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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE GEORGE LEON FAMILY TRUST, Derivatively and on Behalf of JOHNSON & JOHNSON, Plaintiff, v. MARY SUE COLEMAN, PH.D., JAMES G. CULLEN, IAN E. L. DAVIS, MICHAEL M.E. JOHNS, M.D., ARNOLD G. LANGBO, SUSAN L. LINDQUIST, PH.D., ANNE M. MULCAHY, LEO F. MULLIN, WILLIAM D. PEREZ, CHARLES O. PRINCE, III, DAVID SATCHER, M.D., PH.D., and WILLIAM C. WELDON, Defendants, – and – JOHNSON & JOHNSON, a New Jersey Corporation, Nominal Defendant.	Civil Action No.: **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT** **DEMAND FOR JURY TRIAL**

INTRODUCTION

1. This is a verified shareholder derivative action, seeking relief on behalf of nominal party Johnson & Johnson ("J&J" or the "Company"), against certain members of J&J's board of directors (the "Board") who were responsible for awarding lavish and excessive executive compensation to Defendant Chairman/CEO William C. Weldon ("Weldon") from 2006 to present. This action seeks to hold Defendants liable for breaches of their fiduciary duties of candor, good faith and loyalty, and for corporate waste and unjust enrichment, including the issuance of false and misleading statements in J&J's annual proxy statements on Schedule 14A filed with the Securities and Exchange Commission ("SEC") in 2008, 2009, 2010, and 2011.

2. Defendants are Mary Sue Coleman, Ph.D.; James G. Cullen; Ian E. L. Davis; Michael M.E. Johns, M.D.; Arnold G. Langbo; Susan L. Lindquist, Ph.D.; Anne M. Mulcahy; Leo F. Mullin; William D. Perez; Charles O. Prince, III, David Satcher, M.D., Ph.D.; and Weldon. Defendants are/were each directors/members of the Board during the relevant time period.

3. This action arises from Defendants' failure to follow J&J's executive compensation philosophy, and J&J's guiding principles for executive compensation. In failing to follow J&J's executive compensation policies and procedures, Defendants have breached their duty of loyalty and candor, thus grossly over-compensating Weldon, whose total compensation now exceeds $150 million for the period 2006 to present.

4. The Board is not entitled to business judgment protection because it failed to follow J&J's executive compensation philosophies, failed to follow J&J's guiding principles for executive compensation, and failed to follow J&J's executive compensation policies and procedures, as they were represented to J&J shareholders. The Board represented to J&J

shareholders in its proxy statement filed with the Securities and Exchange Commission March 16, 2011 (the "2011 Proxy") that:

> *Pay for performance is an essential element of the Company's guiding principles*, and the executive officers are assessed on their performance against long-term strategic objectives as well as annual business goals. *In alignment with the Company's Credo values*, it is important that the Company recognize its executive officers not only for the results they achieve, *but also for the manner in which they achieve them.*

2011 Proxy, at 22.[1] The Proxy Statement filed in March 2010 (the "2010 Proxy") similarly states:

> *Pay for performance is an essential element of the Company's guiding principles. In alignment with the Company's Credo values*, it is important that the Company recognize its executive officers for the results they achieve *as well as the manner in which they achieve them.*

2010 Proxy, at 20. The Board also represented in proxy statements that *the manner in which results are achieved* is measured by adherence to Credo Values whereby:

> *Credo Values* – The manner in which financial and strategic objectives are achieved is important. While not always quantifiable, the manner in which employees achieve results should also be a key element of the individual performance review process. During the performance review process, the Company's set of core values – trustworthiness, respect, responsibility, fairness, caring and citizenship – as set forth in Our Credo should be used to assess how objectives are achieved.

2011 Proxy, at 25 (emphasis in original).

5. For purposes of J&J's executive compensation, "performance" is evaluated using financial metrics, leadership measures, long-term growth measures, and the progress of J&J's reputation. In these areas, J&J has stagnated or suffered under Weldon's leadership. For example, since Weldon became CEO in April 2002, the value of J&J shares has remained flat. From 2007 through 2010, net sales have been flat; operating cash flows have been flat; research and development has declined; total liabilities have increased over 23% from $37.6 billion to $46.3 billion; and liabilities as a percentage of assets have increased. On December 31, 2004,

[1] Throughout this complaint, emphasis is added unless otherwise indicated.

the price of J&J stock was $63.42 per share. Five years later, on December 31, 2010, the price of J&J stock was $61.85 per share – a 2.5% decrease.

6. J&J's reputation and brands have suffered unprecedented harm under Weldon's leadership. Since the start of 2010, J&J has experienced dozens of product recalls covering J&J's most-recognizable brands. J&J also recalled two types of artificial hips, *after* 93,000 of those artificial hips had been implanted in patients worldwide. By January 2011, Director/Defendant Mulcahy, a member of the Compensation Committee, acknowledged in an interview on CNBC that the repeated instances of J&J recalls and related misconduct have "*been painful from a reputational perspective.*"

7. Yet, during the same five-year period that J&J has experienced stagnant performance and reputational harm, Weldon has seen his annual compensation double, from $14.3 million in 2005 to $28.7 million in 2010. As compared to J&J's lackluster performance and reputational harm, it is apparent that significant, positive compensating factors are necessary to justify the Board's lavish compensation of Weldon under J&J's "pay for performance" executive compensation philosophy.

8. As recently revealed and confirmed, however, there are no positive compensating factors that can reasonably explain Weldon's bloated level of compensation under J&J's pay-for-performance, and manner-of-performance principles. In fact, only negative factors predominate, whereby Weldon's performance and the manner of his performance have been contrary to J&J's Credo values and other J&J governance policies,[2] resulting in significant harm to J&J and its

[2] Other J&J governance policies are contained in corporate documents, including the "Johnson & Johnson Policy on Business Conduct"; "Code of Business Conduct & Ethics for Members of the Board of Directors and Executive Officers"; and "Health Care Compliance Guidelines." As explained by Weldon to J&J employees, "Our Credo, Policy on Business Conduct, and Health Care Compliance guidelines communicate our commitment to putting patients first."

vaunted brands and reputation. On these bases alone, Weldon's compensation should have been far less, and at a minimum commensurate with pre-2006 levels.

9. Defendants have long been aware that J&J has experienced an unprecedented level of compliance failures, recalls and misconduct that resulted in violations of J&J's Credo – all throughout Weldon's leadership. For example, the J&J Board has known of recurring and material violations of the J&J Credo and business practices under Weldon's leadership dating back to 2003, yet lavishly compensated Weldon regardless of performance or the manner of performance with reference to the Credo, such as:

(a) the Board had knowledge of multiple instances whereby the Company's drug manufacturing and marketing practices violated applicable laws and regulations;

(b) the Board had knowledge of state and federal government subpoenas or investigations directed at J&J as a result of its drug manufacturing and marketing practices;

(c) the Board had knowledge of complaints filed by various states' Attorneys General or the U.S. DOJ over alleged illegal conduct;

(d) the Board had knowledge of significant recalls of J&J products, including one secretive "phantom" recall designed to conceal from public view problems with J&J products;

(e) the Board had knowledge of warning letters issued by the U.S. Food and Drug Administration to J&J, some of which have reprimanded J&J for not complying with previous warning letters; and

(f) the Board had knowledge of actual or potential violations of the Foreign Corrupt Practices Act, and the fact that J&J paid kickbacks to the government of Iraq (during the reign of Saddam Hussein).

10. The misconduct, and related violations of the J&J Credo, that has taken place under Weldon's watch has resulted in scathing findings that call into question J&J's very core governing principals and compliance culture, such as:

(a) "J&J chose profit margins over compliance with the law by acquiring a private company for the purpose of paying bribes, and using sham contracts, off-shore companies, and slush funds to cover its tracks." Robert Khuzami, Director of Enforcement, U.S. Securities and Exchange Commission, April 7, 2011.

(b) "Corruption was, in effect, a company policy . . . [and the] corruption was systemic and long-term . . . ." Mr. Justice Bean of the Southwark Crown Court in London, April 14, 2010.

(c) "Based on the reasons stated above, and the considerable volume of evidence presented during the trial, this Court finds that the Defendants exhibited a callous disregard to a patient's right to have all possible information available, and in the hands of their physician, before deciding to use or to continue to use the drug. Further, I find that the Defendants allowed the 'profit at all costs' mentality to cloud the vision of their own responsibilities as acknowledged in their Credo. . . . While this is not a 'fraud on the FDA' case, this concealment shows that the Company employed procedures and methods which almost guaranteed repetition and further endangerment of the public. . . . Who knows how many of those mothers, fathers and patients referenced in their Credo, to be owed their best, were influenced into making incorrect decisions concerning their drug therapy?" Circuit Court Judge Roger L. Couch of the South Carolina Court of Common Pleas, after a jury found Janssen willfully engaged in unfair or deceptive practices concerning marketing and labeling of Risperdal® in the State of South Carolina, ordering J&J subsidiary Janssen to pay penalties of $327 million.

11. J&J's failed compliance culture was investigated by the Congressional Committee on Oversight and Government Reform. During that investigation, in September 2010, Rep. Elijah E. Cummings (D-Md.) explained to Weldon:

> Information I have seen during the course of your investigation raises questions about the integrity of the company; it paints a picture of a company that is deceptive, dishonest, and has risked the health of many of our children.
>
> Now, the Johnson & Johnson Web site states that "The values that guide our decision-making are spelled out in our Credo. *Put simply, our Credo challenges us to put the needs and well-being of the people we serve first.*" Living these values, McNeil Consumer Healthcare and Johnson & Johnson were lauded for their efforts recalling Tylenol and temporarily stopping advertising when lives were on the line due to cyanide contamination in 1982.
>
> *The recent events could not be more different.*

12. Weldon responded to Rep. Cumming's remarks by saying:

> Sir, if I could elaborate for a little bit, I think that we try and establish ourselves, I think there is a reference that the Chairman made earlier on to our Credo. And our Credo, our first responsibility is to the people who use our products. *I stated, and I would state again that we have let them down. There is absolutely no doubt we let them down. This was not one of our best moments.*

13. Weldon further admitted that he accepts "full accountability" for misconduct that resulted in violations of the J&J Credo, testifying as follows:

> Mr. Chairman, *I know that we let the public down.* We did not maintain our high quality standards.
>
> *I accept full accountability for the problems at McNeil*, and I will take full accountability for fixing these problems.
>
> McNeil should have handled things differently.

14. Weldon added:

> Now, I also want to be clear: *we should have determined the root cause in 2008. I do not want to defend our inaction there.*
>
> *So I do not want to make any excuses for what we should have done in 2008*, which was to have determined the root cause. As a corporation, we know today if

> we have adverse events we need to investigate. We investigate them thoroughly until we determine the root cause. And that is exactly what happened in this instance. *We did not*, and the FDA was absolutely correct in pointing that out to us. And we did identify it ultimately. It was a very, very scientifically challenging exercise. *But that is no excuse*.

15. Chairman Rep. Edolphus Towns (D-N.Y.) concluded the Congressional hearings by stating:

> At the outset of today's hearing, Johnson & Johnson specifically confirmed that they did not inform the FDA about the phantom recall.
>
> J&J also admitted that they made a mistake in the way they handled the defective Motrin.
>
> Nevertheless, the testimony today, combined with the testimony at our first hearing, indicated some very serious problems – both with the way Johnson & Johnson viewed its responsibility to the public and with its day-to-day relationship with the FDA.
>
> Mr. Weldon testified that J&J tries to work cooperatively with the FDA. On its face, that sounds positive. But there is often a thin line between "working cooperatively" and having a "cozy relationship."
>
> The documents we have seen in this case indicate that this line may have been crossed – early and often.
>
> But it is all too easy for J&J to say, "If the FDA had asked us to conduct a recall, we would have done it."
>
> On the contrary, the evidence indicates that J&J did everything it could to avoid a formal recall. *In short, J&J tried to pull a fast one on the American public, but they got caught.*

16. In an interview with Geoff Colvin, Senior Editor-at-Large, *Fortune*, Weldon admitted that Credo violations concerning the Tylenol and Motrin recalls called for public apologies:

> Colvin: Bill, Johnson & Johnson's famous Credo believes – begins famously, "We believe our first responsibility is to the doctors, nurses and patients . . . mothers and fathers, all others who use our products and services." *Is this recent recall some kind of failure to meet that value*?

> Weldon: *Yeah*, I think – I think we have to apologize, Geoff. *I think we – we have done a disservice to, uh, that first, you know, tenet of our Credo, which is our responsibility to patients*. And I think it's – *it's something that I have to apologize for*, and I think, as a corporation, we have to apologize for. We – we have to understand that *this is not the way we normally perform*; this is not what we expect of ourselves. So – so yes, it's a – *it's a disappointment to all of us*.

17. Inexplicably, following these admissions and other confirming information, the Board continued to lavishly compensate Weldon. Instead of recognizing the admitted Credo violations, poor performance, and the manner of performance (that harmed J&J's brand and reputation), the Board continued to lavishly compensate Weldon, basing its award, in part, on Weldon's response to the numerous failures for which Weldon testified to lawmakers that he takes "full accountability." By lavishly compensating Weldon for cleaning-up his admitted mistakes and failings, the Board has violated J&J's executive compensation philosophy and guiding principles, by compensating J&J executives regardless of performance, and regardless of their manner of performance. In sum, the Board has departed from the executive compensation scheme that it promised J&J shareholders, and instead is promoting and perpetuating a culture of rewarding executives for extraordinary compliance and reputational failures.

18. Credible observers have been highly critical of Defendants and their continuing support of Weldon and Weldon's corporate culture and leadership of J&J. For example:

(a) Professor Erik Gordon, Ross School of Business, University of Michigan:

> I think it's a disaster for what was a premier corporate brand name. I think what should happen is that Bill Weldon should retire and somebody from the outside should be brought in as CEO who is not part of J&J management, not from the Bill Weldon J&J culture, and can try to bring J&J back to its traditions and Credo. You've got to start at the top. This is not one mistake by one low-level person. And the response to the mistakes, including by Weldon, paints a pretty clear picture that the J&J most of us have known and loved is not Weldon's J&J.

* * *

> He's a career guy and the board is, essentially, condoning what is going on by allowing him to remain in place. Their approach seems to be to let him leave with dignity, but that sends the wrong signal to the outside world and inside J&J. It's a signal that what he's done is okay. But this is not acceptable conduct at J&J, as opposed to the kind of conduct that gets you a big bonus.
>
> * * *
>
> I think the board has shirked its responsibility. I don't think it's displayed exemplary conduct and set an example of how a board should act. For all the talk over the past decade of how boards should act, you've got too many old, retired guys on the board who are happy to have the directorship and pick up their money and not rock the boat. It turns out the president of my university [defendant Coleman, President of the University of Michigan] is on the [J&J] board."

