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 <u>CLASS ACTION</u> REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANTS' RELIANCE ON ADVICE OF COUNSEL AND GOOD FAITH DEFENSES

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. CORRECTING THE RECORD 4

A. The Disclosures at Issue..4

B. Block/Fox Simply Adopted Investigation Counsel's Judgment 5

C. Block and Fox Did Not Receive All Information Pertinent to the Government Investigation..10

D. Defendants Admit that KPMG and Loretta Cangialosi Also Relied on Investigation Counsel..12

III. ARGUMENT 13

A. Defendants Ignore Their Own Amended Answer 13

B. Neither the Court nor Plaintiffs Are to Blame for Defendants' Gamesmanship 13

C. Defendants' Assured Belief in Substantial Defenses and Their Omissions of Contrary Information Are Actionable 18

D. Defendants Cannot Prove Their Reliance-on-Counsel Defense 20

E. Defendants Unquestionably Failed to Share All Pertinent Information with Block/Fox..21

F. The Overwhelming Evidence that Defendants Concealed Rendered Their Statements Misleading and Their Reserve Decisions Improper 29

G. Defendants Lay Bare Their Gamesmanship 29

IV. CONCLUSION..31

991243_1

TABLE OF AUTHORITIES

Page

CASES

Arista Records LLC v. Lime Grp. LLC,
No. 06 CV 5936 (KMW), 2011 U.S. Dist. LEXIS 42881
(S.D.N.Y. Apr. 20, 2011) 14, 15

Bank Brussels Lambert v. Chase Manhattan Bank, N.A.,
No. 93 Civ. 5298 (LMM) (RLE), 1998 U.S. Dist. LEXIS 13611
(S.D.N.Y. Sept. 3, 1998), *aff'd sub nom.*, *Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.*, No. 93 Civ. 6876 (LMM),
2000 U.S. Dist. LEXIS 14316 (S.D.N.Y. Sept. 29, 2000) 18, 21

Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.,
Nos. 93 Civ. 6876 (KMW), 94 Civ. 1317 (KMW),
1995 U.S. Dist. LEXIS 14808 (S.D.N.Y. Oct. 11, 1995) 18

Basic Inc. v. Levinson,
485 U.S. 224 (1988) 19

Caiola v. Citibank, N.A.,
295 F.3d 312 (2d Cir. 2002) 19

Hernon v. Revere Copper & Brass, Inc.,
494 F.2d 705 (8th Cir. 1974) 24

In re Alstom SA Sec. Litig.,
406 F. Supp. 2d 433 (S.D.N.Y. 2005) 19

In re Broadcom Corp. Sec. Litig.,
No. SACV 01-275-GLT, 2005 U.S. Dist. LEXIS 4854
(C.D. Cal. Apr. 7, 2005) 15, 16, 17

In re Par Pharm., Sec. Litig.,
733 F. Supp. 668 (S.D.N.Y. 1990) 19

In re Time Warner Sec. Litig.,
9 F.3d 259 (2d Cir. 1993) 19, 29

Jock v. Ransom,
No. 7:05-cv-1108, 2007 U.S. Dist. LEXIS 47027
(N.D.N.Y. June 28, 2007), *aff'd*, No. 07-3162-cv,
2009 U.S. Dist. LEXIS 6048 (2d Cir. Mar. 20, 2009) 24

991243_1

Page

L. Gem Lab Ltd. v. Gem Quality Inst., Inc.,
90 F. Supp. 2d 277 (S.D.N.Y. 2000),
aff'd, 4 F. App'x 81 (2d Cir. 2001) 15, 18

Lapin v. Goldman Sachs Grp., Inc.,
506 F. Supp. 2d 221 (S.D.N.Y. 2006)....................19

Markowski v. SEC,
34 F.3d 99 (2d Cir. 1994)....................15, 24, 26

S.E.C. v. O'Meally,
No. 06 Civ. 6483(LTS)(RLE), 2010 U.S. Dist. LEXIS
107696, 2010 WL 3911444 (S.D.N.Y. Sept. 29, 2010)....................15

SEC v. Forma,
117 F.R.D. 516 (S.D.N.Y. 1987) 12, 18, 21

SEC v. Prince,
942 F. Supp. 2d 108 (D.D.C. 2013) 25

SEC v. Reserve Mgmt. Co.,
Nos. 09 MD 2011 (PGG), 09 Civ. 4346 (PGG),
2012 U.S. Dist. LEXIS 147723 (S.D.N.Y. Sept. 12, 2012)....................15, 16, 24

SEC v. Steadman,
967 F.2d 636 (D.C. Cir. 1992) 25

SEC v. Wyly,
No. 10 Civ. 5760 (SAS), 2011 U.S. Dist. LEXIS 87660
(S.D.N.Y. July 27, 2011) 12, 18, 21, 31

United States v. Beech-Nut Nutrition Corp.,
871 F.2d 1181 (2d Cir. 1989)....................24

United States v. Bilzerian,
926 F.2d 1285 (2d Cir. 1991)....................14, 15, 17

United States v. DeFries,
129 F.3d 1293 (D.C. Cir. 1997) 24

United States v. Gorski,
No. CRIM. 12-10338-FDS, 2014 U.S. Dist. LEXIS 105384
(D. Mass. Aug. 1, 2014)....................25

Page

Vicinanzo v. Brunschwig & Fils, Inc.,
739 F. Supp. 891 (S.D.N.Y. 1990) 14

STATUTES, RULES AND REGULATIONS

Federal Rules of Evidence
Rule 502(d) 13

I. INTRODUCTION

Defendants' response to plaintiffs' motion for partial summary judgment is built on a false premise, framed with hollow rhetoric, and finished with half-truths. Where plaintiffs' motion stands on unequivocal testimony, defendants' response is evasive. Where plaintiffs' motion rests on strikingly similar cases, defendants' response is unsupported. And where plaintiffs' motion sounds in common sense and fair play, defendants shrilly demand that the Court allow them to strike at plaintiffs' claims with the "judgment" of the same investigation counsel defendants shielded from discovery. Defendants raise six different arguments bound by one common thread: none has merit.

First, defendants demand denial because "[s]ummary judgment motions are properly directed to claims ***or defenses*** . . . ." Dkt. No. 322 at 1, 21-23. It is fitting that this is defendants' top argument because it is so plainly baseless. Plaintiffs' motion expressly seeks summary judgment on defendants' "FOURTEENTH ***DEFENSE***." Dkt. No. 288 at 4.[1]

Second, defendants assert a false premise that underlies the balance of their opposition: that their reliance on Dennis Block ("Block")/Lawrence Fox ("Fox") and their reliance on investigation counsel are mutually exclusive. Dkt. No. 322 at 1-2, 29-36. This is how defendants presented their reliance defense to the Court in order to shield investigation counsel from discovery: "Defendants are not invoking or relying upon any advice provided by Covington [& Burling LLP ('Covington')] regarding the Government Investigations." Dkt. No. 172 at 35 n.30. As it turns out, however, the relationship between investigation counsel's advice and Block/Fox's advice regarding disclosures concerning the government investigation is the opposite of mutual exclusivity – the two are completely intertwined, as defendants now admit: "[T]he company's Board, senior executives, and in-house lawyers all relied on Covington's judgment to inform them that the company had

[1] Emphasis is added and internal citations and footnotes are omitted, unless otherwise noted.

meritorious defenses. . . . [T]he undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures." Dkt. No. 246 at 46. "And it also is undisputed that ***based on government investigations counsel's views***, Pfizer's securities disclosure lawyers advised the company that the 'substantial defenses' language in the securities filings was appropriate as applied to the DOJ investigation." Dkt. No. 355 at 4. To be clear, the problem is not that investigation counsel were essential to defendants' statements and reserves decisions concerning the government investigation. Rather, the problem is that defendants represented just the opposite throughout discovery and are now trying to ambush plaintiffs with a new defense that plaintiffs cannot rebut because it relies on the investigation counsel whom defendants shielded from discovery.

Third, defendants' claim that their assurance that, "'we believe we have substantial defenses'" to the government investigation is not actionable because the remainder of the sentence warned of the possibility of incurring a judgment or entering into a settlement. Dkt. No. 322 at 2, 28-29. Exposing the fatal flaw in this argument requires no more than simply changing "we believe we have substantial defenses" to "we believe we have no substantial defenses." Clearly, the latter statement would have conveyed to investors a much greater risk than did defendants' false assurance. More importantly, defendants fail to respond at all to the specific material omissions that rendered misleading their "substantial defenses" assurance and their other statements. These identified omissions are the heart of this case, and defendants concede, by not opposing, that Block/Fox did not approve them because defendants withheld from them the same information they concealed from investors.

