



**IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

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IN RE TYSON FOODS, INC. CONSOLIDATED : Consolidated C.A. No. 1106-N  
SHAREHOLDER LITIGATION :  
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**CONSOLIDATED COMPLAINT**

Plaintiffs AMALGAMATED BANK (“Amalgamated”), Trustee of the LongView MidCap 400 Index, and ERIC MEYER (“Meyer”) (collectively, “Plaintiffs”), shareholders of Tyson Foods, Inc. (“Tyson” or the “Company”), bring the following Consolidated Complaint derivatively on behalf of Tyson, and as a class action on behalf of themselves and all others similarly situated, against defendants Don Tyson, John Tyson, Barbara Tyson, Lloyd V. Hackley, Jim Keever, David A. Jones, Richard L. Bond, Jo Ann R. Smith, Leland E. Tollett, Joe F. Starr, Neely E. Cassady, Fred Vorsanger, Shelby D. Massey, Donald E. Wray, Wayne B. Britt, Gerald M. Johnston, Barbara Allen, Albert C. Zapanta, and Tyson Limited Partnership (“TLP”) (collectively, “Defendants”), and aver as follows:

**SUMMARY OF THE ACTION**

1. This action is brought against certain present and former members of Tyson’s Board of Directors (the “Board”) who, through a series of improper stock option grants and related party transactions, have demonstrated a wanton disregard for their fiduciary duties to the Company and its shareholders. Instead of acting in the best interests of the Company, the Defendants have favored the personal interests of the

controlling shareholders – members of the Tyson family (the “Tyson Family”). As set forth more fully below, Defendants breached their fiduciary duties in four principal ways.

2. First, on no fewer than four occasions, Defendants timed stock option grants to certain directors and officers of Tyson to benefit the recipients at the expense of the Company. Because the relevant stock option plans required the options to carry strike prices of at least the publicly traded price of the Company’s stock at the time of the grant, Defendants deliberately timed the grant of millions of stock options to occur shortly before public announcements that they *knew* would increase the stock price. As a result, these stock option grants (totalling options on 2,789,400 shares of Company stock) gave the insider recipients the benefit of this inside information by allowing them to exercise their options at a lower price than if the options had been granted after the information was disseminated to the investing public, representing a potential cost to the Company of at least \$5.8 million.

3. Second, Defendants have wasted Tyson’s assets by causing the Company to enter into grossly excessive compensation arrangements and “consulting” contracts with members of the Tyson Family, and their friends, without regard to any legitimate business purpose. For example, Defendants caused the Company to enter into at least four (4) contracts with members of the Tyson Family and their friends, which provide for continued payments for “consulting” services following their retirement from the Company and extend such consulting payments posthumously. It is difficult to conceive what consulting services a deceased individual may provide to Tyson. Even Don Tyson, the retired Chairman and Chief Executive Officer (and son of the founder) who has enjoyed the benefit of one such contract that paid him \$800,000 per year, plus life and

health insurance, and travel and entertainment expenses, acknowledged the absurdity of the purported “consulting” justification when he stated that he “look[ed] forward to following [Tyson’s] progress from [his] boat.” Following an SEC inquiry into the adequacy of Tyson’s compensation-related disclosures, where the SEC found a lack of internal controls over the Tyson family’s use of Company assets, the Board did not react by reducing the amount paid to Don Tyson, or eliminating the contract altogether. Instead, the Board approved a superseding “consulting” agreement with Don Tyson that pays him even more (\$1.2 million per year, including hundreds of thousands of dollars worth of perquisites), but still requires no actual work by Don Tyson.

4. Third, Defendants have allowed the Tyson Family to run roughshod over the Company’s finances by causing the Company to enter into a series of unjustified related party transactions, some of which the Company was forced to cancel following an internal review spawned by an ongoing SEC investigation. Past and present members of the Board failed to ensure that the related party transactions entered into by Tyson were fair to the Company, even after this Court ordered that the Board review the fairness of the Company’s related party transactions. Many of these related party transactions were, in fact, unfair to the Company, causing millions of dollars of losses to Tyson, and unjustly enriching Tyson family members and friends. Defendants have allowed and caused to be made materially misleading and inadequate disclosures in proxy statements regarding these related party transactions.

5. Fourth, Defendants have allowed and caused to be made materially misleading statements and inadequate disclosures in proxy statements regarding executive perquisites and personal benefits paid to Don Tyson, to other Tyson executives,

and to Tyson family members and friends. These benefits served no legitimate business purposes, and were concealed from shareholders in advance of annual shareholder meetings where shareholder votes were solicited. Certain of these undisclosed executive perquisites and personal benefits have already given rise to an SEC enforcement proceeding which resulted in the payment of penalties by Tyson and Don Tyson in the amount of \$2.2 million.

### **THE PARTIES**

6. Plaintiff Amalgamated is an eighty-year-old banking institution that prides itself on providing financial services to working people. Amalgamated has locations in New Jersey, California, New York, and Washington D.C., with its main office located in Manhattan at 15 Union Square, New York, New York 10003. Amalgamated brings this action as trustee of the LongView MidCap 400 Index Fund, which at the time of filing its original complaint in this action, was the owner of 88,891 shares of Tyson stock. The LongView MidCap 400 Index Fund has been the owner of shares of Tyson stock at all relevant times, and commits to retaining an ownership interest in Tyson stock throughout the course of this litigation.

7. Plaintiff Meyer is an individual resident of New Jersey, and beneficial owner of 2,000 shares of common stock in Tyson. Meyer has owned shares of Tyson stock at all relevant times, and commits to retaining ownership interest in Tyson stock throughout the course of this litigation.

8. Nominal defendant Tyson is a Delaware corporation with its principal executive offices located at 210 West Oaklawn Drive, Springdale, Arkansas 72762-6999. Tyson was founded in the 1930s by John Tyson, who served as Chairman of the Board

and Chief Executive Officer of the Company until his death in 1967. Tyson is the largest provider of protein products in the world, producing and marketing beef, pork, and chicken. As of October 2, 2004, Tyson had 250,560,172 shares of Class A Common Stock and 101,625,548 shares of Class B Common Stock outstanding. Each Class A share is entitled to one vote on all matters subject to a shareholder vote, while each Class B share is entitled to ten votes.

9. Defendant Don Tyson, the son of the founder of the Company, has been a member of Tyson's Board of Directors since 1952, and was the Senior Chairman of the Board from 1995 to 2001 when he retired and became a "consultant" to the Company. Don Tyson also served as Chief Executive Officer of Tyson until 1991. Currently, Don Tyson, personally and through his position as the managing general partner of TLP, controls over 99% of the outstanding Class B common stock, which carries more than eighty percent of Tyson's aggregate voting power. On October 19, 2001, upon his retirement, Tyson and Don Tyson entered into a consulting contract pursuant to which Tyson: (a) committed to pay Don Tyson \$800,000 per year for ten years (extending such benefits to his survivors in the event of his passing); (b) granted him one million shares of Class A Common Stock; and (c) agreed to cover his travel and entertainment costs, his estimated income tax liabilities, and the continuation of life and health insurance benefits. Subsequent to an SEC investigation in which Tyson was informed that Don Tyson was using the corporate treasury as his own personal piggy bank, Tyson entered (and the Tyson Board approved) an even more lucrative consulting contract with Don Tyson, whereby he receives \$1.2 million annually, as well as additional perquisites amounting to

hundreds of thousands of dollars. Neither consulting contract required, or requires, Don Tyson to perform any actual work or provide any consulting services to the Company.

10. Defendant John Tyson, Don Tyson's son, has been a member of the Tyson Board since 1984, and has been Chairman of the Board since 1998. John Tyson also serves as the Company's Chief Executive Officer, a position he has held since April 2000, and served as Tyson's President from April 2000 to October 2001. He currently has an employment contract with Tyson which extends at least until February 2008, paying him a minimum annual salary of \$1 million. Tyson has granted John Tyson 2 million options currently valued at over \$8 million and 1,826,397 shares of restricted stock worth over \$25.5 million since the Company's Stock Incentive Plan was approved in 2000. In addition, John Tyson is a general partner of the TLP, which controls approximately eighty percent of Tyson's voting power.

11. Defendant Barbara A. Tyson, the widow of Randal Tyson (brother of Don Tyson), has been a Tyson Board member since 1988. In 2002, after serving as the Company's Vice President, Ms. Tyson retired and entered into a ten-year advisory contract with the Company whereby Ms. Tyson was to provide consulting services to Tyson for an annual salary of \$7,200. As of October 2004, Ms. Tyson was the beneficial owner of 167,095 shares of Tyson Class A common stock. Ms. Tyson is a general partner of the TLP, which controls approximately eighty percent of Tyson's voting power.

12. Defendant Lloyd V. Hackley ("Hackley") has been a Tyson Board member since 1992. Hackley is President and Chief Executive Officer of Lloyd V. Hackley and Associates, Inc., and is also a director of Branch Banking and Trust

Corporation, headquartered in Winston-Salem, North Carolina. Hackley beneficially owns at least 13,510 shares of Tyson Class A common stock. Hackley serves as Chairman of the Board's Governance Committee (formerly known as the Special Committee) and is a member of the Board's Compensation Committee.

13. Defendant Jim Kever ("Kever") has been a member of Tyson's Board of Directors since 1999. Kever is the founding partner of Voyent Partners, LLC, an investment partnership. Kever is also Chairman of the Board and owns 12% of the outstanding stock of DigiScript, Inc., a company in which John Tyson made an indirect investment of \$204,000 in 2003. Kever owns at least 2,621 shares of Tyson Class A Common Stock, and serves as the Chairman of the Board's Audit Committee and is a member of the Board's Governance Committee (formerly the Special Committee).

14. Defendant David A. Jones ("Jones") has been a Tyson Board member since 2000. Jones is the Chairman and Chief Executive Officer of Rayovac Corporation since 1996. Jones is the beneficial owner of 2,492 shares of Tyson Class A Common Stock. Additionally, Jones serves on the Board's Compensation and Audit Committees. Jones resigned from the Tyson Board of Directors on June 3, 2005, after the filing of this action.

15. Defendant Richard L. Bond ("Bond"), the Company's President and Chief Operating Officer, has been a Tyson Board member since 2001. Bond is the beneficial owner of at least 1,523,288 shares of Tyson Class A common stock and the owner of 864,764 shares of restricted stock valued at over \$12 million. In 2004, Bond was paid a salary of \$1,000,000, a bonus of \$2.3 million, over \$580,000 of "other annual compensation," along with a stock option award of 280,000 shares. Tyson and Bond

entered into an employment contract in July 2003, which provides for his active employment by Tyson through February 2008. Under this contract, Bond is guaranteed a minimum annual salary of \$970,000 and a bonus to be determined by the Compensation Committee.

16. Defendant Jo Ann R. Smith (“Smith”) has been a Tyson Board member since 2001. Smith is the President of Smith Associates, an agricultural marketing business. She is the beneficial owner of 6,932 shares of Tyson Class A common stock. Smith is the Chairperson of the Board’s Compensation Committee and a member of both the Board’s Audit and Governance Committee.

17. Defendant Leland E. Tollett (“Tollett”) has been a Tyson Board member since 1984. Tollett served as the Company’s Chairman of the Board and Chief Executive Officer from 1995 to 1998, when he retired and became a consultant to the Company. Pursuant to a ten-year consulting contract entered into in 1999, Tyson paid Tollett \$310,000 annually for five years (until 2004), and is now paying Tollett annual compensation of \$125,000 until January 2009. Under the contract, Tyson also provides health insurance and the continued vesting of Tollett’s outstanding stock options. Tollett is the beneficial owner of 3,398,034 shares of Tyson Class A common stock. Tollett is also a general partner of the TLP, which controls approximately eighty percent of Tyson’s voting power.