(b) Professor Sydney Finkelstein, Tuck School of Business, Dartmouth University, discussing top CEO blunders of 2010:

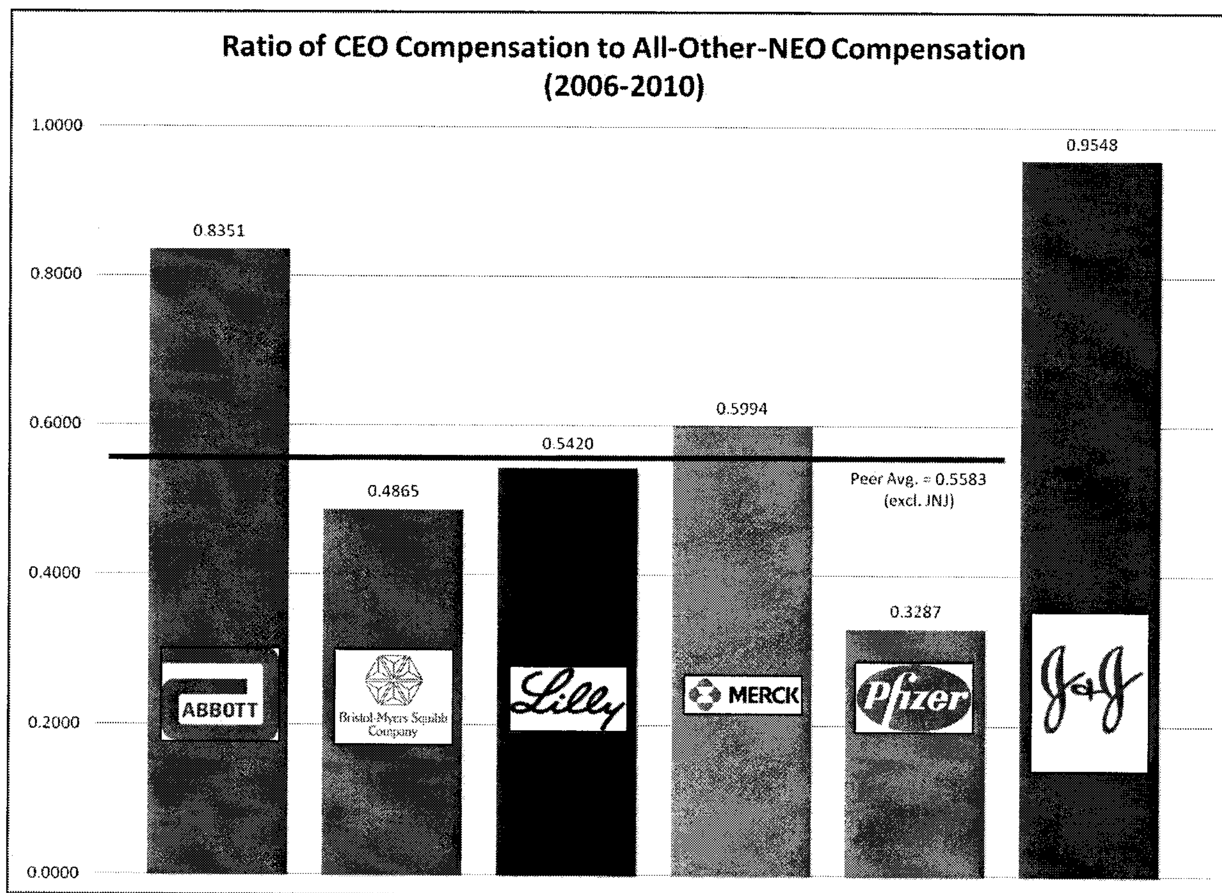
> J&J in 2010 has had a whole series of safety – product recalls, in many of the different divisions. And so when something like this happens in one division, especially in a decentralized company like J&J, we could say, "Look, it was that division that kind of messed up." But when it happens, three – four – five times across divisions, it becomes something that is about leadership and culture. And William Weldon is the CEO of the company, and it's his primary responsibility to focus on safety above all else given the types of products that are being made. The irony, of course, is that for years J&J was the gold standard when it came to the Tylenol recall back in the early 80's, and now unfortunately J&J may become not quite the gold standard for mismanaging safety concerns. And I think this is what elevates William Weldon to kind of the list of major CEO blunders, because of the company he's from, the standards are higher for a J&J. They are the best, and have been the best, and they really have fallen off of a perch this year.

19. Defendants have allowed Weldon's compensation to be lavish and extreme by any measure. For example, in 2010 Weldon was the highest paid executive of 86 pharmaceutical companies tracked by the AFL-CIO. Of these 86 companies, J&J was by far the company that suffered the most damaging compliance and reputational failures throughout 2010.

20. Weldon's compensation has also approximated (and sometimes exceeded) the total combined compensation of the next four most-highly-paid J&J executives. For the period 2006 through 2010, Weldon was compensated over $147 million and the combined compensation of the next four most-highly-paid J&J executives was $154 million. In other

words, during the prime time of J&J's compliance failures and misconduct, Weldon was paid over 95% of the combined compensation of the next four most-highly-paid J&J executives. For 2009, well after numerous problems surfaced at J&J, Weldon was compensated over $30 million while the combined compensation of the next four most-highly-paid J&J executives totaled less than $28 million. Defendants repeatedly justified to J&J's shareholders that Weldon's "compensation is higher than that of the Company's other executive officers due to the level of responsibility of his position." See 2011 Proxy at 39; 2010 Proxy at 37; and March 11, 2009 Proxy ("2009 Proxy") at 38.

21. As compared to J&J's peers – including peers with far more centralized management structures – Weldon's compensation unreasonably outweighs the compensation of other J&J named executive officers ("NEOs"), as the following chart illustrates:



22. Had Weldon's compensation more closely approximated the peer averages depicted above, Weldon's compensation would have been over $60 million less during the period 2006 through 2010. In other words, Weldon would have been paid about $90 million over five years; still significantly higher than J&J's other most highly-paid executives.

23. The truth is Weldon either (i) did not maintain anywhere near a level of responsibility commensurate with the extraordinary level of lavish compensation awarded by the J&J board; and/or (ii) was accountable for leading J&J into a gauntlet of compliance failures, improper acts and violations of the J&J Credo that resulted in immeasurable harm to J&J's vaunted reputation. In either case or both, Weldon's lavish compensation was wholly detached from positive performance, the manner of performance, adherence to J&J's Credo values, the resulting harm to J&J's brands and reputation, and the responsibilities placed upon him as CEO, in violation of J&J's pay-for-performance executive compensation philosophy and practices.

24. In sum, the Board's decisions to depart from J&J's executive compensation philosophies and guiding principles, by repeatedly awarding Weldon such lavish compensation regardless of performance, while leading J&J to extraordinary reputational harm, were not valid exercises of business judgment, but were unreasonable and disloyal acts which lacked good faith.

25. Defendants concealed and attempted to justify their misconduct by issuing to shareholders and filing with the Securities & Exchange Commission proxy statements that were materially false and misleading including, *inter alia*, the following statements:

(a) "Mr. Weldon continues to reinforce across all the Company's businesses the importance of adhering to the ethical principles of the Credo" and "[u]nder Mr. Weldon's leadership, the Company continues to enjoy a reputation as one of the world's most admired and respected companies." March 12, 2008 Proxy ("2008 Proxy") at 37.

(b) "Mr. Weldon continues to uphold the strong reputation of the Company" and "Mr. Weldon has sustained the ethical principles of the Credo." 2009 Proxy at 37.

(c) "The Company continued to maintain a strong reputation through Mr. Weldon's commitment to Our Credo, focus on sustainability, transparency in investor relations and philanthropic activities." 2010 Proxy at 37.

(d) "Mr. Weldon was instrumental in the Company's response to these [reputational and related] issues, including the implementation of a comprehensive remediation plan at McNeil and a new operating model for supply chain, quality, and compliance spanning the enterprise." 2011 Proxy at 38.

(e) Statements and characterizations that McNeil's product recalls and closure of McNeil's Fort Washington plant were "voluntary." April 19, 2011 Amended Proxy ("April 2011 Amendment").

JURISDICTION AND VENUE

26. This Court has federal question jurisdiction of this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. In addition, this Court has exclusive jurisdiction over this action pursuant to Section 27 of the Securities Exchange Act, 15 U.S.C. § 78aa, because this action asserts claims under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and has supplemental jurisdiction over the non-federal claims asserted herein under 28 U.S.C. § 1367(a). This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

27. This Court has jurisdiction over each Defendant because each Defendant has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the courts of this District permissible under traditional notions of equity and substantial justice.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged wrongdoing and/or their effects have occurred within this District, and Nominal Defendant J&J's headquarters are in this District.

THE PARTIES

Plaintiff

29. Plaintiff The George Leon Family Trust is a current shareholder of J&J common stock and has continuously held J&J stock since November 2008. Plaintiff makes the allegations contained herein based upon personal knowledge as to Plaintiff, and to all other matters upon information and belief, including the investigation of Plaintiff's counsel and their review of J&J corporate documents; SEC filings; media; court files; and related analyses.

Nominal Defendant

30. Nominal party J&J is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. J&J manufactures and sells pharmaceutical products, medical devices and consumer packaged goods.

Defendants

31. Defendant Mary Sue Coleman, Ph.D. ("Coleman") has been a J&J director, and has been a member of the J&J Board's Audit Committee and the Science & Technology Advisory Committee, since 2003. Coleman assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Coleman also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Coleman executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

32. Defendant James G. Cullen ("Cullen") has been a J&J director since 1995 and is J&J's Presiding Director of the Board and Chairman of the J&J Board's Audit Committee. Cullen has been a member of the Audit Committee since 1997 and the Nominating & Corporate Governance Committee since 2004. Cullen assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Cullen also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Cullen executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

33. Defendant Ian E. L. Davis ("Davis") has been J&J director, and has been a member of the J&J Board's Audit Committee and the Public Policy Advisory Committee, since July 2010. Davis retired from McKinsey & Company (management consulting) in 2010 as a Senior Partner, having served as Chairman and Worldwide Managing Director from 2003 until 2009. As Chairman and Worldwide Managing Director at McKinsey & Co., Inc., in 2006 Davis was responsible for consulting work provided to J&J pursuant to a Corporate Center Review ("CCR") conducted in 2006. The CCR restructured and diluted J&J's compliance activities and philosophies by causing worldwide compliance oversight of operating companies to be passive, not active. For example, following the CCR, worldwide J&J health care compliance staff was reduced by 25% to just 12 employees, and worldwide J&J quality and compliance was reduced by 35% to just 28 employees – all to cover J&J's worldwide compliance efforts involving approximately 114,000 employees at over 250 companies in 57 countries. Davis assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in

favor of J&J's executive compensation practices and Weldon's compensation. Davis executed and issued the J&J 2010 annual report on Form 10-K.

34. Defendant Michael M.E. Johns, M.D. ("Johns") has been a J&J director since 2005, and has been a member of the J&J Board's Compensation & Benefits Committee (hereinafter "Compensation Committee") and the Science & Technology Advisory Committee since 2006. Johns is also a member of the J&J Board's Special Committee. Johns assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Johns also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Johns executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

35. Defendant Arnold G. Langbo ("Langbo") was a J&J director from 1991 to 2010 and was chairman of the J&J Board's Compensation Committee and a member of the Nominating & Corporate Governance Committee until 2010. Langbo assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Langbo executed and issued the J&J 2008 and 2009 annual reports on Form 10-K.

36. Defendant Susan L. Lindquist, Ph.D. ("Lindquist") has been a J&J director, and has been a member of the J&J Board's Science & Technology Advisory Committee and the Public Policy Advisory Committee, since 2004. Lindquist assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Lindquist also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which

recommended that J&J shareholders vote for in favor of J&J's executive compensation practices and Weldon's compensation. Lindquist executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

37. Defendant Anne M. Mulcahy ("Mulcahy") has been a J&J director, and a member of the J&J Board's Compensation Committee and the Nominating & Corporate Governance Committee, since 2009. Mulcahy is also a member of the Board's Special Committee. In January 2011, Mulcahy acknowledged in an interview on CNBC that the repeated instances of J&J recalls and related misconduct have "been painful from a reputational perspective." Mulcahy has been and currently is the defendant in numerous shareholder suits, including cases stemming from corporate waste while serving as CEO of Xerox Corp. and on the boards of directors for Fannie Mae and Citigroup, Inc., where she served on the board of directors with Defendant Prince. Mulcahy assisted in and/or authorized the issuance of J&J's false and misleading March 17, 2010 Proxy Statement. Mulcahy also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Mulcahy executed and issued the J&J 2009, and 2010 annual reports on Form 10-K.

38. Defendant Leo F. Mullin ("Mullin") has been a J&J director since 1999, and has been a member of the J&J Board's Audit Committee since 2000, the Public Policy Advisory Committee since 2006, and the Nominating & Corporate Governance Committee from 2000 to 2005. Mullin assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Mullin also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's

executive compensation practices and Weldon's compensation. Mullin executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

39. Defendant William D. Perez ("Perez") has been a J&J director, and has been a member of the J&J Board's Compensation Committee since 2007, and was a member of the Public Policy Advisory Committee from 2007 to 2010. Perez has also been a member and chairman of the Nominating & Corporate Governance Committee since 2010. Perez is also a member of the Board's Special Committee. Perez assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Perez also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Perez executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

40. Defendant Charles O. Prince, III ("Prince") has been a J&J director since 2006, has been a member of the J&J Board's Compensation Committee since 2007, and its committee Chairman since 2010. Prince has also been a member of the Nominating & Corporate Governance Committee since 2007 and its committee Chairman from 2008 to 2010. Prince is also a member and Chairman of the Board's Special Committee. Prince has been and currently is the defendant in numerous shareholder suits, including cases stemming from his granting of excessive compensation to himself and others while CEO of Citigroup, Inc., where he served on the board of directors with Defendant Mulcahy. Prince assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Prince also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in

favor of J&J's executive compensation practices and Weldon's compensation. Prince executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

41. Defendant David Satcher, M.D., Ph.D. ("Satcher") has been a J&J director since 2002, has been Chairman of the Science & Technology Advisory Committee since 2003, and has been a member of the Public Policy Advisory Committee since 2002. Satcher assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Satcher also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Satcher executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K.

42. Defendant William C. Weldon ("Weldon") was elected to the J&J Board and named Vice Chairman of the Board in 2001 and assumed his current responsibilities as Chairman of the Board and Chief Executive Officer in April 2002. Weldon joined J&J in 1971 as a sales representative at McNeil Pharmaceutical. In 1989, he became Vice President, Sales and Marketing for Janssen. He was appointed to the Executive Committee and named Worldwide Chairman, Pharmaceuticals Group, in 1998, and became Chairman of the Executive Committee in 2002. Weldon assisted in and/or authorized the issuance of J&J's false and misleading proxy statements filed with the SEC in 2008, 2009, and 2010. Weldon also assisted in and/or authorized the issuance of J&J's false and misleading March 16, 2011 Proxy Statement and its April 19, 2011 amendment, both of which recommended that J&J shareholders vote in favor of J&J's executive compensation practices and Weldon's compensation. Weldon executed and issued the J&J 2008, 2009, and 2010 annual reports on Form 10-K. Each of these Forms 10-K contained a certification by Weldon that J&J management was responsible for establishing and

maintaining adequate internal control over financial reporting and that management had concluded that J&J's internal control over financial reporting was effective.

43. Weldon's executive and director responsibilities at J&J make Weldon the primary executive officer at J&J responsible for ensuring J&J's compliance with the J&J Credo:

(a) Weldon joined J&J in 1971, has been employed by J&J for his entire career continuously since that date, and was employed by J&J in sales, marketing and international management positions;

(b) In 1992, became President of J&J's Ethicon Endo-Surgery, Inc.;

(c) In 1995, became Company Group Chairman of Ethicon Endo-Surgery, Inc.;

(d) In 1998, was appointed to the Executive Committee and named Worldwide Chairman of J&J's Pharmaceuticals Group;

(e) In 2001, was elected to the J&J Board and named Vice Chairman that year;

(f) In 2002, became Chairman of the J&J Board of Directors, CEO, and Chairman of the Executive Committee;

(g) According to the Board, as represented in J&J proxy statements filed with the SEC, Weldon has "vast knowledge of the Company's business, structure, history and culture . . . ." 2011 Proxy at 9; 2010 Proxy at 9.

(h) Chairman of the Board's Finance Committee since at least 2007;

(i) Member of J&J's Management Compensation Committee;

(j) Weldon is responsible for the review, evaluation and certification of J&J's disclosure controls, including statements that J&J "used the criteria established by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)" that includes a proper "tone at the top" controls culture at J&J;

(k) According to the Board, "Mr. Weldon's compensation is higher [approximately four times higher] that that of the Company's other executive [most highly-paid] officers due to the level of responsibility of his position." *See* 2011 Proxy at 39; 2010 Proxy at 37; and

(l) Since 2007, Weldon has disposed of J&J securities for gross proceeds of over $60 million for gains over $17 million, and currently owns J&J securities valued at over $28 million. Weldon received an estimated $800,000 in J&J dividends in 2010, and an estimated $3.6 million of dividends since 2006.

DEFENDANTS' DUTIES

44. By reason of their positions as directors and fiduciaries of J&J, and because of their ability to control the business and corporate affairs of J&J, Defendants owed J&J and its shareholders fiduciary obligations of care, good faith, loyalty and candor, and were and are required to use their utmost ability to control and manage J&J in a fair, just, honest and equitable manner. Defendants were and are required to act in furtherance of the best interests of J&J and its shareholders so as to benefit all shareholders equally, and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to J&J and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing. Defendants' fiduciary duty of loyalty prohibits them from acting in bad faith as well as making false statements to J&J's shareholders about, among other things, its executive compensation practices and/or pay-for-performance executive compensation policy.

45. Defendants, because of their positions of control and authority as directors of J&J, were able to and did, directly and/or indirectly, exercise control over the wrongful acts

complained of herein. Because of their directorial positions with J&J, each of the Defendants had knowledge of material, non-public information regarding the Company.

