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 CLASS ACTION PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO PFIZER INC.'S AND THE INDIVIDUAL DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

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STATUTES, RULES AND REGULATIONS

GLOSSARY OF DEFINED TERMS

"2004 CIA": Corporate Integrity Agreement Between the OIG and the Department of Health and Human Services and Pfizer, dated May 11, 2004.

"AUSA": Assistant U.S. Attorney

"Bextra Investigation" or "Government Investigations": Used alternatively to reference the Government's investigation into alleged misbranding ("off-label promotion") of Bextra, Geodon, Lyrica, and Zyvox

"Block": Dennis Block, Pfizer's outside Disclosure Counsel

"Cangialosi": Loretta Cangialosi, Pfizer SVP and Controller (Principle Accounting Office)

"CIA": Corporate Integrity Agreement

"Class Period": January 19, 2006 through January 23, 2009

"CME": Continuing Medical Education

"Covington": Covington & Burling LLP

"Davis Polk": Davis Polk & Wardwell

"Donnelly": Hugh Donnelly, V.P. Internal Audit

"DOJ": Department of Justice

"DPN": Diabetic peripheral neuropathy

"ELT": Executive Leadership Team

"EPS": Earnings Per Share

"Epstein": Epstein Becker & Green, P.C.

"FAS 5": Statement of Financial Accounting Standards No. 5

"Farina": Thomas Farina, Pfizer District Manager

"FDA": U.S. Food and Drug Administration

"FMS": False & Misleading Statements Chart

"Fox": Lawrence Fox, Pfizer's in-house Disclosure Counsel

"GAAP": Generally Accepted Accounting Principles

"GAP": Generalized Anxiety Disorder

"Giampetruzzi": Gary Giampetruzzi, Pfizer's in-house Investigation Counsel

"Government Investigations" or "Bextra Investigation": Used alternatively to reference the Government's

GLOSSARY OF DEFINED TERMS

investigation into alleged misbranding ("off-label promotion") of Bextra, Geodon, Lyrica, and Zyvox

"Government": Refers collectively to the U.S. Department of Justice, the U.S. Attorney's Office, Health and Human Services Office of Inspector General, and/or any other federal governmental agency

"GSK": GlaxoSmithKline

"HCC": Healthcare compliance

"HHS": Department of Health and Human Services

"IA": Pfizer's Internal Audit Department.

"Investigation Counsel": Refers to all lawyers who investigated, provided input, or conveyed to others information concerning the Government Investigations, including outside counsel Covington & Burling LLP, Sidley Austin (Bextra), King & Spalding (Bextra), Ropes & Gray (Bextra and Zyvox), Davis Polk & Wardwell (Lyrica), and DLA Piper (Geodon). In terms of in-house Investigation Counsel, they included, among others, Douglas Lankler, Carlton Wessel, and Gary Giampetruzzi.

"KOLs": Key Opinion Leaders

"KPMG": KPMG LLP

"Lankler": Douglas Lankler, Chief Compliance and Risk Officer

"Mooney": Chuck Mooney, Director of Internal Audit

"NeP": Neuropathic pain

"OA": Osteoarthritis

"OIG": Health and Human Services Office of Inspector General

"PD": Primary dysmenorrhea

"Pfizer" or the "Company": Refers to Pfizer Inc. and its wholly owned subsidiaries, as well as any entities that later became its wholly owned subsidiaries

"PHN": Postherpetic neuralgia

"PLT": Pfizer Leadership Team

"POA": Plan of Action

"RA": Rheumatoid arthritis

"Sonnenschein": Sonnenschein Nath & Rosenthal

"SOX": Sarbanes-Oxley Act of 2002, 15 U.S.C. §7201, *et seq.*

"USAO": U.S. Attorney's Office

GLOSSARY OF DEFINED TERMS

"USPO": Pfizer's U.S. Pharmaceutical Operations

"USSG": U.S. Sentencing Guidelines

"Wessel": Carlton Wessel, Pfizer's in-house Investigation Counsel

"WPO": Pfizer Worldwide Pharmaceutical Operations

I. INTRODUCTION

This is a simple case against one of the world's most sophisticated companies. Defendants assured the public that Pfizer was nothing like the many law-breaking pharmaceutical companies at the time: "In a time when the news media is full of stories of business leaders and companies whose actions have engendered public suspicion and mistrust, Pfizer truly stands apart."[1] Indeed, defendants even distinguished Pfizer from the law-breaking subsidiaries it acquired: "Pfizer's marketing and promotion practices are not involved in the [criminal plea and multi-million-dollar] settlement. The company has internal controls to guard against these types [off-label promotion] of practices."[2] Unlike these other companies, at Pfizer, "[c]ompliance with all relevant statutes and rules is both the legacy of our 150-year history and one of our most important advantages in global business."[3]

Defendants painted a pretty picture. If only it had been true.

In stark contrast with his publicly proclaimed pride in Pfizer's legacy of compliance, behind Pfizer's closed doors, Pfizer CEO Hank McKinnell lamented being "understandably angry and embarrassed by these [unsatisfactory internal audit] findings . . . as indeed we ALL should be."[4] But unsatisfactory audits were only the tip of an iceberg of corruption at Pfizer. Whistleblowers led to a series of Government Investigations that exposed a mountain of evidence of Pfizer's off-label

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1 *See* Chart of Defendants' Class Period False and Misleading Statements ("FMS"), attached hereto as Attachment 1, No. 2.

2 FMS No. 19. All "Ex. __" references herein are exhibits attached to the Declaration of Henry Rosen in Support of Plaintiffs' Memorandum of Law in Opposition to Pfizer Inc.'s and the Individual Defendants' Motions for Summary Judgment, submitted herewith unless otherwise noted. Unless otherwise noted, all emphasis is added and citations are omitted.

3 Plaintiffs' Statement of Material Facts Requiring Denial of Defendants' Motions for Summary Judgment, filed herewith ("PSMF"), ¶9; FMS No. 2.

4 Ex. 102 at Jenner-A 10000251931.

promotion of several drugs, primarily Bextra: thousands of conclusively incriminating contemporaneous call notes, sales contests for off-label surgical protocols, a District Manager directing Sales Representatives to destroy evidence of off-label promotion – and the list went on and on. Publicly, however, defendants maintained their law-abiding mask by declaring their belief in non-existent "substantial defenses" to the Government Investigations and refusing to book any earnings-lowering reserves for an investigation that was destined to result in a massive fine.

On January 26, 2009, Pfizer reached this inevitable destination with an announcement of a $2.3 billion resolution of the Government Investigations, which, for the first time, Pfizer publicly acknowledged was all about off-label promotion. Pfizer did "truly stand[] apart," with what was the largest fine in U.S. history. The market was shocked, and Pfizer's investors lost billions that day. Defendants, however, were not shocked, as internal documents show that defendants predicted the reputational harm that Pfizer eventually suffered from the announcement.

As was the case with the Government Investigations, as defendants' culpability becomes more obvious, they protest their innocence more loudly. Defendants' motion for summary judgment proves this point. Their main argument is that they should avoid trial because they are only guilty of relying on counsel. Who is responsible for lying to investors has become a shell game. According to the defendants, it is anyone but them. It could be another defendant, an inside lawyer such as Lankler or Fox, Pfizer's Controller Cangialosi, an army of outside lawyers, including those at Cadwalder and Covington, Pfizer's outside auditors or countless other possibilities. They are willing to throw anyone under the bus to shield themselves from liability, just as they did to their own employees in the Bextra Investigation. Even if defendants were entitled to raise such a defense here, which they are not, it could never amount to any more than a factor for the jury to consider when

weighing defendants' good-faith defense. A reliance-on-counsel defense is unquestionably ***not*** a complete defense in the Second Circuit.

Recognizing the fatal flaws in their reliance-on-counsel and auditors defense, defendants either disavow the authority to make statements or rehash long-rejected arguments that the statements were not materially misleading to investors.

Defendants' final argument is even more facially implausible: shareholders could not have been harmed by the announcement of an unprecedented $2.3 billion fine for a crime whose true nature defendants concealed and whose commission they denied. As the Court stated during the July 7, 2014 status conference, regarding defendants' anticipated motion for summary judgment on loss causation: "How can you prove, in a mixed causation case, that nothing focused on the settlement? . . . You make your motion, but I don't know how a judge can decide, as a matter of law, that one thing, that the settlement didn't have any impact on price." Plaintiffs' highly qualified expert carefully analyzed all of the causes and circumstances concerning Pfizer's stock price drop and he determined the amounts attributable to all non-fraud factors (*i.e.*, causes other than the settlement announcement). Defendants' expert agrees with, or does not dispute, the vast majority of plaintiffs' expert's findings. He does not dispute Pfizer's total residual share-price drop, and he does not offer any competing estimates of the price drops attributable to the non-fraud factors. The only explanation for the remaining price drop is the settlement announcement.

Defendants have woefully failed to meet their burden to establish an entitlement to summary judgment, and plaintiffs respectfully request that the Court deny defendants' motions in their entirety.

II. OVERVIEW OF MATERIAL FACTS

A. Pfizer Knew from the Neurontin Settlement the Risks It Faced

In May 2004, Pfizer announced that it had paid $430 million to settle criminal and civil charges for the illegal off-label promotion of Neurontin. As part of that settlement, Pfizer entered into a Corporate Integrity Agreement ("CIA") with the Office of the Inspector General ("OIG"),[5] which required defendants to track and detect off-label promotion of its drugs, including supplying the OIG with "data on the off-label use of products [and] the percentage of off-label sales."[6]

Prior to the Neurontin settlement, in November 2003, Pfizer assured the government that it promoted all Pfizer drugs on-label and it was Warner-Lambert's sales force that had been responsible for the illegal promotion of Neurontin.[7] In January 2004, McKinnell assured Pfizer's Board of Directors that the DOJ's announcement of the Neurontin settlement would "make clear [to the public] that [the Neurontin issue] was a legacy Warner-Lambert matter involving activities that occurred nearly eight years ago and does not involve any allegations concerning Pfizer's conduct."[8] But at the time Pfizer made that assurance to the DOJ, defendants knew the Company was illegally promoting its drugs on an unprecedented scale.[9] Pfizer's disavowal of any illegal conduct makes

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[5] Corporate Integrity Agreement Between the OIG and the Department of Health and Human Services and Pfizer, dated May 11, 2004 ("2004 CIA"); PSMF ¶¶2-4.

[6] *See* Ex. 190 at PFE DERIV 00006968.

[7] *See* Ex. 314 at DOJ000213.

[8] *See* Ex. 376 at PFE DERIV 00000373-74.

[9] PSMF ¶¶122-150, 154-175, 195-197, 205-222, 237-259, 273-284, 298-310.

sense; defendants were well aware that the reputational risk to Pfizer, should it be found to be breaking the law on such a grand scale, was enormous.[10]

Kindler and McKinnell supervised the Neurontin settlement negotiations, knew how the $240 million criminal fine had been calculated and were fully aware of the obligations imposed by the 2004 CIA.[11] Kindler was also familiar with the United States Sentencing Guidelines and understood how those Guidelines were used to calculate fines for corporate defendants if they were found guilty or pled guilty to illegal off-label promotion of pharmaceuticals.[12] As was true in the Neurontin case, Kindler knew that the primary variable for determining a fine for off-label promotion is the amount of gain from the crime.[13]

Defendants knew of this methodology and understood that it was readily available to estimate the loss stemming from the Bextra Investigation. By January 2006, defendants knew what Pfizer's U.S. Bextra revenues were from the time it was introduced to the market to the time it was withdrawn.[14] Defendants were also required to provide the OIG with data concerning the off-label use and sales of Pfizer's products. Defendants had the ability to derive all the variables in the fine calculation. Despite these facts, defendants refused to apply the Neurontin methodology to calculate a reasonable estimate of the Company's liability for the Bextra Investigation.[15]

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[10] Ex. 438 at PFE-JONES 00005596-98; Ex. 105 at PFE DERIV 01002341; Ex. 156 at PFE DERIV 01062960; Ex. 380 at PFE DERIV 00003792.

[11] Ex. 54 (10/10/14 Kindler Depo.) at 104:3-8; Ex. 59 (11/11/13 McKinnell Depo.) at 83:20-84:8.

[12] Ex. 54 (10/10/14 Kindler Depo.) at 105:4-14.

[13] Ex. 54 (10/10/14 Kindler Depo.) at 105:18-106:3; Ex. 255 at 46-50.

[14] For example, Pfizer's 2005 Form 10-K set forth, along with other drugs, Bextra revenues for the years 2003-2005. Dkt. 247-1 (2005 Form 10-K) at 66 of 726.

[15] Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 25-46.

B. Pfizer's Off-Label Promotion of Bextra and Destruction of Evidence

The record demonstrates that prior to the Class Period, Pfizer had engaged in the pervasive off-label promotion of the blockbuster drug Bextra for, *inter alia*, acute pain, pre- and post-operative pain and at unapproved doses.[16] Pfizer sought the approval of Bextra for, among other indications, acute pain, pre-operative pain and opioid-sparing in the context of surgery and in doses up to 40mg.[17] In November 2001, the U.S. Food and Drug Administration ("FDA") denied approval of Bextra for these uses.[18] Instead, the FDA limited its approval to 10mg for osteoarthritis ("OA") and rheumatoid arthritis ("RA") and 20mg for primary dysmenorrhea ("PD").[19] Undeterred, Pfizer widely promoted Bextra for the very uses and doses the FDA had rejected.[20] Pfizer's message was that "Bextra can be used pre- and post- operatively."[21] Pfizer's sales force understood the message to sell Bextra for acute pain. For example, by early 2003, Pfizer's sales force was told to market Bextra to "anyone that uses a scalpel for a living."[22] By August 2004, more than 50% of Bextra 20mg samples "ha[d] been going to providers who don't typically treat primary dysmenorrhea,"[23] the only indication for which 20mg doses were approved.[24]

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16 PSMF ¶52.

17 PSMF ¶53.

18 PSMF ¶¶56-66.

19 PSMF ¶¶53.

20 PSMF ¶¶56-66. *See also* Ex. 1 (Avorn Report) at 11-19.

21 Ex. 189 at Levy-L10000300174.

22 Ex. 147 at BEX 000143047.

23 Ex. 288 at BEX0060062253.

24 PSMF ¶¶53, 66.

In February 2004, the DOJ requested documents and information from Pfizer related to the promotion and marketing of Bextra and Celebrex and informed Pfizer that a *qui tam* complaint had been filed alleging the off-label promotion of Bextra.[25]

On July 15, 2004, less than two months after agreeing to pay $430 million to settle the Neurontin case, Pfizer made a presentation to the DOJ concerning the allegation that Pfizer was promoting Bextra off-label.[26] During that presentation, Pfizer acknowledged several ways it illegally promoted Bextra, including promoting it for acute pain, using improper comparative claims, improperly using medical literature for pre- and post-operative use, establishing protocols and standing orders at hospitals to prescribe Bextra for unapproved uses and promoting it for doses outside the label.[27]

On November 16-17, 2004, Pfizer's outside criminal investigation counsel, Covington & Burling LLP ("Covington"), made another presentation to the DOJ concerning evidence of the Company's illegal promotional activities, gathered during an internal investigation.[28] Pfizer's investigation confirmed the systemic and pervasive off-label promotion of Bextra, as alleged in the *qui tam* complaint.[29] For example, Pfizer confirmed that its sales representatives were regularly promoting Bextra as effective for acute pain.[30] The investigation also confirmed that Pfizer sales

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[25] Ex. 153 at KPMG-PFIZ-DS 053290; Ex. 244 at PFE-JONES 00103712-13.

[26] Ex. 247 at PFE DERIV 00066668; Ex. 211 at PFE-JONES 00006992-93.

[27] Ex. 247 at PFE DERIV 00066670.

[28] Ex. 296 at BEX 000000059-238; Ex. 211 at PFE-JONES 00006993-94; *see also* Ex. 434 at PFE DERIV A 0007406-07.

[29] PSMF ¶128.

[30] *Id.* at BEX 00000082-83, 93-104, 149-79, 200-207.

representatives were obtaining standing orders and protocols to use Bextra off-label to treat surgical pain and were providing 20mg samples to doctors who did not treat PD.[31]

At the November 22, 2004 Pfizer Leadership Meeting, Kindler discussed the November 16-17 meeting between Pfizer and the DOJ.[32] Between December 2004 and February 2005, Covington interviewed several Pfizer sales representatives, who confirmed that their District Manager had directed them to alter and delete electronic documents related to the off-label promotion of Bextra.[33]

Defendants were aware of the sales representatives' document destruction and Pfizer's off-label promotion of Bextra. For example, Kindler admitted that with regard to the off-label promotion of Bextra, he "was made aware [in 2004] that there was wrongdoing, that people in our field force, including managers in our field force, and people at junior levels of our marketing organization, ***had engaged in conduct that resulted in off-label promotion***."[34] Waxman also knew of the Bextra document destruction by March 2005.[35] Likewise, McKinnell and Levin admitted that they were aware in 2005 that Pfizer employees had violated healthcare laws in promoting Bextra for unapproved uses.[36]

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[31] *Id.* at BEX 00000184, 236.

[32] Ex. 434 at PFE DERIV A 0007406-07.

[33] Ex. 473 at PFE-JONES 00103565; Ex. 244 at PFE-JONES 00103570; Ex. 245 at PFE-JONES 00103586; Ex. 474 at PFE-JONES 00103591; Ex. 475 at PFE-JONES 00103607; Ex. 476 at PFE-JONES 00103615; Ex. 493 at PFE-JONES 00104197.

[34] Ex. 436 at PFE-JONES 00000894; Ex. 436 (Kindler 9-21-10 Deposition in the *In re Pfizer, Inc., Shareholder Derivative Litigation*) at PFE-JONES 00000894.

[35] Ex. 412 at PFE DERIV 00076059; Ex. 68 (10/16/14 Waxman Depo.) at 31:7-20.

[36] *See* Ex. 59 (11/11/13 McKinnell Depo.) at 255:18-257:1; Ex. 58 (9/23/14 Levin Depo.) at 10:21-11:7.

Pfizer's upper management approved and/or acquiesced to this unlawful conduct.[37] It was this brazen, illegal promotional activity and Pfizer's belief that it was above the law that contributed to Pfizer being forced to pay $2.3 billion in January 2009, including the largest criminal fine in U.S. history at the time. Ultimately, Pfizer admitted what had been obvious all along:

- From February 2002 through April 2005, Pfizer promoted Bextra for uses that were not within its approved label, including (a) for acute pain, (b) for pre-operative and post-operative surgical pain, and (c) as opioid-sparing in the context of surgery. Ex. 982 at 51:10-17.

- Pfizer promoted Bextra at dosages higher than the approved doses for certain indications. *Id*. at 51:17-18.

- Pfizer introduced a drug into interstate commerce that lacked adequate directions for such off-label uses and dosages. *Id*. at 51:19-21.

- Pfizer promoted Bextra with an intent to defraud or mislead. *Id*. at 51:22-23.

- Certain members of Pfizer's sales force promoted Bextra with false and misleading claims, including that it had no dose proportional increase in hypertension and edema. *Id*. at 52:1-4

- Certain members of Pfizer's sales force submitted to their supervisors false, fake requests indicating that physicians had requested off-label information when, in fact, they had not, and then there was follow-through in providing medical information letters to those physicians. *Id*. at 52:5-9.

C. The Broadening Reach of Defendants' Unlawful Promotion of Pharmaceutical Products

Pfizer's off-label practices permeated the Company's business. As early as November 2002, Pfizer's senior sales and marketing managers instructed the sales force to market Geodon for various unapproved uses (including, but not limited to, borderline personality disorder, depression, excessive compulsive disorder, post-traumatic stress disorder, dementia, bi-polar maintenance and pediatric/adolescent conduct disorders).[38] Based on those instructions, Pfizer's off-label promotion

[37] *See* Ex. 314 at DOJ000226; Ex. 1 (Avorn Report) at 11-19; PSMF ¶131(b).

[38] Ex. 69 (Westlock Depo.) at 27:10-30:12; PSMF ¶332.

of Geodon continued unabated, despite the ongoing Bextra Investigation, through 2007.[39] One tactic broadly used by Pfizer's sales force to promote Geodon off-label was hiring physicians to speak about off-label uses at Pfizer-sponsored events. The evidence demonstrates that physicians were engaged and presented information on the use of Geodon for unapproved patient populations (children and the elderly), unapproved doses (exceeding 160mg per day) and for indications not approved by the FDA.[40]

Call notes recorded by Pfizer's sales representatives from 2002 to 2005 demonstrate that after physicians listened to Pfizer's paid speakers, including Key Opinion Leaders ("KOLs"), they were "more comfortable" prescribing Geodon for off-label uses.[41] Pfizer's sales force call notes also indicate that it detailed Geodon to physicians using dosing information, strategies and/or data from

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[39] PSMF ¶¶334-36.

[40] *E.g.*, Ex. 174 at FLAG0037336 (notes of "pearls from [Dr. Risch's] talk" in January 2003 include "Children will benefit from G[eodon]," "if partial response to G[eodon], go as high as 240 to 300" and "G[eodon] at 160 is a 'big gun antidepressant'"); Ex. 80 at PG 267295, 267300, 267302 (slides from Dr. Alessi's October 2003 teleconference titled "Ziprasidone *Applications in Children and Adolescents*" presented use of Geodon in children with Tourette's Syndrome, PDD/Autism and Schizoaffective Disorder/Bipolar with Psychosis and dosing up to 540 mg/day); Ex. 79 at PFE-JONES 00006131 (email attaching slides of Dr. Deutschman who had "approximately 700 patients on Geodon and [wa]s able to show the diagnosis (psychosis, bipolar, anxiety, unipolar depression, etc.), dose of Geodon (up to 480 mg QD), and the age of the patients (which ranges from age 3-88)"); Ex. 80 at PG 267, 407-8 (slides from Dr. Mech's teleconference, "approved by HQ and Legal," discuss Geodon dosing for treatment-resistant depression, geriatric patients and young children and at higher than approved doses by the FDA); Ex. 173 at FLAG0037887, 894-96, 898 (slides from Dr. Ishii's presentation went over "Geodon's applications: Indication versus off label use," including use in children and adolescents as well as for psychosis, aggression and depression).

[41] *E.g.*, Ex. 143 ("followed up with [child psychiatrist] regarding discussion with Dr. Kaye. said he feels more comfortable to prescribe Geodon . . . will try it for aggression in adolescents"); Ex. 505 at PG 167372 (Child psychiatrist "really enjoyed speaking with Dr. Crane for the morning Breakfast. Said it made him feel a lot more comfortable with dosing higher with Geodon in kids . . . ."); Ex. 503 at PG 161172 ("After Dr. Kaye's talk, [child psychiatrist] is more comfortable using high dose Geodon."); Ex. 501 at PG 128990 ("[child psychiatrist] really liked [M]ech, tried GEo[don] on a few [patients]"); Ex. 507 at PG 209844 ("Dr enjoyed Crane program . . . said he will try Geodon lower doses for panic patients on Dr Crane's recommendation.").

speakers, including KOLs, who spoke at Pfizer-sponsored events regarding the drug's use in juvenile and adolescent populations, at doses exceeding 160mg per day and for indications not approved by the FDA.[42]

Pfizer's off-label promotion did not stop with Bextra or Geodon, it also involved Zyvox. On July 20, 2005, the FDA sent McKinnell a Warning Letter demanding the Company immediately cease and desist its unlawful promotion of Zyvox.[43] Kindler, while serving as the Chair of the Compliance Committee, also received a copy of the FDA warning letter.[44] Despite receipt of the FDA warning letter, Pfizer instructed its sales force on September 30, 2005, that when detailing doctors, to "[a]lways go back to Zyvox proven efficacy [and that] Zyvox is better than vancomycin."[45] The Company's sales force listened to this directive and continued making unsubstantiated superiority claims.[46] The evidence is overwhelming that a key promotional strategy for Zyvox was to claim superiority over its competitor vancomycin.[47]

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[42] *E.g.*, Ex. 500 at PG 106259 (Child psychiatrist "starting kids on 20 mg geodon . . . . I detailed kaye's dosing."); Ex. 497 at PG 043702 (child psychiatrist "very interested in trying Geodon to augment her patients with ADHD/OCD/Agression . . . [sales representative to] F/U with Crane's talk and augmentation strategy"); Ex. 506 at PG 209274 (sales representative "mentioned Deutschman data showing Geodon's safety and efficacy in children"); Ex. 502 at PG 135658 (sales representative to follow up with a child psychiatrist by "SHOW[ING] STAHL DATA ON DOSE"); Ex. 142 at FLAG0036532-34 (email circulating slides from Dr. Kaye to Pfizer's sales force for their "VERBAL discussions" with their physicians which include dosing recommendations for children and adolescents as well as non-FDA approved indications).

[43] Ex. 123 at PZ0034666-76.

[44] Ex. 123 at PZ0034666-76.

[45] Ex. 237 at 2 (Pfizer admitted that despite the Warning Letter and Pfizer's promise to cease, "Pfizer's sales personnel thereafter continued to make claims to physicians that Zyvox was superior to vancomycin").

[46] Ex. 140 at Greensmith003890.

[47] PSMF ¶¶76-85. Defendants were told by the FDA they could not make these unsubstantiated claims.

There is more. Despite Pfizer's experience with the government in the Neurontin settlement, they employed similar unlawful promotional tactics with Lyrica, a drug chemically related to Neurontin.[48] From the outset of the September 2005 launch of Lyrica, the Company's sales force detailed the drug for the treatment of general neuropathic pain (or "NeP"), a use not approved by the FDA.[49] An October 19, 2005 report reflects that the most common detailing message recalled by doctors was "Lyrica as a 'new option' for NeP [*i.e.*, neuropathic pain]."[50] Pfizer's sales force also claimed "success" in making the unsubstantiated claim that Lyrica was superior to Neurontin to treat pain.[51]

Consistent with the Company's knowledge of its illegal promotional strategies, on September 26, 2005, Pfizer's counsel advised McKinnell and Levin that it was likely Pfizer would be forced to settle the Bextra Investigation with the DOJ.[52] And, thereafter, the DOJ's investigation continued to expand. On December 1, 2005, in a memorandum to Pfizer's Audit Committee, Waxman informed McKinnell, Kindler, Levin and Read that the Government had "broadened the scope of their review to include payments made to physicians in connection with both Bextra and other products."[53] Kindler was also informed that the *qui tam* complaint filed in 2003 specifically alleged that Pfizer

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[48] Ex. 1 (Avorn Report) at 44-52.

[49] PSMF ¶¶86-92.

[50] *E.g.*, Ex. 358 at LYR000047318.

[51] Ex. 91.

[52] Ex. P-5 at PFE-JONES 00043524 (members of Pfizer's Legal Division, Legal Finance and Controllers staff concluded that: "it is our estimation based on the facts and circumstances to date that we are likely to be forced to reach some form of settlement of this [Bextra Investigation] matter").

[53] Ex. 224 at PFE DERIV 00003429 (Waxman's "Government Investigations Pre-Read for Upcoming [Audit Committee] Meeting").

employees detailed Bextra by "disseminating non-WLF journal articles referring to Bextra's efficacy in various acute pain models."[54]

Pfizer's Internal Audit ("IA") group also red-flagged the Company's illegal promotional strategies. On December 16, 2005, Kindler, McKinnell and Levin received an IA Report that gave an "unsatisfactory" rating to Pfizer's "U.S. Sales Force - Call Notes and E-Mails New York Headquarters."[55] The IA Report highlighted hundreds of sales visits during which sales representatives left samples of drugs with physicians whose practice areas would not ordinarily treat conditions the drugs were approved to address. For example, there were 368 visits during which sales representatives provided samples of Viagra to surgeons. IA warned that this practice could lead to the perception that the purpose of the visit was to promote the product for use beyond its approved indications.[56] In addition, the IA Report acknowledged that "[b]ecause the subjects of the planned [Call and e-mails] audit [were] at issue in pending state and federal government investigations and in private civil litigation, in-house Pfizer counsel and attorneys at Covington provided directions to [IA] regarding the conduct of this audit."[57] This unsatisfactory IA Report was not the first to be issued in 2005. Eight months earlier, on April 7, 2005, IA reported to Kindler, McKinnell and Levin their findings that gifts to physicians by Pfizer sales representatives "could

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[54] Ex. 224 at PFE DERIV 00003429.

[55] Ex. 103.

[56] Ex. 103 at KPMG-PFIZ-DS 007301.

[57] Ex. 103 at KPMG-PFIZ-DS 007294.

result in a fine or penalty to Pfizer."[58] In May 2005, McKinnell's observation was that he was "angry and embarrassed by these findings . . . as indeed we ALL should be."[59]

And, Pfizer understood the risks of its pervasive off-label promotional activities. In late 2005, Pfizer's Assistant General Counsel and Deputy Compliance Officer, Doug Lankler, wrote that one of the biggest costs associated with off-label promotion would be the "hit" to Pfizer's reputation if it came to light.[60]

D. Defendants' False and Misleading Statements Concerning Pfizer's Compliance with the Law and the Reasons for the Success of Its Drugs

On the first day of the Class Period, defendants represented to investors that "Lyrica has already gained more than a 7-percent new-prescription share of the U.S. anti-epileptic market as of December 23, continuing its performance as one of Pfizer's most successful pharmaceutical launches."[61] Further, that "[i]n the U.S., Geodon is the second-fastest growing atypical anti-psychotic oral medication in new-prescription volume as of November year-to-date. Its balance of powerful efficacy and a favorable metabolic profile positions it for further growth."[62] These statements, and defendants other statements throughout the Class Period regarding the source of Pfizer's success with its drugs, were materially false and misleading because defendants failed to

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[58] Ex. 101 at PFE DERIV 00075595.

[59] Ex. 102 at Jenner-A 10000251931.

[60] Ex. 438 at PFE-JONES 00005596-98.

[61] FMS No. 1.

[62] FMS No. 1.

inform investors that the drugs' market share and new-prescription growth were fueled by Pfizer's rampant off-label promotion.[63]

Following these statements, on March 1, 2006, after it had completed its investigations, IA formally reported its risk assessment of Pfizer's healthcare compliance controls, noting that it was "Almost Certain" Pfizer would engage in illegal off-label promotion and, as a result, would likely suffer a hit to profitability exceeding $1.0 billion, suffer a sustained reduction in market capitalization and suffer a "[s]ignificant diminution in reputation."[64]

Despite IA's investigation and findings, as well as the mounting evidence of rampant off-label promotion of Bextra and the ongoing pervasive off-label promotion of Geodon, Lyrica and Zyvox, on March 1, 2006, defendants falsely assured investors: "***Compliance with all relevant statutes and rules is both the legacy of our 150-year history and one of our most important advantages . . . [and] Pfizer observes all requirements of the U.S. Food and Drug Administration***."[65] Thereafter, defendants made repeated promises that they complied with the requirements of the FDA throughout the Class Period.[66]

Defendants were continually warned that Pfizer's promotional practices could result in violations of the law. On May 22, 2006, Kindler, McKinnell and Levin received additional unsatisfactory findings by IA regarding Pfizer's "Marketing Promotional Speaker Programs."[67] This unsatisfactory report identified numerous control weaknesses, including, but not limited to, the

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[63] PSMF 76-92; Ex. 8 (Rosenthal Report) at 40, 60; *see also* FMS Nos. 1, 8, 14, 26, 27, 33, 38, 41 and 42.

[64] Ex. 105 at PFE DERIV 01002341, 350.

[65] FMS No. 2.

[66] FMS Nos. 2, 4, 16, 18, 31, 34.

[67] Ex. 107 at PFE DERIV 00075210.

increased "risk that processes and controls may not be properly understood, communicated, or executed, which could result in violations of laws and regulations governing healthcare compliance."[68]

In August and September 2006 meetings, the DOJ confronted Pfizer with damning evidence of the Company's criminal off-label conduct, relying on documents produced by Pfizer itself. For example, on August 17, 2006, the Government presented to Pfizer several slide decks and hundreds of supporting documents "concerning contentions about alleged off-label promotion" of Bextra including the promotion of Bextra for "Acute Pain generally," "Pre and Post Op Pain," "Sampling 20 mg to doctors with no on label use," "$$ Remuneration to Influence doctors" and the "Publication Strategy."[69] The DOJ also presented information that "HQ knowledge" was demonstrated by the "Bextra Positioning for Acute Pain" and "Headquarters knowledge of promotion for unapproved uses."[70]

The DOJ told Pfizer that Bextra had "$2.4 billion in Revenues," but the "Majority of Sales [were] for Unapproved Uses."[71] The DOJ also explicitly discussed not only potential criminal charges but "Aggravating Factors," including "Knowledge at the Top," "A Deliberate Scheme" and "Pervasive Misconduct."[72] The DOJ pointed to the recent Neurontin prosecution, two CIAs,

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[68] Ex. 107 at PFE DERIV 00075213; This news was clearly important within the Company, but withheld from investors. On June 21, 2006, Kindler, McKinnell and Levin attended the Audit Committee meeting during which IA's findings in the Marketing Promotional Speaker Programs audit report was further discussed. Ex. 425 at PFE DERIV A 00001398.