Fourth, defendants return to their false mutual-exclusivity premise, contending that plaintiffs are "claiming that Defendants actually relied on government investigations lawyers, not disclosure

lawyers, for advice on the adequacy of the disclosures." Dkt. No. 322 at 3. Again, this is not an either-or proposition. There is no question that Block/Fox provided general disclosure counsel, but regarding the disclosures and reserve decisions concerning the government investigation (the only ones at issue here), it is obvious that investigation counsel were the primary lawyers on whom defendants ***and*** Block/Fox relied, as defendants now admit. *See, e.g.*, Dkt. No. 246 at 46 ("[T]he undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures.").

Fifth, defendants argue that it is "undisputed" that they provided Block/Fox with "all information" material to "the company's disclosure of the Bextra investigation." Dkt. No. 322 at 3. This is another example of defendants arguing the exact opposite of what the record proves, in the hope that the Court will mistakenly believe there must be a question of fact where there is not. Plaintiffs' motion explicitly identified seven categories of evidence and information that defendants withheld from Block, six of which they also withheld from Fox. Dkt. No. 288 at 15-23. Defendants did not, and cannot, refute these points – because Block and Fox have confirmed them, as have defendants' own admissions and document productions.

And sixth, as further indication that their fifth argument is a complete contrivance, defendants contend that it does not matter if they failed to disclose all pertinent facts to Block/Fox, so long as they "***believed*** [Block/Fox] were informed of all material facts." Dkt. No. 322 at 4. The law, however, has much more stringent standards before allowing executives to blame others for their own statements and omissions. A reliance defense is unavailable as a matter of law where, as here, those wanting to assert it failed to make a ***complete*** disclosure of all pertinent facts.

The bottom line is that both sides agree defendants cannot present their reliance defenses without extensively invoking the involvement and "judgment" (*i.e.*, advice) of the same investigation

counsel whom they shielded from discovery. Because this is a complete reversal of defendants' earlier representation to the Court and cases universally prohibit such gamesmanship, plaintiffs respectfully request that the Court grant plaintiffs' motion for partial summary judgment as to defendants' Fourteenth Defense and preclude any direct or indirect references to the judgment of counsel (both investigation counsel and the disclosure counsel who relied on investigation counsel).

II. CORRECTING THE RECORD

Unable to dispute or deny the clear testimony that plaintiffs quote throughout their opening memorandum (Dkt. No. 288 at 7-22), defendants attempt to muddy the waters with their purported "BACKGROUND" section.

A. The Disclosures at Issue

Defendants go to great lengths to avoid their own words, including one of the most critical representations in this case: defendants' assurance that "'we believe we have substantial defenses'" to the government investigation (and all other investigations). Statement of Undisputed Facts (Dkt. No. 289) ("SUF"), ¶5. Despite defendants' best efforts, there is no avoiding the fact that this assurance dramatically tempered whatever warning followed it, leaving investors completely misled as to the tremendous leverage the government had over Pfizer[2] and completely unprepared for the largest criminal fine in U.S. history. Block put this point best with the following testimony:

> Q. I think you said something along the lines of that 750 million would have been a hard sell to the board of directors. Why do you think that?
>
> A. It's a lot of money.
>
> Q. Okay.
>
> A. And they had heard – the board had heard pretty consistently that there were strong defenses to this case, and I don't think the board was anticipating hearing that

[2] References to "Pfizer" or the "Company" refer to defendant Pfizer Inc. and any of its wholly-owned subsidiaries.

> there was going to be a payment of that level. So expectation breeds frustration. Just it would have come as sort of a surprise, I think.

See Ex. 1 at 266:7-19 (Block Depo.).[3] The record payout that stunned the market ($2.3 billion) was over ***three times greater*** than the figure that Block said would have surprised Pfizer's own Board because "the board had heard pretty consistently that there were strong defenses to this case." *Id.*

Moreover, defendants' entire "disclosures" section ignores that this is primarily an omissions case. Nowhere do defendants claim that they disclosed the many omissions that rendered their statements grossly misleading (*e.g.*, acknowledged commission of offense, deletion/alteration of evidence of off-label promotion, thousands of call notes demonstrating off-label promotion, including promotion through false and misleading representations). Dkt. No. 288 at 15-23.

B. Block/Fox Simply Adopted Investigation Counsel's Judgment

Defendants' false mutual-exclusivity premise is most pronounced when they discuss advice that Block/Fox purportedly provided related to the government investigation:

> When Pfizer learned of the Department of Justice investigation, the company retained experienced government investigations counsel at Covington & Burling to conduct an internal investigation and to respond to the government's requests for information. The company also assigned in-house litigation counsel to oversee Covington's work; chief among them were Douglas Lankler and Carlton Wessel, both former federal prosecutors. These lawyers – along with others retained as the investigation continued over a period of years (collectively, "government investigations counsel") – advised Pfizer in responding to the Department of Justice.
>
> ***Separate and apart from the company's strategy in responding to the government***, Pfizer had to determine whether and how to disclose the investigation in its SEC filings. For that task, Defendants relied on the judgment of its two veteran securities lawyers: in-house disclosure counsel Larry Fox, and outside disclosure counsel Dennis Block, then of the law firm Cadwalader Wickersham & Taft LLP.

---

[3] All "Ex. _" references are to the Declaration of Jason A. Forge in Support of Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment on Defendants' Reliance on Advice of Counsel and Good Faith Defenses, filed concurrently herewith.

Dkt. No. 322 at 8. The highlighted language demonstrates defendants' mutual-exclusivity fallacy, or fantasy. Either way, it exists only in defendants' counsel's arguments, and even those arguments confirm that Block/Fox's advice was not "separate and apart" from investigation counsel's advice and work product. Just the opposite. Defendants acknowledge that they relied entirely on investigation counsel for the accuracy of the "substantial defenses" assurance and as to any assessments of the strengths and weaknesses of the government's case:

> [T]he company's Board, senior executives, and in-house lawyers all relied on Covington's judgment to inform them that the company had meritorious defenses. . . . ***[T]he undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures***.

Dkt. No. 246 at 46. "And it also is undisputed that ***based on government investigations counsel's views***, Pfizer's securities disclosure lawyers advised the company that the 'substantial defenses' language in the securities filings was appropriate as applied to the DOJ investigation." Dkt. No. 355 at 4.

To their credit, Block and Fox left no room for debate that they relied entirely on investigation counsel to assess the government investigation, including the "substantial defenses" assurance:

> [Q.] The first part talking about "we have substantial defenses in these matters," did you personally and professionally make the assessment that there were substantial defenses regarding the government investigations?
>
> A. No.
>
> Q. You relied on others for that –
>
> A. Yes.
>
> Q. – conclusion?

Ex. 1 at 104:15-23 (Block Depo.).

> Q. But with respect to the disclosure that "We believe we have substantial defenses in these matters," is that the type of information that you, Larry Fox, independently researched and determined to be accurate?
>
> [Objection]
>
> THE WITNESS: No.

See Ex. 2 at 86:13-19 (Fox Depo.).

> [Q.] Did you render any legal advice regarding the accuracy of the statement "We believe we have substantial defenses in these matters"?
>
> A. I would not have said that I am – that this is my view. Nobody in the company would have ever thought to even ask me whether I have personal knowledge of the strength of our defenses in any litigation.

Ex. 2 at 90:12-20 (Fox Depo.); *see also* SUF, ¶¶14-15.

The individual defendants are now represented by five different law firms – not to be confused with the three different law firms that previously represented them in this matter. But defendants have changed more than their counsel. They have changed their tune, admitting that investigation counsel provided all the substantive advice concerning the government investigation that is the subject of all the statements, omissions and reserve decisions at issue in this case:

> Q. I'm asking you point-blank: On what counsel do you – are you claiming to have relied [for] your defense in this case?
>
> [Objection]
>
> A. Covington & Burling.
>
> Q. Any others?
>
> A. My recollection was that it was primarily Covington & Burling. I don't recall if there were any others.

See Ex. 3 at 99:19-100:4 (9/23/14 Levin Depo.).