46. Defendants also knew or should have known that the J&J Board's recommendation to J&J shareholders to approve J&J's 2010 executive compensation practices was false and misleading when made, as further described below.

47. To discharge their duties, the officers and directors of J&J were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of J&J were required to, among other things, exercise good faith and diligence to ensure the affairs of J&J were conducted legally, honestly, and efficiently, taking particular care to identify and correct misconduct and to prevent its recurrence.

48. The J&J Board of Directors is obligated, by virtue of adopting the J&J Policy on Business Conduct, to ensure compliance with such policy by J&J directors, officers and employees, which provides, among other things, the following:

(a) Consistent with Our Credo and business philosophy, it is the policy of Johnson & Johnson to comply with the laws of each country in which our companies do business.

(b) No employee of the Company shall engage in anti-competitive conduct in violation of any such antitrust or competition law.

(c) Management must take particular care to ensure appropriate employees are aware of regulatory requirements and take necessary steps to comply with them.

(d) Sales of the Company's products and services, and purchases of products and services of suppliers, shall be made solely on the basis of quality, price and service, and never on the basis of giving or receiving payments, gifts, entertainment or favors.

(e) No Company funds, assets or information shall be used for any unlawful purpose. No employee shall purchase privileges or special benefits through payment of bribes, illegal political contributions, or other illicit payments or otherwise give anything of value to a government office in order to influence inappropriately any act or decision on the part of the official.

(f) No payment shall be approved or made with the agreement or understanding that any part of such payment is to be used for any purpose other than that described by documents supporting the payment.

49. Defendants were also each obligated to comply, and annually certify such compliance, with the J&J Code of Business Conduct & Ethics for Members of the Board of Directors and Executive Officers, which provides, among other things, the following:

(a) If any Director or Executive Officer believes that a prohibited act under this Code has occurred, then he or she shall promptly report such belief to the Chairman of the Board, the Presiding Director and the General Counsel. While this is the preferred reporting procedure, any Director or Executive Officer should feel free to report any such alleged prohibited act hereunder to the Audit Committee or the Chairman of the Nominating & Corporate Governance Committee.

(b) No Director or Executive Officer shall take unfair advantage of any customer, supplier, competitor or other person through manipulation, concealment, misrepresentation of material facts or other unfair-dealing practice.

(c) Consistent with our Credo and business philosophy, it is the policy of Johnson & Johnson to comply with laws of each country in which our companies do business. Each Director and Executive Officer shall comply with all applicable laws, rules and regulations, and shall use all reasonable efforts to oversee compliance by employees, other Directors and other Executive Officers with all applicable laws, rules and regulations.

(d) No Company funds, assets or information shall be used for any unlawful purpose.

(e) No false or artificial entries shall be made in the books and records of the Company for any reason, and no Director or Executive Officer shall engage in any arrangement that results in such prohibited act.

50. Defendants (excluding Weldon) were compensated as directors with cash and stock in the following amounts:

Director	2006	2007	2008	2009	2010	Totals
Coleman	$ 199,687	$ 202,631	$ 239,317	$ 229,978	$ 229,940	$ 1,101,553
Cullen	219,687	222,631	239,317	229,978	229,942	1,141,555
Davis					114,580	114,580
Johns	197,489	201,683	238,690	229,978	222,442	1,090,282
Langbo	209,687	214,131	249,317	232,478	142,442	1,048,055
Lindquist	204,687	202,631	219,317	211,678	212,142	1,050,455
Mulcahy				79,995	212,142	292,137
Mullin	209,687	212,631	249,317	239,978	239,942	1,151,555
Perez		114,540	232,879	229,978	239,942	817,339
Prince	141,987	198,906	222,438	219,978	224,942	1,008,251
Satcher	209,687	212,631	229,317	239,978	239,942	1,131,555
	$ 1,592,598	$ 1,782,415	$ 2,119,909	$ 2,143,997	$ 2,308,398	$ 9,947,317

AIDING AND ABETTING AND CONCERTED ACTION

51. In committing the wrongful acts particularized herein, Defendants have pursued or joined in the pursuit of a common course of conduct, and have acted in concert with one another in furtherance of their common plan or design. In addition to the wrongful conduct particularized herein as giving rise to primary liability, Defendants further aided and abetted and/or assisted each other in breach of their respective duties.

52. Each of Defendants aided and abetted and rendered substantial assistance in the wrongs detailed herein. In taking such actions to substantially assist the commission of the wrongdoing detailed herein, each Defendant acted with knowledge of the primary wrongdoing,

substantially assisted the accomplishment of that wrongdoing and was aware of his or her overall contribution to and furtherance of the wrongdoing.

SUBSTANTIVE ALLEGATIONS

The J&J Executive Compensation Philosophy

53. J&J has long represented that it employs an executive compensation philosophy that adheres to the following guiding principles, including "Pay for Performance" and "Credo Values":

- *Competitiveness* – All components of compensation should be set competitively as compared against appropriate peer companies so that the Company can continue to attract, retain and motivate high performing executives in an environment where companies are increasingly competing for high caliber talent.
- *Pay for Performance – All components of compensation should be tied to the performance of the individual executive officer* and his or her specific business unit or function *and/or the Company overall.*
- *Credo Values – The manner in which financial and strategic objectives are achieved is important.* While not always quantifiable, *the manner in which employees achieve results should also be a key element* of the individual performance review process. *During the performance review process, the Company's set of core values – trustworthiness, respect, responsibility, fairness, caring and citizenship – as set forth in Our Credo should be used to assess how objectives are achieved.*
- *Accountability for Short- and Long-Term Performance* – Annual performance bonuses and long-term incentives *should reward an appropriate balance of short-and long-term financial and strategic business results, with an emphasis on managing the business for the long term.*
- *Alignment to Shareholders' Interests* – Annual Performance bonuses and long term incentives should align the interests of individual executive officers *with the long-term interests of the Company's shareholders.*

See 2011 Proxy at 25; 2010 Proxy at 23.

54. The J&J Board has consistently represented that "Pay for Performance" is essential and necessary to J&J's executive compensation practices and philosophy:

(a) "Pay for performance is an essential element of the Company's guiding principles, and the executive officers are assessed on their performance against long-term strategic objectives as well as annual business goals." 2011 Proxy at 22; 2010 Proxy at 20 (similar language).

(b) "Pay for Performance – All components of compensation should be tied to the performance of the individual executive officer and his or her specific business unit or function and the Company overall." 2011 Proxy at 25; 2010 Proxy at 23 (similar language).

(c) "The Company's formal individual performance assessment process is designed to . . . [f]oster a pay for performance culture . . . ." 2011 Proxy at 33; 2010 Proxy at 32.

(d) "The guiding principles of the Johnson & Johnson's executive compensation philosophy and practice continue to be: Competitiveness; Pay for Performance; Accountability for Short- and Long-Term Performance; and Alignment to Shareholders Interests." 2011 Proxy at 62.

55. Central to J&J's "Pay for Performance" compensation philosophy is the manner in which performance is achieved, as expressed in J&J's "Importance of Credo Values":

> *For more than 65 years, the Johnson & Johnson Credo has guided the actions of the Company and its executive officers in fulfilling their responsibilities to the Company's customers, employees, communities, and shareholders.* In assessing the executive officers' contributions to the Company's performance, the Committee not only looks to results-oriented measures of performance, *but also considers how those results were achieved – whether the decisions and actions leading to the results were consistent with the values embodied in the Credo – and the long-term impact of an executive officer's decisions.* Credo-based behavior is not something that can be precisely measured; thus, there is no formula for how Credo-based behavior can, or will, impact an executive's compensation. *The [Compensation] Committee and the Chairman/CEO use their judgment and experience to evaluate whether an executive's actions were aligned with the Company's Credo values.*

See 2011 Proxy at 25; 2010 Proxy at 23.

56. J&J's mission statement states:

> At the heart of everything we do at Johnson & Johnson is our Credo. In 1943, Robert Wood Johnson wrote Our Credo, a document that outlines our responsibilities to our customers, employees, the community and our shareholders. Johnson & Johnson's adherence to the ethical principles embodied in the Credo have resulted in numerous awards and accolades which recognize the Company as an employer and a good corporate citizen.

57. According to the J&J website, the J&J Credo is essentially the soul of J&J:

> The values that guide our decision making are spelled out in Our Credo. Put simply, Our Credo challenges us to put the needs and well-being of the people we serve *first*.
>
> Robert Wood Johnson, former chairman from 1932 to 1963 and a member of the Company's founding family, crafted Our Credo himself in 1943, just before Johnson & Johnson became a publicly traded company. This was long before anyone ever heard the term "corporate social responsibility." *Our Credo is more than just a moral compass. We believe it's a recipe for business success. The fact*

that Johnson & Johnson is one of only a handful of companies that have flourished through more than a century of change is proof of that.

58. The J&J Credo is as follows (see next page):

Our Credo

We believe our first responsibility is to the doctors, nurses and patients,
to mothers and fathers and all others who use our products and services.
In meeting their needs everything we do must be of high quality.
We must constantly strive to reduce our costs
in order to maintain reasonable prices.
Customers' orders must be serviced promptly and accurately.
Our suppliers and distributors must have an opportunity
to make a fair profit.

We are responsible to our employees,
the men and women who work with us throughout the world.
Everyone must be considered as an individual.
We must respect their dignity and recognize their merit.
They must have a sense of security in their jobs.
Compensation must be fair and adequate,
and working conditions clean, orderly and safe.
We must be mindful of ways to help our employees fulfill
their family responsibilities.
Employees must feel free to make suggestions and complaints.
There must be equal opportunity for employment, development
and advancement for those qualified.
We must provide competent management,
and their actions must be just and ethical.

We are responsible to the communities in which we live and work
and to the world community as well.
We must be good citizens — support good works and charities
and bear our fair share of taxes.
We must encourage civic improvements and better health and education.
We must maintain in good order
the property we are privileged to use,
protecting the environment and natural resources.

Our final responsibility is to our stockholders.
Business must make a sound profit.
We must experiment with new ideas.
Research must be carried on, innovative programs developed
and mistakes paid for.
New equipment must be purchased, new facilities provided
and new products launched.
Reserves must be created to provide for adverse times.
When we operate according to these principles,
the stockholders should realize a fair return.

Johnson & Johnson

59. The J&J Credo cannot be satisfied unless J&J operates in compliance with the laws of each country in which its companies do business. As explained in J&J's "Policy on Business Conduct" the importance of legal compliance in management's responsibility, stating:

> Consistent with our Credo and business philosophy, *it is the policy of Johnson & Johnson to comply with the laws of each country in which our companies do business. It is the responsibility of each company's management and employees to be familiar with the laws and regulations* which relate to their business responsibilities *and to comply with them.*
>
> The Law Department of Johnson & Johnson conducts periodic programs to help our companies and employees understand and comply with applicable laws and regulations and is available to your company for this purpose. Additionally, the Law Department is always available for consultation on the laws which relate to our businesses around the world. *However, it is the responsibility of each company's management to ensure compliance with applicable laws.*

60. Credo compliance (and thus legal compliance) is also critical to J&J's strategic objectives, including maintaining a strong reputation to "[e]nsure that the Company fulfills its responsibilities to its customers, employees, communities, and shareholders, as set forth in our Credo." *See* 2011 Proxy at 36. J&J's rationale for the "Reputation" strategic objective is to "*measure how well the Company is meeting its social responsibilities to its communities as outlined in the Credo*," is "*[k]ey to maintaining strong brands*," and "[b]uilding relationships with the investment community and media [because it] is important in helping investors, customers, and other stakeholders understand the Company's business model." *Id.*

<u>The Board Has Long Been Aware of Violations of the J&J Credo, Related Governance, and the Resulting Harm to J&J's Brands and Reputation</u>

61. Before 2007, the Board had learned of an overwhelming number of adverse events that threatened J&J, its brand and reputations, and included violations of the Credo and related governance policies germane to executive compensation decisions. Further, the Board had actual and/or constructive knowledge that Weldon was responsible and/or had a role in events that individually and/or collectively evidenced violations of the Credo and related governance policies, including, but not limited to, the following:

a) After the FDA had approved Natrecor® (a drug used to treat congestive heart failure) for limited use for hospitalized patients, in 2003 Weldon approved a business plan that included outpatient use for Natrecor®.[3]

b) In 2003, J&J received a request for information and documents from the U.S. Attorney's Office in New Jersey in connection with its investigation into marketing practices at J&J's Centocor unit.

c) In 2003, J&J received a subpoena from the U.S. Attorney's Office in Boston related to the off-label marketing of the epilepsy and migraine drug Topamax®.[4]

d) In 2003, J&J received a subpoena from the SEC regarding Foreign Corrupt Practices Act violations in Poland.

e) In or about 2003, J&J's internal audit group was notified by an anonymous letter that J&J was paying kickbacks to surgeons in Greece. The Board's Audit Committee would have received detailed information about these allegations in connection with the Audit Committee's oversight responsibilities over the internal audit function. See J&J Audit Committee Charter.

f) In January 2004, J&J received a subpoena from the U.S. Office of Personnel Management related to Risperdal® (a drug to treat schizophrenia).[5]

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[3] J&J faces a federal *qui tam* action for illegal promotion of Natrecor®.

[4] In April 2010, the U.S. Department of Justice announced that J&J had agreed to pay more than $81 million to resolve criminal and civil liability arising from the illegal promotion of Topamax®. The settlement included a guilty plea for violation of federal law by J&J subsidiary McNeil. In September 2010, Weldon accepted "full accountability for the problems at McNeil."

[5] J&J faces substantial liability concerning Risperdal®. In June 2011, a South Carolina judge penalized Janssen $327 million for marketing and labeling of Risperdal® following jury's findings that Janssen willfully engaged in unfair or deceptive practices concerning marketing and labeling of Risperdal® in the State of South Carolina. Other states are pursuing similar claims.

g) In April 2004, the FDA sent a Warning Letter to Weldon (a notice of violations of the Federal Food, Drug, and Cosmetic Act) concerning the Company's false and misleading Risperdal® warnings. Despite the red flags raised by the Risperdal® subpoena and the notice of violations of federal law for illegal drug promotion, the following month in May 2004, under Weldon's leadership, J&J paid a $500,000 grant to the University of Texas Southwestern Medical Center, to promote a University of Texas cardiologist friendly toward outpatient use of Natrecor®.

h) In July 2004, J&J received requests from the New York Attorney General's office pertaining to off-label marketing and results of clinical trials for six J&J drugs.

i) In September 2004, the FDA issued another Warning Letter to Weldon, citing violations of federal law relating to J&J's false and misleading marketing of Topomax®. The Warning Letter cited "serious public health concerns because [J&J marketing materials] encourage the unsafe use of Topamax®, including, particularly, in pediatric patients." The same month, J&J subsidiary Ortho Biotech received a subpoena from the OIG regarding marketing of Procrit® (a drug to treat anemia).[6]

j) In July 2005, J&J's Scios subsidiary received a subpoena from the U.S. Attorney's Office in Boston seeking documents relating to potential unlawful sale and marketing of Natrecor®.

k) In August 2005, the New York Times published an article entitled "Expert Panel Gives Advice that Surprises a Drug Maker" describing J&J's off-label use of Natrecor®

[6] Questionable marketing of Procrit® triggered letters from Congressmen stating that J&J Procrit® marketing campaigns are likely to convince doctors to prescribe Procrit® at unsafe doses. These concerns have been confirmed in Procrit® personal injury lawsuits that cite a New York Times report that about 50% of kidney failure patients received Procrit® doses above the FDA-approved levels. The lawsuits further assert that American patients receive twice the Procrit® dosage that European patients receive.

and the Company's Special Advisory Committee's unfavorable findings. Among other things, the article stated that the "committee of 10 medical experts determined that use of Natrecor®, an expensive intravenous therapy, should be strictly limited to acutely ill patients in hospitals." The Special Advisory Committee asked Scios to begin warning doctors against the drug's use in outpatients, a treatment that was not approved by the Food and Drug Administration but that had helped turn Natrecor® into a big money maker.

l) In September 2005, J&J received a subpoena from the U.S. Attorney's Office for Massachusetts regarding the sales and marketing of eight drugs to Omnicare, Inc.

m) In November 2005, J&J's Janssen subsidiary receives a subpoena from the U.S. Attorney in Philadelphia regarding marketing of, and adverse reactions to, Risperdal®.

n) During 2005, the U.S. Senate Finance Committee questioned J&J's use of supposed educational grants as a tool to promote the prescriptions of J&J drugs, which could include off-label marketing and unlawful kickbacks.

o) In January 2006, the Texas Attorney General issued an investigative demand regarding potential illegal marketing of Risperdal®.

p) In March 2006, the Centers for Medicare & Medicaid Services issued a nationwide coverage determination denying coverage for outpatient use of Natrecor®.

q) In June 2006, J&J received a subpoena from the Boston U.S. Attorney's Office regarding off-label marketing of Topomax®, and J&J's DePuy subsidiary received a subpoena from the U.S. Department of Justice's Antitrust Division regarding the manufacture, marketing and sale of orthopedic devices.[7]

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[7] The DePuy product problems have been a disaster for recipients of DePuy hip replacements. J&J has known since at least 2008 of hundreds of complaints related to DePuy hip replacements. Finally, in August 2010, a recall of DePuy hips was initiated, following a study indicating that the five-year failure rate of this product is approximately 13%, or one in eight patients. The

r) In September 2006, a *qui tam* action was filed against J&J regarding biliary stents alleging that J&J falsely told the FDA that it was using its stents as biliary stents, which require lesser FDA review, when it was promoting the stents as vascular stents, subject to greater FDA review. A month later, the Texas Attorney General's Office joined a *qui tam* action filed against J&J's Janssen subsidiary in Texas state court, alleging off-label marketing of Risperdal® and seeking compensation for alleged adverse patient reactions from Risperdal®. Also, the California Attorney General issued a subpoena concerning marketing, kickbacks and sales of Risperdal®, and interactions with public officials regarding Medicaid-reimbursed drugs.

s) In or about 2006, a whistleblower again notified the J&J internal audit group that J&J was paying kickbacks to doctors in Greece. Again, the Board's Audit Committee would have received detailed information about these allegations in connection with the Audit Committee's oversight responsibilities over the internal audit function.[8]

62. Despite these numerous red flags crying out for improved, centralized corporate governance and compliance with laws and the J&J Credo, the Board allowed Weldon and his management team to restructure and further decentralize J&J's compliance structure. This compliance restructuring effort had the effect of dispersing compliance responsibilities and accountability to operating companies who had also been tasked with meeting certain financial

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recall is particularly devastating to patients who have already undergone one surgical procedure to replace a hip and now face a second surgery under the recall, obviously putting patients' health at serious risk of related complications. Personal injury lawsuits filed against DePuy and J&J number in the thousands.

