

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

**DEFENDANT JEFFREY B. KINDLER'S STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, Defendant Jeffrey B. Kindler respectfully submits this statement of undisputed facts in connection with his Motion for Summary Judgment (the "Motion").

1. From the start of the class period in January 2006 through August 1, 2006, Jeffrey Kindler was General Counsel, Chief Compliance Officer and Vice Chairman of Pfizer, Inc. and, in that capacity, participated in each of the quarterly meetings of Pfizer's Disclosure Committee held in connection with the preparation of Pfizer's SEC filings during that period.¹

2. During the period from January 2006 to August 1, 2006, including during each meeting of the Disclosure Committee during that period, Mr. Kindler was advised

¹ Declaration of Joseph G. Petrosinelli in Support of Pfizer's Motion for Summary Judgment (hereinafter "Petrosinelli Decl.") Ex. A-2 at 8:10-21; Petrosinelli Decl. Ex. V-6 at PFE-JONES 00036383-685.

by Pfizer's in-house disclosure counsel, Lawrence Fox, that he had reviewed Pfizer's proposed legal proceedings disclosures with respect to the government's investigation into Bextra and that the disclosures were accurate and complied with the federal securities laws.²

3. Beginning on August 1, 2006 and through the end of the class period, Mr. Kindler served as CEO and Chairman of Pfizer. During that period, including during each of the quarterly "Certification Meetings" held in connection with his certification of Pfizer's SEC filings, Mr. Kindler was advised by Mr. Fox and by Pfizer's outside disclosure counsel, Dennis Block, of Cadwalader, Wickersham & Taft, that they had reviewed Pfizer's legal proceedings disclosures regarding the government's investigations into the marketing of Bextra and other drugs, and that the disclosures were accurate and complied with the federal securities laws.³

4. During each quarterly Certification Meeting during the class period, each of the heads of Pfizer's various business units, its General Counsel and its Controller signed a "sub-certification" that, to the best of his or her knowledge, the information

² Petrosinelli Decl. Ex. B-2 at 90:2-91:4, 91:13-93:2, 116:25-117:19, 244:1-7; Petrosinelli Decl. Ex. C-2 at 44:2-11; Petrosinelli Decl. Ex. E-2 at 10:2-23; Petrosinelli Decl. Ex. H-5; Petrosinelli Decl. Ex. O-1 at 12:5-13:24, 41:18-45:13, 46:21-23; Petrosinelli Decl. Ex. V-6 at PFE-JONES 00036689-90; Petrosinelli Decl. Ex. Y-1 at 162:4-180:21, 231:3-21; Declaration of James P. Rouhandeh in Support of Pfizer's Motion for Summary Judgment (hereinafter "Rouhandeh Decl.") Ex. B-K at PFE-JONES 00032605.

³ Petrosinelli Decl. Ex. A-2 at 10:10-19; Petrosinelli Decl. Ex. B-2 at 90:2-91:4, 91:13-93:2, 105:23-25, 116:25-117:19, 170:14-22, 174:6-16, 174:21-176:24, 244:1-7; Petrosinelli Decl. Ex. B-4; Petrosinelli Decl. Ex. C-2 at 44:2-11; Petrosinelli Decl. Ex. E-2 at 10:2-23; Petrosinelli Decl. Ex. H-5; Petrosinelli Decl. Ex. O-1 at 12:5-13:24, 41:18-45:13, 46:21-23; Petrosinelli Decl. Ex. P-2 at 183:5-12; Petrosinelli Decl. Ex. V-6; Petrosinelli Decl. Ex. Y-1 at 162:4-180:21, 231:3-21; Rouhandeh Decl. Ex. B-K at PFE-JONES 00032605.

contained in the company's proposed SEC filings for the quarter was accurate and complete.⁴

5. For each quarter ending during the class period, the legal proceedings disclosures regarding the government's investigations into Bextra and other drugs were the product of a process overseen by Mr. Fox that included: (i) regular consultation between the lawyers handling the investigations and disclosure counsel, as well as additional consultations whenever developments warranted; (ii) review and comment by Pfizer's outside disclosure counsel; (iii) review by KPMG, Pfizer's independent auditors; (iv) review by the Disclosure Committee, (v) certifications attesting to the accuracy and completeness of the disclosures by in-house lawyers and by the company's outside disclosure counsel Mr. Block; and (vi) review during the Certification Meeting attended by, among others, outside disclosure counsel, in-house disclosure counsel, the Controller and KPMG. At the end of the process, Pfizer's lead in-house lawyer responsible for supervising the company's government investigations certified that he had "reviewed [each filing] and, to the best of [his] knowledge, believe[d] it to be accurate and complete."⁵

6. Throughout the class period, Pfizer's in-house attorneys responsible for the government's investigations into Bextra and other drugs were under standing instructions to discuss all significant developments in the investigations with Mr. Block

⁴ Petrosinelli Decl. Ex. B-2 at 174:13-175:2; Rouhandeh Decl. Ex. E-K; Rouhandeh Decl. Ex. F-K; Rouhandeh Decl. Ex. G-K; Petrosinelli Decl. Ex. B-4.