> Q. In the course of that process or in any other context, did Mr. Block ever advise you regarding the strengths or weaknesses of Pfizer's defenses to the government's investigation of Bextra?
>
> [Objection]

> A. He may or may not have expressed an opinion about that, but I did not look to him for advice on that.
>
> Q. Did you look to Larry Fox for advice on that?
>
> A. No.
>
> Q. You looked to other lawyers for advice on that; correct?
>
> A. On the strength – could you repeat the predicate?
>
> Q. Sure, the strengths or weaknesses of the government's investigation regard[ing] Bextra.
>
> [Objection]
>
> A. I did not look to either Mr. Block or Mr. Fox for advice on that subject.
>
> Q. But you did look to other lawyers for advice on that subject; correct?
>
> A. Yes.

See Ex. 4 at 31:10-32:8 (Kindler Depo.).

Defendants attempt to sweep away all the witnesses' testimony and their own admissions as a mere "division of labor." Dkt. No. 322. But no euphemism can change defendants' own admission that "the undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures." Dkt. No. 246 at 46; *see also* Dkt. No. 355 at 4 ("***based on government investigations counsel's views***, [Block/Fox] advised the company that the 'substantial defenses' language in the securities filings was appropriate as applied to the DOJ investigation"). This means defendants they have no reliance defense without investigation counsel's judgment. The parties spent thousands of hours and millions of dollars on a discovery process built atop a foundation that specifically excluded investigation counsel because "Defendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations." Dkt. No. 172 at 35 n.30. Discovery is not some whimsical romp that ends with defendants donning golden locks, abandoning their past representations as too untrue, and picking a

new reliance defense that is just right. Because defendants have no reliance defense without the judgment of the investigation counsel whom they shielded from discovery, they have no reliance defense.

Defendants continue to preach mutual exclusivity with their citation to Edward Buthusiem's testimony. Dkt. No. 322 at 10-11. But defendants (intentionally) miss the point. The point is not that executives and disclosure counsel are not permitted to rely on advice from investigation counsel. Rather, the point is that in such situations, as here, where defendants and disclosure counsel (and accountants) adopt the judgment of investigation counsel, any reliance defense ***necessarily*** extends to investigation counsel.

This is why defendants' "gotcha" argument as to plaintiffs – and the Court – is so patently inappropriate. Dkt. No. 322 at 11-14. Plaintiffs were skeptical that Block/Fox, acting alone, could have rendered advice about disclosures concerning the government investigation, such as the "substantial defenses" assurance. *See, e.g.*, Dkt. No. 172 at 8 ("Pfizer's desire to define the scope of discovery by narrowing the scope of its waiver is particularly unfair here because defendants' defenses relate to layers of inter-related work performed by layers of internal and external accountants and lawyers, yet it is far from clear who gave what advice to whom."). Throughout a summer's worth of litigation in 2013 (Dkt. Nos. 172 and 181), defendants assured the Court that "Defendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations." Dkt. No. 172 at 35 n.30. The Court's acceptance of defendants' representation simply means that the only reliance defense defendants could possibly use at trial would be one that does "not invok[e] or rely[] upon any advice provided by Covington [or any other investigation counsel] regarding the Government Investigations." *Id.* No such reliance defense exists, however, as defendants have made crystal clear. Instead, defendants want to ambush

plaintiffs with a new defense that they cannot rebut because defendants shielded them from the discovery necessary to do so.

C. Block and Fox Did Not Receive All Information Pertinent to the Government Investigation

Defendants' contention regarding the completeness of the information Block/Fox received completely disregards the specific information plaintiffs' motion identifies and attempts to turn an indispensable requirement that a defendant establish complete disclosure ***to*** counsel into one that places the burden on ***counsel*** to seek and receive all pertinent information. Dkt. No. 322 at 14-18 ("When disclosure counsel wanted more information, they could and did ask for it."). Consistent with the "division of labor" and Block/Fox's complete lack of criminal law experience, they unquestionably did ***not*** receive all information pertinent to defendants' "substantial defenses" assurance, assessing the government's case, or information defendants withheld from investors. Defendants' citation to Fox's professed comfort with the completeness of the information he received (Dkt. No. 322 at 15) simply confirms that ignorance is bliss, as Fox admitted he had no way to verify the completeness and simply trusted others to give him what he needed:

> Q. Given your lack of experience in criminal cases, lack of experience concerning health care fraud, lack of experience concerning internal investigations, and your lack of involvement in the investigations related to the government investigations, did you have – personally have any way of verifying whether you were receiving all relevant information regarding the government investigations?
>
> [Objection]
>
> THE WITNESS: I am – as I've indicated many times, I am a securities lawyer. I am not a litigator. It is not my job, it is not the job of any securities lawyer in any company in the country to look at the evidence – the underlying evidence, make analyses, interview witnesses, look at interviews of witnesses in connection with making a securities law judgment. If we did that, we could not do our own jobs. I am fully confident in the experience and the expertise of our in-house GI attorneys, Doug in particular, a former prosecutor. And I relied on them for that. And as I've indicated many times, we had scheduled and unscheduled calls with them, "we"

> meaning Dennis Block and I, to fully inform us of what we needed to know to make our securities law judgment. I'm not a litigator.
>
> * * *
>
> [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. 2 at 212:13-214:3 (Fox Depo.).

As it turns out, and defendants fail to refute, consistent with the "division of labor" and Block/Fox's complete lack of criminal law experience, they unquestionably ***did*** not receive any of the information that was most critical to defendants' "substantial defenses" assurance, to assessing the government's case, or that defendants also concealed from investors, including: (1) defendants' awareness that Pfizer had actually committed the offense the government was investigating (Dkt. No. 288 at 15-17); (2) the exhibits corroborating the *qui tam* complaint that triggered the government investigation (*id.* at 17); (3) the documents that Pfizer's District Manager illegally directed to be deleted and altered (*id.* at 17-18); (4) sales force surveys confirming Pfizer's systemic off-label promotion (*id.* at 18-19); (5) call notes (*id.* at 19-21); (6) employee interviews (*id.* at 21-23); and (7) off-label sales/gain data (Ex. 1 at 73:21-74:16 (Block Depo.); Ex. 2 at 76:2-4 (Fox Depo.)). This evidence comprised nearly the government's entire case, as demonstrated by the government's presentations to Pfizer in August and September 2006. Yet, Block/Fox received none of it. Defendants also withheld defendants' communications with their investigation counsel and investigation counsel's work product and files from Block/Fox. Dkt. No. 288 at 23. Block and Fox ***still*** have not received any of this information; they are still unqualified in criminal law; and they are

still completely dependent upon investigation counsel's judgment. So defendants' assertion that their opinions have not changed (Dkt. No. 322 at 18) is as predictable as it is meaningless.

D. Defendants Admit that KPMG and Loretta Cangialosi Also Relied on Investigation Counsel

Defendants have withdrawn their previously asserted reliance on Block/Fox for Pfizer's Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* ("FAS 5") reserves decisions. Dkt. No. 322 at 46. Instead, defendants focus on KPMG LLP and Loretta Cangialosi ("Cangialosi") exclusively. Dkt. No. 322 at 18-21, 46-49. Yet, even in their opposition, defendants continue to concede that KPMG and Cangialosi relied on investigation counsel. Dkt. No. 322 at 19 (citing KPMG's reliance on "Covington & Burling's internal investigation workplan; the 75-page white paper Covington presented to the government . . .; and the audit response letters Covington sent to KPMG"). Once again, defendants are doing exactly what they promised the Court they would not do: "Defendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations." Dkt. No. 172 at 35 n.30. Likewise, defendants (again) intentionally miss the point, which is not whether defendants provided plaintiffs with the same Covington advocacy pieces they provided to KPMG. Rather, because defendants shielded from plaintiffs all of their private communications with Covington, they may not assert as a defense their direct or indirect reliance on Covington. "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)).

III. ARGUMENT

A. Defendants Ignore Their Own Amended Answer

Defendants' lead argument is that the Court should deny plaintiffs' motion because "[s]ummary judgment motions are properly directed to claims ***or defenses***." Dkt. No. 322 at 1, 21-23. Throughout their 49-page opposition, however, defendants ignore their own FOURTEENTH ***DEFENSE***:

> 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 those government investigations [(the Bextra Investigation)].

Dkt. No. 160 at 26 (FOURTEENTH DEFENSE). Because plaintiffs' motion for partial summary judgment expressly attacks this ***defense***, the Court should reject out of hand defendants' first argument.

B. Neither the Court nor Plaintiffs Are to Blame for Defendants' Gamesmanship

Defendants, and defendants alone, had the power to provide discovery concerning their investigation counsel. They, and they alone, chose not to do so:

- "Defendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations."

