UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF BROCKTON RETIREMENT SYSTEM, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. AVON PRODUCTS, INC., ANDREA JUNG, and CHARLES W. CRAMB, Defendants.	: : : : : : : : : : : : :	Civil Action No. 11 Civ. 4665 (PGG) **CLASS ACTION** **SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

1. Court-appointed Lead Plaintiffs LBBW Asset Management Investmentgesellschaft mbH ("LBBW") and SGSS Deutschland Kapitalanlagegesellschaft mbH ("SGSS") (collectively, "Lead Plaintiffs") and Named Plaintiffs City of Brockton Retirement System ("CBRS"), Metropolitan Water Reclamation District Retirement Fund ("Met Water"), and Louisiana Municipal Police Employees' Retirement System ("LAMPERS") (collectively, with Lead Plaintiffs, "Plaintiffs"), individually and on behalf of all other persons and entities who purchased or otherwise acquired the common stock of Avon Products, Inc. ("Avon" or the "Company") from July 31, 2006, through and including October 26, 2011 ("Class Period"), by their undersigned attorneys, allege the following upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, based on the investigation conducted by and through their attorneys, which included, without limitation: (a) review and analysis of filings Avon made with the U.S. Securities and Exchange Commission ("SEC"); (b) review and analysis of certain press releases, public statements, and other publications disseminated by or concerning the defendants named herein and related parties; (c) review and analysis of Avon's press conferences, analyst conference calls, and conferences, and Avon's corporate website; (d) review and analysis of securities analyst reports concerning Avon and its operations; (e) review and analysis of certain other documents and materials concerning Avon and the other defendants named herein, including newspaper articles and trade periodicals; (f) interviews with individuals possessing information concerning the subject matter alleged herein, including former Avon employees and current Chinese government officials; and (g) information and analyses concerning defendants' legal, accounting, and compliance obligations, as well as general information about compliance, bribery, and corruption. Many of the facts supporting the allegations contained herein are known only to the defendants named

herein or are exclusively within their custody and/or control. Plaintiffs believe that further evidentiary support for their allegations can be obtained after a reasonable opportunity for discovery.

II. EXECUTIVE SUMMARY

2. This is a securities class action brought on behalf of all persons who purchased or otherwise acquired Avon's common stock during the Class Period. Avon is a leading global beauty company, with over $10 billion in annual revenue. As the world's largest direct-seller, Avon markets its products to individuals in more than 100 countries through millions of independent Avon Sales Representatives. Throughout the Class Period, defendants Avon; Andrea Jung, Avon's former Chief Executive Officer ("CEO") ("Jung"); and Charles W. Cramb, Avon's former Chief Financial Strategy Officer ("CFSO") ("Cramb") (collectively, "Defendants"), represented that Avon's level of success in international markets, most notably China and Latin America, was the result of legitimate activities that complied with both the letter and spirit of the anti-bribery provisions set forth in the U.S. Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1 *et seq*. (the "FCPA"). Congress enacted the FCPA in 1977 to halt the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Among other things, the FCPA outlaws the practice of bribing foreign officials and other categories of recipients for the purpose of obtaining or retaining a business benefit.

3. Specifically, Avon made disclosures about its compliance with applicable laws, including the FCPA, and its desire to avoid "even the appearance of impropriety" during the Class Period. In addition, Avon's two most senior executives – the individual defendants in this action – repeatedly signed certifications attesting to the adequacy of Avon's internal controls. Having assured investors as to the legitimacy of Avon's revenues, Defendants further touted the

success of the Company's business in both China and Latin America, indicating to investors that strong growth had occurred and would continue in those regions.

4. Those statements were belied by Defendants' knowledge or reckless disregard of Avon's woefully ineffective compliance regime and complete lack of FCPA controls. Avon's control and compliance deficiencies made it impossible for Defendants to believe that the success in certain international markets they regularly touted was not, at least in part, the result of pervasive FCPA violations occurring from 2004 to as late as 2010 across multiple geographic business units. Plaintiffs' investigation identified several former Avon employees who confirmed that, prior to 2009, Avon employed virtually none of the basic legal compliance protocols that were universally expected of a public company of Avon's size at that time. Moreover, the Company had no dedicated compliance personnel. Those witnesses further revealed that, even as late as 2010, Avon still had no FCPA policies or training programs in place. Such deficiencies are particularly shocking considering the scope and importance of Avon's business in "high-risk" FCPA markets such as China and Latin America. But nothing demonstrates Defendants' fundamental lack of commitment to FCPA compliance more than a wrongful termination lawsuit that was filed by Avon's former Director of Global Compliance. In that action, the plaintiff alleges that she was fired in 2010 after Avon's General Counsel refused to implement FCPA compliance controls ***precisely because Avon's General Counsel knew that those measures likely would uncover FCPA violations***. Additionally, as discussed elsewhere herein, Avon has announced that, as part of its "understanding" of settlement with the federal agencies investigating FCPA-related misconduct at the Company, Avon will need to install an external "compliance monitor." This constitutes further evidence of Avon's woeful FCPA compliance efforts during the Class Period. *See, e.g.*, ¶¶ 356-58.

5. Given that Avon had a corporate culture that was actively hostile to effective compliance measures, it could have come as no surprise when FCPA violations did, in fact, occur at one of the Company's most important international business segments – Avon China. In particular, Plaintiffs' investigation revealed that Avon executives bribed government officials responsible for China's "direct sales" licensing process in 2005 and/or 2006. For several years China had banned the practice of direct selling, Avon's preferred business model. Therefore, the procurement of such a license was crucial to Avon's future success in China. Chinese government officials interviewed by Plaintiffs' investigator confirmed that Company executives: (1) paid third-party intermediaries substantial sums to schedule meetings between Jung and high-level Chinese government ministers; (2) repeatedly treated Chinese licensing officials to "dinner and karaoke"; and (3) paid Chinese government officials and other employees to attend some Avon press conferences. Significantly, each of the Chinese government officials interviewed by Plaintiffs' investigator confirmed that such payments were made specifically in support of the Company's all-important application for a "direct sales" license. Not surprisingly, in 2006, Avon was given the very first "direct sales" license that China awarded since the country's ban on direct selling went into effect in 1998.

6. Plaintiffs' investigation further revealed that Defendants knew about or recklessly disregarded the pervasive bribery activities at Avon China as early as 2005, but in no event later than June 2006. Specifically, a former Avon auditor revealed that his or her supervisor, Avon's Global Internal Audit Director, Fabian LaPresa ("LaPresa"), received additional severance benefits – ***which only Cramb could have approved*** – after LaPresa threatened senior management that he would leak to the SEC an internal audit report in his possession reflecting bribes Avon executives made to Chinese government officials. Thus, Cramb's agreement to buy LaPresa's

silence with a larger termination package plainly reflected his awareness of Avon's FCPA violations no later than LaPresa's last day at Avon in June 2006.

7. Despite possessing evidence of FCPA violations at Avon China, Defendants completely buried that information for another two years. It was not until October 20, 2008, that Defendants belatedly disclosed that the Company was investigating the legitimacy of certain travel, entertainment, and other expenses incurred at Avon China. Even then, Defendants revealed only that FCPA violations "may" have occurred when, in fact, they knew, or recklessly disregarded, from information in the internal audit report received by LaPresa and other Avon employees that such violations already had occurred. On that October 20, 2008 disclosure, Avon's stock price declined significantly.

8. Subsequent revelations about the progress of Avon's investigation and the consequences of its FCPA violations, while incomplete, were nonetheless highly material to investors. After first hiding the FCPA violations in China, Defendants continued to conceal both their knowledge and the serious consequences of those violations, as well as violations in other markets around the world. For example, in April 2010, Avon announced that, as part of its FCPA investigation, the Company had placed four senior executives, including the General Manager of Avon China, on administrative leave. Likewise, in February 2011, Avon announced that Bennett R. Gallina ("Gallina"), the executive overseeing Avon China (who reported directly to Jung) was placed on administrative leave, prompting his retirement just days later. Then, in May 2011, Avon terminated the services of the four senior employees whom it previously had placed on administrative leave. Later that same month, *The Wall Street Journal* ("*Journal*") reported that Avon's internal investigation had uncovered evidence of improper payments to government officials in several countries outside of China, including Brazil, Mexico, Argentina, India, and

Japan. The bribery activities in Latin America were particularly noteworthy given that the majority of Avon's sales and profits were generated in that region. With each new revelation about the scope of Avon's wrongdoing, the value of the Company's stock declined significantly.

9. Finally, on October 27, 2011, the investing public was shocked to learn that the SEC had initiated a "formal" investigation regarding FCPA violations at Avon. At that same time, Avon acknowledged the existence of a second SEC probe regarding whether Cramb had improperly disclosed information about Avon's internal investigation to certain members of the financial community. "'One inquiry is bad,' said Stifel Nicolaus analyst Mark Astrachan. . . . 'Two is a major headache, and we believe the formal order relating to the FCPA investigation indicates a significant step-up in activity, with a resolution unlikely to come any time soon.'"[1] On this news, Avon's share price dropped by over 18% in just one trading day.

10. Remarkably, while Avon's internal investigation has dragged on for years without any formal findings at a staggering cost to the Company of "at least $344 million,"[2] news reports have corroborated the findings of Plaintiffs' investigation that Cramb and other senior Avon executives knew about the FCPA violations much earlier than previously disclosed. First, on January 31, 2012, the *Journal* reported that Avon terminated Cramb after evidence was uncovered that he knew of wrongful payments to foreign officials in China "as early as the middle of the last decade."[3] Then, on February 13, 2012, numerous news agencies reported that federal prosecutors had presented evidence to a grand jury regarding a 2005 internal audit report received

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[1] Jessica Wohl, *Avon Under SEC Investigation, shares drop*, Reuters, Oct. 27, 2011 (on file with author).

[2] Tom Schoenberg & David Voreacos, *Avon Bribe-Probe Tab Neared $500 Million as Sales Slumped*, Bloomberg, May 2, 2014.

[3] Andrew Dowell, *Avon Fires Vice Chairman*, Wall St. J., Jan. 31, 2012.

at the time by senior Avon executives, presumably including Cramb, which concluded that Avon employees in China made questionable payments to Chinese officials and third-party consultants.

11. On May 1, 2014, the Company announced that it had reached "an understanding with respect to terms of settlement with each of the [U.S. Department of Justice ("DOJ")] and the staff of the SEC." Significantly, two key parts of the settlement are that: (a) an Avon subsidiary in China will plead guilty to violating the books and records provisions of the FCPA; and (b) Avon will have an external compliance monitor for a period of eighteen months. The guilty plea – which is imputable to Avon – constitutes an unconditional admission of guilt. The imposition of an external compliance monitor reflects the horrendous state of the Company's Class Period FCPA compliance-related mechanisms. Pursuant to this "understanding" of settlement, Avon also will pay $135 million in fines, disgorgement, and pre-judgment interest with respect to alleged violations of the books and records and internal control provisions of the FCPA ($68 million will be paid to the DOJ and $67 million will be paid to the SEC).

12. There is no question that responsibility for Avon China's bribery scandal lies squarely with the Company's most senior executives. Avon confirmed in a 2005 SEC filing that senior management had restructured the Company's operations so that senior management, including Jung, Cramb, and Gallina, would have more direct involvement in the day-to-day management of Avon China. Jung played a decisive role in securing Avon's "direct sales" license, meeting on several occasions with senior Chinese officials, including a Vice Premier in charge of the agency responsible for issuing such business licenses. Moreover, given that Avon's FCPA compliance efforts were non-existent at Avon China (and everywhere else, for that matter), Jung and Cramb are charged with knowing that doing business in China, where extensive corporate gift-

giving is a cultural norm, presented a serious FCPA risk for Avon.[4] When that serious risk of FCPA violations became a reality during the process surrounding Avon's direct sales licensing application, it was Cramb and other senior managers who attempted – successfully, for a time – to conceal those unlawful activities from investors.

13. In sum, Plaintiffs' investigation, together with the publicly disclosed information, makes clear that Defendants deliberately or recklessly misled investors as to the existence of known FCPA violations, the fraudulent basis of a significant portion of Avon's Class Period revenues, and the Company's utter lack of basic compliance and control policies, procedures, and personnel. Notably, a material amount of Avon's direct selling revenues were not the result of legitimate business activities, as Defendants claimed, but rather were the product of a systematic bribery campaign in China and elsewhere in direct violation of the FCPA and in direct contradiction of Defendants' public disclosures. Such revenue was only made possible by Defendants' failure to implement a legitimate and effective FCPA compliance program at Avon.

14. As *Forbes* commentator Howard Sklar asked when discussing FCPA violations at another company: "How is a company supposed to avoid corrupt payments when the individual tasked with finding out about corrupt payments and reporting them to the Board of Directors is himself complicit in the bribery scheme?"[5] If the Avon bribery scandal provides any insight, the answer to Sklar's question is that a company in those circumstances simply cannot avoid running afoul of the FCPA. Worse still, when senior management conceals that information from the public, investors are invariably left with only one alternative: to seek judicial redress, as

[4] As discussed herein, the standard of knowledge under the FCPA includes "conscious disregard" and "willful blindness." The prevents corporations from taking a "head in the sand" approach to the practice of foreign bribery.

[5] Howard Sklar, *Infernal Audit: When Internal Auditors Go Bad*, Forbes, Feb. 24, 2012, *available at* http://www.forbes.com/sites/howardsklar/2012/02/24/quis-custodiet-ipsos-custodes/?partner=yahootix.

Plaintiffs have done here, when the FCPA violations eventually come to light and the company's share price declines precipitously as a result.

III. JURISDICTION AND VENUE

15. The claims asserted herein arise under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), respectively, and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

16. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and § 27 of the Exchange Act, 15 U.S.C. § 78aa.

17. Venue is proper in this District pursuant to § 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Avon maintains its principal place of business in this District, and many of the acts and practices complained of herein occurred in this District.

18. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities markets.

IV. THE PARTIES

A. Lead Plaintiffs And Named Plaintiffs

19. LBBW and SGSS were appointed Lead Plaintiffs in this action by the Court on September 29, 2011. As set forth in their certifications previously filed with the Court and incorporated herein by reference, Lead Plaintiffs purchased Avon common stock at artificially inflated prices during the Class Period and were damaged thereby.

20. CBRS, Met Water, and LAMPERS were appointed as Named Plaintiffs in this action by the Court on September 29, 2011. As set forth in their certifications previously filed with the Court and incorporated herein by reference, CBRS, Met Water, and LAMPERS purchased

Avon common stock at artificially inflated prices during the Class Period and were damaged thereby.

B. Defendants

21. Defendant Avon is a corporation that is headquartered in New York City. The Company's common stock is listed and publicly traded on the New York Stock Exchange ("NYSE") under the ticker symbol "AVP." Avon is a global manufacturer and marketer of beauty and related products. The Company commenced operations in 1886 and was incorporated in the State of New York on January 27, 1916. In its latest Form 10-K, filed with the SEC on February 26, 2014, the Company stated "[w]e presently have sales operations in 62 countries and territories, including the United States, and distribute our products in 43 other countries and territories." The Company's website touts that "Avon is committed to corporate responsibility" and, further, that "Avon is committed to the mission to 'do well by doing good.'" Avon conducts direct selling through approximately 6 million independent Avon Sales Representatives. Avon's product line includes beauty products, as well as fashion and home products. The Company's web address is www.avoncompany.com.

22. Defendant Jung served as the Company's CEO from 1999 until April 2012 and as Chairman of the Board of Directors of the Company from September 2001 until December 2012. In those capacities, and as detailed herein, Jung made false and misleading statements throughout the Class Period. During her tenure with Avon, the Company's website reported that, as CEO and Chairman, Jung was "responsible for developing and executing all of the company's long-term growth strategies, launching new brand initiatives, developing earnings opportunities for women worldwide, and defining Avon as the premier direct seller of beauty products." Jung, who speaks Mandarin Chinese fluently, first joined Avon in January 1994. In public filings, the Company repeatedly touted Jung's "deep understanding" of the Company's business, as well as

her "full responsibility for our global business units." The Board stated in Avon's 2011 Schedule 14A Proxy Statement filed with the SEC on March 25, 2011, that "Jung is the director most familiar with Avon's business and industry and best positioned to set and execute strategic priorities."

23. Defendant Cramb served as CFSO for Avon from September 2007 until November 2011. In a September 2007 press release, Jung stated that Cramb had been "an invaluable business partner" since joining the Company and that, going forward, he would "work more closely with me to address longer-range strategic opportunities."[6] Prior to assuming the position of CFSO, Cramb served as Avon's Executive Vice President, Finance and Technology and CFO beginning in 2005. During the Class Period, he served as the Company's principal financial officer. In that capacity, and as detailed herein, Cramb made a number of false and misleading statements. In November 2011, Cramb took the position of Vice Chairman of Avon's Developed Market Group. On January 30, 2012, Avon announced that Cramb had been fired. News reports and Plaintiffs' investigation indicate that Cramb's termination was prompted by evidence that he had known for some years that Company officials were paying bribes in China in violation of the FCPA. *See* ¶ 78.

24. Jung and Cramb are collectively referred to herein as the "Individual Defendants."

V. BACKGROUND ON THE COMPANY, ITS FRAUDULENT SCHEME, AND FCPA RISK

A. Avon's Need To Employ An International Growth Strategy

25. During the second half of 2004 and early 2005, Avon was at an economic crossroads, needing to generate revenue internationally to help the Company replace rapidly

[6] *Elizabeth Smith Appointed President, Avon Products, Inc.*, PR Newswire, Sept. 11, 2007, *available at* http://www.prnewswire.com/news-releases/elizabeth-smith-appointed-president-avon-products-inc-57949727.html.

declining sales in the United States. On October 20, 2004, Avon reported that "sales in the U.S. declined 1% versus a 7% gain in the third quarter of 2003, reflecting weak consumer response to color cosmetics promotions in advance of a late September category re-launch, and underperformance in children's apparel and toys."[7] In March 2005, the Company reaffirmed that "U.S. revenue is projected to decline mid-single digits and operating profit is forecast to be down in the mid-teens versus the prior year."[8] Analysts confirmed that "[t]he U.S. is clearly one of their more difficult markets, and it'll continue to be challenging."[9]

26. To overcome declining domestic sales, the Company heightened its focus on increasing revenue in so-called developing markets around the globe, including China and nations in Latin America. As William Steele, an analyst with Banc of America Securities, noted in mid-2004: "'Avon's international business is the key to its growth going forward. There's no disputing that.'"[10]

27. China, in particular, represented a tremendous growth opportunity for the Company. According to the China Association of Fragrance Flavor and Cosmetic Industries, total sales of cosmetics in China in 2004 "reached nearly 85 billion yuan [approximately $10.5 billion], up 13% from a year earlier, making it Asia's second-largest market, after Japan, and eighth in the

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[7] Press Release, Avon, Avon Reports Third Quarter Earnings of $.37 Per Share, Up 32%, $.03 Per Share Ahead of Earlier Guidance (Oct. 29, 2004), http://media.avoncompany.com/index.php?s=10922&item=22851.

[8] Press Release, Avon, Avon Reaffirms First-Quarter and Full-Year Earnings Outlook (Mar. 17, 2005), http://media.avoncompany.com/index.php?s=10922&item=23098.

[9] Shobhana Chandra, *Moving into China: World at the door for Avon's calling; With U.S. cosmetic sales stagnant, international market looks beautiful*, Hous. Chron. (Jan. 2, 2005).

[10] Parija Bhatnagar, *Making over China: Avon is conquering China's beauty market even thought its ladies can't yet ring the doorbells there*, CNNMoney, June 29, 2004, *available at* http://money.cnn.com/2004/06/28/news/fortune500/avon/index.htm.

world."[11] The Li & Fung Research Center, based in Hong Kong, estimated that by 2010 annual cosmetics sales in China would reach 100 billion yuan (or approximately $12.4 billion).[12]

28. As one commentator further explained:

> Given its population of around 1.3 billion, of which nearly 502 million were urban residents, China had the largest number of potential cosmetics customers in the world. Chinese people had become more fashion conscious due to their increase in income levels and better living standards. The government-backed Chinese Academy of Social Science claimed that urban residents in China had formed a new middle class, defined as households with total assets of US$18,000-36,000.
>
> According to a report by the China Perfumes and Cosmetics Association, the total sales value of cosmetics in China had grown by an average of 23.8% each year from 1982 to 1998, peaking at 41%. Cosmetics production in value terms had grown by 40% annually on average from 1990 to 2002. . . . Cosmetics sales in China had grown more than 200 times from around US$25 million in 1994 to US$6 billion in 2004. In 2004, China's cosmetics industry was ranked fourth in terms of consumption expenditure, after real estate, automobile and tourism.[13]

29. As early as 2004 and 2005, industry observers had expected Avon's heightened focus on China, explaining that "with its domestic market growth drying up, Avon needs to penetrate the Chinese markets as well as expand into other fresh pastures if it wants to keep growing."[14] Media reports echoed the need for Avon to expand in China:

> Jung needs China because she can no longer count on the United States, still Avon's largest single market with 33 percent of the company's sales, to boost profit. U.S. sales fell 1 percent in the third quarter, and on Dec. 8[, 2004] the company forecast they would

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[11] Mei Fong, *China Approves Avon Direct Sales In Step That Ends an 8-Year Ban*, Wall St. J., Feb. 28, 2006, at B4.

[12] *Id.*

[13] Zhigang Tao, *Future of Avon China: Direct Sales, Retail Sales or Both*, Asia Case Research Centre, The University of Hong Kong, at 6 (2007) (internal citation omitted).

[14] Bhatnagar, *supra* note 10.

> decline 5 percent in the fourth quarter and fall further in 2005. That news sent the stock down 3.9 percent in one day.[15]

Not surprisingly, an Avon spokesperson expressly called China the Company's "number one market opportunity."[16]

30. Yet Avon faced an additional (and significant) obstacle during 2004 and early 2005 as it considered avenues to achieving future success in China. In 2004, Avon was unable to rely on its primary business model in China since that country had imposed a ban on direct sales in 1998. Instead, the Company's sales in China were tied to its retail outlets known as "Beauty Boutiques," the growth potential of which was severely limited.

31. Therefore, in order for Avon to expand its operations in the growing Chinese market sufficiently enough to offset significantly declining sales in the United States, the Company needed first to convince Chinese government officials to permit direct selling.

32. On April 8, 2005, Avon filed a Form 8-K with an accompanying press release announcing that it had won government approval to test direct selling in three regions beginning that same month. The testing was to take place in Beijing, Tianjin, and Guangdong Province. In September 2005, the *South China Morning Post* reported that the central Chinese government had published a new direct sales law. According to that report, the new law involved two sets of regulations. The first, lifting the ban on direct sales, was to take effect on December 1, 2005. The second, which codified an existing ban on pyramid sales with fines and criminal prosecution, was to take effect on November 1, 2005.[17] On February 22, 2006, China's Ministry of Commerce ("MOC") announced via its website that it had approved Avon's application for

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[15] Chandra, *supra* note 9.

[16] Bhatnagar, *supra* note 10.

[17] Mark O'Neill, *Beijing allows direct selling, keeps ban on pyramid sales*, S. China Morning Post, Sept. 5, 2005.

direct selling, allowing the Company to hire independent promoters to sell products directly to consumers. The MOC also granted certificates to seven of Avon's employees, allowing them to train door-to-door vendors for the Company. By virtue of this action, Avon became the first company to resume direct sales in China.[18]

33. China's abrupt "about face" with regard to direct selling, including the decision by the MOC to allow Avon to have the first "test" licenses, was a profoundly significant development for Avon. Even more important for the Company was the MOC's decision to grant Avon a permanent direct selling license – a development the Company itself announced in a Form 8-K filed with the SEC on March 3, 2006 ("March 3 8-K"). In the March 3 8-K, Avon stated: "[a]s a result of receiving the license, Avon China will now roll-out its previously tested single-level direct selling model nationwide." Without question, these events represented a tremendous, and much needed, growth opportunity for Avon. As illustrated by the 2005 internal audit report, and as discussed elsewhere herein, Avon was able to persuade the Chinese government to change its policy on direct selling (and provide the Company with direct selling licenses) only through undisclosed bribes that were made in violation of the FCPA.

34. Latin America also was crucial to the Company's future long-term success. Avon's "sales in Latin America expanded 8 per cent in U.S. dollar terms in the third quarter" of 2004 and, by that time, "Mexico and Brazil [were] Avon's second- and third-largest markets."[19] Those facts prompted Jung to note that the "'global footprint obviously is an extraordinarily exciting one for us.'"[20]

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[18] *Avon awarded first direct sales license*, Asia Times, Mar. 1, 2006, www.atimes.com/atimes/China_Business/HC01Cb03.html.

[19] Angela Barnes, *Avon's makeover as global beautifier has analysts fretting; Sales in U.S. have fallen as cosmetics firm expands in Latin America, Europe, Asia*, Globe & Mail (Can.), Dec. 8, 2004, at B15.

[20] *Id*.

35. Analysts also highlighted Latin America's importance to Avon. As explained in a Sturdivant & Co. report from December 2004:

> Avon first entered Latin American markets in the 1950's. The company remains the largest cosmetics company in the region with a 14.7% market share and continues to increase market share. Brazil is the largest market for Avon, with the number of representatives nearing 1 billion. Argentina was a difficult market several years ago, however, the business has significantly improved. The company was profitable throughout the period. ***Despite the many disruptions in Latin America over the past 10 years, the CAGR* [*Compound Annual Growth Rate*] *for sales of Avon in this region over this period has been about 10%. This rate of growth is expected to continue over the next several years.***[21]

36. This Sturdivant & Co. report further explained that:

> "[t]he young populations of Latin America and other developing countries are exceptionally good prospects for business development. Many of these markets are on the threshold of consumerism, and the Hispanic community is very brand loyal. Once a brand is established in these communities, they are often favored for a lifetime. Avon is well-established in these markets."[22]

B. Avon's Corporate Headquarters Increases Its Involvement In The Day-To-Day Management Of The Company's China Operations

37. In 2005, Avon implemented changes to its management framework that had a significant impact on oversight responsibilities for the Company's China operations. In particular, on December 7, 2005, Avon filed a Form 8-K with an accompanying press release with the SEC announcing changes to the Company's "global operating structure" ("December 7 8-K"). In that filing, Avon reported that:

> it will now manage Central and Eastern Europe and also China as stand-alone business units due to their strategic importance and long-term growth potential. The change increases the number of Avon's geographic regions – now called Commercial Business

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[21] Beth Ann Loewy, *Avon Products Company (NYSE: AVP - $38.80) "Reaching Consumers in Developing Countries*," Mid-Atlantic Institutional Research, Sturdivant & Co., at 9 (Dec. 29, 2004) (emphasis added).

[22] *Id*. at 12.

> Units – to six. The other four are: North America; Latin America; Western Europe, Middle East and Africa; and Asia Pacific.

38. The December 7 8-K further announced the appointment of several "Commercial Business Unit" leaders, including Gallina, who was promoted to Senior Vice President overseeing both China and Avon's Western Europe, Middle East and Africa business units, and James Wei, who received a promotion to Senior Vice President, Asia Pacific.

39. According to a former executive employed at Avon from February 1999 to January 2010 and who worked as Executive Director of Human Resources, Asia Pacific (Hong Kong) from August 2007 until he/she left the Company (Confidential Witness ("CW") 1), Avon China's operations became a region unto itself after the Company restructured the Asia Pacific Region in 2005. According to CW1, the Chinese operations reported thereafter directly to Avon's U.S. headquarters (through Gallina). Moreover, CW1 confirmed that, after the restructuring, Avon China maintained its own finance, human resources, and accounting departments, which were no longer consolidated with the Asia Pacific operations. A former Director of Avon's IT Finance & Governance from 1984 to 2008 ("CW2") similarly confirmed that, after the 2005 restructuring, "China stood on its own," preparing its own "balance sheet, P&L and cash flows" and even moving its corporate offices from Hong Kong to China.

40. Significantly, the December 7 8-K stated that the restructuring was designed to "bring senior management closer to its key business geographies" and, therefore:

> ***the new structure will have dual reporting to Andrea Jung***, chairman and chief executive officer, and Susan J. Kropf, president and chief operating officer who will work together as the "Office of the Chairman." ***The company said this new structure is the first step in its initiative to eliminate layers in the organization, give management a clearer line of sight to day-to-day business operations*** and get closer to its Representatives and customers.

(Emphasis added.)

41. Jung acknowledged that the newly-announced operational structure would give senior managers at Avon's New York headquarters more direct involvement in the daily management of the Company's emerging markets, including China. In particular, she was quoted in the December 7 8-K as follows: "'[*b*]*y* ***flattening the organization, strengthening integration and centrally managing the global brand and supply chain functions, we will significantly increase speed and flexibility in decision-making***, become closer to our Representatives and customers, and achieve our goal of delivering world-class products at world-class cost.'" (Emphasis added.)

42. Several former Company employees confirmed that, in or around 2005, Avon's most senior executives, including Cramb and Jung, became more actively involved in the Company's China operations. For example, CW1 stated that Jung and Cramb, as well as Gallina and Kao, were actively involved in the "push" for a direct sales license in China. CW1 also confirmed that Jung traveled to China several times for meetings with Avon executives to discuss strategy for obtaining the direct selling license from Chinese government officials. Likewise, a former Senior Finance Manager at Avon's New York headquarters from 2000 to 2009 ("CW3") confirmed that at that time Jung took responsibility for reviewing and approving Gallina's expenses.

43. Accordingly, in light of Avon's 2005 restructuring, Jung's admission in the December 7 8-K, and testimony from Plaintiffs' Confidential Witnesses confirming the same, Defendants were well aware of the day-to-day management issues that arose at Avon China during the Class Period. These issues included the total absence of FCPA controls, as well as evidence about illegal payments made to Chinese government authorities in violation of the FCPA and

Avon's corporate policies. As set forth below, that conduct was completely inconsistent with Defendants' public statements.

C. Avon's International Growth Strategy In China And Latin America Heightens The Company's FCPA Risk

44. While expanding in developing markets offered much potential for Avon, that strategy also carried risk, including the increased specter of FCPA violations. Since its enactment, the FCPA has been an important consideration for U.S. companies conducting business internationally.[23]

45. Corporations doing business abroad ignore the FCPA at their own peril. In recent years, the DOJ and the SEC have dramatically increased the number of FCPA enforcement actions and the severity of the penalties imposed for statutory violations. "With the recent burst of enforcement activity and the sharp increase in fines and penalties collected, everyone doing business abroad must now pay particular attention to the FCPA."[24]

46. As detailed herein, however, Avon intentionally and/or recklessly disregarded its FCPA obligations in the search for new revenue in China and other developing markets. Among other things, the Company did not develop, implement, and monitor internal controls to combat the unique issues posed by "high risk" international markets such as China and Latin America.

[23] *See, e.g.*, Zach Harmon, *Foreign Corrupt Practices Act Compliance Issues*, Aspatore (July 2010) (available on Westlaw) ("For companies operating in the global marketplace, the U.S. Foreign Corrupt Practices Act . . . is no longer an obscure U.S. law. Increasingly, personnel working at all levels in multinational companies – even companies not based in the U.S. – are aware of the FCPA and the general obligations it imposes.").

[24] Robert C. Blume & Ryan V. Caughey, Commentary, *The FCPA: Overview, Enforcement Trends and Best Practices*, 13 Andrews Sec. Litig. & Reg. Reporter 1 (Nov. 3, 2009).

47. For Avon, the emergence of developing markets provided numerous opportunities for unlawful conduct. Factors specific to China and Latin America created a particularly dangerous compliance minefield for Avon and exponentially increased its FCPA risks.

