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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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STATE OF NEW JERSEY, DEPARTMENT OF
TREASURY, DIVISION OF INVESTMENTS BY :
TREASURER JOHN E. McCORMAC, on behalf of the :
COMMON PENSION FUND A, DCP EQUITY FUND, :
DCP SMALL CAP EQUITY FUND, SUPPLEMENTAL :
ANNUITY COLLECTIVE TRUST FUND, and :
NJ BEST POOLED EQUITY FUND, :
:
Plaintiffs, :
:
v. :
:
TYCO INTERNATIONAL LTD., L. DENNIS :
KOZLOWSKI, MARK H. SWARTZ, MARK A. : **COMPLAINT**
BELNICK, PRICEWATERHOUSECOOPERS, LLP, :
PRICEWATERHOUSECOOPERS, FRANK E. WALSH, :
JR., RICHARD S. BODMAN, JOHN F. FORT, III, :
JAMES S. PASMAN, JR., and WENDY E. LANE, :
:
Defendants. :

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The State of New Jersey, Department of Treasury, Division of Investments, by
Treasurer John E. McCormac, on behalf of the Common Pension Fund A, DCP Equity Fund,
DCP Small Cap Equity Fund, Supplemental Annuity Collective Trust Fund, and NJ Best Pooled

Equity Fund, (collectively, “Plaintiffs”) allege the following based upon the investigation conducted by and through their undersigned attorneys, except as to those paragraphs relating to Plaintiffs or their purchases of the securities of defendant Tyco International, Ltd. (“Tyco” or the “Company”). Those allegations are alleged upon Plaintiffs’ personal knowledge. The investigation of Plaintiffs’ counsel has included, but has not been limited to, the following: (a) the review and analysis of the filings made by Tyco with the United States Securities and Exchange Commission (“SEC”); (b) the review and analysis of Tyco press releases; (c) the review and analysis of the newspaper, magazine and other periodical articles identified in the Complaint; (d) the review and analysis of the pleadings in certain civil litigations, regulatory proceedings and criminal actions brought against the individual defendants named herein by Tyco, the SEC and the Manhattan District Attorney’s Office (the “Manhattan D.A.”); and (e) interviews of potential witnesses in this action conducted by Plaintiffs’ counsel.

I.

SUMMARY OF CLAIMS

1. Shareholders entrust their investments to corporate officers and directors with the knowledge that those individuals have the highest fiduciary obligations of good faith, fair dealing, loyalty, due care and disclosure. As a further check upon the fidelity of those fiduciaries, the shareholders of publicly-traded companies rely upon certified public accountants, whose job it is to audit companies’ financial statements and declare that their financial disclosures comply with generally accepted accounting principles (“GAAP”).

2. This case involves the total collapse of that system of checks and balances upon the conduct of corporate fiduciaries. As all the world now knows, the senior executive officers and directors of defendant Tyco pillaged the Company at a breathtaking rate while simultaneously concealing from investors the grossly excessive compensation they were paying themselves and their own criminal conduct.

3. The defendants (collectively, "Defendants") who exploited the trust reposed in them by Tyco shareholders include: L. Dennis Kozlowski, Tyco’s former Chairman of the Board

and Chief Executive Officer, whose repeated misrepresentations concerning his theft of Tyco funds to finance his lavish lifestyle have made him the poster boy for corporate greed; Mark H. Swartz, Tyco's former Executive Vice President and Chief Financial Officer, who likewise authorized the issuance of materially misleading representations concerning Tyco's financial results and who personally enriched himself at the expense of Plaintiffs and other Tyco shareholders; Mark A. Belnick, Tyco's former Executive Vice President and Chief Corporate Counsel, who also repeatedly authorized the release of financial information concerning Tyco's operations that he knew was materially false as a result of his undisclosed theft of Tyco funds; and former Tyco director Frank E. Walsh, Jr., who also actively participated in and benefitted from the theft of Tyco funds and the dissemination of materially misleading statements concerning that theft.

4. While the scale of the Defendants' fraudulent conduct was massive, the manner in which they perpetrated their fraudulent scheme was simple in nature.

5. For example, the "Officer Defendants" (Kozlowski, Swartz and Belnick) used Tyco loan programs as a corporate piggy bank for their personal enrichment. Those loan programs were designed exclusively for limited uses such as financing home purchases by Tyco employees forced to sell their primary homes and to relocate to other Tyco locations.

6. Nevertheless, the Officer Defendants, with the knowing assistance of the other defendants, utilized those loan programs (which provided for interest-free loans) to finance a flurry of personal expenditures on everything from real estate purchases that did not fit within the terms of Tyco's loan programs to lavish personal expenditures on art work and furnishings.

7. On many occasions, the Officer Defendants thereafter arranged to have their loan balances reduced by millions of dollars by fiat. As a result, it is apparent that each of the defendants either knew or was recklessly unaware that the Officer Defendants were paying themselves grossly excessive compensation and that Defendants' statements regarding such matters were materially misleading.

8. The larceny committed by the Officer Defendants could not have been accomplished had defendants PricewaterhouseCoopers and PricewaterhouseCoopers, LLP (collectively, the "PWC Defendants"), the international accounting firms that were responsible for auditing Tyco's financial statements, performed even the most rudimentary audit procedures prior to certifying the financial statements issued by Tyco each year as compliant with GAAP.

9. At best, the PWC Defendants were supine lapdogs rather than the corporate watchdogs investors reasonably expected them to be. More probably, the PWC Defendants were knowing participants in an early contender for the fraud of the century because, as the former Chief Accountant of the SEC has stated in discussing the fraudulent conduct alleged herein, "[T]his is called fraud. . . How the hell do you do that and not have PricewaterhouseCoopers find it?"

10. Similarly, Defendants Richard S. Bodman, John F. Fort, III, James S. Pasman, Jr. and Wendy E. Lane, the members of the Tyco Audit Committee (the "Audit Committee Defendants"), failed miserably in their duty to ensure that Tyco made accurate disclosures to Plaintiffs and other investors regarding such critical matters as the compensation paid to the Company's officers and the related-party transactions in which Tyco engaged. Although the fraudulent transactions described in detail herein were, for the most part, reflected in large, obvious entries in Tyco's financial records, the Audit Committee Defendants failed to so much as question the reasons why Tyco's officers were receiving hundreds of millions of dollars in unauthorized and grossly excessive compensation.

11. Tragically, thousands of investors, including the beneficiaries of the New Jersey pension funds operated by Plaintiffs, have fallen prey to Defendants' wrongdoing and unmitigated greed. Because investors must, by necessity, place heavy reliance upon the fidelity of corporate officers and directors to safeguard the interests of corporations and their shareholders, events that demonstrate that those fiduciaries have breached that trust exert a dramatic negative impact upon the market prices of publicly-traded securities.

12. Many of the purchases of Tyco stock made by Plaintiffs between July 1997 and May 2002 in reliance upon the fidelity of the Defendants named herein and the accuracy of their disclosures were at prices that exceeded \$55.00 per share. Once investors learned that the Company's management had utilized Tyco as a personal piggy bank and made repeated misrepresentations concerning their conduct, that stock dropped to as low as \$6.98 per share.

13. As a result, the pension funds controlled by Plaintiffs, and the thousands of current and former New Jersey employees who are the beneficiaries of those funds, have suffered tens of millions of dollars in damages. Because those damages are the direct and proximate result of the fraudulent conduct in which the Defendants engaged, Plaintiffs have commenced this action to recover damages and other appropriate relief.

II.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa because Plaintiffs assert claims arising under Sections 10(b), 14(a) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78n(a) and 78t(a)), and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5). The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

15. Venue is proper in this District pursuant to Section 27 of the Exchange Act because Plaintiffs and Tyco maintain offices in this district. Furthermore, many of the alleged acts and transactions, and much of the conduct constituting violations of law, including the issuance and dissemination to the investing public of materially false and misleading information, occurred, at least in part, in this District.

16. In connection with the acts alleged in this Complaint, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the mails, telephone communications, and the facilities of the national securities exchanges.

III.

THE PARTIES

A. Plaintiffs

17. Plaintiff the State of New Jersey, Department of Treasurer, Division of Investments (the “Division of Investments”) is a division of the New Jersey Department of the Treasury. The Division of Investment, under the direction of the State Investment Council, has investment responsibility for all funds administered by the State of New Jersey Division of Pensions and Benefits. The Division of Investment administers each of the following Funds that purchased Tyco common stock and were damaged by Defendants’ fraudulent conduct: Common Pension Fund A, DCP Equity Fund, DCP Small Cap Equity Fund, Supplemental Annuity Collective Trust Fund, and N. J. Best Pooled Equity Fund.

18. Plaintiff Common Pension Fund A (“Fund A”) is an equity investment pension fund managed by the Division of Investment. Fund A invests contributions from various state pension trust funds including the Public Employee Retirement System (“PERS”), the Police and Fireman’s Retirement System (“PFRS”), the State Police Retirement System, and the Teachers’ Pension and Annuity Fund (“TPAF”).

19. Plaintiff DCP Equity Fund is a deferred compensation equity investment pension fund managed by the Division of Investment.

20. Plaintiff DCP Small Cap Equity Fund is a deferred compensation small capital equity investment pension fund managed by the Division of Investment.

21. Plaintiff Supplemental Annuity Collective Trust Fund is an investment pension fund managed by the Division of Investment.

22. Plaintiff N. J. Best Pooled Equity Fund is an investment pension fund managed by the Division of Investment.

23. Plaintiffs made various purchases and sales of Tyco common stock on the dates and in the amounts specified in the attached Exhibit A.

24. As a direct and proximate result of their purchases of Tyco securities, Plaintiffs have suffered tens of millions of dollars in damages. Plaintiffs purchased Tyco securities at prices that were materially inflated as a result of the misrepresentations and omissions alleged herein. Moreover, Plaintiffs suffered enormous economic losses when the market prices of those securities collapsed following the belated revelation that Defendants had engaged in the fraudulent conduct specified herein.

B. Defendants

25. Defendant Tyco is incorporated in Bermuda to avoid the payment of certain taxes that would be payable if it were incorporated in the United States. Tyco's principal United States subsidiary has its office in One Tyco Park, Exeter, New Hampshire 03833. Tyco has offices in this District located at 60 Colombia Road, Morristown, New Jersey.

26. Tyco is a diversified manufacturing and services company. During the relevant time period, Tyco through its subsidiaries, including Tyco US, designed, manufactured and distributed electronic and electrical components, undersea cable communications systems, disposable medical supplies, fire detection and suppression systems, electronic security systems and other products.

27. Defendant Kozlowski was the Company's CEO from July 1993 until June 3, 2002, and Chairman of the Board beginning in July 1997. Kozlowski "resigned" from his positions at Tyco on June 3, 2002, because he was soon to be indicted for tax evasion by the Manhattan D.A.

28. Defendant Swartz was Tyco's Executive Vice President and Chief Financial Officer from 1995 through September of 2002. Swartz, too, left Tyco in shame as a result of his participation in the fraudulent schemes developed by Defendants to enrich themselves at the expense of Tyco shareholders.

29. Defendant Belnick was Tyco's Executive Vice President and Chief Corporate Counsel from 1998 through June of 2002, when he was fired as a result of his refusal to cooperate in an internal Tyco probe of the excessive compensation paid to the Officer

Defendants. Since his termination, Tyco has revealed that Belnick also received tens of millions of dollars in unauthorized compensation in connection with the fraudulent conduct alleged herein during his tenure as Tyco's highest-ranking legal officer.

30. Defendant Walsh is a resident of New Jersey. Walsh was a Tyco director from 1997 through February 2002, during which time he also became the "Lead Director" of Tyco's board. He was also a director of a predecessor of Tyco from 1992 to 1997. Walsh was forced to resign from the Tyco Board as a result of his participation in a fraudulent scheme pursuant to which the Officer Defendants agreed to pay Walsh a massive \$20 million fee for performing the limited "service" of introducing Tyco to an acquisition candidate although he was already obligated to perform such "services" because of his status as a Tyco director and fiduciary.

31. During the time period relevant to Plaintiffs' claims, the Audit Committee Defendants – Richard S. Bodman, John F. Fort, III, James S. Pasman, Jr. and Wendy E. Lane – were members of the Audit Committee of Tyco's Board of Directors.

32. By virtue of their roles as members of the Board and/or as the Company's highest-ranking executives, defendants Kozlowski, Swartz, Belnick, Walsh, Bodman, Fort, Pasman and Lane were "control persons" of Tyco as that term is utilized in § 20(a) of the Exchange Act. These defendants are collectively referred to as the "Individual Defendants."

33. Defendant Kozlowski was able to exercise control over Tyco's operations because he was the Company's highest-ranking executive. As a result, Kozlowski served as the Company's primary voice in all press releases and interviews and actively participated in the day-to-day management of Tyco's affairs.

34. Defendant Belnick was able to exercise control over Tyco's operations because he was the Company's General Counsel at the time of Defendants' material misrepresentations and omissions and other fraudulent conduct. In that role, Belnick was closely involved in all aspects of the day-to-day management of Tyco's affairs, and the misconduct alleged herein.

35. Defendant Swartz was able to exercise control over Tyco's operations because he was the Company's highest-ranking financial officer during the time Plaintiffs' purchases of

Tyco securities were made. As a result, he was intimately involved in all aspects of the day-to-day management of Tyco's operations and the misrepresentations and omissions concerning the Company's operations, financial results and compensation plans that are the subject of Plaintiffs' claims. Swartz also prepared the Company's false and misleading financial statements, participated in the drafting of the Company's financial releases, supervised and drafted material portions of the Company's SEC filings, and signed certain of the SEC filings described herein.

36. As Tyco's "Lead Director," Walsh served as the primary liaison between Tyco's management and the Company's independent directors. Walsh also served as a member of the Board's Corporate Governance and Nominating Committee, and previously served on the Compensation Committee, which was responsible for determining the compensation and benefits of Tyco's management. Through these various positions, Walsh was actively involved in the management of Tyco and had the ability to exercise control over Tyco's operations.

37. The Audit Committee Defendants were able to exercise control over Tyco's operations because they signed the Company's financial statements and were actively involved in and oversaw the Company's accounting policies and procedures, including the manner in which the Company publicly reported its executive compensation.

38. Tyco, the Officer Defendants and the Audit Committee Defendants are collectively referred to herein as the "Tyco Defendants."

39. The issuance of the false, misleading and incomplete information concerning Tyco that was conveyed to Plaintiffs and other investors in Tyco securities resulted from the collective actions of the Tyco Defendants. The Tyco Defendants served as the Company's public spokespersons, participated in drafting, reviewing and disseminating the false and misleading statements and information alleged herein, oversaw the Company's accounting policies and procedures and were aware of the material adverse facts that rendered those statements false and misleading.

40. Defendant PricewaterhouseCoopers LLP ("PWC LLP") is an accounting firm

based in the United States, with its principal place of business located at 1177 Avenue of the Americas, New York, New York 10036, and regional offices located throughout the country, including this District. PWC LLP performed the vast majority of the accounting services performed for Tyco for the time period relevant to this action, including the audits of the financial statements included in Tyco's SEC filings.

41. PricewaterhouseCoopers ("PWC-Bermuda") is an accounting firm based in Hamilton, Bermuda. PWC-Bermuda is a member of PricewaterhouseCoopers International, a "membership company" based in the United Kingdom. In conjunction with PWC LLP, PWC-Bermuda conducted the audits of Tyco's year-end financial statements for the 1997-2001 fiscal years. PWC-Bermuda signed the clean audit opinions affixed to each set of those financial statements.

42. While PWC-Bermuda signed all of the audit opinions attached to Tyco's financial statements for the 1997-2001 fiscal years, PWC LLP actually performed the overwhelming majority of Tyco's auditing work. In fact, PWC LLP has publicly acknowledged that PWC-Bermuda's audit reports were, in effect, the opinions of PWC LLP. For example, in a Form S-4 Registration Statement filed by Tyco with the SEC on May 22, 2002, PWC LLP explicitly adopted the audit report of PWC-Bermuda dated October 18, 2001. In particular, PWC LLP stated as follows in the May 22, 2002 Registration Statement:

We hereby consent to the incorporation by reference in this Amendment No. 1 to the Registration Statement on Form S-4 of Tyco International Ltd. of our report dated October 18, 2001, except as to Note 31 which is as of December 18, 2001, relating to the financial statements and financial statement schedule, which appears in Tyco International Ltd.'s Annual Report on Form 10-K for the year ended September 30, 2001. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

43. During Tyco's fiscal 2001, Tyco paid the PWC Defendants at least \$37.9 million for consulting, advisory, tax and accounting services and \$13.2 million in auditing fees.

