petrosinelli Decl. Ex. K-7 (PFE DERIV A 00003427 at 00003429) (Dec. 1, 2005 Audit Committee Government Investigations Pre-Read) (“In early November, we met with the government to discuss the substantial defenses that we believe the Company has with respect to the issues raised in the complaint.”).

¹⁵⁶ Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 224:15-19).

¹⁵⁷ Petrosinelli Decl. Ex. R-2 (Waxman (Nov. 14, 2013) Dep. 131:5-8).

¹⁵⁸ Petrosinelli Decl. Ex. R-2 (Waxman (Nov. 14, 2013) Dep. 14:7-9).

¹⁵⁹ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep.88:4-7); *see also id.* at 87:1-89:14.

¹⁶⁰ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 71:24-72:7).

informed of incidents of off-label promotion,¹⁶¹ but that despite that knowledge, "[t]hat does not necessarily mean we didn't have substantial defenses and that we would have, had it gone to trial, been convicted of a crime."¹⁶²

110. Pfizer would not accept a settlement that resulted in criminal charges against Pfizer Inc. (as opposed to one of its non-operating subsidiaries).¹⁶³ Pfizer also insisted that any settlement resolve open government investigations involving other products, despite the fact that the other investigations had begun only recently,¹⁶⁴ and that such investigations be resolved with civil settlements in which Pfizer denied all liability.¹⁶⁵

111. After Pfizer filed its Third Quarter 2008 Form 10-Q on November 7, 2008,¹⁶⁶ representatives of the company met in Washington with senior Department of Justice officials concerning the lack of progress in negotiations with the Boston USAO.¹⁶⁷ Following this meeting, settlement discussions between the Boston USAO and Pfizer began again after months

¹⁶¹ Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 63:9-13).

¹⁶² Petrosinelli Decl. Ex. Y-1 (Fox (Sept. 26, 2013) Dep. 72:8-14).

¹⁶³ Petrosinelli Decl. Ex. D-7 (PFE DERIV 00068338 at 00068342) (Jan. 9, 2009 letter from B. O'Connor to S. Bloom) ("Pfizer strongly believes in its legal and factual positions and would welcome the opportunity to test them at trial if you would agree to charge an entity other than Pfizer Inc or Pharmacia Corp so as to avoid the significant collateral consequences that would accompany an indictment of either of those entities.").

¹⁶⁴ Petrosinelli Decl. Ex. O-1 (Block (Sept. 16, 2013) Dep. 239:25-240:12 ("[T]hey took . . . three or four other drugs that were under investigation, I don't believe any of which had a . . . serious set of facts that showed mislabeling. And they said, we want to get it resolved And, by the way, without getting that, they wouldn't have settled.")).

¹⁶⁵ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 50, 52); Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 171:5-173:23 (describing January 2009 negotiations)); *see also* Petrosinelli Decl. Ex. Q-1 (Bradley (Aug. 8, 2013) Dep. 87:17-88:6 (noting "wide disparity" between parties in 2008)).

¹⁶⁶ Petrosinelli Decl. Ex. I-1 (Pfizer, 2008 Q3 Form 10-Q (Nov. 7, 2008)).

¹⁶⁷ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 41).

of stalemate, as the prosecutors in Boston substantially reduced their monetary demands.¹⁶⁸

Between December 2008 and January 7, 2009, the government lowered its monetary demand for the Bextra matter alone by nearly half--from over \$4 billion to approximately \$2.5 billion.¹⁶⁹

112. On January 5, 2009, Pfizer's counsel Ropes & Gray proposed to the government various ways to test Pfizer's defenses that would not require Pfizer to risk debarment from federal healthcare programs.¹⁷⁰ Brien O'Connor, the lead Ropes & Gray partner, testified that Pfizer was "saying to [the government] we'd love to have it mediated. We'd love to have a three-judge panel hear arguments by both sides. We would love to try the case for a [non-operating] entity like the entity that pled."¹⁷¹ Pfizer "continued to push because [it] felt so passionately about the fact that the government's positions were way over the top and really wrong in several important respects."¹⁷²

VI. THE JANUARY 26, 2009 ANNOUNCEMENT: RESOLUTION OF THE INVESTIGATION, THE WYETH ACQUISITION, THE DIVIDEND CUT, AND THE REDUCED EARNINGS GUIDANCE

113. Just before midnight on Friday, January 23, 2009, Pfizer and DOJ reached an agreement in principle to resolve the Bextra investigation and several other outstanding matters

¹⁶⁸ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 41-46).

¹⁶⁹ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 38-47).

¹⁷⁰ Petrosinelli Decl. Ex. E-7 (PFE DERIV 00067946 at 00067947) (Jan. 5, 2009 letter from B. O'Connor to M. Sullivan).

¹⁷¹ Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 110:13-17).

