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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TESCO PLC SECURITIES LITIGATION	Case: 14 Civ. 8495-RMB HON. JUDGE RICHARD M. BERMAN <u>Class Action</u> **CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

INTRODUCTION

1. This is a federal securities class action brought by Lead Plaintiff Stephen Klug ("Plaintiff") on behalf of all persons or entities who purchased or otherwise acquired American Depository Shares ("ADRs") of Tesco PLC ("Tesco" or the "Company") between April 18, 2012 and September 22, 2014, inclusive (the "Class Period") seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5. Defendants are the Company and three former top officers and/or directors: Philip Clarke ("Clarke"), Tesco's former Chief Executive Officer; Laurie McIlwee ("McIlwee"), Tesco's former Chief Financial Officer; and Sir Richard Broadbent ("Broadbent"), Tesco's former Chairman of the Board (collectively, "Defendants").

2. This case arises from the concealment of a massive accounting scandal at Tesco, one of the world's three largest grocery and general merchandise retailers based in the United Kingdom ("UK"). The scandal has garnered international attention. In a series of stunning admissions beginning on September 22, 2014, Tesco revealed that the Company had "accelerated recognition of commercial income and delayed accrual of costs" resulting in an overstatement of £250 million, a number that has continued to grow as further details of the fraud are revealed.

3. The revelation of the truth underlying Defendants' accounting scheme surprised investors and analysts, sending the market for Tesco ADRs in the United States in a tailspin. The value of Tesco ADRs plummeted 15% in a single trading day, from $11.29 per share at close on September 19, 2014 to $9.61 per share on September 22, 2014, on unprecedented trading volume.

4. Defendants McIlwee and Clarke, in addition to eight other senior executives who were leaders of various segments within Tesco's UK food business, were asked to resign. One

of them, however, according to a December 1, 2014 article in *The Telegraph*, was asked to return to the Company after an internal investigation revealed that he had "worked tirelessly to resolve the issues we faced." Defendant Broadbent, Tesco's Chairman, also resigned in the wake of the scandal. These resignations demonstrate that material accounting errors pervaded numerous major departments of the Company. The heads of those departments were held accountable and removed from their positions, all the way up the chain to the CEO, CFO, and Chairman of the Company.

5. The high-profile accounting scandal sparked an immediate investigation of Tesco and PricewaterhouseCoopers ("PwC"), the Company's outside auditor, by the Financial Conduct Authority ("FCA") in the UK. Shortly thereafter, on October 29, 2014, the UK's Serious Fraud Office ("SFO") notified Tesco that it would launch a formal criminal investigation into the accounting practices of the Company. Additionally, the Financial Reporting Council ("FRC") launched an inquiry into the preparation, approval and audit of Tesco's accounts from early 2012 through August 2014, and on February 5, 2015, the Groceries Code Adjudicator announced that it too began an official investigation into whether Tesco broke industry rules by, among other things, delaying payments to suppliers. The SFO, FRC and the Groceries Code Adjudicator have not yet announced the results of their ongoing investigations.

6. Based on the investigation of Lead Plaintiff's counsel—which included a review of Tesco's corporate reports, regulatory filings and reports, securities analysts' reports concerning the Company, press releases and other public statements issued by the Company, media reports about the Company, assistance of a forensic accounting consultant who reviewed and analyzed publicly available financial data concerning Tesco during the relevant time period, and interviews with witnesses with knowledge of the allegations herein—Defendants engaged in

a complex accounting scheme whereby Tesco masked its floundering profit margins through the use of dishonest and illegal accounting practices, in violation of International Financial Accounting Standards ("IFRS") reporting requirements:

- recognizing premature and fictitious commercial income;
- delaying accrual of costs;
- overstating inventory; and
- misrepresenting "trading profit" and "underlying profit."

Absent its wrongful accounting practices, Tesco would have reported materially lower profits and even losses during the Class Period.

7. With regard to Tesco's use of commercial income to artificially boost profit margins, Defendants pressured the Company's suppliers to, *inter alia*, pay for premium shelf positioning and offer rebates that Tesco could log as commercial income. Among other things, Tesco entered into agreements with its suppliers that in exchange for purchasing and selling large volumes of products, Tesco would receive discounts and rebates, which it would immediately count towards commercial income. But Tesco did not have the ability to purchase and turn around and sell in sufficient quantity to obtain the discounts, and yet, Tesco had already booked the income. These practices not only violated IFRS, but also the Groceries Supply Code of Practice, which Tesco has admitted in its 2015 annual report: "***Regrettably, we have concluded that there have been a number of instances of probable breaches of the Code which fall short of the high standards we expect to uphold with our suppliers.***" (Emphasis added). A Tesco spokesman confirmed that the Company's accelerated recognition of commercial income was linked to its improper treatment of suppliers and breaches of the Groceries Supply Code of Practice: "***Following our announcement last September regarding commercial income, we***

have worked with [the Groceries Code Adjudicator] to identify any relevant GSCOP issues. An internal review we carried out and shared with the GCA identified some areas of concern. (Emphasis added).

8. In both IFRS and Generally Accepted Accounting Principles ("GAAP"), it is axiomatic that revenues and related expenses must be "matched," *i.e.*, recorded in the same reporting period.[1] If one is not known, or not fixed in amount, the other should be deferred until the former is known and fixed. If revenue or costs are recorded, the other must be recorded concurrently. During the Class Period, Defendants often (i) recorded revenues but deferred or did not even record the associated costs; and (ii) if commercial income resulted in a reduction in both costs and revenue (*e.g.*, a cost discount intended to be passed on to consumers to increase sales), Tesco would sometimes reduce costs in the current period, but improperly defer the associated reduction of revenue (for example, by not lowering their prices when agreed to, Tesco was not contractually entitled to discounts they had already recorded).

9. By delaying accrual of costs, however, Defendants went well beyond violating matching principle, they committed fraud. Costs are always accrued, regardless of when they are recognized. To delay accrual of costs, paper invoices would need to be physically diverted from processes in which they are routinely recorded - override of internal controls is necessary. As noted in the September 22, 2014 *Forbes* article entitled "Tesco's Accounting Irregularities Are Mind Blowing," the author explained that "the only way Tesco could have 'delayed booking of costs' is by not entering invoices into its accounting systems. In today's world of electronic

[1] IFRS Conceptual Framework for Financial Reporting, ¶4.50 ("Expenses are recognised in the income statement on the basis of a direct association between the costs incurred and the earning of specific items of income. This process, commonly referred to as the matching of costs with revenues, involves the simultaneous or combined recognition of revenues and expenses that result directly and jointly from the same transactions or other events").

invoicing, that's not easy to do, and ***had to be consciously managed***." [Emphasis added].

10. Thus, Tesco's improper accounting practices were known to, or at the very least, recklessly disregarded by Defendants. According to a news article reported by the BBC entitled "What Went Wrong," Defendant McIlwee sent an email to Tesco's senior finance team in April 2012, warning them that the Company discovered a problem with the recognition of commercial income in Tesco's Polish business. The email specifically stated that Tesco was recognizing future income and profits in the wrong accounting period —the very same type of misconduct for which the SFO is currently investigating Tesco's U.K. business. According to CW1—a Communications and Operations Assistant at Tesco during the Class Period from April 2014 through September 2014 working mostly with Tesco's Central European team consisting of Poland, Hungary, and the Czech Republic—Tesco's treatment of promotional pricing did not often comply with the legal team's guidance. CW1 stated that management endorsed this noncompliance.

11. Moreover, the whistleblower who alerted new CEO David Lewis to the Company's wrongful accounting practices and caused Tesco to issue the September 22, 2014 announcement of the profit overstatement had, according to an article in *The Sunday Times*, raised the accounting red flags while Defendant Clarke was still CEO. The whistleblower, who CEO Lewis has described as a "reasonably senior person," was ignored. According to the *International Business Times* (September 29, 2014), the whistleblower had "been ignored for months." The accounting errors were brought to the attention of Tesco's general counsel on Friday, September 19, 2014, and promptly delivered to Lewis, who, by the following Monday, was able to confirm that substantial problems existed and that a number of senior executives

should be immediately suspended.[2] Lewis' ability to confirm such pervasive accounting issues over the course of a single weekend underscores that Defendant Clarke was, at the very least, severely reckless in ignoring the whistleblower's caution, and more likely, intentionally dismissed the warnings.

12. Tesco's financial reports indicate that the Company's outside auditor, PricewaterhouseCoopers ("PwC") also identified some of the accounting issues and brought them to the Company's attention. With regard to the Company's "[r]ecognition of commercial income," PwC took the unusual step in Tesco's 2014 Annual Report of noting that Tesco's practices give rise to a "risk of manipulation[.]" No such language regarding commercial income appears anywhere in PwC's independent auditors' report in Tesco's 2013 Annual Report, which suggests that PwC urged Tesco to make commercial income adjustments in 2013/14, and when the Company declined, PwC was forced to include a note indicating that it focused on this area because of the risk of manipulation.

13. Despite knowing the truth about Tesco's improper business and accounting practices, Defendants continued to flood the market with false financial reports and misleading statements regarding the successful transition of the Company, causing Tesco ADRs to trade at artificially inflated prices during the Class Period, as high as $18.51 per share. Specifically, the Company made numerous statements regarding Tesco's improving performance including:

- ***underlying performance significantly improved throughout the year, led by a much stronger performance in food***...;

- ***We have continued to make good progress on our six-part plan to Build a Better Tesco in the UK. As a result, like-for-like sales growth in our food business - the main focus of the plan to date - has improved***; and

[2] *See* September 25, 2014 *Daily Mail* article at http://www.dailymail.co.uk/news/article-2769254/Tesco-crisis-deepens-supermarket-admits-no-finance-chief-five-months-profits-blunder-leading-US-investor-starts-dumping-shares.html.

- ***UK Performance in line with expectations***, ***and an improvement relative to market***.

[Emphasis added]. Tesco also made material misstatements and omissions throughout the Class Period regarding the sufficiency of its accounting compliance and fraud monitoring controls:

- ***the Group financial statements, which have been prepared in accordance with IFRS, as endorsed by the EU, give a true and fair view of the assets, liabilities, financial position and profit of the Group***;

- ***Appropriate procedures and controls including Group Accounting Policy, key financial controls, IT access controls and segregation of duties are set out across the business to reduce fraud risks***;

- ***Compliance Committee monitors implementation of, and compliance with, relevant policies and procedures***;

- ***Group Loss Prevention & Security monitors fraud, bribery and business continuity across the Group and reports its findings to the Audit Committee***; and

- ***Store and distribution compliance and technical law and trading reviews conducted regularly to reinforce compliance across the estate.***

[Emphasis added]. These false and misleading statements issued during the Class Period are in addition to the Company's misrepresentations of profits that began no later than its 2011/12 fiscal year, which Tesco now admits were neither a "true" nor "fair" view of its financial performance.

14. The reactions of analysts who covered Tesco and were in the best position among Company outsiders to understand the true financial and operational state of the Company, provide a resounding confirmation of Plaintiff's allegations of Defendants' accounting fraud.

15. On September 22, 2014, HSBC analyst David McCarthy, whom the BBC notes "is so highly rated that even Tesco's management speak of him in glowing terms," stated that "it is unclear whether the real underlying level of profits has yet been found" and that "investing in Tesco is investing in the unknown and is high risk."

16. An article in Reuters on September 23, 2014, noted: "Tesco Plc's disclosure of huge accounting mistakes over contracts with its suppliers shocked industry analysts and executives" and the "revelation on Monday that it had overstated its profit forecast for the first half of the year by 250 million pounds came as a nasty surprise and wiped 2 billion pounds off its stock market value."

17. Analysts at Macquarie Research likewise noted on September 23, 2014 that the "overstatement creates massive uncertainty in the business" and "lack of clarity regarding the real underlying profitability."

JURISDICTION AND VENUE

18. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the United States Securities and Exchange Commission ("SEC") [17 C.F.R. § 240.10b-5].

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

20. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). The designated depository bank that issues Tesco ADRs and acts as Tesco's transfer agent is Deutsche Bank Trust Company Americas ("Deutsche Bank"), which is located at 60 Wall Street, New York, New York 10005. Tesco has a formal agreement with Deutsche Bank to issue the ADRs, making the securities sponsored ADRs. On April 22, 2004, Tesco filed a Form F-6 Registration Statement with the United States Securities and Exchange Commission ("SEC") for 250,000,000 Tesco ADRs naming Deutsche Bank as its depositary. The Registration Statement was signed by, among others, Defendant Clarke.

21. Plaintiff, a resident of Sanibel, Florida, purchased his ADRs during the Class

Period while in Florida through his online account with TD Ameritrade, an American company incorporated in Omaha, Nebraska. Deutsche Bank issues all Tesco ADRs in the United States, including those purchased by Plaintiff. Plaintiff and TD Ameritrade became irrevocably liable to one another for the Class Period purchase and sale of Tesco ADRs within the United States when Plaintiff agreed to take and pay for the Tesco ADRs and TD Ameritrade agreed to deliver said Tesco ADRs. Moreover, title to Plaintiff's Tesco ADRs purchased during the Class Period transferred from Deutsche Bank in New York to Plaintiff in Florida through TD Ameritrade.

22. By issuing ADRs to Plaintiff and other members of the Class, Tesco reached out to American investors using a security that enables Americans to realize dividends and capital gains in U.S. dollars. Moreover, by sponsoring an ADR facility, Tesco purposely availed itself of the privilege of conducting activities in the American securities market, and thereby established the requisite minimum contacts with the United States such that Tesco had adequate notice that it may be haled into a court of the United States for fraudulently manipulating the market for its securities. Tesco's corporate website provides information regarding its ADRs, and directs shareholder inquiries to the following address:

> Tesco PLC
> C/o American Stock Transfer & Trust Company
> Peck Slip Station
> P.O. Box 2050
> New York , NY 10272-2050

23. The United States has an interest in preventing fraud in the United States, protecting the integrity of investments offered in the United States, protecting investor confidence in the United States, and providing relief under applicable federal statutes to those harmed by securities fraud.

24. 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 mails, interstate telephone communications and the facilities of United States banks. Moreover, at times during the Class Period, Tesco owned well over 100 Fresh & Easy subsidiary grocery stores operating in the United States.

PARTIES

Lead Plaintiff

25. Lead Plaintiff **STEPHEN KLUG**, as set forth in his previously-filed certification [Dkt. # 29-1], incorporated by reference herein, purchased the ADR shares of Tesco at artificially inflated prices during the Class Period, and was harmed when the price of Tesco ADRs dropped as a result of the revelations of the truth about Tesco's true financial condition, improper revenue recognition, and failure to comply with IFRS.

Company Defendant

26. Defendant **TESCO PLC** is a multinational supermarket and general merchandise retailer formed under the laws of the UK, and maintains its headquarters at Cheshunt, Waltham Cross, Hertfordshire EN8 9SL, UK. Tesco ADRs are traded on the over-the-counter ("OTC") market under the symbol "TSCDY." The designated depository bank that issues Tesco ADRs and acts as Tesco's transfer agent is Deutsche Bank, which is located at 60 Wall Street, New York, New York 10005. Tesco has a formal agreement with Deutsche Bank to issue the ADRs, making the securities sponsored ADRs. On April 22, 2004, Tesco filed a Form F-6 Registration Statement with the SEC for 250,000,000 Tesco ADRs naming Deutsche Bank as its depositary, and Depositary Management Corporation, located at 570 Lexington Avenue, 44th Floor, New York, NY 10022, as its duly authorized representative for service in the United States. At times during the Class Period, Tesco owned and operated over 100 Fresh & Easy subsidiary grocery

stores in the United States.

Individual Defendants

27. Defendant **PHILIP CLARKE** was Tesco's Chief Executive Officer ("CEO") and a member of the Company's Board of Directors ("Board"). Clarke began working with the Company in 1974 and became CEO in 2011. Clarke was replaced as CEO and Board member in September 2014. Clarke received a £1,217,000 payout from Tesco after his departure from the Company. Defendant Clarke made false and misleading public statements during the Class Period. As a Board member, Defendant Clarke confirmed that the Company's financial statements were prepared in accordance with IFRS. Defendant Clarke signed Tesco's April 22, 2004 Form F-6 Registration Statement for 250,000,000 Tesco ADRs that was filed with the SEC.

28. During the Class Period, Defendant Clarke also sat on the board of directors of the Consumer Goods Forum ("CGF"), a global organization that provides a knowledge exchange for the development of the consumer goods industry. The CGF has a regional office in Washington, D.C.

29. Defendant **LAURIE MCILWEE** was Tesco's Chief Financial Officer and a Board member from January 2009 until his resignation in April 2014. McIlwee received a £970,880 payout from Tesco after his departure from the Company. Defendant McIlwee made false and misleading public statements and omissions during the Class Period. As a Board member, Defendant McIlwee confirmed that the Company's financial statements were prepared in accordance with IFRS. During the Class Period, Defendant McIlwee made numerous statements on behalf of Tesco regarding the Company's expansion in the U.S. grocery market and its withdrawal from the U.S. Market. For example, in April 2013, McIlwee spoke with analysts during a conference call and explained that Tesco is "pursuing with earnest" several

organizations interested in buying Tesco's Fresh & Easy U.S. business "in its entirety or virtually in its entirety." The Fresh & Easy business was later sold to The Yucaipa Companies, LLC, a Los Angeles-based holding company.

30. Defendant **SIR RICHARD BROADBENT** was Chairman of Tesco during the Class Period. As a Board member, Defendant Broadbent confirmed that the Company's financial statements were prepared in accordance with IFRS.

31. Defendants Clarke, McIlwee, and Broadbent are referred to herein as the "Individual Defendants." Collectively, Defendants Tesco, Clarke, McIlwee, and Broadbent are referred to herein as "Defendants."

BACKGROUND TO TESCO'S FRAUD

The UK Retail Darling Struggles

32. Between the late 1990s and 2007, when shares hit a record high under then CEO Sir Terry Leahy, Tesco experienced unprecedented growth and was considered the picture of British corporate success. Thereafter, Tesco's market share peaked and in the midst of the recession sparked by the Lehman Brothers Holdings Inc. collapse of 2008, Tesco increased its prices to maintain its double-digit growth. Tesco then took heavy losses on its newly introduced Fresh & Easy stores in the United States, and in 2010 Sir Leahy retired from the Company after 14 years at the helm, passing the reins to Defendant Clarke.

