

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.

Civil Action No. 1:10-cv-03864-AKH

Hon. Alvin K. Hellerstein

**RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANT
FRANK D'AMELIO'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of this Court's Local and Civil Rules, Defendant Frank D'Amelio respectfully submits the following statement of material facts as to which there is no genuine issue to be tried.¹

I. BACKGROUND ON MR. D'AMELIO

1. Mr. D'Amelio became Pfizer's Chief Financial Officer in September 2007, bringing with him almost three decades of operating and financial experience from three large public companies.²
2. As CFO, Mr. D'Amelio signed Pfizer's Forms 10-K and 10-Q, including SOX certifications with respect to those filings, and made statements on the Company's behalf during analyst presentations and earnings calls.³

¹ Capitalized terms have the same definitions as in the Memorandum of Law in Support of Defendant Frank D'Amelio's Motion for Summary Judgment. "Strassberg Ex. ___" refers to exhibits annexed to the Declaration of Richard M. Strassberg in Support of Defendant Frank D'Amelio's Motion for Summary Judgment. "Petrosinelli Ex. ___" refers to exhibits annexed to the Declaration of Joseph G. Petrosinelli in Support of Pfizer's Motion for Summary Judgment.

² Strassberg Ex. G-D (Press Release, Pfizer Pharmaceutical News and Media, Pfizer Names Frank D'Amelio Chief Financial Officer, (August 22, 2007), available at <http://press.pfizer.com/press-release/pfizer-names-frank-damelio-chief-financial-officer>.) Mr. D'Amelio previously worked in various executive and managerial capacities at AT&T Bell Labs, Lucent Technologies, and Alcatel-Lucent. *See id.*

3. In late 2008, Mr. D'Amelio acquired 82,591 shares of Pfizer common stock worth more than \$1.5 million in total through the vesting of restricted stock units.⁴

II. PFIZER'S PROCESS FOR DISCLOSURES IN SEC FILINGS

4. According to Plaintiff's own securities disclosure expert, Pfizer's disclosure process was "very long and lengthy and involved."⁵
5. Statements in Pfizer's SEC filings (including Mr. D'Amelio's SOX certifications) were vetted by dozens of in-house and outside counsel, internal and independent auditors, and senior executives.⁶
6. Pfizer's disclosure process was led by two securities disclosure lawyers with more than 75 years of experience between them: Mr. Fox and Mr. Block.⁷
7. "[T]o ensure that [every litigation update] was accurate and complete," Mr. Fox developed eight steps that Pfizer followed each quarter:⁸
 - a. **Step 1:** Mr. Fox e-mailed 15-20 senior legal division members specializing in each area of Pfizer's legal department (including government investigations) to request disclosures of any significant developments in previously reported matters and of any material legal proceedings that had not been reported previously.⁹

³ See, e.g., Strassberg Ex. J-D (Pfizer Analyst Meeting, Final FD (Fair Disclosure) Wire, Mar. 5, 2008 at 41); Strassberg Ex. N-D (Q3 2007 Pfizer Earnings Call Transcript, dated October 18, 2007 at 6); Strassberg Ex. O-D (Q4 2007 Pfizer Earnings Call Transcript, dated January 23, 2008 at 6-7); Strassberg Ex. P-D (Q1 2008 Pfizer Earnings Call Transcript, dated April 17, 2008 at 5); Strassberg Ex. Q-D (Q3 Pfizer Earnings Call Transcript, dated October 21, 2008 at 7); Petrosinelli Ex. F-1 (Pfizer Inc., 2007 Form 10-K, dated February 29, 2008); Petrosinelli Ex. G-1 (Pfizer, Inc. 2008 Q1-10-Q, dated May 02, 2008); Petrosinelli Ex. H-1 (Pfizer, Inc. 2008 Q2 10-Q, dated August 08, 2008); Petrosinelli Ex. I-1 (2008 Q3 10-Q, dated November 07, 2008).

⁴ See Strassberg Ex. M-D (Pfizer Inc. Notice of Annual Meeting of Shareholders and Proxy Statement and 2008 Financial Report, dated March 12, 2009 ("2008 Proxy Statement"), at 67.)

⁵ Petrosinelli Ex. R-1 (Deposition Transcript of Edward Buthusiem, dated Aug. 1, 2014 ("Buthusiem Tr.") at 323:20-21.) In fact, it was the same process that Mr. Buthusiem had used himself while at GlaxoSmithKline. *Id.* at 319:8-9.

⁶ See *infra* ¶¶ 4-53.

⁷ Petrosinelli Ex. Y-1 (Deposition Transcript of Larry Fox, dated Sept. 26, 2013 ("Fox Tr.") at 161:17-180:21); Petrosinelli Ex. O-1 (Deposition Transcript of Dennis Block, dated Sept. 16, 2013 ("Block Tr.") at 44:6-14.) (See also Rule 56.1 Statement of Undisputed Facts in Support of Pfizer's Motion for Summary Judgment ("Pfizer Rule 56.1 Statement") ¶¶ 2-3.)

⁸ Strassberg Ex. R-D (PFE-JONES 00039919 at -919 (Legal Proceedings Disclosure Process, prepared by Larry Fox, February 27, 2006) [hereinafter PFE-JONES 00039919 (Legal Proceedings Disclosure Process)]); Petrosinelli Ex. Y-1 (Fox Tr. at 165:18-21.)

⁹ Strassberg Ex. R-D (PFE-JONES 00039919 at -919 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 162:4-10 ("I would prepare the first draft of the legal proceedings disclosures for an upcoming periodic SEC report . . . based on the information that I had been provided since our most recent disclosure by our in-house litigators, civil litigation attorneys, patent attorneys and government investigation attorneys.")); Petrosinelli Ex. O-1 (Block Tr. at 41:18-25.)

- b. **Step 2:** Mr. Fox reviewed the responses from those senior legal division members and sought clarification and additional information as necessary. He prepared a first draft of the legal proceedings disclosures, which were then approved by each of the appropriate senior legal division members.¹⁰
- c. **Step 3:** Approximately three weeks before the SEC filing date, Mr. Fox e-mailed Mr. Block and Pfizer's head of litigation a second draft of the legal proceedings disclosures.¹¹ He reviewed their comments, discussed the comments with them, and "ma[d]e various judgments, including with respect to the materiality of various developments."¹² After they would all "get comfortable" with the disclosures,¹³ Mr. Fox prepared a third draft of the legal proceedings disclosures, which were reviewed and revised by Pfizer's head of litigation and Mr. Block.¹⁴
- d. **Step 4:** Approximately two to three weeks before the SEC filing date, Mr. Fox e-mailed the General Counsel a complete draft of the legal proceedings disclosures that had been approved by Mr. Block and Pfizer's head of litigation.¹⁵ This resulted in a fourth draft, incorporating the General Counsel's comments.¹⁶
- e. **Step 5:** Approximately two weeks before the SEC filing date, Mr. Fox e-mailed to KPMG for comment the legal proceedings disclosures that had been approved by Mr. Block, Pfizer's General Counsel, and Pfizer's head of litigation.¹⁷ KPMG

¹⁰ Strassberg Ex. R-D (PFE-JONES 00039919 at -919 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 164:19-165:5 ("I would prepare the first draft, and I would send it to a group of eight or nine in house lawyers in certain areas that always included the [government investigations] lawyer... So there was a group of ... 15 to 20 lawyers who reviewed it in that first stage, and that always included the [government investigations] lawyer.")); Petrosinelli Ex. Y-1 (Fox Tr. at 165:23-166:4 ("I would get comments from that group of 15 to 20 lawyers...")). In addition to this quarterly process, during the course of the Bextra investigation, Mr. Lankler provided regular updates to Mr. Fox and Mr. Block to ensure that the disclosures in the securities filings were up-to-date and accurate. See Petrosinelli Ex. E-2 (Deposition Transcript of Douglas Lankler, dated Jan. 22, 2014 ("Lankler Tr.") at 258:17-259:13); see also Petrosinelli Ex. Y-1 (Fox Tr. at 46:9-15 (testifying that Pfizer's statement that it believed that it had "substantial defenses" to the Government Investigations was "the result of regular updates provided to [Mr. Fox] and to Dennis Block" by the Company's litigators and government investigation attorneys)).

