UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY K. JONES, Individually and on Behalf of All Others Similarly Situated, Plaintiff, -vs- PFIZER INC., et al., Defendants.	Civil Action No. 1:10-cv-03864-AKH Hon. Alvin K. Hellerstein ECF Case

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT IAN C. READ'S MOTION FOR SUMMARY JUDGMENT

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Defendant Ian C. Read ("Mr. Read") respectfully submits this memorandum of law in support of his motion pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment with respect to all claims asserted against him in the First Amended Complaint ("AC"). In addition to the arguments set forth below, Mr. Read hereby joins in the arguments set forth in the Memorandum of Law in Support of Pfizer Inc.'s Motion for Summary Judgment, dated October 30, 2014 ("Pfizer Memorandum").

PRELIMINARY STATEMENT

This case is primarily about Pfizer's disclosures concerning the government's investigation of Pfizer's marketing of the medication Bextra. It is undisputed that Mr. Read had absolutely nothing to do with any statement about Bextra or the government's investigation of the marketing of the product. And after months of discovery, it is clear that Mr. Read—now the Company's Chief Executive Officer—does not belong in this litigation. The following facts are not disputed:

- Mr. Read did not sign or certify any of Pfizer's SEC filings during the Class Period.
- Mr. Read was not involved in drafting or approving Pfizer's securities disclosures of legal proceedings or of internal controls during the Class Period.
- Mr. Read had no role in setting, approving, or disclosing reserves under FAS 5.
- Mr. Read made *no* statements about Bextra, the government's Bextra investigation, or the settlement of that investigation.
- Mr. Read was not involved in Pfizer's response to the government's Bextra investigation or the settlement of it.

Obviously wanting to drag Pfizer's current CEO into their case, Plaintiffs have alleged that Mr. Read made three misleading oral statements about two other Pfizer products, Geodon and Lyrica. Plaintiffs entirely ignored these allegations throughout discovery. Indeed, Plaintiffs

appear to have abandoned these allegations, because *they did not ask Mr. Read a single question about these statements at his deposition*.

Setting aside Plaintiffs' utter failure to develop these claims against Mr. Read, they fail for several independent reasons. First, Plaintiffs cannot show that they suffered any loss caused by any allegedly misleading statements about Geodon or Lyrica. The sole alleged "corrective disclosure" on January 26, 2009 announced a resolution of the government investigations and named Bextra only—it did not *mention* Geodon or Lyrica, let alone reveal any information about these products that had somehow previously been misstated. In fact, it is clear that the market was unaware that those products were a part of the investigation or the settlement until September 2009, more than six months later, long after the end of the Class Period. *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 551 (S.D.N.Y. 2008), *aff'd*, 597 F.3d 501 (2d Cir. 2010) ("absence of a corrective disclosure [is] 'fatal under Second Circuit precedent.'") (citations omitted). And on the day that September announcement was made, Pfizer's stock price did not significantly decline.

Plaintiffs fare no better on the other elements of their primary claims against Mr. Read. The record establishes that Mr. Read's oral statements about the annual revenues for Geodon and Lyrica were true. And, as to the element of scienter, Mr. Read's statements about Geodon and Lyrica were based on scripts that were prepared for him and approved by numerous professionals, including counsel. Indeed, the record is devoid of *any* evidence that Mr. Read had any reason to believe—let alone actually believed—that any of his statements was false, or that he was reckless in making the statements.

Finally, to the extent that Plaintiffs are still pursuing a claim against Mr. Read on a control person theory, that claim also fails. As the Company's brief explains, there is no primary

violation on which control person liability could be based. And Mr. Read did not, in any event, exercise actual control over any other defendant with respect to the challenged disclosures during the Class Period.

This Court should grant summary judgment in favor of Mr. Read on all claims.

STATEMENT OF UNDISPUTED FACTS AS RELEVANT TO MR. READ

A. Background

A detailed account of the undisputed facts of this case is set forth in Pfizer's Memorandum. This brief recounts only the undisputed facts particularly relevant to Mr. Read's motion.