[69] Ex. 211 at PFE-JONES 00006996-7014; Ex. 256 at DOJ 000235-40.

[70] Ex. 256 at DOJ000240.

[71] PSMF ¶131.

[72] PSMF ¶131.

numerous internal complaints and other red flags as aggravating factors.[73] Kindler, Read, Levin and Waxman knew of these presentations, which also addressed the "off-label promotion of Bextra and the Company's interactions with physicians in the form of advisory boards, mentorships, continuing medical education and publication strategies."[74]

Shortly after the DOJ presentations, in November 2006, IA concluded that Pfizer's U.S. operations did not have an effective healthcare law regulatory compliance function and that, "[v]iolations of laws and regulations resulting from the failure to . . . [comply] with HCC risks could subject the Company to harm to its reputation . . . or loss of government business."[75] Moreover, IA warned that "the current unique and unprecedented regulatory environment Pfizer was facing created a more direct link between Pfizer's inadequate controls and financial reporting." *Id*.

If the DOJ's August and September 2006 findings were not bad enough for Pfizer, the Company was forced to report several incidents of off-label use of Geodon to the OIG. This included a September 25, 2006 report indicating that Pfizer and its outside counsel's investigation had corroborated an Ohio sales representative's allegations of off-label uses. The report indicated that "certain Geodon sales representatives were aware that doctors hired for Pfizer-sponsored speaker programs were discussing Geodon off-label uses in children/adolescents or at high doses."[76] On October 3, 2006, Pfizer informed the OIG that a Wisconsin sales representative "detail[ed] Geodon using an unapproved detailing piece with a physician," which "potentially contains off-label

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[73] PSMF ¶131(b).

[74] Ex. 433 at PFE DERIV A 00004034-35; Ex. 258 at DOJ000199, 205, 207-08.

[75] Ex. 161 at PFE DERIV 01062960.

[76] Ex. 214 at PFE DERIV 00068510.

information."[77] Compounding Pfizer's government investigation woes, on December 8, 2006, Kindler, Read, Levin and Waxman learned that Pfizer Corporate Compliance was "investigating several matters involving the alleged off-label promotion of Lyrica."[78]

In the face of the evidence that Pfizer pervasively promoted Geodon off-label, on January 22, 2007, Read told investors that Geodon was "the fastest – growing atypical agent in the US" and that the "[b]etter understanding of Geodon's dosing, as well as its superior metabolic profile" was the reason.[79] Only six weeks earlier, however, Read had informed Pfizer's Audit Committee of the status of U.S. Healthcare Compliance, following a "number of unsatisfactory internal audits and reviews in areas such as speaker programs, advisory board and consultant payments."[80]

Shortly thereafter, on March 1, 2007, defendants again assured investors in Pfizer's SEC filing that "***Pfizer observes all requirements of the U.S. Food and Drug Administration***."[81] A month later, on April 2, 2007, Pfizer issued a press release regarding its settlement of the Genotropin case, in which Waxman assured investors that "'***Pfizer's marketing and promotion practices are not involved in the settlement. The company has internal controls to guard against these types of practices***.'"[82] By the time Waxman offered investors this assurance, multiple outside law firms were years into several investigations that were generating mountains of evidence of Pfizer's off-label promotional practices.

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77 Ex. 111 at PFE DERIV 00068543.

78 Ex. 220 at PFE DERIV 00004035.

79 FMS No. 14.

80 Ex. 155 at KPMG-PFIZ-DS 017942.

81 FMS Nos. 2, 4, 16, 18, 31, 34.

82 FMS No. 19.

Later, on June 12, 2007, one of those firms, DLA Piper, sent Pfizer's Corporate Compliance group a memo concerning its investigation of Pfizer's off-label promotion of Geodon, which concluded that the Company's sales force "engaged third-party physicians for Pfizer-sponsored speaker programs during which the speakers affirmatively presented information on the use of Geodon" for unapproved patient populations (children) and unapproved doses.[83] On June 15, 2007, Kindler, Waxman and Read received the "Pre-read Regarding Geodon Investigation" concerning allegations that Pfizer sales "supervisors had promoted the use of speakers who would discuss prescribing Geodon off-label to children and adolescents and at improper dosages."[84] Five days later, Read concluded that the "[r]eputational impact" of off-label promotion by Pfizer's U.S. operations "is arguably . . . the greatest exposure[] facing the company."[85] Again, defendants understood the risk associated with their conduct.

On July 12, 2007, Kindler was personally served with a subpoena from the DOJ seeking documents concerning the alleged off-label promotion of Lyrica.[86] By September 11, 2007, Davis Polk & Wardwell ("Davis Polk") was giving presentations to the government regarding the Lyrica investigation.[87] Despite the escalating investigation and confirmed Lyrica off-label promotional practices, defendants issued a press release on October 18, 2007 claiming that "Lyrica's growth

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[83] Ex. 168 at PFE-DERIV 00003754.

[84] Ex. 431 at PFE DERIV A 00003787.

[85] Ex. 380 at PFE DERIV 00003792.

[86] Ex. 287; Declaration of Joseph G. Petrosinelli in Support of Pfizer's Motion for Summary Jusgment ("Petrosinelli Decl."), Ex. F-7.

[87] PSMF ¶222.

continues to be fueled by strong efficacy," when defendants knew that the growth was fueled in substantial part by off-label promotion.[88]

On December 12, 2007, the DOJ served another subpoena on Pfizer, this time concerning the alleged off-label promotion of Geodon and Zyvox.[89] Also in December 2007, the DOJ followed up with Pfizer about the July 2005 Zyvox Warning Letter.[90] By late January 2008, Pfizer internally acknowledged the scope of the comparative messaging problem concerning Zyvox.[91] Yet, defendants again assured investors on February 29, 2008 that Pfizer did not illegally promote its drugs off-label and complied with all FDA marketing requirements.[92]

This statement was followed by defendants' statements throughout 2008, which concealed that off-label promotion fueled Pfizer's drug sales. *E.g.*, ("Lyrica revenues" were "driven by strong efficacy")[93]; ("We're differentiating [Lyrica] based on its rapid onset of action, persistence of efficacy and lack of tritation . . . .").[94]

E. Defendants' Class Period False and Misleading Statements Concerning FAS 5 Disclosures, Litigation Reserves and Earnings

Given the plethora of evidence piling up against Pfizer concerning its unlawful promotional conduct prior to and throughout the Class Period, by September 2005 Pfizer knew it would be forced

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88 FMS No. 26.

89 Ex. 451.

90 Ex. 121 at PFE DERIV 00067562.

91 Ex. 121 at PFE DERIV 00067562.

92 FMS No. 31.

93 FMS No. 38.

94 *See also* FMS No. 41.

to settle with the DOJ for a huge sum of money or risk debarment.[95] The evidence confirms the reliability of the Legal Division's September 2005 conclusion.

Yet the Company's FY2005 Form 10-K (filed March 1, 2006), 1Q06 Form 10-Q (filed May 8, 2006), 2Q06 Form 10-Q (filed August 11, 2006) and 3Q06 Form 10-Q (filed November 3, 2006) concealed from Pfizer investors material risks concerning the Bextra Investigation. How defendants deliberately disguised those risks is self-evident.[96]

Defendants consciously hid from investors the true nature of the Bextra Investigation. Comparing legal proceeding descriptions from Pfizer's contingency reserve footnotes to the financial statements is telling. For example, with regard to certain state attorneys general investigations, Pfizer said:

> We received a letter from the Office of the Attorney General of the State of New York in 2004 requesting documents and information concerning clinical trials of certain of our pharmaceutical products ***for indications other than those approved by the FDA and concerning possible promotion of those products for such indications***. We also received a letter from the Office of the Attorney General of the State of Connecticut in 2004 requesting similar materials concerning Zoloft.[97]

When speaking about the DOJ investigation, however, defendants merely said: "In 2003 and 2004, we received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice" without disclosing that the investigation concerned illegal off-label promotion.[98]

Not a single one of Pfizer's Class Period public disclosures or SEC filings revealed to investors that the focus of the DOJ's Bextra Investigation was the "***off-label***" promotion of the drug.

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[95] *See* Ex. 62 (O'Connor Depo.) at 124:14-125:8; Ex. P-5 at PFE-JONES 00043524.

[96] Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 36-56.

[97] Dkt. No. 241-1, 2005 Financial Report at 67.

[98] FMS No. 2.

Not a single one of Pfizer's Class Period disclosures revealed to investors that the focus of the DOJ's investigation into Lyrica, Geodon and Zyvox was the off-label promotion of those drugs. Defendants deliberately chose not to disclose receipt of the Lyrica and Geodon/Zyvox subpoenas in July 2007 and December 2007, respectively, because "not naming the drugs [in SEC filings] avoid[s] highlighting them for the plaintiffs' bar."[99] Even Dennis Block ("Block"), on whom defendants purport to rely in support of their reliance-on-counsel defense in this case, called that reasoning "silly."[100]

It is undisputed that all of Pfizer's Class Period earnings press releases and SEC filings demonstrate that defendants failed to: (i) disclose a potential range of loss for the DOJ investigation; and/or (ii) reserve a single dollar for an estimable loss.[101] Because Pfizer failed to disclose a potential range of loss or book a reasonable reserve, the Company's Class Period earnings releases and Form 10-Ks and 10-Qs overstated earnings and violated U.S. Generally Accepted Accounting Principles ("GAAP").[102] For example, Pfizer's 4Q05 and FY2005 earnings, reported on January 19, 2006 and March 1, 2006, were materially misstated by at least $1.0 billion.[103]

Defendants' refusal to reserve for losses associated with the DOJ investigation, let alone disclose a range of potential loss, is particularly troubling given that the Neurontin settlement framework rendered the Bextra losses reasonably and readily estimable.[104] Defendants' refusal to

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[99] Ex. 130 at PFE JONES 00044599.

[100] Ex. 37 (Block Depo.) at 174:9-175:4.

[101] Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 36-56.

[102] *See* Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 47-48, Ex. 3.

[103] *See* Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 47-48, Ex. 3.

[104] *See* Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 25-36.

reserve is even more egregious given that Pfizer executives had again concluded that the probable criteria of FAS 5 had been met no later than October 9, 2007, and both Pfizer and its auditor, KPMG, conceded that the Neurontin loss calculation was the benchmark for estimating losses in cases analogous to Bextra.[105] Defendants' refusal to reserve any loss for the Bextra Investigation continued even after settlement negotiations with the DOJ commenced in early 2008, with Pfizer's "proposed-to-recommend" offers to settle starting at $50-$70 million and rising to $750 million by June 2008.[106]

F. Pfizer's Disclosure of Its Off-Label Promotion and Associated $2.3 Billion Charge to Earnings

Prior to the trading day on January 23, 2009, *The Wall Street Journal* reported that Pfizer and Wyeth had been in discussions for months regarding a merger the value of which would be "well over $60 billion."[107] In response to the news of the Pfizer and Wyeth transaction on January 23, 2006, the price of both companies' common stock increased.[108] On January 26, 2009, Pfizer confirmed the merger with Wyeth in its own press release.[109]

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[105] *See* Exs. N-6, B-6; Ex. 44 (Chapman Depo.) at 129:16-130:1.

[106] *See* Ex. 104 at PFE-JONES 0007028 ($50-$70 million offer), Ex. Y-6 at PFE DERIV 00066378 ($250 million offer), Ex. 158 at KS_00002 ($750 million offer); Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 43-46.

[107] Ex. 520, *Karnitschnig and Rockoff*, "Pfizer in Talks to Buy Wyeth," *The Wall Street Journal*, January 23, 2009.

[108] Ex. 4 (Feinstein Report), ¶105.

[109] Ex. 35 ("Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company," *Business Wire*, Company press release, January 26, 2009).

Prior to the trading day, on January 26, 2009, Pfizer announced financial results for 4Q08 and FY08.[110] 4Q08 EPS declined by 90% to $0.04 per share compared to the 4Q07 quarter. This decline was due to the $2.3 billion charge Pfizer accrued in connection with the settlement of the DOJ's investigations into the off-label promotion of Pfizer's drugs.[111]

The Company's 4Q08 and FY08 earnings press release also included Pfizer's 2009 financial guidance.[112] For FY2009, the Company expected revenue of between $44 and $46 billion, and for adjusted EPS to be between $1.85 and $1.95 per share.[113] Defendants attributed the decline in 2009 revenue, versus FY2008, to the effects of the strengthening U.S. dollar. Defendants attributed the $0.50 decline in EPS, versus FY08, to the following factors:

> Looking to 2009, we expect . . . on the bottom line, adjusted diluted EPS in the range of $1.85 to $1.95. . . . Now I would expect to provide a bridge from '08 actuals to 2009 guidance. We expect '09 adjusted diluted EPS to be negatively impacted by approximately $0.21 due to expected $3 billion year-over-year revenue decline related foreign exchange, $0.21 relating to increasing the effective tax rate to 30% reflecting financial strategies in connection with the proposed acquisition of Wyeth, $0.04 due to increased pension expenses and $0.04 resulting from a decrease in interest income. All of the factors translate into a negative impact of roughly $0.50 on 2009 adjusted diluted EPS versus 2008.[114]

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[110] Ex. 34 ("Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance, "Business Wire, Pfizer press release, January 26, 2009).

[111] Ex. 34 ("Pfizer Reports Fourth-Quarter and Full-Year 2008 Results and 2009 Financial Guidance, "Business Wire, Pfizer press release, January 26, 2009).

[112] Ex. 34 ("Pfizer Reports Fourth-Quarter and Full-Year Results and 2009 Financial Guidance," *Business Wire*, Company press release, January 26, 2009).

[113] Ex. 34 ("Pfizer Reports Fourth-Quarter and Full-Year Results and 2009 Financial Guidance," *Business Wire*, Company press release, January 26, 2009).

[114] Ex. 35 ("PFE-Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company," *Thompson Streetevents*, Company conference call, January 26, 2009).

Pfizer also announced that it had cut its quarterly dividend from $0.32 to $0.16.[115]

In response to the news announced on January 26, 2009, the price of Pfizer's common stock decreased by 10.89%.[116] The 10.89% drop was the largest single-day drop in Pfizer's stock price in over three years.[117]

Plaintiffs' loss causation and damages expert, Dr. Steven Feinstein ("Feinstein"), performed an event study analysis to determine whether the Company's January 26, 2009 disclosure of the $2.3 billion settlement with the DOJ caused losses to Class Period investors.[118] Defendants' expert, Kenneth Lehn, did not identify any flaw in the methodology or computations used by Feinstein with regard to Feinstein's event study.[119] Further, it is undisputed that the trading market for Pfizer's stock, the NYSE, was efficient throughout the Class Period and on January 26, 2006.[120]

Feinstein has opined that the abnormal, or residual, return on January 26, 2009, was -11.53% or -$1.90 per share. The negative abnormal return was statistically significant.[121] Defendants' expert, Dr. Lehn, has no material dispute with this conclusion.[122] The negative abnormal return on January 26, 2009 cannot be explained by general economic conditions, stock-market-wide factors,

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[115] Ex. 35 ("Pfizer to Acquire Wyeth, Creating the World's Premier Biopharmaceutical Company," *Business Wire*, Company press release, January 26, 2009).

[116] Ex. 4 (Feinstein Report), ¶147.

[117] Ex. 4 (Feinstein Report), Ex. 4.

[118] *See* Declaration of Amanda M. Macdonald in Support of Defendants' Motion to Exclude Plaintiffs' Expert Dr. Steven Feinstein, Ex. A, ¶¶128, 143-144 (Dkt. No. 250-1) (hereinafter "Feinstein Report").

[119] Ex. 262, ¶20.

[120] Ex. 56 (Lehn Depo.) at 84:18-24.

[121] Ex. 4 (Feinstein Report), ¶¶145, 147-148.

[122] Ex. 262 (Lehn Report), ¶20.

macro-economic factors, or by industry-specific factors.[123] Rather, Feinstein has opined that the negative abnormal return on January 26, 2009, was caused substantially by the disclosure of the record $2.3 billion settlement with the government concerning Pfizer's rampant alleged unlawful off-label promotion.[124]

Feinstein opined that of the $1.90 per share residual decline in Pfizer's common stock price on January 26, 2009, $1.26 of the residual decline ($0.34 for the $2.3 billion 4Q08 charge and $0.92 in reputational loss) is related to plaintiffs' allegations of fraud and the disclosure thereof by Pfizer on that day.[125] Defendants' expert provided no opinion on what caused the $1.90 per share residual decline on January 26, 2009.[126] Additionally, Lehn did not estimate what portion of the $1.90 decline plaintiffs are entitled to in damages.[127]

Feinstein's $0.92 estimate of reputational loss is particularly apt in this case. After all, in late 2005, Pfizer admitted that a major cost to companies "for [f]ailure to [c]omply with [r]elevant [l]aws and [s]tatutes" is a hit to "[r]eputation."[128] On March 1, 2006, IA concluded the most significant impacts Pfizer could suffer as a result of being caught promoting its products off-label included a larger than $1.0 billion reduction in profitability, "[s]ustained reduction in mkt cap" and a "[s]ignificant diminution in reputation."[129] In November 2006, IA concluded that in light of the

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[123] Ex. 4 (Feinstein Report), ¶147.

[124] Ex. 4 (Feinstein Report), ¶¶165, 205, 224, 235, 255.

[125] Ex. 4 (Feinstein Report), ¶256.

[126] Ex. 262 (Lehn Report), ¶¶8-10.

[127] Ex. 56 (Lehn Depo.) at 86:25-94:18.

[128] Ex. 438 at PFE-JONES 00005596-98.

[129] Ex. 105 at PFE DERIV 01002341.

Bextra Investigation and heightened regulatory environment, violating laws governing the promotion of Pfizer's products could subject the Company to "harm to its reputation, as well as . . . loss of government business."[130] On June 20, 2007, Read also recognized that the "[r]eputational impact" on Pfizer for being caught promoting the Company's drugs for unapproved uses in the United States "is arguably among the greatest exposures facing the company."[131]

Feinstein, in arriving at the $1.26 per-share damage figure, accounted for confounding, non-fraud-related disclosures Pfizer made on January 26, 2009.[132] The non-fraud-related factors Pfizer disclosed on January 26, 2009 include: (a) strengthening of the U.S. dollar; (b) increased pension expense; (c) the acquisition of Wyeth; (d) a dividend cut; (e) S&P and Moody's placing Pfizer on a credit watch; (f) lower interest income; (g) increased tax rate; and (h) Wyeth earnings and outlook.[133] Conversely, defendants' expert Lehn provided no estimate of the per-share impact on Pfizer's stock price due to the disclosure of these non-fraud-related factors.[134]

Feinstein found the per-share impact of the non-fraud-related factors to be: (a) strengthening of the U.S. dollar, $0.06;[135] (b) increased pension expense, $0.00;[136] (c) the acquisition of Wyeth, $0.00;[137] (d) dividend cut, $0.22;[138] (e) credit watch, $0.00;[139] (f) lower interest income, $0.00;[140](g)

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[130] Ex. 156 at PFE DERIV 01062960.

[131] Ex. 380 at PFE DERIV 00003792.

[132] Ex. 4 (Feinstein Report), ¶¶150-238.

[133] Ex. 4 (Feinstein Report), ¶152.

[134] Ex. 56 (Lehn Depo.) at 86:25-94:16.

[135] Ex. 4 (Feinstein Report), ¶165.

[136] Ex. 4 (Feinstein Report), ¶174.

[137] Ex. 4 (Feinstein Report), ¶181.

increased tax rate, $0.34;[141] and (h) Wyeth earnings and outlook, $0.00.[142] Therefore, whether or not defendants agree with his methodology, Feinstein undeniably disaggregated fraud- and non-fraud-related factors.

III. LEGAL STANDARD

Summary judgment is only proper if there is no genuine issue as to any material fact. Federal Rule of Civil Procedure 56(c). A party moving for summary judgment bears a substantial burden of "show[ing] that there is no genuine issue as to any material fact and [it is] entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If a moving party has met that burden (which is not the case here), the non-moving party need only "designate 'specific facts showing that there is a genuine issue for trial.'" *Id*. at 324.

Because of the extreme nature of summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [that party's] favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520, 523 (2d Cir. 1992) (the court is required to resolve "all ambiguities and draw all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide").

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[138] Ex. 4 (Feinstein Report), ¶205.

[139] Ex. 4 (Feinstein Report), ¶211.

[140] Ex. 4 (Feinstein Report), ¶216.

[141] Ex. 4 (Feinstein Report), ¶224.

[142] Ex. 4 (Feinstein Report), ¶228.

IV. DEFENDANTS' STATEMENTS WERE FALSE AND MISLEADING

A. A Reasonable Jury Will Find that Defendants' Misstatements Concealed Material Information from Investors

The determination of whether information is material is "a mixed question of law and fact that generally should be presented to a jury." *Press v. Chemical Inv. Servs. Corp.*, 166 F.3d 529, 538 (2d Cir. 1999) (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Materiality can be decided as a matter of law only when an alleged "omission[] [is] 'so obviously [un]important to an investor, that reasonable minds cannot differ on the question of materiality." *TSC Indus*, 426 U.S. at 450, and *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). "[A]ssessing . . . materiality is a fact-specific inquiry, requiring consideration of . . . source, content, and context." *Matrixx Initiatives, Inc. v. Siracusano*, __ U.S. __, 131 S. Ct. 1309, 1312 (2011); *accord Operating Local 649 Annuity Trust Fund v. Smith Barney Fund Mgmt. LLC*, 595 F.3d 86, 92 (2d Cir. 2010). There are no bright-line materiality tests. *Matrixx*, 131 S. Ct. at 1318-21. Nor are there any categorical rules automatically excluding information as immaterial, as defendants suggest. *Id*. at 1319.

Despite this authority, defendants ignore the factual "context" in which their statements were made, including, among other facts – being subject to a CIA, Company-sanctioned widespread off-label marketing of several blockbuster drugs, and a grand jury investigation.[143] "The[securities] laws are founded on the principle that full and fair disclosure of all material facts must be made to investors so that they may have the benefit of the facts in making their investment decisions." *Sonesta Int'l Hotels Corp. v. Wellington Assoc.*, 483 F.2d 247, 249 (2d Cir. 1973). A reasonable jury could find that under the specific factual context of this case defendants concealed material facts

[143] PSMF ¶¶2, 52-93, 138.

from investors when they made affirmative statements in Pfizer's SEC filings, during conference calls, and in press releases.

B. Defendants' Statements Regarding the Government Investigations Were False and Misleading and Defendants' Related Reserve Decisions Resulted in False Financial Statements

When a corporation chooses to speak, it has a "duty to be both accurate and complete." *Caiola*, 295 F.3d at 331. Defendants had a duty under the securities laws "to disclose facts necessary to ensure that their statements are not misleading. This duty applies to the disclosure of criminal conduct to the same extent it applies to the disclosure of any other material information." *In re Marsh & McLennan Cos. Sec. Litig.*, 501 F. Supp. 2d 452, 469 (S.D.N.Y. 2006).[144] "[A] corporation has a duty to disclose uncharged criminal conduct to prevent conveying, through its own public statements, a false impression to an investor." *Menkes v. Stolt-Nielsen S.A.*, No. 3:03-cv-409, 2005 U.S. Dist. LEXIS 28208, at *23 (D. Conn. Nov. 10, 2005).

With clear knowledge of the risks facing Pfizer, on March 1, 2006, defendants caused the Company to issue its annual financial results in the FY05 Form 10-K.[145] With regard to the Bextra Investigation, Pfizer made the following misleading legal proceeding disclosure: "***[W]e received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice*** . . . ." *Id*. McKinnell and Levin signed the Form 10-K with full knowledge that the DOJ's investigation focused on the off-label promotion of Bextra.

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[144] *See also Chamberlain v. Reddy Ice Holdings, Inc.*, No. 08-cv-13451, 2010 U.S. Dist. LEXIS 128347, at *60 (E.D. Mich. Dec. 6, 2010) (finding actionable statements of compliance with the law and that success was due to lawful competition where defendants failed to disclose illegal anticompetitive behavior); *Schlifke v. Seafirst Corp.*, 866 F.2d 935, 944 (7th Cir. 1989) ("'half-truths,' implicate a duty to disclose whatever additional information is necessary to rectify the misleading statements").

[145] *See* FMS No. 2.

Rather than inform investors of that fact, however, defendants further downplayed the financial and existential risks facing Pfizer by instead touting the Company's "***substantial defenses***" to the DOJ's allegations.[146] Defendants McKinnell and Levin signed and certified to the accuracy of the Company's 1Q06 Form 10-Q, and Kindler (upon replacing McKinnell as CEO) and Levin signed the Company's 2Q06 Form 10-Q, both of which repeated this patently misleading description of the Bextra Investigation.

Defendants cannot reasonably dispute that they were fully aware of the materiality of their Class Period omissions concerning the DOJ investigation. On March 1, 2006, Pfizer released the results of its 2006 risk assessment concerning the Company's promotional activities.[147] Not only did the Company conclude it was "almost certain" that it would engage in unlawful off-label promotion, but it ranked the severity of the impact Pfizer faced for being caught doing so at the highest level. Here, Pfizer acknowledged at the outset of the Class Period what impact its illegal off-label promotional activities would have on the Company:

- ***A greater than $1.0 billion impact on profitability;***
- ***A sustained loss of market share;***
- ***Significant diminution in reputation; and/or***
- ***Sustained reduction in market capitalization.***[148]

It is undisputed, moreover, that defendants failed to disclose to investors that the focus of the DOJ's investigation was into the illegal off-label promotion of the Company's pharmaceutical

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[146] *See* FMS No. 2.

[147] PSMF ¶370.

[148] *See* Ex. 105 at PFE DERIV 01002341.

products.[149] It is also undisputed that defendants deliberately concealed that fact and did not book a reserve until January 26, 2009.[150]

Between 2006 and 2008, defendants continued to issue misleading statements regarding the nature of the Government's case in its FAS 5 disclosures. For example, in August and September 2006, the DOJ made two detailed presentations to Pfizer regarding the strengths of Government's case concerning Bextra.[151] Specifically, the DOJ informed Pfizer that it believed the Company had generated a majority of $2.4 billion in total Bextra revenue from unapproved uses and outlined a series of potential criminal charges.[152] The DOJ informed Pfizer of several key "aggravating factors" for the purpose of expressing how seriously the Government viewed the Company's unlawful conduct, including:

- ***There was "Knowledge at the Top"***
- ***It was "A Deliberate Scheme"***
- ***It was "Pervasive Misconduct"***
- ***Pfizer's unlawful conduct persisted despite the ongoing Neurontin criminal investigation***
- ***The FDA had said No***

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[149] PSMF ¶¶8-51. Defendants McKinnell and Levin signed and certified the 1Q06 Form 10-Q. FMS No. 6. Defendants Kindler and Levin signed and certified the 2Q06 and 3Q06 Form 10-Qs, 2006 Form 10-K, and the 1Q07 and 2Q07 Form 10-Qs. FMS Nos. 9, 12, 17, 21, 24. Defendants Kindler and D'Amelio signed and certified the 3Q07 Form 10-Q, the 2007 Form 10-K and 1Q08, 2Q08 and 3Q08 Form 10-Qs. FMS Nos. 28, 32, 36, 39, 43. As discussed above, each did so with knowledge and or reckless disregard that their statements were false and misleading when made.

[150] Pfizer's SUF ¶¶35, 47, 49.

[151] PSMF ¶¶131-135.

[152] PSMF ¶¶131-135.

- ***The FDA's concern was Safety***[153]

Despite the hard evidence against Pfizer, defendants never disclosed that the DOJ's focus was on the off-label marketing of Bextra, and, in Pfizer's 3Q06 Form 10-Q, defendants merely repeated that "***we received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice.***"[154] Defendants were either aware of, or could have learned if they had simply asked for, the details of the DOJ's August and September 2006 presentations.[155] In any event, defendants continued to conceal the risks facing Pfizer by assuring investors that Pfizer had "***substantial defenses***" to the DOJ's case.

Pfizer's disclosures as to the Government Investigations at issue contrast sharply with other meaningful disclosures they were making to investors, including describing:

- a letter from the New York Attorney General "requesting documents and information concerning clinical trials of certain of our pharmaceutical products ***for indications other than those approved by the FDA and concerning possible promotion of those products for such indications***. We also received a letter from the office of the Attorney General of the State of Connecticut in 2004 requesting similar materials concerning Zoloff;"[156]

- the provision of information to the DOJ and SEC "concerning potentially ***improper payments*** made in connection with foreign sales activities";[157]

- that it is "under ***criminal investigation***" in Italy "with respect to gifts and payments allegedly provided to certain doctors";[158] and

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[153] PSMF ¶¶131-135.

[154] *See* FMS Nos. 2, 13.

[155] PSMF ¶¶131-135, 165-166, 196, 213-216, 228-230, 251-254, 266-267, 292-294.

[156] Ex. B-1, Financial Review, Note 18, Section F, at page 67.

[157] *Id.*

[158] *Id.*

- that it is "the subject of a civil and ***criminal investigation*** with respect to certain tax matters" in Germany.[159]

On March 1, 2007, the Company filed its FY2006 Form 10-K with the SEC. Kindler and Levin signed and certified to the accuracy of the contents of the annual report. Despite having knowledge of the strength of the Government's case, defendants merely informed investors that "***we have received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and group of states attorneys general. We have been considering various ways to resolve those matters***."[160] Still, defendants chose not to disclose that the focus of the DOJ's case was the off-label promotion of Bextra.[161]

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[159] Ex. D-1, Financial Review, Note 19, Section F at p. 73.

[160] *See* FMS No. 16 [Pfizer's SUF at ¶71]. The Company's 1Q07 and 2Q07 Form 10-Qs contained the identical FAS 5 disclosure, by reference to Pfizer's FY2006 Form 10-K. *See* FMS Nos. 22, 25. In the Company's 3Q07 Form 10-Q, defendants merely added language confirming they had substantial defenses to the state attorneys general group's allegations. FMS No. 29.

[161] Defendants attempt to justify their failure to disclose the off-label nature of the Bextra Investigation with a reference to the Government's use of the phrase "sales and marketing" in its $5 billion demand letter to Pfizer. The letter, though, does not stop at "marketing," but describes that the DOJ was seeking a felony plea, a criminal fine of $3.6 billion, a civil fine of $1.2 billion and remedial measures. Pfizer Summary Judgment Motion at 47; Petrosinelli Decl., Ex. Y-6. More importantly, as to the gimmicky nature of defendants' argument, the DOJ sent its April 2008 letter two months ***after*** it had sent Pfizer a grand jury target letter, which Pfizer also concealed, that expressly informed Pfizer that it was the target of a grand jury investigation concerning "the introduction of misbranded and unapproved drugs, including specifically Bextra, into interstate commerce." PSMF ¶139. Of course, by 2008, Pfizer and the Government had spent years referring privately to the Bextra Investigation as one concerning misbranding/off-label promotion. Given that history, there was no risk whatsoever that Pfizer would misunderstand the Government's shorthand "marketing" reference to refer to anything other than the off-label promotion investigation that it and Pfizer had been discussing for years. In stark contrast, defendants ***never*** informed investors that the Bextra Investigation concerned off-label promotion, so to them, defendants' use of the generic term "marketing" could have meant any of the "many other things" that Pfizer's own disclosure counsel admitted this term encompasses. Ex. 49 (Fox Depo.) at 140:11-17.