IV.

THE FACTS AND CIRCUMSTANCES THAT DEMONSTRATE THAT DEFENDANTS' REPRESENTATIONS WERE MATERIALLY FALSE AND MISLEADING

44. Throughout the time period in which Plaintiffs invested the savings of New Jersey pension fund participants in Tyco securities, Defendants made a series of misrepresentations and omissions concerning Tyco that had the effect of inflating the prices at which the Company's securities traded or of maintaining the prices of those securities at artificially high levels.

45. As is alleged in detail below, the misrepresentations and omissions made by Defendants can be categorized as concerning at least eight interrelated schemes used by the Officer Defendants and others to receive millions of dollars of unauthorized loans, payments and other benefits.

46. As a result of the Defendants' misconduct, there are currently a number of criminal and regulatory investigations under way concerning the Officer Defendants' conduct, including an SEC investigation and criminal prosecutions being pursued by the Manhattan D.A. In its September 10, 2002 Form 8-K filed with the SEC (the "September 2002 8-K"), Tyco also stated that it had cooperated with investigations concerning Defendants' actions that were being conducted by the Committee on Energy and Commerce of the United States House of Representatives, the United States Attorney for the District of New Hampshire, and the Bureau of Securities Regulation of the State of New Hampshire.

47. Tyco has acknowledged the egregious nature of the Officer Defendants' conduct in its September 2002 8-K. In that document, Tyco concedes that the Officer Defendants engaged in "improper and unlawful conduct." The same document acknowledges that the amount of money stolen by those Defendants "is very large" and that their unlawful conduct continued for over five years.

A. Defendants' Material Misrepresentations And Omissions Concerning The Walsh Compensation Scheme

48. The first fraudulent compensation scheme that was belatedly disclosed to Tyco shareholders was the grossly excessive payment of \$20 million that the Officer Defendants conspired to pay to defendant Walsh and a charity of his choice for the minimal service of introducing Kozlowski to the Chairman of The CIT Group ("CIT"), a large financial services company that Walsh also served as a director.

49. In early 2001, Walsh, who was at the time Tyco's "Lead Director" (a position in which he served as the principal liaison between Tyco's management and Board) and the former Chairman of its Compensation Committee, recommended to the Board that Tyco acquire a financial services company. Later, he proposed that he introduce Kozlowski to the Chairman and CEO of CIT.

50. At the time Walsh agreed to make that introduction, he was obligated to do so as a result of the fiduciary obligations that he owed to Tyco and its shareholders. As a result, at the time the potential CIT acquisition was first discussed, the Tyco Board did not contemplate that Walsh would be paid for making his introduction.

51. Following the introduction of Kozlowski and the CIT Chairman facilitated by Walsh, negotiations led to an agreement for Tyco to acquire CIT. That transaction closed in June of 2001.

52. After the terms of the CIT transaction had been agreed to, Kozlowski caused Tyco to pay to Walsh a secret \$20 million fee for his role in the transaction.

53. According to the September 2002 8-K, Kozlowski and Walsh agreed that they should conceal this payment from the Board and, as a result, none of Tyco's directors (other than Kozlowski, Swartz and Walsh) was aware of the Walsh payment until early January 2002, at which time they confronted Kozlowski and Walsh and demanded that the money be returned immediately.

54. When Walsh refused, he was not re-nominated for election to the Board, and his term expired as of the 2002 annual meeting. The Board never ratified the Walsh payment. Rather, it set in motion an investigation into the conduct of Walsh, Kozlowski and Swartz that culminated in the disclosure of the Officer Defendants' systematic looting of the Company.

55. Tyco belatedly disclosed the improper payments made to Walsh in a Proxy Statement filed with the SEC on January 28, 2002. The disclosure of that payment received significant attention in the financial press. As a result, Tyco's stock price fell approximately 20% from \$42 to \$33.65, reducing the Company's market capitalization by \$16.7 billion in one day.

56. On June 17, 2002, Tyco sued Walsh in the Southern District of New York for his misconduct in connection with the \$20 million payments made to him in conjunction with the CIT transaction. Tyco has alleged claims for restitution, breach of fiduciary duty and inducing breach of fiduciary duty, conversion, and unjust enrichment, and asserted a constructive trust, seeking to recover for all of the losses suffered by the Company as a result of Walsh's conduct.

B. Defendants' False And Misleading Disclosures Concerning The Compensation Paid To The Officer Defendants Pursuant To The New York "Relocation" Scheme And The Florida "Relocation" Scheme

57. While the Walsh compensation scheme resulted in a dramatic decline in the market prices of Tyco securities at the time it was belatedly disclosed to investors, that adverse effect paled in comparison to the devastation wreaked upon Tyco by the other fraudulent schemes in which the Officer Defendants engaged.

58. One principal method that the Officer Defendants utilized to enrich themselves at the expense of Tyco shareholders was taking large, no-interest "relocation" loans from Tyco. As Tyco concedes in the September 2002 8-K, "certain executive officers used the relocation program to receive non-qualifying loans and unauthorized benefits that were not generally available to all salaried employees affected by relocations, or were not related to any Tyco relocation, enriching themselves with no colorable benefit to Tyco."

59. Unequivocal SEC regulations that require companies to disclose loans to senior executives that amount, in aggregate, to over \$60,000 mandated that Defendants disclose those loans in Tyco's SEC filings. Throughout the time period in which Plaintiffs invested in Tyco securities, Defendants failed to fulfill those disclosure obligations.

60. The thievery of Kozlowski and Swartz through the use of "relocation loans" was set in motion in March of 1995, when they initiated a "relocation program" to serve Kozlowski's desire to move his offices from Exeter, New Hampshire to Manhattan.

61. After Kozlowski proposed a relocation program that would only have benefitted five or six Tyco executives, that proposal was rejected because it would have had to be disclosed to Tyco shareholders as compensation paid to those executives.

62. As a result, the Company adopted a broader relocation program that was designed not to discriminate in favor of the Company's officers and directors. After that program was approved by the Tyco Board, Kozlowski implemented a different, more generous relocation plan, tailored to the individual circumstances of five or six executives and one assistant (the "New York Plan").

63. The unauthorized New York Plan permitted reimbursement of school tuition, and provided for "gross-up" payments of additional compensation to offset the taxes due on imputed income from the program.

64. After Tyco's 1997 reverse merger with ADT Ltd., a company that conducted its U.S. operations from Boca Raton, Florida, Kozlowski and Swartz adopted a second relocation program through which they stole additional money from Tyco (the "Florida Plan"). That generous plan for executives was maintained in the files of Tyco's then-Treasurer, while a Board-authorized Florida relocation plan was maintained in the files of the Company's Human Resources Department.

65. Kozlowski was, by far, the biggest abuser of the Tyco "relocation" programs. The September 2002 8-K summarizes Kozlowski's unauthorized borrowing from the Company as follows:

- a. \$7,011,669 in interest free loans for purported New York relocations that did not qualify under the New York Plan;
- b. \$29,756,110 in interest free loans for the acquisition of property under the unauthorized Florida Plan; and
- c. \$24,922,849 in interest free loans for the acquisitions of other properties that were not authorized by any relocation program.

66. Of that total amount of \$61,690,628 in unauthorized interest free "relocation" loans, Kozlowski: repaid \$21,697,303 without interest; bestowed \$19,439,392 in authorized loan forgiveness upon himself; and reclassified \$20,553,933 to other loan accounts maintained by him with the Company.

67. While not quite as large as the loans taken by Kozlowski, the unauthorized loans received by Swartz from Tyco were also extravagant and improper.

68. According to the September 2002 8-K, Swartz took the following illegal loans:
- a. \$7,668,750 in interest free loans for property acquisitions in New York and New Hampshire in March of 1996 under the unauthorized New York Plan;
 - b. \$20,992,000 in interest free loans under the unauthorized Florida Plan between 1997 and 2000; and
 - c. \$4,437,175 in interest-free loans for the acquisition of other properties that were not authorized by any relocation program.

69. Of the \$33,097,925 in unauthorized, interest free relocation loans obtained by Swartz, \$10,786,977 was repaid by him without interest, \$9,792,000 was repaid through loan "forgiveness" that Kozlowski was not authorized to bestow, and \$12,518,948 was reclassified to other loan accounts that Swartz maintained with the Company.

70. According to the September 2002 8-K, Belnick also used the unauthorized version of the New York Plan to borrow approximately \$4,217,000 from September 1998 through May 2001 for the purchase and improvement of a cooperative apartment in New York City. Belnick attempted to benefit from the New York Plan although he lived less than 50 miles from the

address of his new apartment and had worked in New York City prior to purchasing the apartment (factors that disqualified him from participating in any Tyco relocation program). Belnick also improperly used the unauthorized relocation program to pay his rent for several months while his new apartment was being renovated.

71. In 2001 and 2002, Belnick incurred an additional \$10,418,599 in “relocation” debt to purchase land and build a home in the ski resort community of Park City, Utah. Belnick then charged Tyco \$1,600 per month for his home office located in that house although Tyco maintains no corporate offices in Utah, and Belnick was not requested to relocate to Utah. The September 2002 8-K states that Belnick’s indebtedness “was not incurred through an authorized employee relocation plan available generally to all salaried employees, and as such was not exempt from disclosure in the Company's proxies” and that “[t]here was no colorable benefit to Tyco for any of Belnick's loans.”

72. Furthermore, in a complaint filed by Tyco against Belnick in federal court (the "Belnick Complaint"), the Company states:

Tyco never adopted a relocation program to Utah. Second, Tyco has no offices in Utah to which Belnick could be said to be relocating . . . , Belnick did not even execute the various documents called for by the Company's legitimate relocation plans, and there is no corporate document that even arguably purports to authorize Belnick's Utah loan. In fact, the only documentation of the loan is a series of promissory notes, signed only by Belnick, which total over \$10 million.

73. Nevertheless, like the unauthorized loans taken by Kozlowski and Swartz, Belnick’s massive borrowing was never disclosed to the Company’s investors.

C. The Defendants’ Failure To Disclose The Unauthorized TyCom Bonus Program

74. After the Officer Defendants incurred massive debts to the Company by means of the unauthorized real estate loans discussed above, they engaged in a number of additional fraudulent schemes designed to eliminate much of the interest-free debt that they had incurred to the Company.

75. The first such fraudulent scheme introduced by the Officer Defendants involved the initial public offering (“IPO”) of Tyco’s TyCom subsidiary in September 2000 (the “TyCom Scheme”).

76. In order to facilitate the TyCom Program, in early September 2000, Kozlowski falsely informed Tyco's Senior VP of Human Resources that, in addition to cash and share bonuses for the successful completion of the TyCom IPO, the Board had decided to forgive all of the relocation loans made to the Tyco employees who had relocated to Florida in 1998. He exacerbated his fraud by falsely representing that the Board agreed to "gross-up" the benefits, making each employee whole on an after-tax basis for the forgiveness of the loans. In effect, he falsely represented that the Company would both forgive the loans and pay all income taxes associated therewith.

77. When the Human Resources executive requested a memorandum for her files documenting those purported Board decisions, Kozlowski provided her and Swartz (her direct supervisor) with a memorandum from Kozlowski that indicated that "a decision has been made to forgive the relocation loans for those individuals . . . whose efforts were instrumental to successfully completing the TyCom IPO."

78. Pursuant to the TyCom Scheme, which the September 2002 8-K states was not authorized by the Tyco Compensation Committee, \$56,415,037 in loan forgiveness was provided to 51 Tyco employees. Including the “gross up” benefits that Kozlowski stated had been authorized, the TyCom Scheme cost Tyco \$95,962,000, of which amount Kozlowski received \$32,976,000 and Swartz received \$16,611,000.

79. In an effort to conceal his fraudulent conduct from investors, Kozlowski also directed the Human Resources executive to obtain confidentiality agreements from each of the employees who benefitted from the TyCom Scheme providing that the breach thereof would result in forfeiture of the award, purportedly because morale would be diminished if information about this generous benefit were made available to the public.

80. Normally, executive compensation would have appeared in Tyco's financial statements as part of the Company's selling, general and administrative expenses. Tyco, however, accounted for the TyCom bonus in three different accounts totaling \$97.4 million. Approximately \$44.6 million of the total was incorrectly booked as part of the TyCom offering expense.

81. The other \$52.8 million was not counted as an expense at all. Rather, Tyco hid that sum in two reserve accounts that had been previously established on the Company's balance sheet for unrelated purposes. The majority of the money, \$41 million, was booked against "Accrued Federal Income Tax," in effect reducing sums that Tyco had put aside to pay its federal corporate taxes. The remainder of the bonus payments, approximately \$11.8 million, was offset against a balance sheet account called "Accrued G&A Expenses," an account intended to offset previous over-accruals of General and Administrative Expenses. Defendants' distribution of these payments to various places in the balance sheet demonstrates their intention to conceal those payments.

82. By hiding the TyCom Scheme payments in this manner, Defendants also made it impossible for Plaintiffs and other investors to determine that the enormous bonuses had been paid. In addition, by disguising the bonuses as "non-recurring charges," Defendants were able to inflate Tyco's earnings before non-recurring charges, a primary measure by which Tyco's financial performance was gauged by investors.

83. In a September 30, 2002 *Wall Street Journal* article discussing the TyCom bonus payments, a number of leading accounting experts commented upon the obvious impropriety of the fraudulent accounting for those bonuses.

84. For example, in the article, Charles Mulford, an accounting professor at Georgia Institute of Technology stated, "This looks like blatant misstatement of both the income statement and the balance sheet." Mulford noted that the maneuver appears to have improperly inflated Tyco's pretax income by \$52.8 million in the period, the fourth quarter of fiscal 2000. He also called dipping into the income-tax kitty particularly "egregious," and said "it would be very surprising if it wasn't picked up by the auditors."

85. Those sentiments were echoed by Lynn Turner, the former Chief Accountant at SEC. According to Turner, the TyCom Scheme was particularly obvious because auditors typically look closely at such items as tax accounts and big one-time gains, and thus should have spotted the bonus payments easily because of their highly suspicious nature.

86. The September 2002 8-K also notes that "[a]ll of the forgiveness benefits were individually reported on separate W-2s, yet none of the income associated with the forgiveness benefits was reported in the Company's proxies."

D. The Defendants' Failure To Disclose The Unauthorized ADT Automotive Scheme

87. Those benefits were not sufficient, however, to satisfy the Officer Defendants.

88. A few weeks after implementing the unauthorized TyCom Scheme, Kozlowski provided 16 of the Company's executives with additional bonuses and "relocation" payments as

a purported result of their contributions to the successful divestiture of Tyco's ADT Automotive business (the "ADT Scheme").

89. Each of the recipients of those purported relocation benefits had already recovered all of the grossed-up costs associated with their recent relocations as part of the near- \$100 million unauthorized TyCom Scheme.

90. The total of the additional ADT Automotive cash bonus and "relocation" benefits were \$3,979,000 and \$32,009,641, respectively. In forwarding those payments to the Company's executives, Kozlowski claimed that the amounts listed were reviewed and approved by the Chairman of Tyco's Compensation Committee. According to the September 2002 8-K, that representation was false.

91. Kozlowski and Swartz each received millions of dollars at the time of the distribution of the unauthorized ADT Automotive distribution.

92. As was the case with the TyCom Scheme, the unauthorized benefits paid in connection with the ADT Scheme were individually reported on separate 2000 W-2s. None of these benefits were disclosed to Tyco's investors, however.

93. Kozlowski and Swartz also directed that those costs be offset against the unrelated gain accrued by Tyco on the disposition of the ADT Automotive business. Again, that accounting treatment was obviously incorrect. Thus, the entries on Tyco's financial statements were, or should have been, obvious to all of the Defendants, particularly the PWC Defendants.

E. Defendants' Failure To Disclose The Fraudulent Flag Telecom Scheme

94. On June 22, 2001, Tyco acquired 15 million shares of Flag Telecom Holdings Ltd. (“Flag”), a telecom company, for \$11,421,810 in cash and 5,580,647 TyCom shares.