¹⁷² Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 173:19-23). From Pfizer's perspective, the negotiations appeared as if they might fail to result in an acceptable agreement in principle. *See, e.g.*, Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 171:5-173:23 (describing January 2009 negotiations)); *see also* Petrosinelli Decl. Ex. P-1 (Bradley (Aug. 8, 2013) Dep. 87:17-88:6 (noting "wide disparity" between parties in 2008)).

for \$2.3 billion. The key terms of the agreement included: (1) a criminal plea relating to Bextra by a yet-to-be-determined non-operating Pfizer subsidiary, along with a fine; and (2) a civil settlement, with no admission of liability, for claims arising out of Pfizer's marketing of Bextra, Lyrica, Geodon, and Zyvox. The government also agreed not to prosecute Pfizer Inc.¹⁷³

114. Pfizer's Board of Directors approved the agreement in principle on Sunday, January 25, 2009.¹⁷⁴

115. Also on Sunday, January 25, 2009, Pfizer's Board of Directors approved an agreement to acquire Wyeth for \$68 billion.¹⁷⁵

116. The merger agreement between Pfizer and Wyeth prohibited Pfizer from paying a dividend greater than \$0.16 per share—i.e., 50 percent of its pre-merger dividend—during the period before the closing of the merger or the termination of the deal (here, October 31, 2009).¹⁷⁶

117. Pfizer had paid a dividend since 1901, and for 42 consecutive years it had increased its dividend.¹⁷⁷ Until its dividend cut in January 2009, Pfizer was included in the S&P 500 Dividend Aristocrats Index, which consisted of companies that had increased dividends

¹⁷³ Petrosinelli Decl. Ex. X-2 (Pfizer's Dec. 3, 2013 Supplement and Verification to Pfizer's Suppl. Int. Resp. Ex. B, at 51-52); Petrosinelli Decl. Ex. E-4 (KPMG-PFIZ-DS 030177 at 030178) (Jan. 23, 2009 email from L. Cangialosi to L. Bradley) (discussing agreement in principle); Petrosinelli Decl. Ex. E-2 (Lankler (Jan. 22, 2014) Dep. 192:17-193:25).

¹⁷⁴ Petrosinelli Decl. Ex. E-6 (PFE-JONES 00039893 at 39896) (Jan. 25, 2009 Minutes of a Special Meeting of the Board of Directors of Pfizer Inc.).

¹⁷⁵ Petrosinelli Decl. Ex. E-6 (PFE-JONES 00039893 at 39896) (Jan. 25, 2009 Minutes of a Special Meeting of the Board of Directors of Pfizer Inc.); *see also* Petrosinelli Decl. Ex. L-1 (Pfizer, Form 8-K, at 7 (Jan. 26, 2009)) (press release issued by company titled "Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company") (indicating total value of transaction at "approximately \$68 billion").

¹⁷⁶ Petrosinelli Decl. Ex. M-1 (Pfizer, Form 8-K, at § 4.9 (Jan. 29, 2009)) (Merger Agreement) (Pfizer to "reduce quarterly cash dividend to an amount not to exceed \$0.16 per share of Parent Common Stock.").

¹⁷⁷ Petrosinelli Decl. Ex. O-3 (Barron's, "Fighting Headwinds—Boeing, Eli Lilly and Waste Management buck cuts" (Dec. 22, 2008), at 1).

every year for the preceding 25 years.¹⁷⁸ Many shareholders invested in Pfizer because of its long history of paying substantial dividends, and the cut to Pfizer's dividend led them to sell.¹⁷⁹

118. The dividend cut was unrelated to Pfizer's settlement of the government investigations of Bextra, Geodon, Zyvox, and Lyrica. Then-CEO Jeffrey Kindler testified:

Q. If Pfizer had not acquired Wyeth, but had nonetheless settled the government investigation, would it have cut its dividend?

A. Absolutely not.

Q. And why not?

A. That was a one—look, \$2.3 billion is obviously a substantial amount of money, but that was a onetime event that meant \$2.3 billion was being paid out. The money that I was just describing of increased obligations for dividends on the new stock issued, for cash that was required to finance the deal, for debt service, those were obligations in the billions of dollars that would have gone out for years and years and years. So we could very easily have managed the \$2.3 billion. We would never have thought about cutting the dividend as a result of that.¹⁸⁰

Frank D'Amelio, Pfizer's CFO, confirmed:

Q. Did that settlement play any role at all in Pfizer's decision to cut the dividend?

¹⁷⁸ Petrosinelli Decl. Ex. U-3 (Barron's, "Where to Find High, Safe Stock Yields" (Mar. 16, 2009), at 1).

¹⁷⁹ Petrosinelli Decl. Ex. C-3 (Deutsche Bank, "Pfizer—Merger Model Update, 4Q Review" (Jan. 26, 2009), at 1) ("The 50% cut to the dividend has clearly angered some investors, and the holders attracted purely to the yield may clearly choose other alternatives."); Petrosinelli Decl. Ex. A-3 (Cowen, "Quick Take: Combination Looks Solid for PFE Shareholders; Less For WYE's" (Jan. 26, 2009), at 1) ("Pfizer's dividend likely will be a key concern to Pfizer and Wyeth shareholders."); Petrosinelli Decl. Ex. B-3 (UBS, "PFE Reportedly to Buy WYE for ~\$50/Share; Cut Dividend in Half" (Jan. 26, 2009), at 1) ("NT elimination of a steep EPS cliff should modestly help PFE's P/E, albeit if the dividend is cut 50% (yield would be below most peers), stock could see turnover."); Petrosinelli Decl. Ex. H-3 (BMO Capital Markets, "The Wyeth Purchase: Activity Yes, But Progress?" (Jan. 28, 2009), at 1) ("reducing its dividend reduces PFE shares attractiveness"); Petrosinelli Decl. Ex. J-3 (Credit Suisse, "Pfizer and Wyeth—A Closer Look Reinforces Merits, Upgrade PFE to Outperform" (Feb. 2, 2009), at 1) ("PFE stock is down 16% post deal as the case to sell was clear (high dividend yield investors were exiting the stock)[.]"); *see also* Petrosinelli Decl. Ex. P-3 (Reuters, "Pfizer to buy Wyeth for \$68 billion" (Jan. 26, 2009), at 1) ("People who owned it for the dividend got slapped in the head with a two-by-four today.").

