

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
MARY K. JONES, Individually and on Behalf :
of All Others Similarly Situated, : 10-cv-3864 (AKH)
 :
Plaintiff, : **ECF Case**
 :
v. : **Electronically Filed**
 :
PFIZER INC., et al., :
 :
Defendants. :
----- X

**LOCAL RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN
SUPPORT OF ALAN G. LEVIN'S MOTION FOR SUMMARY JUDGMENT**

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Jay B. Kasner
Gary J. Hacker
Alexander C. Drylewski
Four Times Square
New York, New York 10036
Telephone: (212) 735-3000
Fax: (212) 735-2000

Attorneys for Defendant Alan G. Levin

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, defendant Alan G. Levin, in connection with his Motion for Summary Judgment, sets forth the following statement of material facts as to which no genuine issue exists.¹

A. The Parties

1. Plaintiffs

1. Lead plaintiff Stichting Philips Pensioenfonds and plaintiff Mary K. Jones (together, “Plaintiffs”) purport to represent purchasers of Pfizer common stock between January 19, 2006 and January 23, 2009 (the “Class Period”). (First Amended Complaint (“FAC”)² ¶¶ 1, 21-22.) By order dated March 29, 2012, the Court certified a plaintiff class of “[a]ll persons who purchased domestically or purchased on domestic exchanges Pfizer common stock between 1/19/06 and 1/23/09, inclusive, and were damaged thereby, excluding defendants and their families, directors and officers of Pfizer, and their families and affiliates.” (ECF No. 132.)

2. Alan Levin

2. Mr. Levin is a certified public accountant with a Bachelor’s Degree from Princeton University and a Master’s Degree from New York University’s Stern School of Business. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 13:8-14:1.)³

3. Mr. Levin is not an attorney. (*Id.* at 115:5-14.)

4. Mr. Levin began working at Pfizer in April 1987. (*Id.* at 14:8-14.)

¹ Mr. Levin incorporates by reference the Statement of Undisputed Facts in Support of Pfizer’s (“Pfizer”) Motion for Summary Judgment (“Pfizer SUF”), insofar as relevant to the claims asserted against him.

² ECF No. 71.

³ True and correct copies of the documents referenced herein are attached to the Declaration of Alexander C. Drylewski dated October 30, 2014 (“Drylewski Decl.”), or the Declaration of Joseph Petrosinelli dated October 30, 2014 submitted in connection with Pfizer’s Motion for Summary Judgment (“Petrosinelli Decl.”).

5. Mr. Levin held a number of positions at Pfizer, including Treasurer, Vice President of Finance and Senior Vice President of Finance for Pfizer's research and development division. (*Id.* at 14:11-16:17.)

6. In March 2005, Mr. Levin assumed the role of Chief Financial Officer ("CFO") of Pfizer. (FAC ¶ 30; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 16:21-23.)

7. Mr. Levin served as Pfizer's CFO until his resignation on September 10, 2007. (Levin Decl. ¶ 2;⁴ Drylewski Decl. Ex. A-L, Ex 10.1); *see also* FAC ¶ 30; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 16:24-17:1, 140:21-141:1.)

8. After exiting the role of CFO, Mr. Levin remained employed by the Company in a non-executive position through November 2, 2007. (Levin Decl. ¶ 2; Drylewski Decl. Ex. A-L, Ex 10.1); Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 17:2-12.)

B. The Bextra Investigation

9. In February 2004, the United States Department of Justice informed Pfizer that it had begun investigating the Company's sales and marketing practices concerning the prescription medication Bextra. (Petrosinelli Decl. Ex. L-4.)

10. In response, the Company hired Covington & Burling LLP ("Covington & Burling") to conduct an internal investigation of its promotion of Bextra and disclosed the existence of the investigation in its Form 10-K for the year 2003, filed with the United States Securities and Exchange Commission ("SEC"). (Petrosinelli Decl. Ex. A-1.)

11. In December 2004, the government issued a subpoena to Pfizer requesting the production of Bextra-related documents. (Petrosinelli Decl. Ex. X-6 at 8540.)

⁴"Levin Decl." refers to the Declaration of Alan G. Levin, dated October 29, 2014, submitted herewith.

12. In August and September 2006, the government met with Pfizer's lawyers and presented for the first time its view of the documents it had received concerning the promotion of Bextra. (Drylewski Decl. Ex. B-L at 6-35.)

13. At the conclusion of the meetings, the government stated that it "wants to hear Pfizer's responses, but [it] cannot delay timing and wants a further substantive discussion in thirty days" in order to "mak[e] a recommendation on how the investigation should proceed." (*Id.* at 35.)