[8] The Board and the Board's Audit Committee had actual or constructive knowledge of allegations that J&J employees and agents had routinely paid bribes to public doctors in Greece who selected J&J surgical implants for their patients. Further, payment of kickbacks is highly-intentional misconduct, and was actively concealed, whereby J&J used slush funds, sham contracts and off-shore companies in the Isle of Man to carry out the bribery. In order to conceal the payments to the Greek, Polish and Romanian doctors on the books and records of J&J and its subsidiaries, the payments were misrepresented as, among other things, "commissions," "civil contracts," "travel," "donations" and "discounts." As part of its duties, the Board knew, or should have known, of these facts.

targets. This restructuring created conflict of interests whereby Credo and other compliance became less important. In the words of the Special Committee:

> In essence, the corporate Compliance philosophy became "pull not push." The corporate Compliance organizations no longer "pushed" themselves onto the operating companies, but responded to requests for assistance or advice from the operating companies.

63. This restructuring lead to a 25% reduction of the Health Care Compliance and a 35% reduction of J&J's quality and control headcount. In sum, there were only a few dozen compliance professionals available to directly assist Weldon with overseeing and monitoring compliance of over 100,000 employees at over 200 companies in over 50 countries.

64. After the significant compliance restructuring, the Board learned of further numerous Credo violations that threatened J&J, its brand and reputations, and included Credo violations germane to executive compensation decisions. The Board had actual and/or constructive knowledge that Weldon was responsible and/or had a role in events that individually and/or collectively evidence violations of the Credo and related governance policies, including, but not limited to, the following:

a) In March 2007, J&J's Cordis subsidiary received a letter from the House Committee on Oversight and Government Reform regarding its marketing of stents. Further federal and state investigations are initiated into unlawful marketing practices.

b) In May 2007, the U.S. Senate Finance Committee sent J&J a letter regarding Procrit® marketing practices. The New York Attorney General issues a subpoena for information about Procrit® marketing

c) In August 2007, an internal J&J report showed that the Fort Washington plant has had widespread manufacturing problems since 2005. Executive management received

the report, yet nothing was done. In 2007, the Company again experienced an unusual number of drug, medical device, and product recalls.

d) In September 2007, the Department of Health and Human Services filed a criminal complaint in New Jersey alleging systematic illegal kickbacks by J&J. J&J announced a settlement pursuant to which: (i) J&J paid $84.7 million to settle charges regarding kickbacks to orthopedic surgeons, (ii) pled guilty to conspiracy to violate the federal Anti-Kickback Statute, and entered into a deferred prosecution agreement and a corporate integrity agreement; and (iii) J&J's DePuy subsidiary accepted a monitor to oversee compliance with the deferred prosecution agreement.

e) In November 2007, the FDA issued a warning letter to J&J subsidiary Scios identifying the failure to disclose appropriate indication and patient risk information in connection with Natrecor®. The same month, J&J announced a $440 million write-down due to declining sales of Natrecor®. Also in November 2007, the Arkansas Attorney General's Office filed a complaint seeking damages and other relief arising from off-label promotion of Risperdal®.

f) In December 2007, J&J received a request from the U.S. Senate Finance Committee concerning the marketing and promotion of Risperdal® for use by nursing home patients.

g) A December 2007 *qui tam* complaint also cited kickbacks, alleging that McNeil "illegally and aggressively promotes . . . Topamax® – for numerous off-label treatments not approved by FDA" through a variety of fraudulent means, including "the illegal remuneration of providers to influence their prescribing practices and to induce them to prescribe Topamax®."

h) After 2007, J&J employed a scheme to award travel benefits to doctors in Romania who prescribed and/or promoted J&J products.

i) In February 2008, a False Claims Act complaint was unsealed in the District of Massachusetts, alleging among other things that J&J had engaged in a widespread fraudulent scheme regarding off-label marketing of Topamax®. The complaint detailed how Topamax® was fraudulently marketed, including use of fictitious and scientifically baseless "studies." The complaint also alleged that J&J actively sought to minimize and mislead practicing physicians about the serious and life threatening side-effects of Topamax®.

j) In August 2008, J&J engaged in a secretive "phantom recall," in which J&J hired contractors to pose as customers and buy adult Motrin off the shelves in order to remove the product from store shelves, concealing from the public the need to recall the product.

k) In August 2008, the Louisiana Attorney General's office filed a complaint seeking damages and other relief arising from the off-label promotion and sale of Risperdal®. In October 2010, a jury found that J&J had illegally marketed Risperdal® and should pay $258 million of damages to the State of Louisiana.

l) In September 2008, J&J received a letter from the FDA concerning violations of law and identifying misrepresentations made in the promotion of J&J's Concerta® drug.

m) In December 2008, the Texas Attorney General filed a complaint arising from off-label promotion of Risperdal®.

n) Also in 2008, the FDA issued a report on Tylenol Arthritis, noting that J&J failed to timely report contamination at its facilities or to follow up on corrective

commitments related to product recalls. The report also notes that procedures were not followed and internal investigations were deficient.

o) The "phantom recall" tactics of 2008 were repeated in 2009, and included a memorandum instructing a secret recall the products in stores and that there should be no mention of the recall to vendors.

p) In April 2009, J&J was served with complaints in two civil *qui tam* cases regarding the marketing of prescription drugs to Omnicare, Inc.

q) In May 2009, the FDA sent a warning letter to Weldon describing illegal marketing of J&J Ultram® ER ("extended release") painkiller, saying J&J promotions were "false or misleading because they omitted and minimized the serious risks of the drug and overstated the efficacy of Ultram® ER."

r) In June 2009, the DOJ filed a Complaint following its intervention in a *qui tam* action concerning Natrecor®. The complaint alleged that "J&J engaged in a fraudulent scheme to market and promote Natrecor® for serial, scheduled outpatient infusions – a use not approved by the FDA." Also, J&J trained its "sales force to market for outpatient use because 'that's where the money is.'"

s) In September 2009, J&J publicly recalled 21 different infant and children's products after an FDA inspection of McNeil's Fort Washington plant found that product contained B. capacia bacteria.

t) In November 2009, J&J recalled five lots of Tylenol Arthritis Pain Caplet 100-count bottles because of an unusual smell or taste. J&J later expanded the November 2009 recall to include all lots of Tylenol Arthritis Pain 100-count because of the unusual, moldy odor. The total recall of Tylenol Arthritis Pain medication was about 6.3 million bottles.

u) In November 2009, the DOJ announced a $98 million settlement from Omnicare to resolve anti-kickback claims.

v) In January 2010, The New York Times reported widespread off-label marketing of biniary stents by J&J, and the DOJ filed a complaint against J&J on January 15, 2010, intervening in the two Omnicare *qui tam* cases.

w) In January 2010, the McNeil product recalls were expanded to include Benadryl®Allergy, Children's Tylenol® Meltaway, and Rolaids®. J&J receives another Warning Letter from the FDA, highly critical of upper management.

x) In February 2010, J&J received Civil Investigative Demands from multiple states' Attorneys General seeking additional information relating to sales and possible illegal marketing of J&J products.

y) In April 2010, a former executive with J&J's DePuy unit was sentenced to 12 months in a U.K. prison after pleading guilty to charges related to his involvement in DePuy payments in Greece. Also, J&J recalls 135 million bottles of product made in Fort Washington, Pennsylvania and closes the plant.

z) In May 2010, the FDA's Joshua Sharfstein says the U.S. may pursue criminal charges against J&J.

aa) In June 2010, McNeil expands the recall from its Puerto Rico plant to include five more lots of Benadryl®and Tylenol®. A South Carolina judge penalizes J&J $327 million for deceptive marketing of Risperdal®.

bb) In July 2010, J&J disclosed that the U.S. Attorney's Office in Philadelphia issued grand jury subpoenas concerning the vast and ongoing recalls of McNeil products. J&J submits to the FDA a remediation plan for the McNeil plants.

cc) In August 2010, J&J received a warning letter from the FDA relating to improper marketing of DePuy's TruMatch® Personalized Solutions System and the Corail® Hip System without the required marketing clearance or approval, and J&J announced that the FDA had forced J&J to stop its sales of the Corail® Hip System due to improper marketing. J&J also recalls 100,000 boxes of 1-Day Acuvue® TruEye contact lenses; days later, DePuy recalls ASR™ hips. In an interview Weldon admitted that, "We've learned a lot of lessons. They've been very painful." Also, J&J announces the selection of a Quality & Compliance Team.

dd) In September 2010, Weldon admitted in a Financial Times interview that J&J may face criminal action due to recent investigations and that the problems facing the company have been "most disheartening . . . we've let the people who use our products down. This is a very difficult situation."

ee) In October 2010, a jury finds J&J should pay Louisiana $258 million for illegal marketing of Risperdal®.

ff) In November 2010, the FDA completed its inspection of the Las Piedras facility and issued an FDA Form 483 ("Inspectional Observations") detailing significant and potential manufacturing and process failures. Also, J&J recalled 71,000 packages of Rolaids® following consumer complaints of "an uncharacteristic consistency or texture." J&J also recalled 4 million packages of Benadryl® Fastmelt tablets and 800,000 Motrin® caplets. J&J recalled nine million bottles of Tylenol® Cold Multi-Symptom liquid medication due to mislabeling of the product's alcohol content due to flavoring agents. J&J recalled twelve million bottles of Mylanta® and 85,000 bottles of AlternaGel® liquid antacid.

gg) In December 2010, J&J recalled all lots of three varieties of Rolaids® Natrecor® (up to 13 million packages) after J&J customers report wood and metal particles in

the product. J&J also announces an expansion of its August 2010 recall of Acuvue® contact lenses to 492,000 boxes.

hh) In January 2011, J&J withdraws 43 million bottles of Rolaids®, Tylenol®, Benadryl®, and Sinutab®; and announces that lost sales from recalls and plant slowdowns is about $900 million.

ii) In February 2011, J&J units announce recalls of 70,000 potentially cracked syringes preloaded with the antipsychotic Invega®.

jj) In March 2011, J&J withdraws 585,000 surgical sutures due to concerns about compromised sterile packaging; David Floyd, president of DePuy Orthopaedics, announces his resignation; J&J's Animas unit announces recall of 384,000 insulin-pump cartridges that may leak; and FDA and McNeil announce consent decree that will give agency expanded oversight of three plants.

The Repeated Violations of J&J's Credo and Related Governance Have Substantially Harmed J&J's Brands and Reputation

65. The years of illegal marketing practices, kickbacks and manufacturing and recall issues are a manifestation of Weldon's allowance of repeated and recurring violations of the J&J Credo, known to the Board. The failed management and leadership of Weldon that resulted in an overwhelming number of Credo violations had negatively and materially impacted J&J's "Reputation," as was exemplified by the following public reports:

(a) On January 22, 2010, the *Wall Street Journal* published an article titled "*Has Johnson & Johnson's Reputation Been Damaged?*" that stated:

> Consumer healthcare goods behemoth Johnson & Johnson (JNJ:NYSE) was slammed with a succession of negative news last Friday – and *it's now left to investors to consider whether the company's image has been permanently damaged.*
>
> It was, to be sure, *a very Black Friday for J&J*: In the evening, the U.S. Justice Department revealed it had filed a complaint against J&J for allegedly offering

millions of dollars in kickbacks to the U.S's largest nursing home pharmacy, Omnicare (OCR:NYSE).

(b) On May 4, 2010, *TheStreet.com* published a report called "*Tylenol Recall: Is J&J's Reputation in Tatters?*" that stated:

> Johnson & Johnson (JNJ:NYSE) has been in the headlines a lot lately – and for all the wrong reasons. Indeed, its latest children's Tylenol recall is only *the most recent stain on the reputation of the company.*

(c) Also on May 4, 2010, *Bloomberg News* published an article called "*Bacteria Found in J&J's Tylenol Ingredients*" that stated:

> "This is a pretty copious list of things," Les Funtleyder, an analyst with Miller Tabak & Co., said today in an interview. "*You've got a company that's considered one of the premier companies, that's spent something like 100 years building its reputation. This is the kind of thing that can hurt that.*"
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> * * *
>
> The recall isn't likely to hurt J&J financially, said Linda Bannister, an analyst with Edward Jones & Co. "We're not concerned about the damage from an actual profitability standpoint," she said today in a telephone interview. "Although J&J is built on a pretty solid reputation, if this expands or becomes more of an issue and J&J's reputation suffers, that's when it could begin to become problematic."

(d) On May 5, 2010, *Reuters News* published a report called "*FACTBOX-J&J Product Recalls Test Company's 1943 'Credo'*" that stated:

> Four recent recalls of Johnson & Johnson's Tylenol painkiller and other over-the-counter products have *called into question how well the company is adhering to quality standards enshrined in its corporate credo.*

(e) On May 7, 2010, *Tendersinfo News* published a report called "*United States: FDA Finds Grime and Bacteria at J&J Plant, Urges Generic Drugs*" that stated:

> *The findings were a further blow to J&J's reputation*, as the FDA later on Tuesday urged parents to choose private label alternatives for the over-the-counter medications and said it was weighing possible further regulatory action.

(f) On May 27, 2010, *ABC News* published a report called "*Their Fiasco; A Parent's Worry*" that stated:

> Government officials said today they are considering criminal charges against Johnson & Johnson, stemming from last month's huge recall of Tylenol and other popular over the counter children's medicines. *It's the latest flood of the drug*

> *maker's reputation and something parents have to think about every time they try to buy medicine for their kids.*

(g) On May 28, 2010, the *Star-Ledger* published a report called "*J&J Recall Has Led to Changes at the Top*" that stated:

> Still, the recall, especially details of the problems leading up to it, *have badly blemished the reputation of the New Brunswick-based health care giant*. At one point during the hearing, Chairman Edolphus Towns (D-N.Y.) described Johnson & Johnson's actions as "*deceptive and dishonest*."

