

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

ELECTRICAL WORKERS PENSION FUND,  
LOCAL 103, I.B.E.W., Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

WHOLE FOODS MARKET, INC., JOHN P.  
MACKEY, WALTER E. ROBB III, and  
GLENDA JANE FLANAGAN,

Defendants.

**No. 1:15-CV-878-\_\_\_**

**CLASS ACTION**

**COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. (“Local 103” or “Plaintiff”), by and through its undersigned counsel, alleges the following individually and on behalf of a class of all persons and entities similarly situated, upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s allegations are based upon the investigation of Plaintiff’s counsel, which included a review of Defendants’ (defined herein) public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Whole Foods Market, Inc. (“Whole Foods” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a class action on behalf of all those who purchased or otherwise acquired Whole Foods securities between August 9, 2013 and July 30, 2015, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Whole Foods operates as a retailer of natural and organic foods. The Company’s stores offer produce and floral, grocery, meat, seafood, bakery, prepared foods and catering, coffee, tea, beer, wine, cheese, nutritional supplements, vitamins, and body care products, as well as lifestyle products, including books, pet products, and household products. As of May 7, 2015, the company had approximately 417 stores worldwide.

3. Whole Foods was founded in 1978 and is headquartered in Austin, Texas. Its shares trade on the NASDAQ Stock Market under the ticker symbol “WFM.”

4. Throughout the Class Period, Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company routinely overstated the weight of its pre-packaged products and overcharged customers; and (2) as a result of the foregoing, Defendants’ statements about Whole Foods’s business, operations, and prospects were false and misleading and/or lacked a reasonable basis.

5. In the summer of 2013, City Attorneys in Santa Monica, Los Angeles, and San Diego opened an investigation into Whole Foods’ pricing of its popular prepared and pre-packaged food products. The investigation revealed that the Company had been overcharging customers, and in June 2014, the City Attorney of Santa Monica, California announced that Whole Foods had agreed to pay \$800,000 in penalties and to be subject to a five-year injunction

requiring the Company to conduct audits, charge accurate prices, and oversee pricing accuracy statewide.

6. In response to the California penalty, Whole Foods defended its practices and stated that its own records showed that pricing of weighed and measured items was accurate 98% of the time.

7. The truth about Whole Foods' practices began to be revealed on May 6, 2015, when Whole Foods reported its results for the second quarter of 2015, including revenue below analysts' expectations. In addition, the Company announced a new store concept offering "value prices ... geared toward millennial shoppers." Analysts expressed concern that the new concept would cannibalize Whole Foods sales. On this news, Whole Foods' stock price declined from \$47.72 per share at close on May 6, 2015 to close at \$43.07 on May 7, 2015, or 9.7 percent.

8. Then, on June 23, 2015, *The New York Daily News* published an exclusive report revealing that the New York City Department of Consumer Affairs (the "NYDCA") had launched an investigation into overcharging by Whole Foods at New York City locations, focused again on the weight marked on pre-packaged foods. A sting operation conducted in late 2014 was said to have found that *every one* of 80 containers was mislabeled, including many that were substantially overpriced, such as a container of shrimp that was overpriced by nearly \$15.00.

9. NYDCA Commissioner Julie Menin announced that inspectors had called the practice "the worst case of overcharges that they've ever seen," and noted that the results were particularly shocking because Whole Foods had been cited and fined for this conduct several times previously. In response, the Company stated that there was no evidence of overcharging and responded that it would vigorously defend itself against what it described as "overreaching

allegations” by NYDCA. On this news, Whole Food stock price declined from \$40.76 per share to close at \$40.57 on June 23, 2015, or 0.47%.

10. Finally, on July 29, 2015, post-market, the Company issued a press release and filed a Current Report on Form 8-K with the SEC announcing Whole Foods’ financial and operating results for the quarter ended July 5, 2015 (the “July 2015 8-K”). For the quarter, net income was \$154 million, or \$0.43 per diluted share, on revenue of \$3.63 billion, compared to net income of \$151 million, or \$0.41 per diluted share, on revenue of \$3.38 billion for the same period in the prior year. Reporting store sales growth of 0.6% for the last two weeks of the quarter, the July 2015 8-K stated, in part, that “[w]eights and measures audit in New York City stores garnered national media attention.”