14. Pfizer's lawyers attended additional meetings with the government on January 30, 2007, January 31, 2007, and March 23, 2007. (*Id.* at 36-38.)

15. At no time during Mr. Levin's tenure as CFO of Pfizer did the government make a settlement demand on Pfizer relating to its Bextra investigation. (Petrosinelli Decl. Ex. Y-6; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 103:2-13.)

16. At no time during Mr. Levin's tenure as CFO of Pfizer did the Company propose a settlement offer relating to the government's Bextra investigation. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 103:2-13 ("During my tenure as CFO, the investigation was in a much earlier phase and so settlement discussions would not have come up."), 112:15-19 ("There was a good piece of time during my tenure as CFO where all the government was doing was reviewing documents and had not gotten into a regular dialog with us."); Petrosinelli Decl. Ex. Y-6.)

17. At no time during Mr. Levin's tenure as CFO of Pfizer did he have discussions with Pfizer's attorneys concerning a settlement with the government. (*See* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 103:2-13.)

18. At no time during Mr. Levin's tenure as CFO of Pfizer did he receive a damages analysis relating to the Bextra investigation. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at

152:17-153:6.)

19. Mr. Levin testified at his deposition: “During my tenure as CFO, the investigation was in a much earlier phase and so settlement discussions would not have come up.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 103:2-13; *see also id.* at 112:15-19 (“There was a good piece of time during my tenure as CFO where all the government was doing was reviewing the documents and had not gotten into a regular dialog with us.”).)

20. On September 14, 2007, after Mr. Levin had exited the role of Pfizer CFO (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 140:21-141:5), the government suggested to Pfizer for the first time that Pfizer make a financial proposal to the government for a resolution of the Bextra matter (*see* Petrosinelli Decl. Ex. K-4 at 3513).

21. On September 14, 2007, after Mr. Levin had exited the role of Pfizer CFO (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 140:21-141:5), the government suggested to Pfizer for the first time that it could pursue a damages theory via criminal charges under which it could recover what it termed the “intended loss” (as opposed to any actual loss) caused by the alleged conduct (*see* Petrosinelli Decl. Ex. B-6; Petrosinelli Decl. Ex. Y-6).

22. In October 2007, the Company’s outside attorneys at Covington & Burling provided to the government a written analysis contesting the government’s theory of damages. (Petrosinelli Decl. Ex. B-6.)

23. On April 4, 2008, approximately seven months after Mr. Levin exited the role of Pfizer CFO, the government made its first proposal for settlement of its Bextra investigation. (Petrosinelli Decl. Ex. Y-6.)

24. That proposal would have required Pfizer to pay over \$4.8 billion in fines and penalties. (*Id.*)

25. On January 25, 2009, more than sixteen months after Mr. Levin exited the role of Pfizer CFO, the Company's Board of Directors approved a settlement with the government. (Petrosinelli Decl. Ex. E-6.)

26. Pursuant to that settlement, the government agreed not to prosecute Pfizer. (Petrosinelli Decl. Ex. I-L.)

27. Pursuant to that settlement, a non-operating subsidiary of Pfizer pled guilty to one count of felony misbranding of Bextra. (*See* Petrosinelli Decl. Ex. E-2 (Lankler Tr.) at 193:2-194:12.)

28. Pursuant to that settlement, Pfizer agreed to pay a total of \$2.3 billion in fines, penalties and civil settlements. (*Id.*)

29. The settlement agreement in principal was publicly disclosed on January 26, 2009. (FAC ¶ 95.)

C. The Geodon, Lyrica and Zyvox Investigations

30. The \$2.3 billion settlement resolved not only the Bextra investigation, but also government investigations into Pfizer's promotion and marketing of three other prescription medications – Geodon, Lyrica and Zyvox. (Drylewski Decl. Ex. I-L; Petrosinelli Decl. Ex. E-2 (Lankler Tr.) at 192:17-193:8.)

31. The government issued document subpoenas concerning Lyrica in July 2007. (Petrosinelli Decl. Ex. J-5.)

32. The government issued document subpoenas concerning Geodon and Zyvox in December 2007, after Mr. Levin had left Pfizer's employ. (Petrosinelli Decl. Ex. W-6.)

D. Pfizer's Disclosures Regarding Legal Proceedings and Contingencies During Mr. Levin's Tenure as CFO

33. In Pfizer's 2005 Form 10-K, filed on March 1, 2006, the Company disclosed as

follows: “[W]e received requests for information and documents concerning the marketing and safety of Bextra . . . from the Department of Justice and a group of state attorneys general.”

