UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION	No. 04 Civ. 9866 (LTS) (HBP) ECF CASE
THIS DOCUMENT RELATES TO: The Consolidated Securities Class Action	Oral Argument Requested

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION *IN LIMINE* NO. 8 TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL R. FISCHEL

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Defendants submit this reply memorandum of law in further support of their Motion *in Limine* No. 8 to exclude the testimony of Daniel R. Fischel (Dkt. Nos. 521, 574).

PRELIMINARY STATEMENT

Defendants showed in their opening brief that Fischel's opinion has two fatal flaws: it contains an unprecedented damages-inflating adjustment unjustified by economic analysis; and it fails to disaggregate damages attributable to statements by Pharmacia for which Pfizer is not responsible. The overarching themes of Plaintiffs' opposition are non-responsive:

- They suggest that Fischel's credentials place him beyond reproach, representing, falsely,[1] in the very first sentence of their brief that he "has never been precluded by a court from testifying in his 30-year career." (Pls. Opp. at 1; *see also id*. at 3, 14-16.)
- They argue that Defendants' expert, Dr. Gompers, has not proposed his own inflation calculation and has only criticized Fischel's (*id*. at 1-2, 4, 10-12, 19-20, 22), ignoring established law that rebuttal experts are not required or expected to do more.[2]
- They trivialize as "quibbl[ing]," "mere[]," or "slight[]" (*id*. at 1, 10-12, 14 n.14, 20) an issue that may inflate claimed damages by a billion dollars or more.

But they fail to deal adequately with the defects in Fischel's analysis. Fischel originally identified seven dates when inflation came out of the stock price, and five dates when inflation entered the stock price. The Court rejected two of his seven inflation-out dates, which would logically reduce damages. The task before Fischel at that point was straightforward: to "reset" (*id.* at 6) his analysis using only the five remaining inflation-out dates and the five inflation-entry

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[1] *See United States* v. *Nacchio*, 555 F.3d 1234, 1242 (10th Cir. 2009) (upholding preclusion of Fischel's testimony where the proponent failed to "establish that Fischel's testimony is the product of reliable principles and methods or that Fischel applied some principles and methods reliably in this case"); *Abrams* v. *Van Kampen Funds, Inc.*, No. 01 C 7538, 2005 WL 88973, at *10 (N.D. Ill. Jan. 13, 2005) (excluding Fischel's opinion as "not supported by adequate methodology nor shown to be relevant to issues in the present case"); *cf. In re Oracle Corp., Deriv. Litig.*, 867 A.2d 904, 947 n.166 (Del. Ch. 2004) (granting summary judgment after finding that "Fischel provides no reliable evidence" and "made no effort to determine" if contrary facts were relevant).

[2] *See, e.g.*, *IBEW Local 90 Pension Fund* v. *Deutsche Bank AG*, No. 11 Civ. 4209(KBF), 2013 WL 5815472, at *13 (S.D.N.Y. Oct. 29, 2013) ("The fact that defendants' experts have not proffered analyses that disprove market efficiency is irrelevant—defendants do not bear such a burden."); *In re Zyprexa Prods. Liab. Litig.*, 489 F. Supp. 2d 230, 285 (E.D.N.Y. 2007) ("[D]efendants' experts . . . have no burden to produce models or methods of their own; they need only attack those of plaintiffs' experts.").

dates. Fischel previously said under oath that if November 4, 2004, or any other of his dates, were rejected, he would simply remove the residual price declines on those dates. This would reduce his calculated inflation on all earlier dates, including the start of the Class Period, by $.67. But he did not do so. Instead, he invented an admittedly unprecedented "inflation adjustment" factor of 9.7%, which he applied *after* removing the two rejected dates. The result was to increase implied damages arbitrarily, likely by more than a billion dollars,[3] above what a simple reset using only the accepted dates would have yielded. Under Fed. R. Evid. 702 and *Daubert* v. *Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), this analysis should not go to the jury.