11. Also on July 29, 2015, post-market, Whole Foods hosted an earnings call to discuss the financial and operating results reported in the July 2015 8-K. During the call, the Individual Defendants directly attributed Whole Foods’ lower-than-expected quarterly results to news that the Company had overcharged its customers:

[Analyst]: . . . [W]hen you look at the slowdown over the past five weeks, I guess, how can you guys be so precise that the New York audit is the primary factor? And I guess, more importantly, what steps are you taking to fix the problem given that it seems like it’s bled into the first few weeks here of the fourth quarter?

Walter Robb – Co-Chief Executive Officer & Director: . . . **[B]y any measure, it has significant impact on our sales.**

[Analyst]: Has the New York City store started to bounce back or are you still facing the pressures?

\* \* \*Glenda Flanagan – Chief Financial Officer & Executive Vice President: ***Well, I just want to say that the impact was really felt across the whole country, not in New York City. This was national news.***

\* \* \*

*And there's no magic bullet for restoring whatever trust was lost*

.....

12. On this adverse news, Whole Foods' common stock fell \$4.74 per share, or 11.61%, to close at \$36.08 on July 30, 2015.

13. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

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

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

16. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the preparation and dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District.

17. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

## **PARTIES**

18. Plaintiff Local 103 is a defined-benefit pension fund based in Boston, Massachusetts providing retirement benefits to its members. As set forth in the accompanying certification, incorporated by reference herein, Local 103 purchased Whole Foods common stock during the Class Period, and suffered damages as a result of the federal securities law violations and the revelation of the alleged corrective disclosures.

19. Defendant Whole Foods is a Texas corporation with its principal executive offices located at 550 Bowie Street, Austin, Texas 78703. Whole Foods's common stock trades on the NASDAQ under the ticker symbol "WFM."

20. Defendant John P. Mackey ("Mackey") is, and was at all relevant times, Co-Chief Executive Officer and Director of Whole Foods.

21. Defendant Walter E. Robb, III ("Robb") is, and was at all relevant times, Co-Chief Executive Officer and Director of Whole Foods.

22. Defendant Glenda Jane Flanagan ("Flanagan") is, and was at all relevant times, Chief Financial Officer, Executive Vice President and Secretary of Whole Foods.

23. The defendants referenced above in ¶¶ 20-22 are sometimes collectively referred to herein as the "Individual Defendants," and together with Whole Foods, "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

24. Whole Foods operates as a retailer of natural and organic foods. Whole Foods was founded in 1978 and is headquartered in Austin, Texas. Its shares trade on the NASDAQ Global Select Market under the ticker symbol "WFM."

25. The Company's stores offer produce and floral, grocery, meat, seafood, bakery, prepared foods and catering, coffee, tea, beer, wine, cheese, nutritional supplements, vitamins, and body care products, as well as lifestyle products, including books, pet products, and household products. As of May 7, 2015, the company had approximately 417 stores worldwide.

26. Whole Foods is known for charging premium prices, and claims to leverage high quality standards to "attract and maintain a broad base of loyal customers." The Company highlights its "emphasis on perishable" food items and touts its prepared (including pre-packaged) food offerings as a "key differentiator" of Whole Foods in relation to competing grocery store chains. Prepared food items accounted for more than nineteen percent of Whole Foods' sales in 2014, and approximately the same percent of sales in 2013 and 2012.

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

27. The Class Period begins on August 9, 2013, when Whole Foods filed a quarterly report on Form 10-Q with the SEC announcing its financial and operating results for the quarter ended July 7, 2013 (the "July 2013 10-Q"). For the quarter, net income was \$142 million, or \$0.38 per diluted share, on revenue of \$3.06 billion, compared to net income of \$117 million, or \$0.16 per diluted share, on revenue of \$2.73 billion for the same period in the prior year. The July 2013 10-Q contained signed certification pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by defendants Mackey, Robb and Flanagan, stated that the financial information contained in the July 2013 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

28. On November 22, 2013, Whole Foods filed an annual report on Form 10-K with the SEC announcing its financial and operating results for the quarter and fiscal year ended September 29, 2013 (the "2013 10-K"). For the quarter, net income was \$121 million, or \$0.32

per diluted share, on revenue of \$2.98 billion, compared to a net income of \$112.73 million, or \$0.30 per diluted share, on revenue of \$2.91 billion for the same period in the prior year. For the fiscal year, net income was \$551 million, or \$1.47 per diluted share, on revenue of \$12.9 billion, compared to net income of \$465.57 million, or \$1.26 per diluted share, on revenue of \$11.7 billion for the prior fiscal year. In addition, the 2013 10-K contained signed certifications pursuant to SOX by defendants Mackey, Robb, and Flanagan, stating that the financial information contained in the 2013 10-K was accurate and disclosed any material changes to the Company's internal control over financial reporting.