18. Defendant Wayne B. Britt (“Britt”) was a Tyson Board member from 1998 until 2000. Britt served as the Company’s Chief Executive Officer from 1998 until 2000; as Executive Vice President and Chief Financial Officer from 1996 to 1998; as Senior Vice President, International Division from 1994 to 1996; as Vice President,

Wholesale Club Sales and Marketing from 1992 to 1994; and as Secretary-Treasurer, Controller, Cost and Budget Manager, and Complex Controller prior to 1992.

19. Defendant Joe F. Starr (“Starr”) was a Tyson Board member from 1969 until 2002. He also served as the Company’s Vice President until 1996. Starr is a private investor and has been involved in numerous related-party transactions with Tyson for many years.

20. Defendant Neely E. Cassady (“Cassady”) was a Tyson Board member from 1974 until 2000. He served as a member of the Board’s Audit and Compensation Committees from at least 1994 to 2000, and was a member of the Special Committee appointed to review related party transactions from 1997 to 2000.

21. Defendant Fred Vorsanger (“Vorsanger”) was a Tyson Board member from 1977 until 2000. Vorsanger is a private business consultant, and during his tenure as a director at Tyson was manager of Bud Walton Arena and Vice President Emeritus of Finance and Administration at the University of Arkansas. He served as a member of the Tyson Board’s Audit Committee and Compensation Committee from at least 1994 to 2000, and as a member of the Tyson Board’s Special Committee from 1997 to 2000.

22. Defendant Shelby D. Massey (“Massey”) was a Tyson Board member from 1985 through 2002 and served as Senior Vice Chairman of the Board from 1985 to 1988. Massey is a farmer and a private investor. Massey was also a member of the Board’s Compensation Committee (from at least 1994 to 2002), Special Committee (1997 to August 2002), and Governance Committee (from August 2002 through December 2002).

23. Defendant Donald E. Wray (“Wray”) was a Tyson Board member from 1994 until 2002. Wray was the Company’s President from April 1995 until 2000, Chief Operating Officer from 1991 until 1999, and Senior Vice President of the Sales and Marketing Division beginning in 1985. Wray and Tyson entered into a Senior Executive Employment Agreement in 1998 whereby Tyson paid Wray \$200,000 annually until 2003 and will pay him \$100,000 annually until 2008 plus additional benefits and perquisites.

24. Defendant Gerald M. Johnston (“Johnston”) was a Tyson Board member from 1996 until 2002. Johnston was Executive Vice President of Finance for Tyson from 1981 to 1996, when he stepped down and became a consultant to the Company.

25. Defendant Barbara Allen (“Allen”) was a Tyson Board member from 2000 until 2002. Allen served as Advisory Support for the Women’s United Soccer Association, and prior to that was President and Chief Operating Officer of Paladin Resources, LLC. During her tenure on the Board, she served on the Compensation Committee, Audit Committee and Compensation Subcommittee.

26. Robert L. Peterson (“Peterson”), deceased, joined Tyson’s Board in 2001 after Tyson acquired Iowa Beef Packers, Inc. (“IBP”), where Peterson had been Chairman of the Board and the Chief Executive Officer. Upon his retirement, Peterson entered into a contract with Tyson on October 1, 2001 to provide advisory services to the Company. Pursuant to the agreement, Peterson would receive a salary of \$400,000 per year plus bonus payments, annual country club dues, use of Tyson’s aircraft, and health insurance – all of which would become payable to his wife in the event of his death. Peterson left the Board in November 2003 due to a medical condition, and died in May

2004. This Complaint seeks injunctive relief in order to prevent Tyson from continuing to pay Peterson's spouse the improper "salary" and benefits she receives pursuant to the October 1, 2001 contract.

27. Defendant Albert C. Zapanta ("Zapanta") was elected to the Board in May 2004. Zapanta is President and CEO of the United States-Mexico Chamber of Commerce based in Washington, D.C. Zapanta was identified, introduced, and nominated to the Board by John Tyson and currently sits on the Board's Compensation and Governance Committees.

28. Defendant Tyson Limited Partnership (referred to herein as "TLP"), is a limited partnership organized under the laws of the state of Delaware. It is the controlling shareholder of Tyson through its ownership of over 100 million Class B shares of the Company. TLP, in turn, is controlled by Don Tyson, its general partner and majority limited partner. Don Tyson and the Randal W. Tyson<sup>1</sup> Testamentary Trust have a 99% interest in the TLP general and limited partnership.

29. Defendants John Tyson, Don Tyson, Barbara Tyson, Hackley, Kever, Jones, Bond, Smith, Tollett, Starr, Cassady, Vorsanger, Wray, Britt, Massey, Johnston, Allen, and Zapanta will sometimes be referred to herein as the Individual Defendants.

30. By virtue of the Individual Defendants' positions as present or former directors and/or officers of Tyson Foods, they have been in a fiduciary relationship with Tyson and its public shareholders and owed to Tyson and its shareholders the highest obligations of good faith, fair dealing, due care and candor, and had an obligation to

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<sup>1</sup> Randal W. Tyson was Don Tyson's brother. His widow, defendant Barbara A. Tyson, is currently a member of the Tyson board.

protect and preserve the assets and interests of the Company. By failing to inquire about continuing related-party transactions, acting in a manner to further certain directors' and officers' own interests, permitting waste of the Company's assets, and making inaccurate and incomplete disclosures to shareholders, the Individual Defendants have breached their fiduciary duties.

### **JURISDICTION**

31. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

### **DERIVATIVE ALLEGATIONS**

32. Plaintiffs bring the derivative counts for the benefit of Tyson to redress injuries suffered by Tyson as a direct result of the breaches of fiduciary duty by the Individual Defendants.

33. The Individual Defendants, in committing the acts alleged herein, acted unlawfully and intentionally, were grossly negligent, mismanaged the business of Tyson, and breached their fiduciary duties of loyalty, care, and disclosure to Tyson and its public shareholders.

34. Plaintiff Amalgamated has owned Tyson stock continuously during the wrongful course of conduct by the Defendants alleged herein. Plaintiff Meyer has owned Tyson stock since September 2001. Both Plaintiffs continue to own Tyson stock, and will retain an equity interest in Tyson throughout the course of this litigation.

35. Plaintiffs will fairly and adequately represent the interests of Tyson and its shareholders in enforcing and prosecuting their rights and have retained counsel competent and experienced in stockholder derivative litigation.

## CLASS ACTION ALLEGATIONS

36. Plaintiffs bring the class action count (Count VIII) pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of themselves and all others who owned Tyson Class A common stock as of December 23, 2003 (the “Class”), the record date for the vote at the 2004 annual meeting. Excluded from the Class are the Individual Defendants, as well as their affiliates and assigns.

37. This action is properly maintainable as a class action.

38. The Class is so numerous that joinder of all members is impractical. As of June 26, 2004, the Company had outstanding 251,360,294 shares of its Class A common stock, held by individuals and entities too numerous to bring separate actions. During all times relevant to Count VII, Tyson had more than 100 million Class A shares outstanding. It is reasonable to assume that holders of the Class A common stock are geographically dispersed throughout the United States.

39. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia, whether Defendants caused the 2004 Proxy Statement to misrepresent the payment of perquisites to defendants Don Tyson, John Tyson, Peterson and Bond, and whether Defendants caused the 2004 Proxy Statement to misrepresent the payments made to Tyson family members and friends, and to Board members themselves in related parties transactions with the Company.

40. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are members of the Class, and Plaintiffs’ claims are typical of the claims of the other members of the Class.

Accordingly, Plaintiffs are adequate representatives and will adequately protect the interests of the Class.

41. Plaintiffs anticipate that there will be no difficulty in the management of this litigation as a class action.

42. The Individual Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

43. Plaintiffs have suffered nominal damages on account of the Individual Defendants' breaches of their fiduciary duties to disclose material information in annual proxy statements, because such breaches have improperly interfered with and denied the Class plaintiffs their voting franchise. Plaintiffs have also suffered damages in the form of payments made, and options granted, to Board members who were elected based upon their failures to disclose and material misrepresentations regarding "other compensation" and "travel and entertainment" disclosures, which unbeknownst to shareholders took the form of improper executive perquisites and personal benefits and which served no legitimate business purposes. Plaintiffs seek recoupment and disgorgement of the ill-gotten gains of Board members who were elected in 2004 based upon their failures to disclose and material misrepresentations in the 2004 Proxy Statement.

44. The prosecution of separate actions would create the risk of:
- (a) inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and/or
  - (b) adjudications which would as a practical matter be dispositive of the interests of other members of the Class.

## **PROCEDURAL BACKGROUND**

45. On August 26, 2004, Plaintiff Meyer made a written demand upon the Company under Section 220 of the Delaware General Corporation Law to inspect certain of its books and records (the “Demand”).

46. In the Demand, Meyer indicated that “[t]he purpose of the Demand is to determine whether certain transactions initiated and implemented by the controlling directors and officers of Tyson benefit those directors and officers at the expense of Tyson and its Class A shareholders and to investigate ... certain related party transactions (as of December 31, 2003)<sup>2</sup> as disclosed in Tyson public filings ....” The list of “Documents Requested” included:

5. All documents relating to consideration or approval by the Board of Directors of the Company, or any committee thereof, relating to remuneration given to Tyson Directors, management, and employees in relation to disclosed related party transactions.

6. All documents relating to consideration or approval by the independent auditors of the Company relating to remuneration given to Tyson Directors, management, and employees in relation to disclosed related party transactions.

47. In response to the Meyer Demand, and pursuant to a confidentiality agreement demanded by Tyson (attached hereto as Exhibit 1), the Company produced documents related to the SEC investigation of Don Tyson’s compensation and perquisites and documents relating to the SEC investigation of Tyson involvement in accounting fraud at Royal Ahold. However, despite repeated requests, Tyson refused to produce its

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<sup>2</sup> As of August 26, 2004, the Tyson proxy statement that included related party transactions for 2004 had not yet been filed.

Governance Committee's minutes or reports in connection with the related party transactions reported in Tyson's annual proxy statements, including those related to related party farm lease payments, aircraft lease agreements, swine grow out, breeder hen research, poultry grow out, waste water treatment, warehouse leases, and cattle purchases.

48. Meyer filed a Section 220 Complaint against the Company on June 7, 2005. In response to the Section 220 Complaint, Tyson agreed to produce the documents requested. On July 21, 2005, Tyson produced the requested documents.

49. At the same time, Plaintiff Amalgamated had been investigating the conduct of the Individual Defendants with respect to some of the same underlying events. Amalgamated filed a Complaint on February 16, 2005, alleging direct class action claims and derivative claims against the Individual Defendants for proxy disclosure violations and breaches of fiduciary duty, respectively. On July 1, 2005, Amalgamated filed an Amended Complaint.

50. After receiving and reviewing documents from Tyson, Meyer too concluded that the evidence showed serious breaches of fiduciary duty by the Individual Defendants, who failed to fulfill their fiduciary duties to the Company (1) by failing to review approximately \$100 million of related party transactions as required by the charter of the Tyson Board of Directors' Governance Committee, (2) by reimbursing Don Tyson for \$1.7 million of expenses which the Tyson Board of Directors' Compensation Committee determined were improperly charged to the Company and, therefore, owed to the Company by Don Tyson subsequent to an SEC investigation, (3) by purchasing 1,028,577 shares of Class A stock from Don Tyson for \$15.5 million, and (4) by failing

to review over \$5 million in related party transactions with a company owned by a close friend of Don Tyson. Meyer filed his Derivative Complaint on September 12, 2005. Pursuant to the confidentiality agreement executed by and between Meyer and Tyson, Meyer requested leave to file the Derivative Complaint under seal.