Additionally, Plaintiffs' defense of Fischel's failure to address this Court's rejection of claims based on Pharmacia's statements is contradicted by Fischel's own testimony. They argue that because they rely on a "maintenance" theory of liability, it is irrelevant to Fischel's analysis who made the misstatements that caused price inflation. (Pls. Opp. at 23-25.) But Fischel said otherwise: he testified that his analysis was predicated on the assumption that all inflation was caused by "statements [that] are attributable to defendants." (Omnibus Declaration of Andrew J. Ehrlich, Esq., dated Sept. 30, 2013 (Dkt. No. 524) ("Ehrlich Decl."), Ex. 73, at 78:16-79:19.) Moreover, under controlling law, Plaintiffs must prove "that it was *defendant's* fraud—rather than other salient factors—that proximately caused plaintiffs' loss." *Lentell* v. *Merrill Lynch & Co*., 396 F.3d 161, 177 (2d Cir. 2005) (emphasis added).[4]

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[3] For example, instead of reducing inflation by $.67 on November 3, 2004, Fischel's Supplemental Report reduces it by only $.39—a difference of $.28 cents. (*Compare* Ehrlich Decl., Ex. 72, Ex. 38, at 27 *with* Ehrlich Decl., Ex. 76, Ex. 38, at 26.) And between November 4 and December 16, 2004, Fischel's adjusted inflation is $.21 *higher* than his original analysis. (*Compare* Ehrlich Decl., Ex. 72, Ex. 38, at 27-28 *with* Ehrlich Decl., Ex. 76, Ex. 38, at 26-27.) By his own analysis, Pfizer had between 6.2 and 8.2 billion shares outstanding, and a total of over 24 billion shares traded, during the five-year Class Period. (Omnibus Declaration of Daniel J. Juceam, dated Nov. 22, 2013 ("Juceam Decl."), Ex. 45 ¶ 13.) The issue is clearly more than a "quibble."

[4] Plaintiffs' opposition identifies certain aspects of Fischel's opinion that it contends Defendants and/or Gompers do not challenge. (*See* Pls. Opp. at 4-6, 12 & n.12, 14 n.15.) In many cases, Plaintiffs are simply wrong. For example, Gompers vigorously disputes "Fischel's calculation . . . [of] artificial inflation." (*Id.* at 4, 12; *compare*

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An expert cannot simply rely on credentials but must "employ[] in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co.* v. *Carmichael*, 526 U.S. 137, 152 (1998). Plaintiffs must show not only that Fischel's approach is a sufficiently reliable basis for his opinion, but that his "experience is reliably applied to the facts." Fed. R. Evid. 702 advisory comm. note (2000). They fail this test.

I. Fischel's 9.7% Adjustment is Not Based on Any Reliable Methodology or Principle

Plaintiffs concede that Fischel's methodology has no precedent, has not been tested or peer-reviewed, and has no support in economic literature. (Pls. Opp. at 9, 13.) This alone renders it devoid of "the required indicia of scientific reliability" under *Daubert*. *Nimely* v. *City of New York*, 414 F.3d 381, 396 (2d Cir. 2005). Nor can Plaintiffs deny that Fischel's pre-summary judgment deposition testimony as to how he would respond to a rejection of his dates conflicts with his current opinion.[5] His about-face only underscores the unreliable and result-driven nature of his invented methodology, which offsets the reduction to inflation following the Court's ruling and at times *increases* inflation. *See Washburn* v. *Merck & Co.*, No. 99–9121, 2000 WL 528649, at *2 (2d Cir. May 1, 2000) (expert opinion is unreliable in part because it was not based on his "own research in the field, but rather was developed for purposes of litigation").

A. Fischel's Opinion is Not an Appropriate Judgment Applied to "Unique Circumstances" and Instead Contravenes His Equilibrium Principle

Plaintiffs first argue that the Court's rejection of two corrective disclosure dates

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Corrected Declaration of Charles T. Caliendo in Opposition to Defendants' Motions *In Limine*, dated Nov. 12, 2013 (Dkt. No. 606), Ex. 7 ¶¶ 7-8, 49-50.) In any event, none of this discussion of purportedly undisputed points by Plaintiffs is relevant to assessing the defects in Fischel's opinion that are before the Court on the instant motion, and therefore Defendants do not address them individually in this brief.