¹¹ Strassberg Ex. R-D (PFE-JONES 00039919 at -919 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 166:5-7); Petrosinelli Ex. O-1 (Block Tr. at 42:8-14 ("[T]here would usually be a discussion between Larry and I. And Larry would typically have knowledgeable people about specific things join the conversation to give us . . . information regarding new matters that might be disclosable and the status of old matters that had been disclosed.")).

¹² Strassberg Ex. R-D (PFE-JONES 00039919 at -919 (Legal Proceedings Disclosure Process)).

¹³ Petrosinelli Ex. Y-1 (Fox Tr. at 166:22-25).

¹⁴ Strassberg Ex. R-D (PFE-JONES 00039919 at -920 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 173:21-23).

¹⁵ Strassberg Ex. R-D (PFE-JONES 00039919 at 920 (Legal Proceedings Disclosure Process)); Petrosinelli Decl. Ex. Y-1 (Fox Tr. at 173:21-174:4).

¹⁶ Petrosinelli Ex. Y-1 (Fox Tr. at 174:11-23).

¹⁷ Strassberg Ex. R-D (PFE-JONES 00039919 at 920 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 174:11-175:2).

often suggested changes to Pfizer's proposed disclosures that the Company implemented.¹⁸ At the same time, Mr. Fox e-mailed the disclosures to the Controller's office.¹⁹

- f. **Step 6:** The Controller's office distributed the approved legal proceedings disclosures to a "very long list of people"²⁰ one to two weeks before the SEC filing, and the disclosures were then reviewed and discussed at the Disclosure Committee meeting, which Mr. Fox, Mr. Block, other Pfizer legal division members, and KPMG attended.²¹ The disclosures were discussed again at the subsequent Certification Meeting, which Mr. Fox, Mr. Block, Pfizer Legal, and KPMG attended.²² In connection with the Certification Meeting, Mr. Block certified the accuracy and completeness of the securities disclosures.²³
 - g. **Step 7:** As a "last step," Mr. Fox sent the final version of the legal proceedings disclosures to Mr. Block and a group of 35 to 40 people, most of whom were in Legal, providing them a last opportunity to make comments before the disclosures were filed.²⁴ Mr. Fox then updated the legal proceedings disclosures to include any "late-breaking" significant developments and reviewed the revisions with Mr. Block and Pfizer's General Counsel, head of litigation, and relevant attorneys for approval.²⁵
 - h. **Step 8:** At the end of the process, Mr. Fox completed, signed, and dated a checklist that all of the steps had been completed.²⁶
8. As part of Pfizer's disclosure process, Mr. D'Amelio participated in the Disclosure Committee meetings.²⁷

¹⁸ See Petrosinelli Ex. O-5 (PFE-JONES 00042203 at -203 (2/15/2006 e-mail from Larry Fox to Jeffrey Kindler, copying Dennis Block et al., concerning "Legal Proceedings Disclosure")); Petrosinelli Ex. K-5 (PFE-JONES 00041249 at -249-50 (2/21/2007 e-mail chain among Allen Waxman, Larry Fox, Dennis Block, and John Chapman concerning "10K comment")); Petrosinelli Ex. I-5 (PFE-JONES 00032806 at -806 (2/17/2006 e-mail from Larry Fox to KPMG NYHQ concerning "E-mail to Eric Riso")); Petrosinelli Ex. A-6 (PFE-JONES 00059156 (2/26/2007 e-mail from Larry Fox to Suzanne Lee)).

¹⁹ Strassberg Ex. R-D (PFE-JONES 00039919 at -920 (Legal Proceedings Disclosure Process)).

²⁰ Petrosinelli Ex. Y-1 (Fox Tr. at 174:16-175:2).

²¹ Petrosinelli Ex. Y-1 (Fox Tr. at 177:23-178:5).

²² Petrosinelli Ex. Y-1 (Fox Tr. at 178:17-179:19).

²³ Strassberg Ex. R-D (PFE-JONES 00039919 at -921 (Legal Proceedings Disclosure Process)); Petrosinelli Ex. Y-1 (Fox Tr. at 169:16-23).

²⁴ Petrosinelli Ex. Y-1 (Fox Tr. at 179:22-180:14).

²⁵ Strassberg Ex. R-D (PFE-JONES 00039919 at -921 (Legal Proceedings Disclosure Process)).

²⁶ Strassberg Ex. R-D (PFE-JONES 00039919 at -921 (Legal Proceedings Disclosure Process)).

²⁷ See Petrosinelli Ex. B-4 (PFE-JONES 00036812 at -812-13 (Minutes from 11/1/2007 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00036882 at -882 (Minutes from 2/27/2008 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00036947 at -947 (Minutes from 4/30/2008 Certification Meeting));

9. The Disclosure Committee's review was aimed at ensuring that Pfizer's disclosures to the investment community were "accurate and complete and fairly present the Company's financial condition and results of operations in all material respects."²⁸
10. Subject matter experts from many areas of Pfizer's business – including Legal, Internal Audit, Investor Development and Strategy, the Controller's office, and Finance – were present as Pfizer's General Counsel and disclosure counsel reviewed active legal proceedings and noted any updates to previously disclosed matters and any matters disclosed for the first time.²⁹
11. As Mr. Block explained, "the head of everything within the organization attended, looked at the disclosure and gave their input as to the accuracy of the disclosures."³⁰
12. Mr. D'Amelio became a member of the Disclosure Committee upon joining Pfizer as CFO and participated in every meeting thereafter concerning the securities filings at issue in the Amended Complaint.³¹
13. His role was "the same as anybody else": "to bring forward any issues or concerns around the disclosures, and to ... listen to the debate around the table."³²
14. The Disclosure Committee's quarterly review concluded with a Certification Meeting in which Pfizer's key decision makers – including its in-house and outside disclosure counsel (Mr. Fox and Mr. Block), independent accountant and auditor (KPMG), and business and finance departments – would provide the CEO and CFO with the information necessary to enable them to execute their SOX certifications of the Forms 10-K and 10-Q on an informed basis.³³

Petrosinelli Ex. B-4 (PFE-JONES 00037021 at -021 (Minutes from 8/6/2008 Certification Meeting));
Petrosinelli Ex. B-4 (PFE-JONES 00037056 at -056 (Minutes from 11/5/2008 Certification Meeting)).

²⁸ See, e.g., Strassberg Ex. T-D (PFE-JONES 00034602 at -602 (Disclosure Committee Charter (attachment to PFE-JONES 00036793, 10/6/2007 e-mail from Mr. Fox to Mr. D'Amelio))).

²⁹ Strassberg Ex. T-D (PFE-JONES 00034602 (Disclosure Committee Charter, attachment to e-mail from Mr. Fox to Mr. D'Amelio dated October 6, 2007, PFE-JONES 00036793)); Petrosinelli Ex. U-1 (Deposition Transcript of Frank D'Amelio, dated Dec. 4, 2013 ("D'Amelio Tr.") at 182:23-184:4).

³⁰ Petrosinelli Ex. O-1 (Block Tr. at 44:15-22).

³¹ See Petrosinelli Ex. V-6 (PFE-JONES 00036782 (Minutes from 10/30/2007 Disclosure Committee Meeting)); Petrosinelli Ex. V-6 (PFE-JONES 00036853 (Minutes from 2/26/2008 Disclosure Committee Meeting)); Petrosinelli Ex. V-6 (PFE-JONES 00035688 (Minutes from 4/28/2008 Disclosure Committee Meeting)); Petrosinelli Ex. V-6 (PFE-JONES 00037016 (Minutes from 8/5/2008 Disclosure Committee Meeting)); Petrosinelli Ex. V-6 (PFE-JONES 00037044 (Minutes from 11/3/2008 Disclosure Committee Meeting)).

³² Petrosinelli Ex. S-1 (Deposition Transcript of Loretta Cangialosi, dated June 21, 2013 ("Cangialosi Tr.") at 53:1-9).

³³ Petrosinelli Ex. B-2 (Deposition Transcript of Jeffrey Kindler, dated Dec. 6, 2013 ("Kindler Tr.") at 175:19-176:24); Petrosinelli Ex. O-1 (Block Tr. at 44:23-45:4 ("[T]he CEO, the CFO, the heads of all the major divisions and most of the senior litigators or senior corporate people . . . went over all questions that were raised during the quarterly period about any disclosure.")).