95. The Company reported a \$79,364,700 gain associated with the swap of TyCom shares for Flag equity. This “gain” accelerated vesting of restricted shares to various Tyco officers and directors, purportedly as another bonus.

96. Each of the executives involved in the improper grant of restricted shares sold the shares back to the Company's Newington subsidiary on June 20, 2001, and received wire transfers to their personal accounts based upon the purported justification that the transaction resulted in the \$79 million gain to TyCom.

97. The Compensation Committee approved and certified the vesting of 290,000 shares for Kozlowski and Swartz only on October 1, 2001 "in conjunction with the gain . . ." on the Flag transaction. The total cost to the Company related to the award of these shares was \$15,378,700. By the end of the quarter (September 30, 2001), and, therefore, prior to the October 1, 2001 certification by the Compensation Committee, the value of the Flag stock decreased substantially, to the point that it was impaired.

98. According to the September 2002 8-K, neither Kozlowski nor Swartz, who were both members of the Board of Directors during this time period, ever disclosed this impairment or the full circumstances of the Flag transaction to the Compensation Committee. More importantly, they never disclosed to investors and potential investors that they had succeeded in advancing their personal interests at the expense of Tyco in this manner.

99. In the Complaint that Tyco has filed against Kozlowski in federal court (the "Kozlowski Complaint"), the Company provided the following damning summary of the TyCom, ADT Automotive and Flag Telecom bonus schemes employed by Kozlowski and Swartz to loot Tyco:

The combined cost of these unauthorized "special bonus" programs - TyCom Forgiveness Program (\$95,962,653), the ADT Automotive Bonus (\$55,954,455), and Flag Vesting (\$15,378,700) - cost the Company over \$167,295,808. None of these programs was properly approved by the Board or its Compensation Committee. The net benefit from these combined programs accrued overwhelmingly to Kozlowski and permitted him to realize more than \$66,760,551 in undisclosed income in less than twelve months.

F. The "KEL" Loan Fraudulent Scheme

100. Kozlowski and the other Officer Defendants also abused a Tyco "Key Employee Loan Program" that was intended to encourage ownership of Tyco common shares by executive officers and other key employees. The program was intended to provide loans ("KEL" loans) on favorable terms so that officers would pay taxes due upon the vesting of shares granted under Tyco's restricted share ownership plan without having to sell the shares at the time of vesting to pay the resultant tax liability.

101. Although the Officer Defendants were well aware of the authorized uses for KEL loans, they those loans as an unlimited line of credit to fund their personal expenses.

102. As was revealed in the September 2002 8-K, by August of 1999, Kozlowski had taken \$55.9 million in KEL loans, 90% of which did not satisfy the program's criteria. By June

30, 2002, Kozlowski's balance in unauthorized KEL loans was approximately \$43,841,000, plus accrued interest.

103. Swartz also took tens of millions of dollars in unauthorized KEL loans. In particular, in a complaint filed by the SEC against Swartz in federal court (the "SEC Complaint"), the SEC states (based upon documentation provided by Tyco) that Swartz took \$85 million in KEL loans between 1997 and 2002, although he utilized just \$13 million of that amount for the sole authorized purpose of KEL loans – paying taxes on his sales of Tyco stock.

104. In August 1999, at the direction of Kozlowski and Swartz, entries were made in Tyco's KEL records that purported to reduce \$25,000,000 of Kozlowski's outstanding KEL indebtedness, \$12,500,000 of Swartz's KEL indebtedness, and \$1,000,000 of the KEL indebtedness of another Tyco employee. Tyco is currently seeking to recover those amounts in its civil lawsuit against Kozlowski and an arbitration proceeding Tyco has brought against Swartz.

105. Tyco has conceded in the September 2002 8-K that Belnick was aware of Kozlowski's abuse of the KEL loan program. According to that document, Belnick personally approved language in Tyco's SEC filings that gave varying descriptions of how the KEL loan program was being used by Kozlowski without disclosing Kozlowski's abuse of that program. In addition, the September 2002 8-K reveals that, during the week of June 3-7, 2002, Belnick agreed that it was wrong for Kozlowski to use the KEL program for purposes other than to facilitate his retention of Tyco stock.

G. The Fraudulent Belnick Compensation Scheme

106. Defendant Belnick also received a number of forms of compensation that were not disclosed to the Company's shareholders.

107. SEC rules require companies to disclose in their proxy statements the compensation of their CEOs and their four highest-paid executive officers. The determination of who are the four highest-paid executive officers is made by reference to total annual salary and bonus, and not other forms of remuneration. For this purpose, SEC rules allow a company in limited circumstances not to count the distribution or accrual of a large amount of cash compensation (such as a bonus) that is not part of a recurring arrangement and which is unlikely to continue.

108. On August 19, 1998 (a month before Belnick began working at Tyco), Kozlowski sent Belnick a letter describing Belnick's proposed compensation. The version of that letter given to the Company's personnel department, and represented to be the agreement with Belnick, described Belnick's cash compensation as:

- a base salary of \$700,000 per year;
- a sign-on bonus of \$300,000;
- a guarantee cash bonus of \$1,500,000 the first year; \$1,000,000 the second year; and \$1,000,000 the third year, with your first bonus payable with our fiscal year end September 30, 1999.

109. The letter agreement also entitled Belnick to 100,000 restricted Tyco shares (with a then-market value of over \$5 million), vesting over three years, and 500,000 options (with a then fair market value in the millions), also vesting over three years.

110. On the date that agreement was reached, however, Belnick and Kozlowski executed another agreement that was far more generous to Belnick. That version of Belnick's agreement was kept by him in a file entitled "Tyco Compensation." In that agreement, Kozlowski assured Belnick that, "in any event, your annual cash bonus will not be less than 1/3 of mine."

111. Belnick's version of the Kozlowski letter also included two additional paragraphs not in the version of the letter represented to the Tyco personnel department to be the agreement with Belnick. Those paragraphs provided:

You will also be entitled to participate in and benefit from (proportionate to your position) all existing and future benefit plans and programs that are available for senior executive officers of the Company. Accordingly, among other benefits, you will be entitled to participation in Tyco's relocation program to New York City, participation in the Company's 401(k) Plan, the use of a car and either a Company loan or a re-load of restricted shares in connection with your tax liability on the same of previously restricted shares.

If for any reason the relationship does not work out to your or the Company's satisfaction and you leave the Company prior to September 30, 2001, the Company will pay you until then your base salary and guaranteed cash bonuses, less the sign-on bonus, (regardless of your income or earnings from other employment). You would also retain in full the sign-on bonus, restricted shares (whether or not still restricted) and your stock options.

112. The undisclosed version of the August 19, 1998 letter purported to increase Belnick's compensation substantially by tying Belnick's compensation to Kozlowski's, giving him access to millions in zero-interest loans, and guaranteeing Belnick's compensation (including cash bonuses and stock) regardless of how long Belnick worked for Tyco, and regardless of the circumstances under which he departed from the Company.

113. Due to the rich terms of Belnick's undisclosed compensation agreements with Kozlowski, Belnick's actual compensation in 1999, 2000 and 2001 was as follows:

a. 1999 – \$700,000 base salary, \$1,500,000 guaranteed bonus, \$179,990 in loan interest forgiveness, \$3,388,258 in restricted stock vesting and \$1,906,799 in proceeds from the exercise of stock options (of a total of 1,000,000 options granted) for total compensation (after adjustments for deferred compensation and other matters, but excluding unexercised stock options) of \$6,916,004;

b. 2000 – \$750,000 base salary, \$2,000,000 guaranteed bonus (though \$1,000,000 was re-classified as a "special bonus"), \$2,000,000 in another "special bonus", \$231,445 in loan interest forgiveness, \$197,485 in gross-up payments to compensate for taxes on the imputed income from his loan interest forgiveness, \$6,035,803 in restricted stock vesting, and new options to purchase 200,000 shares of stock for total compensation (after adjustments for deferred compensation and other matters, but excluding unexercised stock options) of \$10,442,331;

c. 2001 – \$762,500 base salary, \$50,000 in an undefined "special bonus," \$300,010 in loan interest forgiveness, \$255,420 in gross-up payments to compensate for taxes on the imputed income from his loan interest forgiveness, \$15,592,042 in restricted stock vesting, and more options to purchase 200,000 shares of stock for total compensation (after adjustments for deferred compensation and other matters, but excluding unexercised options) of \$16,973,344.

114. Because Belnick's 2000 compensation made him one of the Company's four-highest paid executives other than Kozlowski, he was obligated to disclose that compensation in the Company's Proxy and other SEC filings. In conjunction with the other Defendants, however, Belnick conspired to, and did, avoid making those required disclosures.

115. Belnick's efforts to conceal his compensation related to the bonus income that he received from the Company in 2000. In July of that year, Belnick demanded and received a \$2 million "special bonus" for his role in bringing about the conclusion of an SEC investigation of Tyco's accounting policies and a purported guaranteed minimum annual bonus of \$2 million (for a total of \$4 million).

116. Even standing alone, the \$2 million guaranteed minimum annual bonus would have made Belnick one of Tyco's four highest paid executives other than Kozlowski. Nevertheless, Belnick repeatedly caused Tyco to make filings with the SEC that did *not* disclose significant portions of the compensation that he received from Tyco. In addition, throughout the same time frame, Belnick made enormous sales of Tyco stock without disclosing that he was receiving large amounts of unauthorized compensation from Tyco as a result of fraudulent side deals that he cut with Kozlowski.

117. Belnick sought to conceal his actual compensation by causing Tyco's HR department to record his 2000 bonuses as being comprised of \$3 million in special bonuses, and only a \$1 million guaranteed bonus. In particular, Belnick caused \$1 million of the purported \$2 million guaranteed bonus to be characterized as a special bonus related to a transaction with

TyCom. As a result of that reclassification, \$3 million of the bonus income received by Belnick was considered non-recurring and was thus excluded from the computation of Tyco's four highest paid executives, dropping Belnick out of that category.

H. Defendants' Failure To Disclose The Fraudulent Belnick Retention Agreement

118. The Tyco Defendants also failed to disclose to Tyco shareholders a "Retention Agreement" that Belnick drafted for himself in late 2001. That agreement provided for Belnick to receive a further payment by October 1, 2003 of approximately \$20 million (\$10.6 million plus a "gross-up" for taxes) even if he were discharged for intentional misconduct.

119. In February 2002, weeks after the Retention Agreement had been agreed to and executed, a proposal for such an agreement was purportedly reported for the first time to the Compensation Committee, at a meeting attended by the head of Tyco's Human Resources department. During the course of the meeting, a "Term Sheet" was presented to the Compensation Committee purporting to summarize the principal terms of Belnick's new agreement.

120. The Term Sheet was important for what it did not state. According to Tyco, neither in the Term Sheet nor at any other time was the Compensation Committee informed that the Retention Agreement had already been executed and that it purported to provide for multi-million dollar payments to Belnick even if he were fired for an intentional breach of his duties to the Company.

121. What was included in the Term Sheet was also misleading. For example, the Term Sheet represented that the retention "payment is in lieu of bonuses," without revealing the huge undisclosed bonuses Belnick had just received in 2000.

122. As Tyco's Chief Corporate Counsel, Belnick was aware that the Compensation Committee had defined among its roles the review of compensation, "including salary, bonus, equity plan awards, and prerequisites" for all executives and those senior officers reporting directly to Kozlowski. Especially for these reasons, Belnick had a duty to inform the Compensation Committee of the magnitude of his undisclosed prior compensation.

123. After review by Tyco's outside counsel on benefits and employment matters, Belnick's executed Retention Agreement was revised to add some basic terms for that type of agreement, but the essential economic terms were never changed and neither the Board nor Compensation Committee ever sought or received any independent advice as to the reasonableness of such terms.

124. Defendants failed to disclose to investors that Belnick had obtained the rich Retention Agreement, that he had allegedly concealed material terms of that agreement from the Tyco Compensation Committee, that he allegedly failed to disclose the actual bonuses that he had been paid at the time the Compensation Committee approved the agreement or that the agreement purported to require Tyco to pay Belnick millions of dollars even if he were terminated from his position as the Company's General Counsel for cause.

I. Defendants' Failure To Disclose The Further Compensation Paid To Kozlowski And Swartz By Tyco

125. Apparently unsatisfied with the enormous thefts outlined above, Kozlowski also engaged in a number of other real estate-related scams through which he enriched himself at the expense of Tyco shareholders. All of the Defendants either knew or should have known that Kozlowski had engineered those scams, but failed to reveal the compensation that Kozlowski derived from them in Tyco's disclosures to shareholders.

126. In particular, the September 2002 8-K and the Kozlowski Complaint demonstrate that Defendants failed to disclose that Kozlowski:

a. arranged for Tyco to rent for him, at Tyco's expense, a Manhattan apartment with annual rent of \$264,000 from 1997 to 2001;

b. purchased, using interest-free relocation loans, a \$7 million Tyco-owned apartment in Manhattan at depreciated book value and without appraisals and then deeded the apartment to his ex-wife a few months later;

c. sold his New Hampshire house to the Company in 2000 without appraisals for \$4.5 million, an amount approximately three times its market value (less than 24 months later, the Company wrote down this asset by approximately \$3 million);

d. sold a home in North Hampton, New Hampshire to the Company in 2000 and then continued to make personal use of the property by permitting his ex-wife to reside there for two years, without a lease or without even reimbursement to the Company of expenses;

e. caused Tyco to purchase a second Manhattan apartment for his use for \$16.8 million, and then caused Tyco to spend \$3 million in improvements and \$11 million in

furnishings for that apartment (including a \$6,000 shower curtain, a \$15,000 dog umbrella stand, a \$6,300 sewing basket, a \$17,100 traveling toilette box, a \$2,200 gilt metal wastebasket, coat hangers for \$2,900, two sets of sheets for \$5,960, a \$1,650 notebook, and a \$445 pincushion);

f. furnished a home that he owned in New Castle, New Hampshire, at a cost of \$269,000, which he expensed to the Company, and thereafter reportedly made exclusive use of the property, while charging the maintenance costs to the Company;

g. purchased a home in Rye, New Hampshire with Company funds that he later reimbursed and then made personal use of the property, while expensing its maintenance to the Company; and

h. purchased a home in Boca Raton with the Company's money and then made personal use of the property for himself and visiting family members.

127. Furthermore, none of the Defendants disclosed that, as is conceded in the September 2002 8-K and the Kozlowski Complaint, Kozlowski received "gross-up" benefits to avoid having to pay any state income tax liability incurred after relocating to New York.

128. In sum, according to the September 2002 8-K and the Kozlowski Complaint, Kozlowski:

a. misappropriated for himself over \$100 million that he was not authorized to receive;

b. "wrongfully divert[ed] to others millions of dollars in cash and stock, used to induce their cooperation or buy their silence";

c. caused Tyco executives to receive \$95,962,653 in connection with the unapproved TyCom Scheme, of which \$79,177,081 represented senior executive benefits Kozlowski awarded allegedly without obtaining requisite Board approvals;

d. provided himself with \$17,188,034 and 148,000 shares of Tyco stock in connection with the unauthorized ADT Scheme;

e. caused the Company to pay a total of \$36,584,338 and to issue a total of 261,500 shares of Tyco stock in connection with that program, of which \$34,822,412 and 259,500 shares represent senior executive benefits Kozlowski awarded allegedly without obtaining the requisite Board approvals;

f. provided himself with \$8,219,650 in connection with the unauthorized Flag Telecom Scheme;

g. caused the Company to pay \$15,378,700 in connection with that unauthorized bonus program; and

h. misappropriated tens of millions of dollars in Company funds that were charged as purported business expenses, including at least \$20,000,000 for artwork, antiques, and furnishings; \$700,000 to finance the movie "Endurance"; one-half of the \$2.1 million expense of a week-long birthday party for his wife in Sardinia; \$110,000 for use of his yacht; \$1,144,000 for jewelry, clothing, florist, club memberships, wines, and private ventures; and \$150,000 for personal expenses at 59 Harbor Rd., Rye, New Hampshire from 1996 to 2002.

129. Kozlowski also caused Tyco to make donations or pledges to charitable organizations totaling over \$106 million. Of that total, at least \$43 million in donations were represented in transmittal letters or otherwise as Kozlowski's personal donations, or were made using the Company's funds for Kozlowski's personal benefit.