51. On September 21, 2005, this Court requested that counsel for Meyer confer with counsel for Amalgamated for purposes of consolidating this action against Tyson and the Individual Defendants. Plaintiffs' counsel thereafter agreed to consolidate their actions. This Consolidated Complaint follows.

### **FACTUAL BACKGROUND**

52. Tyson was founded in the 1930s by John Tyson. The corporation went public in 1963 and has since grown into the largest processor and marketer of protein products in the world. Throughout its existence, Tyson has been under the control of the Tyson family. In fact, three generations of Tysons have run the company – John Tyson; his son Don Tyson; and Don Tyson's son, John Tyson.

53. In 1998, John Tyson became Chairman of the Board at Tyson – following in his father's and grandfather's footsteps – and obtained control of the Tyson empire. Don Tyson, however, was not quite prepared to give up control and stayed on as Senior Chairman of the Board until 2001. With Don Tyson and John Tyson running the show, Tyson merged with IBP and formed the largest provider of protein products the world had ever seen and the second largest publicly-traded food company in the United States. The Tyson family had more power than ever.

54. The Tyson family's power over the Company is cemented by Tyson's current equity structure. Unlike most corporations of its size, Tyson maintains a dual

class stock structure, having both Class A and Class B voting stock. Tyson's Class A Stock receives one vote per share while the Class B stock receives ten votes per share. The TLP owns 99.9% of Tyson's Class B Stock. By maintaining this dual class stock structure, even over public shareholder opposition, the Tyson family maintains control over the Company's business with more than 80% of its voting power, despite the fact that its economic interest is substantially less than a majority.

55. The Tyson family squelched the minority shareholders' attempts in both 1999 and 2003 to recapitalize the Company's equity structure. The Tyson family's absolute ability to defeat these shareholder proposals was not enough for the Board. They went the extra step of trying to prevent the 1999 proposal from ever making it onto the ballot. The Board went to the SEC and requested a "no action" letter that would permit the Company to leave the proposal off the proxy – a request which was denied by the SEC. Both recapitalization proposals were defeated by the Tyson's voting power, but the 2003 proposal garnered support from nearly 50% of the non-Tyson family shares.

56. The saying "absolute power corrupts absolutely" could have been coined for the Tyson family. They have abused their power and have taken for themselves and their friends on the Board millions of dollars straight out of the Company coffers. By acting in the interest of the Tyson family over all others, Tyson's Board of Directors has breached its fiduciary duties and violated the trust of its shareholders.

### **The Special Committee**

57. In 1997, the Company's Board created a "Special Committee" pursuant to an order of this Court, "for the purpose of overseeing and reviewing related party and other special transactions between the Company and its directors, executive officers or

their affiliates.” The court order was entered as part of the settlement of *Herbets v. Tyson, et al.*, C.A. No. 14231 (Del. Ch.) (the “*Herbets* Action”), an action brought to remedy self-dealing transactions (including related party transactions and inadequate disclosures of “other compensation” being paid to Tyson executives) that occurred prior to 1997. Thus, as early as 1997, the Board was not only aware of past breaches of fiduciary duty and a pattern of self-dealing at Tyson, but the Board was specifically *put on notice that it must closely monitor all self dealing transactions going forward*. The Special Committee was composed of defendants Massey, Hackley, Jones and Kever, with Hackley serving as Chairman.

58. According to the Charter creating the Special Committee, its “primary functions” were to “(i) oversee and review related party and other special transactions between the Company and its directors, executive officers or their affiliates; (ii) review and recommend to the Board Corporate Governance Principles applicable to the Company; and (iii) review and recommend to the Board a Code of Conduct applicable to the Company.”

59. Pursuant to the court order approving the settlement of the *Herbets* Action, the Special Committee was specifically ordered to “review the reasonableness of Don Tyson’s requests for reimbursement annually.”

60. The Special Committee held only one meeting annually from 1999 to 2002, when it was replaced by the Governance Committee on August 2, 2002.

#### **The Governance Committee**

61. The Governance Committee of the Tyson Board of Directors was established in 2002 and is governed by a charter that requires the Governance Committee

to “review and approve” every “Covered Transaction.” That review is to be conducted annually, and “shall include an analysis of whether the terms of the transaction are fair to the Company.” The charter defines a “Covered Transaction” as “any transaction ... between the Company and any officer, director or affiliate of the Company that would be required under Securities and Exchange Commission rules and regulations to be disclosed in the Company’s annual proxy statement.”

62. The charter provides that the Governance Committee may “draw on the expertise of the management and corporate staff and, when appropriate, may hire outside legal, accounting or other experts or advisors to assist the Committee with its work.” It further provides that the Committee is to meet “normally ... four times per year ....” In fact, the Governance Committee did not meet at all in 2002, and met only once in 2003 and once in 2004.

63. As instructed by the Board of Directors’ Compensation Committee, in a report prepared after a review pursuant to an SEC investigation of Don Tyson in 2004, when the Company enters into a contract with a related party, the Governance Committee “shall consider whether a bid process should be required so that there can be no question as to the arm’s length nature and appropriate pricing of the contract.”

64. Since its inception, members of the Governance Committee have included defendants Hackley (Chairman), Massey, Kever and Smith. Zapanta joined the Governance Committee on November 19, 2004.

65. The Governance Committee did not fulfill its obligations under the charter. Neither the Governance Committee nor its predecessor, the Special Committee, reviewed approximately \$100 million of related party transactions, a significant

proportion of which involved Don Tyson. Neither the Governance Committee nor the Special Committee reviewed the reasonableness of Don Tyson's requests for reimbursement annually, as the Court ordered. In addition, neither Committee met the required number of times during any year. Even when the Special Committee or Governance Committee performed some kind of review, it ignored the recommendations of outside consultants and approved transactions that were substantively unfair to Tyson.

### **Related-Party Transactions**

66. The Tyson family and certain of Tyson's executives and directors have earned millions of dollars through their involvement in numerous related-party transactions with the Company. The terms of these contracts have consistently been kept from Tyson's minority shareholders. Rather, Defendants simply disclosed in each year's proxy the aggregate amount of payments made to the related entities in the previous fiscal year and the most cursory of descriptions of the nature of the transactions. The payments that were disclosed totaled a staggering \$52,004,040 for the period 2001 through 2003 alone. From 1998 through 2004, the aggregate amount of related party payments made by Tyson totaled over \$97 million. Predictably, these contracts are with members of the Tyson family and their friends (past and present) on the Tyson Board.

67. These lucrative related-party transactions were consummated on financial terms that were unfair to the corporation and served to enrich corporate insiders to the detriment of Tyson. Because of the misleading, incomplete, and cursory nature of the disclosures made by Tyson regarding related-party transactions, the disclosures that were made amounted to no disclosures at all.

68. The following chart, including data taken from the Tyson annual proxy statements, shows the Tyson related parties, the nature of the transactions involving those related parties and the amounts of money paid (or received) by Tyson in transactions with the related parties from 1998 through 2004:

TYPE OF TRANSACTION	ENTITY RECEIVING PAYMENT	YEAR							Total per Related Party
		1998	1999	2000	2001	2002	2003	2004	
Farm Lease Payments									
	John Tyson and Randal W. Tyson Testamentary Trust	336,000	336,000	299,558	211,056	211,056	211,056	218,696	1,823,422
	Joe Starr and children of Don Tyson	1,127,080	1,127,080	995,968	675,060	675,060	530,225	286,596	5,417,069
	Tyson Children's Partnership	540,000	540,000	540,000	615,000	450,000	450,000	450,000	3,585,000
	JHT LLC				30,000	30,000	30,000	30,000	120,000
	Leland Tollett	226,486	224,135	216,898	140,640	140,640	86,010	10,270	1,045,079
	Gerald M Johnston	397,728	394,628	280,726	246,732	246,732	218,177		1,784,723
	Don Tyson	759,000	675,950	587,970	392,652	394,567	229,047		3,039,186
	Randal W. Tyson Trust	120,000	120,000	107,092	75,756	75,756	50,504		549,108
	John and Helen Tyson Estate	30,000	30,000	30,000					90,000
	Joe Starr Entities	105,500	105,500	93,133	64,368	64,368	37,548		470,417
	Wayne Britt	512,012	504,000						1,016,012
	Johnston and Wray Partnership	98,880							98,880
Aircraft Lease Agreement									
	John and Helen Tyson Estate	230,592	230,592	230,592					691,776
	Tyson Family Aviation				1,532,664	2,043,552	2,043,552	2,043,551	7,663,319
Swine Growout									
	Johnston and Wray Partnership		148,320	140,952	153,043	167,613	73,967		683,895
Breeder Hen Research									
	Leland E. Tollett	624,077	624,077	624,077	624,077	624,077	624,077	676,084	4,420,546
Poultry Growout									
	Don Tyson	6,757,678	6,311,080	6,602,549	6,491,069	6,562,375	6,518,566		39,243,317

	Joe Starr	1,564,626	1,591,210	1,887,174	1,598,522	1,544,603	1,588,308		9,774,443
	John Tyson	1,989,501	1,577,922	1,683,967	1,668,628	1,589,121	1,595,169		10,104,308
	Barbara Tyson	1,220,630	949,737	741,800	680,450	455,098			4,047,715
	Carla Tyson						88,432		88,432
	Cheryl Tyson						66,311		66,311
	Joe Starr and children of Don Tyson						485,153		485,153
	Children of Joe Starr						458,859		458,859
	Gerald M. Johnston Entity	84,273	74,657	82,308	85,595	77,681	79,888		484,402
	Johnston and Wray Partnership	167,358	159,532	129,011	94,981	93,907	58,809		703,598
Waste Water Treatment									
	Don Tyson Entity	3,298,899	3,061,924	2,776,045	3,887,629	3,521,427	3,534,455	3,196,523	23,276,902
	Tyson LP and Don Tyson entity	1,891,787	2,184,508	1,907,255	2,219,928	2,032,946	1,824,448	2,012,542	14,073,414
Leased Warehouse Space									
	Joe Starr and children of Don Tyson	186,000	186,000	186,000	186,000	186,000	186,000	201,500	1,317,500
Cattle									
	Shelby Massey Farms					10,111,386	10,155,849		20,267,235
Cold Storage									
	Gerald Johnston (25%)				83,963				83,963
Unimproved Property									
	Relatives of Chairman			5,198,000					5,198,000
Chicken Products									
	Son of Gerald Johnston	1,056,217							1,056,217
	<b>TOTAL BY YEAR</b>	<b>23,324,324</b>	<b>21,156,852</b>	<b>25,341,075</b>	<b>21,757,813</b>	<b>31,297,965</b>	<b>31,224,410</b>	<b>9,125,762</b>	<b>163,228,201</b>
									TOTAL FOR 7 YEAR PERIOD

69. As the chart above shows, the total value of related party transactions from 1998 through 2004 was \$163,228,201. This is more than 10% of the Company's \$1.6 billion net earnings for that period. Thus, the size of the related party transactions is clearly material. The following chart presents a summary of the Company's results from operations (in millions) for the same period:

<b>Summary of Operations</b>	1998	1999	2000	2001	2002	2003	2004	Total
Sales	7,414	7,621	7,268	10,563	23,367	24,549	26,411	
Cost of sales	6,260	6,470	6,453	9,660	21,550	22,805	24,550	
Gross profit	1,154	1,151	815	903	1,817	1,744	1,891	
Operating income	204	487	349	316	887	837	925	
Interest expense	139	124	116	144	305	296	275	
Provision for income taxes	46	129	83	58	210	186	232	
Net income (loss)	25	230	151	88	383	337	403	\$1,617,000,000

72. In response to the Meyer Demand, Tyson has produced documents that demonstrate a limited and porous review of related-party transactions that amounted to no review at all. Of the \$163,228,201 in payments made by and to related parties during the relevant time period, the Special Committee and/or Governance Committee (collectively, the “Committees”) reviewed less than 42% (\$68,675,685) of the transactions. The Committees did not review the swine grow out program, the poultry grow out program, cattle purchases from defendant Shelby Massey, a lease of cold storage facilities partially owned by defendant Gerald Johnston, or certain individual farm leases. The poultry grow out program alone, which was not reviewed, resulted in transactions valued at \$65,456,538, nearly equal to the total value of the related-party transactions that the Governance or Special Committee reviewed. By failing to adequately review the Company’s related-party transactions, Defendants breached their fiduciary duties.

