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January 9, 2015

VIA ECF AND FACSIMILE

The Honorable Alvin K. Hellerstein
United States District Court,
Southern District of New York
Room 1050
500 Pearl Street
New York, NY 10007

Re: Jones v. Pfizer et al., 10-Civ-03864-AKH (S.D.N.Y.)

Dear Judge Hellerstein:

In response to the Court's January 8, 2015 order that the parties submit a proposed order outlining the rulings on the motions made on the record by the Court at the January 6, 2015 Status Conference, a proposed order is attached. This proposed order reflects language agreed upon by the parties as well as areas on which the parties were unable to reach agreement on the Court's rulings.

Respectfully,



Joseph G. Petrosinelli
WILLIAMS & CONNOLLY



Michael J. Dowd
ROBBINS GELLER RUDMAN & DOWD

cc: Counsel of Record (via ECF)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARY K. JONES, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

PFIZER INC., et al.,

Defendants.

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

Hon. Alvin K. Hellerstein

ECF Case

[PROPOSED] ORDER

At the January 6, 2015 pretrial conference, the Court ruled on certain pending motions. The scope of those rulings and the reasoning underlying them are as set forth more fully in the transcript of those proceedings (attached hereto):

1. The Court will seat eight jurors. 1/6/2015 Tr. at 6-7.
2. Defendants' Motion to Exclude Plaintiffs' Expert Steven Feinstein (Dkt. 250) is DENIED without prejudice. 1/6/2015 Tr. 30-32.
3. Defendants' Motion *in Limine* No. 1 to Exclude Plaintiffs' Designated Expert Jerome Avorn (Dkt. 342) is GRANTED in part and DENIED in part. Dr. Avorn may not testify as to someone else's intent. 1/6/2015 Tr. 39.
4. **Defendants' Position:** Defendants' Motion in Limine No. 5 To Exclude Evidence Related To Marketing And Alleged Off-Label Promotion of Pfizer Products (Dkt. 355) is GRANTED. The Court will consider permitting such evidence as against Pfizer if Pfizer denies prior admissions by the company made in connection with its settlement of the government investigations. 1/6/2015 Tr. 46-47.

Plaintiffs' Position: Defendants' Motion *in Limine* No. 5 to Exclude Evidence Related to Marketing and Alleged Off-Label Promotion of Pfizer Products (Dkt. 355) is GRANTED in part. Plaintiffs may not have a witness testify as to what the witness did or sold that plaintiffs suggest was illegal. If defendants dispute that they engaged in off-label promotion and the extent of the off-label promotion, then plaintiffs will be permitted to present evidence of off-label promotion. 1/6/2015 Tr. 46-47.

5. **Defendants' Position:** Plaintiffs' Motion in Limine To Exclude Reliance Evidence And Argument (Dkt. 346) is DENIED. 1/6/2015 Tr. 35, 51-54. Defendants shall be permitted to introduce evidence and argument that they relied on securities disclosure advice from

Dennis Block and Larry Fox to the extent that Defendants allowed Plaintiffs to inquire of Messrs. Block and Fox as to the information upon which they relied.

Plaintiffs' Position: Plaintiffs' Motion to Exclude Reliance Evidence and Argument (Dkt. 346) is DENIED without prejudice. As of now, defendants shall be permitted to introduce evidence and argument that they relied on securities disclosure advice from Dennis Block and Larry Fox. But, defendants should know that if they rely on a witness who relies on others that were shielded from discovery, then the witness is not going to be allowed to testify. 1/6/2015 Tr. 35, 51-54.

6. Plaintiffs' objection to defendants' witnesses Ethan Posner, Gary Giampetruzzi and Carl Wessel is SUSTAINED. 1/6/2015 Tr. 40.
7. All other motions *in limine*, to the extent not addressed by the Court's rulings, shall be ruled upon as necessary.

* * *

IT IS SO ORDERED.

DATED: _____

THE HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE

Regan Karstrand

From: NYSD_ECF_Pool@nysd.uscourts.gov
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U.S. District Court

Southern District of New York

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Alan G. Levin
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Ian C. Read
Stichting Philips Pensioenfonds
Allen Waxman

Document Number: [444](#)

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JOINT LETTER addressed to Judge Alvin K. Hellerstein from Joseph G. Petrosinelli and Michael J. Dowd dated January 9, 2015 re: January 8, 2015 order regarding submission of proposed order. Document filed by Frank D'Amelio, Mary K. Jones(Individually), Jeffrey B. Kindler, Alan G. Levin, Henry A. McKinnell, Pfizer, Inc., Ian C. Read, Stichting Philips Pensioenfonds, Allen Waxman.(Collogan, Lauren)

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