Then, on July 12, 2007, Kindler received a subpoena from the DOJ seeking documents related to the off-label marketing of Lyrica.[162] By no later than September 18, 2007, D'Amelio and Waxman were informed of the Lyrica subpoena.[163] On December 12, 2007, Pfizer received another subpoena from the DOJ seeking documents related to the off-label promotion of various drugs, including Geodon and Zyvox.[164] After receipt of the subpoenas, the defendants' inside counsel, Lawrence Fox, sent an email to Block, Lankler and other Pfizer in-house attorneys, in which Fox confirmed "***the main reason for not naming the drugs in question in [SEC filings] is to avoid highlighting them for the plaintiffs' bar, and we would not want [Investor Relations] or Media Relations to name them either***."[165] Thereafter, it is undisputed that defendants failed to disclose receipt of the Geodon, Lyrica and Zyvox subpoenas to investors in a press release or SEC filing.[166]

Defendants point to the risk disclosures in the second half of their "substantial defenses" statement, arguing that their statements about "civil and criminal sanctions," "excessive verdict" and "settlements of claims" immunize them from liability. However, to be "meaningful," a risk disclosure "'must discredit the alleged misrepresentations to such an extent that "the risk of real deception drops to nil."'" *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 763 F. Supp. 2d 423, 495 (S.D.N.Y. 2011); *In re TCW/DW N. Am. Gov't Income Trust Sec. Litig.*, 941 F. Supp. 326, 330-31 (S.D.N.Y. 1996) (while defendants clearly and accurately depict type of risk borne, they did not accurately depict the extent of risk). None of defendants' purported risk

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[162] PSMF ¶172.

[163] *Id.*, ¶¶173,197.

[164] *Id.*, ¶174.

[165] PSMF ¶190.

[166] Pfizer's SUF ¶¶90-91.

disclosures can be said to do so as a matter of law. Even Block testified that Pfizer's own Board would have been surprised by a $750 million resolution because it had been repeatedly told that Pfizer had substantial defenses.[167]

In other words, none of the language on which defendants rely was conveyed to Pfizer's own Board, let alone investors, "'with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by' the alleged misstatements." *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000); *accord In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1116 (9th Cir. 1989); *Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 734 (7th Cir. 2004); *see also In re Citigroup Inc. Sec. Litig.*, 753 F. Supp. 2d 206, 235, 240 (S.D.N.Y. 2010) (statements indicating that Citigroup had minimal exposure and concealed the full extent of the Company's disclosures were actionable). Viewing defendants' statements in context, a reasonable jury could find that investors were materially misled as they failed to "accurately inform" investors as to the government investigations into the off-label promotion of Bextra, Lyrica, Geodon and Zyvox. *McMahan & Co. v. Wherehouse Entm't*, 900 F.2d 576, 579 (2d Cir. 1990) ("the disclosure required by the securities laws is measured not by literal truth, but by the ability of the material to accurately inform rather than mislead prospective buyers").

It is also undisputed that defendants did not cause Pfizer to book a reserve until January 2009. Defendants assert that Pfizer's litigation reserves are non-actionable statements of opinion. Defendants misapprehend the law and misstate the facts presented here. Defendants' reliance on *Fait v. Regions Fin. Corp.*, 655 F.3d 105, 113 (2d Cir. 2011), is misplaced because here plaintiffs have demonstrated, unlike in *Fait*, that an objective standard exists to demonstrate the falsity of Pfizer's litigation reserves. Here, there was an objective methodology to estimate the range of loss

[167] Ex. 37 (Block Depo.) at 266:7-19.

as admitted by counsel for defendants. In its October 1, 2007 letter to the DOJ, Covington advocated that the DOJ should use the actual gain methodology applied in the "analogous" Neurontin case to calculate the potential fine Pfizer would have to pay to resolve the Bextra Investigation.[168]

Covington urged the DOJ to use this straightforward methodology to estimate the range of loss because it was used by the DOJ and Pfizer to settle the Neurontin case, and several others, all of which were prosecuted by the same USAO in Boston.[169] During his deposition, John Chapman from KPMG testified that Neurontin was the "benchmark."[170] In *Fait*, there was no methodology to calculate the loan-loss reserves at issue, let alone a straightforward and objective method. There was no consistent way to estimate the loan losses agent-to-agent, office-to-office or region-to-region. This stands in stark contrast to the situation here, where in every case cited by Covington in the October 1, 2007 letter, the parties used the actual losses methodology. Because an objective methodology existed to estimate the range of loss, under *Fait*, Pfizer's alleged false and misleading FAS 5 reserve statements are actionable statements of fact. *See In re MF Global Holdings Secs. Litig.*, 982 F. Supp. 2d 277, 312 (S.D.N.Y. 2013) (citing *Fait*, 655 F.3d at 112-13). *See also City of Westland Police and Fire Retirement System v. Metlife*, 928 F. Supp. 2d 705, 713, 717 (S.D.N.Y. 2013) (no reasonable basis for reserves where defendants knew reserves did not account for the Company's obligations).

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[168] Ex. B-6.

[169] Ex. 510 at PFE-JONES 00059190 (referring to other cases handled by the Boston office, including Neurontin, Schering Sales Corp., Serono and Genotropin).

[170] Ex. 44 (Chapman Depo.) at 129:21-22.

The admissible evidence reveals why this statement was false. Before the Class Period, on September 26, 2005, Pfizer's Legal Division concluded the loss was probable when it reported that "it is our estimation based on the facts and circumstances to date that we are likely to be forced to reach some form of settlement of [the Bextra Investigation]."[171] Because Kindler and McKinnell were personally involved in the resolution of the Neurontin litigation, they knew how the $430 million fine was calculated.[172] Defendants knew what Pfizer's Bextra revenues were from the time it was introduced to the market to the time it was withdrawn.[173] Therefore, defendants could have applied the Neurontin methodology to calculate a reasonable estimate of the Company's gain, and, thus, the likely fine for the Bextra Investigation.[174] Despite having recognized the likelihood that Pfizer would be forced to reach some sort of settlement of the Bextra Investigation and having the tools necessary to calculate the fine, defendants failed to take a reserve for this likely loss and thus caused Pfizer to file false and misleading earnings releases and quarterly and yearly SEC filings throughout the Class Period.[175]

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[171] Ex. P-5 at PFE-JONES 00059186-87.

[172] Ex. 54 (10/10/14 Kindler Depo.) at 104:3-8; Ex. 59 (11/11/13 McKinnell Depo.) at 83:20-84:8.

[173] Petrosinelli Decl., Ex. B-1, at 13.

[174] Ex. 7 (Supp. Regan Report), Ex. E.

[175] The statements include: the January 19, 2006, 4Q05 earnings press release issued by Pfizer (FMS No. 1); the 2005 Form 10-K signed on March 1, 2006, by McKinnell and Levin (FMS No. 2); the April 19, 2006, 1Q06 earnings press release issued by Pfizer (FMS No. 5); the 1Q06 Form 10-Q signed on April 8, 2006, by McKinnell and Levin (FMS No. 7); the July 20, 2006, 2Q06 earnings press release issued by Pfizer (FMS No. 8); the 2Q06 Form 10-Q signed on August 11, 2006, by Kindler and Levin (FMS No. 10); the October 19, 2006, earnings press release issued by Pfizer (FMS No. 11); the 3Q06 Form 10-Q signed on November 3, 2006, by Kindler and Levin (FMS No. 13); the January 22, 2007, 4Q06 earnings press release issued by Pfizer (FMS No. 15); the 2006 Form 10-K signed on March 1, 2007, by Kindler and Levin (FMS No. 16); the April 20, 2007, 1Q07 earnings press release issued by Pfizer (FMS No. 20); the 1Q07 Form 10-Q signed on May 4, 2007, by Kindler and Levin (FMS No. 22); the July 18, 2007, 2Q07 earnings press release issued by Pfizer (FMS No. 23); the 2Q07 Form 10-Q signed on August 6, 2007, by Kindler and Levin (FMS No. 25);

C. Pfizer's Assurances of "Substantial Defenses" to the Government Investigations Were Material Misrepresentations

Defendants curiously contend that plaintiffs did not "plead[] in the Complaint" their "substantial defenses" statement. Dkt. No. 246 at 43. The Complaint itself debunks defendants' contention. Dkt. No. 71, ¶¶68-69.

Recognizing the fallacy of their argument that the statement was not pled, defendants next argue that the "substantial defenses" language is forward-looking and protected by the safe harbor and/or bespeaks caution doctrine. Defendants are incorrect. First, the present tense language is not protected by the safe harbor or bespeaks caution doctrine. "'[I]t is well recognized that even when an allegedly false statement "has both a forward looking aspect and an aspect that encompasses a representation of present fact," the safe harbor provision of the PSLRA does not apply.'" *In re Nortel Networks Corp. Sec. Litig.*, 238 F. Supp. 2d 613, 629 (S.D.N.Y. 2003);[176] *In re MF Global Holdings Secs. Litig.*, 982 F. Supp. 2d 277 (S.D.N.Y. 2013) (bespeaks caution doctrine only applies to forward-looking statements). Second, the language is clearly tied to defendants' purported

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the October 18, 2007, 3Q07 earnings press release issued by Pfizer (FMS No. 26); the 3Q07 Form 10-Q signed on November 5, 2007, by Kindler and D'Amelio (FMS No. 29); the January 22, 2008, 4Q06 earnings press release issued by Pfizer (FMS No. 30); the 2007 Form 10-K signed on February 29, 2008, by Kindler and D'Amelio (FMS No. 31); the April 17, 2008, 1Q08 earnings press release issued by Pfizer (FMS No. 35); the 1Q08 Form 10-Q signed on May 2, 2008, by Kindler and D'Amelio (FMS No. 37); the July 23, 2008, 2Q08 earnings press release issued by Pfizer (FMS No. 38); the 2Q08 Form 10-Q signed on August 8, 2008, by Kindler and D'Amelio (FMS No. 40); the October 21, 2008, 3Q08 earnings press release issued by Pfizer (FMS No. 42); and the 3Q08 Form 10-Q signed on November 7, 2008, by Kindler and D'Amelio.

[176] The safe harbor only applies to statements that are forward-looking and "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement." *In re ITT Educ. Servs.*, No. 13-cv-1620, 2014 U.S. Dist. LEXIS 99931, at *13 (S.D.N.Y. July 22, 2014). "The safe harbor, though, is dependent on what the defendant knows at the time of the statement; cautionary language is meaningful only when it discloses the ***known*** risks of the statement's falsity and statements are forward-looking only if they are not false when made." *Id.* (citing *Asher v. Baxter Int'l Inc.*, 377 F.3d 727, 729 (7th Cir. 2004) (Easterbrook, J.)) (emphasis in original).

explanation of whether a contingent liability was probable, whether a reserve should be taken, or whether an estimate of the loss could be provided. Third, defendants' "warning" that Pfizer could incur settlements is over-shadowed by their assurances to investors that they had "substantial defenses." Fourth, Pfizer's assurance that it had "substantial defenses" is completely unbalanced, as it fails to inform investors of the compelling evidence that the Government presented to Pfizer in August and September 2006. Having chosen to speak, defendants may not tell half-truths. *Slayton v. Am. Express Co.*, 604 F.3d 758 (2d Cir. 2010); *Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002); *In re Bristol Myers Squibb Co. Sec. Litig.*, 586 F. Supp. 2d 148, 160-61 (S.D.N.Y. 2008) (company's assertion that it would "vigorously pursue" its patent rights was not accurate or complete).

Even if the safe-harbor or the bespeaks-caution doctrines were available to defendants, the cautionary language is not meaningful when viewed in the context of the then existing facts. At best, Pfizer's "warnings only warned what might occur if certain contingencies were met; the disclosures did not make clear that such contingencies had, in fact, already occurred." *In re Facebook, Inc.*, 986 F. Supp. 2d 487, 516 (S.D.N.Y. 2013).[177] Defendants led investors to believe that it was not likely that they faced record-breaking fines and penalties and instead assured investors that they were in compliance with "laws that apply to marketing activities" and concealed Pfizer's off-label promotion practices. "Cautionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired." *Rombach v. Chan*, 355 F.3d 164, 173 (2d. Cir. 2004) (noting that the

[177] The disclosures that will be tried to a jury are not those in Pfizer's "risk disclosures." Rather, they are contained in the Financial Review and Notes to Pfizer's financial statements regarding Legal Proceedings and Disclosures making defendants' arguments regarding "risk disclosures" irrelevant. *See, e.g.*, FMS Nos. 2, 7, 10, 13, 16, 22, 25, 29, 31, 37, 40 and 44; *see also* Dkt. No. 246 at 44 (citing *Zeid v. Kimberly*, 930 F. Supp. 431, 437 (N.D. Cal. 1996)).

"bespeaks caution doctrine does not serve if it is abused or gamed"). As set forth in §IV.B. above, the risk that required a reserve or estimate of loss had already transpired.

Defendants also contend that their "belief" cannot be actionable. Even if this statement is construed as "defendants' belief," which it is not, both the Supreme Court and the Second Circuit hold the statement is actionable. "We think there is no room to deny that a statement of belief by corporate directors about a recommended course of action, or an explanation of their reasons for recommending it," can be material. *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1090-91, 115 L. Ed. 2d 929, 111 S. Ct. 2749 (1990). The Second Circuit has since explained that statements of belief are actionable based on the underlying facts. *See In re IBM Corporate Sec. Litig.*, 163 F.3d 102, 107-09 (2d Cir. 1998). An opinion "contain[s] three implicit factual assertions – '(i) that the statement is genuinely believed; (ii) that there is a reasonable basis for that belief; and (iii) that the speaker is not aware of any undisclosed facts tending to seriously undermine the accuracy of the statement.'" *Slayton*, 604 F.3d at 774; *see also id*. at 775.

Defendants' statement, even if it is considered a "belief," does not survive this test. And, in any event, whether it meets the test is a jury question. And the evidence belies defendants' claim that the statement was genuinely believed, had a reasonable basis, and was not undermined by other facts. Here, the Company had already acknowledged that (i) it was "likely to be forced to reach some form of settlement"[178] and (ii) it was "almost certain/highly likely" that it would face severe penalties for off-label promotion, prior to the issuance of each of the Class Period Legal Proceedings and contingency disclosures. Moreover, by the issuance of Pfizer's 3Q06 financial statements, the DOJ had spelled out a litany of off-label tactics used to promote Bextra and informed Pfizer (using Pfizer's own documents) of its view that as of 1Q05 52% of the $2.4 billion in Bextra revenue

[178] Petrosinelli Decl., Ex. P-5 at PFE-JONES 00043524.

earned by Pfizer was for 20mg doses, which were approved only for PD, and that 76% of Bextra revenue was for unapproved indications.[179] Given these findings, it is not surprising that the Government also informed Pfizer of the potential criminal charges and aggravating factors.[180]

D. Defendant Waxman's Statement When Pfizer Announced the Genotropin Settlement and Disavowed Off-Label Promotion Required Him to Disclose Pfizer's Corporate-Wide Strategy to Promote Off-Label

On April 2, 2007, in a Pfizer press release announcing the $34.7 million settlement of the Genotropin off-label marketing investigation, defendant Waxman, Pfizer's general counsel at the time, assured investors that Pfizer did not engage in off-label promotion and that Pfizer had internal controls to prevent those types of practices as follows:

> As the Department of Justice has acknowledged, Pfizer voluntarily and fully self-disclosed the off-label promotion of Genotropin by a Pharmacia subsidiary before Pharmacia was acquired by Pfizer," said Allen Waxman, senior vice president and general counsel. "Pfizer's marketing and promotion practices are not involved in the settlement. The company has internal controls to guard against these types of practices."[181]

Defendants assert that this statement is true and, therefore, not actionable. Defendants miss the point. Waxman's statement must be viewed in context. At the time he made this statement, Waxman was well aware of the overwhelming evidence of massive undisclosed off-label promotion ***at Pfizer***, as well as the near certainty that Pfizer would have to pay over $1 billion in penalties due to its off-label-promotion activities.[182] Yet Waxman's assurance gave the opposite impression and

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[179] Ex. 248 at DOJ000237-240; Ex. 249 at DOJ000202-203.

[180] Ex. 249 at DOJ000205-208.

[181] FMS No. 19.

[182] PSMF ¶¶52-67, 205-218, 224-233; Ex. 105 at PFE-JONES 00005595 (Pfizer defined "High" severity to mean at least one of the following: (i) $1 billion impact on profitability; (ii) sustained loss of market share; (iii) significant diminution in reputation; and/or (iv) sustained reduction in market capitalization).

created the opposite expectation. This statement is neither true nor a forward looking guarantee. Instead, it must be examined in context. *Operating Local 649 Annuity Trust Fund*, 595 F.3d at 92; *Matrix*, 131 S. Ct. at 1312; *See also Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 986 (9th Cir. 2008) (reversing dismissal of complaint and rejecting defendants' alternative interpretation of statements because "[w]hile this is a conceivable interpretation of this paragraph, it is hardly the only – or even the most plausible – one").

When Waxman spoke, he was obligated to be truthful about the fact that the more accurate distinction between Pfizer and its acquired subsidiary (Pharmacia) was that Pfizer promoted off-label on a much grander scale than did its subsidiary. *Marsh & McLennan, Cos.*, 501 F. Supp. 2d at 469 (duty to disclose facts necessary to ensure statements are not misleading extends to criminal conduct); *United Paperworkers Int'l Union v. Int'l Paper Co.*, 985 F.2d 1190, 1200-01 (2d Cir. 1993) (duty to disclose conduct which involved felonies, enormous potential fines, breach of prior settlements and government exclusion); *Caiola*, 295 F.3d at 331 (duty to disclose requires accuracy and completeness). Moreover, a company's "representations about its purported controls [that are] directly at odds with its alleged conduct" are actionable. *In re Goldman Sachs Group, Inc. Sec. Litig.*, No. 10-cv-3461 (PAC), 2014 U.S. Dist. LEXIS 85683, at *16-*17 (S.D.N.Y. June 23, 2014).

The unmistakable message Waxman conveyed was that unlike its acquired subsidiary, Pfizer did not engage in off-label promotion because it had controls in place to guard against such practices. Having chosen to tout Pfizer's internal controls in this specific context, Waxman was obligated to disclose its rampant off-label marketing of Bextra, Geodon, Zyvox and Lyrica. Instead, his statement was the equivalent of the captain of the *Titanic* assuring passengers that the *Titanic* had the world's best engineering to guard against sinking – without disclosing that it had just struck a massive iceberg and was taking on thousands of gallons of water.

Waxman has failed to establish as a matter of law that no reasonable investor could conclude that his statement was misleading. In fact, the evidence overwhelmingly supports the opposite conclusion.

E. Defendants Have Not Met Their Extremely Heavy Burden at Summary Judgment of Demonstrating that as a Matter of Law Investors Would Not Have Considered Pfizer's Systemic Illegal Business Practices as Significantly Altering the Mix of Relevant Information

The Court already rejected defendants' claims of "puffery" at the motion to dismiss stage and their attempt to revisit this contention at summary judgment fares no better. In seeking to deprive a jury of their fact-finding province on the issue of whether defendants' statements were materially misleading, defendants once again deliberately ignore the context in which these statements were made. *Ganino*, 228 F.3d at 165 ("[m]ateriality is determined in light of the circumstances existing at the time the alleged misstatement occurred"). This context includes abundant evidence of Pfizer's years of off-label promotion from which it profited by hundreds of millions of dollars, a District Manager who directed subordinates to engage in unprecedented document destruction, the $430 million Neurontin off-label promotion resolution, the Genotropin conviction, and a CIA designed to monitor and prevent off-label promotion that was in effect throughout much of the time Pfizer was promoting its drugs off-label.[183] It also includes the fact that Pfizer and its executives knew, even before the Class Period, that the risks of non-compliance with marketing laws were "Reputation," "Stock price," "Exclusion," "Fines," and "Civil Judgments."[184] In March 2006, moreover, Pfizer had already concluded that the risk of non-compliance with marketing laws (*i.e.*, off-label promotion) at Pfizer was "[a]lmost [c]ertain/[h]ighly [l]ikely" with consequences such as a greater

[183] PSMF ¶¶1-4, 52-92, 118, 121, 317-353.

[184] PSMF ¶438.

than $1 billion impact on profitability and "significant reduction in [market] share."[185] All of this is information that would be material to a reasonable investor. As McKinnell testified: without compliance "nothing else matters much."[186]

Pfizer's deplorable record on compliance, including its felonious marketing of Bextra off-label, would "plainly" be considered important by a reasonable shareholder in light of its "rather glowing description of the Company's [compliance] spirit, performance, and sense of responsibility." *United Paperworkers Int'l Union*, 985 F.2d at 1198. "[I]t defies logic to suggest that, for example, an investor would not reasonably rely on a statement, contained in what [d]efendants concede was a list of [Pfizer's] business principles, that recognized [Pfizer's] dedication to complying with the letter and spirit of the laws and that [Pfizer's] success depended on such adherence." *Lapin v. Goldman Sachs Group, Inc.*, 506 F. Supp. 2d 221, 240 (S.D.N.Y. 2006).[187] This is particularly true in the context of this case, where Pfizer took pains to disavow any association with off-label promotion in the Neurontin and Genotropin matters.[188] Undoubtedly because of the reputational harm associated with such practices.

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[185] Ex. 105 at PFE DERIV 01002341.

[186] Ex. 59 (McKinnell Depo.) at 315:14-19.

[187] *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp. 2d 176, 190 (S.D.N.Y. 2010) ("statements touting risk management [that] were . . . juxtaposed against detailed factual descriptions of the Company's woefully inadequate or non-existent credit risk procedures" were actionable misstatements); *In re Ambac Fin. Grp., Inc. Sec. Litig.*, 693 F. Supp. 2d 241, 271 (S.D.N.Y. 2010) (defendants' representations of conservative lending standards found actionable because of their failure to disclose the lowering of those standards); *Shaprio v. UJB Fin. Corp*, 964 F.2d 272, 282 (3d Cir. 1992) ("By addressing the quality of a particular management practice, a defendant declares the subject of its representation to be material . . . .").

[188] PSMF ¶¶1, 94; FMS No. 19.

Defendants put forth no plausible evidence in support of their motions and rely on many of the same cases that were raised and rejected by the Court at the pleading stage.[189] Pfizer's new cases do not compel a different result. "*UBS* . . . and *Bahash* do not constitute an intervening change in controlling law, but merely elaborate on *JP Morgan*, which the Court considered in its [prior] decision." *Goldman Sachs Group*, 2014 U.S. Dist. LEXIS 85683, at *7, *13 (rejecting reconsideration of his finding that statements such as "'[w]e are dedicated to complying fully with the letter and spirit of the laws'" were actionable non-puffery).

Moreover, unlike the "explicitly aspirational" statements considered in *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 183 (2d Cir. 2014), the statements here are ones of existing fact. *Compare id.* at 183 (noting that the statements contained "qualifiers such as 'aims to,' 'wants to,' and 'should'") *with e.g.*, FMS No. 2 ("Pfizer observes all requirements of the FDA . . . .").[190] Further, the statements at issue here do "suggest that [Pfizer's] compliance systems give the Company a competitive advantage over other companies." *The City of Brockton Retirement System v. Avon Products, Inc.*, No. 11-CV-4665 (PGG), 2014 U.S. Dist. LEXIS 137387, at *45 (S.D.N.Y. Sept. 29, 2014); *see, e.g.*, FMS No. 2 ("Compliance with all relevant statutes and rules is both the legacy of our 150-year history and one of our most important advantages in global business.").

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[189] Defendants' Motion to Dismiss (Dkt. No. 78) at 25 (citing *ECA & Local 134 IBEW Joint Pension Trust v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009) and *Lasker v. N.Y. State Elec.& Gas Corp.*, 85 F.3d 55 (2d Cir. 1996)). These cases are factually inapposite. *ECA*, 553 F.3d at 204 (in the absence of other factors "[a]n accounting classification decision that affects less than one-third of one percent of total assets does not suggest materiality"); *Lasker*, 85 F.3d at 59 (broad, general statements not tied to alleged fraud not actionable).

[190] *See also, e.g.*, *City of Sterling Heights Police v. Abbey*, 423 F. Supp. 2d 348, 356-57 (S.D.N.Y. 2006) ("public statements must be 'consistent with reasonably available data' and should not misrepresent existing facts'").

This Court noted during a hearing held in this case on July 7, 2014, that as to statements such as compliance with healthcare obligations: "You can prove it by proving they do the things they say they don't do." July 7, 2014 Hearing Tr. at 20. The Court's observation is well supported in the case law. While noting the summary opinion of *Boca Raton Firefighters and Police Pension Fund v. Bahash*, 506 Fed. App'x 32, 37 (2d Cir. 2012), regarding generalizations, Judge Townes recently explained that "courts have declined to dismiss actions on materiality grounds where, for example, a plaintiff alleges a 'glaring disparity' between a defendant's actual operations and public statements of conservative lending standards and disciplined focus." *Waterford Twp. Police & Fire Ret. Sys. v. Smithtown Bancorp, Inc.*, No. 10-CV-864 (SLT), 2014 U.S. Dist. LEXIS 98087, at *17 (E.D.N.Y. July 17, 2014) (citing *Freudenberg*, 712 F. Supp. 2d at 185); *see also Goldman Sachs*, 2014 U.S. Dist. LEXIS 85683, at *16-*17. The litany of facts presented in opposition to the motions before this Court demonstrate that Pfizer was in fact, doing "the things they sa[id] they [didn't] do" to the tune of hundreds of millions of dollars in admittedly ill-gotten gains, a felony conviction, and $2.3 billion in fines and penalties.[191]

Defendants' citations to cherry-picked testimony from plaintiffs' expert Buthusiem is misplaced. *See, e.g.*, Dkt. No. 246 at 43. In this regard, Buthusiem's testimony related to a ***different*** company (GSK) that issued vastly ***different*** statements. For example, none of GSK's statements included anything like Pfizer's competitive-advantage statements, such as: "In a time when the news media is full of stories of business leaders and companies whose actions have engendered public suspicion and mistrust, Pfizer truly stands apart. . . . Compliance with ***all*** relevant statues and rules is both the legacy of our 150-year history and one of our most important ***advantages*** . . . ."[192]

[191] Ex. 179.

[192] *Compare* FMS No. 2 *with* Ex. 269 at 2.

Likewise, GSK revealed what Pfizer concealed: that it was being investigated for off-label promotion.[193] Also, GSK took a vastly different approach to the inevitable loss from the government's investigation: it actually took a reserve nearly ***three years*** before announcing a resolution,[194] whereas Pfizer ***delayed*** doing so for years and until announcing the resolution. Finally, none of the critical contextual circumstances at Pfizer existed at GSK (*e.g.*, multiple prior convictions, document destruction, promoting off-label while already operating under a CIA, etc.). The simple truth is that Buthusiem's testimony defeats, rather than supports, defendants' motions for summary judgment, particularly as to materiality.[195]

While the statements here are not puffery, Pfizer fails to acknowledge that even in cases where puffery is at issue, those statements can be actionable if the speaker "does not genuinely or reasonably believe them." *IBM*, 163 F.3d at 107. In short, "[g]iven [Pfizer's illegal] acts, [the defendants] could not have genuinely believed that its statements about complying with the letter and spirit of the law – and that its continued success depends upon it, [and] valuing its reputation . . . were accurate and complete." *Richman v. Goldman Sachs Group, Inc.*, 868 F. Supp. 2d 261, 279 (S.D.N.Y. 2012). Given the abundant evidence of off-label promotion about which defendants were aware – an awareness they knew the government shared – a reasonable jury could plainly find that defendants did not honestly or reasonably believe their statements about Pfizer's steadfast compliance with healthcare laws and that it represented "one of our most important advantages."

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[193] Ex. 269 at 7.

[194] *See* GSK January 29, 2009 Form 6-K at 1-2; GSK November 3, 2011 Form 6-K at 1-2.

[195] *See, e.g.*, Ex. 42 (Buthusiem Depo.) at 232:20-23 (disclosing that investigation concerned off-label promotion is critical because that inherently revealed risk of exclusion, which is "so material that nobody is going to really test that theory and take it to court and fight it"); *Id*. at 232:25-242:10.

F. Defendants Were Required, but Failed to Disclose that the Source of Pfizer's Drug Success Was Systemic Off-Label Marketing

Defendants again seek to resurrect previously rejected arguments with their contentions that their explanations as to the catalysts for their drug sales are non-actionable. As was true the last time defendants made this argument (Dkt. No. 78 at 10-12), defendants deliberately miss the point – the question is not whether the sales ***figures*** defendants provided were literally true. Rather, the question is whether defendants' ***explanations*** for those sales were misleading because they omitted a significant sales catalyst: Pfizer's illegal off-label promotional activities. The law is well-established that literal truth is not the measure of whether a statement violates the securities laws. *See, e.g.*, *Operating Local 649 Annuity Trust Fund*, 595 F.3d 86. Context matters. Once Pfizer "put[] the topic of the cause of its financial success at issue, then it is 'obligated to disclose information concerning the source of its success.'" *In re Van Der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 400-01 (S.D.N.Y. 2005); *In re Gentiva Sec. Litig.*, 932 F. Supp. 2d 352, 368-69 (E.D.N.Y. 2013) (same).[196] The evidence demonstrates that a driving source of Pfizer's success for its blockbuster drugs – Geodon, Lyrica and Zyvox – was the Company's illegal off-label marketing

[196] *See also In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1052 (9th Cir. 2008) (finding actionable defendants failure to disclose off-label sales where defendants touted the drug as the driver of its earnings); *Sapssov v. Health Mgmt. Assocs., Inc.*, No. 12-CV-46, 2014 U.S. Dist. LEXIS 69679, at *40-*43 (M.D. Fla. May 21, 2014) (finding statements regarding growth actionable where defendants failed to disclose fraudulent Medicare billing practices); *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1034 (C.D. Cal. 2008) ("Defendants misled investors by implicitly and falsely warranting that there were no illegal practices contributing to [the] success" of a drug's sales when they promoted sales for unapproved uses.); *Steiner v. MedQuist Inc.*, No. 04-5487 (JBS), 2006 U.S. Dist. LEXIS 71952, at *53-*54 (D.N.J. Sept. 29, 2006) (attributing revenues to "legitimate business factors" while failing "to disclose a major source of that revenue – the improper billing scheme – was misleading"); *In re Providian Fin. Corp. Sec. Litig.*, 152 F. Supp. 2d 814, 824-25 (E.D. Pa. 2001) (a company has a duty to disclose that the source of its success was illegal business practices when it "put the issues in play").

tactics, which defendants concealed from investors.[197] Thus, there is a disputed issue of material fact precluding summary judgment.

In addition to Pfizer's efforts to attack materiality, D'Amelio separately claims that there is no evidence that "any alleged off-label promotion of Lyrica was material." Dkt. No. 263 at 20. This argument fails for at least two reasons. First, Pfizer's own counsel has acknowledged that knowing off-label promotion triggers mandatory exclusion from federal health benefit programs, and that "people who are wise and reasonably conservative, don't, you know, expose all of the constituents, the stakeholders of a company the size of Pfizer to ruin [from exclusion] if it can be avoided."[198] And second, "it is plainly material to investors that executives of a company are acting fraudulently." *In re Comverse Tech., Inc. Sec. Litig.*, 543 F. Supp. 2d 134, 151 (E.D.N.Y. 2008). Whether these statements concealed material information is a jury question. The facts demonstrate that even though Pfizer was told not to make unsubstantiated claims, Pfizer disregarded that warning and took a page from the illegal, albeit successful, Neurontin playbook and improperly promoted Lyrica off-label.[199] Pfizer had the ability to estimate the amount of off-label profits from its experience with Neurontin and other off-label cases.[200] To that end, plaintiffs' expert, Professor Meredith Rosenthal, has conservatively estimated that Pfizer's off-label promotion of these drugs led to over $760 million in Lyrica sales from 2005 to 2008 in the United States.[201] Pfizer itself acknowledged in 2006 that its improper marketing of Lyrica rose to the level of a "Reportable Event" (*i.e.*, a probable violation of

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[197] PSMF ¶¶68-92.

[198] Ex. 62 (O'Connor's Depo.) at 124:14-125:8.

[199] PSMF ¶¶76-85.

[200] PSMF ¶¶118-121, 137, 177-180, 313-314.

[201] Ex. 8 (Rosenthal Report), ¶87.

criminal, civil or administrative laws – for which penalties or exclusions may be authorized).[202] And by the summer of 2007, the DOJ had already issued a subpoena for documents concerning the off-label marketing of Lyrica.[203] D'Amelio is welcome to try to wow a jury with his argument that no reasonable investor would have cared that their CFO was misleading them about only a few hundred million dollars, but the Court should not let him avoid trial altogether.