29. In the 2013 10-K, the Company stated, in part:

*Value Programs*

We remain committed to the highest quality standards and to providing a clear range of choices in every category, both of which we believe are important in driving our sales growth over the long term. In addition to offering our 365 Everyday Value brands, we have competitively matched prices on thousands of known value items, extended value choices to our perishables departments, promoted our regional and national one-day sales, and focused on improving customer awareness about the value we offer in our stores. We also have The Whole Deal, our printed value guide, available in all our stores in the U.S. and Canada, as well as online. The value guide features supplier-sponsored and Whole Foods Market store brand coupons, budget-conscious recipes, money-saving shopping and cooking tips, and Sure Deals that highlight everyday value pricing on high-quality products our customers love.

\* \* \*

**Global Responsibility**

We seek to be a deeply responsible company in the communities where we do business around the world, providing ethically sourced, high-quality products and transparent information to our customers, reducing our impact on the environment, and actively participating in our local communities.

\* \* \*

*Adverse publicity may reduce our brand value and negatively impact our business.*

We believe our Company has built an excellent reputation as a food retailer, socially responsible corporation and employer, and we believe our continued success depends on our ability to preserve, grow and leverage the value of our brand. Brand value is based in large part on perceptions of subjective qualities, and even isolated incidents can erode trust and confidence, particularly if they result in adverse publicity, governmental investigations or litigation, which can negatively impact these perceptions and our business. In addition, our brand and reputation could be harmed by actions taken by our suppliers that are outside of our control.

30. On February 12, 2014, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the quarter ended January 19, 2014 (the “January 2014 8-K”). For the quarter, net income was \$158 million, or \$0.42 per diluted share, on revenue of \$4.24 billion, compared to net income of \$146 million, or \$0.39 per diluted share, on revenue of \$3.86 billion for the same period in the prior year.

31. On February 21, 2014, Whole Foods filed a quarterly report on Form 10-Q (the “January 2014 10-Q”). The January 2014 10-Q reiterated the financial and operating results previously announced in the February 2014 8-K. In addition, the January 2014 10-Q contained signed certifications pursuant to SOX by defendants Mackey, Robb, and Flanagan, stating that the financial information contained in the January 2014 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

32. On May 6, 2014, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the quarter ended April 13, 2014 (the “April 2014 8-K”). For the quarter, net income was \$142 million, or \$0.38 per diluted

share, on revenue of \$3.32 billion, compared to net income of \$142 million, or \$0.38 per diluted share, on revenue of \$3.03 billion for the same period in the prior year.

33. On May 16, 2014, Whole Foods filed a quarterly report on Form 10-Q with the SEC (the “April 2014 10-Q”). The April 2014 10-Q reiterated the financial and operating results previously announced in the April 2014 8-K. In addition, the April 2014 10-Q contained signed certifications pursuant to SOX by defendants Mackey, Robb, and Flanagan, stating that the financial information contained in the April 2014 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

34. On June 24, 2014, the City Attorney of Santa Monica, California announced that Whole Foods had agreed to pay \$800,000 in penalties for violating consumer protection laws regarding false advertising and unfair competition. Whole Foods was also subjected to a five-year court injunction requiring the Company to conduct random audits, charge accurate prices, and appoint employees to oversee pricing accuracy statewide and also within each store in California. In response to the California penalty, Whole Foods defended its practices, stating, in part, that “based on a review of [its] own records and sampling of inspection reports .... [its] pricing on weighed and measured items was accurate 98% of the time.” The Company also pledged to “improve internal procedures to reduce human error.”

35. On July 29, 2014, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the quarter ended July 5, 2014 (the “July 2014 8-K”). For the quarter, net income was \$151 million, or \$0.41 per diluted share, on revenue of \$3.38 billion, compared to net income of \$142 million, or \$0.38 per diluted share, on revenue of \$3.06 billion for the same period in the prior year.

36. On August 8, 2014, Whole Foods filed a quarterly report on Form 10-Q with the SEC (the “July 2014 10-Q”). The July 2014 10-Q reiterated the financial and operating results previously announced in the July 2014 8-K. In addition, the July 2014 10-Q contained signed certifications pursuant to SOX by defendants Mackey, Robb, and Flanagan, stating that the financial information contained in the July 2014 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

37. On November 5, 2014, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the quarter ended September 28, 2014 (the “September 2014 8-K”). For the quarter, net income was \$128 million, or \$0.35 per diluted share, on revenue of \$3.26 billion, compared to net income of \$121 million, or \$0.32 per diluted share, on revenue of \$2.98 billion for the same period in the prior year.

