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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ANDREW J. GUILFORD, JUDGE PRESIDING

HSINGCHING HSU,)	
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)	
)	
Plaintiff,)	
)	
)	
)	
Vs.)	No. SACV15-0865-AG
)	
)	
PUMA BIOTECHNOLOGY, ET AL,)	
)	
)	
)	
Defendants.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL, DAY 5

SANTA ANA, CALIFORNIA

WEDNESDAY, JANUARY 23, 2019

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1 SANTA ANA, CALIFORNIA; WEDNESDAY, JANUARY 23, 2019; 9:03 A.M.

2 ---

3 THE CLERK: All rise.

4 (Open court - jury present)

5 THE COURT: Welcome back, everyone.

6 Mr. Clubok, please continue.

7 MR. CLUBOK: Thank you very much.

8 **Alexander Younger, Plaintiffs' witness, previously sworn**

9 **CROSS-EXAMINATION RESUMED**

10 BY MR. CLUBOK:

11 Q. Good morning, Mr. Younger.

12 A. Good morning.

13 Q. Mr. Younger, where we left off yesterday, we were
14 talking about how the practice is that an advisor like
15 Capital would purchase stock in a company like Puma on your
16 behalf and not tell you in advance, but then they would
17 notify you after, correct?

18 A. Well, that notification would come through the standard
19 recordkeeping, yes.

20 Q. The notification came through the standard
21 recordkeeping? What do you mean by that?

22 A. I think when we spoke yesterday, I referred to the
23 monthly accounting report, but also the fact that those
24 trades are placed through our custodian bank. So we see them
25 within that custody system.

1 Q. Okay. But in the case of Puma, Norfolk -- I'm sorry.
2 In the case of Puma, Capital actually specifically
3 highlighted that they had made the investments in Puma to
4 you; isn't that true?

5 A. In what sense? While they were making those investments
6 or post the event? It's not untypical in quarterly reporting
7 for them to highlight a number of new positions they will
8 have taken in that period. That's not untypical of any
9 investment manager.

10 Q. Yes. I understand. So let me -- let me try it again,
11 and maybe my question wasn't clear. Capital purchased Puma
12 stock for Norfolk without telling you in advance they were
13 going to do it, correct?

14 A. Correct.

15 Q. And after the fact, they notified you that they had made
16 these purchases, correct?

17 MR. FORGE: Your Honor, I'm just going to object as
18 vague as to time in terms of when after the fact.

19 THE COURT: Sustained.

20 Clarify that.

21 BY MR. CLUBOK:

22 Q. Well, when? How soon after Puma -- I'm sorry. How soon
23 after Capital made its initial investments on behalf of
24 Norfolk did Capital specifically highlight to you that they
25 had made those investments?

1 A. Are you classifying the standard accounting reporting in
2 your phrase specifically highlighting?

3 Q. No, sir. I'm not asking about the standard accounting,
4 which you did get anyway. I'm asking about Capital
5 specifically highlighting to Norfolk that it had invested in
6 Puma on behalf of Norfolk. How soon did that occur after the
7 first investments?

8 A. My expectation would be that given it was a new
9 position, there would be some narrative inclusion in the
10 first quarterly report following those trades.

11 Q. So the very first quarterly report following the first
12 trades in Puma stock, Capital would have specifically
13 highlighted those investments to you; is that correct?

14 A. That's my expectation, along with all --

15 Q. And was that --

16 A. Could I finish, sir?

17 Q. Of course.

18 A. -- along with all other new positions that they would
19 have initiated in that period.

20 Q. And it -- it's not just your expectation, but in fact
21 that's what actually happened in this case. That is, that
22 Capital specifically highlighted the investment in Puma stock
23 within the first quarter after the initial purchases; isn't
24 that true?

25 A. I recall that that quarterly report included Puma

1 Biotechnology amongst a number of other company names.

2 Q. So is that a yes?

3 A. Well, that's yes, to my recollection.

4 BY MR. CLUBOK:

5 Q. Why don't we turn your attention to Exhibit 12.

6 MR. CLUBOK: Exhibit 12, Your Honor, has no
7 objection to it. I'd like to offer it into admission.

8 THE COURT: Without objection Exhibit 12 is
9 admitted.

10 **(Exhibit 12 received)**

11 BY MR. CLUBOK:

12 Q. Exhibit 12 is the quarterly investment report for
13 Norfolk Pension Fund for the period ending December 31st,
14 2014; correct?

15 A. Yes, that's correct. It says it on the first page.

16 Q. And this would have been the very first quarterly report
17 by Capital Group to Norfolk about Norfolk's investments which
18 you received after the very first purchases in Puma stock,
19 correct?

20 A. Given an initial purchase date of October, which falls
21 in this quarter, that's correct.

22 Q. And, in fact, if we turn to page -- I believe it's
23 page 10 of the exhibit although it's numbered page 9 in the
24 slide deck. This is a page that's entitled Investing in
25 Healthcare Innovation. Do you see that?

1 A. I can, yes.

2 Q. And this was a page in which Capital is specifically
3 highlighting to Norfolk its approach to investing in
4 healthcare-related companies, correct?

5 A. That's correct.

6 Q. And specifically in biotechnology companies, correct?

7 A. It references biotechnology, yes.

8 Q. And Capital is explaining to Norfolk and highlighting
9 its approach, and it says in the first main paragraph: The
10 biopharmaceutical industry is in a golden age of innovation.

11 Do you see that?

12 A. Sorry. Yes.

13 Q. And two sentences later it says: As companies explore
14 revolutionary cures against cancer and other troubling
15 conditions, we are seeing investment opportunities in new
16 areas.

17 Do you see that?

18 A. I can read that, yes.

19 Q. So Capital is telling you they just bought Puma stock
20 and it's because they see this investment opportunity in a
21 company like Puma and these others identified here, correct?

22 MR. FORGE: Objection, Your Honor. Compound. And
23 the document speaks for itself.

24 MR. CLUBOK: May I slightly rephrase, Your Honor?

25 THE COURT: Yes, please. I think you should.

1 BY MR. CLUBOK:

2 Q. Was it your understanding from this that Capital was
3 communicating to you their approach to investing in
4 biopharmaceutical companies, including Puma?

5 A. This page lists their approach and a number of positions
6 they initiated in Agios, Puma, and Incyte.

7 Q. And they specifically on the right call out Puma and
8 have their own paragraph related to Puma, correct?

9 A. There are two bullet points relating to Puma, yes.

10 Q. Also on this page they have a list of all of the
11 positions, or they call it the holdings, as of December 31st,
12 2014, that they have purchased on behalf of Norfolk, correct?

13 A. Well, to clarify, these are holdings in the healthcare
14 area. They're not the total portfolio.

15 Q. Thank you for that clarification. This is just the
16 healthcare sector that Capital has invested on. Capital has
17 also invested on a number of other sectors, correct?

18 A. Yes, across all sectors globally. But, yes, that's
19 correct. This is healthcare specifically.

20 Q. So within the healthcare set of investments made by
21 Capital on behalf of Norfolk, Puma is listed as one of, looks
22 like, 12 or so other companies?

23 A. One of 12 or so, as you say, yes.

24 Q. And overall the holdings represent .5 percent?

25 A. I'd need to add that up, but if -- I'm happy to trust

1 your math, but, yeah.

2 Q. Sir, I'm actually just referring to what it says here.
3 It says Puma Biotechnology is .5 percent of the total
4 holdings. Do you see that?

5 A. Apologies. I thought you said total holdings of five
6 percent.

7 Q. I probably did. I said it incorrectly. I apologize.

8 A. So I'd say you're referring to Puma Bio being .5 percent
9 of the total portfolio that Capital are running on our
10 behalf?

11 Q. Right.

12 A. That's correct.

13 Q. Now, with respect to all of these other biotech,
14 biopharmaceutical companies --

15 A. I don't believe they're all biopharmaceutical companies.

16 Q. Fair enough. They're all within the healthcare
17 industry?

18 A. They are healthcare companies. It's a sector analysis.

19 Q. And some of them are biopharmaceutical companies just
20 like Puma?

21 A. Well, they'll all have unique characteristics. Some of
22 them will be biopharmaceutical companies. Some of them will
23 be larger pharma companies which have biopharma activities
24 within them.

25 Q. Right. But some of them like Puma were single-drug

1 biopharmaceutical companies, correct?

2 A. I don't know whether they were single-drug biopharma
3 companies.

4 Q. Okay. Now, you said that you have two law firms,
5 including this law firm that's here today, Robbins Geller,
6 and another law firm who are on retainer to continually
7 monitor your investments, correct?

8 A. They undertake the monitoring as I described. That's
9 correct.

10 Q. And I think you said on direct that they'll tell you if
11 there are lawsuits that relate to your holdings and if there
12 are settlements and that sort of thing, correct?

13 A. There's two functions. So one is have lawsuits or
14 settlements been reached, and are we claiming those moneys to
15 which we are due appropriately.

16 The second is the identification of where there may
17 have been various activities which might indicate that a
18 lawsuit is required for investors to seek remedy.

19 Q. And amongst those two law firms you have on retainer,
20 you would expect them to include this group of
21 healthcare-related companies amongst the ones they're
22 watching to see if there are lawsuit or settlements or
23 potential claims, correct?

24 A. They have full access to all of our records, so they
25 would be reviewing our entire portfolio across all sectors

1 and all of the managers that run those moneys.

2 Q. So surely you've been advised that every single one of
3 these companies on this list has been the subject of a
4 shareholder lawsuit; isn't that true?

5 A. So are you referring to being the subject of or being
6 advised that there is the potential for -- are you talking
7 about settlement?

8 Q. My question, sir, is every single one of these companies
9 on this list has been sued by shareholders. Were you aware
10 of that?

11 MR. FORGE: Your Honor, object to the phrasing of
12 the statement.

13 THE COURT: Overruled.

14 THE WITNESS: I'm not aware of the litigation
15 history of all of those companies.

16 BY MR. CLUBOK:

17 Q. Are you aware that many of these other companies were
18 also sued by Robbins Geller, the same firm that is
19 representing you here in this case?

20 MR. FORGE: Your Honor, I would object on 401 and
21 403 grounds.

22 THE COURT: Sustained.

23 BY MR. CLUBOK:

24 Q. Are you aware, sir, that in some cases the companies
25 were sued because their stock price was allegedly too low,

1 and in other cases they were sued because the stock price was
2 allegedly too high?

3 MR. FORGE: Objection. 401, 403, and 602.

4 THE COURT: Just a moment.

5 Sustained.

6 MR. CLUBOK: May I respond briefly, Your Honor?

7 THE COURT: Briefly.

8 MR. CLUBOK: The implication here was that they
9 have law firms monitoring, and only in the most special case
10 do they choose to participate. I want to examine what they
11 knew about the other lawsuits and whether it's true that
12 there is some special circumstance why they chose to
13 participate in this one versus the others.

14 THE COURT: Response?

15 MR. FORGE: What Mr. Clubok infers is really not
16 relevant, Your Honor. It's what the jury can infer. And
17 there was no questions about anything being special about
18 this lawsuit.

19 THE COURT: Okay. I'm reversing myself. The
20 objection is overruled.

21 MR. CLUBOK: Thank you, Your Honor.

22 THE COURT: Don't thank me. I'm just doing my job.

23 MR. CLUBOK: I appreciate it.

24 May I ask, Your Honor, if the court reporter could
25 read back the question?

1 THE COURT: She may.

2 (Record read)

3 THE WITNESS: As I stated, I'm not aware of the
4 litigation history of all those companies, so I'm not aware
5 of the details of those litigations.

6 BY MR. CLUBOK:

7 Q. With respect -- you see there's a company called
8 Receptos here?

9 A. I can see that's included on the list.

10 Q. And Receptos was mentioned in the context -- were you
11 here when Receptos was discussed in Mr. Auerbach's testimony?