¹⁸⁰ Petrosinelli Decl. Ex. B-2 (Kindler (Dec. 6, 2013) Dep. 299:9-300:1).

A. It did not.

Q. And how do you know that?

A. I was involved in all the conversations.

Q. Did anyone who was involved in those conversations suggest that the company needed to cut the dividend because of the Government investigation settlement?

A. I don't believe so.

Q. And as the CFO of the company, did you believe that that settlement would have required Pfizer to cut its dividend?

A. I do not.¹⁸¹

119. The dividend cut instead was the result of the \$68 billion acquisition of Wyeth.¹⁸²

As Mr. D'Amelio testified:

[T]he acquisition was 68 billion, by the way, the new debt was 23 billion, the new equity was 23 billion, and remember the debt has to be serviced until it matures. The equity results in new dividend requirements that continue. The settlement was a one-time event. Don't get me wrong, I don't like writing checks but it was a one-time event. Relative to the other items, it was relatively small.¹⁸³

¹⁸¹ Petrosinelli Decl. Ex. U-1 (D'Amelio (Dec. 4, 2013) Dep. 295:19-296:8).

¹⁸² Petrosinelli Decl. Ex. U-1 (D'Amelio (Dec. 4, 2013) Dep. 287:15-288:17 (“Q. Why did Pfizer cut its dividend in connection with the Wyeth acquisition? A. Two reasons. If we had not cut the dividend, remember, we paid for half of the acquisition in equity so our shares outstanding went from 6-1/2 billion to 8 billion. 8 billion times 1.28 cents a share, if you assume no increases, make it 1.3 to make the math easy, it was about \$10-1/2 billion a year in an annual dividend. The other thing we did is—one of the other things we did as part of the Wyeth acquisition is we issued 22-1/2 billion in new debt that needed to be serviced with U.S. cash. So one of the ways to reallocate capital to preserve U.S. cash so I could service the debt was to cut the dividend.”), 290:10-24 (“[G]iven the size of the new entry on debt, the interest expense, plus the level of dividend, I decided the best way to do that was to cut the dividend in half.”)); Petrosinelli Decl. Ex. B-2 (Kindler (Dec. 6, 2013) Dep. 297:17-298:19).

¹⁸³ Petrosinelli Decl. Ex. U-1 (D'Amelio (Dec. 4, 2013) Dep. 296:9-297:7).

120. On Monday, January 26, 2009, prior to the opening of the U.S. financial markets, Pfizer issued two press releases: one announcing that it would acquire Wyeth, and one reporting Pfizer's 2008 fourth quarter and year-end results and 2009 financial guidance.¹⁸⁴

121. As to the acquisition, Pfizer announced that it "w[ould] acquire Wyeth in a cash-and-stock transaction currently valued at . . . a total of approximately \$68 billion." Pfizer would finance the transaction "through a combination of cash, debt and stock," with Pfizer taking on "\$22.5 billion in debt." Pfizer announced that, "in connection with the proposed transaction" and its assumption of additional debt, Pfizer would be cutting its quarterly dividend per share to \$0.16.¹⁸⁵

122. Pfizer also announced a significant reduction in its forward-looking earnings guidance: "In 2009, Pfizer expects . . . adjusted diluted EPS of \$1.85 to \$1.95." The company explained that the reduction in guidance reflected, among other things, "the projected impact of the strengthening of the U.S. dollar, increased pension expenses and lower interest income." Pfizer did not cite the settlement with the Boston USAO as a factor impacting its 2009 guidance.¹⁸⁶ Until this announcement, the analyst consensus estimates for Pfizer's 2009 earnings

¹⁸⁴ Petrosinelli Decl. Ex. K-1 (Pfizer, Form 8-K, at 5 (Jan. 26, 2009)) (press release issued by company titled "Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance"); Petrosinelli Decl. Ex. L-1 (Pfizer, Form 8-K, at 7 (Jan. 26, 2009)) (press release issued by company titled "Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company").

¹⁸⁵ Petrosinelli Decl. Ex. L-1 (Pfizer, Form 8-K, at 8 (Jan. 26, 2009)) (press release issued by company titled "Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company"); Petrosinelli Decl. Ex. Y-2 (Final Transcript, "PFE-Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company" (Jan. 26, 2009), at 7) (8:30 AM ET conference call transcript).

¹⁸⁶ Petrosinelli Decl. Ex. K-1 (Pfizer, Form 8-K, at 13-15 (Jan. 26, 2009)) (press release issued by company titled "Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance").

had been \$2.49 per share—31% higher than what Pfizer disclosed on January 26.¹⁸⁷

123. The settlement was announced in connection with Pfizer’s 4Q 2008 earnings release: “Fourth-quarter 2008 results were impacted by a \$2.3 billion pre-tax and after-tax charge resulting from an agreement in principle with the Office of Michael Sullivan, the United States Attorney for the District of Massachusetts, to resolve previously disclosed investigations regarding allegations of past off-label promotional practices concerning Bextra, as well as other open investigations.” The disclosure did not mention the names of the products at issue in the other “open investigations.”¹⁸⁸

124. On January 26, 2009, Pfizer’s stock opened at \$17.45 per share. After the release of the announcements, Pfizer’s share price fell and closed at \$15.65, down \$1.80 from the close of the previous business day.