73. Tyson’s 2003 Proxy declared that “[a]ll existing related party transactions have been reviewed by the Governance Committee or its predecessor Committee. Any new related party transactions will be reviewed by the Governance Committee.” Given the factual allegations above, that statement is simply incorrect.

### *The Grow-Out Operations*

74. Tyson entered into poultry and swine grow-out agreements with related parties, whereby related parties would purchase from Tyson baby chicks and swine, feed, veterinary and technical services, supplies, and other related items necessary to grow the livestock to market age. Once the livestock reached market age, the related parties would sell them either to Tyson or to unaffiliated companies. Notably absent from Tyson's disclosures are what it paid these related-parties in the buy-back of the livestock it originally sold to these related-parties.

75. According to the Company's Proxy Statement dated December 31, 2003, all of the following parties were involved in these grow-out operations: Don Tyson; Starr; John Tyson; Carla Tyson and Cheryl Tyson (the daughters of Don Tyson and sisters of John Tyson); entities in which Starr and Don Tyson's children, including John Tyson, are partners or owners; an entity owned by Johnston; a partnership in which Johnston and Wray are partners; and a partnership in which Joe Starr's children are partners. Don Tyson captured the lion's share of these grow-out operations with roughly 60% of all such operations in 2003.

76. The end result of these cozy arrangements is that the Company is allowing corporate insiders to capture profits that rightfully belong to the Company. There is no valid business reason for selling these insiders the Company's raw product and everything needed to develop it, and then turning around and buying the finished product back from them at a higher price. What is even more offensive is that the arrangements also allow these insiders to sell the livestock to Tyson's competitors – so that livestock

from Tyson's farms could end up in a competitor's breeding program, or, at the very least, in a competitor's packaging for sale to consumers.

77. Despite the conflicts of interest inherent in these transaction between the Company and its Board members (and their families), the Defendants failed to take steps to ensure their fairness to the Company. Neither the Board nor its Committees reviewed whether Tyson was receiving a fair price from the Tyson insiders at the front end of these arrangements, or whether it was paying a fair price when buying the livestock back at the end. Also, neither the Board nor its Committees reviewed or disclosed the profits reaped by corporate insiders when they sold the market aged grown products back to Tyson or its competitors.

78. It seems that the SEC's turning its attention to Tyson made the Board nervous about these grow-out deals because they were terminated in late 2003.

#### ***Farm Leases***

79. Tyson's farm lease payments to related parties totaled \$2,451,264 in 2001, \$2,288,179 in 2002, and \$1,842,387 in 2003. In 2003, when the SEC began investigating Tyson, \$596,218 worth of farm leases with related parties were terminated.

80. Despite the inherent conflicts of interest between the Company and members of the Board in connection with these farm lease agreements, the Board employed no procedures to ensure their fairness to the Company. The farm lease payments made by Tyson to related parties were either not reviewed, or were inadequately reviewed by the Individual Defendants, and the leases were at a premium to market and were otherwise on terms that were unfair to Tyson giving the related parties an unjust windfall.

***Other Related Party Transactions With The Tyson Family***

81. Tyson has an aircraft lease agreement with Tyson Family Aviation, LLC, of which Don Tyson, John Tyson, the Randal W. Tyson Testamentary Trust, and Starr are members. In each of 2002, 2003, and 2004, Tyson made over \$2 million in aggregate lease payments to Tyson Family Aviation. In 2001, Tyson paid in excess of \$1.5 million in airplane lease payments to Tyson Family Aviation.

82. Tyson also had two agreements with Tyson family entities for the operation of two wastewater treatment plants in Arkansas. The first wastewater agreement covers a plant in Nashville, Arkansas and is between Tyson and entities in which Don Tyson is a principal. The second wastewater agreement covers a plant in Springdale, Arkansas and is between Tyson and the TLP and another entity in which Don Tyson is a principal. Tyson made combined aggregate payments to the two plants totaling over \$5.2 million in 2004, \$5.3 million in 2003, \$5.5 million in 2002, and \$6.1 million in 2001.

83. Tyson leases offices and warehouses from entities in which Starr and Don Tyson's children, including John Tyson, are partners or owners. The lease payments totaled \$759,500 for the period of 2001 through 2004 alone.

84. On May 21, 2004, Tyson purchased a parcel of land for approximately \$356,000 from JHT, LLC, a company of which Don Tyson and the Randal W. Tyson Testamentary Trust, are members.

85. The Defendants approved all of these related party transactions without employing procedures to ensure their fairness to the Company.

***Other Transactions With Board Members Massey and Tollett***

86. In each of 2002 and 2003, Tyson paid over \$10 million to Shelby Massey Farms, owned by Massey, for cattle.

87. In each of 2003, 2002 and 2001, a Tyson subsidiary paid Tollett \$624,077 for breeder hen research and development. In 2004, the same Tyson subsidiary paid Tollett \$676,084 for breeder hen research and development.

88. The Defendants approved these related party transactions without employing procedures to ensure their fairness to the Company.

**Related Party Transaction Reviews**

89. In 1998, although the Defendants failed to produce any Board meeting minutes or Special Committee notes, the Special Committee reviewed farm leases Tyson had with Gerald Johnston and Joe Starr, and waste water treatment plant leases with Don Tyson. The Board failed to review farm leases with: John Tyson and the Randal Tyson Trust (Hiwassee Farm Partnership); Joe Starr and the children of Don Tyson (Skull Creek Development); the Tyson Children's Partnership; Leland Tollett; Don Tyson; the Randal Tyson Trust (separate from Hiwassee); the John and Helen Tyson Estate; Wayne Britt; and the Johnston and Wray Partnership. The Special Committee also failed to review an aircraft lease between the Company and the John and Helen Tyson Estate, payments in connection with breeder hen research by Leland Tollett, any facet of the poultry grow out program, a warehouse space lease from Joe Starr and John Tyson, and the sale of chicken products to the son of Gerald Johnston.

90. In 1999, the Special Committee reviewed a farm lease between the Company and the John and Helen Tyson Estate, payments to a breeder hen research

facility owned by Leland Tollett, and an office space lease from a company partially owned by Joe Starr and John Tyson. The Special Committee failed to review farm leases with: John Tyson and the Randal Tyson Trust (Hiwassee Farm Partnership); Joe Starr and the children of Don Tyson (Skull Creek Development); the Tyson Children's Partnership; Leland Tollett; Gerald Johnston; Don Tyson; Randal Tyson Trust (separate from Hiwassee); entities related to Joe Starr; and Wayne Britt. The Special Committee also failed to review an aircraft lease between the Company and the John and Helen Tyson Estate, any facet of the poultry grow out program, any facet of the swine grow out program, or the contracts with the wastewater plants run by Don Tyson.

91. In 2000, the Special Committee reviewed farm leases between the Company and John Tyson and the Randal Tyson Trust (Hiwassee Farm Partnership); the Tyson Children's Partnership; Leland Tollett; Gerald Johnston; Don Tyson; the Randal Tyson Trust; and entities related to Joe Starr. The Special Committee failed to review farm leases with Joe Starr and the children of Don Tyson (Skull Creek Development), farm leases with the John and Helen Tyson Estate, an aircraft lease with the John and Helen Tyson Estate, the swine grow out program, the poultry grow out program, payments to a breeder hen research facility owned by Leland Tollett, contracts with wastewater plants run by Don Tyson, a warehouse space lease from Joe Starr and John Tyson, or an unimproved property lease from the relatives of Don Tyson.

92. In 2001, the Special Committee only reviewed an aircraft lease with Tyson Family Aviation, but failed to review nine farm leases, the swine grow out program, payments to the breeder hen research facility owned by Leland Tollett, the poultry grow out program, the contracts with the wastewater plants owned by Don Tyson, an office

space lease from Joe Starr and John Tyson, or cold storage facility leases from Gerald Johnston.

93. In 2002, neither the Governance Committee nor the Board reviewed any of the related party transactions, including nine farm leases, an aircraft lease, the swine grow out program, payments to the breeder hen research facility owned by Leland Tollett, the poultry grow out program, the contracts with wastewater plants owned by Don Tyson, an office space lease from Joe Starr and John Tyson, or cattle purchases from Shelby Massey.

94. In 2003, the Governance Committee again failed to review any of the related party transactions, including nine farm leases, an aircraft lease, the swine grow out program, payments to the breeder hen research facility owned by Leland Tollett, the poultry grow out program, contracts with the wastewater plants owned by Don Tyson, office space leases from Joe Starr and John Tyson, or cattle purchases from Shelby Massey.

95. In 2004, following an SEC investigation, the Governance Committee reviewed farm leases with: John Tyson and the Randal Tyson trust (Hiwassee Farm Partnership); Joe Starr and the children of Don Tyson (Skull Creek Development); the Tyson Children's Partnership; JHT LLC; and Leland Tollett. The Governance Committee also reviewed payments to a breeder hen research facility owned by Leland Tollett, contracts with wastewater plants owned by Don Tyson, and office space leases from Joe Starr and John Tyson. The Governance Committee failed to review a lease with Tyson Family Aviation.

96. Despite the magnitude of Tyson's related party transactions, and despite the fact that arm's length negotiations for the same goods and services purchased from these related parties might have saved Tyson tens of millions of dollars which would have been added directly to Tyson's bottom line, the Governance Committee of the Tyson Board of Directors made little effort either to determine whether such related party transactions simulated arm's length transactions, or whether a bidding process would have been appropriate.

#### **Improperly Reviewed Related-Party Transactions**

97. In certain of the related party transaction reviews actually conducted by the Special Committee or the Governance Committee, warnings from outside appraisers that some deals were detrimental to the Company were ignored.

#### ***Arnett Sow Complex Review***

98. In a spring 2000 analysis, the Flake & Kelly Management Company advised Tyson that "the Arnett Sow Complex... was out of line when compared to the other facilities." The facility, partly owned by Don Tyson and Joe Starr, yielded a rate of return to its owners of nearly double that of comparable farms analyzed by Flake & Kelly, even though it was in "poor condition." In concluding their review, Flake & Kelly reported: "higher rent per sow is paid at the Arnett Sow Complex. Based on our site visit, this complex would seem to be in poorer shape than other sow farms. The committee may wish to revisit the terms of this lease."

99. Also in the spring of 2000, the Pork Group, a Tyson subsidiary, "proposed a downward adjustment to the lease rates currently in place with certain Tyson Foods insiders," due to the poor conditions of the pork industry. Specifically, the Pork Group

proposed an 85% reduction in the monthly lease payments to occur over two years (from the then-current lease payments of \$47,400 per month, to \$7,175 per month by May of 2002. However, Tyson's Board only reduced the rate by half the requested amount, and continued to pay inflated lease prices to company insiders.

***Tyson Children's Partnership Lease***

100. In 2000, the Special Committee reviewed the lease of a farm (CLS Farm) owned by the Tyson Children's Partnership by hiring outside companies to appraise the transaction. Tellingly, the Special Committee instructed one of the companies, Integra Chapman & Bell, not to appraise the lease but only the value of the property. Integra Chapman & Bell's appraisal likely would have been unfavorable to the Board's desire to continue overpaying for insider-owned farms given that the appraisers were "of the opinion that [the lease was] not an arms length-market lease," and that the farm "suffered from incompetent farm management." Had the Board instructed Integra Chapman & Bell to review the lease, they likely would have been unable to support their approval of the lease.