[5] Plaintiffs argue that Defendants "omitt[ed] reference to later testimony in which Fischel clarified" his 2012 deposition. (Pls. Opp. at 16.) The point is that when asked in advance of the Court's ruling what he would do, his approach required no adjustment of the type he now employs. That he attempted after the fact to justify his departure from his prior approach is no answer, as Defendants' opening brief explained. (Defs. Mem. at 18.)

left Fischel in uncharted territory, forcing him to improvise. (Pls. Opp. at 13-18.) This is nonsense. As Defendants' opening brief demonstrated, other courts have rejected corrective disclosure dates, and Fischel, when questioned at his initial deposition about just such a scenario, said no corrective adjustment would be required. (Defs. Mem. at 11-12.) It is implausible that he never before considered the possibility that the Court might reject some of his dates, given his 30 years' experience, 50 trials, challenges to his dates by Defendants' expert, *and direct questions on the scenario* at his deposition in this case.[6]

Nor, as Plaintiffs argue, did the Court's ruling—which reduced total residual price decline by 9.7%—require a 9.7% haircut to Fischel's five intra-Class Period inflation-entry dates. Plaintiffs argue that Fischel elected to both reduce inflation on the five inflation-entry dates *and* reduce inflation at the beginning of the Class Period to restore "equilibrium." (Pls. Opp. at 8, 17.) The basic flaw in this argument is that it treats the amount of inflation that existed at the beginning of the Class Period as a fixed number that Fischel calculated, and that therefore had some independent validity to be preserved. In fact, Fischel's analysis consisted of calculating the residual price decreases on inflation-out dates and subtracting the residual price increases on inflation-entry dates—and the inflation at the beginning of the Class Period was the difference left over. (Ehrlich Decl., Ex. 75 ¶¶ 11-12.) Removing the residual price declines on

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[6] Fischel claims that the particular aspect of the Court's ruling he did not anticipate—and without which his proportional adjustment methodology would not apply (Ehrlich Decl., Ex. 73, at 35:9-36:4)—is that the Court supposedly rejected the two dates for "*legal*" reasons without disturbing Fischel's "*economic* opinion that th[e] disclosure[s] caused the underlying price decline" on those days. (Pls. Opp. at 19-20.) Yet Fischel concedes that "the court conclude[d] that there's no new information as to Celebrex and Bextra's cardiovascular risks" in October 20, 2005 disclosure. (Ehrlich Decl., Ex. 73, at 61:3-62:25.) This is clearly an "economic," as well as a "legal" reason for rejecting it. Fischel's present claim that months-old information about Celebrex and Bextra moved the stock price on that day contradicts his theory of an efficient market, since, as he opines, an efficient market would have incorporated that information into Pfizer's stock price when it was first made public, "virtually instantaneously . . . within one day or even less." (Omnibus Declaration of Karen R. King, dated Nov. 5, 2013 (Dkt. No. 575), Ex.17, at 87:19-89:23); *see also Bricklayers & Trowel Trades Int'l Pension Fund* v. *Credit Suisse First Boston*, 853 F. Supp. 2d 181, 193 (D. Mass. 2012) ("Consistent with the efficient market principle, if investors already knew the truth, the drop in stock price could not be attributed to the disclosure.").

the rejected dates would automatically reduce that remainder, and thus "Day One" inflation, thereby preserving the "equilibrium principle." There is simply no basis to support Plaintiffs' argument that Fischel had to depart from his prior analytical method and conjure some vague "holistic" judgment (Pls. Opp. at 10, 14) to alter the five residual price increases (which he had specifically calculated as relevant to inflation) in order to preserve "equilibrium," when his model had already self-corrected by balancing out inflation entering the stock on "Day One."

Plaintiffs advance a hypothetical to defend Fischel's newly-invented approach, positing what would happen if the Court rejected the December 17, 2004 date. (*Id.* at 17-18.) That would remove $3.03 of residual price decline from Fischel's analysis, resulting in negative inflation at the start of the Class Period; a consequence that, they claim, Fischel's percentage method would avoid. But the more logical interpretation of that result would be that Fischel's initial selection of dates was wrong or his conclusion as to pre-Class Period positive inflation was wrong. Moreover, Plaintiffs' hypothetical has no bearing on whether Fischel's method is supported by the facts at hand, where November 4, 2004 and October 20, 2005 were rejected.