⁵ Rouhandeh Decl. Ex. C-K; Rouhandeh Decl. Ex. D-K; Petrosinelli Decl. Ex. A-6; Petrosinelli Decl. Ex. I-5; Petrosinelli Decl. Ex. K-5; Petrosinelli Decl. Ex. O-1 at 41:18-25, 42:8-14, 43:17-44:1, 44:15-22; Petrosinelli Decl. Ex. O-5; Petrosinelli Decl. Ex. Y-1 at 10:16-23, 46:9-23, 162:4-163:2, 165:23-166:19, 173:24-175:2, 176:18-177:16, 177:23-178:5.

and Mr. Fox. Mr. Kindler repeatedly instructed Mr. Block and Mr. Fox to ask for any information they needed.⁶

7. Throughout the class period, Mr. Block and Mr. Fox each repeatedly assured Mr. Kindler that they had the information they needed to advise Pfizer that the legal proceedings disclosures regarding the government's investigations into Bextra and other drugs were accurate and complied with the federal securities laws.⁷

8. As to each quarterly filing during the class period, Mr. Block formally certified in writing that, "to the best of [his] knowledge," it "contain[ed] all the information required to be included in the Form" to be filed and did not "contain an untrue statement of a material fact" and did not "omit a material fact necessary to make the statements . . . not misleading."⁸

9. Based on information from Pfizer's in-house counsel responsible for the government's investigations and the disclosure advice provided by Mr. Block and Mr. Fox, the legal proceedings disclosures in each of Pfizer's SEC filings during the class period discussed the government's investigation into Bextra and changed at various times

⁶ Petrosinelli Decl. Ex. C-2 at 51:22-52:22; Petrosinelli Decl. Ex. E-2 at 258:17-259:13; Petrosinelli Decl. Ex. F-2 at 96:7-97:6, 99:1-100:21; Petrosinelli Decl. Ex. O-1 at 41:18-45:13, 83:19-84:15; Petrosinelli Decl. Ex. R-2 at 137:11-21, 186:15-23; Petrosinelli Decl. Ex. Y-1 at 67:12-18, 144:1-7, 204:21-205:16.

⁷ Petrosinelli Decl. Ex. C-2 at 69:17-24; Petrosinelli Decl. Ex. O-1 at 179:9-12, 183:21-184:5, 198:1-199:14, 269:12-18; Petrosinelli Decl. Ex. Y-1 at 46:13-23, 88:4-11, 109:20-25, 110:3-5, 144:1-7, 180:23-181:16.

⁸ Petrosinelli Decl. Ex. O-1 at 139:22-140:16, 179:9-12, 183:21-184:5, 269:12-18; Petrosinelli Decl. Ex. O-7.

during the class period as the government's investigations into Bextra and other drugs progressed.⁹

10. Mr. Kindler believed in good faith throughout the class period that the legal proceedings disclosures in each of Pfizer's SEC filings, including the discussion of the government's investigations of Bextra and other drugs, were accurate and complied with the federal securities laws.¹⁰

11. Throughout the class period, Mr. Kindler was assured by Pfizer's internal accountants and auditors and by KPMG, including at Certification Meetings, that Pfizer's financial statements conformed with Generally Accepted Accounting Principles ("GAAP").¹¹

12. For each year ending during the class period, KPMG audited Pfizer's financial statements and concluded with respect to each year that Pfizer maintained "effective internal control over financial reporting" and did not determine that there was a material weakness in Pfizer's internal controls over financial reporting.¹²

⁹ Petrosinelli Decl. Ex. B-1 at 18; Petrosinelli Decl. Ex. B-2 at 90:19-91:4, 92:20-93:2, 108:8-110:4, 117:21-118:6, 178:2-23, 269:12-18; Petrosinelli Decl. Ex. C-2 at 30:13-31:9, 52:1-22, 69:17-24, 70:10-24; Petrosinelli Decl. Ex. D-1 at 73; Petrosinelli Decl. Ex. E-2 at 66:11-17:19, 87:9-20, 260:16-261:9; Petrosinelli Decl. Ex. H-1 at 40; Petrosinelli Decl. Ex. O-1 at 41:18-43:3, 54:13-55:1, 83:19-84:22, 197:3-199:14; Petrosinelli Decl. Ex. O-5; Petrosinelli Decl. Ex. O-6; Petrosinelli Decl. Ex. Y-1 at 10:16-23, 18-6:10, 46:13-23, 83:12-22, 87:24-88:14, 144:1-7, 162:4-164:15; Rouhandeh Decl. Ex. H-K.

