

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|   |   |                                    |
|---|---|------------------------------------|
| _____                                     | X |                                    |
| MARY K. JONES, Individually and on Behalf | : | Civil Action No. 1:10-cv-03864-AKH |
| of All Others Similarly Situated,         | : |                                    |
|   | : | <u>CLASS ACTION</u>                |
| Plaintiff                                 | : |                                    |
|   | : | JOINT RULE 26(f) REPORT AND CASE   |
| vs.                                       | : | MANAGEMENT PLAN                    |
|   | : |                                    |
| PFIZER INC., et al.,                      | : | STATUS CONFERENCE:                 |
|   | : | September 23, 2011 at 10:30 a.m.   |
| Defendants.                               | : |                                    |
| _____                                     | X |                                    |

The parties in the above-captioned action jointly submit the following Fed. R. Civ. P. 26(f) Report and accompanying [Proposed] Civil Case Management Plan:

**I. THE PARTIES**

Stichting Philips Pensioenfond is the appointed lead plaintiff. Mary K. Jones, an individual, is also a named plaintiff in the First Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws (“Complaint”).

The defendants are Pfizer Inc. (“Pfizer” or the “Company”) and ten of its current and past executives including Ian C. Read (“Read”), Jeffrey B. Kindler (“Kindler”), Henry A. McKinnell (“McKinnell”), Frank D’Amelio (“D’Amelio”), David L. Shedlarz (“Shedlarz”), Alan G. Levin (“Levin”), Joseph M. Feczko (“Feczko”), Karen Katen (“Katen”), Allen Waxman (“Waxman”) and J. Patrick Kelly (“Kelly”).

**II. NATURE OF THE CASE**

Plaintiffs allege that during the January 19, 2006 to January 23, 2009 Class Period, defendants violated §10(b) of the Securities Exchange Act of 1934 (“1934 Act”) and Rule 10b-5 promulgated thereunder by concealing the material risks to Pfizer of the Company’s systemic unlawful promotion of Pfizer’s drugs after specific promises to the government and investors that Pfizer would cease off-label marketing. The Complaint generally alleges that defendants misled investors by (i) failing to sufficiently account for or disclose loss contingences as required by Generally Accepted Accounting Principles in Pfizer’s financial results; (ii) telling investors that Pfizer complied with marketing laws and maintained adequate controls when it did not; (iii) touting the success of Pfizer’s drugs while concealing that off-label marketing contributed to their sales; and (iv) disclosing half-truths with respect to Pfizer’s legal contingencies. At the end of the Class Period, Pfizer revealed that they had agreed to pay \$2.3 billion to resolve criminal and civil

investigations into off-label marketing and that it would reduce the fourth quarter of 2008 earnings per share and revenue by 90%. Defendants deny these allegations and Plaintiffs' characterizations of their claims.

### **III. STATUS OF ACTION**

The initial complaint in this action was filed on May 11, 2010. On November 4, 2010, Stichting Philips Pensioenfonds was appointed as lead plaintiff. On December 6, 2010, a consolidated complaint was filed by lead plaintiff Stichting Philips Pensioenfonds and named plaintiff Mary K. Jones. On April 5, 2011, the Court denied without prejudice the defendants' initial motion to dismiss, granted plaintiffs' motion to strike and directed plaintiff to submit an amended complaint with only essential exhibits. Pursuant to the Court's directive, plaintiffs filed the Complaint on April 15, 2011. Defendants moved to dismiss the Complaint on May 24, 2011 and plaintiffs filed an opposition thereto on June 24, 2011. On August 10, 2011 the Court issued an Order denying defendants' motions to dismiss. Defendants' Answer to the Complaint is scheduled to be filed on September 22, 2011.

### **IV. NON-EXPERT DISCOVERY TOPICS, STATUS OF DISCOVERY AND NON-EXPERT DISCOVERY CUT-OFF**

Pursuant to the Private Securities Litigation Reform Act, discovery in this action was stayed until the Court's Order on August 10, 2011. The parties conducted their Rule 26(f) conference on August 31, 2011. The parties agreed to exchange initial disclosures on September 21, 2011.