130. Most egregiously, Kozlowski donated to the Nantucket Conservation Foundation, Inc. a total of \$1,300,000 in Tyco funds. That sum was used partially to purchase 60 acres of property called "Squam Swamp" adjacent to Kozlowski's own Nantucket estate. The effect of this gift was to preclude future development of the land and thereby increase the value of Kozlowski's home.

131. On March 1, 2002, purportedly without approval by the Compensation Committee or the Board, Swartz caused Tyco to pay him a reimbursement of \$1.2 million to cover lost deposits on personal real estate transactions involving apartments in Trump Tower on 5th Avenue in New York.

J. The Failure Of The Tyco Defendants To Disclose The Additional Criminal Conduct Committed By The Officer Defendants

132. According to the September 2002 8-K, on May 3, 2002, Kozlowski and Belnick learned that Kozlowski's longtime tax evasion had resulted in him becoming the target of a criminal investigation by the Manhattan D.A. That investigation concerned the compensation paid to Kozlowski by Tyco and his failure to pay sales tax on certain art works. Soon after Kozlowski learned that he was a target of the investigation, Swartz and Belnick learned the same information.

133. Kozlowski perpetrated his tax evasion over several years prior to May 2002 by engaging in deceptive conduct designed to create the impression that art works that he purchased – including paintings by Monet and Renoir – were being shipped to Tyco’s offices in New Hampshire (where they would not be subject to New York sales tax) when, in fact, they were being sent to his New York City apartment. Oftentimes, Kozlowski attempted to perpetrate that ruse by having empty containers shipped to Tyco while the paintings were secretly delivered to his apartment.

134. The Officer Defendants were immediately aware of the seriousness of this investigation and the danger it posed to the Company. As a result, on May 3, 2002, Belnick retained criminal counsel for both Kozlowski and Tyco. Because Belnick recognized that the interests of Kozlowski and Tyco were in conflict, different law firms were retained to represent each.

135. Although Belnick retained counsel to represent Tyco in connection with that investigation, caused those counsel to meet with the Manhattan D.A. and arranged to provide prosecutors with documents and data, the September 2002 8-K states that Belnick, Kozlowski and Swartz withheld the existence of that investigation from the Tyco Board until May 31, 2002 and from Tyco investors until three days thereafter. Belnick and Kozlowski concealed those facts although, on May 23, 2002, they met and conferred with the members of the Board in New York. According to the Belnick Complaint and the Kozlowski Complaint, neither Kozlowski nor

Belnick mentioned (on or off the record) the pending criminal investigation or the subpoena to the Board during the course of that meeting.

136. According to those complaints, Belnick and Kozlowski only disclosed the existence of the criminal investigation into Kozlowski's conduct after they were told that Kozlowski was about to be indicted. They concealed those highly material facts in a vain attempt to protect themselves rather than acting in good faith towards investors in Tyco securities.

137. May 31 was a Friday; on the evening of Sunday, June 2, the Tyco Board met by phone and requested Kozlowski's resignation as Chairman, CEO and director, and Kozlowski tendered his resignation. On Monday, June 3, the Manhattan D.A. held a press conference to announce its investigation, and on Tuesday June 4, Kozlowski was indicted on twelve counts of conspiring to evade New York sales taxes on \$13.1 million in paintings he purchased.

138. Those announcements had a devastating impact on the value of Tyco securities. In particular, Tyco's stock dropped from a closing price of \$21.95 on May 31, 2002, to \$16.45 on Tuesday, June 4 (a drop of approximately 25%).

139. That initial indictment was only the beginning of the Officer Defendants' criminal problems. On June 26, 2002, Kozlowski was charged in a superseding indictment with two counts of obstruction of justice relating to the removal of documents subpoenaed by the Manhattan D.A.

140. On September 12, 2002, additional indictments were filed in New York Supreme Court against Kozlowski and Swartz alleging enterprise corruption, fraud, conspiracy, grand larceny, falsifying certain business records and other crimes, and against Belnick alleging falsification of business records.

141. One day later, Tyco was served with an Order to Show Cause with Temporary Restraining Order freezing the assets and property of Kozlowski and Swartz and their families and dependents.

142. Because of the highly material nature of Kozlowski's criminal conduct, and the fact that, as described below, he and the other Officer Defendants made massive sales of Tyco stock during the time frame in which he engaged in that criminal conduct, Tyco and the Officer Defendants were obligated to disclose Kozlowski's conduct to Plaintiffs and other investors in the Company's securities. Those Defendants failed to make the required disclosures, however, until the last possible moment prior to Kozlowski's indictment and resignation from the Company in shame.

K. Defendants' GAAP And GAAS Violations

143. As a result of the foregoing facts, the financial statements, proxy statements and other disclosures made by Defendants prior to Plaintiffs' investments in Tyco securities were materially misleading in at least the following respects:

a. Defendants failed to disclose the true compensation paid to the Officer Defendants and Walsh in violation of GAAP provisions and SEC regulations that require the

accurate disclosure of the compensation paid by companies to their CEO and four highest-paid executives.

b. Defendants failed to make proper disclosures in the Company's financial statements, other SEC filings and other disclosures concerning all of the "related party" transactions among Tyco, the Officer Defendants and defendant Walsh. Those undisclosed related-party transactions included, but were not limited to, the transactions related to the Walsh Bonus Scheme, the TyCom Scheme, the Flag Telecom Scheme, the ADT Scheme, the KEL loan scheme, and Tyco's payment of excessive and undisclosed compensation to the Officer Defendants.

c. The Officer Defendants failed to disclose the criminal conduct in which they had engaged although they exploited their concealment of that conduct by selling hundreds of millions of dollars in Tyco stock to unsuspecting investors such as Plaintiffs.

144. By engaging in the fraudulent conduct alleged herein, Defendants violated the following GAAP provisions, among others:

a. The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶ 34);

b. The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions,

events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶ 40);

c. The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶ 50);

d. The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶ 42);

e. The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. The notion that information should be reliable as well as relevant is central to accounting (FASB Statement of Concepts No. 2, ¶¶ 58-59);

f. The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions, was violated (FASB Statement of Concepts No. 2, ¶ 79); and

g. The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶ 95, 97).

145. By violating those GAAP provisions, the Tyco Defendants and the PWC Defendants violated the disclosure requirements of Regulation S-X, 17 CFR 210.4-01(a)(1), which provides that financial statements that do not conform to GAAP are presumptively misleading and inaccurate.

146. In addition, the audit opinions of the PWC Defendants, insofar as they stated that their audits of the Company's financial statements were conducted in accordance with GAAS, were false and misleading because the following GAAS (AU 150) were knowingly and recklessly violated:

a. Standard Of Field Work No. 2 was violated, which standard requires that a sufficient understanding of the internal control structure must be obtained to plan the audit and to determine the nature, timing and extent of tests to be performed.

b. Standard Of Field Work No. 3 was violated, which standard requires that sufficient competent evidential matter must be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under examination.

c. Standard Of Reporting No. 1 was violated, which standard requires that the report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.

d. Standard Of Reporting No. 3 was violated, which standard requires that informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.

147. The Tyco Defendants were required to disclose in the Company's financial statements the existence of the material facts described herein and to appropriately report transactions in conformity with GAAP. The Tyco Defendants failed to satisfy those obligations. The PWC Defendants were therefore required pursuant to GAAS to express either a qualified or an adverse opinion on the Company's financial statements.

148. The PWC Defendants therefore violated GAAS by failing to express qualified or adverse opinions on the Company's financial statements.

V.

THE MATERIALLY MISLEADING REPRESENTATIONS AND OMISSIONS MADE BY DEFENDANTS

149. As set forth in detail below, during the period in which Plaintiffs were purchasing shares of Tyco common stock, Defendants issued or caused to be issued numerous statements that included false and misleading representations regarding the compensation of the Officer Defendants, the accounting treatment for such compensation and related-party transactions involving the Tyco Defendants.

**A. The Officer Defendants' Reported
Compensation For The Period Ended September 30, 1997**

150. On January 28, 1998, Tyco filed with the SEC Amendment No. 1 on Form 10-K/A amending the Form 10-K for the “transition period” from January 1, 1997, through September 30, 1997 (the “1997 10-K Amendment”). The 1997 10-K Amendment was signed by Defendant Swartz.

151. The 1997 10-K Amendment contained a table that purportedly represented the “annual and long-term compensation for services in all capacities to the Company and its subsidiaries for those persons who served as the Chief Executive Officer during Fiscal 1997 and the other four most highly compensated executive officers of the Company.” That table described Defendants Kozlowski's and Swartz's annual and long-term compensation as follows:

	Year	Salary	Cash Bonus	Options	Plan Payouts	Other Compensation
Kozlowski	1997	\$1,250,000	\$2,544,260	3,300,000	\$6,508,125	\$108,125
Swartz	1997	\$559,500	\$1,272,130	1,100,000	\$2,169,375	\$31,994

152. The 1997 10-K Amendment also contained a table purporting to reflect “all grants of share options to the Named Officers during Fiscal 1997.” That table described Defendant Kozlowski's and Swartz's options compensation as follows:

	Options Granted	Exercise Price	Expiration Date	Present Value
Kozlowski	3,000,000	\$38.31250	July 17, 2007	\$69,783,845

Kozlowski	300,000	\$40.96875	July 23, 2007	\$6,653,793
Swartz	1,000,000	\$38.31250	July 17, 2007	\$23,261,281
Swartz	100,000	\$40.96875	July 23, 2007	\$2,217,931

153. The 1997 10-K Amendment also contained a table setting forth “information with respect to aggregate option exercises by the Named Officers in the fiscal year ended September 30, 1997 and with respect to unexercised options to purchase common shares granted in Fiscal 1997 and prior years to the Named Officers and held by them at September 30, 1997.” That table purported to describe Defendant Kozlowski’s and Swartz’s options exercises and unexercised options as follows:

	Shares acquired on exercise of option in fiscal year	Value realized on exercise of options in fiscal year	Number of unexercised options at fiscal year end Exercisable	Number of unexercised options at fiscal year end Unexercisable	Value of Unexercised in-the-money options at fiscal year end Exercisable	Value of Unexercised in-the-money options at fiscal year end Unexercisable
Kozlowski	0	0	0	3,300,000	0	\$8,175,000
Swartz	0	0	0	1,100,000	0	\$2,725,000

154. On February 20, 1998, Tyco filed with the SEC a Proxy Statement in connection with the Company’s Annual General Meeting of Shareholders scheduled for March 27, 1998 (the “1998 Proxy”). Portions of the 1998 Proxy were signed by Defendant Kozlowski. The 1998 Proxy contained the same or similar information concerning the Officer Defendants’ reported compensation as was contained in the 1997 10-K Amendment.

155. The 1998 Proxy also contained a “Board Compensation Committee Report on Executive Compensation.” That report, which was “submitted” by the members of the Tyco

Board of Directors Compensation Committee (Stephen W. Foss, Philip M. Hampton, W. Peter Slusser and Frank E. Walsh, Jr.) represented, among other things, that:

The Compensation Committee meets shortly after the end of each fiscal year to consider and make its determination regarding the total compensation of the Chief Executive Officer for the ensuing year. The Compensation Committee determines such compensation based on its assessment of the individual performance of the Chief Executive Officer, a review of the Company's operating performance (including such factors as revenues, operating income, earnings per share and cash flow generation), an analysis of total returns to shareholders relative to total returns generated by comparable quoted companies and a review of compensation of the chief executive officers of companies with similar businesses of comparable size.

156. On or about December 24, 1997, Tyco filed with the SEC a Report on Form 10-K disclosing the Company's financial results for the fiscal year ended September 30, 1997 (the "1997 10-K"). The 1997 10-K was signed by Defendants Kozlowski, Swartz, Bodman, Fort, Pisman and Walsh. Under the heading "Management Remuneration," the 1997 10-K incorporated by reference the information concerning management remuneration contained in the 1997 10-K Amendment.

157. The fiscal 1997 financial statements were audited by the Coopers & Lybrand, the predecessor firm to the PWC Defendants. Coopers & Lybrand stated in the 1997 10-K that the financial statements complied with GAAP although they did not for the reasons set forth in Section IV.

B. The Officer Defendants' Reported Compensation For The Period Ended September 30, 1998

158. On January 29, 1999, Tyco filed with the SEC Amendment No. 1 on Form 10-K/A to Form 10-K for the fiscal year ended September 30, 1998 (the “1998 10-K Amendment”). The 1998 10-K Amendment was signed by Defendant Swartz.

159. The 1998 10-K Amendment contained a table that purportedly represented the “annual and long-term compensation for services in all capacities to the Company and its subsidiaries for those persons who served as the Chief Executive Officer during fiscal 1998 and the other four most highly compensated executive officers of the Company.” That table described Defendants Kozlowski's and Swartz’s annual and long-term compensation as follows:

	Year	Salary	Cash Bonus	Options	Restricted Stock Awards ¹	Other Compensation
Kozlowski	1998	\$1,250,000	\$2,500,000	1,916,400	\$20,140,000	\$901,002
Swartz	1998	\$559,500	\$1,272,000	1,100,000	\$10,070,000	\$256,878

160. The 1998 10-K Amendment also contained a table purporting to reflect “all grants of share options to the Named Officers during fiscal 1998 under the Tyco Long-Term Incentive Plan.” That table described Defendants Kozlowski's and Swartz’s options compensation as follows:

¹ Restricted shares are issued under a restricted share program whereby specific performance criteria determine the number of shares that vest for the fiscal year. If the performance criteria are not met resulting in some or all of the shares not being earned (i.e., not vesting) within the three-year period, those shares are forfeited and must be returned to the Company. The values shown are the fair market value on the date of the grant.

	Options Granted	Exercise Price	Expiration Date	Present Value
Kozlowski	100,000	\$45.639	n/a	n/a
Kozlowski	83,000	\$55.084	n/a	n/a
Kozlowski	483,000	\$68.097	July 23, 2007	\$6,982,240
Kozlowski	1,000,000	\$68.220	July 17, 2007	\$14,470,000
Kozlowski	250,000	\$68.220	July 17, 2008	\$3,617,500
Swartz	500,000	\$39.375	October 28, 2007	\$3,755,000
Swartz	162,000	\$40.500	n/a	n/a
Swartz	262,000	\$68.097	July 23, 2007	\$3,785,900
Swartz	333,333	\$68.220	July 17, 2007	\$4,823,329
Swartz	125,000	\$68.220	July 17, 2008	\$1,808,750

161. The 1998 10-K Amendment also contained a table setting forth “information with respect to aggregate option exercises by the Named Officers in the fiscal year ended September 30, 1998 and with respect to unexercised stock options held by them at September 30, 1998.” That table purported to describe Defendants Kozlowski and Swartz’s options exercises and unexercised options as follows:

	Shares acquired on exercise of option in fiscal year	Value realized on exercise of options in fiscal year	Number of unexercised options at fiscal year end		Value of Unexercised in-the-money options at fiscal year end	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Kozlowski	1,483,200	\$41,374,391	1,733,200	2,000,000	0	\$33,875,000
Swartz	595,333	\$17,152,765	720,333	1,166,667	0	\$19,229,172

162. The 1998 10-K Amendment also purported to describe the Tyco “Key Employee

Corporate Loan Program,” which was supposedly designed to “encourage ownership of Tyco common shares by key employees.” According to the 1998 10-K Amendment, “Loans are primarily used for the payment of taxes due as a result of the vesting of restricted stock.”

163. The 1998 10-K Amendment further described the general terms and conditions of the Key Employee Corporate Loan Program:

The Compensation Committee authorizes loans, which may not exceed the amount allowable under any regulation of the United States Treasury or other applicable statute or regulation. Loans may be required to be secured by Tyco common shares owned by the employee or may be unsecured. Loans generally bear interest at Tyco's incremental short-term borrowing rate (5.5% for 1999). Loans are generally repayable in ten years or when the participant reaches age 69, whichever occurs first, except that earlier payments must be made in the event that the participant's employment with the Company or its subsidiaries terminates. The participant is also required to make loan payments upon the sale or other disposition of Tyco common shares (other than gifts to certain family members) with respect to which loans have been granted.