B. Mr. Read's Role in the Company During the Class Period

For the first seven months of the Class Period, Mr. Read had no responsibility related to the issues raised in the case, as he was responsible for managing Pfizer's commercial operations in Europe, Latin America, Africa and Canada.[1] In August 2006, Mr. Read was appointed President of Worldwide Pharmaceutical Operations ("WPO").[2] During this time he reported to Mr. Kindler, who was Pfizer's CEO.[3] He retained this position until after the end of the Class Period, when he was appointed CEO of Pfizer in December 2010, replacing Mr. Kindler.[4] As President of WPO, Mr. Read had responsibility for Pfizer's sales and marketing operations globally.[5] Mr. Read's responsibilities with respect to the United States included "interaction with the U.S. leadership team, understanding the overall strategies for the year, which would be

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[1] Read Statement of Undisputed Facts ("Read SUF") at ¶ 9.

[2] Read SUF at ¶ 10.

[3] Read SUF at ¶ 11.

[4] Read SUF at ¶ 12.

[5] Read SUF at ¶ 13.

the capital allocations, size of resources, HR talent and planning, things of that strategic nature."[6] With responsibility for approximately 40,000 employees, including 2,000 doctors and 2,000 marketing personnel, Mr. Read's focus was at a high level, in his words, "one principally of leadership."[7] When Mr. Read was promoted to head the WPO, he joined what was referred to as the Executive Leadership Team ("ELT").[8] The ELT acted as a consulting body for the CEO, who had ultimate authority to make decisions on behalf of the Company.[9]

Mr. Read did not have any responsibility during the Class Period for SEC disclosures or for litigation, including government investigations.[10] Mr. Read took no part in the government investigation or negotiating the settlement with DOJ.[11] Indeed, the record reflects more than 30 meetings between Pfizer and Pfizer's counsel and DOJ related to the investigation and settlement leading up to the announcement, and Mr. Read did not attend a single one of them.[12]

C. Mr. Read Had No Role in Preparing Pfizer Public Disclosures During the Class Period

It is undisputed that Mr. Read did not sign or certify any of Pfizer's SEC filings, including proxy statements, Form 10-K annual reports, or Form 10-Q quarterly reports from 2006 through January 2009.[13] Mr. Read was not involved in drafting or approving the disclosures in the legal proceedings section of any Form 10-K annual report or Form 10-Q quarterly report from 2006 through January 2009, and did not exercise any control over the

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[6] Read SUF at ¶ 14.

[7] Read SUF at ¶ 15.

[8] Read SUF at ¶ 16.

[9] Read SUF at ¶ 17.

[10] Read SUF at ¶ 18.

[11] Read SUF at ¶ 19.

[12] Read SUF at ¶ 20.

[13] Read SUF at ¶ 21.

content of that section.[14] Mr. Read also was not involved in drafting or approving the internal controls section of any of those SEC filings, and did not exercise any control over those sections.[15] Mr. Read had no role in setting, approving, or disclosing FAS 5 reserves.[16] Likewise, Mr. Read was not involved in drafting or approving disclosures setting forth revenues that Pfizer achieved for any sales of its pharmaceutical products.[17] During the Class Period, Pfizer had a Disclosure Committee—and Mr. Read was not a member of that committee.[18]

D. Mr. Read's Statements to Investors

In their complaint, Plaintiffs identify three investor conferences in 2007 and 2008 during which Mr. Read allegedly made misleading statements relating to the revenues and safety and efficacy of two products: Geodon and Lyrica.[19]

All of these statements were true, and Plaintiffs do not allege otherwise. Rather, they claim these statements were misleading because they failed to disclose that the sales of these two products were being driven by improper off-label marketing, not their efficacy, safety and performance. Tellingly, *Plaintiffs did not question Mr. Read about any of these three statements during his deposition*.[20] Had they done so, and as explained below, they would have learned that Mr. Read's statements were based on written materials, including scripts, that were prepared for him for use at the three investor conferences.[21] Those materials—and the data contained in them

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[14] Read SUF at ¶ 22.

[15] Read SUF at ¶ 23.

[16] Read SUF at ¶ 24.

[17] Read SUF at ¶ 25.

[18] Read SUF at ¶¶ 26-28.

[19] The allegedly misleading statements are set out in Appendix A.

[20] Read SUF at ¶ 39.

[21] Read SUF at ¶ 34.

about Geodon and Lyrica, which he referenced in his statements—were reviewed by multiple professionals, including counsel.[22]

Plaintiffs also claim that Mr. Read is liable as a "control person" under Section 20(a) of the Exchange Act (¶¶ 158-59), but the only allegations cited in support of that claim are the allegations in Paragraph 31 of the Amended Complaint, which identify Mr. Read and note that he is a member of the ELT, Executive Compliance Committee, and participated in a number of Pfizer conference calls during the Class Period.[23] Plaintiffs have not introduced into the record any evidence that would allow a factfinder to conclude that Mr. Read exerted any actual control over the persons who certified or authored the disclosures.