Dkt. No. 172 at 35 n.30.

- 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?

  [Objection]

  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.

See Ex. 5 at 52:21-53:12 (10/16/14 Waxman Depo.).

So it is defendants who must bear sole responsibility for their strategic decision and all corresponding consequences, including the consequence of being precluded from reversing their previous promises to the Court:

> [T]he company's Board, senior executives, and in-house lawyers all relied on Covington's judgment to inform them that the company had meritorious defenses. . . . ***[T]he undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures***.

Dkt. No. 246 at 46.

The fact that the Court accepted defendants' representations in 2013 does not give defendants license to reverse their position for this 2015 trial. Yet, that is exactly what defendants are trying to do by arguing for the Court to maintain its prior decisions (Dkt. No. 322 at 24-25), despite defendants' reversal of the representations on which the Court based its decisions. Understandably, courts universally prohibit such ambush tactics – even where they were not preceded by a motion to compel, let alone a motion to compel that a defendant opposed:

> In any event, a motion to compel is not a prerequisite to invoking the *Bilzerian* rule. Rather, *Bilzerian* provides that a party "who intends to rely at trial" on a good faith defense "must make a full disclosure during discovery; failure to do so constitutes a waiver" of that defense. *Vicinanzo,* 739 F. Supp. at 894. Indeed, courts in this circuit have followed *Bilzerian* and blocked good faith defenses, without requiring the party seeking preclusion to move to compel.

Arista Records LLC v. Lime Grp. LLC, No. 06 CV 5936 (KMW), 2011 U.S. Dist. LEXIS 42881, at *8-*9 (S.D.N.Y. Apr. 20, 2011) (quoting *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 891,

894 (S.D.N.Y. 1990), and citing *United States v. Bilzerian*, 926 F.2d 1285 (2d Cir. 1991)); *see also E.G.L. Gem Lab Ltd. v. Gem Quality Inst., Inc.*, 90 F. Supp. 2d 277, 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."), *aff'd*, 4 F. App'x 81 (2d Cir. 2001). Plaintiffs cite *Arista Records*, *Bilzerian* and *E.G.L. Gem Lab* several times in their opening brief (Dkt. No. 288 at 34-36, 38) because they are directly on point here. Yet, defendants do not even acknowledge these cases, let alone attempt to distinguish them.

Instead, defendants cite two other cases, both of which are quite serviceable nails in the coffin for their reliance defenses. Dkt. No. 322 at 25 (citing *SEC v. Reserve Mgmt. Co.*, Nos. 09 MD 2011 (PGG), 09 Civ. 4346 (PGG), 2012 U.S. Dist. LEXIS 147723 (S.D.N.Y. Sept. 12, 2012), and *In re Broadcom Corp. Sec. Litig.*, No. SACV 01-275-GLT (MLGx), 2005 U.S. Dist. LEXIS 48549 (C.D. Cal. Apr. 7, 2005)).

First, *Reserve Mgmt. Co.*, again a case that ***defendants*** cite, expressly rejects defendants' contention that reliance on counsel is not an affirmative defense:

> "In order to establish ***the affirmative defense of advice of counsel***, ***a defendant must show*** (1) that he made a complete disclosure to counsel; (2) sought advice from counsel as to the legality of his actions; (3) received advice that his conduct was legal; and (4) relied on such advice in good faith." *S.E.C. v. O'Meally*, No. 06 Civ. 6483(LTS)(RLE), 2010 U.S. Dist. LEXIS 107696, 2010 WL 3911444, at *4 (S.D.N.Y. Sept. 29, 2010) (citing *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994).

Reserve Mgmt. Co., 2012 U.S. Dist. LEXIS 147723, at *18-*19. Second, although defendants ignore *Arista Records*, the Court in *Reserve Mgmt.* embraces it. *Id.* (""""[A] party who intends to rely at trial on the advice of counsel must make a full disclosure during discovery; failure to do so constitutes a waiver of the advice-of-counsel defense."""") (citing *Arista Records*, 2011 U.S. Dist. LEXIS 42881, at *8). And third, the reason the *Reserve Mgmt.* Court allowed the defendants to

proceed with their affirmative defense was because the facts there were the inverse of those presented here. There, the Securities and Exchange Commission ("SEC") sought to preclude defendants' reliance defense because the defendants had withheld discovery concerning their bankruptcy counsel. *Id.* at *19-*20. But the two topics that were the subject of the reliance defense "d[id] not relate" to the subject of the defendants' communications with bankruptcy counsel, and "the Commission has cited no public statements by Defendants that directly implicate principles of, or the application of, bankruptcy law." *Id.* at *21.

The contrast with this case could not be clearer. The exact same government investigation that is the subject of the disclosures to which defendants' reliance defense applies is also the subject of the work and advice of the investigation counsel defendants shielded from discovery. And, the public statement by defendants assuring investors of their "substantial defenses" to the government investigation directly implicates principles of, and the application of, criminal law, which is what defendants shielded from discovery. Because the circumstances this case presents are the opposite of those presented in *Reserve Mgmt.*, its reasoning would compel the opposite outcome here: defendants should be precluded from advancing their reliance defense.

Broadcom also contradicts defendants' position. There, the plaintiff class contended "that the waiver of the attorney-client privilege extends not just to the individual defendants, but to Broadcom as well." 2005 U.S. Dist. LEXIS 48549, at *9. The defendants disagreed, but the court held that "Broadcom has also waived the attorney-client privilege for communications relating to the public statements." *Id.* at *10. Here, it is self-evident that communications with investigation counsel about Pfizer's defenses to the government investigation relate to Pfizer's public statements about their "substantial defenses" to the government investigation. Next, the plaintiff class in *Broadcom* asserted that "work product protection is waived by assertion of a reliance on counsel

defense." *Id.* The court agreed and held that "Defendants' reliance on the advice of counsel defense has waived the protections of the work product doctrine as to the same ***subject matter***," reasoning that "an attorney's state of mind and the facts and documents informing that state of mind are relevant in determining a client's state of mind" and that "[c]ourts also find waiver [of work product] in an effort to avoid selective disclosure by the defendant." *Id.* at *11. Defendants have finally admitted that "the undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures." Dkt. No. 246 at 46. This means that in order to maintain their reliance defense, defendants would have had to have revealed in discovery both their communications with investigation counsel and investigation counsel's work product as to the subject of the government investigation. Because defendants failed to fulfill this obligation, under the very cases they cite, their reliance defenses are precluded.

The *Broadcom* court's warning of the need to "avoid selective disclosure by the defendant" (2005 U.S. Dist. LEXIS 48549, at *11), also directly conflicts with defendants' contention that Block/Fox and KPMG can rely on investigation counsel's "legal brief" (*i.e.*, the Covington "white paper") because it was provided to the government and to plaintiffs. Dkt. No. 322 at 26-27, 48. In addition to conflicting with the very case defendants cite, this contention flies directly in the face of the sword-and-shield prohibition. *Bilzerian*, 926 F.2d at 1292 (a party may not use the attorney-client privilege "as a shield and a sword"). If adopted, defendants' position would make a mockery of this firmly entrenched doctrine. Clients could simply invoke and "rely upon" their lawyers' posturing letters and briefs that speak only to points supporting their positions, yet shield from discovery the overwhelmingly contrary advice they received from their lawyers in separate communications. This is what defendants are trying to do by simply invoking and "relying upon" Covington's posturing white paper, audit response letters and separate communications with

Block/Fox, KPMG and Cangialosi that speak only to points supporting their positions (*e.g.*, "substantial defenses"), while shielding from plaintiffs all of their private communications with only government investigation counsel.

The law prohibits defendants' new rule because under it "'a claim of reliance on counsel would be immune from a showing that, in fact, the defendant had received overwhelming advice to the contrary.'" *Wyly*, 2011 U.S. Dist. LEXIS 87660, at *5-*6 (quoting *Forma*, 117 F.R.D. at 523 n.5). "The [privileged] communications will enable the plaintiffs to verify or challenge [defendants'] assertion that its liability, if any, was caused by faulty advice of counsel. ***To deny the plaintiffs this opportunity would result in a one-sided account and prejudice the plaintiffs' ability to litigate their claim***." *Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.*, Nos. 93 Civ. 6876 (KMW), 94 Civ. 1317 (KMW), 1995 U.S. Dist. LEXIS 14808, at *16 (S.D.N.Y. Oct. 11, 1995); *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 sub nom.*, *Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.*, No. 93 Civ. 6876 (LMM), 2000 U.S. Dist. LEXIS 14316 (S.D.N.Y. Sept. 29, 2000); *E.G.L. Gem Lab*, 90 F. Supp. 2d at 296 n.133 ("Having blocked his adversary from conducting discovery on this issue, he will not now be heard to advance reliance on counsel.").