164. According to the 1998 10-K Amendment, as of September 30, 1998, the amount of loans outstanding under the loan programs to Defendants Kozlowski and Swartz totaled \$4,821,982 and \$461,680, respectively. In addition, the largest amount of indebtedness since October 1, 1997 for Kozlowski and Swartz under these programs was reported to be \$22,474,345 and \$12,538,406, respectively. The 1998 10-K Amendment further represented that “the Company made short-term loans to Mr. Kozlowski and Mr. Swartz in the amounts \$59,750,014 and \$23,428,695, respectively, to assist in the exercise of stock options.” According to the 1998 10-K Amendment, “[i]nterest of 5.75% was charged and the loans were repaid within 3 days.”

165. On September 27, 1999, Tyco filed with the SEC a Proxy Statement in connection with the Company's Annual General Meeting of Shareholders scheduled for November 3, 1999 (the “1999 Proxy”). Portions of the 1999 Proxy were signed by Defendant Kozlowski. The 1999 Proxy contained the same or similar information concerning the Officer Defendants' reported compensation as was contained in the 1998 10-K Amendment.

166. The 1999 Proxy also contained a “Board Compensation Committee Report on Executive Compensation.” That report, which was “submitted” by the members of the Tyco Board of Directors' Compensation Committee (Stephen W. Foss, Philip M. Hampton, W. Peter Slusser and Frank E. Walsh, Jr.) represented, among other things, that:

KKKKKKK. The Compensation Committee of the Board of Directors approves all of the policies under which compensation is paid or awarded to the Company's executive officers and key managers and oversees the administration of executive compensation programs. The Compensation Committee is composed solely of independent directors, none of whom has any interlocking relationships with the Company that are subject to disclosure under rules of the United States Securities and Exchange Commission (the "SEC") relating to proxy statements.

LLLLLLL. The Compensation Committee meets shortly after the end of each fiscal year to consider and make its determination regarding the total compensation of the Chief Executive Officer for the ensuing year. The Compensation Committee determines such compensation based on its assessment of the individual performance of the Chief Executive Officer, a review of the Company's operating performance (including such factors as revenues, operating income, earnings per share and cash flow generation), an analysis of total returns to shareholders relative to total returns generated by comparable quoted companies and a review of compensation of the chief executive officers of companies with similar businesses of comparable size.

MMMMMMM. The Committee considers Mr. Kozlowski's level of compensation appropriate in view of his leadership of the Company during fiscal 1998, which both created significant current shareholder value and laid the groundwork for continued growth. For example, during fiscal 1998, the Company and Former Tyco were successfully integrated, the Company made over 20 acquisitions totaling over \$3.8 billion and earnings per share before non-recurring items increased by 51% over the prior fiscal year.

NNNNNNN. Tyco's philosophy is to hire and retain the best available executive talent. Tyco believes in paying well to keep and continually motivate exceptionally talented executives - if such pay is merited by performance. Tyco generally employs entrepreneurial executives, those that are willing to have a significant amount of their pay tied to performance. Tyco's executive compensation program reflects this focus by offering significant financial rewards

when the Company and the individual perform well, but significantly lower pay if performance goals are not met. The Committee feels that Tyco's executive compensation program, which is based on this philosophy, is in the best interests of shareholders and that executive compensation in fiscal 1998 was consistent with the focus and goals of the program.

167. On or about December 10, 1998, Tyco filed with the SEC on Form 10-K the Company's financial results for the fiscal year ended September 30, 1998 (the "1998 10-K"). The 1998 10-K was signed by Defendants Kozlowski, Swartz, Bodman, Fort, Paskan and Walsh. Under the heading "Management Remuneration," the 1998 10-K incorporated by reference the information concerning management remuneration contained in the 1998 10-K Amendment and the 1999 Proxy.

168. The fiscal 1998 financial statements were audited by the PWC Defendants, who stated that the financial statements complied with GAAP although they did not for the reasons set forth in Section IV.

**C. The Officer Defendants' Reported
Compensation For The Period Ended September 30, 1999**

169. On February 1, 2000, Tyco filed with the SEC Amendment No. 1 on Form 10-K/A to Form 10-K for the fiscal year ended September 30, 1999 (the "1999 10-K Amendment"). The 1999 10-K Amendment was signed by Defendant Swartz.

170. The 1999 10-K Amendment contained a table that purportedly represented the "annual and long-term compensation for services in all capacities to the Company and its subsidiaries for the Chief Executive Officer of the Company and the other four most highly

compensated executive officers of the Company during fiscal 1999.” That table described

Defendants Kozlowski’s and Swartz’s annual and long-term compensation as follows:

	Year	Salary	Cash Bonus	Options	Restricted Stock Awards	Other Compensation
Kozlowski	1999	\$1,350,000	\$3,200,000	6,621,834	\$25,707,178	\$387,001
Swartz	1999	\$750,000	\$1,600,000	2,976,480	\$12,029,641	\$150,014

171. The 1999 10-K Amendment also contained a table purporting to reflect “all grants of stock options to the Named Officers during fiscal 1999 under the Tyco International Ltd. Long Term Incentive Plan.” That table described Defendants Kozlowski and Swartz’s options compensation as follows:

	Options Granted	Exercise Price	Expiration Date	Present Value
Kozlowski	141,600	\$27.45330	Options transferred to a family partnership, which then exercised the options during fiscal 1999.	\$799,332
Kozlowski	584,000	\$40.96875	Same as above	\$3,547,800
Kozlowski	120,400	\$39.00000	Same as above	\$1,033,032
Kozlowski	40,000	\$44.62500	June 10, 2009	\$423,800
Kozlowski	2,305,114	\$50.99245	July 17, 2007– October 22, 2008	\$27,626,791
Kozlowski	3,430,720	\$49.99995	July 17, 2007	\$40,431,035
Swartz	312,000	\$29.23095	Options transferred to a family partnership, which then exercised the options during fiscal 1999.	\$1,895,400

Swartz	482,160	\$50.99245	July 17, 2007	5,778,688
Swartz	2,182,320	\$49.99995	July 17, 2007– October 22, 2008	\$25,718,641

172. The 1999 10-K Amendment also contained a table setting forth “information with respect to aggregate option exercises by the Named Officers in the fiscal year ended September 30, 1999 and with respect to unexercised options to purchase common shares granted in Fiscal 1997 and prior years to the Named Officers and held by them at September 30, 1999.” That table purported to describe Defendants Kozlowski and Swartz’s options exercises and unexercised options as follows:

	Shares acquired on exercise of option in fiscal year	Value realized on exercise of options in fiscal year	Number of unexercised options at fiscal year end		Value of Unexercised in-the-money options at fiscal year end	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Kozlowski	\$6,312,400	\$139,739,099	5,735,834	2,000,000	\$2,823,139	\$63,333,200
Swartz	\$2,752,668	\$62,802,959	2,664,480	1,333,332	\$1,795,831	\$41,867,925

173. Finally, the 1999 10-K Amendment represented that, as of September 30, 1999, there were no loans outstanding under the Key Employee Corporate Loan Program for Defendants Kozlowski and Swartz. According to the 1999 10-K Amendment, the largest amount of indebtedness under the loan program since October 1, 1998 was \$52,688,249 for Defendant Kozlowski, and \$17,435,319 for Defendant Swartz.

174. On March 1, 2000, Tyco filed with the SEC a Proxy Statement on Form 14A in connection with the Company's Annual General Meeting of Shareholders scheduled for April 19, 2000 (the "2000 Proxy"). Portions of the 2000 Proxy were signed by Defendant Kozlowski. The 2000 Proxy contained the same or similar information concerning the Officer Defendants' reported compensation as was contained in the 1999 10-K Amendment.

175. The 2000 Proxy also contained a "Board Compensation Committee Report on Executive Compensation." That report, which was "submitted" by the members of the Tyco Board of Directors Compensation Committee (Stephen W. Foss, Philip M. Hampton, W. Peter Slusser and Frank E. Walsh, Jr.) contained the same or similar representations concerning the remuneration paid to members of Tyco's management as were contained in the compensation report submitted with the 1999 Proxy.

176. On or about December 13, 1999, Tyco filed with the SEC on Form 10-K the Company's financial results for the fiscal year ended September 30, 1999 (the "1999 10-K"). The 1999 10-K was signed by Defendants Kozlowski, Swartz, Bodman, Fort, Paskan and Walsh. Under the heading "Management Remuneration," the 1999 10-K incorporated by reference the information concerning management remuneration contained in the 2000 Proxy.

177. The fiscal 1999 financial statements were audited by the PWC Defendants, who stated that the financial statements complied with GAAP although they did not for the reasons set forth in Section IV.

**D. The Officer Defendants' Reported
Compensation for the Period Ended September 30, 2000**

178. On January 28, 2001, Tyco filed with the SEC a Proxy Statement on Form 14A in connection with the Company's Annual General Meeting of Shareholders scheduled for March 27, 2001 (the "2001 Proxy"). Portions of the 2001 Proxy were signed by Defendant Kozlowski.

179. The 2001 Proxy also contained a table that purportedly represented the "annual and long-term compensation for services in all capacities to Tyco and its subsidiaries for the periods shown for Tyco's Chief Executive Officer and the other four most highly compensated executive officers of Tyco during fiscal 2000." That table described Defendant Kozlowski's and Swartz's annual and long-term compensation as follows:

	Year	Salary	Cash Bonus	Tyco Options	TyCom Options	Restricted Stock Awards	Other Compensation
Kozlowski	2000	\$1,350,000	\$2,800,000	1,439,135	800,000	\$21,207,540	\$527,152
Swartz	2000	\$768,750	\$1,400,000	788,425	500,000	\$10,603,770	\$292,487

180. The 2001 Proxy also contained a table purporting to reflect "all grants of stock options to the Named Officers during fiscal 2000 under the Tyco International Ltd. Long Term

Incentive Plan ... and the TyCom Ltd. Long Term Incentive Plan”² That table described

Defendants Kozlowski and Swartz’s options compensation as follows:

	Type	Options Granted	Exercise Price	Expiration Date	Present Value
Kozlowski	TYC	20,000	\$50.8125	October 1, 2009	\$270,400
Kozlowski	TYC	392,000	\$41.1974	October 17, 2009	\$4,319,840
Kozlowski	TYC	744,000	\$35.3459	January 1, 2010	\$7,209,360
Kozlowski	TYC	20,000	\$50.0000	March 22, 2010	\$296,800
Kozlowski	TYC	300,000	\$53.0000	April 17, 2010	\$2,673,000
Kozlowski	TYC	300,000	\$65.0000	April 17, 2010	\$1,815,000
Kozlowski	TYC	300,000	\$75.0000	April 17, 2010	\$1,323,000
Kozlowski	TYC	1,502,467	\$58.2843	July 17, 2007– January 2, 2010	\$25,511,890
Kozlowski	TYC	1,255,602	\$56.8342	July 17, 2007– January 2, 2010	\$20,792,769
Kozlowski	TYC	273,089	\$55.2500	July 17, 2007– January 2, 2010	\$4,396,733
Kozlowski	TCM	800,000	\$32.0000	July 25, 2010	\$12,248,000
Swartz	TYC	196,000	\$41.1974	October 17, 2009	\$4,230,000
Swartz	TYC	372,000	\$35.3459	January 4, 2010	\$1,120,360
Swartz	TYC	150,000	\$53.0000	April 17, 2010	\$2,807,000
Swartz	TYC	150,000	\$65.0000	April 17, 2010	\$1,678,747

² According to the 2001 Proxy, TyCom Ltd. was “amalgamated” with a subsidiary of Tyco on December 18, 2001. In the amalgamation, each outstanding TyCom common share was converted into 0.3133 of a Tyco common share, and each outstanding option to purchase TyCom shares was converted into an option to purchase Tyco shares in a corresponding ratio.

Swartz	TYC	150,000	\$75.0000	April 17, 2010	\$874,805
Swartz	TYC	368,197	\$58.2843	July 17, 2007	\$1,311,300
Swartz	TYC	944,398	\$56.8352	July 17, 2007– January 4, 2010	\$15,639,231
Swartz	TYC	205,404	\$55.2500	October 17, 2009- January 4, 2010	\$3,307,004
Swartz	TCM	500,000	\$32.0000	July 25, 2010	\$7,655,000

181. The 2001 Proxy also contained a table setting forth “information with respect to aggregate option exercises by the named officers in the fiscal year ended September 30, 2000 and with respect to unexercised options held by them at September 30, 2000.” That table purported to describe Defendants Kozlowski’s and Swartz’s options exercises and unexercised options as follows:

	Type	Shares acquired on exercise of option in fiscal year	Value realized on exercise of options in fiscal year	Number of unexercised options at fiscal year end Exercisable	Number of unexercised options at fiscal year end Unexercisable	Value of Unexercised in-the-money options at fiscal year end Exercisable	Value of Unexercised in-the-money options at fiscal year end Unexercisable
Kozlowski	TYC	744,000	\$16,558,701	5,775,834	3,931,158	\$10,710,320	0
Kozlowski	TYC	40,000	\$530,127	--	--	--	--
Kozlowski	TYC	2,392,000	\$82,828,516	--	--	--	--
Kozlowski	TCM	--	--	0	800,000	0	\$4,840,160
Swartz	TYC	--	--	2,664,480	2,301,332	\$5,525,196	\$10,855,222

Swartz	TYC	1,567,999	\$48,840,326	–	–	--	--
Swartz	TCM	–	–	0	500,000	0	\$3,025,100

182. The 2001 Proxy further represented that, as of September 30, 2000, there were no loans outstanding under the Key Employee Corporate Loan Program for Defendants Kozlowski and Swartz. According to the 2001 Proxy, the largest amount of indebtedness under the loan program since October 1, 1999 was \$12,711,768 for Defendant Kozlowski, and \$1,000,000 for Defendant Swartz.

183. The 2001 Proxy also contained a “Board Compensation Committee Report on Executive Compensation.” The Report, which was “submitted” by Tyco directors Philip M. Hampton, Stephen W. Foss, James S. Pasman and W. Peter Slusser, stated, among other things, that:

BBBBBBBB. The Compensation Committee of the Board of Directors is composed solely of independent directors, none of whom has any interlocking relationships with Tyco that are subject to disclosure under rules of the SEC relating to proxy statements. The Compensation Committee approves all of the policies under which compensation is paid or awarded to Tyco's Chief Executive Officer, reviews and, as required, approves such policies for executive officers and key managers, and oversees the administration of executive compensation programs.

CCCCCCCC. In formulating the policies under which Tyco's executives were compensated, the Committee considers the following factors, among others:
--In this very competitive environment in which Tyco operates, it must attract, retain and motivate highly talented corporate leaders who are capable of achieving the Company's goals for short-term and long-term profitability, growth and return to shareholders.

--Company growth and ultimately shareholder value are best served by having incentive compensation based on the financial performance of the Company and its various operating companies with a large component based on increase in the value of Tyco shares.

--The compensation paid by Tyco to its management team should be competitive with executive compensation of other similarly situated public companies. The Committee retains an independent outside consulting firm to evaluate the appropriateness of Tyco's executive pay practices.

DDDDDDDD. At the end of each fiscal year, the Compensation Committee reviews with the Chief Executive Officer the individual performance of each of the other executive officers and reviews his recommendations for the appropriate compensation awards and the financial and other objectives for each of the executive officers for the following year.

EEEEEEEE. The Committee considers Mr. Kozlowski's level of compensation appropriate in view of his performance and continued leadership of Tyco during fiscal 2000.

FFFFFFF. Tyco's philosophy is to hire and retain the best executive talent. Tyco believes in paying very competitively to keep and continually motivate exceptionally talented executives--if such pay is merited by performance. Tyco generally employs entrepreneurial executives, those that are willing to have a significant amount of their pay tied to performance. Tyco's executive compensation program reflects this focus by offering significant financial rewards when Tyco and the individual achieve excellent results; however, significantly lower compensation is tied to lower levels of performance.

184. On or about December 21, 2000, Tyco filed with the SEC on Form 10-K the Company's financial results for the fiscal year ended September 30, 2000 (the "2000 10-K").

The 2000 10-K was signed by Defendants Kozlowski, Swartz, Bodman, Fort, Lane, Pasman and

Walsh. Under the heading “Management Remuneration”, the 2000 10-K incorporated by reference the information concerning management remuneration contained in the 2001 Proxy.

185. The fiscal 2000 financial statements were audited by the PWC Defendants, who stated that the financial statements complied with GAAP although they did not for the reasons set forth in Section IV.