(Petrosinelli Decl. Ex. B-1, 2005 Financial Report at 67.)

34. Pfizer further disclosed in its 2005 Form 10-K: “We and certain of our subsidiaries are involved in various . . . government investigations[.]” and “[a]lthough 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.” (*Id.* at 32, 62-63.)

35. In Pfizer’s 10-Q for the Quarter Ended April 2, 2006, filed on May 8, 2006, the Company again disclosed: “We and certain of our subsidiaries are involved in various . . . government investigations” and “[a]lthough 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.” (Petrosinelli Decl. Ex. C-1 at 58.)

36. Materially identical disclosure language is contained in Pfizer’s (a) 10-Q for the Quarter Ended July 2, 2006, filed on August 11, 2006 (Drylewski Decl. Ex. C-L at 65-66); (b) 10-Q for the Quarter Ended October 1, 2006, filed on November 3, 2006 (Drylewski Decl. Ex. D-L at 70); (c) 10-Q for the Quarter Ended April 1, 2007, filed on May 4, 2007 (Petrosinelli Decl. Ex. E-1 at 50); and (d) 10-Q for the Quarter Ended July 1, 2007, filed on August 6, 2007 (Drylewski Decl. Ex. E-L at 59-60).

37. In Pfizer’s 2006 10-K, filed on March 1, 2007, the Company disclosed: “Since 2003, we have received requests for information and documents concerning the marketing and safety of Bextra . . . from the Department of Justice and a group of state attorneys general. We

have been considering various ways to resolve these matters.” (Petrosinelli Decl. Ex. D-1, 2006 Financial Report at 73.)

38. Pfizer further disclosed in its 2006 Form 10-K that “[i]t is possible that criminal charges and fines and/or civil penalties could result from pending government investigations.” (*Id.*)

39. Finally, Pfizer once again disclosed: “We and certain of our subsidiaries are involved in various . . . government investigations” and “[a]lthough 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.” (*Id.* at 17.)

E. Mr. Levin’s Role as CFO

40. During the Class Period, in his role as CFO, Mr. Levin would “undertake specific procedures on a monthly and quarterly basis relative to review of [Pfizer’s] financial results and disclosures,” including:

- (a) “[a]ttend[ing] Monthly Executive Litigation review meetings to discuss changes in the legal environment, particularly as they relate to financial contingencies and disclosures, as well as potential reserves”;
- (b) “[m]eet[ing] quarterly with KPMG to discuss the results of their limited reviews of [Pfizer’s] quarterly financial results including a discussion of any matters they wish to highlight that carry enterprise or financial risk”;
- (c) “[p]articipat[ing] in Disclosure Committee meetings which review near-final drafts of quarterly earnings press releases as well as 10Q/10K filings”;
- (d) “review[ing] successive drafts of both earnings press releases and SEC draft filings on a quarterly basis”; and
- (e) “[d]iscuss[ing] . . . sub-certifications received from Pfizer executives and key finance personnel in support of CEO/CFO certification process.”

(Drylewski Decl. Ex. F-L; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 19:10-21:20.)

41. As CFO of Pfizer, Mr. Levin signed a certification pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act, Pub.L. 107–204, 116 Stat. 745 (2002), for every 10-Q and 10-K that Pfizer filed with the SEC. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 32:8-38:8, 39:13-22.)

42. The certification for each filing indicated Mr. Levin’s “belief that the filing presents fairly [the Company’s] financial position and results in compliance with securities laws.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 34:2-25.)

43. Mr. Levin testified at his deposition that there were “fulsome procedures” in place during his tenure as CFO “that [he followed] in order to allow [him] to make that certification.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 36:12-15; *see also* Petrosinelli Decl. Ex. B-4.)

44. For example, during his tenure as CFO of Pfizer, Mr. Levin was a member of the Company’s Disclosure Committee, which “was a group primarily of finance and legal professionals who got together in advance of filing a 10-Q or a 10-K in order to discuss the various disclosures that were included in that quarter’s financial filing and to determine whether any adjustments needed to be made in those disclosures.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 57:14-58:7.)

45. The Disclosure Committee “assist[ed] the senior officers in fulfilling their responsibility for oversight of the disclosures made by the company” and was “a part of a framework for allowing executive officers to get to a Sarbanes-Oxley certification.” (*Id.* at 67:6-11; 69:18-21.)

46. The Disclosure Committee would have “fulsome discussions” regarding the legal proceedings disclosures in the Company’s 10-Q and 10-K filings. (*Id.* at 59:2-10, 66:23-

67:2.)