12 A. The name came up. I can't remember the detail of that
13 testimony.

14 Q. Are you aware that Receptos itself has been sued both by
15 shareholders who claimed the share prices were too low and by
16 other shareholders who are claiming the shareholder price was
17 too high? Were you aware of that?

18 A. I think I would have to refer --

19 MR. FORGE: Your Honor, I'm going to raise a 401,
20 403, and 602 objection. The witness has already stated he
21 does not have personal knowledge of lawsuits involving these
22 other companies.

23 THE COURT: The question is, were you aware of
24 that? You may answer yes or no.

25 THE WITNESS: No.

1 BY MR. CLUBOK:

2 Q. And were you aware that it was the Robbins Geller firm
3 that has used, claiming that -- well, strike that. Are you
4 aware that Receptos makes a drug called Ozanimod, which is a
5 drug designed to address multiple sclerosis?

6 A. No, I'm not.

7 Q. And are you aware that there has been a claim that the
8 benefits of that drug were -- and I'm loosely saying it --
9 overstated, and thus the stock price associated with this
10 company was inflated? Are you aware about those claims?

11 A. From my previous answers, of course I'm not.

12 Q. Well, are you aware that Robbins Geller has pursued
13 those claims on behalf of their clients?

14 A. Robbins Geller is active behalf of a number of
15 shareholders in this area.

16 Q. Have you heard of a firm called Robbins Arroyo?

17 A. I'm not familiar with that firm, no.

18 Q. Are you aware that the Robbins in Robbins Geller is a
19 person named Darren Robbins, and the Robbins in Robbins
20 Arroyo is his brother named Brian Robbins? Are you aware of
21 that?

22 MR. FORGE: Your Honor, I'm going to object on 401
23 and 403 grounds. This is so far afield, I think it's
24 irrelevant.

25 MR. CLUBOK: I'll link it up if I may, Your Honor.

1 THE COURT: Overruled subject to strike if you
2 don't link it up sufficiently.

3 THE WITNESS: Apologies. So I'm able to answer?

4 MR. CLUBOK: Yes.

5 THE WITNESS: I'm not aware of the family
6 relationship of Robbins Geller partners.

7 BY MR. CLUBOK:

8 Q. Did you know that the Robbins Arroyo firm sued on behalf
9 of shareholders who claimed that Receptos was undervalued
10 when it was sold? Are you aware that that happened?

11 A. I'm not aware of the legal action involving Receptos.

12 Q. Well, you were an investor in Receptos. Did you monitor
13 a lawsuit that was filed by the brother of the lead partner
14 of the firm that's representing you in this case?

15 MR. FORGE: Again, Your Honor, I'm going to object
16 to this whole line of questioning under 401 and 403.

17 THE COURT: Are you wrapping it up?

18 MR. CLUBOK: I've got two more questions on this
19 and I'll be wrapped up.

20 THE COURT: Subject to a motion to strike, ask the
21 two following questions.

22 THE WITNESS: I think in terms of what our
23 monitoring means, so the initial monitoring is, is there a
24 case in which you wish to be involved, of which we accept the
25 -- we understand to be the presumption of the U.S. court that

1 the lead plaintiff status is best pursued by the investor
2 with the largest loss in that individual case. Generally,
3 and I know you have some issues on what is small or large,
4 but we are not an enormous fund.

5 So typically large losses occur by large investors
6 subject to specific circumstances. Our monitoring beyond
7 that is are we collecting funds that have fallen due when
8 decisions have been made and settlement has been reached.

9 And that is a multi-faceted approach because there
10 are a number of those settlements. We would simply be
11 reconciling between the report from the lawyers and the
12 report from the custodian.

13 BY MR. CLUBOK:

14 Q. And that's exactly what I'm getting to. You would
15 surely have been notified if the Robbins Arroyo firm had
16 settled on behalf of a class involving your investment in
17 Receptos, correct?

18 A. We would be notified if there was a claim to be filed.

19 Q. Right. And are you aware that in that case the
20 settlement was just for payment of lawyers' fees with no
21 money to the class in the case brought by Robbins Arroyo?

22 THE COURT: Hold on. Make the objection.

23 MR. FORGE: 401 and 403.

24 THE COURT: Sustained.

25 MR. FORGE: Your Honor --

1 THE COURT: Hold on. Hold on.

2 Do not consider the attorney's question.

3 Yes?

4 MR. FORGE: Your Honor, at this time that's the
5 second question of the two questions that Mr. Clubok said he
6 had that was going to somehow tie up this entire line of
7 questioning. I don't believe he has done that, and I would
8 move to strike all of the questions along these lines as
9 under 401 and 403.

10 THE COURT: I'm inclined to do it.

11 Response?

12 MR. CLUBOK: The response, Your Honor, is that this
13 witness was examined about the monitoring they do both in
14 terms of whether to bring lawsuits and about settlements that
15 they can make claims on. It was -- to the extent it was
16 intended to try to show that there is something special about
17 this case because they're here as opposed to the other cases,
18 that's the purpose I use it for.

19 THE COURT: Okay. If you're tying it together with
20 a question about how other cases settled, for heaven's sake,
21 we're not getting into that. We're not getting into, as I
22 think I've heard people in this case say, cases within cases,
23 why it might settle, based on a million different factors.

24 I'm going to strike this line of testimony and ask
25 you to move on. Move on.

1 MR. CLUBOK: Thank you, Your Honor.

2 BY MR. CLUBOK:

3 Q. It was the Robbins Geller firm that triggered your
4 interest in this lawsuit, correct?

5 A. Yes. The initial approach was from Robbins Geller.

6 Q. And you are not being asked to pay anything to pursue
7 this litigation in terms of costs or fees of this case; isn't
8 it true?

9 A. I believe it's standard practice that it's a contingent
10 fee basis with the firm.

11 Q. That's the standard practice in the U.S. but not in
12 England, right?

13 A. The legal framework for securities litigation in England
14 is completely different. I'm not -- I'm not a UK or a U.S.
15 attorney, so I suspect I'd be slipping into areas where my
16 understanding would be more limited for the benefit of the
17 Court.

18 Q. Do you know who is paying the fees and costs for this
19 litigation?

20 A. As I've just said, it's a contingent fee basis. So
21 should the litigation be successful, that's where the fees
22 are derived. Funding, which is what you may be arriving at,
23 is being provided by Robbins Geller.

24 Q. And how about all the costs of paying all those experts
25 who have testified and are going to continue to testify in

1 this case on behalf of you? Do you know who's paying those
2 costs?

3 A. I think that's the answer I've just given. The upfront
4 costs are being met by Robbins Geller.

5 Q. Now, sir, you are responsible for knowing at least in
6 layman's terms -- I realize you're not a lawyer -- but the
7 general gist of the allegations that you're coming here to
8 bring on behalf of the class, correct?

9 A. That's correct.

10 Q. And you were here -- you've been here through opening
11 statements and through the testimony of the witnesses up to
12 this point, correct?

13 A. For the majority. I think I did have to step out for
14 one of the sessions.

15 Q. Fair enough. But you understand that generally
16 speaking, the claims here are that during a teleconference on
17 July 22nd, 2014, Mr. Auerbach made what you claim to be or
18 what the plaintiffs in this case claim to be false
19 statements, correct?

20 MR. FORGE: Your Honor, I'm going to object under
21 401 and 403. It's not counsel's job to frame the case in the
22 form of a question.

23 THE COURT: Where are we going with this?

24 MR. CLUBOK: I'm just establishing what the general
25 allegations are. Let me make it -- let me rephrase and see

1 if I can get to it.

2 BY MR. CLUBOK:

3 Q. The basic gist of this case is that Mr. Auerbach said
4 something untrue on that call that relates generally to four
5 subject areas. These were the ones the Court read to the
6 jury, and that is specifically the disease-free survival
7 rates, the absolute disease-free survival rates, the rates of
8 grade-three or higher diarrhea, the Kaplan-Meier curves, and
9 the discontinuation rate in the ExteNET study due to adverse
10 events. Just generally speaking, those are the four --

11 A. Was that not five?

12 Q. Probably the way I asked it, it may have sounded like
13 five. Let me say it again.

14 MR. CLUBOK: And if I may, I'm just trying to
15 establish --

16 THE COURT: I don't know that we need this witness
17 telling us what this case is about. Get to the question that
18 makes that somehow relevant.

19 BY MR. CLUBOK:

20 Q. Well, the allegations are that there were false
21 statements made on July 22nd, and then the truth is
22 supposedly revealed to the market based on the publication of
23 the abstract on May 13th, 2015, and also based on a
24 presentation made at an ASCO conference on June 1st. That's
25 the general claim that you're pursuing on behalf of the

1 class, correct?

2 MR. FORGE: Your Honor, again --

3 THE COURT: You have not wrapped it up into
4 anything relevant. I don't want this man to describe the
5 case.

6 MR. CLUBOK: Your Honor, my intention --

7 THE COURT: You need a wrap-up question, and I
8 don't hear it. If you're just asking him to give his opinion
9 of what this case is about, this witness is not the right
10 person to ask.

11 MR. CLUBOK: It's about the timing of the purchase
12 of the stock.

13 THE COURT: Then ask the wrap-up question. You're
14 not asking that.

15 BY MR. CLUBOK:

16 Q. Sir, is it your claim that you are entitled to recover
17 for damages for stock that was purchased after the telephone
18 call but before the truth was allegedly revealed first on
19 that publication of the May abstract? Is that the gist of
20 your claim?

21 MR. FORGE: Your Honor, again --

22 THE COURT: Sustained.

23 MR. FORGE: Thank you.

24 BY MR. CLUBOK:

25 Q. Why don't we move on concretely, and maybe this will

1 show what we're trying to do here. If we could turn back to
2 Exhibit 14. This was the bank record that your lawyer asked
3 you about in the initial examination.

4 Do you remember this one?

5 A. That is correct, yes.

6 Q. And this is the one where you were testifying about when
7 you believed that Norfolk had initially purchased the stock
8 that is the subject of your million-dollar damages claim,
9 correct?

10 A. That's correct, yes.

11 Q. All right. So then we -- we also showed you another
12 document which we'll put up side by side, which was
13 Exhibit 18, which is transactions that we received evidence
14 of when we asked Capital to send it to us directly.

15 A. That's correct. That's a Capital document against an
16 HSBC custody record.

17 Q. So the first question is: Did you understand for
18 purposes of this litigation that you had an obligation to
19 provide all the records that Norfolk had about the dates of
20 the purchases of its stock?

21 A. I did. I'd also accept that there was some confusion in
22 my testimony yesterday. Given the break, I did take the
23 opportunity to discuss with the office the two records. The
24 issue that arose there is as of the first of December, we
25 transitioned to a new custodial provider. So HSBC is the

1 custodial provider. The previous custodian was the U.S. Bank
2 Northern Trust headquartered in Chicago that has a
3 significant London operation.

4 So you asked with reference to the first item on
5 that list, which I don't know if you can blow it up, the
6 3,300 shares. That's -- my speculation was incorrect, which
7 I apologize.

8 That was the transitioning in of those units, those
9 shares that were held but were traded in accordance with that
10 Capital block there. So they were purchased when the
11 custodian arrangement lay with Northern Trust.

12 Q. Understood. In the course of the litigation, did you
13 provide us with the records from Northern Trust that
14 reflected Norfolk's actual purchases?

15 A. I believe we provided the records that were requested,
16 and we've certainly taken good order of the retention
17 instructions we've received. So all of those records, both
18 physical and electronic, where they exist, are available.

19 Q. You understand -- you understood that what was requested
20 was a record from Norfolk's records of all of the purchases
21 in Puma during the class period? Did you understand that
22 that was a request made?

23 MR. FORGE: Objection, Your Honor. It's vague as
24 to time. As counsel knows, this class -- the Court certified
25 this class on December 8th.