**E. The Officer Defendants’ Reported
Compensation for the Period Ended September 30, 2001**

186. On January 28, 2002, Tyco filed with the SEC a Proxy Statement on Form 14A in connection with the Company’s Annual General Meeting of Shareholders scheduled for February 21, 2002 (the “2002 Proxy”). Portions of the 2002 Proxy were signed by Defendant Kozlowski.

187. According to the 2002 Proxy, as of November 30, 2001, Defendant Kozlowski beneficially owned 13,364,508 Tyco shares, and Defendant Swartz beneficially owned 5,746,095 Tyco shares.

188. The 2002 Proxy also contained a table that purportedly represented the “annual and long-term compensation for services in all capacities to Tyco and its subsidiaries for the periods shown for Tyco’s Chief Executive Officer and the other four most highly compensated executive officers of Tyco during fiscal 2001.” That table described Defendants Kozlowski’s and Swartz’s annual and long-term compensation as follows:

	Year	Salary	Cash Bonus	Options	Restricted Stock Awards	Other Compensation
Kozlowski	2001	\$1,650,000	\$4,000,000	1,439,135	\$30,398,880	\$219,543
Swartz	2001	\$968,750	\$2,000,000	788,425	\$15,199,440	\$277,856

189. The 2002 Proxy also contained a table purporting to reflect “all grants of stock options to the named officers during Fiscal 2001 under the Tyco International Ltd. Long Term Incentive Plan....” That table described Defendants Kozlowski's and Swartz’s options compensation as follows:

	Options Granted	Exercise Price	Expiration Date	Present Value
Kozlowski	6,000,000	\$53.0484	October 23, 2010	\$8,460,000
Kozlowski	400	\$55.5000	October 29, 2010	\$5,932
Kozlowski	17,800	\$55.4375	October 29, 2010	\$263,618
Kozlowski	148,000	\$56.6120	October 30, 2010	\$2,240,720
Kozlowski	14,600	\$53.0000	December 25, 2010	\$198,414
Kozlowski	400	\$53.0625	December 25, 2010	\$5,444
Kozlowski	20,000	\$60.0000	January 15, 2011	\$310,600
Kozlowski	350,000	\$62.2124	January 29, 2011	\$5,614,000
Kozlowski	20,000	\$54.5000	March 8, 2011	\$283,000
Kozlowski	107,935	\$53.0300	June 19, 2011	\$1,749,626
Kozlowski	155,000	\$54.9150	July 2, 2011	\$2,622,600
Kozlowski	5,000	\$44.1800	September 26, 2011	\$65,150
Swartz	300,000	\$53.0484	October 23, 2010	\$4,230,000
Swartz	74,000	\$56.6120	October 30, 2010	\$1,120,360

Swartz	175,000	\$62.2142	January 29, 2011	\$2,807,000
Swartz	107,958	\$60.7878	October 28, 2007	\$1,678,747
Swartz	53,967	\$53.0300	June 19, 2011	\$874,805
Swartz	77,500	\$54.9150	July 2, 2011	\$1,311,300

190. The 2002 Proxy also contained a table setting forth “information with respect to aggregate option exercises by the named officers in the fiscal year ended September 30, 2001 and with respect to unexercised options held by them at September 30, 2001.” That table purported to describe Defendants Kozlowski's and Swartz's options exercises and unexercised options as follows:

	Shares acquired on exercise of option in fiscal year	Value realized on exercise of options in fiscal year	Number of unexercised options at fiscal year end Exercisable	Number of unexercised options at fiscal year end Unexercisable	Value of Unexercised in-the-money options at fiscal year end Exercisable	Value of Unexercised in-the-money options at fiscal year end Unexercisable
Kozlowski	0	0	10,148,787	1,087,980	\$6,667	0
Swartz	333,333	13,700,086	5,010,067	567,487	0	0

191. The 2002 Proxy further represented that, as of September 30, 2001, there were no loans outstanding under the Key Employee Corporate Loan Program for Defendants Kozlowski and Swartz. According to the 2002 Proxy, the largest amount of indebtedness under the program during fiscal year 2001 was \$23,009,703 for Defendant Kozlowski and \$6,500,000 for Defendant Swartz.

192. The 2002 Proxy also revealed that, as of November 30, 2001, Defendant Belnick owned 10,000 TyCom shares. In addition, Belnick held options to purchase TyCom shares that were converted to options to purchase 7,833 Tyco common shares at \$102.14 per share.

193. As with the 2001 Proxy, the 2002 Proxy contained a “Board Compensation Committee Report on Executive Compensation.” That report, which was “submitted” by Tyco directors Stephen W. Foss, James S. Pasman and W. Peter Slusser, stated, among other things, that:

LLLLLLLLL. The Compensation Committee of the Board of Directors is composed solely of independent directors, none of whom has any interlocking relationships with Tyco that are subject to disclosure under rules of the SEC relating to proxy statements. The Compensation Committee approves all of the policies under which compensation is paid or awarded to Tyco's Chief Executive Officer, reviews and, as required, approves such policies for executive officers and key managers, and has oversight of the administration of executive compensation programs. The Compensation Committee reviews the compensation policies in light, among other things, of the competitive environment in which Tyco must compete for superior executive talent and the benefit to the Company and its shareholders of having a large portion of incentive compensation tied to the equity value of the Company.

MMMMMMMMM. The elements of Tyco's compensation program for its executives are base salary, annual incentive bonus opportunity, and long-term, equity-based incentive compensation.

NNNNNNNN. During fiscal 2001, the Committee took steps to ensure the continued leadership of the executive management of the Company. In this connection, at the Committee's request and approval, Tyco entered into retention agreements with L. Dennis Kozlowski, described in the CEO compensation section below, and with Mark H. Swartz.

OOOOOOOO. The Committee retains a nationally recognized consulting firm to review and analyze Tyco's executive compensation practices relative to the Company's performance, as well as the marketplace for executive talent. The Committee also observed that Tyco and Mr. Kozlowski's leadership of Tyco have received many favorable comments from the business and financial community. The Committee noted that Tyco was named the best performing company by BUSINESS WEEK in its Spring 2001 special edition featuring its choice of the 50 best performing companies and that more recently Mr. Kozlowski was named one of the top 25 managers of the year by BUSINESS WEEK in its January 14, 2002 edition. Mr. Kozlowski has led Tyco from a \$3 billion manufacturing corporation in 1993 to a \$36 billion diversified service and manufacturing corporation in 2001 that has provided 910% in total cumulative shareholder return from 1993 - 2001. In addition, Mr. Kozlowski grew revenue an average of 38% per year from 1993-2001. During Mr. Kozlowski's tenure as Chief Executive Officer, Tyco has consistently enjoyed a strong balance sheet, with debt levels appropriate for a company of its size and scope of operations, and with investment grade ratings that allow the Company efficiently to address and service its capital requirements.

194. On or about December 28, 2001, Tyco filed with the SEC on Form 10-K the Company's financial results for the fiscal year ended September 30, 2001 (the "2001 10-K"). The 2001 10-K was signed by Defendants Kozlowski, Swartz, Bodman, Fort, Lane, Paskan and Walsh. Under the heading "Executive Compensation," the 2000 10-K incorporated by reference the information concerning management remuneration contained in the 2002 Proxy.

195. The fiscal 2001 financial statements were audited by the PWC Defendants, who stated that those financial statements complied with GAAP although they did not for the reasons set forth in Section IV.

VI.

PLAINTIFFS REASONABLY RELIED UPON DEFENDANTS' REPRESENTATIONS, THE ABSENCE OF MATERIAL OMISSIONS AND THE INTEGRITY OF THE MARKET PRICES FOR TYCO SECURITIES IN PURCHASING THOSE SECURITIES

196. Plaintiffs directly relied upon all of the foregoing misrepresentations in purchasing Tyco securities. In addition, in making those purchases, Plaintiffs relied upon the reasonable assumption that Defendants had not failed to disclose material adverse facts concerning Tyco's operations, including the specific adverse facts related to the compensation paid to the Officer Defendants and Walsh alleged herein.

197. Plaintiffs are also entitled to the presumption of reliance upon the material misrepresentations and omissions alleged herein that is provided by the fraud-on-the-market doctrine.

198. The fraud-on-the-market doctrine's presumption of reliance arises here for the following reasons:

- a. As a regulated issuer, Tyco filed periodic public reports with the SEC that disclosed information that was promptly disseminated to investors.
- b. Tyco regularly communicated with public investors via established market communication mechanisms such as the regular dissemination of press releases on major newswire

services, regular communications with the financial and trade press and through meetings with institutional investors and other major Tyco shareholders.

c. Tyco securities were traded in developed and efficient markets. That is, the information disclosed by Defendants to the public concerning Tyco was incorporated by the market for Tyco securities into the market price for those securities in a manner that caused the market price of Tyco securities to reflect all publicly-available information concerning Tyco. Of course, the market price of Tyco securities did not reflect the information that Defendants concealed from the market. By concealing that information, Defendants therefore caused the Company's securities to trade at inflated prices at all material times.

d. At all relevant times, Tyco common stock met the requirements for listing on the New York Stock Exchange, a highly efficient market. During that time frame, Tyco common stock was among the most frequently-traded securities listed on the New York Stock Exchange.

e. Tyco was followed by several securities analysts employed by major brokerage firms and institutional investors who analyzed the Company's operations and prospects on a regular basis and who recommended the purchase or sale of Tyco stock and bonds on the basis of those analyses.

f. Defendants made material misrepresentations that impacted the prices at which Plaintiffs purchased Tyco securities and failed to disclose material facts that Defendants were obligated to disclose under the circumstances.

g. Plaintiffs purchased their Tyco securities between the time Defendants made the misrepresentations and omissions alleged herein and the time the market learned the adverse facts concerning the Company's operations that Defendants concealed throughout from Plaintiffs.

199. Plaintiffs are therefore entitled to a presumption of reliance upon the integrity of the market for Tyco securities and upon the material misrepresentations and omissions that form the basis for Plaintiffs' claims.

VII.

ADDITIONAL FACTS AND CIRCUMSTANCES THAT DEMONSTRATE THAT DEFENDANTS ACTED WITH SCIENTER

200. Defendants made the misrepresentations and omissions concerning then-existing facts complained of herein with scienter in that they knew or recklessly disregarded that their representations concerning the Company were materially false and misleading when made.

201. With respect to any forward-looking misrepresentations or omissions alleged herein, Defendants made such misrepresentations or omissions with actual knowledge that their statements were materially false. The facts alleged in the following paragraphs, among others, strongly support the conclusion that Defendants acted with scienter.

A. The Officer Defendants And Walsh Possessed Substantial Motives To Commit The Fraudulent Acts Alleged Herein

202. The Officer Defendants and Walsh possessed substantial motives for making the misrepresentations and for failing to disclose the material facts identified in this Complaint.

Indeed, the motives of the Officer Defendants and Walsh to engage in the fraudulent conduct alleged by Plaintiffs could not be more clear. This is not a case in which those Defendants somehow benefitted indirectly from their fraudulent conduct.

203. Rather, as is alleged in substantial detail above, the Officer Defendants and Walsh made material misrepresentations and fraudulent omissions to conceal from investors the fact that they were looting Tyco of hundreds of millions of dollars.

204. In addition, notwithstanding their obligation to refrain from trading Tyco stock under these circumstances, or to disclose the insider information prior to selling such stock, the Officer Defendants and Walsh sold hundreds of thousands of shares of Tyco stock for millions of dollars in proceeds at prices that had been artificially inflated by Defendants' materially false representations and omissions. In the aggregate, the Officer Defendants alone collectively sold more than 2 million shares of Tyco common stock for proceeds of approximately \$500 million during the relevant period.

205. During Tyco's fiscal 2001, for example, from October 2000 through August 1, 2001, while the price of Tyco stock was artificially inflated as a result of Tyco's improper and undisclosed executive compensation and improper accounting practices, Defendants Kozlowski, Swartz and Belnick sold approximately 2 million shares of Tyco common stock for gross proceeds exceeding \$100 million as follows:

Insider	Date	Shares Sold	Price	Total Proceeds
Swartz	10/24/00	300,000	54.13	\$16,293,000
Kozlowski	10/24/00	600,000	54.13	\$32,586,000

Swartz	10/31/00	74,000	56.69	\$4,195,000
Kozlowski	10/31/00	148,000	56.69	\$8,390,120
Walsh	11/30/00	15,147	52.96	\$802,185
Swartz	1/30/01	175,000	62.80	\$10,990,000
Kozlowski	1/30/01	350,000	62.80	\$21,980,000
Swartz	2/1/01	107,968	60.96	\$6,581,729.28
Swartz	6/20/01	53,967	52.96	\$2,858,092.32
Kozlowski	6/20/01	107,935	52.96	\$5,716,237.60
Swartz	7/3/01	77,500	54.98	\$4,260,950
Kozlowski	7/3/01	155,000	54.98	\$8,521,900
Belnick	07/19/01	200,000	\$53.85	\$10,770,000.00

206. In addition, on December 4, 2001, Defendant Belnick sold 116,666 shares of Tyco stock at a price of \$58.13 for total proceeds of \$6,781,794.00.

207. All of the foregoing shares were suspicious in nature because they were made at times when the Officer Defendants were aware that they had looted the Company and concealed their fraudulent conduct through the use of improper accounting.

208. Further, the sales occurred while Defendant Kozlowski was falsely touting his supposed practice of retaining nearly all of his Tyco stock. For example, according to a January 30, 2002 article in the *New York Times*, Kozlowski stated in December 2000 that “I’m paid in Tyco stock . . . We, the board, everybody, feel the best way to keep management’s interests aligned with shareholders is to keep 100 percent of our net worth in Tyco’s stock.”

209. In addition to the foregoing insider sales, the Racketeering Indictment filed by the Manhattan D.A.’s Office indicates that Kozlowski sold more than \$280 million in stock during the period from January 1, 1995 through September 9, 2002.

210. The same document states that, during the period from January 1, 1995 through September 9, 2002, Swartz sold in excess of 2 million shares of Tyco stock for proceeds of more than \$125 million.

211. Notably, Kozlowski and Swartz made a significant portion of those sales to Tyco subsidiaries based in bank secrecy jurisdictions such as the Jersey Islands and the Bahamas.

Because of that unusual characteristic of the sales made by Kozlowski and Swartz, they were able to conceal those sales from investors until year-end, a fact that advanced the ability of Kozlowski and Swartz to conceal their fraudulent conduct from investors.

B. Other Members Of The Tyco Board Possessed Substantial Motives For Their Fraudulent Conduct

212. Other members of the Tyco Board – who facilitated the Officer Defendants' looting of the Company by knowingly or in a grossly reckless manner permitting repeated false statements concerning the conduct of the Officer Defendants to be made to investors – likewise had strong incentives not to insist that accurate disclosures be made concerning such matters.

213. For example, Defendant Richard S. Bodman, who was a Tyco director since 1992, has acknowledged that Kozlowski invested \$5 million in a \$43 million fund that Bodman managed that aimed to invest in the stocks of then-highflying technology companies.

214. Bodman was a member of Tyco's audit committee and of its corporate governance and nominating committee, the very organizations that were supposed to protect investors from the malfeasance that occurred at Tyco under Bodman's watch. Nevertheless, Bodman failed to disclose even his own fund's transactions with Kozlowski.

215. Tyco has also acknowledged that three other Tyco Board members engaged in undisclosed transactions with the Company that provided them with strong incentives to permit

the Officer Defendants to run Tyco as they saw fit. Two leased aircraft to Tyco, while a third was paid \$360,000 per year for two years for legal and other professional services.

216. From 1996 through 2002, Stockwood, Inc., in which Defendant Walsh had a controlling interest, leased an aircraft to the Company. During that time frame, Walsh's company was paid \$2,490,319 for that lease. Stockwood VII, Inc., in which Walsh also has a controlling interest, also provided pilot services to the Company. For the period 1996 to 2002, Stockwood VII, Inc. was paid \$1,077,071 for those services. Walsh also received the aforementioned secret "introduction" fee of \$20 million from Tyco in connection with the CIT acquisition.

217. The conflicts of interest faced by the members of the Tyco Board were so severe that, shortly before Defendant Swartz was indicted by the Manhattan D.A., the Board agreed to pay him approximately \$44.8 million in severance. Under the departure agreement, Swartz received, among other things, \$9.1 million in a lump-sum severance deal, \$24.5 million from an executive life insurance plan and \$10.4 million from a deferred compensation plan.