A reasonable jury could find the defendants' explanation for Lyrica's sales were materially misleading given the fact that a substantial portion of Pfizer's reported revenue stemmed from illegal off-label promotion outside of Lyrica's approved label. These facts are at odds with defendants' assurances to investors, for example, in press releases that growth of Lyrica was "fueled by strong efficacy"; "driven by strong efficacy"; or "driven by high patient and physician satisfaction."[204] Moreover, at issue is far more than nominal sales or adverse drug effects. *C.f. GlaxoklineSmith Sec. Litig.*, 2006 WL 2871968 (S.D.N.Y. Oct. 6, 2006) (dismissal where it was alleged that the Company concealed negative safety information impacting a nominal amount of the drugs' annual sales of $1.5 billion). The illegal conduct with respect to not only Lyrica but each of the drugs at issue threatened the commercial viability of Pfizer *vis-a-vis* exclusion.[205] By its nature, exclusion from government-funded programs would be material to Pfizer.[206]

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[202] For example, Pfizer informed the OIG in 2006 of a Reportable Event consisting of a regional manager instructing district managers regarding improper comparisons between Lyrica and Neurontin. Ex. 399.

[203] PSMF ¶172; Ex. 437 at 248; Ex. 465 at PFE-JONES 00038274.

[204] FMS Nos. 1, 8, 14, 26, 27, 33, 38, 41 and 42.

[205] PSMF ¶5.

[206] PSMF ¶143.

Pfizer's ability to market and sell Lyrica worldwide after its settlement agreement has no bearing on the materiality of the statements at the time. "Materiality is determined in light of the circumstances ***existing at the time*** the alleged misstatement occurred." *Ganino*, 228 F.3d at 165. Not only is there no evidence that increased sales were not a result of more effective marketing plans, new indications, withdrawal of competitor drugs, etc., but as Professor Rosenthal explains, "promotional effects are long-lived."[207]

Defendants Read and McKinnell also claim that certain statements were forward looking or predictions of future performance.[208] A simple review of the statements that will be tried to a jury – in context – demonstrates that they are not forward-looking, but statements of present or historical fact that misled investors because they concealed material facts known to the defendants including: *E.g.*, *Read* SOF ¶31 ("Lyrica ***has*** demonstrated"); ¶32 Read SOF ("Lyrica ***is*** demonstrating strong performance"); ¶32 ("***We're differentiating*** it based on . . . .").[209]

G. Defendants Are Liable for the False and Misleading Statements

The Individual Defendants argue that they are not responsible for certain false and misleading statements under *Janus Capital Group Inc. v. First Deriv. Traders*, 131 S. Ct. 2296 (2011). First, defendants incorrectly identify the statements that plaintiffs allege are false. For the sake of clarity, plaintiffs have attached a chart that identifies the specific statements that plaintiffs allege are false and misleading. *See* FMS. Second, plaintiffs have identified each Individual

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[207] Ex. 8 (Rosenthal Report), ¶29.

[208] Dkt. No. 269 at 23; Dkt. No. 264 at 8-9.

[209] Even if defendants' statements could be considered forward-looking (which they are not) defendants point to no cautionary language that would alert a reasonable investor that its drug sales were a result of off-label promotion. Nor can defendants overcome the mountain of evidence demonstrating that they were well aware of facts demonstrating that these statements were misleading. *See* §§II.B., II.C. and II.D., *supra*.

Defendant who is primarily responsible for each such statement. *Id*. With that clarification, each of the Individual Defendants is liable for the statements made by them under *Janus* and their motions for summary judgment should be denied. At a minimum, their responsibility for these statements raises a triable issue of fact that must be resolved by the jury at trial.

1. *Janus*

The Individual Defendants argue that unless a defendant signs an SEC filing, is directly quoted in a press release, or personally utters an oral statement, he cannot be primarily liable for that statement under *Janus*. Defendants read *Janus* far too broadly.

Janus did not adopt a rule insulating all non-speaking corporate executives from liability. Rather, the Supreme Court addressed whether a third party – a mutual fund advisor – may be primarily liable under the federal securities laws for statements made by one of its clients. *Janus*, 131 S. Ct. at 2299. The Court concluded that because the investment advisor did not have "ultimate authority" over its client's statements, it did not "make" the statements. *Id*. at 2302 n.6. The Court emphasized that the case involved "separate legal entit[ies]" with distinct owners, and that the mutual fund's board of trustees was independent from its advisor. *Id*. at 2299, 2304. The Court thus declined to "disregard the corporate form" to hold one entity liable for another's statements. *Id*. at 2304.

That reasoning does not apply to cases like this one, involving statements made by a single corporate entity and its ***own*** corporate officers:

> [*Janus*] addressed only whether third parties can be held liable for statements made by their clients. Its logic rested on the distinction between secondary liability and primary liability . . . and has no bearing on how corporate officers who work together in the same entity can be held jointly responsible on a theory of primary liability.

City of Pontiac Gen. Emples. Ret. Sys. v. Lockheed Martin Corp., 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012). Whether an executive signed an SEC filing, was quoted in a press release, or uttered the words during an analyst meeting is not the only test under *Janus*. As one court noted:

> While it is correct [the executive officer] did not sign any of the SEC filings at issue, he still may be found to have made a misstatement. In the post-*Janus* world, an executive may be held accountable where the executive had ultimate authority over the company's statement; signed the company's statement; . . . or when the statement is attributed to the executive.

In re Fannie Mae 2008 Securities Litigation, 891 F. Supp. 2d 458, 473 (S.D.N.Y. 2012).

Numerous other courts have since rejected the contention that corporate executives with ultimate authority over a company's statements are not accountable for the statements' accuracy. *See, e.g.*, *SEC v. Benger*, 931 F. Supp. 2d 908, 911 (N.D. Ill. 2013) ("ultimate authority" established where defendants "'approved, adopted, and collectively implemented'" the challenged statements "in concert with the other defendants"); *SEC v. Daifotis*, 874 F. Supp. 2d 870, 881 (N.D. Cal. 2012) ("in the wake of *Janus*, an executive who undisputably exercise[s] authority over his own non-casual statements with the intent and reasonable expectation that such statement would be relayed to the investing public, should be deemed to be the person who 'made' the statements"); *In re Satyam Computer Servs. Secs. Litig.*, 915 F. Supp. 2d 450, 477 n.16 (S.D.N.Y. 2013) (distinguishing *Janus* where defendants were "charged with responsibility for false statements made by the Company itself").

The Individual Defendants had ultimate authority over each statement for which plaintiffs seek primary liability against them in this case. Therefore, the statements satisfy the test set forth in *Janus*.

2. SEC Filings

McKinnell, Levin, Kindler and D'Amelio do not and cannot contest that they signed certain Form 10-Ks and 10-Qs filed with the SEC during the Class Period and, thereby, made the statements set forth in these documents.[210] *In re Pfizer Sec. Litig.*, 936 F. Supp. 2d 252, 269 (S.D.N.Y. 2013) (denying summary judgment as to McKinnell for SEC filings signed by him as Pfizer CEO); *Local 703, I.B. of T. Grocery & Food Empls. v. Regions Financial Corp.*, No. 10-CV-2847, 2011 U.S. Dist. LEXIS 93873, at *3 (N.D. Ala. Aug. 23, 2011) ("Nothing in *Janus* stands for the proposition that CEOs and CFOs can not be liable for false and misleading statements in their own company's financial statements, for which they signed Sarbanes-Oxley certifications.").

The remaining Individual Defendants are also liable for statements in the Form 10-Ks and 10-Qs filed during their tenure – even though they did not sign the documents at issue.[211] The Individual Defendants were high-ranking executives at Pfizer, who were members of the Company's Executive Committee or Executive Leadership Team ("ELT") and were specifically identified as such in the Company's SEC filings.[212] Kindler was a member of the Pfizer Executive Committee until becoming Pfizer's CEO on August 1, 2006.[213] The Executive Committee, chaired by

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[210] McKinnell signed SEC filings that contained FMS Nos. 2, 3, 6, 7; Levin signed SEC filings that contained FMS Nos. 2, 3, 6, 7, 9, 10, 12, 13, 16, 17, 21, 22, 24 and 25; Kindler signed SEC filings that contained FMS Nos. 9, 10, 12, 13, 16, 17, 21, 22, 24, 25, 28, 29, 31, 32, 36, 37, 39, 40, 43 and 44; D'Amelio signed SEC filings that contained FMS Nos. 28, 29, 31, 32, 36, 37, 39, 40, 43 and 44. Levin and McKinnell argue that they cannot be liable for statements made by the other defendants after their departure from the Company. Plaintiffs do not disagree and have only charged defendants with statements made during their time at Pfizer. *See* FMS.

[211] Kindler (as General Counsel prior to his promotion to CEO): FMS Nos. 2 and 7; Read: FMS Nos. 13, 16, 22, 25, 29, 31, 37, 40 and 44; Waxman (as General Counsel): FMS Nos. 10, 13, 16, 22, 25, 29 and 31.

[212] Petrosinelli Decl., Exs. B-1, D-1, F-1.

[213] Kindler signed each of the Company's 10-Qs and 10-Ks after he was named Pfizer's CEO.

McKinnell, was the "company's top decision-making team, responsible for vision, strategic direction and operations of the company."[214] The Executive Committee reviewed and approved "all major management, operating and financial decisions."[215] Waxman and Read were members of Pfizer's ELT, which was formed by Kindler to replace the Executive Committee as the Company's decision-making team. The ELT, "comprised of Pfizer's senior-most leadership," was the "single senior operating body responsible for running the company." The ELT was charged with "making decisions relating to issues of enterprise-wide significance, such as the company's strategic and operating plans."[216] The ELT held quarterly meetings to discuss quarterly results and significant matters. The ELT was responsible for identifying potential disclosure items to be communicated to the CFO.[217] The ELT also was responsible for reviewing the third draft of SEC filings and making comments on that draft.[218] Once the ELT's comments were incorporated into the document, the final version of the SEC filing was generated.[219]

In addition, prior to ascending to the CEO role, Kindler was a member of the Company's Disclosure Committee. Waxman, who was promoted to General Counsel when Kindler became CEO, replaced Kindler as a member of the Disclosure Committee in August 2006. The Disclosure Committee was charged with reviewing each disclosure document, including SEC filings, and

[214] Ex. 238 at Litwac-A 10000354339.

[215] Ex. 238 at Litwac-A 10000354339.

[216] Ex. 202 at KPMG-PFIZ-DS 037982.

[217] Ex. 452 at PFE-JONES 00032754.

[218] Ex. 337 at KPMG-PFIZ-DS 053801.

[219] Ex. 337 at KPMG-PFIZ-DS 053801.

evaluating issues of materiality and disclosure.[220] The chair of the Disclosure Committee reported findings and conclusions directly to the CFO.[221] The Disclosure Committee was charged with assisting the CFO and CEO in fulfilling their responsibility for overseeing Pfizer's disclosures.[222] In addition, in their roles as General Counsel, both Kindler and Waxman were responsible for the Legal Proceedings Disclosures and were charged with their ultimate approval.[223]

Moreover, Kindler (while General Counsel), Read and Waxman attended Certification Meetings at quarter and year end at which they sat in a conference room with the CEO and CFO to review the final version of the SEC filings.[224] At those Certification Meetings, Kindler, Read and Waxman approved the SEC filings again before the CEO and CFO signed their Sarbanes-Oxley certifications that were filed with the SEC. Kindler and Waxman, as part of that process, signed certifications as to the accuracy and completeness of the information contained therein. Galin Decl., Ex. C-2-W at PFE-JONES 00045992 and Strassberg Decl., Ex. CC-D.[225] Without Kindler, Read and

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[220] Ex. 452 at PFE-JONES 00032753.

[221] Ex. 452 at PFE-JONES 00032756.

[222] Ex. 337 KPMG-PFIZ-DS 053822.

[223] Ex. 452 at PFE-JONES 00032755.

[224] *See, e.g.*, Kindler attending the Certification Meetings as General Counsel (Ex. 456 at PFE-JONES 00036401-2; Ex. 458 at PFE-JONES 00036468-69); Waxman attending Certification Meetings as General Counsel (Galin Decl. G-2-W, H-2-W, I-2-W, J-2-W and K-2-W); and Read attending as an ELT member (I-2-W).

[225] Although defendants produced only one of Read's certifications (KPMG-PFIZ-DS 068572), other documents reflect that certifications were obtained from critical corporate officers and other executives. Ex. 452 at PFE-JONES 00032756. Read, as an ELT member and President – Worldwide Pharmaceutical Operations ("WPO"), certainly falls within this group of officers required to provide certifications. Waxman relies on *In re DVI, Inc. Sec. Litig.*, 919 F. Supp. 2d 498 (E.D. Pa. 2013), to argue that signing a subcertification is insufficient to satisfy *Janus*. However, as set forth herein, Waxman did far more than sign a subcertification. Waxman's subcertification, nonetheless, is evidence of his ultimate authority over the statements. *Fannie Mae 2008*, 891 F.

Waxman's certifications, Pfizer's disclosure process did not permit the CEO and CFO to sign Pfizer's SEC filings. Their role in Pfizer's disclosure process demonstrates Kindler, Read and Waxman's ultimate authority over the statements in the SEC filings.

Put simply, *Janus* does not hold that there can be only one "maker" of a statement. *Carpenters Pension Trust v. Barclays PLC*, 12-CV-5329 (SAS), 2014 U.S. Dist. LEXIS 148772, at *17 (S.D.N.Y. Oct. 20, 2014). *Janus* "'has no bearing on how corporate officers who work together in the same entity can be held jointly responsible on a theory of primary liability. It is not inconsistent with *Janus Capital* to presume that multiple people in a single corporation have the joint authority to "make" an SEC filing, such that a misstatement has more than one "maker."'" *Pfizer*, 936 F. Supp. 2d at 268-69 (S.D.N.Y. 2013) (quoting *City of Pontiac*, 875 F. Supp. 2d at 373); *Carpenters Pension Trust*, 2014 U.S. Dist. LEXIS 148772, at *18 (same).

Applying that logic, trial courts have rejected attempts by defendants to avoid liability under *Janus* by claiming that they did not personally sign SEC filings and press releases. *See, e.g.*, *In re Pfizer Sec. Litig.*, 936 F. Supp. 2d at 269-70 (denying summary judgment as to statements in Pfizer press releases because the individual defendants reviewed and had authority over the issuance of any press releases, while granting summary judgment as to certain defendants as to SEC filings where plaintiffs, unlike here, failed to identify any evidence to indicate that those defendants had authority over the content of the filings); *City of Pontiac*, 875 F. Supp. 2d at 374-75 (denying motion to dismiss on group pleading analysis as to unattributed statements in company press releases because defendant was the executive in charge of the division whose misconduct was at the heart of plaintiff's claims, an officer of the company, and one of seven individuals listed as part of

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Supp. 2d 458, 473 (executive's role, participation in drafting SEC filings and "his sub-certification (and, thus, approval) of the SEC filings" create question of fact as to his ultimate authority).

Lockheed's "Leadership"); *Munoz v. China Expert Technology*, No. 07 CIV. 10531 (AKH), 2011 U.S. Dist. LEXIS 128539, at *4-*5 (S.D.N.Y. Nov. 7, 2011) (denying motion to dismiss audit firm's New York-based affiliate where there were "genuine issues of fact" as to whether that entity "explicitly or implicitly controlled sufficiently – and thus 'made' – the statements in question"); *Carpenters Pension Trust*, 2014 U.S. Dist. LEXIS 148772, at *18-*19 (denying CEO's motion to dismiss because it was plausible that CEO was able to cause the bank to make false statement by instructing it to do so, even where the statements were explicitly attributed to the bank, not the CEO); *Satyam*, 915 F. Supp. 2d at 477 (holding that allegations were sufficient under *Janus* to deny motion to dismiss as to audit committee members who were responsible for overseeing the company's financial reporting process, ensuring the accuracy of its financial statements, reviewing the outside auditors' performance, and reviewing the quarterly financial statements with management).

Here, the evidence demonstrated that each of the Individual Defendants had authority over the contents of the SEC filings, and whether and how to communicate that information. Against that backdrop, a jury should decide whether the defendants "made" the statements at issue.[226]

3. Annual Proxy Statements

Pfizer and McKinnell are liable for the Blue Book (Pfizer's Policies on Business Conduct) statements, which are expressly incorporated into Pfizer's Annual 2006 Proxy Statement. FMS No. 4. First, McKinnell signed the letter within the Blue Book, which contains the false and misleading statements. *Id.* He unquestionably was the maker of this statement. Second, as the Chairman of the

[226] Read argues that *Pfizer Sec. Litig.*, 936 F. Supp. 2d 252, relieves him of liability for statements in the SEC filings. However, in that case, the Court found that plaintiffs had not identified any evidence that certain defendants had authority over the content of the SEC filings. Here, plaintiffs have demonstrated Read's role in the content and approval of those statements.

Board, McKinnell reviewed drafts of the Proxy Statement and approved the final version. McKinnell had ultimate authority over the statements contained in that document.[227]

Similarly, Pfizer and Kindler are liable for the Blue Book statements in the 2007 and 2008 Proxy Statements. Kindler was the CEO and Chairman of Pfizer's Board of Directors at the time that Pfizer's Annual 2007 Proxy Statement (FMS No. 18) and Annual 2008 Proxy Statement (FMS No. 34) were issued. Again, Kindler approved the Proxy Statements and had ultimate authority over the statements contained therein.[228] Facing this uncontroverted evidence, McKinnell and Kindler cannot seriously contest that they were the makers of these statements.

4. Press Releases

The Individual Defendants are also responsible for the press releases issued by Pfizer during their tenures with the Company.[229] In *In re Pfizer Sec. Litig.*, 936 F. Supp. 2d at 269, the district court denied summary judgment with respect to statements in Pfizer press releases despite the same *Janus*-based arguments advanced by defendants here. In *Pfizer*, Judge Swain noted that the individual defendants were officers of the company who made statements pursuant to their

[227] Ex. 264 at PFE-JONES 00037385 (noting a draft of the proxy was sent to all information providers, which included elected officers and directors, and that "The Board of Directors received the final version of the proxy statement for their review in the materials that were sent to them in connection with the February 23, 2006 Meeting, at which they will be asked to approve its filing with the SEC."); Ex. 381 at PFE DERIV 00000 458-59 (Feb. 23, 2006 Board of Directors Minutes note that approval of the proxy occurred, although defendants redacted the details of the discussion).

[228] *See* Ex. 339 at KPMG-PFIZ-DS at 057288 (Feb. 22, 2007 Pfizer Inc. Board of Directors Minutes, noting Kindler was present as Chairman of the Board and that the Board received drafts of the 2007 Proxy Statement in advance of the meeting and approved it for filing with the SEC at the Feb. 22, 2007 meeting); Ex. 375 at PFE DERIV 00000094107 (Feb. 28, 2008 Pfizer Inc. Board of Director Minutes, noting Kindler was present as Chairman of the Board and containing an entry "Approval of Proxy Material," although defendants redacted the substance of the discussions as nonresponsive).

[229] Plaintiffs allege that defendants made certain false statements in 12 press releases that announced Pfizer's earnings (FMS Nos. 1, 5, 8, 11, 15, 20, 23, 26, 30, 35, 38 and 42) and in one press release relating to Pfizer's settlement of the Genotropin investigation on April 2, 2007. FMS No. 19.

responsibility and authority to act on Pfizer's behalf, "'not as in Janus, on behalf of some separate and independent entity.'" *Pfizer*, 963 F. Supp. 2d at 268 (citing *In re Merck & Co., Sec., Derivative & ERISA Litig.*, 2011 U.S. Dist. LEXIS 87578, at *25 (D.N.J. Aug. 8, 2011)). The court held:

> The record contains evidence that the Individual Defendants had "ultimate authority" over the alleged misstatements released by Pfizer as a corporation. In particular, Plaintiffs point to testimony from Andrew McCormick, Pfizer's vice president of media relations during the Class Period, stating that top management, including the Individual Defendants, reviewed all Pfizer press releases as to COX-2 drugs. . . . Thus, there is record evidence from which a jury could conclude that the Individual Defendants made statements issued by Pfizer, and Defendants are not entitled to judgment dismissing the claims against them that are based on such statements.

Id. at 269.

The same holds true for the Individual Defendants in this *Pfizer* case. The evidence established that the Individual Defendants reviewed Pfizer press releases as a matter of general practice and, thereby, had authority over the contents of these press releases.[230] As CEO and CFO at different times during the Class Period, McKinnell, Levin, Kindler and D'Amelio had ultimate authority over any Pfizer press releases.[231] In fact, McKinnell, Levin, Kindler and D'Amelio are quoted in many of the same press releases that contain the false and misleading statements.[232]

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[230] As to the press releases with false statements, the Individual Defendants are liable for the following statements: McKinnell: FMS Nos. 1, 5 and 8; Kindler: FMS Nos. 1, 5, 8, 11, 15, 19, 20, 23, 26, 30, 35, 38 and 42; Levin: FMS Nos. 1, 5, 8, 11, 15, 19, 20 and 23; D'Amelio: FMS Nos. 26, 30, 35, 38 and 42; Waxman: FMS Nos. 11, 15, 19, 20, 23, 26 and 30; Read: FMS Nos. 11, 15, 19, 20, 23, 26, 30, 35, 38 and 42.

[231] Ex. 464 at PFE-JONES 00037198 (defining Disclosure Committee's role in assisting "the CEO and CFO ('the Senior Officers') in fulfilling their responsibility for oversight of the disclosures made by the company").

[232] McKinnell is quoted in FMS Nos. 1, 5 and 8; Levin in FMS Nos. 1, 5, 8, 11 and 15; Kindler in FMS Nos. 1, 11, 15, 20, 23, 26, 30, 35, 38 and 42; and D'Amelio in FMS Nos. 26, 30, 35, 38 and 42.

As Executive Committee/ELT members, McKinnell, Kindler, D'Amelio, Waxman and Read attended meetings to discuss quarterly results and significant matters on a quarterly basis.[233] For example, the ELT Meeting Minutes from April 10, 2007 state that ELT members (at that time) Kindler, Waxman and Read were asked to return their comments on the April 20, 2007 earnings release (FMS No. 20) by the end of the day.[234] Similarly, a draft of the July 20, 2006 earnings press release (FMS No. 8), was provided to the Executive Committee for approval.[235] Minutes of the ELT meeting on September 26, 2006 provide another example of its responsibility for press releases. At that meeting, Kindler, Read and Waxman discussed a proposed communication strategy for Pfizer to follow over the next six months, including the upcoming October 19, 2007 earnings call (FMS No. 11 was the press release ultimately issued that day) and the January 2007 earnings press release (FMS No. 15).[236] The Executive Committee/ELT "comprised of Pfizer's senior-most leadership," such as McKinnell, Kindler, D'Amelio, Waxman and Read, were "responsible for running the company" and had ultimate responsibility for these statements.

However, there is still more evidence of defendants' authority over the press releases. First, Waxman is quoted as making the false and misleading statement on April 2, 2007. And Waxman has admitted making the statement.[237] Second, Kindler (until his promotion to CEO), D'Amelio, Levin and Waxman were all members of the Disclosure Committee at Pfizer. The Disclosure Committee met each quarter before the earnings release. As Disclosure Committee members, their

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[233] Ex. 452 at PFE-JONES 00032754.

[234] Ex. 341 at KPMG-PFIZ-DS 057367.

[235] Ex. 239 at PFE DERIV 01029370 ("Final Draft for EC Approval").

[236] Ex. 202 at KPMG-PFIZ-DS 037981-998, at 037989, 037981.

[237] Ex. 67 (11/14/13 Waxman Depo.) at 142:24-143:4; Ex. 68 (10/16/14 Waxman Depo.) at 71:15-18.

role was to assist the CEO and CFO in overseeing Pfizer disclosures, including reviewing disclosure controls and procedures relating to the preparation of "press releases containing financial information, guidance, information about material acquisitions or dispositions or other information material to the Company's security holders."[238] More importantly, the Disclosure Committee's role was to "oversee the filing process by reviewing each disclosure document and evaluating issues of materiality and disclosure."[239]

Moreover, as Pfizer's CFOs during the Class Period, D'Amelio and Levin held an "earnings review meeting at the end of the quarter to discuss significant matters."[240] And "[d]uring this meeting, a first draft of the earnings release" was reviewed.[241] Later, the CFO (Levin or D'Amelio) was required to engage in a conference call with the Company's General Counsel (Kindler or Waxman), "to review the quarterly earnings release and attached schedules (income statement, balance sheet and segment data)."[242]

Again, a jury should decide whether the evidence proves that defendants "made" these press release statements.

5. Oral Statements

At trial, plaintiffs will prove that Pfizer made false statements, through its executives, during earnings calls and analyst meetings on July 20, 2006, January 22, 2007, October 18, 2007, March 5, 2008, and September 28, 2008. Pfizer is clearly liable for each of these false statements, since *Janus*

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[238] Ex. 337 at KPMG-PFIZ-DS 053822; *see also* Ex. 124 at 1.

[239] Ex. 452 at PFE-JONES 00032753.

[240] Ex. 452 at PFE-JONES 00032754.

[241] Ex. 452 at PFE-JONES 00032754.

[242] Ex. 452 at PFE-JONES 00032755.

did not alter the well-established rule that a corporation can only act through its employees and agents. *In re Pfizer Sec. Litig.*, 936 F. Supp. 2d at 268. And, in addition to the defendants who uttered the oral statement, certain other defendants are also liable for certain oral statements, as set forth below.[243]

a. January 22, 2007 (Pfizer, Read and Kindler)

On January 22, 2007, Pfizer hosted a meeting and live webcast with analysts. Defendant Read spoke at the conference and made false and misleading statements regarding both Geodon and Lyrica. FMS No. 14. Read is liable for his statements. *In re Nevsun Res. Ltd.*, No. 12 CIV. 1845 (PGG), 2013 U.S. Dist. LEXIS 162048 (S.D.N.Y. Sept. 27, 2013) (rejecting individual defendant's argument that statements he made during investor conference calls simply repeated information from securities filings; and noting that "'in the post-*Janus* world, an executive may be held accountable . . . where the statement is attributed to the executive'"). Three other Individual Defendants spoke at and participated in this conference: Kindler as the CEO, Levin as the CFO and Waxman as the General Counsel. Of those three, Kindler is also liable for the statements uttered by Read.

On January 22, 2007, Kindler was Pfizer's CEO. He was the primary speaker on behalf of the Company at the conference. Kindler explained that "great opportunities abound for our

[243] Defendants' reliance on cases such as *In re UBS AG Securities Litigation*, No. 07 CIV. 11225 (RJS), 2012 WL 4471265 (S.D.N.Y. Sept. 28, 2012), *In re JPMorgan Chase & Co. Secs. Litig.*, No. 12 CIV. 3852 (GBD), 2014 U.S. Dist. LEXIS 44050 (S.D.N.Y. Mar. 31, 2014), and *Ho v. Duoyen Global Water, Inc.*, 887 F. Supp. 2d 547 (S.D.N.Y. 2012), for the proposition that a defendant cannot be liable for the oral statements of another executive is misplaced. *In re UBS* and *Ho* are motion to dismiss cases in which plaintiffs sought to rely on the group-pleading doctrine. In *JPMorgan*, the Court rejected plaintiffs' argument that providing information to another defendant in advance of a conference call was sufficient under *Janus*. Here, plaintiffs have adduced evidence demonstrating that the defendants adopted, approved or affirmed certain oral statements made by other defendants. If a defendant did not adopt, approve or reiterate an oral statement by his co-defendant, plaintiffs have not asserted that he is liable.

business." January 22, 2007 Hearing Transcript at 3. He stressed that Pfizer was changing its business model and noted:

> In the past Pfizer has always offered a wide range of medicines, but with giant blockbusters aimed at the primary care market generating a very large share of our revenue. In the future, we must have a comprehensive and diversified portfolio of uniquely valuable medicines, many aimed at specialty markets that are complemented by value-added products and services. Among other things, that means that we need to be just as effective at selling a large number of $500 million products as we are selling drugs with multibillion dollar sales.

January 22, 2007 Hearing Transcript at 4.

Within minutes of Kindler's statements about Pfizer's diversified portfolios and $500 million products, defendant Read discussed Geodon, its $600 million in annual sales and its growth potential – clearly Geodon was among the $500 million products Kindler was pointing to, which would drive the future. Kindler introduced Read at the conference, stating:

> Today with the help of several of my colleagues, Ian Read, the Head of our Worldwide Pharmaceutical Operations; John LaMattina, the Head of Pfizer Global Research and Development; and David Shedlarz, our Vice Chairman, we will tell you about the steps we're taking right now to get there.

January 22, 2007 Hearing Transcript at 4.

In making this introduction, CEO Kindler clearly blessed, approved and adopted Read's statements that followed moments later. Kindler also stated:

> We are working hard now to maximize near and long-term revenues from our current portfolio . . . .
>
> * * *
>
> At Pfizer we aspire to the best of both of those worlds. Today you will hear how Ian Read is doing that in the commercial organization by breaking our nearly $24 billion US operations into four separately managed commercial units with a fifth unit responsible for customer support. Each of these units will draw on the resources that are best managed at scale, but each will have a general manager with P&L responsibility who is accountable for the specific products within that unit and who is accountable for maximizing the performance of that therapeutic area.
>
> * * *

> Thank you. At this point I would like to turn the podium over to Ian Read, who in his short tenure as head of our Worldwide Pharmaceutical Operations, has already brought the benefits of his years of industry experience, his creativity and his sense of urgency to moving forward our agenda of change. Ian?

January 22, 2007 Hearing Transcript at 5-7.

And after Read made his false and misleading statements, Kindler followed up on them, stating:

> "I hope you have a better understanding of ***our*** immediate priorities after listening to the presentations today, and I hope you also see that ***we*** are moving very quickly to execute on them."

January 22, 2007 Hearing Transcript at 27.

Unquestionably, Kindler coordinated his comments with Read's, and in doing so, he embraced and reaffirmed Read's false statements with references to "our" priorities and actions that "we" are taking – referring to the presentations by Read and two other executives. Thereafter, he left no doubt that he was reaffirming Read's statements about in-line products,[244] such as Geodon and Lyrica, stating:

> "[W]e are trying to, as you heard today, really press on three fronts simultaneously and as aggressively as possible. Our in-line products, which we do believe have terrific potential and you heard today about our efforts in that regard and we're going to continue pushing very hard on that revenue driver."

Kindler approved, adopted and reaffirmed Read's comments on January 22, 2007. As such, he is just as liable for them as Read and Pfizer. At a minimum, Kindler has failed to foreclose as a matter of law his joint responsibility for Read's comments.

b. October 18, 2007 (Pfizer and Kindler)

On October 18, 2007, Pfizer hosted a conference call for analysts and the investing public to discuss the Company's 3Q07 earnings announcement. At that meeting, Kindler, Pfizer's CEO, made

[244] Pfizer repeatedly used the term "in-line products" to describe drugs that had already launched and were generating revenue. *See, e.g.*, Pfizer 2005 10-K at Petrosinelli Decl., Ex. B-1.

misleading statements regarding the growth of Geodon. FMS No. 27. Kindler and Pfizer are liable for those statements. *Nevsun*, 2013 U.S. Dist. LEXIS 162048, at *37. Although D'Amelio, Read and Waxman also participated in the conference call, plaintiffs do not seek to hold them accountable for Kindler's statements under *Janus*.

c. March 5, 2008 (Pfizer, Read, D'Amelio and Kindler)

On March 5, 2008, at Pfizer's Investor Day, Read made false and misleading statements regarding Lyrica. Specifically, Read asserted that the product's sales growth in 2007 was driven by the FDA's approval of its use for fibromyalgia. FMS No. 33. In fact, as defendants knew, Lyrica's growth was driven by Pfizer's off-label marketing of the drug. Read and Pfizer are liable for this statement. Three other Individual Defendants, Kindler, D'Amelio and Waxman, were present and participated in the Investor Day. Both CEO Kindler and CFO D'Amelio are also liable for Read's statements since they approved, reaffirmed and adopted those false and misleading statements during the conference.