1 THE COURT: Hold on. Let's -- let's stop. Vague
2 as to time. Sustained.

3 BY MR. CLUBOK:

4 Q. During the class period. I asked you at the
5 beginning --

6 THE COURT: Hold on. Just a moment.
7 Start another question fresh.

8 MR. CLUBOK: Sure.

9 BY MR. CLUBOK:

10 Q. I think we established at the very beginning that you
11 understand the class period in this case runs from July 22nd,
12 2014, through May 29th, 2015. I think you've already
13 testified to that, that that's your understanding of the
14 class period, correct?

15 A. Yes. If I've testified to that, yes.

16 Q. Okay. So when I say class period, that's what I mean.
17 Okay?

18 A. Uh-huh.

19 Q. You understand?

20 A. Yes.

21 Q. Okay. So did you understand that in the course of
22 discovery, you had an obligation on behalf of Norfolk to
23 produce the records that Norfolk had of its purchases of Puma
24 stock during that class period?

25 A. I believe --

1 MR. FORGE: Your Honor, I'm going to object. Vague
2 as to time. The reason is because the initial complaint
3 which was not filed by Norfolk alleged a different class
4 period. So I think what counsel is trying to set up here is
5 a gotcha.

6 The class period was not established by the Court
7 until December 8th, 2017, and that's when the class period
8 officially became July 22, 2014, through May 29, 2015.

9 THE COURT: Sustained.

10 BY MR. CLUBOK:

11 Q. Sir, did you -- did you --

12 MR. CLUBOK: Well, Your Honor, if I may, I think
13 long before --

14 THE COURT: Sustained. Ask another question.

15 BY MR. CLUBOK:

16 Q. Sir, did you understand that there was a proposed class
17 period even before the judge ruled on the dates of the class
18 period for which you had an obligation to produce records
19 showing Norfolk's purchases of Puma stock during the proposed
20 class period which was those dates, July 22nd, 2014, through
21 May 29th, 2015? Did you understand that obligation during
22 the course of discovery in this case?

23 A. I believe we provided records as requested, but I'm -- I
24 cannot recall, and forgive me, the specific narrative of
25 those requests.

1 Q. Okay. Why don't we try to make this even simpler. We
2 have prepared a demonstrative that's entitled demonstrative
3 number two. That is a document that we have compiled using
4 both the records that Norfolk provided and the records that
5 we obtained from Capital to try to identify all of the
6 purchases made by Norfolk of Puma stock during the actual
7 class period.

8 MR. CLUBOK: If I may put up demonstrative number
9 two, Your Honor?

10 THE COURT: Yes.

11 MR. CLUBOK: Thank you.

12 BY MR. CLUBOK:

13 Q. Demonstrative number two, which is on the large board --
14 and we also have a hard copy that we have marked as
15 demonstrative number two -- shows every single purchase by
16 Norfolk of Puma stock during the class period, correct?

17 A. That appears to be the case.

18 Q. And, in fact, the first purchase date is October 2nd,
19 2014, and the last purchase date according to this is
20 May 14th, 2015; correct?

21 A. They are the dates on the demonstrative.

22 Q. Okay. Now, and I -- sir, you have up on this screen
23 just in case you want to double-check all the records. You
24 have the binders. You take my word for it or you can take
25 time if you want that we've accurately reflected in

1 demonstrative two the combined purchases by Norfolk of Puma
2 stock.

3 A. The dates on the screen are blurred, but I will take
4 your word for it.

5 THE COURT: Let me ask, is there an 8 1/2 x 11
6 version of this?

7 MR. CLUBOK: There is, Your Honor. I believe it's
8 in your binder. And that's what we'll be marking as
9 demonstrative Exhibit 2.

10 THE COURT: I would prefer to mark it as an ongoing
11 exhibit.

12 MR. CLUBOK: That's fine. You'd like me to mark it
13 and hand it up to Your Honor as the official --

14 THE COURT: Wait. Which book is it in? Is it in
15 the 16 volumes or in this volume?

16 MR. CLUBOK: In the Younger specific volume, Your
17 Honor.

18 THE COURT: It's not in the 16 volumes?

19 MR. CLUBOK: No. It's a demonstrative, so it would
20 be a document that we just obviously didn't have ahead of
21 time, but it is tabbed.

22 THE COURT: Well, not obviously. All right. So I
23 have a demonstrative. It needs to have an exhibit number,
24 not a separate exhibit number for a demonstrative. What
25 exhibit number would you like to give to it?

1 MR. CLUBOK: Demonstrative Exhibit 2, Your Honor.

2 THE COURT: No, no, no.

3 MR. CLUBOK: DX-2?

4 THE COURT: No. Let me state it again. It needs
5 to be one of the regular running exhibits. What exhibit
6 number would you like to give to it?

7 MR. CLUBOK: Exhibit 1089, Your Honor.

8 THE COURT: Okay.

9 MR. CLUBOK: Thank you.

10 THE COURT: I do have a 1088. And you think -- you
11 know what? We're going to make this Exhibit 1100.

12 MR. CLUBOK: Thank you, Your Honor. I appreciate
13 it.

14 THE COURT: Exhibit 1100 is the demonstrative.
15 Okay?

16 MR. CLUBOK: Okay.

17 THE COURT: Proceed.

18 BY MR. CLUBOK:

19 Q. So you have Exhibit 1100, which is DX-2 or the second
20 demonstrative that the defendants have provided in this case.

21 What I'd like to do now is put up on the screen a
22 picture of the stock chart throughout the class period. What
23 we have on the screen here is a graph that shows the closing
24 stock price for every day during the class period from
25 July 22nd, 2014, through May 29th, 2015.

1 Do you see that?

2 A. Yes, I can.

3 Q. And what we've added to that stock chart -- and this is
4 why I want to just try to orient you about the timing of the
5 purchases --

6 MR. FORGE: Your Honor, just for the record, I
7 would just ask counsel to identify for the record what is
8 being shown to the jury and the witness. I don't have a
9 problem with it, just...

10 THE COURT: I believe that -- thank you for that,
11 counsel. I believe that is the third page of Exhibit 1100
12 bearing the mark DX-3. Am I correct on that?

13 MR. CLUBOK: This is a different demonstrative,
14 Your Honor. I apologize.

15 THE COURT: Do you know what DX-3 is?

16 MR. CLUBOK: DX-3 is -- yes, Your Honor. We're --
17 we are -- I was building the DX-3, and then I was going to
18 offer it into -- as an exhibit.

19 THE COURT: Look, I think the plaintiff is correct
20 in wanting this to be identified. How do you wish to
21 identify it so someone months from now might be able to know
22 what we're talking about?

23 MR. CLUBOK: Your Honor, it's going to become DX-3
24 and ideally Exhibit 1101.

25 THE COURT: How about the third page of

1 Exhibit 1100?

2 MR. CLUBOK: I can do it if you like, Your Honor,
3 but it's really --

4 THE COURT: Listen. I'm going to leave it at this.
5 Just make your record and do it as simple as possible. I
6 thought this was DX-3 in my book under tab -- I think it
7 would be better to call this page 3 of Exhibit 1100. If you
8 want to go a different route, I'll add all the other exhibits
9 and we'll do it that way.

10 MR. CLUBOK: I would appreciate it. It really is a
11 distinct exhibit from Exhibit 1100, which we had --

12 THE COURT: You need to give it an exhibit number
13 and we'll move forward.

14 MR. CLUBOK: Okay. We'll call it Exhibit 1101.

15 THE COURT: And what is it in the book in front of
16 me?

17 MR. CLUBOK: DX-3.

18 THE COURT: Okay. 1101 is DX-3. Okay. Go ahead.

19 MR. CLUBOK: Thank you, Your Honor.

20 BY MR. CLUBOK:

21 Q. So Exhibit 1101 shows both a stock chart with a closing
22 price of every day in the class period from July 22nd, 2014,
23 through May 29th, 2015. We've also added to that two
24 specific dates. One in a blue box that says July 22nd, 2014,
25 that was the date of the press release and the conference

1 call that we've been discussing in this case.

2 We've also added a blue box to identify the date
3 May 13th, 2015, which is the date that that abstract was
4 published in advance of the ASCO meeting.

5 MR. FORGE: Your Honor --

6 BY MR. CLUBOK:

7 Q. Is this all accurate?

8 MR. FORGE: Your Honor, just for the record, as the
9 Court can see, Exhibit 1101 has a line drawn down from -- I'm
10 just describing for the record -- drawn down from May 13th,
11 2015, to the point in the stock chart that corresponds to the
12 price to that date.

13 It does not, however, have a corresponding line
14 dropping all the way down from July 22nd, 2014, to the \$59
15 price on that date.

16 THE COURT: Is that an objection or an observation?

17 MR. FORGE: It's just noting it for the record,
18 Your Honor.

19 THE COURT: All right. Continue.

20 MR. CLUBOK: Okay. May I offer Exhibit 1101, Your
21 Honor, as described?

22 THE COURT: As -- to be admitted into evidence
23 rather than a demonstrative?

24 MR. CLUBOK: Actually I would offer it as an
25 exhibit into --

1 THE COURT: I don't know what you're saying, then,
2 when you say I offer. Just tell me what you want done.

3 MR. CLUBOK: I'd like to offer Exhibit 1101 as
4 reflective of the witness's testimony, into evidence.

5 THE COURT: Okay. So you're offering it as an
6 exhibit? Simple question.

7 MR. CLUBOK: Yeah.

8 THE COURT: Any objection?

9 MR. FORGE: Yes, Your Honor. It's hearsay and 602
10 as to this witness.

11 THE COURT: Foundation. Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q. So we'll refer to 1101 simply as a demonstrative. Now,
15 sir, what we are going to do --

16 THE COURT: And by the way, that means -- a lot of
17 lawyer talk here. It means at this moment you don't get to
18 take that image on the screen with you into your
19 deliberations at the moment.

20 Okay. Go ahead.

21 MR. CLUBOK: Okay.

22 BY MR. CLUBOK:

23 Q. But you certainly are familiar with these two dates,
24 July 22nd, 2014, as being the date of the press release and
25 conference call, and then May 13th, 2015, being the date that

1 the ASCO abstract was published, correct?

2 A. I believe they are the dates, yes.

3 Q. Okay. Now we are going to create -- we're going to put
4 on another exhibit.

5 MR. CLUBOK: That's in your binder, Your Honor, as
6 DX-4. We will ask that that be identified for the record as
7 Exhibit 1102.

8 BY MR. CLUBOK:

9 Q. In Exhibit 1102 we're going to add, indicated by red
10 dots, the purchases of Puma stock onto the stock chart so
11 that we can show graphically the dates that Puma stock was
12 purchased by Norfolk during the class period. Okay?

13 A. Yeah.

14 Q. So what I'm going to do is simply ask Mr. Lara to add
15 onto the stock chart first a series of purchases, the first
16 few purchases that were made on October 2nd, October 3rd,
17 October 6th, October 7th, October 8th, and October 9th, six
18 days in October when Capital bought Puma stock on behalf of
19 Norfolk, correct?

20 A. I can see you've added those dots. Yes.

21 Q. And they're red dots that have been put on that
22 accurately reflect those dates?

23 A. I think the key there would make that quite difficult
24 for me just to give a comment on accuracy, but they look to
25 be approximately positioned.

1 Q. Okay. And then again in early and mid December 2014,
2 Capital bought more stock in Puma on behalf of Norfolk, and
3 those were the 3rd of December, and it was actually two
4 purchases on the 3rd; also the 4th of December, on my
5 birthday, when there were also two purchases; and the 11th of
6 December and the 12th of December. Do you see that?

7 A. I can see you've added those dots in the additional
8 period, yeah.

9 Q. And all of those purchases would have been made before
10 Capital issued its quarterly report to you to tell you about
11 the fact that Norfolk was now invested in Puma, correct?