(h) On May 31, 2010, *Pharm Aid* published a report called "*What's Next for J&J?*" that stated:

> *For J&J, shielding their CEO isn't helping the company on the reputation front.* J&Js CEO, William Weldon, gave one media interview before going into hiding. J&Js cover story is that he's undergoing a pre-scheduled medical procedure (sounds like liposuction). J&J needs to get its CEO out in front of the public FAST. If he's not dead, he needs to be doing media interviews from his hospital bed. This shouldn't be delegated to their official scapegoat (Colleen Goggins).

(i) On June 1, 2010, the *Associated Press* published a news article titled "*Congress Investigating J&J 'Phantom Recall'*" that reported:

> "It raises the question of whether Johnson & Johnson placed a higher priority on preserving the reputation of its Motrin brand than it did on consumer protection," states the letter from Chairman Rep. Edolphus Towns, D-N.Y., who chairs the House Committee on Oversight and Government Reform.

(j) On June 2, 2010, the *Mother Nature Network* published a report called "*McNeil Accused of Cover-Up in Motrin Recall*" that stated:

> *The sheer number of recalls and products involved has put a ding in Johnson & Johnson's reputation*. But what's worse, the company is now accused of actually trying to hide one of these recalls from the public.

(k) On June 6, 2010, the *Star-Ledger* published an article called "*Don't Use as Directed*" that stated:

> While off-label marketing isn't usually dangerous to patients, the practice has made drug makers more vulnerable to patient lawsuits over safety problems and *has sullied once-pristine reputations of companies such as Johnson & Johnson.*

(l) On June 7, 2010, *CNN Money* published an article called "*The Brilliant Lessons from McDonald's Recall*" that stated:

> But, while McDonald's will likely have to address the recall in its restaurants and produce a new successful promotion to bring some skittish customers back inside, the restaurant chain is already moving from the cloud of the recall. That is not so for Johnson & Johnson (JNJ, Fortune 500), which is still grappling with massive consumer and regulatory hurdles over the way its McNeil Consumer Healthcare unit has handled several recalls – the last being the April recall of 136 million bottles of Benadryl, Motrin, Tylenol and Zyrtec for children and infants. Executives recently faced congressional grilling, while the FDA says it is now considering "seizure, injunction or criminal penalties" against the unit, which has been accused of trying to cover up manufacturing problems.

(m) On July 8, 2010, the *International Business Times* published an article titled "*Johnson & Johnson Division McNeil Recalls Various OTC Drugs*" that stated:

> Products of Johnson & Johnson, which once enjoyed a strong reputation for safety and quality control, has come under scanner of the FDA in recent times for selling substandard drugs.

(n) Also on July 8, 2010, the *Associated Press* published an article titled "*Johnson & Johnson Unit Recalls More OTC Products*" that stated:

> The world's biggest maker of health care products, Johnson & Johnson enjoyed a strong reputation for safety, but it has dealt with several product recalls since late last year. It withdrew over-the-counter drugs in November and December 2009 before issuing a much larger recall in January. Federal regulators said McNeil was told about the problem in early 2008 but made a limited investigation and did not tell the Food and Drug Administration quickly.

(o) Also on July 8, 2010, the *Associated Press* published a report called "*More Tylenol, Motrin, Benadryl Recalled by Johnson & Johnson*" that stated:

> *The string of recalls is an embarrassment for a company* that set the standard on how to do it correctly when it rushed to pull bottles of Tylenol – deliberately poisoned by someone who was never caught – off store shelves in the early 1980s.
>
> This time, the culprit appears to be a lack of internal quality control. That's harder to forgive, particularly given that *the public has little tolerance for mistakes or carelessness involving products for children*, said analyst Steve Brozak of WBB Securities.

(p) On July 9, 2010, *CBC News* published an article called "*Johnson & Johnson Issues Another Drug Recall*" that stated:

> The repeated recalls are particularly surprising at a company where executives regularly repeat the 67-year-old corporate credo, which begins: "We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services."

(q) On July 16, 2010, the *Insurance Times* published a report called "*Fault Line*" that stated:

> The number of recalls has escalated in recent years, costing businesses millions, *damaging reputations and making consumers increasingly wary.* Toyota is the most high-profile casualty this year: it is facing a public relations crisis and a 20% drop in share price after having to recall 8.5 million cars following incidents with faulty accelerators. Fellow brand giants Honda, McDonalds, Nestlé and *Johnson & Johnson also have fallen foul of quality standards.*

(r) Also on July 16, 2010, *Pharmalot* published a report called "*Should J&J Replace the McNeil Management Team?*" that stated:

> Now, though, the storied J&J image is losing its luster over a series of unusual quality-control gaffes at its McNeil Consumer Healthcare unit and the missteps would appear to be exacerbated by the way this latest crisis has been handled.

(s) On July 27, 2010, *Seeking Alpha* published an article called "*J&J's McNeil Problems are Credit Negative*" that stated:

> These events are negative for J&J's credit profile not only because of lost earnings and cash flow, but also because of *increasing reputational risk as the deficiencies continue to escalate.*

(t) The next day, on July 28, 2010, *Seeking Alpha* published a report called "*Is Johnson & Johnson Really a Safety Stock?*" that stated:

> However, the problems at J&J have allowed generic OTC competitors to take a much higher share of the retail market – and *may lead to a loss of reputation for J&J's brands, which could take a long while to recover from.*

(u) On August 18, 2010, the *Associated Press* published a news report called "*J&J Creates New Quality Control Position*" that stated:

> [The recalls] *hurt the reputation* of a company once cited as a textbook example for how businesses should handle such problems.

(v) On August 28, 2010, the *Boston Globe* published a report called "*J&J Hopes to Rebuild Public Trust*" that stated:

> *With Johnson & Johnson's once-golden reputation tarnished by 11 recalls of medicines, contact lenses, and hip implants in as many months, its chief executive says he knows the company let consumers down.*

(w) On September 7, 2010, *CNN Money* published an article called "*Johnson & Johnson CEO Bill Weldon's Painful Year*" in which anonymous J&J personnel tied Weldon directly to the quality control failures:

> Meanwhile, Weldon's plan to install a new quality czar has rankled some staffers, who say he is resurrecting a concept that was dismantled under his watch. According to four former employees, J&J had a corporate compliance group that oversaw all of the different companies, but it was drastically cut down in 2007. The group, helmed by Corporate Compliance Officer Brenda Davis, conducted tough biannual audits of J&J's operating companies and helped set up "management action plans" for improving quality control.

(x) On September 9, 2010, *CBS News* published a news report called "*J&J Donates $200M to Help Mothers, Children*" that stated:

> *Weldon has spent recent months trying to refurbish J&J's once-golden reputation*, which has been tarnished by 11 recalls of medicines, contact lenses and hip implants in the last year.

(y) On September 16, 2010, the *Associated Press* published a news article called "*House Panel Sets 2nd Hearing in J&J Recall Probe*" that stated:

> *J&J's once-golden reputation has been severely tarnished by 11 recalls of medicines, contact lenses and hip implants in as many months.*

(z) Also on September 16, the *Associated Press* published a report called "*J&J Consumer Drug Head Retiring Amid Recall Probe*" that stated:

> The head of the Johnson & Johnson division responsible for most of the company's 11 product recalls announced her retirement late Thursday, shortly after a congressional committee probing the recalls invited her to a second hearing on the case.

(aa) On September 18, 2010, the *Ottawa Citizen* published a report called "*J&J offers $2.3B for Vaccine Firm*" that stated:

> Johnson & Johnson, which makes prescription drugs and medical devices as well as Tylenol pain relievers and Band-Aids, *has seen its reputation take a hit in recent months over recalls of its consumer medicines.*

(bb) On September 20, 2010, *CNN Money* published a report called "*Johnson & Johnson's Troubled Times*" that stated:

> Criminal investigations, "phantom" recalls and executive oustings *are exposing a dark side of Johnson & Johnson*, once considered a pillar of American industry.
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> * * *
>
> "Goggins' exit is worrisome. *It's another black eye for Johnson & Johnson* because she was touted as the next CEO of the company," said Damien Conover, analyst with Morningstar.

(cc) On September 23, 2010, *Fox News* published a report called "*Beetle-Tainted Infant Formula Recalled*" that stated:

> J&J has been hounded by repeated massive recalls in the past year – of its Tylenol and Motrin painkillers and its Benadryl allergy treatment – *that have tarnished its reputation* and sparked a U.S. congressional probe.

(dd) On September 28, 2010, the *Wall Street Journal* published a report called "*J&J's Quality Control Draws Scrutiny*" that stated:

> *New revelations could put a dent in J&J's reputation for corporate responsibility.* The company cemented that reputation in 1982, after quickly recalling Tylenol because of a fatal tampering scare. J&J and its Tylenol brand still benefit from the reservoir of good will built up decades earlier, said Chris Malone, chief advisory officer of the Relational Capital Group, a marketing concern that recently surveyed consumer attitudes toward the company and Tylenol.

(ee) On September 29, 2010, *Seeking Alpha* published a report called "*Johnson & Johnson's Reputation Begins to Slide*" that stated:

> *A new survey finds the health care giant's reputation has declined* 27 percent among mothers, 31 percent among pediatricians and 23 percent among general practitioners.

(ff) Also on September 29, 2010, *Barron's* published a report called "*J&J: Reputation on the Line, Says CLSA*" that stated:

> As Weldon labors to assure elected officials that mis-steps at the company's McNeil Consumer Healthcare unit (which has had to recall certain products from the marketplace) have been contained, a recent survey by CLSA analyst David Maris indicates that *the company's reputation among mothers and doctors may need a Band-Aide.*

(gg) On October 19, 2010, *Fox News* published a report called "*Musty Odor Sparks Another Tylenol Recall*" that stated:

> Products made at the plant had annual sales of about $650 million, about 1 percent of total annual company sales. But *the spate of recalls has tarnished the reputation of J&J and its consumer brands and forced a shakeup at the McNeil unit.*

(hh) On October 29, 2010, the *Associated Press* published a report called "*Pfizer Recalls Lipitor Due to Moldy Smell*" that stated:

> New Brunswick, N.J.-based *J&J has seen its reputation battered* in the past year over more than a dozen product recalls. Five of those actions involved odor issues reported with Tylenol, Benadryl and other household brands.

(ii) On November 1, 2010, *Chem.Info* published a report called "*TBA: Stinking Out the Supply Chain*" that stated:

> The pharmaceutical industry has a new enemy. TBA, formally known as 2,3,6 tribromoanisole, has infiltrated the supply chain, contaminated tens of millions of dollars worth of product, and *caused irreversible damage to the reputation of drugmakers and their well-known brands*. Johnson & Johnson and Pfizer have issued nine TBA-related recalls since the problem first surfaced in December of last year.

(jj) On November 22, 2010, *Dow Jones News* published a report called "*Children's Benadryl Recall Latest to Hit J&J*" that stated:

> It was the latest in a series of *product recalls in the last year that have hurt the reputation and financial results of J&J.*

(kk) On December 1, 2010, *CNN Money* published a report called "*Tylenol Plant Still Plagued by FDA Violations*" that stated:

McNeil has been plagued with a plethora of problems this year that have sullied the once pristine reputation of its parent.

(ll) Also on December 1, 2010, *Pharmalot* published a report called "*Will Johnson & Johnson Get a Consent Decree?*" that stated:

> What are the implications? Well, there would be *another stain on the once-venerable Johnson & Johnson reputation*, possibly more lost jobs and a notable financial hit.

(mm) On December 10, 2010, *CBS News* published a report called "*Rolaids SoftChews Recalled Over Contamination*" that stated:

> *This is the latest blow for Johnson and Johnson, which has seen its long-standing reputation as a trusted brand severely tarnished by manufacturing problems, recalls and even a congressional probe into its business practices.*

(nn) On January 4, 2011, *Bloomberg News* published a report called "*Mulcahy Tells CNBC Recalls at J&J 'Very Painful' on Reputation*" that stated:

> "Having said that, *it's been painful from a reputational perspective*," Mulcahy, who serves on the Johnson & Johnson board, said in an interview on CNBC today.

(oo) Also on January 4, 2011, *24/Wall St.* published a report that its unranked *list of the fifteen most hated companies included Johnson & Johnson.*

(pp) On January 15, 2011, the *New York Times* published a report called "*Can Johnson & Johnson Get Its Act Together?*" that stated:

> "It looks like a plane spinning out of control," says David Vinjamuri, a former J.&J. marketing employee who now trains brand managers at his company, ThirdWay Brand Trainers.
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> * * *
>
> Some critics, including former employees, say *Johnson & Johnson has lost sight of its credo*, while others suggest that the company *decentralized its oversight of manufacturing and quality control in error.*

(qq) Also on January 15, 2011, the *L.A. Times* published a report called "*J&J Recalls Tylenol, Other Drugs*" that stated:

> The company, *whose reputation has been tarnished by the recalls*, is recalling

bottles and packages of various kinds of Tylenol, Benadryl, Rolaids and other consumer products.

(rr) Also on January 19, 2011, *Return on Reputation* published a report called "*For Johnson & Johnson, the Hits Keep on Coming*" that stated:

> Through a series of public relations fumbles, belated mea cuplas and operational gaffes, J&J, a consumer healthcare icon, who's 1980s Tylenol tampering response was widely seen as the crisis communication gold standard, *has seen its reputation significantly tarnished and its sales plummet.*
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> * * *
>
> Conversely, for J&J and Mr. Weldon the reputational issue may be a CEO staying too long in a position.

(ss) Also on January 19, 2011, the *Daily Caller* published a report called "*Johnson & Johnson Explains Series of Mass Recalls*" that stated:

> The series of recalls *have tarnished the company's reputation* and sales plummeted 25 percent in the 3rd quarter. Additionally, Johnson & Johnson's shares closed down 36 cents (.5 percent) on the New York Stock Exchange. The company may even face criminal charges from the U.S. Department of Justice.

(tt) On January 24, 2011, *Pharmalot* published a report called "*J&J CEO Weldon Should Go . . . Now: Gordon Explains*" that stated:

> I think what should happen is that Bill Weldon should retire and somebody from the outside should be brought in as CEO who is not part of J&J management, *not from the Bill Weldon J&J culture, and can try to bring J&J back to its traditions and credo.*

(uu) On January 26, 2011, the *Wall Street Journal* published a report called "*PR Experts' Advice for Toyota*" that stated:

> *Recent safety headaches also have tarnished the reputation for Johnson & Johnson*, a maker of products ranging from Band-Aids to the anti-inflammatory drug Remicade. It's trying to recover from a series of product recalls since 2009. In response, J&J suspended manufacturing at a U.S. plant and made changes at a Puerto Rico facility, which together reduced the company's 2010 sales by about $900 million.

(vv) On February 14, 2011, *Barron's* published a report called ". . . *And the Award Goes to Apple!*" that stated:

A fall from grace is both difficult to watch and morbidly fascinating. Whether the subject is a person of high regard or a greatly respected company, often it is impossible to look the other way.

Such is the case with Johnson & Johnson in Barron's latest ranking, The World's Most Respected Companies. Few firms, with the possible exception of banks, have fallen harder in the eyes of our respondents since our survey of professional money managers was launched seven years ago. J&J (ticker: JNJ) has always ranked No. 1 or No. 2 in garnering respect from investors – until this year, that is. After struggling with quality-control issues, *the New Brunswick, N.J.-based health-care giant has tumbled all the way to No. 25 among the world's 100 largest public companies, hanging on to the list's first quartile by its bloodied fingernails.*

(ww) On March 8, 2011, *Reuters* published a report called "*Johnson & Johnson Recalls Leaky Insulin Cartridges*" that stated:

J&J's once-golden reputation has been badly tarnished by manufacturing and quality control problems at its plants that have led to a series of recalls of widely used consumer healthcare medicines, such as Tylenol, Rolaids and Motrin, and of medical devices and other products, including syringes and sutures.

(xx) On March 10, 2011, the *Wall Street Journal* published a report called "*FDA Set to Oversee J&J Plants*" that stated:

In addition, CEO William Weldon has come in for criticism. Early this year, the Change to Win pension funds, which hold about 13.5 million J&J shares, *chastised Mr. Weldon for not doing enough to protect the reputation of J&J products.*

(yy) On March 16, 2011, the *Associated Press* published a report called "*Johnson & Johnson Cut CEO's Pay by 9 Percent Amid 2010 Recalls*" that stated:

The board appeared to tie most of the recall problems to consumer products chairwoman Colleen Goggins, who oversaw the company's McNeil Consumer Healthcare unit before retiring earlier this month. Her total compensation fell 12 percent to $6.5 million for the year. Still, the board did not level any direct criticism at Goggins, instead praising her "distinguished career with the company."