ARGUMENT[24]

Point I.

Plaintiffs Cannot Establish That Mr. Read Made a Material False Statement

Only the "maker" of an allegedly false statement can be liable as a primary violator of the securities laws under Rule 10b-5. *Janus Capital Grp. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011). Further, summary judgment must be granted where a plaintiff alleges that a defendant affirmatively misstated a material fact but those alleged misstatements prove to be objectively true. *See, e.g.*, *In re Int'l Bus. Mach. Sec. Litig. (IBM)*, 163 F.3d 102, 108 (2d Cir. 1998) (affirming summary judgment for defendants where the evidentiary record showed that "at the time [the alleged misstatements] were made they were truthful").

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[22] Read SUF at ¶ 34.

[23] AC at ¶ 31.

[24] The relevant legal standards are set out in the Pfizer Memorandum.

A. Mr. Read Did Not Make Any of the Allegedly False or Misleading Statements Plaintiffs Identify in Pfizer's SEC Filings

It is undisputed that *none* of the allegedly misleading statements contained in the Company's Form 10-Ks, Form 10-Qs, and proxy statements was signed by, attributed to, or referred to Mr. Read; nor did he have any authority over their contents.[25] Mr. Read was not Pfizer's CEO at the time, and he had no involvement in the drafting or approving of any disclosures about legal proceedings or internal controls. Because only the "maker" of a false statement can be liable as a primary violator of the securities laws under Rule 10b-5, Mr. Read is entitled to summary judgment on those claims. *See Janus Capital Grp.*, 131 S. Ct. at 2302 ("One 'makes' a statement by stating it. . . . For purposes of Rule 10b–5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.").[26]

B. Mr. Read's Three Statements About Geodon and Lyrica Were Not False or Misleading

Despite Plaintiffs' admissions that this case is primarily about Bextra and the Government's investigation of that product, Plaintiffs have sought to keep Mr. Read in this case based on oral statements made by him at three conferences concerning the revenues, efficacy and safety of Geodon and Lyrica. But there is no evidence that any of these statements was false or misleading.[27]

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[25] Read SUF at ¶¶ 21-23.

[26] *See also In re Pfizer Inc. Sec. Litig.*, 936 F. Supp. 2d 252, 269 n.10 (S.D.N.Y. 2013) (on summary judgment, individual defendants could not be held liable for any misstatements in the challenged SEC filings that they did not sign because plaintiffs identified no evidence suggesting they had authority over the content of Pfizer's SEC filings).

[27] *See* Appendix A. Each of Mr. Read's statements was preceded by meaningful cautionary language, and all forward-looking statements are entitled to the safe harbor provisions of the PSLRA. 15 U.S.C.A. § 78u-5(c) (1995).

First, with respect to Mr. Read's statements about revenues for these two products, Plaintiffs *do not* allege that Geodon and Lyrica revenues did not grow, nor do Plaintiffs dispute the actual revenue figures themselves. No evidence has suggested that these figures were not correct. Even if Plaintiffs were correct that the revenue numbers included sales resulting from unlawful promotional conduct, this would not change the fact that the revenues were accurately stated. Thus, none of these statements is false or misleading as a matter of law. *See In re Marsh & McLennan Cos., Inc. Sec. Litig*., 501 F. Supp. 2d 452, 470 (S.D.N.Y. 2006) ("Absent an allegation that [defendant] reported income that it did not actually receive, the allegation that a corporation properly reported income that is alleged to have been, in part, improperly obtained is insufficient to impose Section 10(b) liability.") (citations omitted); *In re FBR Inc. Sec. Litig.*, 544 F. Supp. 2d 346, 356 (S.D.N.Y. 2008) ("Accurate statements of past earnings figures are not themselves actionable under 10(b).") (citations omitted).