33. Since that time, Tesco has further weakened with the emergence of competing companies such as German rivals Aldi and Lidl, and has lost its reputation for selling its goods at bargain prices. Tesco's still-leading market share in the U.K. has steadily eroded in the face of competition from both higher-end grocery stores and aggressive discounters. Despite efforts of Defendant Clarke to remodel dilapidated stores with artisan bakeries, children's playgrounds,

and Zumba dance classes, Tesco's sales have steadily declined, as the Company did not react to its cheaper competitors with lower prices.

34. Instead of focusing on customer loyalty through low prices and store investment, Tesco maintained its profits through the recession by cost savings in the hope that consumer spending would return to normal when the economy recovered. By the time that happened, however, Tesco's stores were in disrepair, and German newcomers Aldi and Lidl had stolen a portion of Tesco's market share with bargain-basement pricing.

Tesco Pressures Its Vendors and Improperly Accounts for Commercial Income

35. The stagnant sales growth prompted Tesco to employ aggressive tactics with its suppliers to create income. Specifically, Defendants pushed the Company's suppliers to pay for premium shelf positioning and offer rebates that Tesco could log as commercial income. Tesco entered into agreements with its suppliers that in exchange for purchasing and selling large volumes of products, Tesco would receive discounts and rebates, which it would immediately count towards commercial income. The problem, however, was that even though it had already booked the income, Tesco did not have the ability to purchase and turn around and sell in sufficient quantity to obtain the discounts.

36. In the grocery business worldwide, commercial income can be earned from suppliers and vendors in various ways. For example, supermarkets can earn premiums that reduce the net cost of their stock through favorable shelf positioning of products, or by displaying supplier-provided signage in its stores. Such premiums can be recorded as revenue or as reduction to either inventory or cost of sales, depending on whether the retailer (Tesco) sold the merchandise during the reporting period. Supermarkets can also earn discounts and rebates by exceeding predetermined sales or purchase volume targets, and by reducing or agreeing not to

make returns. Although premiums, rebates and discounts are all commercial income, they are generally not treated as revenue unless cash is paid to Tesco by suppliers, manufacturers or third party distributors. Whether in the form of premiums, rebates or discounts, commercial income has the effect of improving the retailer's margins, when the retailer legitimately and actually achieves the contractually agreed numerical targets, in the current period.

37. In essence, Tesco tried to get suppliers to enter into a variety of rebate and discount deals where Tesco had an opportunity to earn additional commercial income. With struggling sales, the Company depended on the recognition of this income even though it was not accurate or proper under accounting rules. For example, if Tesco faced a £50 million shortfall, it would pressure its suppliers to offer extra premiums and rebates, and recognize them, even when there was no guarantee they would ever be earned and paid by the vendor. If Tesco's slump had only been temporary, and it exceeded its targets in the following accounting period by at least £50 million, it would then have covered the fictitious/premature income already recognized. However, if the next year brought another £50 million hole, Tesco would be forced to borrow the entire £100 million from another future period, resulting in a devastating cycle of robbing Peter to pay Paul. During the Class Period, this is what happened.

38. Such rebates are also often tied to the retailer performing certain tasks for the supplier, and Tesco aggressively hounded its suppliers to pay the Company even when its suppliers felt the rebate proceeds were not earned. For example, L'Oreal, one of the world's largest cosmetics firms, threatened legal action disputing almost £1 million worth of charges, fines, and fees demanded by Tesco in connection with its supplier agreements.

39. The commercial revenue practices which were specifically designed to artificially inflate Tesco's reported profits began in the fall of 2011. It was during this time that Tesco began

to squeeze its suppliers, which frequently paid funds to retailers like Tesco to promote their products by, for example, providing better placement in the stores for visibility where customers are more likely to see products, or for two-for-one offers.

40. Tesco asked suppliers to pay a premium for the best shelf placement for products, even when the products were not on promotion. According to an article written by *The Grocer* on October 26, 2013, one Tesco supplier noted that this "new tactic" made it "increasingly unattractive to do business with them." The article also noted that an internal Tesco email written by the Company's cooking ingredients buying manager set forth the rates for differing shelf placements, and explained that the cost for a supplier to place one product at eye-level in 600 stores would cost £18,000.

41. According to CW2, who served as Tesco's Interim Category Buying Manager in the Company's Procurement division from February 2014 through December 2014, Tesco was a "bully" with its suppliers and would "batter" the suppliers until they gave Tesco rebates and whatever else the Company wanted. Although CW2 mostly interacted with Tesco's indirect suppliers who delivered not-for-resale goods, CW2 also regularly interfaced with senior managers from the commercial and operations departments. CW2 learned of Tesco's bullying tactics from suppliers that CW2 interfaced with in Procurement.

42. CW2 recalled Tesco's dispute with L'Oreal specifically. According to CW2, in the summer of 2014 an internal frenzy erupted at Tesco as a result of L'Oreal resisting Tesco's pressure tactics. While meeting with a representative in Tesco's legal department to discuss the terms of the procurement team's contracts with suppliers, CW2 noticed that employees in the legal department were particularly tense and "running around in a panic." CW2 asked a colleague from the legal team to explain, and the colleague said that Tesco had tried to pressure

L'Oreal into providing a higher rebate by threatening to remove L'Oreal's products from Tesco's shelves, and L'Oreal would not buckle under the pressure. This caused Tesco to panic because L'Oreal was one of Tesco's largest suppliers in the cosmetics category.

43. Tom Salmon, former managing director of Hedon Salads, one of Tesco's key producers of aubergines, tomatoes, cucumbers and peppers recalled to Rupert Steiner of the Daily Mail[3] how Tesco would pressure suppliers. Salmon experienced first-hand the Tesco-supplier relationship and, although he retired at the end of 2011, he offered his account because he believed his "story may help in some way explain what suppliers have gone through and give a slightly different perspective on the demise of Tesco." According to Salmon, Tesco began changing the way it did business in 2002, but "as time went by these charges became more onerous, first it was to pay for new quality ideas" but it became increasingly worse. For example, when items are discounted from £9 to £5, it is the suppliers who pay the £4 difference, and suppliers also pay to place their items on the best positions on the shelves. Then, Salmon said: "My company also had to face a wave of supplementary charges." Salmon recalled one specific example:

> We had to buy all our packing from a stated supplier from which Tesco took a roll [a cut] off the top. The worst case was in 2010 when the weather in Southern Spain was so bad that salad produce was very short. We could not supply aubergines for two weeks and the result was Tesco fined us £45,000 for loss of profit. We declined the fine and said we would not pay, they promptly took the money from our account that they owed us.

44. Salmon summed up the Tesco-supplier relationship as follows: "If you want to supply Tesco you have to pay. As the years went by the charges became more unreasonable,

[3] *See* Rupert Steiner, "'Tesco's Bullying Tactics Mean You Have To Pay Them!' Supplier Tells of Harsh Treatment By Britain's Biggest Supermarket Chain," DailyMail.com (Oct. 23, 2014) at http://www.dailymail.co.uk/news/article-2804406/Tesco-reveals-profits-fallen-91-CENT.html.

they buyer's profit margin was down and he or she was not going to make their bonus." He went on to say that when he retired, he "felt that the Tesco bubble was starting to burst. Suppliers could not go on supplying like this. It had become impossible to service Tesco with all these add-on costs and demands."

45. Many of Tesco's methods to extract commercial income from its suppliers, often post contract, were prohibited by the UK Groceries Supply Code of Practice ("GSCOP"). The GSCOP was intended, *inter alia,* to stop retailers like Tesco from changing supplier agreements without notice or taking payments from them without contractual rights. Tesco was able to bully smaller supplier companies into making unlawful concessions because of its size and importance to its suppliers. On February 5, 2015, the Groceries Code Adjudicator announced an investigation into Tesco over allegations of "bullying" suppliers and prior delays in supplier payments. The conduct under investigation includes: (i) imposition of penalties for short deliveries; (ii) unilaterally-declared amounts of consumer complaints; (iii) delays in payments based on claims of being double invoiced; (iv) unknown deductions from payments; (v) incorrect payment deductions for promotions ("gate fees"); and (vi) unilateral, disputed deductions for past promotions.

46. Simply by aggressively demanding and withholding payments for such supplier fees, contributions, discounts, multiple offers and volume rebates, Tesco was willing to book commercial income even though Tesco knew that many suppliers would dispute or resist the tactics. The "pricing and promotions" sub-strategy of Tesco's larger "Build a Better Tesco" strategy was thereby utilized to improperly recognize commercial income, and improperly delay costs, and the Company's subsequently reported financial results were not driven by a change in business strategy or Tesco' s actual financial performance, but were the result of fraud.

Individual Defendants' Knowledge of Improper Accounting Practices

47. In April 2012, then CFO Defendant McIlwee sent an email to Tesco's senior finance team warning that the Company's financial controls. According to a news article reported by the BBC entitled "What Went Wrong," McIlwee sent the warning email after the Company discovered a problem with the recognition of commercial income in Tesco's Polish business. The email specifically referenced that Tesco was recognizing future income and profits in the wrong accounting period.

48. According to CW1—who was a Communications and Operations Assistant at Tesco from April 2014 through September 2014 working mostly with Tesco's Central European team consisting of Poland, Hungary, and Czechoslovakia—Tesco's treatment of promotional pricing did not often comply with the legal team's guidance. CW1 explained that the legal department and the buyers communicated regularly regarding promotions and retail prices and the legal team provided guidance on pricing to the buyers. Providing an example with regard to this type of guidance, CW1 explained that if an item was being advertised and sold at a promotional price and the promotional period had not yet expired, buyers were not able to raise the price without prior approval from the legal department. Buyers were obligated to adhere to this guidance. However, CW1 recalled that the buyers many times ignored the pricing guidance of the legal team and set their own prices. CW1 explained that the buyers did this in order to make more of a profit from the higher prices they set. CW1 recalled that buyers regularly defied pricing requirements and that management endorsed this practice.

49. In practice, this could not result in greater commercial income, because retail sales prices (as opposed to retail sales volume) would not ordinarily have any impact on Tesco's suppliers. In fact, the practice of marking up sales prices, contrary to Tesco's contractual

agreements, exacerbated Tesco's improper financial reporting, because increasing prices generally results in decreased sales, which reduced Tesco's ability to legitimately meet its purchase or sales volume targets. In such cases, suppliers may have had contractual rights to increase the prices Tesco agreed to pay, rather than grant discounts.

50. Defendant Clarke himself is credited with creating a culture of desperation and recklessness within Tesco. According to a May 11, 2015 article entitled "Tesco's Darkest Hour: The Inside Track on Phil Clarke's Final Chapter"[4] written by Rupert Steiner for the Daily Mail published on thisismoney.co.uk, former and current Tesco insiders shed light on Clarke's contribution to Tesco's problems. One source stated that Clarke "was putting huge pressure on people to deliver the numbers" and that "[t]he phrase that came out was, 'I don't care how you do it, just do it.'" In this way, insiders suggested that "they were pushed to the limit to improve performance."

51. Defendants continued to keep the house of cards afloat despite being confronted by a Tesco employee regarding the false accounting practices. According to *The Sunday Times*, the very same Tesco employee who alerted new CEO David Lewis to the Company's improper accounting practices that later led to the September 22, 2014 revelation of truth, raised the concerns while Defendant Clarke was CEO, but was ignored. According to the *International Business Times* (September 29, 2014), the whistleblower had "been ignored for months." Lewis was able to confirm the extent of the accounting issues over the course of a single weekend, underscoring that Defendant Clarke was, at the very least, severely reckless in ignoring the whistleblower's caution.

[4] *See* http://www.thisismoney.co.uk/money/markets/article-3077087/Tesco-s-darkest-hour-inside-track-Phil-Clarke-s-final-chapter.html.

52. PwC also identified some of the accounting issues and brought them to the Company's attention. In Tesco's 2014 Annual Report in the section entitled "Independent auditors' report to the members of Tesco PLC," PwC stated the following regarding the "Recognition of commercial income":

> Commercial income (promotional monies, discounts and rebates receivable from suppliers) recognized during the year is material to the income statements and amounts accrued at the year end are judgemental.
>
> We focused on this area because of the judgement required in accounting for the commercial income deals and the risk of **manipulation** of these balances.

[Emphasis added].

53. No such language regarding commercial income appears anywhere in PwC's independent auditors' report in Tesco's 2013 Annual Report. This strongly suggests that PwC urged Tesco to make commercial income adjustments in 2013/14, and that PwC was forced to give Tesco an ultimatum: account for the commercial income adjustments, or we will include a note indicating we focused on this area because of the risk of manipulation. Tesco management clearly opted for the latter.

54. In addition to hiding the Company's falling margins from the public eye and keeping their high-paying executive jobs, Defendants McIlwee and Clarke were personally motivated to misrepresent Tesco's financial condition because executive bonuses were largely tied to the financial performance of Tesco. As explained in the Company's 2014 Annual Report, "[a]t least 70% of the bonus will be based on financial performance. . . . "Normally around 30% of the bonus is paid for threshold performance, around 50% of the bonus is paid if target levels of performance are delivered with the full bonus being paid for delivering stretching levels of performance." Stuart Chambers, chairman of the Remuneration Committee of Tesco, stated in

May 2013 with regard to the 2013-2014 annual executive bonuses, "bonuses will only be paid if profits have grown." Therefore, Defendants were incentivized to stretch commercial income to meet the requisite financial targets for bonus payment.

55. According to an anecdote from a former Tesco insider retold in the May 11, 2015 thisismoney.co.uk article, Tesco held a management event in 2012 at a luxury golf and spa resort in Bedfordshire called Luton Hoo. During the retreat, Clarke told senior management that there would be no bonuses, as the Company turnaround would be more difficult than expected. Shortly thereafter, the source stated that Clarke marched the senior personnel into the parking lot to show off his recently renovated Ferrari.

Defendants Conceal and Misrepresent Tesco's Improper Accounting Practices

56. Despite knowing the true, concealed facts about Tesco's improper business and accounting practices, Defendants flooded the market with false financial reports and misleading statements regarding the successful transition of the Company. Defendants caused Tesco to issue false and misleading public statements and financial reports indicating that the Company's "Build a Better Tesco" transformational program was on track and that the Company's finances were in far better shape than reported.

57. Tesco was only able to report revenue and sales growth through the Class Period by improperly recognizing commercial income from premiums, discounts, and rebates that Tesco claimed from its U.K. suppliers (often, without any accounting basis) for supporting promotions or for reaching certain volume purchase targets. Premiums and rebates are not uncommon practices in the supermarket business, but Tesco violated accounting rules by reporting such commercial income fictitiously and prematurely, and by taking advantage of UK accounting rules that did not explicitly require separate disclosure of supplier-based income. Absent these

improper accounting practices, Tesco would have reported significantly lower revenue, higher cost of sales and materially lower amounts of profits and income during the Class Period.

58. Moreover, throughout the Class Period, Tesco dramatically inflated its reported trading profit and underlying profit by systematically mischaracterizing ongoing and recurring expenses under IFRS as "one-offs," and adding such expenses back to reported profit. Tesco emphasizes the "trading profit" and "underlying profit" in all of its earnings announcements and analyst calls, yet "underlying profit" is a metric that is not compliant with GAAP (Generally Accepted Accounting Principles) and "trading profit" is neither compliant with GAAP nor IFRS. Recurring expenses that are eliminated because Tesco claims they are "one-offs" include routine supermarket expense categories such as provisions for inventory losses, customer redress, and property losses (in addition to the £4.7 billion in "one-off" property charges in 2014/15, Tesco had £870 million in 2012/13 and £636 million in 2013/14). In each of these three years, moreover, Tesco also added back as "one-offs" costs for customer loyalty programs and future rent escalations.

59. The most obviously dishonest of Tesco's add-backs to "trading profit" and "underlying profit," however, is the £208 million associated with its commercial income fraud which Tesco added to "trading profit" and "underlying profit" for 2014/15. Through this tactic, Tesco essentially concedes that if it hadn't egregiously erred in earlier years, then its 2014/15 income would have been £208 million higher, a rather dubious justification for increasing an indicator like underlying earnings. What is assuredly false is that despite Tesco's admission that £53 million of the £208 million was commercial income improperly reported in 2013/14, and adding this amount to 2014/15, Tesco did not also deduct it from 2013/14 in the comparative financial statements. In short, Tesco double counted £53 million.

60. Mike Dennis, an analyst covering Tesco for Cantor Fitzgerald, also accused Tesco of squeezing its suppliers in order to boost its margins. After speaking with Tesco's suppliers, on November 28, 2013, Dennis noted that they were under major pressure and stated that "[i]t is our view that Tesco has again overstepped the mark and the situation is very difficult for many suppliers." Dennis went on to say that "[i]t seems Tesco's stable UK margin stance is illogical and unsustainable and cannot just be maintained at the expense of sales, European profits and other operations." Dennis also stated that suppliers had shown him letters from Tesco demanding discounts after the fact.

61. In response to Dennis' prophetic statements, a Tesco spokesman said: "The analyst is clear it is his opinion, based only on speculation, but he doesn't seem to have taken our previous guidance into account." Tesco did not explain why it considered a number of interviews with its suppliers, and review of related documentation from Tesco, to be "speculation."

62. Defendants' false and misleading statements caused Tesco ADRs to trade at artificially inflated prices during the Class Period, as high as $18.51 per share.

Tesco's Accounting Scheme Begins to Unravel and the Company Reveals the Truth

63. Ultimately, the crippling effects of the Company's poor sales and fraudulent accounting practices caught up with Defendants. On April 4, 2014, Tesco announced that Defendant McIlwee, a Tesco veteran of 14 years, had resigned from his post as CFO of the Company, though he would remain as CFO until his successor was found.

64. Then, on July 21, 2014, after Tesco issued its second profit warning of 2014 noting that "sales and trading profit in the first half of the year are somewhat below expectations[,]" the Company announced that David Lewis, formerly of Unilever, would replace

Defendant Clarke as CEO of Tesco. The Company further explained that Lewis would assume the CEO position officially on October 1, 2914, with Defendant Clarke remaining with Tesco to support the transition until January 2015.