12 A. Given that they are in advance of the quarter end, yes,
13 that would be correct.

14 Q. And then after that quarterly report, in January Capital
15 continued to buy more stock on behalf of Norfolk. And, in
16 fact, there were I believe seven days in early and
17 mid-January -- the 7th, the 8th, the 9th, the 12th, the 13th,
18 the 14th, and the 15th.

19 Again, those were all reflected on the big board
20 right next to you in case you want to check as I read them
21 out. And we've added red dots to show those purchases by
22 Norfolk of Puma stock in early to mid-January. Do you see
23 that?

24 A. Yep. I can see an additional group of red dots.

25 Q. Okay. Now, you were here during various testimony that

1 was given about a stock offering. And were you here and did
2 you generally understand that there was a stock offering done
3 by Puma sometime in 2015?

4 A. I understand that Puma did a stock offering to raise
5 additional capital.

6 Q. And the date of that offering I will tell you was
7 January 20th. Does that -- any reason to disagree with me
8 there?

9 A. Of course, I wouldn't disagree with you.

10 Q. Okay. So assuming that January 20th is the date of that
11 stock offering that was the subject of a fair amount of
12 testimony, is it fair to say that every one of the red dots,
13 every one of the purchases of Puma stock up on the screen so
14 far were all done before that secondary stock offering?
15 Correct? All the purchases, in other words, between --

16 A. I'm just --

17 Q. Sure.

18 A. So the final -- so the final purchase on there is
19 January 15th, which is in advance of the 20th.

20 Q. Yeah. So every single purchase except for those last
21 two -- and we'll get to those -- were by Puma -- I'm sorry.
22 Every single purchase of Puma stock by Norfolk prior to
23 May 14th was also prior to the stock offering, correct?

24 A. The purchases that Capital made were prior to the 20th
25 of January, if that's the date of the stock offering.

1 Q. You would agree that whatever was disclosed to the
2 public in connection with that January 20th stock offering
3 certainly couldn't have been relied upon in the purchases
4 that were made through January 15, 2015; isn't it true?

5 MR. FORGE: Objection, Your Honor. Number one, it
6 misstates the evidence. But more importantly, it's really
7 calling for expert testimony regarding what is reflected in
8 the stock -- what information is reflected in the stock price
9 at what time.

10 THE COURT: Sustained as phrased.

11 BY MR. CLUBOK:

12 Q. Is it true that every single purchase by Norfolk through
13 January 15th could not possibly have relied on what was
14 publicly disclosed in connection with the January 20, 2015,
15 stock offering?

16 MR. FORGE: Objection, Your Honor. Again, this is
17 improperly calling for expert testimony. As counsel knows,
18 the information that relates to the January 20th stock
19 offering dates back far before January 20th, 2015 and has an
20 impact on the price far before January 20th, 2015.

21 THE COURT: Sustained as phrased.

22 BY MR. CLUBOK:

23 Q. Have you looked at what was disclosed to the public --
24 strike that. You know in a stock offering, there are
25 disclosures made to the public in connection with the stock

1 offering? Are you aware of that?

2 A. Given our investment management arrangements, we don't
3 generally participate in -- this is as Norfolk -- in stock
4 offerings. That would be a choice that's made by managers.

5 So that I am -- so I'm not familiar with the
6 generalities of stock offering documentation, nor did I
7 specifically review the stock offering documentation that was
8 offered for this particular Puma offer.

9 Q. Norfolk did not participate in the stock offering on
10 January 20, 2015; correct?

11 A. To my knowledge, no.

12 Q. So is that a yes to my question? This is that double
13 negative problem, so let me just ask it again for the record.

14 It's true that to the best of your knowledge,
15 Norfolk did not participate in the stock offering that
16 occurred in January 2015, correct?

17 A. I mean, our trading record is behind me, which does not
18 indicate we participated in that stock offering.

19 Q. So is that a yes?

20 A. That would be a yes.

21 Q. And as far as you know, did anybody from Capital ever
22 say to you in words or substance that the decision to
23 purchase prior to -- the decision to purchase Puma stock
24 through January 14, 2015, had anything to do with what was
25 going to be publicly disclosed in connection with the

1 January 20th stock offering?

2 A. We had no discussions with Capital regarding that stock
3 offering.

4 Q. Let's turn then to May 13th, 2015. On May 13th, 2015,
5 we know that's the date that abstract, the ASCO abstract, is
6 released. That's a tongue twister. Is that correct?

7 A. Are you asking me a question? Yes.

8 Q. And Exhibit 503, which has already been admitted into
9 evidence, is the actual abstract that was released on that
10 day.

11 MR. CLUBOK: If we could put that up on the screen.

12 BY MR. CLUBOK:

13 Q. I take it at the time you didn't read this abstract back
14 then?

15 A. That wasn't part of my role. No.

16 Q. Okay. But you entrusted your investment managers like
17 Capital who were following a stock like this to have read
18 that, correct?

19 A. I don't know if Capital specifically read it. Capital
20 would be researching a range of companies taking information
21 from a number of sources. So I can't comment specifically on
22 whether they read that document.

23 Q. Well, let's turn -- I think before we previously
24 highlighted -- strike that.

25 Mr. Auerbach was asked about some aspects of this

1 document, and in particular there's a section called results.

2 MR. CLUBOK: If we could highlight that.

3 BY MR. CLUBOK:

4 Q. It talks about how -- there's a bold word in the
5 abstract called results with a colon, and then it continues
6 for a couple sentences that we can highlight on the screen.

7 MR. CLUBOK: If we could just highlight through
8 that paragraph.

9 BY MR. CLUBOK:

10 Q. You were here when you heard some testimony about the
11 reaction to these results by analysts and others?

12 MR. FORGE: Your Honor, I'm going to object under
13 403 timing ground and 602. This witness has already
14 testified he never reviewed this document and has no idea
15 whether Capital did. This is somewhat of a show here.

16 THE COURT: Overruled.

17 THE WITNESS: Sorry. Could the court reporter
18 repeat the question?

19 THE COURT: Yes, please. Thank you.

20 (Record read)

21 THE WITNESS: Yes, I believe that from part of the
22 testimony.

23 BY MR. CLUBOK:

24 Q. And below those results there's a chart, I guess, that
25 has rows beginning with IDFS and a column that begins with

1 efficacy end point.

2 MR. CLUBOK: I'm going to just ask if we could
3 expand that a little bit so it's easier to see.

4 BY MR. CLUBOK:

5 Q. You see there is the 93.9 percent and 91.6 percent
6 absolute disease-free survival rates that have been the
7 subject of some of the testimony in this case, correct?

8 A. I can see those two highlighted numbers.

9 Q. And that was published as part of this abstract,
10 correct?

11 MR. FORGE: Objection, Your Honor. 602. The
12 witness has already disclaimed any personal knowledge of this
13 abstract.

14 THE COURT: Overruled.

15 THE WITNESS: Well, it is published in the document
16 presented before us as the abstract.

17 BY MR. CLUBOK:

18 Q. Okay. And you're now aware that this was publicized at
19 the time, correct?

20 MR. FORGE: Objection, Your Honor. Again, the now
21 aware, it's still not personal knowledge.

22 THE COURT: Hold on. When you say now aware,
23 sustained.

24 MR. CLUBOK: Okay.
25

1 BY MR. CLUBOK:

2 Q. Sir, turning to another sentence in the abstract
3 publication. You can see that on the top of the second page,
4 it identifies the grade-three diarrhea rates. If we can
5 highlight that. It says diarrhea was the most common adverse
6 event, AE, for N patients with 40 percent G3. Do you see
7 that?

8 A. Yes. That's the highlighted statement.

9 Q. And that was included in this abstract that was
10 published on May 13th; is that correct?

11 MR. FORGE: Again, I would object on 602 grounds.

12 THE COURT: Aren't you really just using this
13 witness to make an argument that you're more than welcome to
14 make to the jury?

15 MR. CLUBOK: A, I'm testing whether he knew it at
16 the time, which I think we've gotten the answer to that. And
17 B, I'm also comparing this to what his investment advisors
18 are going to say about that and see if he knows that. I plan
19 to ask him those appropriate questions.

20 THE COURT: All right. Overruled.

21 Did you get an answer to the last question?

22 MR. CLUBOK: I don't believe so, Your Honor.

23 THE COURT: Would you like it reread?

24 MR. CLUBOK: Thank you, Your Honor.

25 (Record read)

1 THE WITNESS: Yes, I can see it in the abstract as
2 presented in evidence.

3 BY MR. CLUBOK:

4 Q. And then it goes on to --

5 THE COURT: Hold on just a moment.

6 Did you get that last answer? When she's reading,
7 just a slight pause before you give a quick answer is
8 helpful.

9 THE WITNESS: I'm sorry, Your Honor.

10 THE COURT: Go ahead.

11 BY MR. CLUBOK:

12 Q. And finally it goes on to say that the diarrhea,
13 although it was the most common adverse event, it was
14 manageable --

15 MR. CLUBOK: If we could highlight that: Diarrhea,
16 the most common AE, was manageable.

17 BY MR. CLUBOK:

18 Q. You see that was all part of the abstract, correct?

19 A. I'm just trying to identify it in the yellow
20 highlighting. Bear with me. Thank you. Yes, I can see in
21 the yellow highlighting at the bottom: Diarrhea, the most
22 common AE, was manageable.

23 Q. And are you aware that the fact that the diarrhea,
24 grade-three diarrhea rates could have been either 30 or
25 40 percent was not subject -- was not a factor into Capital's

1 decision to purchase Puma stock?

2 A. That is not a discussion we've had with Capital, so it
3 would have to come from them.

4 Q. You've never asked Capital point-blank directly whether
5 the fact of diarrhea rates being 30 or 40 percent was a
6 factor or affected in any way their decision to purchase Puma
7 stock? You've never asked that question to Capital?

8 A. We've not explored that with them, no.

9 Q. Well, are you aware of what Capital has said in this
10 litigation under oath on that subject?

11 A. Not off the top of my head, no.

12 Q. Okay. Well, I'm going to refer you to a transcript in
13 your binder that's called the Kopcho transcript.

14 MR. FORGE: Your Honor, I'm going to --

15 THE COURT: There's no pending question. He's
16 being referred. Let's wait until we see what the question
17 is.

18 BY MR. CLUBOK:

19 Q. I'm going to ask you to turn to page 202, lines 12 to --
20 I'm referring you to -- and by the way, this is the
21 transcript of Darcy Kopcho, right? I'm sorry. You know who
22 Darcy Kopcho is, correct?

23 A. Yes.

24 Q. She was one of the people at Capital at the time who was
25 helping advise or making decisions on behalf of Norfolk in

1 connection with the Puma investments, correct?

2 A. She was a portfolio manager at Capital who were our
3 investment manager at the time.

4 Q. Who specifically was involved in the decision to invest
5 in Puma, correct?

6 A. I believe that's the case.

7 Q. And were you -- you said that you didn't know off the
8 top of your head if Capital in the course of this litigation
9 had said anything on this subject. My question to you is,
10 sir, are you aware that under oath --

11 THE COURT: Just a moment.

12 MR. FORGE: Your Honor, I would object to the use
13 of the deposition in this manner. As counsel is well aware,
14 we --

15 THE COURT: Hold on. This isn't the way we use
16 depositions.

17 MR. CLUBOK: Okay.

18 BY MR. CLUBOK:

19 Q. Let me ask you this: Does reading this testimony on
20 page 202 --

21 A. Could I find it? Sorry. I wasn't aware of the piece of
22 testimony you were looking at. You're sort of away from the
23 microphone.

24 Q. I apologize. I'm sorry. My eyes are not great, so I
25 keep leaning forward. I'm going to try to position the

1 microphone better.