As regards to Mr. Read's statements relating to "the efficacy, safety and performance" of Geodon and Lyrica, those statements are either factually accurate or constitute forward-looking statements that cannot be deemed misleading.[28] For example, Mr. Read's statements about Lyrica—involving Pfizer's intent to "broaden the Lyrica label over time" and to develop Lyrica "for new indications"—clearly reflect Pfizer's plans for the future.[29] Mere opinions or predictions of future performance are not actionable under the securities laws unless "they are worded as guarantees or are supported by specific statements of fact, or if the speaker does not

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[28] Plaintiffs' expert reports suggest that they may no longer be pursuing claims based on these statements. For example, Plaintiffs' expert on causation and damages, Steven Feinstein, did not include this category of alleged misstatements in his analysis. Feinstein Rep. at ¶ 6.

[29] At the outset of each conference, Pfizer warned attendees that the discussion would involve forward-looking statements. Read SUF at ¶ 33. *See Gissin v. Endres*, 739 F. Supp. 2d 488, 506-07 (S.D.N.Y. 2010) (noting that "the use of linguistic cues like 'we expect' or 'we believe' when combined with an explanatory description of the company's intention to thereby designated a statement as forward looking satisfies the [PSLRA's] safe harbor.") (quoting *Slayton v. Am. Exp. Co.*, 604 F.3d 758, 769 (2d Cir. 2010).

genuinely or reasonably believe them."[30] *IBM*, 163 F.3d at 107 (internal citations omitted) (holding that statements regarding future payments of dividends were opinions, not guarantees, and therefore inactionable).[31]

Because there is no genuine issue of material fact as to whether Mr. Read's statements were truthful when made, he is entitled to summary judgment.

Point II.

There Is No Evidence Suggesting That Mr. Read Acted With Intent to Deceive, Manipulate, or Defraud Investors

"To establish liability under [Section] 10(b) and Rule 10b-5, a private plaintiff must prove that the defendant acted with scienter, 'a mental state embracing intent to deceive, manipulate, or defraud.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193-94 (1976)). To avoid summary judgment with respect to scienter, Plaintiffs must produce evidence that, "taken as a whole, could support a finding by a reasonable juror that defendants acted with intent to deceive, manipulate, or defraud investors." *In re Northern Telecom Ltd. Sec. Litig.*, 116 F. Supp. 2d 446, 462 (S.D.N.Y. 2000) (granting summary judgment to defendants) (citing *AUSA Life Ins. Co. v. Ernst*

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[30] Likewise, there is no evidence that Mr. Read inaccurately summarized the results of the National Institute of Mental Health's "CATIE" study. Plaintiffs allege that the CATIE study "revealed that Geodon was *not more effective* than the other anti-psychotic drugs to which it was compared." AC ¶ 88 (emphasis added). But Mr. Read did not state that Geodon was more effective than its competitors. Rather, Mr. Read stated that the CATIE study showed that Geodon had a "benign metabolic profile," meaning that Geodon use was not associated with one particular side effect. The AC thus fails even to *allege* that this statement is false or misleading, much less creates a genuine issue of material fact on this point. In fact, one of Plaintiffs' own experts helped author a brochure that specifically highlighted that Geodon was the only one of six atypical antipsychotics not associated with "weight gain and metabolic effect." Read SUF at ¶ 38.

[31] Affirming the district court's summary judgment ruling in *IBM*, the Second Circuit determined that there was no evidence in the record that the speakers did not actually believe their statements, or that the speakers "were aware of any facts undermining the accuracy" of their statements. *IBM*, 163 F.3d at 109; *Lasker v. N.Y. State Elec. & Gas Corp.*, 85 F.3d 55, 58 (2d Cir. 1996) ("[F]uture earnings, sales goals, and [the Company's] desire to achieve continued prosperity [a]re 'just the sort of predictive statements of opinion and belief that courts have found immaterial.'") (citations omitted); *In re Bausch & Lomb, Inc. Sec. Litig.*, 592 F. Supp. 2d 323, 353 (W.D.N.Y. 2008) (finding statements that reflect sales are "going very well commercially" and "dramatic improvements" were made to certain company products constitute "general statement[s] of optimism" and therefore were not actionable).