38. On November 21, 2014, Whole Foods filed an annual report on Form 10-K (the “2014 10-K”). The 2014 10-K reiterated the quarterly financial and operating results previously announced in the September 2014 8-K and announced the Company’s financial and operating results for the fiscal year ended September 28, 2014. For the fiscal year, net income was \$579 million, or \$1.56 per diluted share, on revenue of \$14.2 billion, compared to net income of \$551 million, or \$1.47 per diluted share, on revenue of \$12.9 billion for the prior fiscal year. In addition, the 2014 10-K contained signed certifications pursuant to SOX by defendants Mackey, Robb, and Flanagan, stating that the financial information contained in the 2014 10-K was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

39. In the 2014 10-K, the Company stated, in part:

## **Value Programs**

We remain committed to the highest quality standards and to providing a clear range of choices in every category, both of which are important drivers of sales growth over the long term. In addition to our 365 Everyday Value exclusive products, we competitively price thousands of branded items and have extended value choices to our perishables departments as well. We also regularly promote thousands of products each month, including the widest array of organic and non-GMO sale items available. Our website features budget-friendly recipes and money-saving tips, and we offer in-store value tours and The Whole Deal value guide, which features supplier-sponsored and Whole Foods Market exclusive brand coupons online and in all stores in the U.S. and Canada.

\* \* \*

## **Global Responsibility**

We seek to be a deeply responsible company in the communities where we do business around the world, providing ethically sourced, high-quality products and transparent information to our customers, reducing our impact on the environment, and actively participating in our local communities.

*Adverse publicity may reduce our brand value and negatively impact our business.*

We believe our Company has built an excellent reputation as a food retailer, socially responsible corporation and employer, and we believe our continued success depends on our ability to preserve, grow and leverage the value of our brand. Brand value is based in large part on perceptions of subjective qualities, and even isolated incidents can erode trust and confidence, particularly if they result in adverse publicity, governmental investigations or litigation, which can negatively impact these perceptions and our business. We believe that many customers choose to shop our stores because of their interest in health, nutrition and food safety and that they hold us to a higher food safety standard than other supermarkets. There is increasing governmental scrutiny of and

public awareness regarding food safety. The real or perceived sale of contaminated food products by us could result in government enforcement action, private litigation, product recalls and other liabilities, the settlement or outcome of which might have a material adverse effect on our operating results and brand value.

40. On February 11, 2015, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the quarter ended January 18, 2015 (the “January 2015 8-K”). For the quarter, net income was \$167 million, or \$0.46 per diluted share, on revenue of \$4.67 billion, compared to a net income of \$158 million, or \$0.42 per diluted share, on revenue of \$4.24 billion for the same period in the prior year.

41. On February 27, 2015, Whole Foods filed a quarterly report on Form 10-Q with the SEC (the “January 2015 10-Q”). The January 2015 10-Q reiterated the financial and operating results previously announced in the January 2015 8-K. In addition, the January 2015 10-Q contained signed certifications pursuant to SOX by defendants Mackey, Robb and Flanagan, stating that the financial information contained in the January 2015 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

42. The statements referenced in ¶¶ 27 – 41 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts, which were known to Defendants or recklessly guarded by them, including that: (1) the Company routinely overstated the weight of its pre-packaged products and overcharged customers; and (2) as a result of the foregoing, Defendants’ statements about Whole Foods’s business, operations, and prospects were false and misleading and/or lacked a reasonable basis.

#### **The Truth Begins to Emerge**

43. On May 6, 2015, Whole Foods issued a press release and filed a report on Form 8-K with the SEC announcing its financial and operating results for the second-quarter ended April 12, 2015 (the “April 2015 8-K”). For the quarter, net income was \$158 million, or \$0.44

per diluted share, on revenue of \$3.65 billion, compared to net income of \$142 million, or \$0.38 per diluted share, on revenue of \$3.32 billion for the same period in the prior year. The revenue reported by the Company was below analysts' expectations.

44. In addition to disappointing results, Whole Foods announced a new store concept offering "value prices ... geared toward millennial shoppers."