47. Additionally, prior to signing a particular certification during his tenure as CFO of Pfizer, Mr. Levin would attend a certification meeting where a report of the “activities of the disclosure committee was read out,” including a “summary of activities from the last disclosure committee associated with that filing.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 64:16-24, 66:6-12.)

48. In advance of the certification meeting, Mr. Levin would meet with “key individuals who were directly involved in the preparation” of the filings. (*See* Petrosinelli Decl. Ex. B-4.)

49. Many of those individuals, including the Company’s outside disclosure counsel, provided Mr. Levin with sub-certifications attesting to the accuracy of the disclosures at issue, which Mr. Levin relied upon in executing his own certification. (*See* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 266:2-20; 299:24-300:4; Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 111:3-9.)

50. At no point during Mr. Levin’s tenure as CFO “did anyone in any disclosure committee meeting or certification meeting ever suggest that they believed that the [Company’s] disclosures concerning the legal proceedings were not in compliance with the law.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 300:5-10.)

51. During his tenure as CFO of Pfizer, Mr. Levin also personally received internal Litigation Monthly Financial Controls Reports (“Litigation Reports”). (*See, e.g.*, Drylewski Decl. Ex. H-L; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 82:21-83:12.)

52. These Litigation Reports provided updates on the status of the Bextra government investigation at issue in this case. (*See, e.g.*, Drylewski Decl. Ex. H-L at 43-44; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 82:21-83:12.)

53. The Litigation Reports reflected that the government's Bextra investigation was still in the early stages during Mr. Levin's tenure as CFO of Pfizer and that the Company believed it had strong defenses to any potential charges. (*See, e.g.*, Drylewski Decl. Ex. H-L at 43-44.)

54. For example, in September 2007, Mr. Levin received a Litigation Report that stated in part:

We have had numerous meetings 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 Likewise, we have pushed back forcefully on the government[']s theories. We have also had a physician present to them on our position that there are no safety issues relating to the use of Bextra for acute pain.

(*Id.* at 43.)

F. Mr. Levin's Reliance on the Advice of Internal and External Disclosure Counsel in Connection with the Company's Disclosures

55. Mr. Levin relied on the advice of numerous lawyers and accountants to ensure that the Company's public disclosures concerning legal proceedings were accurate, appropriate and fully compliant with the federal securities laws. (*See* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 95:17-96:25, 99:12-20 ("I was dependent on both internal and external counsel, external counsel being Cadwalader, on our securities disclosures"), 102:11-20, 120:1-6, 145:8-16, 159:7-160:1, 299:3-300:4; *see also* Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 30:19-24 40:14-18 ("I'm not an attorney. I'm not trained legally in these matters. And so I'm highly reliant on the professional advice I have from legal professionals in the execution of my responsibility."), 113:20-114:10; Pfizer SUF ¶¶ 1-5.)

56. These attorneys had significant involvement in the process of drafting, reviewing and approving Pfizer's securities disclosures, including the legal proceedings sections

of those disclosures, and included:

- (a) Dennis Block: During the period of Mr. Levin's service as Pfizer CFO, Mr. Block acted as outside disclosure counsel for Pfizer. (Petrosinelli Decl. Ex. O-1 (Block Tr.) at 19:23-25, 41:6-46:7.) Mr. Block was a partner at Cadwalader, Wickersham & Taft LLP and a recognized expert in the area of securities law. (*Id.* 20:18-21:2.) Mr. Block testified at his deposition that he has approximately 45 years of legal experience (*id.* at 12:11-13); and
- (b) Lawrence Fox: During the period of Mr. Levin's service as Pfizer CFO, Mr. Fox acted as in-house disclosure counsel for Pfizer. (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 30:25-35:2.) Mr. Fox testified at his deposition that he has more than 40 years of legal experience, including 35 years advising companies on disclosure requirements. (*Id.* at 231:3-21.)

57. During Mr. Levin's tenure as Pfizer CFO, Pfizer employed certain processes for ensuring that its public disclosures concerning legal proceedings were compliant with the federal securities laws. (Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 38:9-22, 113:20-116:2; Petrosinelli Decl. Ex. I-2 (McKinnell Tr.) at 48:10-16; Pfizer SUF ¶ 1.)