48. As early as 2005, China was recognized to be a "high risk" market with regard to FCPA compliance, in large part because of its political system: "companies in [China] remain largely state-owned. Any employee of a state-owned company may be considered a 'foreign official' for purposes of the FCPA."[25] It is estimated that the Chinese government owns more than 70% of the country's productive wealth, and the government is majority shareholder of 31% of publicly-listed companies.[26]

49. Additionally, China is a Communist country, and many entities operating there either are or were at one time government-owned or government-controlled. For that reason, among others, the Chinese government's broad ownership and control of commercial enterprises qualifies a significant percentage of the country's workforce as "foreign officials" under the FCPA, which significantly magnifies U.S. companies' compliance challenges.[27]

50. China also has a unique social culture that emphasizes the importance of gift exchange. In Chinese culture, the tradition of gift-giving and entertaining as a sign of respect

[25] Daniel R. Margolis & Brent C. Carlson, *Mitigating FCPA Risks When Doing Business in China*, 4 Bloomberg Corp. L.J. 117, 117 (2009); *see also* Rich Steeves, *Solving the puzzle of the FCPA in China*, Inside Couns., Nov. 1, 2013 (noting that, "[t]hough it applies to all foreign nations, the FCPA has had a great effect on companies doing business in China' and quoting one commentator as saying "[n]o matter who you do business with in China, no matter what industry – steel, finance, oil and gas, telecommunications, air transport, etc. – all are controlled by state-owned enterprises for policy and security reasons, and businesspeople will be construed to be foreign officials because of the state-owned concept"), *available at* http://www.insidecounsel.com/2013/11/01/solving-the-puzzle-of-the-fcpa-in-china.

[26] Michael S. Diamant, *Asian Values, FCPA Risks*, FCPA Blog (June 29, 2010, 7:28 AM), http://www.fcpablog.com/blog/2010/6/29/asian-values-fcpa-risks.html.

[27] Margolis & Carlson, *supra* note 25, at 122.

is deeply ingrained.[28] In the commercial context, however, such gift-giving squarely implicates the FCPA. As explained by one commentator, corporations doing business in China need to recognize the unique risks posed by Chinese cultural traditions and take steps to minimize the risk that they will result in FCPA violations:

> ***companies doing business in China must pay particularly close attention to business courtesy expenditures***. Indeed, nearly one-half of all China-related corporate prosecutions under the FCPA since 2002 involved the provision of gifts, meals, travel, or entertainment. The prosecutions of Schnitzer, Paradigm, Lucent, Siemens, Avery, and UTStarcom show that no company subject to the FCPA can afford to ignore this risk in China. In that country's business climate, gifts are given far more frequently than is customary in the West. . . . ***Although always a trouble spot for anti-corruption compliance, the ubiquity of gifts, meals, entertainment, travel, and other business courtesies in China elevates the risk of misstep—especially for companies that lack adequate expenditure control, approval, and documentation regimes***.[29]

51. Moreover, a significant issue in China is "'business licensing and the regulatory approval processes in China. . . . It is not just a matter of frequency of contact. There are also significant barriers to doing business in China. If a company has to get something done, the company may have to look to find a way to expedite these processes.'"[30] Since Chinese law often is vague, considerable discretionary power is placed in the hands of bureaucrats.[31] With that authority comes the temptation to benefit personally, creating an environment that is more conducive to corrupt behavior. *The Wall Street Journal Asia* reported in an article dated October

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[28] *See* F. Joseph Warin, Michael S. Diamant & Jill M. Pfenning, *FCPA Compliance in China and the Gifts and Hospitality Challenge*, 5 Va. L. & Bus. Rev. 33, 35-37 (Spring 2010).

[29] *Id.* at 59 (emphasis added).

[30] Kevin Corbett & Ed Rial, *Avoiding FCPA Risk While Doing Business in China* (Deloitte Forensic Ctr. 2008), *available at* http://www.acc.com/chapters/wmacca/upload/8_Background-Materials-Avoiding-FCPA-Risk-While-Doing-Business-in-China.pdf.

[31] *Id.*

31, 2008, that bribery is a commonly known way of obtaining favorable treatment from Chinese regulators.[32]

52. The fact that Chinese law completely prohibited Avon's preferred business model – direct selling – between 1998 and 2005 only heightened this risk. *The Wall Street Journal Asia* reported that, in order to cause regulators to "[t]o 'loosen the leash' [on direct-sales activities], according to a senior executive of a major direct-sales firm in China, operators encourage regulators to look the other way by proffering expensive gifts, from free merchandise for junior inspectors to luxurious travel for senior bureaucrats. 'This is not the exception, that is the rules of the game,' says the person."[33]

53. Similarly, conducting business in Latin America also carries significant FCPA-related risks. "As U.S. companies move more aggressively into Latin American markets, they quickly learn bribery is often seen as a normal part of business; however, operating with a 'when in Rome' mentality can easily lead to violations of the [FCPA] and associated sanctions."[34] Indeed, "[a] number of FCPA enforcement actions have recently focused on U.S. business conduct in Brazil, Costa Rica, Argentina, Venezuela, Mexico and Ecuador."[35]

54. In this regard, the *National Law Journal* has reported that, "[a]s never before, U.S. companies engaged in cross-border business in Latin America face significant risk when it comes to avoiding entanglement with the Foreign Corrupt Practices Act," noting that "Latin America as a whole, and certain countries in particular—including those with the three

[32] James T. Areddy & Ellen Byron, *China Detains Key Officials*, Wall St. J. Asia, Oct. 31, 2008.

[33] *Id.*

[34] Veronica Foley & Catina Haynes, *The FCPA and Its Impacts in Latin America*, Int'l Trade L.J. 27, 27 (Summer 2009) (available on Westlaw).

[35] *Id.*

largest economies, Mexico, Brazil and Argentina—suffer from entrenched public corruption and weak law enforcement."[36] With respect to Brazil, "[s]urveys indicate that both the public procurement and the taxation systems, among other government functions, are plagued with corruption: 38% of international companies based in Brazil report having lost business because a competitor paid a bribe."[37] And, "corruption poses substantial obstacles to doing business in Mexico, outranked only by inefficient bureaucracy."[38]

55. Michael Diaz, Jr., the Miami, Florida-based managing partner at Diaz, Reus & Targ, LLP, who has over 20 years of experience defending and investigating Latin American money laundering and public corruption cases, has cautioned companies to "[b]eware when doing business in Latin America."[39] Mr. Diaz, who also is a former U.S. prosecutor, explained, among other things, that:

- "Thanks to well financed and growing Chinese and Middle Eastern investment there, fraud and bribery are growing as well. Business practices considered unethical, fraudulent, and illegal in the United States, such as bribery and financial 'favors,' are largely tolerated and thriving in the developing regions of the Western Hemisphere, with little risk to the perpetrators."

- "Latin American nations often see U.S. antifraud and anticorruption regulations as hindrances to their economic growth – particularly during a recession when foreign investment from China and the Middle East comes as badly needed economic stimulus. For many Latin American governments, the creation of new jobs ranks far more important than abiding by U.S. anticorruption laws."

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[36] Iris E. Bennett, *Cross Border Issues – Corruption remains a business risk*, Nat'l L.J. (Mar. 31, 2008), *available at* http://www.jenner.com/system/assets/publications/877/original/NLJ_03.31.08_Bennett.pdf?1314027698.

[37] *Id.*

[38] *Id.*

[39] Steven Meyerowitz, *Asian And Middle Eastern Business Ethics Hit Latin America*, Fin. Fraud Law (July 6, 2010), *available at* http://www.diazreus.com/news-200.html.

- "[A]ny company doing business in Latin America needs to analyze the risks associated with a new investment, acquisition, joint venture, or business transaction. There's no substitute for due diligence at every step, including a thorough investigation of potential partners in the region. ***Otherwise, the U.S. company could be exposed to significant legal, financial, and public relations risks if past bribery or corruption charges come to light.***"[40]

D. Avon's Code Of Business Conduct And Ethics

56. During the Class Period, Defendants professed to create a corporate culture and employ procedural mechanisms that ensured Avon's compliance with applicable laws, including anti-bribery statutes. In its Form 10-K dated February 23, 2004, the Company stated "Avon's Board of Directors has adopted a Code of Business Conduct and Ethics that applies to all members of the Board of Directors and to all of the Company's employees, including its principal executive officer, principal financial officer, and principal accounting officer or controller." The 2004 version of Avon's Code of Business Conduct and Ethics (the "2004 Ethics Code") stated that "**[*o*]*ne of Avon's fundamental principles is that its associates will observe the very highest standards of ethics in the conduct of Avon's business, so that even the mere appearance of impropriety is avoided***." (Emphasis added.) The 2004 Ethics Code also provided that "**[*e*]*ach Avon associate is responsible for complying with all laws and regulations that apply to his or her work, for adhering to the specific provisions and spirit of this Code, and for avoiding even the appearance of improper conduct***." (Emphasis added.)

57. That document also included a message from Jung, who stated: "Avon has always been strongly committed to a policy and practice of compliance with both the letter and

[40] *Id.* (emphasis added).

spirit of all applicable laws and regulations in each country in which we do business." She added that:

> [n]ow more than ever, it is imperative that each of us understands his or her individual responsibility for strict compliance with all legal requirements and the highest ethical standards, and for adherence to the provisions of this Code. Only through such behavior, and through a corporate culture that recognizes the need for and benefits of compliance with these standards, can Avon look forward to continued success in the future.

(Emphasis added.)

58. Moreover, the 2004 Ethics Code addressed the FCPA as follows:

> The Foreign Corrupt Practices Act prohibits Avon from offering or paying any money or other thing of value, directly or indirectly to any foreign government official, foreign political party or its officials, or candidate for public office, for the purpose of improperly obtaining or maintaining business or influencing governmental action favorable to Avon. Such prohibited payments include consulting, broker's, finder's or other fees paid to third parties where there is reason to believe that any part of such fees will be distributed to, or for the benefit of, foreign officials or political parties for those improper objectives.

59. The 2004 Ethics Code also stated that "***[b]ribes, kickbacks and payoffs to government officials, suppliers and other are strictly prohibited***." (Emphasis added.) It further explained that "[n]o gift, entertainment or favor of any kind may be given to any government employee without the prior approval of the Legal Department or officer in charge of legal affairs in your country."

60. The Company's annual report for fiscal year 2004, filed on Form 10-K and dated March 2, 2005, stated "Avon's Board of Directors has adopted a Code of Business Conduct and Ethics that applies to all members of the Board of Directors and to all of the Company's employees, including its principal executive officer, principal financial officer and principal accounting officer or controller. Avon's Code of Business Conduct and Ethics is available, free

of charge, on Avon's website." Substantially the same language appeared in the Company's Form 10-K dated March 10, 2006, as well as the Form 10-K dated February 28, 2007.

61. Avon adopted an amended code of conduct in February 2008. *See* ¶¶ 225-27. That amended code of conduct continued the 2004 Ethics Code's prohibition against bribes, kickbacks, and payoffs and the requirement that prior approval of the Legal Department be obtained as addressed in ¶ 59 above. Significantly, both the 2004 and the 2008 versions of the code contained Jung's statement that "Avon has always been strongly committed to a policy and practice of compliance with both the letter and spirit of all applicable laws and regulations in each country in which we do business."

E. Avon's 2004 Corporate Social Responsibility Report

62. Avon further espoused its commitment to "corporate responsibility" and "good corporate citizenship" when it released its first Corporate Responsibility Report in 2004. In it, Jung stated:

> For more than a century, Avon has demonstrated a deep commitment to empowering women and a ***strong belief in the importance of corporate responsibility.*** This echoes the core principles that our founder, David H. McConnell, set forth when he established the company in 1886. ***These principles still live on in every aspect of our business today.***
>
> . . . .
>
> In today's increasingly complex business environment, corporate integrity has become a key barometer for a company's success. To that end, ***Avon continues to adhere to the highest standards of integrity, ethical conduct and good corporate citizenship.***
>
> . . . .
>
> ***Avon remains dedicated to the goals of our founder, who believed in meeting "fully the obligations of corporate citizenship by***

> ***contributing to the well-being of society and the environment in which it functions."***

(Emphasis added.)

63. In the 2004 Report, the Company also touted its "Strong Internal Control Environment," noting that Avon had:

> a comprehensive and well-documented set of internal controls that provide reasonable assurance that our financial transactions are recorded accurately and completely, and our assets are safeguarded. It is management's responsibility to monitor the control environment through quarterly and annual self-assessments and independent monitoring from internal audit. In fact, every single financial reporting location participates in an annual internal control self-assessment and is asked to certify that their control environment is designed and operating efficiently.
>
> Sarbanes-Oxley legislation in the U.S. requires that CEOs and CFOs of publicly traded companies certify annually as to the effectiveness of their internal control over financial reporting. To fulfill this task, Avon created an internal team of global accounting and auditing professionals to work together to coordinate and assist Avon's worldwide associates in the identification, documentation, and review of over 12,000 internal controls across all markets and key functions. This first annual certification of 2004 controls was successfully completed in early 2005.

64. The 2004 Report also referenced Avon's Ethics Code:

> ***The code describes Avon's policies and practices, which collectively are intended to promote ethical and lawful behavior, and deter wrongdoing and improper conduct. For instance, the policies include compliance with regulations in all countries where we operate; the prohibition of conflicts of interest, improper payments and bribery***; equal opportunity; and fair dealing.

(Emphasis added.)

F. The Bribery Scandal At Avon

65. The market first learned of a potential overseas bribery scandal at Avon on October 20, 2008. On that date, Avon revealed in a press release that Jung had received a letter in June 2008 from a so-called "whistleblower" who made credible allegations of FCPA violations in

China. Although it has been more than six years since Avon first told investors that the Company likely had run afoul of the FCPA, the breadth of Defendants' wrongdoing is still unclear. From the information that has trickled into the public domain since that first announcement, however, one thing is now readily apparent: serious and extensive FCPA violations occurred at Avon both before and during the Class Period.[41]

66. In particular, Avon's October 20, 2008 press release revealed that a "whistleblower" had alleged that travel and entertainment expenses reported in the Company's China operations may have violated the FCPA. That is, rather than being legitimate expenses, those questionable ledger entries allegedly reflected nothing more than illegal payments that Avon made to Chinese government officials or their proxies in order to gain a business advantage in China. Demonstrating the credibility of the bribery allegations that Jung received, Avon initiated an internal investigation to be conducted by outside counsel (Mayer Brown LLP) under the oversight of the Audit Committee of the Company's Board of Directors. Avon also thought enough of the allegations to voluntarily alert both the DOJ and SEC.[42]

67. As noted above, China banned direct sales in 1998 and Avon was forced to pursue sales in China through other, less preferable, methods, including retail stores. Plaintiffs' investigation demonstrates that Avon's bribes in that country were made in connection with the direct selling license that Avon desperately needed to compete.

68. As detailed further below, internal Avon documents, confidential witness statements, and news reports indicate that certain bribery payments to Chinese officials were

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[41] Ellen Byron, *Avon Bribe Investigation Widens*, Wall St. J., May 5, 2011 [hereinafter Byron, *Bribe Investigation Widens (May 5th)*], *available at* http://online.wsj.com/article/0,,SB10001424052748704322804576303302214411400,00.html.

[42] Press Release, Avon, Avon Statement on Voluntary Disclosure (Oct. 20, 2008), http://media.avoncompany.com/index.php?s=10922&item=23067.

discovered as early as 2005, but no later than 2006, in connection with Avon's pursuit of a direct selling license.

69. Avon's startling disclosure of October 20, 2008, regarding bribery at the Company's China operations was soon followed by an article in the *Journal* dated October 31, 2008. That article reported that in recent weeks the Chinese government had "detained officials involved in licensing foreign companies to operate in China, in what appears to be a widening corruption probe that has touched most obviously on the direct-selling business."[43] The article further stated that:

> [t]he sweep has implicated key officials involved in licensing and regulating numerous foreign companies in China, as well as lawyers adept at arranging licenses for new entrants to China, according to people familiar with the situation and Chinese media reports. The most senior official so far detained for questioning by authorities, people familiar with the situation said, is Guo Jingyi, director general of the treaty and law department at China's Ministry of Commerce, who has been a key voice in deciding which foreign companies get business licenses.
>
> The direct-selling industry has taken notice that among those detained is a longtime gatekeeper at the Commerce Ministry, Deng Zhan, a deputy director general with a particular responsibility for regulating the direct-selling sector. Also detained is Liu Wei, a deputy director for foreign investment at the State Administration for Industry and Commerce, an organization that monitors corporate day-to-day business operations. Also being investigated is Zhang Yudong, an attorney at the Beijing firm Seafront Law Office, also known as Sifeng, which says it has helped more than 100 foreign companies now doing business in China get licensed, including direct-sales companies.[44]

70. The October 31, 2008 *Journal* article connected the arrests of Chinese executives to the Avon FCPA investigation, noting that their detention came "at a time when

[43] Areddy & Byron, *supra* note 32.

[44] *Id.*

[Avon] says it may have found improprieties in its operations in the country" and that the "suspected bribery in China by Avon officials involves ***several million dollars***." (Emphasis added.) Even the Chinese press, which is notoriously reluctant to print any material negatively characterizing Chinese government officials, reported that sources had linked the arrests to Avon's internal investigation of bribes made to Chinese government officials.[45]

71. Multiple Chinese government officials eventually received lengthy prison sentences for their roles in the "direct-sale licensing" bribery scandal, including Guo Jingyi, who was sentenced to death (with a two-year suspension after which a more lenient punishment will be considered), and Deng Zhan, who received a twelve-year prison sentence.[46]

72. Not coincidentally, Avon received two invaluable benefits from the Chinese government during the same timeframe as the alleged bribery payments. First, in July 2005, Avon announced that Chinese government officials had provided the Company with the first test license to engage in direct selling activities since China banned the practice in 1998. ¶ 32. Then, in 2006, Avon became the first company to which China granted a permanent direct sales license. *Id.* Considering all of the events that have transpired and information disclosed since 2006, it is little wonder how Avon ultimately received such favorable treatment from the Chinese government. That treatment gave Avon unrivaled access to massive consumer markets that it otherwise would have been unable to reach.

73. Unsurprisingly, Avon's culture of bribery was not solely confined to the Company's operations in mainland China. In Avon's quarterly report on Form 10-Q for the period

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[45] Liu Yinghua, *It is rumored that the fall of the officers of the Ministry of Commerce leads to the exposure of Avon Bribe Gate*, Beijing Morning Post, Oct. 23, 2008 (on file with author).

[46] *See, e.g.*, Jeremy Goldkorn, *Commerce official Guo Jingyi convicted: fallout from Huang Guangyu*, Danwei, May 21, 2010, *available at* http://www.danwei.org/corruption/guo_jingyi_convicted.php; *Ministry of Commerce of the original Deng Zhan, deputy director of First Instance jailed for 12 years*, Chinahourly, Nov. 19, 2011 (on file with author).

ending on July 30, 2009, the Company disclosed that the FCPA investigation had expanded to additional countries where Avon has business operations. Moreover, a *Journal* article dated May 4, 2011, reported that, after nearly three years of investigating the matter, Avon uncovered additional evidence of "millions of dollars of questionable payments to officials in Brazil, Mexico, Argentina, India and Japan."[47]

74. Avon's bribery activities were not limited in scope or time. Remarkably, the May 4, 2011 *Journal* article reported that the illegal payments had occurred as early as 2004, and continued until as late as 2010 – one year after the Company purportedly expanded its investigation of FCPA violations to include several countries other than China.[48]

75. Although Avon still has not made public a final report on its FCPA investigation, the Company apparently possessed enough incriminating information to discipline, demote, and/or terminate numerous high-ranking executives who were involved with Avon's China operations at the time of the bribery scandal. For example, an April 13, 2010 *Journal* article confirmed that Avon had suspended four senior executives in connection with the FCPA investigation: S.K. Kao ("Kao"), President and General Manager of Avon China; Jimmy Beh ("Beh"), CFO of Avon China; C.Q. Sun ("Sun"); Head of Corporate Affairs and Government Relations for Avon China; and Ian Rossetter ("Rossetter"); former head of Avon's Global Internal Audit and Security and formerly Director of Finance for the Asia Pacific region.[49] All four executives had long occupied senior positions reporting directly to Avon's top managers. Kao,

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[47] *See* Ellen Byron, *Avon Probe Uncovers Questionable Payments Outside of China*, wsj.com (May 4, 2011, 19:47:44.868 GMT) [hereinafter Byron, *Probe Uncovers Questionable Payments*] (emphasis added) (on file with author).

[48] *Id.*

[49] *See* Ellen Byron, *Avon Suspends Executives In Inquiry*, Wall St. J., Apr. 13, 2010, at B1 [hereinafter Byron, *Avon Suspends Executives*].

Beh, and Sun reported directly to Gallina (who, in turn, reported directly to Jung), and Rossetter reported to Cramb and the Audit Committee of Avon's Board of Directors.

76. On February 20, 2011, Avon disclosed in a Form 8-K that Gallina himself had been "placed on administrative leave" in connection with the internal FCPA investigation, a personnel move that resulted in his abrupt retirement from Avon only two days later. Then, on May 3, 2011, Avon's quarterly report on Form 10-Q for the period ending March 31, 2011, revealed that Kao, Beh, Sun, and Rossetter all had been terminated as a result of the FCPA investigation.

77. Those senior executives were not the only dominos to fall in the wake of Avon's bribery scandal. On May 23, 2011, Avon disclosed that Cramb would no longer serve as CFSO when his replacement, Kimberly A. Ross, joined Avon in the fall of 2011. Then, on December 14, 2011, Avon announced that Jung would step down as CEO as soon as a new executive is named to the post.

78. Finally, in a Form 8-K filed on January 30, 2012, Avon terminated Cramb in a "personnel action" that was made "in connection with the Company's previously disclosed internal investigation [into possible FCPA violations] and the [related SEC investigation]." The *Journal* reported that "Mr. Cramb was fired after indications emerged that he had been aware of possible corruption involving foreign officials in China ***as early as the middle of the last decade***."[50] Thus, culminating as it did in the removal of the Company's two top officers, Avon's bribery scandal unquestionably implicated the very top echelons of the Company's senior management.

[50] *See* Dowell, *supra* note 3 (emphasis added).

79. The consequences of the scandal have not been confined to internal disciplinary actions. Rather, Avon is now squarely in the crosshairs of the various government agencies charged with policing FCPA violations. On February 25, 2010, Avon first announced in a Form 10-K for the period ending December 31, 2009, that it had entered into tolling agreements with the DOJ and the SEC, and could face fines, criminal penalties, and/or sanctions related to the Company's bribery of Chinese government officials.

80. Those tolling agreements led to government investigations. On February 13, 2012, a *Reuters* article reported that prosecutors are investigating whether Avon "continued to provide business dinners and entertainment for low-level Chinese ministers after 2005."[51] On May 24, 2011, the *Journal* confirmed that federal prosecutors are investigating Avon for criminal violations of the FCPA.[52]

81. On October 26, 2011, Avon disclosed in its quarterly report on Form 10-Q for the period ended September 30, 2011, that the SEC was formally investigating the Company and had issued a subpoena to obtain information concerning whether Avon or its representatives had bribed Chinese officials and/or made improper disclosures to securities analysts. *See* ¶ 319. The latter issue concerns potentially improper statements that Cramb made to a securities analyst about the progress of Avon's internal FCPA investigation. *See* ¶ 347.

82. Significantly, on February 13, 2012, the *Journal* reported that federal prosecutors investigating Avon's bribery scandal presented evidence to a grand jury, presumably

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[51] Aruna Viswanatha, Phil Wahba & Sakthi Prasad, *Avon 2005 internal audit gets scrutiny-source*, Reuters, Feb. 13, 2012, *available at* http://www.reuters.com/article/2012/02/13/us-avon-federalinvestigation-idUSTRE81C0C020120213.

[52] Ellen Byron & Michael Rothfeld, *US Prosecutors Look at Avon Bribery Allegation*, wsj.com (May 24, 2011, 23:55:07.741 GMT) (on file with author).

seeking a criminal indictment under the FCPA.[53] Although Avon claimed not to have been aware of FCPA violations until 2008, the *Journal* article indicated that the government had evidence of a 2005 internal audit report sent to senior Avon executives in New York, which concluded that Avon employees in China may have provided hundreds of thousands of dollars in bribes to Chinese government officials in violation of the FCPA.[54] The article further stated that "[t]he Federal Bureau of Investigation and U.S. prosecutors in New York and Washington are trying to determine whether current or former executives ignored the audit's findings or actively took steps to conceal the problems, both potential offenses."[55]

83. Avon disclosed in a Form 10-Q filing with the SEC dated May 1, 2014 that the Company had reached an "understanding" to resolve the government's ongoing investigation of Avon's FCPA-related misconduct. As reported by Avon, the Company will pay $135 million in fines, disgorgement, and prejudgment interest with respect to alleged violations of the books and records and internal control provisions of the FCPA ($68 million will be paid to DOJ, and $67 million will be paid to the SEC). As part of the proposed settlement, Avon will enter into a three-year deferred prosecution agreement with DOJ, and also agreed to an external compliance monitor for a term of at least 18 months. (After the 18-month term has expired, Avon, with the approval of the government, may self-report to regulators for an additional 18 months.) Additionally, as part of its settlement, Avon's subsidiary operating in China will enter a guilty plea in connection with alleged violations of the books and records provision of the FCPA. As detailed elsewhere herein, a plea of guilty would constitute an unconditional admission of guilt – which

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[53] Joe Palazzolo & Emily Glazer, *Foreign Bribe Case at Avon Presented to Grand Jury*, Wall St. J., Feb. 13, 2012, at A1.

[54] *Id.*

[55] *Id.*

admission is imputable to the Company under applicable law. *See* ¶¶ 354-55. Moreover, the requirement that the Company utilize an external compliance monitor for a period of eighteen months strongly suggests that Avon's FCPA compliance function and related internal controls were woefully inadequate and/or virtually nonexistent. *See* ¶¶ 356-58.

84. In view of the announcement of the "understanding" of settlement regarding FCPA violations at Avon (which includes a guilty plea), the most relevant question for investors is: "How did it happen at a company that purportedly paid such close attention to legal compliance matters?" As Plaintiffs' investigation reveals, the simple answer is that Avon and its senior management did not abide by the policies, goals, and procedures they described in the Company's public disclosures. Notwithstanding what they told investors regarding high standards of ethical conduct and legal compliance, *see, e.g.*, ¶¶ 225-27, 269-70, Defendants built and oversaw a corporate culture that allowed and, indeed, encouraged criminal conduct as a means of advancing Avon's business interests. They also falsely attributed the Company's Class Period "growth" and "success" solely to legitimate activities. *See, e.g.*, ¶¶ 212-13. Finally, when FCPA violations occurred throughout Avon's operations, senior management turned a blind eye to them.

85. This entire episode could have been prevented had Avon simply employed the FCPA controls and compliance measures that it led investors to believe were in place to prevent, identify, and/or address potential and/or actual statutory violations. Unfortunately, that did not occur. Defendants' failure to keep their promises to investors has taken a tremendous toll on the value of Avon's common stock.

G. Avon Obligated Itself To Implement And Follow "Best Practices" For FCPA Compliance

86. The FCPA generally prohibits the corrupt offer, promise, or payment of anything of value to foreign government officials, political parties, party officials, or candidates to

obtain or retain business or otherwise secure an advantage.[56] Under the FCPA's deceptive record provisions, public companies are required to maintain accurate books and records and an adequate system of internal accounting controls. As an issuer subject to the federal securities laws, Avon has been at all relevant times required to comply with both the anti-bribery and the deceptive records provisions of the FCPA.[57]

87. Through the 2008 version of its Code of Business Conduct and Ethics (the "2008 Ethics Code"), Avon informed the investing public that it sought to impose "a standard of ethical conduct ***beyond that required by mere technical compliance with the law*** or the minimum standards for business behavior." (Emphasis added.) The 2004 Ethics Code similarly stated that "[e]ach Avon associate is responsible for complying with all laws and regulations . . . and for avoiding even the appearance of improper conduct." These documents also expressly prohibit "bribes" of any kind. Both the 2004 Ethics Code and the 2008 Ethics Code strongly imply that Avon adhered to well-established "best practices" to ensure FCPA compliance.

88. Apart from Avon's own statements regarding compliance, the statute imposes certain obligations on subject companies "by requiring companies to devise and maintain systems of internal accounting controls, and more broadly by mandating strict adherence with anti-bribery principles, the FCPA counsels companies to implement robust systems of anti-corruption compliance and accounting controls."[58]

89. Agencies of the U.S. government, including those involved in law enforcement in general and FCPA enforcement in particular, have published information outlining

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[56] *See* 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3.; *see also Clayco Petroleum Corp. v. Occidental Petroleum Corp.*, 712 F.2d 404, 408 (9th Cir. 1983) ("The FCPA prohibits bribery of a foreign official for the purpose of obtaining or retaining business.").

[57] *See* 15 U.S.C. § 78*l*.

[58] Blume & Caughey, *supra* note 24.

the components of FCPA "best practices," including what companies can do to ensure compliance with the statute, avoid prosecution, and mitigate consequences arising from FCPA violations.

90. Since 2005, the U.S. Sentencing Commission has embodied in the Federal Sentencing Guidelines detailed practices and policies that, if followed, can mitigate the sentences imposed on an organization convicted of criminal conduct, including FCPA violations. Chapter Eight of the 2013 Federal Sentencing Guidelines (the "Sentencing Guidelines") sets forth certain mitigating factors that can reduce or eliminate the liability of an organizational defendant found to have violated federal law, including the FCPA.[59]

91. Chapter Eight of the Sentencing Guidelines details the minimum requirements for effective compliance and ethics programs. The Sentencing Guidelines further provide that an effective compliance and ethics program must exist and must be supervised by a senior executive or executives:

> High-level personnel of the organization shall ensure that the organization ***has an effective compliance and ethics program***. . . . Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.[60]

92. The Sentencing Guidelines also state that someone within a corporation must be responsible for daily operations of the ethics and compliance program, and that such person must be given "***adequate resources***, appropriate authority, and direct access to the governing authority" of the Company.[61]

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[59] *See, e.g.*, 2013 Federal Sentencing Guidelines Manual, *available at* http://www.ussc.gov/guidelines-manual/2013-ussc-guidelines-manual.

[60] *Id.* § 8B2.1(b)(2)(B) (emphasis added).

[61] *Id.* § 8B2.1(b)(2)(C) (emphasis added).

93. In addition to the establishment and staffing of a compliance program, the Sentencing Guidelines require that a company such as Avon provide "***effective training programs***" to "communicate" its compliance and ethics program in a "practical manner" to ***all of the company's employees***.[62]

94. Once a program is established and staffed and the employees trained, a company like Avon must take "reasonable steps" to "ensure that [its] compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct."[63]

95. Perhaps the most important section of the Sentencing Guidelines as it relates to this action is the requirement that "**[*a*]*fter criminal conduct has been detected" a company must take steps to "prevent further similar criminal conduct***, including making any necessary modifications to the organization's compliance and ethics program."[64]

96. Similar to the Sentencing Guidelines, the DOJ's Principles of Federal Prosecutions of Business Organizations (the "PFPBO") provide information about how federal law enforcement authorities evaluate the efficacy of corporate ethics and compliance programs.[65] Thus, the PFPBO reflects the minimum qualitative requirements of an effective compliance program. Of particular significance is the Comment to the Corporate Compliance Programs section, which states that:

> the critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether ***corporate management is enforcing the program or is tacitly***

[62] *Id.* § 8B2.1(b)(4)(A) (emphasis added).

[63] *Id.* § 8B2.1(b)(5)(A).

[64] *Id.* § 8B2.1(b)(7) (emphasis added).