15. On or before the date of the Certification Meeting, the head of each business and finance unit provided sub-certifications to the CEO and CFO.³⁴

- Loretta Cangialosi, the “chair of the Disclosure Committee, . . . certifi[ed] the committee’s findings that the disclosure controls and procedures are adequate.”³⁵
- Hugh Donnelly, the head of Internal Audit, “certified as to internal control over financial reporting” and the absence of any material weakness in those controls.³⁶
- Mr. Block, outside disclosure counsel, certified that, “to the best of [his] knowledge,” the Form 10-K or 10-Q “fully complie[d] with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; d[id] not contain an untrue statement of material fact as of the end of the period covered by such report; and d[id] not omit a material fact necessary to make the statements in the Form 10-Q [or 10-K], in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report.”³⁷ Pfizer’s General Counsel then provided a substantially identical certification.³⁸

16. The purpose of the Certification Meetings was to raise and vet any concerns “so that the individual[s] signing the documents would be satisfied with the process that was undertaken.”³⁹

³⁴ Strassberg Ex. BB-D (PFE-JONES 00033733 at -735 (Preparation of the 2007 Form 10-K Process Summary, February 21, 2008 (attachment to PFE-JONES 00033720, 2/23/2008 e-mail from Larry Fox to Loretta Cangialosi et al.)); Petrosinelli Ex. B-4 (PFE-JONES 00036812 at -812 (Minutes from 11/1/2007 Certification Meeting) (“Messrs. Kindler and D’Amelio asked the business and financial heads of the Company’s principal business units, David Shedlarz, the Company’s Vice Chairman, Allen Waxman, the Company’s General Counsel, Loretta Cangialosi, the Company’s Controller, and Alan Levin, the Company’s former Chief Financial Officer, to review the draft Form 10-Q and certify as to the accuracy and completeness of the information contained therein. All of the individuals did certify and return copies of their certificates to Messrs. Kindler and D’Amelio.”)).

³⁵ Strassberg Ex. BB-D (PFE-JONES 00033723 at -726 (Disclosure Controls and Procedures, February 22, 2008 (attachment to PFE-JONES 00033720, 2/23/2008 e-mail from Mr. Fox concerning “Disclosure Committee Meeting - Tuesday, February 26”)); *see also* Petrosinelli Ex. B-4 (PFE-JONES 00036812 at -813 (Minutes from 11/1/2007 Certification Meeting)) (“She indicated that the committee concluded that the Company’s disclosure controls and procedures were adequate and effective as of the end of the period covered by the Form 10-Q, and she delivered a certificate from the Disclosure Committee to that effect to Messrs. Kindler and D’Amelio.”).

³⁶ *See, e.g.*, Petrosinelli Ex. B-4 (PFE-JONES 00036812 at -812 (Minutes from 11/1/2007 Certification Meeting)).

³⁷ *See, e.g.*, Petrosinelli Ex. O-7 (PFE-JONES 00040456 at -456 (Memorandum from Dennis Block to Allen Waxman, dated October 31, 2007)).

³⁸ *See, e.g.*, Strassberg Ex. CC-D (PFE-JONES 00046088 (SEC Certification Relating to 2007 Form 10-K)).

³⁹ Petrosinelli Ex. B-2 (Kindler Tr. at 176:4-16 (Mr. Kindler generally inquired about “what matters [the disclosure committee] had considered disclosing and decided not to and would ask them why. We would ask them whether there were any disagreements among them.”)); Petrosinelli Ex. P-2 (Deposition Transcript of Eric Riso, dated Aug. 1, 2013, (“Riso Tr.”) at 183:5-12 (confirming that the “financial and legal team [went] around the table, and . . . went through the [10-Q or 10-K] and people discussed any issues they had with the document before it was filed”; Mr. Kindler “gave everyone an opportunity to speak up and raise concerns.”)); Petrosinelli Ex. P-1 (Deposition Transcript of Larry Bradley, dated Aug. 8-9, 2013 (“Bradley Tr.”) at 60:12-20).

17. To that end, the CEO and CFO assembled and questioned (*inter alia*) in-house and outside disclosure counsel, KPMG, and Pfizer's General Counsel, Controller's office, and Internal Audit.⁴⁰
18. At the close of each Certification Meeting, Pfizer's CEO would ask the entire group if there was any reason that the statements to which he and the CFO were attesting were in any way inaccurate.⁴¹
19. After receiving final assurances, the CEO and CFO (including Mr. D'Amelio after he joined Pfizer) signed their SOX certifications.⁴²
20. As part of the disclosure process, before every quarterly filing, each senior legal division representative provided updates about the Government Investigations, which were compiled by Mr. Fox and shared with Mr. Block.⁴³
21. In addition, Pfizer's Chief Compliance Officer reviewed recent developments regarding the Government Investigations with Mr. Fox and Mr. Block at Disclosure Committee and Certification Meetings; updated Mr. Fox and Mr. Block on developments between meetings as necessary; and discussed with Mr. Fox and Mr. Block potential outcomes, including the risk of debarment, the range of fines in other cases, and views on the \$5 billion demand that Pfizer eventually received.⁴⁴
22. Mr. D'Amelio was at meetings where Mr. Fox and Mr. Block received comprehensive updates regarding the status of Government Investigations.⁴⁵

⁴⁰ See Petrosinelli Ex. B-4 (PFE-JONES 00036812 at 812-13 (Minutes from 11/1/2007 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00036882 at -882-084 (Minutes from 2/27/2008 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00036947 at -947-48 (Minutes from 4/30/2008 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00037021 (Minutes from 8/6/2008 Certification Meeting)); Petrosinelli Ex. B-4 (PFE-JONES 00037056 at -056-57 (Minutes from 11/5/2008 Certification Meeting)).

⁴¹ Petrosinelli Ex. B-2 (Kindler Tr. at 176:17-24); Petrosinelli Ex. P-1 (Bradley Tr. at 64:9-17 (“Q. Did the CEO or CFO of Pfizer ever ask you at such a meeting whether you had any issues or concerns that they should be aware of before issuing their certification? A. Typically at the very end of the meeting the CEO would ask a question of the entire group and ask for any individual to respond if they knew of any reasons for why he should not sign the SEC filing.”)).

⁴² Pfizer Rule 56.1 Statement ¶¶ 18-19.

⁴³ Pfizer Rule 56.1 Statement ¶¶ 6-16.

⁴⁴ Pfizer Rule 56.1 Statement ¶¶ 7-10, 65-67, 84-100.

⁴⁵ See, e.g., Petrosinelli Ex. B-4 (PFE-JONES 00036882 at -883 (Minutes from the 2/27/2008 Certification Meeting) (“Messrs. Waxman and Fox reviewed legal proceedings. Mr. Fox explained that the Form 10-K includes updates on several previously reported legal proceedings as well as a few matters being reported in an SEC filing for the first time. Mr. Waxman noted certain late-February developments that had been added to the 10-K legal proceedings disclosure . . . ”)); Petrosinelli Ex. V-6 (PFE-JONES 00037016 at 0016-17 (Minutes from 8/5/2008 Disclosure Committee Meeting) (“Mr. Lankler reviewed recent developments regarding certain government investigations, including the Department of Justice investigation relating to the marketing and safety of the Company’s COX-2 medicines.”)); Petrosinelli Ex. B-4 (PFE-JONES 00037021 at -021-22 (Minutes from 8/6/2008 Certification Meeting) (“Mr. Lankler reviewed recent developments regarding certain government investigations, including the Department of Justice investigation relating to the marketing and

23. Mr. D'Amelio saw e-mails reflecting the free flow of information between the Chief Compliance Officer and Mr. Fox and Mr. Block.⁴⁶ For example, an April 7, 2008, e-mail from the Chief Compliance Officer, copying Mr. D'Amelio, states:

The Boston office has made a monetary request in the Bextra matter. As predicted, it is absurdly high and not even close to anything we would ever consider (nor, for that matter, is it anywhere close to the highest award DOJ has ever obtained in any matter). . . . We have advised Dennis [Block]. We wanted you to be aware as we will be working through our processes to ensure this does not impact reserve or disclosure obligations (the strong collective sense is that it won't.)⁴⁷

24. Mr. D'Amelio relied on the disclosure process to become familiar with the status of the Government Investigations. As he testified:

Q: [C]an you explain the process that you went through to become familiar with what the status was of that investigation? . . .