125. On the morning of January 26, 2009, Pfizer hosted a conference call for leading stock analysts in the healthcare field. Pfizer’s CFO opened the call by noting, among other things, the \$2.3 billion settlement with the government.¹⁸⁹ The analysts’ questions during the call concerned the Wyeth acquisition, the dividend cut, the new debt resulting from the acquisition and the company’s future earnings and business prospects. Not one question

¹⁸⁷ Petrosinelli Decl. Ex. R-3 (Dow Jones Newswires, “Pfizer Confirms \$68B Deal to Buy Wyeth; 4Q Net Down 90%” (Jan. 26, 2009), at 2) (analysts “were expecting \$2.49”); *see also* Petrosinelli Decl. Ex. U-1 (D’Amelio (Dec. 4, 2013) Dep. 303:6-23 (“Q. The difference between what analysts were expecting and what Pfizer offered as forward looking guidance, was that a big difference or a small difference? A. The dollar 85 to dollar 95 versus 2.49? Q. Yes, sir. A. That's a big difference.”)).

¹⁸⁸ Petrosinelli Decl. Ex. K-1 (Pfizer, Form 8-K, at 5-32 (Jan. 26, 2009)) (press release issued by company titled “Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance”).

¹⁸⁹ Petrosinelli Decl. Ex. Y-2 (Final Transcript, “PFE–Pfizer to Acquire Wyeth, Creating the World’s Premier Biopharmaceutical Company” (Jan. 26, 2009), at 7) (8:30 AM ET conference call transcript) (“These significant year-over-year decreases were primarily driven by a \$2.3 billion pretax and after-tax charge resulting from an agreement in principle to resolve previously disclosed investigations regarding allegations of past off-label promotional practices concerning Bextra, as well as other open investigations.”).

concerned the settlement of the government investigations.¹⁹⁰ Similarly, at an investor luncheon the next day, the analysts' questions all focused on the Wyeth acquisition and Pfizer's earnings guidance.¹⁹¹

126. On January 27, 2009, the day after the announcements, representatives from BlackRock—the investment manager for Lead Plaintiff Stichting Philips Pensioenfond—met with Pfizer executives. In preparation for the meeting, Dan Hanson—a BlackRock managing director—circulated an email outlining “major questions” to be asked. Mr. Hanson's email lists as topics of discussion: (1) the background of the merger; (2) synergies in biotechnology R&D from the merger; (3) Pfizer's target dividend after 2012; (4) cost synergies in the merger; and (5) Pfizer's R&D pipeline and its fit with Wyeth.¹⁹² There is no mention of the government settlement.

127. On January 26, 2009, and over the following two weeks, sixteen banks issued financial analyst reports assessing the impact of Pfizer's announcements. Fifteen of these reports reference the company's acquisition of Wyeth. Most of these reports attribute the decrease in Pfizer share value to the merger, the reduced 2009 earnings guidance, and/or the dividend cut:

- a. **Deutsche Bank (Jan. 26, 2009):** “The 50% cut to the dividend has clearly angered some investors, and the holders attracted purely to the yield may clearly choose other alternatives.”¹⁹³

¹⁹⁰ Petrosinelli Decl. Ex. Y-2 (Final Transcript, “PFE–Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company” (Jan. 26, 2009), at 10-20) (8:30 AM ET conference call transcript).

¹⁹¹ Petrosinelli Decl. Ex. Z-2 (Final Transcript, “PFE–Pfizer Investor Luncheon” (Jan. 27, 2009), at 8-30) (12:30 PM ET transcript).

¹⁹² Petrosinelli Decl. Ex. L-7 (BLK00148 at BLK00148) (Jan. 26, 2009 email from D. Hanson to K. Rendino) (listing topics for call).

¹⁹³ Petrosinelli Decl. Ex. C-3 (Deutsche Bank, “Pfizer—Merger Model Update, 4Q Review” (Jan. 26, 2009), at 1).

- b. **Hilliard Lyons (Jan. 27, 2009):** “[E]xisting shareholders are now being asked to accept the more nebulous promise of increased long-term shareholder value from the merger as opposed to receiving current income now.”¹⁹⁴
- c. **Leerink Swann (Jan. 27, 2009):** “[U]ncertain base-year EPS for the combined entity, along with the planned 50% cut in the dividend, unconvincing 2012 revenue guidance & confusing long-term tax rate guidance, lead us to believe the shares will trade sideways given current investor confusion/disappointment.”¹⁹⁵
- d. **Bernstein Research (Jan. 27, 2009):** “[Pfizer] provided 2009 guidance that was surprisingly disappointing, with both revenues and EPS falling well below our and consensus expectations.”¹⁹⁶
- e. **Cowen and Company (Jan. 27, 2009):** “[G]iven integration risks, the 50% dividend cut, and an est. EPS growth rate that is below other stocks . . . , we are uninspired by the merger.”¹⁹⁷
- f. **Bank of America/Merrill Lynch (Jan. 28, 2009):** “The 50% dividend cut was disappointing, but it now appears to be reflected in the stock.”¹⁹⁸
- g. **Credit Suisse (Feb. 2, 2009):** “PFE stock is down 16% post deal as the case to sell was clear (high dividend yield investors were exiting the stock). . . . With the Wyeth deal we expected and have seen immediate negative volatility, which was driven by the obvious need to sell as the dividend cut caused a rapid exodus of high yield investors . . . and the less obvious need to buy This change in investor base dramatically over-powered interest in PFE shares and the evaluation of deal benefits.”¹⁹⁹

¹⁹⁴ Petrosinelli Decl. Ex. G-3 (Hilliard Lyons, “Pfizer—PFE Agrees to Acquire Wyeth, Reports 4Q Results, Cuts Dividend” (Jan. 27, 2009), at 5).