The parties agree that discovery will be needed regarding the following issues: (i) whether defendants participated in a scheme to defraud; (ii) whether the market price of Pfizer's securities was artificially inflated; (iii) whether defendants acted with scienter; (iv) whether defendants Pfizer, Kindler, McKinnell, D'Amelio, Levin, Shedlarz, Read, Feczko and Waxman were control persons within the meaning of §20(a) of the 1934 Act; (v) whether defendants' actions caused damage to

lead plaintiff and the members of the Class; and (vi) the extent of damage sustained by Class members and the proper measure of damages.

The parties agree that the first set of discovery requests to the parties shall be issued by September 28, 2011. With respect to third parties, the parties anticipate serving the requests on a rolling basis.

On September 1, 2011, plaintiffs issued their first set of discovery requests on defendants. On September 6, 2011, plaintiffs issued subpoenas to Pfizer's auditor KPMG LLP regarding its audited financials and its consultant PricewaterhouseCoopers LLP regarding compliance matters. On September 13, 2011, plaintiffs issued subpoenas to Morgan Stanley & Co. LLC and Evercore Group LLC, financial advisors with respect to the merger of Pfizer and Wyeth Pharmaceuticals, Inc. No other discovery requests have been issued as of the submission of this statement. Defendants will issue their first set of discovery requests on plaintiffs by September 23, 2011. After receipt of initial production, the parties will be in a better position to assess the necessity and timing for additional document requests.

The parties anticipate proceeding with document discovery prior to substantive depositions. In order to prepare this action for trial, the parties believe that February 8, 2013 is a reasonable discovery cut-off for all non-expert discovery. The time frame will allow the parties to review and focus this action for trial.

## **V. EFFICIENCY OF DISCOVERY**

The parties have discussed and will continue to discuss ways to ensure discovery in this action will be efficient.

## **VI. ELECTRONIC DISCOVERY**

On August 15, 2011, plaintiffs sent defendants a letter to assist in creating a framework and protocol for discovery of electronically stored information (“ESI”). Defendants are using their best efforts to respond to the manner in which it maintains its ESI and the types of systems in place at Pfizer.

## **VII. NUMBER OF NON-EXPERT DEPOSITIONS AND TIMING**

Under Fed. R. Civ. P. 30, each party is permitted to take 10 depositions. There are 11 defendants in this action (including Pfizer) and plaintiffs anticipate that additional depositions will be required in this action beyond this limit. After reviewing defendants’ Answer, initial disclosures and responsive documents to plaintiffs’ first set of document requests (*e.g.*, organizational charts), plaintiffs believe that they will be in a better position to propose a reasonable number of depositions to be taken in this action. Accordingly, the parties propose that the initial limit on the number of depositions be set at the next status conference. The parties agree that all non-expert depositions will be completed by February 8, 2013.

## **VIII. EXPERT DISCOVERY**

The parties agree that following a decision on dispositive motions there should be a period of expert discovery. The parties propose that within 35 days of the Court’s decision on dispositive motions, the parties will exchange a list of experts and expert reports in compliance with Fed. R. Civ. P. 26 and the rules of this Court. The parties will have 30 days from the exchange of reports for expert depositions. Thereafter the parties will have 21 days to exchange a list of any rebuttal experts and rebuttal expert reports in compliance with Fed. R. Civ. P. 26 and the rules of this Court.

## **IX. REQUESTS FOR ADMISSION**

The parties agree that all Requests to Admit will be served by January 8, 2013 with responses due 30 days after.

**X. JOINDER OF ADDITIONAL PARTIES**

The parties do not anticipate adding any additional parties but propose, subject to the timely production of discovery in this action, April 2, 2012 as the cut-off for the addition of any parties to permit time for discovery as a result of any additions prior to the proposed February 8, 2013 non-expert discovery cut-off.

**XI. AMENDED PLEADINGS**

The parties propose that, subject to the timely production of discovery in this action, amended pleadings be permitted without leave of court up to April 2, 2012 to permit time for discovery as a result of any amendments.

**XII. DISPOSITIVE MOTIONS**

Subject to the approval of the Court, the parties request that dispositive motions be filed 60 days after the close of non-expert discovery in this action (April 9, 2013). The party believes that 60 days will be necessary in order to focus the motions. The parties have also agreed due to the complexity of the action and the anticipated volume of discovery that, subject to Court approval, opposing briefs be filed by May 24, 2013 and reply briefs be filed by June 24, 2013.