[65] U.S. Dep't of Justice, 9 U.S. Attorneys' Manual 9-28.800, *available at* http://www.justice.gov/opa/documents/corp-charging-guidelines.pdf.

encouraging or pressuring employees to engage in misconduct to achieve business objectives.[66]

97. The PFPBO suggests that, when evaluating the adequacy of a compliance program, one must consider "whether the corporation has established corporate governance mechanisms that can effectively detect and prevent misconduct."[67] Specifically, the PFPBO looks at whether "internal audit functions [are] conducted at a level sufficient to ensure their independence and accuracy."[68]

98. The key determinant under the PFPBO is "whether a corporation's compliance program is merely a 'paper program' or whether it was designed, implemented, reviewed, and revised, as appropriate, in an effective manner."[69] Thus, to have an effective compliance program, a corporation must have both "provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation's compliance efforts" and guaranteed that "employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it."[70]

99. Together, the Sentencing Guidelines and PFPBO provided Avon with a set of "best practices" to ensure a "standard of ethical conduct" beyond "mere technical compliance with the law."[71]

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[66] *Id.* 9-28.800.B cmt. (emphasis added).

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] Michael Josephson, *Elements of an Exemplary Corporate Ethics Program – Check-the-Box Compliance Programs Won't Meet New Federal Standards*, Josephson Institute (Feb. 16, 2012), *available at* http://josephsoninstitute.org/business/blog/2012/02/article-check-the-box-compliance-programs-wont-meet-new-federal-standards-for-an-effective-ethics-and-compliance-program/.

100. Apart from the foregoing, it is well-recognized that companies doing business abroad must pay particularly close attention to their business courtesy expenditures, i.e., gifts, hospitality, meals and travel, lodging, and entertainment expenses. Compliance professionals acknowledge that "any U.S. Company with Chinese business [must] make the proper investment in its internal controls, including installing experienced compliance officers, maintaining any anonymous reporting system, conducting frequent training, and instituting effective controls over high-risk counterparties."[72] Identical concerns exist in Latin America, where bribery is a "normal part of business."[73]

101. Before conducting business in high-risk markets like China and Latin America, experts suggest that companies conduct a baseline assessment to determine any FCPA exposure. The DOJ has outlined a number of "red flags" that U.S. firms should look for when conducting business abroad, including, *inter alia*, "unusual payment patterns or financial arrangements, a history of corruption in the country, a refusal by the [foreign counterparty] to provide a certification that it will not take any action . . . in violation of the FCPA, unusually high commissions, lack of transparency in expenses and accounting records, . . . and whether the [foreign counterparty] has been recommended by an official of the potential governmental customer."[74] In this context, "[s]uccessful risk assessments are designed to identify potential corruption risks associated with a company's business model, business partners, business relationships, use of agents and consultants, and overall strategic plans."[75]

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[72] Warin et al., *supra* note 28, at 58.

[73] Foley & Haynes, *supra* note 34, at 1.

[74] *See* U.S. Dep't of Justice, Foreign Corrupt Practices Act – Antibribery Provisions [hereinafter DOJ Lay Person's Guide] (on file with author).

[75] Ed Rial & Kevin Corbett, *Evaluating Your FCPA Compliance In Light Of Dodd Frank* (Deloitte Forensic Ctr. Mar. 31, 2011) (available on Westlaw).

102. Once the relevant risks have been identified, a company should create an effective FCPA compliance program by considering the Sentencing Guidelines, the PFPBO, documented experts' views (as set forth above), as well as other similar documents. All of those resources were available to Avon during the Class Period, and together compel the conclusion that Avon was obligated to design a compliance program that:

a) had clearly articulated policies and procedures;

b) had adequate resources assigned to enforce such policies and procedures and ensure training for all employees, including meetings and informational handouts in the local language for Avon employees working outside the U.S.;

c) required written certification by relevant employees and third-party agents acknowledging receipt, understanding and willingness to follow the applicable policies;

d) had clear consequences within the organization when violations were discovered;

e) required management to foster a culture of compliance and not simply pay "lip service" to compliance in name only;

f) required senior management to provide appropriate oversight to ensure that the policies were being followed in the field;

g) acknowledged that Avon's business in China and Latin America carried a higher level of FCPA risk, and imposed specific procedures and guidance to mitigate that risk; and

h) enumerated procedures for investigating possible violations and for ongoing internal audits and compliance assessments.

103. As detailed elsewhere herein, however, Avon did not design and implement such a program. In fact, it is clear that Avon had no effective compliance or training program in place at all. *See, e.g.*, ¶¶ 109-21, 356-58. Cramb was on notice of unlawful payments dating back to the middle of the last decade, yet bribery continued unabated in several different countries until

at least 2010. Senior management also apparently turned a blind eye to a 2005 internal report that concluded Company employees had paid bribes in China in violation of the FCPA.

104. Simply put, if Avon had adopted programs, procedures, and actions consistent with the Sentencing Guidelines, the PFPBO, and other relevant materials, the Company likely would have avoided an enormously expensive and protracted internal investigation and a $135 million settlement for FCPA violations while simultaneously mitigating other potential liability. The Company's lack of compliance procedures, policies, and internal controls also belied Avon's disclosures attesting to a goal of compliance and a focus on integrity.

H. Avon's Failure To Implement A Uniform FCPA Compliance Program Across The Company's Global Operations

105. Notwithstanding well-established "best practices" (described above) requiring a large corporation such as Avon to have an effective, company-wide compliance program to prevent law-breaking in general and FCPA violations in particular, and contrary to Defendants' statements that legal compliance was a corporate priority, the Company had no independent compliance function whatsoever at any time prior to 2009. Even after 2009, Avon's attempt to employ legal and other professionals in a compliance capacity was ineffective, and marked by unaccomplished goals, high turnover, and discord. That complete lack of focus on FCPA compliance, which was well known to Avon's most senior executives and set the tone for Avon's global staff, allowed the Company's internal financial and accounting controls to be circumvented and FCPA violations to continue as late as 2010 – two years after Avon's purported investigation into the China bribery scandal began.

106. Some of the most revealing information about the inadequacy of Avon's compliance efforts at that time can be found in a lawsuit filed on December 28, 2011, by Debra Sabatini Hennelly ("Hennelly"), Avon's former Executive Director of Global Ethics and

Compliance.[76] The Hennelly Complaint alleges that Avon fired Hennelly for insisting that the Company implement a legitimate compliance program in its Latin American operations in 2010 – a request that Avon's General Counsel, Kim Rucker ("Rucker"), rejected outright. Notably, Rucker reported directly to Jung.[77]

107. The story told in the Hennelly Complaint is that of a compliance culture led by those at the very top of the Company's corporate ladder that was openly hostile to FCPA compliance efforts at Avon's international operations, even after the exposure of the bribery activities plaguing Avon's China operations.

108. In her complaint, Hennelly alleges that she was "directly responsible for improving and implementing Avon's global ethics and compliance program."[78] The Hennelly Complaint further alleges that, in that position, Hennelly's duties included taking "preventive and corrective action against violations of the [FCPA]."[79] According to her complaint, Hennelly was well-qualified for the position, being a "nationally recognized expert on corporate ethics and compliance" and having worked in the compliance field for more than twenty years.[80]

109. It appears that Hennelly first learned of Avon's hostility to compliance when Charles Herington ("Herington"), Vice President of Avon's Developing Markets Group and the "senior-most business leader for Latin American and Eastern Europe," invited Hennelly and AnnaMaria Vitek ("Vitek"), Avon's Vice President and Regional Counsel for Latin America, to

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[76] *See Hennelly v. Avon Prods., Inc. et al.*, No MRS-L-3490-11 (N.J. Super. Ct. Law Div.) (the "Hennelly Complaint"). Hennelly confirmed to Plaintiffs' Counsel that the allegations in the Hennelly Complaint were true and accurate to the best of her knowledge.

[77] *Avon gets new senior vice president, general counsel*, Feb. 11, 2008 (noting Rucker "will . . . report to company chairman and CEO Andrea Jung") (on file with author).

[78] Hennelly Compl. ¶ 4.

[79] *Id.* ¶ 8.

[80] *Id.* ¶ 3.

train Herington's direct reports regarding their FCPA responsibilities.[81] At that meeting, held on August 31, 2010, Herington allegedly told Hennelly that Rucker had refused to authorize a broad and immediate review of Avon's existing contracts – a course that Hennelly considered to be "a violation of Avon's obligation to prevent, detect and respond to violations of the FCPA, as well as a violation of the Sentencing Guidelines' requirement to 'promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.'"[82]

110. During a meeting on September 8, 2010, Hennelly allegedly raised her concerns with Rucker, her direct supervisor, about Rucker's denial of Herington's request for a review of all vendor contracts.[83] In particular, Hennelly alleges that she told Rucker that, as a result of her (Rucker's) refusal to accede to Herington's request, Avon was failing to adhere to federal law by "neglecting to review the anti-bribery contractual provisions and high-risk activities of all of Avon's vendors and agents in Latin America."[84] Hennelly avers that she insisted that Rucker reconsider Herington's request, which was supported by both Hennelly and Vitek.[85] But, according to Hennelly, Rucker refused to reconsider her decision and asserted that Avon examine only ***new*** vendor/agent contracts and/or contracts that were already being reviewed.[86]

111. Remarkably, the Hennelly Complaint states that Rucker's reason for refusing to institute the fundamental compliance procedures that Herington, Hennelly, and Vitek requested was "***to avoid*** being inundated with ***what would likely be uncovered*** if Avon started

[81] *Id.* ¶¶ 9-10.

[82] *Id.*

[83] *Id.* ¶ 9.

[84] *Id.*

[85] *Id.* ¶ 10.

[86] *Id.* ¶¶ 10-11.

doing the broader reviews of all of its vendors in Latin America."[87] Hennelly further alleged that "Rucker was well aware that her justification for refusing to follow Hennelly's request to reconsider reviewing all Avon's vendors and agents in Latin America was contrary to the Federal Sentencing Guidelines and risked violating – or continuing to violate – the FCPA."[88] Thus, in effect, the Hennelly Complaint alleges that Avon's General Counsel, the Company's highest-ranking attorney who reported directly to Jung, knowingly cast a "blind eye" on the inability of Avon's substandard compliance program to detect and eliminate potential FCPA violations that even she conceded were "likely" to be occurring.

112. The Hennelly Complaint further alleges that, during her tenure at Avon, the Company rejected two candidates put forth by Hennelly for a position that was "critical to implementing an 'effective' ethics and compliance program in [Latin America], pursuant to the [Sentencing Guidelines]."[89] In particular, Rucker is alleged to have twice rejected qualified candidates – who both Hennelly and Vitek supported and urged her to hire – to fill the vacant position of Avon's Regional Director, Ethics & Compliance – Latin America.[90] The Company's failure to fill that position hindered efforts to help reduce Avon's risk of FCPA violations in that region.

113. Not to be deterred in her attempts to bring effective compliance activities to Avon, Hennelly once again tried to convince Rucker to improve Avon's ineffective compliance program. According to the Hennelly Complaint, in the 2010 Strategic Plan she provided to Rucker

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[87] *Id.* (emphasis added).

[88] *Id.* ¶ 12.

[89] *Id.* ¶ 13.

[90] *Id.*

in September 2010, Hennelly noted that Avon "failed to meet several of the Federal Sentencing Guidelines' requirements for an effective compliance program."[91] Rather than address those deficiencies, however, Avon fired Hennelly the very next month (October 2010), notwithstanding that Jung had designated her in July 2010 as one of Avon's "High Potential Leaders" (Hennelly allegedly was the first legal department employee to have received the award in the prior ten years).[92] Notably, a former Compliance Training Manager ("CW4") reported that a former colleague in Avon's compliance department had confirmed that Hennelly's position as Executive Director of Global Ethics and Compliance remained unfilled as of February 2012.

114. Several former Avon employees, who were hired to work in the Company's legal department solely on compliance issues at or around that time, corroborated the Hennelly Complaint's depiction of Avon's woeful compliance efforts in 2009 and 2010. An employee with relevant compliance experience hired by Avon in that timeframe ("CW5") confirmed that after he/she was hired, Rucker told him/her not to be "surprised by how far behind" Avon was with respect to a compliance program. Similarly, CW5 recalled that Si-Yeoung Kim, Avon's Vice President and Regional Counsel – Avon China/Asia Region, frequently expressed frustration in meetings that, by 2010, Avon still had not implemented key aspects of an FCPA compliance program. A former Vice President of Global Compliance and Legal Affairs ("CW6") and a former Regional Compliance Director ("CW7") both confirmed that Avon did not even have an independent compliance function prior to 2009. Indeed, each of those confidential sources was specifically tasked in 2009 and thereafter with designing and/or implementing a global compliance program at Avon where none had existed before. Moreover, CW4, CW5, and CW7 all conveyed

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[91] *Id.* ¶ 15.

[92] *Id.* ¶ 7.

their understanding that Avon's compliance efforts prior to 2009, if any, would have been conducted by attorneys with no specialized compliance experience.

115. A former Executive Secretary to Avon's General Counsel from October 2006 to July 2010 ("CW8") confirmed that, although "certain attorneys focused on FCPA," "there was not anyone specific that was devoted to compliance issues." Moreover, CW8 stated that Avon really did not have any semblance of a compliance program in place in the legal department as there was neither any "section or title" named for FCPA compliance nor anything "specifically devoted to compliance issues." Likewise, CW7 confirmed that Avon's compliance efforts prior to 2009 consisted solely of a few lawyers in Avon's legal department with dual responsibility for compliance and legal matters.

116. Moreover, consistent with Hennelly's allegations, statements by former Avon employees who were responsible for Avon's FCPA compliance efforts after 2009 indicate that, even then, Avon's compliance function was virtually non-existent. For example, CW6, who worked at Avon from 2009 until February 2010, confirmed that he/she was Avon's first "Global Chief Compliance Officer," a fact corroborated by CW4 and CW7. Tellingly, CW4, who was recruited and hired by CW6 in November 2009 to fill a new position charged with developing an FCPA training program for Avon, stated that when he/she began working at Avon, "compliance consisted of a Code of Conduct and a helpline." CW7, like CW4, also was the first person at Avon to hold his/her newly-created position after senior management decided to implement a "formalized compliance program" in 2009. Significantly, CW7 confirmed that all Avon had by way of legal compliance when he/she started in September 2009 was the Ethics Code and a 24-hour hotline for employees to report wrongdoing. But perhaps most startling, CW5 revealed that senior members of Avon's legal department, including Richard Davies ("Davies"), Avon's lead

compliance attorney, acknowledged to him/her that Avon lacked the type of compliance programs that would be expected of a company of Avon's size. For example, CW5 remembered receiving a response to that effect after expressing concern to Davies about the lack of a company-wide anti-bribery training program.

117. According to CW4, "having a standalone compliance function was a new idea" at Avon in 2009. Given CW4's experience as the Head of Global Compliance Training at a major international bank, Avon "really didn't know what they were doing on compliance" and any compliance efforts the Company did have in place at that time were "nonexistent or weak" and "didn't work." In fact, CW4's role "was ground-floor, setting up the compliance function."

118. Further demonstrating Avon's lack of commitment to FCPA compliance, CW4 confirmed that during the 2009-2010 time period, the compliance department had only six to eight employees, including administrative staff. Moreover, CW4 stated that, when CW6, who was CW4's boss, left Avon, "initially I didn't report to anyone." Though CW4 eventually reported to an attorney in the legal department who had "double headed legal and compliance responsibilities," CW4's recollections reflect Avon's indifference to compliance.

119. CW4 also recalled it being peculiar that what little compliance efforts Avon made prior to CW6's tenure were run out of the Company's legal department, which had dual responsibility for compliance and legal matters. CW4's prior experience with legitimate compliance programs showed that it was common knowledge that legal and compliance functions should be separated because it afforded compliance officers direct access to the Board of Directors, and avoided "compliance reporting to the business people because there could be conflicts." Moreover, as CW4 noted, such separation is important because "legal doesn't have the experience

or expertise" in compliance subject matters. Nevertheless, CW4 confirmed that, for all practical purposes, no such division appeared to exist at Avon during his or her tenure.[93]

120. Sources also confirmed that FCPA training programs were non-existent within Avon. "That's why I was hired," CW4 said, explaining that when CW6 recruited CW4 to join Avon in 2009, CW4's vision was to help develop, ***for the first time***, a global FCPA training program at the Company. CW7 corroborated that account, stating that there were no FCPA policies or training before CW7 joined Avon in 2009. Notably, when CW4 resigned from the Company in February 2010, nearly two years after Avon launched an internal investigation into FCPA violations, Avon still did not have any FCPA training program in place.

121. Taken together, formal allegations and statements made by the very people with responsibility for Avon's compliance function make clear that, whether the relevant market was China, Latin America, or elsewhere, Avon had no effective FCPA compliance function as late as 2010 and beyond. Indeed, even by February 2012, Avon still had not replaced Hennelly, the leader of its purported global compliance department, who was fired in October 2010 for attempting to bring legitimate compliance efforts to the Company.

122. Thus, notwithstanding Defendants' repeated representations regarding the maintenance of high standards of integrity and ethical conduct and Avon's stated policy of complying with both the letter and spirit of applicable law, the Company did not have effective FCPA compliance protocols in place during the Class Period. In fact, Avon's compliance protocols were so woefully inadequate that the Company has agreed to install an external

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[93] Commentators agree that legal and compliance functions should be separated. *See, e.g.*, Karen Kurti, *Factors to Consider in Compliance Reporting Structures,* Our Viewpoint – SAI Global Compliance, Feb. 15, 2011 (stating that "[a] separate and independent compliance department is preferable and should be staffed accordingly, headed by a chief compliance officer who reports directly to the board of directors (or audit committee). The primary rationale for separating a compliance department from a law department is to reduce actual or potential conflicts of interest.") (on file with author).

compliance monitor as part of its "understanding" of settlement with the DOJ and SEC. ¶¶ 356-58. Moreover, considering that Rucker directly impeded the implementation of effective compliance protocols, the Company's senior management was certainly aware of, or recklessly disregarded, the substandard condition of Avon's FCPA compliance function. By fostering a corporate culture that avoided any sincere efforts to ensure compliance with the FCPA – the very opposite of what they led investors to believe they were doing – Defendants set the stage for FCPA violations to take place both before and during the Class Period.

I. The Lack Of FCPA Compliance Measures Coupled With A Corporate Culture Focused On Obtaining A Direct Selling License From China At Any Cost Allows FCPA Violations To Override Avon's Accounting Controls

1. Avon's Accounting Controls on Expenses and Other Expenditures

123. Plaintiffs' investigation reveals that the bribes occurring in China were made possible by senior management's circumvention of Avon's policies and controls relating to expense reimbursement. These individuals undercut critical processes that were designed to ensure that unauthorized or fictitious expenditures would not be reimbursed out of the Company's coffers. By way of background, a former Senior Manager, Information Technology, Internal Audit in Avon's New York headquarters from August 2006 through February 2007 ("CW9"), who reported directly to Rossetter (who, in turn, reported to Cramb), revealed that Avon's Audit IT department created and implemented limited "level[s] of fiscal authority" that prevented employees from receiving unauthorized expense reimbursements. CW9 further stated that those permission levels for various payment amounts were "locked in" to Avon's corporate accounting system. For example, according to CW9, Avon's accounting system would only allow CW9, a Senior Manager, to approve payments of up to $25,000. If CW9 (or any other employee) tried to exceed his or her authority level, the expense would "get flagged" for review by Avon's Internal Audit department, which was headed by Rossetter.

124. Significantly, CW9 also noted that although an employee technically may have permission for a certain level of expenditure, Avon required (in addition to imposing expenditure limits as an audit tool) that an employee's superior review and approve all expenditures. In that regard, CW9 described an additional process that CW9's department established: (a) to receive reimbursement of expenses or other payments, an employee had to submit a purchase order; (b) the submission of the purchase order would then automatically generate a list, or "approval matrix," of signatures authorized to approve that employee's expenses; and (c) to be reimbursed, the employee would need to obtain one of those signatures and submit an executed expense form.

125. Moreover, according to CW2, Avon China's expense reimbursement process was more exacting than that in place at other Avon operating units. Whereas receipts generally were required at Avon for expenditures of $75 (and later $100) or more, CW10 noted that receipts were required for "everything" in China, even expenses as low as $1.

126. According to CW9, under Avon's financial and audit controls, an employee seeking to engage in an unauthorized or fraudulent payment "would have had to either override [the level of authority controls] or go around them." In other words, successful efforts to bypass Avon's accounting and audit controls with a fraudulent payment had to be made or approved by the Company's most senior management, including the President, General Manager, or Finance Director in Avon China.

127. Providing corroboration of that fact, CW1 noted that Beh, Avon China's Chief Executive Officer, and Kao, Avon China's former General Manager, were the "only ones in China with authority to write checks and [make] withdrawals." Notably, however, CW1 stated that "even Beh and Kao needed Gallina's approval." A former Senior Audit Manager in Avon's

Internal Audit department from January 2001 through January 2008 and Senior Project Manager from January 2008 until January 2010 ("CW10") agreed, noting that Kao reviewed Beh's expense reports and Gallina reviewed Kao's expense reports. Likewise, CW3 stated that Gallina, in turn, needed Jung's approval to receive reimbursement of his expenses.

128. With those finance and audit controls in place, illegal payments made from Avon China's operations – which are thought to total millions of dollars – could not have been made without the knowledge or approval of Avon's senior management. Indeed, any such expenditures would have been approved by Beh or Kao (both fired by Avon) and known about by Gallina (suspended by Avon and later "retired") and/or Jung (removed as Avon CEO). At the same time, if any of Avon's Internal Audit functions "flagged" improper payment(s) in China, it would have come to the attention of Rossetter (terminated by Avon), who reported directly to Cramb (terminated by Avon due to his knowledge of the improper payments as far back as 2005 or 2006).

2. Avon's Internal Audit Uncovers Evidence of Bribery in or Around 2005

129. Both publicly available information and Plaintiffs' investigation indicate that, as far back as 2005, but in no event later than June 2006, Avon's senior management came to understand that the Company's internal audit function overseeing Avon China detected that employees at Avon China had made improper payments to Chinese government officials in violation of the FCPA. Notably, a draft audit report reflecting such unlawful activities was generated at Avon no later than June 2006, and possibly as early as 2005. Senior executives at Avon, including Cramb, Rossetter, and Kerry Carr ("Carr"), Avon's Vice President of Internal Audit, were aware of that report no later than June 2006, and probably much earlier. Yet rather

than take the steps necessary to ensure that FCPA violations ceased, Plaintiffs' investigation reveals that Defendants only sought to conceal the unlawful activities.

130. A former Avon Senior Manager, Internal Audit, Latin and North America from August 2004 through July 2006 ("CW11"), confirmed to Plaintiffs that his/her boss at the time, LaPresa, Avon's Global Internal Audit Director from June 2004 through June 2006, received via email a draft copy of an internal audit report of Avon China that had uncovered inappropriate payments made to Chinese officials. According to CW11, LaPresa specifically characterized those payments as "bribery payments," stating further that the unlawful charges were made to Avon's travel and entertainment account as a means of concealing their true nature. Significantly, CW11 confirmed that LaPresa said the payments had initially escaped scrutiny because "senior management made the payments," but that they were eventually uncovered in an audit led by Mark Rajkovic ("Rajkovic"), an Avon Audit Director who was responsible for the group that conducted that audit.

131. The fact that LaPresa received a copy of an audit report outside of the scope of his responsibilities did not appear out of the ordinary to CW11 because internal audit teams at Avon regularly reviewed each other's reports for quality control. CW9 confirmed that it "was common" for employees within Avon's internal audit department to collaborate and share audit reports with each other. Similarly, CW2 also confirmed that it was the "usual practice" at Avon to share IT audit reports with colleagues to ensure quality control. CW10 confirmed that ***all internal audit reports that were prepared were kept on the Company's "G Drive" and that anyone could access that drive and read the reports***. That means Jung and Cramb had access to the internal audit report referenced elsewhere herein, *see, e.g.* ¶ 130.

132. CW11 stated that information regarding Rajkovic's audit report would have been provided to Rossetter, whom CW11 understood at the time to be the CFO and Finance Director of the region that included China. Additionally, CW11 confirmed that the other senior executives, including Carr and likely Cramb, would have been made aware of the Rajkovic report.

133. Specifically, LaPresa told CW11 in a subsequent conversation that he, LaPresa, had exploited his knowledge of Rajkovic's audit report in discussions with Carr, his immediate superior, over the severance package LaPresa was to receive after being terminated for what CW11 described as misusing his expense account. According to CW11, LaPresa said that he told Carr that he had read a draft audit report that identified inappropriate payments made to Chinese officials and that he would disclose that information to persons outside the Company if Avon did not provide him with benefits beyond those to which he was entitled under Avon's strict severance policies. As CW11 understood the situation, LaPresa told Carr that if she did not increase his benefits package, he would disclose Rajkovic's audit report to the SEC.

134. According to CW11, as a Director-level employee, LaPresa would have been eligible for severance of only three months of salary and benefits upon termination for cause. CW1, who had broad responsibilities within Avon's HR department over an 11-year tenure at the Company, corroborated CW11's understanding of Avon's strict U.S. severance policy, noting that Director-level employees who were terminated for cause were entitled only to three months of salary and health care benefits. Significantly, CW1 further stated that HR "never made" exceptions to increase an employee's severance package because to do so could expose Avon to litigation from other former employees who did not receive the same favorable treatment.

135. Nonetheless, CW11 stated that, rather than receiving the normal severance package of a Director terminated for cause, LaPresa received a year's salary and health insurance

as severance when he was fired by Avon in June 2006. A family member of LaPresa's at the time ("CW12") confirmed to both CW11 and Plaintiffs that LaPresa received one year's pay and health benefits as severance from Avon. CW11 further reported that LaPresa kept a copy of Rajkovic's audit report, presumably to ensure he received the full amount of his newly-enhanced severance package.

136. CW1 confirmed that comparable U.S. severance packages of one year's salary and benefits were provided only to employees terminated as part of a "major restructuring." According to CW11, however, LaPresa's termination was not the result of any restructuring at Avon. Notably, CW11 confirmed that Carr, who "officially" reported to the Audit Committee of Avon's Board of Directors, but operationally reported to Cramb, would have needed Cramb's approval to increase LaPresa's severance package to the level of termination benefits he eventually received.

137. As a result, CW11's statements indicate that Cramb received information about Rajkovic's audit report no later than June 2006. Additionally, by giving in to LaPresa's extortion demands – which only he could approve – Cramb made clear that Avon's leadership group was more intent on burying criminal conduct that occurred on their watch than ensuring that the Company lived up to its promises to investors regarding strict legal compliance. ¶¶ 129-35.

138. Furthermore, news reports indicate that Cramb already may have had information about the internal audit report when LaPresa's severance "negotiations" came to his attention. *See* ¶ 78 (articles report that Cramb learned about improper payments made to Chinese officials in or about 2005). The *Journal* subsequently reported on February 13, 2012, that senior Avon officers knew about improper payments to Chinese officials from an internal audit report prepared in 2005. ¶ 82. The reasonable inference from the confluence of these articles and

Plaintiffs' investigation is that the media is referring to the audit report that was prepared by Rajkovic and sent to LaPresa, which Cramb (and other senior Avon executives) apparently received as early as 2005.

3. Statements from Four Unnamed Chinese Government Officials Regarding Unlawful Payments by Avon to Numerous Chinese Officials

139. Discussions that Plaintiffs' investigator had with officials from four distinct Chinese agencies describe unlawful payments made by Avon executives to Chinese government representatives during the 2003-2005 timeframe. These officials, however, have refused to allow Plaintiffs' investigator in China to provide or use their names or titles in this litigation for fear of being prosecuted, jailed or otherwise harmed by Chinese authorities for providing information to "foreigners" about the circumstances surrounding the payment by Avon of bribes to Chinese government representatives. Indeed, as described *infra*, two of those officials have the added fear of being directly implicated in the scandal. Therefore, Plaintiffs do not have their names or titles. Plaintiffs' investigator, however has that information and has agreed to sign a sworn affidavit attesting both to his knowledge of the identity and rank of the government officials and to the fact that the substance of his interviews with those officials is accurately described herein.

140. An October 31, 2008, article in the *Journal* makes clear that these collective fears are not unfounded, noting that "[t]he secretive administrative-detention process can keep detainees in legal limbo for extensive questioning without charges being brought."[94] Indeed, two other government officials involved in the scandal already have been sentenced to harsh prison sentences – one was given a suspended death sentence – and several others have been "detained"

[94] Areddy & Byron, *supra* note 32.

by Chinese authorities without charge and with no further information about their whereabouts. *See* ¶ 71.

141. Although the officials' names have been withheld from Plaintiffs to protect their safety and/or freedom, all had knowledge of Avon's role in the bribery scandal. Indeed, two of the officials were beneficiaries of many such unlawful payments. For example, Plaintiffs' investigator spoke with a senior MOC official who had more than a decade of experience at the MOC and thirty years of overall experience within the Chinese government (the "MOC Official"). According to the MOC Official, Deng Zhan was "the team leader . . . in drafting, implementing and approving the 'China style' direct [sales] licenses." The MOC Official further stated that in 2005 Avon executives were "very close" to Deng Zhan and his team, which included the MOC Official, and that they frequently met together for "dinner and karaoke" and Avon "always" paid the bills. In addition, according to the MOC Official, Avon executives were very active in meeting Chinese government officials in Guangdong province and Beijing.

142. The MOC Official also admitted that Avon paid government officials, including him, to attend some Avon news conferences as a sign of China's support for Avon. The MOC Official further stated that government officials would get paid for their attendance in cash or with a gift, the value of which depended on their rank and title – but normally ranged from a hundred to a few thousand RMB (approximately twenty to a few hundred U.S. dollars). Significantly, the MOC Official received both cash and gift payments for attending several Avon press conferences, but would not detail the exact amount of those bribes, which could reveal his position in the MOC.

143. The MOC Official stated that Avon received the first direct sales license in China due to contacts that Avon executives developed with the Guangdong Administration for

Industry and Commerce agency ("Guangdong AIC"), the Chinese State Administration for Industry and Commerce Bureau ("SAIC") and the MOC, all of which could only be developed through bribes. Particularly important, according to the MOC Official, were meetings Avon executives had with Chinese Vice Premier Madam Wu Yi, which at that time were not possible without paying "huge amounts of money" to government intermediaries to arrange the meetings.

144. Plaintiffs' investigator also interviewed two Chinese government officials who were directly involved in the administration of "direct sell" licenses between 2005 and 2007. Each such official provided corroborating information about how Avon obtained its direct sales licenses through bribery. For example, Plaintiffs' investigator spoke to an official who worked on the team responsible for the administration and supervision of Avon's direct sales trial period in 2005-2006 in the Guangdong AIC (the "Guangdong AIC Official"). According to the Guangdong AIC Official, Avon's direct sales license application was submitted in Guangdong. The Guangdong AIC Official further reported that, after being approved by the Guangdong AIC, the application was directed to the MOC (the Chinese government departments responsible for issuing direct sales licenses)[95] and the SAIC (the Chinese government department responsible for issuing business licenses and also the administration of the direct sales business).

145. Significantly, the Guangdong AIC Official stated that it was almost impossible to get things through the Guangdong AIC during the 2003-2007 time period without bribery, or "contributions," which the official said was simply a "common practice" at that time. According to the Guangdong AIC Official, everyone was aware of it and "Avon was no exception." Indeed, the Guangdong AIC Official confirmed that his group was "entertained (dinner, drinking, karaoke) by Avon's local management all the time and Avon's management

[95] Andrew Yeh, *Avon launches hiring offensive in China*, Fin'l Times, July 18, 2006.

always paid the bill." The trial license was issued to Avon in 2005, before Avon obtained the first direct sales license in China. Not surprisingly, the Guangdong AIC Official's overall assessment of Guangdong was that it "was one of the most corrupt places for doing business [in China]" at the time and that bribes took many forms, including cash, expensive gifts, paid travel outside of China, and overseas tuition payments and educational expenses for the children of government officials.

