



Lead Plaintiffs City of Roseville Employees' Retirement System and Maritime Association – I.L.A. Pension Fund (collectively, the “Lead Plaintiffs” or “Plaintiffs”) have alleged the following based upon the investigation of Plaintiffs’ counsel, which included a review of United States Securities and Exchange Commission (“SEC”) filings by Tommy Hilfiger Corporation (“THC” or the “Company”), as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, interviews with former employees of the Company and media reports about the Company, and Lead Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of purchasers of the securities of THC between November 3, 1999 and September 24, 2004, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Defendant THC designs and markets men’s and women’s sportswear under the “Tommy Hilfiger” brand name. This case concerns a massive financial fraud at THC whereby hundreds of millions of dollars of earnings were shifted to offshore tax havens in order to evade income taxes that should have been paid on THC’s earnings in tax jurisdictions such as the U.S. These tax manipulations, as well as other fraudulent conduct at the Company, were employed by Defendants to offset the Company’s declining operating results.

3. THC’s tax evasion scheme first came to investors’ attention when the U.S. Attorney’s Office for the Southern District of New York (the “U.S. Attorney’s Office”) served grand jury subpoenas on the Company and several current and former officers concerning the commissions charged by THC’s “foreign buying offices” when the Company imported goods for sale to U.S. retailers. Subsequently, THC admitted that its “foreign buying offices” located in Hong Kong and

India, among others, were in fact incorporated in the British Virgin Islands (the “BVI”), an offshore tax haven, which for years employed strict secrecy laws. The commission scheme had the effect of shifting earnings from taxable jurisdictions such as the U.S. to the BVI where THC paid no taxes.

4. Throughout the Class Period, Defendants issued numerous statements and filed quarterly and annual reports with the SEC regarding the Company’s current financial performance and future earnings. These statements were materially false and misleading because Defendants knew, but failed to disclose: (i) that the Company had engaged in an improper tax avoidance scheme whereby it shifted certain of its income to lower tax jurisdictions through the overpayment of commissions to one of its non-U.S. subsidiaries; (ii) that, since at least 1999, the Company’s reported income tax liability had been materially understated; and (iii) that the Company’s publicly disseminated financial statements materially violated Generally Accepted Accounting Principles (“GAAP”) and SEC reporting requirements; (iv) as a result of the foregoing, the Company’s effective tax rate would now be significantly higher and the Company will likely have to pay back taxes and fines in excess of \$100 million.

5. On September 24, 2004, after the close of the market for regular trading, THC disclosed that it had received a grand jury subpoena issued by the U.S. Attorney’s Office for the Southern District of New York seeking documents related to commissions paid by the Company to one of its non-U.S. subsidiaries. According to the press release, “the investigation is focused on whether the commission rate is appropriate.”

6. In response to this announcement, on September 27, 2004, the next trading day, shares of THC common stock fell to an intra-day low of \$9.75 per share, before closing down \$2.87 per share for the day, or almost 22%, at \$10.30 per share.

7. Subsequently, on November 3, 2004, THC common stock fell an additional 5%, closing at \$8.94 per share, after the Company announced that it could not release final earnings for the second quarter of fiscal 2005, ended September 30, 2004, due to uncertainties concerning the U.S. Attorney's investigation and pending the completion of an internal investigation. Since the scandal came to investors' attention the Company has been unable to fulfill its SEC reporting requirements and has missed at least two quarterly financial filings with the SEC.

8. Prior to the disclosure of these adverse facts, THC insiders, including certain of the named defendants herein sold more than 6.8 million shares of THC stock at artificially inflated prices generating more than \$93.6 million in proceeds.

#### **JURISDICTION AND VENUE**

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

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

11. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b). Many of the acts and transactions alleged herein occurred in substantial part in this Judicial District.

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

## **PARTIES**

13. Lead Plaintiffs purchased the securities of THC at artificially inflated prices during the Class Period and have been damaged thereby. Leads Plaintiffs' certifications have been previously filed with the Court and are hereby incorporated by reference.

14. Defendant THC is a British Virgin Islands corporation and maintains its principal executive offices at 9/F, Novel Industrial Bldng. 850 870 Lai Chi Kok Road Kowloon, Hong Kong. The Company also maintains its principal offices in the United States at 25 West 39th Street, New York, New York. The Company incorporated in the British Virgin Islands in June 1992 to serve as a holding company for its U.S., Far East, and Japanese operations.

15. (a) Defendant Thomas J. Hilfiger ("Hilfiger") was, at all relevant times, the Company's Honorary Chairman and Principal Designer;

(b) Defendant Joel J. Horowitz ("Horowitz") has served as the Company's Executive Chairman of the Board since February 2003;

(c) Defendant David F. Dyer ("Dyer") has served as the Company's Chief Executive Officer, President and Director since August 2003;

(d) Defendant Joseph Scirocco ("Scirocco") served, at varying points during the Class Period, as the Company's Chief Financial Officer, Senior Vice President and Treasurer;

(e) Defendant James P. Reilly ("Reilly") served as the Company's Vice President and Corporate Controller since October 2002;

(f) Defendant Joel H. Newman ("Newman") served as the Company's Executive Vice President-Finance and Operations since 2001 and served as the Company's Chief Financial Officer from 2001 to October 2002 and as Chief Financial and Administrative Officer and Executive Vice President from 2000 to 2001;

(g) Defendant Lawrence S. Stroll (“Stroll”) served as one of the Company’s Co-Chairmen from 1998 until his resignation during the fiscal year ended March 31, 2003;

(h) Defendant Silas K.F. Chou (“Chou”) served as one of the Company’s Co-Chairmen from 1998 until his resignation during the fiscal year ended March 31, 2003;

(i) Defendant Benjamin M.T. Ng (“Ng”) served, at varying points during the Class Period, as the Company’s Chief Financial Officer and as Executive Vice President Corporate Finance; and

(j) Defendants Hilfiger, Horowitz, Dyer, Scirocco, Reilly, Newman, Stroll, Chou and Ng are collectively referred to herein as the “Individual Defendants.”

16. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about the Company’s business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

17. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company’s public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of THC, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business,

operations, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

18. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (“NYSE”), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company’s publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

19. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with THC, each of the Individual Defendants had access to the adverse undisclosed information about THC’s financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts

rendered the positive representations made by or about THC and its business issued or adopted by the Company materially false and misleading.

20. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

21. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of THC securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding THC's business, operations, management and the intrinsic value of THC securities; (ii) enabled certain of the Individual Defendants and other THC insiders to sell more than \$93 million of their personally-held THC securities to the unsuspecting market; and (iii) caused Plaintiffs and other members of the Class to purchase THC securities at artificially inflated prices.

#### **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

22. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of THC during the Class Period and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times,

members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

23. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, THC common shares were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by THC or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

24. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

25. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

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

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

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

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

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

## **SUBSTANTIVE ALLEGATIONS**

### **Background Facts**

28. Through its subsidiaries, Defendant THC designs, sources and markets men's and women's sportswear, jeanswear and childrenswear under various THC trademarks. The Company currently has three reportable business segments: wholesale, retail and licensing. The Company's wholesale operations generate revenues from sales to retailers throughout the U.S., Europe and the Far East. During the Class Period, THC's reported wholesale revenues accounted for more than 78% of the Company's \$11 billion in total revenues for the years 1999 through 2004.

29. By the mid 1990's THC brands had reached their peak. THC's heavily-logoed, urban style, which gained the brand initial popularity, lost its appeal in the 21st century. This style was no longer sought out by many consumers, as styles were rapidly changing. The brand began losing its identity when THC unsuccessfully tried several different styles to reach the customer. In order to artificially boost its sagging operating results, THC engaged in a tax evasion scheme, as detailed herein, which served to decrease the Company's tax rate, thereby artificially inflating its income and earnings. Thus, THC was able to conceal the true state of its financial and operating condition.

## **THC's Fraudulent Tax Evasion Scheme**

30. Unbeknownst to investors, prior to and during the Class Period, THC was engaged in an illegal tax evasion scheme that required each of the Company's subsidiaries operating as wholesale distributors of THC products in a taxable jurisdiction, including Tommy Hilfiger USA ("TH USA"), among others, to purchase all of its imported products from a THC subsidiary that was incorporated in a tax haven jurisdiction such as the British Virgin Islands.<sup>1</sup> As detailed herein, the THC subsidiary performed little, if any, services for the "commission" it was receiving and, in any event, the commission rate paid to the THC subsidiary greatly exceeded the industry norm for such commissions. As a result of these transactions, THC's earnings were shifted to the THC subsidiary, thereby effectively shielding the earnings from taxes in the United States and other localities. In this way, THC was able to reduce its tax rate and "improve" its financial performance.

31. The commissions charged by THC's tax haven subsidiary bore no relationship to the actual services provided by these affiliates and exceeded both industry averages and commission charges by other wholesale importers by more than 100%. According to a former TH USA Production Manager, CI 1, the company was paying commissions that were significantly higher than "the industry standard" that CI 1 had experienced in her other places of employment.<sup>2</sup> CI 1 stated that the industry standard commission rate paid to foreign buying offices at CI 1's prior places of

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<sup>1</sup> Prior to and during the Class Period, THC reported at least four subsidiaries incorporated in the BVI including Tommy Hilfiger (Eastern Hemisphere) Limited ("THEH"), Tommy Hilfiger (Far East) Limited, TJ Far East Limited, and Tommy Hilfiger (India) Limited. Based upon information and belief Plaintiffs allege that one or more of these subsidiaries played a substantial role in THC's illegal tax evasion scheme.

<sup>2</sup> CI 1 was employed by THC from November 2003 to November 2004. CI 1 had extensive experience in the garment/fashion industry for 13 years with international brands, including Ralph Lauren/Polo, Perry Ellis and Van Heusen.

employment had always been in the 5% - 7% range. For example, in CI 1's experience, Ralph Lauren typically pays a 5% - 7% commission rate depending on what region manufactured the garments. Similarly, Perry Ellis pays a 5% commission rate for items sourced from Asian garment makers, and may pay 7% for items sourced from Italy. In contrast, THC operating subsidiaries were paying commissions in the 10% - 13% range regardless of the manufacturer or region, which simply bore no relationship to the cost of sourcing the product. In late 2003, CI 1 asked supervisors why THC paid such high commission rates, but was told repeatedly by superiors, including a THC Production Vice President, Cheryl Sakas, ("Sakas"), "don't worry about it."

32. CI 1 stated that THC's target margin was always supposed to be 77%, but was almost never met and was invariably much lower than this. CI 1 stated that 64% was typical and "the reality was 55%." But CI 1 stated margins as low as 46% and 22% also resulted. According to CI 1, the primary reason why the margins goal of 77% could not be met was due to the inexplicably high commission rates paid to the foreign buying office, specifically, Tommy Hilfiger Hong Kong.

33. CI 1's basis for knowledge of what the commission rates were came from analyzing the cost sheets related to the menswear products CI 1 was responsible for. CI 1's responsibilities included collaborating with THC's design and merchandising departments in selecting vendors to manufacture clothing items, specifically knits and sweaters in the menswear line, and ensuring that those clothes were produced and then delivered into the US for distribution to THC's stores and other retail customers. With reference to the cost sheets for these products CI 1 was able to infer that there were costs of some kind included that resulted in a higher "landed price" than should have been the case based on CI 1's experience. Because the landed prices were higher than CI 1 knew the estimated cost to manufacture and ship the garments should have been, CI 1 had asked Sakas about this and apparently learned from Sakas that the commission rate paid to the foreign buying office

was around 10%. As noted, however, CI 1 determined that the commission rate was actually 13%. CI 1 also noted that Sakas had also worked at Ralph Lauren at one time and so CI 1 had reminded Sakas that at Ralph Lauren the commission rates were only 5% -7%. Sakas apparently responded, “I know, but we don’t talk about it [*i.e.*, the high commission rates].”