In fact, the arbitrariness of Fischel's methodology is shown by his failure to tie his adjustment to any analysis of events on either the two rejected dates or the five inflation-entry dates. (Defs. Mem. at 16-17.) As one example, Defendants noted that under Fischel's theory, if no inflation comes out of the stock price on November 4, 2004, he concludes less inflation must have *come in* on three *later* dates—December 21 and 22, 2004, and February 18, 2005. (*Id.*at 15-16.) Plaintiffs posit that these dates represent "bounce-backs" tied to a market overreaction to the November 4 Canada Post article. (Pls. Opp. at 18.) Fischel nowhere takes this position,[7] and

[7] To the contrary, Fischel claimed those three price increases corrected the market's later speculation that Celebrex would be withdrawn in December 2004. (Ehrlich Decl., Ex. 72 ¶¶ 21-22; Juceam Decl., Ex. 44, at 41:16-42:15.) And if, as Plaintiffs say, those three dates represent bounce backs from *earlier* price declines, Fischel cannot explain why he also adjusts them based on removal of a *later* price decline on October 20, 2005.

it makes little sense, because there is no apparent connection between the Canada Post article and the disclosures on the later "bounce back" dates. Thus, Fischel's across-the-board haircut to all inflation-entry dates is the antithesis of his earlier analysis, which evaluated each date individually to decide what portion of the price rise was attributable to fraud-related events.[8]

B. Fischel's Adjustment Does Not Decrease Inflation and Damages

Plaintiffs argue that Fischel's adjustment has the effect of reducing damages overall. (Pls. Opp. at 20-21.) This confuses two very different calculations. The Court's rejection of two corrective disclosure dates required Fischel to remove the $.67 of residual price decreases on those two dates from his analysis—which indisputably reduced implied damages. However, Fischel's newly invented 9.7% adjustment to the inflation-entry dates indisputably *increases* implied damages relative to what they would have been had he simply removed the $.67. It is that adjustment, not the required removal of the rejected dates, that is contested here.

Plaintiffs do not dispute Defendants' showing that, for at least 45 days, Fischel's supplemental analysis results in even higher positive inflation than he had calculated before the Court's summary judgment ruling. (*Id.*) It is no answer that, as Plaintiffs contend, certain additional days *after* December 16, 2004—on which Fischel's supplemental analysis *also* increased inflation—do not matter because inflation was negative at that point in time. (*Id.*) The point is that Fischel's adjustment leads to indefensible results.[9]

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[8] Plaintiffs' citation to an unpublished order in *In re Vivendi Universal, S.A. Sec. Litig.* is distinguishable, because that court found the expert used a "standard technique" that was "not arbitrary" and had an adequate "basis in the record," whereas Fischel's approach is concededly non-standard and deviates from ordinary event-driven analysis. No. 02 Civ. 5571 (RJH) (HBP), at 5, 7 (S.D.N.Y. Aug. 12, 2009). Likewise, the *Carpenters Health & Welfare Fund* v. *Coca-Cola Co.* case Plaintiffs cite involved a normal event study methodology that the defendants did not challenge. No. 1:00-CV-2838-WBH, 2008 WL 4737173, at *2 (N.D. Ga. Mar. 14, 2008).

[9] Nor are Plaintiffs even arguably mathematically correct when they contend that it was not Fischel's 9.7% adjustment, but rather the removal of the November 4, 2004 date, that caused the increase to inflation on those days. (*See* Pls. Opp. at 21.) Fischel's methodology works "*backwards*," such that inflation on any given day is calculated by summing all "*subsequent* residual price changes." (Juceam Decl., Ex. 44, at 18:11-22:1; 44:11-19 (emphasis added); *see also* Ehrlich Decl., Ex. 72 ¶ 30.) The increased inflation in Fischel's supplemental report