58. Those processes including at least the following steps:

- (a) First, Mr. Fox would prepare a first draft of the legal proceedings disclosures based on information he had been provided by in-house litigators, civil litigation attorneys and government investigation attorneys during regularly-scheduled and interim calls/meetings. (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 161:24-163:2; *see also* Petrosinelli Decl. Ex. O-1 (Block Tr.) at 41:15-45:13.)
- (b) As Mr. Fox testified: “[W]e schedule every quarter a conference call among our [government investigation] attorneys, the head of the group and very often others in his group, our outside disclosure counsel, Dennis Block at the time, and me. That happened every quarter. And in addition, not infrequently, there were similar conference calls that were not scheduled, but took place as appropriate as developments occurred 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.” (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 162:11-163:2; *see also id.* at 46:9-15.)
- (c) Moreover, during the course of the Bextra investigation, Mr. Lankler had conversations with Messrs. Fox and Block “[s]o that we could make sure that they were aware of the government investigations that were pending, what

developments had occurred, and they could assess whatever disclosures they thought might need to be made . . . in our securities filings.” (Petrosinelli Decl. Ex. E-2 (Lankler Tr.) at 258:17-259:13.)

- (d) Second, a draft of the legal proceedings disclosure would be sent to a group of 15-20 lawyers, including Pfizer’s government investigation lawyers. (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 164:17-165:5.)
- (e) Third, the group of 15-20 lawyers would provide comments on the draft and a second draft would be created. (*Id.* at 165:22-166:4.)
- (f) Fourth, the new draft would be sent to Pfizer’s head of litigation and outside disclosure counsel, Mr. Block. (*Id.* at 166:5-17.)
- (g) Fifth, comments from the head of litigation and Mr. Block would be incorporated into a new third draft. (*Id.* at 166:18-25, 173:13-23.)
- (h) Sixth, the third draft would be sent to Pfizer’s General Counsel, copying everyone who had thus far provided comments. (*Id.* at 173:24-174:4.)
- (i) Seventh, the General Counsel would provide comments and a fourth draft is created. (*Id.* at 174:5-10.) The fourth draft would be provided to the controller’s group, who would include it in the draft 10-Q or 10-K. (*Id.* at 174:5-15.)
- (j) Eighth, the controller’s group would then circulate the entire filing, including the legal proceedings disclosure, to a list of people, including the various lawyers who had previously reviewed the legal proceedings disclosure and KPMG, the company’s outside auditor. (*Id.* at 174:16-175:2.)
- (k) Ninth, a meeting of the disclosure committee (of which Mr. Levin was a member) for the purpose of reviewing the particular public filing would then take place. (*Id.* at 177:23-178:5; Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 57:14-17; Drylewski Decl. Ex. F-L.)
- (l) Tenth, a Certification Meeting would be held, which would include Pfizer’s CEO, CFO (i.e., Mr. Levin), Controller, General Counsel, KPMG, inside and outside disclosure counsel and others. (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 178:15-179:19.)

- (m) The purpose of the Certification Meeting would be to review again both the substance and process in connection with the public filing in an effort to ensure that the CEO and CFO are comfortable in signing the requisite certifications. (*Id.*; *see also* Petrosinelli Decl. Ex. O-1 (Block Tr.) at 45:5-12 (“So you would have a full discussion to the CEO and CFO who had to certify either the 10-K or the 10-Qs regarding every issue that was discussed during the process that I just described. And everybody then would either sign off or say, no, I think we should make additional disclosure here or maybe this isn’t something that needs to be disclosed.”).)
- (n) Eleventh, Mr. Fox would send the entire legal proceedings disclosure to a group of 35 or 40 people, most of whom are in the legal department, giving them a final chance to provide any comments. (Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 179:22-180:14.)
- (o) Twelfth, Mr. Block would provide Pfizer’s General Counsel with a certification that the filing met the requirements of the securities laws. (*Id.* at 169:16-23.)

59. Mr. Levin testified during his September 23, 2014 deposition as follows:

There is a robust disclosure process that we have in place that is designed to ensure that anything that is worthy of disclosure and should be disclosed comes to the attention of a collection of people, not just me personally but other executives of the company, participants in our certification process, participants in our disclosure committee process. And in the context of that, I have no reason to believe that that process failed at any point during my tenure as CFO.

(Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 38:12-22; *see also id.* at 30:5-12; 31:3-11; 37:10-15.)

60. Regarding the Company’s public disclosures concerning legal proceedings, Mr. Levin testified at his September 23, 2014 deposition as follows: “I’m not an attorney. I’m not trained legally in these matters. And so I’m highly reliant on the professional advice I have from legal professionals in the execution of my responsibility.” (Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 40:14-18; *see also* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 120:1-6, 159:22-160:1,

299:17-23.)