¹⁹⁵ Petrosinelli Decl. Ex. D-3 (Leerink Swann, “Pfizer, Inc.—Perfect Storm of Uncertainty Taints Solid Strategic Acquisition” (Jan. 27, 2009), at 1).

¹⁹⁶ Petrosinelli Decl. Ex. E-3 (Bernstein Research, “Pfizer: 4Q08 Beats—Overshadowed, of Course, by Low 2009 Guidance and News of Wyeth Acquisition” (Jan. 27, 2009), at 1).

¹⁹⁷ Petrosinelli Decl. Ex. F-3 (Cowen and Company, “Pfizer—Combined PFE/WYE Offers Better Growth Than PFE Alone But With Added Risk” (Jan. 27, 2009), at 1).

¹⁹⁸ Petrosinelli Decl. Ex. I-3 (Bank of America/Merrill Lynch, “Maintaining Buy but lowering PO” (Jan. 28, 2009), at 1).

¹⁹⁹ Petrosinelli Decl. Ex. J-3 (Credit Suisse, “Pfizer and Wyeth—A Closer Look Reinforces Merits, Upgrade PFE to Outperform” (Feb. 2, 2009), at 1, 3).

128. The earnings guidance Pfizer announced on January 26, 2009, was more than 30 percent lower than market expectations²⁰⁰ and, combined with the news of the Wyeth merger and the corresponding 50-percent dividend cut, caused market analysts to lower their price targets for Pfizer shares by as much as \$3.00 per share. In the days following the Company's January 26 issuance of earnings guidance, multiple analyst reports lowered the target price for Pfizer's stock. Two, BMO Capital Markets and Natixis Bleichroeder, reduced Pfizer's price target by \$3 per share, from \$19 to \$16.²⁰¹ Two others, Bernstein Research and Merrill Lynch, reduced their targets by \$2 per share, from \$20 to \$18—essentially the same amount that Pfizer's stock price had fallen on January 26.²⁰² These analysts tied their target price reductions to new earnings-per-share estimates, which had been revised downward as a result of Pfizer's reduced 2009 earnings guidance.²⁰³

²⁰⁰ See Petrosinelli Decl. Ex. Q-3 (Bloomberg, "Pfizer Sees 2009 Adjusted EPS \$1.85 to \$1.95, Estimate \$2.50" (Jan. 26, 2009), at 1 ("adjusted earning per share of \$1.85 to \$1.95 [is] well below the consensus estimate of \$2.50").

²⁰¹ Petrosinelli Decl. Ex. H-3 (BMO Capital Markets, "The Wyeth Purchase: Activity Yes, But Progress?" (Jan. 28, 2009), at 1); Petrosinelli Decl. Ex. L-3 (Natixis Bleichroeder, "PFE: Rolling Out Our Pfizer-Wyeth Model; Lowering Target Price To \$16" (Feb. 3, 2009), at 1.

²⁰² Petrosinelli Decl. Ex. E-3 (Bernstein Research, "Pfizer: 4Q08 Beats—Overshadowed, of Course, by Low 2009 Guidance and News of Wyeth Acquisition" (Jan. 27, 2009), at 1); Petrosinelli Decl. Ex. I-3 (Bank of America/Merrill Lynch, "Maintaining Buy but lowering PO" (Jan. 28, 2009), at 1). A third analyst report, from Citi, also lowered its target by \$2 a share, from \$18 to \$16. Petrosinelli Decl. Ex. K-3 (Citi, "Pfizer (PFE) 2012 NEWCO Top-Line Assumption of \$70B Looks Unachievable" (Feb. 3, 2009), at 1).

²⁰³ Petrosinelli Decl. Ex. H-3 (BMO Capital Markets, "The Wyeth Purchase: Activity Yes, But Progress?" (Jan. 28, 2009), at 1) (applying 8x multiplier to downwardly revised EPS estimates); Petrosinelli Decl. Ex. E-3 (Bernstein Research, "Pfizer: 4Q08 Beats—Overshadowed, of Course, by Low 2009 Guidance and News of Wyeth Acquisition" (Jan. 27, 2009), at 4) (applying 9x multiplier to downwardly revised EPS estimates); Petrosinelli Decl. Ex. I-3 (Bank of America/Merrill Lynch, "Maintaining Buy but lowering PO" (Jan. 28, 2009), at 1) (applying 8x multiplier to downwardly revised EPS estimates).

129. Only four of the reports make any mention of Pfizer's settlement with the Department of Justice.²⁰⁴ Two of these reports simply list the settlement as a line item in tables, with no discussion of the settlement, and one of those two reports upgraded Pfizer to a "Buy" rating.²⁰⁵ The other two reports each include a one-sentence mention of the settlement in the context of other charges, and one of these reports misstates the amount of the settlement as \$2.3 million.²⁰⁶

130. The drop in Pfizer's share price after the announcement of the Pfizer-Wyeth merger is consistent with the 10.6% (\$3.42) drop in Pfizer's share price after Pfizer announced that it would acquire Pharmacia on July 15, 2002.²⁰⁷

131. On September 2, 2009, DOJ and Pfizer finalized the settlement, disclosing to the public many of the details of the settlement for the first time.²⁰⁸ The September 2, 2009 press

²⁰⁴ Petrosinelli Decl. Ex. G-3 (Hilliard Lyons, "Pfizer—PFE Agrees to Acquire Wyeth, Reports 4Q Results, Cuts Dividend" (Jan. 27, 2009), at 4); Petrosinelli Decl. Ex. F-3 (Cowen and Company, "Pfizer—Combined PFE/WYE Offers Better Growth Than PFE Alone But With Added Risk" (Jan. 27, 2009), at 3); Petrosinelli Decl. Ex. H-3 (BMO Capital Markets, "The Wyeth Purchase: Activity Yes, But Progress?" (Jan. 28, 2009), at 2, 6, 10); Petrosinelli Decl. Ex. B-3 (UBS, "PFE Reportedly to Buy WYE for ~\$50/Share; Cut Dividend in Half" (Jan. 26, 2009), at 8).