A: Sure. So really it was a combination of things. One was my attendance in audit committee meetings where typically Doug Lankler would get up and give an update on litigation matters including this investigation [W]e went through every earnings release process. We have a series of meetings. One is a disclosure committee, one is a certification committee, before I would sign-off on a Q or a K. And those processes included a review of the legal disclosures that were part of those external financial documents.⁴⁸

25. Mr. D'Amelio asked questions of Mr. Fox and Mr. Block at Disclosure Committee and Certification Meetings before signing the SEC filings (including his SOX certifications).⁴⁹

safety of the Company's COX-2 medicines.''); Petrosinelli Ex. V-6 (PFE-JONES 00037044 at -044-45 (Minutes from 11/3/2008 Disclosure Committee Meeting) ("Mr. Lankler reviewed recent developments regarding certain government investigations, including the Department of Justice investigation relating to the marketing of the Company's COX-2 medicines.'')).

⁴⁶ See, e.g., Petrosinelli Ex. Z-5 (PFE-JONES 00059116 at -116 (4/11/2008 e-mail from Mr. Lankler to Mr. Donnelly stating that he advised Mr. D'Amelio regarding the government's demand in the Bextra investigation and cleared with Mr. Block that the demand should not require any disclosure or other obligations)).

⁴⁷ Petrosinelli Ex. Y-5 (PFE-JONES 00047290 at -290 (4/7/2008 e-mail from Mr. Lankler to Mr. Kindler (copying Mr. D'Amelio))).

⁴⁸ Petrosinelli Ex. U-1 (D'Amelio Tr. at 182:24-184:4).

⁴⁹ See, e.g., Petrosinelli Ex. B-4 (PFE-JONES 00036882 at -883-84 (Minutes from 2/27/2008 Certification Meeting) (reporting that Mr. Fox and Mr. Waxman provided updates concerning litigation matters and corresponding changes to the legal proceedings disclosure and Mr. D'Amelio and Mr. Kindler followed up with questions)).

26. Mr. D'Amelio relied on the advice of Mr. Fox and Mr. Block to ensure that Pfizer's legal disclosures were appropriate.⁵⁰ As he testified:

[There are] certain elements of these disclosures where I rely on certain people who have expertise in areas that I don't. I don't have expertise in legal disclosure. I'm not trained in legal disclosure. So on areas like this I do rely on people who have expertise in this area. Quite frankly, at the time the people that were doing this, people like Dennis and Larry, they have decades, decades worth of experience in this area. Dennis is a securities lawyer expert. So yes, I do rely on other people. I need to sign this, I need to get comfortable. Part of how I get comfortable is I get to know these people. But I'm not in any way saying I'm not responsible for signing the Q or the K, I am. But there are certain areas of this where I do rely on experts to get me comfortable.⁵¹

27. Mr. D'Amelio also relied on the Disclosure Committee to "monitor the integrity and effectiveness of the Company's Disclosure Controls"⁵² and on Certification Meetings to serve as a check on Pfizer's disclosures concerning compliance and internal controls.⁵³

28. In addition to the Disclosure Committee and Certification Meetings, Mr. D'Amelio participated in Audit Committee meetings. Those meetings – which were also attended by in-house counsel and KPMG – included updates from Pfizer's then-Chief Compliance Officer, Doug Lankler, on the Company's compliance, the status of continuing government investigations, and the progress with discussions to resolve such investigations.⁵⁴

⁵⁰ See, e.g., Petrosinelli Ex. O-7 (PFE-JONES 00040456 at -456 (Memorandum from Dennis Block to Allen P. Waxman dated October 31, 2007)); Strassberg Ex. JJ-D (PFE-JONES 00044108 at -108 (7/23/2008 e-mail chain among Loretta Cangialosi, Frank D'Amelio, Doug Lankler and Larry Fox concerning "10-Q Legal Proceedings Update—Cox-2 Government Investigations" reporting that Ms. Cangialosi proposed a change to legal disclosure language that was discussed among Mr. Fox, Mr. Block, Mr. Lankler, and Ms. Schulman and approved by Ms. Schulman)).

⁵¹ Petrosinelli Ex.U-1 (D'Amelio Tr. at 205:14-206:7); see also Petrosinelli Ex.U-1 (D'Amelio Tr. at 26:21-27:13 (describing Mr. Fox and Mr. Block as the "two folks who I primarily relied upon relative to [Pfizer's] legal disclosure, including their "FAS 5 disclosures as it relates the Department of Justice's investigation of Bextra and other drugs"))).

⁵² See, e.g., Strassberg Ex. T-D (PFE-JONES 00034602 at -602 (Disclosure Committee Charter (attachment to PFE-JONES 00036793, 10/6/07 e-mail from Larry Fox to Frank D'Amelio outlining the Disclosure Committee process and describing the Committee's role in assisting the executives in "[m]onitor[ing] the integrity and effectiveness of the Company's Disclosure Controls"))).

⁵³ See, e.g., Petrosinelli Ex. B-4 (PFE-JONES 00036812 at -812-13 (Minutes from 11/1/2007 Certification Meeting)).

⁵⁴ See, e.g., Strassberg Ex. E-D (PFE DERIV 00001307 (Minutes from 9/24/2008 Audit Committee Meeting)).

29. KPMG described Mr. Lankler's updates as "very open" and confirmed that he "was responsive to the committee's questions."⁵⁵
30. Mr. D'Amelio relied on these Audit Committee meetings where Pfizer's Chief Compliance Officer gave updates on Pfizer's compliance program and measures taken to address any compliance risks.⁵⁶
31. Further, Mr. D'Amelio participated in, and relied on, Quarterly Review meetings with the Controller's office and KPMG. During those meetings, KPMG – which independently monitored Pfizer's internal controls⁵⁷ – advised Mr. D'Amelio directly on "Legal, Compliance, etc." by "[a]ddress[ing] risks related to regulatory requirements and compliance, as well as internal detection, investigation and reporting of fraud and misconduct . . . and other compliance matters."⁵⁸ Mr. D'Amelio and KPMG also discussed "sales and marketing compliance,"⁵⁹ including "healthcare compliance" in particular.⁶⁰
32. As of July 2007 – months before Mr. D'Amelio joined Pfizer – KPMG concluded that concerns regarding Pfizer's compliance controls had been fully addressed.⁶¹
33. With respect to the 2007 and 2008 audits, KPMG stated that it had reviewed Pfizer's controls and agreed with the Company's determination that those "internal controls over financial reporting" were effective.⁶²
34. To this day, Mr. Fox, Mr. Block, and KPMG stand behind Pfizer's disclosures and the advice that they provided.⁶³

⁵⁵ Petrosinelli Ex. P-1 (Bradley Tr. at 18:19-19:9).

⁵⁶ *See, e.g.*, Strassberg Ex. E-D (PFE DERIV 00001307 (Minutes from 9/24/2008 Audit Committee Meeting)). ("Mr. Lankler provided a review of the Company's 2008 Corporate Compliance program, including updated information on the Corporate Regulatory Compliance He discussed several key compliance matters, including the Company's outreach to the Department of Justice regarding the Bextra matter").

⁵⁷ *See* Petrosinelli Ex. U-1 (D'Amelio Tr. at 269:19-270:17).

⁵⁸ *See, e.g.*, Strassberg Ex. KK-D (KPMG-PFIZ-DS 019807 at -811 (Q2 08 Pfizer Quarterly Review, Controller's Agenda, July 17, 2008)).

⁵⁹ *See* Strassberg Ex. U-D (PFE-JONES 00038491 at -492 (2007 Third Quarter Earnings Release, Agenda – Meeting with CFO)).

⁶⁰ *See* Strassberg Ex. KK-D (KPMG-PFIZ-DS 019807 at -810 (Q2 2008 Quarterly Review – Controller's Agenda, July 17, 2008)).

⁶¹ *See* Petrosinelli Ex. A-5 (KPMG-PFIZ-DS 064159 at -161 (7/26/2007 KPMG "Deficiency Evaluation – Q2 2007")) ("The significant deficiency related to Sales and Marketing practices has been evaluated in the separate HCC memo. The conclusion was that the SD does not exist at the end of Q2.").