65. On September 22, 2014, Tesco revealed the truth about its dismal financial state when it issued a press release which stated that the Company "identified an overstatement of its expected profit for the half year, principally due to the accelerated recognition of commercial income and delayed accrual of costs." The press release further explained that "[o]n the basis of preliminary investigations in to the UK food business, the Board believes that the guidance issued on 29 August 2014 for the Group profits for the six months to 23 August 2014 was overstated by an estimated £250m. Some of this impact includes in-year timing differences. Work is ongoing to establish the extent of these issues and what impact they will have on the full year."

66. The announcement of the overstatement came as a result of a Tesco whistleblower—the very same employee who brought these practices to the attention of management earlier during Defendant Clarke's CEO tenure—who worked as an accountant in the Company reporting to UK finance director Carl Rogberg. When acting CEO Dave Lewis was apprised of the accounting concerns, he caused the Company to issue its announcement and asked Deloitte LLP ("Deloitte") to undertake an independent review of the accounting issues working with Freshfields Bruckhaus Deringer LLP ("Freshfields"), Tesco's legal advisers.

67. As a result of Tesco's announcement on September 22, 2014, that it had overstated its expected profit for the half year because it had improperly accelerated recognition of income and delayed accrual of certain costs, and the Company's further announcement that it had suspended the managing director of its UK business along with its UK director and two food

directors, Tesco ADRs plummeted 15% from $11.29 on September 19, 2014 and declined to $9.61 per share on September 22, 2014 on unprecedented volume.

68. Analysts and journalists were shocked at the announcement and started piecing together Defendants' fraud. On September 22, 2014, HSBC analyst David McCarthy, who the BBC notes "is so highly rated that even Tesco's management speak of him in glowing terms," stated that "it is unclear whether the real underlying level of profits has yet been found" and that "investing in Tesco is investing in the unknown and is high risk." McCarthy also noted that slowing sales growth at Tesco contributed to its inaccurate calculations, saying, "[w]e suspect Tesco may have been booking promotional rebates based on historic precedent rather than on current volumes." According to *The Telegraph*, Jaime Vazquez, an analyst at JP Morgan, similarly said: "Regardless of what the exact UK profit was in 2013/14, it seems clear to us that Tesco's results are being hit by the unwinding of supplier rebates as volumes fall, hence the need to reset the framework with suppliers."

69. Analysts at Macquarie Research likewise noted on September 23, 2014 that the "overstatement creates massive uncertainty in the business" and "lack of clarity regarding the real underlying profitability."

70. An article in Reuters on September 23, 2014, noted: "Tesco Plc's disclosure of huge accounting mistakes over contracts with its suppliers shocked industry analysts and executives" and that the "revelation on Monday that it had overstated its profit forecast for the first half of the year by 250 million pounds came as a nasty surprise and wiped 2 billion pounds off its stock market value." The article also quoted Mike Dennis at Cantor Fitzgerald who put the blame squarely on the Individual Defendants, explaining that the problems stemmed from "a behavioural issue instilled by previous management."

71. In the September 22, 2014 *Forbes* article entitled "Tesco's Accounting Irregularities Are Mind Blowing," the author states that "the only way Tesco could have 'delayed booking of costs' is by not entering invoices into its accounting systems. In today's world of electronic invoicing, that's not easy to do, and had to be consciously managed." Despite making numerous assurances to the contrary, Defendants utterly failed to implement procedures that were reasonably designed to prevent accounting irregularities.

The Problems for Tesco Get Worse as the Extent of the Fraud Becomes Clearer

72. In addition, on October 1, 2014, the Company disclosed that the U.K.'s Financial Conduct Authority ("FCA") was conducting an investigation into the Company's accounting irregularities. Moreover, on October 7, 2014, Tesco announced that commercial director Kevin Grace had been suspended, and on October 14, the Company suspended three more executives.

73. Initially, on September 22, 2014, Tesco reported the overstated profits only related to the first six months of the financial year – effecting only unaudited accounts – but the Company soon revealed that the misreporting had been taking place for at least the last three audited fiscal years.

74. On October 23, 2014, Tesco disclosed, in connection with the Deloitte & Freshfields report, that the size of the misstatement for just the first half of the year was actually at least £263 million, that similar improper accounting practices had impacted its financial results reported in prior periods, and that the Company's chairman was resigning. Specifically, the Deloitte investigation revealed there was an overstatement in Tesco's profit expectations of £263 million in the first half of 2014/15, and the impact to trading profit was £118 million, with a further £70 million relating to 2013/14 (fiscal year ending February 22, 2014) and £75million relating to pre-2013/14 (a period prior to February 2013). The Company also disclosed on

October 23 that first half-year profits had fallen a dramatic 90% from the same period the prior year, and the Company told investors it was unable to provide any full-year profit guidance. In addition, the Company's chairman Defendant Sir Richard Broadbent announced his resignation, telling investors that he was "deeply disappointed" about the accounting irregularities and calling the developments a "matter of profound regret."

75. On December 22, 2014, the FRC announced that it launched an investigation into the preparation, approval, and audit of the financial statements of Tesco for the financial years ended February 25, 2012, February 23, 2013, and February 22, 2014 in connection with the Company's recently disclosed profit overstatements.

76. Then, a little over a month later, on February 5, 2015, the Groceries Code Adjudicator, Christine Tacon, announced that her office also launched an investigation into Tesco amid allegations that it delayed payments to suppliers and unfairly handled payments for shelf promotions. Tacon stated: "I have reasonable suspicion that Tesco breached the code in two areas. One is reasonable payments and second is payments for better positions on shelf outside promotions." According to Tacon, the probe, which covers Tesco's conduct from June 25, 2013 to February 5, 2015, would focus specifically on delays in payments associated with:

- Short deliveries, including imposition of penalties;
- Consumer complaints where the amounts were not agreed;
- Invoicing discrepancies such as duplicate invoicing where two invoices were issued for the same product;
- Deductions for unknown or un-agreed items;
- Deductions for promotional fixed costs (gate fees) that were incorrect; and

- Deductions in relation to historic promotions which had not been agreed.

77. Although suppliers have been largely unwilling to publicly admonish Tesco for fear of reprisal, Tacon stated:

> "I can legally require suppliers to give me information I want for an investigation. I have a legal duty to protect their anonymity. And in this case there is very much safety in numbers and I frequently hear about the same issues from every sector in groceries from toilet rolls, to apples, to wine. I'm just looking for a large amount of evidence and anonymity will be protected."

78. Tesco has since admitted to certain grocery code violations and that these violations were connected to the improperly recognized commercial income, which contributed to the overstated profit estimates. For example, following Tacon's announcement of her office's investigation into Tesco, a Company spokesman stated:

> We have worked closely with the office of the Adjudicator since its creation to put in place strong compliance processes.
>
> ***Following our announcement last September regarding commercial income, we have worked with her to identify any relevant GSCOP issues. An internal review we carried out and shared with the GCA identified some areas of concern.***
>
> We have taken action to strengthen compliance and, as we have announced, we are changing the way we work with suppliers. We will continue to co-operate fully with the GCA as she carries out her investigation and welcome the opportunity for our suppliers to provide direct feedback."

(Emphasis added). Moreover, in Tesco's 2015 Annual Report, the Company made the following admission under the heading "Compliance with the Groceries (Supply Chain Practices) Market Investigation Order 2009 and the Groceries Supply Code of Practice (the 'Code'):

> The Code establishes an overarching principle that retailers must deal with their suppliers fairly and lawfully. Specific obligations include giving reasonable notice in circumstances such as changes to supply chain procedures and when ceasing or significantly reducing purchases from a supplier. The Code also contains a number of provisions relating to payments by suppliers, including obligations for retailers to pay suppliers without delay and a prohibition on certain types of payments, such as those for shrinkage.

> ***Regrettably, we have concluded that there have been a number of instances of probable breaches of the Code which fall short of the high standards we expect to uphold with our suppliers.***
>
> We are taking effective action to prevent this arising again. We are fundamentally changing the way we work with our suppliers to deliver a more sustainable and collaborative business model for everyone in the supply chain. In addition, we are significantly up-weighting our Code compliance programme.

(Emphasis added).

79. On April 22, 2015, Tesco issued its 2014/15 preliminary financial results, announcing purported "one-off" write-offs of over £7 billion, including £208 million for a commercial income adjustment for prior years, which was £63 million more than the £145 million prior year commercial income adjustment stated from the Deloitte report. Tesco did not say how large the £118 million commercial income error in first half of the year had become at the end of the year. Tesco has been criticized in the past for claiming ongoing charges are "one-offs," and the nature and size of the other £6.8 billion in 2014/15 charges strongly suggest that many of the charges relate to a number of prior periods.

80. In addition, despite Tesco's claim that its errors in reporting commercial income were merely "timing errors," Tesco has not provided sufficient information to corroborate this claim, despite ample opportunity. Apart from £17 million that was apparently recorded during fiscal 2013/14 but not earned until the 2nd Half of fiscal 2014/15, in each accounting period, the cumulative reporting error grew by precisely the amount reported by Tesco as an error. If more than £17 million of the improper commercial income reported were timing errors and not simply fictitious, the cumulative error would have been offset, and reduced, in the periods that commercial income could have been properly recognized.

81. The accounting practices that gave rise to Tesco's profit misstatements have so far

been discovered primarily in the Company's UK grocery operations, where the Individual Defendants had the closest relationships and greatest degree of control. Eight senior executives who worked in Tesco's UK operations were asked to resign amidst the accounting scandal: Chris Bush, the former U.K. managing director; Kevin Grace, the former commercial director; Carl Rogberg, the ex-U.K. finance director; John Scouler, the former U.K. food commercial director; Dan Jago, William Linnane, and Sean McCurley, who lead various segments within Tesco's U.K. food business; and Matt Simister, Tesco's group food sourcing director, who, according to a December 1, 2014 article in *The Telegraph*, was asked to return to the Company after an internal investigation revealed that Mr. Simister had actually "worked tirelessly to resolve the issues we faced." Defendants Clarke, McIlwee and Broadbent also were forced to resign in the wake of the scandal. These resignations indicate that the accounting errors were pervasive, impacting multiple departments, and the heads of those departments were held accountable and removed from their positions, all the way up the chain to the CEO, CFO, and Chairman of the Company.

82. As a result of Tesco's disclosures that revealed the truth regarding Tesco's suffering business and fraudulent accounting practices, Tesco securities have continued to lose value. Through this action, Plaintiff seeks to recover the damages that Plaintiff and other Class members have suffered as a result of Defendants' fraud, and the precipitous decline in the value of their investments in Tesco ADRs.

DEFENDANTS' IMPROPER ACCOUNTING PRACTICES DURING THE CLASS PERIOD

83. Analogous to GAAP, IFRS is a comprehensive set of authoritative accounting principles, interpretations, rules and underlying concepts which the Securities and Exchange

Commission has expressly authorized for financial reporting by public companies that trade ADRs in the United States, like Tesco. *See* SEC Release Nos. 33-8879, 34-57026; December 21, 2007. The mission of the IFRS Foundation is "to develop International Financial Reporting Standards (IFRS) that bring transparency, accountability and efficiency to financial markets around the world." (*See* www.ifrs.org, About Us.) The International Accounting Standards Board ("IASB"), is the international standard setting body of the IFRS Foundation.

84. During the Class Period, Tesco was subject to IFRS, which includes pronouncements by (i) the IASB, ("IFRS __"), (ii) the Financial Reporting Interpretations Committee ("IFRIC __"), (iii) the International Accounting Standards Committee ("IAS __"), and (iv) the Standing Interpretations Committee ("SIC __").

85. As stated in its 2014 annual report, Tesco's Directors are required by the UK Companies Act 2006, *inter alia*, "to prepare financial statements for each financial year which give a true and fair view of the … profit or loss of the Group for the financial year. Under that law the Directors are required to prepare the Group financial statements in accordance with International Financial Reporting Standards ('IFRS') as adopted by the European Union ('EU') and … in accordance with UK Accounting Standards." (*See* Tesco 2014 Annual Report, page 63.) Tesco is also subject to financial reporting regulations set forth in The UK Corporate Governance Code, established by the Financial Reporting Council ("FRC"), the U.K. regulator responsible for promoting high quality corporate governance.

86. During the Class Period, Tesco reported the following financial results:

Tesco PLC Financial Results,[5]
FY 2011/12 – FY 2014/15
(Amounts in millions)

Tesco, PLC Impact of Class Period Errors	2011/12 52 wks	2012/13 26 wks	2012/13 restated 52 wks	2013/14 26 wks	2013/14 52 wks	2014/15 26 wks	2014/15 53 wks	2011/12-2014/15 Totals
Tesco IFRS errors:								
1. Improper commercial income	£50	£52	£105	£26	£53			£208
2. Delayed accrual of costs	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
3. Overstated inventory	142	71	142	71	142	£72	£144	570
Total estimated errors	192	123	247	97	195	72	144	778
"Trading Profit," reported* (non-GAAP)	3,969	1,718	3,525	1,588	3,315	1,100	2,450	13,259
Less: Tesco errors	(192)	(123)	(247)	(97)	(195)	(72)	(144)	(778)
Trading Profit, adjusted	3,777	1,595	3,278	1,491	3,120	1,028	2,306	12,481
Error as a percent of adjusted	5.1%	7.7%	7.5%	6.5%	6.3%	7.0%	6.2%	6.2%
* 2014/15 = 8/29/14 forecast								
Profit before tax from continuing operations, reported	4,038	1,814	2,057	1,387	2,259	112	**(6,376)**	1,978
Less: Tesco errors	(192)	(123)	(247)	(97)	(195)	(72)	(144)	(778)
Profit before tax from continuing operations, adjusted	3,846	1,691	1,810	1,290	2,064	40	**(6,520)**	1,200
Error as a percent of adjusted	5.0%	7.3%	13.6%	7.5%	9.4%	180%	2.2%	65%
Profit for the year, reported (includes discontinued operations)	2,814	1,235	24	820	970	6	**(5,766)**	**(1,958)**
Less: Tesco errors, net of tax	(150)	(100)	(183)	(80)	(165)	(48)	(130)	(628)
Profit for the year, adjusted	£2,664	£1,135	**£(159)**	£740	£805	**£(42)**	**£(5,896)**	**£(2,586)**
Error as a percent of adjusted	7.2%	10.8%	P > L	13%	24%	P > L	2.4%	30%

87. These results, Tesco's contemporaneous financial statements, and the Company's

[5] Table includes the most recent figures reported for each period, which are not always the amounts initially reported. Error amounts are estimated, based on limited available public information, and subject to change based on discovery and/or additional public revelations.

related public statements were materially false and misleading when made. As Tesco now admits, beginning no later than its 2011/12 fiscal year ("2011/12"), Tesco began to misrepresent profits and losses during the Class Period, such that its financial statements were neither a "true" nor "fair" view of its financial performance. Specifically, Tesco violated IFRS reporting requirements for commercial income, promotional expenses, and inventory, by material amounts.

Tesco recorded commercial income in a fraudulent manner.

88. Commercial income refers to increased revenue or decreased cost of sales based on transactions with Tesco's suppliers and vendors. Tesco can earn commercial income from fees and contributions, such as by providing premium shelf placement or displaying in-store signage for products. Commercial income can also be earned by meeting contractual purchase volume or sales targets, which, if accepted by suppliers, result in discounts to prices which Tesco would otherwise have paid. Tesco's UK buyers were incentivized to maximize such discounts, because maintaining or improving sales margins was a critical part to their job.

89. With respect to fees, contributions, discounts, multiple offers and volume rebates involving suppliers and vendors in which Tesco purported to earn commercial income revenue, such as premium shelf placement and signage, IAS 18, *Revenue,* says:

> When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction shall be recognised by reference to the stage of completion of the transaction at the end of the reporting period. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:
>
> (a) the amount of revenue can be measured reliably;
>
> (b) it is probable that the economic benefits associated with the transaction will flow to the entity;
>
> (c) the stage of completion of the transaction at the end of the reporting period can be measured reliably; and

> (d) the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

See IAS 18, ¶20. *See also* IAS ¶¶21-28, which define the above criteria in specific terms which unequivocally establish that Tesco violated paragraph 20.

90. With respect to commercial income revenue, Tesco violated each of the four required provisions above, by tens or hundreds of millions (combined with commercial income cost reductions, at least £326 million), both with respect to commercial income that was ***prematurely*** recorded as revenue (meaning Tesco could not justify recording such revenue in the period it did so), and with respect to ***fictitious*** commercial income revenue (meaning that Tesco could never justify recording such revenue).

91. With respect to commercial income cost reductions, commercial income from rebates and discounts under IFRS is governed primarily by IAS 2, *Inventories.* Under IAS 2, ¶11, rebates and purchase discounts are not recorded as revenue, but as a reduction to the cost of inventory, or, if the inventory has already been sold, as a reduction to the cost of sales. Tesco violated IAS 2 and related IFRS requirements, *inter alia*, by recording tens or hundreds of millions of dollars (combined with commercial income revenue, at least £326 million) in reductions to cost of sales before the products were actually sold. Tesco also violated IAS 2 when it recorded rebates and discounts to that it was not contractually entitled to, or to which the seller had not agreed, or was not willing to provide a discount for other reasons, as set forth below.

92. Tesco's commercial income errors did not just violate IFRS pronouncements, but also violated IFRS's *The Conceptual Framework for Financial Reporting.* For example, the Technical Summary of the Framework states, "In order to meet their objectives, financial

statements are prepared on the accrual basis of accounting. Accrual accounting depicts the effects of transactions and other events and circumstances on a reporting entity's economic resources and claims in the periods in which those effects occur, even if the resulting cash receipts and payments occur in a different period. … If financial information is to be useful, it must be relevant (ie must have predictive value and confirmatory value, based on the nature or magnitude, or both, of the item to which the information relates in the context of an individual entity's financial report) and faithfully represents what it purports to represent (*i.e.*, information must be complete, neutral and free from error).

93. On November 29, 2013, Mike Dennis, an analyst from Cantor Fitzgerald wrote, "We also fear that Tesco have been placing pressure on suppliers by demanding money, in order to boost short term profit margins. Based on anecdotal evidence, we believe that Tesco is demanding £150 million from suppliers in Q3, that would ~ 60bps to gross and net margin." The analyst was quoted the same day saying, "Tesco has recently been in contact with 100's of manufacturers either demanding additional payments due to lower commodity prices or deducting money from supplier trading accounts before they are paid to suppliers." (Citywire.co.uk, November 29, 2013). Tesco asserts that commercial income errors during 2013/14 were only £53 million, and £208 million cumulatively (£155 million from periods prior to 2013/2014).