61. Regarding the Company's public disclosures concerning legal proceedings, Mr. Levin testified at his September 23, 2014 deposition as follows: "I relied on internal and external investigation counsel and the conversations I understood happened between them and our disclosure counsel in ultimately determining a view on the disclosures for the company." (Petrosinelli Decl. Ex. G-2 (Levin 9/23 Tr.) at 30:19-24; *see also* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 99:12-20 ("I was dependent on both internal and external counsel, external counsel being Cadwalader, on our securities disclosures. And part of what would have informed a view on securities disclosures that would have been developed by our legal division would have been discussions between Doug Lankler and Covington & Burling on this matter.").)

62. During his deposition, Mr. Levin testified that he "was guided by [Pfizer's] attorneys" that the Company continued to have "strong defenses" to government charges regarding Bextra during his tenure as Pfizer CFO, including that:

[T]here didn't seem to be any pattern of intentional direction of off-label promotion of Bextra by people in senior management positions in the company; that this seemed to be isolated incidents by a limited number of representatives; that the company had put in place very robust processes to monitor the promotional practices of its representatives; that those practices continued to evolve as new standards came into place; and that we had put practices in place under other corporate integrity agreements that gave us some reasonable assurance that there was not a systematic pattern of effort by the company.

(Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 120:18-121:7.)

63. During Mr. Levin's tenure as CFO, no Pfizer disclosure attorney (or anyone else) ever told him that the Company's legal proceedings disclosures were inadequate or that they did not comply with federal securities laws. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) 300:5-10.)

64. Moreover, during his tenure as CFO of Pfizer, Mr. Levin had numerous discussions with Pfizer's government investigation attorneys, including Douglas Lankler, regarding the strengths and weaknesses of, and potential defenses to, the government's case regarding its investigation of Bextra. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 102:11-20 ("I believe we spent a fair amount of time talking about the strong defenses that we felt we had with respect to the case. And as the government's case began to be presented to us, we understood better what they felt were the strengths of their case; but at the same time, we also felt that we had strong defenses of our own"); *see also id.* at 95:17-96:3 ("Q. Were you typically briefed on the Bextra investigation from Doug Lankler? A. Yes.").)

65. Similarly, during the Class Period, the Company's government investigations attorneys would regularly provide litigation updates to Messrs. Block and Fox regarding the Bextra investigation:

[W]e explained to them 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.

(Petrosinelli Decl. Ex. E-2 (Lankler Tr.) at 260:16-261:9; *see also id.* at 96:4-17.)

G. Pfizer's Process For Setting Litigation Reserves

66. During his tenure as CFO of Pfizer, Mr. Levin relied in good faith upon the advice of Pfizer's external and internal accountants in connection with the Company's decisions

regarding whether to take litigation reserves. (*See* Petrosinelli Decl. Ex. F-2 (Levin Tr.) 179:23-180:17, 300:16-302:2.)

67. During Mr. Levin's tenure as Pfizer CFO, the Company's Controller was Loretta Cangialosi. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 32:3-5.)

68. During Mr. Levin's tenure as Pfizer CFO, Ms. Cangialosi "had principal responsibility for ensuring that the company's reserves were in compliance with [Generally Accepted Accounting Principles ('GAAP')]" and utilized "rules of [Statement of Financial Accounting Standards No. 5 ('FAS 5')]" to do so. (Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 367:23-368:14.)

69. During the Mr. Levin's tenure as Pfizer CFO, he attended "monthly executive litigation review meetings to discuss changes in the legal environment, particularly as they relate to financial contingencies and disclosures as well as potential reserves." (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 29:2-10; Drylewski Decl. Ex. F-L.)

70. Those executive litigation review meetings were also attended by Ms. Cangialosi, "several members of her staff, and members of the legal division who were handling various litigation matters," as well as KPMG. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 29:11-16; Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 374:21-375:23; Petrosinelli Decl. Ex. P-1 (Bradley Tr.) at 155:1-9; *see also* Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 209:11-210:13, 258:19-25, 277:6-13, 284:4-285:12; 315:8-18; Petrosinelli Decl. Ex. E-2 (Lankler Tr.) at 180:4-9; Petrosinelli Decl. Ex. P-2 (Riso Tr.) at 107:20-111:23.)

71. The purpose of the monthly 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.” (Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 375:3-10.)

72. During Mr. Levin’s tenure as CFO of Pfizer, the Controller’s office “engaged with in-house legal counsel regarding investigations into off-label promotion” and “utilized the process [it] put into place to review the [FAS 5] disclosures” in which in-house and outside counsel provided the Controller’s office with “legal advice with respect to the FAS 5 disclosures concerning the government investigations.” (*Id.* at 37:13-38:14; 227:4-230:20; *see also id.* at 288:16-25; Petrosinelli Decl. Ex. N-7.)