146. Plaintiffs' investigator also spoke to an official who is currently employed in the SAIC (the "SAIC Official"). Beginning in 2006, the SAIC Official was part of the team involved in the administration of direct sales licenses in China. The SAIC Official confirmed that Avon was the first to receive a direct sales license in China, at least in part, due to two meetings between Jung and Chinese Vice Premier Madam Wu Yi, one in 2003 and the other in 2004. *See also* ¶¶ 51, 149, 341 (noting Jung's frequent meetings with Chinese officials including her meeting with Vice Premier Madam Wu Yi in June 2004).

147. The SAIC Official also stated that each of those meetings was a "high level meeting" and that none of them could have been obtained without an "arrangement" or "under table deals" that would have involved payments of large amounts of money. Indeed, the SAIC Official's understanding is that such payments can be as high as "RMB 1,000,000," or approximately $121,000 based on 2003 exchange rates.

148. According to the SAIC Official, the "former Deputy Director of the Department of Foreign Investment Administration of the Ministry of Commerce, Deng Zhan," who was later sentenced to twelve years in jail for his role in the bribery scandal, likely was connected to Avon's FCPA investigation because he "was in charge of the approval of direct sales licenses at the time" and Avon would have been his "ideal" bribery partner. Corroborating that statement, the Guangdong AIC Official was even less circumspect, observing that "Deng Zhan

was simply unlucky. [The Chinese government] needed someone high enough to take the blame to cover up a much broader embarrassment to the country. If they really wanted to dig, everyone would go to jail."

149. Plaintiffs' investigator also spoke with a senior officer and forty-year veteran of the Beijing Public Security Bureau ("PSB") who confirmed that Deng Zhan was prosecuted for receiving bribes from Avon (among others) in connection with the Company's direct sales license application (the "PSB Official"). Specifically, the PSB Official disclosed that one of the judges involved in Deng Zhan's prosecution indicated to the PSB Official that documents in Deng's trial indicated that Avon was involved in bribing Deng and other Chinese government officials in the process of obtaining a direct sales license in China. According to the PSB Official, however, the Chinese government has not made such information publicly available because too many high-ranking officials at the MOC and SAIC were involved in the bribery scandal. As a result, the PSB Official stated that such prosecutions would be an unacceptable embarrassment for Chinese government officials who were not involved in the bribery, including Madam Wu Yi, who had meetings with Jung in 2003 and 2004 and openly supported Avon at that time.

150. The import of these statements in ¶¶ 141-49 above is that the Company could not have obtained the first direct selling licenses without paying significant bribes to officials at multiple Chinese government agencies. Moreover, the pervasiveness of the culture of bribery in China at the time (which has been widely reported and is corroborated by these witnesses) and the scale of the bribery in this case further suggests that senior Company officials either knew and/or recklessly disregarded such improper payments in connection with Avon's direct sales license application.

4. Despite Discovering FCPA Violations at Avon China, Defendants Fail To Incorporate FCPA Risk into Subsequent Audit Planning

151. As discussed elsewhere herein, the FCPA requires a company like Avon to ensure that its compliance program and internal controls are sufficient to prevent FCPA violations. ¶¶ 165-67. Companies are required to use rigorous and independent financial auditing controls as part of those FCPA compliance efforts. ¶ 167. Such controls gain particular importance when prior FCPA violations, such as those at Avon China, already have occurred. ¶ 95.

152. Notwithstanding these requirements, Plaintiffs' investigation reveals that, despite knowing from Rajkovic's audit report in 2005 or 2006 that serious FCPA violations had occurred at Avon China, the Company never incorporated FCPA compliance into Avon's audit plans for 2007, 2008, or 2009.

153. In particular, a former employee who was Avon's Internal Controls Manager from October 2006 to October 2007 and Senior Manager – Global Internal Audit & Enterprise Risk Management from October 2007 to April 2010 ("CW13"), confirmed that none of Avon's audit plans for any business segment from 2007-2009 included testing for FCPA compliance. In fact, according to CW13, who had responsibility for auditing the Company's Latin American business unit, Avon's senior management never even told its internal auditors during that entire time period that FCPA might pose an audit risk. As far as CW13 understood, "[w]e didn't audit for FCPA" at any of Avon's business segments, noting that the only thing ever done was a cursory check to confirm that employees had signed the Ethics Code.

154. According to CW13, audit plans for each year were "defined in New York headquarters," starting with an annual meeting held during September of the prior year. CW13's recollection was that at each yearly audit planning meeting he/she attended during the 2007-2009 period, the heads of internal audit for each region and their supervisors were present, as were

Avon's external auditors (PricewaterhouseCoopers from 2007 to 2008 and Ernst & Young ("E&Y") in 2009). CW13 further stated that Rossetter led the audit planning meetings from 2007 to 2009. In addition, CW13 specifically remembered that Rajkovic attended the 2007 meeting. To CW13's recollection, each of Avon's business regions was represented at the yearly meetings from 2007 to 2009, including Latin America; North America; Europe, Middle East, Africa; and Asia Pacific. Finally, CW13 noted that the 2007 and 2008 meetings were held at Avon's headquarters in Rye, New York, while the 2009 meeting was held at E&Y's headquarters.

155. The goal of Avon's annual audit planning process, according to CW13, was to identify the individual risks relevant to each business unit and to define the scope of each region's audit based on those or other global risks. CW13 identified several factors on which the scope of each region's yearly audit was based, including: (1) the number of countries in the region; (2) assets in the region; (3) prior audit reports; (4) risks in each country; and (5) other variables. CW13 recalled that the process was protracted each year, usually lasting several months after the September meeting and continuing with several follow-up conference calls in which CW13 participated. According to CW13, after that process was completed, Rossetter prepared an audit plan for each of Avon's business segments. Those audit plans, based on emails CW13 received, would then have been reviewed and approved by Cramb and all of Avon's department heads, whom CW13 characterized as "VPs."

156. Significantly, CW13 confirmed that at no stage of the audit planning process from 2007 to 2009, including the September audit planning meetings or subsequent conference calls, were FCPA violations mentioned by anyone as a risk for any of Avon's regions. Moreover, as far as CW13 remembers, FCPA was never included as an issue in any region's audit plan for the years 2007, 2008, or 2009. CW13 further made clear that, as a result, Avon "didn't

audit specifically for FCPA" violations at any of the Company's business segments during that timeframe, including China or Latin America. More importantly, according to CW13, "it is safe to say [Avon auditors] won't find FCPA violations if it's not part of the scope" of an audit plan.

157. Thus, in contravention of their FCPA compliance obligations, and conflicting with their representations to Avon's shareholders, Defendants utterly failed to implement the controls necessary to prevent future FCPA violations, even though they knew from Rajkovic's audit report in 2005 or 2006 that Avon's worldwide operations clearly were subject to those risks. Not surprisingly, what was once an FCPA risk ultimately became a reality when the Company uncovered suspected FCPA violations in several countries, including Brazil, Mexico, Argentina, India, and Japan. ¶¶ 407-09.

158. Yet those discoveries may only be the tip of the iceberg, considering (a) the allegations in the Hennelly Complaint (specifically, that Avon's General Counsel refused to implement fundamental FCPA compliance measures in Latin America because she was concerned "about being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendor[contracts]"), ¶ 111; and (b) the government's insistence that Avon install an external compliance monitor for a period of 18 months as part of the "understanding" of settlement, ¶¶ 356-58. Had Defendants employed adequate auditing controls when they knew that Avon was at high risk for FCPA violations, they could have prevented, uncovered, and stopped that malfeasance immediately. Instead, their decision to misrepresent Avon's compliance efforts and to look the other way when violations occurred caused significant damage to the Company's shareholders.

VI. LEGAL BACKGROUND TO THE CLASS PERIOD WRONGDOING – THE FCPA

A. The Anti-Bribery Provisions Of The FCPA

159. Although the FCPA has two central prongs, the anti-bribery provisions comprise the "heart" of the statute.[96] In analyzing these provisions, there are a number of important issues to consider.

160. First, the FCPA anti-bribery provisions apply to "(1) issuers, (2) domestic concerns, (3) individual officers, directors, employees, agents, or shareholders of issuers or domestic concerns who are acting on behalf of the issuer or domestic concern, and (4) any other persons or entities (or officers, directors, employees, agents, or shareholders thereof), while in U.S. territory, that use the mails or interstate commerce," and prohibit "acts in furtherance of bribery."[97] As a result, the FCPA prohibits both direct and indirect payments to foreign officials. Thus, a company can face FCPA liability based on improper payments made by its agents or other business partners.[98] From a compliance perspective, this is one of the more important aspects of the law because corrupt payments often are made by agents and other third-party business representatives. Additionally, engaging a foreign agent and maintaining a relationship with that agent can ultimately expose a company to liability under the FCPA even if the agent is engaged by a distinct subsidiary or affiliate.[99] In 1998, Congress amended the FCPA to extend the statute's reach

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[96] Aaron Einhorn, *The Evolution and Endpoint of Responsibility*: *The FCPA, SOX, Socialist-Oriented Governments, Gratuitous Promises, and a Novel CSR Code*, 35 Denv. J. Int'l L. & Pol'y 509, 516 (2007).

[97] Warin et al., *supra* note 28, at 61.

[98] Jeffrey M. Kaplan & Rebecca Walker, *Prevention of Liability for FCPA Violations*, 14 Ben. & Comp. Mgmt. Update (BNA) No. 0, at 1 (June 27, 2011).

[99] Mike Koehler, *The Foreign Corrupt Practices Act in the Ultimate Year of its Decade of Re-surgence*, 43 Ind. L. Rev. 389, 402 (2010).

beyond U.S. borders by removing the requirement of a territorial nexus between the proscribed bribery and the United States.[100]

161. Second, the bribes prohibited by the FCPA are not limited solely to monetary payments.[101] The term "anything of value," as used in the statute, has been broadly construed to include, among other things: discounts; gifts; use of materials, facilities or equipment; entertainment; drinks; meals; transportation; lodging; insurance; benefits; and promise of future employment. Also, the anti-bribery provisions do not include a materiality standard as to amount. Thus, the payment of anything of value, however small, can be deemed to be in violation of the statute.[102]

162. Third, the FCPA prohibits the bribery of any "foreign official," or "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization."[103] Both the SEC and the DOJ have broadly construed this provision.[104] For FCPA purposes, the term "foreign official" is not limited to high-ranking government officials, but also includes employees of state-owned enterprises ("SOEs").[105] So, in foreign countries like China, where the government "wields power through the allocation of

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[100] Michael B. Bixby, *The Lion Awakens: The Foreign Corrupt Practices Act – 1977 to 2010*, 12 San Diego Int'l L.J. 89, 100-01 (2010).

[101] Edmund W. Searby & George P. Farragher, *Foreign Corrupt Practices Act (FCPA) Poses Risk for Middle Market Companies*, 9 The Bullet"iln" Newsletter 2 (Int'l Lawyers Network), Dec. 22, 2010 (on file with author).

[102] *Id.*

[103] 15 U.S.C. § 78dd-1(f)(1)(A).

[104] Warin et al., *supra* note 28, at 44 (noting that journalists, physicians at state-owned hospitals, and employees of state-owned oil and steel companies all have been considered "foreign officials" in China).

[105] Corbett & Rial, *supra* note 30.

massive state resources and effective control of large-scale SOEs . . . which continue to dominate key sectors of the economy," a significant percentage of the country's workforce qualifies as "foreign officials" under the FCPA.[106]

163. Finally, it is significant that payments to third parties are unlawful under the FCPA when conveyed ***with knowledge*** that all or part of the payment will be passed on to a government official or other covered person. In many parts of the world, including China, it is difficult to identify who is a "government official" because many foreign companies were formerly state-owned and/or currently have members of state-owned entities on their boards.[107] Nevertheless, a company still can be held responsible for violating the FCPA based on its knowledge that an unlawful event is certain ***or likely*** to occur, and evidence of a company's failure to take note of an unlawful event or efforts to remain willfully blind can demonstrate the requisite knowledge.[108] As noted in one commentary, "[t]he government does not need to prove actual knowledge of a payment's corrupt purpose to impose liability under the FCPA. The courts have held that the Act's knowledge requirement incorporates the concepts of willful blindness and conscious disregard. Therefore, corporate executives cannot bury their heads in the sand and ignore the suspicious actions of their agents in an attempt to escape FCPA liability."[109]

164. Together, these FCPA provisions task corporate management with the responsibility of knowing who its company is doing business with, conducting prudent due diligence before entering into business arrangements, and keeping a close, continual watch over

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[106] *See* Warin et al., *supra* note 28, at 45 (internal citation and quotation marks omitted).

[107] *See* Searby & Farragher, *supra* note 101.

[108] *Id.*

[109] Douglas N. Greenburg et al., *Prosecutors Without Borders: Emerging Trends in Extraterritorial Enforcement*, 1882 PLI/Corp 149, 153 (Apr. 29, 2011).

the actions of agents and employees conducting business in foreign countries. As discussed above, Avon failed miserably in this regard.

B. The Auditing And Accounting Provisions Of The FCPA

165. In addition to its anti-bribery provisions, the FCPA includes auditing and accounting provisions that apply to publicly-traded entities such as Avon. These accounting provisions, also known as the deceptive record provisions of the FCPA,[110] were designed to operate in tandem with the anti-bribery provisions of the FCPA and require covered companies to adopt and maintain certain internal controls, reasonably designed to detect, deter, and prevent unlawful bribery from occurring in foreign countries.

166. More specifically, the deceptive record provisions require companies to: "(A) make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;" and "(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances" that "(i) transactions are executed in accordance with management's general or specific authorization" and "(ii) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets."[111]

167. Accordingly, pursuant to the FCPA, a company must have a system of internal accounting controls in place that will provide reasonable assurances that transactions are properly authorized and accurately recorded on its books. Companies also are required to keep those books in a manner that accurately and fairly reflects all transactions. These FCPA provisions

[110] *See generally* 15 U.S.C. §§ 78dd-1 and 78m.

[111] 15 U.S.C. § 78(m)(b)(2).

"are designed to prevent an entity from: (1) failing to record improper transactions; (2) falsifying records to conceal improper transactions; and (3) generating records that fail to specify the qualitative aspects of a transaction that might reveal the true purpose of a particular payment."[112]

168. Unlike the anti-bribery provisions, the FCPA's deceptive records provisions apply regardless of whether a company has foreign operations and can be enforced whether or not bribery is actually involved. The statute provides that criminal liability may be imposed for knowingly falsifying books and records or for knowingly failing to implement an internal control system. Like the FCPA's anti-bribery provisions, the deceptive record provisions extend to a covered company's agents and distributors.[113] As a result, the actions of any agent may constitute FCPA violations by the company.[114]

169. Certain external factors can exponentially increase the risk for FCPA violations, including a history of inattention due to the remoteness of operations; a lack of transparency in operations and financial reporting; and/or a lack of effective and consistent oversight.[115] It is critical for multinational companies like Avon, who do business in "high-risk" markets abroad, to account for payments-made in order to mitigate FCPA risks and avoid severe penalties.

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[112] *Foreign Corrupt Practices Act Presents Risks and Challenges for U.S. Companies in China*, Construction WebLinks (June 18, 2007) (on file with author).

[113] *See* 15 U.S.C. § 78dd-1(s).

[114] *See* Searby & Farragher, *supra* note 101.

[115] George Farragher, *Fraud Risk in Emerging Markets is Real, But Manageable: One key to mitigating risks is investing in a thorough program to combat fraud*, allbusiness.com (2007) (on file with author).

C. Exceptions And Exemptions To The FCPA

170. There are exceptions and exemptions to the foregoing anti-bribery and deceptive records provisions of the FCPA but, as discussed below, they are narrowly construed and do not apply to the circumstances alleged herein.

171. As an initial matter, the FCPA anti-bribery provisions do not apply to any facilitating or expediting payment to a foreign official, political party, or a party official if the purpose is to "expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official."[116] That provision applies only to payments made to facilitate nondiscretionary government action. Moreover, it does not apply to any decision by a foreign official to award new business contracts or to continue pre-existing business arrangements.[117] Thus, the exclusion is quite narrow and has no application to the events and circumstances alleged herein.

172. An affirmative defense to a charge of violating the FCPA's anti-bribery provisions also is available. In that regard, a payment is permitted if it is lawful under the written laws of the relevant foreign country or when the money was spent as part of demonstrating a product or performing a contractual obligation.[118] This defense, which is "loaded with uncertainty and very difficult for companies to safely use,"[119] cannot apply here in light of the Chinese government's high-profile prosecutions of government officials for accepting bribes from Avon and other companies. ¶¶ 70-71.

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[116] *See* 15 U.S.C. § 78dd-1(b).

[117] *See* Warin et al., *supra* note 28, at 53.

[118] 15 U.S.C. § 78dd-1(c).

[119] Richard L. Cassin, *Ding Dong, FCPA Investigation Calling*, FCPA Blog (Oct. 20, 2008, 7:48 PM), http://www.fcpablog.com/blog/2008/10/20/ding-dong-fcpa-investigation-calling.html (last visited on Oct. 23, 2014).

D. Penalties For Violations Of The FCPA

173. The criminal penalties that may be imposed for violations of the FCPA's anti-bribery provisions are severe.[120] Under the statute's criminal provisions, corporations and other business organizations are subject to a fine of up to $2 million and individuals are subject to a fine of up to $100,000 and imprisonment for up to five years.[121] Under the Alternative Fines Act, however, FCPA fines actually can be higher – up to twice the benefit that the defendant sought to obtain by making the corrupt payment.[122] Significantly, fines imposed upon individuals may not be paid by that person's employer or principal.[123]

174. In addition to criminal penalties, the Attorney General or the SEC may bring a civil action seeking a fine of up to $10,000 against any firm – as well as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm – who violates the anti-bribery provisions of the FCPA. In an SEC enforcement action, the court may impose an additional fine not to exceed the greater of the gross amount of the pecuniary gain to the defendant as a result of the violation, or a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $5,000 to $100,000 for a natural person and $50,000 to $500,000 for any other person.[124] The Attorney General or the SEC also may seek to enjoin any act or practice of a firm if it appears that the firm, or an officer, director, employee, agent, or

[120] *See, e.g.*, *Clayco Petroleum*, 712 F.2d at 408 ("The Act provides for severe criminal penalties including fines and imprisonment.").

[121] *See* 15 U.S.C. §§ 78dd-2(g)-78ff(c).

[122] 18 U.S.C. § 3571(d).

[123] 15 U.S.C. §§ 78dd-2(g)(3); 78ff(c)(3).

[124] 15 U.S.C. §§ 78dd-2(g)(1)(B) (2000) (for domestic concerns), 78dd-2(g)(2)(B) (2000) (for employees of domestic concerns), 78dd-3(e)(1)(B) (2000) (for defendant corporation that is neither a domestic concern nor an issuer), 78dd-3(e)(2)(B) (2000) (for defendant individual that works for a company that is neither a domestic concern nor an issuer), 78ff(c)(1)(B) (2000) (for issuers), and 78ff(c)(2)(B) (2000) (for employees of issuers).

stockholder acting on behalf of the firm, is, or is about to be, in violation of the FCPA's anti-bribery provisions.

175. As previously discussed, the deceptive record provisions also are a key component of the FCPA. The SEC typically enforces these provisions by, among other things, seeking injunctions when appropriate.[125]

176. In addition to criminal and civil penalties and fines, under guidelines issued by the Office of Management and Budget a person or firm found in violation of the FCPA may be barred from doing business with the federal government. Indictment alone can lead to suspension of the right to do business with the government. Furthermore, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses.[126]

E. Increased Government Enforcement Of FCPA Violations

177. The increased FCPA risk associated with international business activities is not abstract. In recent years, both the DOJ and the SEC have significantly increased enforcement of the FCPA.[127] For example, between 2003 and 2007, "there [were] more FCPA enforcement actions than during the prior 26-year period since the FCPA's enforcement."[128] That trend has continued to the present. For example, in 2010, the DOJ brought forty-eight enforcement actions and the SEC brought twenty-six actions.[129] In addition, the two agencies levied a total of $1.782

[125] Shearman & Sterling, LLP, *Recent Trends and Patterns in FCPA Enforcement*, at 4 (Feb. 13, 2008).

[126] DOJ Lay Person's Guide, *supra* note 74.

[127] Cortney Thomas, *The Foreign Corrupt Practices Act: A Decade of Rapid Expansion Explained, Defended, and Justified*, 29 Rev. Litig. 439, 439-40 (Winter 2010) (noting "exponential increase" in FCPA enforcement by DOJ and SEC beginning in early 21st century).

[128] Andrew Kaizer & Kate Learoyd, *The Global Impact of the U.S. Foreign Corrupt Practices Act*, Lexology: Association of Corporate Counsel, Dec. 10, 2007, *available at* http://www.lexology.com/library/detail.aspx?g=42cc34ff-810b-46a6-9bc3-565e2b035107.

[129] Covington & Burling LLP, *Significant Developments and Trends in Anti-Corruption Enforcement*, at 1 (Jan. 2011), *available at* http://www.cov.com/files/Publication/5ff26ab9-61cf-46f4-ba8a-aa463a65f9fe/Presentation/Publication

billion in criminal fines and disgorgement in 2010, representing an increase of more than 70% over 2009.[130] Gibson Dunn's "2013 Year-End FCPA Update,"[131] noted that:

> [a]n unmistakable characteristic of the year in FCPA enforcement is that the market rate for resolving a corporate FCPA enforcement action spiked precipitously in 2013. The average closing price for a corporate FCPA resolution, inclusive of DOJ and SEC fines, penalties, disgorgement, and prejudgment interest, was more than $80 million in 2013. That is a nearly fourfold increase over 2012.

That same piece further stated that "two of the nine corporate FCPA resolutions of 2013 . . . joined the infamous 'FCPA Top 10' list."[132] An August 2014 mid-year update published by another leading defense firm indicated that "the number of investigations undertaken by the [SEC and DOJ] this year is on pace with that of 2013, a year which saw one of the highest total dollar amounts ever for companies settling FCPA enforcement actions."[133]

178. The DOJ and SEC also have increased enforcement of the FCPA in the past decade with regard to corporate activities in China. Some noteworthy examples are as follows:

> a. In 2007, the SEC and DOJ brought actions against Lucent Technologies Inc. ("Lucent"). The SEC alleged that the company violated the books-and-records and internal controls provisions in relation to its business in China,[134] prompting the DOJ to charge Lucent with bribery.[135] The DOJ charges involved Lucent's payment of over $10 million in travel expenses for more than 300 trips by Chinese government officials, including officials at state-

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Attachment/437b6d49-f6c1-4b3a-b2ad-be89b9337322/Significant%20Developments%20and%20Trends%20in%20Anti-Corruption%20Enforcement.pdf.

[130] Steptoe & Johnson LLP, *FCPA Year in Review 2010* (Mar. 15, 2011), *available at* http://www.steptoe.com/publications-newsletter-129.html.

[131] Gibson, Dunn & Crutcher LLP, *2013 Year-End FCPA Update* (Jan. 6, 2014), *available at* http://www.gibsondunn.com/publications/pages/2013-Year-End-FCPA-Update.aspx.

[132] *Id.*

[133] BakerHostetler, *Foreign Corrupt Practices Act 2014 Mid-Year Update*, *available at* https://www.bakerlaw.com/files/uploads/Documents/FCPA/2014FCPAMidYearUpdate.pdf.

[134] Compl., *SEC v. Lucent Techs., Inc.*, No. 07-cv-2301 (D.D.C. Dec. 21, 2007).

[135] Press Release, U.S. Dep't of Justice, Lucent Technologies Agrees to Pay $1 Million Fine to Resolve FCPA Allegation (Dec. 21, 2007), *available at* http://www.justice.gov/opa/pr/2007/December/07_crm_1028.html.

owned telecommunications companies and subsidiaries, to the U.S., Australia, Germany, and Japan that consisted almost entirely of entertainment activities.[136] Lucent also allegedly paid educational expenses for officials and their relatives, and wrongfully attributed those expenses to sales and marketing costs.[137] Lucent paid $1 million to the DOJ and $1.5 million to the SEC to settle those two cases.[138]

b. In July 2009, Avery Dennison Corp. reached a settlement with the SEC and agreed to pay over $500,000 in civil penalties, disgorgement, and interest, to resolve charges that its Chinese subsidiary paid kickbacks to Chinese officials to secure contracts.[139] The subsidiary also provided expensive gifts to those officials, hosted sightseeing trips, and hired relatives of the officials for improper purposes.[140]

c. In December 2009, UTStarcom, Inc., reached a settlement with the DOJ and SEC and agreed to pay a $1.5 million penalty to each agency[141] to resolve charges that its Chinese subsidiary paid $7 million for lavish overseas trips by employees of Chinese-owned telecoms.[142] The agencies further alleged that the Company's China subsidiary falsely recorded "training expenses" when the purpose actually was to obtain and retain lucrative contracts.[143]

d. In 2013, Diebold Inc. ("Diebold") agreed to a $48 million settlement with the SEC to settle charges that it attempted to bribe officials from China, Indonesia, and Russia in exchange for government contracts on ATMs. The SEC estimates that Diebold spent $1.8 million on travel for foreign dignitaries and an additional $1.2 million in bribes to Russian officials to falsify books and records. In one instance, the SEC alleged that Diebold paid for

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] SEC Litigation Release No. 21156 (July 28, 2009), *available at* http://www.sec.gov/litigation/litreleases/2009/lr21156.htm.

[140] *See* Compl., *SEC v. Avery Dennison Corp.*, No. CV09-5493DSF (CWx) (C.D. Cal. July 28, 2009).

[141] Press Release, U.S. Dep't of Justice, UTStarcom Inc. Agrees to Pay $1.5 Million Penalty for Acts of Foreign Bribery in China (Dec. 31, 2009), *available at* http://www.justice.gov/opa/pr/2009/December /09-crm-1390.html.

[142] *See* Compl., *SEC v. UTStarcom, Inc.,* No. CV 09 6094 JSW (N.D. Cal. Dec 31, 2009); *SEC Charges California Telecom Company with Bribery and Other FCPA Violations*, SEC Litigation Release No. 21357 (Dec. 31, 2009), *available at* http://www.sec.gov/litigation/litreleases/2009/lr21357.htm.

[143] *See* Press Release, *supra* note 141.

> Chinese bank officials to take a two-week trip around Europe, including stops in Paris and Rome. Diebold also agreed to enter a three-year deferred prosecution agreement and retain a compliance monitor for at least 18 months.[144]

179. Furthermore, "[a] number of FCPA enforcement actions have recently focused on U.S. business conduct in Brazil, Costa Rica, Argentina, Venezuela, Mexico and Ecuador."[145] In one such high profile case in 2008, Siemens Aktiengesellschaft, doing business through various subsidiaries around the world, including those in Argentina and Venezuela, settled an FCPA case with the DOJ, SEC, and the Munich Public Prosecutor's Office for a staggering total of $1.6 billion in penalties.[146]

180. Likewise in 2008, the Willbros Group, through its employees, paid bribes to government officials in Bolivia, Ecuador, and Nigeria in order to obtain and retain significant contracts. The company also mischaracterized the payments in its books and records. In an agreement reached with the DOJ, Willbros ultimately agreed to pay a $22 million criminal penalty and another $10.3 million as disgorgement of all profits plus prejudgment interest in connection with charges levied by the SEC.[147] "At the time, the combined penalties were the second highest ever paid to resolve an FCPA action."[148]

181. As demonstrated by these examples and regulatory enforcement trends, and as further evidenced by the $135 million "understanding" of settlement between the Company and

[144] Zac Warren, *Diebold Inc. to pay $48 million for FCPA violations*, Inside Couns. (Oct. 23, 2013), http://www.insidecounsel.com/2013/10/23/diebold-inc-to-pay-48-million-for-fcpa-violations.

[145] Foley & Haynes, *supra* note 34, at 27.

[146] Press Release, U.S. Dep't of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay $450 Million in Combined Criminal Fines (Dec. 15, 2008), *available at* http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html.

[147] Foley & Haynes, *supra* note 34, at 33.

[148] *Id*. at 33-34.

the federal government, *see* ¶¶ 11, 83, 352-58, U.S. businesses operating in China and Latin America face the prospect of significant penalties for FCPA violations.

VII. DEFENDANTS' FALSE AND MISLEADING STATEMENTS

182. As set forth herein, Defendants made numerous statements throughout the Class Period regarding the Company's business and results from operations that were materially incomplete and/or false and misleading given Defendants' failure to disclose that Avon's "growth" and "success" in certain markets were due, in large part, to an illegal bribery scheme and could not have occurred but for that scheme. Nor did the Defendants disclose the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

183. Additionally, throughout the Class Period the Defendants claimed, *inter alia*, that Avon strictly adhered to the highest ethical standards, was committed to a policy of complying with all applicable laws and regulations, and specifically that "[b]ribes, kickbacks and payoffs to government officials, suppliers and others [were] ***strictly prohibited***." *See, e.g.*, ¶¶ 59, 227. However, such statements were materially incomplete and/or false and misleading given Defendants' failure to disclose, *inter alia*, (a) the full magnitude and consequences of the Company's FCPA violations; (b) that the Company's compliance function and internal controls were woefully inadequate and, in many respects, virtually nonexistent; and (c) that violations of Avon's internal controls and corporate policy were ignored.

184. Finally, during the period after October 2008, Defendants affirmatively misrepresented and/or omitted material facts relating to the Company's internal investigation of FCPA violations. Among other things, Defendants' statements created the false impression that Defendants first learned of FCPA-related misconduct in June 2008. But, by that point in time, and

no later than June 2006, Company management, and specifically Cramb, had learned of FCPA violations at Avon China. ¶¶ 78, 82, 130-38. Federal prosecutors have been probing whether Company officials took affirmative steps to ignore or conceal a 2005 internal audit report that identified concerns about the Company's FCPA compliance. Notably, the *Journal* has reported that Cramb was fired because he knew of the illegal bribery payments as early as the middle part of the last decade. Moreover, as detailed herein, the Defendants knew, or recklessly disregarded, that the Company's compliance function and internal controls were wholly inadequate from a financial and operational perspective.

A. Second Quarter 2006 Form 10-Q And Related Statements

185. On July 31, 2006, the start of the Class Period, Avon filed its 2Q06 Form 10-Q. In this Form 10-Q, the Company reported that total revenue in China increased in the second quarter of 2006, "as the commencement of direct selling more than offset the unfavorable impact of the exit of the company-run beauty counters."

186. That same day, Avon issued a press release on Form 8-K and reported that "***[t]his quarter's results reflect the aggressive actions we are taking to return our business to sustainable growth***. . . . Revenue in China grew 8% (5% in local currency) including the commencement of direct selling as well as the unfavorable impact of the exit of company-run beauty counters." (Emphasis added.)

187. The statements identified in ¶¶ 185-86 above were materially false and misleading because Avon failed to disclose that any increase in revenue in China related to direct sales was significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to criminal and regulatory investigations that would

result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

188. Moreover, in connection with the 2Q06 Form 10-Q, Jung and Cramb submitted false and misleading certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX Certifications"). As an initial matter, the Individual Defendants certified that "[t]he information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company."

189. These SOX Certifications further stated that:

> 1. I have reviewed this quarterly report on Form 10-Q of Avon Products, Inc.;
>
> 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
>
> 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
>
> 4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
>
> > a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
> >
> > b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be

> designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
>
> c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
>
> d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
>
> 5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
>
> a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
>
> b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

190. The SOX Certifications identified in ¶¶ 188-89 above were materially false and misleading because Jung and Cramb were at that time aware of and/or recklessly disregarded material weaknesses in Avon's system of internal controls that were not disclosed to the investing public. As noted elsewhere herein, *see* ¶ 366, an effective FCPA compliance program "is a critical component of an issuer's internal controls." And, as Plaintiffs' investigation illustrated, Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent

until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

B. Avon's 2004 Ethics Code And Corporate Responsibility Report

191. The statements quoted above from Avon's 2004 Ethics Code, ¶¶ 56-59, also operated as false statements from the beginning of the Class Period. In the 2004 Ethics Code, Avon represented, among other things, that it was a "fundamental principle" that its employees avoid even the "mere appearance of impropriety" and that all employees must understand their "individual responsibility for strict compliance with all legal requirements and the highest ethical standards." The 2004 Ethics Code also specifically explained the scope of prohibited conduct under the FCPA. ¶ 58. The 2004 Ethics Code also stated that "bribes, kickbacks and payoffs to government officials . . . are strictly prohibited." ¶ 59.