34. CI 1 also stated that so far as the menswear division was concerned, it was absolutely obligated to utilize the Tommy Hilfiger Hong Kong buying office. In fact, CI 1 was told by Sakas that CI 1 could not attempt to source products from anywhere but the Hong Kong buying office. Specifically, CI 1 said that the menswear division was restricted to at most two specific factories. They were “South Ocean,” which had factories in China and Hong Kong, and “South Asia,” which had factories in China and Djakarta. CI 1 stated that those two companies had factories that did all of the manufacturing for the menswear line and that there was no choice but to use them. Therefore, the foreign buying office provided no actual service in sourcing the garment production with a specific manufacturer.

35. Another former employee of THC, CI 2, also confirmed that the foreign buying offices did little more than “place the order” with the manufacturer once THC personnel had researched and developed specifications for a particular garment. CI 2 was employed by THC from October 2002 through February 2004. CI 2’s responsibilities included sourcing fabrics as part of the company’s junior jeans product line. CI 2 frequently traveled to meet with overseas textile vendors to examine various types of fabric that were available from the mills and also to put out requests for mills to produce types of fabric that THC desired. Once samples and quotes were produced by the vendors, they would be evaluated internally by THC personnel, including CI 2, to determine whether quality and price met THC’s goals and requirements. CI 2 stated that THC’s research and development group would typically request that fabric managers like CI 2 try to find a particular

type of fabric that they had in mind at a particular price, which CI 2 and other production managers would then set about doing by meeting with various textile manufactures. Once a particular sample and price were deemed acceptable, the actual order for the material would be placed by the appropriate THC foreign buying office. It is clear then that the THC's foreign buying office played little or no role in the actual sourcing of THC garments, but was charging THC 13% buying commissions nonetheless.

36. Furthermore, Lead Plaintiffs' investigation has also revealed that at least part of the commissions payments made to THC's tax haven subsidiaries directly benefited certain of the Individual Defendants, including defendants Chou and Stroll, who controlled companies that received millions of dollars in "kickbacks" disguised as consulting fees both prior to and during the Class Period. Indeed, CI 1 stated that the inflated foreign buying office commissions had involved some kind of "kickback" scheme involving the Hong Kong office and the various overseas factories. Another former employee, CI 3, further confirmed that a large part of THC's overseas sourcing was required to be placed through THC foreign buying office in Hong Kong to the exclusion of other viable sources.<sup>3</sup>

37. Investors could not have known of the illegal nature of THC's tax evasion scheme prior to the revelations concerning the U.S. Attorney's Office investigation, detailed herein, or

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<sup>3</sup> CI 3 is a former employee of THC employed from March 2002 until January 2005. CI 3 was an Assistant Fabric Design Research and Development Manager in THC's men's sportswear, H, denim and children's wear divisions. CI 3 was responsible for researching fabrics to determine what fabrics worked best with a particular style. CI 3 did this in collaboration with the Design and Production Departments. CI 3 also worked with Production on researching which mill could produce the best fabric for the best price. In order to do this, CI 3 had daily email contact with sourcing offices in Hong Kong, Korea, Pakistan, Peru, Turkey, Egypt and India. Of these sourcing offices, the Hong Kong and India offices were the only THC foreign buying offices, and invariably the order for the fabric would be placed through THC's Hong Kong office.

THC's post-Class Period admission in a November 2004 press release that "[s]everal domestic and international subsidiaries of the Company pay buying office commissions to THEH," a BVI corporation which is a wholly-owned and consolidated subsidiary of THC. Prior to that admission, investors were never told that THC's tax haven subsidiaries had been interposed as an illegal 'middleman' in every merchandise purchase transaction entered into by THC's domestic and international operating subsidiaries. Nor were investors told that the sole purpose of paying "buying office commissions" was the illegal evasion of income taxes. Indeed, the true reasons for the large disparity between THC's statutory income tax and its effective income tax were affirmatively misrepresented in dozens of THC's SEC filings, both prior to and during the Class Period. For example, THC's fiscal 2004 10-K represented that the Company's statutory U.S. federal income taxes for fiscal 2004 were legitimately reduced by more than \$30 million due to the "relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject ..." <sup>4</sup> While the full magnitude of THC's tax evasion scheme has not yet been determined by the U.S. Attorney's Office, it should be noted that the U.S. Attorney's investigation covers a period back to 1990 and could result in the assessment of more than one hundred million dollars in back taxes, interest and penalties against THC, according to industry analysts.

38. As a result of these various manipulations, THC's tax evasion scheme had the effect of illegally shifting hundreds of millions of dollars of revenues from taxable jurisdictions, such as the United States, to tax haven jurisdictions, where THC paid no income taxes, thereby artificially inflating the Company's earnings and income.

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<sup>4</sup> Substantially identical representations were made in each of THC's 10-K filings during the Class Period as detailed herein. During fiscal years 1999 through 2004, THC reported that it had legitimately reduced its statutory U.S. federal income taxes by more than \$185 million.

## **THC's Failure to Disclose Material Risks and Uncertainties**

39. The cornerstone of THC's tax evasion scheme was built upon the secrecy and non-cooperation that characterized the BVI's interactions with foreign tax authorities and law enforcement agencies. Tax havens like the BVI typically had in place laws or administrative practices under which businesses and individuals can benefit from strict secrecy rules and other protections against scrutiny by foreign tax authorities thereby preventing the effective exchange of information on taxpayers benefiting from the low tax jurisdiction. However, by at least the beginning of the Class Period, tax haven jurisdictions had come under increased international pressure to reform their harmful tax practices and exchange information with tax authorities in the United States and elsewhere. However, THC's Class period SEC filings were virtually silent regarding the increased risk that their tax evasion scheme would be exposed. Thus, while THC and Defendants well understood the adverse risk to THC's earnings and cash flows that such reforms represented, investors were kept in the dark. THC made no disclosure of the risks and uncertainties concerning its illegal tax evasion scheme even though it was required to do so by GAAP and SEC reporting requirements. (See ¶¶118-148 below.)

40. During the Class Period, THC either provided no warnings or inadequate warnings to investors concerning the probable adverse impact on the Company's earnings and cash flows that would result from a tax examination of its tax haven operations. During the fiscal years 1999 through 2001, the Company's SEC filings and press release were silent concerning such adverse risks even though the secrecy protections on which THC's tax scheme depended were, or would soon be, eliminated. After 2001, THC provided boilerplate disclosures, as detailed herein, that only warned investors of hypothetical risks concerning possible changes in tax laws or regulations when

in fact those events had little or nothing to do with THC's actual tax risks.<sup>5</sup> Indeed, at the time of THC's hypothetical risk disclosures, significant events had already occurred that made the adverse events such as the U.S. Attorney's investigation, which have now come to pass, highly probable.

41. For example in April 1998 the Organisation For Economic Co-Operation And Development (the "OECD") issued a report on the harmful tax effects that tax haven jurisdictions were having on industrialized economies. The OECD report identified several factors characterizing "harmful tax havens" and recommended voluntary reforms be undertaken by the tax haven jurisdiction to end these practices.<sup>6</sup> In June 2000, the OECD specifically identified 35 "harmful tax haven" jurisdictions including the BVI. The OECD called for each of the identified tax havens to comply with OECD reforms by July 2001.<sup>7</sup> In November 2001, the OECD received a commitment to the reforms from the British Government, for and on behalf of its "overseas territories," which includes the BVI. On April 2, 2002, the BVI sent its formal commitment letter to the OECD stating that "it commits to the principles of transparency and effective exchange of information in tax matters." Then on April 3, 2002, the BVI signed the "2002 Information Exchange Agreement" with the U.S. Specifically, the agreement covers U.S. federal income taxes and BVI taxes and relates to

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<sup>5</sup> It should also be noted that while the Company warned against possible adverse changes in tax laws and regulations, no substantive change in the changes in tax rules or interpretations preceded the issuing of the U.S. Attorneys subpoenas. Rather, the U.S. Attorney's investigation stemmed from having, for the first time, access to tax information concerning THC's tax haven operations. Of course, such access was always available to THC and the Individual Defendants.

<sup>6</sup> Such factors included among others: a) no or only nominal income taxes on the relevant income; b) a lack of effective exchange of information with foreign tax and regulatory authorities; c) no "transparency" *i.e.*, a relaxed regulatory framework making it unlikely that information needed by tax authorities was available; and d) the absence of a requirement that the activity in the tax haven be substantial and not purely tax driven.

<sup>7</sup> At this time, the reforms centered on exchange of information with foreign tax authorities and "transparency" issues.

both civil tax claims and criminal tax evasion. Under the agreement, when the competent authority of a contracting state requests information, the responding state is required to provide information relevant to the assessment and collection of civil tax claims and to criminal tax evasion.

42. Thus as early as 1998, THC was on notice that the BVI's secrecy protections were being scrutinized with a goal of ending them. By 2000, or at the latest 2001, it was more likely than not that the BVI would agree to the exchange of information with foreign tax authorities. THC had an affirmative duty under SEC reporting regulations to warn investors of the outcome of these reforms. Unfortunately for THC's investors, the Company failed to do so. Indeed, when information concerning THC's tax haven operations in the BVI became available to U.S. tax and law enforcement agencies it merely confirmed what THC and the Individual Defendants knew or recklessly disregarded since the early 1990's: that the Company faced possible tax, interest and penalty assessments in excess of a hundred million dollars and that its operating results would be adversely impacted by tens of millions of dollars in legal costs and other expenses because of the Company's illegal tax evasion scheme.

**Defendants Engaged in Unprecedented Insider Selling  
Prior to the Disclosure of the Truth About the Company and Its Business**

43. During the Class Period, defendants Chou, Horowitz, Stroll, Reilly and other high-level executives of THC collectively sold \$93 million worth of their personally-held THC common stock to the unsuspecting public while in the possession of material adverse facts concerning THC and its illegal tax evasion scheme, as detailed herein.

44. Defendants' insider sales were unusual and suspicious in timing and amount for the following reasons among others:

(a) as set forth in the chart below, certain of the Individual Defendants and other THC insiders sold a high percentage of the THC shares they directly or beneficially owned during

the Class Period. For example on February 6, 2001 defendants Chou and Stroll sold 3.5 million shares of THC common stock which represented more than 59% of their total shares held as reported to the SEC on Form 4 for the month ended February 2001; then during August, Chou and Stroll sold an additional 1.6 million shares or 61% of their holdings; defendant Horowitz sold 61% of his Class Period holdings; and defendants Newman and Reilly each sold 100% of their Class Period holdings;

(b) as shown below, the bulk of the sales by the Individual Defendants took place during the period February 2001 to May of 2002. This period coincides with key dates in the OECD's program to reform harmful tax practices of certain offshore financial centers and the BVI. For example, the OECD had set a deadline for commitment to its reforms by July 2001 and then in April 2002 the BVI notified the OECD that it would commit to certain reforms, including the exchange of information with foreign tax authorities. (See ¶¶40-42) The Individual Defendants wrongfully profited from the sale of their THC common stock at artificially inflated prices knowing that the OECD reforms, and subsequent enforcement by tax authorities would expose THC's tax evasion scheme and adversely affect the price of THC common shares.