C. Defendants' Assured Belief in Substantial Defenses and Their Omissions of Contrary Information Are Actionable

Defendants' next argument is that assuring investors that they believed they had substantial defenses to the government investigation "could never give rise to liability." Dkt. No. 322 at 28-29. So, according to defendants, no matter how baseless and false this assurance, it exposes them to no

liability. This sense of impunity sheds tremendous light on the rationale behind defendants' misleading statements and omissions, as well as their improper reserves decisions. It is also completely contrary to the law. "[O]nce corporate officers undertake to make statements, they are obligated to speak truthfully and to make such additional disclosures as are necessary to avoid rendering the statements made misleading." *In re Par Pharm., Sec. Litig.*, 733 F. Supp. 668, 675 (S.D.N.Y. 1990) (citing multiple cases, including *Basic Inc. v. Levinson*, 485 U.S. 224, 240 n.18 (1988) ("the ever-present duty not to mislead")); *In re Time Warner Sec. Litig.*, 9 F.3d 259, 268 (2d Cir. 1993) (holding that "[a] duty to disclose arises whenever secret information renders prior public statements materially misleading . . ."); *Lapin v. Goldman Sachs Grp., Inc.*, 506 F. Supp. 2d 221, 237 (S.D.N.Y. 2006) (holding that "upon choosing to speak one 'has a duty to be both accurate and complete'") (quoting *Caiola v. Citibank, N.A.*, 295 F.3d 312, 331 (2d Cir. 2002)); *In re Alstom SA Sec. Litig.*, 406 F. Supp. 2d 433, 453 (S.D.N.Y. 2005) ("[O]mission is actionable when the failure to disclose renders a statement misleading."). Plaintiffs' opening brief cited all these cases (Dkt. No. 288 at 28), yet defendants opposition ignores every one of them.

Defendants even ignore Block's own testimony about how the "substantial defenses" assurances had left Pfizer's own Board unprepared for a $750 million loss, let alone the $2.3 billion dollar bomb that defendants dropped on investors. Ex. 1 at 266:7-19 (Block Depo.) ("[T]he board had heard pretty consistently that there were strong defenses to this case, and I don't think the board was anticipating hearing that there was going to be a payment of that [$750 million] level. So expectation breeds frustration. Just it would have come as sort of a surprise, I think."). Clearly, a false and/or misleadingly incomplete assurance that Pfizer had substantial defenses to the government investigation is actionable, and because neither Block nor Fox gave defendants such an

assessment (Ex. 1 at 104:15-23 (Block Depo.); Ex. 2 at 86:13-19 (Fox Depo.)), the Court should not allow defendants to point the finger at any counsel to justify their assurance.

D. Defendants Cannot Prove Their Reliance-on-Counsel Defense

Defendants' next argument stretches over seven pages of their brief ***without a single case cite***. Dkt. No. 322 at 29-36. This is a living example of the maxim that: "If the facts are on your side, pound the facts. If the law is on your side, pound the law. If neither the facts nor the law are on your side, pound the table." Clinging to the false premise of mutual exclusivity, defendants aver that, "[a]s any lawyer who has ever represented a large public corporation knows, securities disclosure counsel do not typically offer litigation advice and litigators do not typically offer securities disclosure advice; it is commonplace to retain separate counsel for those separate functions." Dkt. No. 322 at 30. Defendants' attempt to invoke the Court's prior representation of large public corporations is about as subtle as a bull horn, but undersigned counsel has also represented "large public corporation[s]," and it does not take such experience to see defendants' "separate functions" point as a non sequitur inasmuch as defendants admit that they did not maintain the separateness of these functions. Instead, they expressly, inextricably and admittedly intertwined the advice of investigation counsel with advice of disclosure counsel:

> [T]he company's Board, senior executives, and in-house lawyers all relied on Covington's judgment to inform them that the company had meritorious defenses. . . . [T]he undisputed fact is that Pfizer and its disclosure counsel relied on investigation counsel's judgment in crafting the company's securities disclosures.

Dkt. No. 246 at 46. "And it also is undisputed that ***based on government investigations counsel's views***, Pfizer's securities disclosure lawyers advised the company that the 'substantial defenses' language in the securities filings was appropriate as applied to the DOJ investigation." Dkt. No. 355 at 4.

Plaintiffs are not questioning whether a company should be able to choose to hire lawyers with different areas of expertise, depending on their needs. Of course they should. But if such a company then ***chooses*** to intertwine the work of these different groups of lawyers so that, for example, one group of "disclosure counsel relie[s] on [another group of] investigation counsel's judgment in crafting the company's securities disclosures" (Dkt. No. 246 at 46), and if such company later ***chooses*** to pursue a reliance-on-counsel defense concerning its security disclosures, it may do so only if it produces in discovery all privileged communications and work product from all lawyers concerning the subject of the security disclosures. Otherwise, all defendants could eat their cake and have it too by using "buffer counsel" to receive a partial and skewed perspective from the fully informed counsel who have separate contrary communications with defendants, limiting discovery to only the buffer counsel, invoking all counsel at trial and rendering their "'claim of reliance on counsel . . . immune from a showing that, in fact, the defendant had received overwhelming advice to the contrary.'" *Wyly*, 2011 U.S. Dist. LEXIS 87660, at *5-*6 (quoting *Forma*, 117 F.R.D. at 523 n.5); *Bank Brussels Lambert*, 1998 U.S. Dist. LEXIS 13611, at *9. The patent inequity of such a scenario is why the law prohibits it and why the Court should preclude defendants' reliance defenses and any direct and indirect invocations of investigation counsel's "judgment."

E. Defendants Unquestionably Failed to Share All Pertinent Information with Block/Fox

Defendants' false mutual-exclusivity premise extends into their next argument, which contends that "Plaintiffs argue that the law requires the impossible – that securities disclosure counsel, for a corporation that discloses dozens of legal matters every quarter, must learn every conceivable fact and review all potentially relevant evidence about all of those matters in order to render disclosure advice." Dkt. No. 322 at 36. This is actually the opposite of plaintiffs' argument.

Plaintiffs agree that it was impossible for Block/Fox, who did not participate in the Pfizer side of the government investigation and knew next to nothing about criminal law, to learn and analyze "all potentially relevant evidence" about the government investigation so they could render disclosure advice concerning the government investigation. That is why they simply relied on and adopted the judgment of investigation counsel (*e.g.*, substantial defenses), rather than their own, as defendants admit. Dkt. No. 246 at 46; Dkt. No. 355 at 4. As to Pfizer's government investigation disclosures, Block/Fox's role was largely ministerial:

> 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. 1 at 56:2-11 (Block Depo.); 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. 2 at 11:19-20 (Fox Depo.); SUF, ¶12. Both Block and Fox also disclaimed any role in advising Pfizer as to the accuracy of its "substantial defenses" assurance. Ex. 1 at 104:15-23 (Block Depo.); Ex. 2 at 86:13-19, 90:12-20 (Fox Depo.); *see also* SUF, ¶¶14-15. They realized their limited role and experience, so they simply adopted, without questioning, investigation counsel's judgment:

> Q. Did you have any basis to assess the reliability of the responses you would have received if you had asked, what is our exposure [in the government investigation]?
>
> A. Second guessing the advice from GI attorneys on our potential exposure?
>
> Q. Yes.
>
> A. No.

Ex 2 at 82:19-25 (Fox Depo.).

> Q. Did you understand during the class period that you and Dennis Block were the most knowledgeable lawyers involved in this process concerning the government investigations?
>
> [Objection]
>
> THE WITNESS: We – we were the lawyers – we were the securities lawyers who were advising the company on disclosure obligations. We certainly were not the most knowledgeable about the underlying litigation. That's why we have litigators.
>
> BY MR. FORGE:
>
> Q. So was the advice you were rendering only as reliable as the information you were receiving from the experts and outside counsel?
>
> [Objection]
>
> THE WITNESS: We assumed, and I think with good reason given the nature of the people that we were dealing with, the reliability of the information that we were being given. But, yes, we were relying on our GI counsel to advise us about the status of the litigation, judgments, some possible outcomes and the like.

Ex. 2 at 84:4-85:4 (Fox Depo.).