Kindler, as Pfizer's CEO, led the Investor Day, spoke first during the conference, and introduced Read with a preview of Read's remarks. Among other things, Kindler touched on the Company's product portfolio and in-line products (which included Lyrica), talked about growth strategies, and discussed Read's successful implementation of Pfizer's strategy, stating:

> Plus, we have a diversified product portfolio with some of the world's great brands.
>
> * * *
>
> We have five specific strategies for growth during this period. First, to refocus and optimize the patent-protected portfolio, both the research pipeline and the in-line products. Second, to seize new revenues opportunities in the fast-growing markets for established products around the world where we have significant sales of post-LOE brands. Third, to accelerate our growth in emerging markets. Fourth, to relentlessly focus on continuous improvement and innovation. And fifth, to invest in

> complementary business that leverage our capabilities and provide attractive financial returns.
>
> Now today we're going to focus primarily on the first three of those, although you'll see evidence of the fourth in every presentation. So I'd like to give you an overview of how we'll address them in the balance of our presentations today.
>
> * * *
>
> Now while we work aggressively on our pipeline, we're also optimizing the value of our in-line products, including products that we will have long after Lipitor. At the same time we're also moving quickly to change our business models to respond to the new realities of our marketplace. Ian Reid [sic], our President of Worldwide Pharmaceutical Operations, will give you an in depth look at our experimentation and implementation of multiple new go-to-market approaches that enable us to add more value to our customers by focusing locally, while we spend less money to do so. This is a strategy that Ian successfully developed and implemented as the head of our European Pharmaceuticals business and he's now applying it worldwide.

March 5, 2008 Hearing Transcript at 5-6

Later in the conference, Jamie Reuben, a Morgan Stanley analyst, asked a question regarding Lyrica and fibromyalgia in response to Read's false and misleading statements on the topic. Read answered the question. As soon as Read finished speaking, Kindler asked, "Okay, Jamie?," ensuring that Read's remarks were understood. March 5, 2008 Hearing Transcript at 44. In light of his position as Pfizer's CFO, repeated endorsement of Read, and comments at the conference regarding both the Company's products and sales growth, Kindler must be held accountable under *Janus* for the words spoken by Read.

Similarly, D'Amelio is also liable for Read's oral statements regarding Lyrica at the conference. As soon as Read completed his remarks, including his misleading statements with respect to Lyrica and its growth, he turned the podium over to D'Amelio, introducing him as Pfizer's CFO. Almost immediately, D'Amelio echoed Read's oral statements. D'Amelio, discussing the Company's 2007 financial performance, stated:

> If you look at revenues, year-over-year, they were essentially flat. A lot going on in those revenue numbers. We had Norvasc was down $1.9 billion year-over-year, Zoloft was down $1.6 billion, so $3.5 billion down on a year-over-year basis due to LOE impacts. ***We were able to offset that with a combination of new product revenues***, Chantix, ***Lyrica*** and Sutent, ***which were up $1.8 billion year-over-year***.

March 5, 2008 Hearing Transcript at 37.

D'Amelio's comments reinforced Read's statements regarding Lyrica's growth. D'Amelio thereby reaffirmed Read's false and misleading statements. As such, D'Amelio is also a "maker" of the statement under *Janus*.

d. September 22, 2008 (Pfizer and Read)

On September 22, 2008, Read made a presentation on Pfizer's behalf at the UBS Global Life Sciences Conference. Read made false and misleading statements at that conference regarding Lyrica and, in particular, the reasons for its "strong performance." FMS No. 41. Read and Pfizer are liable for those statements.

V. A REASONABLE JURY WILL FIND PFIZER AND THE INDIVIDUAL DEFENDANTS KNEW OR RECKLESSLY DISREGARDED THEIR FALSE AND MISLEADING STATEMENTS

Pfizer and the Individual Defendants argue that their good faith reliance on Disclosure Counsel and KPMG entitle them to summary judgment.[245] Defendants are wrong, however, as they misapprehend the applicable legal standards on summary judgment that the Court must apply when evaluating plaintiffs' evidence of scienter. Summary judgment is not appropriate on these defenses because "'good faith reliance'" on any professional advice is "'not a complete defense, but only one factor for consideration.'" *SEC v. Meltzer*, 440 F. Supp. 2d 179, 189 (E.D.N.Y. 2006) (quoting *Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994)). Summary judgment is especially inappropriate

[245] Dkt. No. 246 at 31-38; Dkt. No. 263 at 23-31; Dkt. No. 253 at 22-27; Dkt. No. 274 at 20-25; Dkt. No. 269 at 16-17; Dkt. No. 264 at 10-11; Dkt. No. 258 at 23-25.

given defendants' reliance on counsel and KPMG, because "[w]hether or not a given intent existed, is of course, a question of fact." *SEC v. First Jersey Sec. Ins.*, 101 F.3d 1450, 1467 (2d Cir. 1996). Because those reliance defenses are defendants' only objection to scienter, the question of scienter should go to the jury. *See, e.g.*, *Silverman v. Motorola, Inc.*, 798 F. Supp. 2d 954 at 967-69 (N.D. Ill. 2012) (rejecting reliance on counsel, auditors and "process" defenses at summary judgment and observing "[t]he weight of authority suggests that evidence of reliability is merely relevant to whether a defendant acted with the requisite scienter.").

It is worth noting that by only asserting their good faith, defendants waive any claim that plaintiffs' allegations of actual knowledge or recklessness are insufficient. Defendants do not challenge their scienter – and only assert their scienter is excused – because the undisputed facts demonstrate their actual knowledge or reckless disregard for the falsity of their statements and omissions.[246] Moreover, defendants' assertions of good faith also fall short, as they can demonstrate neither their good faith reliance on Disclosure Counsel nor KPMG.[247]

A. Scienter Is a Fact-Based Inquiry to Be Decided by a Jury and Is Inappropriate on Summary Judgment

Scienter can be established by a showing either defendants' conscious misbehavior or recklessness. *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000). Recklessness can be established by proof that defendants knew or should have known that they were misrepresenting material facts

[246] Although certain of the Individual Defendants, namely D'Amelio, Kindler, McKinnell and Read, assert that plaintiffs cannot demonstrate their motive and opportunity to commit the fraud and thus cannot establish scienter, these defendants ignore the law. Dkt. No. 263 at 22-23; Dkt. No. 274 at 20; Dkt. No. 269 at 14-15; Dkt. No. 264 at 10 n.32. The Supreme Court has held that an absence of motive "is not fatal" at the pleading stage – let alone at summary judgment, where, as here, there is ample evidence of actual fraudulent knowledge and recklessness. *Tellabs Inc. v. Makor Issue & Rights, Ltd.*, 551 U.S. 308, 325 (2007).

[247] *See* §V.B.-D.

related to the corporation. *Id.* Evidence that "defendants failed to review or check information that they had a duty to monitor or ignored obvious signs of fraud" is also sufficient for scienter. *Id.*; *accord Gould v. Winstar Communs., Inc.*, 692 F.3d 148 (2d Cir. 2012) (reversing grant of summary judgment). To prove scienter, "circumstantial evidence can be more than sufficient." *Herman & Maclean v. Huddleston*, 459 U.S. 375, 391 n.30 (1983).

Courts routinely recognize that "the fact-intensive nature of a scienter inquiry militates against granting judgment as a matter of law." *In re Celestica Inc. Sec. Litig.*, 07-CV-312, 2014 U.S. Dist. LEXIS 116562, at *31 (S.D.N.Y. Aug. 20, 2014) (citing *RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, 207 F. Supp. 2d 292, 298 (S.D.N.Y. 2002)); *Wechsler v. Steinberg*, 733 F.2d 1054, 1058-59 (2d Cir. 1984) ("Issues of motive and intent are usually inappropriate for disposition on summary judgment."); *In re Columbia Sec. Litig.*, 155 F.R.D. 466, 479 (S.D.N.Y. 1994) ("Resolution of the question of scienter, as with any issue of motive or intent, generally requires examination of a witness's demeanor and credibility and is thus . . . inappropriate for disposition on summary judgment.").

"The Second Circuit has further directed courts to be "'lenient in allowing scienter issues to withstand summary judgment based on fairly tenuous inferences," because such issues are "appropriate for resolution by the trier of fact."'" *King County v. IKB Deutsche Industriebank AG*, 916 F. Supp. 2d 442, 448 (S.D.N.Y. 2013) (quoting *In re DDAVP Direct Purchaser Antitrust Litig.*, 585 F.3d 677, 693 (2d Cir. 2009)); *see also Press*, 166 F.3d at 538 ("'Whether a given intent existed is generally a question of fact,' – appropriate for resolution by the trier of fact.").

B. Defendants' Pursuit of Summary Judgment Based on Reliance Defenses Is Baseless

1. A Reliance-on-Others Defense Is Not a Complete Defense

As to scienter, defendants' motions depend entirely on their reliance-on-others' defenses. *See* Dkt. Nos. 246 at 28; 263 at 23; 253 at 19; 269 at 7; 264 at 10; 258 at 22; and 274 at 20. The "others" defendants describe include dozens of outside and in-house counsel, outside auditor KPMG, and Pfizer's Controller, Loretta Cangialosi. *See, e.g.*, Dkt. No. 274 at 22 ("Pfizer's processes for making its disclosures as to legal proceedings involved literally dozens of lawyers, inside and outside the company, to ensure that appropriate disclosures were made."); Dkt. No. 246 at 14 ("Together with outside counsel Covington & Burling, Pfizer's Chief Compliance Officer Mr. Lankler, a former federal prosecutor in the Southern District of New York, and Pfizer's head of government investigations Carlton Wessel, also a former federal prosecutor, attended these meetings with the government."); Dkt. No. 253 at 11 ("A draft of the legal proceedings disclosure is sent to a group of 15-20 lawyers, including Pfizer's government investigation lawyers."); Dkt. No. 246 at 9 ("In consultation with KPMG, Pfizer's Controller, Loretta Cangialosi, was principally responsible for ensuring that the company's FAS 5 reserves complied with GAAP.").

Defendants' reliance defenses fail for many reasons, but the most fundamental one on summary judgment is that the Second Circuit has expressly held that a defendant asserting such a defense "has to show that he made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith. ***Even where these prerequisites are satisfied, such reliance is not a complete defense, but only one factor for consideration***." *Markowski*, 34 F.3d at 105. This uncontroversial rule is universally recognized and followed in the Second Circuit. *See, e.g.*, *SEC v. Wyly*, 950 F. Supp. 2d 547, 565-66 (S.D.N.Y. 2013) ("The Second Circuit has made clear that reliance upon advice of counsel is a defense only if

an individual 'made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith.' Even then, 'such reliance is not a complete defense, but only one factor for consideration.'"); *id*. at 565-66 (quoting *Markowski*, 34 F.3d at 105); *In re Reserve Fund Sec. & Derivative Litig.*, No. 09 CIV. 4346 PGG, 2012 WL 4774834, at *2 (S.D.N.Y. Sept. 12, 2012); *SEC v. Cavanagh*, No. 98 CIV. 1818-DLC, 2004 WL 1594818, at *27 (S.D.N.Y. July 16, 2004), *aff'd on other grounds*, 445 F.3d 105 (2d Cir. 2006); *SEC v. Cavanagh*, 1 F. Supp. 2d 337, 374 n.63 (S.D.N.Y. 1998), *aff'd*, 155 F.3d 129 (2d Cir. 1998) (same); *SEC v. Federated Alliance Grp., Inc.*, No. 93-CV-0895E(F), 1996 WL 484036, at *3 (W.D.N.Y. Aug. 21, 1996) (same).

Despite seven separate summary judgment motions and nearly 300 pages of briefing, not a single defendant acknowledges the Second Circuit's decision in *Markowski*, nor any of the many cases applying it. Instead, all seven defendants cite cases that do not, and cannot, overrule *Markowski*. In fact, defendants cite only two cases from the Second Circuit: *Cruden v. Bank of New York*, 957 F.2d 961 (2d Cir. 1992), and *Steed Fin. LDC. v. Nomura Sec. Int'l, Inc.*, 148 F. App'x 66 (2d Cir. 2005). Neither case stands for the proposition that, contrary to *Markowski*, a reliance defense is a complete defense. Far from it.

The fraud alleged in *Cruden* concerned a series of indentures for certain public debentures. 957 F.2d at 964. These indentures were governed by the "Trust Indenture Act (Act)," which required indenture trustees to obtain opinions of counsel regarding supplemental indentures and expressly provided that "'the indenture trustee may ***conclusively rely***, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture.'" *Id*. at 969 (quoting 15 U.S.C. §77ooo(a)(2)). The indenture agreements at issue in *Cruden* contained

nearly this identical language. *Id.* Because the defendants (the indenture trustees) had obtained the legal opinions required under the Act, ***by law and by agreement***, they were entitled to "conclusively rely" upon them. 957 F.2d at 969-70, 972. Thus, *Cruden*, which predated *Markowski* by two years, simply enforced the express language of the Act and the indenture agreements at issue in that case. In no way did it hold that the defendants' reliance-on-counsel defense would have been complete ***without*** a statute and agreement both establishing its completeness. Because no such statute or agreement allowed defendants here to "conclusively rely" upon counsel, *Cruden* is inapt.

The only other case from the Second Circuit that defendants cite is the unpublished decision issued in *Steed Fin. LDC*, 148 F. App'x 66. Consistent with this being an unpublished decision, it does not cite a single case regarding a reliance-on-counsel defense and its entire analysis of the issue consists of two sentences. *Id.* at 69. In fact, only the District Court's Memorandum and Order reveals that the Court did ***not*** grant summary judgment as to scienter based strictly on the defendants' reliance-on-counsel defense. The reliance defense in *Steed* concerned the defendants' use of a trust (the "D5 trust") to securitize and sell subordinated mortgage pass-through certificates. *Steed Fin. LDC v. Nomura Sec. Int'l, Inc.*, No. 00 CIV. 8058 (NRB), 2004 U.S. Dist. LEXIS 18580, at *2 (S.D.N.Y. Sept. 14, 2004). Defendants' counsel had determined that the D5 trust qualified as a real estate mortgage investment conduit ("REMIC"), which would make it eligible for preferential tax treatment, and it was marketed as such. *Id.* at *31. The plaintiff claimed that the REMIC status was false. *Id.* at *8. In granting summary judgment as to scienter, the Court's primary reasoning was that the D5 trust was "registered as a REMIC as of October 24, 1997 and has been treated as a REMIC by the IRS since its formation. The D5 Trustee has also always treated the trust as a REMIC." *Id.* at *31. In other words, there could be no intent to defraud where the allegedly false representation was, in fact, accurate and the plaintiffs were merely alleging that the REMIC status

was "jeopardized." *Id.* at *7-*10. While the defendants invoked a reliance-on-counsel defense, that was only a ***secondary*** part of the Court's explanation as to why summary judgment on scienter was appropriate. *Id.* at *31-*32 ("***Moreover***, before releasing any information stating that the D5 Trust was REMIC-qualified, defendants retained REMIC counsel from Cadwalader to issue an opinion as to the Trust's REMIC status. Defendants fully disclosed the relevant facts to counsel at Cadwalader and were informed in response that the D5 Trust did qualify for REMIC treatment."). Accordingly, *Steed* did not hold that the defendants' reliance-on-counsel defense was a complete defense.

2. Defendants' Out-of-Circuit Cases Do Not Support Their Cause

The remaining cases defendants cite are all from outside the Second Circuit. Moreover, not one of them resulted in a holding contrary to the Second Circuit's rule that "such reliance is not a complete defense, but only one factor for consideration." *Markowski*, 34 F.3d at 105. The closest defendants come to finding an out-of-circuit case that conflicts with the law in the Second Circuit is *In re Fannie Mae Secs.*, 892 F. Supp. 2d 59, 72 (D.D.C. 2012), which included the following language:

> In short, where a chief executive, like Raines, relies in good faith on the professional judgment of the company's 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 Fannie Mae's accounting policies violated GAAP***, summary judgment is warranted. *See In re REMEC Inc. Sec. Litig.*, 702 F. Supp. 2d 1202, 1236-51 (S.D. Cal. 2010).

As the highlighted portion of this quote demonstrates, the D.C. District Court did ***not*** hold that a reliance-on-others defense is a complete defense. Rather, the court identified ***additional*** reasons why summary judgment was warranted. In the pages that followed, the court identified still more non-reliance reasons that supported summary judgment. *Id.* at 72-76 (*e.g.*, "plaintiffs have provided no admissible evidence to support a reasonable inference that Raines was aware of, or consciously disregarded, information presenting a danger of misleading investors"; "plaintiffs neither did, nor

could, explain how OFHEO's charges against [the CEO], which were settled with a ***denial*** of liability, can be considered evidence of scienter") (emphasis in original). Obviously, these non-reliance reasons do not apply here inasmuch as: (1) each defendant has acknowledged awareness of information that they withheld from investors (PSMF ¶¶154-192, ¶¶ 80-96 (Kindler); ¶¶195-200 (D'Amelio); ¶¶205-233 (Waxman), ¶¶237-268 (Levin), and ¶¶273-294 (Read), and (2) the charges here against Pfizer were settled with a ***felony guilty plea and a detailed admission of years of criminal off-label promotion***.

Another of defendants' out-of-circuit cases is *In re REMEC Inc.* – the sole authority cited by the D.C. District Court – which does ***not*** hold that a reliance-on-others defense is a complete defense. The *REMEC* court rejected plaintiff's scienter allegations for many reasons. 702 F. Supp. 2d at 1243 ("[t]his argument [in favor of scienter] fails for three reasons"), *id*. at 1244 ("Plaintiffs do not present any evidence to show [defendant] had reason to believe that REMEC had not conducted the transactional goodwill impairment test"), and *id*. at 1246 ("the level of transparency also serves to negate an inference that [defendant] had a scheme to defraud investors"). Here, in stark contrast, defendants had far more than a "reason" to believe that Pfizer had committed the misbranding crime that was the subject of the Bextra Investigation – they have admitted actual knowledge.[248] And, unlike the transparency in *REMEC*, defendants could not have been more opaque. For example, one of Pfizer's dozens of Investigation Counsel, Brien O'Connor ("O'Connor") acknowledged that,

[248] Kindler, Ex. 436 at PFE-JONES 00000894; Ex. 58 (Levin Depo.) at 24:5-11; Ex. 68 (10/16/14 Waxman Depo.) at 49:24-50:5 ("there was a conclusion that that [marketing to dentists] was off label"), 51:19-52:20 (Waxman recants slightly, "It may be I was advised that. I'm not recalling it."); Ex. 59 (11/11/13 McKinnell Depo.) at 256:6-9 ("[t]here . . . appeared to be a small group of sales representatives who were using unapproved promotional material"), 259:9-12 ("Yes, I did [rely on both Kindler and Lankler's representations regarding the scope of the off-label promotion of Bextra.]").

> from February 2002 through April 2005 [Pfizer] promoted Bextra for uses that were not within Bextra's approved label, including, particularly, acute pain and pre- and postoperative surgical pain and opioid sparing in the context of surgery. And that [Pfizer] also promoted Bextra at dosages higher than the approved doses for certain indications. As a result, we agree that [Pfizer] introduced a drug into interstate commerce that lacked adequate directions for these off-label uses and dosages and was, thus, under the law, under the FDCA misbranded.

Ex. 240 at 51:13-22. Yet, throughout the Class Period, Pfizer represented the exact opposite to Block. When asked when he "first learned that Pfizer employees were, in fact, promoting Bextra off-label," Block responded, "I wouldn't know how to answer that question because I could say, in full honesty, never." Ex. 37 at 49:17-21.

The remaining out-of-circuit cases defendants cite are similarly unhelpful to their strategy of ignoring out of existence *Markowski* and the many cases ***within*** the Second Circuit that recognize its binding status. In *SEC v. Shanahan*, 646 F.3d 536, 544 (8th Cir. 2011) (*see* Dkt. Nos. 274 at 21; 253 at 19; 258 at 25 n.102; 263 at 23 n.93; 264 at 11), the Eighth Circuit upheld a district court's finding that "'no evidence that Mr. Shanahan, Jr. knew the alleged omissions or misrepresentations at issue . . . presented a danger of misleading buyers or sellers,'" and that there was insufficient evidence to permit a finding that "'the alleged misrepresentations or omissions . . . presented a danger of misleading investors so . . . obvious that Mr. Shanahan, Jr. must have been aware of it.'" As is plain to see, a reliance-on-others defense was not even one of the primary reasons the district court granted judgment as a matter of law, let alone a singularly sufficient reason.

Likewise, in *Howard v. SEC*, 376 F.3d 1136, 1147 (D.C. Cir. 2004) (Dkt. Nos. 274 at 21; 258 at 25 n.102), the D.C. Circuit expressly held that "reliance on the advice of counsel need not be a formal defense; it is simply ***evidence*** of good faith, ***a relevant consideration*** in evaluating a defendant's scienter."

Similarly, *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992) (Dkt. Nos. 274 at 21; 253 at 23 n.19; 258 at 24), involved the defendants' failure "to book liabilities for penalties they might incur from failing to register under state Blue Sky laws." On appeal of the district court's entry of an injunction against the defendants, the D.C. Circuit observed that one of the principal problems with the SEC's theory was that "[t]he Funds disclosed their non-registration under state Blue Sky laws fully and repeatedly, both to their investors and to the SEC, for 17 years-hardly the sort of behavior one would expect from the perpetrator of securities fraud." *Id*. at 642. Moreover, "district court's finding of willful fraud [*i.e.*, they actually knew that they had to register under state Blue Sky laws] [wa]s based ***solely*** on the evidence that [one defendant], although not a practicing lawyer, is a graduate of the Harvard Law School and that he and the directors of the Funds had extensive experience in the securities industry." *Id*. The court reversed the injunction based on the complete ***lack*** of evidence of scienter, ***plus*** what the court described as such strong reliance-on-counsel evidence, that it would be "frivolous" to contest. *Id.* at 642 n.4. Here, the facts are the exact opposite of those presented in *Steadman*: defendants knew off-label promotion was illegal, they knew that Pfizer had engaged in off-label promotion, and they denied, rather than disclosed, Pfizer's years of promoting Bextra off-label.

Defendants save their worst for last with a citation to *N. Port Firefighters' Pension – Local Option Plan v. Temple-Inland, Inc.*, 936 F. Supp. 2d 722, 755 (N.D. Tex. 2013) (Dkt. No. 274 at 21). Only defendant Kindler makes the mistake of citing this case, which merely dismissed without prejudice a complaint because the signature on a SOX certification, "standing alone, does not contribute to a strong inference of scienter." *Id.* at 754. How such a decision from the Northern District of Texas could possibly justify open defiance of clear Second-Circuit precedent is a mystery.

Defendants here are represented by a half-dozen of the finest law firms in the world. The advantage of facing such highly competent adversaries is that the Court can rest assured that defendants have left no stone unturned in trying to support their argument that a reliance-on-others defense is a complete defense. Yet, they have come up with nothing. The fact that all six of these elite law firms failed to acknowledge *Markowski*, and the many decisions applying it within this Circuit, speaks volumes as to the untenable nature of defendants' contrary argument. And defendants' fruitless sojourn outside the Second Circuit simply confirms this point. "Even where these [reliance-on-counsel] prerequisites are satisfied, ***such reliance is not a complete defense, but only one factor for consideration***." *Markowski*, 34 F.3d at 105. That is the law, as confirmed by defendants' complete failure to prove otherwise.

C. Defendants' Reliance Defenses Fail

This is not to say that summary judgment as to defendants' reliance defenses is unwarranted. On the contrary, the undisputed facts as to these defenses scream for summary judgment – ***against*** defendants. Plaintiffs hereby incorporate by this reference their memorandum of law in support of their motion for partial summary judgment (Dkt. No. 288), including all exhibits thereto. Accordingly, plaintiffs will not repeat all of those arguments here. Plaintiffs do wish to emphasize the four points set forth below, though.

1. All Roads Lead to Investigation Counsel

Defendants do not have enough fingers to point at everyone and everything on whom and on which they claim to have relied. Defendant D'Amelio manages to capture three of them in a single sentence: "Mr. D'Amelio's reliance on counsel, KPMG, and Pfizer's robust processes rebuts any inference of scienter." Dkt. No. 263 at 24. But defendants' finger-pointing flurry peaks with McKinnell, who includes co-defendants Kindler and Waxman among the attorneys on whom he

purportedly relied regarding the Bextra Investigation. Dkt. No. 269 at 5. Defendants also point to "outside disclosure counsel (Dennis Block), [and] inside disclosure counsel (Lawrence Fox)." Dkt. No. 246 at 1. In addition to KPMG, another of the non-lawyers on whom defendants claim to have relied is Cangialosi. *See, e.g.*, Dkt. No. 274 at 15 ("Throughout the class period, Pfizer's Controller, Loretta Cangialosi, had principal responsibility for ensuring that the company's reserve determinations complied with FAS 5."). The one common thread among defendants' varied characterizations of their reliance defense (reliance on the process, reliance on disclosure counsel, reliance on KPMG, reliance on Cangialosi, etc.) is Pfizer's Investigation Counsel (*i.e.*, outside and inside counsel tasked with conducting and analyzing the Bextra Investigation):

- "The process for disclosures about government investigations included: (i) review and comment by the in-house lawyers responsible for supervising the company's government investigations; (ii) ***quarterly consultation between the lawyers handling the investigations*** and inside and outside disclosure counsel, as well as additional consultations whenever developments warranted . . . ." Dkt. No. 246 at 5.

- "Once Mr. Fox, in consultation with Mr. Block, was comfortable with the first draft of the disclosures, he circulated them for comment to 15 to 20 lawyers, ***including the government investigations lawyers***." Dkt. No. 258 at 4.

- "***Mr. Lankler and his team provided updates*** to Mr. Kindler, Mr. Fox and other Pfizer executives (such as Pfizer's Controller, Loretta Cangialosi), as well as to Mr. Block and KPMG, on the status of the government investigations into the marketing of Bextra and other drugs." Dkt. No. 274 at 5.

- "Q. So Block and Fox would have relied on the inside and outside criminal defense government investigation team?"

  [Objection]

  A. I believe they would have. You certainly can talk to them. But it's my understanding, that's right." Ex. 21 (10/16/14 Waxman Depo.) at 20:15-21.

- "Covington & Burling, Pfizer's counsel in the Bextra investigation, also provided audit response letters to KPMG . . . ." Dkt. No. 274 at 16.

- KPMG's 2007 audit conclusion regarding FAS 5 reserves "'was further emphasized by the Bextra white paper [from Covington & Burling]." Dkt. No. 263 at 30.

As can be seen, it is undisputed that every process and every person on whom defendants claim to have relied traces back to Investigation Counsel. So who were these Investigation Counsel? As Block observed, "Pfizer had – close to the American Bar Association – has lawyers assisting it in connection with the criminal matters." Ex. 37 at 46:23-47:1. Indeed, Pfizer retained each of the following law firms in connection with the Bextra Investigation: Sidley Austin (Bextra), Ex. 68 (10/16/14 Waxman Depo.) at 15:11-25, Covington (Bextra) (*id.*), King & Spalding (Bextra) (Ex. 240), Ropes & Gray (Bextra and Zyvox) (Ex. 189); PFE-DERIV 00067599), Davis Polk (Lyrica) (PFE-JONES 00030059), and DLA Piper (Geodon) (Ex. 168). In terms of in-house Investigation Counsel, they included, among others, Lankler, Carlton Wessel, and Gary Giampetruzzi. Ex. 68 (10/16/14 Waxman Depo.) at 15:11-25. In fact, there were so many Investigation Counsel, it would probably be easier to identify who was ***not*** Investigation Counsel: Block and Fox.

> Q. In other words – I guess different way of asking it: Did you actually participate in any sort of internal investigation –
>
> A. Oh, no.
>
> Q. – related to the government investigations?
>
> A. No, no. I had no knowledge of the actual – firsthand knowledge of the actual facts. I never looked at documents and things like that during this time frame.

Ex. 37 at 56:2-11; SUF, ¶11. Fox echoed this sentiment as to all internal investigations: "I'm a securities lawyer and do not get involved in the investigations themselves." Ex. 49 at 11:19-20; SUF, ¶12.

Yet, the only reliance defense that defendants have pled is the following:

> Pursuant to Pfizer's limited subject-matter waiver of its attorney client privilege, as governed by the Rule 502(d) Order entered by the Court on January 18, 2013, Defendants acted at all times in good faith and with reasonable care, and they reasonably relied upon, among other things, advice of outside and inside counsel regarding the legal proceedings disclosures concerning (i) the government investigations that culminated in the $2.3 billion settlement announced on January

> 26, 2009 [(the "Bextra Investigation")], and (ii) Pfizer's FAS 5 reserves to take into account any potential losses arising out of [the Bextra Investigation].

Dkt. No. 160 at 26 (FOURTEENTH DEFENSE). Though one would never know it from defendants' briefs, well over a year ago, while convincing the Court to shield from discovery ***all*** of the Investigation Counsel, defendants adamantly insisted that their reliance-on-counsel defense was limited to ***one*** outside counsel – Block – and ***one*** inside counsel – Fox:

- "The only outside counsel that provided legal advice to Pfizer regarding the Waived Subjects was Dennis Block of Cadwalader Wickersham & Taft." Dkt. No. 172 at 25.
- "Your Honor there's one in-house lawyer, Larry Fox." July 19, 2013 Hearing Transcript at 12:1-2.
- "Defendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations." Dkt. No. 172 at 35 n.30.

Unlike Investigation Counsel, however, Block and Fox had no criminal law experience, no familiarity with the elements of a misbranding violation, no familiarity with the elements of corporate criminal liability under the doctrine of *Respondeat Superior*, no experience performing the Sentencing Guidelines' calculations that underlie determinations of corporate fines, and no involvement with the Bextra Investigation. PSMF ¶¶411-413. McKinnell has the right idea in pointing to co-defendants Kindler and Waxman. Unlike Block and Fox, at least Kindler had criminal law experience, including working on cases that involved Guidelines' calculations. Ex. 54 Ex. 54 (Kindler Depo.) at 7:23-8:13, 9:6-10:25. Nevertheless, ***defendants*** cite cases stressing the need to examine the substantive experience of reliance counsel. Dkt. No. 258 at 24 (citing *Morgan v. Prudential Grp., Inc.*, 527 F. Supp. 957, 960 (S.D.N.Y. 1981)) (defendants describe holding as "no scienter where the general counsel lacked substantive expertise and relied instead on the participation of tax counsel").

2. All of Defendants' Reliance Defenses Are Precluded by the Sword-and-Shield Prohibition

Defendants' repeated invocations of the advice and input from Investigation Counsel, after having shielded them from discovery, is contrary every opinion ever written on this topic. *See, e.g.*, *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (cautioning that a party may not use the attorney-client privilege "as a shield and a sword"). "If the rule were otherwise, a 'claim of reliance on counsel would be immune from a showing that, in fact, the defendant had received overwhelming advice to the contrary.'" *SEC v. Wyly*, No. 10 CIV. 5760 (SAS), 2011 U.S. Dist. LEXIS 87660, at *5-*6 (S.D.N.Y. July 27, 2011) (quoting *SEC v. Forma*, 117 F.R.D. 516, 523 n.5 (S.D.N.Y. 1987)). It is unfathomable that Sidley Austin, Covington, King & Spalding, Ropes & Gray, and all the other Investigation Counsel completely dropped the ball on advising Pfizer as to what turned out to be the largest criminal fine in U.S. history. These responsible law firms must have advised Pfizer as to its clear exposure in a case with such overwhelming evidence. Yet, plaintiffs were denied access to the witnesses and documents necessary to prove this point:

> Q. So as you sit here today, you can't remember somebody at Covington saying to you, Well, these employees at least in Brooklyn definitely marketed off label and then they tried to destroy documents to cover it up?
>
> Q. You don't remember anyone telling you that?
>
> MR. PETROSINELLI: Wait a minute. You can't ask him about his discussions with Covington. That is privileged, and we haven't waived it.
>
> Q. I take it you will follow your counsel's advice?
>
> A. I will follow that counsel's advice; I assume I will follow this counsel's advice. I will follow the advice.

Ex. 68 (10/16/14 Waxman Depo.) at 52:21-53:12. This is why it is imperative that the Court uphold the sword-and-shield prohibition. "[O]therwise, [Pfizer's] 'claim of reliance on counsel would be

immune from a showing that, in fact, the defendant[s] had received overwhelming advice to the contrary.'" *SEC v. Wyly*, 2011 U.S. Dist. LEXIS 87660, at *5-*6.

3. Defendants Must Prove Actual Full Disclosure

In their brief, defendants assert that neither Block nor Fox recanted their disclosure advice at their depositions. Dkt. No. 246 at 34. This inane point ignores the fact that Block and Fox were not shown during their depositions all of the evidence defendants withheld from them, including the following: documents that corroborated a *qui tam* relator's claims, Bextra-related documents that Pfizer employees had attempted to delete or alter, call notes, sales force survey results, and hundreds of employee interview memoranda.[249] Likewise, to this day, defendants have not disclosed to Block that Pfizer's sales force had promoted Bextra with false and misleading claims, even though defendants' own expert declared that he was not aware of any defenses whatsoever that Pfizer had regarding this admitted fact.[250] Ex. 66 (Theodorou Depo.) at 64:23-65:11.