45. The following table details the sales by the Individual Defendants and other high-level THC insiders which totaled more than \$93 million during the Class Period:

<b>Name</b>	<b>Date</b>	<b>Shares</b>	<b>Price</b>	<b>Proceeds</b>	<b>Percentage of Holdings</b>
Arthur A. Bargonetti, Senior Vice-President	2/8/2001	60,000	\$16.000	\$960,000	
	6/1/2001	20,000	\$15.000	\$300,000	
	8/3/2001	54,300	\$13.190	\$716,217	
	8/6/2001	9,434	\$13.000	\$122,642	
	8/7/2001	69,600	\$13.000	\$904,800	
	6/28/2004	66,666	\$14.980	\$998,657	
	6/28/2004	20,000	\$14.980	\$299,600	
			300,000		\$4,301,916
Silas Chou Kei-Fong and Lawrence Sheldon Stroll, Co-Chairmen of the Board	2/6/2001	3,500,000	\$14.250	\$49,875,000	56.90%
	8/1/2001	1,339,525	\$13.250	\$17,748,706	

	8/6/2001	23,350	\$12.870	\$300,515	
	8/7/2001	194,450	\$12.900	\$2,508,405	
	8/8/2001	77,200	\$13.000	\$1,003,600	61.90%
	11/5/2001	500,000	\$12.050	\$6,025,000	49.60%
		5,634,525		\$77,461,226	
Joel J. Horowitz, Chief Executive Officer	2/4/2002	426,800	\$12.720	\$5,428,896	
	2/4/2002	21,200	\$12.850	\$272,420	
	2/5/2002	373,200	\$12.230	\$4,564,236	
		821,200		\$10,265,552	61.40%
Joel H. Newman, Chief Financial Officer	8/21/2001	33,334	\$13.310	\$443,676	
	5/29/2002	2,500	\$15.400	\$38,500	
	5/31/2002	64,166	\$15.190	\$974,682	
		100,000		\$1,456,857	100.00%
James P. Reilly, Vice President	8/20/2004	8,750	\$14.000	\$122,500	100.00%
<b>Grand Total</b>		<b>6,864,475</b>		<b>\$93,608,051</b>	

**Materially False and Misleading  
Statements Issued During the Class Period**

46. The Class Period begins on November 3, 1999. On that day, THC issued a press release announcing its financial results for the second quarter fiscal 2000, ended September 30, 1999. For the quarter, the Company reported that net income rose 33.8% to \$76 million from net income of \$56.8 million in the same period a year ago. Defendant Horowitz commented positively on the results, stating, in pertinent part, as follows:

*We are very pleased with the results for the second quarter.* Within our wholesale segment, womenswear and childrenswear, particularly our new girl's sizes 4 to 16 line, performed very well. Our retail stores reported strong comparable store sales and we continued to add square footage through our new store and expansion programs. In our licensing segment, we successfully launched our new FREEDOM fragrance for him and for her. *Our operating margins improved due to a favorable revenue mix that more than offset our planned increase in expenses.* We continue to invest in new businesses and marketing that supports the Tommy Hilfiger brand. [Emphasis added.]

47. On or about November 12, 1999, THC filed with the SEC Form 10-Q for the period ended September 30, 1999. The 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the 10-Q provided:

The provision for income taxes has decreased to 28.9% of income before taxes in the quarter ended September 30, 1999 from 29.3% in the corresponding quarter last year. *This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject*, including the effects of the special charges which were tax effected at a higher rate than the Company's weighted average tax rate in the six-month period ended September 30, 1998.

\* \* \*

In the opinion of management, the accompanying financial statements reflect all adjustments, consisting of only normal and recurring adjustments, necessary for a fair presentation of the financial position and results of operations and cash flows for the periods presented. [Emphasis added.]

48. The statements referenced above in ¶¶46-47 were materially false and misleading because they failed to disclose and misrepresented the following material adverse facts which were known to Defendants or recklessly disregarded by them:

(a) that THC was engaged in an illegal tax evasion scheme whereby it shifted certain of its income to lower tax jurisdictions through the overpayment of commissions to one or more of its tax haven subsidiaries;

(b) that, since at least 1999, the Company's reported income tax liability had been materially understated and the Company's net earnings and stockholders' equity had been materially overstated. In aggregate, THC overstated its earnings during the Class Period by at least \$160 million;

(c) that the Company's publicly disseminated financial statements materially violated GAAP and SEC reporting requirements (see ¶¶118-148); and

(d) as a result of the foregoing, the Company's effective tax rate would now be significantly higher and THC will likely have to pay back taxes and fines in excess of \$100 million. Therefore, the Company's announcement that its earnings had improved significantly over the prior year due to improved profit margins and that the Company's tax provision reflected the "relative level of earnings in the various taxing jurisdictions" was materially false and misleading because it failed to disclose that the Company was engaging in an improper tax evasion scheme.

49. On or about February 2, 2000, THC issued a press release announcing its financial results for the third quarter fiscal 2000, ended December 31, 1999. For the quarter, the Company reported net income increased to \$59.1 million from \$57.8 million in the same period a year ago. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

*Our operations are highly cash generative and our balance sheet is very sound* as evidenced by our year-to-date EBITDA of \$337 million, ending cash balance of nearly \$400 million and *total debt to total capital of 33%*. Our childrenswear and retail components exceeded our expectations this quarter and we continue to rank among the leaders in our major product categories. In addition, we continue to generate operating margins that are among the highest in the industry." [Emphasis added.]

50. On or about February 11, 2000, THC filed with the SEC Form 10-Q for the period ended December 31, 1999. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 28.2% of income before taxes in the nine-month period ended December 31, 1999 from 29.7% in the corresponding period last year. *This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject*, offset by the effects of the special charges which were tax effected at a higher rate than the Company's weighted average tax rate in the nine-month period ended December 31, 1998.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented. [Emphasis added.]

51. The statements referenced above in ¶¶49-50 were materially false and misleading for the reasons stated in ¶48 above. In addition, defendant Horowitz' statement that THC's balance sheet was "very sound" as shown by the Company's "debt to capital ratio" was materially false and misleading because it failed to disclose that THC had intentionally understated its tax liabilities by tens of millions of dollars thereby understating its debt and overstating equity. Moreover, as detailed in ¶¶118-148, THC's interim financial statements were not prepared in accordance with GAAP and, therefore, it was not true that the interim financial statements contained in the Form 10-Q contained "all adjustments" necessary for a "fair presentation" of the Company's operating results.

52. On May 25, 2000, THC issued a press release announcing its financial results for the fourth quarter and year ended March 31, 2000. For the fourth quarter, the Company reported net income, before special charges, of \$34.8 million. Defendant Horowitz commented on the Company's performance, stating, in pertinent part, as follows:

We have just completed our most challenging year to date. Fiscal 2000 was a year which began with great promise, but became increasingly difficult as the year went on. Although our children's division, along with our retail and licensing components, achieved positive results, our men's and women's components were unable to maintain growth momentum. As we have said before, significant price adjustments were required to eliminate excess inventory and to compensate for an imbalance between supply and demand, resulting in substantially lower levels of gross margin. We also indicated that we expect pressure on gross margin to continue through the first half of fiscal 2001; however, we are moving quickly to refocus product lines around the strength of classic Tommy designs as well as to explore new initiatives. ***Our balance sheet remains quite strong and our inventories and backlog are within our expectations.*** [Emphasis added.]

53. On or about June 28, 2000, the Company filed its Annual Report on Form 10-K for fiscal year 2000, the period ending March 31, 2000 (the "2000 10-K"). The 2000 10-K confirmed the Company's previously announced financial results and was signed by defendants Chou, Stroll,

Hilfiger, Horowitz, Ng and Scirocco, among others. Concerning the Company's tax rate, the 2000 10-K provided:

The provision for income taxes decreased to 24.2% of income before taxes in the twelve month period ended March 31, 2000 from 29.5% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject, as well as the effects of the special charges which were tax effected at higher rates than the Company's weighted average tax rate in each period. Excluding the effects of special charges, the comparative provisions for income taxes were 28.0% and 30.3% in fiscal year 2000 and fiscal year 1999, respectively.

54. The statements referenced above in ¶¶52-53 were materially false and misleading for the reasons stated in ¶48 above. In addition:

(a) defendant Horowitz' statement that THC's balance sheet was "quite strong" was materially false and misleading because he failed to disclose that THC had intentionally understated its tax liabilities by tens of millions of dollars thereby understating its debt and overstating equity;

(b) the statements concerning THC's tax provisions were materially false and misleading because they failed to disclose the risk that the OECD reforms could require the BVI to exchange information with foreign tax authorities thus subjecting the Company's tax haven subsidiaries to greater scrutiny by U.S tax and law enforcement authorities. In fact several weeks prior to the filing of THC's 10-K the OECD had issued a report identifying the BVI as a "harmful tax haven." In addition, these statements were materially false and misleading because they failed to disclose that the decrease in the tax rate was due, in material part, to the Company's improper tax evasion scheme; and

(c) the financial statements contained in the 2000 10-K were not prepared in accordance with GAAP and therefore were materially false and misleading as detailed herein in ¶¶118-148 below.

55. On or about July 26, 2000, THC issued a press release announcing its financial results for the first quarter fiscal 2001, ended June 30, 2000. For the quarter, the Company reported that net income was \$9.7 million versus \$38.7 million in the same period a year ago. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

As we have previously stated, fiscal 2001 is a repositioning and rebuilding year for us. We are well underway with our efforts to offer consumers an improved assortment of Tommy Hilfiger products with the traditional styling, quality and fit they have come to expect.

The results of these efforts will take time to work through our product cycle, and therefore are not expected to materialize until the second half of this fiscal year. These and other business improvements, including balancing supply and demand and streamlining operations, will continue to be our primary focus as we stabilize our sales base and gross margins. We also plan to continue to invest in the Tommy Hilfiger brand and have maintained our commitment to a strong marketing program.

***Our balance sheet remains strong. We finished the quarter with \$264.9 million of cash, and our ratio of debt to total capital is now 32.7%.*** [Emphasis added.]

56. On or about August 11, 2000, THC filed with the SEC Form 10-Q for the period ended June 30, 2000. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 27.9% of income before taxes in the quarter ended June 30, 2000 from 28.9% in the corresponding quarter last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

57. The statements referenced above in ¶¶55-56 were materially false and misleading for the reasons stated in ¶48 above. In addition, defendant Horowitz' statement that THC balance sheet

was strong as shown by the Company's "debt to capital ratio" was materially false and misleading because THC had intentionally understated its tax liabilities by tens of millions of dollars thereby understating its debt and overstating equity. Moreover, as detailed in ¶¶118-148, THC's interim financial statements were not prepared in accordance with GAAP and, therefore, it was not true that the interim financial statements contained in the Form 10-Q contained "all adjustments" necessary for a "fair presentation" of the Company's operating results.

58. On or about November 1, 2000, THC issued a press release announcing its financial results for the second quarter fiscal 2001, ended September 30, 2000. For the quarter, the Company reported that net income was \$44.9 million versus \$76.0 million in the same period a year ago. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

There continue to be challenges, including an ongoing promotional climate in department store retailing and uncertainty in consumer demand, as we head into the all-important Holiday season. At this stage we believe that *we can achieve earnings per share of \$0.46 for the third quarter and \$0.33 for the fourth quarter, which are the First Call consensus estimates* as adjusted for currently outstanding shares of 90.8 million. [Emphasis added.]

59. On or about November 13, 2000, THC filed with the SEC Form 10-Q for the period ended September 30, 2000. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 26.9% of income before taxes in the six-month period ended September 30, 2000 from 28.9% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

60. The statements referenced above in ¶¶58-59 were materially false and misleading for the reasons stated in ¶48 above. In addition, defendant Horowitz' statement that THC would achieve its short-term earnings guidance was materially false and misleading because it failed to disclose that THC's earnings targets were subject to the material risk that THC's tax evasion scheme would be exposed. Moreover, as detailed in ¶¶118-148, THC's interim financial statements were not prepared in accordance with GAAP and, therefore, it was not true that the interim financial statements contained in the Form 10-Q contained "all adjustments" necessary for a "fair presentation" of the Company's operating results.

61. On or about February 1, 2001, THC issued a press release announcing its financial results for the third quarter fiscal 2001, ended December 31, 2000. For the quarter, the Company reported that net income was \$42.7 million or \$0.47 per share, versus \$59.1 million in the same period a year ago, *beating THC's previously issued guidance of \$0.46 per share by one penny*. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

Our performance this quarter further validates our strategy of bringing supply and demand for our product into balance, supporting our brand with focused marketing and streamlining our operations. Our industry faces ongoing challenges and we continue to work to improve our business against the backdrop of a softer economy and the likelihood of an equally promotional selling environment throughout the apparel sector. ***Our current expectations are to achieve earnings per share of \$0.33 for the fourth quarter, which is the First Call consensus estimate as adjusted for currently outstanding shares of 89.5 million, with net revenue below last year's in the mid single digits.*** [Emphasis added.]