94. As Tesco's practice of improperly recording commercial income increased in size and scope over time, it imposed on suppliers more and more, at least through the end of the Class Period. On October 17, 2014, David Sable, formerly of Procter & Gamble and later a niche supplier sales negotiation expert, was quoted as saying, "Tesco has asked for alarmingly increasing amounts and frequencies for support and promotional bonus money to come in early,

saying that it will be accrued until the correct later period." In fact, Tesco had no need for cash advances, because by August 23, it had accumulated between £500 million and £1 billion in excess cash, largely by withholding payments from suppliers as an additional means of forcing them to supply Tesco with almost any form of commercial income. (Under IFRS, even if Tesco received promotional funds from its suppliers in advance, it could not record the commercial income if it had not yet performed under an actual contract.) On October 28, 2014 an article appeared with the headline, "Tesco suppliers call in audit teams over accounting scandal." (Telegraph.co.uk.).

95. Tesco routinely tried to extract commercial income from its suppliers, often post contract, in a variety of nefarious ways, many of which were prohibited by the UK Groceries Supply Code of Practice ("GSCOP"). The GSCOP was intended, *inter alia,* to stop retailers like Tesco from changing supplier agreements without notice or taking payments from them without contractual rights. Tesco can pressure smaller supplier companies into making unlawful concessions because of its size and importance to its suppliers.

96. On February 5, 2015, the Groceries Code Adjudicator announced an investigation into Tesco over allegations of "bullying" suppliers and prior delays in supplier payments including Tesco's, (i) imposition of penalties for short deliveries, (ii) unilaterally-declared amounts of consumer complaints, (iii) delays in payments based on claims of being double invoiced, (iv) unknown deductions from payments, (v) incorrect payment deductions for promotions ("gate fees"), and (vi) unilateral, disputed deductions for past promotions. Consistent with statements by Dave Lewis and Alan Stewart on the January 8, 2015 analyst call, Tesco's cash balance on February 28, 2015 was about £750 million (26%) lower than it was on August 23, 2014, primarily because Tesco has now changed the manner in which it has been

paying suppliers.

97. As reflected in the chart above in ¶86, as a result of Tesco's improper accounting for commercial income under IFRS, its Class Period financial statements were overstated by at least £208 million.

Contingent gains (commercial income).

98. Many transactions and accounting rules are interrelated. From Tesco's perspective, commercial income can take the form of revenue or reduced cost of sales, and sometimes payments come before the income can be recognized, sometimes vice-versa. In connection with inappropriate recognition of commercial income, in addition to violating IAS 2, *Inventory* and IAS 18, *Revenue*, Tesco violated IAS 37, *Provisions, Contingent Liabilities and Contingent Assets.*

99. According to IAS 37, ¶IN20, a contingent asset is "a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain events not wholly within control of the entity." IAS 37, ¶IN21 says "An entity shall not recognize a contingent asset." IAS 37, ¶IN22 says "When the realisation of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate. *See also* IAS 37, ¶¶31-35, *Contingent assets.*

100. When Tesco recorded fictitious and premature commercial income to the income statement, it would credit (increase) revenue or credit (decrease) cost of sales. The other side of the entry was a debit. During the Class Period, Tesco carried as much as £326 million in other receivables and accrued income. To the extent these assets were recorded in connection with improperly recorded commercial income, these were contingent assets, as defined in IAS 37, ¶IN20. In violation of IFRS, they violated the "bright line" rule that contingent gains may never

be recorded. *See* IFRS Conceptual Framework for Financial Reporting, ¶4.50 ("[T]he application of the matching concept under this Conceptual Framework does not allow the recognition of items in the balance sheet which do not meet the definition of assets or liabilities.").

<u>Tesco delayed its accrual of costs, in violation of IFRS.</u>

101. Tesco has been cagey and lacking in transparency regarding what it referred to as "delayed accrual of costs." This refers to Tesco's failure to report its "certain expenses" in the period the expenses were incurred. IAS 38, *Intangible Assets*, ¶29 make clear that sales expenses must be recognized immediately. In other words, when Tesco said it "delayed accrual of costs," it meant that Tesco failed to record expenses which, under IFRS, are not permitted to be deferred.

102. The phrase "delayed accrual of costs" is itself misleading, because accrued costs often refer to prepaid assets, which would have no income statement impact. At the time Tesco issued its financial statements, the Company did not say that promotional expenses were understated. Although Tesco disclosed the £326 million negative impact of reversing prior commercial income overstatements during fiscal 2014/15, Tesco has not provided any amounts related to its delayed accrual of costs, or the periods for which they were corrected. However, the chart below shows Tesco's reported revenue, cost of sales and gross profit during the Class Period. The £4.85 billion increase in cost of sales for 2014/15 includes the impact of recognizing delayed accrual of costs, which Tesco has not separately disclosed.

<u>Tesco Reported Gross Profit (amounts in millions):</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>	<u>2014/15</u>

Tesco Reported Gross Profit (amounts in millions):	2011/12	2012/13	2013/14	2014/15
Revenue	£63,916	£63,406	£63,557	62,284
Cost of sales	58,519	59,252	59,547	64,396
Gross profit	£5,397	£4,154	£4,010	£(2,112)
Gross margin %	8.4%	6.6%	6.3%	(3.4)%

Tesco's overstated inventory – IAS 2, *Inventory*, IAS 37, *Provisions, Contingent Liabilities, and Contingent Assets.*

103. Tesco's Class Period strategy of protecting its margins by focusing on commercial income was a disastrous move, given the competitive landscape. Tesco's margins *were* falling, because of competition from German discounters Aldi and Lidl. Tesco knew that making purchases in sufficient quantities to earn vendor discounts and rebates carried risks. And Tesco's strategy of pressuring buyers to preserve margins through obtaining commercial income by any means necessary, led to ongoing issues with excess, out-of-fashion, seasonal and otherwise non-sellable inventory.

104. For commercial income that was achieved with sales targets, if Tesco pushed customers to purchase unpopular or poor quality products, excessive returns would follow, along with upset customers. Processing returns is expensive for any retail store, and vendors are less likely to take returns back from Tesco after paying for sales promotions. For commercial income that was achieved through purchase targets, Tesco would often project quantities in vastly greater amounts than it could resell.

105. Tesco has disclosed some but not all of the reasons for the £4.85 billion increase in cost of sales from 2013/14 (£59.55 billion) to 2014/15 (£64.4 billion). £570 million of the increase was due to charges for overvalued inventory (also called stock) on Tesco's balance

sheets, which had persisted throughout the Class Period. Tesco improperly called this a "one-off," but these charges were not related to a restructuring, discontinued operations, spin-off or store closures. All of this amount was actually financial reporting errors during the Class Period, and overstated every measure of profit reported by Tesco. Tesco failed to admit that these were material errors during the Class Period, which should have resulted in financial restatements of multiple years prior to 2014/15.

106. Tesco's commercial income strategy directly contributed to a need for increased inventory write-offs. Tesco knew that making purchases in sufficient quantities to earn significant vendor discounts and rebates carried risks. And Tesco's strategy of pressuring buyers to preserve margins through obtaining commercial income by any means necessary, led to ongoing issues with excess, out-of-fashion, seasonal, damaged, obsolete, and otherwise non-sellable inventory.

107. Tesco violated IAS 2, *Inventories.* IAS 2, ¶9 states, "Inventories shall be measured at the lower of cost and net realizable value." ¶11 states, "Trade discounts, rebates and other similar items are deducted in determining the costs of purchase." ¶¶21-27 discuss various cost methods, including the retail method, which is used by most retailers, and is dependent on the accuracy of gross margin. However, Tesco does not say if it follows the retail method. If Tesco uses the retail method, and it used a gross margin percentage that was inflated by fictitious and/or premature commercial income, and/or by overstating inventory in prior years, for example, then its inventory balances would necessarily continue to be overstated.

108. IAS 2, ¶¶28-33 discuss how to determine net realizable value. ¶28 says, "The cost of inventories may not be recoverable if those inventories are damaged, if they have become wholly or partially obsolete, or if their selling prices have declined," or if "estimated costs to be

incurred to make the sale have increased." Consequently, if promotional costs increase, net realizable value declines. ¶30 says, "Estimates of net realizable value are based on the most reliable evidence at the time estimates are made, of the amounts the inventories are expected to realise." IAS 2, ¶34 states, "The amount of any write-down of inventories to net realizable value and all losses of inventories to net realizable value shall be recognized as an expense in the period the write-down or loss occurs." Tesco failed to write-off or write-down inventory in accordance with IAS 2, ¶¶28-34.

109. IAS 2, ¶¶36-39 address required inventory valuation methodology disclosures. Tesco's disclosures were also inadequate under IFRS. For example, in its 2014 annual financial statements, Tesco disclosed the following about its inventory accounting policies:

> **Inventories**
> Inventories comprise goods and properties held for resale and properties held for, or in the course of, development with a view to sell. Inventories are valued at the lower of cost and fair value less costs to sell using the weighted average cost basis.

110. Tesco merely restated basic IFRS rules above, without providing insight into how Tesco followed those rules, as required. It wasn't until after the Class Period that Tesco corrected its improper accounting for inventories under IFRS. On April 22, 2015, Tesco made new disclosures admitting that the 2014/15 charges resulted from changes in inventory valuation methods and processes, and not because the inventory had recently become impaired. In the preliminary financial statements and on the analyst call that day, Tesco and Alan Stewart explained that £402 million of the £570 million error came from changing the valuation methodology from being based on when the inventory was purchased (in violation of IAS 2, ¶30) to being based on projected sales (in compliance with IAS 2, ¶30). They further explained that the other £168 million of the £570 million inventory write off was because Tesco had been

capitalizing store activities as inventory rather than expensing the activities, in violation of IAS 2, ¶¶21-27 and IFRS Framework.

111. The 2014 inventory disclosure did not adequately inform inventors of the risk of a £570 million charge related to the new valuation methodologies disclosed after 2014/15 had ended. For example, investors were unaware until April 22, 2015, that, in violation of IFRS, Tesco used a backwards looking valuation methodology (as opposed to the forward-looking methodology they just began using). Tesco failed to disclose this. Nor has Tesco adequately disclosed how it allowed inventories under the old methodology to become overstated by a whopping £402 million. Similarly, investors could not have known that Tesco had capitalized £168 million worth of in-store costs in a blatant violation of IFRS.

112. As Defendants knew, proper inventory valuation at each balance sheet date is critical to accurately recording cost of sales, sales margins and gross profit. Generally speaking, each pound (dollar) of overstated inventory understates cost of sales by a pound (dollar). This is one of the reasons why stock counts are taken at least annually, usually around the balance sheet dates.[6]

113. As a result of Tesco's failure to comply with IFRS with respect to inventory valuation and cost of sales, Tesco's Class Period financial statements are overstated by an estimated £498 million (£142 + £142 + £142 + £72), as shown in the table below.

Reported cost of sales and inventory (amounts in millions)	2011/12	2012/13	2013/14	1st Half 2014/15	FY 2014/15

[6] On December 14, 2014, Daily Mail City & Finance published an article saying that Tesco had asked PwC to attend more inventory counts ("stock takes"), than it had previously, in order to look closely for "lost, stolen or spoiled" products still on the books. The article also said that Tesco's request was made before Tesco reported the £263 million error on October 23, 2014.

Reported cost of sales and inventory (amounts in millions)	2011/12	2012/13	2013/14	1st Half 2014/15	FY 2014/15
Cost of sales, during the period	£58,519	£59,252	£59,547	£29,200	£64,396
Inventory, ending balance	3,598	3,744	3,576	3,599	2,957
Stock losses (write-offs)	1,118	1,157	1,316	n/a	1,189
Stock loss, as a % of cost of sales	1.9%	2.0%	2.2%	n/a	1.8%
Inventory Provision, as reported					570
Inventory provision, as corrected	£142	£142	£142	£72	£72

Defendants' false interim reporting.

114. In addition to Tesco's year-end financial statements, throughout the Class Period, all of its interim financial statements were also materially false and misleading, due to false statements and material disclosure omissions with respect to commercial income, delayed accrual of costs and inventory. IAS 34, *Interim Financial Reporting*, required Tesco to provide "an explanation of events and transactions that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period." *See* IAS 34, ¶15, *Significant events and transactions*. In violation of IFRS, during the Class Period, Tesco failed to disclose its increased commercial income balances, both on its balance sheets and its income statements. IAS 34 also required Tesco to make appropriate write-downs of excess and obsolete inventory balances, as well as provide related disclosures; and prohibited the early recognition of commercial income, improper deferral of costs, and failure to write off inventory.

Materiality

115. According to IAS 8, *Accounting Policies, Changes in Accounting Estimates and*

Errors, "comparative information for prior periods is presented as if … prior period errors had never occurred." IAS 8, IN9. Tesco violated IAS 8 because in both its interim and year-end financial statements for 2014/15, it failed to correct 2013/14 for the commercial income errors. Tesco determined that restating its prior financial statements was not necessary by claiming the errors were not material to prior periods. As set forth below, Tesco's self-serving conclusion about materiality does not withstand scrutiny.

116. IAS 8 states that:

> Material Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. ***Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances.*** The size or nature of the item, or a combination of both, could be the determining factor.
>
> Prior period errors are omissions from, and misstatements in, the entity's financial statements for one or more prior periods arising from a failure to use, or misuse of, reliable information that:
>
> (a) was available when financial statements for those periods were authorised for issue; and
>
> (b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements.
>
> Such errors include the effects of mathematical mistakes, mistakes in applying accounting policies, oversights or misinterpretations of facts, and fraud.

See IAS 8, ¶5(d), emphasis added.

117. IAS 8 also states:

> Assessing whether an omission or misstatement could influence economic decisions of users, and so be material, requires consideration of the characteristics of those users. The Framework for the Preparation and Presentation of Financial Statements states in paragraph 252 that 'users are assumed to have a reasonable knowledge of business and economic activities and accounting and a willingness to study the information with reasonable diligence.' Therefore, the assessment needs to take into account how users with such attributes could reasonably be expected to be influenced in making economic decisions.

See IAS 8, ¶6.

118. Tesco's improper commercial income was material to multiple prior periods on the basis of the ***nature*** of the errors because, based on Tesco's admissions as well as media reports, Tesco personnel intentionally reported commercial income improperly because of Tesco's poor performance and weakening stock price. Based on this, the nature of the error was material.

119. Tesco's improper commercial income was also material to multiple prior periods on the basis of the ***size*** of the errors relative to key metrics relied on by shareholders. For example, for 2012/13, Tesco reported net profit of just £24 million. However, the commercial income error for years prior to 2013/14 is claimed to be £155 million. This gives strong support to the notion that without any bogus commercial income in 2012/13, Tesco would have reported a net loss for the year. So both the size and the nature of the error indicate that the error was material, and restatement was required. If 2012/13 was restated, 2013/14 would have needed to be restated as well, to correct 2013/14 commercial income that was initially reported in 2012/13.

Tesco's misrepresentations of Trading Profit and Underlying Profit

120. Tesco emphasizes the "trading profit" and "underlying profit" in all of its earnings announcements and analyst calls, yet "underlying profit" is a metric that is not compliant with GAAP and "trading profit" is neither compliant with GAAP nor IFRS. During the entire course of the Class Period, Tesco dramatically inflated its reported trading profit and underlying profit, by systematically mischaracterizing ongoing and recurring expenses under

IFRS as "one-offs,[7]" and adding such expenses back to reported profit. Recurring expenses that are eliminated because Tesco claims they are "one-offs" include routine supermarket expense categories such as provisions for inventory losses, customer redress, and property losses (in addition to the £4.7 billion in "one-off" property charges in 2014/15, Tesco had £870 million in 2012/13 and £636 million in 2013/14). In each of the three years, moreover, Tesco also added back as "one-offs," costs for customer loyalty programs and future rent escalations. As reflected in the chart in ¶86 above, during the four year period ended February 28, 2015, Tesco reported trading profit of £13.3 billion, while reporting just £2.0 billion in net income from continuing operations before tax under IFRS.

121. The most obviously dishonest of Tesco's add-backs to "trading profit" and "underlying profit," however, is the £208 million associated with its commercial income fraud which Tesco added to "trading profit" and "underlying profit" for 2014/15. Claiming any of it essentially acknowledges that if it hadn't committed fraud in earlier years, then its 2014/15 income would have been £208 million higher, a rather dubious justification for increasing an indicator like underlying earnings. What is assuredly false is that despite Tesco having admitted that £53 million of the £208 million was commercial income improperly reported in 2013/14, and adding this amount to 2014/15, Tesco did not also deduct it from 2013/14 in the comparative financial statements. Thus, Tesco double counted £53 million.

PwC took the unusual step of publicly noting that with respect to commercial income, Tesco's financial reports were at risk of manipulation

122. PwC is currently under investigation by the FRC for its audits for its Tesco audits in 2011/12, 2012/13, and 2013/14. The most recent Public Company Accounting Oversight

[7] Even Tesco uses quotation marks for its so-called "one-off" charges.

Board ("PCAOB") audit inspection report on PricewaterhouseCoopers LLP (London, UK), is dated October 1, 2013, based on 2011 reviews. Tesco was one of just 13 issuers audited by PwC in the UK. The PCAOB concluded the following: "The deficiencies identified included a deficiency of such significance that it appeared to the inspection team that, in one of the audits performed by the Firm, the Firm, at the time it issued its audit report, had not obtained sufficient competent evidential matter to support its opinion on the issuer's financial statements." This language is the strongest that the PCAOB is allowed to use publicly.

123. The audits of PwC do nothing to exculpate Tesco. Auditors have a long and established history of missing massive frauds. Further, the circumstances in which auditors most often overlook fraud were all present at Tesco. For example, Tesco paid PwC an astounding £5.5 million for its 2013/14 audit, and then paid an additional £5.7 million for non-audit work – all of which was purportedly in compliance with Tesco's "Non-audit Service Policy." Tesco maintains a revolving door for high level PwC alumni – two of Tesco's Board members came from PwC, and many of its past CFOs, including Defendant McIlwee. PwC has served as Tesco's auditor continuously since 1983.