(zz) On March 31, 2011, *RTT News* published a report called "*Reports: Johnson & Johnson to Revamp Consumer Unit*" that stated:

In order to restore its tarnished reputation, the company plans to make its over-the-counter business in the U.S. a separate division from April 4, enhancing focus on quality and compliance. Thus, the consumer business will have four groups

covering Asia and the Pacific; Europe, the Middle East and Africa; Latin America and North America.

(aaa) On April 3, 2011, *MSNBC* published a report called "*Johnson & Johnson Reaches for Band-Aid*" that stated:

> In an 11th-floor conference room – a generic space but for the sword in a display case on the wall, a replica of the one used by Scottish nationalist William "Braveheart" Wallace – the credo comes up often during a Bloomberg Businessweek interview with CEO Weldon. *The 62-year-old Brooklyn native concedes that the recalls have tarnished his brand and that events of the past year 'have been just a huge disappointment.'*

(bbb) On April 4, 2011, *FiercePharma* published a report called "*Finding the Source of J&J's River of Woe*" that stated:

> Some see J&J as too decentralized, with its independent-operating-company approach. Others see too much emphasis on cost-cutting. *Others call it a management failure to live up the J&J's famous patient-first credo.*

(ccc) On April 8, 2011, *MSNBC* published a report called "*Johnson & Johnson Settles Bribery Case with Feds*" that stated:

> The company will pay $21.4 million in criminal penalties for improper payments and return $48.6 million in illegal profits, according to the government. Department of Justice officials said penalties against the company were reduced because J&J cooperated with investigators.
>
> * * *
>
> *J&J's household reputation has been battered in the past year* by a string of recalls, including over-the-counter medicines – such such as Children's Tylenol and Benadryl – contact lenses and orthopedic hips.

(ddd) On April 9, 2011, the *Wall Street Journal* published a report called "*J&J Settlement in Bribery Case*" that stated:

> *The news is the latest black eye for J&J*, which has been grappling with a series of product recalls because of manufacturing quality lapses, as well as government investigations of its U.S. marketing practices.

(eee) On April 14, 2011, *USA Today* published a report called "*J&J Issues Another Recall, for Epilepsy Pills*" that stated:

> The high-profile lapses have tugged at J&J's revenue, profit and stock price, as well as its once-stellar reputation.

(fff) On April 19, 2011, the *Flame Index*, a web-based indexer of negative media and blog postings, reported that Johnson & Johnson topped its list among all companies.

(ggg) On April 27, 2011, *My Central Jersey* published a report called "*CEO: J&J Has Learned Lessons from Recalls*" that stated:

> Johnson & Johnson's CEO said Wednesday he'll tell shareholders at their annual meeting today in New Brunswick that he hopes most of the company's product recalls are behind it, but he can't promise that.

(hhh) On May 11, 2011, *MarketingProfs Daily Fix* published an article called "*You Never Write, You Never Call: Some Advice from Mom to Johnson & Johnson*" that stated:

> It's never easy for a mother to discipline her child, and it pains me to have to adopt this tone with you, Johnson & Johnson. But tough love is sometimes required in tough times. By getting back to the words on which your company is built, I think you can find your way back.

(iii) Also on May 11, 2011, the *Harvard Business Review* published a report called "*When Does the Buck Stop?*" that stated:

> Or to put it another way: every CEO says that the buck stops with them. But how realistic is this, really, in a huge company? And if it should stop with the CEO, just when should it stop?
>
> For William Weldon, these aren't just hypothetical questions. Weldon is CEO of Johnson & Johnson (J&J), which firmly established itself as one of the world's most trusted companies following the famous Tylenol scare in the 1980s. From 1998 to 2005, J&J ranked at the top of Harris Interactive's National Corporate Reputation Survey, and in 2008 Barron's named it the world's most respected company. The Robert Wood Johnson Foundation, the U.S.'s largest public health philanthropy, conducts research that helps millions. And the company has been a blue-chip stock for years. Its well-known credo, stating that "everything we do must be of high quality," has withstood the test of time.
>
> Until lately, that is. Over the past few years, J&J has increasingly found itself in a world of hurt. Manufacturing problems at three different plants forced the company to recall more than 50 products, including over the counter drugs including Tylenol, Motrin, Rolaids and Benadryl, which led to a Congressional probe. Its artificial hips, called the ASR XL, were voluntarily recalled, but only after they were already implanted in some 93,000 patients worldwide.

Executive Compensation Processes and Procedures

66. J&J uses established processes and procedures for the award of executive compensation. With respect to Chairman/CEO Weldon, the Board evaluates Weldon's performance and approves Weldon's compensation.

67. Per the 2011 proxy statement, the so-called "independent members" of the Board "[p]articipate in the performance assessment process for the Chairman/CEO [Weldon]" and "[a]pprove the Chairman/CEO's [Weldon's] compensation." Thus, all so-called "independent directors" (including members of the Special Committee) are involved in assessing Weldon's performance and setting Weldon's compensation.

68. Per the 2011 proxy statement:

> The primary function of the ***Compensation & Benefits Committee*** is to discharge the Board's duties and responsibilities relating to compensation of the Company's Non-Employee Directors and executive officers and oversee the design and management of the various pension, long-term incentive, savings, health and welfare plans that cover the Company's employees.
>
> The Compensation & Benefits Committee's duties and responsibilities under its charter with respect to the compensation of the Company's Directors and executive officers include:
>
> - recommending to the Board the Chairman/CEO's compensation based on the independent Directors' annual evaluation of his or her performance;
> - reviewing and providing oversight of the development of the Company's compensation philosophy and composition of the group of peer companies used for comparison of executive compensation;
> - approving the establishment of competitive targets versus the group of peer companies used for comparison of executive compensation and all equity-based plans requiring shareholder approval;
> - reviewing the eligibility criteria and award guidelines for the corporate-wide compensation programs in which the executive officers participate;
> - reviewing and approving compensation decisions recommended by the Chairman/CEO for the Company's other executive officers, including setting base salaries, annual performance bonuses, long-term incentive awards, severance benefits and perquisites; and
> - reviewing and approving compensation for the Non-Employee Directors.

2011 Proxy at 17. The 2010 Proxy contains identical or similar language.

69. The charter of the Compensation Committee requires it to discharge the Board's duties and responsibilities relating to compensation of the Company's directors and executive officers and oversight of the management of the various pension, long-term incentive, savings, health and welfare plans that cover the Company's employees." The Compensation Committee's duties and responsibilities include:

- 1. The Committee shall review and discuss the "Compensation Discussion and Analysis" section of the Company's proxy statement with management.
- 3. The Committee shall assess the Company's financial and non-financial goals versus actual performance, *including against the background of the factors and principles outlined in the Credo, evaluate the CEO in light of this performance, and set the CEO's compensation level based on this evaluation.*

70. Late in each calendar year, the Compensation Committee begins review and preliminary consideration of the compensation awards that will be decided early the following year, before the proxy is issued before the annual meeting. By the time that the Board was preparing to issue proxy statements in 2008, 2009, 2010, and 2011, it had become aware of an overwhelming number of Credo and other governance violations, and resulting actual or potential reputational harm, consciously disregarding these adverse factors when evaluating Weldon's performance, and manner of performance. Had Defendants properly carried out J&J's executive compensation policies and procedures, the compensation awards to Weldon would have been commensurate with pre-2006 levels, saving J&J tens of millions of dollars.

The Board Forms a Special Committee (Consisting Solely of Members of the Compensation Committee) to Investigate Allegations of J&J Misconduct Under Weldon's Leadership

71. By April 2010, the Board established a Special Committee to investigate alleged wrongdoing at J&J, including violations of the Credo and reputational harm to J&J. The Board appointed Defendants and Compensation Committee members Michael M.E. Johns, Anne

Mulcahy, William D. Perez and Charles Prince (Chairman of the Special Committee). The Board charged the Special Committee "to investigate, review, and analyze the facts and circumstances surrounding the allegations raised in, and recommend any appropriate or necessary actions, if any, in connection with, the First, Second, and Third [shareholder] Demands." In June 2010, the Board expanded the Special Committee's authority to investigate two subsequent shareholder demands.

72. The Special Committee did not complete its investigation, nor report any findings to the Board before the Board had reached its conclusions regarding Weldon's 2010 performance and compensation, as represented in the 2011 proxy statement and related amendment. That is, before the Special Committee reported its findings to the Board, the Board reached conclusions on executive compensation for 2010 that required assessment of factors relative to the Credo and J&J's reputation. Thus, the Board reached conclusions concerning Weldon's performance (and the manner in which he performed) before it had all relevant information for purposes of awarding Weldon extravagant compensation for 2010. The failure to assess all material facts in determining executive compensation for the CEO was a breach of fiduciary duty and is not protected business judgment.

73. Alternatively, the Special Committee (i.e., Compensation Committee) reached certain conclusions concerning Weldon's performance and manner of performance for purposes of 2010 compensation that are contained in its June 2011 "Report of the Special Committee of the Board of Directors of Johnson & Johnson" (hereinafter "Special Committee Report"). Among other things, the Special Committee Report concluded:

- McNeil leadership "may not have had sufficient understanding of what was taking place at the plant level." Special Committee Report at 59.
- "At the [McNeil] plant level, there seemed to be a lack of attention to product quality by some non-quality personnel (especially in Engineering and

Operations), which at times produced an adversarial relationship between Quality personnel and Operations." *Id.*

- "J&J's acquisition of Pfizer Consumer Healthcare ("PCH") in December 2006 had a major impact on McNeil OTC, as PCH's OTC product lines were added to those of McNeil. PCH was J&J's largest acquisition to date, bringing to J&J over 3000 Stock Keeping Units of products. Given that 25% of PCH's total sales were of products made at manufacturing sites that would not be conveyed to J&J, product lines were added to Fort Washington and Las Piedras, increasing the volume and complexity of their operations and distracting from quality system improvements. [Quality and Compliance] headcount may not have increased sufficiently to adjust to this added complexity. Las Piedras, in particular, was not equipped for the changes needed as a result of the PCH acquisition." *Id.*

- A 2007 internal inspection of Las Piedras had rated the site overall as "unsatisfactory." *Id.* at 60.

- 2008 and 2009 internal audits of McNeil plants at Fort Washington and Las Piedras reported highly-negative scores under the category of "Focused Assessments/Internal Audits" but those negative scores were allowed to be averaged against other more positive scores so that the findings did not reach a "critical" status. *Id.* at 62.

- "A virtual hiring freeze in 2008-2009 made it difficult to hire additional McNeil Quality personnel. There was no compliance group within the McNeil Quality organization to conduct internal cGMP audits; such audits were performed by personnel from other plants. There was a single Quality Site Leader for Fort Washington and Lancaster during 2009, and part of 2010; the Quality Site Leader position at Las Piedras was open for more than four months during 2009. Although the Vice President for Quality of McNeil OTC (Robert Miller) was well regarded, he spent a significant amount of his time focusing on other matters (the integration of PCH into McNeil OTC in 2007-2008, and the enterprise-wide supply chain initiative (Project Rubik) in 2009). Two of his senior direct reports were out on sick leave for part of 2009." *Id.* at 60.

- "[I]nternal audits conducted by the McNeil Quality organization and by one outside consultant in 2007 revealed some cGMP issues that went uncorrected for long periods of time. The observations resulting from the internal audits were supposed to be incorporated into Management Action Plans ("MAPs"), which were periodically reported to the McNeil Management Board, but the MAPs were incomplete, and the due dates for corrective actions were frequently postponed, yielding the impression that everything was under control." *Id.*

- "A potential contributing factor to the apparent failure of the checks and balances built into the J&J Q&C Worldwide organization and operation may also trace back to the restructuring of the J&J Corporate Center in early 2007, pursuant to the Corporate Center Review conducted in 2006. As previously

> noted, that restructuring reduced the headcount at the corporate Q&C Worldwide organization by 35%, took away the authority to conduct unannounced Q&C audits at operating companies, and assigned responsibility for reviewing management's compliance with MAPs to the GOCs. With the benefit of hindsight, it appears that the restructuring may have been imperfectly executed by the Consumer GOC. Among other things, the Consumer GOC should have paid more attention to Q&C, and exercised more management oversight of McNeil. With reduced central oversight and tasked with implementing the Pfizer Healthcare acquisition, some McNeil employees may have lost focus and commitment to maintain quality standards. And the change in the corporate Q&C audit function meant that cGMP issues at McNeil had more of a chance to develop until they reached a critical point." *Id.* at 63.

74. Notably, the Compensation Committee (i.e., Special Committee) and the Board had actual or constructive knowledge of Weldon's September 2010 testimony before a Congressional Committee investigating J&J misconduct whereby Weldon testified that "I accept full accountability for the problems at McNeil." Nevertheless, the Board failed to disclose this material factor to Weldon's compensation in the 2011 Proxies, and continued to over-compensate Weldon for 2010. Further, the material omissions necessarily made false and misleading the Board's recommendation to shareholders in the 2011 proxies that they vote in favor of the Board practices that violated J&J executive compensation philosophies and guiding principles, resulting in overcompensation of Weldon.

75. On July 18, 2011, the Board voted unanimously to adopt the recommendations of the Special Committee Report. The Special Committee Report confirmed Weldon's failures and/or lack of performance, leadership, and responsibility as outlined in this complaint.

<u>The J&J 2008 Proxy Statement</u>

76. On or about March 12, 2008, Defendants caused a proxy statement to be filed with the SEC (the "2008 Proxy"). The 2008 Proxy was solicited by the Board.

77. With respect to Defendant Weldon's compensation, the Board stated in the 2008 Proxy:

> The Board believes Mr. Weldon took significant steps in 2007 to position the Company for strong long-term performance while operating in a very challenging environment and still meeting his short-term financial goals. Mr. Weldon directed several critical strategic changes at the Company, including (1) restructuring the Pharmaceuticals segment and Cordis business to generate significant cost savings that can be reinvested and drive financial performance, (2) establishing the Office of Strategy and Growth to identify entirely new fields of business for the Company, and (3) creating separate Comprehensive Care and Surgical Care operating groups within the Medical Devices and Diagnostics segment. Under Mr. Weldon's leadership, the Company has created a foundation for a robust pipeline of products and technology platforms that should result in significant future product launches.
>
> *Mr. Weldon continues to reinforce across all the Company's businesses the importance of adhering to the ethical principles of the Credo. Mr. Weldon, along with Mr. Deyo, the Company's General Counsel, traveled around the world meeting with managing directors and other senior executives to reinforce the Company's insistence on ethical, Credo-based behavior.*
>
> * * *
>
> *Under Mr. Weldon's leadership, the Company continues to enjoy a reputation as one of the world's most admired and respected companies.*
>
> For Mr. Weldon, the Committee approved a 3.7% salary increase effective February 25, 2008. This base salary increase is in line with the merit increase budget set in place for all employees. Mr. Weldon's 2008 base salary is below the 75th percentile of the Executive Peer Group.
>
> Mr. Weldon was also awarded an annual performance bonus equal to 126% of his target, an option/RSU award equal to 99% of his target and a CEC grant of 200,000 units bringing him to 101% of his target accrual. Mr. Weldon's total compensation is below the 75th percentile of the Executive Peer Group. Please see the table on page 40 of this Proxy Statement for the award values for each pay component.
>
> In the role of Chairman/CEO, Mr. Weldon's compensation is higher than that of the Company's other executive officers due to the level of responsibility of his position. All other executive officers report to Mr. Weldon and are appropriately compensated based on their roles in the organization and against the Executive Peer Group.

2011 Proxy at 37.

78. The statements that "Mr. Weldon continues to reinforce across all the Company's businesses the importance of adhering to the ethical principles of the Credo" and "[u]nder Mr. Weldon's leadership, the Company continues to enjoy a reputation as one of the world's

most admired and respected companies" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that Weldon was emphasizing the importance of Credo compliance without also disclosing that, under Weldon's leadership, J&J was involved in an unprecedented number of Credo violations; and

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that enjoyed a reputation as one of the world's most admired and respected companies without also disclosing that J&J was at very high risk of losing that reputation as a result of numerous and cumulative Credo violations that had taken place under Weldon's leadership.

79. The 2008 Proxy also contained a shareholder proposal (submitted by the College Retirement Equities Fund (CREF)) that recommended an annual shareholder advisory vote on executive compensation. The Board recommended a vote against this proposal.

The J&J 2009 Proxy Statement

80. On or about March 11, 2009, Defendants caused a proxy statement to be filed with the SEC (the "2009 Proxy"). The 2009 Proxy was solicited by the Board.