⁶² *See* Petrosinelli Ex. F-1 (Pfizer 2007 Form 10-K, 2007 Financial Report at 38 (KPMG stated: "[I]n our opinion, Pfizer Inc . . . maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007.")); Petrosinelli Ex. J-1 (Pfizer 2008 Form 10-K, 2008 Financial Report at 46 (same for 2008)).

⁶³ Pfizer Rule 56.1 Statement ¶¶ 22-29.

III. PFIZER'S PROCESS FOR FINANCIAL STATEMENTS IN SEC FILINGS

35. Pfizer's financial statements in its SEC filings (including Mr. D'Amelio's SOX certifications) – and specifically the judgment that the dual requirements for establishing a FAS 5 reserve for the Government Investigations had not been met – were vetted through a process where Pfizer's Controller's office and in-house government investigation counsel participated in Quarterly Review meetings with KPMG.⁶⁴
36. As one of KPMG's lead signing partners for Pfizer explained, the "purpose of those meetings would be to obtain an update on legal matters, the status of legal matters and give us an opportunity to ask questions and obtain information for purposes of our quarterly review and at year-end for the year-end audit."⁶⁵
37. During the Quarterly Review meetings, Pfizer's in-house government investigations counsel discussed (*inter alia*): (1) the government's claims in the Bextra investigation; (2) Pfizer's potential defenses to limit liability in the Bextra investigation; and (3) the status of settlement negotiations (if any).⁶⁶
38. In addition, Pfizer's in-house government investigations counsel conferred with KPMG (as well as Mr. Block and Mr. Fox) whenever there was a material development in the Bextra investigation in order to assess any impact on the Company's FAS 5 obligations.⁶⁷
39. KPMG was always "satisfied" with the information provided by Pfizer.⁶⁸ Mr. Chapman, one of KPMG's signing partners for Pfizer during the Class Period, testified: "I would not leave a meeting unless I was satisfied. We'd still be in a meeting if I wasn't satisfied. The questions will not go away. You get answers to your questions."⁶⁹ Mr. Bradley, another of KPMG's signing partners for Pfizer during the Class Period, testified that KPMG would ask questions during each quarterly review or year-end audit concerning updates on legal matters and was never dissatisfied with the "quantity or quality of information" provided by the Company.⁷⁰

⁶⁴ See, e.g., Petrosinelli Ex. S-1 (Cangialosi Tr. at 223:5-17); Petrosinelli Ex. P-1 (Bradley Tr. at 154:16-155:15); Petrosinelli Ex. T-1 (Deposition Transcript of John Chapman, dated Sept. 5, 2013 ("Chapman Tr.") at 43:20-44:8); Petrosinelli Ex. T-1 (Chapman Tr. at 45:21-46:20).

⁶⁵ See, e.g., Petrosinelli Ex. P-1 (Bradley Tr. at 77:24-78:16).

⁶⁶ See, e.g., Petrosinelli Ex. S-1 (Cangialosi Tr. at 209:4-210:13); Petrosinelli Ex. S-1 (Cangialosi Tr. at 258:16-25); Petrosinelli Ex. S-1 (Cangialosi Tr. at 314:24-315:7); Petrosinelli Ex. E-2 (Lankler Tr. at 259:14-262:23); Petrosinelli Ex. P-1 (Bradley Tr. at 146:16-147:7); Petrosinelli Ex. P-1 (Bradley Tr. at 153:6-20); Petrosinelli Ex. P-1 (Bradley Tr. at 327:12-328:23); Petrosinelli Ex. T-1 (Chapman Tr. at 43:20-44:8); Petrosinelli Ex. T-1 (Chapman Tr. at 45:21-46:20); Petrosinelli Ex. P-2 (Riso Tr. at 107:12-108:21).

⁶⁷ Pfizer Rule 56.1 Statement ¶¶ 7, 30-37.

⁶⁸ Petrosinelli Ex. T-1 (Chapman Tr. at 46:16-20); Petrosinelli Ex. P-2 (Riso Tr. at 237:23-238:8); Petrosinelli Ex. P-1 (Bradley Tr. at 78:18-78:23).

⁶⁹ Petrosinelli Ex. T-1 (Chapman Tr. at 109:6-19).

⁷⁰ Petrosinelli Ex. P-1 (Bradley Tr. at 78:18-23).

40. Through this process, KPMG reviewed the status of the Government Investigations in the context of “every quarterly filing” to determine whether or not the requirement for recording a reserve had been met.⁷¹
41. KPMG brought “a level of skepticism” to their independent review because they were “not bound or reporting to the client in any way, shape or form.”⁷²
42. KPMG determined that Pfizer was not required under FAS 5 to take a reserve with respect to the Government Investigations until January 2009 when the Company reached an agreement in principle with the government.⁷³
43. KPMG concluded in its 2007 audit results:

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.⁷⁴
44. KPMG provided unqualified opinions throughout the Class Period that Pfizer’s financial statements were accurate, specifically determining each quarter that the Government Investigations did not trigger reserve obligations under FAS 5 until January 2009 when an agreement in principle had been reached with respect to the Government Investigations.⁷⁵
45. As the lead signing partner for Pfizer’s 2008 audit testified, KPMG was “advised that an agreement in principle had been reached in January of 2009,” took that agreement into account in connection with KPMG’s audit of Pfizer’s fiscal year 2008 financial statements,⁷⁶ and concluded “that the management had made a proper determination to record the accrual in its 2008 financial statements.”⁷⁷

⁷¹ Petrosinelli Ex. P-1 (Bradley Tr. at 75:7-76:6).

⁷² Petrosinelli Ex. T-1 (Chapman Tr. at 58:10-20).

⁷³ Petrosinelli Ex. P-2 (Riso Tr. at 260:6-15); Petrosinelli Ex. P-1 (Bradley Tr. at 92:16-93:19).

⁷⁴ Petrosinelli Ex. J-4 (KPMG-PFIZ-DS 018638 (2007 Audit Results and SAS 114 Report)); *see also* Petrosinelli Ex. U-4 (KPMG-PFIZ-DS 00004281 (2/28/2008 KPMG memorandum) (“[W]e believe that Management’s conclusion that no accrual pursuant to FAS 5 as of December 31, 2007 is appropriate.”)).

⁷⁵ Pfizer Rule 56.1 Statement ¶¶ 26-27, 35-41, 43, 47.

⁷⁶ Petrosinelli Ex. P-1 (Bradley Tr. at 90:6-14); *see also* Petrosinelli Ex. P-1 (Bradley Tr. at 93:11-19 (“Q: As a result of the agreement in principle being reached, did KPMG reach any conclusions as to whether any prior period statements issued by Pfizer were materially misstated? A. No, we did not come to any different conclusion, that is we did not determine that any period, any prior period financial statements or filings were materially misstated.”)); Petrosinelli Ex. P-2 (Riso Tr. at 260:6-261:14 (“Q. So up until January of 2009, the

46. Mr. D'Amelio participated in a series of meetings where KPMG offered its advice on Pfizer's financial statements, including the Company's FAS 5 obligations.
47. Mr. D'Amelio attended the Audit Committee meetings along with KPMG⁷⁸ where Pfizer's Chief Compliance Officer – who KPMG described as “very open” and “responsive to the committee member's questions”⁷⁹ – provided updates on the Government Investigations⁸⁰ and Pfizer's General Counsel provided updates on settlement discussions in related litigation.⁸¹
48. Mr. D'Amelio participated in Quarterly Review meetings with the Controller's office and KPMG where KPMG advised that FAS 5 did not obligate Pfizer to reserve for the Government Investigations.⁸²
49. Mr. D'Amelio held “Meetings with the CFO” with KPMG before each earnings release where KPMG again advised that FAS 5 did not require Pfizer to take a reserve for the Government Investigations.⁸³
50. Mr. D'Amelio 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.”⁸⁴

company had determined that the requirements for the posting of a reserve had not been met with respect to the Bextra investigation, correct? A. Correct. . . . Q: Did KPMG reach a conclusion as to whether the company had posted the reserve in the proper period? A: Yes, we believed it belonged in 2008 . . . in the fourth quarter.”); Petrosinelli Ex. P-2 (Riso Tr. at 262:24-263:3 (“Q: Did the entry into a settlement in 2009 cause KPMG to conclude that any prior period financial statement issued by Pfizer had been materially misstated? A: No.”)).