2 A. I'm on 202.

3 Q. Yes. And I think you had just said off the top of your
4 head, you didn't recall whether Capital had testified under
5 oath on the subject of whether the difference between 30 to
6 40 percent rates of grade-three diarrhea changed the decision
7 to buy Puma stock.

8 I'm wondering -- first question is: Does page 202,
9 the testimony there, do anything to refresh your recollection
10 as to whether you were aware of the position that Capital has
11 taken in this litigation?

12 A. I haven't previously read this testimony.

13 Q. Okay. And you've done nothing else to investigate with
14 Capital inside or outside of the litigation whether that had
15 any effect, the difference in rates of grade-three diarrhea
16 had any impact on their decision to purchase Puma stock on
17 Norfolk's behalf, correct?

18 A. Investigation has been undertaken by our attorneys.

19 Q. Right. Have you ever done that personally?

20 A. No, given that that work is being undertaken by our
21 attorneys.

22 Q. I'm going to ask you to look at Exhibit 34.

23 MR. CLUBOK: Your Honor, I believe this has not
24 been objected to, and I'm going to ask that it be offered
25 into evidence.

1 THE COURT: Without objection 34 is admitted.

2 (Exhibit 34 received.)

3 BY MR. CLUBOK:

4 Q. Exhibit 34 is a document that appears to be authored by
5 Skye Drynan, dated May 14, 2015. Do you see that?

6 A. I'm just looking. That appears to be the case.

7 Q. And the title of this article -- if we could blow that
8 up -- is the house is not, all caps, on fire. And then in
9 all caps, buy. Do you see that?

10 A. Yes, I can read that.

11 Q. And actually I should say for the record, it actually
12 says Puma, colon, the house is, all caps, not, on fire, dash,
13 dash, in all caps, buy. That's what the title of this report
14 is from May 14, 2015; correct?

15 A. That's the title of the report that was made during the
16 class period.

17 Q. And were you aware that at the time this was -- that
18 Skye Drynan had generated this report?

19 A. Was I aware at the time?

20 Q. Yes.

21 A. No, because this is an internal Capital document for the
22 consumption of Capital employees.

23 Q. Did Capital ever share this report to you after
24 May 14th?

25 A. No. Capital haven't shared this report, neither have

1 they shared reports on any other companies in their
2 portfolio.

3 Q. Okay. But Capital does from time to time discuss their
4 investment strategies with you and sends you quarterly
5 reports about them, correct?

6 A. Not from time to time. We receive a quarterly
7 investment report. We have regular update meetings and
8 reviews as well.

9 Q. Okay.

10 MR. CLUBOK: If we could turn back to Exhibit 1102
11 on the screen, please.

12 BY MR. CLUBOK:

13 Q. That's demonstrative Exhibit 4 in the book with all of
14 the purchases up until May 13th. This is I believe where we
15 left off with all the red dots that all ended previously in
16 January of 2015.

17 The abstract gets released on May 13th. Ms. Drynan
18 then issues this report. And then on May 14th, isn't it the
19 case that Norfolk buys additional stock in Puma?

20 A. Yeah, which has been kindly put on the demonstrative.
21 So, yeah.

22 Q. In fact, there were two purchases that day totaling --
23 on May 14th, the day after the ASCO abstract gets released,
24 there are two purchases of stock for a total of 2,200
25 additional shares in Puma on behalf of Norfolk, correct?

1 A. That's correct, but within the class period.

2 Q. Right. But it's after information is released on
3 May 13th which you're claiming exposed fraud in the company;
4 isn't that true?

5 A. That's true, but those purchases remain within the class
6 period.

7 Q. Right. You are seeking to recover -- along with all of
8 the other red dots, you're seeking to recover for the losses
9 that you may have suffered in the future or that you may
10 suffer -- strike that. I apologize. That was an inartful
11 question.

12 You're seeking to recover for losses associated
13 with the purchases of all of the red dots on Exhibit 1102,
14 including those purchases made on May 14th, 2015; correct?

15 A. We are seeking to recover the losses for the entirety of
16 the class period, which runs through and includes those
17 purchases made on May 14th.

18 Q. Now, after -- let's continue. This is the class period.
19 But after the class period, what happens next of relevance to
20 this case -- strike that.

21 The class period ends May 29, 2015; correct?

22 A. Correct.

23 Q. And then I assume it's the next -- well, on June 1st,
24 2015, there is a presentation at ASCO. Let's look at
25 Exhibit 176 which has already been admitted just to remind

1 you that this is the slide show that is presented on June 1st
2 at ASCO which you heard testimony about, correct?

3 A. I've seen the document and heard testimony on it, yes.

4 Q. And I take it at the time, you hadn't reviewed either
5 the presentation or any report of this presentation back in
6 2015, correct?

7 A. You're correct, but, no, we hadn't.

8 Q. And you just learned about this presentation after the
9 fact and after in fact this case was filed, right?

10 A. That's correct.

11 Q. But you would have expected Skye Drynan and others at
12 Capital to have been following what happened at ASCO given
13 all of the investments that they had made on your behalf;
14 isn't that true?

15 A. We would expect Capital to be taking information,
16 publicly available information, and incorporating it into
17 their investment decisions.

18 Q. And this would have been publicly available information,
19 this presentation at ASCO, correct?

20 A. I'm not able to comment on that. I'd be making an
21 assumption. I don't know the practice of publication at
22 ASCO.

23 MR. CLUBOK: Let's put up -- what we have on the
24 screen right now is the first page of Exhibit 176. Let's put
25 up the view that shows all 20 slides.

1 BY MR. CLUBOK:

2 Q. There's been testimony that these 20 slides where the
3 presentation was made by Dr. Arlene Chan at ASCO. You were
4 here for that, right?

5 A. I believe so, yes.

6 Q. Okay. And if we refer -- and my understanding -- strike
7 that.

8 Is it your understanding that the gist of your
9 claim includes the fact that there was some information
10 revealed on June 1st during this ASCO presentation that
11 exposed some fraudulent statement that had been made back on
12 that conference call? Is that your general position that
13 you're advancing in this case on behalf of the class?

14 MR. FORGE: Your Honor, I'm going to renew the
15 objection that the Court sustained regarding counsel's
16 attempts to summarize the claims and ask this witness to
17 characterize the gist of the claims.

18 MR. CLUBOK: Your Honor, under the PSLRA, it's
19 perfectly appropriate -- if I may respond.

20 THE COURT: Well, I wish you would -- I wish you
21 take the hints I keep giving you. Let me just reread the way
22 you phrased the question. (The Court reading) Yeah, I'm
23 going to sustain it the way you phrased it. But you can get
24 around this, counsel.

25

1 BY MR. CLUBOK:

2 Q. Let me try it this way. Do you know the gist of the
3 complaint that you're making with respect to what was
4 presented at ASCO on behalf of the class?

5 A. I am aware of the complaint. The use of the phrase
6 gist --

7 Q. I apologize.

8 A. Let's put it this way. I'm aware of the summary of the
9 complaint, would be my answer to that.

10 Q. I'm not asking you to be a lawyer here, but just based
11 on your understanding of what you're alleging in this case,
12 what generally speaking is the information that was disclosed
13 at ASCO that you say revealed some fraud?

14 MR. FORGE: Your Honor, I'm going to object on 401
15 and 403.

16 THE COURT: I don't know why you need to say based
17 on. Why don't you just ask him the question without
18 referring to the complaint?

19 MR. CLUBOK: Okay.

20 BY MR. CLUBOK:

21 Q. What, if any, information was released at ASCO that
22 exposed any kind of fraudulent statement back in that
23 conference call?

24 A. So my understanding is that the ASCO conference
25 highlighted the true disease-free survival rates and the four

1 other items that you previously referred to of the complaint.

2 Q. I'm sorry. The first one was the true disease-free
3 survival rates?

4 A. It referred to disease-free survival rates.

5 Q. Those were disclosed in the abstract that we just looked
6 at, correct?

7 A. Are you considering the presentation -- I mean, they all
8 relate to ASCO, would be my -- sorry. Are you -- what are
9 you asking me to correct, would be my question?

10 Q. Let me ask you this. Specifically with respect to the
11 June 1st presentation at ASCO, what if anything was disclosed
12 that revealed some sort of fraud?

13 MR. FORGE: Your Honor, I'm going to object on 401,
14 403, and 602 grounds. This witness has already disclaimed
15 knowledge of the details of the ASCO presentation. So it's
16 an attempted memory test, but it's not even a fair memory
17 test because this witness never was aware of the information.

18 THE COURT: Sustained.

19 MR. CLUBOK: Your Honor, I will not ask about
20 details, but am I allowed to ask him if he knows anything
21 about what --

22 THE COURT: Ask your question and see what happens.

23 MR. CLUBOK: Okay.

24 BY MR. CLUBOK:

25 Q. Sir, can you describe anything that you know about what

1 was allegedly presented on June 1st at ASCO that demonstrates
2 there was a fraud?

3 MR. FORGE: Your Honor, I'm just going to object as
4 vague. He's asking if you know anything that was allegedly
5 presented rather than what was presented. It's not clear
6 what he's asking.

7 MR. CLUBOK: May I rephrase?

8 THE COURT: Yes.

9 BY MR. CLUBOK:

10 Q. Was anything -- can you give -- strike that. Can you
11 describe in whatever detail you're capable of describing what
12 you think was said on June 1st at ASCO that demonstrates a
13 fraud had occurred?

14 MR. FORGE: Again, Your Honor, I'm going to object
15 on 602 grounds because this witness has already disclaimed
16 personal knowledge of what was said on June 1st at the ASCO
17 presentation.

18 THE COURT: Overruled.

19 THE WITNESS: I would be performing a memory test,
20 and I would not be making a distinction in my mind between
21 the two documents. My overall review of it is that the
22 information presented here was significantly different to the
23 information and impression given by the call in July the
24 previous year.

25

1 BY MR. CLUBOK:

2 Q. In what subject?

3 A. Well, on the effectiveness of neratinib.

4 Q. And you can't be any more specific than that, correct?

5 A. That level of detail would not be appropriate to my
6 professional knowledge of it.

7 Q. And when you said you can't make a distinction -- I
8 don't want to the put words in your mouth -- you qualified
9 your answer at first. And we could ask the court reporter to
10 read it back if that would help you. You said --

11 A. I'm aware of how I answered.

12 Q. Could you just explain what you mean when you say that
13 you can't make a distinction between the two?

14 A. Well, as a lay person without significant knowledge of
15 the practice and process at ASCO, my takeaway from sitting
16 here, which could be incorrect, would be that a synopsis of a
17 presentation should reflect that presentation.

18 So I'm viewing the abstract as a synopsis, if you
19 like, of what's thereafter going to be presented at the
20 conference.

21 Q. Is there anything that you're aware of that was
22 different on June 1st that demonstrated fraud?

23 MR. FORGE: Objection, Your Honor. Vague as to
24 different from what?

25 MR. CLUBOK: Different from the abstract that had

1 been published in advance of the ASCO conference.

2 MR. FORGE: I would make a 602 objection. The
3 witness has already repeatedly stated he's not familiar with
4 either document, and he doesn't distinguish between the two.

5 And at this point I would also make a 403
6 objection, Your Honor.

7 THE COURT: How much longer do you have with this
8 witness?

9 MR. CLUBOK: This is was it. Oh, I'm sorry. With
10 this witness, on this line of questioning? With this witness
11 I have approximately 25 minutes.

12 THE COURT: All right. The objection is sustained.

13 MR. CLUBOK: All right.

14 BY MR. CLUBOK:

15 Q. Let's look at --

16 MR. CLUBOK: Your Honor, I'm going to turn to what
17 has been included in your binder as DX-5 but which we will
18 ask to be marked as Exhibit 1103. And that is --

19 THE COURT: All right. My binder goes from DX-4 to
20 DX-6. That's what my binder does.

21 MR. FORGE: Just to help you out, Your Honor, I
22 think for some reason DX-5 is before DX-2. So the
23 demonstrative tabs actually begins with DX-5 and then drops
24 down to DX-2.