124. Tesco's financial reports themselves indicate that PwC identified some of the accounting issues and brought them to the Company's attention. In Tesco's 2014 Annual Report in the section entitled "Independent auditors' report to the members of Tesco PLC," PwC stated the following regarding the "Recognition of commercial income":

> Commercial income (promotional monies, discounts and rebates receivable from suppliers) recognized during the year is material to the income statements and amounts accrued at the year end are judgemental.
>
> We focused on this area because of the judgement required in accounting for the commercial income deals and the risk of **manipulation** of these balances.

[Emphasis added].

125. No such language regarding commercial income appears anywhere in PwC's independent auditors' report in Tesco's 2013 Annual Report. This suggests that PwC strongly suggested that commercial income adjustments be made in 2013/14, and that PwC gave Tesco an ultimatum: account for the commercial income adjustments, or we will include a note indicating we focused on this area because of the risk of manipulation. Tesco management clearly opted for the latter.

MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS MADE BY DEFENDANTS DURING THE CLASS PERIOD

126. On April 18, 2012, the beginning of the Class Period, Tesco disclosed its preliminary year-end results for the fiscal year 2011/12 (the 52 weeks ended February 25, 2012). In addition to reporting £3.8 billion in annual trading profits, U.K. revenues of £42.248 billion and U.K. trading profit of £2.480 billion, Tesco reported strengthening sales performance as follows:

> Our determined focus on [Tesco' s] immediate objectives has seen us take action in key areas during the year to strengthen our performance:
>
> • First, ***we are making rapid, substantial changes to our UK business to sharpen execution and competitiveness for customers by investing in staff and training, price and promotions***, ranging, service and store environment. This has required us to make a significant revenue and capital investment in the business which, when implemented, ***we expect to deliver a stronger sales performance in the months ahead.***

[Emphasis added].

127. The foregoing statements were materially false and misleading when made because the "rapid, substantial changes to [Tesco's] UK business" that the Company was implementing were not designed to "deliver a stronger sales performance in the months ahead" but rather to mislead the public as to the deteriorating operational and financial state of the Company. Specifically, beginning no later than its 2011/12 fiscal year, Tesco began to

misrepresent profits and losses, violating IFRS reporting requirements for commercial income by material amounts.

128. The April 18, 2012 report also explained Tesco's plan to generate more financial resources:

> The UK Plan - Building a Better Tesco
>
> It is against this background of slower than planned like-for-like growth and a further weakening in our performance relative to the wider industry that we took the decision in January to accelerate a plan - which had been developed over the course of 2011 - to make substantial changes to the UK business for customers. Elements of that plan, including ***the most significant changes to our pricing and promotions strategy for many years***, had started to be introduced in the autumn of 2011. We had also begun, just before Christmas, to progress another key component of the plan - designed to increase significantly staffing levels in key departments - initially in over 200 trial stores - to improve service standards.
>
> The additional investment we announced in January in these and other areas ***will result in a significant reset to the level of UK margins. This reset will give us the financial resources we need to make a comprehensive set of improvements to the shopping trip for customers over the course of the next few months.***

[Emphasis added].

129. The foregoing statements were materially false and misleading because the "significant changes to [Tesco's] pricing and promotions strategy" was not meant to and did not "result in a significant reset to the level of UK margins." In reality, the changes made to Tesco's pricing and promotions strategy were to place increasing pressure on suppliers to demand money in the form of rebates and premium shelf pricing placement, and these changes were not designed to "reset the level of UK margins" but rather to—as Mike Dennis of Cantor Fitzgerald explained—"boost short term profit margins."

130. One of the specific elements of Tesco's "plan to reinvigorate the UK core business" was to offer better prices and promotions. With regard to this approach, the April 18,

2012 announcement explained:

> Price & Value. We have seen some encouraging signs since the Big Price Drop was introduced - including, on our internal measures, ***a stronger shelf-edge price position against competitors*** **and** ***an improvement in volume growth relative to the market*** **-** but we have not seen the desired improvement in customer price perception.
>
> * * *
>
> Going forward, ***we intend to further strengthen Price Drop to build trust in our pricing but we will also increase the promotional element of it with stronger deals,*** including improved seasonal events. In addition, our trials of new activities to encourage higher basket sizes and loyalty, including money-off couponing through Club card and at the checkout, have gone well and will be applied more widely.

[Emphasis added].

131. The foregoing statements were materially false and misleading when made because Tesco's "Big Price Drop" plan was not intended to "further strengthen Price Drop to build trust in our pricing" because the Company's plan was to have suppliers share the pain of price cuts and promotions, but suppliers would only do that by agreeing to short-term, temporary price cuts in exchange for higher future prices or sales volumes that Tesco could not maintain. Thus, Tesco's plan was to inflate the Company's gross sales margins and overall profits in the short-term to disguise the deteriorating financial picture of the Company and not lose all consumer and investor confidence.

132. On June 11, 2012, Tesco released its First Quarter Interim Management Statement 2012/13 ("1Q:12-13 Statement"), which reassured investors that the "Build a Better Tesco" plan was making headway, and that the Company's "performance in the UK has been steady during a challenging quarter for the industry as a whole." The 1Q:12-13 Statement also noted:

- **Solid Q1 trading performance** and good progress on our strategic priorities
- **UK Performance in line with expectations**, and an improvement relative to market

133. The foregoing statements from the 1Q:12-13 Statement were materially false and misleading when made because by the 1st quarter, Tesco was improperly reporting material amounts of fictitious and premature commercial income. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £52 million[8] in commercial income in the 1st half of 2012/13. Thus, Tesco did not have "solid Q1 trading performance" and "UK Performance" was NOT "in line with expectations" because Defendants were basing these statements on data that Defendants knew or recklessly disregarded was false.

134. On October 3, 2012, Tesco released its Interim Results for the half year ended August 25, 2012, which announced a 1.4% increase in Group sales to £36 billion, UK division revenues of £21.407 billion and a UK trading profit of £1.115 billion. Moreover, Tesco reassured investors that its plan to "Build a Better Tesco" was on track:

> [W]e believe that our investment in 'Building a Better Tesco' in the UK ***will continue to strengthen our competitiveness*** by delivering further improvements in the shopping trip for customers. Consistent with our previous guidance, ***we expect trading margins in the UK to be similar in the second half to the first.***
>
> * * *
>
> ***This reduction in capital expenditure demonstrates our continued commitment to the financial strategy we laid out in April: investing to support sustainable business growth while also moving towards a higher level of cash generation and improving returns for shareholders.***
>
> * * *
>
> ***We are on track with the implementation of our plans to Build a Better Tesco in the UK.*** The additional investment we announced in January and the detailed plans we laid out in April are being implemented across the business, led by the strong, experienced UK leadership team we now have in place and supported by the hard work of our more than 300,000 staff.
>
> * * *
>
> We have focused our efforts in the first half on ***providing a stronger blend of great prices, relevant and engaging promotions*** - including couponing - and more highly-personalised offers using Clubcard.

[Emphasis added].

[8] £52 million is based on Plaintiff's allocation–Tesco said £155 in years prior to 2013/14.

135. The foregoing statements are materially false and misleading when made. At the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £52 million in commercial income in the 1st half of 2012/13, which artificially inflated, among other things, Tesco's reported trading profits. Thus, Defendants had no reasonable basis for the statement that "***we expect trading margins in the UK to be similar in the second half to the first.***" Moreover, because it was Tesco's plan to inflate the Company's gross sales margins and overall profits in the short-term to disguise the deteriorating financial picture of the Company, Defendants were not "***investing to support sustainable business growth***" as conveyed to the public. Rather than pursuing a plan to "'Build[] a Better Tesco' in the UK" that would "***continue to strengthen our competitiveness,***" Defendants instead embarked on a plan to make the Company appear to be in dramatically better financial shape than it was.

136. On December 5, 2012, Tesco issued its Third Quarter Interim Management Statement ("3Q:12-13 Statement"), announcing that UK total sales grew by 1.7%. The Company continued to inform investors that the Build a Better Tesco plan was progressing well and the Company's outlook was positive:

> ***We have continued to make good progress on our six-part plan to Build a Better Tesco in the UK. As a result, like-for-like sales growth in our food business - the main focus of the plan to date - has improved to + 1.2% for the quarter, outperforming the market. We are also pleased with the strong performance of our online grocery business, which delivered sales growth of 15%.***

* * *

> In the UK, ahead of the important seasonal period, and ***with the progress we have made so far on our plans to improve the shopping trip for customers, our outlook for the year as a whole is unchanged.***

[Emphasis added].

137. The foregoing statements from the 3Q:12-13 Statement were materially false and misleading when made because in this financial period Tesco was improperly reporting material amounts of fictitious and/or premature commercial income. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £53 million in commercial income in the 2nd half of 2012/13. Thus, Tesco did not "***continue[] to make good progress on our six-part plan to Build a Better Tesco in the UK***" because Defendants were basing this statement on data that Defendants knew or recklessly disregarded was false. Moreover, Defendants misleadingly affirmed Tesco's previous financial outlook by stating that "our outlook for the year as a whole is unchanged" despite the fact that its previous outlook was based on fictitious commercial income and grossly improper pulled-forward revenues.

138. In the 3Q:13 Statement, Defendant Clarke also boasted a positive outlook for Tesco:

> [Defendant Clarke:] "***I am pleased with the performance of our food business in the UK. Our six-part plan is about improving the shopping trip for customers for the long-term and this is a positive early sign.***"

[Emphasis added].

139. Defendant Clarke's statement was materially false and misleading when made because Tesco improperly accounted for £53 million in commercial income in the 2nd half of 2012/13, and therefore the Company's performance in the UK announced in the 3Q:12-13 Statement was based on materially false data. Moreover, the Company's "plan" was to have suppliers share the pain of price cuts and promotions, but suppliers would only do that by

agreeing to short-term, temporary price cuts in exchange for higher future prices or sales volumes that Tesco could not maintain. Thus, Tesco's plan was to inflate the Company's gross sales margins and overall profits in the short-term to disguise the deteriorating financial picture of the Company and not lose all consumer confidence.

140. On January 10, 2013, Tesco issued its Christmas and New Year Trading Statement, in which Defendants boasted improved financial results and positive Company outlook:

> ***UK like-for-like sales growth of +1.8% benefiting from an improving offer for customers - Recovering in-store performance - particularly in food.***
>
> * * *
>
> Consistent with the guidance provided in our Third Quarter Interim Management Statement in December, ***our outlook for the full year for the UK is unchanged and we expect the broad trends we have seen so far in the second half to continue through to the year-end***

[Emphasis added].

141. The foregoing statement was materially false and misleading because the "improving offer for customers" was based on short-term promotions that Tesco was only able to provide by squeezing its suppliers into agreements whereby the Company agreed to offer higher prices in the future and in volumes that Tesco would not be able to sell. Moreover, Defendants misleadingly affirmed Tesco's previous financial outlook by stating that "our outlook for the year for the UK is unchanged and we expect the broad trends we have seen so far in the second half to continue through to the year-end" even when its previous outlook was taking into account improperly accounted for commercial income and pulled-forward revenues.

142. The Christmas and New Year Trading Statement also included a statement from Defendant Clarke: "The Group performed broadly in-line with our expectations through the

Christmas period, with an ***improved performance in the UK***[.]" [Emphasis added].

143. Defendant Clarke's statement was materially false and misleading because the "improved performance in the UK" was based on data that Defendants actually knew or were reckless in disregarding was false and inflated due to, among other things, the Company's improper recognition of commercial revenue.

144. On April 17, 2013, Tesco issued its preliminary year-end results for the fiscal year 2012/13 (52 weeks ended February 23, 2013), in which the Company reported £3.5 billion in annual trading profits, U.K. trading profit of £2.272 billion and U.K. revenues of £42.088 billion). Tesco boasted the continued success of its "Build a Better Tesco" plan as follows:

> ***Our planned investment to 'Build a Better Tesco' has delivered an improved performance, despite trading conditions for the market as a whole remaining difficult throughout the year.*** Consumer confidence remained very low and customers continued to manage household budgets carefully in the face of high inflation. Despite this, our ***underlying performance significantly improved throughout the year, led by a much stronger performance in food- the main focus of our efforts to date.***

[Emphasis added].

145. The foregoing statements are materially false and misleading when made. At the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £105 million in commercial income in the 52 weeks ended 2012/13, which inflated, among other things, Tesco's reported trading profits. Thus, Defendants had no basis for the statement that "***underlying performance significantly improved throughout the year.***" Moreover, Tesco's "Build a Better Tesco" plan was not based

on long-term "improved performance" but rather to inflate the Company's gross sales margins and overall profits in the short-term, Defendants misled the public when they said that the plan "delivered."

146. On May 23, 2013, Tesco issued its 2013 Annual Report. The 2012-13 Annual Report also reported that its results were "in line with the guidance given at our Preliminary Results in April last year" and that "this level of margin is sustainable and appropriate for the foreseeable future."

147. These statements were materially false and misleading when made because Defendants misleadingly affirmed the Company's previous financial outlook by stating that results were "in line with the guidance given at our Preliminary Results in April last year" when its previous outlook was taking into account improperly accounted for commercial income and pulled-forward revenues. Moreover, Tesco's level of margin was not "sustainable and appropriate for the foreseeable future" because the trading margin was based upon "revenues" that were actually pulled from other financial periods and not accrued in the reporting period and high amounts of commercial revenue that came from temporary price cuts and promotions in exchange for higher future prices or sales volumes that Tesco knew it could not maintain.

148. Moreover, Tesco indicated that the fourth quarter of fiscal 2012 delivered the "strongest level of like-for-like sales growth [in the U.K. business] for three years," and explained that these results were "driven by a market-leading performance through the important Christmas & New Year period and was achieved despite a tougher comparative base as we lapped the exceptionally high levels of couponing activity undertaken in early 2012."

149. These statements were materially false and misleading when made because any sales growth was dependent upon couponing, promotions, and temporary price cuts through

agreements with the Company's suppliers that provided such relief only in exchange for higher future prices and greater promised sales volumes.

150. Defendant Clarke also lauded the success of the "Build a Better Tesco" plan and explained that the Company was poised for growth:

> ***Our plan to 'Build a Better Tesco' is on track and I am pleased with the real progress in the UK. We have already made substantial improvements to our customers' shopping experience, which are starting to be reflected in a better performance. We have set the business on the right track to deliver realistic, sustainable and attractive returns and long-term growth for shareholders.***

[Emphasis added].

151. The foregoing statements from Defendant Clarke were materially false and misleading when made because Tesco improperly accounted for £105 million in commercial income in 2012/13, and therefore the Company's performance in the UK announced in the 2013 Annual Report was based on false data. Moreover, Company's "plan" was to have suppliers share the pain of price cuts and promotions, but suppliers would only do that by agreeing to short-term, temporary price cuts in exchange for higher future prices or sales volumes that Tesco could not maintain. Tesco was also manipulating its reported revenues by improperly pulling forward revenue from future financial reporting periods. In reality, there was no "real progress in the UK" as the Company's performance in the UK was getting worse, not "better." Tesco's "Build a Better Tesco" plan was not designed to "deliver realistic, sustainable and attractive returns and long-term growth" because it was based upon delivering short term inflation to the Company's gross sales margins, therefore, the plan was not at all "on track."

152. The 2013 Annual Report also included the following statement regarding the Company's revenue recognition policy:

> **Revenue**

> Revenue comprises the fair value of consideration received or receivable for the sale of goods and services in the ordinary course of the Group's activities.
>
> **Sale of goods**
> ***Revenue is recognized when the significant risks and rewards of ownership of the goods have transferred to the buyer and the amount of revenue can be measured reliably.***
>
> Revenue is recorded net of returns, discounts/offers and value added taxes.

[Emphasis added].

153. The foregoing statements were materially false and/or misleading when made because Defendants did not recognize revenue when "the amount of revenue can be measured reliably." Rather, the commercial income revenue recognized in fiscal 2012/13 was measured ***prematurely*** (meaning Tesco could not justify recording such revenue in the period it did so), and ***fictitiously*** (meaning that Tesco could never justify recording such revenue).

154. The 2013 Annual Report also included the following statements regarding fraud, compliance and control:

> ***Appropriate procedures and controls including Group Accounting Policy, key financial controls, IT access controls and segregation of duties are set out across the business to reduce fraud risks***
>
> ***Compliance Committee monitors implementation of, and compliance with, relevant policies and procedures***
>
> ***Internal Audit undertakes risk-based programmes and detailed investigations into all business areas and reports its findings to the Audit Committee***
>
> ***Group Loss Prevention & Security monitors fraud, bribery and business continuity across the Group and reports its findings to the Audit Committee***
>
> ***Store and distribution compliance and technical law and trading reviews conducted regularly to reinforce compliance across the estate***
>
> ***External Audit rotational coverage of areas and assessment of controls***

[Emphasis added].

155. The foregoing statements were materially false and/or misleading when made because Tesco's internal control procedures with respect to accounting were woefully deficient and ineffective. Despite its statements to the contrary, Tesco failed to maintain accurate records concerning its revenues, income and costs, and knew or were reckless in not knowing of Tesco's failure to record revenues, income, and costs in the appropriate accounting periods. Defendants failed to implement procedures that were reasonably designed to prevent accounting irregularities. Indeed, as provided in the September 22, 2014 *Forbes* article entitled "Tesco's Accounting Irregularities Are Mind Blowing," the author states that "the only way Tesco could have 'delayed booking of costs' is by not entering invoices into its accounting systems. In today's world of electronic invoicing, that's not easy to do, and had to be consciously managed." Defendants' statement that "***appropriate procedures and controls including Group Accounting Policy, key financial controls, IT access controls and segregation of duties are set out across the business to reduce fraud risks"*** was materially false when made, as Defendants failed to install proper review procedures and checks to ensure that it was properly recording revenue, income, rebates, promotional allowances, and costs. [Emphasis added].

156. The 2013 Annual Report also includes a section entitled "Statement of Directors' responsibilities," which includes the following statement:

> The Directors, whose names and functions are set out on pages 24 and 25 confirm that, to the best of their knowledge:
>
> the Group financial statements, ***which have been prepared in accordance with IFRS, as endorsed by the EU, give a true and fair view of the assets, liabilities, financial position and profit of the Group***

[Emphasis added].