101. According to the appraisal of CLS Farm conducted by Integra Chapman & Bell, the market value of the farm owned by the Tyson Children's Partnership was \$2.8 million. Tyson entered into a 10-year lease agreement whereby it paid a whopping \$450,000 per year in rent, plus all property taxes, all utility costs, all insurance costs, and all costs of maintenance and repair. Thus, by the sixth year of this 10-year lease, Tyson would have paid the Tyson Children's Partnership the full market value of the property. Thus, as in the case of the Arnett Sow lease, the Special Committee consciously ignored

evidence of non-market lease terms—directly demonstrating their allegiance to the Tyson family and other insiders first, and the Company second.

### *Tyson's Logo Vendor*

102. In August 2004, the Compensation Committee of the Board reported that a personal friend of Don Tyson was the principal owner of a vendor company that serves as Tyson's "primary supplier of logo merchandise." According to the report, Tyson paid the logo supplier \$2,322,081 in 2003, \$1,908,779 in 2002, and \$802,579 in 2001. Those payments constituted approximately 80% of the logo supplier's total business.

103. Although the payments to the logo supplier are not listed in the Company's related party disclosures in its annual proxy statements, the owner, according to Company documents, had a personal relationship with Don Tyson and, as a result, access to a Company credit card. The Compensation Committee reported that the Company had cancelled the friend's credit card and that Don Tyson had reimbursed the Company for the charges to that card. The Compensation Committee had concluded that, "the possession and use of credit cards by [the friend] was not contemplated by Don Tyson's Retirement Agreement."

104. In regard to the logo supplier's contract, the Compensation Committee reported that "no bid process was conducted for this contract."

105. Just as the Company failed to seek bids for a contract involving a friend of the controlling shareholder, or even to determine whether the contract involved a fair market price, the Board failed to seek bids for, or determine the fair market value of, related party transactions involving Don Tyson himself, his family members and close associates, as described above.

### The Consulting Contracts

106. Upon retirement, Tyson provides many of its executives with lucrative consulting deals. These deals vary in compensation and *require* no work from former Tyson executives but instead provide only that an executive *may work up to* a grueling twenty hours per month.

107. Don Tyson was first given his consulting agreement upon retirement on October 19, 2001. Under his original agreement, he received \$800,000 annually, plus life and health insurance, travel and entertainment expenses, and other perks for a period of 10 years. The agreement obligated Tyson to provide Don Tyson with his “travel and entertainment costs...consistent with past practices.” The agreement did not disclose what type of travel and entertainment expenses were included, and it did not disclose the likely amount of such expenses given “past practices.” The contract provides that the Company *may* require Don Tyson to work “up to twenty (20) hours per month...,” in providing advisory services to the Company. Amazingly, Don Tyson’s value to the Company appears to have gone up with his retirement, because he was never paid more than \$600,000 for full-time work. Moreover, the agreement survives Don Tyson, requiring all payments and benefits to go to his “survivors” (including John Tyson) in the event of his death before the expiration of the agreement.

108. After an SEC inquiry culminating in March 2004 revealed that Don Tyson had been stripping money from Tyson and using Tyson’s corporate treasury as his own personal piggy bank, including mischaracterizing expenses as “travel and entertainment,” the Board reacted by awarding Don Tyson an even more lucrative and wasteful consulting agreement in July 2004, which superseded his October 2001 agreement, and

which pays him a whopping \$1.2 million annually, provides him with numerous additional perquisites, and again requires no actual work. This agreement is discussed in further detail below.

109. Tollett received his consulting contract in 1999. He received \$350,000 annually until 2004, and is entitled to receive \$125,000 annually until the expiration of the agreement in 2009. Tollett also receives health insurance and continued vesting of his stock options throughout the term of the agreement.

110. Wray received his consulting agreement in 1998. From that time until 2003, Wray received \$200,000 annually, and starting in 2004, he receives \$100,000 annually until the expiration of the agreement in 2008. Wray also receives health insurance and continued vesting of his stock options throughout the term of the agreement.

111. Peterson's consulting contract came right on the heels of Tyson's merger with IBP in October 2001, and it was entered at about the same time as Don Tyson's October 2001 consulting agreement. Peterson is entitled to \$400,000 per year plus bonus payments, annual country club dues, use of the "Tyson" aircraft and health insurance. Like Don Tyson, Peterson was also entitled to all of the perquisites "consistent with past practices of [Peterson] at IBP." When Peterson died in May 2004, his widow became entitled to all of these payments and perks. Under the consulting contract, if Peterson died one day after he was awarded the consulting contract, Peterson's spouse would still be entitled to 10 years worth of payments and perquisites, despite the fact that Tyson would receive nothing at all in return.

112. Notably, Tollett and Wray were both Board members being paid pursuant to their own lucrative and wasteful consulting contracts at the time that Don Tyson's and Peterson's consulting contracts were approved and entered. Thus, neither Tollett nor Wray could have exercised independent business judgment without consideration of their own self interests in seeing their consulting contracts paid out.

**The SEC Investigates and Penalizes Tyson For Disguising  
The Improper Use of Corporate Assets As "Other Annual Compensation"**

113. Several of the Board members and other executives have been enjoying a disguised form of compensation that was grouped under the rubric of "other annual compensation" in the footnotes of Tyson's proxy statements. The "other annual compensation" category has appeared on Tyson's proxy statements since at least 1992, when Don Tyson was the sole beneficiary of this category of income. In 1998, when John Tyson became Chairman of the Board, he began benefiting from the "other annual compensation" category as well. Bond started receiving "other annual compensation" in 2001.

114. The 2004 Proxy Statement (dated December 31, 2003) described this category of compensation as travel and entertainment costs, insurance premiums, reimbursements for income tax liability related to the travel and entertainment costs and other items. However, it actually included much more.

115. In March 2004 the SEC conducted a formal, non-public investigation into these annual perquisites provided under the category "other annual compensation." The SEC investigation revealed that Tyson's proxy statements were incomplete and misleading from 1997 to 2003, by lumping amounts of other compensation and perquisites under the rubric "travel and entertainment costs." Tyson was therefore

required, for the first time, to either stop giving away lavish executive perks or to begin disclosing the true extent and nature of the other compensation and perquisites being paid to Tyson executives.

116. The Tyson Board apparently elected to make additional disclosures regarding executive perquisites and amounts of “other annual compensation” being paid to executives. The 2005 Proxy Statement (dated December 30, 2004), for instance, disclosed for the first time that “other annual compensation” included not just “travel and entertainment expenses,” but compensation for purely personal expenses such as automobile expenses, payment of country club dues, personal use of the Company aircraft, telecommunications services, personal use of Company-owned vacation properties, security services, tax and estate planning services, holiday department store gifts cards, medical reimbursements, and reimbursements for taxes and insurance premiums paid by the Company on behalf of the executives.

117. Don Tyson, John Tyson and Bond received “other annual compensation” in the following amounts for 2001 through 2004:

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
John Tyson	\$125,146	\$172,463	\$325,286	\$545,297
Bond	\$61,566	\$73,685	\$183,548	\$320,539
Don Tyson	\$275,822	--	--	--

118. The SEC’s investigation culminated in a recommendation that formal action be taken against the Company. On August 16, 2004, the SEC notified Tyson that that it intended to recommend a civil enforcement action against the Company and a

separate action against Don Tyson and was considering seeking a monetary penalty based on the Company's noncompliance with SEC regulations for the years 1997 through 2003. The SEC alleged that Tyson failed to fully comply with regulations with respect to the descriptions and disclosure of perquisites totaling approximately \$1.7 million to Don Tyson. Further, the SEC alleged that the Company failed to maintain an adequate system of internal controls regarding the personal use of Company assets and the disclosure of perquisites and personal benefits.

119. Apparently realizing the implications of this SEC action, the Company announced, on the same day that it revealed the SEC's recommendation for an enforcement proceeding, that its "independent" Board members (unnamed in the release) had conducted a "review of this matter." The press release also stated that Don Tyson had voluntarily paid \$1.516 million to the Company "for certain items identified by independent members of the Board for the fiscal years 1997 through 2003."

120. The SEC's action should not have come as a surprise to the Tyson Board because other governmental agencies have taken the Company to task for similar violations. The IRS demanded that Tyson pay an additional \$12 million in taxes after Tyson took illegal deductions for certain travel and entertainment expenses, including lake homes, aircraft, yachts, and compensation for executives during the fiscal years 1995 through 1997.

121. The SEC's investigation further resulted, among other things, in Tyson's consent to the entry of an "Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (hereafter, the "Order").

122. In the Order, the SEC found that Tyson “made misleading disclosures of perquisites and personal benefits provided to Don Tyson” in “proxy statements filed with the [SEC] from 1997 to 2003.” It further found that the Company not only “fail[ed] to disclose over \$1 million of perquisites” but that it “used the expression ‘travel and entertainment’ to describe perquisites that could not properly be so characterized.”

123. In addition, the Order concluded that from 2002 to 2003, Tyson “used the same misleading terms ‘travel and entertainment’ to describe the continuation of [Don Tyson’s] perquisites pursuant to a retirement agreement and failed to disclose fully the nature and scope of those benefits.”

124. The Order found nearly \$3 million worth of undisclosed or inadequately disclosed perquisites paid to Don Tyson, or his family and friends, which included uses of the Tyson corporate credit cards for personal expenditures such as purchases of antiques, oriental rugs, vacations, a horse, and “other substantial purchases of clothing, jewelry, artwork, ...and theater tickets.” Family and friends of the Tysons were also given virtually unlimited use of company-owned aircraft, homes in the English countryside and in Cabo San Lucas, Mexico, which included the use of company paid chauffers, cars, cooks, housekeepers, landscapers, telephones, and a boat crew.

125. The Order also found that Tyson made false or inadequate disclosures regarding the perquisites and personal benefits to be paid to Don Tyson pursuant to his consulting agreement, entered upon his retirement in 2001, by again characterizing Don Tyson’s perquisites as “travel and entertainment costs...consistent with past practices.” The Order concluded that the 2002 and 2003 proxy statements made “no other disclosures describing the full nature and scope of the perquisites” paid to Don Tyson,

and failed to disclose that he and many of his friends and family would continue to receive many of the perquisites...which could not be characterized as either 'travel' or 'entertainment.'”

126. The Order found that Tyson violated proxy solicitation and reporting provisions required by federal securities laws, and that Tyson “failed to devise and maintain a system of internal accounting controls over personal use of assets sufficient to detect, prevent, or account properly for Don Tyson’s and his family’s and friends’ use of company assets.” Tyson consented to the entry of the Order.

#### **The Board Lets Don Tyson Off The Hook For The SEC Penalty**

127. As a result of the SEC-initiated investigation of Don Tyson’s compensation and perquisites, Tyson’s Board of Directors began its own investigation. As a result of that investigation, the Compensation Committee of the Board of Directors determined that Don Tyson should reimburse the Company for improper compensation and perquisites.

128. In its 2004 proxy, the Company disclosed that Don Tyson had agreed to pay the Company \$1,516,471 “as reimbursement for certain perquisites and personal benefits received during fiscal years 1997 through 2003.” It also disclosed that Don Tyson had agreed to pay an additional \$200,000 as reimbursement for improper expenses. However, the Board made sure these “reimbursements” would have no real impact on Don Tyson.

129. At the same time, the Company disclosed that, on July 30, 2004, it had approved an increase in Don Tyson’s annual compensation for “advisory services” from \$800,000 to \$1.2 million annually, and that “[i]n the event of Mr. Tyson’s death, the cash

consideration described above [\$1.2 million annual compensation] will continue to be paid for the remaining term of the contract [until October 19, 2011] to the surviving of Mr. Tyson's three children." Over the seven remaining years of the contract, Don Tyson's raise amounted to an increase of \$2.8 million over the previous contract. Thus, in a flagrant example of the Board's allegiance to the Tyson family at the expense of Tyson and its shareholders, the Board increased Don Tyson's compensation so that he not only lost no money as a result of the SEC sanction, but he actually received a windfall of almost \$1.1 million for violating SEC rules and deceiving shareholders. Meanwhile, the Company was stuck paying the SEC fine and Don Tyson's increased "compensation."