Moreover, even if, in the year 2013, plaintiffs had provided Block and Fox with the information defendants had concealed from them, such a belated provision would be irrelevant for two basic and undeniable reasons. First, the reliance-on-counsel defense requires a defendant to prove full disclosure to counsel ***before counsel renders his/her advice***.[251] And second, Block and Fox remain just as unqualified to opine on criminal misbranding investigations as they were during the Class Period.[252]

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[249] PSMF ¶¶433, 438, 441, 443, 453, 455-7.

[250] PSMF ¶¶420, 428, 451.

[251] *Markowski*, 34 F.3d at 105 (defendant asserting reliance must show that he "made [(past tense)] complete disclosure to counsel"); *see also Wyly*, 950 F. Supp. 2d at 565 (same); *Meltzer*, 440 F. Supp. 2d at 189 (same).

[252] PSMF ¶¶411-417.

Defendants' failure to make full disclosure to Block and Fox and Block's and Fox's complete lack of criminal law experience also expose the fallacy of defendants' argument "that Messrs. Block and Fox asked whatever questions they needed answered in order to render their disclosure advice, 'educat[ed]' themselves concerning 'the status of the litigation' and its 'likely outcomes' and 'potential risks'; and that disclosure counsel 'drilled down until [they] were comfortable.'" Dkt. No. 246 at 33-34. Again, defendants have to prove full ***disclosure*** to Block and Fox, not a full opportunity to ask questions. It is undisputed that defendants did ***not*** fully disclose all relevant facts to Block and Fox:

> Q. You mentioned the fact that there was a voluminous amount of information generated in the Bextra investigation; right?
>
> A. Yes.
>
> Q. Now, you and others made your own determinations as to what portions of that information you would share with Dennis Block and Larry Fox; right?
>
> A. Yes, that's correct.
>
> Q. So you certainly didn't give them everything.
>
> A. That's correct.[253]

Moreover, Block and Fox were so unqualified as to criminal misbranding investigations, they did not even know what to ask, but simply relied on others to decide what they needed:

> Q. Mr. Fox, are you familiar with the expression "garbage in/garbage out"?
>
> A. I am.
>
> Q. What does it mean to you?
>
> A. It means if you put something in that is garbage, that's what's going to come out the other end of it.

* * *

[253] Ex. 55 (Lankler Depo.) at 268:15-269:1.

> [Q.] I'm asking you, did you have any way of verifying that the information they gave you was all of the information that was relevant to the government investigations?
>
> A. The answer to that question is no, but I did have confidence in the experience and expertise and integrity of our GI attorneys who provided the information to Dennis and me.

Ex. 49 (Fox Depo.) at 210:23-211:4, 213:21-214:3.

4. Not a Single Defendant Claims to Have Sought Advice Regarding the Propriety of Their Omissions

Despite the fact that this is primarily an omissions case, and notwithstanding literally dozens of references to their purported reliance on others, not a single defendant claims to have sought advice from Block, Fox, or anyone else regarding the propriety of all their omissions. For example, not a single defendant claims to have asked Block if it would be proper to omit from their "substantial defenses" statement any mention of the thousands of incriminating call notes or to fail to disclose that a District Manager had illegally directed Sales Representatives to delete and alter documents that showed Pfizer had been promoting Bextra off-label. Block and Fox could not have possibly given advice on the propriety of omitting information of which they were unaware. And defendants could not have relied in good faith on advice that was ***never*** given, much less from uninvolved and unqualified counsel. *See, e.g.*, *United States v. Curtis*, No. 12-30819, 2014 U.S. App. LEXIS 13484, at *14 (5th Cir. July 15, 2014) (confirming unavailability of reliance-on-counsel defense concerning defendants' fraudulent concealment of contracts from bankruptcy schedule, where reliance counsel also "'had no information regarding the contracts that [defendant] fraudulently concealed'"); *SEC v. Scott*, 565 F. Supp. 1513, 1534 (S.D.N.Y. 1983) ("by not informing his counsel about the purchases until after the closing, Dirks failed to apprise his counsel of all the material facts and therefore cannot rely on his counsel's advice to shield him from culpability [for failing to amend prospectus to reflect material use of proceeds from offering]"), *aff'd*

sub nom., *SEC v. Cayman Islands Reinsurance Corp.*, 734 F.2d 118 (2d Cir. 1984); *Meltzer*, 440 F. Supp. 2d at 189 (Court rejected reliance-on-counsel defense at summary judgment stage because "Meltzer did seek the advice of counsel, but there is nothing in the record to demonstrate that he made a complete disclosure, nor is there any indication that counsel advised Meltzer that the conduct was appropriate. (*See* Meltzer Depo. at 110-115 (indicating that Meltzer did not discuss the actual content of the e-mails or websites with counsel).) In fact, Meltzer's testimony demonstrates that he did not make a full disclosure. (*See id*. at 112 (Q: 'Did [your attorney] review each profile you sent out?' Meltzer: 'No, he did not.'")).

D. Neither Pfizer nor the Individual Defendants Can Establish a Good Faith Reliance on KPMG Defense

Pfizer and the Individual Defendants assert that their reliance on KPMG establishes good faith, which warrants summary judgment on plaintiffs' FAS 5 contingency reserves and disclosures allegations.[254] Defendants are wrong, as summary judgment is not appropriate in the first instance because, as noted, "'good faith reliance'" is "'not a complete defense, but only one factor for consideration.'" *Meltzer*, 440 F. Supp. 2d at 189 (quoting *Markowski*, 34 F.3d at 105). "Issues of

[254] Defendant Read further asserts that his reliance on auditors immunizes him from liability for his statements about Pfizer's drug success made during analyst and investor conferences. Dkt. No. 264 at 8-9. Read's reliance on internal auditors and attorneys for these statements fails because he has presented no evidence that he sought advice from these professionals as to whether defendants were required to disclose that the source of Pfizer's success marketing its drugs was from systemic illegal off-label promotion. *Markowski*, 34 F.3d at 105. Further, the evidence defendant Read cites in support of his assertion that he relied on in-house accountants and counsel does not demonstrate anything other than a package being circulated to him in advance of the meetings. Dkt. No. 264 at 10; Read SUF, ¶34. Read was responsible for reviewing and commenting on the entirety of the Company's SEC filings before they were finalized and distributed to the SEC and investors. Exs. 756, 757. As a senior executive at Pfizer, Read cannot shirk his responsibility to ensure the accuracy of his statements or to ensure his statements do not omit information required to be disclosed by meekly asserting he relied on materials prepared by Pfizer's investor relations department. *See In re Winstar Communs.*, No. 01-CV-3014 (GBD), 2006 U.S. Dist. LEXIS 7618, at *26 (S.D.N.Y. Feb. 27, 2006) (quoting *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997), *aff'd* 159 F.3d 1348 (2d Cir. 1998)).

motive and intent are usually inappropriate for disposition on summary judgment." *Wechsler*, 733 F. 2d at 1058-59. For this reason, when a client asserts the reliance-on-counsel or auditor defense, "questions of whether the client made full disclosure, and acted throughout in good faith or with malice, are for the jury to decide." *Kidder, Peabody & Co. v. IAG Int'l Acceptance Group N.V.*, 14 F. Supp. 2d 391, 403 (S.D.N.Y. 1998).

Summary judgment is also not appropriate for two reasons. First, as with their asserted reliance-on-counsel defense, defendants are inappropriately using favorable advice Covington provided to KPMG via the white paper while shielding plaintiffs from all other Covington communications regarding the Bextra Investigation. This assertion is contrary to the law, as defendants may not invoke the advice that Investigation Counsel shared with KPMG that defendants deem favorable and then shield Covington from discovery. As noted by the Court in *SEC v.* Wyly, No. 10 CIV. 5760 (SAS), 2011 U.S. Dist. LEXIS 87660, at *5-*6, the result would be exactly what defendants are attempting here: to make themselves immune from a showing that they received "'overwhelming advice to the contrary.'" *Id.* (quoting *SEC v. Forma*, 117 F.R.D. at 523 n.5). Second, defendants have not come forward, as is their burden, with sufficient evidence to establish the reliance-on-auditor defense. "'To establish the defense, the defendant should show that he/she/it made a complete disclosure, sought the advice as to the appropriateness of the challenged conduct, received advice that the conduct was appropriate, and relied on that advice in good faith.'" *Meltzer*, 440 F. Supp. 2d at 189. In this case, defendants' reliance on KPMG fails because defendants did not make complete disclosure of all information necessary for KPMG to render advice concerning Pfizer's government investigation contingency reserves and legal proceeding disclosures. The evidence demonstrates that KPMG was not provided with critical information needed to evaluate the FAS 5 reserves.

1. Defendants Have Waived Any Reliance on KPMG Defense

There can be no dispute that the advice KPMG rendered in the action – relating to the FAS 5 reserve decisions – was based upon input from Investigation Counsel, including Covington, Lankler and Wessel. *See, e.g.*, Dkt. No. 246 at 9 (citing KPMG's consultation with Pfizer's Controller, Cangialosi, who "participated in quarterly reserve reviews attended by KPMG and Pfizer's in-house government Investigation Counsel responsible for the Bextra investigation [*i.e.*, counsel other than Block and Fox]"); *id*. at 10 (citing KPMG's audit, which expressly referred to Covington's white paper as support for Pfizer's decision not to reserve for the Bextra Investigation); *id*. at 16 ("Covington also provided audit response letters to KPMG and Pfizer which stated that Covington had 'not concluded that the prospect of an unfavorable outcome' in the Bextra investigation was 'probable'"); Dkt. No. 253 at 13 ("Those executive litigation review meetings were also attended by Ms. Cangialosi, 'several members of her staff, and members of the legal division who were handling various litigation matters [*i.e.*, neither Block nor Fox],' as well as KPMG."); Dkt. No. 258 at 10 n.48 (citing "Jan. 25, 2008 Letter from Covington & Burling to KPMG"). Therefore, defendants' purported reliance on KPMG is therefore just another way in which they are seeking to use Investigation Counsel as a sword after having shielded them from discovery.

For the same reasons stated, defendants and their witnesses should be precluded from invoking any other attorneys, including Investigation Counsel, to explain or justify any action they took or KPMG took because defendants' shielded plaintiffs from discovery from any attorney not named Block or Fox. *See, e.g.*, *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, No. 93 Civ. 5298 (LMM) (RLE), 1998 U.S. Dist. LEXIS 13611, at *9 (S.D.N.Y. Sept. 3, 1998) (rejecting defendant's attempt to limit reliance and waiver to "transactional" counsel because the defendant's pleading was "replete with detailed references to conversations between [defendant] and its litigation

counsel"), *aff'd*, 2000 U.S. Dist. LEXIS 14316 (S.D.N.Y. 2000); *see also E.G.L. Gem Lab Ltd. v. Gem Quality Instit.*, 90 F. Supp. 2d 227, 296 n.133 (S.D.N.Y. 2000) ("Having blocked his adversary from conducting discovery on this issue, he will not now be heard to advance reliance on counsel."). Therefore, defendants should be precluded from relying on anyone, like KPMG, who relied on Investigation Counsel to prevent defendants from using the attorney-client privilege as both a shield and a sword.

2. Defendants Are Improperly Attempting to Use KPMG for "Conduit" Testimony Outside Its Field of Expertise

KPMG is an accounting firm, not a law firm. It made no assessments of the strength of the evidence or defenses thereto in the Bextra Investigation. Just the opposite. KPMG expressly insisted none of them were actually involved in the Bextra Investigation. That is why, as detailed above, Block, Fox, KPMG, and defendants themselves have all made clear that they relied on Pfizer's Investigation Counsel for all purported assessments of, and opinions concerning, the Bextra Investigation, including the probability of loss and whether the loss was reasonably estimable – the only two FAS 5 factors. *See, e.g.*, Dkt. Nos. 246 at 10, 46 ("the undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment"); 258 at 25 n.106. In fact, KPMG's audit opinion expressly invoked Covington's "white paper" to support KPMG's assessment of Pfizer's FAS 5 reserve decision. Dkt. No. 246 at 10. Because the assessment of the FAS 5 factors came from Investigation Counsel, and KPMG was unqualified and unprepared to make its own independent assessment as to whether a loss from the Bextra Investigation was probable or reasonably estimable, it is apparent that KPMG is simply a conduit for Investigation Counsel's otherwise excludable judgments. Such conduit testimony is plainly excludable:

> Mr. Coleman admittedly relied on another's expertise to produce his opinion on this subject. Accordingly, his testimony is excludable as "conduit testimony from an expert on a matter outside his field of expertise." *Louis Vuitton Malletier v. Dooney*

> *& Bourke, Inc.*, 525 F. Supp. 2d 558, 666 (S.D.N.Y. 2007) (financial consultant not allowed to testify regarding statistical analysis of sales data); *see also Dura Auto. Sys. of Indiana v. CTS Corp.*, 285 F.3d 609, 612-14 (7th Cir. 2002) (excluding relied-upon expert because he "exercise[d] professional judgment that is beyond [his] ken" and "the soundness of the underlying expert judgment is in issue.").

Faulkner v. Arista Records LLC, No. 07 CIV. 2318 (LAP), 2014 U.S. Dist. LEXIS 129711, at *48 (S.D.N.Y. Sept. 15, 2014). Far from entitlement to summary judgment based on their purported reliance on KPMG, the prohibition on conduit testimony ***precludes*** this defense altogether.

3. Defendants Cannot Establish They Provided KPMG with Full Disclosure

Defendants have failed to adduce admissible evidence that they shared all pertinent information with KPMG. For example, KPMG was never told the specifics from the August and September 2006 Bextra Investigation meetings between Pfizer and the DOJ. During those meetings, the DOJ presented the strength of its case regarding Pfizer's off-label promotion of Bextra.[255] In addition to telling Pfizer how Bextra was illegally promoted, the DOJ also set forth the criminal charges based on violations of the Food & Drug Act and False Claims Act that Pfizer would face. Instead of revealing these details of the meetings to KPMG, Pfizer auditors were repeatedly told that the DOJ was still outlining the theories of liability.[256] This was misleading because the DOJ told Pfizer exactly how the off-label marketing of Bextra violated federal law.[257]

Pfizer further misled KPMG by claiming not to know how to calculate the potential fine, despite possessing the Neurontin settlement methodology. Pfizer told KPMG the loss was not estimable when, in fact, based on the May 2004 Neurontin settlement with the DOJ, Pfizer had the

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[255] Ex. 256 at DOJ 000195.

[256] Ex. C-6.

[257] Ex. 258 at DOJ 000205.

tools to calculate an estimated loss.[258] ***Despite having this view internally, Pfizer did not inform KPMG that a loss was estimable***. Nonetheless, as reflected in a KPMG memo dated February 6, 2006, Lankler misled KPMG by stating that the off-label promotion of Bextra was not the same as Neurontin.[259] Pfizer concluded in 2005 that a settlement would likely be required to end the DOJ Bextra Investigation.[260]

Later in the Class Period, Pfizer misled KPMG again about whether the probable criteria had been met and whether the range of loss could be estimated. For example, KPMG never received Covington's October 1, 2007, letter which acknowledged a methodology for calculating the fine from "analogous" cases such as Neurontin, Schering, Serono and Genotropin.[261] Of course, as stated above, earlier in the Class Period, Lankler told KPMG that Neurontin was not comparable, yet now Pfizer was telling the government that Neurontin calculations should be used as a guide.

More glaring is that KPMG was never informed that on October 9, 2007, Pfizer's Disclosure Counsel and Pfizer's in-house accountants and attorneys again concluded that a loss from the DOJ Bextra Investigation was "probable."[262] This information was not provided to KPMG, as KPMG audit partners Chapman and Bradley both testified that they were not informed in 2007 that Pfizer

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[258] Ex. 7 (Supplemental Expert Report of D. Paul Regan) at 30-35.

[259] Ex. 152 at KPMG-PFIZ-DS 007248.

[260] Ex. P-5 at PFE-JONES 00043523.

[261] Petrosinelli Decl., Ex. B-6.

[262] Petrosinelli Decl., Ex. N-6 (October 17, 2007, email summarizing the October 9, 2007, meeting attended by Block, Lankler, Wessel, Dadlani and Brockie); Ex. 265 (3Q07 interim Completion Document showing as of 11/3/07, KPMG had been told loss not probable).

had concluded that the loss associated with the Government's investigation of the off-label promotion of Bextra was probable.[263]

Pfizer's outside Disclosure Counsel Block also provided KPMG with misinformation, as he repeatedly told KPMG through the FY 2007 audit that the government had neither spelled out statutory remedies nor the types of damages it would seek. Block assured KPMG that the loss was neither probable nor estimable, even though Posner's response to the DOJ set forth a methodology to calculate the loss.[264] As a result of the government asking them to propose a number, Lankler and Wessel were working on calculating potential losses.[265] Additionally, Chapman testified he did not know Pfizer was working with methodologies to estimate the loss and that the Company was discussing an estimated range.[266] After becoming the engagement partner in early 2008, Bradley was not informed that Lankler and Wessel were working on methodologies to calculate potential losses.[267] Again Pfizer was keeping KPMG in the dark.

KPMG never received the November 2006 memo by Chuck Mooney, Pfizer's director of healthcare compliance audits, which explained how problems with Pfizer's Health Care Compliance function could have a material impact on Pfizer's financial results.[268] KPMG never received the presentation reviewed by Pfizer's Worldwide Pharmaceutical Operations Compliance Committee in October 2007 entitled "'RC Reform' Why, What, When & How," which summarized the findings of

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[263] Ex. 44 (Chapman Depo.) at 122:19-123:16; Ex. 38 (Bradley Depo.) at 239:9-20.

[264] Petrosinelli Decl., Exs. B-6, C-6.

[265] Petrosinelli Decl., Ex. N-6.

[266] Petrosinelli Decl., Ex. N-6; Ex. 44 (Chapman Depo.) at 130:12-18.

[267] Ex. 38 (Bradley Depo.) at 234:1-236:2.

[268] Ex. 161.

the "deep dive" initiated by defendant Read in March 2007 in response to the existence of the significant deficiency in the sales and marketing compliance area. This presentation set forth the complete lack of controls over the Review Committee and, thus, Pfizer's HCC function.[269] These failures are particularly glaring given: (1) Pfizer considered the Review Committee procedures to be a top 10 area of greatest risk;[270] (2) KPMG's concern that Pfizer's controls over sales and marketing practices were impaired;[271] and (3) Pfizer had recently informed KPMG that the significant deficiency with regard to HCC had been remediated by the end of 2Q07.[272]

KPMG was also kept in the dark regarding the DOJ's escalation of the off-label marketing investigation. For example, KPMG was not informed that Pfizer advised the DOJ that it wished to resolve the outstanding investigations of Bextra and other Pfizer drugs as a package deal.[273] Nor was KPMG informed that Pfizer received a target letter from the DOJ on February 5, 2008.[274] KPMG was never informed that the DOJ wrote Covington on April 4, 2008, and confirmed key elements of the proposed Bextra Investigation resolution, mentioned the structure and financial range previously communicated by the DOJ, indicated that it intended to pursue criminal charges, and demanded a settlement of approximately $5 billion.[275]

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[269] Ex. 203.

[270] Ex. 120.

[271] Exs. 149, 150.

[272] Ex. 346 at KPMG PFIZ-DS 0003257 (2Q07 Interim Completion Document)

[273] Ex. 310 at DOJ000057.

[274] Ex. 131; Ex. 38 (Bradley Depo.) at 242:13-16.

[275] Petrosinelli Decl., Ex. Y-6.

KPMG was also misled by Lankler regarding the Zyvox and Geodon investigations in June and July 2008 during compliance meetings. Lankler told KPMG that off-label marketing of Zyvox was identified in isolated cases and not linked to senior management back at Pfizer headquarters.[276] Yet KPMG was never told that immediately after Pfizer received the July 2005 FDA Warning Letter concerning Zyvox promotion, Pfizer upper management continued to instruct the sales force to use the core marketing message that Zyvox was superior to vancomycin.[277] Similarly, Lankler told KPMG that the off-label marketing of Geodon had not been linked back to senior management at corporate headquarters.[278]

As noted above, Pfizer withheld from KPMG the settlement negotiations with the DOJ to resolve the Bextra Investigation. In fact, June and July 2008 KPMG workpapers show that Pfizer told KPMG that no settlement offers to date had been made.[279]

Based on the information withheld from KPMG, defendants' reliance-on-auditor defense fails. It is defendants' burden to demonstrate they made complete disclosure to KPMG. *See Markowski*, 34 F.3d at 105; *see also In re Bank of America Corp. Sec. Deriv. & ERISA Litig.*, No. 09-MD-2058 (PKC), 2011 U.S. Dist. LEXIS 84831, at *37-*38 (S.D.N.Y. July 29, 2011) (good faith reliance on counsel defense failed at motion to dismiss stage because counsel was kept out of the loop as Merrill Lynch's losses mounted).

Because defendants withheld critical information from KPMG, they cannot establish good-faith reliance. *Scott*, 565 F. Supp. at 1534-35 (failure to provide counsel with timely and complete

[276] Ex. 159.

[277] Exs. 138, 139.

[278] Exs. 138, 139.

[279] Ex. 159.

advice renders defense unavailable). It is clear Pfizer had the tools to calculate the estimated loss. Defendants cannot now hide behind KPMG and assert their contingency reserves and disclosures were accurate because KPMG agreed with Pfizer's decisions based on faulty representations Pfizer management made to them.

Further, KPMG relied on representations of Pfizer management in the form of quarterly management representation letters signed by the CFO and Controller, quarterly in-house legal representation letters signed by defendants Waxman and Kindler, and annual legal representation letters from Pfizer's outside counsel. The quarterly management representation letters confirmed that management was responsible for the fair presentation of the financial statements in conformity with GAAP.[280] The quarterly in-house legal representation letters were to provide KPMG with an update of significant pending litigation. The annual legal letters from outside counsel were to provide KPMG with the following information pertaining to material pending or threatened litigation: the nature of the litigation, the progress of the case to date, how management is responding or intends to respond to the litigation, and an evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss. The representations KPMG received failed to disclose information, as set forth above, necessary for KPMG to render advice regarding Pfizer's contingency reserves and disclosures regarding the Government's off-label marketing investigation.

The defense requires more than just providing information, but also that the Individual Defendants fulfill their independent duties to ensure compliance with their disclosure obligations. *Bank of America Corp.*, 2011 U.S. Dist. LEXIS 84831, at *37-*38; *see also SEC v. Goldfield Deep Mines Co.*, 758 F.2d 459, 467 (9th Cir. 1985) ("'If a company officer knows that the financial

[280] *E.g.*, Ex. 134 at KPMG-PFIZ-DS 017125.

statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negate the existence of the requisite intent or establish good faith reliance.'"); *United States v. Erickson*, 601 F.2d 296, 305 (7th Cir. 1979) (same). Here, evidence is plentiful of the huge sums Pfizer paid to KPMG to obtain clean audit opinions. Fees paid to KPMG by Pfizer were $30,285,000, $32,410,000, $28,220,000, and $27,735,000 for services rendered in 2005, 2006, 2007 and 2008, respectively.[281] Fees paid to KPMG by Pfizer for services rendered after the Class Period were $37,353,000, $38,993,000, $38,999,000, $50,267,000, and $32,014,200, for 2009, 2010, 2011, 2012, and 2013, respectively.[282]

The Individual Defendants had a duty to ensure the accuracy of the Company's SEC filings and management may not shirk their responsibility by relying on a well-paid outside auditor who was provided with incomplete information.

E. The Evidence Establishes Defendants' Scienter in Making False and Misleading Statements that Pfizer Complies with All Relevant Statutes, Rules and FDA Requirements and About Pfizer's Drugs

Summary judgment is not appropriate because plaintiffs can present admissible evidence demonstrating that defendants knew, contrary to their statements that Pfizer abided by all marketing laws, that Pfizer was in fact engaged in blatant off-label promotion of its drugs. *Goplen v. 51job, Inc.*, 453 F. Supp. 2d 759, 774-75 (S.D.N.Y. 2006); *In re Refco, Inc. Sec. Litig.*, 503 F. Supp. 2d 611, 649 (S.D.N.Y. 2007).

The defendants were the CEOs, CFOs and/or members of Pfizer's ELT. The defendants were the Company's top decision-making team, responsible for vision, strategic direction and operations of the Company. The defendants were responsible for running the Company. Under their

[281] Pfizer Proxy Statements filed 3/15/07, 3/14/08 and 3/13/09.

[282] Pfizer Proxy Statements filed 3/16/10, 3/22/11, 3/15/12, 3/14/13 and 3/13/14.

watch, the Company settled sweeping investigations into off-label promotion practices relating to four key drugs for $2.3 billion, including the largest fine in U.S. history at that time. The evidence of their knowledge of Pfizer's off-label drug promotion is overwhelming. *See* §II.B., II.C. and II.D., *supra*. Defendants cannot seriously contest their knowledge of the Company's off-label promotion practices.

F. The Evidence Establishes Defendants' Scienter in Making False and Misleading Statements Regarding Pfizer's Legal Proceeding and FAS 5 Disclosures.

It is undisputed that Pfizer did not book a reserve for any losses associated with the DOJ investigation during the Class Period.[283] Pfizer, however, should have because estimating a loss on the first day of the Class Period was not only reasonably possible, but the methodology for estimating it had been sitting in defendants' hands for well over 18 months.

Indeed, Pfizer's run-in with the DOJ regarding the rampant off-label promotion of pharmaceutical products was not the first trip around the block for the Company. In May 2004, Pfizer announced the settlement of government investigations regarding of the off-label promotion of Neurontin and paid $430 million to settle civil and criminal charges.[284] And Kindler and McKinnell supervised the negotiations leading to the Neurontin settlement. Moreover, the USAO that prosecuted the Neurontin and Genotropin off-label cases – both of which involved Pfizer – was the same USAO that initiated the Bextra case.[285] As Pfizer and KPMG have admitted, the methodology utilized to calculate losses from illegal off-label marketing in Neurontin is the

[283] *See* Pfizer's SUF ¶47.

[284] PSMF at ¶1.

[285] PSMF at ¶56.

"benchmark," and the USAO prosecuting the case against Pfizer had used it over-and-over again in cases "analogous" to the Bextra matter.[286]

The Neurontin $430 million settlement was calculated prior to May 2004 using a well-established formula which includes an estimate of the percentage of sales achieved from off-label promotion.[287] According to a well-respected expert on calculating such gains, plaintiffs' expert Professor Rosenthal, the methodology is standardized for the purpose of estimating losses caused by off-label promotion, both in the context of economic research, as well as in civil and criminal litigation.[288] *See, e.g., In re Neurontin Mktg. & Sales Practices Litig.*, 04-cv-10739-PBS, 2011 U.S. Dist. LEXIS 99593, at *96 (D. Mass. Aug. 31, 2011) (accepting Professor Rosenthal's methodology of estimating losses from off-label marketing in light of "the compelling evidence [of] pervasive" off-label marketing by "detailing doctors and sponsorships of CME conferences"). As demonstrated by plaintiffs' accounting expert, D. Paul Regan, estimating the actual gain – the measure used to calculate the Neurontin fine – from alleged unlawful marketing is, indeed, a fairly straight-forward task once the percentage of ill-gotten off-label sales is determined.[289]

Accordingly, by simply using the Neurontin methodology, defendants could have readily estimated a reasonable loss associated with the DOJ's investigation at the commencement of the Class Period.[290] Again, however, defendants refused to comply with FAS 5 for the express purpose of downplaying the potential financial risks faced by the Company.

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[286] *See* PSMF at ¶56; Ex. 44 (Chapman Depo.) at 129:16-130:4; PSMF at ¶¶118-121.

[287] PSMF ¶103.

[288] *See* Ex. 8.

[289] *See* Ex. 7 [Regan Report at Exhibit 2].

[290] *See* Ex. 7 [Regan Report at 25-35.

In August and September 2006, the DOJ presented the Company with its estimate of the off-label sales of Bextra – *i.e.*, $1.8 billion.[291] Defendants were either aware of the Government's estimate, or could have made themselves aware of it, if they had simply asked for the details of the DOJ's August and September 2006 presentation.[292] Still, defendants chose not to comply with FAS 5 and fairly inform investors of the financial risks looming on the horizon.

The evidence of defendants' scienter here is only bolstered by events that transpired in the latter half of 2007 and throughout 2008. In June 2007, Read lamented to the Audit Committee that "off-label" promotion of the Company's products "is arguably among the greatest exposures facing the company."[293] On October 9, 2007, the Company's Disclosure Counsel and in-house Investigations Counsel and Finance Team admitted the Company was then working with methodologies to estimate losses associated with the DOJ investigation.[294] Less than two weeks later, on October 20, 2007, and shortly after taking the reins as Pfizer's CFO, D'Amelio sent Pfizer's controller a handwritten letter confirming the Bextra case "has the potential to be a very big charge (as you know)."[295] According to Waxman, while he was fully aware the DOJ had delivered a grand jury target letter to the Company on February 8, 2008, he had long known the Company was the focus of a grand jury investigation.[296] Pfizer knew, however, that mere indictment could result in preclusion and financial disaster and, thus, any argument in favor of trying a criminal case was, at

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[291] PSMF ¶139 (non-approved sales set forth in table at DOJ000203).

[292] PSMF ¶¶90, 109, 111, 119-120, 139-142, 156-158, 179-182.

[293] PSMF ¶212.

[294] PSMF ¶396.

[295] PSMF ¶124.

[296] PSMF ¶159.

best, irrational. Despite the Company's internal ruminations about the financial risks then facing the Company, Pfizer refused to share a reasonable and readily estimated loss with investors pursuant to FAS 5.[297]

Finally, between February 2008 and June 2008, Pfizer made a series of settlement offers to the DOJ, peaking at $750 million.[298] Defendants Kindler, D'Amelio, Read and Waxman, as members of the ELT, were charged with the approval of all settlements greater than $100 million or in cases of unusual significance.[299] Clearly these are large settlement numbers and certainly of unusual significance. As such, either these defendants recklessly abrogated the responsibility to approve the offers or had direct knowledge of them via the processes of the ELT. But, Pfizer nonetheless failed to take charge a pursuant to FAS 5.[300]

VI. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON THE ELEMENTS OF LOSS CAUSATION OR DAMAGES

The Second Circuit has defined loss causation as the "'causal link between the alleged misconduct and the economic harm ultimately suffered.'" *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 172 (2d Cir. 2005). Thus, "plaintiffs seeking to prove loss causation must establish two causal connections: a connection between the alleged false or misleading statements and one or more events disclosing the truth concealed by that fraud, and a connection between these events and actual share price decline." *In re Vivendi Universal, S.A., Sec. Litig.*, 634 F. Supp. 2d 352, 365 (S.D.N.Y. 2009).

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[297] *See* Ex. 7 (Regan Report) at 35-56.

[298] PSMF ¶125.

[299] PSMF ¶¶77, 118, 128, 200.

[300] Pfizer's reliance on *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1549 (9th Cir. 1994) and *In re Acceptance Inc. Cos. Sec. Litig.*, 423 F.3d 899, 903 (8th Cir. 2005), is also misplaced since neither of these cases apply the controlling standard here under *Fait*, which recognized that when plaintiffs identify an objective standard, reserve allegations are false statements of fact.

In a materialization of risk case such as this, plaintiffs establish loss causation by demonstrating that the alleged loss was "foreseeable ***and*** that the loss [was] caused by the materialization of the concealed risk." *Lentell*, 396 F.3d at 173. As demonstrated below, defendants have failed to demonstrate that no genuine issue of material fact exists with regard to loss causation or damages.