157. The foregoing statement was materially false and misleading because Tesco's

financial statements were NOT "prepared in accordance with IFRS" and did NOT "give a true and fair view of the assets, liabilities, financial position and profit of the Group." The Company's financial results for 2012/13 year improperly recognized £105 million in commercial income, which materially inflated its profits. As described in more detail in ¶¶83-121, Tesco violated IAS 2 and related IFRS requirements, *inter alia*, by recording tens or hundreds of millions of dollars in revenue or reductions to cost of sales before the products were actually sold. Tesco also violated IAS 2 when it recorded rebates and discounts to which it was not contractually entitled, or to which the seller had not agreed, or was not willing to provide for other reasons. Moreover, Tesco dramatically inflated its reported trading profit and underlying profit—metrics that do not comply with IFRS—by systematically mischaracterizing ongoing and recurring expenses under IFRS as "one-off" charges, and adding such expenses back to reported profit.

158. On June 5, 2013, Tesco released its First Quarter Interim Management Statement ("1Q:13-14 Statement"), in which the Company reported 2.7% sales growth (excluding petrol). The 1Q:13-14 Statement stated, in part, that "'Building a Better Tesco in the UK' on track – improving customer perceptions on all key measures" and that "[t]here have been no material events, transactions or changes in the financial position of the Group since the year end, other than as outlined in this statement."

159. The foregoing statements from the 1Q:13-14 Statement were materially false and misleading when made because in this financial period Tesco was improperly reporting material amounts of fictitious and/or premature commercial income. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £26 million in commercial income in the 1st half of 2013/14. The Company's "Building a Better Tesco in the UK" plan was

also not "on track" because the Company's UK operations were getting worse, as Tesco had to squeeze suppliers to generate extra commercial income to improve its short term margins. Moreover, Defendants misleadingly affirmed its previous financial statements by stating that "[t]here have been no material events, transactions or changes in the financial position of the Group since the year end" even when its previous statements were accounting for commercial income and pulled-forward revenues.

160. The 1Q:13-14 Statement also included the following remarks from Defendant Clarke:

> ***"[W]e have started the year on track..."***
>
> "Importantly to the objectives we have set out for sustainable and disciplined growth, customer perceptions are improving across all aspects of the shopping trip in the UK, driven by ***continued progress on our plans to 'Build a Better Tesco'*** and our market-leading multichannel offer.
>
> "Conditions outside the UK remain challenging and ***we have broadly maintained our performance from the fourth quarter of last year.*** Whilst we are not expecting economic conditions to improve in the near term, we have a customer-focused plan for the year in each of our markets which takes this into account, and we will maintain a disciplined approach to investment and cash flow as outlined in April."

[Emphasis added].

161. Defendant Clarke's foregoing statements were materially false and/or misleading when made. First, Tesco improperly accounted for £26 million in commercial income in the 1st half of 2013/14, and was still pressing suppliers to agree to short-term price cuts in exchange for higher future prices increased sales volumes. Thus, the Company did not start 2014 "on track." The Company was failing to "Build a Better Tesco" in the UK because the Company's UK operations were getting progressively worse as the Tesco continued to steal from Peter to pay Paul. Finally, Tesco did not "***broadly maintain[] [its] performance from the fourth quarter of***

last year" because its fourth quarter 2013 performance was overstated, as was the first quarter of 2014.

162. On October 2, 2013, Tesco reported its interim results for the half-year ended August 24, 2013, in which the Company reported £1.588 billion in half-year trading profits, £1.131 billion in half year U.K. trading profits, and U.K revenues of £21.630 billion. With regard to the U.K. operations, the Company explained that "Our plans to Build a Better Tesco in the UK have continued apace in the first half, with more and more customers seeing and responding positively to the changes we have made to our stores, our products, our marketing and the level of service we offer."

163. The foregoing statements from the October 2, 2013 report were materially false and misleading because at the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired as Tesco was improperly recording unearned vendor rebates and promotional allowances as "revenue" and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £26 million in commercial income in the 1st half of 2013/14, which artificially inflated, among other things, Tesco's reported trading profits. The Company's "plans to Build a Better Tesco in the UK" did not "continue[] apace in the first half" because the UK business was continuing to falter and Tesco's gross sales margins were dependent upon vendor rebates and promotions.

164. The October 2, 2013 report also included a statement from Defendant Clarke explaining that the Company's financial performance was driven by the "strengthening" of its U.K. business:

> Despite continuing challenges, ***we have made further progress on our strategic priorities. We are strengthening our UK business, working to establish multichannel leadership and pursuing disciplined international growth. Our performance in the UK has strengthened through the half, particularly in our food business, as we have continued our work to Build a Better Tesco. More and more customers are benefiting from a better shopping environment***, as our store refresh programme has gathered momentum.

[Emphasis added].

165. Defendant Clarke's statements were materially false and misleading when made because Tesco's UK business was weakening, not "strengthening." Tesco was increasingly reliant on sales promotions to lower prices on products and dependent on rebates and other accounting tricks to maintain its gross sales margins.

166. On November 28, 2013, Mike Dennis, an analyst covering Tesco for Cantor Fitzgerald, published a note accusing Tesco of squeezing its suppliers in order to boost its margins. After speaking with Tesco's suppliers, Dennis explained that Tesco was under major pressure and stated that "[i]t is our view that Tesco has again overstepped the mark and the situation is very difficult for many suppliers." Dennis went on to say that "[i]t seems Tesco's stable UK margin stance is illogical and unsustainable and cannot just be maintained at the expense of sales, European profits and other operations." Dennis also stated that suppliers had shown him letters from Tesco demanding discounts after the fact.

167. In response to the Cantor Fitzgerald report, a spokesman for Tesco stated: "The analyst is clear it is his opinion, ***based only on speculation, but he doesn't seem to have taken our previous guidance into account.***"

168. Tesco's statement in response to the note published by Cantor Fitzgerald was materially false and misleading when made because Tesco was, in fact, squeezing its suppliers in order to boost its margins. Moreover, Dennis was correct in stating that Tesco's "margin stance

is illogical and unsustainable" because it was using short term price cuts, rebates, and promotions to maintain its gross sales margins and trading profits.

169. On December 4, 2013, Tesco reported its interim results for the third quarter 2013/2014 indicating that the Company's U.K. sales had grown 0.9% and like-for-like sales had decreased 1.5%. Defendant Clarke explained that the decrease in like-for-like sales was due in part to actions taken by the Company to "position the business for the future." Nevertheless, Defendant Clarke assured that customers continued to "respond positively to the changes we are making to the UK business to differentiate our offer and position Tesco as a multichannel leader" and also that the Company was "***confident that [its] strategic priorities strengthening the UK business, establishing multichannel leadership and ensuring capital discipline-are the right ones and that they will drive long-term value and returns***." [Emphasis added].

170. Defendant Clarke's statements were materially false and misleading when made because Tesco's business actions, such as pressuring suppliers to agree to short-term price cuts, rebates, and promotions, were not designed to "position the business for the future" or to drive "long-term value and returns." These tactics were used simply to temporarily camouflage Tesco's financial difficulties in the unreasonable hope that sales would somehow miraculously improve.

171. On January 9, 2014, Tesco issued its Christmas and New Year Trading Statement in which the Company reported "Group sales in the six weeks to 4 January 2014 declined by (1.2)% including petrol" and "[i]n the UK, total sales including VAT and petrol declined by (1.5)%...." Furthermore, the Company stated the following:

> ***The progress we have made since laying out our plans to Build a Better Tesco in the UK*** contributed to our most compelling Christmas offer at an important time of year for our customers. Despite the external challenges, we continued to

> invest in all elements of our customer offer, which contributed to an ***improving trend through the period.*** Our refreshed stores also performed more strongly.

172. The foregoing statements were materially false and misleading when made because no "progress" had been made "since laying out [the Company's] plans to Build a Better Tesco in the UK." If anything, gross margins were simply maintained, and that was based on short-term promotions that Tesco was only able to provide by squeezing its suppliers into agreements whereby the Company agreed to offer higher prices in the future and in volumes that Tesco would not be able to sell. Moreover, Defendants misleadingly stated that there was "an improving trend through the period" even though Tesco's financial reports were accounting for commercial income and pulled-forward revenues.

173. The Christmas and New Year Trading Statement also stated that "[r]eflecting our continued investment for customers in challenging conditions for the UK market as a whole, we now expect to report full year results within the range of current market expectations." Defendants also "estimate[d] the market consensus for FY 2013/14 Group trading profit to have a range of £3,157m to £3,416m, with a mean of £3,330m."

174. The following statements were materially false and misleading because Defendants knew or recklessly disregarded that Tesco could not legitimately "report full year results within the range of current market expectations" as the market's expectations were based in part due to previously reported results that improperly accounted for commercial income and pulled-forward revenues. Moreover, Defendants' estimated trading profit for the Company in FY 2013/14 was not accounting for the £53 in improperly recognized commercial income that the Company later acknowledged.

175. On April 16, 2014, Tesco disclosed its preliminary year-end results for the fiscal

year 2013/14 (52 weeks ended February 22, 2014), in which the Company reported £3.315 billion in annual trading profits, U.K. trading profit of £2.191 billion and U.K. revenues of £43.057 billion). Defendant Clarke made the following statements:

> ***Having strengthened the foundations of our business in the UK***, we are now accelerating our growth in new channels and investing in sharper prices, improved quality, stronger ranges and better service.
>
> * * *
>
> ***During the year, we have maintained our focus on cash and capital discipline.***

[Emphasis added].

176. The foregoing statements are materially false and misleading when made. At the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £53 million in commercial income in the 52 weeks ended 2013/14, which inflated, among other things, Tesco's reported trading profits. Moreover, Defendant Clarke's statement that Tesco "***strengthened the foundations of [its] business in the UK***" was materially false and misleading because the Company's UK business was struggling and to make up for poor sales, Tesco was pressuring its suppliers to lower prices through promotions and rebates. Clarke's statement that "***we have maintained our focus on cash and capital discipline***" was also false and misleading because Tesco was prematurely and inappropriately recognizing commercial income during 2013/14 year to the tune of £53 million.

177. On May 22, 2014, the Company published its Annual Report and Financial Statements ("2014 Annual Report") for the 52 weeks ended February 22, 2014. In the Annual Report, the Company stated the following regarding its recognition of commercial income:

> Commercial income (promotional monies, discounts and rebates receivable from suppliers) recognized during the year is material to the income statement and amounts accrued at year end are judgmental.
>
> * * *
>
> We agreed commercial income recognized to contractual evidence with suppliers, ***with particular attention to the period the income was recorded and the appropriateness of the accrual at the year end.***

[Emphasis added].

178. The foregoing statements were materially false and/or misleading when made because Defendants did not pay "particular attention to the period the income was recorded" as Tesco prematurely and inappropriately recognized £53 million in commercial income during the 52 weeks ended February 22, 2014.

179. The Annual Report also included the following statement regarding the Company's revenue recognition policy:

> **Revenue**
> Revenue comprises the fair value of consideration received or receivable for the sale of goods and services in the ordinary course of the Group's activities.
>
> **Sale of goods**
> ***Revenue is recognized when the significant risks and rewards of ownership of the goods have transferred to the buyer and the amount of revenue can be measured reliably.***
>
> Revenue is recorded net of returns, discounts/offers and value added taxes.

[Emphasis added].

180. The foregoing statements were materially false and/or misleading when made because Defendants did not recognize revenue when "the amount of revenue can be measured reliably." Rather, the revenue recognized in fiscal 2013/14 was measured ***prematurely*** (meaning Tesco could not justify recording such revenue in the period it did so), with respect to commercial income, and ***fictitiously*** (Tesco could never justify recording such revenue and knew

this), with respect to commercial income revenue.

181. The Company also reported the following in its Annual Report regarding sales and profits:

> Group sales for the year were £70.9 billion, an increase of 0.3% at actual exchange rates. Full-year profit for our continuing operations declined (6.0)% to £3.3 billion.

182. The foregoing statement of sales and profits was materially false and/or misleading when made. At the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £53 million in commercial income in the 52 weeks ended 2013/14, which inflated, among other things, Tesco's reported trading profits.

183. The Annual Report also included the following statements regarding fraud, compliance and control:

> ***Procedures and controls are set out across the business to reduce fraud and compliance risks, including our Group Accounting Policy, key financial controls, IT access controls and segregation of duties***
>
> ***Compliance Committees monitor the implementation of, and compliance with, relevant laws, policies and procedures***
>
> ***Internal Audit undertakes a risk-based programme with detailed investigations into all business areas and reports its findings to management and the Audit Committee***
>
> ***Group Loss Prevention & Security monitors fraud, bribery and business continuity risks across the Group and reports its findings to the Audit Committee***

> ***Store and distribution compliance and technical law and trading reviews are conducted regularly to reinforce compliance across the Group***
>
> ***A comprehensive compliance programme is in place to promote, monitor and review compliance with the UK Groceries Supply Code of Practice***
>
> ***External Audit rotates its coverage of areas and assessment of controls***

[Emphasis added].

184. The foregoing statements were materially false and/or misleading when made because Tesco's internal control procedures with respect to accounting were woefully deficient and ineffective. Despite its statements to the contrary, Tesco failed to maintain accurate records concerning its revenues, income and costs, and knew or were reckless in not knowing of Tesco's failure to record revenues, income, and costs in the appropriate accounting periods. Defendants failed to implement procedures that were reasonably designed to prevent accounting irregularities. Indeed, as provided in the September 22, 2014 *Forbes* article entitled "Tesco's Accounting Irregularities Are Mind Blowing," the author states that "the only way Tesco could have 'delayed booking of costs' is by not entering invoices into its accounting systems. In today's world of electronic invoicing, that's not easy to do, and had to be consciously managed." Defendants' statement that "***appropriate procedures and controls including Group Accounting Policy, key financial controls, IT access controls and segregation of duties are set out across the business to reduce fraud risks"*** was false, as Defendants failed to install proper review procedures and checks to ensure that it was properly recording revenue, income, rebates, promotional allowances, and costs.

185. The Annual Report also includes a section entitled "Statement of Directors' responsibilities," which includes the following statement:

> The Directors, whose names and functions are set out on pages 26 and 27 confirm that, to the best of their knowledge:
>
> the Group financial statements, ***which have been prepared in accordance with IFRS, as adopted by the EU, give a true and fair view of the assets, liabilities, financial position and profit of the Group***

[Emphasis added].

186. The foregoing statement was materially false and/or misleading because Tesco's financial statements were NOT "prepared in accordance with IFRS" and did NOT "give a true and fair view of the assets, liabilities, financial position and profit of the Group." The Company's financial results for 2013/14 year improperly recognized £53 million in commercial income, which materially inflated its profits. As described in more detail in ¶¶83-121, Tesco violated IAS 2 and related IFRS requirements, *inter alia*, by recording tens or hundreds of millions of dollars in revenue or reductions to cost of sales before the products were actually sold. Tesco also violated IAS 2 when it recorded rebates and discounts to which it was not contractually entitled, or to which the seller had not agreed, or was not willing to provide for other reasons. Moreover, Tesco dramatically inflated its reported trading profit and underlying profit—metrics that do not comply with IFRS—by systematically mischaracterizing ongoing and recurring expenses under IFRS as "one-off" charges, and adding such expenses back to reported profit.

187. On June 4, 2014, Tesco issued its First Quarter Interim Management Statement ("Q1:14-15 Statement"), in which the Company reported its first quarter results. The Q1:14-15 Statement included the following statement from Defendant Clarke:

> ***Whilst these improvements will drive long term loyalty, the associated reduction in the level of untargeted promotions and the deflationary impact from lower prices in the first quarter has affected our near term sales performance.*** On price, the entire market has seen a stepdown in growth since the end of last year

> largely driven by lower inflation, led by the actions we outlined in February. ***On promotions, we have chosen to reinvest for loyalty, helping customers manage their budgets on an ongoing basis rather than funding short term, indiscriminate couponing.*** This stepdown in couponing alone accounts for more than half of our underperformance relative to the grocery market compared to the final quarter of last year.

[Emphasis added].

188. This statement was materially false and misleading because Defendant Clarke knew or was reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. Tesco had been engaging in "indiscriminate couponing" and "untargeted promotions" because it was Tesco's plan to inflate the Company's gross sales margins and overall profits in the short-term to disguise the deteriorating financial picture of the Company.

189. In the Q1 Statement, Defendants also stated the following regarding the Company's outlook:

> We are pleased by the early response to our accelerated efforts to deliver the most compelling offer for customers. ***We expect this acceleration to continue to impact our headline performance throughout the coming quarters and for trading conditions to remain challenging for the UK grocery market as a whole.***
>
> ***There have been no material events, transactions or changes in the financial position of the Group since the year end, other than as outlined in this statement.***

[Emphasis added].

190. The foregoing statements were materially false and/or misleading when made because, among other things Tesco was improperly reporting material amounts of fictitious and/or premature commercial income in this financial period. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £118 million in commercial

income in the 1st half of 2014/15. Defendants misleadingly affirmed its previous financial statements by stating that "[t]here have been no material events, transactions or changes in the financial position of the Group since the year end" even when its previous statements were accounting for commercial income and pulled-forward revenues.

191. A June 4, 2014 article in *The Telegraph* reported statements by Defendant Clarke regarding the Company's outlook and his future with Tesco. According to the article, Defendant Clarke stated, "I have never been more determined. I'm not going anywhere. I am going to see through a fundamental reshaping of Tesco." Moreover, the article reported that Defendant Clarke "insisted that Tesco is 'changing' and there is 'positive momentum' within the business." Clarke went on to say that it would be "pointless" to draw conclusions from falling sales figures, and that "[i]t is too early to make a sound judgement [sic] on the success of the business transformation programme. It is not something that happens overnight. This is a short-term number."

192. Defendant Clarke's statements were materially false and misleading when made because Tesco's "business transformation programme" under Defendant Clarke was not a success, as it was merely designed to inflate gross sales margins and overall profits in the short term and not make any transformative changes to the business' operations.