62. On or about February 13, 2001, THC filed with the SEC Form 10-Q for the period ended December 31, 2000. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 26.8% of income before taxes in the nine-month period ended December 31, 2000 from 28.2% in the corresponding period last year. This decrease was primarily attributable to the relative level of

earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

63. The statements referenced above in ¶¶61-62 were materially false and misleading for the reasons stated in ¶48 above. In addition, defendant Horowitz' statement that THC had exceeded its earnings targets was materially false and misleading because it failed to disclose that the reason THC had been able to exceed analysts' earnings estimates was because THC had intentionally understated its tax liabilities by tens of millions of dollars thereby overstating its reported earnings. Moreover, as detailed in ¶¶118-148, THC's interim financial statements were not prepared in accordance with GAAP and, therefore, it was not true that the interim financial statements contained in the Form 10-Q contained "all adjustments" necessary for a "fair presentation" of the Company's operating results.

64. On or about May 24, 2001, THC issued a press release announcing its financial results for the fourth quarter and year ended March 31, 2001. For the quarter, the Company reported that net income was \$33.6 million, or \$0.37, compared to \$34.8 million before special charges in the same period a year ago. The Company also reported that "[r]esults for the fourth quarter of fiscal 2001 included a reduction in the effective tax rate which increased net income and earnings per share by approximately \$4.0 million and \$0.04, respectively." *As a result of the tax rate reduction, THC exceeded its previously issued guidance of \$0.33 per share.* Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

The results of the past year illustrate that *the strength of our brand and diversity of our businesses* enable us to manage through challenging periods in the marketplace. We continue to hold a leading market position in many different components of our

business, both in licensed products and our own apparel lines. Fiscal 2001 also underscored the global appeal of the Tommy Hilfiger brand, with substantial growth in our international licensed business, particularly at Tommy Hilfiger Europe, our largest geographic licensee.

65. On or about June 26, 2001, the Company filed its Annual Report on Form 10-K for fiscal year 2001, the period ending March 31, 2001 (the “2001 10-K”). The 2001 10-K reported on the Company’s financial results and was signed by defendants Chou, Stroll, Hilfiger, Horowitz, Newman and Scirocco, among others. Concerning the Company’s tax rate, the 2001 10-K provided:

The provision for income taxes in fiscal 2001 was 24.5% of income before taxes compared to 24.2% in fiscal 2000. Excluding the effect of special charges in fiscal 2000, the provision for income taxes was 28.0%. The Company’s effective tax rate is dependent upon the relative level of earnings in each of the various taxing jurisdictions in which the Company operates.

\* \* \*

The provision for income taxes decreased to 24.2% of income before taxes in the twelve month period ended March 31, 2000 from 29.5% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company’s earnings are subject, as well as the effects of the special charges which were tax effected at higher rates than the Company’s weighted average tax rate in each period. Excluding the effects of special charges, the comparative provisions for income taxes were 28.0% and 30.3% in fiscal year 2000 and fiscal year 1999, respectively.

66. The statements referenced above in ¶¶64-65 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Horowitz’ statement that THC earnings reflected “the strength of our brand and diversity of our businesses” was materially false and misleading because he failed to disclose that THC had intentionally understated its tax liabilities by tens of millions of dollars thereby materially overstating its earnings;

(b) that the statements concerning THC’s tax provisions were materially misleading because they failed to disclose the risk that the OECD reforms could require the BVI to exchange information with foreign tax authorities thus subjecting the Company’s tax haven

subsidiaries to greater scrutiny by U.S tax and law enforcement authorities. In addition, these statements were materially false and misleading because they failed to disclose that the decrease in the tax rate was due, in material part, to the Company's improper tax evasion scheme; and

(c) the financial statements contained in the 2001 10-K were not prepared in accordance with GAAP and therefore were materially false and misleading as detailed herein in ¶¶118-148 below.

67. On or about July 31, 2001, an article published by *WWD* (Fairchild Publications, Inc.) reported that THC released its financial results for the first quarter of fiscal 2002, ending June 30, 2001. According to the article, for the quarter, the Company reported that net income was \$9.0 million, or \$0.10 per share, compared to \$9.7 million in the same period a year ago. According to the article, during a conference call with analysts Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

We are pleased to report revenues and earnings slightly ahead of our expectations for this first fiscal quarter. Although partially due to the acceleration of certain shipments originally planned for the second quarter, these results also reflect improvements in our product offerings, streamlining of our operations and continued strong inventory management. These initiatives were fundamental to repositioning our business last year and continue to be among our main priorities for the current year as well.

68. On or about August 9, 2001, THC filed with the SEC Form 10-Q for the period ended June 30, 2001. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 19.8% of income before taxes in the quarter ended June 30, 2001 from 27.9% in the corresponding quarter last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

69. The statements referenced above in ¶¶67-68 were materially false and misleading for the reason stated in ¶48 above.

70. On or about October 31, 2001, THC issued a press release announcing its financial results for the second quarter fiscal 2002, ended September 30, 2001. For the quarter, the Company reported that net income increased to \$47.9 million versus \$44.9 million in the same period a year ago. The Company also reported that it now expects earnings per share in the range of \$1.30 to \$1.56 for the full fiscal year, an increase of \$0.06 from the guidance provided on October 4, 2001.

Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

Our performance for the quarter underscores the continuing appeal of the Tommy Hilfiger brand and reinforces our belief that we are taking the right steps to maximize results. At the same time, there remains a great deal of uncertainty with respect to the economic environment and consumer confidence. While business in October has improved somewhat since the period immediately following September 11, it is too early to predict how the holiday and spring seasons will be affected. Therefore, we maintain the views we expressed on October 4, but *we are adjusting our guidance upward to reflect the better-than-expected second quarter results and our lower expected tax rate.* [Emphasis added.]

71. On or about November 13, 2001, THC filed with the SEC Form 10-Q for the period ended September 30, 2001. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 16.5% of income before taxes in the six-month period ended September 30, 2001 from 26.9% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, consisting of only normal and recurring adjustments, necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

72. The statements referenced above in ¶¶70-71 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Horowitz' statement that THC earnings guidance was being adjusted upwards was materially misleading because it failed to disclose the adverse risks inherent in THC's tax evasion scheme.

73. On or about January 30, 2002, THC issued a press release announcing its financial results for the third quarter fiscal 2002, ended December 31, 2001. For the quarter, the Company reported that net income was \$37.0 million versus \$42.7 million in the same period a year ago. The Company also reported that "*[e]arnings per share exceeded the consensus estimate of \$0.38, as reported by First Call, principally due to a lower than anticipated effective tax rate for the quarter.*" THC announced that it was "comfortable with a fourth quarter fiscal 2002 earnings per share estimate of \$0.40, which is the current First Call consensus estimate of \$0.38 adjusted upward to reflect the Company's lower tax rate." Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

Within the current environment, we are focused on continuing to refine our product lines, balancing supply and demand, supporting our brand with focused marketing and maintaining strict inventory and cost controls. We believe it is too early to predict if and when U.S. consumers will return to previous levels of apparel spending. As a result, we are planning both our wholesale and retail businesses accordingly.

74. On or about February 13, 2002, THC filed with the SEC Form 10-Q for the period ended December 31, 2001. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes decreased to 14.1% of income before taxes in the nine-month period ended December 31, 2001 from 26.8% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject. The Company continues to refine its estimate of the annual effective tax rate at various points during the fiscal year and adjusts accordingly. The Company's expected rate for the full fiscal year 2002 is approximately 13.0%.

\* \* \*

In the opinion of management, the accompanying financial statements reflect all adjustments, consisting of only normal and recurring adjustments, necessary for a fair presentation of the financial position and results of operations and cash flows for the periods presented.

75. The statements referenced above in ¶¶73-74 were materially false and misleading for the reason stated in ¶48 above. In addition, THC's statement that the Company's earnings exceeded expectations and that THC was "comfortable" with future earnings expectations was materially false and misleading because it failed to disclose that the Company exceeded analysts' earnings estimates through the Company's tax evasion schemes and failed to disclose the adverse risks inherent in THC's tax evasion scheme.

76. On or about May 23, 2002, THC issued a press release announcing its financial results for the fourth quarter and year ended March 31, 2002. For the quarter, the Company reported that net income grew 21.1% to \$40.7 million in the fourth quarter from \$33.6 million in the same period a year ago. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

We are pleased to have achieved results that exceeded our expectations for the quarter. The major factor driving our improved operating results for the quarter was the strong contribution to both revenue and operating income of Tommy Europe. Performance in our U.S. wholesale divisions also improved, as we continued to operate with much leaner inventory levels than a year ago, resulting in a higher percentage of regular price selling and a higher gross margin.

During fiscal 2002, Tommy Hilfiger Corporation continued its evolution and growth as one of the world's preeminent lifestyle brands. The results of the past year illustrate that the Tommy Hilfiger brand resonates strongly with consumers around

the world. This is particularly true in Europe, where we have experienced tremendous growth, as well as in our U.S. women's businesses, where we continue to gain momentum. ***The strength of our brand, the diversity of our businesses and our continued tight control over working capital and expenses enabled us to maintain our revenue and profitability in the face of substantial economic challenges.*** [Emphasis added.]

77. On or about June 25, 2002, the Company filed its Annual Report on Form 10-K for fiscal year 2002, the period ending March 31, 2002 (the "2002 10-K"). The 10-K reported on the Company's financial results and was signed by defendants Chou, Stroll, Hilfiger, Horowitz, Newman and Scirocco, among others. In the section describing the Company's tax rate (Tax Matters), the Company stated that its effective tax rate for fiscal 2002 had been 13%. The Company further stated:

[THC] was incorporated in 1992 as an International Business Company in the BVI and is also registered and licensed as an external International Business Company in Barbados, where it has established residency for tax purposes. In addition, certain of [THC]'s non United States subsidiaries are incorporated in the BVI and other countries and are subject to taxation in those or other countries where the applicable statutory tax rates are substantially lower than those applicable to the Company's United States subsidiaries. ***As a result, the Company's overall effective tax rate is materially affected by the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.***

\* \* \*

***The Company's effective tax rate, which was 13% for the fiscal year ended March 31, 2002, has been and is expected to continue to be a major factor in the determination of the Company's profitability and cash flow. As such, a significant shift in the relative sources of the Company's earnings, or changes in tax rules or interpretations, could have a material adverse effect on the Company's results of operations and cash flow.*** [Emphasis added.]

78. The statements referenced above in ¶¶76-77 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Horowitz' statement that THC earnings reflected "the strength of our brand and diversity of our businesses" was materially false because THC had intentionally understated its tax liabilities by tens of millions of dollars thereby materially overstating its earnings:

(b) the statements concerning THC's hypothetical exposure to "changes in tax rules" were materially misleading because they failed to disclose that such changes had already occurred. In fact, more than two months before the filing of THC's 10-K, the BVI had notified the OECD that it would adopt certain tax reforms and the BVI had signed a tax information exchange agreement with the U.S. The OECD reforms and information exchange agreement with U.S. tax authorities significantly increased the risk that THC's tax evasion scheme would be exposed;

(c) the financial statements contained in the 2002 10-K were not prepared in accordance with GAAP and therefore were materially false and misleading as detailed herein in ¶¶118-148 below.

79. On or about July 30, 2002, an article published by *WWD* (Fairchild Publications, Inc.) reported that THC released its financial results for the first quarter fiscal 2003, ending June 30, 2002. According to the article, for the quarter, the Company reported that net income before the cumulative effect of a change in accounting principle and a one-time deferred tax charge was \$ 2.6 million, or \$0.03 per share, compared with \$9.0 million in the same year-ago quarter. During a conference call with analysts, Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

[W]e continue to maintain tight inventory and expense control within the wholesale and the corporate areas of the company positioning it to meet the challenges of the current difficult retailing environment.