²⁰⁵ Petrosinelli Decl. Ex. H-3 (BMO Capital Markets, "The Wyeth Purchase: Activity Yes, But Progress?" (Jan. 28, 2009), at 2, 6, 10); Petrosinelli Decl. Ex. B-3 (UBS, "PFE Reportedly to Buy WYE for ~\$50/Share; Cut Dividend in Half" (Jan. 26, 2009), at 8).

²⁰⁶ Petrosinelli Decl. Ex. G-3 (Hilliard Lyons, "Pfizer—PFE Agrees to Acquire Wyeth, Reports 4Q Results, Cuts Dividend" (Jan. 27, 2009), at 4) ("There was also a \$2.3 million pretax charge for litigation to settle claims related to *Celebrex* and *Bextra*, and restructuring charges of \$1.5 billion, among other items."); Petrosinelli Decl. Ex. F-3 (Cowen and Company, "Pfizer—Combined PFE/WYE Offers Better Growth Than PFE Alone But With Added Risk" (Jan. 27, 2009), at 3) ("Pfizer incurred a fourth quarter charge of \$2.3B for allegations of past off-label promotional practices concerning *Bextra*; an additional charge of \$800MM was incurred in Q3:08.").

²⁰⁷ Petrosinelli Decl. Ex. V-3 (Feinstein Ex. 2347 at 4) (Yahoo! Finance Historical Prices for Pfizer) (indicating one-day Pfizer stock price drop from \$32.20 to \$28.78).

²⁰⁸ Petrosinelli Decl. Ex. S-3 (Press Release, U.S. Department of Justice, "Justice Department Announces Largest Health Care Fraud Settlement in Its History" (Sept. 2, 2009), at 1, *available at* <http://www.justice.gov/opa/pr/2009/September/09-civ-900.html>); Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of

release was the first public disclosure that identified Geodon, Lyrica, and Zyvox as part of the settlement.²⁰⁹ It was also the first public disclosure that the settlement included a criminal penalty concerning Bextra, and that the penalty was \$1.195 billion.²¹⁰ Upon the announcement of those details, there was no significant decline in Pfizer's stock price.²¹¹

132. The basis for the \$1.3 billion criminal fine was a Sentencing Guidelines calculation that included a "stipulated number" for Pfizer's gain from the charged conduct, which Pfizer and the government agreed for purposes of sentencing to be \$664 million.²¹²

133. The finalized settlement included many terms:

- a. The final settlement included civil and criminal components concerning Bextra, along with civil (not criminal) payments for the other products, including

Justice Regarding Past Promotional Practices" (Sept. 2, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>). Plaintiff's loss causation and damages expert, Professor Feinstein, acknowledged, for instance, that the September announcement added additional information to the public. Petrosinelli Decl. Ex. W-1 (Feinstein (Oct. 14, 2014) Dep. 50:19 – 51:21).

²⁰⁹ Petrosinelli Decl. Ex. S-3 (Press Release, U.S. Department of Justice, "Justice Department Announces Largest Health Care Fraud Settlement in Its History" (Sept. 2, 2009), at 1, *available at* <http://www.justice.gov/opa/pr/2009/September/09-civ-900.html>); Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of Justice Regarding Past Promotional Practices" (Sept. 2, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>). Professor Feinstein also acknowledged this fact. Petrosinelli Decl. Ex. W-1 (Feinstein (Oct. 14, 2014) Dep. 50:12-13 ("[I]n September the drugs are named.")).

²¹⁰ Petrosinelli Decl. Ex. S-3 (Press Release, U.S. Department of Justice, "Justice Department Announces Largest Health Care Fraud Settlement in Its History" (Sept. 2, 2009), at 1, *available at* <http://www.justice.gov/opa/pr/2009/September/09-civ-900.html>); Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of Justice Regarding Past Promotional Practices" (Sept. 2, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>).

²¹¹ Petrosinelli Decl. Ex. W-1 (Feinstein (Oct. 14, 2014) Dep. 51:6-16 ("I would agree that there was not a statistically significant price reaction on that day.")).

²¹² Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 91:6-92:4, 93:25-94:2).

approximately \$301 million for Geodon, \$98 million for Zyvox, and \$50 million for Lyrica.²¹³

- b. The company denied any liability or unlawful behavior in connection with its marketing of Geodon, Zyvox, or Lyrica.²¹⁴ The company agreed to a statement of facts concerning certain aspects of the promotion of Zyvox, which was appended to the agreement.²¹⁵
- c. As for the marketing of Bextra, a non-operating subsidiary (Pharmacia & Upjohn Company, Inc.) admitted only that there was a factual basis for a plea to one count of misbranding Bextra. Pfizer and its subsidiaries continued to dispute most of the government's allegations, including those contained in the Information the government filed in connection with the plea.²¹⁶

VII. INTERNAL CONTROLS OVER FINANCIAL REPORTING (ICOFR) AND PFIZER'S COMPLIANCE PROGRAMS

134. Pfizer maintained a formal healthcare compliance program throughout the Class Period, including a number of policies and procedures that specifically addressed and were designed to ensure compliance with all applicable laws, regulations, and Pfizer policies and, in

²¹³ Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of Justice Regarding Past Promotional Practices" (Jan. 29, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>).