192. The 2004 Ethics Code was published on Avon's website, a fact that was referenced in Avon's annual report for fiscal 2004 on Form 10-K dated March 2, 2005, its annual report on Form 10-K for fiscal 2005 dated March 10, 2006, and its annual report on Form 10-K for fiscal 2006, dated February 28, 2007.

193. Similarly, Avon published a Corporate Responsibility Report in 2004, which reiterated the Company's commitment to "corporate responsibility" and touted Avon's "Strong Internal Control Environment." ¶¶ 62-64. This report was available to investors and the statements quoted herein, ¶¶ 62-64, operated as false statements as of the beginning of the Class Period.

194. The statements quoted or referenced in ¶¶ 56-59, 62, 64, 191, and 193 above were materially false and misleading because Jung and Cramb were at that time aware of and/or recklessly disregarded material weaknesses in Avon's system of internal controls that were not disclosed to the investing public. As Plaintiffs' investigation illustrated, Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of

an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

C. Third Quarter 2006 Form 10-Q And Related Statements

195. On October 27, 2006, Avon filed its 3Q06 Form 10-Q. In that Form 10-Q, Avon stated that: (i) "[o]ur business in China continues to evolve with the opening of direct selling"; (ii) "total [China] revenue increased in the third quarter of 2006, as the continued roll-out of direct selling more than offset the unfavorable impact of the company-owned store counters"; and (iii) "direct selling is becoming a greater portion of our [China] business and is expected to continue to do so as we continue to build the direct-selling business."

196. The statements identified in ¶ 195 above were materially false and misleading because Avon failed to disclose that the revenue "increases" in China related to direct sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

197. In connection with this Form 10-Q, Jung and Cramb also executed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

198. That same day, Jung told analysts on the quarterly earnings call:

> To our knowledge we remain the only company in China with a national direct selling license. This is a unique window, a once in a lifetime opportunity. We are moving to capitalize on this opportunity as aggressively as possible. China continues to have the potential to become one of the largest markets in Avon.

199. Jung further stated that "turning to China, direct selling is clearly taking hold. If you exclude the impact of the exit of company run stores counters we are very encourage[d] by the strong growth of nearly 70% that we saw in this market" and that "China continues to have the potential to become one of the largest markets in Avon."

200. The statements set forth in ¶¶ 198-99 above were materially false and misleading because Jung failed to disclose that Avon's "strong growth" and "potential" in China were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. Jung also failed to address or discuss the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

D. The February 6, 2007 Form 8-K And Related Statements

201. On February 6, 2007, Avon filed a Form 8-K with the SEC disclosing results for the fourth quarter and full year 2006. In it, the Company reported that "[r]evenue in China grew 28% (24% in local currency), reflecting further expansion of the company's direct-selling business." On a related analyst conference call conducted that same day, Jung told analysts that, "turning to China, fourth quarter revenue was up 28%, 24% in local currency, as direct selling is clearly taking hold."

202. The statements identified in ¶ 201 above were materially false and misleading because Avon failed to disclose that the revenue "increases" in China related to direct sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

E. 2006 Form 10-K

203. On February 28, 2007, Avon filed its 2006 Form 10-K with the SEC. That report was signed by both Jung and Cramb.[149] In that Form 10-K, the Company stated that "***[t]otal revenue [in China] increased in 2006, as significant growth in direct selling more than offset the lower revenue from beauty boutiques***." (Emphasis added.) This report also stated that, "[d]ue to the significant growth of direct selling since our March 2006 launch, direct selling is becoming a greater portion of our business and is expected to continue as it is built up. With respect to Latin America, the Form 10-K reported that "[t]otal revenue increased in 2006, reflecting growth in Active Representatives and units sold, as well as favorable foreign exchange, primarily in Brazil."

204. The statements identified in ¶ 203 above were materially false and misleading because they failed to disclose that Avon's "growth" in China and the "significant growth of direct selling" in China were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme.

[149] That Form 10-K expressly referenced the 2004 Ethics Code. ¶ 60. As Plaintiffs' investigation revealed, however, the statements made in that code, ¶¶ 56-59, were belied by Defendants' knowledge or reckless disregard of Avon's woefully ineffective compliance regime, *see, e.g.*, ¶¶ 114-21.

These statements also failed to address or discuss the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

205. Furthermore, the statements identified in ¶ 203 above were materially false and misleading because Defendants did not address the significance of bribery payments to Avon's "revenue growth" in Latin America, generally, and in Brazil, specifically. On the contrary, such statements falsely implied that the Company's success in these areas was based entirely on legitimate business activities. Media reports have noted that, as far back as 2004, questionable payments had been made by Avon to officials in Brazil, Mexico and other countries in amounts that were "not insignificant." *See* ¶¶ 314, 407.

206. The 2006 Form 10-K also contained SOX Certifications signed by Jung and Cramb that were identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

F. First Quarter 2007 Form 10-Q And Related Statements

207. On May 1, 2007, Avon filed its 1Q07 Form 10-Q. In that report, the Company stated that "[r]evenue in China increased significantly during the first quarter of 2007 due to the continued roll-out of direct selling." The Company stated later in that same report that "[t]otal revenue in China increased significantly, reflecting further expansion of the direct-selling business, which contributed to over one half of the region's revenue in the quarter."

208. The statements identified in ¶ 207 above regarding the "significant" increase in China-related revenue were materially false and misleading because Avon failed to disclose that the revenue "increases" in China related to direct sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have

occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

209. In connection with this Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

210. That same day, on the first quarter analyst call, Jung responded to a question about Avon's business and its competitors as follows:

> Well, it's hard. I am not prepared to discuss how our competitors are doing their business. All abide or not abide by what is the single reg[ulation] for all. ***I just want to continue to say that we are abiding by the regs, which we believe are the same regs for all parties.*** We have not seen impact from direct selling competition. That's not to say that our eyes aren't wide open and – but ***we continue to believe that China is going to be a big success for this company with this hybrid model*** as we just spoke about with the BBs [beauty boutiques] as well as the focus now on activity.

(Emphasis added.)

211. Jung's statements identified in ¶ 210 above were materially false and misleading. Jung's statements created the false impression that Avon had adequate internal controls in place, including controls that would prevent illegal payments prohibited by the FCPA. As Plaintiffs' investigation has shown and public sources have confirmed, however, that was not the case. *See, e.g.*, ¶¶ 114-21. In addition, Jung failed to disclose that her expectations for Avon's "success" in China were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon. Jung also did not address or discuss the significant risk that, once the extent of Avon's illegal practices was revealed publicly, the Company would be exposed to

criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

G. Second Quarter 2007 Form 10-Q And Related Statements

212. On July 31, 2007, Avon filed its 2Q07 Form 10-Q. In that report, the Company stated that "[w]e continued to experience strong growth in emerging and developing markets, including Brazil, China, Colombia, Russia, Turkey and Venezuela. ***Revenue in China increased significantly in both the three and six months ended June 30, 2007, due to the continued roll-out of direct selling***." (Emphasis added.)

213. On that same day, Avon issued an accompanying press release, filed in a Form 8-K, which reported that "[r]evenue in China grew 36% (30% in local currency), reflecting continued expansion of the company's direct-selling business. As of the end of June, Avon China had nearly 660,000 certified Sales Promoters, approximately 240,000 of whom fit Avon's definition of an Active Representative."

214. The statements identified in ¶¶ 212-13 above were materially false and misleading because Avon failed to disclose that the revenue increases in China related to direct sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

215. Furthermore, the statements identified in ¶ 212 above concerning the "growth in emerging and developing markets, including Brazil" were materially false and misleading because Defendants did not address the significance of bribery payments to Avon's

revenue growth in such markets. On the contrary, such statements falsely implied that the Company's success in these areas was based entirely on legitimate business activities. Media reports have noted that, as far back as 2004, questionable payments had been made by Avon to officials in Brazil, Mexico and other countries in amounts that were "not insignificant." *See* ¶¶ 314, 407.

216. In connection with the 2Q07 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

217. That same day, on a quarterly earnings call with analysts, Jung gave the following reasons for Avon's success in China:

> Finally, turning to China, revenue grew 36%, 30% in local currency as the number of direct selling sales promoters climbed to nearly 660,000. . . . In fact, we are starting to see some encouraging productivity numbers emerging.

218. The statements identified in ¶ 217 above were materially false and misleading because Jung failed to disclose that the "encouraging productivity numbers" in China were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. Jung also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

H. Third Quarter 2007 Form 10-Q And Related Statements

219. On October 30, 2007, Avon filed its 3Q07 Form 10-Q. In that report, the Company stated that "[r]evenue in China increased significantly in both the three and nine months ended September 30, 2007, due to the continued roll-out of direct selling."

220. On a quarterly earnings call that same day, Jung stated, "turning to China, with revenue growth of 23%, our business continues to perform strongly in this priority market." Jung added that:

> in terms of the strength of our business model in China, I am very pleased that our beauty boutiques are stable and that the hybrid model of beauty boutiques and sales promoters continues to give Avon a competitive advantage. China remains a huge priority market for us going forward and we will continue to invest in both the resources and the talent necessary for long term success.

221. The statements identified in ¶¶ 219-20 above were materially false and misleading because Defendants failed to disclose that Avon's "significantly" increased revenue "due to the continued roll-out of direct selling" and the Company's "competitive advantage" were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

222. In connection with the 3Q07 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

I. The February 5, 2008 Form 8-K

223. On February 5, 2008, Avon issued a press release on Form 8-K reporting its fourth quarter and full-year results for 2007. In that press release, the Company announced that "[r]evenues in China grew 29% (22% in local currency). . . . Active Representatives were up 73% year over year." The Company added that, "[a]s a result of its revenue growth, China had [an] operating profit of $6 million in the fourth quarter 2007, compared with an operating loss of $3 million in the prior-year quarter."

224. The statements identified in ¶ 223 above were materially false and misleading because Defendants failed to disclose that Avon's "revenue growth" in China was significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

J. The 2008 Code of Business Conduct And Ethics

225. In February 2008, Avon released the 2008 Ethics Code. During the Class Period, Avon expressly referenced its "Code of Business Conduct and Ethics, amended in February 2008" in the Company's Annual Reports on Form 10-K filed with the SEC and dated February 20, 2009, February 25, 2010, and February 24, 2011. The document also was available on the Company's website. Jung was quoted prominently in that document, stating that "Avon has always been strongly committed to a policy and practice of compliance with both the letter and spirit of all applicable laws and regulations in each country in which we do business." Jung further

stated that, "[n]ow more than ever, it is imperative that each of us understands his or her individual responsibility for strict compliance with all legal requirements and the highest ethical standards."

226. The 2008 Ethics Code stated that it was Avon's "policy to comply with the highest standards of business ethics and to be a good citizen of each country in which we do business. This imposes . . . a standard of ethical conduct beyond that required by mere technical compliance with the law or the minimum standards for business behavior."

227. The 2008 Ethics Code specifically provided that "[b]ribes, kickbacks and payoffs to government officials, suppliers and others ***are strictly prohibited***." (Emphasis added.) It further stated that, "[i]n no event shall such payments be offered or paid where the purpose is to obtain new business or the continuation of existing business, or any favored treatment or special benefits to which the Company is not entitled."

228. The statements identified in ¶¶ 225-27 above were materially false and misleading because, in actuality, Avon was not "strongly committed to a policy and practice of compliance with both the letter and spirit of all applicable laws and regulations in each country in which we do business." To the contrary, Defendants knew or recklessly disregarded information about a culture of bribery of governmental officials in numerous different countries from at least 2004 to 2010, and at no time did they take adequate steps to deter and/or remediate such malfeasance. As Plaintiffs' investigation illustrated, Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were

discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

K. 2007 Form 10-K

229. On February 21, 2008, Avon filed its Annual Report for 2007 with the SEC on Form 10-K. The filing was signed by Jung and Cramb and stated that "[t]otal revenue in China increased significantly in 2007, primarily due to an increase in Active Representatives reflecting further expansion of the direct selling business, which contributed over one half of the region's revenue in 2007." The filing also stated that "[r]evenue in China increased significantly due to the continued roll-out of direct selling."

230. With respect to Latin America, the report stated that "[t]otal revenue increased during 2007, driven by growth in Active Representatives. . . . Revenue for 2007 benefited from growth in most markets, particularly from growth of approximately 30% in each of Brazil, Colombia and Venezuela."

231. The statements identified in ¶ 229 above were materially false and misleading because Avon failed to disclose that the revenue "increases" in China related to direct

sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

232. Furthermore, the statements identified in ¶ 230 above about the revenue growth in Latin America were materially false and misleading because Defendants did not address the significance of bribery payments to Avon's revenue growth in such markets. On the contrary, such statements falsely implied that the Company's success in this area was based entirely on legitimate business activities. Media reports have noted that, as far back as 2004, questionable payments had been made by Avon to officials in Brazil, Mexico, and other countries in amounts that were "not insignificant." *See* ¶¶ 314, 407.

233. In connection with this Form 10-K, Defendants Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

L. First Quarter 2008 Form 10-Q And Related Statements

234. On April 29, 2008, Avon filed its 1Q08 Form 10-Q. In that report, Avon stated "***[t]otal revenue in China increased significantly in the first quarter of 2008, primarily due to an increase in Active Representatives***, partially offset by a lower average order. The growth in Active Representatives reflects continued expansion of our direct selling efforts." (Emphasis added.)

235. On that same date, Avon issued a press release as part of a Form 8-K that also specifically addressed the Company's success in China:

> Revenue in China grew 29% (19% in local currency) and units sold were 13% higher in the first quarter, reflecting the company's continued success in operating in this priority growth market. Active Representatives were up 99% year over year. Operating profit more than tripled to $14 million year over year, reflecting a $6 million reduction in a statutory liability and higher revenue. The region's first-quarter operating margin was 15.5%.

236. The statements identified in ¶¶ 234-35 above were materially false and misleading because the Defendants failed to disclose that the "significant" increases in revenue and the "continued success" in China were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon. These statements also failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

237. In connection with the 1Q08 Form 10-Q, Defendants Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

238. On the Company's quarterly earnings call conducted on April 29, 2008, Jung stated:

> Obviously given the government regulations and the continued opportunity, all I would say there is we continue to evaluate the long-term strategy of China. I can't really speak to what competitors are doing. I would just say it's a fluid environment and we're very pleased with what we're doing here.

On the same call, Deutsche Bank analyst William Schmitz asked: "Okay, because the regulations are in place but it seems like Avon is the only company that's actually following them, is that a

fair assessment?" In response, Jung stated: "Well, I'd just say, ***we're following them.***" (Emphasis added.)

239. The foregoing statements were materially false and misleading. Jung's statements created the false impression that Avon's compliance functions and controls were adequate to ensure that applicable laws and regulations were being adhered to. As detailed herein, however, Avon had a woefully ineffective compliance regime and a complete lack of FCPA controls. *See, e.g.*, ¶¶ 114-21. As confirmed by Plaintiffs' investigation and numerous public sources, Avon officials had systematically engaged in FCPA violations in various markets, including China, for a number of years. Additionally, these statements failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

M. Second Quarter 2008 Form 10-Q And Related Statements

240. On July 30, 2008, Avon filed its 2Q08 Form 10-Q. Notwithstanding that the Company had launched an internal investigation into FCPA issues involving China in June 2008, Avon's 2Q08 Form 10-Q made no mention of that investigation or any internal control failures that had prompted such an inquiry. This Form 10-Q did state that:

> **[*r*]*evenue in China increased for both the three and six-month periods of 2008, primarily due to an increase in Active Representatives, partially offset by a lower average order.*** The growth in Active Representatives reflects continued expansion of our direct selling efforts.

(Emphasis added.)

241. Jung and Cramb likewise failed to mention the now-ongoing investigation on the quarterly earnings call of that same date, notwithstanding that they explicitly addressed the

Company's results in China. Instead, Jung continued to assert the strengths of Avon's "attractive business model":

> As I reflect on the success, I just – I would say there's two factors that are key at work here at the company. First, I've said – I've always talked about this, but ***I believe that fundamentally Avon has an attractive business model, we play in the right channel, the right countries, and the right categories and we're enjoying significant leverage from this broad global portfolio.***

(Emphasis added.) At that same time, Jung also emphasized the Company's success in China: "Turning to China, revenues in second quarter increased by 20%, with active representatives growing by 36%. . . . ***In terms of profit, our results reflected our continued aggressive investment in this priority market.***" (Emphasis added.)

242. Incredibly, at this same time, Cramb, who knew about the corrupt payments no later than June 2006 and was later to be fired as part of the FCPA investigation, told analysts during the same call:

> ***We're very pleased with our business model in China right now in terms of the way we operate***. I'm sure some of our peer groups are doing things a bit differently, but at this point in time we're seeing very strong revenue and rep growth, so ***we think our model is the right one for the moment.***

(Emphasis added.)

243. The statements identified in ¶¶ 240-42 above were materially false and misleading because the Defendants failed to disclose that the Company's achievements in China, as well as the successful "business model" then in place, was significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. By the time these statements were made, and no later than June 2006, Company management, and specifically Cramb, had learned of FCPA violations at Avon China through an internal audit report. ¶¶ 78, 82, 130-38. Federal prosecutors have been investigating whether

Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade. Additionally, the statements failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs. Finally, the Defendants failed to disclose that an internal FCPA investigation regarding Avon China had commenced in June 2008.

244. In connection with the 2Q08 Form 10-Q, Defendants Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

N. The October 20, 2008 Press Release And The October 21, 2008 Form 8-K

245. Three months after it had commenced an internal investigation and three years after the 2005 internal audit report had been drafted, the Company issued a press release after the close of the market on October 20, 2008 stating:

> it is voluntarily conducting an internal investigation of its China operations, focusing on compliance with the Foreign Corrupt Practices Act ("FCPA"). The Company, under the oversight of the Audit Committee, commenced in June 2008 an internal investigation after it received an allegation that certain travel, entertainment and other expenses may have been improperly incurred in connection with the Company's China operations. The company has voluntarily contacted the Securities and Exchange Commission and the United States Department of Justice to advise both agencies that an internal investigation is underway. The

> internal investigation is in its early stage and no conclusion can be drawn at this time as to its outcome.[150]

246. On October 21, 2008, Avon filed a Form 8-K announcing the following:

> Avon Products, Inc. (NYSE: AVP) announced today, October 20, 2008, that it is voluntarily conducting an internal investigation of its China operations, focusing on compliance with the Foreign Corrupt Practices Act ("FCPA"). The Company, under the oversight of the Audit Committee, commenced in June 2008 an internal investigation after it received an allegation that certain travel, entertainment and other expenses may have been improperly incurred in connection with the Company's China operations. To lead the investigation, the Company has engaged the independent international law firm of Mayer Brown LLP.
>
> The Company has voluntarily contacted the Securities and Exchange Commission and the United States Department of Justice to advise both agencies that an internal investigation is underway. The internal investigation is in its early stage and no conclusion can be drawn at this time as to its outcome.

247. In response to the disclosures set forth in ¶¶ 245-46 above, the Company's share price fell from a closing price of $30.86 on October 20, 2008 to a closing price of $30.01 on October 21, 2008, a decline of $0.85, or 2.75%. The next day, October 22, 2008, Avon stock closed at $27.22 per share, a decline of $2.79, or 9.30%, from the previous day's closing price. This represented a two-day loss of nearly 12%.

248. However, the statements identified in ¶¶ 245-46 above were false and misleading because they did not tell the complete story. Indeed, these statements created the false impression that Defendants first learned of the suspected corruption in June 2008. That was not the case, though. By June 2008, Defendants had actual knowledge of, or had recklessly disregarded, the fact that the Company's internal controls were wholly inadequate from a financial and operational perspective. *See, e.g.*, ¶¶ 114-21. At the time these statements were made, and no

[150] Press Release, *supra* note 42.

later than June 2006, Company management, and specifically Cramb, had learned of FCPA violations at Avon China through an internal audit report. ¶¶ 78, 82, 130-38. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade. Additionally, the statements failed to address or discuss the significant risk that, once the illegal bribery payments were revealed publicly, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

249. As detailed below, even after the internal investigation became public knowledge, Defendants continued to mislead the investing community by attributing Avon's financial success to sources other than the illegal payments. Additionally, they consciously downplayed the extent of FCPA-related wrongdoing at Avon and the significance and potential impact the internal investigation would have on the Company.

O. Third Quarter 2008 Form 10-Q And Related Statements

250. On October 30, 2008, Avon filed its 3Q08 Form 10-Q. In that report, Avon included substantially the same language that had appeared in the Form 8-K filed on October 21, 2008 concerning the internal investigation:

> We are voluntarily conducting an internal investigation of our China operations, focusing on compliance with the Foreign Corrupt Practices Act. The internal investigation, which is being conducted under the oversight of the Audit Committee, commenced in June 2008 after we received an allegation that certain travel, entertainment and other expenses may have been improperly incurred in connection with our China operations. We have voluntarily contacted the Securities and Exchange Commission and the United States Department of Justice to advise both agencies that

> an internal investigation is underway. Because the internal investigation is in its early stage, we cannot predict how the resulting consequences, if any, may impact our internal controls, business, results of operations or financial position.

251. The statements identified in ¶ 250 above were materially false and misleading for the same reasons set forth in ¶ 248 above.

252. In connection with the 3Q08 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

253. Later that same day, Jung told analysts on the quarterly earnings conference call that "[i]n China, revenue in third quarter increased 25%, 13% in local currencies, with active representatives nearly doubling versus a year ago, and these results reflected our continued strategic investments in this important market." These statements were materially false and misleading because Jung failed to disclose that Avon's "strategic" investments included the bribes to government officials that allowed Avon access to the direct selling market in China. Jung also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

P. The February 3, 2009 Form 8-K And Related Statements

254. On February 3, 2009, Avon filed a Form 8-K with the SEC announcing fourth quarter and fiscal 2008 results. In an accompanying press release, Jung stated that:

> We believe our model is well suited to create income opportunities in these difficult economic times, as we have during past challenges. . . . Throughout our history, these advantages have allowed Avon to emerge well positioned as economic conditions improve.

> . . . .
>
> We are fortunate to be facing these challenging times from a position of financial strength. We have a solid balance sheet, an operating model that generates healthy cash flow and a continued commitment to our dividend. This strong foundation, coupled with . . . the competitive advantages of our direct selling business model, gives us confidence to look past 2009's challenges and to continue our focus on long-term sustainable, profitable growth.

255. The statements identified in ¶ 254 above were materially false and misleading because Jung failed to disclose that Avon's "model," "strong foundation," and "competitive advantages" were significantly attributable to a pervasive illegal bribery scheme. These statements also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

256. That same day, on a quarterly earnings call with analysts, Jung stated that:

> ***Another bright spot in the portfolio in the quarter was China, where revenue in local currency grew 17%.*** Active representatives grew 88%. The number of certified sales promoters in China is now almost 1 million. And this was accomplished in just three years. We were pleased with our progress against representative activity in the quarter, with the level exceeding 50% in the last month of the year.

(Emphasis added.)

257. The statements identified in ¶ 256 above were materially false and misleading because Jung failed to disclose that the reported results in China were significantly attributable to the illegal bribery scheme and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory

investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

Q. 2008 Form 10-K

258. On February 20, 2009, the Company filed its 2008 Form 10-K, which was signed by Jung and Cramb. In that document, the Company repeated substantially the same language about the internal investigation as the Form 8-K filed on October 21, 2008, and failed to reveal any new information. The statements about the internal investigation therefore remained materially false and misleading for the reasons set forth in ¶ 248 above.

259. With respect to China, the Form 10-K reported:

> Revenue in China increased for 2008, primarily due to an increase in Active Representatives, partially offset by a lower average order. ***The growth in Active Representatives reflected continued expansion of our direct selling efforts***, which were supported with significant Representative recruiting, television advertising and field incentives. The lower average order resulted from the continued expansion of direct selling, as Representatives order in smaller quantities than beauty boutiques, and orders from new Representatives tend to be smaller than the average direct selling order. Beauty boutique ordering activity levels have remained steady during this extended period of direct selling expansion, as our beauty boutique operators continue to service our Representatives.

(Emphasis added.)

260. The statements identified in ¶ 259 above were materially false and misleading because Avon failed to disclose that the revenue increases in China related to direct sales were significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon and could not have occurred but for that scheme. These statements also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result

in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

261. With respect to Latin America, the Form 10-K reported:

> Total revenue increased for 2008, ***driven by a larger average order and growth in Active Representatives, as well as favorable foreign exchange***. Growth in Active Representatives reflects significant investments in RVP and a continued high level of investment in advertising. Revenue for 2008 benefited from continued growth in substantially all markets. In particular, during 2008, revenue grew 24% in Brazil, 36% in Venezuela, 5% in Mexico and 3% in Colombia. ***Revenue growth in Brazil was driven by higher average order, growth in Active Representatives and the impact of foreign exchange***. Revenue growth in Venezuela was driven by higher average order, ***while revenue in Mexico benefited from growth in Active Representatives.***

(Emphasis added.)

262. The statements identified in ¶ 261 above about the "[r]evenue growth" in Latin American were materially false and misleading because Defendants did not address the significance of bribery payments to Avon's revenue growth in such markets. On the contrary, such statements falsely implied that the Company's success in these areas was based entirely on legitimate business activities. Media reports have noted that, as far back as 2004, questionable payments had been made by Avon to officials in Brazil, Mexico and other countries in amounts that were "not insignificant." *See* ¶¶ 314, 407.

263. In connection with this Form 10-K, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

R. First Quarter 2009 Form 10-Q And Related Statements

264. On May 5, 2009, Avon filed its 1Q09 Form 10-Q. Again, Avon failed to disclose any new information regarding the internal investigation, and instead used substantially

similar language to that found in the Form 8-K filed on October 21, 2008. *See* ¶ 246. These disclosures were materially false and misleading for the reasons discussed in ¶ 248 above.

265. In that report, the Company stated that, as to China, "[r]evenue increased in the first quarter of 2009. . . . The growth in Active Representatives reflects continued expansion of our direct selling efforts, which were supported with continued Representative recruiting, television advertising and field incentives." The foregoing statements were materially false and misleading for the reasons discussed in ¶ 260 above.

266. In connection with the 1Q09 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

267. During Avon's quarterly earnings call that same day, Jung stated, "[j]ust a comment about China. We continue to bring in over 40,000 new sales promoters each month. Active representatives in this market were up over 40% in the quarter. We now have almost 0.5 million active representatives in China. ***So the direct selling business in this market remains healthy and growing.***" (Emphasis added.)

268. The statements identified in ¶ 267 above were materially false and misleading because Jung failed to disclose that the Company's "healthy" and "growing" direct sales business in China was significantly attributable to the illegal bribery scheme that had opened the direct selling market to Avon. Jung also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

S. Corporate Responsibility Report Dated July 2009

269. During the Class Period, Defendants held out Avon to investors as a company committed to the highest ethical standards. A Corporate Responsibility Report released in July 2009 (the "Report") stated:

> ***Avon is strongly committed to conducting its business in full compliance with all applicable laws, rules and regulations in every country in which we do business***, including but not limited to those related to labor and employment; direct selling; product labeling; advertising; ***improper payments and bribery***; and antitrust and competition. Laws affecting the operation of our business in every country have grown in number and complexity. It is expected that associates will have a working knowledge of permissible activities involved in their work.

(Emphasis added.)

270. The Report also incorporated a statement made by Jung:

> As Avon associates, we all share a proud heritage of maintaining the highest standards of integrity and ethical conduct. These values trace directly back to the premise upon which David McConnell founded this business more than a century ago. And today, ***we hold steadfast to these values and principles because they are the bedrock not only of Avon's past, but of its future.***

(Emphasis added.)

271. The statements identified in ¶¶ 269-70 above were materially false and misleading because, as Plaintiffs' investigation and public sources have confirmed, the Company and its management were not "strongly committed" to do as the law required and did not "hold steadfast" to "the highest standards of integrity and ethical conduct." Rather, the Defendants had actual knowledge of, and/or recklessly disregarded, the true nature of the Company's internal controls and the severe deficiencies in those controls from a financial and operational perspective. Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent

until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

T. Second Quarter 2009 Form 10-Q And Related Statements

272. On July 30, 2009, Avon filed its 2Q09 Form 10-Q. In it, the Company disclosed that its internal investigation "relating to the Foreign Corrupt Practices Act and related U.S. and foreign laws" had now spread to cover "additional countries":

> We are conducting an internal investigation under the oversight of the Audit Committee and with the assistance of outside independent counsel into compliance with the Foreign Corrupt Practices Act (FCPA) and related U.S. and foreign laws. The initial focus of the internal investigation has been on certain expenses incurred in connection with our China operations. In order to evaluate our compliance efforts, we are also reviewing our practices relating to FCPA and related U.S. and foreign laws in additional countries. We have voluntarily advised the United States Securities and Exchange Commission and the United States Department of Justice of the internal investigation. ***Because the internal investigation is***

> ***ongoing, we cannot predict how the results of the investigation may impact our internal controls, business, and results of operations or financial condition.***

(Emphasis added.)

273. The statements identified in ¶ 272 above were materially false and misleading because Defendants had actual knowledge of, and/or recklessly disregarded, the true nature of the Company's internal controls and the severe deficiencies in those controls from a financial and operational perspective. Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

274. In connection with the 2Q09 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

275. On the same day, Avon filed a Form 8-K with the SEC announcing financial results for the second quarter of 2009. In an accompanying press release, Jung discussed the reasons why second quarter revenue in China had grown 15% (13% in local currency) year over year:

> ***Our bold strategies to counter the recession are working. We've been successful at gaining Representatives and consumers during these tough economic times. This confirms our belief in the inherent advantage of our direct-selling business model.***

(Emphasis added.)

276. The statements identified in ¶ 275 were materially false and misleading because the "inherent advantage" in Avon's direct selling business and the Company's "bold strategies" were a myth. Instead, as Plaintiffs' interviews with confidential witnesses and numerous public sources illustrate, Defendants engaged in a systematic policy of bribery to establish Avon's direct selling model in China. *See, e.g.*, ¶¶ 139-49. Jung also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

277. During the Company's July 30, 2009 earnings call with analysts, when Jung was asked a question about the rate of growth in China, she stated "I'm pleased with the progress, and without giving you a forecast for whether the growth will accelerate, ***I think you can continue to look at China as a major growth driver for the corporation***." (Emphasis added.)

278. On that same call, Jung added in response to an analyst question that: "Well, I think that we still feel good about China. I think the double-digit growth that we're seeing is certainly being driven by strength in direct sales."

279. The statements identified in ¶¶ 277-78 above were materially false and misleading because Jung failed to disclose that China's role as "a major growth driver" and the "strength in direct sales" had been achieved through an illegal bribery scheme that had opened the direct selling market to Avon in China. *See, e.g.*, ¶¶ 139-49. Jung also failed to address or discuss the significant risk that, once the full extent of Avon's illegal practices became known, the Company would be exposed to criminal and regulatory investigations that would result in a significant settlement payment to the federal government, significant damage to reputation, and other losses and costs.

U. Third Quarter 2009 Form 10-Q

280. On October 29, 2009, Avon filed its 3Q09 Form 10-Q. With respect to the ongoing internal investigation, the 3Q09 Form 10-Q contained an identical disclosure as that in the 2Q09 Form 10-Q. *See* ¶ 272. These statements were materially and falsely misleading for the reasons set forth in ¶ 273 above.