Fischel's novel adjustment boosts inflation in this way because his conclusion turns on how many mistakes his original analysis contained. (Defs. Mem. at 12-14.) The size of his adjustment is determined by how much of the initial total residual price decline comes from *rejected* dates. (*See* Ehrlich Decl., Ex. 76 ¶ 2.) So starting with more incorrect dates results in higher damages after a "corrective" adjustment than if he had used only the permitted dates in the first place. There is no way to justify an analysis in which the result is dependent on the number of mistakes made in an earlier version (Ehrlich Decl., Ex. 75 ¶ 37), and Plaintiffs do not even try, other than by denying that Fischel "intentionally" planted invalid dates. (Pls. Opp. at 19.) But whether or not Fischel *deliberately* erred in including the two rejected dates in his initial analysis, the fact remains that those two dates are, as Fischel agrees, "no longer fraud related" and "no longer relevant for purposes of calculating inflation." (Ehrlich Decl., Ex. 73, at 36:8-39:4.) Accordingly, there is no basis for upholding an adjustment that yields higher damages than would have existed had Fischel gotten the set of dates right to begin with.

C. Fischel's Opinion Will Not Assist the Jury

Plaintiffs contend that the defects in Fischel's methodology merely present a "classic 'battle of the experts' for the jury to consider." (Pls. Opp. at 2.) But it is the trial judge, not the jury, who is tasked with *Daubert's* "gatekeeping" mandate to "ensur[e] that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand," particularly because, to a jury, "[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it." *Daubert*, 509 U.S at 595, 597.[10] In "highly complex litigation" like

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is thus necessarily caused by Fischel's 9.7% adjustment to the three *subsequent* price-increase dates in December 2004 and February 2005, and is not affected by removal of the *earlier* November 4, 2004 date.

[10] *See also IBEW*, 2013 WL 5815472, at *12 ("A trial court is tasked with the responsibility of weeding out proffered expert opinions which do not meet [the] required standards."); *Bricklayers*, 853 F. Supp. 2d at 190 ("An event study that fails to disaggregate . . . must be excluded because it misleadingly suggests to the jury that a sophisticated statistical analysis proves the impact of defendants' alleged fraud on a stock's price . . . .").

this, a Court must "place particular emphasis on the reliability and scientific validity of the expert's opinions." *In re Zyprexa Prods. Liab. Litig.*, 688 F. Supp. 2d 130, 145 (E.D.N.Y. 2009); *see also Allison* v. *McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999) ("While meticulous *Daubert* inquiries may bring judges under criticism for donning white coats and making determinations that are outside their field of expertise, the Supreme Court has obviously deemed this less objectionable than dumping a barrage of questionable scientific evidence on a jury, who would likely be even less equipped than the judge to make reliability and relevance determinations and more likely than the judge to be awestruck by the expert's mystique."); *Hartwell* v. *Danek Med., Inc.*, 47 F. Supp. 2d 703, 711 (W.D. Va. 1999) ("While there are certainly times when, given the complexity of issues or the ferocity of the debate, it may seem expedient just to let opposing experts do battle at trial, the Supreme Court has made clear that to do so . . . would be shirking [the court's] duty as evidentiary 'gatekeeper' to the trial process.").

II. Plaintiffs' Maintenance Theory Is Misplaced and Contradicts Their Own Expert

Plaintiffs argue that Fischel properly disregarded this Court's ruling that nine statements made by Pharmacia were not attributable to Pfizer. They assert that Fischel relies on the "maintenance theory" to avoid disaggregating inflation caused by the now-rejected statements. But Fischel has testified otherwise, and governing law is also to the contrary.

At his deposition, even after being directed to the Court's Pharmacia ruling, Fischel repeatedly reiterated that his analysis applies only if the allegedly false statements causing the inflation "are attributable to defendants." (Ehrlich Decl., Ex. 73, at 78:16-22.) Fischel further testified that "if the defendants are not liable for the statements, some or all of the statements, then . . . for those statements where there was no liability, there wouldn't be any role for analyzing inflation or damages." (*Id.* at 79:5-19.) In his own words, if "some or all of the statements" are not attributable to defendants—as the Court held—his analysis does not apply.