25 THE COURT: Thank you for that, counsel.

1 MR. CLUBOK: Thank you.

2 THE COURT: If I'm not mistaken, DX-5 is 1101;
3 isn't it? No. I'm sorry. And DX-3 was 1101. DX-5 is 1100;
4 isn't it? We just need a clear record. I believe, is DX-5
5 what we have up there on the screen behind the witness?

6 MR. CLUBOK: I understand, Your Honor, and I
7 apologize for the confusion. This is a tabbing error that's
8 my fault. So let me just say 1100 was supposed to be a
9 one-page exhibit. I see in the binder it has two because of
10 a tabbing error.

11 So we have marked DX-2 as Exhibit 1100, which is
12 just the shares purchased during the class period.

13 THE COURT: Hold on right there. 1100 is DX-2? Is
14 that what you're saying?

15 MR. CLUBOK: Yes. I believe that's correct, Your
16 Honor.

17 THE COURT: Just a moment. Okay. So that's 1100.
18 I really do wish the parties had a better control on the
19 documents. All right. So DX-2 is 1100. 1101 is DX-3. 1102
20 is DX-4. Now where are we?

21 MR. CLUBOK: I appreciate your patience, Your
22 Honor. I'm sorry. Now we're on 1103 by my count, and that
23 is the other page that shows Norfolk's purchase of Puma stock
24 both before -- both during and after the class period.

25 THE COURT: And I believe that doesn't have a

1 specific number in my book. You see, think about how this
2 will be translated without getting into details in a file so
3 that someone at some other time can look at it. So you see,
4 at the end -- make your record, counsel. If it's confusing,
5 it's the fault of the parties.

6 MR. CLUBOK: Correct. I agree with that, and I
7 apologize.

8 THE COURT: We've got something called 1103, and it
9 bears no indication in the book. What's the title of 1103?

10 MR. CLUBOK: Your Honor, 1103 -- so 1100 was
11 Norfolk's purchases of Puma stock during the class period.
12 1101 is the stock chart that also identifies the date of the
13 conference call and press release and the ASCO abstract.

14 THE COURT: You know, you're now saying something
15 different than I said. I referred to the DX number. What
16 you're saying now, I need to go through and cross correlate
17 to my DX number. We just need a record.

18 MR. CLUBOK: I know, Your Honor, and I'm doing the
19 best I can to try to --

20 THE COURT: Okay. Well, why didn't you use the DX
21 number instead of the title? If you use the titles, I need
22 to go back and crosscheck against you. If that's what you
23 want to do, that's what we'll do.

24 MR. CLUBOK: I will do it the best way that's
25 useful to the Court. I'm trying to do it the best I can.

1 What we had originally included in your binder as DX-2 should
2 be a one-page document that shows Norfolk's purchases of Puma
3 stock during the class period. We have marked it for
4 identification purposes in this case as Exhibit 1100.

5 THE COURT: Okay. I must say, as I look at
6 Exhibit 1100, it doesn't say anything about class period.

7 MR. CLUBOK: I understand. That was the testimony
8 that was given during the case, and it certainly has the
9 dates. But --

10 THE COURT: All right. Next.

11 MR. CLUBOK: Exhibit -- the document that was in
12 your binder as DX-3 -- I'm sorry -- as DX-3 which shows the
13 stock chart during the class period and the two dates that we
14 discussed, July 22nd, 2014, the date of the press release and
15 conference call; and May 13th, 2015, the date of the ASCO
16 abstract, has been marked for identification purposes as
17 Exhibit 1101.

18 May I continue?

19 THE COURT: Sure.

20 MR. CLUBOK: And then what was marked in your book
21 as DX-3, which is entitled --

22 THE COURT: I think you just described DX-3 as
23 1101.

24 MR. CLUBOK: DX-4 in your book has been marked as
25 Exhibit 1102 for identification purposes. It is entitled

1 Norfolk's purchases of Puma stock during the class period,
2 and it shows the stock chart with the dates of the press
3 release, conference call, ASCO abstract, and red dots
4 indicating the dates of purchases of Puma stock by Norfolk.

5 Then, Your Honor, I've asked that a new exhibit
6 could be identified as Exhibit 1104. It was --

7 THE COURT: I'm sorry. What happened to 1103?

8 MR. CLUBOK: Apologies, Your Honor. If I may have
9 just a moment.

10 THE COURT: Sure.

11 (Brief pause in proceedings)

12 MR. CLUBOK: I think we've got it sorted out. I
13 apologize, Your Honor.

14 THE COURT: Okay. I think we stopped at 102 [sic],
15 which is DX-4.

16 MR. CLUBOK: 1102?

17 THE COURT: 1102, which is DX-4.

18 MR. CLUBOK: Yes. So, Your Honor, 1103, which was
19 supposed to DX-5 but was mistakenly the second page of a
20 different exhibit.

21 THE COURT: In my book DX-5 is a document entitled
22 Norfolk's purchase of Puma stock, and it begins with the
23 number in the lower right-hand corner of 14,200.

24 MR. CLUBOK: Yes. That's the right one, Your
25 Honor. Okay.

1 THE COURT: That will be 11 -- that will be DX-5,
2 1103.

3 MR. CLUBOK: Exactly. Thank you, Your Honor. I
4 appreciate your patience.

5 THE COURT: And it's similar, by the way, to DX-2
6 except it adds the 14,200.

7 MR. CLUBOK: That's exactly right.

8 THE COURT: Good.

9 MR. CLUBOK: Thank you, Your Honor.

10 THE COURT: Go ahead.

11 MR. CLUBOK: I appreciate it.

12 BY MR. CLUBOK:

13 Q. Exhibit 1103, which in the book is DX-5, is entitled
14 Norfolk's purchase of Puma stock, but it now shows both the
15 shares purchased during the class period which ended on
16 May 29, 2015, and additional shares purchased by Norfolk
17 after the class period. Do you see that?

18 A. Yes, I can see that.

19 Q. And you have here the first purchase. The very first
20 purchase after the class period by Norfolk of Puma stock is
21 June 1st, 2015, 1,100 shares, correct?

22 A. Capital purchased on our behalf on that date.

23 Q. On that very date of that ASCO presentation, Capital is
24 buying even more Puma stock, correct?

25 A. I can see that trade on that date, correct.

1 Q. And are you aware as to whether or not that trade was
2 made after the folks at Capital heard what was presented at
3 ASCO?

4 A. I do not know the specific timing of that trade.

5 Q. Well, you certainly know that the -- that this purchase
6 on July 6th, some weeks later, that was certainly made after
7 the ASCO presentation, after the ASCO abstract, and after all
8 that analyst coverage of those two that we've talked about in
9 this trial, correct?

10 A. I'm assuming that purchase would have been made after
11 that date but would have been at a stock price incorporating
12 that information once it was publicly available.

13 Q. Sure. Another 2,300 shares purchased on July 6, 2015;
14 correct?

15 A. That's the information on the chart.

16 MR. CLUBOK: We're going to add -- and I believe
17 this is mercifully the last demonstrative that I'm going to
18 ask the Court to allow me to present. And that is -- the
19 Court helped me get the numbers and I quickly lose it --
20 1104, Your Honor.

21 We would like to put on the screen Exhibit 1104,
22 which takes the stock chart and extends it through the date
23 that covers the period for all of Norfolk's purchases of Puma
24 stock.

25 THE COURT: Okay. I'm going to step in here and

1 say 1104 in my book -- are you going to add things to what's
2 on the board?

3 MR. CLUBOK: Yes, Your Honor.

4 THE COURT: So you add things, and then we'll
5 describe what we have.

6 MR. CLUBOK: What we're doing here is we take --
7 we're taking what previously had been 1102 that showed the
8 purchases through the class period, and we've now added a
9 blue box showing the date of the ASCO conference, which was
10 June 1st, 2015. We are putting a red dot on at the price at
11 which the stock was purchased on behalf of Norfolk on that
12 date.

13 BY MR. CLUBOK:

14 Q. Do you see that, sir?

15 A. I can see that dot, yes.

16 Q. And then we're going to continue to add with additional
17 red dots indications of additional purchases made by Norfolk
18 after the ASCO conference, which includes purchases on
19 July 6th, 2015; July 8th, 2015; July 9th, 2015; July 15th,
20 2015; July 16th, 2015; and August 14th, 2015.

21 Do you see that?

22 A. I can see that.

23 Q. And then -- sorry. And I jumped ahead to the August
24 date. We've also put up some additional dates onto this
25 exhibit which identify on June 3rd, 2015, that was the date

1 the initial lawsuit in this case was filed.

2 Are you aware of that?

3 A. I haven't got the dates committed to memory, but that
4 sounds right.

5 Q. Okay. And then on July 24, 2015, Norfolk actually
6 signed a sworn verification relating to the purchases that it
7 had made during the class period at that time, correct?

8 MR. FORGE: Your Honor, this is -- it goes back to
9 the same objection. It's vague as to class period. After
10 was a different alleged class period --

11 THE COURT: Objection, vague. Sustained.

12 BY MR. CLUBOK:

13 Q. Are you aware that on July 24th, 2015, there was a sworn
14 verification signed by individuals at Norfolk relating to
15 this case?

16 A. As I stated previously, I haven't committed those dates
17 to memory, but that sounds about right.

18 Q. In fact, let's -- why don't we just turn right then to
19 that document.

20 MR. CLUBOK: That has been identified in the binder
21 as Exhibit 992. Your Honor, I'd like to offer 992 into
22 evidence.

23 MR. FORGE: Your Honor, here's the issue with 992.
24 It's an earlier period of time than when the Court
25 established the class period, so this goes back to the gotcha

1 line of questioning. There's a different class period date
2 range for 992.

3 THE COURT: Response?

4 MR. CLUBOK: This is -- this is not about a gotcha.
5 This is showing what Norfolk was saying on the one hand about
6 this case and on the other hand continuing to purchase stock.
7 It puts into context the stock purchases that were made after
8 this.

9 THE COURT: You asked the witness to look at it.
10 Are you moving its admission?

11 MR. CLUBOK: I did ask to have its admission -- I
12 did ask for its admission. And I should say, Your Honor,
13 there's actually multiple purposes for this sworn
14 verification.

15 THE COURT: Okay. Let me stop by saying in exhibit
16 book 15, which says 980 through 1066, that exhibit doesn't
17 appear. How do I find that exhibit?

18 MR. CLUBOK: In the Younger binder that I with
19 great reluctance provided yesterday, it has Exhibit 992 in
20 the binder specifically for the witness, Mr. Younger. And we
21 provided a copy to counsel.

22 THE COURT: I'm wondering why it couldn't find its
23 way into the 15 other binders. Okay, 992. You move its
24 admission. And the plaintiff says?

25 MR. FORGE: Your Honor, I would object under 403

1 grounds because it's confusing and it gets into the
2 procedural history of the case, because as you can see,
3 there's a reference to the during the class period in
4 paragraph four here.

5 The class period as of August 3rd, 2015, was a
6 different date range than the class period the Court
7 eventually set in December of 2017.

8 THE COURT: I can think of a few avenues the
9 defense should be allowed to pursue on this. So the
10 objection is overruled based on what I just heard, and 992 is
11 admitted.

12 **(Exhibit 992 received.)**

13 MR. CLUBOK: If we could put 992 up on the screen,
14 please.

15 BY MR. CLUBOK:

16 Q. This is the second -- the first page of Exhibit 992 just
17 says Exhibit B, but the second page of Exhibit 992 which, if
18 we could blow up on the screen, it's entitled certification
19 of named plaintiff pursuant to federal securities laws. Do
20 you see that?

21 A. Yes, I do.

22 Q. And it says that Norfolk County Council as administering
23 authority of the Norfolk Pension Fund, plaintiff, declares --
24 and then it has a number of numbered paragraphs following.