281. In connection with the 3Q09 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

V. 2009 Form 10-K

282. On February 25, 2010, Avon filed its Annual Report for 2009 with the SEC on Form 10-K. That report was signed by Jung and Cramb. In that filing, Avon stated:

> ***We are investigating Foreign Corrupt Practices Act (FCPA) and related U.S. and foreign law matters, and from time to time we may***

conduct other internal investigations and compliance reviews, the consequences of which could negatively impact our business.

From time to time, we may conduct internal investigations and compliance reviews, the consequences of which could negatively impact our business. Any determination that our operations or activities are not in compliance with existing United States or foreign laws or regulations could result in the imposition of substantial fines, interruptions of business, termination of necessary licenses and permits, and other legal or equitable sanctions. Other legal or regulatory proceedings, as well as government investigations, which often involve complex legal issues and are subject to uncertainties, may also follow as a consequence. It is our policy to cooperate with U.S. and foreign government agencies and regulators, as appropriate, in connection with our investigations and compliance reviews.

As previously reported, we have engaged outside counsel to conduct an internal investigation and compliance reviews focused on compliance with the FCPA and related U.S. and foreign laws in China and additional countries. The internal investigation and compliance reviews, which are being conducted under the oversight of our Audit Committee, began in June 2008. We voluntarily contacted the United States Securities and Exchange Commission and the United States Department of Justice to advise both agencies of our internal investigation and compliance reviews and we are, as we have done from the beginning of the internal investigation, continuing to cooperate with both agencies and have signed tolling agreements with them.

The internal investigation and compliance reviews, which started in China, are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, and payments to third-party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees. The internal investigation and compliance reviews of these matters are ongoing. At this point we are unable to predict the duration, scope or results of the internal investigation and compliance reviews.

Any determination that our operations or activities are not in compliance with existing laws or regulations could result in the imposition of substantial fines, civil and criminal penalties, equitable remedies, including disgorgement, injunctive relief and other sanctions against us or our personnel. In addition, other countries in which we do business may initiate their own investigations and impose similar sanctions. ***Because the internal***

> ***investigation and compliance reviews are ongoing, there can be no assurance as to how the resulting consequences, if any, may impact our internal controls, business, reputation, results of operations or financial condition.***

(Emphasis added.)

283. The statements identified in ¶ 282 above were materially false and misleading for several reasons. As an initial matter, these statements created the false impression that Defendants first learned of the suspected corruption in June 2008. That was not the case, though. By June 2008, Defendants had actual knowledge of, or had recklessly disregarded, the fact that the Company's internal controls were wholly inadequate from a financial and operational perspective. *See, e.g.*, ¶¶ 114-21. At the time these statements were made, and no later than June 2006, Company management, and specifically Cramb, had learned of FCPA violations at Avon China through an internal audit report. ¶¶ 78, 82, 130-38. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade. Moreover, as detailed herein, Avon's compliance function was, in fact, woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28.

284. In connection with this Form 10-K, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

285. On April 13, 2010, Avon confirmed to the *Journal* that it had suspended three employees in Asia and one in New York as part of its FCPA investigation.[151] The suspended employees were Kao, the president of Avon China; Beh, the CFO for Avon China; Sun, the head of corporate affairs and government relations for Avon China; and Rossetter in New York, former head of global internal audit and security and before that head of finance for Asia Pacific (which at that time included China).[152] Rossetter was reported to have started a special assignment in mid-2009, reporting to Cramb.[153] "The possible wrongdoing under investigation includes the alleged purchase of trips to France, New York, Canada and Hawaii for Chinese government officials with ties to Avon's business."[154] The article also reported that the probe had expanded to "a dozen or more countries" and included "Latin America, ***where the company garners the bulk of its sales and profits.***"[155] As one news report explained:

> "If these reports are true it certainly brings into question the company's control on either employees or their own finances," said Sanford Bernstein analyst Ali Dibadj. "It certainly does not add to

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[151] *See* Byron, *Avon Suspends Executives*, *supra* note 49.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.* (emphasis added); *see also* Erin Lash, *Ten Things Potential Avon Investors Should Know*, Morningstar, Sept. 19, 2011 (Avon's "[s]ales in Latin America were nearly $4.6 billion in fiscal 2010 (more than 40% of total sales).") (on file with counsel).

> the credibility of the company, which has already been under some pressure recently."[156]

These disclosures had a significant impact on the Company's share price, which fell from a closing price of $34.76 on April 12, 2010, to a closing price of $31.99 on April 13, 2010, with higher than normal trading volume of over 21 million shares. This represented a decline of $2.77 per share, or 8%, and wiped out $1.1 billion in market capitalization.

286. As detailed elsewhere herein, the suspensions of these four employees did not tell the whole story as then known by Defendants. According to confidential witnesses interviewed as part of Plaintiffs' investigation, by no later than June 2006 (and possibly as far back as 2005), Company management, including Cramb, already was aware of the existence of a 2005 internal audit report that had concluded that Avon employees in China may have been bribing officials in violation of the FCPA. *See* ¶¶ 130-38. Federal prosecutors have been investigating whether Company officials took affirmative steps to ignore the report's findings or conceal the problems identified therein. ¶ 82. Moreover, Defendants had actual knowledge of, and/or recklessly disregarded, the true nature of the Company's internal controls and the severe deficiencies in those controls from a financial and operational perspective. *See, e.g.*, ¶¶ 114-28.

W. First Quarter 2010 Form 10-Q And Related Statements

287. The Company's 1Q10 Form 10-Q was filed with the SEC on April 30, 2010. With respect to the FCPA investigation, the Company made disclosures substantially similar to those provided in earlier SEC reports:

> We are conducting these compliance reviews in a number of other countries selected to represent each of the Company's four other international geographic segments. The internal investigation and compliance reviews are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel,

[156] Jessica Wohl & Donny Kwok, *Avon suspends four execs in China bribery probe*, Reuters, Apr. 13, 2010.

> entertainment, gifts, and payments to third-party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees. The internal investigation and compliance reviews of these matters are ongoing, and we continue to cooperate with both agencies with respect to these matters. ***At this point we are unable to predict the duration, scope, developments in, results of, or consequences of the internal investigation and compliance reviews.***

(Emphasis added.)

288. The statements identified in ¶ 287 above were materially false and misleading for the reasons set forth in ¶ 283 above.

289. In connection with the 1Q10 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

290. In the Company's April 30, 2010 earnings conference call, Jung provided an update on the situation in China and the FCPA investigation:

> However, I just wanted to begin my remarks this morning with some comments about China, which I know is top of mind for many of you. I'll talk specifically about our business performance. But first I just want to share my perspective on our FCPA investigation in that market. Given that this is an ongoing investigation and the facts are still under review we're limited, as you well know, in what we can say. But I want to be as responsive as I can and recap the status of our investigation to the extent possible.
>
> ***Avon disclosed in October 2008 that an allegation had been made about possible FCPA violations in our China business relating to travel, entertainment and other expenses. The allegation came in the form of a letter written directly to me.*** As you would expect, I immediately turned the information over for proper handling and we began an internal investigation under the oversight of our audit committee and conducted by outside counsel. Most importantly, we voluntarily self-reported the allegation to the United States Securities and Exchange Commission, as well as the Department of Justice. And again, this was voluntary.
>
> China is a unique and highly regulated market with its own specific requirements. Nevertheless, as a company that holds leadership

> positions in developing and emerging markets, we are also conducting compliance reviews related to FCPA in additional countries. We disclosed this in July 2009.
>
> I want to clarify that we are conducting these compliance reviews in a selection of markets representing each of our 4 international business units outside of China. I also want to emphasize again that the allegation that triggered our investigation was in China only. Conducting compliance reviews in these additional markets is the appropriate thing to do in investigations of this type and as we stated, we've been cooperating with both governmental agencies.
>
> ***Three weeks ago, as you know, 4 associates were placed on administrative leave specifically in connection with the China investigation***. The decision to put people on administrative leave does not reflect any outcome from the investigation. Given this and given that ***the associates are not senior executive level officers of the company***, we did not file a disclosure and name the names. So that's where we are in terms of FCPA. ***No conclusions can be drawn at this time.*** And as I said, the investigation has been going on since 2008. We've seen very little management distraction and I'm pleased that from what I can see, everyone all around the world is focused on running the business as we want them to be.

(Emphasis added.)

291. The foregoing statements were materially false and misleading because Defendants had actual knowledge of, and/or recklessly disregarded, the true nature of the Company's internal controls and the severe deficiencies in those controls from a financial and operational perspective. As Plaintiffs' investigation illustrated, Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Avon's commitment to compliance was similarly absent, and even hostile, with respect to FCPA controls. Former employees confirmed that Avon still had no FCPA compliance policies or training programs as late as 2010, five years after FCPA violations were discovered in China. ¶ 120. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in

connection with bribery payments. *See* ¶¶ 123-28. Moreover, the foregoing statements created the false impression that Defendants first learned of the suspected corruption in June 2008. That was not the case, though. Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

292. The foregoing statements also were materially false and misleading because Jung falsely implied that any FCPA-related wrongdoing in China was limited to non-managerial employees within the organization. *See* ¶ 290 (Jung states that the four employees who were placed on leave were "not senior executive level officers of the Company"). Avon's unlawful bribery scheme, however, could not have been perpetrated in so many different markets and over such a substantial period of time (at least six years) without the knowledge, complicity and/or acquiescence of personnel at the highest level of the Company, including Jung. As Plaintiffs' investigation revealed, the Individual Defendants were active and primary participants in the Company's fraud. *See, e.g.*, ¶¶ 40-43, 78, 322-25.

X. Second Quarter 2010 Form 10-Q And Related Statements

293. On July 29, 2010, Avon filed its 2Q10 Form 10-Q. With respect to the ongoing internal investigation, the Company stated as follows:

> As previously reported in July 2009, in connection with the internal investigation, we commenced compliance reviews regarding the FCPA and related U.S. and foreign laws in additional countries in order to evaluate our compliance efforts. We are conducting these compliance reviews in a number of other countries selected to represent each of the Company's four other international geographic segments. The internal investigation and compliance reviews are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, and payments to third-party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees. The internal investigation and compliance reviews of these matters are ongoing, and we continue to cooperate with both agencies with respect to these matters. ***At this point we are unable to predict the duration, scope, developments in, results of, or consequences of the internal investigation and compliance reviews.***

(Emphasis added.)

294. The statements identified in ¶ 293 above were materially false and misleading for the reasons set forth in ¶ 291 above.

295. In connection with the 2Q10 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above.

Y. Third Quarter 2010 Form 10-Q And Related Statements

296. Before the market opened on October 28, 2010, the Company filed its 3Q10 Form 10-Q. In that report, Avon stated the Company's sales had plunged 31% in China, with units

sold down 28% and Active Representatives down 36%. The Company blamed this on its transition from a hybrid model to a focus on direct selling:

> Total revenue for the three- and nine-month periods ending September 30, 2010, decreased due to significant revenue declines in both direct selling and Beauty Boutiques. The fundamental challenges in our complex hybrid business model, including conflicting needs of retail and direct selling, impacted both businesses, resulting in a 36% and 25% reduction in Active Representatives for the three- and nine-month periods, respectively. Our continued transition away from our complex hybrid business model to one which focuses on direct selling and updating our service center model, is expected to include a realigned field compensation structure and recalibrated merchandising and campaign management strategies to support direct selling.

297. The revelation of the Company's decline in earnings in China, which was a manifestation of (a) the increased scrutiny by U.S. regulators regarding Avon's FCPA violations and (b) the investigations and prosecutions within China that limited Avon's ongoing bribery of government officials, caused the price of the Company's common stock to fall from a closing price of $32.86 on October 27, 2010, to close at $31.01 on October 28, 2010, with higher than normal trading volume of over 28 million shares. This represented a share price decline of $1.85, or approximately 5.6%.

298. The statements identified in ¶ 296 above did not disclose the full scope of Defendants' bribery scheme, the consequences thereof, or Avon's woefully inadequate internal controls and compliance function. Consequently, they were materially false and misleading.

299. In that same report, Avon stated as follows regarding the internal investigation:

> As previously reported in July 2009, in connection with the internal investigation, we commenced compliance reviews regarding the FCPA and related U.S. and foreign laws in additional countries in order to evaluate our compliance efforts. We are conducting these compliance reviews in a number of other countries selected to represent each of the Company's four other international geographic

> segments. The internal investigation and compliance reviews are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, and payments to third-party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees. The internal investigation and compliance reviews of these matters are ongoing, and we continue to cooperate with both agencies with respect to these matters. At this point we are unable to predict the duration, scope, developments in, results of, or consequences of the internal investigation and compliance reviews.

300. The statements identified in ¶ 299 above were materially false and misleading for the reasons set forth in ¶ 291 above. Additionally, by this time Defendants were aware, or had recklessly disregarded, that Hennelly, Avon's Executive Director, Global Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." ¶ 111.

301. In connection with the 3Q10 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above. Additionally, by this time Defendants were aware, or had recklessly disregarded, that Hennelly, Avon's Executive Director, Global Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." ¶ 111.

302. In Avon's quarterly earnings call that same day, Cramb called the FCPA investigation "a significant cost that we never anticipated." This statement was materially false and misleading because such an investigation was entirely foreseeable given the reasons set forth in ¶ 291 above. *See also* ¶ 300. In addition, Cramb gained personal knowledge of the Company's FCPA violations no later than June 2006 and ultimately was fired because he knew of the corruption in China for a number of years. Finally, Cramb was aware of, or recklessly disregarded, the severe deficiencies in the Company's controls and compliance from a financial and operational perspective.

Z. The February 8, 2011 Form 8-K

303. On February 8, 2011, before the market opened, Avon released a Form 8-K with an accompanying press release containing the Company's 2010 results. The Company reported that fourth quarter revenue declined by 45% in China. The Company also noted that the number of Active Representatives in China was down 68%:

> Fourth-quarter revenue in China decreased 45% year over year, or down 47% in constant dollars. The region's revenues continued to be impacted by the company's planned transition away from a hybrid model to one which focuses on direct selling. Units sold decreased 44% and Active Representatives were down 68%.

304. The revelation of the Company's decline in earnings in China, which was a manifestation of (a) the increased scrutiny by U.S. regulators regarding Avon's FCPA violations and (b) investigations and prosecutions within China that limited Avon's ongoing bribery of government officials, caused the price of the Company's common stock to fall. On this news, Avon's shares fell from a closing price of $29.35 on February 7, 2011, to a closing price of $28.47 on February 8, 2011, a loss of $0.88, or 3.0%, with higher than normal trading volume of over 18 million shares.

305. The statements in ¶ 303 above did not fully disclose the full scope of Defendants' bribery scheme, the consequences thereof, and Avon's woefully inadequate internal controls and compliance function. Consequently, they were materially false and misleading.

AA. 2010 Form 10-K

306. On February 24, 2011, Avon filed its Form 10-K for 2010. That report was signed by Jung and Cramb. With regard to the Company's FCPA investigation, the report stated:

> As previously reported in July 2009, in connection with the internal investigation, we commenced compliance reviews regarding the FCPA and related U.S. and foreign laws in additional countries in order to evaluate our compliance efforts. We are conducting these compliance reviews in a number of other countries selected to represent each of the Company's four other international geographic segments. The internal investigation and compliance reviews are focused on reviewing certain expenses and books and records processes, including, but not limited to, travel, entertainment, gifts, use of third party vendors and consultants and related due diligence, joint ventures and acquisitions, and payments to third party agents and others, in connection with our business dealings, directly or indirectly, with foreign governments and their employees. The internal investigation and compliance reviews of these matters are ongoing, and we continue to cooperate with both agencies with respect to these matters. At this point we are unable to predict the duration, scope, developments in, results of, or consequences of the internal investigation and compliance reviews.
>
> Any determination that our operations or activities, including our licenses or permits, importing or exporting, or product testing or approvals are not in compliance with existing laws or regulations could result in the imposition of substantial fines, civil and criminal penalties, interruptions of business, modification of business practices and compliance programs, equitable remedies, including disgorgement, injunctive relief and other sanctions that we may take against our personnel or that may be taken against us or our personnel. In addition, pending the outcome of these matters, certain personnel actions have been taken, including the placing of the Senior Vice President, Western Europe, Middle East & Africa, Asia Pacific and China on administrative leave in connection with the internal investigation relating to our China operations, and additional personnel actions may be taken in the future. Further, other countries in which we do business may initiate their own investigations and impose similar sanctions. Because the internal

> investigation and compliance reviews are ongoing, there can be no assurance as to how the resulting consequences, if any, may impact our internal controls, business, reputation, results of operations or financial condition.

307. The statements identified in ¶ 306 above were materially false and misleading for the reasons set forth in ¶ 291 above. *See also* ¶ 300.

308. In connection with this Form 10-K, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above. Additionally, by this time Defendants were aware, or had recklessly disregarded, that Hennelly, Avon's Executive Director, Global Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." ¶ 111.

BB. First Quarter 2011 Form 10-Q And Subsequent News Reports

309. Beginning in May 2011, the scale of Defendants' malfeasance gradually began to be revealed to the investing public. Defendants' statements during this period continued to be materially incomplete, however, leaving investors in the dark regarding the precise scope and magnitude of the Company's FCPA violations.

310. On May 3, 2011, Avon released its 1Q11 Form 10-Q, purporting to provide further information on the widening scope of the FCPA investigation. In that report, the Company announced that it had discharged Kao, Beh, Sun, and Rossetter, the four employees it had previously suspended:

> In connection with the internal investigation, certain personnel actions have been taken, including the termination of four

> individuals previously placed on administrative leave in 2010 (former general manager for China; former head of corporate affairs for China; former head of finance for China; and former head of global internal audit and security, who was previously head of finance for Asia Pacific). Pending the outcome of the internal investigation and compliance reviews, additional personnel actions may be taken in the future.

311. Although this report addressed these "personnel actions," the remainder of the discussion regarding the Company's internal investigation omitted certain material facts. In particular, Defendants knew or recklessly disregarded information about a culture of bribery of government officials in several different countries from at least 2004 to 2010, and at no time took adequate steps to deter and/or remediate such malfeasance. As Plaintiffs' investigation illustrated, Avon's compliance function was woefully inadequate throughout the Class Period. For example, as former Avon employees stated, the Company's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. ¶¶ 106-20. Former employees also confirmed that Avon's internal controls designed to prevent improper payments or reimbursements were ignored or circumvented in connection with bribery payments. *See* ¶¶ 123-28. Moreover, Company management, including Cramb, was aware of possible corruption as early as 2005 and no later than June 2006. The fact that Cramb and other senior Avon executives had knowledge by mid-2006 of an internal audit report describing bribery payments to Chinese officials is noted in news reports, ¶¶ 78, 82, and is confirmed by several of Plaintiffs' confidential witnesses. Federal prosecutors have been investigating whether Company officials hid this internal audit report from the Audit Committee, which did not learn of its existence for several years, and from the investing community, which did not learn of it until early 2012. Finally, Cramb ultimately was terminated because he knew of FCPA violations dating back to the middle of the last decade.

312. In addition, the FCPA-related discussion identified in ¶ 310 above was materially false and misleading since by this time Defendants were aware, or had recklessly

disregarded, that Hennelly, Avon's Executive Director, Global Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." *See* ¶ 111.

313. In connection with the 1Q11 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above. Additionally, by this time Defendants were aware, or had recklessly disregarded, that Hennelly, Avon's Executive Director, Global Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." ¶ 111.

314. On May 4, 2011, the *Journal* reported that Avon's "internal investigation into possible bribery of foreign officials ha[d] uncovered more potential wrongdoing, with evidence of improper payments to government officials found in several countries beyond the probe's original focus of China."[157] The article reported that the probe found, as recently as 2010 and as far back as 2004, "millions of dollars of questionable payments to officials in Brazil, Mexico, Argentina, India and Japan in amounts that are 'not insignificant.'"[158] The article also

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[157] Byron, *Probe Uncovers Questionable Payments*, *supra* note 47.

[158] *Id.*

stated that "[o]ne employee in these markets has been suspended, and more suspensions are pending."[159]

315. Avon's share price fell as the market reacted to the developments set forth in ¶¶ 309-14 above. The Company's share price dropped from a closing price of $30.91 on May 3, 2011, to a closing price of $28.71 on May 5, 2011, a loss of $2.20 per share, or over 7.1%.

316. On May 24, 2011, the *Journal* reported that federal prosecutors from the Southern District of New York's Complex Fraud Unit were actively investigating possible FCPA violations at Avon and "seeking more information about the role employees at the company's New York headquarters, including some former senior officials, may have played in possible violations."[160] Following the publication of this and similar articles in the business press (which still did not reveal the complete scope and magnitude of the Company's FCPA violations), Avon's share price fell from an opening of $29.80 on May 24, 2011, to close at $29.15 on May 25, 2011, a loss of $0.65 per share, or over 2.7%.

CC. Second Quarter 2011 Form 10-Q

317. On July 28, 2011, the Company filed its 2Q11 Form 10-Q. While that report addressed Avon's ongoing internal investigation regarding FCPA matters, Defendants once again omitted material facts regarding the internal investigation. *See ¶* 311.

318. In connection with the 2Q11 Form 10-Q, Jung and Cramb also signed SOX Certifications identical to those set forth in ¶¶ 188-89 above. These certifications were materially false and misleading for the reasons set forth in ¶ 190 above. Additionally, by this time Defendants were aware, or had recklessly disregarded, that Hennelly, Avon's Executive Director, Global

[159] *Id.*

[160] Byron & Rothfeld, *supra* note 52.

Ethics and Compliance, had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. *See* ¶¶ 106-13. Indeed, by this time Rucker, Avon's General Counsel, had rejected Hennelly's requested FCPA compliance controls "to avoid being inundated with what would likely be uncovered if Avon started doing the broader reviews of all of its vendors in Latin America." ¶ 111.

DD. Third Quarter 2011 Form 10-Q

319. On October 27, 2011, Avon filed its 3Q11 Form 10-Q. In that document, Avon surprised the investing public when it disclosed the following facts:

> On October 26, 2011, the Company received a subpoena from the [SEC] requesting documents and information in connection with a Regulation FD investigation of the Company's contacts and communications with certain financial analysts and other representatives of the financial community during 2010 and 2011. The Company was also advised that a formal order of investigation was issued by the SEC relating to the FCPA matters described [previously] and the Regulation FD matters that are referenced in the subpoena. The Company intends to cooperate fully with the SEC's investigation.[161]

320. In response to this announcement, Avon's share price dropped from a closing price of $23.01 on October 26, 2011, to close at $18.99 on October 27, 2011, a loss of $4.02, or nearly 18%.

VIII. ALLEGATIONS REGARDING SCIENTER AND FRAUDULENT INTENT

321. As Avon's most senior executives, the Individual Defendants were active, culpable, and primary participants in the fraud, as evidenced by their knowing issuance and control over Avon's materially false and misleading statements. The ongoing fraudulent scheme described herein could not have been perpetrated in so many different markets and over such a substantial

[161] Subsequent news reports, published after the end of the Class Period, stated that the SEC's Regulation FD inquiry was triggered by Cramb telling a Citigroup analyst about the status of the Company's internal FCPA investigation. *See* ¶ 347.

period of time (at least six years) without the knowledge, complicity, acquiescence, and/or recklessness of personnel at the highest level of the Company, including Jung and Cramb. When reviewed collectively, as required by applicable law, Plaintiffs' allegations support a strong inference of fraudulent intent on the part of the Defendants or, at the very least, the strong inference that Defendants' conduct was highly unreasonable and an extreme departure from standards of ordinary care. In either case, scienter has been adequately pled. *See, e.g.*, *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, No. 12-cv-5329 (SAS), 2014 U.S. Dist. LEXIS 148772, at *8 (S.D.N.Y. Oct. 20, 2014) ("Accepting the Complaint's allegations as true, and viewing all inferences in favor of Plaintiffs, [defendant's] conduct was — at the very least — 'highly unreasonable' and an 'extreme departure from the standards of ordinary care.' Thus, the Complaint's allegations are sufficient to give rise to a strong inference that 'the danger was either known to [defendant] or so obvious that [defendant] must have been aware of it.'") (footnote call number omitted).

322. Cramb, Avon's CFSO, gained personal knowledge of the Company's FCPA violations no later than June 2006, yet continued to issue false and misleading statements, and to omit from disclosure material information, as alleged herein. *See, e.g.*, ¶ 242. The *Journal* reported that Cramb was fired because he knew of "possible corruption involving foreign officials in China as early as the middle of the last decade."[162]

323. Cramb's knowledge of Avon's FCPA violations is corroborated by the information collected during Plaintiffs' investigation. Notably, CW11 stated that Cramb and Rossetter both would have been made aware of the internal audit report uncovering bribery in China when it was drafted. *See* ¶ 129. Further, CW11 stated that LaPresa threatened public

[162] Dowell, *supra* note 3.

disclosure of that audit report to gain nine additional months of severance benefits when he left Avon in June 2006, and that those additional benefits had to have been approved by Cramb. *See* ¶ 133.

324. Jung was actively involved in Avon's China operations. According to CW1, Jung was actively involved in Avon's efforts to gain a direct sales license in China, and made several trips to China to discuss obtaining the direct sales license. *See* ¶ 42. Jung also was involved in the day-to-day business of Avon's China operations, including approval of expenses and payments. CW1 confirmed that Avon's China operations reported directly to the Company's New York headquarters through Gallina, who in turn reported to Jung. *See* ¶ 39. CW3 stated that Jung was responsible for approving Gallina's expenses and CW1 stated Gallina approved checks and withdrawals made by Beh and Kao, two of the employees fired by Avon as a result of its internal investigation. *See* ¶ 127.

325. Moreover, in the Company's own words, Jung had a "deep understanding" of Avon's business and "full responsibility for [Avon's] global business units." *See* ¶ 22. Cramb also reported to Jung, and given their close working relationship, *see* ¶ 23, would almost certainly have informed her of the Company's FCPA violations, of which he became aware no later than June 2006, *see* ¶¶ 129-38.

326. The already strong inference of scienter is further bolstered by, among other things, Avon's failure to implement an effective FCPA compliance program; Avon's internal investigation and the resulting employment terminations; the government investigations and the May 2014 "understanding" of settlement; Jung and Cramb's false SOX Certifications; and the core operations doctrine. *See, e.g.*, *In re ITT Educ. Servs., Inc. Sec. Litig.*, No. 13-CV-1620 (JPO), 2014 WL 3611095, at *5 (S.D.N.Y. July 22, 2014) ("Securities plaintiffs need not plead facts 'of the

smoking-gun genre' to be entitled to relief."); *Carlson v. Xerox Corp*., 392 F. Supp. 2d 267, 287 (D. Conn. 2005) ("[M]ost often, allegations about a defendant's culpable state of mind must be drawn from limited state of mind evidence augmented by circumstantial facts and logical inferences."). Apart from the foregoing, under applicable law, the cumulative knowledge of Avon's employees is imputed to the Company and supports a finding of corporate scienter. *See, e.g.*, *In re Hi-Crush Partners L.P. Sec. Litig*., No. 12 Civ. 8557(CM), 2013 WL 6233561, at *25 (S.D.N.Y. Dec. 2, 2013) ("The scienter of an employee acting within the scope of employment can be imputed to the employer.").

A. Jung And Cramb Knew Of Or Recklessly Disregarded Avon's Failure To Follow "Best Practices" For FCPA Compliance

327. By publicly disseminating the 2004 Ethics Code, the 2008 Ethics Code, and the July 2009 Corporate Responsibility Report, as well as other documents lauding Avon's stellar corporate citizenship, Defendants imposed upon the Company a requirement to maintain a standard of conduct "beyond that required by mere technical compliance with the law." *See* ¶¶ 87, 226. In so doing, Defendants assumed responsibility for ensuring that the Company implemented and maintained a robust compliance regime that, at a minimum, complied with industry-accepted "best practices." *See* ¶ 87.

328. To do that, Avon needed, at an absolute minimum, to comply with principles set forth in the Sentencing Guidelines and the DOJ's PFPBO. These provide detailed requirements, both practical and qualitative, for the development and maintenance of an effective legal compliance program. *See* ¶¶ 90-99. Importantly, the Sentencing Guidelines require that companies devote adequate resources and personnel, conduct "effective" training programs, and take "reasonable steps" to ensure that all applicable compliance procedures are being followed. *See* ¶¶ 93-94. Another critically important factor set forth in both the Sentencing Guidelines and

the PFPBO is that companies have effective audit controls that are sufficiently capable of detecting criminal conduct. *See* ¶¶ 94, 97. These documents also require management to set the proper compliance tone for the company's employees by fostering a corporate culture that encourages ethical conduct in the workplace. *See* ¶¶ 94, 98.

329. Avon's representations further obligated senior management to maintain and implement robust FCPA controls. Senior managers, including Jung, made representations indicating that Avon was in strict compliance with all applicable laws, including FCPA prohibitions against making unlawful payments to government officials to gain a business advantage for Avon. *See, e.g.*, ¶¶ 56-58, 87, 191. Consequently, management was required to identify the high-risk locations in which Avon conducted business, such as China and Latin America, and install even greater controls in those regions to prevent FCPA violations from occurring. *See* ¶¶ 44-55.

330. As Plaintiffs' investigation has revealed, however, Avon's compliance function was woefully inadequate throughout the Class Period. As former Company employees disclosed, Avon's compliance function was virtually non-existent until 2009, and was substandard at best thereafter. *See* ¶¶ 106-20. Moreover, prior to 2009, Avon had no employees whatsoever dedicated solely to compliance efforts. Even after 2009, and in the midst of its own internal investigation, Avon devoted only six to eight full-time employees (including clerical staff) to this vital area. *See* ¶ 118. Further demonstrating Avon's utter lack of commitment to effective compliance, the Company failed to provide sufficient supervision to the few employees working on compliance matters. *Id.* Additionally, senior members of the Company's legal department acknowledged to CW5 that Avon lacked the type of compliance programs that would be expected of a company of Avon's size. ¶ 116.

331. Avon also demonstrated a lack of commitment to compliance with respect to FCPA controls. Former employees confirmed that Avon had no FCPA compliance policies or training programs in place as late as 2010 – five years after FCPA violations were discovered in China and two years after Avon's belated "investigation" into those activities had commenced. *See ¶* 120. Incredibly, as reflected in the Hennelly Complaint, senior executives such as the Company's General Counsel, who reported directly to Jung, set the tone for Avon's compliance efforts by expressly quashing attempts to prevent FCPA violations, while simultaneously acknowledging that such violations were "likely" to be occurring. *See ¶¶* 106-13.

332. Jung, as Avon's CEO, and Cramb, as CFO and later CFSO, either knew or recklessly disregarded that Avon's compliance function failed to meet the standards that Defendants had led investors to believe were in place at the Company. With respect to China, where senior management, including Jung, was supposed to be taking an active role in daily management, *see ¶¶* 39-43, and where the risk of FCPA violations was especially acute, *see ¶¶* 48-52, Jung and Cramb must be charged with awareness of the Company's complete lack of controls. Indeed, as CW13 confirmed, Avon never even audited its world-wide operations for FCPA violations from 2007 to 2009 – the years directly following Cramb's discovery of an internal audit report describing bribery payments to Chinese government officials. ¶¶ 151-58. As noted above, the knowledge requirement of the FCPA incorporates the concepts of "willful blindness" and "conscious disregard," and corporate executives cannot "bury their heads in the sand." ¶ 163. That is precisely what happened at Avon during the Class Period. *See also* ¶¶ 364-65.

B. Avon's Internal Investigation And The Resulting Suspension, Termination, Or Re-Assignment Of Certain Key Avon Personnel Provides Further Evidence Of Scienter

333. By Avon's own account, the Company launched an internal investigation in 2008 regarding improper payments to Chinese officials in connection with the development of

Avon's direct selling operations in China. Allegedly, the internal investigation was triggered by a letter from a whistleblower who alerted Avon to potential FCPA violations in China. These violations reportedly included gifts and improper travel expenses paid by Avon employees to certain Chinese officials. Avon initially disclosed the internal investigation in a press release dated October 20, 2008. *See* ¶ 245.