& Young, 206 F.3d 202, 221 n.12 (2d Cir. 2000)). Because Plaintiffs cannot establish that Mr. Read acted with intent to deceive, manipulate or defraud investors, summary judgment is appropriate.[32]

Mr. Read's comments regarding Geodon and Lyrica were based on materials prepared and vetted by various professionals.[33] Although Plaintiffs failed during Mr. Read's deposition to ask him about his oral statements, the record establishes that Mr. Read's statements were made in the context of high-level Pfizer analyst presentations covering a wide range of topics, made by a number different of Pfizer executives, and were based upon written presentation materials and scripts prepared by and reviewed in advance by a variety of professionals, including operations, accounting and legal counsel.[34] For example, Mr. Read's comments at the January 22, 2007 and March 5, 2008 analyst meetings about Geodon and Lyrica were based on comprehensive, detailed materials prepared by Pfizer's in-house and outside investor relations team, as well as in-house counsel and operations teams.[35] Mr. Read's good-faith reliance on materials prepared in advance by professionals precludes—as a matter of law—any finding of scienter. *See In re Fed. Nat'l Mortg. Ass'n Sec., Deriv. & "ERISA" Litig.*, 892 F. Supp. 2d 59, 72 (D.D.C. 2012) ("[W]here [the defendant] relies in good faith on the professional judgment of the company's

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[32] Plaintiffs said little about Mr. Read's alleged scienter in their complaint, relying solely on Mr. Read's sales of Pfizer stock during the Class Period to pass the pleading stage. But Plaintiffs appear to have abandoned that theory. Plaintiffs failed to question Mr. Read with respect to those sales or introduce any evidence of their significance in the scope of Mr. Read's holdings. In any event, the fact that Mr. Read in fact *increased* his ownership of Pfizer shares by a factor of three during the Class Period establishes that the alleged sales are not evidence sufficient for a jury to find scienter. Read SUF at ¶ 40. *See In re Bristol-Myers Squibb Sec. Litig.*, 312 F. Supp. 2d 549, 561 (S.D.N.Y. 2004) (increase in holdings during the class period is "wholly inconsistent with fraudulent intent").

[33] Read SUF at ¶ 34.

[34] *See* Read Tr. 302:14-24 ("Q:…Before the conference call occurred, do you recall receiving a script or anticipated Q&A from anybody at Pfizer regarding anticipated questions? A: There would be scripts prepared on key talking points. Q: And who would prepare those scripts? A. It would be a combination of, you know, the Marketing organizations, Legal, Financial.") (Read SUF at ¶ 34).

[35] Read SUF at ¶ 34.

internal and external accounting and auditing personnel, and the plaintiffs have not put forth any evidence that he was notified or should have known that [his company's] accounting policies violated GAAP, summary judgment is warranted.") (citations omitted); *see also SEC v. Shanahan*, 646 F.3d 536, 544 (8th Cir. 2011) (affirming summary judgment where SEC failed to prove scienter where defendant relied on inside and outside lawyers and accountants, noting that "[d]epending on others to ensure the accuracy of disclosures . . . is not severely reckless conduct").

Because discovery has revealed nothing from which a reasonable jury could infer that Mr. Read acted with the requisite scienter, summary judgment should be granted.

Point III.

Plaintiffs Cannot Establish Loss Causation With Respect to Mr. Read's Statements About Geodon and Lyrica

A Section 10(b) plaintiff must prove both a "relevant economic loss" and a "causal connection . . . between that loss and the [alleged] misrepresentation . . . ." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). As explained above, it is undisputed that Mr. Read did not make any of the statements of which Plaintiffs complain related to Bextra and the DOJ investigation. The January 26 "corrective disclosure" identified by Plaintiffs did not disclose *any* information about Geodon or Lyrica—the only two products mentioned by Mr. Read in his challenged statements.[36] Indeed, the market did not learn that Geodon and Lyrica were part of the government settlement until September 2009, when Pfizer disclosed the details of the finalized settlement—at which point there was *no significant price movement in the Company's stock*.[37] Because Plaintiffs cannot show either that Mr. Read's alleged misrepresentations

[36] Read SUF at ¶ 42.

[37] Read SUF at ¶ 44.

inflated Pfizer's stock price, or that they suffered a "relevant economic loss" caused by those alleged misrepresentations, Mr. Read is entitled to judgment on all of Plaintiffs' primary claims.

A. Plaintiffs Must Prove Both a "Relevant Economic Loss" and a "Causal Connection" Between that Loss and the Alleged Misrepresentation

"Loss causation can be established either where (1) the market reacted negatively to a corrective disclosure or (2) the materialization of risks that were concealed by the alleged misrepresentations or omissions *proximately caused* plaintiffs' loss." *In re Omnicom*, 541 F. Supp. 2d at 551 (emphasis added) (citing *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 175 (2d Cir. 2005)). A corrective disclosure must reveal a previously undisclosed fact "with regard to the specific misrepresentations alleged in the complaint . . . ." *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 511 (2d Cir. 2010) (citing *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 40-41 (2d Cir. 2009)) (requiring disclosure of a truth "with respect to the specific misrepresentations alleged"). And a plaintiff must demonstrate "a link between [such] dissemination of information about the alleged misrepresentations and significant drops in share price." *In re GlaxoSmithkline Plc. Sec. Litig*, No. 05-cv-3751, 2006 WL 2871968, at *7 (S.D.N.Y. Oct. 6, 2006).