Most importantly, because this is primarily an omissions case, there is no question that Block/Fox did ***not*** advise defendants it was appropriate for them to omit information that was plainly pertinent to the government investigation and thus pertinent to their disclosures concerning the government investigation, including their "substantial defenses" assurance. The information that defendants withheld from Block included the following: (1) defendants' awareness that Pfizer had actually committed the offense the government was investigating (Dkt. No. 288 at 15-17); (2) the exhibits corroborating the *qui tam* complaint that triggered the government investigation (*id.* at 17); (3) the documents that Pfizer's District Manager illegally directed to be deleted and altered, which proved Pfizer's off-label promotion (*id.* at 17-18); (4) sales force surveys (*id.* at 18-19); (5) call notes (*id.* at 19-21); (6) employee interviews (*id.* at 21-23); and (7) off-label sales/gain data (Ex. 1 at 73:21-74:16 (Block Depo.); Ex. 2 at 76:2-4 (Fox Depo.)). Defendants withheld from Fox categories

(2)-(7). *Id.* Rather than face these omissions head on, defendants run from them in four different directions.

First, defendants argue that they can satisfy the fundamental requirement that they "made complete disclosure to counsel"[4] merely by "direct[ing] everyone" to give Block/Fox whatever they want. Dkt. No. 322 at 38. This argument conflicts with every single case to consider a reliance-on-counsel defense, including the cases defendants themselves cite. *See, e.g.*, *Reserve Mgmt.*, 2012 U.S. Dist. LEXIS 147723, at *18 ("'In order to establish the affirmative defense of advice of counsel, a defendant must show (1) that he made a complete disclosure to counsel . . . .'") (cited by defendants, Dkt. No. 322 at 24); *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1194 (2d Cir. 1989) ("a defendant who would rely on an advice-of-counsel defense is required to have disclosed all pertinent information in his possession to his attorney") (cited by defendants, Dkt. No. 322 at 37); *see also* Dkt. No. 322 at 37 (citing *United States v. DeFries*, 129 F.3d 1293, 1308 (D.C. Cir. 1997) ("A defendant is entitled to an advice-of-counsel instruction if he introduces evidence showing: (1) he made full disclosure of all material facts to his attorney before receiving the advice at issue . . . ."); *Hernon v. Revere Copper & Brass, Inc.*, 494 F.2d 705, 708 (8th Cir. 1974) ("all material facts and circumstances [must be] disclosed by defendant"); *Jock v. Ransom*, No. 7:05-cv-1108, 2007 U.S. Dist. LEXIS 47027, at *25 (N.D.N.Y. June 28, 2007) ("'[t]he advice-of-counsel defense ***requires a defendant to establish*** the following elements: . . . (4) and [he] made a full and accurate report to his attorney of all material facts which the defendant knew"), *aff'd*, No. 07-3162-cv, 2009 U.S. Dist. LEXIS 6048 (2d Cir. Mar. 20, 2009)). Defendants' attempt to rewrite the law is particularly inappropriate here because Block and Fox did not have the requisite experience to even know what information to request, let alone to be able to assess it:

---

[4] *Markowski*, 34 F.3d at 105.

> [Q.] I know as much about misbranding as probably yourself. It's not my area of interest or expertise.
>
> [Plaintiffs' counsel]:
>
> Q. I know a thing or two about it.
>
> A. I don't know as much as you. It's not my area of expertise.

Ex. 1 at 197:21-198-2 (Block Depo.); *see also* Ex. 2 at 212:13-214:3 (Fox Depo.) (quoted *supra* at 10-11).[5]

Second (though later in their opposition), defendants argue that they can satisfy the complete-disclosure requirement, even if they make no disclosure whatsoever, but simply "***Believed in Good Faith that Messrs. Block and Fox were Adequately Informed***." Dkt. No. 322 at 41-43. Defendants cite three cases in purported support of this argument, but none actually support it. Dkt. No. 322 at 42 (citing *SEC v. Prince*, 942 F. Supp. 2d 108, 138 (D.D.C. 2013) ("The advice-of-counsel defense requires the defendant to establish four elements: he must have '(1) made complete disclosure to counsel . . . ."); *SEC v. Steadman*, 967 F.2d 636, 648 (D.C. Cir. 1992) (simply observing that "[g]ood faith reliance on the advice of counsel is also a factor in determining the propriety of injunctive relief," without any question as to completeness of disclosure to counsel); *United States v. Gorski*, No. CRIM. 12-10338-FDS, 2014 U.S. Dist. LEXIS 105384, at *24 (D. Mass. Aug. 1, 2014) ("In order to assert that defense, ***a defendant must establish*** that: '. . . (4) and [he] made a full and accurate report to his attorney of all material facts which the defendant knew . . . .'")). More importantly, as can be seen, all of the cases defendants cite are from outside the circuit and cannot

[5] Block and Fox's lack of any expertise whatsoever in this area, the fact that they ***still*** have not received all of the information defendants withheld from them and their admitted reliance and adoption of investigation counsel's judgment exposes the sophistry of defendants' argument that Block/Fox stand by their ministerial "advice." Dkt. No. 322 at 41.

possibly overrule the Second Circuit's requirements that a defendant asserting a reliance-on-counsel defense "show that he made complete disclosure to counsel." *Markowski*, 34 F.3d at 105.

Third, defendants' characterize the information they withheld from Block/Fox as "myopic details." Dkt. No. 322 at 38. This information, however, comprised the crux of the government's case, which led to Pfizer's felony guilty plea and payment of $2.3 billion to resolve it. Among these supposedly myopic details were call notes that were the focus of the government's presentations to Pfizer (*see* Ex. 6 at DOJ000002-30, DOJ000093-104 (DOJ Presentations)), incriminating documents whose deletion and alteration led to the felony conviction of Pfizer's District Manager (*see* Ex. 7 at 8 (Sentencing Memorandum in *United States v. Farina*, No. 08-cr-10049-JLT)), off-label prescription data that were used to determine that Pfizer's gain from its off-label promotion of Bextra was $664 million (*see* Ex. 8 at 7:19-11:6, 12:9-17 (Plea Transcript); Ex. 6 at DOJ000200-204, DOJ000229-233), and hundreds of employee interview memoranda – including those employees involved in the document deletion and alteration (Ex. 1 at 105:3-13 (Block Depo.); Ex. 2 at 53:23-55:3 (Fox Depo.)). Indeed, defendants fail to point to a single piece of information that Block/Fox received that was nearly as significant as any of the information that defendants withheld from them. These objective facts expose the gross inaccuracy of defendants' characterization of the withheld information.

And fourth, defendants try to rewrite Block's clear testimony, accusing plaintiffs of "twist[ing] a snippet of deposition testimony from Mr. Block regarding when he learned that some Pfizer employees had promoted Bextra off-label." Dkt. No. 322 at 39. Far from twisting anything, plaintiffs' brief quoted the entire question and answer:

> Q. No, I want to know what I asked, which is [when] you first learned that Pfizer employees were, in fact, promoting Bextra off-label.

A. I wouldn't know how to answer that question because I could say, in full honesty, never.

Ex. 1 at 49:16-21 (Block Depo.); Dkt. No. 288 at 16. Defendants stoop to contending that Block drew a distinction between "misbranding" and the more commonly used phrase for this crime, "off-label promotion": "Mr. Block thus clearly distinguished between off-label promotion – which on its own, does not constitute a crime – and 'misbranding,' which is a particular criminal offense . . . ." Dkt. No. 322 at 39-40. This is an incredible argument for several reasons. For one, it is apparent that Block clearly understood "off-label promotion" to refer to a crime:

Q. In terms of the crime for off-label promotion, are you familiar with the elements of that offense?

A. Vaguely.

Q. Have you ever seen the jury instructions for such an offense?

A. No.

Q. Have you ever read the statutes?

A. I probably have, but I couldn't tell you when or under what circumstances.

Q. Are you familiar with the effect on participation in Medicare and state health care programs for any individuals or entities convicted of off-label promotion?

A. Vaguely.

Ex. 1 at 17:2-16 (Block Depo.).

Defendants' argument is also self-defeating. As demonstrated, Block stated "in full honesty" that no one ever revealed to him that Pfizer employees had, in fact, engaged in off-label promotion of Bextra. Ex. 1 at 49:16-21 (Block Depo.); Dkt. No. 288 at 16. If defendants were right and Block understood "off-label promotion" to mean some sort of lesser included conduct, but not necessarily the crime of misbranding, that would make defendants' failure to disclose it all the more egregious – and it would still confirm that they concealed Pfizer's commission of this crime from Block.