¹⁰ Petrosinelli Decl. Ex. B-2 at 116:25-117:19; Petrosinelli Decl. Ex. C-2 at 47:2-11, 67:12-25.

¹¹ Petrosinelli Decl. Ex. B-2 at 116:25-117:19, 244:1-7; Petrosinelli Decl. Ex. C-2 at 44:2-11.

¹² Petrosinelli Decl. Ex. B-1 at 34; Petrosinelli Decl. Ex. D-1 at 36; Petrosinelli Decl. Ex. F-1 at 38.

13. Mr. Kindler believed in good faith throughout the class period that Pfizer maintained effective internal controls over financial reporting and did not determine that there was a material weakness in Pfizer's internal controls over financial reporting.¹³

14. For each quarter ending during the class period, Pfizer's Controller, Loretta Cangialosi, evaluated whether the company was required to accrue reserves for contingent liabilities under Financial Accounting Standard No. 5 ("FAS 5"). In connection with each such quarterly evaluation, Ms. Cangialosi, together with KPMG and Mr. Block, were briefed by Pfizer's lead in-house lawyer responsible for supervising the company's government investigations on the status of the government's investigations into Bextra and other drugs.¹⁴

15. For each quarter ending during the class period, with the exception of the fourth quarter of 2008, Ms. Cangialosi determined that no reserve was required in connection with the government's investigations into Bextra and other drugs.¹⁵

16. For each quarter ending during the class period, KPMG reviewed Ms. Cangialosi's determination that no reserve was required in connection with the government's investigations into Bextra and other drugs and concluded that her determination was reasonable and complied with FAS 5.¹⁶

¹³ Petrosinelli Decl. Ex. B-2 at 177:18-180:14, 203:6-21.

¹⁴ Petrosinelli Decl. Ex. B-2 at 90:19-91:4, 92:20-93:2, 108:8-110:4, 117:21-118:6, 178:2-23, 218:6-219:4, 224:8-13; Petrosinelli Decl. Ex. C-2 at 30:13-31:9, 52:1-22; Petrosinelli Decl. Ex. E-2 at 66:11-17:19, 87:9-20, 258:17-261:9; Petrosinelli Decl. Ex. F-5; Petrosinelli Decl. Ex. O-1 at 41:18-43:3, 54:13-55:1, 83:19-84:22, 197:3-199:14; Petrosinelli Decl. Ex. P-2 at 107:12-25; Petrosinelli Decl. Ex. Q-1 at 154:16-155:15, 323:17-21; Petrosinelli Decl. Ex. S-1 at 209:4-210:25, 275:11-15, 285:4-12, 367:23-368:14, 374:21-375:21; Petrosinelli Decl. Ex. T-1 at 46:16-47:14; Petrosinelli Decl. Ex. V-4; Petrosinelli Decl. Ex. Y-1 at 10:16-23, 18-6:10, 46:13-23, 162:4-164:15; Rouhandeh Decl. Ex. J-K.

¹⁵ Rouhandeh Decl. Ex. K-K.

¹⁶ Petrosinelli Decl. Ex. S-1 at 380:19-383:15.

17. For each quarter ending during the class period, Ms. Cangialosi certified in writing that Pfizer's financial statements fairly presented the financial condition of the Company.¹⁷

18. For each quarter ending during the class period, with the exception of the fourth quarter of 2008, Mr. Kindler was assured by the company's inside and outside accountants and its outside auditors at KPMG that no reserve was required in connection with the government's investigations into Bextra and other drugs.¹⁸

19. Mr. Kindler believed in good faith throughout the class period that Pfizer's accounting for its contingent liabilities, including with respect to its reserve determinations regarding the government's investigations into Bextra and other drugs, were accurate and complied with the federal securities laws.¹⁹

¹⁷ Petrosinelli Decl. Ex. B-2 at 222:25-223:14; Petrosinelli Decl. Ex. B-4 at PFE-JONES 00036812-13; Petrosinelli Decl. Ex. V-4; Rouhandeh Decl. Ex. F-K; Rouhandeh Decl. Ex. I-K; Rouhandeh Decl. Ex. K-K.

¹⁸ Petrosinelli Decl. Ex. B-2 at 116:25-117:19, 218:6-219:4; Petrosinelli Decl. Ex. W-3 at 4-6.

¹⁹ Petrosinelli Decl. Ex. B-2 at 218:7-14; Petrosinelli Decl. Ex. S-1 at 380:19-383:15.

Dated: October 30, 2014

Respectfully submitted,

By: /s/ James P. Rouhandeh

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