B. Plaintiffs Have Not Shown Evidence Of a Corrective Disclosure With Respect to Mr. Read's Allegedly False Statements

Pfizer's announcement of its $2.3 billion agreement in principle with the DOJ did not mention by name Lyrica, Geodon, or Zyvox.[38] Rather, on January 26, 2009, at the same time Pfizer announced its $68 billion acquisition of Wyeth and an unprecedented 50 percent dividend cut, Pfizer disclosed that the settlement resolved "previously disclosed investigations regarding allegations of past off-label promotional practices concerning Bextra, as well as other open

[38] Read SUF at ¶ 42.

investigations."[39] Tellingly, not a single analyst asked a question about or said a word about the settlement during the analyst calls.[40] And none asked what products were involved in the "other open investigations." All analysts were focused exclusively on the news regarding the Wyeth acquisition, the dividend cut, and the company's disappointing 2009 earnings guidance.[41]

Even when Geodon and Lyrica were first identified in September 2009 as part of the settlement, it was revealed that the investigations of Geodon and Lyrica (unlike Bextra) were resolved with civil settlements and no admission of liability.[42] Similarly, there was no restatement of prior revenues for these products, and their future revenues were unaffected.[43] In fact, Geodon's sales were slightly higher after the Class Period than before, and Lyrica revenue has more than doubled, to nearly $5 billion in 2013.[44]

The identification of Geodon and Lyrica as part of the settlement came long after the "single event date identified" by Plaintiffs' damages and loss causation expert, Steven Feinstein.[45] Indeed, Professor Feinstein explicitly states that "[t]he artificial inflation [of Pfizer stock] was dissipated upon the 26 January 2009 announcement of a record $2.3 billion fine Pfizer agreed to pay to settle the government's investigation into the Company's unlawful promotional activities."[46]

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[39] Read SUF at ¶ 42.

[40] Read SUF at ¶ 43.

[41] *See* Feinstein Dep. Tr. 331:10-13 ("Q. In fact, at all three conferences, if you add them all up, there is not a single question out of the dozens of questions that were asked that was about the settlement; correct? A. That's right.") (Read SUF at ¶ 43).

[42] Read SUF at ¶ 44.

[43] Read SUF at ¶ 45.

[44] Read SUF at ¶ 45.

[45] Read SUF at ¶ 46.

[46] Read SUF at ¶ 47.

Plaintiffs' failure to tie any corrective disclosure to Mr. Read's allegedly false statements regarding Geodon or Lyrica is fatal to their claims against him. *In re Omnicom*, 541 F. Supp. 2d at 552 ("[W]here a disclosure does not reveal the falsity of the alleged misstatements, it does not qualify as 'corrective'" and cannot establish loss causation); *see also Lentell*, 396 F.3d at 173 (plaintiff must show that "the *subject* of the fraudulent statement or omission was the cause of the actual loss suffered") (emphasis in original) (citations omitted). As the Second Circuit has made clear, a corrective disclosure must reveal a previously undisclosed fact "with regard to the specific misrepresentations" at issue. *In re Omnicom*, 597 F.3d at 511 (citing *In re Flag Telecom*, 574 F.3d at 40-41); *In re The Warnaco Grp. Sec. Litig.*, 388 F. Supp. 2d 307, 317 (S.D.N.Y. 2005) (no loss causation where fraud only disclosed after bankruptcy of company and thus did not affect stock price), *aff'd sub nom., Lattanzio v. Deloitte & Touche, LLP,* 476 F.3d 147 (2d Cir. 2007). Courts in this Circuit routinely grant summary judgment to defendants in 10b-5 cases where plaintiffs fail to introduce any expert testimony setting out such a disclosure. *See, e.g.*, *In re Omnicom*, 597 F.3d at 512 (rejecting an event study in finding that "[s]ummary judgment is appropriate here because [plaintiff's expert's] testimony does not suffice to draw the requisite causal connection between the [purported corrective disclosure] and the fraud alleged in the complaint.").[47]

