UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION	No. 04-cv-9866 (LTS)(HBP) ECF CASE

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

Court-appointed Lead Plaintiff Teachers' Retirement System of Louisiana and additional Court-appointed class representatives Christine Fleckles, Julie Perusse and Alden Chace (collectively "Plaintiffs"), on behalf of themselves and the Court-certified Class, have agreed to settle all claims asserted in the above-captioned securities class action lawsuit (the "Action") against Defendants Pfizer Inc. ("Pfizer"), Henry A. McKinnell, Karen L. Katen, Joseph M. Feczko, and Gail Cawkwell (collectively, "Defendants"), in exchange for $486,000,000 in cash (the "Settlement"). Plaintiffs hereby submit this supplemental memorandum of law in further support of preliminary approval of the Settlement and the accompanying Amended Notice to the Class.

I. INTRODUCTION

The Settlement represents a significant recovery for the Class—a result that is particularly impressive in light of the previous dismissal of the Action just prior to trial and the fact that Plaintiffs were able to obtain the Settlement only after resurrecting their case on appeal. If approved, this Settlement would represent one of the largest securities class action recoveries against a pharmaceutical company in the history of the Securities Exchange Act.

At the preliminary approval hearing on September 13, 2016, this Court inquired about the maximum aggregate damages that Plaintiffs could recover in this Action and how that amount was calculated. To address the Court's question, Plaintiffs submit this supplemental memorandum.

II. CALCULATION OF THE MAXIMUM AGGREGATE DAMAGES AMOUNT

Plaintiffs have determined that, should the Action proceed to trial, the maximum aggregate damages that could be recovered for Class Members amounts to $5.37 billion. The proposed Settlement recovery of $486 million represents approximately 9% of these maximum

aggregate damages (and a significantly higher percentage of likely recoverable damages). Notably, for years 2006-2015, median securities class action settlements as a percentage of estimated damages were only 0.8% to 1% for cases, like this one, with estimated damages of over $5 billion. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2015 Review and Analysis*, at 9 (Cornerstone Research 2016). Consequently, a settlement such as the one proposed here—particularly after the Action was dismissed in its entirety at summary judgment prior to its resurrection on appeal—sufficiently warrants preliminary approval and, as will be further briefed at the appropriate time, final approval.

For purposes of arriving at the maximum potential aggregate damage amount of $5.37 billion, Plaintiffs assume that they would prevail on every loss causation and damages argument raised by Defendants at trial. That is to say, even assuming Plaintiffs were to prove that Defendants made materially false and misleading statements with scienter, the parties still dispute a number of issues, including (1) which public disclosures were corrective of the alleged fraud or materializations of the undisclosed risk; and (2) what is the quantifiable impact of those disclosures assuming they are found to be corrective. The $5.37 billion damages amount thus presumes Plaintiffs' complete success on these disputes that were litigated throughout the summary judgment and expert discovery phases of the Action.

To compute maximum aggregate damages, Plaintiffs' damages consultant, Michael A. Keable of Compass Lexecon, utilized the table created by Plaintiffs' damages expert, Daniel R. Fischel, which sets forth the estimated artificial inflation in Pfizer's stock price for every day of the Class Period, and applied it to the commonly utilized "80/20 multi-trader" trading model to estimate the number of shares bought and held through at least one corrective disclosure. *See* Declaration of Michael A. Keable (the "Keable Declaration") ¶1. Based upon this analysis,

as reflected in the accompanying Keable Declaration, Keable estimates that maximum aggregate damages under this model are $5.37 billion based on an estimated 3.67 billion damaged shares purchased during the Class Period, which equates to average per-share damages of $1.46. Dividing the amount of the Settlement ($486 million) by 3.67 billion damaged shares yields an average per-share settlement value of approximately 13 cents. *See* Keable Declaration at ¶2. It is important to note that the average recovery per share would differ for every Class Member as each Class Member's recovery depends on when they transacted in the stock and, if challenged in a trial setting, whether they could actually show reliance on the integrity of the market price when purchasing Pfizer stock.

The Amended Notice to the Class (filed herewith) comports with the Private Securities Litigation Reform Act of 1995 ("PSLRA") by explaining that, in Plaintiffs' counsel's view, this per share recovery represents the best possible recovery to allow Class Members to determine whether to object to the settlement or file a claim. Specifically, the Amended Notice states: "Plaintiffs estimate, based on a trading model used by their experts, that the maximum recovery for the Class might be as large as $5.37 billion in the aggregate, or approximately $1.46 per damaged share. This assumes Plaintiffs would prevail on every element of their claims and that the jury would find that each of the alleged corrective disclosures revealed information that had been concealed." Amended Notice.

In considering preliminary approval of a class settlement, "the [C]ourt must make a 'preliminary evaluation' as to whether the settlement is fair, reasonable and adequate." *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006). "If, after a preliminary evaluation of the proposed settlement, a court finds that it appears to fall *within the range* of possible approval, the court shall order that the class members

receive notice of the settlement." *Morris v. Affinity Health Plan, Inc.*, No. 09-cv-1932 (DAB), 2011 WL 6288035, at *2 (S.D.N.Y. Dec. 15, 2011). The standard for preliminary approval is far less stringent than the standard for final approval. Courts reviewing a settlement for final approval typically combine their analysis of the final two *Grinnell* factors, "the range of reasonableness of the settlement fund in light of the best possible recovery" and "the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). In analyzing these two factors, a reviewing court "consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell*, 495 F.2d at 462. "The determination of whether a settlement amount is reasonable does not involve the use of a mathematical equation yielding a particularized sum." *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-05669 (BMC), 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012). Rather, "there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart Stores, Inc. v. Visa USA Inc.*, 396 F. 3d 96, 119 (2d Cir. 2005). Moreover, the settlement amount must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *Shapiro v. JPMorgan Chase*, No. 11 Civ. 8331 (CM) (MHD), 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014).

Here, although Plaintiffs' damages expert estimates that likely recoverable damages approximate $5.37 billion, that amount does not take into account any of Defendants' arguments regarding disaggregation, loss causation, scienter, damages or proportionate fault. In contrast to

the delays, costs and uncertainty of continued litigation, the proposed Settlement confers an immediate and certain payment of $486 million in cash for the benefit of the Class. The Settlement is even more significant given the considerable risks involved in the Action as set forth in Plaintiffs' Memorandum of Law in Support of Preliminary Approval ("Preliminary Approval Brief"). *See* D.E. 699. Plaintiffs and Lead Counsel carefully and thoroughly analyzed these risks when negotiating the present Settlement. Accordingly, the proposed Settlement is a favorable result for the Class in light of the range of possible recoveries and the risks of continued litigation. *Massiah*, 2012 WL 5874655, at *5 ("when a settlement assures immediate payment of substantial amounts to class members, even if it means sacrificing 'speculative payment of a hypothetically larger amount years down the road', settlement is reasonable under this factor.").

III. CONCLUSION

For the reasons set forth above, in addition to those set forth in Plaintiffs' Preliminary Approval Brief, Plaintiffs respectfully ask this Court to enter an order preliminarily approving the proposed Settlement.

Dated September 14, 2016

Respectfully submitted,

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