**XIII. SETTLEMENT DISCUSSIONS**

The parties have not engaged in any settlement discussions to date. Counsel for the parties agree to meet on July 8, 2013, at 11:00 a.m., after briefing on dispositive motions is completed, for the purposes of discussing settlement.

**XIV. CLASS CERTIFICATION**

Plaintiffs assert that this action is maintainable as a class action under Fed. R. Civ. P. 23(a) and (b)(3) on behalf of all persons who purchased the publicly traded securities of Pfizer during the Class Period. The parties have discussed a proposed schedule for class certification and assuming the timely production of necessary discovery have included the following schedule in Attachment A

to the [Proposed] Civil Case Management Plan: (i) plaintiffs will file their motion for class certification on January 26, 2012; (ii) defendants will file their responses on March 15, 2012 with the understanding that sufficient time will be permitted to depose proposed class representatives and any experts preferred by plaintiffs prior to filing said opposition; and (iii) plaintiffs will file their reply brief on May 3, 2012.

DATED: September 16, 2011

ROBBINS GELLER RUDMAN  
& DOWD LLP  
WILLOW E. RADCLIFFE  
DANIEL J. PFEFFERBAUM  
MATTHEW S. MELAMED

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DATED: September 16, 2011

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Attorney for Defendants

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2011, 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 September 16, 2011.

s/WILLOW E. RADCLIFFE  
WILLOW E. RADCLIFFE

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## 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.

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## 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.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|--|---|------------------------------------|
| MARY K. JONES, Individually and on Behalf<br>of All Others Similarly Situated, | : | Civil Action No. 1:10-cv-03864-AKH |
|  | : |                                    |
| Plaintiff  | : | <u>CLASS ACTION</u>                |
|  | : |                                    |
| vs.  | : | [PROPOSED] CIVIL CASE              |
|  | : | MANAGEMENT PLAN                    |
| PFIZER INC., et al.,   | : |                                    |
|  | : |                                    |
| Defendants.  | : |                                    |
|  | : |                                    |

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After consultation with counsel for the parties, the following Civil Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. The case to be tried to a jury.
- B. Non-Expert Discovery:
  - 1. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. All non-expert discovery is to be completed by **FEBRUARY 8, 2013** which date shall not be adjourned except upon a showing of good cause and further order of the Court. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties are certain that they can still meet the discovery completion date ordered by the Court.
    - a. The parties shall list the contemplated discovery activities and anticipated completion dates in Attachment A, annexed hereto.
  - 2. Joinder of additional parties must be accomplished by **APRIL 2, 2012**.
  - 3. Amended pleadings may be filed without leave of the Court until **APRIL 2, 2012**.
- C. For all causes of action seeking monetary damages, each party shall identify and quantify in Attachment B, annexed hereto, each component of damages alleged; or, if not known, specify and indicate by what date Attachment B shall be filed providing such information.
- D. Motions, Settlement, Second Pre-Trial Conference, and Expert Discovery:
  - 1. Upon the conclusion of non-expert discovery, and no later than the date provided below, the parties may file dispositive motions. The parties shall agree to a schedule, and promptly submit same for the Court's approval, providing for no more than three rounds of serving and filing papers: supporting affidavits and briefs, opposing affidavits and briefs, and reply affidavits and briefs. The last day for filing dispositive motions shall be **APRIL 9, 2013 (60 DAYS AFTER THE CLOSE OF NON-EXPERT DISCOVERY)**.