⁷⁷ Petrosinelli Ex. P-1 (Bradley Tr. at 92:20-93:2).

⁷⁸ *See, e.g.*, Strassberg Ex. E-D (PFE DERIV 00001307 (Minutes from 9/24/2008 Audit Committee Meeting)).

⁷⁹ Petrosinelli Ex. P-1 (Bradley Tr. at 18:19-19:9).

⁸⁰ *See, e.g.*, Petrosinelli Ex. U-1 (D'Amelio Tr. at 28:24-29:7); Petrosinelli Ex. S-1 (Cangialosi Tr. at 209:11-21).

⁸¹ *See, e.g.*, Strassberg Ex. E-D (PFE DERIV 00001307 (Minutes from 9/24/2008 Audit Committee Meeting)).

⁸² *See, e.g.*, Strassberg Ex. KK-D (KPMG-PFIZ-DS 019807 (Q2 2008 Pfizer Quarterly Review, Controller's Agenda, dated July 17, 2008); *id.* at -808 (“Observations related to [KPMG's] 2008 Pervasive Audit Considerations” include “Bextra – probable but no estimated range.”)).

⁸³ *See, e.g.*, Strassberg Ex. U-D (PFE-JONES 00038491 at -492-493 (10/27/2007 note from Frank D'Amelio to Loretta Cangialosi attaches “2007 Third Quarter Earnings Release; Agenda – Meeting with CFO, October 17, 2007” which references “Bextra – FAS 5 considerations.”)); Strassberg Ex. AA-D (PFE-JONES 00039437 at -439-40 (Pfizer Inc. 2007 Earnings Release Agenda – Meeting with CFO, January 22, 2008)); Strassberg Ex. AA-D (PFE-JONES 00039437 at -440 (2/5/2008 e-mail from Frank D'Amelio to Loretta Cangialosi attaches notes from “2007 Earnings Release; Agenda – Meeting with CFO,” which references “Bextra – FAS 5 considerations.”)).

⁸⁴ Petrosinelli Ex. U-1 (D'Amelio Tr. at 33:21-34:6); Petrosinelli Ex. U-1 (D'Amelio Tr. at 276:4-15.) Pfizer's former CFOs similarly relied on KPMG's determinations regarding FAS 5. *See* Petrosinelli Ex. F-2 (Deposition Transcript of Alan Levin, dated Dec. 10, 2013 (“Levin Tr.”) at 301:23-302:2).

51. Mr. D'Amelio explained: "KPMG was all over this. You can tell from the meetings they had with me, this came up, they were in all the audit committee meetings where this was being reviewed. They had plenty of opportunity to hear status on this, to interact with folks."⁸⁵ Mr. D'Amelio continued: "There's no question that KPMG was very aware of what was going on with the Government investigations and [Bextra] was on their list ... this was clearly one of their items that was on their review list consistently."⁸⁶

52. Mr. D'Amelio relied in good faith on the advice of KPMG with respect to Pfizer's obligation under FAS 5 to reserve for the Government Investigations. For example:

- An October 20, 2007, note from Mr. D'Amelio states that the government investigation into Bextra was on his "radar screen" following a meeting with KPMG during which Pfizer's FAS 5 obligations were discussed as a "watch item."⁸⁷
- A February 5, 2008, e-mail from Mr. D'Amelio to the Controller's office provided "the summary KPMG reviewed with me regarding the Q4/08 book close and earnings release" with a note from Mr. D'Amelio on the FAS 5 considerations for the government investigation into Bextra: "[N]o add'l accruals required. White paper helped a lot[;] Got John C[hapman] comfortable w/ no add'tl reserves required."⁸⁸
- Mr. D'Amelio's testimony confirms that he relied on Pfizer's subject matter experts and KPMG – *i.e.*, his "accounting team" and the Controller's office (who were "CPAs with extensive experience in accounting") and "KPMG who goes off and does their own independent assessment of whether or not it's required because they've got to put an opinion in this document" – all of whom "concluded that there was no basis for an accrual."⁸⁹

53. To this day, KPMG stands by its advice that Pfizer took a reserve for the Government Investigations at the proper time.⁹⁰

⁸⁵ Petrosinelli Ex. U-1 (D'Amelio Tr. at 239:14-240:4).

⁸⁶ Petrosinelli Ex. U-1 (D'Amelio Tr. at 229:5-10).

⁸⁷ Strassberg Ex. U-D (PFE-JONES 00038491 at -493 (10/27/2007 note from Frank D'Amelio to Loretta Cangialosi attached to "2007 Third Quarter Earnings Release; Agenda – Meeting with CFO.")).

⁸⁸ Strassberg Ex. AA-D (PFE-JONES 00039437 at -440 (2/5/2008 e-mail from Frank D'Amelio to Loretta Cangialosi attaches notes from "2007 Earnings Release; Agenda – Meeting with CFO.")).

⁸⁹ Petrosinelli Ex. U-1 (D'Amelio Tr. at 238:6-239:3).

⁹⁰ Pfizer Rule 56.1 Statement ¶¶ 26-29.

IV. PFIZER'S PROCESS FOR MR. D'AMELIO'S MARCH 5, 2008, STATEMENT ABOUT THE COMPANY'S DIVIDEND

54. On March 5, 2008, Mr. D'Amelio stated during Pfizer's Analyst Day that the Company "expect[s] to continue" to pay its dividend "at least at current levels" absent "significant unforeseen events."⁹¹
55. Mr. D'Amelio's statement was accompanied by meaningful cautionary language warning investors: "Our discussions at this meeting will include forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. The factors that could cause actual results to differ are discussed in Pfizer's 2007 Annual Report on Form 10-K and in our reports on Form 10-Q and Form 8-K."⁹²
56. Mr. D'Amelio's statement was based on the draft Q&A prepared by Investor Relations for his "Financial Overview" presentation,⁹³ which made clear that Pfizer's dividend would remain strong: "We have a long, proven track record of providing a strong, steady dividend, and we see no reason why that can't continue."⁹⁴
57. Those presentation materials had been distributed to a wide range of subject matter experts at Pfizer, including Mr. Fox and others in Legal, Internal Audit, and the Controller's office.⁹⁵ Investor Relations specifically asked those experts whether they saw "any errors or significant issues with any of the presentation and/or notes that must be corrected."⁹⁶

⁹¹ Strassberg Ex. J-D (Pfizer Analyst Meeting, Final FD (Fair Disclosure) Wire, Mar. 5, 2008 at 41) ("So the way I'll say this is significant unforeseen risks and opportunities aside, so significant unforeseen events aside, we expect to continue to generate sufficient cash flow from operations to fund the dividend at least at current levels – at least at current levels.")

⁹² Strassberg Ex. EE-D (PFE DERIV 01136476 at -478 ("Welcome and Logistics" PowerPoint presentation from Amal Naj (attached to PFE DERIV 01136291, 3/1/2008 e-mail from Jeffrey Kindler regarding "Analyst Day – Updated Presentations and Other Information")); *see also* Strassberg Ex. J-D (Pfizer Analyst Meeting, Final FD (Fair Disclosure) Wire, Mar. 5, 2008 (Amal Naj: "Now before we begin I would like to draw your attention to the cautionary language on this slide. . . ."))).

⁹³ *See* Strassberg Ex. EE-D (PFE DERIV 01136291 at -291 (2/29/2008 e-mail from Suzanne Harnett concerning "Updated Presentations and Other Information" for Analyst Day (attaching PFE DERIV 01136463, "Financial Overview" presentation))).

⁹⁴ *See, e.g.*, Strassberg Ex. DD-D (PFE DERIV 01137269 at -269 (3/1/2008 e-mail from Joan Campion (attaching PFE DERIV 01137274 at -277, "draft Q&A – Analyst Day/Financial Overview," "documents for your preparation for March 5th"))).

⁹⁵ *See* Strassberg Ex. EE-D (PFE DERIV 01136291 at -291 (2/29/2008 e-mail from Suzanne Harnett concerning "Analyst Day- Updated Presentations and Other Information" (attaching PFE DERIV 01136463 "Financial Overview" presentation))).