\* \* \*

Turning to our outlook for the balance of the year and while the economic environment is quite challenging can we foresee a continuation of the present highly promotional retail climate we expect the momentum in our women's businesses to continue and we are encouraged by some recent positive trends in men's jeans and children's wear. We are eager to see the results of our initiatives and the redesign of our men's sportswear and the new product and re-merchandising of our retail specialty stores beginning in the fall although these initiatives will come against the backdrop of uncertainty and sagging consumer confidence. Our business in Europe

continues to grow rapidly and we expect Tommy Europe to gain leverage on its [sic] existing infrastructure and therefore to improve its [sic] profitability.

\* \* \*

For the full year fiscal year [2003] [guidance] is now \$1.67 which is consistent with our previous estimate of \$1.64 per share increased by three cents to reflect a higher than anticipated first quarter earnings over our earlier estimate of break even results. We expect that our effective tax rates for the year excluding the impact of the effect of the change in accounting principle and deferred tax charge will increase from 13 percent to approximately 17 percent principally reflecting the changes recently enacted in New Jersey tax legislation that I mentioned earlier. However we expect to be able to offset this increase through operating improvements.

80. The statements referenced above in ¶79 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Horowitz' statements concerning THC's current earnings were materially false because the Company had intentionally understated its tax liability by tens of millions of dollars; and

(b) defendant Horowitz' statements concerning THC's future earnings were materially misleading because they failed to disclose the risks inherent in THC's tax evasion scheme and that the Company was engaging in an improper tax evasion scheme.

81. On or about July 30, 2002, an article, published by *WWD* (Fairchild Publications, Inc.), stated that Laurence Stroll was "stepping down" as THC co-chairman and director. The article stated in pertinent part as follows:

Stroll said he made the decision to leave about nine months ago and apprised his partners. He said there were no disagreements, the parting is amicable, and he remains friendly with them.

Asked if he believes there's growth left in Hilfiger, Stroll said, "There's absolutely opportunity in Tommy. You won't see the growth levels of five to six years ago, it's too large a company. You can only have a certain amount of distribution without lowering one's standards."

***Stroll said he will retain his shares in Hilfiger.*** He and Chou each own 1.1 percent of the company. [Emphasis added.]

82. The statements referenced above in ¶81 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) the statement by defendant Stroll concerning THC's future earnings were materially misleading because it failed to disclose the risks inherent in THC's tax evasion scheme; and

(b) the statement by defendant Stroll that he intended to retain his shares in THC was material misleading because over the past seventeen months Stroll had disposed of more than 5.6 million of THC ordinary shares at artificially inflated prices generating more than \$77 million in proceeds.

83. On or about August 14, 2002, THC filed with the SEC Form 10-Q for the period ended June 30, 2002. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the 10-Q provided:

The provision for income taxes, before the deferred tax charge, for the first three months of fiscal 2003 decreased to 17.7% of income before taxes and the cumulative effect of the change in accounting principle, from 19.8% in the corresponding period last year. This decrease was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, which consist of only normal and recurring adjustments . . . necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

84. The statements referenced above in ¶83 were materially false and misleading for the reason stated in ¶48 above.

85. On or about October 30, 2002, THC issued a press release announcing its financial results for the second quarter fiscal 2003, ended September 30, 2002. For the quarter, the Company

reported that net income increased 27.3% to \$61.0 million versus \$47.9 million in the same period a year ago. The Company also reported that it now expects earnings per share for the third quarter to be in the range of \$0.32 to \$0.42; for the fourth quarter in the range of \$0.13 to \$0.23 per share and for the full fiscal year 2003, in the range of \$1.15 to \$1.35 per share. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

In spite of the difficult conditions across the industry, we reported financial results for the second quarter that were ahead of our previously announced expectations, largely due to the continued strong performance of Tommy Hilfiger Europe. Since we acquired this business in July 2001, we have built steady momentum in this market, reflecting a strong consumer response to the brand

86. On or about November 8, 2002, THC filed with the SEC Form 10-Q for the period ended September 30, 2002. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes, before the deferred tax charge, for the six months of fiscal 2003 increased to 18.7% of income before taxes and the cumulative effect of the change in accounting principle, from 16.5% in the corresponding period last year. This increase was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect all adjustments, which consist of only normal and recurring adjustments . . . necessary for a fair presentation of the financial position and results of operations and cash flows for the periods presented.

87. The statements referenced above in ¶¶85-86 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Horowitz' statement that THC's current earnings were "ahead of our previously announced expectations" was materially false because THC had intentionally understated its tax liability by tens of millions of dollars; and

(b) the Company's statements concerning THC's future earnings were materially misleading because they failed to disclose the risks inherent in THC's tax evasion scheme.

88. On or about February 5, 2003, THC issued a press release announcing its financial results for the third quarter fiscal 2003, ended December 31, 2002. For the quarter, the Company reported that net income, before special charges, was \$34.8 million compared to \$37.0 million in the prior year. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

We are pleased to have achieved results for the third quarter at the upper end of our expected range in this difficult retailing environment. In the United States, our children's business was much improved and our women's business remained a category leader; however, we continued to experience difficulty in the menswear arena. Our outlet retail business also remains a strong and consistent source of profits and cash flow. Internationally, we are very pleased with the continued growth and profitability of Tommy Europe, even as weakening markets pose new challenges. Additionally, our recently announced licenses for the distribution of Tommy Hilfiger apparel in South Korea and Australia attest to the continued global appeal of the Tommy Hilfiger brand.

89. On or about February 11, 2003, THC filed with the SEC Form 10-Q for the period ended December 31, 2002. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes, before non-recurring items, for the nine months of fiscal 2003 increased to 18.9% of income before taxes and the cumulative effect of the change in accounting principle, from 14.1% in the corresponding period last year. This increase was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject including changes in state taxation affecting the Company's U.S. operations. The reported effective tax rate of 10.6% for the nine months reflects a deferred tax charge of \$11,358 related to SFAS 142 offset by a benefit of approximately \$31,000 associated with the special charges recorded in the third quarter of fiscal year 2003.

\* \* \*

In the opinion of management, the accompanying financial statements reflect all adjustments, which consist of only normal and recurring adjustments . . . necessary

for a fair presentation of the financial position and results of operations and cash flows for the periods presented.

90. The statements referenced above in ¶¶88-89 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Horowitz' statement that THC's current earnings were "at the upper end of our expected range" was materially false and misleading because THC had intentionally understated its tax liability by tens of millions of dollars thereby enabling the Company to achieve its earnings.

91. On or about June 5, 2003, THC issued a press release announcing its financial results for the fourth quarter and fiscal year ended March 31, 2003. For the fourth quarter of fiscal 2003, the Company reported income before special charges of \$28.3 million. For the full year, the Company's income, before special items, was \$126.7 million. Defendant Horowitz commented on the Company's performance, stating, in pertinent part, as follows:

As we anticipated, retail conditions were difficult during the fiscal fourth quarter, particularly for our U.S. Wholesale business. On the other hand, we were very pleased with the contribution of [THC] Europe, which achieved revenue for the full fiscal year of \$275.8 million, ahead of the expectations we originally established for the business when we acquired it in July, 2001 and 44.2% above last year on a constant currency basis. ***In addition, during the quarter we continued to realize strong contributions to both earnings and cash flows from our Licensing segment and our U.S. retail business.*** Furthermore, beginning in mid April and continuing throughout May, we saw improved retail trends in our U.S. men's sportswear, jeans and missy divisions, as well as in our U.S. retail division. We are encouraged by these improvements as we believe they are an indication that our product is trend right and our brand recognition continues to be strong. [Emphasis added.]

92. On or about June 24, 2003, the Company filed its Annual Report on Form 10-K for fiscal year 2003, the period ending March 31, 2003 (the "2003 10-K"). The 2003 10-K repeated the Company's previously-stated financial results and was signed by defendants Hilfiger, Horowitz, Scirocco and Reilly, among others. In the section describing the Company's tax rate (Tax Matters), the Company stated that it expected its effective tax rate for fiscal 2004 to be approximately 23%. The Company further stated:

[THC] was incorporated in 1992 as an International Business Company in the BVI and is also registered and licensed as an external International Business Company in Barbados, where it has established residency for tax purposes. In addition, certain of [THC]'s non United States subsidiaries are incorporated in the BVI and other countries and are subject to taxation in those or other countries where the applicable statutory tax rates are substantially lower than those applicable to the Company's United States subsidiaries. ***As a result, the Company's overall effective tax rate is materially affected by the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.***

\* \* \*

***The effective tax rate for all periods is primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject as well as changes in state taxation affecting the Company's U.S. operations.***

\* \* \*

The Company's effective tax rate has been and is expected to continue to be a major factor in the determination of the Company's profitability and cash flow. As such, a significant shift in the relative sources of the Company's earnings, or changes in tax rules or interpretations, could have a material adverse effect on the Company's results of operations and cash flow. [Emphasis added.]

93. The statements referenced above in ¶¶91-92 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Horowitz' statement that THC "continued to realize strong contributions to both earnings and cash flows" was materially false because THC had intentionally understated its tax liabilities by tens of millions of dollars thereby materially overstating its earnings;

(b) the statements concerning THC's hypothetical exposure to "changes in tax rules" were materially misleading because they failed to disclose that such changes had already occurred. In fact, more than fourteen months before the filing of THC's 10-K, the BVI had notified the OECD that it would adopt certain tax reforms and the BVI had signed a tax information exchange agreement with the U.S. The OECD reforms and information exchange agreement with

U.S. tax authorities significantly increased the risk that THC's tax evasion scheme would be exposed; and

(c) the financial statements contained in the 2003 10-K were not prepared in accordance with GAAP and therefore were materially false and misleading as detailed herein in ¶¶118-148 below.

94. On or about August 5, 2003, THC issued a press release announcing its financial results for the first quarter fiscal 2004, ended June 30, 2003. For the quarter, the Company reported that net income of \$9.8 million, or \$0.11 per share, compared with first quarter fiscal 2003 net income of \$2.6 million, or \$0.03 per diluted share. Defendant Horowitz commented on THC's performance stating in pertinent part as follows:

We are pleased with our results for the quarter and encouraged by continued improvements in retail selling in men's sportswear and jeans and missy sportswear, which we have been experiencing since mid-April. We believe these trends are a direct result of our recent product initiatives. In addition, our retail stores registered stronger same store sales results for the quarter, aided by improved performance in our U.S. outlet division, which matched last year's levels on a comparable basis. While both these trends are encouraging, they appear against the backdrop of a weak retail environment characterized by high markdown rates and promotional pricing. Our momentum continues in Europe as demand for our products remains strong in the face of a weak economic climate. In the meantime, we continue to extend our reach through new licensing arrangements and new stores in this region.

95. On or about August 12, 2003, THC filed with the SEC Form 10-Q for the period ended June 30, 2003. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Horowitz and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

In the first quarter of fiscal 2004, the Company recorded a provision for income taxes of \$6,532 on income before taxes of \$23,486 compared to a provision for income taxes of \$11,923 on income before taxes and the cumulative effect of a change in accounting principle of \$3,191 in the same period last year. The fiscal 2004 provision reflects the special item recorded in the first quarter while the provision in the fiscal 2003 first quarter reflects a deferred tax charge related to the adoption of SFAS 142.

The provision for income taxes, before the non-recurring items described above, for the first quarter of fiscal 2004 increased to 21.5% of income before taxes and the cumulative effect of the change in accounting principle from 17.7% in the corresponding period last year. This increase was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, which consist of only normal and recurring adjustments . . . necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

96. The statements referenced above in ¶¶94-95 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Horowitz' statement concerning "continued improvements" in THC's financial results was materially false because THC had intentionally understated its tax liability by tens of millions of dollars.

97. On or about November 5, 2003, THC issued a press release announcing its financial results for the second quarter fiscal 2004, ended September 30, 2003. For the quarter, the Company reported that net income increased 6.1% to \$64.7 million, or \$0.71 per diluted share, for the second quarter of fiscal 2004, from \$61.0 million, or \$0.67 per diluted share, a year ago. Defendant Dyer commented on THC's performance stating in pertinent part as follows:

Results for the quarter exceeded our earlier expectations due to a number of factors. These included stronger than expected revenue and earnings growth from Tommy Hilfiger Europe, which was further bolstered by favorable currency exchange rates, and lower U.S. expenses as a result of our continuing efforts to control costs. In addition to these operating improvements, a significant reduction in interest expense following the repayment of \$151.1 million of our Senior Notes due June 1, 2003 and the repayment of our short-term borrowings increased our quarterly profits compared to the year ago period.