334. Cramb and other senior management at Avon, however, learned of these FCPA violations by no later than June 2006 – more than two years before that Form 8-K was filed. *See, e.g.*, ¶¶ 129-38. As discussed elsewhere herein, the DOJ has uncovered evidence that Avon's management actually had access as early as 2005 to an internal audit report outlining potential FCPA violations in China. According to the *Journal*, the report, which revealed the existence of illegal payments, may not have been timely shared with Avon's board of directors, or the audit or finance committees thereof, until 2008 – ***three years later***. *See* ¶ 82.

335. By July 2009, Avon's internal investigation expanded to include additional international markets. Avon refused to specify how many countries other than China were included in the internal investigation as of July 2009, but the *Journal* reported that a dozen or more were under scrutiny.[163] A subsequent *Journal* article reported that internal investigations within Avon "turned up millions of dollars of questionable payments to officials in Brazil, Mexico, Argentina, India and Japan in amounts that [were] 'not insignificant.'"[164] According to that article, the questionable payments dated "as far back as 2004" and continued through at least 2010.[165]

336. During the Class Period, several senior executives at Avon were suspended and placed on administrative leave as a result of the Company's internal investigation: Kao, the

[163] *See* Byron, *Avon Suspends Executives*, *supra* note 49.

[164] Byron, *Probe Uncovers Questionable Payments*, *supra* note 47.

[165] *Id.*

general manager of the China unit; Beh, Avon China's CFO; Sun, the head of corporate affairs for China; and Rossetter, the former head of global internal audit and security. *See* ¶ 75. Those individuals were subsequently terminated from their positions in May 2011. *See* ¶ 76. Far from being a good faith attempt by the Company to "clean house," at least one analyst has stated that these terminations were part of a strategy by Avon to reach a settlement with the federal government regarding potential criminal charges.[166]

337. On February 24, 2011, Avon filed a Form 8-K with the SEC, which reported that two days prior Gallina, another key Avon executive, had suddenly "retired" as senior vice president of Avon's operations outside of the United States and Latin America. This occurred just two days after he was put on leave in connection with the internal investigation. In 2005, Gallina, who had full profit and loss responsibility over Avon's operations in China, reported directly to Jung. *See* ¶¶ 8, 75.

338. Avon fired Cramb on January 29, 2012, after evidence gleaned from the internal investigation indicated that he knew of possible corruption and other FCPA violations in China for a number of years. *See* ¶ 78; *see also* ¶ 10 and note 3. In that regard, reliance on reporting in reputable newspapers such as the *Journal* is appropriate and may help form the basis of a well-pleaded claim. *See, e.g.*, *Lewis v. Curtis*, 671 F.2d 779, 788 (3d Cir. 1982), *abrogated on other grounds by Garber v. Lego*, 11 F.3d 1197 (3d Cir. 1993) ("Reliance on an article in The Wall Street Journal is not reliance on an insubstantial or meaningless investigation."); *In re JPMorgan Chase & Co. Sec. Litig.*, MDL No. 1783, 2007 WL 4531794, at *5 (N.D. Ill. Dec. 18, 2007) ("A reputable newspaper, where an independent investigation was conducted, provides an

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[166] *See* Matthew Boyle & Joel Rosenblatt, *Avon Products Says It Fired Four Executives Over Bribes to China Officials*, Bloomberg, May 5, 2011, *available at* http://www.bloomberg.com/news/2011-05-04/avon-says-it-fired-four-executives-in-china-over-bribes.html.

additional layer of reliability in reporting. ***Further, the confidential nature of a journalist's source is used to encourage reporting and accuracy***.") (emphasis added); *In re Loewen Grp. Inc. Sec. Litig.*, No. Civ.A. 98-6740, 2004 WL 1853137, at *6 (E.D. Pa. Aug. 18, 2004) ("The articles plaintiffs rely upon were published in . . . reputable newspapers (e.g.[,] *The Wall Street Journal*) and meet the requirements of being independent and reliable. Therefore, I will consider them in determining whether plaintiffs have met their pleading burden.").

339. Commenting on Cramb's termination, Morgan Stanley analyst Dara Mohsenian wrote that "'[w]e view this announcement as a negative, as it suggests that [Foreign Corrupt Practices Act]/Regulation FD matters stretch to the upper levels of management at Avon — Cramb was [CFO] when the allegations emerged, which clearly increases the level of risk at a company where there is already a lack of visibility.'"[167]

340. Additionally, Avon announced on December 13, 2011, that Jung planned to step down as Avon's CEO effective at some point during 2012, but would remain as Avon's Executive Chairman for a period of two years.[168] A number of articles have noted that the Company's decision to remove Jung from the CEO position was tied, at least in part, to the ongoing FCPA investigation.[169] As previously noted, Jung ceased serving as Avon's CEO in April 2012 and stepped down as its Chairman during December 2012. *See* ¶ 22.

341. Both Cramb's dismissal and Jung's re-assignment evidence that knowledge of FCPA violations reached the very highest levels of the Company. As alleged above, Jung

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[167] Molly Prior, *Questions Surrounding Avon Increase*, Women's Wear Daily, Feb. 1, 2012, *available at* http://www.retailgeeks.com/wp-content/uploads/2012/02/2012_0201_AVP1.pdf. (first alteration in original).

[168] *See, e.g.*, Press Release, Avon, Avon to Separate Roles of Chairman and CEO (Dec. 13, 2011), http://media.avoncompany.com/index.php?s=10922&item=96618&printalde.

[169] Brad Dorfman, *Avon to separate roles of chairman, CEO*, FMAG, Dec. 14, 2011, *available at* http://us.fashionmag.com/news-221546-Avon-to-separate-roles-of-chairman-CEO.

supervised Gallina, the head of Avon's China operations, and approved his expenses. *See* ¶ 127. Jung was Avon's top executive throughout the Class Period, had "full responsibility for [Avon] global business units," met "frequently with senior officials" in China, and was "instrumental" in Avon having been granted direct selling licenses in early 2006.[170] Jung was quoted in Avon's December 2005 8-K, which announced the Company's corporate restructuring, as saying that henceforth Avon's senior management would have more direct involvement in the daily management of Avon China. *See* ¶¶ 37-42. In addition, during the third quarter 2011 analyst conference call, Jung emphatically declared "[l]ook, the buck stops with me."[171]

342. Cramb similarly carried significant authority within Avon. In 2007, Jung stated that Cramb had been an "invaluable business partner" since first joining the Company and he would now "work more closely with me to address longer-range strategic opportunities." ¶ 23. In essence, Cramb was Jung's "right-hand man."[172]

343. In quarterly filings issued in October, 2008 and May, 2009, Avon stated that, "[b]ecause the internal investigation is in its early stage, we cannot predict how the resulting consequences, if any, may impact our internal controls, business, results of operations or financial position." In quarterly filings made in July and October 2009, the Company made a substantially similar statement: "[b]ecause the internal investigation is ongoing, we cannot predict how the results of the investigation may impact our internal controls, business, results of operations or

[170] Andria Cheng, *Andrea Jung Is Avon's Ultimate Makeover Artist*, Dow Jones News Service, Dec. 3, 2009; *see also* Areddy & Byron, *supra* note 32 (noting that Jung met "frequently with senior officials" in China); Chandra, *supra* note 9 (reporting that Jung "called on Vice Premier Wu Yi in June"); Molly Prior, *Slimming Down at Avon: Company Restructures to Become More Nimble*, Women's Wear Daily, Dec. 8, 2005 (explaining that, as a result of the Company's "already-announced multiyear restructuring effort," Jung "will ***become more closely involved in the day-to-day oversight*** of the firm's business units") (emphasis added).

[171] Jessica Wohl, *Avon under fire from Feds and Wall Street*, Reuters, Oct. 27, 2011, *available at* http://www.reuters.com/article/2011/10/27/us-avon-idUSTRE79Q3Y720111027.

[172] Prior, *supra* note 167.

financial condition." In the Company's quarterly public filings issued after February, 2010, Avon stated that, "[a]t this point we are unable to predict the duration, scope, developments in, results of, or consequences of the internal investigation and compliance reviews."

344. The statements in the preceding paragraph, however, did not reflect the reality as it then existed. By October 2008, Company management already was aware of the existence of a 2005 internal audit report that had concluded that Avon employees in China may have been bribing officials in violation of the FCPA. ¶¶ 129-38. Federal prosecutors have been probing whether Company officials took affirmative steps to ignore the report's findings or conceal the problems identified therein. ¶ 82. Moreover, Cramb ultimately was terminated because he knew about the illegal bribery payments as early as the middle part of the last decade, and presumably did nothing to stop, prevent or discourage the practice. ¶ 78. Additionally, by Fall 2010, Defendants were aware, or had recklessly disregarded, that Avon's Executive Director of Global Ethics and Compliance had concluded that Avon's then-current compliance program as it related to Latin America was materially inadequate in several respects. ¶¶ 106-13.

345. To date, the Company has spent over $340 million on its internal investigation, ¶ 10, a sum that places the Company's "business, results of operations [and] financial position" in an extremely precarious position. That significant cost, when viewed alongside the duration (approximately six years), the purported scope of that investigation (covering numerous countries on multiple continents), and the size of the corresponding settlement ($135 million), supports a strong inference that Company officials, including the Individual Defendants, engaged in deliberate misconduct during the Class Period.

346. Beginning with the Form 10-K filed February 25, 2010, and continuing with subsequent SEC filings throughout the Class Period, Avon stated that not only had it put the SEC

and the DOJ on notice of the internal investigation but the Company also was "continuing to cooperate with both agencies and [had] signed tolling agreements with them." A tolling agreement is an agreement between parties to waive the right to dismiss a case because of the expiration of the statute of limitations, providing a party and its counsel with additional time to develop its case. Here, the tolling agreements suggest, among other things, that the SEC and the DOJ have expressed serious concerns about both the legality of Avon's business practices in China and other foreign markets as well as the Company's disclosures (or lack thereof) concerning those practices and their consequences. In fact, as discussed elsewhere herein, both the DOJ and the SEC have been actively investigating the Company and federal prosecutors presented evidence to a grand jury. Moreover, Avon has now entered into an "understanding" of settlement with the government. *See, e.g.*, ¶¶ 11, 83, 352-58.

C. The Government Investigation Of Avon Provides Additional Indicia Of Scienter

347. The SEC launched a regulatory investigation into Avon under Regulation FD sometime after May 25, 2011. This investigation apparently was triggered after Cramb supplied material information regarding FCPA issues to a Citigroup analyst.[173] Regulation FD, promulgated by the SEC in 2000, mandates that all publicly traded companies disclose material information to all investors at the same time. Here, the SEC investigation commenced after Cramb met with Citigroup Inc.'s Wendy Nicholson ("Nicholson"). Nicholson subsequently reported the meeting in a May 25, 2011 research report, stating "'[Avon's] real wrongdoings are confined to China.'"[174] Avon also revealed in a Form 10-Q filed with the SEC on October 26, 2011 that the

[173] *See* Aruna Viswanatha & Jessica Wohl, *Avon's Cramb Gave Citi Bribery Probe Info: Source*, Reuters (Nov. 1, 2011), *available at* http://www.reuters.com/article/2011/11/01/us-avon-idUSTRE7A06HC20111101.

[174] *Id.*

SEC's investigation of the Regulation FD matter was "formal" and that the Company had received an SEC subpoena related to that investigation.

348. The SEC launched an investigation of Avon's potential FCPA violations no later than February 25, 2010, as evidenced by Avon's having entered into tolling agreements with the SEC and the DOJ by that date. According to experts, the potential cost to Avon of a governmentally-initiated FCPA action is extremely high: "Avon struggled to get into the Chinese market and if it is seen that the bribes were related to that entry, the whole of the Chinese market could be taken into account" in assessing a penalty.[175]

349. The SEC elevated its FCPA-related investigation to "formal" status as of October 26, 2011, as reported in Avon's Form 10-Q filed October 27, 2011: "a formal order of investigation was issued by the SEC relating to the FCPA matters."

350. Additionally, as first publicly reported in May 2011, federal prosecutors with the Southern District of New York's complex frauds unit and DOJ's fraud unit in Washington, DC, have been investigating whether Avon violated the FCPA. That investigation commenced in February 2011. Media reports indicated the investigation is focused on potential wrongdoing in China and:

> [p]rosecutors are seeking more information about the role employees at the Company's New York headquarters, including some former senior officials, may have played in possible violations of the [FCPA]. . . . Agents from the Federal Bureau of Investigation also made unsuccessful attempts to interview some former employees at their homes.[176]

[175] *See* Dominic Rushe, *SEC investigates allegations that Avon reps bribed foreign officials*, Guardian (Oct. 27, 2011), http://www.guardian.co.uk/business/2011/oct/27/avon-reps-investigation-bribery-allegations?INTCMP=srch.

[176] Ellen Byron & Michael Rothfeld, *Feds Look at Avon Bribery Allegation*, Wall St. J., May 25, 2011, at B1.

351. News reports also have stated that federal prosecutors have presented evidence regarding Avon to a grand jury. *See* ¶ 82. Those same reports indicated that prosecutors have expressed concern about the 2005 internal audit report that flagged issues regarding compliance with U.S. anti-bribery laws and whether executives with Avon ignored or attempted to suppress that report. Those allegations cast severe doubt on Avon's contention that it never learned of any potential violations of the FCPA in China prior to the 2008 whistleblower letter that triggered its internal investigation.

352. On May 1, 2014, Avon filed its Form 10-Q for the quarterly period ending March 31, 2014. In that filing, the Company announced that it had "reached an understanding with respect to terms of settlement with each of the DOJ and the staff of the SEC." In that regard, Avon stated:

> Based on these understandings, the Company would, among other things: pay aggregate fines, disgorgement and prejudgment interest of $135 with respect to alleged violations of the books and records and internal control provisions of the FCPA, with $68 payable to the DOJ and $67 payable to the SEC; enter into a deferred prosecution agreement ("DPA") with the DOJ under which the DOJ would defer criminal prosecution of the Company for a period of three years in connection with alleged violations of the books and records and internal control provisions of the FCPA; agree to have a compliance monitor which, with the approval of the government, can be replaced after 18 months by the Company's agreement to undertake self-monitoring and reporting obligations for an additional 18 months. If the Company remains in compliance with the DPA during its term, the charges against the Company would be dismissed with prejudice. In addition, as part of any settlement with the DOJ, a subsidiary of Avon operating in China would enter a guilty plea in connection with alleged violations of the books and records provision of the FCPA.

353. In commenting on the settlement, James Tillen, Vice Chairman of Miller & Chevalier's international practice in Washington, D.C., noted that "[t]he amount of time it took to investigate and resolve the [Avon] case ***suggests that there was a lot there***."[177]

354. As noted above, as part of this proposed settlement, "a subsidiary of Avon operating in China" will enter a guilty plea in connection with "alleged violations of the books and records provision of the FCPA." That guilty plea is highly significant. Such a guilty plea would constitute an unconditional admission of guilt, as well as an admission of all of the elements of a formal criminal charge. Indeed, as to those elements, such a plea is as conclusive as a jury verdict.

355. Since a corporate defendant can only act through its employees and agents, the scienter of Avon China (which is to plead guilty to a violation of the FCPA) is directly imputable to the Company. This is particularly true here given that Avon's corporate headquarters in New York had significant involvement in the day-to-day management of the Company's China operations. *See* ¶¶ 37-43. Additionally, throughout the Class Period, Jung made numerous specific pronouncements regarding the Company's Chinese operations and the Company's regulatory compliance efforts in that country. *See, e.g.*, ¶¶ 210, 238. These specific pronouncements provide strong circumstantial evidence that Jung was receiving specific information about such matters.[178]

356. In addition to the guilty plea, the "understanding" of settlement announced in May 2014 also includes a provision whereby Avon will agree to an external compliance monitor

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[177] Sue Reisinger, *For Avon, $135M FCPA Settlement Is Just a Start*, Corp. Couns., July 28, 2014 (emphasis added), *available at* http://www.corpcounsel.com/id=1202664648488/For-Avon-36135M-FCPA-Settlement-Is-Just-a-Start?slreturn=20140914125221. According to the Miller & Chevalier website, Mr. Tillen "has had significant experience with every facet of an FCPA enforcement matter." *See* http://www.millerchevalier.com/OurPeople/JamesGTillen.

[178] Alternatively, if Jung was not knowledgeable about the matter in which she purported to speak in detail, such recklessness would readily satisfy the scienter requirement. *See S. Ferry LP #2 v. Killinger*, 687 F. Supp. 2d 1248, 1260 (W.D. Wash. 2009) (noting when a defendant speaks and does not have actual knowledge about the subject at hand, "it would be at least actionably reckless to reassure the public about these matters at all").

for a term of at least 18 months. (After the 18-month term has expired, Avon, with the approval of the government, may self-report to regulators for an additional 18 months.) This provision also is significant given that there has been a trend away from the imposition of external compliance monitors in FCPA settlements over the past several years (particularly when, as here, the company in question self-reported to the government). As noted in one article:

> Just a few years ago, FCPA resolutions routinely required the imposition of an external compliance monitor to review and report on the implementation of new compliance policies and procedures. According to one study, ***between 2004 and 2010 more than 40% of all corporate FCPA resolutions involved the imposition of an external compliance monitor. In the last few years, that statistic has been turned on its head, with the majority of corporate resolutions requiring self-monitoring and reporting instead of external monitors. In fact, companies voluntarily disclosing FCPA violations in recent years have only received external compliance monitors in relatively rare instances***.[179]

357. The fact that prosecutors are insisting on an external monitor for a period of eighteen months strongly suggests that Avon sorely lacked the necessary internal controls to ensure FCPA compliance during the Class Period. As explained by one commentator:

> In recent settlement agreements, the DOJ has cited the "extensive remedial efforts" to reform existing compliance programs – after becoming aware of the alleged violation – as a reason for entering into a settlement agreement and for not imposing an external monitor. ***In contrast, when a corporation has merely taken a 'cookie cutter' approach to FCPA compliance, or*** **[*it*]** ***has a 'paper' program without any real substance to it, the DOJ will most likely impose an external compliance monitor***.[180]

[179] Laura Fraedrich & Jamie A. Schafer, *What Is In It For Me: How Recent Developments in FCPA Enforcement Affect the Voluntary Disclosure Calculus*, 8 Global Trade & Customs J. 257, 260 (2013) (emphasis added) (internal citation omitted), *available at* http://www.kirkland.com/siteFiles/Publications/Global%20Trade%20and%20Customs%20Journal%20(Fraedrich%20byline)%20Sept.%202013.pdf.

[180] Lauren Giudice, Note, *Regulating Corruption: Analyzing Uncertainty in Current Foreign Corrupt Practices Act Enforcement*, 91 B.U.L. Rev. 347, 374 (2011) (emphasis added) (alteration in original) (internal citations and quotation marks omitted).

358. A recent U.S. government publication supports that same conclusion. On November 14, 2012, the U.S. Department of Justice and Securities and Exchange Commission released their *Resource Guide to the U.S. Foreign Corrupt Practices Act* (the "Guide"). In addressing the issue of external compliance monitors in the FCPA settlement context, the Guide emphasizes the relationship between the effectiveness of the subject company's compliance program on the one hand and the government's decision to impose an external monitor on the other:

> Appointment of a monitor is not appropriate in all circumstances, but ***it may be appropriate, for example, where a company does not already have an effective internal compliance program or needs to establish necessary internal controls***.[181]

D. Jung And Cramb Knowingly Signed False SOX Certifications Throughout The Class Period

359. Cramb served as Avon's Chief Financial Officer or CFSO and Jung served as Avon's Chairman and CEO throughout the entire Class Period.

360. In connection with each quarterly and annual report Avon filed with the SEC during the Class Period, Jung and Cramb signed SOX Certifications. Pursuant to applicable law, every Form 10-Q and Form 10-K filed with the SEC and reporting a company's quarterly or annual financial performance must be accompanied by SOX Certifications signed under oath by personnel able to attest to the veracity of the underlying financial reports. Jung and Cramb certified under oath quarter after quarter during the Class Period that all financial reports filed by Avon with the SEC complied with § 13(a) or § 15(d) of the Exchange Act and that each such report

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[181] Crim. Div., U.S. Dep't of Justice & Enforcement Div. of U.S. Sec. & Exchange Comm'n, *A Resource Guide to the* U.S. Foreign Corrupt Practices Act at 71 (emphasis added), *available at* http://www.justice.gov/criminal/fraud/fcpa/guide.pdf.

"fairly present[ed], in all material respects, the financial condition and results of operations of [Avon]."

361. Jung and Cramb also signed SOX Certifications quarter after quarter during the Class Period, attesting under oath that:

a. Avon established and maintained disclosure controls;

b. the design of such controls was adequate "to ensure that material information relating to [Avon and any subsidiaries]" was known to Jung and Cramb during the relevant reporting period;

c. internal controls were evaluated and that any conclusions about the effectiveness of controls was based upon said evaluations;

d. disclosure was made of any changes in internal controls regarding financial reporting during the Company's most recent fiscal quarter that "materially affected or [was] reasonably likely to materially affect, the registrant's internal control over financial reporting"; and

e. Avon disclosed, based on an evaluation of internal controls over financial reporting to the relevant auditors, audit committees, or board of directors, (1) significant deficiencies and material weaknesses in internal control design or operation "reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information" and (2) "any fraud, whether or not material, that involve[d] management or other employees who [had] a significant role in the registrant's internal control over financial reporting."

362. The SOX Certifications signed by Jung and Cramb were materially false and misleading because, at the time they were executed, these individuals were aware of, or recklessly disregarded, the severe deficiencies in the Company's controls from a financial and operational perspective.

363. Jung was in a position to know that Avon lacked any type of FCPA compliance or internal controls, and that efforts to put them in place were thwarted from within.

Rucker, who became General Counsel in March 2008, reported directly to Jung. ¶ 106. In 2010, after Avon was well aware of FCPA violations in China, Rucker refused to authorize a broad review of Avon's past contractual dealings in Latin America for FCPA violations, even when pressed by Hennelly and Vitek and informed that by not doing so Avon was failing to comply with federal law. *See* ¶¶ 109-10. Rucker certainly would have reported such a request to Jung and obtained Jung's approval to deny the review of Avon's contracts, particularly since Rucker denied the request "to avoid being inundated with ***what would likely be uncovered*** if Avon started doing the broader reviews of all of its vendors in Latin America." *See* ¶ 111 (emphasis added).

364. News reports also emphasize that Jung was copied on emails bearing on FCPA issues in China. *See, e.g.*, Joe Palazzolo, Emily Glazer & Joann S. Lublin, *Prosecutors Ask to Meet Jung in Avon Bribe Probe*, Wall St. J. (July 30, 2012) (reporting that federal prosecutors investigating FCPA issues at Avon "have asked to speak to Andrea Jung" and that the Company had "provided thousands of internal emails and other documents to prosecutors," including an email, ***which the* Journal *reviewed***, that contained "a summary of a 2008 sales strategy meeting that discusses potentially increasing company resources to match competitors' spending on gifts and travel for Chinese officials" and that "***Ms. Jung is copied on* [*that*] *email***"). *See also* ¶ 131 (CW10 confirmed that ***all*** internal audit reports were kept on a drive that could be accessed by anyone within the Company); *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000) ("[S]ecurities fraud claims typically have sufficed to state a claim based on recklessness when they have specifically alleged defendants' knowledge of facts ***or access to information*** contradicting their public statements.") (emphasis added).

365. Cramb knew that Avon lacked any FCPA controls and compliance. Indeed, Cramb knew (or, at the very minimum, recklessly disregarded) on or before June 2006 that Avon

had violated the FCPA. ¶¶ 78, 129-38. *See also* ¶ 131 (CW10 confirmed that ***all*** internal audit reports were kept on a drive that could be accessed by anyone within the Company); *Novak*, 216 F.3d at 308 ("[S]ecurities fraud claims typically have sufficed to state a claim based on recklessness when they have specifically alleged defendants' knowledge of facts ***or access to information*** contradicting their public statements.") (emphasis added). By definition, Cramb knew (or recklessly disregarded) that Avon either had no FCPA compliance measures in place, or that the Company's compliance efforts were inadequate.

366. The SOX Certifications are a particularly strong indicator of scienter because the malfeasance at issue directly implicates the adequacy of the Company's internal control systems. Indeed, as explained in the Guide, *see* ¶ 358, "[a]n effective [FCPA] compliance program is a critical component of an issuer's internal controls."[182] As detailed herein, during the Class Period Avon's internal controls were woefully inadequate and, in many respects, virtually non-existent. *See, e.g.*, ¶¶ 114-21.

E. Avon's China Operations Were A Core Operation Of The Company

367. The Individual Defendants had access to all material information regarding the Company's core operations. Therefore, the Individual Defendants are presumed to have had knowledge of all material facts regarding those core operations. *See Hi-Crush*, 2013 WL 6233561, at *26 ("To fulfill the scienter pleading requirement, a plaintiff may rely on the 'core operations doctrine,' which permits an inference that a company and its senior executives have knowledge of information concerning the 'core operations' of a business.").

[182] Guide at 40.

368. The Chinese market was the cornerstone of (and critically important to) Avon's growth strategy, *see, e.g.*, ¶¶ 25-29, and, as such, constituted a core operation of the Company. A recent news report confirms the significance of China to the Company:

> By July 2006, Avon had hired more than 114,000 door-to-door salespeople in China. ***Jung said at the time the company viewed the country as a potential $1 billion market***.[183]

Analysts and commentators also noted the importance of China to Avon even before the start of the Class Period.[184]

369. Defendants' own statements also detailed the material significance of the Chinese market to Avon's future success. By way of example:

a. an Avon spokesperson called China the Company's "number one market opportunity," ¶ 29;

b. Jung states that "China continues to have the potential to become one of the largest markets in Avon," ¶¶ 198-99;

c. Jung states that "China remains a huge priority market for us going forward," ¶ 220;

d. Jung states that China is an "important market," and ¶ 253;

e. Jung states that "I think you can continue to look at China as a major growth driver for the corporation," ¶ 277.

370. The growth of Avon's "robust China Direct Selling platform" between June 2006 and January 2007 is graphically depicted in a 2007 Investor Update Meeting,[185] ***in which***

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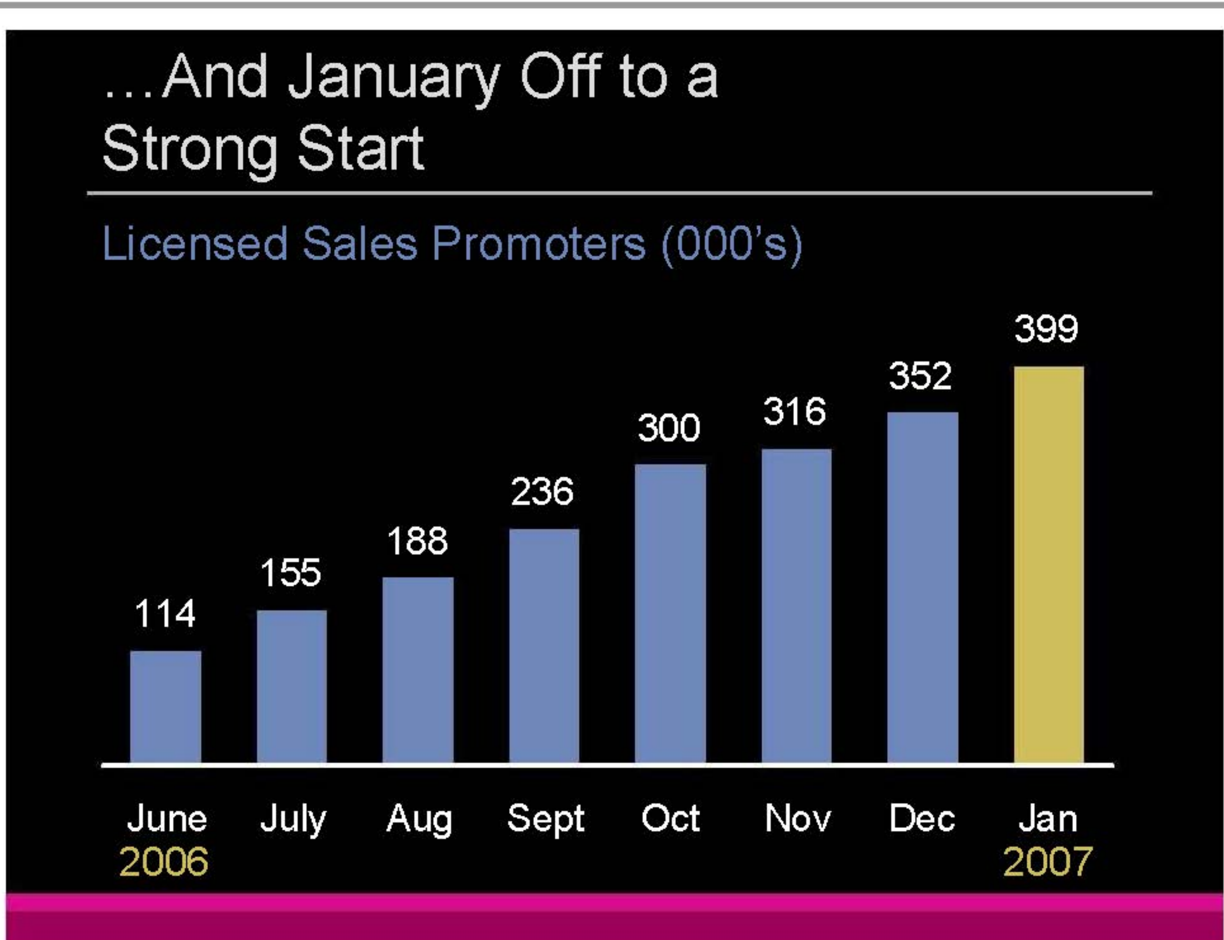
[183] Tom Schoenberg & David Voreacos, *supra* note 2 (emphasis added).

[184] *See, e.g.*, Jacqueline Doherty, *Avon Calling, Again*, Barron's (Mar. 13, 2006) (reporting that "China sales are expected to climb sharply in the future" and, quoting a Morgan Stanley analyst, "'China could be a $1 billion market for them . . . . If you take a five-year view of China, there's a pretty big opportunity for them'"), *available at* http://online.barrons.com/news/articles/SB114203955605695504; *see also* Simon Pitman, *Avon gets approval to resume China direct sales*, cosmeticsdesign.com (noting that "direct sales in China could be the company saving grace"), *available at* http://www.cosmeticsdesign.com/content/view/print/123294.

[185] *See* Avon Prods., Inc., Current Report (Form 8-K), Ex. 99.1, at 24-26 (Feb. 16, 2007).

Jung and Cramb personally participated. At that time, the Individual Defendants touted that Avon was "fueling the China Pipeline":



According to an Avon SEC filing, by September 2007, Avon's sales force in China reached 680,000 (an approximately 600% increase over the number of salespersons in place as of June 2006).[186] On Avon's February 3, 2009 earnings call, Jung stated that "[t]he number of certified sales promoters in China is now almost 1 million." ¶ 256. Thus, Avon's sales force in China increased by *more than 800%* between June 2006 and February 2009.

[186] *See* Avon Prods., Inc., Current Report (Form 8-K), Ex. 99.1, at 5 (Oct. 30, 2007) ("As of the end of September, Avon China had nearly 680,000 certified Sales Promoters.").