Because Plaintiffs have failed to introduce evidence that would allow a factfinder to determine that Mr. Read's three statements to the market inflated Pfizer's stock price, or that any inflation was dissipated by a disclosure that revealed any falsity with respect to those three

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[47] *See also Gordon Partners v. Blumenthal*, No. 02-cv-7377, 2007 WL 431864, *14 (S.D.N.Y. Feb. 9, 2007) ("[P]laintiffs have offered no event study or similar analysis to show whether any loss (and if so how much) was caused by defendants' conduct as opposed to other market factors. In the absence of proof of loss causation, defendants are entitled to summary judgment dismissing the . . . plaintiffs' § 10(b) and Rule 10b-5 claims."), *report and recommendation adopted*, No. 02-cv-7377, 2007 WL 1438753 (S.D.N.Y. May 16, 2007), *aff'd*, 293 Fed. Appx. 815 (2d Cir. 2008).

statements, Plaintiffs are unable to establish loss causation with respect to Mr. Read and he should be granted summary judgment. *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-9866, 2014 WL 3291230, *3 (S.D.N.Y. July 8, 2014) (granting summary judgment to defendants where the court had excluded plaintiffs' expert report on loss causation).

Point IV.

Mr. Read Is Entitled to Summary Judgment on Plaintiffs' Section 20(a) Claims

It is unclear whether Plaintiffs continue to press control-person claims against Mr. Read. The only allegations of control in the Amended Complaint are found in a single paragraph introducing Mr. Read as a defendant, and allege no more than Mr. Read's position within Pfizer as an officer and member of the ELT. Plaintiffs did not question Mr. Read with regard to any alleged control over any other individual defendant during the Class Period, and the only deposition testimony with respect to control over Pfizer's securities disclosures established that Mr. Read had no control over the individuals drafting those sections.[48]

A. There Is No Evidence of a Primary Violation

Section 20(a) provides for control-person liability "to the same extent as" the controlled entity that committed the violation. 15 U.S.C.A. § 78t(a) (2010). But Plaintiffs failed to establish any underlying primary violation of federal securities law. "Without a primary violation, there can be no secondary, or derivative, violation under Section 20(a)." *In re GlaxoSmithkline*, 2006 WL 2871968, at *14. For the reasons set forth in the Pfizer Memorandum, Plaintiffs have failed to establish a primary violation of the federal securities laws. Mr. Read is therefore entitled to summary judgment on the Section 20(a) control person claims asserted against him.

[48] Read SUF at ¶¶ 48-49.

B. There Is No Evidence That During the Class Period Mr. Read Exercised Actual Control Over Any Other Defendant With Respect to the Alleged Misstatements

To establish control of the primary violator by the defendant, plaintiffs must prove that the defendant had the ability to exercise "actual control" over the primary wrongdoer. *In re Livent, Inc. Sec. Litig.*, 78 F. Supp. 2d 194, 221 (S.D.N.Y. 1999). Actual control requires "the power to *direct*, rather than merely inform" the alleged fraud. *In re Lehman Bros. Mortgage-Backed Sec. Litig.*, 650 F.3d 167, 187 (2d Cir. 2011) (emphasis in original) (dismissing control person claims because "providing advice" that defendants chose to follow "does not suggest control"). To establish control person liability, "the defendant must actually possess, in fact, rather than in theory, the ability to direct the actions of the controlled person." *In re Global Crossing, Ltd., Sec. Litig*., No. 02-cv-910, 2005 WL 1875445, *3 (S.D.N.Y. Aug. 5, 2005) (citations omitted) (internal quotation marks omitted).

Here it is undisputed that during the Class Period Mr. Read did not actually direct or have the ability to direct the actions of any of the other individual defendants. With respect to Pfizer, there is no evidence that Mr. Read exercised any control over the allegedly misleading disclosures in Pfizer's public filings. The most Plaintiffs can point to is that Mr. Read was a member of the ELT. But plaintiffs must show more than that Mr. Read was a member of senior management.[49] *See In re Livent*, 78 F. Supp. 2d at 221 ("Officer or director status alone does not