As a preliminary matter, defendants' arguments concerning causation and damages are premised on the assumption that the Court will grant their motion to preclude plaintiffs expert Dr. Feinstein (Dkt. No. 249-50). For the reasons stated in that briefing, which plaintiffs incorporate herein by reference, defendants are wrong. Defendants do, however, advance various flawed legal arguments that should also be rejected.[301] First, defendants contend summary judgment must be granted on the issue of loss causation because the $2.3 billion fine announced on January 26, 2009 was not new news. *See* Dkt. No. 246 at 53-55. That very argument was rejected at the motion to dismiss stage in this case. Aug. 9, 2011 Hearing Tr. at 24:25-25:13. Further, the cases defendants rely on for that argument are clearly distinguishable and provide no legal basis to support summary judgment. *Id*. Defendants next advance a peculiar "fact-based" argument – *i.e.*, an argument devoid of any factual support – concerning loss causation. Dkt. No. 246 at 57-59. The argument must fail because speculation does not counter the real evidence adduced by plaintiffs regarding causation. Defendants also contend that plaintiffs have no evidence of disaggregation of damages caused by their fraud. *Id.* at 55-56, 58-61. Defendants' argument, however, ignores the evidence of damages

[301] Defendants rely on a number of corrective disclosure cases, as opposed to materialization of the risk cases, where the courts decided at motion to dismiss that the disclosures did not correct prior misstatements. *See Joffee v. Lehman Bros.*, 410 F. Supp. 2d 187, 191 (S.D.N.Y. 2006) (the court determined that "[p]laintiffs have not alleged any disclosure of the alleged scheme of which they complain that caused the stock price to decline"); *In re Hansen Natural Corp. Sec. Litig.*, 527 F. Supp. 2d 1142 (C.D. Cal. 2007) (none of the three alleged corrective disclosures revealed defendants' concealed accounting misconduct); *Labib Janbay v. Canadian Solar, Inc.*, No. 10 CIV. 4430 (RWS), 2012 U.S. Dist. LEXIS 47125 (S.D.N.Y. Mar. 30, 2012) (the series of alleged corrective disclosures did not reveal the alleged accounting frauds).

adduced by plaintiffs' loss causation expert, Dr. Feinstein. And, defendants' expert has provided no evidence concerning the issue of damages. Summary judgment on damages, therefore, should also be denied.

A. The Record Evidence Establishes a Genuine Issue of Material Fact Regarding Loss Causation and Damages

Plaintiffs have come forward with ample evidence to support the loss causation and damages elements of their §10(b) fraud claim. On January 26, 2009, Pfizer disclosed that it had taken a $2.3 billion charge to resolve the DOJ's investigation. The same day, Pfizer announced 2009 guidance, the Wyeth merger and a cut in its dividend. In response to that news, the Company's stock price dropped by 10.89%. The Company's stock price reaction on January 26, 2009, however, should be viewed in the context of events leading up to that day.

That the Company's dividend was at risk of being cut significantly was not new news to investors on January 26, 2009. As early as October 2007, defendant D'Amelio had embarked on a campaign to temper investor expectations regarding the Company's ability to sustain its dividend policy going forward.[302] On March 1, 2008, an advisor to defendants Kindler and D'Amelio observed that it "should be obvious to anyone who actually models it" that the rate of growth of Pfizer's dividend will slow.[303] On June 3, 2008, *The Wall Street Journal*, an article entitled "Dividend May Test Pfizer," quoted a sophisticated institutional investor – Croft Leominster – who observed it "seems like it's going to be difficult" for Pfizer to maintain its dividend payout.[304] ***In June 2008***, in response to *The Wall Street Journal* article, ***defendant D'Amelio admitted that "there***

[302] *See also* Ex. 205 at 1 (D'Amelio stating "[o]n the dividend, I could go with the we will announce in Dec . . . the rate of increase will moderate"); Ex. 206 at 1 ("'temper' this somewhat . . . based on the 'rhythm of the numbers,' *i.e.*, 32% in 06 to 21% in 07 to 14% in 08").

[303] Ex. 4 (Feinstein Report), ¶184.

[304] PSMF ¶379.

is a lack of confidence among investors in both Pfizer's willingness and ability to fund the dividend going forward. These increased concerns have been expressed by our shareholders and are reflected in the stock price . . . ."[305] As such, his further admission that the dividend cut was not expected to be a "drag on [Pfizer's] stock price" on January 26, 2009 comes as no surprise.[306] In November 2008, defendants Kindler and D'Amelio were informed that large institutional investors understood a dividend cut was certain if Pfizer announced a large merger, and, by a vote of "4 to 1" those institutions were in favor of pursuing big acquisition.

Regarding the Wyeth merger, investors viewed the transaction favorably. Indeed, on January 23, 2009, after *The Wall Street Journal* leaked news of the merger, the Company's stock price went up, not down.[307] After *The Wall Street Journal* leaked the news, financial analysts viewed the deal as positive. On January 23, 2009, Credit Suisse reported this "is not surprising to us and we have written several times previously that such as [sic] acquisition makes strategic and financial sense."[308] The same day, Goldman Sachs noted the "recent upgrade of Pfizer . . . was predicated on our view that there is pressure building . . . to make a bold move and to do it soon and that the market would welcome it. The possible combination with Wyeth described in today's WSJ would be just such a move."[309] That defendants may have evidence to suggest investors viewed the deal as bad does not support summary judgment, but, rather, proves that summary judgment is inappropriate.

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[305] Ex. 207 at PFE DERIV 01144517.

[306] *See* Defendant D'Amelio's Statement of Undisputed Fact No. 66.

[307] Ex. 4 (Feinstein Report), ¶174.

[308] Ex. 4 (Feinstein Report), ¶177.

[309] Ex. 4 (Feinstein Report), ¶178.

The parties agree that Dr. Feinstein, plaintiffs' loss causation and damages expert, has reliably estimated a -11.53% statistically significant residual stock decline for Pfizer's stock on January 26, 2009. PSMF ¶360. The case law is clear, once a negative residual return has been reliably identified, a jury will next consider firm-specific events that "might have caused" the decline. *Vivendi*, 634 F. Supp. 2d at 353, 364.

When Pfizer announced the $2.3 billion record payment for resolution into the Company's illegal off-label promotional activities, not a single market participant viewed it as good news. Numerous widely disseminated news sources addressed the record $2.3 billion charge. On January 26, 2009, *Bloomberg*, in an article entitled "Pfizer to Pay $2.3 billion to settle U.S. Drug Probe," stated "the world's largest drugmaker, took a $2.3 billion charge for record settlement of U.S. investigations into improper marketing of its Bextra painkiller and other drugs."[310] On January 26, 2009, *CNN Money* reported that Pfizer was to pay $2.3 billion charge to resolve allegations from federal prosecutors.[311] *Record Searchlight* noted the Company's "***fourth-quarter profits takes a brutal hit*** from a $2.3 billion legal settlement over allegations it marketed pain reliever Bextra and possibly other products for indications that had not been approved."[312] The same day, *The Wall Street Journal Health Blog* stated Pfizer took an "***enormous charge***" that "dwarfs Eli Lilly's recent record-breaking $1.42 billion settlement."[313] *The Associated Press* observed the Company's ***4Q08 profit*** "***plunges on legal charges***."[314] Financial analysts also discussed the news. An analyst at

[310] Ex. 565 (January 26, 2009 Bloomberg article).

[311] Declaration of Trig R. Smith in Support of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude Plaintiffs' Expert Dr. Steven Feinstein ("Smith Decl."), Ex. 4.

[312] Smith Decl., Ex. 6.

[313] Smith Decl., Ex. 7.

[314] Smith Decl., Ex. 8.

Hilliard Lyons stated that "'[r]eported EPS declined sharply due to charges. Fourth quarter EPS from continuing operations were $0.04 versus $0.40 last year. . . . There was also a $2.3 [billion] pretax charge for litigation to settle claims related to Celebrex and Bextra . . . .'"[315] Cowen and Company reported "'Pfizer incurred a fourth quarter charge of $2.3B for allegations of past off-label promotional practices concerning Bextra . . . ."[316] BMO stated "'[r]eported EPS of $0.04 included . . . a $0.34 charge related to legal settlements.'"[317]

Plaintiffs' loss causation expert considered that news and more in reaching his opinion that disclosure of Pfizer's alleged fraud was a substantial cause of plaintiffs' economic losses.[318] Defendants have not satisfied their burden on loss causation because they offer no evidence at all, let alone an expert opinion stating the alleged fraud did not cause economic losses. *See* Dkt. No. 246 at 55-58 (not a single piece of record evidence referenced). Accordingly, the Court's inquiry need go no further.

Defendants' suggestion that the market did not react to the $2.3 billion settlement is belied by testimony from Pfizer's outside Disclosure Counsel. When asked about Pfizer's June 2008 offer to settle the Government Investigation for $750 million, he testified that Pfizer's Board had been told that Pfizer had substantial defenses, as investors had been throughout the Class Period, and "they were not anticipating hearing that there was going to be a payment at that level."[319] Disclosure

[315] Ex. 4 (Feinstein Report), ¶109.

[316] Ex. 4 (Feinstein Report), ¶109.

[317] Ex. 4 (Feinstein Report), ¶109.

[318] Ex. 4 (Feinstein Report), Ex. 1.

[319] Ex. 37 (Block Depo.) at 266:7-19.

Counsel added, "***it would have come as sort of a surprise***, I think."[320] If Pfizer's Board would have been surprised by a $750 million settlement, it is difficult to see how investors were not taken aback by a $2.3 billion settlement announcement.[321]

Pfizer's Government Investigation lawyer Brien O'Connor explained why Pfizer's failure to disclose the proper scope and nature of the investigation was misleading. With regard to whether to take the Bextra matter to trial, Mr. O'Connor explained that "***people who are wise and reasonably conservative, don't you know, expose . . . stakeholders of a company the size of Pfizer to ruin . . . .***"[322] Had Pfizer informed investors the Government Investigations focused on off-label promotion, they would have had reason to believe that debarment – the functional equivalent of a corporate death penalty – was a real risk. Mr. O'Connor's revelation of the thought process at Pfizer underscores plaintiffs' argument that Pfizer was never going to trial, thus a loss was always probable.

B. Defendants' January 26, 2009 Disclosure of the $2.3 Billion DOJ Settlement Was New Information

To counter the clear evidence of loss causation, defendants argue that the new information concerning the settlement released on January 26, 2009 did not reveal that earlier statements concerning the Government Investigations were false and misleading. Instead, according to defendants, the January 26, 2009 news simply reiterated what Pfizer already warned the market might happen. Dkt. No. 246 at 54. Defendants made the same argument concerning the same

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[320] Ex. 37 (Block Depo.) at 266:7-19.

[321] Defendants argument completely ignores the fact that the only institutional investor to be deposed in this case, Daniel Hanson from BlackRock, stated that the magnitude of the off-label marketing fine surprised him. Ex. 51 (Hanson Depo.) at 161:10-15.

[322] Ex. 62 (O'Connor Depo.) at 124:20-24.

statements at the motion to dismiss stage of this case and it was rejected by the Court. August 9, 2011 Hearing Tr. at 24:25-25:13.

The legal proceeding disclosures in this case do not warn of the concealed risks concerning Pfizer's off-label conduct any more now than they did when the Court rejected the argument three years ago. If anything, defendants' arguments are worse. At the motion to dismiss hearing, defendants inaccurately informed the Court that the disclosures at issue described the Bextra Investigation as "concern[ing] the marketing of Pfizer products for indications other than those approved by the FDA." August 9, 2011 Hearing Tr. at 6:7-10. Pfizer's Class Period legal proceeding disclosures did not describe the Bextra Investigation in that manner. Pfizer described the Bextra Investigation only as being into "safety and marketing." Indeed, when juxtaposed against the disclosure of the other Pfizer investigation that defendants described at the August 9, 2011 hearing, it is easy to understand why investors did not believe the Bextra Investigation at issue here concerned off-label promotion. Clearly, if defendants wanted investors to know that the Bextra Investigation concerned off-label promotion, they would have described it as they claimed it was described at the hearing.

Defendants' reliance on *In re Omnicom Group, Inc. Sec. Litig.*, 597 F.3d 501 (2d. Cir. 2010), and *Dalberth v. Xerox Corp.*, 766 F.3d 172 (2d Cir. 2014), is not helpful, as the alleged fraud in both of those cases was clearly disclosed in detail well before the alleged corrective disclosures. *Omnicom* concerned allegations that Omnicom created a partnership for the purpose of hiding impaired assets. The plaintiffs alleged that the accounting issues surrounding the creation of the partnership were revealed in June 2002. *Omnicom*, 597 F.3d at 504. Shortly after the creation of the partnership, however, between May 2001 and September 2001, a number of media outlets reported exactly what the plaintiffs argued had not been revealed until June 2002. *Id.* at 505. The media

reports described the transaction as follows: "'a way for Omnicom to get struggling stocks off of its books,'" Omnicom CEO is "'just cleaning up the mess from his last big foray into untapped market terrain: the Internet,'" and Omnicom's CEO "'is now getting all the Net assets off Omnicom's books by shoveling them into a private holding company.'" *Id.* at 505 n.1. The plaintiffs' loss causation expert alleged that the June 2002 stock decline was due to the revelation of previously concealed accounting issues. *Id*. The *Omnicom* court determined that the media reports published between May 2001 and May 2002 specifically informed investors of the risks of the accounting practices, and thus, plaintiffs could not demonstrate any new information was revealed in June 2002. *Id.*

Similarly, in *Dalberth*, plaintiffs argued that defendants failed to disclose the negative impact of their reorganization plan during the October 22, 1998 to October 7, 1999 class period. Starting in May 1999, however, analysts and the company revealed that the increase in defendants' accounts receivable and days sales outstanding were due to the reorganization. For example, in February 1999, analysts revealed: "'revenue growth was hurt by sales force and restructuring initiatives,'" "'receivables ballooned as Xerox attempted to restructure several operations,'" and in May 1999, the company revealed that "'[t]he growth in accounts receivable was primarily the result of the reorganization and restructuring.'" *Dalberth*, 766 F. 3d at 179, 186. The court ruled that each of the public disclosures left "no doubt that it was disclosed that the reorganization of the U.S. operations caused deterioration in A/Rs and DSOs . . . prior to either claimed corrective disclosure date." *Id.* As such, the court found plaintiff's loss causation expert's opinion "'unsustainable.'" *Id.* at 189. Pfizer's off-label marketing practices were not revealed until January 26, 2009 when Pfizer announced a record settlement.

The lack of information in Pfizer's legal proceeding disclosures concerning the Government Investigations and the failure to take a FAS 5 reserve throughout the Class Period distinguish the

facts here from the facts in both *Omnicom* and *Dalberth*. Here, during the Class Period, Pfizer did not even inform the market that the investigation concerned off-label promotion and stated that it had substantial defenses to the investigation. The January 26, 2009 announcement revealed that Pfizer had engaged in criminal off-label marketing – a fact that Pfizer denied throughout the Class Period – and the unconcealed risk of off-label marketing was of a substantial magnitude – *i.e.*, Pfizer was paying a record $2.3 billion fine.

C. Plaintiffs' Evidence of Damages Precludes Summary Judgment

Plaintiffs' loss causation and damages expert has reliably estimated damages attributable to defendants' fraud. Feinstein has disaggregated the effects of the materialization of the risk – *i.e.*, resolution of the DOJ investigation into Pfizer's unlawful off-label promotional activities "from the effects of other, non-fraud-related 'confounding' events." *Liberty Media Corp., LMC v. Vivendi Universal, S.A.*, 923 F. Supp. 2d 511, 518 (S.D.N.Y. 2013). Feinstein devotes 30 pages of his report to "accounting for potential confounding information."[323,324] Feinstein has estimated that $1.26 of the $1.90 residual drop was due to the announcement of the $2.3 billion fine and its reputational impact on the Company.[325] Tellingly, defendants' argument concerning plaintiffs' estimate of

[323] The disaggregation cases Pfizer cites are distinguishable. *See In re Williams Secs. Litig. - WCG Subclass*, 558 F.3d 1130,1138 (10th Cir. 2009) (in one scenario plaintiffs expert relied on the leakage theory and determined fraud-related leakage occurred every day of the class period without identifying any company-specific fraud or nonfraud events and in the second scenario plaintiffs expert identified as a corrective disclosure date the same day plaintiffs' counsel filed suit concerning the same fraud); *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181 (D. Mass. 20012) (plaintiffs' expert failed to take into account industry or company news not related to the fraud); *In re Pfizer Inc. Sec. Litig.*, No. 4-CV-9866 LTS-HBP, 2014 U.S. Dist. LEXIS 92951, at *18 (S.D.N.Y. July 8, 2014) (After plaintiffs' expert's attempt to submit a third supplemental report, the court determined that there was "no justification for [the expert['s] failure to present this aspect of his economic analysis at an earlier point in time.").

[324] Ex. 4 (Feinstein Report), ¶¶150-256.

[325] Ex. 4 (Feinstein Report), ¶¶229-238, 252-255.

damages (Dkt. No. 246 at 55-58) does not acknowledge a single one of those 30 pages, or well-reasoned analysis. Dkt. No. 246 at 56 ("Plaintiffs have failed to show that any part of the stock price drop on that day was caused by the announcement of the settlement, as opposed to other major events.").

Defendants' suggestion that plaintiffs have no facts to support that the announcement of the $2.3 billion fine damaged Pfizer shareholders is absurd. Dkt. No. 246 at 57. For starters, Pfizer wrote off $2.3 billion in cash, accounting for the 90% drop in its fourth quarter earnings year-over-year. A reasonable jury could find that to have caused damages to investors.[326] Importantly, defendants acknowledged throughout the Class Period that the very conduct that was the center of the DOJ settlement would cause Pfizer significant reputational harm. The following statements are found throughout Pfizer's documents:

- In a 2005 compliance document, the Company's Assistant General Counsel noted that failure to comply with relevant laws and statutes governing the Company's promotional practices could cost the business loss of opportunity, time/resources, confusion/disruption, associated employment costs, morale and ***diminution in reputation***.[327]

- In a March 1, 2006 document, IA viewed the risk of off-label marketing occurring as virtually certain and the severity of being caught as high because, among other reasons, Pfizer would suffer "***sustained reduction in [market] cap" and a "significant diminution in reputation***."[328]

- In November 2006, IA's head of healthcare compliance controls stated in a memo to a number of defendants that "[v]iolations of laws and regulation resulting from the failure to properly monitor and ensure compliance with HCC risks could subject the Company to ***harm to its reputation***."[329]

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[326] Certainly, it does not even take an expert to assist a reasonable jury in determining that losing $2.3 billion is damaging.

[327] Ex. 56 at PFE-JONES 00005597-98.

[328] Ex. 105 at 01002341, 01002348 and 01002350.

[329] Ex. 156 at PFE DERIV 01062960.

- In a June 20, 2007 memo to Pfizer's Audit Committee, ***defendant Read described off-label promotion as a risk "deemed most potentially damaging to the company based on the sheer magnitude of the financial penalties involved, potential criminal prosecution and/or damage that [it] can cause to the company's image," and went on to note that "Reputational impact – [i]n an industry as sensitive to public scrutiny as healthcare, either impropriety or simply the perception of it, although it cannot be directly quantified, is arguably among the greatest exposures facing the company***." [330]

Defendants' failure to provide any evidence demonstrating the price impact of non-fraud Pfizer-specific news on the residual stock price decline establishes that summary judgment is not appropriate. Defendants' loss causation and damages expert conceded that he did not estimate the price impact the dividend cut, 2009 earnings guidance or the Wyeth merger had on Pfizer's stock decline.[331] In other words, defendants have adduced no evidence to refute DrFeinstein's disaggregation of non-fraud Pfizer specific news. As such, DrFeinstein's opinion concerning the price impact of the confounding factors must be accepted by the Court. And, if those confounding factors only accounted for $0.62 of the $1.90 January 26, 2009 residual decline, then the only logical explanation is that plaintiffs were damaged by the $2.3 billion payout.

D. The Individual Defendants' Arguments Concerning Loss Causation and Damages Should Be Rejected

Some of the Individual Defendants advance distinct loss causation and damages arguments. For instance, Read contends plaintiffs cannot establish loss causation because Pfizer's January 26, 2009 announcement did not say "Lyrica," "Geodon" or "Zyrox." Dkt. No. 264 at 11-15. Read is fully aware, however, that the $2.3 billion settlement resolved the DOJ's investigations into of the off-label marketing of Lyrica, Geodon and Zyvox. Moreover, Read's argument assumes this is a corrective disclosure case, but in reality, it is a materialization-of-risk action. *Lentell*, 396 F.3d at

[330] PFE DERIV 00003792.

[331] Ex. 56 (Lehn Depo.) at 89:9-1289:20-23; 92:14-18; 270:22.

173 (distinguishing between the two theories). Here, the risk of Pfizer being forced to pay a record fine for its rampant unlawful activity was clearly within the zone of risk concealed by Read – *i.e.*, failing to inform investors that the Company's sales of Lyrica and Geodon were fueled by illegal off-label promotion.[332] *Lentell*, 396 F.3d at 173. Accordingly, the Court should reject Read's arguments.

Defendant Waxman argues, in essence, that because his April 2, 2007 statement concerned the Genotropin settlement, plaintiffs cannot establish loss causation. *See* Dkt. No. 258 at 30-31. As discussed above, however, when Waxman said that Pfizer had sufficient controls in place to prevent Pfizer from engaging in unlawful off-label promotion, he knew that the Company was, in fact, engaged in the rampant off-label promotion of its drugs and that the financial risks associated with the DOJ's investigation into that conduct were significant. On January 26, 2009, the concealed risks of the Company's unlawful scheme were revealed. As such, Waxman's argument should be rejected.

Last, most of the Individual Defendants merely summarize arguments currently before the Court on defendants' motion to exclude Feinstein, which, for the sake of brevity, need not be relitigated here.[333]

VII. DEFENDANTS ARE ALSO LIABLE AS CONTROL PERSONS

Congress "established liability in §20(a) for 'every person who, directly or indirectly, controls any person liable' for violations of the securities laws." *Janus*, 131 S. Ct. at 2304. To

[332] The same argument applies to Waxman's April 2, 2007 statement that Pfizer had controls to protect against off-label promotion practices. *See* Ex. 351.

[333] *See* Dkt. No. 263 at 36-37 (D'Amelio arguing plaintiffs must disaggregate on a defendant-by-defendants basis); Dkt No. 253 at 29-33 (Levin's argument mirrors Pfizer's motion to preclude); Dkt. No. 269 at 17-21 (McKinnell's argument mirrors Pfizer's motion to preclude).

establish control person liability under §20(a), a plaintiff must prove: (1) a primary violation by the controlled person; and (2) control of the primary violator by the §20(a) defendant. *In re WorldCom Inc. Sec. Litig.*, 294 F. Supp. 2d 392, 413-15 (S.D.N.Y. 2003) (Cote, J.). "Control" is "the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. §240.12b-2. McKinnell (CEO), Kindler (General Counsel, Chief Compliance Officer and then CEO), Levin (CFO), D'Amelio (CFO), Waxman (General Counsel) and Read (President of Worldwide Pharmaceuticals) each had control over Pfizer, and others in connection with the statements at issue in this litigation.

Plaintiffs have established that a reasonable jury could find a primary violation of the securities laws as set forth above. Moreover, the evidence, taken together, plainly establishs these defendants' control over Pfizer and its employees. This includes evidence that makes it clear that they possessed the power, influence, and authority to cause or prevent the wrongful conduct at issue, and that they failed to exercise that power to prevent harm to investors. *See Ambac*, 693 F. Supp. 2d at 274 (finding officers to be controlling persons based on allegations derived from their positions within the company); *Sgalambo v. McKenzie*, 739 F. Supp. 2d 453, 487 (S.D.N.Y. Aug. 6, 2010) (allegations that defendants were senior officers and board members and possessed the power to cause the direction of the company's management and policies suffice to satisfy the second element of pleading control person liability). Such evidence includes, *inter alia*, membership on "leadership" teams responsible for, *inter alia*, developing Pfizer's communication strategy to investors, including in SEC filings and press releases, and the approval of settlements of legal cases in amounts greater than $100 million or involving unusual issues.[334] The ELT had decision-making responsibility and

[334] PSMF ¶¶145-146 (McKinnell and Kindler were on the PLT); Exs. 758-768 (defendants Kindler, Waxman and Read were on the ELT); Ex. 65 (Shedlarz Depo.) at 32:13-21, 42:23-43:7; Ex. 63

was to focus on "strategic and operating plans" and "risk and reputation matters," among other matters.[335]

Further, as CEOs, McKinnell and Kindler were responsible for the accuracy of the Company's SEC filings.[336] And as CFOs, Levin and D'Amelio made representations to KPMG in quarterly and annual management representations letters that Pfizer was responsible for the fair presentation in the Company's financial statements in conformity with GAAP as well as confirming certain important matters.[337] The CEOs and CFOs were responsible for certifying that the financial statements were not materially misleading.[338] Further, all of the defendants attended Audit Committee meetings where, among other things, the Government Investigations at issue were discussed.[339]

Kindler, Levin, D'Amelio and Waxman also attended Disclosure Committee meetings prior to the issuance of Pfizer's SEC filings, including press releases.[340] Similarly, McKinnell, Kindler, Levin, D'Amelio and Waxman attended Certification Meetings prior to the issuance of Pfizer's SEC

(Read Depo.) at 60:12-21; Ex. 59 (McKinnell Depo.) at 47:25-48:11; Ex. 46 (D'Amelio Depo.) at 92:12-94:4.

[335] Ex. 202; Ex. 59 (McKinnell Depo.) at 47:25-48:11.

[336] PSMF ¶152.

[337] PSMF ¶458.

[338] Ex. 43 (Cangialosi Depo.) at 31:22-32:17.

[339] PSMF ¶¶153, 164, 166, 168-169, 171, 194, 203, 219, 221, 236, 250, 256, 259, 272, 276, 297, 310.

[340] PSMF ¶147.

filings.[341] To that end, each of these defendants signed certifications prior to the issuance of Pfizer's SEC filings.[342]

Until he became CFO, Kindler was the Chief Compliance Officer.[343] As Compliance Officer he was "responsible for monitoring the day-to-day compliance activities engaged in by Pfizer."[344] Similarly, Kindler, Levin and Waxman as members of the Compliance Committee were "involved in helping drive compliance."[345] As President of WPO, defendant Read, was responsible for operations and sales and marketing of Pfizer's pharmaceutical products.[346] He also updated the Board on compliance, and in his role on the ELT was responsible for taking the lead on assessing "statements to the investment community."[347] As senior Assistant General Counsel of Litigation and the Legal Division's executive team (along with Kindler), Waxman had management responsibility for the legal division,[348] the division that drove the legal disclosures.[349] As General Counsel, Waxman was responsible for corporate governance and government investigations.[350]

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[341] PSMF ¶150; Ex. 59 (11/11/13 McKinnell Depo.) at 99:4-100:12.

[342] PSMF ¶150.

[343] PSMF ¶151.

[344] Ex. 73 at 6.

[345] Ex. 67 (11/14/13 Waxman Depo.) at 35:16-22, 81:1-82:22.

[346] *See* Ex. 63 (Read Depo.) at 40:19-24.

[347] Ex. 560 (PFE DERIV 00003935-953).

[348] Waxman Depo. at 19:1-20:21.

[349] Ex. 46 (D'Amelio Depo.) at 34:22-35:8.

[350] *Id*. at 21:25-22:19.

Nor is it disputed that McKinnell, Levin and D'Amelio signed SEC filings containing the very statements at issue in this case. *Jacobs v. Coopers & Lybrand, L.L.P.*, No. 97-CIV.-3374 (RPP), 1999 U.S. Dist. LEXIS 2102, at *50-*52 (S.D.N.Y. Mar. 1, 1999) (outside director was a control person because "[i]t does comport with common sense to presume that a person who signs his name to a report has some measure of control over those who write the report"); *Anstalt v. New Generation Biofuels, Inc.*, No. 13-CV-5586 (VEC), 2014 U.S. Dist. LEXIS 161472, at *45 (S.D.N.Y. Nov. 18, 2014) (allegations that defendants "held positions as senior executives or board members who exercised control over, and in most cases were signatories to, the public SEC filings on which Plaintiff relied in investing in [the Company], are sufficient to establish control of the primary violator").[351] Nor do Read and Waxman, along with the other defendants, dispute that they made statements at issue in this case or were present during conference calls when they were made.[352] *Sawant v. Ramsey*, No. 307-CV-980, 2010 U.S. Dist. LEXIS 102899, at *58-*61 (D. Conn. Sept. 28, 2010) (denying summary judgment on a §20(a) claim where defendants statements appeared in an article).

Defendants erroneously contend that "culpable participation" is required in the Second Circuit to prove a claim under §20(a). "[T]he Second Circuit has not yet ruled on whether scienter needs to be pled [for a §20(a) claim], and the Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all rejected a scienter requirement, holding that good faith may be asserted as an affirmative defense." *Carpenters Pension Trust*, 2014 U.S. Dist. LEXIS 148772, at *24 n.75; *Dobina v. Weatherford Int'l*, 909 F. Supp. 2d 228, 257 (S.D.N.Y. 2012) ("a plaintiff need not plead

[351] *Howard v. Everex Systems, Inc.*, 228 F.3d 1057, 1066 (9th Cir. 2000) (authority over the preparation and presentation of financial statements sufficient for §20(a)).

[352] FMS Nos. 1-44.

culpable participation by the control person in order to state a legally sufficient claim"); *STMicroelectronics v. Credit Suisse Group*, 775 F. Supp. 2d 525, 536-37 (E.D.N.Y. 2011) (plaintiff not required to allege culpable participation, "having sufficiently pled a primary Section 10(b) violation and CSG's control over CSS, the burden shifts to CSG to prove the adequacy of its internal controls").[353]

Regardless, defendants Pfizer,[354] McKinnell, Kindler, Levin, D'Amelio, Read and Waxman were culpable participants. *Pa. Pub. Sch. Employees' Ret. Sys. v. Bank of Am. Corp.*, 939 F. Supp. 2d 445, 453 (S.D.N.Y. April 7, 2013) (culpable participation requirement met where allegations were defendant failed to disclose liabilities).[355] Among other things, all of them were involved in approving the false and misleading statements at issue.[356] It is also undisputed that Pfizer and the executive defendants had a duty under the 2004 CIA to maintain a compliance program to "ensure compliance with the requirements set forth in the CIA and with Federal health care program

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[353] *See also Nemec v. Shrader*, No. 09-CV-7466 (LAK), 2010 U.S. Dist. LEXIS 107689, at *8-*9 n.7 (S.D.N.Y. Sept. 27, 2010) ("This Court repeatedly has rejected in prior cases defendants' contention that a Section 20(a) claim is insufficient absent allegations of culpable participation . . . ."); *In re Parmalat Sec. Litig.*, 594 F. Supp. 2d 444, 456 (S.D.N.Y. 2009) ("a plaintiff relying on Section 20(a) is not obliged to allege or prove a controlling person's culpable participation in the violation").

[354] Pfizer does not separately move for summary judgment on the grounds that it is not liable as a control person though it is named as a defendant in Claim II of the Complaint. This is likely because "the general rule is that knowledge acquired by an agent acting within the scope of his agency is imputed to his principal and the latter is bound by such knowledge although the information is never actually communicated to it." *Elbit Sys. v. Credit Suisse Group*, 917 F. Supp. 2d 217, 229 (S.D.N.Y. 2013) (citing *N.Y. Univ. v. First Fin. Ins. Co.*, 322 F.3d 750, 753 n.2 (2d Cir. 2003)).

[355] *See also In re Initial Public Offering Sec. Litig.*, 241 F. Supp. 2d 281, 392-98 (S.D.N.Y. 2003) (application of the culpable participation requirement by the Second Circuit has rendered it meaningless).

[356] PSMF ¶¶144-150; *see also* §IV.G., *supra*.

requirements and FDA requirements."[357] *CompuDyne Corp. v. Shane*, 453 F. Supp. 2d 807 (S.D.N.Y. 2006) (where a broker-dealer had an affirmative duty to ensure that employees complied with regulations, the failure to supervise satisfied the culpable participation element established under §20(a)).[358] The facts in this case demonstrate that Pfizer's employees were not properly supervised to prevent such violations.[359]

Moreover, as set forth above, plaintiffs have identified evidence from which a jury could find that defendants were culpable participants in Pfizer's fraud as Judge Swain previously found with respect to defendant McKinnell and other Pfizer executives. *See Pfizer Sec. Litig.*, 936 F. Supp. 2d at 270 ("the pleading requirements for 'culpable participation' are satisfied by the same allegations that satisfy the scienter pleading requirements"). Plaintiffs have also identified evidence from which a jury could find a primary violation and that defendants did not act in good faith. Thus, plaintiffs' control liability claims are ripe for a jury.[360]

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[357] PSMF ¶¶2-6.