218. Only after the indictment and significant public and regulatory uproar concerning that undeserved payment did Tyco file an arbitration claim against Swartz seeking the repayment of those severance benefits. According to the October 7, 2002 edition of the *Wall Street Journal*, Manhattan D.A. Robert Morgenthau said his investigators had warned Tyco officials of Mr. Swartz's growing legal peril two days before the company's board approved his severance agreement. The article quoted Morgenthau as stating, "They knew there was a substantial likelihood he was going to be indicted. . . They shouldn't have paid him."

219. A June 14, 2002 article in the *Wall Street Journal* disclosed the existence of additional conflicts of interest among Tyco directors. The article stated that John Fort, the Lead Director who assumed day-to-day management of the Company following Kozlowski's termination, was an investor in and paid advisor to a fund (DLJ Merchant Banking Partners II) that purchased Tyco's "flow-control" products division for \$810 million in August 1999. That conflict of interest was not disclosed to investors at the time of the transaction.

220. Additionally, in 1996, Fort sold a home in Rye, N.H., to Kozlowski. That purchase was made by Kozlowski through a trust overseen by defendant Swartz.

C. The Access Of The Tyco Defendants To The Adverse Information Concerning The Company's Operations

221. The conclusion that the Tyco Defendants acted with scienter is also supported by the fact that those Defendants were provided with complete access to all of the adverse information concerning Tyco's operations that is alleged herein.

222. The Tyco Defendants were aware of that information as a result of their status as the Company's highest ranking executives and directors.

223. Each of the Officer Defendants is a sophisticated businessman who held a senior executive position with the Company for a number of years. Those positions provided the Officer Defendants with access to the material adverse information that was concealed from Plaintiffs at all material times.

224. Furthermore, the focus of this case is the payment of excessive compensation by the Officer Defendants to the Officer Defendants. As a result, those defendants could not possibly have been unaware of the fraudulent conduct alleged herein.

225. Similarly, Defendant Walsh could not possibly have been unaware of the demands that he made for the payment of the grossly excessive \$20 million payment in connection with the CIT transaction or that the Officer Defendants had acceded to that demand.

226. The Audit Committee Defendants were also provided with complete access to all information necessary to determine that the Officer Defendants were looting the Company. In short order, Tyco's counsel was able to discern from the Company's internal books and records all of the misconduct alleged herein. It should have been equally easy for the Audit Committee Defendants, with the assistance of the PWC Defendants, to learn the same information.

227. Throughout much of the time relevant to this action, the Audit Committee Defendants were aware that the SEC was investigating Tyco's accounting practices. Thus, those Defendants should have been particularly attentive to the possibility that the Company's books and records and financial statements contained materially misleading statements. Yet, despite the obvious nature of the fraudulent conduct alleged herein, none of the Audit Committee Defendants raised adequate questions regarding the compensation paid to the Officer Defendants.

228. The size of the fraudulent entries made by the Officer Defendants on the Company's books and records further supports the conclusion that the Audit Committee Defendants acted with scienter.

229. As is alleged in detail above, the Officer Defendants' fraudulent conduct involved hundreds of millions of dollars in fraudulent loans, hundreds of millions of dollars in unauthorized bonus payments, huge, multi-million dollar entries upon the Company's books and records and accounting entries that any objective observer would have recognized were grossly improper. In light of those obvious red flags that Tyco was not adequately disclosing the compensation paid to the Officer Defendants and the Company's related-party transactions, there is a strong inference that the Audit Committee Defendants acted knowingly or in a grossly reckless manner in permitting Tyco to make fraudulent statements in its filings with the SEC and in other disclosures made by Defendants.

230. Tyco has also conceded that the members of the Tyco Compensation Committee had reason to believe that Belnick and Kozlowski had struck a side deal concerning Belnick's compensation. The complaint filed by Tyco against Belnick in federal court states that, in early 2002, while discussing Belnick's new retention agreement with the Compensation Committee, Kozlowski referred to Belnick's entitlement to a bonus one-third of Kozlowski's own (*i.e.*, to the fraudulent side-deal cut by Kozlowski with Belnick). Despite that statement, the members of the Compensation Committee accepted without inquiry Kozlowski's explanation that he was confusing Belnick with someone else.

D. A Strong Inference Of Scienter Is Provided By The Officer Defendants' Efforts To Conceal Their Fraudulent Conduct

231. The efforts of Officer Defendants to cover up their conduct provides further support for the conclusion that they acted with scienter. After Kozlowski's criminal conduct

came to the attention of the Tyco Board, it retained the law firm of Boies, Schiller & Flexner to investigate the conduct of the Officer Defendants.

232. Although Belnick pledged that he would cooperate in that investigation, in fact, he undertook significant efforts to impede its progress. For example, although Belnick was informed that the Boies firm would be conducting an investigation on Tyco's behalf, he retained separate counsel to perform the same investigation. He then insisted that the other law firm conduct interviews of Tyco personnel and collect documents before the Boies firm could do so.

233. Despite repeated promises that the Boies firm could participate in those interviews, Belnick failed to provide the Boies firm with access to the Company's personnel or with the documents necessary to conduct their investigation. Indeed, according to the Belnick Complaint, Belnick cancelled a conference call on which his chosen counsel were supposed to brief the Boies firm as to what they had discovered. Belnick also instructed his chosen counsel not to share their information with the Boies firm or permit the Boies firm to participate in interviews except as Belnick might agree on a case-by-case basis.

234. Furthermore, when the Boies firm arrived at Tyco's Boca Raton offices on June 10, 2002 to participate in scheduled interviews of Tyco personnel, they were informed that Belnick had ordered that they not be able to participate in those interviews. The Boies firm attorneys were informed at that time that Belnick was not, as he had promised he would be, in Boca Raton, but that he was in Tyco's New York offices packing boxes.

235. Belnick also destroyed numerous documents and attempted to destroy others, after learning of the criminal investigation of Kozlowski's conduct, including the compensation paid to Kozlowski. Early on the morning of Monday June 10, 2002, Belnick entered the New York offices of Tyco and directed Tyco personnel and others to commence packing boxes with numerous files maintained in the vicinity of his office.

236. On information and belief, most of those files were the property of Tyco.

237. Belnick also deleted folders, files and numerous documents from his computer relating to his compensation and employment matters, memoranda to Kozlowski, and other confidential Tyco documents.

238. Belnick was aware that the electronic files that he deleted were Tyco property, since a Tyco policy, effective as of October 1, 2000, approved by Belnick for dissemination to Tyco employees generally in a handbook entitled "Standards of Conduct" provides in pertinent part: "E-mail and other electronic data created, sent or stored on Company property (including data accessed, copied or printed from the Internet) is Company property."

239. Belnick's conduct in deleting electronic information on June 10, 2002 was a breach of his fiduciary duties to the Company and constituted attempted theft or destruction of Company property that breached his ethical obligations to this client.

240. Belnick was not successful in having all of the boxes of documents that he had ordered packed removed from Tyco's offices, however. On June 10, 2002, Belnick's personal counsel demanded that Tyco return 20 boxes of files packed by Belnick's assistant earlier that

morning and that no copies be made of those files. In response, the Boies firm advised Belnick's personal counsel that it was conducting a review of the relevant documents to determine whether they were business or personal files and that Tyco reserved the right to copy documents as appropriate.

241. Even after that exchange of correspondence, Belnick's personal counsel continued to demand that the files be returned without copying and further demanded that Tyco's counsel "delete the Quicken program and all of Belnick's financial data on the computer in his office." Those demands were made although Belnick and his counsel were aware at that time that both the Manhattan D.A.'s office and the SEC were conducting inquiries and had issued subpoenas demanding documents from Tyco.

242. Kozlowski also destroyed documents concerning his tax evasion after he became aware of the Manhattan D.A.'s investigation of his conduct. In particular, a secretary to Kozlowski has testified that Kozlowski removed certain shipping documents from files that had been subpoenaed by the Manhattan D.A. As a result, Kozlowski has been indicted for obstruction of justice.

E. Tyco Has Publicly Admitted Facts That Demonstrate That The Tyco Defendants Acted With Scienter

243. As is alleged in detail above, Tyco has conceded in the September 2002 8-K, the Belnick Complaint, the Kozlowski Complaint and the Walsh Complaint virtually all of the fraudulent conduct alleged herein.

244. In particular, Tyco has conceded that Kozlowski, Swartz, Belnick and Walsh looted Tyco and that they did so with full knowledge that they were not entitled to the payments identified above.

245. Furthermore, Tyco has acknowledged in the September 2002 8-K, the Belnick Complaint, the Kozlowski Complaint and the Walsh Complaint that the filings made by Defendants were grossly misleading insofar as they related to the compensation paid to the Officer Defendants and the Company's related-party transactions.

246. The Company's admissions therefore provide still further support for the conclusion that Defendants' fraudulent misrepresentations and omissions were made with scienter.

**F. Additional Facts That Demonstrate That The PWC Defendants Acted With
Scienter**

247. By virtue of their position as Tyco's longtime independent accountant and auditor, the PWC Defendants had complete access to the files and key employees of the Company at all relevant times. In particular, prior to issuing its clean audit opinion with respect to the Company's financial statements, the PWC Defendants had complete access to Tyco's confidential financial, operating and business information. Documents and information that did or would have revealed the Tyco Defendants' accounting fraud to the PWC Defendants were therefore readily accessible to the PWC Defendants prior to the time that it issued its materially misleading audit opinions.

248. Furthermore, the PWC Defendants employees were frequently present at Tyco's headquarters and other offices. Indeed, during Tyco's fiscal 2001, Tyco paid the PWC Defendants at least \$37.9 million for consulting, advisory, tax and accounting services and \$13.2 million in auditing fees. As a result, it is evident that the PWC Defendants had access to sufficient financial records to uncover the fraudulent conduct of the Tyco Defendants alleged herein.

249. In delivering clean audit opinions concerning the Company's financial statements, the PWC Defendants ignored numerous red flags that demonstrated that those financial statements were not prepared in accordance with GAAP. Because those red flags were of such an obvious character, the PWC Defendants either knew of their existence, but nevertheless ignored them, or were grossly reckless in failing to take note of those facts.

250. In either event, the PWC Defendants' clean audit opinion – perhaps the most critical statement delivered by any of the Defendants concerning Tyco's operations – were either intentionally false or grossly reckless.

251. In a motion filed by Belnick to dismiss the criminal charges brought against him by the Manhattan D.A., Belnick states that he personally apprised the PWC Defendants that he had received \$14 million in "relocation" loans.

252. By no means, however, is Belnick's representation the only evidence that the PWC Defendants acted with scienter. As is alleged in detail above, the accounting entries that appeared on Tyco's books and records with respect to the TyCom bonuses and the ADT Automotive bonuses were patently and flagrantly improper. Even the most cursory audit of Tyco's financial statements would have disclosed those glaring improprieties and, therefore, the Officer Defendants' fraudulent conduct.

253. Furthermore, the loans taken by the Officer Defendants pursuant to the bogus New York and Florida relocation programs and to purchase Belnick's Utah home were fully disclosed in the Company's internal financial records. Those entries reached well into the tens of millions of dollars and were not disguised in any manner on the Company's financial statements. As a result, they were a glaring red flag that the PWC Defendants either knew of or recklessly disregarded.

254. Similarly, the bogus loans taken by the Officer Defendants pursuant to the Company's KEL loan program were fully disclosed in Tyco's financial records. Those loans were

also large in amount, reaching into the hundreds of millions of dollars. The PWC Defendants either learned of those loans and disregarded them or designed their audits of the Company's financial statements in such a deficient manner that it did not learn of the hundreds of entries related to those massive loans. In either case, the PWC Defendants' certification of Tyco's financial statements despite the existence of those fraudulent, undisclosed loans was either knowingly false or grossly reckless.

255. Thus, the nature of the fraud engaged in by the Tyco Defendants also supports a strong inference that the PWC Defendants acted knowingly or in a grossly reckless manner in issuing its clean audit opinion in that the "audit" was so deficient as to amount to no audit at all.

256. Although the Tyco Defendants' fraud involved significant dollar amounts, it was neither sophisticated nor difficult for an auditor to uncover. Rather, that fraud focused heavily upon large accounting entries in improper accounts that even the most rudimentary audit should have uncovered. In light of the size and nature of those accounting entries, they should have been readily detected by the PWC Defendants.

257. Thus, in violation of its obligations under generally accepted auditing standards ("GAAS") — particularly its obligations under AU § 316.05 to design its audit to provide reasonable assurance of detecting errors and intentional misstatements and under AU § 230.01 to exercise due professional care in performing its audit — the PWC Defendants either failed to determine that the Tyco Defendants were fraudulently looting Tyco or recklessly disregarded that information.

VIII.

DEFENDANTS' MATERIALLY FALSE REPRESENTATIONS AND OMISSIONS AND FRAUDULENT COURSE OF CONDUCT WERE THE CAUSE OF PLAINTIFFS' DAMAGES

258. As described herein, Defendants made or caused to be made a series of false statements and failed to disclose various material information concerning Tyco's operations, particularly the compensation paid to the Officer Defendants and Walsh.

259. Those disclosures were highly material to investors in Tyco securities because of the absolute amount of the money that the Officer Defendants and Walsh looted from the Company.

260. More importantly, however, the Defendants' materially misleading statements concerning their compensation was critical to investors because, as absentee owners of Tyco, shareholders must repose substantial trust in the integrity of Tyco's management and auditors to perform their obligations in the best interests of shareholders. Any breach of that trust – such as the payment of excessive, undisclosed compensation to corporate fiduciaries or the commission of criminal conduct by a company's CEO – is therefore highly material to investors.

261. As a result, at all material times, Defendants' materially misleading disclosures and omissions and the fraudulent course of conduct in which they engaged during the time period in which Plaintiffs invested in Tyco had the effect of either inflating the market price of Tyco securities or of maintaining the prices of those securities at values at which they would not have traded had the truth concerning the Company's operations been disclosed to investors.

262. Defendants' false portrayal of Tyco's business operations and fraudulent course of conduct resulted in Plaintiffs purchasing Tyco securities at prices significantly in excess of the actual value of those securities.

263. Plaintiffs would not have purchased Tyco securities at the prices that prevailed at the time of their purchases, if at all, had they been aware of the true facts concerning the Company's business operations and excessive executive compensation payments.

264. When the market determined the true status of Tyco's operations, the prices of the Company's securities declined substantially in value, thereby imposing tens of millions of dollars of losses upon Plaintiffs and the employees of the State of New Jersey who are the beneficiaries of the Plaintiff funds.

265. Accordingly, the material misrepresentations, omissions, acts, practices and schemes alleged herein were the proximate causes of the damages sustained by Plaintiffs in connection with their purchases of Tyco's securities.

IX.

NO SAFE HARBOR

266. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the misrepresentations or omissions alleged herein.

267. Defendants did not adequately identify any of the misrepresentations alleged herein as "forward-looking statements" at the time those representations were made.

268. Furthermore, those representations were not accompanied by meaningful cautionary language identifying important factors that could cause actual results to differ materially from those in the specific statements.

269. To the extent that the statutory safe harbor could apply to any of the misrepresentations pleaded herein, those statements are actionable because, at the time those representations were made, the speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was made by or with the approval of an executive officer of Tyco who knew that the statement was false or misleading.

X.

CAUSES OF ACTION

Count I

(Violations of § 10(b) of the Exchange Act Against all Defendants)

270. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein. This Count is asserted against all Defendants.

271. Defendants, individually and in concert, engaged in a plan, scheme and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiffs.

272. Defendants perpetrated this fraudulent scheme by making various representations that were false or which omitted material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

273. The Tyco Defendants were obligated to supplement and update the disclosures that they made because: (a) they voluntarily made materially misleading statements regarding executive compensation and Tyco's financial results throughout the relevant period; (b) Tyco sold large amounts of securities to the public while the Tyco Defendants were in possession of material, adverse information concerning the Company's operations; and (c) such disclosures were mandated by SEC regulations, including Item 303 of SEC Regulation S-K.

274. Defendants had actual knowledge that the statements specifically alleged above were materially false and misleading and that additional disclosures were necessary to correct the misleading effect of their statements. In the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain that their statements regarding Tyco's financial results and the compensation paid to the Company's senior executive officers were materially false and misleading and/or lacking in reasonable basis at all relevant times.