193. On July 21, 2014, Tesco issued a Trading Update and press release announcing that former Unilever president Dave Lewis would replace Defendant Clarke as CEO of the Company effective on October 1, 2014, with Clarke continuing with the Company to support the transition until January 2015. The press release included a statement regarding profits for 2014:

> Current trading conditions are more challenging than we anticipated at the time of our first quarter interim management statement on 4th June. ***The overall market is weaker and, combined with the increasing investments we are making to***

> ***improve the customer offer and to build long term loyalty, this means that sales and trading profit in the first half of the year are somewhat below expectations.***

[Emphasis added].

194. The foregoing statement was materially false and misleading when made because at the time these statements were made, Defendants knew or were reckless in disregarding that the Company's financial condition was materially impaired because Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco improperly accounted for £118 million in commercial income in the 1st half of 2014/15, which inflated, among other things, Tesco's reported trading profits.

195. On August 29, 2014, Tesco issued a Trading Update and press release stating the following: "**We now expect trading profit for 2014/15 to be in the range of £2.4bn to £2.5bn. Trading profit for the six months ending 23 August 2014 is expected to be in the region of £1.1bn.**" [Emphasis added].

196. The foregoing statement was materially false and misleading when made because Defendants knew or were reckless in disregarding that Tesco was improperly recording unearned vendor rebates and promotional allowances as revenue and creating fictitious revenue by pulling in sales from ensuing quarters. As later admitted by the Company and described in the chart in ¶86, Tesco later lowered its expected trading profit for 2014/15 by £263 million, due to "the accelerated recognition of commercial income and delayed accrual of costs."

ADDITIONAL ALLEGATIONS CONCERNING DEFENDANTS' ACTIONABLE STATEMENTS AND OMISSIONS OF OPINION

197. Defendants' opinion statements omitted material facts about Defendants' inquiry

into or knowledge concerning their statements of opinion. The omitted facts show the statements made by Defendants lacked the basis for making those statements that a reasonable investor would expect, even if Defendants subjectively held those opinions, which they did not. A reasonable investor in Tesco expects not just that Defendants believe the opinions publicly stated (however irrationally), but that they fairly align with the information in Defendants' possession at the time.

198. Class members' expectations about the degree of certainty underlying an opinion is the function of the specificity of the opinion itself and the speaker's special knowledge that is unavailable to Class members. For statement of opinion, the proper analysis is what a reasonable person would naturally understand a statement to convey beyond its literal meaning. For opinion statements, this means considering the foundation investors would expect an issuer to have before making the statement. Where, as here, Defendants omitted material facts about their inquiry into or knowledge concerning their statements of opinion, and those facts conflict with what a reasonable investor would take from the statements themselves, the omissions create liability. Defendants knew at the time they made these statements of opinion particular facts the omission of which made the opinions at issue misleading to a reasonable person reading the statement fairly and in context.

199. Defendants' choice of accounting treatments are statements of opinion. Indeed, Defendants themselves note in their Annual Report that "Commercial income (promotional monies, discounts and rebates receivable from suppliers) recognized during the year is material to the income statement and amounts accrued at year end are ***judgmental***." [Emphasis added]. Defendants' accounting treatments include recognizing premature and fictitious commercial income, delaying accrual of costs, overstating inventory, and misrepresenting trading profit and

underlying profit. Those opinions imply that Defendants had a basis in fact to utilize the particular treatment and that Defendants were not in possession of facts that rebutted the opinion.

200. In truth, Defendants had no reasonable basis for these opinions and possessed facts that rebutted them, including but not limited to: the existence of a whistleblower who raised these very types of accounting red flags to Defendant Clark while he was still CEO; Defendants knew Tesco's Polish subsidiary engaged in the very same type of revenue recognition misconduct which was the subject of an email from Defendant McIlwee back in April 2012; on November 28, 2013, analyst Mike Dennis of Cantor Fitzgerald – after speaking to suppliers and reviewing letters to suppliers from Tesco demanding discounts after the fact -- accused Tesco of squeezing suppliers ,"overstepp[ing] the mark," and noting "Tesco's stable UK margin stance is illogical and unsustainable and cannot just be maintained at the expense of sales, European profits and other operations"; Tesco's odd denial of Dennis' claim accused Dennis of basing his opinion "only on speculation" despite the obvious fact that Dennis had actually interviewed suppliers and reviewed documentation to support his claim; CW1, employed during the last six months of the Class Period at Tesco, reported that Tesco's treatment of promotional pricing often did not comply with the legal team's guidance; Tesco's methods to extract commercial income from suppliers were prohibited by the UK Groceries Supply Code of Practice; CW2, also employed at Tesco during the last six months of the Class Period, reported that Tesco would "bully" and "batter" its suppliers until they offered Tesco rebates and recalled a specific example with L'Oreal, who refused to buckle to Tesco's demands; and PwC included unusual language regarding the "risk of manipulation" regarding accounting for commercial income in its 2014 independent auditors' report that did not appear in the 2013 Annual Report, strongly supporting a conclusion that PwC urged Tesco to make commercial income adjustments in 2013/14, and that

PwC gave Tesco an ultimatum: account for the commercial income adjustments, or we will include a note indicating we focused on this area because of the risk of manipulation. Tesco management clearly opted for the latter.

THE TRUTH IS REVEALED

201. On September 22, 2014, Tesco issued a Trading Update and press release in which the Company stated that the Company "identified an overstatement of its expected profit for the half year, principally due to the accelerated recognition of commercial income and delayed accrual of costs." The press release further explained that "[o]n the basis of preliminary investigations in to the UK food business, the Board believes that the guidance issued on 29 August 2014 for the Group profits for the six months to 23 August 2014 was overstated by an estimated £250m. Some of this impact includes in-year timing differences. Work is ongoing to establish the extent of these issues and what impact they will have on the full year."

202. In response to the announcement, new CEO Dave Lewis stated that "[w]e have uncovered a serious issue and have responded accordingly. The Chairman and I have acted quickly to establish a comprehensive independent investigation. The Board, my colleagues, our customers and I expect Tesco to operate with integrity and transparency and we will take decisive action as the results of the investigation become clear."

203. That same day, Tesco announced that the Company suspended four top executives after discovering that profit estimates had been overstated: UK managing director Chris Bush, UK finance director Carl Rogberg, commercial director John Scouler, and food sourcing director Matt Simister.

204. Tesco also announced that it had retained accountants from Deloitte LLP ("Deloitte") to undertake an independent and comprehensive review of the accounting issues and

work with Freshfields Bruckhaus Deringer LLP, Tesco's external legal advisors, to further analyze the issues that led to the overestimate of profits. The investigation required that executives hand over their laptop computers and submit to interrogation on the issues.

205. When the Company revealed the truth about the Company's true financial condition, the price of Tesco's ADRs plummeted from $11.29 per share at close on September 19, 2014 to $9.61 per share on September 22, 2014, a decline of 15% on unprecedented trading volume.

POST CLASS PERIOD EVENTS AND COMPANY ADMISSIONS

206. On September 23, 2014, Tesco issued a press release stating that Alan Stewart would be immediately replacing Defendant McIlwee as CFO of the Company.

207. That same day, an article in Reuters on September 23, 2014, noted: "Tesco Plc's disclosure of huge accounting mistakes over contracts with its suppliers shocked industry analysts and executives" and that the "revelation on Monday that it had overstated its profit forecast for the first half of the year by 250 million pounds came as a nasty surprise and wiped 2 billion pounds off its stock market value."

208. The next day, on September 24, 2014, the Financial Reporting Council ("FRC") issued a release stating the following:

> The FRC is monitoring the situation following Tesco's [September 22, 2015] announcement closely. The FRC has disciplinary powers in relation to misconduct by accountants and, through the Financial Reporting Review Panel, can also require a company to restate its financial statements. The FRC does not have powers to monitor or require restatement of unaudited trading statements. It will consider the outcome of the investigation announced by the company and determine whether it should take regulatory action.

209. Then, on October 1, 2014, the Financial Conduct Authority ("FCA"), the UK's financial watchdog, announced that it was investigating Tesco's accounting practices. In

response, the Company stated, "Tesco will continue to co-operate fully with the FCA and other relevant authorities considering this matter."

210. Two weeks later, on October 14, 2014, Tesco announced that it suspended three additional executives in the Company's UK food business amid the investigation into the Company's accounting practices: William Linnane, who managed the impulse-purchase unit; Dan Jago, who managed wines and spirits; and Sean McCurley who was in charge of the convenience-store operations. In the wake of the accounting scandal, ten of the Company's most senior staff have been suspended, asked to leave, or have stepped down from the Company.

211. On October 23, 2014, Tesco issued an earnings statement that confirmed that the Company overstated its profit figures for the first half of 2014, but increased the overstatement from £250 million to £263 million, and indicated that the commercial income reporting errors would increase during the 2nd Half of 2014/15. Although the total profit figure will be reflected in the Company's current-year earnings, Tesco stated that £145 million of the overstatement related to its two previous financial years. Conveniently, the £145 million was just under the amount which would require Tesco to restate the results of those previous years. Because of the "uncertainties" over the Company's future performance, Tesco admitted that it could no longer estimate how much profit it would make in the full fiscal year. New CFO Alan Stewart summarized the Company's investigation into the accounting issues as follows:

> So we set up a triage process. One of the realizations we had is that we might get a lot of incoming questions, challenges; we might get more information that came up. So we had a triage process which rapidly assessed that and decided how we dealt with it.
>
> We had 6.3 million documents which have been captured, in the technical word. We've got those data records captured. And we've gone through [18,000]* invoices as the top level of review for this business. That's the scale of what we've had to deal with in this four weeks and what our assistants in Deloitte's and the

auditors have had to deal with.

We've focused in on 500 invoices. We had the paper, which we spoke about. And that highlighted around 500 invoices and areas we had to look at. When we got into that, we then realized that, actually, the complexity of commercial income is that behind any single commercial transaction, there may well be different elements. So those 500 invoices expanded to over 700 invoices, and they go back and forward in time.

All of those have worked through, and we've seen, as I say, no evidence materially outside the UK business. What do I mean when I say materially? Well, actually, in the Irish business, a lot of the purchasing is done in the UK; a very small element into Ireland. But essentially, this is something which is linked to the UK. And we're now complete.

So we've sized it at GBP263 million, and when we look at that, and this is an accounting view of the world, remember, the accounting impact on the first half of this year is GBP118 million.

We've looked at it in respect of the prior year and we estimate that in the last year, around GBP70 million, we've booked GBP70 million for the last year, arose last year, and in earlier years, GBP75 million arose. That means that we had a brought-forward balance sheet of around GBP145 million and a full impact of GBP263 million. Remember that that goes against our expectations for the year and we've had to write that off.

So that's where we are in terms of the numbers...

212. Tesco Chairman Sir Richard Broadbent announced his resignation that same day, stating that "[t]he issues that have come to light over recent weeks are a matter of profound regret."

213. UK's Serious Fraud Office notified Tesco on October 29, 2014 that it would launch a formal criminal investigation into the accounting practices of the Company. As a result of the SFO investigation, the FCA discontinued its own investigation of the Company. The SFO has not yet announced the results of its ongoing investigation.

214. On December 9, 2014, Tesco issued a Trading Update and press release, which stated the following:

> ***In recent weeks we have implemented new policies and procedures which will govern our commercial income activities*** and taken actions to invest in and improve our customer offer.
>
> ***In our interim results on 23 October we highlighted that full year profitability would be impacted by actions we may choose to take and that the commercial income overstatement would affect second half results as we revisited our plans with the new management team***
>
> ***Our new Commercial approach will underpin stronger long-term relationships with our suppliers, benefiting customers, whilst at the same time ensuring that revenue recognition is transparent and appropriate. We have retrained our entire team and begun the cascade with our suppliers.***
>
> * * *
>
> On the 8th January we will share more detail about the measures we plan to take to improve the competitiveness of the UK customer offer and to strengthen the balance sheet. ***On the basis of the changes and investments made to date we now anticipate group trading profit for the financial year ending February 2015 will not exceed £1.4billion.***

[Emphasis added].

215. On December 17, 2014, J.P. Morgan issued a report on Tesco that indicated that the Company's overstatement of profits may be even greater than the £263 million that Tesco announced. In pertinent part, the report stated:

> **EBIT gap.** We have looked at the accounts of Tesco Stores, Tesco Property Holdings, Tesco Distribution, One Stop stores, dunnhumby, Dobbies, Blinkbox and Giraffe of the last eight years. Over the years, the difference between the EBIT reported by Tesco Group for the UK and the sum of the EBIT numbers published by these subsidiaries was very small at £0-50mn. In 2012/13, this difference was only £3mn as an example. However, in 2013/14, this difference amounted to £319mn. Only Blinkbox has not reported the accounts for the year to Feb-14 yet. For this subsidiary we have assumed a loss of £35mn vs £25mn the year before (which was only consolidated by Tesco for half a year). Some analysts in the market have estimated losses for Blinkbox of up to £100mn, which would increase the difference to £384mn.
>
> The difference of £319mn in 2013/14 includes £145mn of the profit overstatement announced by the company (of which £70mn related to 2013/14 and £75mn related to prior years). However, this still leaves a **gap of £174mn, which compares with an average gap of £28mn in the previous seven years**.

> We asked the company, and they did not provide any further details but they noted that this difference might be explained by the fact that we are comparing an IFRS Trading Profit with a UK GAAP operating profit and that there may be intra company adjustments.
>
> * * *
>
> We are unable to explain the full gap between the Companies House EBIT and the reported UK trading profit of 2013/14. Regardless of what the exact UK profit was in 2013/14, it seems clear to us that Tesco's results are being hit by the unwinding of supplier rebates as volumes fall, hence the need to reset the framework with suppliers. We remain cautious on Tesco and the rest of the UK sector.

[Emphasis added].

216. On January 8, 2015, during a call with analysts, new CFO Alan Stewart made a compelling admission related to the Company's improper accounting during the Class Period. In response to a question raised by JP Morgan analyst Jaime Vazquez regarding how much commercial income would be recovered in 2015/16, Stewart responded: "we've said that this an uncertainty, we've said that we will engage and I don't think it would be appropriate to call [sic] you what that means...So to a certain degree it becomes a circular argument so [sic] in the immediate future." In other words, none of the reversed commercial income will be recovered in 2015/16 because it was mostly fictitious.

217. On December 22, 2014, the FRC announced that it launched an investigation into the preparation, approval, and audit of the financial statements of Tesco for the financial years ended February 25, 2012, February 23, 2013, and February 22, 2014 in connection with the Company's recently disclosed profit overstatements.

218. Then, on February 5, 2015, Christine Tacon, the Groceries Code Adjudicator, announced that her office also launched an investigation into Tesco amid allegations that the Company delayed payments to suppliers and unfairly handled payments for shelf promotions.

Tacon stated: "I have reasonable suspicion that Tesco breached the code in two areas. One is reasonable payments and second is payments for better positions on shelf outside promotions." According to Tacon, the probe, which covers Tesco's conduct from June 25, 2013 to February 5, 2015, would focus specifically on delays in payments associated with:

- Short deliveries, including imposition of penalties;
- Consumer complaints where the amounts were not agreed;
- Invoicing discrepancies such as duplicate invoicing where two invoices were issued for the same product;
- Deductions for unknown or un-agreed items;
- Deductions for promotional fixed costs (gate fees) that were incorrect; and
- Deductions in relation to historic promotions which had not been agreed.

219. Tacon stated that she had legal authority to force suppliers to comply with the investigation, as suppliers have only admonished Tesco privately to journalists, for fear that Tesco would retaliate against them. Specifically, Tacon stated:

> "I can legally require suppliers to give me information I want for an investigation. I have a legal duty to protect their anonymity. And in this case there is very much safety in numbers and I frequently hear about the same issues from every sector in groceries from toilet rolls, to apples, to wine. I'm just looking for a large amount of evidence and anonymity will be protected."

220. Tesco has now admitted to probable grocery code violations and their connection to improperly recognized commercial income. For example, following Tacon's announcement of her office's investigation into Tesco, a Company spokesman stated:

> We have worked closely with the office of the Adjudicator since its creation to put in place strong compliance processes.

> ***Following our announcement last September regarding commercial income, we have worked with her to identify any relevant GSCOP issues. An internal review we carried out and shared with the GCA identified some areas of concern.***
>
> We have taken action to strengthen compliance and, as we have announced, we are changing the way we work with suppliers. We will continue to co-operate fully with the GCA as she carries out her investigation and welcome the opportunity for our suppliers to provide direct feedback."

(Emphasis added). Moreover, in Tesco's 2015 Annual Report, the Company made the following admission under the heading "Compliance with the Groceries (Supply Chain Practices) Market Investigation Order 2009 and the Groceries Supply Code of Practice (the 'Code'):

> The Code establishes an overarching principle that retailers must deal with their suppliers fairly and lawfully. Specific obligations include giving reasonable notice in circumstances such as changes to supply chain procedures and when ceasing or significantly reducing purchases from a supplier. The Code also contains a number of provisions relating to payments by suppliers, including obligations for retailers to pay suppliers without delay and a prohibition on certain types of payments, such as those for shrinkage.
>
> ***Regrettably, we have concluded that there have been a number of instances of probable breaches of the Code which fall short of the high standards we expect to uphold with our suppliers.***
>
> We are taking effective action to prevent this arising again. We are fundamentally changing the way we work with our suppliers to deliver a more sustainable and collaborative business model for everyone in the supply chain. In addition, we are significantly up-weighting our Code compliance programme.

(Emphasis added).

221. Then, on April 22, 2015, Tesco issued its 2015 preliminary financial results, announcing "one-off" write-offs of over £7 billion, including £208 million for a commercial income adjustment for prior years, which was £63 million more than the £145 million prior year commercial income adjustment stated from the Deloitte report.

222. That same day, Tesco held a call with analysts in which the Company's senior brass made a number of admissions related to the Company's improper accounting practices.

For example, Stifel Nicolaus & Company, Inc. analyst James Collins asked: “commercial income has hit profits. Where does that fall? And an associated question, how much of that comes back as that normalizes?” In response, CFO Stewart stated:

> "Equally, and this is very important, we haven't had the yearend activity which perhaps accelerated and then led to a deceleration. Now we all know that when one gets into those sorts of activities, wherever they are in a business, the next year it has to be bigger. So we've stopped that and we've taken it away."
>
> * * *
>
> "Quantifying that is very, very difficult, but I really wouldn't expect that you should -- if what you're asking is should we see a bounce back in commercial income in the next year, I really wouldn't take you down that path, because if we look at where we were, we've changed the way we're running the business. Some of what we did earlier hasn't worked."