²¹⁴ Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of Justice Regarding Past Promotional Practices" (Jan. 29, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>).

²¹⁵ Petrosinelli Decl. Ex. T-3 (Press Release, Pfizer, "Pfizer Concludes Previously Disclosed Settlement Agreement With U.S. Department Of Justice Regarding Past Promotional Practices" (Jan. 29, 2009), at 1, *available at* <http://press.pfizer.com/press-release/pfizer-concludes-previously-disclosed-settlement-agreement-us-department-justice-regar>).

²¹⁶ Petrosinelli Decl. Ex. W-2 (Def. Pharmacia & Upjohn Company, Inc.'s Resp. to the U.S.'s Sentencing Mem. at 1-2, United States v. Pharmacia & Upjohn Co., No. 09-cr-10528 (D. Mass. Oct. 14, 2009)) (stating there was a "sufficient factual basis" for its plea but that it "does not agree with many of the factual assertions made by the United States" at both the plea hearing and in its sentencing memorandum); Petrosinelli Decl. Ex. L-2 (O'Connor (Oct. 2, 2013) Dep. 176:19-178:5).

particular, to mitigate the risk of any off-label marketing. Pfizer communicated these policies of conducting business ethically and lawfully to its employees.²¹⁷

135. While plaintiffs' proffered expert Mr. Buthusiem was at GSK, the company made statements in its securities filings, like Pfizer, that GSK was committed to lawful and ethical business conduct. As to those statements, Mr. Buthusiem testified:

Q. You don't think it's implied, when [the GSK disclosure] says "the company is committed to ethical values," that everyone in the company is following that policy?

A. *I think it would be naïve to make that assumption* with a company with 105,000 employees. *It's a statement as to our policy . . . with respect to these marketing activities.*

Q. And you think that most readers of the financial statements would understand this is a description of the policy, not a guarantee that every employee of the company is always going to follow it?

A. Correct.²¹⁸

136. In 2004, as part of the changing regulatory landscape, Pfizer established a Healthcare Law Compliance Audit (HCC) function within its internal audit accounting group, which would test internal controls relating to healthcare compliance.²¹⁹

²¹⁷ E.g., Petrosinelli Decl. Ex. F-7 (PFE DERIV 00013223 at 00013225, 00013229-13664) (Summary of Pfizer Policies on Business Conduct (the "Blue Book")) (containing "Company policies and legal requirements that govern how [Pfizer] conduct [s] business around the world"); Petrosinelli Decl. Ex. M-7 (LYR000044363 at 000044365-44548) (Pfizer's Field Guide (the "Orange Guide")) ("*The Field Guide* has been designed to make it as easy as possible for you to conduct yourselves with Integrity and remain in compliance at all times."); Petrosinelli Decl. Ex. X-1 (Fleischmann (Apr. 26, 2013) Dep. 254:4-256:21 (identifying the Blue Book and Orange Guide as "documents that dealt with Pfizer's compliance policies" and noting "each member of the Pfizer field force was expected to review [the Blue Book] and sign an affidavit attesting that they had reviewed and would comply with the policies and procedures laid out here on an annual basis"))).

²¹⁸ Petrosinelli Decl. Ex. R-1 (Buthusiem (Aug. 1, 2014) Dep. 352:16-353:5) (emphases added).

²¹⁹ Petrosinelli Decl. Ex. J-2 (Mooney (May 31, 2013) Dep. 85:16-88:5 (describing development of healthcare audit group in 2004)).

137. In 2005 and 2006, the HCC internal audit group performed a number of first-time audits in this area.²²⁰ The group audited controls applicable to a number of functions (*e.g.*, speaker programs, advisory boards, travel & entertainment expenses, and others), and issued reports with “unsatisfactory” ratings for several of them.²²¹ These reports found various documentation problems—for example, attendance lists at some speaker programs were not filled out—but the audits were not designed to, and did not, find any actual compliance violations.²²²

138. Based on the number of “unsatisfactory” audit ratings in these areas, in the third quarter of 2006 Pfizer’s internal audit group concluded under accounting guidelines that there was a “significant deficiency” in the monitoring function of the US Pharmaceuticals business unit. The group informed the Audit Committee of Pfizer’s Board of Directors of the finding.²²³ KPMG agreed with the assessment, and particularly with Pfizer’s judgment that these issues did

²²⁰ Petrosinelli Decl. Ex. V-1 (Donnelly (Aug. 14, 2013) Dep. 344:22-345:8 (these audits were in “an area that had never been audited,” and thus “[p]eople . . . were not familiar with the process and the level of documentation and the rigor that goes along with a financial audit, these are non-financial areas, it was new to them”)); Petrosinelli Decl. Ex. J-2 (Mooney (May 31, 2013) Dep. 299:12-300:1 (these unsatisfactory audits were “first-time audits. The first time anyone had asked. . . . [G]oing back to the speakers. . . . [W]e might have done speakers audits in the past, but what we were looking for is something supporting the payment. . . . We hadn’t asked for an attendee list or . . . things like that before.”)).