81. With respect to Defendant Weldon's compensation, the Board stated in the 2009 Proxy:

> *Mr. Weldon continues to uphold the strong reputation of the Company.* He has strengthened the Company's image by personal involvement in health care conferences, with the media and in investor meetings. *Mr. Weldon has sustained the ethical principles of the Credo* and has personally visited Johnson & Johnson locations around the world to discuss the Credo.
>
> In the area of leadership, Mr. Weldon continues to make significant progress in developing future leaders, staying personally involved in succession planning and

> leadership engagement programs. This has been evident during the smooth transition as part of Ms. Poon's retirement.
>
> * * *
>
> While the Committee had recommended a merit increase in Mr. Weldon's base salary for 2009 based on his strong performance in 2008, Mr. Weldon recommended to the Committee that his salary for 2009 stay the same as it was for 2008, in recognition of the current global economic environment. The Committee accepted and approved Mr. Weldon's recommendation. Mr. Weldon's 2009 base salary is above the 75th percentile of the Executive Peer Group.
>
> Mr. Weldon was awarded an annual performance bonus equal to 128% of his target, an option/RSU award equal to 108% of his target and a CLC grant of 125,000 units bringing him to 100% of his target accrual. Mr. Weldon's total direct compensation is below the 75th percentile of the Executive Peer Group. Please see the table on page 40 of this Proxy Statement for the award values for each pay component.
>
> In the role of Chairman/CEO, Mr. Weldon's compensation is higher than that of the Company's other executive officers due to the level of responsibility of his position. All other executive officers report to Mr. Weldon and are appropriately compensated based on their roles in the organization and against the Executive Peer Group.

2009 Proxy at 38.

82. The statements that "Mr. Weldon continues to uphold the strong reputation of the Company" and "Mr. Weldon has sustained the ethical principles of the Credo" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon continues to uphold the strong reputation of the Company" because Weldon was a direct cause of numerous J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, related regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J; and

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon has sustained the

ethical principles of the Credo" because Weldon's leadership of J&J including responsibility and accountability for illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

83. The 2009 Proxy also contained a shareholder proposal (submitted by the College Retirement Equities Fund (CREF)) that recommended an annual shareholder advisory vote on executive compensation. The Board recommended a vote against this proposal.

The J&J 2010 Proxy Statement

84. On or about March 17, 2010, Defendants filed a proxy statement with the SEC (the "2010 Proxy"). The 2010 Proxy was solicited by the Board.

85. With respect to Weldon's compensation, the Board stated in the 2010 Proxy:

> *Overview*
>
> The Board believes that Mr. Weldon generally exceeded expectations despite substantial economic, political, regulatory and competitive challenges as well as significant patent expirations. As referenced in the table above, the Company delivered solid financial results and positioned itself for future growth.

2010 Proxy at 36.

86. The statements that "The Board believes that Mr. Weldon generally exceeded expectations" and "the Company delivered solid financial results and positioned itself for future growth" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon generally exceeded expectations" because Weldon was a direct cause of numerous J&J Credo violations, J&J's

repeated failures to address FDA concerns over manufacturing, related regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J; and

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "the Company delivered solid financial results and positioned itself for future growth" because the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

87. With respect to Defendant Weldon's compensation, the Board stated in the 2010 Proxy that "[t]he Company continued to maintain a strong reputation through Mr. Weldon's commitment to Our Credo, focus on sustainability, transparency in investor relations and philanthropic activities." 2010 Proxy at 37. It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "the Company delivered solid financial results and positioned itself for future growth" because the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

88. The 2010 Proxy also contained a shareholder proposal (submitted by Walden Asset Management) that recommended an annual shareholder advisory vote on executive compensation. The Board recommended a vote against this proposal.

The J&J 2011 Proxy Statements

89. On or about March 16, 2011, Defendants caused a proxy statement to be filed with the SEC (the "2011 Proxy"). The 2011 Proxy was solicited by the Board.

90. With respect to Defendant Weldon's compensation, the Board stated in the 2011 Proxy:

> *Overview*
>
> The Board believes that Mr. Weldon generally met expectations during 2010, a year with many successes and very visible challenges. As referenced in the table above, in 2010 the Company delivered solid adjusted earnings per share, free cash flow and long-term total shareholder return, while operational sales declined and fell below the goals for the year. Mr. Weldon guided the Company through the last year while the Company's long-standing reputation was challenged and revenue was impacted by a series of operational, quality and compliance issues, most notably at McNeil Consumer Healthcare. Mr. Weldon was instrumental in the Company's response to these issues, including the implementation of a comprehensive remediation plan at McNeil and a new operating model for supply chain, quality, and compliance spanning the enterprise.

2011 Proxy at 38.

91. The statements that "The Board believes that Mr. Weldon generally met expectations during 2010 . . . [and] the Company delivered solid adjusted earnings per share, free cash flow and long-term total shareholder return" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon generally met expectations during 2010" because during 2010 Weldon was a direct cause of numerous J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, related regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J; and

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "the Company delivered solid adjusted earnings per share, free cash flow and long-term total shareholder return" because the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

92. The statements that "Mr. Weldon was instrumental in the Company's response to these [reputational and related] issues, including the implementation of a comprehensive remediation plan at McNeil and a new operating model for supply chain, quality, and compliance spanning the enterprise" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon was instrumental in the Company's response to these [reputational and related] issues" because Weldon was a direct cause of "these issues" that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J and extensive personal injury litigation directed at J&J;

(b) It was false and misleading for the Board to represent, as a positive factor at the time these representations were made, that Mr. Weldon was responsible for "the implementation of a comprehensive remediation plan at McNeil and a new operating model for supply chain, quality, and compliance spanning the enterprise" because the so-called "comprehensive remediation plan" was a result of extraordinary actions taken by the FDA and the Department of Justice – in the interest of public safety – to force J&J through a consent

decree to change its manufacturing misconduct, and subject J&J to invasive regulatory oversight, including at least five years of FDA inspections and compliance oversight at McNeil operations. This "comprehensive remediation plan" was hardly the result of Defendant Weldon working to improve J&J, but instead was the result of Weldon's repeated failure to offer effective leadership in the face of regulatory investigations and FDA warning letters.

93. With respect to Defendant Weldon's compensation, the Board stated in the 2011 Proxy:

> In line with the Company's long-standing approach to succession planning, Mr. Weldon also made significant organizational realignments at the Company's executive leadership level to ensure the Company is well-positioned for sustainable growth into the future and continues to develop its leadership talent.
>
> Under Mr. Weldon, the Company also saw a number of successes across the businesses in 2010, including the delivery of innovations in health care and progress in the Company's robust pipelines. Many of the Company's businesses performed well in light of the challenging macroeconomic environment. The Board believes that Mr. Weldon provided strong leadership during a very demanding year and has worked to resolve multiple challenging issues and position the Company for future growth. The Board's decisions on Mr. Weldon's compensation for 2010 reflect the Company's mixed performance, with short-term successes and disappointments, as well as continued strong positioning of the Company for long-term growth.

2011 Proxy at 38.

94. The statements that "Mr. Weldon also made significant organizational realignments at the Company's executive leadership level to ensure the Company is well-positioned for sustainable growth into the future and continues to develop its leadership talent" were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon also made significant organizational realignments at the Company's executive leadership level to ensure the Company is well-positioned for sustainable growth into the future and continues to develop its leadership talent" because Weldon was a direct cause of the events that led to the resignation of

Colleen Goggins, a long-time senior executive of J&J who was a strong internal candidate to replace Weldon. In fact, Weldon's actions created the appearance that Goggins was a scapegoat for the problems that J&J was experiencing at McNeil, when in fact it was Weldon who was ultimately accountable for J&J's problems at McNeil;

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon also made significant organizational realignments at the Company's executive leadership level to ensure the Company . . . continues to develop its leadership talent" because the need to develop leadership talent in 2010 was necessitated by the resignation of Colleen Goggins – Weldon's scapegoat;

(c) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "The Board believes that Mr. Weldon provided strong leadership during a very demanding year and has worked to resolve multiple challenging issues and position the Company for future growth" because Weldon was a direct cause of "these issues" that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(d) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "The Board's decisions on Mr. Weldon's compensation for 2010 reflect the Company's mixed performance, with short-term successes and disappointments, as well as continued strong positioning of the Company for long-term growth" because Weldon was a direct cause of reputational damage to J&J that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J.

95. With respect to Defendant Weldon's compensation, the Board stated in the 2011 Proxy:

> *Strategic Results*
>
> - The Company's reputation was challenged and revenue impacted during 2010 primarily due to a series of product recalls at McNeil Consumer Healthcare. Mr. Weldon's leadership and engagement with employees, legislators, regulators, investors and the news media enabled the Company to deal with the issues.
> - Under Mr. Weldon's leadership, the Company continued to strengthen the overall product pipeline, especially in the Pharmaceutical and Medical Devices & Diagnostics businesses. The Consumer pipeline results were mixed despite some successful new product launches.
> - Manufacturing issues in 2010 triggered the need to make additional investments in the manufacturing operations. These additional investments began in 2010 and will continue in 2011.
> - The Company enhanced its global presence by continuing to generate strong growth in emerging markets including Brazil, Russia, India, China and Mexico.
> - Mr. Weldon played an effective role in shaping health care policy around the world, especially in the U.S. and Japan. Mr. Weldon's personal involvement with key leaders and organizations has ensured the interests of the Company are well represented.
> - Under Mr. Weldon's leadership, the Company continued its long-standing commitment to philanthropic activities and was recognized for social responsibility, inclusiveness, and environmental sustainability.
> - Mr. Weldon continued to build a pipeline of future leaders. The Company retained key leaders, took concrete steps on senior leadership succession planning, and maintained leadership development programs that will produce long-term results for the Company.

2011 Proxy at 39.

96. These positive "strategic results" statements were materially false and misleading for the following reasons:

(a) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon's leadership and engagement with employees, legislators, regulators, investors and the news media enabled the Company to deal with the [McNeil and other] issues" because Weldon was a direct cause of the McNeil debacle and other "issues" that occurred under his leadership, such as J&J Credo

violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(b) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Under Mr. Weldon's leadership, the Company continued its long-standing commitment to philanthropic activities and was recognized for social responsibility, inclusiveness, and environmental sustainability" because Weldon was a direct cause of reputational damage to J&J that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(c) It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "Mr. Weldon continued to build a pipeline of future leaders" because Weldon was a direct cause of the events that led to the resignation of Colleen Goggins, who had long been groomed to replace Weldon.

97. After the 2011 proxy was issued, Institutional Shareholder Services Inc. recommended that J&J shareholders vote "no" with respect to J&J's 2010 executive compensation practices.

98. On or about April 19, 2011, the J&J Board, knowing that it was in danger of losing the shareholder vote on executive pay, issued false and misleading supplemental correspondence to J&J institutional investors, that stated in part:

> As discussed on pages 21-22 and 37-38 in the CD&A of the 2011 Proxy Statement, the Company's performance in 2010 was decidedly mixed, with a number of significant achievements that position the Company for growth – including recognized robust pipelines, growth in key markets, and penetration in emerging markets, but also a number of significant disappointments that impacted the Company's reputation – most notably the well-publicized voluntary product recalls by the McNeil Consumer Healthcare business and the voluntary suspension of manufacturing at McNeil's Fort Washington, Pennsylvania facility. As a result, the Board faced a complex set of facts across the three business segments – Pharmaceuticals, Medical Devices and Diagnostics, and Consumer- when making decisions in January 2011 about the compensation for the Company's executive officers for performance in 2010. The Board lowered annual performance bonuses for 2010 in recognition of the mix of short-term performance successes and disappointments, while still providing competitive long-term incentives tied to the future growth of the Company in recognition of the Company's strengthened positioning for the long-term.
>
> * * *
>
> The Board's decisions on Mr. Weldon's compensation for 2010 reflect the Company's mixed performance, with short-term successes and disappointments, as well as continued strong positioning of the Company for long-term growth.
>
> * * *
>
> **The Board believes its compensation decisions clearly demonstrate the link of CEO pay to Company performance year-to-year, as well as the significant proportion of CEO pay that is tied to the long-term performance of the Company.** Accordingly, the Board has recommended that shareholders vote **FOR** approval of **ITEM 3: ADVISORY VOTE OF NAMED EXECUTIVE OFFICER COMPENSATION** for the upcoming Annual Meeting. We highly encourage shareholders to read the entire CD&A to be fully informed on this matter.

April 2011 Amendment at 3 (emphasis in original).

99. The April 2011 Amendment continued to mislead J&J shareholders in the following ways:

(a) J&J's statement that McNeil's product recalls were "voluntary" was materially false and misleading when made because J&J issued the recalls in reaction to pressures outside the Company, including regulatory pressures, FDA inspection reports, Congressional testimony, and adverse public relations. For example:

(i) Beginning in November 2009, J&J recalled lots of its products due to a musty odor, but only after the FDA issued a report noting that *J&J failed to report the product contamination and to respond to the concern.*

(ii) On January 15, 2010, J&J recalled large quantities of several of its products, *but only after the FDA issued it a warning letter relating to the Las Piedras plant.*

(iii) On April 30, 2010, J&J recalled several of its infant and children's products, *but only after the FDA issued a scathing inspection report on the Fort Washington plant.* Even in announcing the recall, the FDA followed up the next day to publicly state the true reason behind the recall: irregular active ingredients and foreign particle contamination.

(iv) On May 27, 2010, the U.S. House of Representatives Committee on Oversight and Government Reform held a hearing on J&J's recall problems. Dr. Joshua M. Sharfstein, Principal Deputy Commissioner of the FDA, prefaced his testimony by stating, "This is a story of an agency that identified a problem, confronted a company, and *eventually forced major challenges to protect the public.*" Dr. Sharfstein identified J&J's "*reactive vs. proactive approaches to product quality problems*" as a "significant concern."

(v) On September 30, 2010, Dr. Sharfstein again testified before the Committee on Oversight and Government Reform, stating "Although the agency is able to accomplish most drug recalls with the cooperation of the drug manufacturer, there are instances in which films are reluctant or unwilling to conduct a recall, or to do so in a timeframe that FDA believes is necessary and appropriate to protect public health. If a firm refuses to recall, *FDA can pursue a remedy in Federal court*, like a seizure, but this can be time-consuming and cumbersome.

(vi) On December 9, 2010, J&J recalled its Rolaids® softchew products due to metal and wood particles in the product, *but only after the FDA issued its inspection report on the Fort Washington plant.*

(vii) On March 10, 2011, unimpressed with J&J's progress on product safety improvements, the FDA filed suit in federal court seeking an injunction against J&J's McNeil for violations of the Food, Drug, and Cosmetic Act. In its complaint, the FDA alleged:

1) That FDA inspectors discussed the violations with McNeil representatives, but "[n]evertheless, FDA investigators have continued to observe similar CGMP violations at subsequent inspections.

2) That FDA representatives had multiple meetings with J&J and McNeil executives regarding the companies' corporate culture of compliance, yet "recent FDA inspections have confirmed that *violations persist and additional work is needed to fully address deficiencies and achieve sustained compliance with the law.*"

3) That the FDA issued a Warning Letter to J&J and McNeil detailing the manufacturing violations and "the serious nature of the CGMP violations," yet "*sufficient corrections were not made.*"

4) That "*unless restrained by this Court*, Defendants will continue to violate the Act."

(b) J&J's statement that the closure of McNeil's Fort Washington plant was voluntary was materially false and misleading when made because the plant was closed under threats from the FDA and Congress. Most FDA-regulated facilities are subject to periodic inspections, but the FDA accelerated its inspections at the Fort Washington plant "because of the history of compliance problems." This history of compliance problems included:

(i) At a meeting between FDA officials and executives from J&J and McNeil following the FDA's January 15, 2010 warning letter, the FDA told the companies to expect close oversight ongoing. Only after the FDA issued a scathing inspection report did J&J finally close the Fort Washington plant.

(ii) Much like its product recalls, J&J gave an impression that it was proactive in its closing of the Fort Washington plant, when in reality it was only reacting to FDA demands and pressure. When J&J made the statement itself, the plant was closed due to the consent decree forced upon J&J by the FDA. Even to this day, J&J could not "voluntarily" reopen the plant as doing so is subject to independent inspection and FDA approval – presumably meaning that violations would be continually noted.