In addition, defendants' argument ignores all of the withheld facts that ***constituted*** Pfizer's crime:

Pfizer's Admission	Defendants' Failure to Inform Block
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. 8 at 51:10-17.	Q. Through the class period, did any of Pfizer's outside counsel or any Pfizer employee inform you that through February of 2002 through April of 2005, Pfizer promoted Bextra for uses that were not within Bextra's approved label? A. No. Ex. 1 at 57:24-58:4 (Block Depo.); *see also* SUF, ¶43.
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. Ex. 8 at 52:1-4.	Q. Mr. Block, at any point during your representation of Pfizer, did any Pfizer employee or any Pfizer outside counsel inform you that members of Pfizer's sales force had promoted Bextra [with] false and misleading claims? [Objection] THE WITNESS: No. Ex. 1 at 56:21-57:2 (Block Depo.).
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. Ex. 8 at 52:5-9.	Q. Had – at any time during [your] representation of Pfizer, did any of Pfizer's outside counsel or any other Pfizer employee inform you that certain members of Pfizer's sales force submitted to the supervisors false requests indicating that doctors had requested off-label information for Bextra when, in fact, they had not? [Objection] THE WITNESS: No. Ex. 1 at 57:4-15 (Block Depo.).

Plaintiffs' opening brief cites all of these withheld facts and more (Dkt. No. 288 at 15-16), but because even defendants cannot distort them, they simply, and completely, ignore them.

F. The Overwhelming Evidence that Defendants Concealed Rendered Their Statements Misleading and Their Reserve Decisions Improper

Defendants contend that Block/Fox did not need to be aware of all the incriminating evidence defendants withheld from them because "the securities laws do not require disclosure of these documents." Dkt. No. 322 at 44. Defendants went to great lengths to assure investors of Pfizer's "substantial defenses" to the government investigation and that Pfizer's law abidingness was one of its most important advantages over other companies. *See* Ex. 10 at PFE DERIV 00013228. In other words, "you should invest in Pfizer because we did not commit this offense and if you invest in a different company, they might be the kind of lawbreaker that commits crimes that lead to massive fines." In truth, however, Pfizer had committed the crime the government was investigating and ***it*** was hit with a larger fine than any other company had ever received. No wonder Block testified that even one-third of the payout for the government investigation would have surprised Pfizer's Board because "the board had heard pretty consistently that there were strong defenses to this case." Ex. 1 at 266:7-19 (Block Depo.); *see, e.g.*, *Time Warner*, 9 F.3d at 268 ("[a] duty to disclose arises whenever secret information renders prior public statements materially misleading").

G. Defendants Lay Bare Their Gamesmanship

Defendants' final argument epitomizes both the integral role investigation counsel play in their reliance defenses, as well as their unabashed reversal of prior representations and arguments they emphatically made to the Court. Defendants proclaim that "Pfizer's other government investigation counsel . . . will testify [at trial] . . . ." Dkt. No. 322 at 49. Defendants identify the "other government investigation counsel" on their ***new*** trial witness list: Ethan Posner ("Posner"), Carlton Wessel ("Wessel") and Gary Giampetruzzi ("Giampetruzzi"). Ex. 9 (Defendants' Witness List (12/5/14)). These names are familiar to the Court because they are the very same individuals whose documents plaintiffs sought and whom plaintiffs sought to depose in highly contentious

litigation over the summer of 2013. Dkt. Nos. 172, 181. Defendants adamantly opposed plaintiffs' request and promised the Court, *inter alia*, that "[d]efendants are not invoking or relying upon any advice provided by Covington regarding the Government Investigations." Dkt. No. 172 at 35 n.30. They also assured the Court that the lawyers plaintiffs would be deposing were "***all*** inside and outside lawyers who Pfizer designated as trial witnesses" (Block, Fox, Douglas Lankler ("Lankler"), and Brien O'Connor ("O'Connor") were the only lawyers defendants identified as trial witnesses throughout discovery).[6] Dkt. No. 181 at 4. These representations and assurances convinced the Court to deny plaintiffs' request to depose and take discovery from "Posner . . . , Wessel, [and] Giampetruzzi." Dkt. No. 181 at 1. Defendants' reversal and belated attempt to designate Posner, Wessel and Giampetruzzi as trial witnesses is just another ambush tactic.

But defendants would never take such an easily discredited position, unless they were absolutely desperate. And the reason why they are so desperate is because they know that their reliance defenses depend on the advice of the very investigation counsel whom they shielded from discovery, as exemplified by defendant Alan Levin's testimony and defense counsel's strategic decision three weeks later:

> Q. I'm asking you point-blank: On what counsel do you – are you claiming to have relied [for] your defense in this case?
>
> [Objection]
>
> A. Covington & Burling.
>
> Q. Any others?
>
> A. My recollection was that it was primarily Covington & Burling. I don't recall if there were any others.

---

[6] Although Lankler and O'Connor are investigation counsel, defendants foreclosed on privilege grounds plaintiffs' questions about their communications with defendants concerning the government investigation. *See, e.g.*, Ex. 11 at 98:20-99:10 (Lankler Depo.); Ex. 12 at 18:9-16, 41:4-11 (O'Connor Depo.).

Ex. 3 at 99:19-100:4 (9/23/14 Levin Depo.).

> 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?
>
> [Waxman's Counsel]: Objection.
>
> Q. You don't remember anyone telling you that?
>
> [Pfizer's Counsel]: Wait a minute. You can't ask him about his discussions with Covington. That is privileged, and we haven't waived it.

Ex. 5 at 52:21-53:7 (10/16/14 Waxman Depo.).

Merely excluding these witnesses is not remotely sufficient. Defendants' desperation is born of their gamesmanship. And the only way to avoid rewarding defendants and punishing plaintiffs for this gamesmanship is to preclude their reliance defenses altogether, including any direct or indirect references to the judgment of counsel (both investigation counsel and the disclosure counsel who relied on investigation counsel). Otherwise, defendants' "'claim of reliance on counsel would be immune from a showing that, in fact, the defendant had received overwhelming advice to the contrary.'" *Wyly*, 2011 U.S. Dist. LEXIS 87660, at *5-*6.

IV. CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully request that the Court grant summary judgment as to defendants' Fourteenth Defense, and preclude defendants from offering any

testimony, document or argument that refers to or is based upon any input from counsel, including any statements or conduct of KPMG that was based on input from counsel.

DATED: December 18, 2014

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD
HENRY ROSEN
TRIG R. SMITH
JASON A. FORGE
RYAN A. LLORENS
IVY T. NGO

s/ JASON A. FORGE
JASON A. FORGE

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
miked@rgrdlaw.com
henryr@rgrdlaw.com
trigs@rgrdlaw.com
jforge@rgrdlaw.com
ryanl@rgrdlaw.com
ingo@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
WILLOW E. RADCLIFFE
DANIEL J. PFEFFERBAUM
MATTHEW S. MELAMED
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)
willowr@rgrdlaw.com
dpfefferbaum@rgrdlaw.com
mmelamed@rgrdlaw.com

Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 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 December 18, 2014.

s/ JASON A. FORGE

JASON A. FORGE

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: JForge@rgrdlaw.com

Mailing Information for a Case 1:10-cv-03864-AKH

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Michael Scott Bailey**
  michael.bailey@skadden.com
- **Sidney Bashago**
  sidney.bashago@dpw.com,jennifer.kan@davispolk.com,ecf.ct.papers@davispolk.com
- **Sheila L. Birnbaum**
  sheilabirnbaum@quinnemanuel.com
- **George Anthony Borden**
  gborden@wc.com
- **Kevin Anthony Burke**
  kaburke@sidley.com,nyefiling@sidley.com,efilingnotice@sidley.com
- **Michael Barry Carlinsky**
  michaelcarlinsky@quinnemanuel.com,brantkuehn@quinnemanuel.com,jomairecrawford@quinnemanuel.com
- **Lauren Kristina Collogan**
  lcollogan@wc.com
- **Keir Nicholas Dougall**
  kdougall@dougallpc.com
- **Michael Joseph Dowd**
  miked@rgrdlaw.com,e_file_sd@rgrdlaw.com,tome@rgrdlaw.com,e_file_sf@rgrdlaw.com
- **Alexander C Drylewski**
  alexander.drylewski@skadden.com
- **Charles S. Duggan**
  charles.duggan@dpw.com,ecf.ct.papers@davispolk.com
- **Steven M.. Farina**
  sfarina@wc.com
- **Jason A. Forge**
  jforge@rgrdlaw.com,tholindrake@rgrdlaw.com,e_file_SD@rgrdlaw.com
- **Ross Bradley Galin**
  rgalin@omm.com,mochoa@omm.com,neverhart@omm.com,lisachen@omm.com
- **Gary John Hacker**
  ghacker@skadden.com
- **James R. Harper**
  coljamesrharper@me.com
- **Howard E. Heiss**
  hheiss@omm.com,#nymanagingattorney@omm.com
- **Paul T. Hourihan**
  phourihan@wc.com
- **James M. Hughes**
  jhughes@motleyrice.com,kweil@pacernotice.com,mgruetzmacher@motleyrice.com,erichards@motleyrice.com,kweil@motleyrice.com
- **Jay B. Kasner**
  jkasner@skadden.com
- **Joe Kendall**
  administrator@kendalllawgroup.com,jkendall@kendalllawgroup.com,hlindley@kendalllawgroup.com