45. Analysts expressed skepticism, citing "concern that the new concept will steal customers from traditional Whole Foods stores." For example, Brian Yarbrough, an analyst at Edward Jones & Co., wondered, "does [the new concept] cannibalize Whole Foods sales?" On this news, Whole Foods' stock price declined from \$47.72 per share at close on May 6, 2015 to close at \$43.07 on May 7, 2015, or 9.7 percent, but remained partially artificially inflated. The next month, on June 23, 2015, *The New York Daily News* published an exclusive report revealing that NYDCA had launched an investigation into overcharging by Whole Foods at New York City locations focused again on the weight marked on pre-packaged foods. According to the report, investigators "nabbed the upscale food purveyor for routinely overcharging customers on groceries during dozens of inspections dating back to at least 2010." A sting operation conducted in late 2014 was said to have found that every one of 80 containers was mislabeled, including many that were substantially overpriced, such as a container of shrimp that was overpriced by \$14.84.

46. NYDCA Commissioner Julie Menin announced it had uncovered "systematic overcharging for pre-packaged foods" at Whole Foods' eight New York City locations and reported that inspectors had called the practice "the worst case of overcharges that they'[d] ever seen," and noted that the results were particularly shocking because Whole Foods had been cited and fined for this conduct previously. In response, the Company stated that there was no

evidence of overcharging and responded that it would vigorously defend itself against what it described as “overreaching allegations” by NYDCA. On this news, Whole Food stock fell \$0.19, or 0.47%, to close at \$40.57 on June 23, 2015.

47. The impact of Whole Foods’ overcharging practices was finally revealed to the market on July 29, 2015, post-market, when the Company filed its July 2015 8-K, announcing disappointing results for the quarter ended July 5, 2015, including earnings, margins, and sales all below estimates and its weakest growth among established stores since the 2009 recession. For the quarter, net income was \$154 million, or \$0.43 per diluted share, on revenue of \$3.63 billion, compared to net income of \$151 million, or \$0.41 per diluted share, on revenue of \$3.38 billion for the same period in the prior year. Reporting store sales growth of 0.6% for the last two weeks of the quarter, the July 2015 8-K stated, in part, that “[w]eights and measures audit in New York City stores garnered national media attention.”

48. Also on July 29, 2015, post-market, Whole Foods hosted an earnings call to discuss the financial and operating results reported in the July 2015 8-K. During the call, the Individual Defendants directly attributed Whole Foods lower-than-expected quarterly results to news that the Company had overcharged its customers:

[Analyst]: . . . [W]hen you look at the slowdown over the past five weeks, I guess, how can you guys be so precise that the New York audit is the primary factor? And I guess, more importantly, what steps are you taking to fix the problem given that it seems like it’s bled into the first few weeks here of the fourth quarter?

Walter Robb – Co-Chief Executive Officer & Director: . . . Well, again, I think in the comments here, we said that we – look, we try to give you the evidence in the chart there that showed the breakdown of the quarter, the weeks and the quarter, the end of the quarter, the start of the quarter, and the start of the new quarter to help you get some visibility into the impact of it. Clearly, it affected the comps. Clearly, there’s other factors that work here too in terms of the headwinds from the previous year strong sales

and so forth. ***But by any measure, it has significant impact on our sales.***

[Analyst]: Has the New York City store started to bounce back or are you still facing the pressures?

Robb: We're not providing that level of detail as to the sales at this point, but I would say that go ahead

Glenda Flanagan – Chief Financial Officer & Executive Vice President: ***Well, I just want to say that the impact was really felt across the whole country, not in New York City. This was national news.*** So, looking at what's happening in the New York market is really not the right way to look at it. ***It's looking at it across the whole company*** and you can see that for the first three weeks in Q4, although we've seen a little bit of uptick from there, it's still pretty low.

\* \* \*

[Analyst]: I guess I would like to follow on [the previous] questions. The question isn't just how you get your people to do the right thing, because clearly you've done that. The question is how do you change customer perception that somehow Whole Foods can't be trusted?

[Robb]: Yeah, I mean I think that's a really fair question, Meredith. And then there's no – we're taking all the steps you can trust, has to be a trust is broken, it has to be rebuilt a step at a time and through solid, solid execution day in and day out. ***And there's no magic bullet for restoring whatever trust was lost . . . .***

49. On this adverse news, Whole Foods' common stock fell \$4.74 per share, or 11.61%, to close at \$36.08 on July 30, 2015.

50. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other class members have suffered significant losses and damages.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

51. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or

otherwise acquired Whole Foods securities during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest.