²²¹ Petrosinelli Decl. Ex. J-2 (Mooney (May 31, 2013) Dep. Tr. 180:11-181:23 (describing unsatisfactory “audit report of marketing promotional speaker programs”), 279:2-280:2 (describing unsatisfactory “audit of US sales force travel and entertainment expenses”), 296:10-17 (“We conducted audits that had . . . risk and healthcare compliance generally, the risk of ‘best price,’ off-label promotion, anti-kickbacks, audits such as sales speaker, educational grants, charitable contributions, consultant payments, advisory boards, audits— audits such as that.”)).

²²² See, *e.g.*, Petrosinelli Decl. Ex. J-2 (Mooney (May 31, 2013) Dep. Tr. 299:12-300:1, 302:3-8 (“[T]here could be a perfectly good speakers program that took place, but they didn’t prepare all the documentation that they are supposed to prepare in connection with that speakers program.”)).

²²³ Petrosinelli Decl. Ex. X-4 (KPMG-PFIZ-DS 057317 at 057318) (Feb. 21, 2007 Audit Committee Minutes) (“Mr. Donnelly then updated the Committee on the current status of the Healthcare Compliance significant deficiency, actions taken by management to date to remediate the matter and other planned remedial actions.”).

not amount to a “material weakness,” a more serious accounting issue.²²⁴ Mr. Chapman, one of the KPMG audit partners, testified:

Q. Well, did KPMG evaluate, in the context of its review of the company’s internal controls, as to whether the issues identified constituted a material weakness?

A. Yes, we did evaluate that—we evaluated the company’s evaluation. . . .

Q. What actually was the conclusion reached by KPMG as to whether this issue gave rise to a material weakness?

A. It was not a material weakness.

Q. Were you personally comfortable with that conclusion?

A. Yes.²²⁵

139. Pfizer’s internal audit group concluded that the significant deficiency it identified in the third quarter of 2006 was remediated by the second quarter of 2007, and KPMG agreed with that assessment.²²⁶ There is no requirement to disclose a significant deficiency in securities filings.²²⁷

²²⁴ Petrosinelli Decl. Ex. X-4 (KPMG-PFIZ-DS 057317 at 057320-21) (Feb. 21, 2007 Audit Committee Minutes) (“noting that one significant deficiency existed at December 31, 2006, but that there were no material weaknesses at that date”).

²²⁵ Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 96:8-97:22); *see also* Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 102:16-103:1 (describing independent verification KPMG did to “determine why the significant deficiency did not rise to a material weakness”)); Petrosinelli Decl. Ex. J-2 (Mooney (May 31, 2013) Dep. 305:19-306:23 (KPMG and Pfizer’s controller, SOX Program Office, and Internal Audit department all determined that there was no material weakness)); Petrosinelli Decl. Ex. V-1 (Donnelly (Aug. 14, 2013) Dep. 215:1-8 (“there was no way we felt material weakness”)).

²²⁶ Petrosinelli Decl. Ex. A-5 (KPMG-PFIZ-DS 023093 at 023094) (July 26, 2007 Memorandum from C. Mooney to file) (“we believe the division has taken the proper steps to address the significant deficiency in internal controls over US Healthcare Compliance risks”); Petrosinelli Decl. Ex. P-4 (excerpt of KPMG-PFIZ-DS 018692 at 018697) (“The company has concluded that the significant deficiency has been remediated as of Q2 2007.”); Petrosinelli Decl. Ex. T-1 (Chapman (Sept. 5, 2013) Dep. 100:6-17 (“KPMG was comfortable” deficiency had been remediated)).

²²⁷ Petrosinelli Decl. Ex. P-2 (Riso (Aug. 1, 2013) Dep. 140:18-25 (no requirement that “significant deficiencies be disclosed in the company’s financial statements”)); Petrosinelli Decl. Ex. O-2 (Regan

140. KPMG audited Pfizer's internal controls over financial reporting each year during the Class Period. At the conclusion of every audit, KPMG opined that the company maintained "effective internal control over financial reporting," and KPMG issued a certification to that effect that was included in the company's securities filings.²²⁸

Date: October 30, 2014

Respectfully submitted,

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(Aug. 12, 2014) Dep. 264:21-25 (agreeing "there's no duty under GAAP to disclose a significant deficiency").

²²⁸ Petrosinelli Decl. Ex. B-1 (Pfizer, 2005 Annual Report (Form 10-K), 2005 Financial Report at 34 (Feb. 28, 2006)) (KPMG statement that, "[I]n our opinion, Pfizer Inc. . . . maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005."); Petrosinelli Decl. Ex. D-1 (Pfizer, 2006 Annual Report (Form 10-K), 2006 Financial Report at 36 (Feb. 27, 2007)) (same for 2006); Petrosinelli Decl. Ex. F-1 (Pfizer, 2007 Annual Report (Form 10-K), 2007 Financial Report at 38 (Feb. 29, 2008)) (same for 2007); *see also* Petrosinelli Decl. Ex. J-1 (Pfizer, 2008 Annual Report (Form 10-K), 2008 Financial Report at 46 (Feb. 27, 2009)) (same for 2008); *see also* Petrosinelli Decl. Ex. I-4 (KPMG-PFIZ-DS 0002560 at 0002564) (Feb. 2007 KPMG 2006 Audit Results and SAS 61 Report presentation) ("There was one significant deficiency identified and no material weaknesses in internal controls over financial reporting as of December 31, 2006."); *see also id.* at 00049303 ("KPMG expects to issue an unqualified opinion on Pfizer's Internal Control Over Financial Reporting at December 31, 2006.").

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of October, 2014, the foregoing Statement of Undisputed Facts In Support of Pfizer Inc.'s Motion for Summary Judgment was filed with the Court through the CM/ECF system and thereby served on all counsel of record.



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