98. On or about November 14, 2003, THC filed with the SEC Form 10-Q for the period ended September 30, 2003. The Form 10-Q confirmed the Company's previously issued financial

results and was signed by defendants Dyer and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

In the first six months of fiscal 2004, the Company recorded a provision for income taxes of \$22,871 on income before taxes of \$104,513 compared to a provision for income taxes of \$26,030 on income before taxes and the cumulative effect of a change in accounting principle of \$78,292 in the same period last year. The fiscal 2004 provision reflects the special item recorded in the first quarter while the provision in the fiscal 2003 first quarter reflects a deferred tax charge related to the adoption of SFAS 142.

The provision for income taxes, before the non-recurring items described above, for the first six months of fiscal 2004 increased to 20.3% of income before taxes and the cumulative effect of the change in accounting principle from 18.7% in the corresponding period last year. This increase was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, which consist of only normal and recurring adjustments . . . necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

99. The statements referenced above in ¶¶97-98 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Dyer's statement that THC's financial "[r]esults for the quarter exceeded our earlier expectations" was materially false because THC had intentionally understated its tax liability by tens of millions of dollars.

100. On or about February 4, 2004, THC issued a press release announcing its financial results for the third quarter fiscal 2004, ended December 31, 2003. For the quarter, the Company reported that net income, before special charges, was \$25.8 million compared to \$34.8 million in the prior year. Defendant Dyer commented on THC's performance stating in pertinent part as follows:

I am pleased that we have improved upon our earlier estimates and am particularly encouraged with the progress of our improvements in quality and updated fashion offerings across all product lines. While we have made some progress, we remain focused on addressing the many challenges ahead of us.

101. On or about February 12, 2004, THC filed with the SEC Form 10-Q for the period ended December 31, 2003. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Dyer and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

In the first nine months of fiscal 2004, the Company recorded a provision for income taxes of \$29,667 on income before taxes of \$134,942 compared to a provision for income taxes of \$3,593 on income before taxes and the cumulative effect of a change in accounting principle of \$33,780 in the same period last year. The fiscal 2004 provision reflects the effects of the special items recorded during fiscal 2004 described above while the provision in fiscal 2003 reflects the deferred tax charge related to the adoption of SFAS 142 recorded in the first quarter and the charge related to the write down of the 37 U.S. specialty stores recorded in the third quarter.

The provision for income taxes, before the non-recurring items described above, for the first nine months of fiscal 2004 increased to 21.1% of income before taxes and the cumulative effect of the change in accounting principle from 18.9% in the corresponding period last year. This increase was primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, which consist of only normal and recurring adjustments . . . necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

102. The statements referenced above in ¶¶100-101 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Dyer's statement that THC's financial results for the quarter "improved upon our earlier estimates" was materially false because THC had intentionally understated its tax liability by tens of millions of dollars.

103. On or about June 9, 2004, the Company issued a press release announcing its financial results for the fourth quarter and fiscal year ended March 31, 2004. For the fourth quarter of fiscal 2004, the Company's income before special charges was \$36.7 million or \$0.40 per share, compared to \$28.3 million or \$0.31 per share in the prior year. For the full year, the Company's

income, before special items, increased 8.2% to \$137.1 million, compared to \$126.7 million in the prior year. Defendant Dyer commented on the Company's performance, stating, in pertinent part, as follows:

***Our performance for the quarter exceeded earlier expectations due to stronger than anticipated European operating results and favorable currency translations.***

Our focus during the quarter remained on implementing the necessary steps to improve the productivity of our business and position the Company for a return to long term growth. Toward that end, we have taken actions to enhance and extend our product offerings. These initiatives are a critical component in recapturing our fashion leadership and revitalizing our brand. [Emphasis added.]

104. On or about June 14, 2004, the Company filed its Annual Report on Form 10-K for fiscal year 2004, the period ending March 31, 2004 (the "2004 10-K"). The 2004 10-K repeated the Company's previously-stated financial results and was signed by defendants Hilfiger, Horowitz and Dyer, among others. In the section describing the Company's tax rate (Tax Matters), the Company stated that it expected its effective tax rate for fiscal 2005 before special items to be approximately 20%. The Company further stated:

[THC] was incorporated in 1992 as an International Business Company in the BVI and is also registered and licensed as an external International Business Company in Barbados, where it has established residency for tax purposes. In addition, certain of [THC]'s non United States subsidiaries are incorporated in the BVI and other countries and are subject to taxation in those or other countries where the applicable statutory tax rates are substantially lower than those applicable to the Company's United States subsidiaries. ***As a result, the Company's overall effective tax rate is materially effected by the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.***

\* \* \*

***The effective tax rate for all periods is primarily attributable to the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject as well as changes in tax laws affecting the Company's operations.*** [Emphasis added.]

\* \* \*

The Company and its subsidiaries are, from time to time, subject to tax examinations by taxing authorities of the various jurisdictions in which the Company operates.

Such examinations could result in assessments by such taxing authorities. The Company's management does not expect the resolution of these matters to have a material effect on its financial position, results of operations or cash flows.

The Company's effective tax rate has been and is expected to continue to be a major factor in the determination of the Company's profitability and cash flow. As such, a significant shift in the relative sources of the Company's earnings, or changes in tax treaties, laws, rules or interpretations, could have a material adverse effect on the Company's results of operations and cash flow.

105. The statements referenced above in ¶¶103-104 were materially false and misleading for the reason stated in ¶48 above. In addition:

(a) defendant Dyer's statement that THC's financial results "exceeded earlier expectations" was materially false because THC had intentionally understated its tax liabilities by tens of millions of dollars thereby materially overstating its earnings and enabling the Company to meet analysts' earnings expectations;

(b) the statements concerning THC's hypothetical exposure to "changes in tax rules" were materially misleading because they failed to disclose that such changes had already occurred. In fact, more than twenty-six months before the filing of THC's 10-K, the BVI had notified the OECD that it would adopt certain tax reforms and the BVI had signed a tax information exchange agreement with the U.S. The OECD reforms and information exchange agreement with U.S. tax authorities significantly increased the risk that THC's tax evasion scheme would be exposed; and

(c) the financial statements contained in the 2004 10-K were not prepared in accordance with GAAP and therefore were materially false and misleading as detailed herein in ¶¶118-148 below.

106. On or about August 4, 2004, the Company issued a press release announcing its financial results for the first quarter of fiscal 2005. For the quarter, the Company reported a net loss of \$7.6 million, or \$0.08 per share, compared to net income of \$9.8 million or \$0.11 per share before

special items in the prior year period. Defendant Dyer commented on the Company's performance, stating, in pertinent part, as follows:

*While we reported a loss for the quarter, our results were in line with our expectations and, in fact, due to the timing of shipments, slightly better than we previously forecast.* We have kicked off fiscal year 2005 with a strong focus on executing on our strategies to return the Company to long term growth. This includes capitalizing on the excellent potential of [THC] Europe, where we continue to see strong revenue growth even in this seasonally low quarter, while taking the necessary actions to revitalize our U.S. wholesale operations. We have made strategic investments in upgrading and refining our product assortments across all of our divisions and look forward to meeting with our retailer partners as we initiate our Spring markets beginning this month. [Emphasis added.]

107. On or about August 6, 2004, THC filed with the SEC Form 10-Q for the period ended June 30, 2004. The Form 10-Q confirmed the Company's previously issued financial results and was signed by defendants Dyer and Scirocco. Concerning the Company's tax rate, the Form 10-Q provided:

The provision for income taxes for the first quarter of fiscal 2005 decreased to 18.5% of income before taxes from 27.8% in the corresponding period last year. His decrease was primarily attributable to the special item recorded in the first quarter of fiscal 2004, as well as the relative level of earnings in the various taxing jurisdictions to which the Company's earnings are subject.

\* \* \*

In the opinion of management, the accompanying financial statements reflect **all adjustments**, which consist of only normal and recurring adjustments . . . necessary for a **fair presentation** of the financial position and results of operations and cash flows for the periods presented.

108. The statements referenced above in ¶¶106-107 were materially false and misleading for the reason stated in ¶48 above. In addition, defendant Dyer's statement that THC's financial results for the quarter were "in line with our expectations" was materially false because THC had intentionally understated its tax liability by tens of millions of dollars.

## The Truth Begins to Emerge

109. On September 24, 2004, after the close of the market for regular trading, THC issued a press release announcing it had received a grand jury subpoena issued by the U.S. Attorney's Office for the Southern District of New York seeking documents related to buying office commissions paid by the Company to one of its non-U.S. subsidiaries. According to the Company, the commissions were paid for "product development, sourcing, production scheduling and quality-control functions." The press release also stated that "the investigation is focused on whether the commission rate is appropriate." The documents that are being sought date back to 1990.

110. In response to this announcement, on September 27, 2004, the next trading day, shares of THC common stock fell to an intra-day low of \$9.75 per share, before closing down \$2.87 per share for the day, or almost 22%, at \$10.30 per share.

111. That same day, an article in *The Wall Street Journal* ("WSJ") quoted a research note from Lizabeth Dunn, an analyst at Prudential Equity Group, who downgraded shares of the Company to "underweight" from "overweight," in response to the announcement. The note stated, in pertinent part, as follows:

If the investigation proves valid, **the company could be looking at significant back taxes and potential fines.**

\* \* \*

We believe the investigators are looking into *whether [THC] has been shifting around income to avoid paying taxes*. It is difficult to know the magnitude of the potential liability, but our best estimate is *more than \$100 million*. [Emphasis added.]

112. The *WSJ* article also cited to a research note by Virginia Genereux at Merrill Lynch, which stated that THC's various divisions are required to pay its Far East buying offices commissions that are an effective royalty on the Company's wholesale businesses in the U.S. and

Europe. According to Ms. Genereux, those commissions “effectively shifted profits to lower tax jurisdictions.”

113. On or about November 3, 2004, THC common stock fell an additional 5%, closing at \$8.94 per share, after the Company announced that it could not release final earnings for the second quarter of fiscal 2005, ended September 30, 2004, due to the U.S. Attorney’s investigation into the THC’s tax practices. THC also announced that it would be unable to complete its quarterly Form 10-Q report scheduled to be filed with SEC on November 9, 2004. The Company’s announcement confirmed previous press reports that the U.S. Attorney’s investigation was focused on THC’s improper practice of shifting profits earned in the U.S. and other taxable jurisdictions to offshore ‘tax havens’ such as the BVI. The Company’s press release stated in pertinent part:

Several domestic and international subsidiaries of the Company pay buying office commissions to Tommy Hilfiger (Eastern Hemisphere) Limited (“THEH”), a British Virgin Islands corporation which is a wholly-owned and consolidated subsidiary of the Company, pursuant to contracts to provide or otherwise secure through sub-agents certain services, including product development, sourcing, production scheduling and quality control functions. The Company understands that the U.S. Attorney’s Office investigation is focused on the appropriateness of the commission rate paid by the Company’s subsidiaries to THEH, as well as other related tax matters, although there can be no assurance that the scope of the investigation will not be expanded. At this point, *the Company cannot predict the timing or outcome of the investigation, which may include the institution of administrative, civil or criminal proceedings, claims for back taxes and interest, the imposition of fines and penalties, or other remedies and sanctions.* The Company also cannot predict what impact the inquiry may have on its business, financial condition, results of operations, cash flow or historical financial statements. [Emphasis added.]

114. Then on or about February 2, 2005, THC announced that it expects “*to incur pretax special charges for fiscal 2005 of approximately \$40 million for legal and advisory fees relating to the U.S. Attorney investigation*” as well as other restructuring charges. The estimated charges did “*not include other potential liabilities and special charges that may arise from the U.S. Attorney’s Office investigation.*” [Emphasis added.]