**OPPOSITION BRIEFS TO DISPOSITIVE MOTIONS WILL BE DUE  
MAY 24, 2013.**

**REPLY BRIEFS WILL BE DUE JUNE 24, 2013.**

- a. There shall be no cross-motions. Any motions not made by the agreed date shall, unless the Court orders otherwise, not be considered until after the timely-filed motion is determined.
  - b. Papers served and filed by the parties shall conform to the requirements set out in the Court's Individual Rules.
2. Either before or after the motion schedule set out above, counsel for the parties shall meet for at least two hours at a place mutually agreeable to the parties, to discuss settlement. The date for the meeting is **JULY 8, 2013**, at **11 a.m.** (Counsel shall insert a date but, at the option of either, the date may be canceled upon the service or filing of a dispositive motion and notice to the Court.)
  3. Approximately one week thereafter, the parties shall meet with the Court for a Second Case Management Conference to discuss the status of the case, the status and prospects of settlement and whether alternative disputes-resolution procedures should be utilized, the need for and a schedule regulating experts and expert-discovery, a discovery bar date, and any other issue counsel or the Court wish to discuss. The Case Management Conference will be held on \_\_\_\_\_, at \_\_\_\_\_m. (The Court will set this date at the Initial Case Management Conference.)
  4. Within 35 days of the Court's decision on dispositive motions filed in this action, the parties will exchange a list of experts and expert reports in compliance with Fed. R. Civ. P. 26 and the rules of this Court, and shall make all such experts available for deposition within 30 days after the mutual exchange of expert reports. After the expiration of the 30 day time period for expert depositions, the parties shall have 21 days to exchange a list of any rebuttal experts and rebuttal expert reports in compliance with Fed. R. Civ. P. 26 and the rules of this Court.
- E. Any request for relief from any date provided in this Case Management Plan shall conform to the Court's Individual Rules, and include an order, showing consents and disagreements of all counsel, setting out all dates that are likely to be affected by the granting of the relief requested, and proposed modified dates. Unless and until the Court approves the proposed order, the dates provided in this Plan shall be binding.

- F. A final pre-trial conference will be held on a date to be set, as close as possible to the date that trial is expected to begin. The parties, three days before said meeting, shall submit their pre-trial order, conforming to the Court's Individual Rules and, at the conference, deliver their exhibit books containing all exhibits the parties actually intend to offer at the trial.
- G. Pre-Trial Motions:
  - 1. Applications for adjournments and for discovery or procedural rulings will reflect or contain the positions of all parties, and otherwise conform to my Individual Rule 1(D). Unless the Court rules otherwise, motions shall not modify or delay the conduct of discovery or the schedules provided in this Case Management Plan.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ALVIN K. HELLERSTEIN  
UNITED STATES DISTRICT JUDGE

**ATTACHMENT A**

The Parties are to list the discovery activities (*i.e.*, production of documents, number of depositions, requests to admit, interrogatories) and anticipated completion dates:

|    | <b>DISCOVERY ACTIVITIES</b>            | <b>COMPLETION DATE</b>   |
|----|--|--|
| 1. | Initial Disclosures                    | September 21, 2011   |
| 2. | Class Certification Briefing Schedule  | Opening Brief: January 26, 2012<br>Opposing Brief: March 15, 2012<br>Reply Brief: May 3, 2012                                  |
| 3. | Party Document Requests and Production | First Set of Requests by September 23, 2011.<br>Production to begin on a rolling basis thereafter.                             |
| 4. | Third Party Subpoenas and Production   | Subpoenas will be served on a rolling basis.<br>Third party discovery to be completed by February 8, 2013.                     |
| 5. | Plaintiffs' Non-Expert Depositions     | Depositions to begin after reasonable time for review of discovery responses. Depositions to be completed by February 8, 2013. |
| 6. | Defendants' Non-Expert Depositions     | Depositions to be completed by February 8, 2013.   |
| 7. | Requests to Admit                      | All Requests to Admit shall be served by January 8, 2013. All responses to Requests to Admit are due 30 days after service.    |

**ATTACHMENT B**

For all causes of action seeking monetary damages, each party shall identify and quantify each component of damages alleged:

1. **PLAINTIFFS' CLAIMS:**

Classwide damages are subject to expert analysis and shall be calculated by an expert and disclosed consistent with Fed. R. Civ. P. 26 after sufficient discovery. Subject to subsequent expert analysis and discovery, the named plaintiffs shall provide a computation of damages by January 26, 2012 consistent with Fed. R. Civ. P. 26(a)(iii).

2. **COUNTERCLAIMS AND CROSS-CLAIMS:**

No later than April 2, 2012.

3. **THIRD PARTY CLAIMS:**

No later than April 2, 2012.