25 Do you see that?

1 A. Yes, I can see that.

2 Q. The first one is that plaintiff has reviewed a complaint
3 and authorized its filing. Do you see that?

4 A. I can read that, yes.

5 MR. FORGE: Your Honor, I'm going to object under
6 602 grounds here, and 403. This witness is not the witness
7 who signed the verification, so it's not fair to present this
8 as if this witness knows to what complaint, whether it had
9 been filed at this time or was to be filed in the future.
10 This is not Mr. Younger's verification.

11 THE COURT: Overruled.

12 MR. CLUBOK: May I ask the question be repeated?

13 THE COURT: Yes, you may.

14 MR. CLUBOK: Thank you, Your Honor.

15 (Record read)

16 THE WITNESS: Yes.

17 BY MR. CLUBOK:

18 Q. Was that a true statement as far as you know?

19 MR. FORGE: Objection, Your Honor, under 602
20 grounds. Again, this is not Mr. Younger's --

21 THE COURT: Now it's foundation -- as far as you
22 know. The objection is sustained.

23 BY MR. CLUBOK:

24 Q. Do you know whether it's a true statement?

25 THE COURT: Yes or no?

1 THE WITNESS: Yes, to the best of my knowledge.

2 THE COURT: Ask him how he knows.

3 BY MR. CLUBOK:

4 Q. How do you know whether or not that's a true statement?

5 A. Because of the integrity of the system that would
6 require it to be signed off.

7 Q. Isn't it also the case that it was your job to do the
8 review of the complaints as part of your administration of
9 this litigation?

10 A. We have reviewed various versions of various documents.

11 Q. Okay. Now, on paragraph four it says that plaintiff has
12 made the following transactions during the class period in
13 the securities that are subject of this action. And then it
14 refers to a Schedule A. Do you see that?

15 A. The statement or the schedule?

16 Q. Do you see the statement?

17 A. Yes, I can see the statement.

18 Q. And then you see where it refers to Schedule A, correct?

19 A. I can see that. It's not highlighted, but I can see it.

20 Q. Do you see it now? It's highlighted.

21 A. I can see it now. It's been highlighted.

22 Q. If we could turn to Schedule A. Schedule A lists the
23 number of purchases by Norfolk of Puma stock, correct?

24 A. That's correct.

25 Q. If you turn back one page in the exhibit, you can see

1 that this was signed under penalty of perjury on July 24th,
2 2015, by two people whose signatures are difficult to
3 decipher, but I'm going to ask if you know who those
4 signatures -- if you recognize those signatures.

5 A. I think I've given previous testimony. So the chief
6 investment manager is Glenn Cossey, and the head of the
7 pension fund is Nicola Mark.

8 Q. And it says on this, according to this verification,
9 that -- and those are your boss and your boss's boss who
10 signed this under penalty of perjury on July 24th, 2015;
11 correct?

12 A. Yes. That is my direct line manager and indeed his
13 direct line manner. And, yes, I can read the statement under
14 which they signed that document.

15 Q. And as far as you know, at any time in this case has
16 anything related to this verification been updated, or has
17 additional information been provided to update this
18 verification at any time as far as you know?

19 MR. FORGE: Your Honor, I'm going to object under
20 401 and --

21 THE COURT: Sustained. Sustained.

22 BY MR. CLUBOK:

23 Q. Are you aware of any other verifications that have been
24 filed in connection with this case relating to Norfolk's
25 purchases of Puma stock?

1 A. I don't know.

2 MR. CLUBOK: Is this a good time for our break,
3 Your Honor?

4 THE COURT: Yes. How much longer with this
5 witness?

6 MR. CLUBOK: Less than 15 minutes.

7 THE COURT: Well, it keeps getting longer. And
8 I'll direct your attention to the original estimate made by
9 the defense for this witness. I'm trying to think what has
10 happened that made that estimate be now much longer. But
11 just be thinking about that.

12 We'll take our break now and we'll come back at ten
13 minutes to 11. Thank you.

14 THE CLERK: All rise.

15 (Open court - jury not present)

16 THE COURT: All right. See you in 15 minutes.

17 MR. CLUBOK: Thank you, Your Honor.

18 (Recess taken from 10:36 a.m. until 10:56 a.m.)

19 THE CLERK: All rise.

20 (Open court - jury present)

21 THE COURT: Mr. Clubok.

22 MR. CLUBOK: Thank you.

23 BY MR. CLUBOK:

24 Q. Welcome back, Mr. Younger.

25 I'm going to put back up Exhibit 1104. We had just

1 talked about the date of the signing of the verification
2 dated July 24th, 2015. By that point Norfolk was already
3 seeking to become the lead plaintiff in this case, correct?

4 A. July 24th, yes. That's correct.

5 Q. That's when -- Norfolk was accusing Puma of committing
6 securities fraud as of that date, correct?

7 MR. FORGE: Objection, Your Honor. The Court can
8 take judicial notice of the fact that Norfolk had not filed a
9 complaint as of that date, had not made any allegations as of
10 that date. Counsel is continuing to imply a different class
11 period and a different state of affairs than actually existed
12 as of July 2015.

13 MR. CLUBOK: Your Honor, I object to these lengthy
14 lawyer arguments.

15 THE COURT: No. I don't object to them. I think
16 there's some issues that need to be clarified.

17 MR. CLUBOK: My question was not in a filed
18 complaint context but in a -- let me withdraw and I'll ask it
19 again if I may, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. CLUBOK:

22 Q. As of July 24th, Norfolk had committed to pursuing a
23 claim for fraud against Puma and in fact -- I'll stop right
24 there. Isn't that right?

25 A. Sorry. Could you just repeat the actual question?

1 Q. At least as of July 24th, 2015, Norfolk was seeking to
2 pursue a claim against Puma for securities fraud, correct?

3 A. That would be correct.

4 Q. And after that date, Norfolk then bought additional
5 shares of Puma stock in August of 2015; isn't that true?

6 A. Capital on our behalf purchased stock in Puma.

7 Q. On August 14th, 2015, some weeks after this verification
8 was signed, correct?

9 A. Based on the chart behind me, yes.

10 Q. And based on the records that we've provided you,
11 correct?

12 A. Indeed, yeah.

13 MR. CLUBOK: If we could put the red dot -- in
14 fact, the exhibit -- I believe with that, Your Honor,
15 Exhibit 1104 is complete on the screen, and we have marked it
16 as a demonstrative. All four of these exhibits, Your Honor,
17 we've properly labeled. If you'd like me to pass them up, I
18 can. And by that, I mean --

19 THE COURT: Just a moment. Just a moment.

20 All right. 1104 is an unmarked page in the exhibit
21 book I have received for the examination of Mr. Younger. It
22 actually is the last page in this exhibit book. It is
23 perhaps best identified by the fact that there is a yellow
24 shading in the lower right-hand side above the date
25 July 24th, 2015. So that will be 1104.

1 Go ahead.

2 MR. CLUBOK: Your Honor, for each of the exhibits
3 1100 through 1104, we have labels conforming to the Court's
4 marking system. I can bring them up now or later if you
5 prefer.

6 THE COURT: Okay. Good. Bring them up now. Thank
7 you. Oops, no one is here.

8 MR. CLUBOK: I apologize, Your Honor.

9 THE COURT: All right. There we go. Good. Thank
10 you. And you've marked these with exhibit tabs, so they
11 probably should be just given to Ms. Bredahl.

12 MR. CLUBOK: We will, Your Honor.

13 THE COURT: You know, you managed to staple the
14 exhibit tab on three different corners of different
15 documents, but that's okay.

16 Go ahead.

17 BY MR. CLUBOK:

18 Q. With respect to Exhibit 1104, as it was noted, there's a
19 shaded section that indicates all of the purchases of Puma
20 stock after the class period, the current class period in
21 this case, correct?

22 A. Yes. I can see the shaded section.

23 Q. All right. Now, I want to focus on the time period from
24 June 1st, 2015, when the ASCO conference occurred, through --
25 let's just start with through June 30th, through the end of

1 that month. Okay? That end of June was the end of a, if
2 I've done the math right, a quarter? That was the end of a
3 quarter for Norfolk?

4 A. Yeah. We work calendar quarters, so the 30th of June
5 would be a calendar quarter end.

6 Q. So June 30th would have been the end of the second
7 quarter of 2015, right?

8 A. That's correct.

9 Q. And you would expect Capital to give you a quarterly
10 report for the state of the investments it had made on
11 Norfolk's behalf through the end of June?

12 A. We would receive a quarterly report in format and figure
13 in that exhibit number that you see here.

14 Q. And when you received that quarterly report, did Norfolk
15 in any way in words or substance suggest -- sorry. When you
16 received that quarterly report, did Capital in any way in
17 words or substance suggest that they believed that fraud had
18 been revealed in either May or June relating to Puma?

19 MR. FORGE: Your Honor, objection. Vague as to
20 suggest and to whom.

21 THE COURT: Overruled.

22 THE WITNESS: I don't recall any discussions with
23 me personally.

24 BY MR. CLUBOK:

25 Q. Do you recall any indication at all from Capital to

1 Norfolk in the context of its second quarter report in which
2 Capital in any way suggested that they believed that a fraud
3 had occurred?

4 A. I don't.

5 Q. Now, after that, there's additional purchases of stock
6 as indicated by the red dots on Exhibit 1104, and they
7 continue through to August 14th, 2015; right?

8 A. Yes.

9 Q. And then there's another quarter that ends, the third
10 quarter ends in September, at the end of September 2015,
11 correct?

12 A. The third quarter ends the end of September. That's
13 correct.

14 Q. And you would have expected -- I assume Capital sent you
15 its quarterly report for the period that went through --

16 A. I'm not aware we've ever missed a quarterly report. So,
17 yes. That would be the case.

18 Q. And are you aware of Capital in the third quarter, when
19 it's reporting on the state of the investments it had made
20 for Norfolk, in any way indicating that it believed that
21 there had been some fraud exposed in May and June that
22 related to Puma?

23 A. I'm not aware of that.

24 Q. You still work with Capital today, correct?

25 A. Capital International are an investment manager for the

1 Norfolk Pension Fund today.

2 Q. Have they been disciplined in any way in connection with
3 their investment on your behalf in Puma stock?

4 A. I'm not sure why we would be disciplining an investment
5 manager if a fraud has occurred at a company. The suggestion
6 being that it was their fault fraud occurred?

7 Q. Could you please answer my question, sir. Is that a no
8 to my question?

9 A. I don't understand the context in which we would be
10 disciplining a third party for the actions of another party.
11 If the -- the answer to the question would be, no, we have
12 not disciplined Capital.

13 Q. Would you have expected Capital to follow all of the
14 public news relating to Puma before it made a decision to
15 purchase additional stock on your behalf?

16 A. We would be expecting Capital to be following publicly
17 available information.

18 Q. And would you be expecting Capital then to have followed
19 closely what happened on June 1st, 2015, at the ASCO
20 conference before it made additional purchases in Puma stock?

21 A. I'm certain they would have noticed a significant drop
22 in the stock price, and they may therefore have established
23 that the stock was now trading at fair value.

24 MR. CLUBOK: Could I ask that my question be
25 repeated back and ask that an answer to my question be given,

1 Your Honor?

2 THE COURT: Please repeat back the question.

3 (Record read)

4 THE WITNESS: I would expect them to follow that
5 information as it is available, and I would expect them to be
6 considering that in the context of the valuation the company
7 was then trading at.

8 BY MR. CLUBOK:

9 Q. And you would expect them to take into account more than
10 just the price of the stock but also things like what
11 occurred at ASCO; isn't that true?

12 A. I'm not sure I follow your line of questioning. I would
13 expect the price of the stock to reflect what had occurred at
14 ASCO, and I would expect Capital to be using that supporting
15 information in any investment decision.