130. The Company's 2004 proxy statement, moreover, incorrectly advised shareholders that Don Tyson's "new contract provides that Mr. Tyson *will* continue to furnish up to 20 hours *per week* of advisory services" (emphasis added) when, in reality, Don Tyson's new contract only provides that he "*may*" furnish up to 20 hours *per month* of advisory services to the Company.

#### **The Purchase of Don Tyson's Class A Tyson Stock**

131. The Tyson proxy statement for 2004 also disclosed that the Governance Committee had approved the purchase by the Company of 1,028,577 shares of Don Tyson's Class A common stock at a purchase price of \$15.11 per share, for a total of \$15.5 million. There is no explanation for this transaction and no explanation as to why Don Tyson could not have sold those shares on the open market, thereby saving the Company \$15.5 million.

132. This transaction is particularly unusual because just over two years earlier, in connection with the execution of Don Tyson's consulting agreement, Tyson had

handed over 1 million shares Class A Tyson common stock to Don Tyson when the stock was trading at around \$9 per share. Despite the magnitude of Tyson's \$15.5 million dollar buy-back from Don Tyson, the Governance Committee did not even review this related party transaction as required by its charter.

### **Fortuitously Timed Stock Option Grants**

133. Since as early as 1999, Tyson's Board of Directors has had incredibly "fortunate" timing with respect to granting stock options to directors and executives. Tyson's Stock Incentive Plan, which replaced the Company's Nonstatutory Stock Option Plan in 2001, granted the Board permission to award Class A shares, stock options, or other incentives to employees, officers, directors, and others at the Company. The Board's Compensation Committee and Compensation Subcommittee award these options and is vested with discretion as to when and to whom to distribute the awards. In making its determinations, however, the Compensation Committee consults with and receives the "recommendations" of the Company's "Chairman and Chief Executive Officer."

134. The one variable over which the Compensation Committee has no control is the price of the options. The Plan requires that the price be no lower than the fair market value of the Company's stock on the day of the grant. The measure of fair market value employed is the closing price of Tyson's Class A stock.

135. The Compensation Committee found a way around the restriction of their discretion on the price of the options: They issued the options days before the Company issued press releases that were very likely to drive the stock price up. The close proximity in time of the options issuances and the press releases leaves no doubt that the Compensation Committee was well aware of the undisclosed information at the time it

was issuing the options. Tyson's Board of Directors knowingly approved and acquiesced in the scheme to grant favorably priced options because they too were option recipients. The Board represented to shareholders that options were issued at "market rate" strike prices under the Company's stock option plan, while knowingly violating the letter and spirit of that plan by manipulating the grants of stock options so as to coincide with the Company's release of positive, market-moving news.

136. In the first of these timely stock option grants, on September 28, 1999, the Compensation Committee (then comprised of Vorsanger, Massey, and Cassady) granted 150,000 options to John Tyson, 125,000 options to Wayne Britt (a former Tyson CEO), and 80,000 options to Greg W. Lee, Tyson's then chief operating officer. Tyson granted the options at \$15, nine cents over the closing price for that day. The very next day, Tyson announced that Smithfield Foods, Inc. had agreed to acquire Tyson's Pork Group, Inc. in a transaction valued at approximately \$80 million. Tyson's stock rose rapidly on the news and it topped the Associated Press's "Big Movers in the Stock Market List." Just days later on October 4, 1999, the stock closed at \$16.53, 10% higher than the strike price of the options in less than two weeks. By December 1, 1999, Tyson stock closed at \$17.50 per share, approximately 15% higher than the strike price of the options in just two months. Had the issuance of these options not been manipulated to occur just before the stock price was driven up, the strike price of the options would have been substantially higher.

137. On March 29, 2001, the Compensation Committee (comprised of Massey, Hackley and Allen) granted 200,000 stock options to John Tyson, 100,000 stock options to Greg Lee, and 50,000 stock options to Steven Hankins, Tyson's then-Chief Financial

Officer, at \$11.50 per share, the closing price of the stock for that day. The next day, March 30, 2001, Tyson publicly cancelled its \$3.2 billion deal to acquire IBP, Inc. As the news hit the streets, Tyson's stock price rose to \$13.47 by the close on March 30, 2001, more than 15% higher than the strike price of the options issued the previous day. Had the issuance of these options not been manipulated to occur just before the stock price was driven up, the strike price of the options would have been at least \$689,500 higher.

138. In mid-October of 2001, the Compensation Committee (comprised of Hackley, Allen and Massey) granted 200,000 options to John Tyson, 60,000 options to Greg Lee and 15,000 options to Steven Hankins in two separate option grants. Within two weeks of awarding these options, Tyson publicly announced that its 2001 fourth quarter earnings would be more than double the Company's expected earnings. This unexpected (by the public) good news drove Tyson's stock price to \$11.90 by the end of November – even with the stock going ex-dividend on November 28. Had the issuance of these options not been manipulated to occur just before the stock price was driven up, the aggregate strike price of the options would have been at least \$709,500 higher.

139. Lastly, On September 19, 2003, the Compensation Committee (comprised of Smith, Jones and Hackley) granted stock options to a number of executives and directors including 500,000 options to John Tyson, 280,000 options to Bond, and 160,000 options to Greg Lee at a price of \$13.33, the September 18, 2003 closing price. Within days of these transactions, on September 23, 2003, Tyson publicly announced that earnings were expected to exceed analysts' expectations and the stock price rose to \$14.25, increasing the value of the options by approximately seven percent. Had the

issuance of these options not been manipulated to occur just before the stock price was driven up, the aggregate strike price of the options would have been at least \$864,800 higher.

**DEMAND ON THE TYSON BOARD IS EXCUSED AS FUTILE**

140. Tyson's Board members at the time of the filing of the original Complaint in this matter were Don Tyson, John Tyson, Barbara Tyson, Tollett, Hackley, Keever, Jones, Bond, Smith, and Zapanta.

141. Plaintiffs did not make a demand on Tyson's Board of Directors to rectify the wrongs complained of herein because there is not a majority of independent directors on Tyson's Board to appropriately consider such a demand. In addition, there is at least a reasonable doubt that the transactions at issue in this case were products of the valid exercise of business judgment.

142. Tyson openly admits that five of the ten Board members at the time the Complaint was filed – Don Tyson, John Tyson, Barbara Tyson, Bond, and Tollett – lack independence from the Tyson family. Don Tyson, John Tyson, and Barbara Tyson are members of the Tyson family; Bond is a current officer of Tyson and is beholden to the Tyson family for that position; and Tollett is a retired Tyson executive who continues to serve as a consultant to the Company and who is a general partner of TLP, the partnership by which the Tyson family exercises voting control over the Company. Demand is therefore excused with respect to all claims challenging transactions with Tyson family members or compensation paid to Tyson family members, because these five Board members, representing half the Board, cannot independently consider a demand.

143. With respect to Plaintiffs' claims challenging related party transactions, four of the Board members were parties to, and received substantial sums pursuant to, those transactions. Don Tyson (including the entities in which Don Tyson has an interest) received almost \$100 million in related party transactions. Defendant John Tyson received at least \$13,155,374 from related-party transactions including farm lease payments, the poultry grow out program, aircraft lease payments, and office space lease payments. Defendant Barbara Tyson received at least \$4,047,715 from the poultry grow out program. Defendant Leland Tollett received at least \$5,465,535 from related-party transactions including farm lease payments and breeder-hen research. These directors' personal interests in the related party transactions at issue in this case provided another reason, beyond their lack of independence from Don Tyson, why they could not disinterestedly consider a demand to challenge the related party transactions. A fifth Board member, Bond, could not disinterestedly consider such a demand because he is a current Tyson officer who is beholden to the Tyson family for his position.

144. With respect to Plaintiffs' claim challenging Peterson's and Don Tyson's consulting agreements, demand is excused because there was no independent majority of the Board members at the time the Complaint was filed to appropriately consider a demand. In addition to Peterson and Don Tyson, Board member Tollett is the recipient of a lucrative "consulting" agreement that he entered in 1999, paying him \$350,000 and certain perquisites for the first 5 years, and \$125,000 plus perquisites for the remaining 5 years. Accordingly, Tollett could not possibly exercise independent judgment when considering a demand to challenge the Peterson or Don Tyson consulting contracts, because any such challenge would call into question his entitlement to payouts under his

own similar agreement. Likewise, those Board members who lack independence from Don Tyson – namely John Tyson, Barbara Tyson, and Bond – could not exercise independent judgment with respect to a challenge to either Don Tyson’s or Peterson’s consulting agreement, because a successful challenge to either agreement is likely to adversely affect Don Tyson’s continued receipt of benefits under his agreement.

145. With respect to Plaintiffs’ claim challenging the payment of “Other Compensation” to Bond, demand is excused because there was no independent majority of the Board members at the time the Complaint was filed to appropriately consider a demand. Bond and Don Tyson lack independence, because it is their compensation that is being challenged. A successful challenge to the “Other Compensation” paid to one of them will likely have a material adverse effect on the other. Likewise, those directors who lack independence from Don Tyson – namely John Tyson, Barbara Tyson and Tollett – not only could not disinterestedly consider a demand to challenge Don Tyson’s “Other Compensation,” but they could not disinterestedly consider a demand to challenge Bond’s “Other Compensation” because doing so is likely to have a materially adverse effect on Don Tyson.

146. Demand is further excused with respect to transactions involving the Tyson family because four of the five directors whom the Company deems to be “independent” under the NYSE rules -- Hackley, Kever, Jones, and Smith -- have demonstrated a consistent and unvaried pattern of deferring to anything the Tyson family wants, and of failing to exercise independent business judgment. For example:

a. The Special Committee and Governance Committee (including, at various relevant times, Hackley, Kever, and Smith) failed to implement procedures to

ensure the fairness of the Company's transactions with related parties including the Tyson family, and utterly failed to review many of those transactions at all, in violation of a prior order of this Court and of the Committee's own charter, thereby allowing the Tyson family to reap financial benefits at the expense of the Company;

b. The Compensation Committee (which included Hackley) recommended that Tyson pay Don Tyson \$800,000 per year pursuant to a Senior Executive Employment Agreement after he retired in 2001 – \$200,000 more per year than Don Tyson had ever received as a full-time employee of Tyson – and subsequently recommended entering into a superseding Senior Executive Employment Agreement in 2004 pursuant to which Tyson pays Don Tyson \$1.2 million per year – or double the maximum amount that Don Tyson ever earned for full time employment – without requiring Don Tyson to perform any work. The Board (including Hackley, Kever, and Jones) approved these agreements;

c. The Compensation Committee (which included Hackley) granted 400,000 stock options to John Tyson in 2001, at times when it knew an upcoming news release would cause the stock price to increase. These option grants were purposefully timed to give John Tyson the benefit of a lower strike price than if the options had been granted after the announcements.

d. The Compensation Committee (which then included Smith, Jones, and Hackley) granted 500,000 stock options to John Tyson in September 2003, just days before a positive earnings announcement. Again, these grants were purposefully timed to give John Tyson the benefit of a low strike price.

e. The Board approved proxy statements and other disclosures which failed to properly disclose the nature of compensation being paid to Don Tyson and others. Among other things, those disclosures mischaracterized Don Tyson's use of corporate funds and assets for his personal use as "travel and entertainment" or "other compensation" without disclosing that they were for purely personal purposes.

f. After an SEC investigation concluded that Don Tyson was stripping money from Tyson's corporate treasury for his personal use, the Board (including Hackley, Keever, Jones, Smith, and Zapanta) approved a new consulting agreement paying Don Tyson even more money and approving his use of Company funds and Company assets (including Skyboxes, lake homes, and vacation homes) for his personal use. If Don Tyson were to suffer an untimely death, moreover, such payments and perquisites would go to John Tyson, and other Tyson family members. By approving this agreement, the Board caused the Company to bear the full brunt of the penalty imposed by the SEC, without any contribution from Don Tyson.