371. When, as here, a senior officer of a company makes false and misleading public statements regarding its core operations, *see, e.g.*, ¶¶ 210, 238, there is a strong inference that such officer knew the statement was materially false and misleading when made. Stated otherwise, knowledge of falsity can be imputed to key officers who should have known of facts relating to the core operations of their company. Moreover, as signatories to the Company's SEC filings, *see, e.g.*, ¶¶ 258, 282, each Individual Defendants had an affirmative obligation to familiarize himself or herself with the facts relevant to Avon's core operations. To the extent that the Individual Defendants failed to fulfill that obligation, their recklessness would satisfy the scienter element of a claim brought under Section 10(b) and Rule 10b-5. *See, e.g.*, *In re Pall Corp.*, No. 07-CV-3359 (JS)(ARL), 2009 WL 3111777, at *6 (E.D.N.Y. Sept. 21, 2009) ("[R]ecklessness can suffice to meet pleading requirements for scienter where the complaint sufficiently alleges that the 'defendants . . . failed to check information they had a duty to monitor.'").

IX. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-MARKET DOCTRINE

372. Plaintiffs are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants are predicated in part upon omissions of material fact of which there was a duty to disclose.

373. In the alternative, Plaintiffs are entitled to a presumption of reliance on Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market theory. At all relevant times the market for Avon common stock was an efficient market for the following reasons, among others:

a. Avon common stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market. Avon shares were highly liquid during the Class Period, with an average daily volume of 3.8 million shares traded;

b. Avon, as a regulated issuer, filed periodic public reports with the SEC and the NYSE;

c. Avon regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

d. Avon was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

374. Therefore, the market for Avon common stock promptly digested current information regarding the Company from all publicly available sources and reflected such information in Avon's share price. Under these circumstances, all purchasers of Avon common stock during the Class Period suffered similar injury through their purchase of Avon common stock at artificially inflated prices and a presumption of reliance applies.

X. INAPPLICABILITY OF SAFE HARBOR

375. As alleged herein, Defendants acted with scienter because at the time that they issued public documents and other statements in Avon's name they knew, or with extreme recklessness disregarded the fact, that such statements were materially false and misleading or omitted material facts. Moreover, Defendants knew such documents and statements would be issued or disseminated to the investing public, knew that persons were likely to rely upon those misrepresentations and omissions, and knowingly and recklessly participated in the issuance and dissemination of such statements and documents as primary violators of the federal securities laws.

376. As set forth in detail throughout this Complaint, Defendants, by virtue of their control over, and/or receipt, of Avon's materially misleading statements and their positions

with the Company that made them privy to confidential proprietary information, used such information to artificially inflate Avon's financial results. Defendants created, were informed of, participated in, and knew of the scheme alleged herein to distort and suppress material information pertaining to Avon's financial condition, profitability, and present and future prospects of the Company. With respect to non-forward looking statements and omissions, Defendants knew and recklessly disregarded the falsity and misleading nature of that information, which they caused to be disseminated to the investing public.

377. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false statements pleaded in this Complaint. None of the statements pleaded herein are "forward-looking" statements and no such statement was identified as a "forward-looking statement" when made. Rather, the statements alleged herein to be materially false and misleading by affirmative misstatement and/or omissions of material fact all relate to facts and conditions existing at the time the statements were made. Moreover, cautionary statements, if any, did not identify important factors that could cause actual results to differ materially from those in any putative forward-looking statements.

378. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because, at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false and/or the forward-looking statement was authorized and/or approved by an executive officer of Avon who knew that those statements were false when made. Moreover, to the extent that Defendants issued any disclosures designed to "warn" or "caution" investors of certain "risks," those disclosures were also false and misleading because they did not disclose that Defendants were actually engaging in the very

actions about which they purportedly warned and/or had actual knowledge of material adverse facts undermining such disclosures.

XI. LOSS CAUSATION / ECONOMIC LOSS

379. As detailed below, Plaintiffs and the other Class members were damaged as a result of Defendants' fraudulent conduct.

380. Shares of Avon common stock were inflated at all times during the Class Period as a result of Defendants' scheme to deceive investors and the market through the fraudulent course of conduct alleged herein. This inflation was the result of Defendants' materially false and misleading statements and omissions concerning, among other things: (a) Avon's FCPA compliance and its compliance with applicable laws and its own Ethics Code; (b) the magnitude and consequences of Avon's FCPA violations; (c) that the FCPA violations were ongoing and contributing to Avon's successful performance in China and other markets; (d) that curtailment of the conduct that violated the FCPA would lead to material decreases in Avon's revenue in China; (e) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (f) that the Company's internal compliance controls were woefully inadequate and, in many respects, virtually nonexistent; and (g) that violations of Avon's internal controls were ignored. This artificial inflation was dissipated, however, through a series of partial disclosures made either by Avon or reported in the news media, as some of the truth concerning Defendants' fraud was slowly revealed.

381. Defendants were successful in causing the price of Avon common stock to trade at artificially inflated prices during the Class Period. Like their fraud, however, this inflation was not sustainable, and when the true facts were revealed, the price of Avon common stock declined significantly. For example, Avon common stock trading on the NYSE closed as high as $45.25 per share during the Class Period (this occurred on August 5, 2008).

382. As a direct and proximate result of the disclosures set forth below, which, over time, revealed the truth about either Defendants' false and misleading statements, or material facts that they failed to disclose, on October 27, 2011 (the day after the close of the Class Period), Avon common stock fell to $18.81, a 58% decline from its Class Period high.

A. October 21, 2008 And October 22, 2008

383. On Monday, October 20, 2008, Avon common stock closed at $30.86 per share and had a trading volume of 4,277,525 shares.

384. At approximately 6:33 p.m. Eastern Time on Monday, October 20, 2008, after trading had closed on the NYSE for the day,[187] Avon issued a press release that disclosed to the public for the first time that in June 2008 Avon had commenced an internal investigation regarding possible FCPA violations in China. *See* ¶ 245.

385. This announcement caused the price of Avon common stock to decline materially on October 21, 2008, the first trading day after Avon's October 20, 2008 press release was issued. Avon common stock closed at $30.01 per share on October 21, 2008, a decline of $0.85, or 2.75 %, from its October 20, 2008 closing price of $30.86. A total of 5,520,440 shares of Avon common stock were traded on October 21, 2008, a 29.06% increase in volume from the 4,277,525 shares traded on the immediately preceding trading date (October 20, 2008). This was substantially greater than the 3.8 million share average daily trading volume of Avon shares during the Class Period.

[187] At all times relevant hereto, New York Stock Exchange trading opened at 9:30 a.m. Eastern Time and closed at 4:00 p.m. Eastern Time. *See* http://www.nyse.com/markets/hours-calendars.

386. This press release was the first disclosure of any internal FCPA investigation by Avon. The market was not able to fully absorb Avon's disclosure on Tuesday, October 21, 2008.

387. On October 21, 2008, at approximately 5:53 p.m. Eastern Time, after trading on the NYSE had closed, Avon filed a Form 8-K with the SEC announcing that the Company was conducting an internal investigation into potential FCPA violations in China and further that "[t]o lead the investigation, the Company has engaged the independent international law firm of Mayer Brown LLP." *See* ¶ 246.

388. Avon's October 20 and October 21, 2008 disclosures revealed to the public for the first time that potential violations of the FCPA may have occurred in China and that the Company lacked internal controls sufficient to prevent such malfeasance. These potential violations were so severe that Avon had decided to retain outside counsel, Mayer Brown LLP, to assist in its investigation. *Id.* Accordingly, the October 20 and October 21, 2008 disclosures caused Avon common stock to decline materially on October 22, 2008.

389. On October 22, 2008, Avon common stock closed at $27.22 per share, a decline of $2.79, or 9.30%, from its October 21, 2008 closing price of $30.01. A total of 6,008,975 shares of Avon common stock were traded on October 22, 2008, an 8.85% increase in volume from the 5,520,440 shares that traded on the immediately preceding trading date (October 21, 2008). This was substantially greater than the 3.8 million average daily trading volume of Avon shares during the Class Period.

390. Notwithstanding the disclosures described above, the price of Avon common stock continued to be inflated after October 22, 2008, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of

Avon's FCPA violations (including that FCPA violations had occurred in numerous countries other than China); (b) that the FCPA violations were ongoing and contributing to Avon's successful performance in China and other markets; (c) that curtailment of the conduct that violated the FCPA would lead to material decreases in Avon's revenue in China; (d) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (e) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (f) that violations of Avon's internal controls and corporate policies were ignored.

B. April 13, 2010

391. On Monday, April 12, 2010, Avon common stock closed at $34.76 per share and had a trading volume of 2,485,281 shares.

392. On Tuesday, April 13, 2010, at approximately 7:14 a.m. Eastern Time, before trading opened on the NYSE, the *Journal* published an article that disclosed to the public for the first time that, among other things, Avon had suspended four of its executives as a result of its FCPA investigation into bribery in China, and that the investigation had expanded to include a dozen or more countries, including nations in Latin America:

> Avon Products Inc. has suspended four executives amid an internal investigation into alleged bribery that began with the company's China operation and, according to a person familiar with the probe, now involves a dozen or more countries.
>
> The New York-based beauty-products company suspended the president, chief financial officer and top government affairs executive at its China unit, people familiar with the matter said. The fourth suspended employee was a senior executive in New York who was Avon's head of internal audit until the middle of last year, these people said.
>
> Avon spokeswoman Nancy Glaser confirmed that four employees had been asked to take administrative leaves of absence pending the

> outcome of the company's investigation, which she called a "customary action" in such circumstances.
>
> The employees in China who were suspended are S.K. Kao, president of the Chinese unit; Jimmy Beh, its chief financial officer; and C.Q. Sun, head of the corporate affairs and government relations group, people familiar with the matter said. They said the fourth employee was Ian Rossetter, Avon's former head of internal audit, who started a special assignment in mid-2009, reporting to Avon Chief Financial Officer Charles Cramb.
>
> The three suspensions in China took place last week, and Mr. Rossetter was suspended Monday, a person familiar with the matter said.
>
> Avon's China unit wouldn't make the executives available to comment or discuss their alleged activities. Mr. Rossetter couldn't be reached for comment.
>
> The possible wrongdoing under investigation includes the alleged purchase of trips to France, New York, Canada and Hawaii for Chinese government officials with ties to Avon's business, the person familiar with the matter said.
>
> Avon disclosed in October 2008 that it was looking into whether certain travel, entertainment and other expenses in China might have "been improperly incurred." But the scope of the investigation has since widened to regions including Latin America, where the company garners the bulk of its sales and profits, according to the person familiar with the matter. The scale of the alleged bribery, initially involving several million dollars, has grown as well, this person said.
>
> . . . .
>
> China and Latin America are critical sources of sales growth for Avon, which relies on overseas markets to offset weakness in its long-struggling U.S. business. Amid the global economic slump, it eked out a sales gain of less than 1% in China last year, with sales there totaling $353.4 million. Avon's world-wide sales, meanwhile, fell 3% to $10.4 billion.
>
> Latin America accounted for about 40% of Avon's sales in 2009 and more than half of its operating profits.[188]

[188] Byron, *Avon Suspends Executives*, *supra* note 49.

393. This information in the *Journal* revealed for the first time that adverse personnel actions had resulted from the Company's internal FCPA investigation, further indicating the severity of Avon's statutory violations. This also was the first information the market had received regarding Avon's FCPA violations outside of China. The revelation of this information caused Avon's common stock price to decline materially on April 13, 2010.

394. On April 13, 2010, Avon common stock closed at $31.99 per share, a decline of $2.77, or 7.97%, from the previous day's closing price of $34.76. A total of 21,265,616 shares of Avon common stock were traded on April 13, 2010, a 755.66% increase in trading volume over the immediately preceding trading date (April 12, 2010). This also was over five times the average daily trading volume of Avon shares during the Class Period.

395. Notwithstanding the disclosures described above, the price of Avon common stock continued to be inflated after April 13, 2010, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of Avon's FCPA violations (including that FCPA violations had occurred in numerous countries other than China); (b) that the FCPA violations were ongoing and contributing to Avon's successful performance in China and other markets; (c) that curtailment of the conduct that violated the FCPA would lead to material decreases in Avon's revenue in China; (d) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (e) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (f) that violations of Avon's internal controls and corporate policies were ignored.

C. October 28, 2010

396. On Wednesday, October 27, 2010, Avon common stock closed at $32.86 per share and had a trading volume of 9,981,816 shares.

397. On Thursday, October 28, 2010, at approximately 7:16 a.m. Eastern Time, before the NYSE opened for trading, Avon filed a Form 8-K with the SEC attaching a press release announcing its results of operations for the third quarter of 2010 (ending September 30, 2010). The Form 8-K disclosed to the public for the first time, among other things, a 30% year-over-year decrease in Avon's China-related revenue:

> Third-quarter revenue in China decreased 30% year over year, or down 31% in constant dollars. Units sold decreased 28% and Active Representatives were down 36%. The region's revenues continued to be impacted by the company's deliberate transition away from a hybrid model to one which focuses on direct selling. China had an operating loss of $3 million compared with $3 million in profit in last year's third quarter.

398. Avon's decreased revenue in China was a manifestation of the increased scrutiny by the DOJ and SEC regarding Avon's FCPA violations, as well as investigations and prosecutions within China (discussed above) that limited Avon's ongoing bribery of government officials. Therefore, the announcement of a steep decline in revenue from China reflected the substantial impact that Avon's curtailment of its bribery program was having on revenue from that country. This disclosure caused Avon's common stock price to decline materially on October 28, 2010.

399. On October 28, 2010, Avon common stock closed at $31.01 per share, a $1.85 decline, or 5.63%, from the previous day's closing price of $32.86. A total of 28,161,716 shares of Avon common stock were traded on October 28, 2010, a 182.13% increase in trading volume over the immediately preceding trading date (October 27, 2010) and over seven times the average daily trading volume of Avon shares during the Class Period.

400. Notwithstanding the disclosure described above, the price of Avon common stock continued to be inflated after October 28, 2010, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of

Avon's FCPA violations (including that FCPA violations had occurred in numerous countries other than China); (b) that the FCPA violations had contributed to Avon's successful performance in China and other markets; (c) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (d) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (e) that violations of Avon's internal controls and corporate policies were ignored.

D. February 8, 2011

401. On Monday, February 7, 2011, Avon common stock closed at $29.35 per share and had a trading volume of 5,884,946 shares.

402. On Tuesday, February 8, 2011, at approximately 7:15 a.m. Eastern Time, before the NYSE opened for trading, Avon filed a Form 8-K with the SEC, attaching a press release announcing its results of operations for the fourth quarter and full year 2010 (ending December 31, 2010). The press release disclosed to the public for the first time, among other things, a 45% year-over-year decrease in Avon's China revenue:

> Fourth-quarter revenue in China decreased 45% year over year, or down 47% in constant dollars. The region's revenues continued to be impacted by the company's planned transition away from a hybrid model to one which focuses on direct selling. Units sold decreased 44% and Active Representatives were down 68%. Despite the lower revenues, China reported operating profit of $4 million compared with a $3 million loss in last year's fourth quarter. The quarter benefited from lower incentives and suspended advertising during this transition phase. China's operating margin was 7.8% as compared to (3%) in the prior-year quarter. The region's adjusted operating margin was 9.3%, up approximately 10 percentage points from prior year.

403. The continued decline in the Company's revenue from China was a further manifestation of the increased scrutiny by the DOJ and SEC regarding Avon's FCPA violations, as well as investigations and prosecutions within China (discussed above) that limited Avon's

ongoing bribery of government officials. Therefore, the announcement of a steep decline in revenue from China reflected the substantial impact that Avon's curtailment of its bribery program was having on China-related revenue. This announcement caused Avon's common stock price to decline materially on February 8, 2011.

404. On February 8, 2011, Avon common stock closed at $28.47 per share, a decrease of $0.88, or 3%, from the previous day's closing price. A total of 18,714,460 shares of Avon common stock were traded on February 8, 2011, a 218.01% increase in trading volume over the immediately preceding trading date (February 7, 2010), and over four times greater than the 3.8 million average daily trading volume of Avon shares during the Class Period.

405. Notwithstanding the disclosure described above, the price of Avon common stock continued to be inflated after February 8, 2011, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of Avon's FCPA violations (including that FCPA violations had occurred in numerous countries other than China); (b) that the FCPA violations had contributed to Avon's successful performance in China and other markets; (c) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (d) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (e) that violations of Avon's internal controls and corporate policies were ignored.

E. May 4, 2011 And May 5, 2011

406. On Tuesday, May 3, 2011, Avon common stock closed at $30.91 per share. A total of 9,579,855 shares of Avon common stock were traded on May 3, 2011.

407. On Wednesday, May 4, 2011, Avon common stock reached an intra-day high of $31.27 per share. At approximately 3:47 p.m. Eastern Time on May 4, 2011, thirteen minutes before NYSE trading closed for the day, the *Journal* published an article on its website

that disclosed to the public for the first time that, among other things, Avon's internal FCPA investigation had uncovered millions of dollars of bribes to government officials in Brazil, Mexico, Argentina, India, and Japan:

> Avon Products Inc.'s (AVP) internal investigation into possible bribery of foreign officials has uncovered more potential wrongdoing, with evidence of improper payments to government officials found in several countries beyond the probe's original focus of China, according to a person familiar with the matter.
>
> ***Internal investigators at the door-to-door beauty seller have turned up millions of dollars of questionable payments to officials in Brazil, Mexico, Argentina, India and Japan in amounts that are "not insignificant," this person said. The possible wrongdoing happened as recently as last year and as far back as 2004.***
>
> One employee in these markets has been suspended, and more suspensions are pending, this person said.[189]

408. At approximately 7:17 p.m. Eastern Time on Wednesday, May 4, 2011, the *Journal* posted to its website an updated version of the aforementioned article. This updated version included, among other things, the following additional information:

> The expanding investigation is a black eye for the 52-year-old Ms. Jung, an executive known as a savvy navigator of emerging markets. Fluent in Chinese, Ms. Jung is widely credited with helping Avon become the first company to obtain a direct-selling license in China in 2006. Ms. Jung is a corporate celebrity in China, where she has been dubbed "glamour queen" by some local media.
>
> . . . .
>
> Ms. Jung is trying to shake up her management structure, too, most noticeably with the announcement in February that Chief Financial Officer Charles Cramb will take over the developed-market group. The company is looking for a new CFO.[190]

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[189] Byron, *Probe Uncovers Questionable Payments*, *supra* note 47 (emphasis added).

[190] Ellen Byron, *Avon Bribe Investigation Widens*, wsj.com (May 4, 2011, 23:17:34.696 GMT) (on file with author).

409. On Thursday, May 5, 2011, the *Journal* published the final version of this article. This further updated article contained the following new information:

> On Wednesday Avon said, "The allegation that triggered our investigation was in China. Conducting compliance reviews in additional markets is the appropriate thing to do in investigations of this type." The company also said it "has made regular, timely and material disclosures since the internal investigation began in 2008, including our most recent Form 10-Q filing on May 3."[191]

Avon's May 3, 2011 Form 10-Q filing made no reference to the millions of dollars in bribes paid to government officials in Brazil, Mexico, Argentina, India, and Japan that Avon's internal investigation had identified.

410. The information disclosed in the *Journal* articles, *see* ¶¶ 407-09, further evidenced the pervasiveness of Avon's FCPA violations, while specifically revealing for the first time the magnitude of the malfeasance outside of China, the suspension of at least one additional employee, and the fact that previously undisclosed statutory violations dated as far back as 2004. The information in these articles caused Avon's common stock price to decline materially starting at the end of trading on May 4, 2011, and continuing through trading on May 5, 2011.

411. Avon common shares closed at $30.32 per share on May 4, 2011, $0.59, or 1.91%, less than the closing price of $30.91 per share on May 3, 2011, and $0.95, or 3.04%, less than the May 4, 2011 intra-day high. A total of 9,356,071 shares of Avon common stock traded on May 4, 2011. This was more than double the average daily trading volume of Avon shares during the Class Period.

412. On May 5, 2011, the first full trading day after the May 4, 2011 *Journal* articles, Avon common stock closed at $28.71 per share, a decline of $1.61, or 5.31%, from its

[191] Byron, *Bribe Investigation Widens (May 5th)*, *supra* note 41.

May 4, 2011 closing price of $30.32 per share. A total of 10,665,935 shares of Avon common stock were traded on May 5, 2011. This represented an increase of 14% over the immediately preceding trading date (May 4, 2011), and was more than double the average daily trading volume of Avon shares during the Class Period.

413. The decline of Avon shares on May 4 and May 5, 2011, totaled $2.20 per share, or 7.1%, from the May 3, 2011 closing price.

414. Notwithstanding the disclosures described above, the price of Avon common stock continued to be inflated after May 5, 2011, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of Avon's FCPA violations; (b) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (c) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (d) that violations of Avon's internal controls and corporate policies were ignored.

F. May 25, 2011

415. On Tuesday, May 24, 2011, Avon common stock closed at $29.98. A total of 3,444,679 shares of Avon common stock were traded on May 24, 2011.

416. On that day, at approximately 7:54 p.m. Eastern Time, after trading on the NYSE had closed, the *Journal* published an article on its web site disclosing to the public for the first time that, among other things, Avon and its employees were the subject of a federal criminal investigation being led by the U.S. Attorney's Office for the Southern District of New York and the Department of Justice, Fraud Section, and that the investigation had been ongoing and known to Avon since at least February 2011:

> Federal prosecutors are investigating several former Avon Products Inc. (AVP) employees, raising the prospect of criminal charges in

> an ongoing probe into allegations the company bribed foreign officials, people familiar with the matter said.
>
> Since February, prosecutors in the Southern District of New York's Complex Frauds Unit in Manhattan have interviewed or requested interviews with a handful of former employees, people familiar with the matter said. The Justice Department's Fraud Section in Washington, which oversees foreign bribery cases, has been involved since last year, one person said.
>
> The inquiries raise the stakes in the door-to-door beauty company's three-year internal probe into bribery allegations that began in China and then spread, including to Avon's core markets in Latin America.
>
> . . . .
>
> Prosecutors are seeking more information about the role employees at the company's New York headquarters, including some former senior officials, may have played in possible violations of the Foreign Corrupt Practices Act, the people familiar with the matter said. Currently, the questioning focuses on possible wrongdoing in China, one person familiar with the situation said.[192]

417. The information disclosed in this *Journal* article informed the market for the first time that the severity of the Company's FCPA violations had resulted in a federal criminal investigation implicating employees "at the company's New York headquarters." This information caused the price of Avon common stock to decline materially on Wednesday May 25, 2011, the first trading day after the article was published.

418. On May 25, 2011, Avon common stock closed at $29.15 per share, a decline of $0.83, or 2.77%, from the previous day's closing price. A total of 3,985,849 shares of Avon common stock were traded on May 25, 2011. This was an increase of 15.71% over the immediately preceding trading date (May 24, 2011), and was greater than the average daily trading volume of Avon shares during the Class Period.

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[192] Byron & Rothfeld, *supra* note 52.

419. Notwithstanding the disclosures described above, the price of Avon common stock continued to be inflated after May 25, 2011, because Defendants continued to misrepresent and/or failed to disclose, *inter alia*: (a) the full magnitude and consequences of Avon's FCPA violations; (b) the Individual Defendants' awareness of, and/or involvement or acquiescence in, Avon's FCPA violations; (c) that the Company's internal controls and compliance function were woefully inadequate and, in many respects, virtually nonexistent; and (d) that violations of Avon's internal controls and corporate policies were ignored.

G. October 27, 2011

420. On Wednesday, October 26, 2011, Avon common stock closed at $23.01 per share. A total of 6,523,905 shares of Avon common stock were traded on October 26, 2011.

421. On Thursday, October 27, 2011, at 7:11 a.m. Eastern Time, before the NYSE opened for trading, Avon filed its Form 10-Q for the third quarter of 2011. This Form 10-Q informed the market for the first time that the SEC had commenced a "formal" investigation concerning the Company's FCPA violations. This Form 10-Q also disclosed to the public for the first time that the SEC was investigating the Company for Regulation FD violations related to communications with analysts regarding Avon's internal investigation:

> On October 26, 2011, the Company received a subpoena from the United States Securities and Exchange Commission ("SEC") requesting documents and information in connection with a Regulation FD investigation of the Company's contacts and communications with certain financial analysts and other representatives of the financial community during 2010 and 2011. The Company was also advised that a formal order of investigation was issued by the SEC relating to the FCPA matters described above and the Regulation FD matters that are referenced in the subpoena. The Company intends to cooperate fully with the SEC's investigation.

422. The Company's disclosure of the SEC investigations caused Avon's common stock price to decline materially on October 27, 2011.

423. On October 27, 2011, Avon common stock closed at $18.81 per share, a decline of $4.20 per share, or 18.25%, from the prior day's closing price. A total of 31,534,887 shares of Avon common stock were traded on October 27, 2011, a 383.37% increase in trading volume over the immediately preceding trading date (October 26, 2010). This was more than eight times the average daily trading volume of Avon shares during the Class Period.

XII. CONTROL PERSON ALLEGATIONS / GROUP PLEADING

424. By virtue of the Individual Defendants' positions within the Company, they had access to undisclosed adverse information about Avon, its business, operations, operational trends, finances, and present and future business prospects. The Individual Defendants would ascertain such information through Avon's internal corporate documents, conversations, and connections with other corporate officers, bankers, traders, risk officers, marketing experts, and employees, attendance at management and Board of Directors' meetings, including committees thereof, and through reports and other information provided to them in connection with their roles and duties as Avon officers and/or directors.

425. It is appropriate to treat the Individual Defendants collectively as a group for pleading purposes and to presume that the materially false, misleading, and incomplete information conveyed in the Company's public filings, press releases, and public statements, as alleged herein, was the result of the collective actions of the Individual Defendants identified above. The Individual Defendants, by virtue of their high-level positions within the Company, directly participated in the management of the Company, were directly involved in the day-to-day operations of the Company at the highest levels, and were privy to confidential proprietary information concerning the Company, its business, operations, prospects, growth, finances, and financial condition, as alleged herein.

426. The Individual Defendants were involved in drafting, producing, reviewing, approving, and/or disseminating the materially false and misleading statements and information alleged herein, were aware of or recklessly disregarded the fact that materially false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

427. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the NYSE, and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, risk, earnings, and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' material misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

428. The Individual Defendants, by virtue of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases, and other public statements pertaining to the Company during the Class Period. The Individual Defendants were provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, they are responsible for the accuracy of the public reports and releases detailed herein.

429. Each of the Defendants is liable as a participant in a scheme, plan, and course of conduct that operated as a fraud and deceit on Class Period purchasers of the Company's securities.

XIII. CLASS ACTION ALLEGATIONS

430. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who acquired Avon common stock from July 31, 2006, through and including October 26, 2011, and who were damaged thereby. Excluded from the Class are Defendants; members of the immediate families of the Individual Defendants; Avon's subsidiaries and affiliates; any person who is or was an officer or director of Avon or any of Avon's subsidiaries or affiliates during the Class Period; any entity in which any Defendant has a controlling interest; and the legal representatives, heirs, successors and assigns of any such excluded person or entity.

431. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impracticable. As of September 30, 2011, the Company had approximately 431 million shares of its common stock outstanding, which were actively traded on the NYSE. Although the exact number of Class members is unknown at this time and can only be ascertained through appropriate discovery, Plaintiffs believe there are hundreds, if not thousands, of members of the Class who traded Company common stock during the Class Period.

432. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants violated federal securities laws based upon the facts alleged herein;

b. With regard to the § 10(b) claim, whether Defendants acted knowingly or with deliberate recklessness in making materially misleading statements and/or omissions during the Class Period;

c. Whether the market prices of the Company's securities during the Class Period were artificially inflated because of Defendants' conduct complained of herein; and

d. Whether the members of the Class have sustained damages and, if so, the proper measure of damages.

433. Plaintiffs' claims are typical of the claims of the members of the Class as Plaintiffs and members of the Class sustained damages arising out of Defendants' wrongful conduct in violation of federal laws as complained of herein.

434. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiffs have no interests antagonistic to, or in conflict with, those of the Class.

435. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members of this Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

CLAIMS FOR RELIEF

COUNT I

(Against Avon and the Individual Defendants)
Violations of § 10(b) of the Exchange Act and SEC Rule 10b-5

436. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

437. This Count is asserted against Defendants and is based upon § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 promulgated thereunder.

438. During the Class Period, Defendants, singly and in concert, directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or with deliberate recklessness engaged in acts, transactions, practices, and course of business that operated as fraud and deceit upon Plaintiffs and the other members of the Class, made untrue statements of material facts, and failed to disclose material information in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiffs and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiffs and the other members of the Class to purchase Avon's common stock during the Class Period at artificially inflated prices.

439. Throughout the Class Period, Avon acted through the Individual Defendants, whom it portrayed and represented to the financial press and public as its valid representatives. The willfulness, motive, knowledge, and recklessness of the Individual Defendants are therefore imputed to Avon, which is primarily liable for the securities law violations of the Individual Defendants.

440. As a result of the untrue statements of material facts and/or the failure to disclose material facts, the information Avon and the Individual Defendants disseminated to the investing public was materially false and misleading as set forth above, and the market price of Avon's common stock was artificially inflated during the Class Period. In ignorance of the false and misleading nature of Defendants' statements and omissions, and relying directly or indirectly on those statements or upon the integrity of the market price for Avon common stock, Plaintiffs

and other members of the Class purchased Avon common stock at artificially inflated prices during the Class Period. But for the fraud, Plaintiffs and members of the Class would not have purchased Avon common stock at such artificially inflated prices. As set forth herein, when the true facts were subsequently disclosed, the price of Avon common stock declined precipitously. Plaintiffs and members of the Class were harmed and damaged as a direct and proximate result of their purchases of Avon common stock at artificially inflated prices and the subsequent decline in the price of that stock when the truth began to be disclosed.

441. Plaintiffs and other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

442. By reason of the foregoing, Defendants directly violated § 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and/or failed to disclose material information; or (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiffs and the other members of the Class in connection with their purchases of Avon's common stock during the Class Period.

COUNT II

(Against the Individual Defendants)
Violations of § 20(a) of the Exchange Act

443. Plaintiffs repeat and re-allege each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

444. This count is asserted against the Individual Defendants by Plaintiffs on behalf of itself and themselves and all members of the Class for violations of § 20(a) of the Exchange Act.

445. As alleged above, Avon violated § 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder by, *inter alia*, making false and misleading statements in connection with the purchase and sale of securities and by participating in a fraudulent scheme and course of business or conduct throughout the Class Period. This fraudulent conduct was undertaken with scienter and the Company is charged with the knowledge and scienter of each of the Individual Defendants who knew of, or deliberately and recklessly disregarded, the falsity of the Company's statements and the fraudulent nature of its scheme during the Class Period.

446. The Individual Defendants were directly involved in the actions of Avon as described herein, and were thus culpable participants in the actions perpetrated by the Company.

447. Moreover, the Individual Defendants acted as controlling persons of Avon within the meaning of § 20(a) of the Exchange Act. By virtue of their high-level positions, and their participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements made by the Company and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Avon, including the content and dissemination of the various statements that Plaintiffs and the Class contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs and the Class to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

448. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have

had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

449. As set forth above, the Company violated § 10(b) of the Exchange Act and SEC Rule 10b-5 by its acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to § 20(a) of the Exchange Act. As a direct and proximate result of the Individual Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

XIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for judgment as follows:

A. Determining this action to be a proper class action and certifying Lead Plaintiffs and Named Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Declaring and determining that Defendants violated the Exchange Act by reason of the acts and omissions alleged herein;

C. Awarding compensatory damages in favor of Plaintiffs and the other members of the Class against all Defendants, jointly and severally, for the damages sustained as a result of the wrongdoings of Defendants, together with interest thereon;

D. Awarding Plaintiffs and the Class the fees and expenses incurred in this action including reasonable allowance of fees for Plaintiffs' attorneys and experts;

E. Granting equitable and/or injunctive relief as permitted by law, equity, and federal statutory provisions sued on hereunder; and

F. Granting such other and further relief as the Court may deem just and proper.

XV. JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues that may be so tried.

Dated: October 24, 2014

Respectfully submitted,

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