275. As a direct and proximate result of the foregoing material misrepresentations and omissions, the market prices of Tyco common stock were artificially inflated throughout the relevant period.

276. In ignorance of the materially misleading and/or incomplete nature of the representations made by Defendants, Plaintiffs relied to their detriment upon the accuracy and completeness of those statements and/or upon the integrity and efficiency of the market for Tyco common stock.

277. Plaintiffs would not have purchased Tyco securities at the market prices that

prevailed during the relevant period, if at all, had they been aware of the true facts concerning the Company's financial results and the amount of compensation paid to the Company's executive officers and directors.

278. The market price of Tyco's common stock declined materially as investors belatedly learned the adverse facts that had been concealed and misrepresented by Defendants during the relevant period. Plaintiffs have therefore suffered substantial damages as a direct and proximate result of Defendants' misconduct.

279. By reason of the foregoing, Defendants knowingly or recklessly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made material misrepresentations of fact and failed to disclose material facts necessary in order to make their statements, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiffs in connection with their purchases of Tyco securities during the relevant period.

280. Plaintiffs are therefore entitled to damages in an amount to be determined at trial.

COUNT II

(Against the Individual Defendants for Violations of § 20(a) of the Exchange Act)

281. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein. This Count is asserted against the Individual Defendants.

282. As is particularized above, the Individual Defendants were "controlling

persons" of the Company within the meaning of § 20(a) of the Exchange Act.

283. The Individual Defendants qualify as "controlling persons" because they had the power to cause Tyco to engage in the unlawful conduct complained of herein and because they could have prevented the unlawful conduct that Plaintiffs allege. These defendants, by virtue of their positions as officers and directors of Tyco, had the power to influence and control, and did so influence and control, the acts and conduct of Tyco. In particular, these defendants had the power and influence to direct Tyco to disclose the true facts concerning Tyco's financial results and the nature and amount of executive compensation received by the Company's officers and directors throughout the relevant period.

284. Because each of the Individual Defendants is a "controlling person" of Tyco and the other Individual Defendants, each of whom is a person who has committed violations of Section 10(b) of the Exchange Act, the Individual Defendants are secondarily liable for those primary violations pursuant to Section 20(a) of the Exchange Act.

285. Plaintiffs are therefore entitled to damages in an amount to be determined at trial.

Count III

(Against all Defendants for Common Law Fraud)

286. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein. This Count is asserted against all Defendants.

287. As particularized above, Defendants knowingly and willfully made and participated

in the making of public misrepresentations of material facts concerning, among other things, the nature and amounts of compensation paid to officers and directors of the Company, and knowingly and willfully failed to disclose or fraudulently concealed the true facts relating thereto. These misrepresentations were made directly and/or indirectly to Plaintiffs prior to their investments in the Company.

288. In reasonable reliance on those representations, and as a result of Defendants' failure to disclose and fraudulent concealment of the true facts, Plaintiffs purchased and/or acquired Tyco securities.

289. As a direct and proximate result of the fraudulent conduct of Defendants, Plaintiffs have sustained damages in an amount to be proven at trial.

Count IV

(Against all Defendants for Negligent Misrepresentation)

290. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein. This Count is asserted against all Defendants.

291. In making the representations and omissions, and doing the things alleged above, Defendants acted without any reasonable grounds for believing the representations they made to be true and, upon the exercise of due care which they had a duty to the Plaintiffs, the Defendants would have discovered and known of these misstatements and omissions.

292. The misrepresentations made by Defendants as described herein were made directly and/or indirectly to Plaintiffs prior to their investments in the Company.

293. Defendants owed Plaintiffs a duty of reasonable care and knew, or should have known, that in purchasing and/or acquiring Tyco securities, Plaintiffs would rely upon each of the Defendants' acts, practices, misrepresentations, omissions and violations and other wrongs complained of above.

294. Plaintiffs actually, reasonably, foreseeably and justifiably relied upon each of the acts, practices, misrepresentations, omissions, violations and other wrongs complained of above, in purchasing and/or acquiring Tyco securities.

295. As a direct and proximate result of the conduct of each of the Defendants, as described above, Plaintiffs were induced to purchase and/or acquire Tyco securities and have sustained damages in an amount to be determined at trial.

Count V

(Against all Defendants for Aiding and Abetting Common Law Fraud)

296. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein. This Count is asserted against all Defendants.

297. As set forth above, Defendants intentionally and knowingly defrauded Plaintiffs by misrepresenting and concealing material facts concerning, among other things, the Officer Defendants' compensation and Tyco's reported financial results. Those misrepresentations and omissions were designed to and did induce Plaintiffs to purchase and/or acquire Tyco securities.

298. Each of the Defendants knew of the misrepresentations and omissions described

above and knowingly, recklessly, and intentionally rendered substantial assistance and aided and abetted the perpetration of the fraudulent scheme alleged herein.

299. As a direct and proximate result of the conduct of each of the Defendants, as described above, Plaintiffs were induced to purchase and/or acquire Tyco securities and have sustained damages in an amount to be determined at trial.

Count VI

(Against the Individual Defendants for Breaches of Fiduciary Duties)

300. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein. This Count is asserted against the Individual Defendants.

301. At all relevant times, the Individual Defendants owed Plaintiffs fiduciary duties of candor and good faith and were obligated to make full and complete disclosure with regard to all relevant and material information in their possession and control. As described above, the Individual Defendants breached those fiduciary duties by misrepresenting and failing to disclose material information during the relevant period regarding, among other things, Tyco's financial results and related-party transactions and the nature and amounts of compensation received by executive officers of the Company, including the Officer Defendants. By virtue of those misrepresentations and omissions, and in reliance thereon, Plaintiffs were induced to and did purchase and/or acquire Tyco securities during the relevant period.

302. As a direct and proximate result of the Individual Defendants' breaches of

fiduciary duties, as described above, Plaintiffs have sustained damages in an amount to be determined at trial.

Count VII

(Against the Tyco Defendants For Violations of Section 14A of the Exchange Act and Rule 14A-9 Promulgated Thereunder)

303. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

This Count is asserted against the Tyco Defendants

304. The Tyco Defendants owed a duty to assure the truth and accuracy of the information in the proxy statements identified herein and to assure that there were no material omissions in those statements. As described above, the Tyco Defendants solicited proxies that contained material misrepresentations and failed to disclose material facts regarding, among other things, the nature and amount of the Officer Defendants' compensation and Tyco's reported financial results. Those misrepresentations and omissions were the essential link in soliciting shareholder approval of, among other matters, the election of directors to the Tyco Board of Directors.

305. By reason of the conduct alleged herein, the Tyco Defendants violated Section 14A of the Exchange Act and Rule 14A-9 promulgated thereunder.

306. As a direct and proximate result of the Tyco Defendants' violations as described above, Plaintiffs have sustained damages in an amount to be determined at trial.

Count VIII

(Against the Tyco Defendants for Conspiracy to Commit Fraud)

307. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

This Count is asserted against the Tyco Defendants.

308. In committing the wrongful acts alleged herein, the Tyco Defendants have pursued a common course of conduct and acted in concert with and conspired with one another in furtherance of their common plan, scheme and design.

309. The Tyco Defendants initiated and/or joined in a course of conduct which was designed to and did: (i) deceive Plaintiffs regarding the nature and amount of executive compensation received by officers and directors of the Company; (ii) artificially inflate the market price of Tyco's common stock and (iii) cause Plaintiffs to purchase and/or acquire Tyco securities at artificially inflated prices. In furtherance of this plan, conspiracy and course of conduct, Defendants took the actions as herein set forth.

310. As a direct and proximate result of the Tyco Defendants' acts of conspiracy, as described above, Plaintiffs have sustained damages in an amount to be determined at trial.

Count IX

(New Jersey RICO Against Tyco and the Officer Defendants)

311. The Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

312. Defendants Kozlowski, Swartz, Belnick, Walsh and Tyco (for purposes of Plaintiffs' RICO causes of action, the "RICO Defendants") constitute persons and enterprises within the meaning of N.J.S.A. 2C:41-1, et seq.

313. From 1997 until at least September of 2002, the RICO Defendants engaged in a pattern of racketeering activity, as that term is defined in N.J.S.A. 2C:41-1a. In particular, the RICO Defendants engaged in at least two incidents of racketeering conduct as that term is defined in N.J.S.A. 2C:41-1a.

314. The racketeering activity perpetrated by the RICO Defendants was interrelated by distinguishing characteristics and did not consist of isolated incidents. The racketeering activity carried out by the RICO Defendants was intended to damage the same victims, namely the investing public, including Plaintiffs, and was characterized by the same purpose, result and participants.

315. The incidents of racketeering conduct perpetrated by the RICO Defendants against the investing public, including Plaintiffs, between 1997 and September of 2002 include, among others, the repeated and systematic dissemination of false and misleading information concerning Tyco's financial condition and affairs, the compensation paid to the Officer Defendants and Defendant Walsh, the criminal conduct in which the Officer Defendants engaged and the related-party transactions conducted among Tyco, the Officer Defendants and Walsh. The RICO Defendants thereby perpetrated securities fraud on the investing public, including Plaintiffs, by means of fraudulent practices, theft, and mail and wire fraud.

316. The conduct alleged in this cause of action and alleged in greater detail above constituted a violation of the New Jersey RICO Act, N.J.S.A. 2C:41-2(c).

317. As a direct and proximate result of the RICO Defendants' racketeering activities, Plaintiffs have been damaged.

WHEREFORE, as to this Count Plaintiffs demand judgment against Defendants Kozlowski, Swartz, Belnick, Walsh and Tyco, individually and/or jointly and severally, for:

- a. treble damages, including interest;
- b. costs of suit, including attorneys' fees;
- c. costs of investigation and litigation; and
- d. such other and further relief as the Court deems just and equitable.

Count X

(Aiding and Abetting Liability Under New Jersey RICO Against RICO Defendants)

318. The Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

319. At all relevant times, there was an association-in-fact among the RICO Defendants. The RICO Defendants all participated in the association-in-fact and the conduct of the association in which they participated constituted racketeering activity in violation of the New Jersey Anti-Racketeering Act, §2C:41-2(c). This association-in-fact was an enterprise under N.J.S.A. § 2C:41-1c.

320. Each of the RICO Defendants, directly and indirectly, has conducted and participated in the affairs of Tyco within the State of New Jersey and elsewhere through a pattern

of racketeering activity in violation of N.J.S.A. §2C:41-2(c). Tyco is an enterprise, as defined in N.J.S.A. 2C:41-1c, as well as a person under N.J.S.A. 2C:41-1b.

321. Each of the RICO Defendants knowingly and intentionally participated in and pursued the goals of the aforesaid racketeering activity. Those goals included, among other things, enriching the RICO Defendants by disseminating false and misleading information concerning Tyco's financial condition and affairs, the compensation paid to the Officer Defendants and Defendant Walsh, the criminal conduct in which the Officer Defendants engaged and the related-party transactions conducted among Tyco, the Officer Defendants and Walsh. The RICO Defendants thereby perpetrated securities fraud on the investing public, including Plaintiffs, by means of fraudulent practices, theft, and mail and wire fraud.

322. The RICO Defendants together comprise an association-in-fact, which is also an enterprise engaged in commerce.

323. Each of the RICO Defendants participated directly or indirectly in the business of Tyco and the association-in-fact by, among other things, engaging in the aforesaid unlawful conduct.

324. Each of the RICO Defendants knowingly participated in this pattern of racketeering, which involved repeated and continuous releases of fraudulent, misleading and intentionally inaccurate statements to Plaintiffs and other investors. The scheme began at the latest in 1997 and continued through August of 2002, during which time the RICO Defendants repeated and continuously released fraudulent, misleading and knowingly inaccurate information

to Plaintiffs and other investors. Each of the RICO Defendants helped to perpetrate the scheme by misrepresenting and/or concealing the true financial condition of Tyco and by their procurement and receipt of improper compensation and benefits and the concealment of same. The RICO Defendants had full knowledge of the losses to the investing public that would ultimately result from their scheme.

325. Although effective use of the Court's compulsory process will be necessary to reveal fully the RICO Defendants' RICO-related conduct, the RICO Defendants committed, among other things, the predicate acts of securities fraud, theft by deception and fraudulent practices, as set forth in N.J.S.A. 2C:41-1. Among other things, the RICO Defendants engaged in the racketeering activity set forth in Count IX.

326. As a direct and proximate result of the RICO Defendants' racketeering activities, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment on this Count against Defendants Kozlowski, Swartz, Belnick and Tyco, individually and/or jointly and severally, for:

- a. treble damages, including interest;
- b. costs of suit, including attorneys' fees;
- c. costs of investigation and litigation; and
- d. such other and further relief as the Court deems just and equitable.

Count XI

(Respondeat Superior Liability Under RICO - Against Tyco)

327. Plaintiffs repeat and incorporate herein each every paragraph of the Complaint as if set forth at length herein.

328. At all relevant times, Tyco was aware of the RICO violations committed by Defendants Kozlowski, Swartz and Belnick. Tyco attempted to benefit from said racketeering activity by, among other things, (i) issuing stock in connection with the numerous corporate acquisitions conducted by Tyco that was artificially inflated as a result of the Defendants' racketeering activity, (ii) disseminating false and misleading statements regarding its financial condition to the investing public, (iii) issuing stock options as compensation to its officers and employees that were artificially inflated as a result of the RICO Defendants' racketeering activity.

329. Tyco knowingly participated in this pattern of racketeering activity, which involved repeated and continuous issuance of false, misleading and fraudulent representations concerning Tyco's financial condition and affairs, the compensation paid to the Officer Defendants and Defendant Walsh, the criminal conduct in which the Officer Defendants engaged and the related-party transactions conducted among Tyco, the Officer Defendants and Walsh, between 1997 and August of 2002. Tyco aided and abetted and participated in this scheme by misrepresenting and failing to disclose material facts. Tyco had full knowledge of the losses that would eventually result from the racketeering activity.

330. As a direct and proximate result of Defendant Tyco's racketeering activities, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Defendant Tyco on this Count for:

- a. treble damages, including interest;
- b. cost of suit, including attorneys' fees;
- c. costs of investigation and litigation; and
- d. such other and further relief as the Court deems just and equitable.

Count XII

(Conspiracy to Violate New Jersey RICO)

331. Plaintiffs repeat and incorporate herein each every paragraph of the Complaint as if set forth at length herein.

332. The RICO Defendants conspired with each other to violate the provisions of the New Jersey Anti-Racketeering Act, N.J.S.A. §2C:41-2(c) and thus have violated N.J.S.A. §2C:41-2(d).

333. The RICO Defendants combined and conspired with each other to defraud the investing public as set forth above. The object of the RICO Defendants' conspiracy was to enrich themselves at the expense of the investing public, including Plaintiffs, as set forth above.

334. The RICO Defendants' conspiracy began at least as early as 1997 and continued through at least August of 2002.

335. Each of the RICO Defendants knowingly participated in the conspiracy. Each agreed to commit, did commit and/or aided and abetted the commission of racketeering acts, including the use of the interstate mails and wires to implement, perpetuate and share in the fruits of their fraudulent scheme.

336. Each of the RICO Defendants knew that the scheme they were pursuing would enrich themselves and injure the investing public, including Plaintiffs. Each of the RICO Defendants agreed to commit racketeering acts in furtherance of the conspiracy, including through the issuance of false, fraudulent and misleading statements regarding Tyco's financial condition.

337. As a direct and proximate result of the RICO Defendants' conspiracy to violate New Jersey's RICO statute, the Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment on this Count against Defendants Kozlowski, Swartz, Belnick and Tyco, individually and/or jointly and severally for:

- a. treble damages, including interest;
- b. costs of suit, including attorneys' fees;
- c. costs of investigation and litigation; and
- d. such other and further relief as the Court deems just and equitable

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Declaring the conduct of the Defendants to be in violation of law as set forth herein;

B. Awarding Plaintiffs compensatory damages;

C. Awarding Plaintiffs rescissionary damages;

D. Awarding Plaintiffs punitive damages;

E. Awarding Plaintiffs statutory damages;

F. Awarding Plaintiffs' reasonable attorneys' fees, experts' fees, interest and cost of suit; and

G. Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

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