147. The Board's unquestioning loyalty to the Tyson family is due, in large part, to the overwhelming voting power of the Tyson family under Tyson's current equity structure. The Tyson family controls over 80% of the voting power. Moreover, the Tyson Board also has no nominating committee, and therefore, Don Tyson and the Tyson family actually select those who are to be nominated to the Board.

148. Tyson itself discloses and acknowledges this control in its annual proxy statements:

In accordance with a provision in NYSE rules for controlled companies, the Company has elected not to comply with NYSE corporate governance rules that provide for (i) a majority of independent directors, (ii) a

nominating committee comprised solely of independent directors to identify and recommend nominees to the board of directors, and (iii) a compensation committee with power to determine the compensation of the CEO. The Company qualifies as a controlled company due to the ownership by the Tyson Limited Partnership of shares allowing it to cast more than 50% of votes eligible to be cast for election of directors.

The Tyson family's control of the Board destroys the independence of the purportedly independent Board members, because those Board members have reaped substantial benefits on account of their Board memberships.

149. Because there is not a majority of independent directors on Tyson's Board who could disinterestedly consider a demand to assert any of the claims asserted in this Complaint, and because there is at least a reasonable doubt that the transactions at issue in this case were products of the valid exercise of business judgment, demand is excused as futile.

#### **TOLLING OF THE STATUTE OF LIMITATIONS**

150. The original complaint in this action was filed by Amalgamated on February 16, 2005. With respect to all of Plaintiffs' claims relating to conduct, misrepresentations, omissions, and breaches of fiduciary duty occurring on or after February 16, 2002, Plaintiffs' claims are timely under 10 *Del. C.* §8106.

151. With respect to Plaintiffs' claims relating to conduct, misrepresentations, omissions, and breaches of fiduciary duty occurring before February 16, 2002, Plaintiffs' claims are timely under the doctrine of equitable tolling. In this regard, the wrongdoing alleged in this Complaint was inherently unknowable to Plaintiffs before 2004, because all of the salient information was in the exclusive possession of Tyson and Defendants

and, at all material times, the information was not disclosed, or was inadequately disclosed, to shareholders.

152. With respect to executive compensation matters, Defendants simply used the misleading terms “other annual compensation” and “travel and expenses” to mask the fact that Don Tyson, his friends and family members, were actually receiving kick-backs and other personal payments and perquisites that were undisclosed or inadequately disclosed. Only after the SEC had initiated an investigation into the Company’s failure to disclose certain compensation arrangements were investors apprised of the massive scope and extent of the personal benefits and perquisites being abused by Don Tyson and his family and friends since 1997. It was only in the Company’s 2005 proxy statement, dated December 30, 2004, that Defendants made any effort to disclose what perquisites and personal benefits are being enjoyed by past and present Tyson executives under the rubric of “other annual compensation” and even still these disclosures relate only to “other annual compensation” awarded in 2002 and 2003. Defendants have still made no effort to adequately disclose secret compensation awarded under the rubric of “travel and entertainment costs.”

153. Plaintiffs were also unable to determine that Defendants were timing stock option issuances to manipulate the strike price of the options until a pattern of such behavior became clear. After all, the first such occurrence in 1999 – and even the second one in March 2001 – might have been explained as coincidence. Even if Plaintiffs could have discerned a pattern of deliberate price manipulation after the third grant, that grant (which occurred in October 2001) was not disclosed to shareholders until the following year’s proxy statement in January 2003. Thus, it was not until at least 2003 that

Plaintiffs, or any other shareholders, could have reasonably discovered Defendants' scheme.

154. The allegations that the Special Committee and Governance Committee of the Board and, hence, the Board itself, failed to review approximately \$100 million worth of related party transactions between 1998 and 2004, and that the transactions were the result of an unfair process, could not have been discovered until Meyer received documents pursuant to his Demand in the first half of 2005. The fact that many of the related party transactions were not reviewed, and the deficiencies in the reviews they did conduct, as described above, were consistently concealed from shareholders because the Governance Committee, as it did in Tyson's 2003 Proxy, declared that "[a]ll existing related party transactions have been reviewed by the Governance Committee or its predecessor Committee. Any new related party transactions will be reviewed by the Governance Committee." This disclosure was false and concealed the fact that millions of dollars worth of related party transactions were not reviewed, or were reviewed in such a cursory manner, with an eye toward approval, that any review that was conducted amounted to no review at all. These failures violated not only the Tyson charter governing the role and tasks of the Special Committee and the Governance Committee, but an order of this Court in the *Herbets* Action.

## COUNT I

### **(Derivative Claim For Breaches of Fiduciary Duty For Approving The Don Tyson And Peterson Consulting Contracts In 2001, And The Don Tyson Consulting Contract In 2004)**

155. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

156. This count is brought against defendants John Tyson, Bond, Hackley, Kever, Jones, Tollett, Barbara Tyson, Starr, Massey, Wray, Johnston, and Allen for the approval of the Don Tyson and Peterson consulting contracts in 2001, and against John Tyson, Bond, Hackley, Kever, Jones, Tollett, Barbara Tyson, Smith, Zapanta and Allen for the approval of Don Tyson's "new" consulting contract in July 2004.

157. Each of the defendants named in this count owed Tyson and its shareholders the duties of unflinching loyalty and due care. They were obligated to act in the best interests of Tyson, to the exclusion of all other interests and influences.

158. Defendants named herein breached their fiduciary duties to Tyson by approving the consulting agreements for Don Tyson and Peterson in 2001 and for Don Tyson in 2004. These agreements were shams, requiring little to no "consultation" by Don Tyson or Peterson in return for extremely lucrative payments. These payments were nothing more than gifts and amount to corporate waste, and the consulting agreements are substantively unfair to the Company.

159. There can be no clearer proof that these agreements constituted nothing but gifts to Don Tyson and Peterson than the fact that the payments were required to continue after their death. Peterson died in May 2004 – clearly no more advisory services are being provided to Tyson. Yet Tyson is contractually required to continue making payments under his agreement to his widow. In the event of Don Tyson's death, Tyson would be required to make the remaining payments under his agreement to his surviving children, including John Tyson (who voted to approve the agreement and signed it on behalf of the Company).

160. Further, although the Company conducted an investigation into Don Tyson's compensation in 2004 on the heels of an SEC-initiated investigation, the Board approved of a \$2.8 million raise for Don Tyson despite the SEC conclusions that Don Tyson was improperly using corporate funds and assets for his personal benefit. The fact that the Board would approve a \$2.8 million raise for Don Tyson in his capacity as no more than a possible 20-hour per month consultant demonstrates that the Board continues to act to the detriment of Tyson and its shareholders. Only a Board deeply beholden to Don Tyson would reward him after the SEC finding, as well as a Board finding, that Don Tyson acted inappropriately by stripping funds from the Company in the form of disguised compensation and perquisites. Don Tyson's 2004 consulting agreement was a vehicle intended, quite improperly, to repay him for the moneys he was forced to repay to the Company by the SEC.

161. The breaches of fiduciary duty attendant upon the approval of Don Tyson's and Peterson's consulting contracts are compounded by the fact that the Board incorrectly and inadequately disclosed the nature of those contracts in the Company's proxy statements. The Company's disclosures regarding the 2001 contracts stated that the Company would pay Don Tyson's "travel and entertainment" costs, as well as other perquisites to Don Tyson and Peterson, "consistent with past practices" but did not state what those past practices were. In fact, as the SEC found, Don Tyson received substantial benefits under the 2001 consulting agreement which could not be properly characterized as either "travel" or "entertainment," but whose true nature was never disclosed in the Company's proxy statements. Those benefits were simply passed off to stockholders as "travel and entertainment" costs. When Don Tyson's new consulting

agreement was entered in 2004, the Board misrepresented the nature of the services to be provided by Don Tyson by stating that the contract *required* Don Tyson to work up 20 hours *per week*, when in fact the contract required no work, but indicated only that Don Tyson *may* work up to 20 hours *per month*.

162. The Board used the Don Tyson and Peterson consulting agreements to funnel corporate funds to Don Tyson, Peterson, and their families under the guise of “consulting fees” when in fact those cash payments and perquisites were unrelated to any consulting services.

163. Tyson has been damaged by the sham consulting agreements in an amount that cannot be ascertained at this time due to the variable nature of the costs of certain of the perquisites granted thereunder.

164. The Don Tyson and Peterson consulting agreements should be declared null and void because they are products of breaches of fiduciary duty, and all payments made pursuant thereto should be refunded to the Company.

165. Plaintiffs have no adequate remedy at law.

## **COUNT II**

### **(Derivative Claim For Breaches of Fiduciary Duty In Awarding Undisclosed “Other Annual Compensation” For Tyson Executives in 2001 through 2003)**

166. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

167. This count is brought against defendants Don Tyson, John Tyson, Bond, Hackley, Kever, Jones, Tollett, Barbara Tyson, Starr, Massey, Wray, Johnston, and Allen for the approval and inadequate disclosure of “Other Annual Compensation” to Don Tyson, John Tyson, and Bond in 2001 through 2003.

168. Each of the defendants named in this count owed Tyson and its shareholders the duties of loyalty and due care. They were obligated to act in the best interests of Tyson, to the exclusion of all other interests and influences.

169. Defendants breached their fiduciary duties to Tyson by approving the “other annual compensation” payments to Don Tyson, John Tyson and Bond in 2001, and the “other annual compensation” payments to John Tyson and Bond in 2002 and 2003. These payments were reported to be reimbursement for travel and entertainment expenses, but actually were for these individual’s personal expenses that were not in any way business-related. Payment of these personal expenses out of corporate funds was wasteful and amounted to a gift, with no benefit to the Company.

170. The expenses totaled \$462,534 in 2001, \$246,148 in 2002 and \$508,834 in 2003, but the damage to the Company does not end there. Due to the misrepresentation of the true purposes of this “compensation” – which also constituted a breach of fiduciary duty by Defendants – the SEC brought and settled a civil enforcement proceeding against the Company and issued a substantial monetary fine.

171. Plaintiffs have no adequate remedy at law.

### **COUNT III**

#### **(Derivative Claim For Breaches of Fiduciary Duty For The Improper Timing Of Stock Option Awards To Tyson Insiders Based Upon Inside Information)**

172. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

173. This count is brought against defendants John Tyson, Don Tyson, Barbara Tyson, Tollett, Kever, Hackley, Wray, Johnston, Starr, Vorsanger, Massey and Cassady as to the 1999 option issuances; against John Tyson, Don Tyson, Barbara Tyson, Kever,

Jones, Tollett, Hackley, Massey, and Allen as to the 2001 option issuances; and, against John Tyson, Don Tyson, Barbara Tyson, Bond, Tollett, Kever, Hackley, Jones and Smith as to the 2003 option issuances.

174. Each of the defendants named in this count owed Tyson and its shareholders the duties of loyalty and due care. They were obligated to act in the best interests of Tyson, to the exclusion of all other interests and influences.

175. The Company's stock option plan, which requires the strike price of options to be "no lower than the fair market value of the Company's stock on the day of the grant," was approved by the Company's stockholders. In seeking such approval, the Board did not disclose that it would use inside information to time option grants to occur shortly before announcements that would increase the Company's stock price.