⁹⁶ *See* Strassberg Ex. EE-D (PFE DERIV 01136291 at -291 (2/29/2008 e-mail from Suzanne Harnett attaching "Analyst Day- Updated Presentations and Other Information" (attaching PFE DERIV 01136463 "Financial Overview" presentation))); Petrosinelli Ex. U-1 (D'Amelio Tr. at 130:18-25).

58. In July 2008, Investor Relations and Pfizer's subject matter experts prepared materials for Mr. D'Amelio and others at Pfizer in advance of the Q2 2008 earnings call.⁹⁷
59. Those materials contained the same views on the dividend: "As we've previously stated, unforeseen significant risks and opportunities aside, we expect to continue to generate sufficient cash from operations to fund the dividend at least at the current levels."⁹⁸
60. Pfizer's discussions with Wyeth Pharmaceuticals about the possibility of an acquisition ripened in late 2008 and January 2009.⁹⁹
61. When Pfizer announced its acquisition of Wyeth for \$68 billion on January 26, 2009, it also announced a dividend cut.¹⁰⁰
62. As Mr. D'Amelio testified, the Wyeth acquisition was the sort of "significant unforeseen event" that required Pfizer to cut its dividend.¹⁰¹
63. Mr. D'Amelio testified that Pfizer would not have cut its dividend but for the Wyeth acquisition and certainly not as a result of the settlement of the Government Investigations:

[T]he Government settlement was a one-time event. The dividend is a perpetual event. So I mentioned if we didn't cut the dividend it would have been 10-1/2 billion a year every year if we didn't increase it. After five years that's a 52-1/2 billion dollar number versus a \$2.3 billion one-time event. So that's clearly one reason. That's a big reason . . . [T]he other thing is the acquisition was \$68 billion... Don't get me wrong, I don't like writing checks but [the settlement] was a one-time event. Relative to the other items, it was relatively small."¹⁰²

⁹⁷ See Strassberg Ex. II-D (PFE DERIV 01062630 at -036 (Anticipated Investor Q&A – 2Q08 Conference Call, July 16, 2008)).

⁹⁸ See Strassberg Ex. II-D (PFE DERIV 01062630 at -036 (Anticipated Investor Q&A – 2Q08 Conference Call, July 16, 2008 (attached to PFE DERIV 01062589, 7/17/2008 e-mail from Suzanne Harnett to Frank D'Amelio and others regarding "Qtr 2 Earnings Release Materials."))).

⁹⁹ Strassberg Ex. GG-D (PFE-JONES 00052827 (9/9/2008 e-mail from Richard Passov to Denise Pacchiano (Mr. D'Amelio's administrative assistant))); Strassberg Ex. F-D (PFE-JONES 00039449 at -451 (11/7/2008 e-mail from Chuck Triano to Jeff Kindler and Frank D'Amelio re: "Investor Views – M&A.")); Strassberg Ex. C-D (PFE-JONES 00048296 at -310, -312 (12/16/2008 e-mail from Richard Passov to Frank D'Amelio attaching PowerPoint deck)).

¹⁰⁰ Pfizer Rule 56.1 Statement ¶¶ 120-121.

¹⁰¹ Petrosinelli Ex. U-1 (D'Amelio Tr. at 326:11-20); see also Petrosinelli Ex. U-1 (D'Amelio Tr. at 295:23-296:9 ("Q. Did you believe that as of January 26th, 2009 investors expected Pfizer to cut its dividend in half? A. No, I did not. In fact prior to announcing the acquisition I don't believe investors expected us to cut the dividend at all. Q. Why is that? A. Because we said publicly our intent, significant unforeseen events aside, was to at least maintain the dividend at current levels. Q. Was that in fact Pfizer's intent? A. That was absolutely our intent.")).

¹⁰² Petrosinelli Ex. U-1 (D'Amelio Tr. at 296:9-297:7).

64. Mr. D'Amelio testified:

Q. If Pfizer hadn't made the Wyeth acquisition would it have cut its dividend in January of 2009?

A. We would not.

Q. On January 26th, 2009 there was also an announcement of the settlement between the company and the Government regarding Bextra, correct?

A. Yes.

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

A. It did not."¹⁰³

65. Contemporaneous documents confirm that it was only in the context of the Wyeth acquisition discussions in late 2008 – months after Mr. D'Amelio's March 2008 statement – that Pfizer considered the possibility of cutting the dividend.

- An e-mail to Mr. D'Amelio's assistant on September 9, 2008, states: "Frank gave me a note today that he would normally hand to you for follow up: He wants an analysis that shows a 50% dividend cut for project Horizon [*i.e.*, the Wyeth acquisition] . . . This if [sic] for follow by on 9/17/2008."¹⁰⁴
- A draft memo from Investor Relations to Mr. Kindler and Mr. D'Amelio on November 7, 2008, explored "investor views" about the possibility of a "transformational acquisition" with Wyeth, which was described as the "best fit," and identified one of the investor concerns as a "reduction of dividend payment."¹⁰⁵
- A PowerPoint presentation sent to Mr. D'Amelio on December 16, 2008, stated: "The dividend cut will result in some shareholder movement, but is not expected to be a drag on P's stock price given the strategic merits of the transaction" and because "[i]nvestors [are] not expecting dividend to remain this high in perpetuity."¹⁰⁶

¹⁰³ Petrosinelli Ex.U-1 (D'Amelio Tr. at 295:10-21) (*See also* Pfizer Rule 56.1 Statement ¶¶ 118-119).

¹⁰⁴ Strassberg Ex. GG-D (PFE-JONES 00052827 (9/9/2008 e-mail from Richard Passov to Denise Pacchiano (Mr. D'Amelio's administrative assistant))).

¹⁰⁵ Strassberg Ex. F-D (PFE-JONES 00039449 at -451 (11/7/2008 e-mail from Chuck Triano to Jeff Kindler and Frank D'Amelio re: "Investor Views – M&A.")).

¹⁰⁶ Strassberg Ex. C-D (PFE-JONES 00048296 at -310, -312 (12/16/2008 e-mail from Richard Passov to Frank D'Amelio attaching PowerPoint deck)); *see id.* at -310 (The PowerPoint reflects Pfizer's discussions that it might have to "[r]eset[] annual dividend in connection with the deal [*i.e.*, the Wyeth acquisition].").

66. Plaintiffs' own damages and loss causation expert, Steven P. Feinstein, expressly excluded the dividend cut as one of the factors that caused Plaintiffs' purported damages.¹⁰⁷ Dr. Feinstein determined that Pfizer's price decline due to the dividend cut was "modest at most."¹⁰⁸

V. PFIZER'S PROCESS FOR MR. D'AMELIO'S STATEMENTS ABOUT THE COMPANY'S REVENUE FROM LYRICA

67. In earnings calls on October 18, 2007, January 23, 2008, April 17, 2008, and October 21, 2008, Mr. D'Amelio reported Pfizer's sales revenue from Lyrica.¹⁰⁹ Mr. D'Amelio's statements were based on proposed remarks or "scripts" and other earnings release materials that had been vetted or approved in advance by Investor Relations and a rigorous process of review including inside and outside professionals. Those materials included "Key Messages" memoranda, draft scripts for the CEO and CFO, charts or presentations to assist in preparing for the call, and draft Q&A to help respond to likely questions.¹¹⁰

68. In the week before each earnings call, Investor Relations circulated the materials to a wide range of subject matter experts within Pfizer, including Mr. Fox and Mr. Block (and/or others in Legal), the Controller's office, and Finance.¹¹¹ Investor Relations requested feedback on anything that was "materially incorrect and must be changed."¹¹²

¹⁰⁷ Strassberg Ex. D-D (Report of Professor Steven P. Feinstein, dated June 10, 2014 ("Feinstein Report"), at ¶ 256).

¹⁰⁸ Strassberg Ex. D-D (Feinstein Report at ¶ 182).

¹⁰⁹ See Strassberg Ex. N-D (Q3 2007 Pfizer Earnings Call Transcript, dated October 18, 2007 at 6); Strassberg Ex. O-D (Q4 2007 Pfizer Earnings Call Transcript, dated January 23, 2008 at 6-7); Strassberg Ex. P-D (Q1 2008 Pfizer Earnings Call Transcript, dated April 17, 2008 at 5); Strassberg Ex. Q-D (Q3 Pfizer Earnings Call Transcript, dated October 21, 2008 at 7).