Plaintiffs again contradict Fischel's opinion when they argue that he did not have to adjust his work to account for the Court's ruling "[b]ecause the nine Pharmacia statements did not *increase* the inflation in Pfizer's stock price." (Pls. Opp. at 25 (emphasis in original).) But this is merely their assumption, not a matter that Fischel (or any other expert) has supported. Indeed, Fischel acknowledged that some sort of disaggregation would be required to adjust his calculations—but he would leave it to the jury unguided to perform it:

> Q. You're assuming [the $1.17 in pre-Class Period inflation is] the responsibility of the defendants who are named in the complaint?
>
> A. Correct.
>
> Q. If the court were to conclude that it's in part the responsibility of someone other than a defendant named in the complaint, your analysis doesn't purport to disaggregate on that account; is that right? . . .
>
> THE WITNESS: . . . [T]hat would just mean that the defendants are not liable for or not responsible for some or all of the inflation that I've calculated, and that a jury would have to take that into account . . . ."

(Ehrlich Decl., Ex. 73, at 83:13-84:21.)

Plaintiffs are also mistaken when they claim that under *Dura Pharm., Inc.* v. *Broudo*, 544 U.S. 336 (2005), an expert need only disaggregate "multiple pieces of information disclosed simultaneously." (Pls. Opp. at 25.) Rather, experts must disaggregate the full "tangle of factors affecting price," including all "facts, conditions, or other events" contributing to price change other than the defendant's "earlier misrepresentation." *Dura*, 544 U.S. at 343. Where, as here, different actors are "responsible for different misrepresentations that are, nonetheless, revealed together in corrective disclosures[,] [t]his is another species of confounding information." (Ehrlich Decl., Ex. 79, at 29.) Plaintiffs must prove "that it was *defendant's* fraud—rather than other salient factors—that proximately caused plaintiffs' loss." *Lentell*, 396

F.3d at 177 (emphasis added).[11] Their reliance on *Liberty Media Corp.* v. *Vivendi Universal, S.A.*, 923 F. Supp. 2d 511 (S.D.N.Y. 2013), and *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512 (S.D.N.Y. 2011), where a defendant maintained *its own* fraud, not the situation here where a *non-defendant*'s actions affect stock price, is misplaced. (Pls. Opp. at 22-25.)

III. Fischel's Reply Report Should Be Excluded

Plaintiffs relegate their discussion of Fischel's Reply Report to a footnote in the "Background" section of their brief. (*Id.* at 11 n.11) They do not address Defendants' argument that the Reply Report will likely confuse the jury into accepting a methodology that Fischel admits would "overestimate" inflation. (Defs. Mem. at 24-25.) Instead, they contend that the Reply Report is relevant to showing that defense counsel "want to have their cake and eat it too" by selectively critiquing Fischel's (arbitrary and unfounded) adjustment methodology, without also disputing his (uncontroversial) inclusion of price-increase dates. (*See* Pls. Opp. at 11 n.11.) Plaintiffs are thus complaining that Defendants must object to all aspects of Fischel's opinion or they cannot object to any of it. Unsurprisingly, they cite no authority for this proposition. An expert can do one thing right but later get another aspect of his analysis completely wrong.

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court grant their motion to exclude the expert testimony of Daniel R. Fischel at trial.

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[11] For example, in *Lattanzio* v. *Deloitte & Touche LLP*, the Second Circuit rejected securities fraud claims where the plaintiff failed to disentangle the effect of a *non-defendant's* alleged misstatements on stock price, by not alleging facts that "would allow a factfinder to ascribe some rough proportion of the whole loss to [the defendant's] misstatements." 476 F.3d 147, 158 (2d. Cir. 2007). Plaintiffs here similarly allege that a nonparty made misstatements (Dkt. No. 361 ¶¶ 348, 363, 372, 386, 389, 390), and offer no expert evidence ascribing any part of the loss to Pharmacia. *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554 (S.D.N.Y. 2008) (absent expert disaggregation, there is "simply no way for a juror to determine whether the alleged fraud caused any portion of Plaintiffs' loss"), *aff'd*, 597 F.3d 501 (2d Cir. 2010); *In re Vivendi Universal, S.A. Sec. Litig.*, 634 F. Supp. 2d 352, 364 (S.D.N.Y. 2009) ("Sorting out which declines were caused by such extraneous factors and which were caused by a materialization of the concealed risk is generally the province of an expert.").

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