- **Brant Duncan Kuehn**
  brantkuehn@quinnemanuel.com
- **Leigh R. Lasky**
  lasky@laskyrifkind.com
- **Hamilton Philip Lindley**
  hlindley@deanslyons.com,mgoens@deanslyons.com
- **Ryan A. Llorens**
  ryanl@rgrdlaw.com,nbear@rgrdlaw.com,kirstenb@rgrdlaw.com
- **Amanda M. MacDonald**
  amacdonald@wc.com
- **Lori McGill**
  lorialvinomcgill@quinnemanuel.com
- **Matthew Melamed**
  mmelamed@rgrdlaw.com
- **Donald Alan Migliori**
  dmigliori@motleyrice.com
- **Eugene Mikolajczyk**
  genem@rgrdlaw.com
- **Seema Mittal**
  smittal@wc.com
- **Cynthia Margaret Monaco**
  cmonaco@cynthiamonacolaw.com,cmmonaco@gmail.com
- **Juliana Newcomb Murray**
  juliana.murray@davispolk.com,lisa.hirakawa@davispolk.com,ecf.ct.papers@davispolk.com
- **Scott D. Musoff**
  smusoff@skadden.com
- **Danielle Suzanne Myers**
  dmyers@rgrdlaw.com
- **William H. Narwold**
  bnarwold@motleyrice.com,vlepine@motleyrice.com,ajanelle@motleyrice.com
- **Ivy T. Ngo**
  ingo@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joseph G. Petrosinelli**
  jpetrosinelli@wc.com
- **Willow E. Radcliffe**
  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**
  trigs@rgrdlaw.com,e_file_sd@rgrdlaw.com,nhorstman@rgrdlaw.com
- **Jennifer Lynn Spaziano**
  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
Suite 1900
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

Regan Karstrand

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: Thursday, December 18, 2014 8:03 PM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:10-cv-03864-AKH Jones et al v. Pfizer, Inc. et al Reply Memorandum of Law in Support of 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 Forge, Jason on 12/18/2014 at 8:02 PM EST and filed on 12/18/2014

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: 391

Docket Text:
REPLY MEMORANDUM OF LAW in Support re: [287] MOTION for Partial Summary Judgment . . Document filed by Mary K. Jones(Individually), Stichting Philips Pensioenfonds. (Forge, Jason)

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

Alexander C Drylewski alexander.drylewski@skadden.com

Amanda M. MacDonald amacdonald@wc.com

Brant Duncan Kuehn brantkuehn@quinnemanuel.com

Charles S. Duggan charles.duggan@dpw.com, ecf.ct.papers@davispolk.com

Cynthia Margaret Monaco cmonaco@cynthiamonacolaw.com, cmmonaco@gmail.com

Daniel Prugh Roeser droeser@goodwinprocter.com

Danielle Suzanne Myers dmyers@rgrdlaw.com

Darren J. Robbins e_file_sd@rgrdlaw.com

David Avi Rosenfeld drosenfeld@rgrdlaw.com, e_file_ny@rgrdlaw.com, e_file_sd@rgrdlaw.com

Donald Alan Migliori dmigliori@motleyrice.com

Eugene Mikolajczyk genem@rgrdlaw.com

Gary John Hacker ghacker@skadden.com

George Anthony Borden gborden@wc.com

Hamilton Philip Lindley hlindley@deanslyons.com, mgoens@deanslyons.com

Henry Rosen henryr@rgrdlaw.com, dianah@rgrdlaw.com

Howard E. Heiss hheiss@omm.com, #nymanagingattorney@omm.com

Ivy T. Ngo ingo@rgrdlaw.com, e_file_sd@rgrdlaw.com

James M. Hughes jhughes@motleyrice.com, erichards@motleyrice.com, kweil@motleyrice.com, kweil@pacernotice.com, mgruetzmacher@motleyrice.com

James P. Rouhandeh james.rouhandeh@dpw.com, ecf.ct.papers@davispolk.com

James R. Harper coljamesrharper@me.com

Jason A. Forge jforge@rgrdlaw.com, e_file_SD@rgrdlaw.com, tholindrake@rgrdlaw.com

Jay B. Kasner jkasner@skadden.com

Jennifer Lynn Spaziano jen.spaziano@skadden.com

Joe Kendall administrator@kendalllawgroup.com, hlindley@kendalllawgroup.com, jkendall@kendalllawgroup.com

John K. Villa jvilla@wc.com

Joseph F. Rice jrice@motleyrice.com

Joseph G. Petrosinelli jpetrosinelli@wc.com

Juliana Newcomb Murray juliana.murray@davispolk.com, ecf.ct.papers@davispolk.com, lisa.hirakawa@davispolk.com

Keir Nicholas Dougall kdougall@dougallpc.com

Kevin Anthony Burke kaburke@sidley.com, efilingnotice@sidley.com, nyefiling@sidley.com

Lauren Kristina Collogan lcollogan@wc.com

Leigh R. Lasky lasky@laskyrifkind.com

Lori McGill lorialvinomcgill@quinnemanuel.com

Matthew Melamed mmelamed@rgrdlaw.com

Michael Barry Carlinsky michaelcarlinsky@quinnemanuel.com, brantkuehn@quinnemanuel.com, jomairecrawford@quinnemanuel.com

Michael Joseph Dowd miked@rgrdlaw.com, e_file_sd@rgrdlaw.com, e_file_sf@rgrdlaw.com, tome@rgrdlaw.com

Michael Scott Bailey michael.bailey@skadden.com

Mitchell M.Z. Twersky mtwersky@aftlaw.com

Paul T. Hourihan phourihan@wc.com

Richard Mark Strassberg rstrassberg@goodwinprocter.com, nymanagingclerk@goodwinprocter.com

Ross Bradley Galin rgalin@omm.com, lisachen@omm.com, mochoa@omm.com, neverhart@omm.com

Ryan A. Llorens ryanl@rgrdlaw.com, kirstenb@rgrdlaw.com, nbear@rgrdlaw.com

Samuel Howard Rudman srudman@rgrdlaw.com, e_file_ny@rgrdlaw.com, e_file_sd@rgrdlaw.com, mblasy@rgrdlaw.com

Scott D. Musoff smusoff@skadden.com

Seema Mittal smittal@wc.com

Sheila L. Birnbaum sheilabirnbaum@quinnemanuel.com

Sidney Bashago sidney.bashago@dpw.com, ecf.ct.papers@davispolk.com, jennifer.kan@davispolk.com

Steven M.. Farina sfarina@wc.com

Stuart Michael Sarnoff ssarnoff@omm.com

Trig Randall Smith trigs@rgrdlaw.com, e_file_sd@rgrdlaw.com, nhorstman@rgrdlaw.com

William E. Schurmann wschurmann@wc.com

William H. Narwold bnarwold@motleyrice.com, ajanelle@motleyrice.com, vlepine@motleyrice.com

Willow E. Radcliffe willowr@rgrdlaw.com, ptiffith@rgrdlaw.com

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

Catherine J. Kowalewski
Robbins Geller Rudman & Dowd LLP (San Diego)
655 West Broadway
Suite 1900
San Diego, CA 92101

Daniel E. Hill
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

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=12/18/2014] [FileNumber=14028890
-0] [795cdde84009414d63d5766a9cf9239045ba4fbd178acf3222ccd5a73c66b862a
2e7a7eefb925d5ccebc21ab19d5d7876690b1b4d8bc409eb1f6bd4a6ea061e2]]