¹¹⁰ See, e.g., Strassberg Ex. V-D (PFE DERIV 01139362 at -362 (10/17/2007 e-mail from Jennifer Davis attaching Q&A documents for 3Q 2007 earnings call)); Strassberg Ex. Y-D (PFE DERIV 01150346 at -346 (1/19/2008 e-mail from Suzanne Harnett concerning "Quarter 4 Earnings Release")); Strassberg Ex. FF-D (PFE DERIV 01149857 at -857 (4/7/2008 e-mail from Suzanne Harnett concerning "Draft 1 of Qtr. 1 Earnings Release and Q&A")); Strassberg Ex. X-D (PFE DERIV 01068552 at -552 (10/17/2008 e-mail from Suzanne Harnett concerning "Qtr. 3 Earnings Release Materials")).

¹¹¹ See, e.g., Strassberg Ex. V-D (PFE DERIV 01139362 at -362 (10/17/2007 e-mail from Jennifer Davis attaching Q&A documents for 3Q 2007 earnings call)); Strassberg Ex. Y-D (PFE DERIV 01150346 at -346 (1/19/2008 e-mail from Suzanne Harnett attaching "Quarter 4 Earnings Release")); Strassberg Ex. FF-D (PFE DERIV 01149857 at -857 (4/7/2008 e-mail from Suzanne Harnett attaching "Qtr 1 Earnings Release and Q&A")); Strassberg Ex. X-D (PFE DERIV 01068552 at -552 (10/17/2008 e-mail from Suzanne Harnett concerning "Qtr 3 Earnings Release Materials")).

¹¹² See, e.g., Strassberg Ex. X-D (PFE DERIV 01068552 at -552 (10/17/2008 e-mail from Suzanne Harnett concerning "Qtr 3 Earnings Release Materials")).

69. After vetting, the final materials were then circulated to over twenty people within Pfizer who provided “help throughout [the] entire process” of creating them.¹¹³
70. Mr. D’Amelio relied on this comprehensive process to vet the statements that he made on each earnings call. As he testified:
- [B]efore we get to this point in an earnings cycle, we’ve had several meetings with I’ll call it just a bunch of people who are involved in the earnings release process. They include people from my team, so controller’s organization, investor relations, Treasury, tax, folks from the legal team. Larry Fox is very involved in this entire process. KPMG is involved in this process. Outside counsel is involved in this process. . . . All those folks, those different organizations that I just referred to have all been through this document in detail.¹¹⁴
71. Mr. D’Amelio’s statements concerning the Company’s sales revenue from Lyrica tracked the scripts, draft Q&A, and other materials – often verbatim.¹¹⁵
72. In addition, Mr. D’Amelio’s statements tracked information that had already been disclosed by Pfizer in press releases to the investor community.¹¹⁶
73. Pfizer’s public announcements on January 26, 2009, did not mention Lyrica.¹¹⁷
74. Lyrica was not identified as part of the Government Investigations and settlement until more than six months later in September 2009 (at which time there was no significant drop in Pfizer’s stock price).¹¹⁸

¹¹³ See, e.g., Strassberg Ex. S-D (PFE DERIV 01143501 at -501 (10/21/2008 e-mail from Suzanne Harnett concerning “Third Quarter Earnings – Final Materials”)).

¹¹⁴ Petrosinelli Ex. U-1 (D’Amelio Tr. at 175:8-176:2); see also Petrosinelli Ex.U-1 (D’Amelio Tr. at 176:23-177:2 (explaining that he got “ready for a call” through a review of the earnings materials)).

¹¹⁵ Compare Strassberg Ex. W-D (PFE DERIV 01028837 (10/17/2007 e-mail from Jeff Kindler (attaching PFE DERIV 01028840 at -841, “11am Version of Jeff’s Call Script”))) with Compl. Ex. B at ¶ 29; compare Strassberg Ex. Z-D (PFE DERIV 01030599 (1/ 21/2008 e-mail from Jeff Kindler (attaching PFE DERIV 01030601 at -606, “Qtr 4 FDA Script 012008 7pm”))) with Compl. Ex. B at ¶ 32; compare Strassberg Ex. Z-D (PFE DERIV 01030599 at -608 (1/21/2008 e-mail from Jeff Kindler (attaching PFE DERIV 01030601 at -608, “Qtr 4 FDA Script 012008 7pm”))) with Compl. Ex. B at ¶ 32; compare Strassberg Ex. HH-D (PFE DERIV 01003447 (Anticipated Investor Q&A – 1Q08 Conference Call)) with Compl. Ex. B ¶ 35; compare Strassberg Ex. S-D (PFE DERIV 01143501 (10/ 21/2008 e-mail from Suzanne Harnett regarding “Third Quarter Earnings – Final Materials” (attaching PFE DERIV 01143504 at -512, “FINAL FDA SCRIPT”))) with Compl. Ex. B ¶ 42.

¹¹⁶ Compare Strassberg Ex. H-D (Press Release, Pfizer Reports Third-Quarter 2007 Results; Reconfirms 2007 and 2008 Revenue and Adjusted Diluted EPS Guidance (Oct. 17, 2007)) with Compl. Ex. B at ¶ 29; compare Strassberg Ex. I-D (Press Release, Pfizer Reports Fourth-Quarter and Full-Year 2007 Results and 2008 Financial Guidance (Jan. 22, 2008)) with Compl. Ex. B at ¶ 32; compare Strassberg Ex. K-D (Press Release, Pfizer Reports First-Quarter 2008 Results; Reaffirms Full-Year 2008 Financial Guidance (Apr. 17, 2008)) with Compl. Ex. B at ¶ 35; compare Strassberg Ex. L-D (Press Release, Pfizer Reports Third Quarter 2008 Results (Oct. 21, 2008)) with Compl. Ex. B at ¶ 42.

¹¹⁷ Pfizer Rule 56.1 Statement ¶¶ 113-123.

75. The sales revenue from Lyrica has increased after the government settlement, growing from \$2.8 billion in 2009 to \$4.6 billion in 2013.¹¹⁹

VI. PLAINTIFFS' LOSS CAUSATION EXPERT, DR. STEVEN P. FEINSTEIN

76. Dr. Feinstein did not disaggregate in his report the statements during the Class Period that, in his view, caused Plaintiffs' purported losses.¹²⁰

77. Dr. Feinstein testified that he did not perform any analysis of "when and how the inflation first got into the stock price" or of which statements at issue caused the supposed inflation.¹²¹

78. Dr. Feinstein testified that he did not and could not determine whether any particular statement caused any losses to Plaintiffs.¹²²

79. Dr. Feinstein testified that the losses attributable to individual statements – e.g., Mr. D'Amelio's specific statements – were not part of, and were irrelevant to, his analysis.¹²³

Dated: October 30, 2014

Respectfully submitted,

/s/ Richard M. Strassberg

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¹¹⁸ Pfizer Rule 56.1 Statement ¶ 133.

¹¹⁹ Compare Strassberg Ex. A-D (Pfizer 2009 Form 10-K, Exhibit 13 at 21) with Strassberg Ex. B-D (Pfizer 2013 Form 10-K, Exhibit 13 at 24).

¹²⁰ Strassberg Ex. D-D (Feinstein Report ¶¶ 29-32).

¹²¹ See Petrosinelli Ex. W-1 (Deposition Transcript of Dr. Steven P. Feinstein, dated Oct. 14, 2014 ("Feinstein Tr."), at 23:16-17).

¹²² Petrosinelli Ex. W-1 (Feinstein Tr. at 127:8-17 ("Q. So there's not a single statement that's identified in the complaint that caused the inflation to increase during the class period...[W]e looked at 41 that are in [Exhibit B]. There are more in the Complaint. There's not a single statement that was made by Pfizer or a Pfizer employee during the class period that...added inflation to the stock. A. Correct.")).

¹²³ Petrosinelli Ex. W-1 (Feinstein Tr. at 183:24-184:4 ("[I]f it's determined by the trier of fact that a particular statement was not responsible for the deception, then I would accept that that statement was not responsible for the \$1.26 deception. Other statements were.")).

CERTIFICATE OF SERVICE

I, Richard M. Strassberg, hereby certify that on October 30, 2014, a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel of record who are not served through the CM/ECF system.

/s/ Richard M. Strassberg
Richard M. Strassberg