176. Defendants named herein breached their fiduciary duties to Tyson and its shareholders by approving the issuance of stock options that were timed to cause a lower strike price than otherwise would have been required. Defendants deliberately issued the options knowing that the Company was on the verge of making announcements that would drive the stock price (and therefore the option strike price) up.

177. Tyson has been damaged by these options grants because it will receive a lower exercise price than it would have received if the defendants had not manipulated the timing of the grants.

178. Plaintiffs have no adequate remedy at law.

#### COUNT IV

##### **(Derivative Claim For Breaches of Fiduciary Duty For The Related-Party Transactions)**

179. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

180. This count is brought against defendants John Tyson, Bond, Hackley, Keever, Jones, Tollett, Barbara Tyson, Smith, Zapanta and Allen for approval of, or failure to review, related party transaction payments in 2004; against Don Tyson, John Tyson, Hackley, Jones, Smith, Keever, Bond, Barbara Tyson, Tollett, Massey, and Peterson for approval of, or failure to review, related-party transaction payments approved in 2003; and against defendants Don Tyson, John Tyson, Hackley, Jones, Smith, Keever, Bond, Barbara Tyson, Tollett, Peterson, Starr, Massey, Wray, Johnston, and Allen for approval of, or failure to review, related-party transaction payments approved in 1998 through 2002. These related-party transactions are detailed in paragraphs 65 through 106 above.

181. Each of the defendants named in this count owed Tyson and its shareholders the duties of loyalty, due care and good faith. They were obligated to act in the best interests of Tyson, to the exclusion of all other interests and influences. The above-named defendants failed Tyson and its shareholders and breached their fiduciary duties by recklessly approving related party transactions of more than \$97 million without adequate investigation.

182. Defendants named herein breached their fiduciary duties to Tyson by approving the payments made to related-parties for farm, office, warehouse and aircraft leases; cattle purchases; breeder hen development; wastewater treatment services; grow-out operations; and logo vendor services. The defendants named in this Count approved

these payments without employing any procedures to ensure the fairness of these transactions to Tyson, and in many cases did not review these transactions at all, contrary to the Special Committee and/or Governance Committee charters and contrary to the terms of a court approved settlement in the *Herbets* Action. These transactions were substantively and procedurally unfair to Tyson, and were simply a means of diverting corporate funds and assets to corporate insiders, their families and friends. By failing to determine whether these related party transactions were the equivalent of arms length transactions in the open market, the above-named defendants have cost the Company tens of millions of dollars.

183. The defendant Board members who were also beneficiaries of the related party transactions that were not properly reviewed, or not reviewed at all, by the Board, also violated their duty of loyalty to Tyson and its shareholders by benefiting personally at the expense of Tyson and its shareholders as described above.

184. The defendant Board members also violated their duty of candor to the shareholders of Tyson by representing in SEC filings that related party transactions had been properly reviewed when, in fact, that was not true.

185. Defendant TLP, as controlling shareholder of Tyson, also owes Tyson and the minority shareholders a duty of care, and breached its fiduciary duties by participating in related party transactions to the detriment of the Company and for its own account.

186. Plaintiffs have no adequate remedy at law.

## COUNT V

### **(Derivative Claim For Breaches of Fiduciary Duty For Decisions and Inadequate Disclosures Exposing Tyson to SEC Sanctions and Fines )**

187. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

188. This count is brought against all Individual Defendants for a consistent pattern and practice of failing to investigate and disclose self-dealing payments and schemes bent on enriching corporate insiders to the detriment of the Company, which failures exposed Tyson to SEC penalties and fines. This count is further brought for making inadequate, incomplete, or no disclosures regarding large amounts of executive compensation, which any reasonable Board member would have adequately investigated and would have adequately disclosed.

189. All of the Individual Defendants owed Tyson and its shareholders the duties of loyalty, due care, and good faith. They were obligated to act in the best interests of Tyson, to the exclusion of all other interests and influences.

190. Defendants breached their fiduciary duties to Tyson by engaging in a consistent pattern and practice of neglect, which resulted in disclosure violations that exposed the Company to SEC sanctions and fines, including, but not limited to failures to disclose amounts of “other compensation,” amounts of “travel and entertainment” expenses paid to executives by the Company and amounts paid in related-party transactions.

191. Tyson has been damaged by the Individual Defendants’ breaches of fiduciary duty and disclosure violations.

192. Plaintiffs have no adequate remedy at law.

## COUNT VI

### **(Derivative Claim for Breach of Contract – Against Defendants Don Tyson, John Tyson, Barbara Tyson, Tollett, Wray, Starr, Massey, Cassady, Vorsanger, and Hackley for Breach of the Settlement Agreement in the *Herbets* Action)**

193. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

194. Defendants Don Tyson, John Tyson, Barbara Tyson, Tollett, Wray, Starr, Massey, Cassady, Vorsanger, Johnston and Hackley (hereafter, the “Herbets Defendants”) were defendants in the *Herbets* derivative action and Board members of Tyson when they entered into a Stipulation and Agreement of Compromise, Settlement and Release (“Settlement Agreement”), which was filed with the Court on February 6, 1997, to resolve the claims brought against them by a Tyson shareholder on behalf of Tyson. The Settlement Agreement is a valid and enforceable contract.

195. In entering the Settlement Agreement, the Herbets Defendants agreed, among other things, that an independent committee of outside directors would review, at least annually, the terms and fairness of all transactions between Tyson and its officers and directors (or their affiliates) which are required to be disclosed in the Company’s proxy statements. The Herbets Defendants formed a committee, but failed to ensure that it was comprised of independent outside directors, and failed to ensure that adequate procedural safeguards were installed to ensure that all related party transactions between Tyson and its officers and directors were fair to the Company. In fact, as alleged herein, the committee did not review all related party transactions between Tyson and its officers and directors. This was a material breach of the Settlement Agreement.

196. The Herbets Defendants further agreed in the Settlement Agreement that an independent committee of outside directors would review the reasonableness of Don Tyson's requests for expense reimbursements annually, and to reduce his bonuses by the amount of his expense reimbursements. The Herbets Defendants breached the Settlement Agreement by failing to institute adequate procedures to review, and by failing to review, the reasonableness of Don Tyson's requests for reimbursements annually, and by failing to reduce Don Tyson's compensation as a result.

197. Finally, the Herbets Defendants breached the Settlement Agreement by (a) failing to institute procedures requiring that accurate records be kept of who uses Tyson's boat at all times and for what business purpose, and (b) failing to charge and collect \$1000 a day from officers, directors, and their affiliates who used Tyson's boat for non-business purposes.

198. Each of the Herbets Defendants' breaches of the Settlement Agreement detailed above was a material breach of the Settlement Agreement that caused Tyson to suffer millions of dollars in damages on an annual basis.

#### **COUNT VII**

#### **(Derivative Claim For Civil Contempt of Court Order in *Herbets* Action -- Against All Defendants)**

199. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

200. In April 1997, then-Vice Chancellor Jacobs entered an Order and Final Judgment ("Order") in the *Herbets* Action, approving the Settlement Agreement and directing the parties to consummate the settlement in accordance with the terms of the Settlement Agreement.

201. For the reasons discussed in the preceding count, the Individual Defendants have violated the Settlement Agreement and thus the terms of this Court's Order.

202. The violations of the Order detailed above have caused Tyson to suffer millions of dollars in damages which are recoverable by Tyson on account of such violation.

### **COUNT VIII**

#### **(Class Action Claim Based Upon Material Misrepresentations In The 2004 Proxy Statement)**

203. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

204. This count is brought against defendants Don Tyson, John Tyson, Hackley, Jones, Smith, Kever, Bond, Barbara Tyson, and Tollett.

205. On December 1, 2003, defendants issued the 2004 Proxy Statement ("2004 Proxy") to solicit votes in anticipation of the annual meeting of Tyson shareholders, scheduled for February 6, 2004. The directors slated for re-election at the 2004 annual meeting were Don Tyson, John Tyson, Hackley, Jones, Smith, Kever, Bond, Barbara Tyson, and Tollett.

206. In the 2004 Proxy, defendants misrepresented the nature of John Tyson's and Bond's compensation by representing these individual's "Other Compensation" as payments for "travel and entertainment" costs when, in fact, the costs were incurred by Tyson to pay personal expenses of executives that were not in any way business-related. Additionally, Defendants misrepresented the nature and extent of payments made by Tyson in related-party transactions with Tyson family members and friends, and with

certain Tyson Board members, and further misrepresented that such transactions were reviewed by an independent Committee for fairness.

207. The true nature of these payments was material to Tyson's Class A shareholders. If those shareholders had been told the true nature of these payments to John Tyson and Bond, they might not have voted for defendants Don Tyson, John Tyson, Hackley, Jones, Smith, Keever, Bond, Barbara Tyson, and Tollett. Such information would certainly have altered the total mix of information available to the shareholders when deciding whether to vote for these directors' re-election.

208. As a result of the misrepresentations in the 2004 Proxy, defendants Don Tyson, John Tyson, Hackley, Jones, Smith, Keever, Bond, Barbara Tyson, and Tollett were re-elected at the 2004 annual meeting.

209. Plaintiffs and the Class were thus deprived of their right under Delaware law to cast a fully informed vote at the 2004 annual meeting thereby suffering nominal damages.

210. Plaintiffs and the Class further seek damages in the form of disgorgement of all ill-gotten gains by those directors elected in 2004 based upon their breaches of the duty of disclosure.

211. Plaintiffs have no adequate remedy at law.

### **COUNT IX**

#### **(Derivative Claim For Unjust Enrichment Against Defendants Benefiting From Related Party Transactions, Stock Option Timing, Consulting Contracts, And "Other Annual Compensation" Payments)**

212. Plaintiffs reallege and incorporate by reference herein each and every preceding paragraph.

213. As set forth above, defendants Don Tyson, John Tyson, Barbara Tyson, Lloyd V. Hackley, Richard L. Bond, Leland E. Tollett, Joe F. Starr, Neely E. Cassady, Fred Vorsanger, Shelby D. Massey, Donald E. Wray, Wayne B. Britt, Gerald M. Johnston and the TLP, by their wrongful acts and omissions, have unjustly benefited at the expense of Tyson through a series of insider, self-dealing transactions, which resulted from the defendants' breaches of their fiduciary duties owed to Tyson and its public shareholders.

214. Plaintiffs, as shareholders and representatives of Tyson, seek restitution and disgorgement from these defendants of all benefits, profits, and other compensation obtained on account of their wrongful conduct and fiduciary breaches.

215. Plaintiffs have no adequate remedy at law.

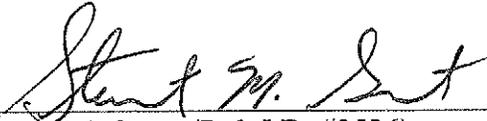
#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order as follows:

- a. entering judgment against Defendants and in favor of Tyson on Counts I, II, III, IV, V, VI, VII and IX;
- b. entering judgment against Defendants and in favor of Plaintiffs and the Class on Count VIII;
- c. awarding compensatory and consequential damages to Tyson, including pre- and post-judgment interest;
- d. certifying the Class, voiding the election of directors held on February 6, 2004, and awarding damages to the Class;
- e. granting Plaintiffs an award of attorneys' fees and costs; and
- f. granting Plaintiffs such other relief that is fair and just, and the Court deems appropriate.

Dated: January 11, 2006

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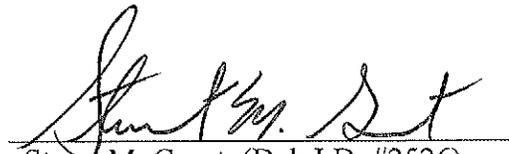
CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2006, copies of the foregoing Consolidated Complaint were served upon the following attorneys of record as follows:

BY LEXISNEXIS FILE & SERVE:

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