[358] Defendants' cases are factually inapposite. *See, e.g.*, *Levy v. Maggiore*, 13-CV-2219 (MKB), 2014 U.S. Dist. LEXIS 137813 (E.D.N.Y. Sept. 29, 2014) (lack of factual allegations on a motion to dismiss); *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 166-67 (S.D.N.Y. 2012) (defendant was not an officer of the company that filed the misleading statements and had not a single contact with individuals he was alleged to control); *Special Situations Fund III QP, L.P. v. Deloitte Touche Tohmatsu CPA, Ltd.*, No. 13-CV-1094 (ER), 2014 U.S. Dist. LEXIS 99861, at *86-*87 (S.D.N.Y. July 21, 2014) (only allegation of control was that Deloitte U.S. was involved in preparing the Company's Form 10-K and communicated with the SEC regarding a write-off not alleged to be improper).

[359] PSMF ¶¶52-92; Ex. 179.

[360] Defendants seek to reserve their rights to make further arguments regarding control liability but the time for moving for summary judgment has passed. *See* Fed. R. Civ. P. 56(b) (summary judgment motions to be filed 30 days after close of discovery). Thus, any further argument on this claim has been waived.

VIII. CONCLUSION

By reason of the foregoing, defendants' motions for summary judgment should be denied.

DATED: November 26, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2014.

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  ingo@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joseph G. Petrosinelli**
  jpetrosinelli@wc.com
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  willowr@rgrdlaw.com,ptiffith@rgrdlaw.com
- **Joseph F. Rice**
  jrice@motleyrice.com
- **Darren J. Robbins**
  e_file_sd@rgrdlaw.com
- **Daniel Prugh Roeser**
  droeser@goodwinprocter.com
- **Henry Rosen**
  henryr@rgrdlaw.com,dianah@rgrdlaw.com
- **David Avi Rosenfeld**
  drosenfeld@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com

- **James P. Rouhandeh**
  james.rouhandeh@dpw.com,ecf.ct.papers@davispolk.com
- **Samuel Howard Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,mblasy@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Stuart Michael Sarnoff**
  ssarnoff@omm.com
- **William E. Schurmann**
  wschurmann@wc.com
- **Trig Randall Smith**
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  jen.spaziano@skadden.com
- **Richard Mark Strassberg**
  rstrassberg@goodwinprocter.com,nymanagingclerk@goodwinprocter.com
- **Mitchell M.Z. Twersky**
  mtwersky@aftlaw.com
- **John K. Villa**
  jvilla@wc.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Daniel E. Hill
Kendall Law Group, LLP
3232 McKinney Avenue
Suite 700
Dallas, TX 75204

Catherine J. Kowalewski
Robbins Geller Rudman & Dowd LLP (San Diego)
655 West Broadway
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San Diego, CA 92101

Jamie J. McKey
Kendall Law Group, LLP
3232 McKinney Avenue
Suite 700
Dallas, TX 75204

David C. Walton
Robbins Geller Rudman & Dowd LLP (SANDIEGO)
655 West Broadway
Suite 1900
San Diego, CA 92101

DEFENDANTS' CLASS PERIOD FALSE & MISLEADING STATEMENTS

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td>1.</td><td>1/19/06 Press Release</td><td>Ex. 26</td><td>The performance of the central nervous system portfolio was fueled by the launch of Lyrica. Since its September launch, more than 500,000 prescriptions have been written for Lyrica in the U.S. as of December 23, 2005. Lyrica had already gained more than a 7-percent new-prescription share of the U.S. anti-epileptic market as of December 23, continuing its performance as one of Pfizer's most successful pharmaceutical launches. . . . In the U.S., Geodon is the second-fastest-growing atypical anti-psychotic oral medication in new-prescription volume as of November year-to-date. Its balance of powerful efficacy and a favorable metabolic profile positions it for further growth.

* * *

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:

<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>4Q 2005</td><td>$323</td><td>$2,732</td><td>$0.37</td><td>1/19/06</td></tr><tr><td>2005</td><td>($347)</td><td>$8,085</td><td>$1.09</td><td>1/19/06</td></tr></table></td><td>Pfizer
Alan Levin
Jeff Kindler
Henry McKinnell</td></tr>
<tr><td>2.</td><td>3/1/06 2005 Form 10-K</td><td>Petrosinelli Decl., Ex. B-1</td><td>In a time when the news media is full of stories of business leaders and companies whose actions have engendered public suspicion and mistrust, Pfizer truly stands apart. Pfizer is proud of our record of compliance. Compliance with all relevant statutes and rules is both the legacy of our 150-year history and one of our most important advantages in global business.

* * *

[T]hese policies and practices are the foundation of our drive to become the</td><td>Pfizer
Henry McKinnell
Jeff Kindler
Alan Levin</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>
world's most valued company

* * *

At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to:

■ false or misleading advertising, or any other form of misrepresentation made in connection with sales;

* * *

Regulatory Requirements

On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .

Pfizer's Policies on Business Conduct (Blue Book) incorporated by reference

* * *

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:

<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>Full Year 2005</td><td>($347)</td><td>$8,085</td><td>$1.09</td><td>3/1/06</td></tr>
</table>
</td><td></td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			Financial Results * * * **Financial Review** * * * **Legal Proceedings and Contingencies** We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. * * * Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * *	

No.	Date/ Type	Source	Statement	Defendants
			ITEM 3. LEGAL PROCEEDINGS Certain legal proceedings in which we are involved are discussed in Note 18 to our consolidated financial statements, *Legal Proceedings and Contingencies*, in our 2005 Financial Report, which is incorporated by reference. * * * 18. Legal Proceedings and Contingencies We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * F. Government Investigations and Requests for Information Like other pharmaceutical companies, we are subject to extensive regulation by national, state and local government agencies in the U.S. and in the other countries in which we operate. As a result, we have interactions with government agencies on an ongoing basis. The principal pending investigations and requests for information by government agencies are as follows:	

No.	Date/ Type	Source	Statement	Defendants
			* * * In 2003 and 2004, we received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and a group of state attorneys general. In 2005, we received a similar request from the staff of the Securities and Exchange Commission.	
3.	3/1/06 2005 Form 10-K	Petrosinelli Decl., Ex. B-1	"in all material respects the financial condition [and] results of [Pfizer's] operations": I, [defendant], certify that: 1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report; 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report; **Executive Certifications**	Henry McKinnell Alan Levin
4.	3/16/06 Annual 2006 Proxy Statement	Ex. 10	In a time when the news media is full of stories of business leaders and companies whose actions have engendered public suspicion and mistrust, Pfizer truly stands apart. Pfizer is proud of our record of compliance. Compliance with all relevant statutes and rules is both the legacy of our 150-year history and one of our most important advantages in global business. * * * [T]hese policies and practices are the foundation of our drive to become the world's most valued company **Pfizer's Policies on Business Conduct (Blue Book) incorporated by reference**	Pfizer Henry McKinnell

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
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At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to:

■ false or misleading advertising, or any other form of misrepresentation made in connection with sales;

* * *

Regulatory Requirements

On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .</td><td></td></tr>
<tr><td>5.</td><td>4/19/06 Press Release</td><td>Ex. 27</td><td><table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>1Q 2006</td><td>$272</td><td>$4,111</td><td>$0.56</td><td>4/19/06</td></tr></table>
Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:</td><td>Pfizer
Henry McKinnell
Alan Levin
Jeff Kindler</td></tr>
<tr><td>6.</td><td>5/8/06 1Q06 Form 10-Q</td><td>Petrosinelli Decl., Ex. C-1</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:

1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;</td><td>Henry McKinnell
Alan Levin</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

Executive Certifications</td><td></td></tr>
<tr><td>7.</td><td>5/8/06
1Q06 Form 10-Q</td><td>Petrosinelli Decl., Ex. C-1</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:

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</table>

Financial Results

* * *

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by</td><td>Pfizer
Henry McKinnell
Jeff Kindler
Alan Levin</td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * Item 1. Legal Proceedings Certain legal proceedings in which we are involved are discussed in Note 18 to the consolidated financial statements included in our 2005 Financial Report and in Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2005. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.	
8.	7/20/06 Press Release	Ex. 28	"Our second-quarter 2006 performance is quite encouraging. . . . Celebrex, Geodon, and six other major in-line products, each delivered double-digit revenue growth in the quarter. Particularly impressive was the robust performance of two of our new products, Lyrica and Sutent, evidencing their rapid acceptance by physicians and patients." * * * Worldwide sales of Geodon increased 14 percent in the quarter to $165 million, driven by the better understanding by clinicians of its efficacy, increased benefits from optimal dosing, and favorable metabolic profile. We continue to expect full-year Geodon revenues of about $800 million. For example, Lyrica worldwide sales reached $271 million in the second quarter of 2006, reflecting strong market acceptance by physicians and patients since its initial launch nearly two years ago. In the U.S., Lyrica had $172 million in revenues for the second quarter of 2006. * * *	Pfizer Alan Levin Jeff Kindler Henry McKinnell

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>In the U.S., Lyrica performance has been robust, with new prescriptions continuing to grow steadily through the second quarter of 2006 to reach a 9.8-percent share of the total anti-epileptic drug market in June 2006 (IMS).

* * *

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:

<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>2Q 2006</td><td>$359</td><td>$2,415</td><td>$0.33</td><td>7/20/06</td></tr></table></td><td></td></tr>
<tr><td>9.</td><td>8/11/06 2Q06 Form 10-Q</td><td>Ex. 12</td><td>"in all material respects the financial condition [and] results of [Pfizer's] operations":
I, [defendant], certify that:
1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
Executive Certifications</td><td>Jeff Kindler
Alan Levin</td></tr>
<tr><td>10.</td><td>8/11/06 2Q06 Form 10-Q</td><td>Ex. 12</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows.</td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman</td></tr>
</table>

<table>
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Financial Results

* * *

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.

* * *

<u>Item 1. Legal Proceedings</u>

Certain legal proceedings in which we are involved are discussed in Note 18 to the consolidated financial statements included in our 2005 Financial Report; Part
</td><td></td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2005; and Part II, Item 1, of our Quarterly Report on Form 10-Q for the quarter ended April 2, 2006. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.</td><td></td></tr>
<tr><td>11.</td><td>10/19/06 Press Release</td><td>Ex. 29</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>3Q 2006</td><td>$343</td><td>$3,362</td><td>$0.46</td><td>10/19/06</td></tr></table></td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
<tr><td>12.</td><td>11/3/06 3Q06 Form 10-Q</td><td>Ex. 13</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:
1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
Executive Certifications</td><td>Jeff Kindler
Alan Levin</td></tr>
<tr><td>13.</td><td>11/3/06 3Q06 Form</td><td>Ex. 13</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:</td><td>Pfizer
Jeff Kindler</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td>10-Q</td><td></td><td>
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Financial Results
* * *
<u>Legal Proceedings and Contingencies</u>
We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.
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* * *
<u>Item 1. Legal Proceedings</u>
Certain legal proceedings in which we are involved are discussed in Note 18 to the consolidated financial statements included in our 2005 Financial Report; Part</td><td>Alan Levin
Allen Waxman
Ian Read</td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2005; and Part II, Item 1, of our Quarterly Reports on Form 10-Q for the quarters ended April 2 and July 2, 2006. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.	
14.	1/22/07 Analyst Meeting	Carlinsky Decl., Ex. C-R	[Defendant Read:] Lyrica's launch has gone extremely well, and with excellent feedback from both patients and physicians, we have an exciting new marketing initiative aimed at improving the appropriate diagnosis of patients, and we are optimistic about the potential new indication for fibromyalgia. Another drug, Geodon, is a quiet but impressive success story. It is now the fastest-growing atypical agent in the US, and I will give you an update on what is driving this. * * * 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. * * * 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.	Pfizer Ian Read Jeff Kindler
15.	1/22/07 Press Release	Ex. 30	Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:	Pfizer Jeff Kindler Alan Levin Allen Waxman Ian Read

<table>
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<tr><td>4Q 2006</td><td>($54)</td><td>$9,449</td><td>$1.32</td><td>1/22/07</td></tr>
<tr><td>2006</td><td>$904</td><td>$19,337</td><td>$2.66</td><td>1/22/07</td></tr>
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</td><td></td></tr>
<tr><td>16.</td><td>3/1/07
2006 Form 10-K</td><td>Petrosinelli Decl., Ex. D-1</td><td>At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to:

■ false or misleading advertising, or any other form of misrepresentation made in connection with sales;

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On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .

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Jeff Kindler
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Financial Results

* * *

Financial Review

* * *

Legal Proceedings and Contingencies

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.
</td><td></td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			* * * ITEM 3. LEGAL PROCEEDINGS Certain legal proceedings in which we are involved are discussed in Note 19 to our consolidated financial statements, *Legal Proceedings and Contingencies*, in our 2006 Financial Report, which is incorporated by reference. * * * <u>19. Legal Proceedings and Contingencies</u> We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * <u>F. Government Investigations and Requests for Information</u> Like other pharmaceutical companies, we are subject to extensive regulation by	

No.	Date/ Type	Source	Statement	Defendants
			national, state and local government agencies in the U.S. and in the other countries in which we operate. As a result, we have interactions with government agencies on an ongoing basis. Among the investigations and requests for information by government agencies are those discussed below. It is possible that criminal charges and fines and/or civil penalties could result from pending government investigations. Since 2003, we have received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and a group of state attorneys general. We have been considering various ways to resolve these matters.	
17.	3/1/07 2006 Form 10-K	Petrosinelli Decl., Ex. D-1	"in all material respects the financial condition [and] results of [Pfizer's] operations": I, [defendant], certify that: 1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report; 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report; **Executive Certifications**	Jeff Kindler Alan Levin
18.	3/15/07 Annual 2007 Proxy Statement	Ex. 14	At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to: ■ false or misleading advertising, or any other form of misrepresentation made in connection with sales; * * * **Regulatory Requirements**	Pfizer Jeff Kindler

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .

Pfizer’s Policies on Business Conduct (Blue Book) incorporated by reference</td><td></td></tr>
<tr><td>19.</td><td>4/2/07 Press Release</td><td>Galin Decl., Ex. Q-W</td><td>HEADLINE: Pharmacia Subsidiaries Reach $34.7 Million Settlement with DOJ; Resolve Allegations of Improper Activities Prior to Acquisition by Pfizer;
* * *
“As the Department of Justice has acknowledged, Pfizer voluntarily and fully self-disclosed the off-label promotion of Genotropin by a Pharmacia subsidiary before Pharmacia was acquired by Pfizer," said Allen Waxman, senior vice president and general counsel. "Pfizer's marketing and promotion practices are not involved in the settlement. The company has internal controls to guard against these types of practices.”</td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
<tr><td>20.</td><td>4/20/07 Press Release</td><td>Ex. 31</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>1Q 2007</td><td>$402</td><td>$3,392</td><td>$0.48</td><td>4/20/07</td></tr>
</table></td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
<tr><td>21.</td><td>5/4/07 1Q07 Form 10-Q</td><td>Petrosinelli Decl., Ex. E-1</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:
1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements</td><td>Jeff Kindler
Alan Levin</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

Executive Certifications</td><td></td></tr>
<tr><td>22.</td><td>5/4/07
1Q07 Form 10-Q</td><td>Petrosinelli Decl., Ex. E-1</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>1Q 2007</td><td>$402</td><td>$3,392</td><td>$0.48</td><td>5/4/07</td></tr>
</table>
Financial Results

* * *

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities and environmental litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments</td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.

* * *

<u>Item 1. Legal Proceedings</u>

Certain legal proceedings in which we are involved are discussed in Note 19 to the consolidated financial statements included in our 2006 Financial Report and in Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2006. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.</td><td></td></tr>
<tr><td>23.</td><td>7/18/07 Press Release</td><td>Ex. 32</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>2Q 2007</td><td>$487</td><td>$1,267</td><td>$0.18</td><td>7/18/07</td></tr>
</table></td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
<tr><td>24.</td><td>8/6/07 2Q07 Form 10-Q</td><td>Ex. 15</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:

1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;</td><td>Jeff Kindler
Alan Levin</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

Executive Certifications</td><td></td></tr>
<tr><td>25.</td><td>8/6/07
2Q07 Form 10-Q</td><td>Ex. 15</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>2Q 2007</td><td>$487</td><td>$1,267</td><td>$0.18</td><td>8/6/07</td></tr></table>
Financial Results

* * *

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities and environmental litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these</td><td>Pfizer
Jeff Kindler
Alan Levin
Allen Waxman
Ian Read</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.

* * *

<u>Item 1. Legal Proceedings</u>

Certain legal proceedings in which we are involved are discussed in Note 19 to the consolidated financial statements included in our 2006 Financial Report; Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2006; and Part II, Item 1, of our Quarterly Report on Form 10-Q for the quarter ended April 1, 2007. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.</td><td></td></tr>
<tr><td>26.</td><td>10/18/07 Press Release</td><td>Strassberg Decl., Ex. H-D</td><td>Lyrica revenues grew 37% to $465 million in the third quarter of 2007 compared to the same period last year. Lyrica’s growth continues to be fueled by strong efficacy as well as high patient and physician satisfaction in the marketplace.

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:

<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>3Q 2007</td><td>$260</td><td>$761</td><td>$0.11</td><td>10/18/07</td></tr>
</table></td><td>Pfizer
Jeff Kindler
Frank D’Amelio
Allen Waxman
Ian Read</td></tr>
<tr><td>27.</td><td>10/18/07 3Q07 Earnings Conference</td><td>Strassberg Decl., Ex. N-D</td><td>[Defendant Kindler:] Geodon is growing at a rate of two times the market for atypical antipsychotics.</td><td>Pfizer
Jeff Kindler</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td>Call</td><td></td><td>* * *

[Defendant D’Amelio:] As you can see, all the key in-line products posted positive results in the third quarter compared to the same period last year. I would also like to emphasize the strong growth being delivered by our key new products. . . . Revenues of Lyrica, our medicine for the management of neuropathic pain and most recently fibromyalgia, increased 37% to $465 million.</td><td></td></tr>
<tr><td>28.</td><td>11/5/07 3Q07 Form 10-Q</td><td>Ex. 16</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:
1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
Executive Certifications</td><td>Jeff Kindler
Frank D’Amelio</td></tr>
<tr><td>29.</td><td>11/5/07 3Q07 Form 10-Q</td><td>Ex. 16</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>3Q 2007</td><td>$260</td><td>$761</td><td>$0.11</td><td>11/5/07</td></tr>
</table>
Financial Results
* * *</td><td>Pfizer
Jeff Kindler
Frank D’Amelio
Allen Waxman
Ian Read</td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			Legal Proceedings and Contingencies We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities and environmental litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. We record accruals for such contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * Item 1. Legal Proceedings Certain legal proceedings in which we are involved are discussed in Note 19 to the consolidated financial statements included in our 2006 Financial Report; Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2006; and Part II, Item 1, of our Quarterly Reports on Form 10-Q for the quarters ended April 1, 2007 and July 1, 2007. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.	

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>* * *

<u>Celebrex and Bextra Matters</u>

* * *

As previously reported, since 2003 we have received requests for information and documents in connection with potential claims concerning the marketing and safety of Bextra and Celebrex from a group of state attorneys general. We believe that we have strong defenses to any potential claims that may be asserted by members of the attorney general group, and we continue to explore various ways to resolve any such potential claims.</td><td></td></tr>
<tr><td>30.</td><td>1/22/08 Press Release</td><td>Strassberg Decl., Ex. I-D</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>4Q 2007</td><td>$610</td><td>$2,878</td><td>$0.42</td><td>1/23/08</td></tr>
<tr><td>2007</td><td>$1,759</td><td>$8,298</td><td>$1.20</td><td>1/23/08</td></tr>
</table></td><td>Pfizer
Jeff Kindler
Frank D'Amelio
Allen Waxman
Ian Read</td></tr>
<tr><td>31.</td><td>2/29/08 2007 Form 10-K</td><td>Petrosinelli Decl., Ex. F-1</td><td>At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to:

■ false or misleading advertising, or any other form of misrepresentation made in connection with sales;

* * *</td><td>Pfizer
Jeff Kindler
Frank D'Amelio
Allen Waxman
Ian Read</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>

Regulatory Requirements

On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .

Pfizer's Policies on Business Conduct (Blue Book) incorporated by reference

* * *

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:

<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>Full Year 2007</td><td>$1,759</td><td>$8,144</td><td>$1.18</td><td>2/29/08</td></tr>
</table>

Financial Results

* * *

Financial Review

</td><td></td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			* * * **Legal Proceedings and Contingencies** We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. * * * We record accruals for all other contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable, and we record anticipated recoveries under existing insurance contracts when assured of recovery. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * ITEM 3. LEGAL PROCEEDINGS Certain legal proceedings in which we are involved are discussed in Note 20 to our consolidated financial statements, *Legal Proceedings and Contingencies*, in our 2007 Financial Report, which is incorporated by reference.	

No.	Date/ Type	Source	Statement	Defendants
			* * * 20. Legal Proceedings and Contingencies We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position. * * * We record accruals for all other contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable, and we record anticipated recoveries under existing insurance contracts when assured of recovery. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . .Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * D. Government Investigations and Requests for Information Like other pharmaceutical companies, we are subject to extensive regulation by national, state and local government agencies in the U.S. and in the other countries in which we operate. As a result, we have interactions with government agencies on an ongoing basis. Among the investigations and requests for information by government agencies are those discussed below. It is possible that	

No.	Date/ Type	Source	Statement	Defendants
			criminal charges and fines and/or civil penalties could result from pending government investigations, including but not limited to those discussed below. The Department of Justice continues to actively investigate the marketing and safety of our COX-2 medicines, particularly Bextra. The investigation has included requests for information and documents. We also have received requests for information and documents in connection with threatened claims concerning the marketing and safety of Bextra and Celebrex from a group of state attorneys general. We have been considering various ways to resolve these matters.	
32.	2/29/08 2007 Form 10-K	Petrosinelli Decl., Ex. F-1	"in all material respects the financial condition [and] results of [Pfizer's] operations": I, [defendant], certify that: 1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.; 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report; 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report; **Executive Certifications**	Jeff Kindler Frank D'Amelio
33.	3/05/08 Analyst Meeting	Carlinsky Decl., Ex. D-R	[Defendant Read:] Lyrica has demonstrated rapid and sustained uptake. 2007 U.S. sales were up 46% with international sales growing 78% to $781 million. On this slide, you can see how the product positively responded to the launch of the fibromyalgia indication in the third quarter of last year in the U.S.	Pfizer Ian Read Jeff Kindler Frank D'Amelio
34.	3/14/08 Annual 2008 Proxy Statement	Ex. 17	At Pfizer, we are committed to fair competition. This means, among other things, abiding by all laws that apply to our marketing activities. Under these laws it is illegal to use unfair methods of competition or unfair or deceptive acts or practices in commerce. This prohibition includes, but is not limited to: ■ false or misleading advertising, or any other form of misrepresentation made in connection with sales;	Pfizer Jeff Kindler

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>* * *

Regulatory Requirements

On a global basis, Pfizer also follows all applicable laws governing the manufacturing and distribution of drugs or biological products. In particular, Pfizer observes all requirements of the U.S. Food and Drug Administration (FDA). . . .

Pfizer's Policies on Business Conduct (Blue Book) incorporated by reference</td><td></td></tr>
<tr><td>35.</td><td>4/17/08 Press Release</td><td>Strassberg Decl., Ex. K-D</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:
<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>1Q 2008</td><td>$333</td><td>$2,784</td><td>$0.41</td><td>4/17/08</td></tr></table></td><td>Pfizer
Jeff Kindler
Frank D'Amelio
Ian Read</td></tr>
<tr><td>36.</td><td>5/2/08 1Q08 Form 10-Q</td><td>Petrosinelli Decl., Ex. G-1</td><td>"in all material respects the financial condition [and] results of [Pfizer's] operations":
I, [defendant], certify that:

1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

Executive Certifications</td><td>Jeff Kindler
Frank D'Amelio</td></tr>
<tr><td>37.</td><td>5/2/08 1Q08 Form</td><td>Petrosinelli Decl., Ex. G-1</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer's net income and diluted earnings per share ("EPS") as follows:</td><td>Pfizer
Jeff Kindler</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td>10-Q</td><td></td><td>
<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>1Q 2008</td><td>$333</td><td>$2,784</td><td>$0.41</td><td>5/2/08</td></tr>
</table>
Financial Results

* * *

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

* * *

We record accruals for all other contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable, and we record anticipated recoveries under existing insurance contracts when assured of recovery. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period.
</td><td>Frank D’Amelio
Ian Read</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>* * *

<u>Item 1. Legal Proceedings</u>

Certain legal proceedings in which we are involved are discussed in Note 20 to the consolidated financial statements included in our 2007 Financial Report, which is incorporated by reference in Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2007. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with our 2007 Financial Report. Unless otherwise indicated, all proceedings discussed in our 2007 Financial Report remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.</td><td></td></tr>
<tr><td>38.</td><td>7/23/08 Press Release</td><td>Ex. 33</td><td>Lyrica revenues in the second-quarter 2008 were $614 million, an increase of 52% compared with the prior-year quarter, driven by strong efficacy and high patient and physician satisfaction in managing nerve pain associated with diabetes and nerve pain after shingles, the June 2007 U.S. approval for the management of fibromyalgia, a branded and unbranded advertising strategy focused on increasing both Lyrica and fibromyalgia awareness as well as the favorable impact of foreign exchange. In the U.S., Lyrica revenues rose to $335 million, an increase of 55% compared to the prior-year quarter, while international revenues grew to $279 million, an increase of 48%.

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:

<table><tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr><tr><td>2Q 2008</td><td>$167</td><td>$2,776</td><td>$0.41</td><td>7/23/08</td></tr></table></td><td>Pfizer
Jeff Kindler
Frank D’Amelio
Ian Read</td></tr>
<tr><td>39.</td><td>8/8/08 2Q08 Form 10-Q</td><td>Petrosinelli Decl., Ex. H-1</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:

1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a</td><td>Jeff Kindler
Frank D’Amelio</td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

Executive Certifications</td><td></td></tr>
<tr><td>40.</td><td>8/8/08
2Q08 Form 10-Q</td><td>Petrosinelli Decl., Ex. H-1</td><td>Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:

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<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) - Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
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</table>

Financial Results

<u>Legal Proceedings and Contingencies</u>

We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.

* * *

We record accruals for all other contingencies to the extent that we conclude their occurrence is probable and the related damages are estimable, and we record anticipated recoveries under existing insurance contracts when assured of recovery. If a range of liability is probable and estimable and some amount within the range appears to be a better estimate than any other amount within the range, we accrue that amount. If a range of liability is probable and estimable and no amount within the range appears to be a better estimate than any other amount</td><td>Pfizer
Jeff Kindler
Frank D’Amelio
Ian Read</td></tr>
</table>

No.	Date/ Type	Source	Statement	Defendants
			within the range, we accrue the minimum of such probable range. . . . Consequently, we cannot reasonably estimate the maximum potential exposure or the range of possible loss in excess of amounts accrued for these contingencies. . . . Our assessments are based on estimates and assumptions that have been deemed reasonable by management. . . . Although we believe we have substantial defenses in these matters, we could in the future incur judgments or enter into settlements of claims that could have a material adverse effect on our results of operations in any particular period. * * * <u>Item 1. Legal Proceedings</u> Certain legal proceedings in which we are involved are discussed in Note 20 to the consolidated financial statements included in our 2007 Financial Report, which is incorporated by reference in Part I, Item 3, of our Annual Report on Form 10-K for the year ended December 31, 2007; and Part II, Item 1, of our Quarterly Report on Form 10-Q for the quarter ended March 30, 2008. The following discussion is limited to certain recent developments concerning our legal proceedings and should be read in conjunction with those earlier Reports. Unless otherwise indicated, all proceedings discussed in those earlier Reports remain outstanding. Reference also is made to the Legal Proceedings and Contingencies section in Part I, Item 2, of this Form 10-Q.	
41.	9/22/08 UBS Global Life Sciences Conference	Carlinsky Decl., Ex. E-R	[Defendant Read:] 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. There continues to be the leading branded agent for diabetic peripheral neuropathy and post-hepatic neuralgia. 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 post-stroke pain, cancer pain, restless leg syndrome and postoperative pain.	Pfizer Ian Read
42.	10/21/08 Press Release	Strassberg Decl., Ex. L-D	"We remain on-track to meet our 2008 objectives, despite the turbulent global economy," said Chairman and Chief Executive Officer Jeff Kindler. "We continued to deliver steady results this quarter, with many of our most important medicines performing well around the world, including Lyrica, Celebrex, Viagra,	Pfizer Jeff Kindler Frank D'Amelio Ian Read

<table>
<tr><th>No.</th><th>Date/ Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td></td><td></td><td></td><td>Sutent, Zyvox and Geodon, as well as Lipitor in a highly competitive market.”

* * *

Lyrica revenues in third-quarter 2008 were $675 million, an increase of 45% compared with the prior-year quarter, driven by high patient and physician satisfaction globally demonstrated by strong physician prescribing patterns, as well as growth in the U.S. fibromyalgia market, where we continue to expand our leadership position. In the U.S., Lyrica revenues rose to $379 million, an increase of 40% compared with the prior-year quarter, while international revenues grew to $296 million, an increase of 51% primarily from operation growth.

* * *

Defendants caused Pfizer to issue false and misleading financial results, including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:

<table>
<tr><th>Fiscal Period</th><th>Other Income/ (Other Deductions) – Net (in millions)</th><th>Net Income (in millions)</th><th>Diluted EPS</th><th>Filed with the SEC</th></tr>
<tr><td>3Q 2008</td><td>($721)</td><td>$2,278</td><td>$0.34</td><td>10/21/08</td></tr>
</table>
</td><td></td></tr>
</table>

<table>
<tr><th>No.</th><th>Date/
Type</th><th>Source</th><th>Statement</th><th>Defendants</th></tr>
<tr><td>43.</td><td>11/7/08
3Q08 Form
10-Q</td><td>Petrosinelli Decl., Ex. I-1</td><td>“in all material respects the financial condition [and] results of [Pfizer’s] operations”:
I, [defendant], certify that:
1. I have reviewed this report on [Form 10-Q/Form 10-K] of Pfizer Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
Executive Certifications</td><td>Pfizer
Jeff Kindler
Frank D’Amelio</td></tr>
<tr><td>44.</td><td>11/7/08
3Q08 Form
10-Q</td><td>Petrosinelli Decl., Ex. I-1</td><td>Defendants caused Pfizer to issue false and misleading financial results including Pfizer’s net income and diluted earnings per share (“EPS”) as follows:
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<tr><td>3Q 2008</td><td>($721)</td><td>$2,278</td><td>$0.34</td><td>11/7/08</td></tr>
</table>
Financial Results
* * *
<u>Legal Proceedings and Contingencies</u>
We and certain of our subsidiaries are involved in various patent, product liability, consumer, commercial, securities, environmental and tax litigations and claims; government investigations; and other legal proceedings that arise from time to time in the ordinary course of our business. We do not believe any of them will have a material adverse effect on our financial position.</td><td>Pfizer
Jeff Kindler
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No.	Date/ Type	Source	Statement	Defendants
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Regan Karstrand

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: Wednesday, November 26, 2014 11:58 PM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:10-cv-03864-AKH Jones et al v. Pfizer, Inc. et al Memorandum of Law in Opposition to Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered by Rosen, Henry on 11/26/2014 at 11:57 PM EST and filed on 11/26/2014

Case Name: Jones et al v. Pfizer, Inc. et al
Case Number: 1:10-cv-03864-AKH
Filer: Mary K. Jones
Stichting Philips Pensioenfonds
Document Number: 304

Docket Text:
MEMORANDUM OF LAW in Opposition re: [256] MOTION for Summary Judgment ., [244] MOTION for Summary Judgment ., [255] MOTION for Summary Judgment ., [260] MOTION for Summary Judgment ., [271] MOTION for Summary Judgment ., [268] MOTION for Summary Judgment ., [252] MOTION for Summary Judgment . . Document filed by Mary K. Jones(Individually), Stichting Philips Pensioenfonds. (Rosen, Henry)

1:10-cv-03864-AKH Notice has been electronically mailed to:

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Brant Duncan Kuehn brantkuehn@quinnemanuel.com

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1:10-cv-03864-AKH Notice has been delivered by other means to:

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Jamie J. McKey
Kendall Law Group, LLP
3232 McKinney Avenue
Suite 700
Dallas, TX 75204

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1008691343 [Date=11/26/2014] [FileNumber=13933637
-0] [04339b4b7257ac2ff4541175cc75ad0efb0134b0da89783502e959f66c803617a
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