73. In addition to reviewing monthly Litigation Reports for purposes of the Company’s legal proceedings disclosures, Mr. Levin also reviewed the Litigation Reports in order “to determine whether or not any accrual was necessary for a legal contingency and/or whether changes in disclosure were warranted.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 82:21-83:12; *e.g.*, Drylewski Decl. Ex. H-L.)

74. Mr. Levin had regular discussions with the Company’s external and government investigations attorneys, including Doug Lankler, in order to make reserving determinations. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 95:17-96:3.)

75. Mr. Levin testified during his deposition as follows:

Q. What was the purpose of you[r] meeting with Doug [Lanker] ad hoc to discuss the Bextra litigation?

A. Well, part of my responsibilities as CFO of the company were around the financial reporting and disclosures. And so understanding how the Bextra investigation was progressing and the nature of the dialog with the government helped me to form a view as to the adequacy of disclosures and/or whether or not any additional financial accrual recognition was warranted at a particular point in time.

Q. And would those discussions with Mr. Lankler help you understand whether or not a loss related to the Bextra investigation was probable?

A. They helped to inform my understanding of the case, which then enabled me to determine whether or not a loss was – was probable and estimable at a particular point in time.

Q. So those discussions with Mr. Lankler would also help you in doing your job as CFO to determine whether or not a reserve related to the Bextra investigation should be taken?

A. Correct.

(*Id.* at 96:4-97:6; *see also id.* at 97:24-98:15.)

76. Mr. Levin further testified during his deposition as follows:

The determination of whether or not we had a probable and estimable liability against which we would have a reserve was a decision that I would make in consultation with our controller.

We were informed in order to make an informed decision. We were informed by the latest thinking with respect to the government investigation at that point in time. We were informed by the conversations that would have taken place between representatives of the legal division and Larry Fox.

But the actual decision about whether or not to put a reserve up on the books of the company would have been a financial decision.

(*Id.* at 100:3-21.)

(a) The Company's Outside Auditor

77. During Mr. Levin's tenure as CFO of Pfizer, KPMG served as the Company's independent auditor. (*Id.* at 171:15-16; Petrosinelli Decl. Ex. Y-1 (Fox Tr.) at 122:22-25, 225:24-226:1.)

78. During Mr. Levin's tenure as CFO of Pfizer, KPMG reviewed the status of the government's investigation "every single reporting period from January 2006 through the end of 2008." (Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 380:25-381:4; *see also* Petrosinelli Decl.

Ex. T-1 (Chapman Tr.) at 82:6-10.)

79. During Mr. Levin's tenure as CFO of Pfizer, KPMG independently determined each quarter that Pfizer's reserving decisions were reasonable and compliant with GAAP and FAS 5. (Petrosinelli Decl. Ex. S-1 (Cangialosi Tr.) at 380:19-382:15; *see also* Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 170:5-14.)

80. Mr. Levin testified at his deposition that KPMG "scrutinized our disclosures with regard to legal proceedings and contingencies" and "had a responsibility as [Pfizer's] auditors to satisfy themselves with respect to conclusions that management was coming to on reserve disclosures." (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 170:5-12; *see also id.* at 301:20-302:2.)

81. In connection with its 2006 audit of Pfizer, 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." (Petrosinelli Decl. Ex. H-4 at 2.)

82. In connection with its 2007 audit of Pfizer dated February 28, 2008 – issued after Mr. Levin left the Company – KPMG concluded: "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 [from Covington & Burling], which Pfizer submitted to the Department of Justice detailing its defenses to various allegations." (Petrosinelli Decl. Ex. J-4; *see also* Petrosinelli

Decl. Ex. U-4 (“[W]e believe that Management's conclusion that no accrual pursuant to FAS 5 as of December 31, 2007 [for the Bextra investigation] is appropriate.”.)

83. At no point during Mr. Levin’s tenure as CFO did anyone from KPMG, or anyone else, indicate to Mr. Levin that the Company’s reserving decisions or disclosures were in any way incorrect or inappropriate. (Levin Tr. 302:3-15.)

H. Pfizer’s Internal Controls

84. In his role as CFO of Pfizer, part of Mr. Levin’s “responsibilities involved a regular interaction, discussion of the internal audit functions, the findings and the control environment.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 42:20-43:1.)

85. Mr. Levin testified at his deposition as follows: “We followed a model at Pfizer which reflected management having responsibility for internal controls over financial reporting. The audit committee audit group would test the effectiveness of those controls on an annual basis as part of their Sarbanes-Oxley plan. And KPMG in turn would do their testing as well to come to an independent conclusion on the effectiveness of those controls.” (*Id.* at 43:1-10.)