115. The market for THC's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, THC's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired THC securities relying upon the integrity of the market price of THC's securities and market information relating to THC, and have been damaged thereby.

116. During the Class Period, defendants materially misled the investing public, thereby inflating the price of THC's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

117. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about THC's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of THC and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

### **THC's Financial Statements During the Class Period Were Materially False and Misleading**

118. During the Class Period, Defendants falsely represented that the financial statements THC issued to investors were each prepared in accordance with GAAP and the accounting and disclosure rules and regulations of the SEC.<sup>8</sup> These representations were materially false and misleading when made because the financial statements issued by THC during the Class Period violated the provisions of GAAP noted below associated with its high risk, transfer pricing arrangements which were designed to evade U.S income tax laws.<sup>9</sup>

119. As a result, THC's reported net income was materially inflated during the Class Period and investors were unaware of the true risks associated with its transfer pricing practices. As alleged more fully herein, THC's stock price fell, thereby eliminating hundreds of millions of dollars of the Company's market value, when it announced that its transfer pricing practices were under investigation by the U.S. Attorney's Office.

120. GAAP, in FASB's Statement of Financial Accounting Standards ("SFAS") No. 5, ¶10, creates the duty that financial statements disclose contingencies when it is at least *reasonably* possible (defined by the accounting standards to be "a greater than *slight*" chance) that a loss may have been incurred.<sup>10</sup> The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss, a range of loss, or state that such an estimate cannot be made. *Id.*

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<sup>8</sup> Generally accepted auditing standard ("GAAS") §AU 411.02 defines GAAP as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time.

<sup>9</sup> The web site of PricewaterhouseCoopers ("PwC"), THC's auditor, defines "transfer pricing" as an intercompany pricing arrangement between related business entities, including transfers of intellectual property, transfers of tangible goods, services and loan and other financing transactions.

<sup>10</sup> SFAS No. 5 defines "contingency" is as an existing condition, situation or set of circumstances involving an uncertainty as a possible gain or loss.

121. The SEC considers the disclosure of loss contingencies to be of such importance to an informed investment decision that it issued Article 10-01 of Regulation S-X [17 C.F.R. §210.10-01], which provides that disclosures in interim period financial statements may be abbreviated and need not duplicate the disclosure contained in the most recent audited financial statements, *except that* “where material contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred.”

122. In addition, GAAP requires that financial statements disclose significant risks and uncertainties associated with an entity’s business. American Institute of Certified Public Accountant’s Statement of Position No. 94-6.

123. Section 482 of the Internal Revenue Code and the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* published by the Organization for Economic Cooperation and Development (“OECD”) provide guidance on the appropriate allocation of income and the appropriate pricing of transactions involving the transfer of goods and services between related or controlled parties.<sup>11</sup>

124. Section 482 of the Internal Revenue Code authorizes the IRS to adjust the income, deductions, credits, or allowances of commonly controlled taxpayers to prevent evasion of taxes or to clearly reflect their income. The regulations under section 482 generally provide that prices charged by one affiliate to another, in an intercompany transaction involving the transfer of goods, services, or intangibles, *yield results that are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances.*

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<sup>11</sup> The OECD is a forum where the governments of thirty democratic governments work to coordinate domestic and international economic, social, environmental and governance policies.

In addition, the April 2002 edition of the *OECD Observer* notes:

Not long ago, transfer pricing was a subject for tax administrators and one or two other specialists. But recently, politicians, economists and businesspeople, as well as NGOs, have been waking up to the importance of who pays tax on what in international business transactions between different arms of the same corporation. Globalisation is one reason for this interest, the rise of the multinational corporation is another. Once you take on board the fact that more than 60% of world trade takes place within multinational enterprises, the importance of transfer pricing becomes clear.

Transfer pricing refers to the allocation of profits for tax and other purposes between parts of a multinational corporate group. Consider a profitable UK computer group that buys micro-chips from its own subsidiary in Korea: how much the UK parent pays its subsidiary – the transfer price – will determine how much profit the Korean unit reports and how much local tax it pays. If the parent pays below normal local market prices, the Korean unit may appear to be in financial difficulty, even if the group as a whole shows a decent profit margin when the completed computer is sold. UK tax administrators might not grumble as the profit will be reported at their end, but their Korean counterparts will be disappointed not to have much profit to tax on their side of the operation. This problem only arises inside corporations with subsidiaries in more than one country; if the UK company bought its microchips from an independent company in Korea it would pay the market price, and the supplier would pay taxes on its own profits in the normal way. It is the fact that the various parts of the organization are under some form of common control that is important for the tax authority as this may mean that transfers are not subject to the full play of market forces.

\* \* \*

***In a bid to avoid such problems, current OECD international guidelines are based on the arm's length principle – that a transfer price should be the same as if the two companies involved were indeed two independents, not part of the same corporate structure.*** The arm's length principle ("ALP"), despite its informal sounding name, is found in Article 9 of the OECD Model Tax Convention and is the framework for bilateral treaties between OECD countries, and many non-OECD governments, too.

The OECD Transfer Pricing Guidelines provide a framework for settling such matters by providing considerable detail as to how to apply the arm's length principle . . . .

Concerning the general risks associated with transfer pricing arrangements, PwC's web site on May 5, 2005 noted:

***Tax Authorities worldwide are imposing new and stricter documentation requirements on companies in relation to their transfer pricing arrangements, and failure to comply can result in significant penalties.*** With the ever changing transfer pricing regulations, companies need an efficient framework for producing the required level of documentation to defend their transfer pricing data. [Emphasis added.]

In addition, the March 2004 issue of CFO magazine reported:

According to transfer-pricing experts, the IRS's decision to take Glaxo to court reflects new thinking on the part of the agency. They say the new thinking is enshrined in ***new regulations, proposed by the IRS last September. The rules would radically change how the U.S. tax authority treats services supplied to parent companies by affiliates in other tax jurisdictions (and vice versa)*** – including jurisdictions that offer enough tax incentives to be considered havens. “The new rules will allow the IRS to deal with this issue much more effectively,” observes Deloris Wright, a principal in the Denver office of consulting firm The Analysis Group.

\* \* \*

The current IRS rules are similar to those in the 29 other members of the Organization for Economic Cooperation and Development (OECD). And that means that, should the new IRS rules be ratified, one or more of those foreign tax authorities could add insult to injury. ***If another OECD member disagrees with the IRS interpretation of proper transfer pricing, the parent or subsidiary in that country would still owe tax on the portion of profit subject to tax in the United States – subjecting that amount to double taxation.*** [Emphasis added.]

125. As defendants knew or recklessly ignored, THC, in violation of GAAP and the SEC reporting rules and regulations, failed to disclose its contingent liabilities and significant risks and uncertainties associated with its transfer pricing practices which were designed to evade U.S income tax laws during the Class Period.

126. As noted herein, THC transfer pricing arrangements required each of THC's wholesale distribution companies to purchase products from a THC subsidiary that was incorporated in a “tax haven” jurisdiction. Former THC employees contacted by the Lead Plaintiffs' counsel have stated that THC's subsidiaries domiciled in tax favorable jurisdictions would routinely charge THC's wholesale distribution companies grossly inflated “commissions” which bore no relationship to the

actual services provided by them. As a result, the income of the subsidiaries located in tax favorable jurisdictions would be materially overstated and the income of THC's wholesale distribution subsidiaries, including its principal operating subsidiary THC USA, would be materially understated.<sup>12</sup>

127. For example, CI 1, stated that after joining the Company, it took him/her “about *three days*” to realize that THC was paying its foreign buying subsidiaries' commissions that were “significantly higher than the industry standard.” CI 1 stated THC paid its foreign buying subsidiaries “commission” of 10% - 13%, when in his /her experience, commissions for similar services at Ralph Lauren and Perry Ellis ranged between 5% - 7%.

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<sup>12</sup> Concerning materiality, GAAP, in the SEC's Staff Accounting Bulletin (“SAB”) No. 99 notes:

. . . the staff believes that there are numerous circumstances in which misstatements below 5% could well be material. Qualitative factors may cause misstatements of quantitatively small amounts to be material; as stated in the auditing literature:

\* \* \*

For the reasons noted above, the staff believes that a registrant and the auditors of its financial statements should not assume that *even small intentional misstatements in financial statements, for example those pursuant to actions to “manage” earnings, are immaterial. While the intent of management does not render a misstatement material, it may provide significant evidence of materiality. The evidence may be particularly compelling where management has intentionally misstated items in the financial statements to “manage” reported earnings. In that instance, it presumably has done so believing that the resulting amounts and trends would be significant to users of the registrant's financial statements.* The staff believes that investors generally would regard as significant a management practice to over-or under-state earnings up to an amount just short of a percentage threshold in order to “manage” earnings. Investors presumably also would regard as significant an accounting practice that, in essence, rendered all earnings figures subject to a management-directed margin of misstatement. [Footnotes deleted, emphasis added.]

128. The above representation by CI 1 concerning THC's and apparel industry's commission rates have been confirmed in various news reports. For example, according to a December 26, 2004 article in *The New York Times*:

***Industry executives who have seen Tommy's tax records and are familiar with operations of the company . . . estimate that Hilfiger paid 12 to 15 percent commissions to one of its subsidiaries*** involved in product development, manufacturing and quality control in Asia. ***That would be about twice the going rate in the industry.***

129. In fact, the December 26, 2004 article in *The New York Times* states that "one executive involved with the company said that the company's commissions were definitely higher than industry norms, but ranged from 8 to 12 percent."

130. In addition, a December 7, 2004 Fairchild Publications, Inc., *WWD* states that commissions to cover services such as product development, sourcing and quality control are commonplace in the industry and "usually the fees represent about 5 to 8 percent of the cost of the unit sold by the factory."

131. Furthermore, former Company employees stated that THC foreign buying offices provided very little service to the Company's wholesale distribution subsidiaries, functioning more like a simple order taker, but charged the THC subsidiaries grossly inflated commissions nonetheless.

132. As a result of the foregoing undisclosed practices, THC's income tax expense and liabilities during the Class Period were materially understated, thereby overstating earnings. For example, THC's fiscal 2004 financial statements reported that its income tax rate approximated 22% while its U.S. based competitors such as Polo Ralph Lauren, Jones Apparel and Liz Claiborne had tax rates more than 35%.

133. For example, a November 8, 2004 Fairchild Publications Inc., *WWD* article notes:

***“You have to [have a tax rate] somewhere in the neighborhood of 35 percent plus,” said an executive at another apparel manufacture, who asked not to be identified. “It’s a challenge to have a tax rate as low as they did.” [Emphasis added.]***

In addition, a November 15, 2004 *Investment Dealers Digest* article notes:

***“I think the [U.S. Attorney’s] investigation is kind of saying, **how were they able to get away with a 20% tax rate?**” said a [securities] analyst who did not want to be named. “**Most companies actually have a 35% tax rate**, which is normal because most of their tax jurisdiction is in the U.S.”***

\* \* \*

Meanwhile, at least one analyst doesn’t think the Hilfiger woes will spread through the apparel industry.

***“[Hilfiger has] always done it a bit differently than everyone else,” said Elizabeth Montgomery, retail analyst at SG Cowen. “The tax rate has always been a part a of their strategy, and no one else has that - anybody can go and decide to base themselves for tax purposes in any country. It just complicates things, and makes people realize their earnings could be something else if they had a normal tax rate.” [Emphasis added.]***

134. Securities industry retail analysts now estimate that the Company’s income tax liability has been understated by \$160 million, ***excluding*** fines and interest.