DAMAGES TO J&J

100. J&J's once valuable corporate franchise has been gravely impaired by a variety of Credo violations and other misconduct damaging J&J's reputation, all under the leadership of Weldon who has accepted accountability. Nevertheless, Defendants inexplicably award Weldon with excessive and unwarranted compensation in light of repetitive and recurring violations of the J&J Credo that have adversely affected J&J's reputation.

101. By this action, Plaintiff seeks to recover damages and other relief for J&J against Defendants for their breaches of fiduciary duty, corporate waste, and the unjust enrichment of Weldon. Absent this action, as the Board has already demonstrated, the Company's rights against its wayward fiduciaries will not be exercised, to the further detriment to the Company.

102. Damages to J&J include:

(a) Overcompensation of Weldon from 2006 to present;

(b) Costs and fees associated with issuing and correcting false proxy statements;

(c) Costs and fees associated with soliciting institutional and other investors to vote "yes" in favor of J&J's executive compensation practices when those practices were misrepresented and not in accord with J&J's executive compensation philosophies and guiding principles; and

(d) Harm to J&J's reputation, lost sales and increased expenses due to overcompensating Weldon, leaving Weldon in senior leadership, and incenting Weldon to create a compliance culture that led to reputational harm to J&J.

DERIVATIVE ALLEGATIONS

103. Plaintiff incorporates all preceding and subsequent allegations as if fully set forth herein.

104. Plaintiff brings this action derivatively in the right and for the benefit of J&J to redress the breaches of fiduciary duty and other violations of law by the Defendants.

105. Plaintiff will adequately and fairly represent the interests of J&J and its shareholders in enforcing and prosecuting its rights.

106. At the time this action was initiated, the Board consisted of twelve directors. Plaintiff did not make any demand on the Board to institute this action because such a demand would be a futile, wasteful and useless act, for the following reasons:

107. Sometime before March 16, 2011, the full Board ratified the Compensation Committee's recommendation to pay J&J's CEO and other executives, and then, sometime prior to March 16, 2011, unanimously recommended to shareholders in the 2011 proxy statement that they approve J&J's 2010 executive compensation, without disclosing that the Special Committee existed or that it was evaluating J&J's executive compensation and was responding to shareholder allegations germane to executive compensation decisions.

108. The Board purportedly follows a pay-for-performance executive compensation philosophy and considers the manner in which performance is achieved. Nevertheless, the Board paid the CEO and other executives despite the Company's dismal financial results and for results obtained through illegal and improper conduct that damaged J&J's reputation. This executive pay was not only unreasonable and without good faith (and thus, a breach of fiduciary duty), it also was not a proper exercise of business judgment and violated J&J's pay-for-performance compensation policy and the Board's obligations in soliciting 2010 proxy votes. The Board's 2009, and 2010 executive pay raises also put the lie to its representations regarding J&J's adherence to a pay-for-performance – including the manner of performance – executive compensation model. Because at least a majority of the Board is substantially likely to be held liable for breach of fiduciary duties in connection with J&J's 2009, and 2010 executive compensation, those Board members are interested in a demand. Thus, demand is excused.

109. For the same reasons as set forth above, Plaintiff has raised substantial doubt that the Board's 2009, and 2010 compensation decisions were protected business judgment, thus excusing demand. Based on the facts alleged herein, there is substantial doubt that the Board's decision to lavishly compensate CEO Weldon in 2009, and 2010 in light of extraordinary level of Credo violations, in the context of Weldon's admitted acceptance of responsibility for the Credo violations that resulting reputational harm to J&J, was a protected business judgment. The Board has subsequently ratified its decision on executive pay for 2010, when it recommended that J&J stockholders approve the 2010 executive compensation in an advisory vote (without having disclosed that the Special Committee existed or that it was evaluating Credo violations and reputational harm). Accordingly, making a pre-suit demand on the Board is a useless and futile act, and therefore, excused.

110. Similarly, demand is excused because the Board unanimously recommended that the shareholders approve J&J's 2010 executive compensation practices, policies and philosophies, including the excessive pay for J&J's CEO and other executives (without having disclosed that the Special Committee existed or that it was evaluating Credo violations and reputational harm).

111. Demand is also excused because, as detailed above, the Board failed to mention the existence of the Special Committee when soliciting the Company's shareholders action in voting on the say-on-pay measure in the 2011 Proxy Statement. The Board's failure to disclose the existence of the Special Committee or what it was charged with doing, which are facts material to J&J shareholders voting on J&J's executive compensation practices, was a breach of the Board's fiduciary duties and its duties under the Exchange Act. Thus, the entire Board faces a substantial likelihood of liability and, accordingly, any demand upon the Board is futile.

112. It is also futile to make a demand on the Board that has adopted the Special Committee Report, prepared by the Compensation Committee, because the entire Board is now positioned to defend the findings and conduct of the Special Committee Report, regardless of whether those findings and conduct are consistent or inconsistent with J&J's executive compensation practices from 2008 to present. Further, the Board is hopefully conflicted between accepting Weldon's testimony concerning his full accountability for McNeil problems identified in the Special Committee Report, and the Board's awareness and approval of compliance restructuring and decentralization that made it highly unlikely that Weldon could be an effective leader of J&J's compliance efforts.

113. The Board also failed to disclose that the Special Committee as constituted is the same as the Compensation Committee during the relevant time periods herein. The Board also failed to disclose that Weldon had accepted full accountability for the problems at McNeil.

Additionally, all of the Board members are interested because they engaged in conduct which is not protected by the business judgment rule in connection with their intentional failure to mention the existence of the Special Committee or what it was charged with doing in the 2011 Proxy Statement, or for the 2010 Proxy, that a Special Committee was either formed or contemplated to evaluate Credo violations and reputational harm. The Board was required to disclose the existence and/or formulation of the Special Committee and that it was assessing J&J's executive compensation and responding to shareholder complaints about executive pay when the Board was simultaneously soliciting J&J shareholders' votes in connection with the say-on-pay initiative. This Board decision is not a protected business judgment. Thus, demand is excused.

FIRST CAUSE OF ACTION

Against Defendants for Violations of Section 14(a) of the Exchange Act

114. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

115. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9. Specifically, J&J's 2010 and 2011 Proxy Statements violated § 14(a) and Rule 14a-9 because they contained materially false and misleading statements, and omitted material facts regarding the Company's compensation practices.

116. The 2010 and 2011 Proxy Statements (including the April 2011 Amendment) were also each false and misleading when issued because they failed to disclose the formation and/or existence of the Special Committee formed by the Board, and that the Special Committee

had been charged with evaluating Credo violations and reputational harm at the Company and assessing and responding to shareholder demands questioning J&J's violations of its Credo, all of which was and is material information to a reasonable investor being asked to vote on executive compensation matters at the Company.

117. For example, it was materially false and misleading for the 2011 Proxy and related amendment to state that "The Board believes that Mr. Weldon generally met expectations during 2010 . . . [and] the Company delivered solid adjusted earnings per share, free cash flow and long-term total shareholder return" because:

(a) during 2010, Weldon was a direct cause of numerous J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, related regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J; and

(b) the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed.

118. It was also materially false and misleading for the 2011 Proxy and related amendment to state that "Mr. Weldon was instrumental in the Company's response to these [reputational and related] issues, including the implementation of a comprehensive remediation plan at McNeil and a new operating model for supply chain, quality, and compliance spanning the enterprise" because:

(a) Weldon was a direct cause of "these issues" that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(b) the so-called "comprehensive remediation plan" was a result of extraordinary actions taken by the FDA and the Department of Justice – in the interest of public safety – to force J&J through a consent decree to change its manufacturing misconduct, and subject J&J to invasive regulatory oversight, including at least five years of FDA inspections and compliance oversight at McNeil operations. This "comprehensive remediation plan" was hardly the result of Defendant Weldon working to improve J&J, but instead was the result of Weldon's repeated failure to offer effective leadership in the face of regulatory investigations and FDA warning letters.

119. It was materially false and misleading for the 2011 Proxy and related amendment to state that "Mr. Weldon also made significant organizational realignments at the Company's executive leadership level to ensure the Company is well-positioned for sustainable growth into the future and continues to develop its leadership talent" because:

(a) Weldon was a direct cause of the events that led to the resignation of Colleen Goggins, a long-time senior executive of J&J who was a strong internal candidate to replace Weldon. In fact, Weldon's actions created the appearance that Goggins was a scapegoat for the problems that J&J was experiencing at McNeil, when in fact it was Weldon who was ultimately responsible for J&J's problems at McNeil;

(b) the need to develop leadership talent in 2010 was necessitated by the resignation of Colleen Goggins – Weldon's scapegoat;

(c) Weldon was a direct cause of "these issues" that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(d) Weldon was a direct cause of reputational damage to J&J that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J.

120. It was materially false and misleading for the 2011 Proxy and related amendment to make positive "strategic results" statements because:

(a) Weldon was a direct cause of the McNeil debacle and other "issues" that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(b) Weldon was a direct cause of reputational damage to J&J that occurred under his leadership, such as J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J;

(c) Weldon was a direct cause of the events that led to the resignation of Colleen Goggins, who had long been groomed to replace Weldon.

121. It was materially false and misleading for the 2010 Proxy and related amendment to state that "The Board believes that Mr. Weldon generally exceeded expectations" and "the Company delivered solid financial results and positioned itself for future growth because:

(a) Weldon was a direct cause of numerous J&J Credo violations, J&J's repeated failures to address FDA concerns over manufacturing, related regulatory misconduct actions directed at J&J, and extensive personal injury litigation directed at J&J; and

(b) the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and

sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

122. With respect to Defendant Weldon's compensation, the Board stated in the 2010 Proxy that "[t]he Company continued to maintain a strong reputation through Mr. Weldon's commitment to Our Credo, focus on sustainability, transparency in investor relations and philanthropic activities." It was materially false and misleading for the Board to represent, as a positive factor at the time these representations were made, that "the Company delivered solid financial results and positioned itself for future growth" because the manner in which those results were achieved involved illegal and other improper activities, including bribery of foreign officials, off-label marketing of drugs, and sale of products that were unfit for the purposes under which they were marketed. These illegal and improper activities were in violation of the J&J Credo and damaged J&J's reputation. Weldon, as Chairman/CEO of J&J, was a direct cause of the manner in which these results were achieved.

123. In the exercise of reasonable care, Defendants should have known that the 2010 and 2011 Proxy Statements were materially false and misleading when made.

124. The misrepresentations and omissions in these Proxy Statements were material to J&J shareholders, and material to shareholders, including Plaintiff, when considering "say on pay" in the 2010 and 2011 Proxies. These Proxy Statements were an essential link in the accomplishment of the continuation of Defendants' violation of the Company's compensation policies, and the Board's recommendation in connection with a shareholder proposal that shareholders not be given an opportunity to cast advisory votes on J&J executive compensation, as revelations of the truth would have immediately thwarted a continuation of shareholders'

endorsement of the directors' positions, the advisory vote proposal, the executive officers' compensation and the Company's compensation policies. Likewise, the 2010 and 2011 Proxies were an essential link in the accomplishment of the continuation of Defendants' violation of the Company's compensation policies, and the shareholders advisory vote proposal whereby shareholders could cast advisory votes on J&J executive compensation practices as represented in proxy statements, as revelations of the truth would have immediately thwarted a continuation of shareholders' endorsement of the directors' positions, the advisory vote proposal, the executive officers' compensation and the Company's compensation policies.

125. The Company was damaged as a result of the material misrepresentations and omissions in the above-referenced Proxy Statements.

SECOND CAUSE OF ACTION

Against Defendants for Breach of Fiduciary Duty

126. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

127. Each of the Defendants named in this claim was a director and/or officer of J&J and as such owed to J&J the highest duty known to the law. Each of these Defendants agreed to and did participate in and/or aided and abetted one another in a deliberate course of action designed to divert corporate assets in breach of the fiduciary duties these Defendants owed to J&J.

128. As demonstrated by the allegations above, the Defendants named herein breached their fiduciary duties of loyalty, good faith, candor and independence owed to J&J and its shareholders, and they failed to disclose material information and/or made material misrepresentations to shareholders regarding Defendants' scheme to unjustly award Weldon executive compensation.

129. These Defendants have violated fiduciary duties of care, loyalty, good faith, candor and independence owed to J&J and its shareholders, have engaged in unlawful self-dealing and have acted to put their personal interests and/or their colleagues' interests ahead of the interests of J&J and its shareholders. As directors of J&J, these Defendants participated in the wrongful acts of alleged herein. They thereby breached their fiduciary duties to J&J shareholders.

130. As corporate fiduciaries, the Defendants named herein owed to J&J and its shareholders a duty of candor and full and accurate disclosure. As a result of the conduct complained of, Defendants made, or aided and abetted the making of, numerous misrepresentations to and/or concealed material facts from J&J's shareholders despite their duty to, *inter alia*, disclose the true facts regarding J&J. Thus they have violated their duty of candor.

131. In committing the wrongful acts particularized herein, Defendants have pursued or joined in the pursuit of a common course of conduct, and have acted in concert with one another in furtherance of their common plan or design.

132. At all relevant times, Defendants collectively and individually initiated a course of conduct which was designed to and did: (i) conceal the fact that the Company was overpaying its Chairman/CEO via compensation premised on an illusory "pay-for-performance" executive compensation scheme; and (ii) maintain Defendants' directorial and executive positions at J&J and the profits, power and prestige which Defendants enjoyed as a result of these positions. This misconduct included issuance of false and misleading proxy statements issued to J&J shareholders and filed with the SEC in 2008, 2009, 2010, and 2011.

133. Defendants' misconduct was not due to an honest error of judgment, but rather to their bad faith and was done knowingly, willfully, intentionally or recklessly.

134. By reason of the foregoing acts, practices and course of conduct, the Defendants named in this claim have failed to exercise good faith and instead have acted knowingly or in reckless disregard of their fiduciary obligations toward J&J and its public shareholders, harming J&J.

THIRD CAUSE OF ACTION

Against Defendants for Corporate Waste

135. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

136. By failing to properly consider the interests of the Company, by failing to conduct proper supervision, and by giving away tens of millions of dollars to J&J's Chairman/CEO via Defendants' executive compensation scheme, the Defendants named in this claim caused J&J to overpay its Chairman/CEO since at least 2006

137. By reason of the foregoing, J&J and its shareholders have been damaged.

FOURTH CAUSE OF ACTION

Against Defendant Weldon for Unjust Enrichment

138. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

139. As a result of the conduct described above, Defendant Weldon will be and has been unjustly enriched at the expense of J&J, in the form of unjustified salaries, benefits, bonuses, stock option grants, stock grants, pension benefits, perquisites and other emoluments of office.

140. All the payments and benefits provided to Weldon that are disconnected with pay-for-performance principles, or the manner of performance, unjustly awarded to Weldon and were at the expense of J&J, resulting in substantially unearned compensation to Weldon.

141. Weldon should be ordered to disgorge the compensation which he has received and/or will unjustly obtain and/or a constructive trust should be imposed for the benefit of the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of J&J for the amount of damages sustained by the Company as a result of Defendants' violation of state law;

B. Extraordinary equitable and/or injunctive relief as necessary or permitted by law, equity and statutory provisions sued hereunder, including disgorgement, attachment, impoundment, imposition of a constructive trust on or otherwise restricting the disposition/exercise of improvidently awarded executive compensation that was disconnected with pay for performance principles, or the manner of performance, so as to ensure that Plaintiff on behalf of J&J has an effective remedy;

C. Ordering the implementation and administration of internal controls and systems at J&J designed to prohibit and prevent excessive and/or unwarranted executive compensation payments to J&J's CEO and other executives;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, and accountants' and experts' fees, costs, and expenses;

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury.

DATED: September 1, 2011

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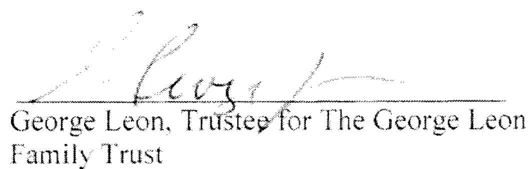
Attorneys for Plaintiff

VERIFICATION

I, George Leon, as Trustee for The George Leon Family Trust, under penalty of perjury, state as follows:

The George Leon Family Trust is the Plaintiff in the above-captioned action. As its Trustee, I have read the foregoing Complaint and authorized its filing on behalf of The George Leon Family Trust. Based upon the investigation of my counsel, the allegations in the Complaint are true to the best of my knowledge, information and belief.

DATED: September 1, 2011



George Leon, Trustee for The George Leon Family Trust