86. During Mr. Levin’s tenure as Pfizer CFO, the Company identified an issue with respect to monitoring controls over U.S. healthcare compliance, which Pfizer determined should be characterized as a “significant deficiency.” (*Id.* at 78:3-79:10; Pfizer SUF ¶ 138.)

87. During Mr. Levin’s tenure as Pfizer CFO, KPMG conducted audits of the Company’s internal controls and concluded that the Company’s disclosure decisions regarding its internal controls were correct. (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 300:16-302:2; *see also id.* at 253:13-25; Pfizer SUF ¶¶ 139-40.)

88. During Mr. Levin’s tenure as Pfizer CFO, KPMG agreed that any identified issue regarding Pfizer’s monitoring controls over U.S. healthcare compliance could be

characterized at most as a “significant deficiency” rather than a “material weakness.” (Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 213:14-214:13, 218:6-12, 300:16-302:2; *see also* Petrosinelli Decl. Ex. P-2 (Riso Tr.) at 140:3-17; Petrosinelli Decl. Ex. T-1 (Chapman Tr.) at 99:22-100:8.)

89. Mr. Levin testified at his December 10, 2013 deposition as follows:

[N]o one ever thought that we were anywhere close to a material weakness in terms of our financial reporting. As I said, I think that we felt internally within the company there was some debate as to whether we would characterize these as deficiencies or whether they rose to the level of a significant deficiency.

We had a view from KPMG that they viewed it as a significant deficiency. And, again, there is a robust dialog between us and KPMG. There is an area where they have a lot more experience than I do in interpreting PCAOB pronouncements and how those had to work.

(Petrosinelli Decl. Ex. F-2 (Levin Tr.) at 213:14-214:13, 253:13-256:3.)

I. The First Amended Complaint

90. Plaintiffs’ First Amended Complaint names as defendants Pfizer and certain current and former officers of Pfizer, including Mr. Levin. (FAC ¶¶ 23-35.)

91. The First Amended Complaint alleges that defendants “deliberately concealed” from investors information regarding “the materially adverse risks to Pfizer from its illegal off-label marketing” (*id.* ¶ 13), and asserts causes of action for violations of (i) Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, and (ii) Section 20(a) of the Exchange Act (*id.* ¶¶ 149-59).

92. The First Amended Complaint identifies at least 34 days during the Class Period on which Plaintiffs contend that defendants made materially false and misleading statements. (*See* FAC ¶¶ 58-94, Ex. B Items 1-42.)

93. Mr. Levin served as CFO of Pfizer for only 19 of those days identified in the Amended Complaint upon which Plaintiffs contend that defendants made materially false and

misleading statements during the Class Period. (*See id.*)

94. Exhibit B to the First Amended Complaint contains a list of 42 allegedly false and misleading statements regarding Geodon, Lyrica and Zyvox. (FAC Ex. B.)

95. Only 25 of the 42 statements contained in Exhibit B to the First Amended Complaint were made during Mr. Levin's tenure as CFO of Pfizer. (FAC Ex. B Items 1-25.)

96. Of those 25 statements contained in Exhibit B to the First Amended Complaint that were made during Mr. Levin's tenure as CFO of Pfizer, 18 are alleged to be oral statements communicated by individuals other than Mr. Levin. (FAC Ex. B Items 2-10, 12-15, 18-19, 22-24.) The remaining 7 statements were published by Pfizer. (FAC Ex. B.)

97. At the time of Mr. Levin's departure from Pfizer on November 2, 2007, he directly beneficially owned approximately 160,000 shares of Pfizer common stock either in certificated form, in his brokerage account or in his account with Pfizer's stock transfer agent. (Levin Decl. ¶ 3.)

98. As of January 26, 2009, Mr. Levin directly beneficially owned approximately 158,000 shares of Pfizer common stock either in certificated form, in his brokerage account or in his account with Pfizer's stock transfer agent. (*Id.* ¶ 4.)

99. As of October 29, 2014, Mr. Levin directly beneficially owned approximately 183,000 shares of Pfizer common stock either in certificated form, in his brokerage account or in his account with Pfizer's stock transfer agent. (*Id.* ¶ 5.)

Dated: New York, New York
October 30, 2014

Respectfully submitted,

/s/ Jay B. Kasner

Jay B. Kasner

Gary J. Hacker

Alexander C. Drylewski

SKADDEN, ARPS, SLATE,

MEAGHER & FLOM LLP

Four Times Square

New York, New York 10036

Telephone: (212) 735-3000

Fax: (212) 735-2000

jay.kasner@skadden.com

gary.hacker@skadden.com

alexander.drylewski@skadden.com

Attorneys for Defendant Alan G. Levin