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

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

54. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

- whether the federal securities laws were violated by defendants’ acts as alleged herein;

- whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Whole Foods;
- whether the Individual Defendants caused Whole Foods to issue false and misleading financial statements during the Class Period;
- whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Whole Foods securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages?

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

#### **LOSS CAUSATION**

57. During the Class Period, as detailed herein, Defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of Whole Foods' securities, and operated as a fraud or deceit on Class Period purchasers of Whole Foods' securities by misrepresenting the value and prospects for the Company's business, growth prospects, and accounting compliance. Later, when Defendants' prior misrepresentations and fraudulent conduct were disclosed to the market, the price of Whole Foods securities fell precipitously, as the prior artificial inflation came out of the price. As a result of their purchases of Whole Foods securities during the Class Period,

Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

**INAPPLICABILITY OF STATUTORY SAFE HARBOR**

58. Whole Foods' verbal "Safe Harbor" warnings accompanying its oral forward looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

59. Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Whole Foods who knew that the FLS was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to, or stated to be dependent on, those historic or present tense statements when made.

**ADDITIONAL ALLEGATIONS REGARDING SCIENTER**

60. During the Class Period, as alleged herein, the Individual Defendants acted with scienter in that the Individual Defendants knew or were reckless as to whether the public documents and statements issued or disseminated in the name of the Company during the Class Period were materially false and misleading; knew or were reckless as to whether such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

61. The Individual Defendants permitted Whole Foods to release these false and misleading statements and failed to file the necessary corrective disclosures, which artificially inflated the value of the Company's stock.

62. As set forth herein, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Whole Foods, their control over, receipt, and/or modification of Whole Foods's allegedly materially misleading statements and omissions, and/or their positions with the Company that made them privy to confidential information concerning Whole Foods, participated in the fraudulent scheme alleged herein.

63. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of Whole Foods common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme deceived the investing public regarding Whole Foods' business, operations, and management and the intrinsic value of Whole Foods' securities and caused Plaintiff and members of the Class to purchase Whole Foods securities at artificially inflated prices.

#### **PRESUMPTION OF RELIANCE**

64. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Whole Foods securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;

- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Whole Foods securities between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

65. Based upon the foregoing, the market for Whole Foods securities promptly digested current information regarding Whole Foods from all publicly available sources and reflected such information in Whole Foods' stock price. Under these circumstances, all purchasers of Whole Foods securities during the Class Period suffered similar injury through their purchase of Whole Foods securities at artificially inflated prices and the presumption of reliance applies.

66. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

## COUNT I

### **Against All Defendants For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**

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

68. This Count is asserted against defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

69. During the Class Period, defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,

practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (2) artificially inflate and maintain the market price of Whole Foods securities; and (3) cause Plaintiff and other members of the Class to purchase or otherwise acquire Whole Foods securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants took the actions set forth herein.

70. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Whole Foods securities. Such reports, filings, releases, and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Whole Foods's finances and business prospects.

71. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Whole Foods securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Whole Foods's business and financial condition which were concealed by defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Whole Foods securities at

artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by defendants, and were damaged thereby.

72. By reason of the conduct alleged herein, defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

73. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

### **Violations of Section 20(a) of the Exchange Act Against The Individual Defendants**

74. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

75. During the Class Period, the Individual Defendants acted as controlling persons of Whole Foods within the meaning of Section 20(a) of the Exchange Act. By virtue of their senior positions and their power to control public statements about Whole Foods, the Individual Defendants had the power and ability to control the actions of Whole Foods and its employees. By reason of such conduct, Defendants are liable pursuant to Section 20(a) of the Exchange Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class

representative;

- B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated: October 2, 2015

**Respectfully Submitted**

**DIETZ & JARRARD P.C.**

By: /s/ R. Mark Dietz  
R. Mark Dietz  
Texas Bar Number: 05857200  
106 Fannin Avenue East  
Round Rock, Texas 78664  
Telephone: (512) 244-9314  
Facsimile: (512) 244-3766  
Email: rmdietz@lawdietz.com

**LABATON SUCHAROW LLP**

Christopher J. Keller (*pro hac vice pending*)  
Michael W. Stocker (*pro hac vice pending*)  
Natalie M. Mackiel (*pro hac vice pending*)  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 883-7529  
Email: nmackiel@labaton.com

***Counsel for Plaintiff***  
***Electrical Workers Pension Fund, Local 103,***  
***I.B.E.W.***