135. As a result, THC’s Class Period financial statements also violated GAAP’s income tax financial accounting and reporting standards as set forth in SFAS No. 109.<sup>13</sup>

136. In addition to the accounting violations noted above, THC presented its financial statements in a manner that also violated at least the following provisions of GAAP:

(a) The principal that financial statements identify material related party transactions and disclose: (a) the nature of the relationship(s), (b) a description of the transaction, (c)

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<sup>13</sup> The objectives of accounting for income taxes are to recognize (a) the amount of taxes payable or refundable for the current year and (b) deferred tax liabilities and assets for the future tax consequences of events that have been recognized in an enterprise’s financial statements or tax returns.

the dollar amount of transactions for each period for which an income statement is presented, and (d) the amounts due from or to the related parties as of the date of each balance sheet (SFAS No. 57);

(b) The concept 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 (Concepts Statement No. 1, ¶34);

(c) The concept 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 (Concepts Statement No. 1, ¶40);

(d) The concept that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it. 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 (Concepts Statement No. 1, ¶50);

(e) The concept that financial reporting should provide information about an enterprise's financial performance during a period. 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 (Concepts Statement No. 1, ¶42);

(f) The concept that financial reporting should be reliable in that it represents what it purports to represent. That information should be reliable as well as relevant is a notion that is central to accounting (Concepts Statement No. 2, ¶¶58-59);

(g) The concept 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 (Concepts Statement No. 2, ¶79); and

(h) The concept 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. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (Concepts Statement No. 2, ¶¶95, 97).

137. Moreover, THC's income tax strategies were an integral element of the Company's business plan and were evaluated by management on an on-going basis. In fact, THC's Forms 10-K for the years ended March 31, 2004 and 2003 disclosed:

The Company has recorded its provision for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized based on differences between the financial statement and tax bases of assets and liabilities using enacted tax rates that will be in effect at the time such differences are expected to reverse. ***Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.***

***The Company evaluates the probability of realizing its deferred tax assets on an ongoing basis. This evaluation includes estimating the Company's future taxable income in each of the taxing jurisdictions in which the Company operates as well as the feasibility of tax planning strategies.*** The Company is required to provide a valuation allowance if it is determined to be more likely than not that the Company will not be able to realize certain of its deferred tax assets. For certain of the Company's deferred tax assets, the Company had previously determined that it was not more likely than not that these assets will be realized and recorded the appropriate valuation allowance. Should the Company determine that it is more likely than not that it will realize certain of its deferred tax assets in the future, an adjustment would be required to reduce the existing valuation allowance and increase income. ***Conversely, if the Company should determine that an adjustment to increase the valuation allowance is required, such an adjustment would be charged to income tax expense in the period such conclusion was reached.*** [Emphasis added.]

138. Accordingly, THC has admitted that it evaluated the Company's future taxable income in each of the taxing jurisdictions in which it operated, as well as the feasibility of tax planning strategies on an on-going basis during the Class Period.

139. In addition, THC's Forms 10-K for the years ended March 31, 2004 and 2003 disclosed that, "The company's effective tax rate has been and is expected to continue to be a major factor in the determination of the company's profitability and cash flow."

140. These disclosures indicate that THC's income tax strategies were a centerpiece of the Company's business plan and were evaluated by management on an on-going basis. Accordingly, THC's transfer pricing arrangements were known to, and/or condoned by, the highest level of THC's management and the individual defendants during the Class Period.

141. The Company's Class Period Form 10-K and Forms 10-Q filed with the SEC were also materially false and misleading in that they failed to disclose known trends, demands, commitments, events, and uncertainties that were reasonably likely to have a materially adverse effect on the Company's liquidity, net sales, revenues and income from continuing operations, as required by Item 303 of Regulation S-K.

#### **False and Misleading Internal and Disclosure Control Statements and Management Certifications**

142. Congress enacted the Sarbanes-Oxley Act of 2002 ("SOX"), in part, to heighten the responsibility of public company senior managers and directors associated with the quality of financial reporting and disclosures made by their companies.

143. In addition, SEC promulgated Item 307 of Regulation S-K [17.C.F.R. §229.307] which provides that businesses like THC generally disclose:

- a) The conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the small business issuer's disclosure controls and procedures (as defined in Rule 13a 14(c) or Rule 15d 14(c) of this chapter) based on their evaluation of these controls

and procedures as of a date within 90 days of the filing date of the quarterly or annual report that includes the disclosure required by this paragraph; and

b) Disclose whether or not there were significant changes in the registrant's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

144. As a result of the foregoing requirements, THC's fiscal 2003 and 2004 Forms 10-K in all material respects disclosed:

Based on their evaluation as of a date within 90 days of the filing date of this report, ***the Company's principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures*** (as defined in Sections 240.13a-14(c) and 240.15d-14(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) ***are effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.*** There were no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

145. These disclosures, which were repeated in all material respects in THC's second and third fiscal 2003 Forms 10-Q, its fiscal 2004 Forms 10-Q and its first quarter fiscal 2005 Form 10-Q filed with the SEC, were materially false and misleading when made because such filings failed to: (1) disclose the information required by GAAP and the SEC rules and regulations associated with THC's income tax practices; and (2), record, process, summarize and report THC's true income tax expense and liability during the Class Period.

146. These false and misleading representations were then falsely certified, in all material respects, by defendants Horowitz, Dyer and/or Scirocco and included in THC's above noted Forms 10-K and 10-Q:

## CERTIFICATIONS

I, . . . , certify that

I have reviewed this . . . report . . . of Tommy Hilfiger Corporation;

***Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading*** with respect to the period covered by this report;

3 Based on my knowledge, ***the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations*** and cash flows of the registrant as of, and for, the periods presented in this report;

***The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures*** (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

- a) ***Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities***, particularly during the period in which this report is being prepared;
- b) ***Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures***, as of the end of the period covered by this report based on such evaluation; and
- c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are

reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

147. Defendants had the responsibility to insure that THC's financial statements were presented in conformity with GAAP. More particularly, Section 13 of the Exchange Act of 1934 requires that:

Every issuer which has a class of securities registered pursuant to Section 12 of this title and every issuer which is required to file reports pursuant to Section 15(d) of this title shall:

- A. make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
- B. devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
  - i. transactions are executed in accordance with management's general or specific authorization;
  - ii. transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;
  - iii. access to assets is permitted only in accordance with management's general or specific authorization; and
  - iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

148. Nonetheless, the defendants participated in a scheme which allowed THC to issue financial statements that violated GAAP and the SEC's accounting rules and regulations during the Class Period. In failing to file financial statements with the SEC which conformed to the requirements of GAAP and the SEC's accounting rules and regulations, THC repeatedly

disseminated financial statements that were presumptively misleading and inaccurate and misrepresent the truth about the Company and its business, operations and financial performance to the detriment of those who relied on them.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

149. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding THC, their control over, and/or receipt and/or modification of THC's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning THC, participated in the fraudulent scheme alleged herein.

150. In addition, certain of the Individual Defendants, including Chou and Stroll directly benefited from THC's tax evasion scheme, by receiving millions of dollars in "consulting fees" paid by the Company's tax haven subsidiaries in the BVI. According to THC's SEC filings defendants Chous and Stroll were the direct beneficiaries of THEH's "consulting agreement" with Fasco International. Additionally, defendant Stroll benefited from THEH's consulting agreement with Polostro Limited domiciled in the Channel Islands, another offshore tax haven. CI 1, a former THC production manager, stated that the inflated foreign buying office commissions had involved some kind of "kickback" scheme involving the Hong Kong office and the various factories. Both Chou and Stroll had extensive dealings with the Company in Hong Kong.

**Applicability of Presumption of Reliance:  
Fraud on the Market Doctrine**

151. At all relevant times, the market for THC's securities was an efficient market for the following reasons, among others:

(a) THC's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient market;

(b) As a regulated issuer, THC filed periodic public reports with the SEC and the NYSE;

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

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

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

**NO SAFE HARBOR**

153. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pled in this complaint. Many

of the specific statements pled herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pled herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of THC who knew that those statements were false when made.

#### **LOSS CAUSATION/ECONOMIC LOSS**

154. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated THC’s stock price and operated as a fraud or deceit on Class Period purchasers of THC stock by misrepresenting the Company’s financial results, business success and future business prospects, and concealing the extent and seriousness of manipulations involving commissions charges by THC’s foreign buying offices and the Company’s improper tax evasion scheme. Defendants achieved this façade of success, growth and strong future business prospects by blatantly concealing the fraudulent conduct and misrepresenting THC’s business. Later, however, when Defendants’ prior misrepresentations were disclosed and became apparent to the market, THC stock fell precipitously as the prior artificial inflation came out of THC’s stock price. As a result of their purchases of THC stock during the Class Period, plaintiffs and other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

155. By improperly concealing its conduct, the Defendants presented a misleading picture of THC’s business and prospects. Thus, instead of truthfully disclosing during the Class Period that

THC's earnings did not reflect its true tax liabilities, defendants caused THC to conceal its violation of SEC and NYSE rules. During the Class Period, defendants repeatedly emphasized THC's improving financial condition which would lead to enhanced future results.

156. These claims of financial improvement caused and maintained the artificial inflation in THC's stock price throughout the Class Period and until the truth was revealed to the market.

157. Concurrent with the concealment of the improprieties by high level THC officials, Defendants also misled investors by asserting that the "relative level of earnings in the various taxing jurisdictions" was allowing THC to legitimately reduce its tax liabilities and achieve favorable results even in a difficult business environment.

158. Defendants' false and misleading statements had the intended effect and caused THC stock to trade at artificially inflated levels throughout the Class Period, reaching as high as \$ 29.75 per share.

159. On September 24, 2004, Defendants were forced to publicly disclose that it had received a grand jury subpoena issued by the U.S. Attorney's Office for the Southern District of New York seeking documents related to buying office commissions paid by the Company to one of its non-U.S. subsidiaries. On November 3, 2004, Defendants had to admit that THC's tax haven subsidiary – THEH was the recipient of "buying office commissions" from several of the Company's domestic and international subsidiaries. These public revelations indicated that THC had been illegally shifting hundreds of millions of dollars of revenues from taxable jurisdictions to offshore tax havens where it paid no income taxes. As investors and the market became aware of these issues, the prior artificial inflation came out of THC's stock price, damaging investors.

160. As a direct result of defendants' admissions and the public revelations regarding the truth about THC's previously reported financial results and its actual business prospects going

forward, THC's stock price plummeted nearly 26%, falling from \$ 13.17 in overnight trading to a low of \$9.75 per share before closing off 22% at \$10.30 on September 27, 2004, a drop of \$2.87 per share. Then following the November 3, 2004 announcements concerning THC's tax evasion scheme, the stock dropped an additional 5% from \$9.45 per share to close at \$8.94 per share on November 3, 2004, a drop of \$0.51. These drops removed the inflation from THC's stock price, causing real economic loss to investors who had purchased the stock during the Class Period.

161. In sum, as the truth about Defendants' fraud and THC's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock and plaintiff and other members of the Class were damaged, suffering economic losses of up to \$4.23 per share.

162. The 32% decline in THC's stock price at the end of the Class Period was a direct result of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of THC's stock price declines negate any inference that the loss suffered by plaintiffs and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent conduct. During the same period in which THC's stock price fell 32% from \$13.17 per share as a result of defendants' fraud being revealed, the Standard & Poor's 500 securities index was essentially flat. The economic loss, *i.e.*, damages, suffered by plaintiffs and other members of the Class was a direct result of defendants' fraudulent scheme to artificially inflate THC's stock price and the subsequent significant decline in the value of THC's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

## **FIRST CLAIM**

### **Violation of Section 10(b) of the Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants**

163. Lead Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

164. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding THC's business, operations, management and the intrinsic value of THC securities; and (ii) cause Lead Plaintiffs and other members of the Class to purchase THC securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

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

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

167. These Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of

conduct as alleged herein in an effort to assure investors of THC's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about THC and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of THC securities during the Class Period.

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

169. The Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for

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

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

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

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

173. As a direct and proximate result of defendants' wrongful conduct, Lead Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation of Section 20(A) of the Exchange Act Against the Individual Defendants**

174. Lead Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

175. The Individual Defendants acted as controlling persons of THC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Lead Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Lead Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

176. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control

or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

177. As set forth above, THC and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Lead Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, Lead Plaintiffs pray for relief and judgment, as follows:

(a) Determining that this action is a proper class action, certifying Lead Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Lead Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Lead Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Lead Plaintiffs hereby demand a trial by jury.

DATED: May 13, 2005

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