Like his evasive response to nearly the same question on January 8, 2015, Stewart’s foregoing statement suggests that none of the commercial income will be recovered in 2015/16 and beyond because it was fictitious income.

223. New CEO David Lewis’ comments to the same issue are also telling admissions the Company was recognizing fictitious income. For example, Lewis stated: "We talked about recognition in the half year of commercial income [when we took it]. There was an assumption in our business that what had got us to that first-half position would happen in the second-half position, and we clearly didn't do that. We just clearly didn't do that." In other words, Lewis admitted to analysts that Tesco led them to believe commercial income would reverse in subsequent periods, beginning in the second half of 2014/15, but that was misleading. Lewis also stated, “"So let's just be candid; we didn't do that. We didn't do some of the things at the end of the year that perhaps we may have done in the past as well, and that had an impact." Thus, Lewis conceded that a substantial part of the reason 2014/15 was so bad financially was because

the Company stopped the various erroneous accounting methods it had been using. Finally, Lewis stated: "[w]e want to get back to the level of commercial income that we had, but we want it to be simpler; more in the case price, less in the other deals. And it will take us some time to do that. It won't happen immediately, so not the bounce back." In other words, none of the commercial income recognized was coming back. It was all fictitious.

224. The April 22, 2015 conference call also included admissions regarding the Company's improper accounting for inventory. Specifically, CFO Stewart stated:

> "The stock write-off comprises principally two elements: GBP570 million; again, this is across the whole of the Group. ***And we've moved from a basis of provisioning stock based on the basis of when we bought it, so an age basis, to a basis now based on expected sales. And the way we look at those expected sales is by reference to the last three months sales actually. So this reflects the realities of the business as we are.*** Again it's a non-cash item and it's the large majority of that.
>
> ***"We've also looked at given the changes we've made in store activities as to how do we capitalize costs into that stock, and we've taken GBP168 million of a one-off charge, reflecting the fact that previously we'd be capitalizing more costs into stock.*** Now, with the new ways of working, we're not doing quite as much of that, so GBP168 million."

[Emphasis added].

225. These admissions confirm the improper accounting practices Defendants engaged in during the Class Period.

ADDITIONAL SCIENTER ALLEGATIONS

226. Defendants acted with scienter in that each Defendant knew or recklessly disregarded that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and, knowingly or recklessly disregarded, and/or substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal

securities laws. Defendants participated in the fraudulent scheme alleged by virtue of their receipt of information reflecting the true facts regarding Tesco, their control over the Company's alleged materially misleading misstatements, and/or their associations with the Company, which made them privy to confidential proprietary information concerning Tesco and the Company's recovery efforts.

227. Tesco experienced a growth plateau starting in the late 2000's as its United States expansion fizzled and the economic recession emerged. Instead of focusing on customer loyalty through low prices and store investment, Tesco maintained its profits through the recession by cost savings in the hope that consumer spending would return to normal when the economy recovered. By the time that happened, however, Tesco's stores were in dire need of a face-lift, and German newcomers Aldi and Lidl had grabbed some of Tesco's market share with bargain-basement pricing. The stagnant sales growth prompted Tesco to employ aggressive tactics with its suppliers create income. Specifically, Defendants pushed its suppliers to pay for premium shelf positioning and offer rebates that Tesco could log as commercial income. The commercial income obscured the Company's poor sales figures in the short-term, but created a growing accounting problem.

228. Tesco's improper accounting practices were known to, or at the very least, recklessly disregarded by Defendants. According to a news article reported by the BBC entitled "What Went Wrong," Defendant McIlwee sent an email to Tesco's senior finance team in April 2012, warning them that the Company discovered a problem with the recognition of commercial income in Tesco's Polish business. The email specifically referenced that Tesco was recognizing future income and profits in the wrong accounting period "where they cannot be justified" in the exact same manner in which the SFO is currently investigating Tesco's U.K. business.

229. Moreover, the whistleblower that caused Tesco to issue the September 22, 2014 announcement of the profit overstatement had, according to an article in *The Sunday Times*, raised the accounting concerns to Defendant Clarke while he was still CEO, but was ignored. According to the *International Business Times* (September 29, 2014), the whistleblower had "been ignored for months."

230. Both Defendant McIlwee and Defendant Clarke were asked to resign amidst the accounting scandal, in addition to eight other senior executives: Chris Bush, the former U.K. managing director; Kevin Grace, the former commercial director; Carl Rogberg, the ex-U.K. finance director; John Scouler, the former U.K. food commercial director; Dan Jago, William Linnane, and Sean McCurley, who lead various segments within Tesco's U.K. food business; and Matt Simister, who, according to a December 1, 2014 article in *The Telegraph*, was asked to return to the Company after an internal investigation revealed that Mr. Simister had actually "worked tirelessly to resolve the issues we faced." Defendant Broadbent, Tesco's Chairman, also resigned in the wake of the scandal. These resignations indicate that the accounting errors pervaded several different departments, and the heads of those departments were held accountable and removed from their positions, all the way up the chain to the CEO, CFO, and Chairman of the Company. The accounting errors were concentrated in the UK, where defendants were physically present, and exercised greater control than other parts of the company where the fraud did not take place.

231. The August 29, 2014 projection included a £326 million "hole" from misreported commercial income – £208 million from prior years, and apparently another £118 million from overstating the first quarter, in June 2014. As Alan Stewart said on the April 22, 2015 conference call, "Equally, and this is very important, we haven't had the yearend activity which

perhaps accelerated and then led to a deceleration. Now we all know that when one gets into those sorts of activities, wherever they are in the business, the next year it has to be bigger."

232. In June 2010, a Citibank analyst accused Tesco of manipulating trading and underlying profits in a variety of ways, including the inappropriate use of adjustments, and recast Tesco's underlying profit figure downward from £3.4 billion reported to £2.6 billion per Citibank, to be reasonable and comparable with Tesco's competitors. In fact, some of the 2010 criticisms appear to have been validated by Tesco's post-Class Period write offs, including excessive depreciation periods for property, and interest capitalization policies.

233. Numerous media reports indicate that Tesco's fraud was corporate policy and not rogue employees. In addition to articles cited above in late 2013 and late 2014 about Tesco's institutional mistreatment of suppliers, on September 23, 2014, *The Guardian* reported that Chris Bush, a trusted employee with a 32-year tenure, who was integral to Tesco's financial statement preparation, was involved in activities over business costs that are "thought to centre in figures booked for food that is out of date, and stock theft." On September 27, 2014, the *Sunday Telegraph* reported that a senior source told the paper that a "corruption of virtues" had made people "go over lines that basic values suggest they shouldn't have."

234. Defendant Clarke himself is credited with creating the culture of desperation and recklessness within Tesco. According to the May 11, 2015 article entitled "Tesco's Darkest Hour: The Inside Track on Phil Clarke's Final Chapter," a former Tesco insider stated that Clarke "was putting huge pressure on people to deliver the numbers" and that "[t]he phrase that came out was, 'I don't care how you do it, just do it.'" Clarke's statement demonstrates a conscious disregard for rules and regulations, evidencing, at a minimum, a level of recklessness sufficient to establish scienter. Moreover, the insider's account dovetails with the description of

Tesco's culture under Defendant Clarke written in *The Independent*, on September 29, 2014, that "targets were king and to miss them would lead to a dressing down that could make Sir Alex Ferguson's hairdryer treatment look mild."

235. On October 19, 2014, the *Sunday Telegraph* reported after speaking with a "senior source close to the investigation," that "the scandal involves Tesco booking supplier contribution that were conditional on hitting sales targets that it was not going to reach," and that a "small group" knew the targets would not be reached and struck deals with suppliers to make the payments currently, with Tesco promising future benefits, which involved Tesco paying back money to the same suppliers in the subsequent period. On October 20, 2014, the *Sunday Times* reported that there was evidence of a cover-up, and that the cover-up was about executives trying to save their jobs. On October 23, 2014, *The Guardian* reported that Deloitte's report said that supplier payments had been "pulled forward or deferred" and the sums "pulled forward grew period by period." Defendants created a culture at Tesco that placed its employees under intense pressure to deliver on results at the end of financial periods that led to these practices. Indeed, Mike Dennis of Cantor Fitzgerald put the blame squarely on the Individual Defendants, noting that the Company's accounting scandal stemmed from "a behavioural issue instilled by previous management."

236. Tesco's disclosures have been cagey; for example, new commercial income disclosures continue to conceal the income statement impact, which was what motivated the activity in the first place. Many disclosures raise other questions, such as the inventory write-offs: Did any of the £570 million worth of written off inventory exist in physical form (it would equate to more than 500 stores worth of goods), or was it entirely made up of unsupported accounting entries? Over what reporting periods did the £570 million build up? With respect to

"delayed accrual of costs," Tesco did not disclose any amounts or time periods involved, either when it reported 2014/15 financial results at interim, or at year end.

237. Tesco only considered £59 million of the £570 million in written off inventory to be an error, rather than most or all of it. Also, Tesco only considered whether errors were individually material, in violation of IFRS requirements. IFRS requires a materiality assessment on the aggregated errors as well.

238. Based on all of the smoke underlying Tesco's accounting fire that indicates systematic, conscious intent at the highest levels of Tesco, an inference of scienter is unavoidable.

239. Moreover, Defendants McIlwee and Clarke were personally motivated to misrepresent Tesco's financial condition because executive bonuses were largely tied to the financial performance of Tesco. As explained in the Company's 2014 Annual Report, "[a]t least 70% of the bonus will be based on financial performance. . . . "Normally around 30% of the bonus is paid for threshold performance, around 50% of the bonus is paid if target levels of performance are delivered with the full bonus being paid for delivering stretching levels of performance." Stuart Chambers, chairman of the Remuneration Committee of Tesco, stated in May 2013 with regard to the 2013-2014 annual executive bonuses, "bonuses will only be paid if profits have grown." Therefore, Defendants were incentivized to stretch commercial income to meet the requisite financial targets for bonus payment.

240. After the massive accounting fraud at Tesco came to light, in May 2015 the Company effectively admitted that its executive compensation structure motivated McIlwee and Clarke to push the envelope with the Tesco's accounting by changing its executive bonus to prioritize long-term sales growth over short-term profit. In 2014, 50% of Clarke's bonus was

determined by earnings with only 18% of that amount determined by sales. For 2015, Tesco altered Lewis' annual bonus so that 50% of his bonus will be determined by sales growth and 30% linked to trading profit. This change in bonus structure echoes Lewis' April 2015 comments to journalists that Tesco would no longer be "slavishly driven" to hit financial targets in the wake of Tesco's accounting scandal.

241. Defendants were motivated to materially misrepresent the true condition of Tesco and the true facts about the Company's accounting tactics because, in creating lofty profit forecasts and shrouding the underlying poor sales numbers with commercial income gains, Defendants were able to, and did: (a) deceive the investing public regarding the Company's inevitable write-offs for improperly recognized income; (b) deceive the investing public regarding Tesco's compliance with accounting rules; (c) deceive the investing public regarding Tesco's business, operations, performance, and prospects, and the true value of Tesco ADRs; and (c) cause Plaintiff and other members of the Class to purchase Tesco ADRs at artificially inflated prices and to suffer substantial damages therefrom when the truth was revealed and the artificial inflation in the price of the ADRs was removed.

LOSS CAUSATION/ECONOMIC LOSS

242. During the Class Period, Defendants engaged in a scheme to deceive the market, and a course of conduct that artificially inflated the price of Tesco ADRs and operated as a fraud on Class Period purchasers of Tesco's ADRs by misrepresenting the Company's financial status, recognition of revenue, compliance with IFERS, and internal controls. Ultimately, however, when Defendants' prior misrepresentations and fraudulent conduct came to be revealed to investors, the value of Tesco ADRs declined precipitously -- evidence that the prior artificial inflation in the price of Tesco's ADRs was eradicated. As a result of their purchases of Tesco

ADRs during the Class Period at artificially inflated prices, Plaintiff and other members of the Class suffered economic losses when the Company's true condition and the truth about was finally revealed and the artificial inflation was removed from price of the Company's ADRs, *i.e.*, damages under the federal securities laws.

243. As a direct result of Defendants' disclosure on September 22, 2014, Tesco's ADR price plummeted to $9.61 per share on Monday, September 22, 2014, a decline of 15% from the previous trading day's closing price of $11.29 per share, on high trading volume. The drop removed the inflation from the price of Tesco ADRs, causing real economic loss to investors who had purchased Tesco ADRs during the Class Period.

244. The 15% decline in the price of Tesco ADRs at the end of the Class Period was a direct result of the nature and extent of Defendants' fraud being revealed to investors and to the market. The timing and magnitude of the price drop of Tesco ADRs negates any inference that the losses suffered by Plaintiff and the other members of the Class were caused by changed market conditions, macroeconomic or industry factors, or even Company-specific facts unrelated to Defendants' fraud.

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

245. Tesco ADRs are traded on the over-the-counter ("OTC") market under the symbol "TSCDY." At all relevant times, the market for Tesco ADRs was an efficient market for the following reasons, among others:

(a) Tesco 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;

(b) Tesco was followed by several securities analysts employed by major brokerage firm(s) who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firm(s). Each of these reports was publicly available and entered the public marketplace; and

(c) Tesco ADRs had a large average weekly trade volume exceeding several hundred thousand ADRs per week.

246. As a result of the foregoing, the market for Tesco ADRs promptly digested current information regarding Tesco from all publicly available sources and reflected such information in Tesco's ADR price. Under these circumstances, all purchasers of Tesco ADRs during the Class Period suffered similar injury through their purchase of Tesco ADRs at artificially inflated prices and a presumption of reliance applies.

PSLRA STATUTORY SAFE HARBOR DOES NOT APPLY

247. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. 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 Tesco who knew that those statements were false when made.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

248. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Tesco ADRs between April 18, 2012 and September 22, 2014, inclusive (the "Class") and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

249. The members of the Class are so numerous that joinder of all members is impracticable. The Company has tens if not hundreds of millions of ADRs outstanding, and throughout the Class Period, Tesco ADRs were actively traded with an average daily trading volume of hundreds of thousands of ADRs. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Tesco or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

250. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

251. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

252. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Tesco; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

253. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM

Violation of Section 10(b) of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants

254. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

255. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public regarding Tesco's business, operations, management and the intrinsic value of Tesco securities; (b) enable Defendants to artificially inflate the price of Tesco ADRs; (c) cause Plaintiff and other members of the Class to purchase Tesco ADRs at artificially inflated prices. Plaintiff and other members of the Class were harmed when the previously undisclosed truth was revealed, or partially revealed causing the corresponding decline in the value of Tesco ADRs. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, jointly and individually (and each of them) took the actions set forth herein.

256. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and, (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Tesco's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

257. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Tesco as specified herein.

258. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Tesco's value and

performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Tesco's finances, revenue recognition, and compliance with IFERS, in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Tesco ADRs during the Class Period.

259. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (a) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (b) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (c) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and, (d) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

260. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, and/or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts. Such defendants' material misrepresentations and/or omissions were done knowingly and/or with recklessly for the purpose and effect of concealing

Tesco's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its ADRs. As demonstrated by Defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by recklessly refraining from taking those steps necessary to discover whether those statements were false or misleading.

261. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Tesco ADRs was artificially inflated during the Class Period. In ignorance of the fact that market prices of Tesco's publicly-traded ADRs were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Tesco ADRs during the Class Period at artificially high prices and were damaged thereby.

262. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Tesco was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Tesco securities, or, if they had acquired such ADRs during the Class Period, they would not have done so at the artificially inflated prices which they paid.

263. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

264. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's ADRs during the Class Period.

SECOND CLAIM

For Violations Of § 10(b) Of The Exchange Act And Rule 10b-5(a) & (c) Against All Defendants

265. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

266. During the Class Period, Defendants participated in the preparation of and/or disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

267. Defendants violated § 10(b) of the Exchange Act and Rule 10b-5(a) & (c) in that they employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Tesco publicly traded securities during the Class Period.

268. Defendants, individually and together, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or the mails, engaged and participated in a continuous course of conduct to conceal the truth and/or adverse material information about the business, operations and future prospects of Tesco as specified herein.

269. Defendants employed devices, schemes and artifices to defraud, while in

possession of material, adverse, non-public information and engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Tesco securities during the Class Period.

270. Defendants had actual knowledge of the misrepresentations and omissions of material fact set forth herein, or recklessly disregarded the true facts that were available to them. Defendants' misconduct was engaged in knowingly or with reckless disregard for the truth, and for the purpose and effect of concealing Tesco's true financial condition from the investing public and supporting the artificially inflated price of Tesco's securities.

271. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Tesco publicly traded securities. Plaintiff and the Class would not have purchased Tesco publicly traded securities at the prices they paid, or at all, had they been aware that the market prices for Tesco's securities had been artificially inflated by Defendants' materially false and misleading statements.

THIRD CLAIM

Violation of Section 20(a) of The Exchange Act Against the Individual Defendants

272. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein.

273. The Individual Defendants used their control over Tesco to cause the Company to issue materially false and misleading information in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder. By virtue of each of the Individual Defendants' acts resulting in the issuance by Tesco of materially false and misleading statements to the public, each of the Individual Defendants, directly or indirectly, engaged in conduct that was unlawful for the Individual Defendants to do under Section 10(b) of the Exchange Act and

the rules and regulations promulgated thereunder through another person, Tesco.

274. As a direct and proximate result of Defendant Tesco's and the Individual Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

275. As a direct and proximate result of the Individual Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's stock during the Class Period based on directly or indirectly relying on the material misstatements and omissions issued by the Company.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 and any appropriate state law remedies to assure that the Class has an effective remedy; and

E. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: June 18, 2015

By: /s/ Kim E. Miller______________________

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Lead Counsel for Lead Plaintiff Stephen Klug and the Class

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2015, I filed the Consolidated Amended Class Action Complaint for Violation of the Federal Securities Laws attached thereto upon all counsel of record by using the CM/ECF system and via e-mail. The CM/ECF system will provide service of such filing(s) via Notice of Electronic Filing (NEF).

_/s/ Kim E. Miller____________________
Kim E. Miller