16 Q. Would you have expected Capital to rely on more
17 information beyond just the price of the stock in making a
18 decision to continue buying Puma on behalf of Norfolk?

19 A. My assumption would be that Capital are taking wide
20 sources of information in evaluating any company in their
21 portfolio, including Puma.

22 Q. And you have not, though, specifically asked anyone at
23 Capital what they specifically relied upon when making these
24 decisions on your behalf for any of these purchases; isn't
25 that true?

1 A. Any during the entire time period including the class
2 period, or any in the period we've been discussing, the
3 shaded?

4 Q. Any purchase of -- let me ask it again, sir. With
5 respect to any purchase of Puma stock either before or after
6 the class period, it's true that you have not spoken directly
7 with anyone at Capital regarding what they relied upon when
8 they made those purchases on Norfolk's behalf, correct?

9 A. I have not. As I said, we've given the investigation to
10 our attorneys.

11 Q. And as far as you know, no one who works at Norfolk,
12 like you or your boss or your boss's boss, as far as you're
13 aware, none of those people have had those direct discussions
14 with Capital about what they relied upon when they decided to
15 invest in Puma stock either during or after the class period;
16 isn't that true?

17 A. We have not had those conversations beyond the direct
18 work of our attorneys.

19 Q. Is that a yes?

20 A. Yeah.

21 MR. CLUBOK: Thank you.

22 THE COURT: All right. Thank you.

23 Redirect?

24 I will note that at the end of yesterday I said how
25 much longer, and there was a thought we might get him out of

1 here by 5:00. But, gosh, we wouldn't have gotten him out of
2 here until 6:00 or 7:00.

3 MR. CLUBOK: Yes.

4 THE COURT: So it's good thing you stayed, sir.

5 THE WITNESS: Thank you.

6 MR. FORGE: I was at 90 seconds at the end of the
7 day yesterday, Your Honor. I will be a little bit longer
8 than that, but not too much more.

9 **REDIRECT EXAMINATION**

10 BY MR. FORGE:

11 Q. Mr. Younger, directing your attention back to
12 Exhibit 503.

13 MR. FORGE: Highlight the first sentence, please,
14 Larry. The first sentence. And the table also, please.

15 BY MR. FORGE:

16 Q. Mr. Younger, do you have any reason to believe that
17 Capital was aware of the internal e-mails at Puma showing
18 that Alan Auerbach was aware of the actual grade-three
19 diarrhea rate for neratinib back on July 22nd, 2014?

20 A. I have no reason to believe that.

21 Q. Do you have any reason to believe that Capital was aware
22 of the internal e-mail showing that Alan Auerbach was aware
23 of the actual absolute benefit from neratinib back on
24 July 22nd, 2014?

25 MR. CLUBOK: Objection, Your Honor. Foundation.

1 The way these questions are being asked, it's not whether or
2 not he's aware. It's suggesting, I believe, something that
3 he would lack foundation to respond to, or it would be
4 leading.

5 THE COURT: Just a moment.

6 I think he asked it correctly.

7 Overruled.

8 THE WITNESS: I have no reason to believe that.

9 BY MR. FORGE:

10 Q. Now, you mentioned a couple of times --

11 MR. FORGE: Your Honor, may I approach?

12 THE COURT: Yes, you may.

13 MR. FORGE: Your Honor, would it be okay if I stand
14 in the well for a moment?

15 THE COURT: Yes.

16 BY MR. FORGE:

17 Q. Mr. Younger, you mentioned a couple of times that you
18 would expect Puma's share price to reflect publicly available
19 information; is that right?

20 A. I would, yes.

21 Q. Okay. So even though it's a really big board and --

22 MR. CLUBOK: Objection, Your Honor. I move to
23 strike that. That was the subject of your ruling that said
24 it was expert testimony and leading. He only answered that
25 in response to a sustained objection.

1 MR. FORGE: Your Honor, I'm referring to
2 Mr. Younger's testimony this morning.

3 THE COURT: Hold on.

4 The objection is overruled.

5 BY MR. FORGE:

6 Q. Now, Mr. Younger, let's add some information that
7 defendants omitted from this demonstrative. If you could
8 please take a look at Exhibit 18 and tell me the share price,
9 the price per share that Puma paid in its first purchase, the
10 one closest to July 22nd. Can you tell me the share price it
11 paid?

12 A. This is Capital we're talking about?

13 MR. CLUBOK: Objection. Object to the
14 characterization we admitted anything from that exhibit.
15 He's just referring him to a different exhibit.

16 THE COURT: I didn't understand any such
17 characterization.

18 MR. CLUBOK: I heard an accusation that we omitted
19 information from an exhibit, which I take exception to.

20 THE COURT: All right. Just a moment.

21 You did say that. I'll strike that opening
22 sentence.

23 MR. FORGE: Okay.

24 BY MR. FORGE:

25 Q. Mr. Younger, does the defendant's demonstrative,

1 Exhibit 1103, does it reflect the share prices for any of the
2 purchases listed in this four-and-a-half-foot-tall board?

3 A. There's no share price information on that board.

4 Q. Okay. So let's fill those in for the jury, at least a
5 few of them. The first purchase, the one closest to
6 Mr. Auerbach's statement on July 22nd, 2014, what was the
7 share price of Puma then? And you can look at Exhibit 18 for
8 that.

9 A. This is the trade blotter?

10 Q. Correct.

11 A. The date, sorry, of what trade?

12 Q. October 2nd, 2014, the first purchase.

13 A. Apology. Yeah. So 200 shares, the price of which was
14 \$246.85.

15 Q. Okay. So let's put \$246 here by the first purchase.

16 Now, that ASCO presentation was -- I think you
17 heard the testimony. It was basically all day, all day with
18 sessions that evening, correct?

19 A. I believe so, yes.

20 Q. Okay. So let's ask about the price of Puma's stock that
21 Capital -- I'm sorry, that Norfolk paid after June 1st. What
22 was the first purchase after June 1st?

23 A. So this blotter runs to May 29th.

24 Q. You can look at Exhibit 14 for that.

25 A. Sorry. All right.

1 Q. You can actually look at this board also. First one is
2 July 6, 2015. So if you look at Exhibit 14, what does that
3 show for the share price as of July 6, 2015?

4 A. The disclosed unit price in that document is \$113.01.

5 Q. Okay. Then by the time of Capital's last purchase on
6 behalf of Norfolk, that August 14th, 2015, purchase date,
7 what was the price of Puma stock then?

8 A. \$88.56.

9 Q. I'll round that to \$89.

10 MR. FORGE: I'll hold the board so the jurors can
11 see it.

12 Your Honor, I would ask the Court to take judicial
13 notice of the fact that as of July 24th, 2015, the only
14 complaint that was on file in this matter was the complaint
15 at docket one which was filed by an individual other than
16 Norfolk, represented by a firm other than Robbins Geller.

17 THE COURT: I'm not going to be taking judicial
18 notice on the fly like that.

19 MR. FORGE: Okay. We can deal with it later.
20 Thank you, Your Honor.

21 Nothing further, Mr. Younger.

22 **RECROSS-EXAMINATION**

23 BY MR. CLUBOK:

24 Q. Mr. Younger, you were just asked a question, and I
25 apologize if I don't get it exactly right. If you need it

1 read back, we can ask that it be read back. I'll try to
2 capture the gist of it. Do you guys use that word, gist?

3 A. Yeah, but it's quite general.

4 Q. Okay. The essence of it is what I'm trying to capture.
5 You were asked if you had any reason to believe on -- that
6 whether or not -- strike that -- that you had any reason to
7 believe that when Capital purchased stock on Norfolk's behalf
8 on May 14th, that they knew about the information that had
9 been in Mr. Auerbach's private e-mails or something to that
10 effect? Do you remember that question?

11 A. I do recall that question, yeah.

12 Q. Okay. Fair to say you have no idea one way or the other
13 what information Capital had when they chose to make that
14 purchase on May 14th, correct?

15 A. Sorry. Well, I have no reason -- the answer to the
16 first question is I have no reason to believe that they had
17 the internal Puma e-mail access. But I also don't have full
18 access to the information that they did have in making that
19 decision.

20 Q. Okay. And you do know -- strike that.

21 You also don't know whether or not the information
22 that gets released on May 13th, that if it had been available
23 prior to that to Capital, whether it would have affected
24 their decision to purchase Puma stock; is that fair?

25 A. This is the abstract we're now discussing?

1 Q. Yes, sir.

2 A. No. I have no knowledge as to whether it would have
3 impacted either their decision or the market price had it
4 come out.

5 Q. But what you do know is that the next trading day after
6 the abstract is released, Ms. Drynan recommends buy, and in
7 fact Capital buys more stock on behalf of Norfolk. That's
8 what you do know, correct?

9 A. This is by reference to her notes, yeah.

10 MR. FORGE: Object as to the compound. The first
11 part of it the witness has disclaimed any knowledge of the
12 recommendation.

13 THE COURT: Rephrase.

14 BY MR. CLUBOK:

15 Q. Sir, you do know that on the first trading day after the
16 abstract was released, in fact Capital purchased more Puma
17 stock on behalf of Norfolk? That's something you do know,
18 correct?

19 A. I am aware that purchase was made on the 14th of May.

20 Q. And you also with respect to June 1st don't have --
21 don't know whether or not the information that was revealed
22 on June 1st would have had an impact on purchase decisions
23 made prior to June 1st; is that fair?

24 A. Information revealed on June 1st which wasn't known,
25 would that have had an impact on decisions made prior to that

1 date? I would assume the information that is not available
2 cannot by its nature impact on decisions prior to its
3 availability.

4 Q. And if the information that was revealed at the ASCO
5 conference on June 1st had been revealed earlier, you don't
6 know one way or the other whether it would have impacted
7 Capital's decision to purchase Puma stock, correct?

8 A. In them considering a number of factors, no, I don't
9 know how that factor would have influenced that decision.

10 Q. But you do know that on June 1st, Capital did buy more
11 stock following that ASCO presentation, correct?

12 MR. FORGE: Your Honor, I'm going to object as to
13 vague as to time -- June 1st. He says following the ASCO
14 presentation. That is not clear from the record.

15 THE COURT: Sustained.

16 BY MR. CLUBOK:

17 Q. Do you know whether or not the purchases made on
18 June 1st were before or after the ASCO presentation?

19 A. I do not know that.

20 Q. Okay. Do you know -- have you made any effort to
21 investigate that?

22 A. As I said, the investigation is being conducted by the
23 attorneys. I'm not aware of any evidence of the exact timing
24 of the trade.

25 Q. And you certainly know, though, that trades were made on

1 June 1st and continuing thereafter on behalf of Norfolk,
2 correct?

3 A. I know that trades were made outside of the class period
4 by Capital on behalf of Norfolk.

5 Q. After the ASCO presentation?

6 A. After the class period, which is book-ended by the ASCO
7 presentation, yeah.

8 MR. CLUBOK: Thank you.

9 THE COURT: Thank you.

10 Anything else?

11 MR. FORGE: No, Your Honor. Thank you.

12 THE COURT: All right.

13 MR. CLUBOK: Thank you, Mr. Younger.

14 THE COURT: Thank you. Cheerio.

15 The plaintiff will call its next witness.

16 MR. GRONBORG: Plaintiffs call Dr. Claire Sherman.

17 THE COURT: As Dr. Sherman comes forward, I have
18 reviewed jury instructions, and on the issue of damages,
19 causation, and reliance, I have reconstructed the
20 instructions based on suggestions from both sides, and I
21 would like to hand out this proposal.

22 Ms. Bredahl, I only have one copy, so I need you to
23 make multiple copies and hand it out to the parties to review
24 and comment upon further.

25 Would you please stand right there. Thank you.

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
THE ABOVE MATTER.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird

01/23/2019

MIRIAM V. BAIRD
OFFICIAL REPORTER

DATE