[49] To the extent Plaintiffs contend that Mr. Read received drafts of the SEC filings, that argument would fail to establish control person liability. Mr. Read was only one of more than 90 recipients of the draft SEC filings, and there is literally no evidence to suggest that Mr. Read reviewed or in any way controlled the disclosures related to government investigations, FAS 5 reserves, or internal controls. *See supra*, at 4-5. Because there is no evidence upon which a reasonable finder of fact could determine that Mr. Read exercised control over the allegedly false and misleading statements in Pfizer's SEC disclosures, Mr. Read cannot be held liable under Section 20(a) and his motion for summary judgment should be granted. *See In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d. 152, 167 (S.D.N.Y. 2012) (dismissing control person claims where, although plaintiffs alleged that the defendant "'was provided with or had unlimited access to copies of the [Funds'] public filings,' they do not allege that [the defendant] signed, drafted approved, or confirmed a misleading statement. Nor do Plaintiffs contend that [the defendant] ordered or encouraged [the primary violators] to sign a misleading statement.") (citations omitted).

constitute control."). Further, there is no evidence that any such general corporate control extended to the complained-of disclosures, as it must. *See, e.g.*, *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 166 (S.D.N.Y. 2012) ("But these allegations are unavailing because they focus exclusively on [the parent company CEO]'s 'control person status' rather than [his] exercise of 'actual control over the matters at issue.'").[50]

[50] As noted above, it is undisputed that Mr. Read had no involvement in drafting any of the disclosures at issue and Plaintiffs cannot point to any fact suggesting that Mr. Read knew or should have known that such disclosures were (allegedly) false. *See supra*, at 4-5. Thus, he cannot be shown to be a culpable participant. *Special Situations Fund III QP, L.P. v. Deloitte Touche Tohmatsu CPA, Ltd.*, No. 13-cv-1094, 2014 WL 3605540, *25 (S.D.N.Y. July 21, 2014) (a plaintiff must show that "the controlling person knew or should have known that the primary violator, over whom that person had control, was engaging in fraudulent conduct") (citations omitted) (internal quotation omitted).

CONCLUSION

For the reasons set forth above, this Court should grant Mr. Read's motion for summary judgment as to all of Plaintiffs' claims.

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Appendix A: Mr. Read's Alleged Misleading Statements[51]

January 22, 2007 Pfizer Analyst Meeting

- "Lyrica's launch has gone extremely well…"
- "Another drug, Geodon, is a quiet but impressive success story. It is now the fastest-growing atypical agent in the US…"
- "Sales of our underlying portfolio - that is revenue excluding products that have lost or are losing exclusivity -grew by 9%. This reflects solid performance of Lipitor, Celebrex, Lyrica, Geodon, among other products."
- "Let's now look at Geodon, a growing success story. Geodon 's 2006 sales of over $600 million and a growth of 31% is a clear sign that the atypical antipsychotic market is changing. With the publication of the landmark CATIE study last year focus on the metabolic profiles of these agents has intensified."
- "Better understanding of Geodon 's dosing, as well as its superior metabolic profile, has made Geodon the fastest-growing atypical medicine in the US market. This growth is being fueled by the results of the major NIMH CATIE study, which showed Geodon to have a benign metabolic profile."
- "This program and the favorable market dynamics highlights the growth potential for Geodon."

March 5, 2008 Pfizer Analyst Meeting

- "The pain market is a $45 billion opportunity with a variety of treatment options. Lyrica is one of our anchor products in this category with a very promising long term outlook."
- "Lyrica is backed by strong data."
- "Lyrica has demonstrated rapid and sustained uptake. 2007 U.S. sales were up 46% with international sales growing 78% to $781 million."
- "To accomplish this [revenue growth], we are using a broad-based, multi-channel campaign to build awareness, e-newsletters, webcasts, in pharmacy adherence programs and a call center for patients, to mention a few of the examples you see on the screen. To maximize the value of Lyrica to patients, we have a robust life cycle plan in place."
- "We also plan to broaden the Lyrica label over time through areas such as post stroke pain, cancer pain, restless legs syndrome and post operative pain."

September 22, 2008 UBS Global Life Sciences Conference

- "Lyrica is demonstrating strong performance in the United States and around the world, primarily driven by the rapid uptake of fibromyalgia indication in the US and by global growth in neuropathic pain conditions."
- "We're differentiating it based on its rapid onset of action, persistence of efficacy and lack of titration, as well as clinical development for new indications such as poststroke pain, cancer pain, restless leg syndrome and postoperative pain."

[51] *See* AC Ex. B.