

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

KENNETH W. DIFONZO,
Defendant.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission
("Commission"), alleges for its Complaint, as follows:

SUMMARY

1. Defendant Kenneth W. DiFonzo ("DiFonzo"), a former Senior Vice President and Corporate Controller of ConAgra Foods, Inc. ("ConAgra" or "Company"), directed certain improper accounting practices at ConAgra relating to the establishment and use of excess reserves in fiscal year ("FY") 1999. These accounting practices resulted in a material overstatement of ConAgra's financial performance in its public statements and periodic filings with the Commission in FY 1999.

2. DiFonzo knew, or should have known, that ConAgra improperly accounted for excess reserves in FY 1999. The accounting practices were not in accordance with Generally Accepted Accounting Principles ("GAAP") and resulted in ConAgra misstating its reported income before income taxes by at least \$105 million in FY 1999 in

addition to overstating its reported net income and earnings per share. Had ConAgra's accounting for its reserves been in accordance with GAAP, it would have reduced its excess reserves in earlier periods, which would have resulted in a corresponding increase in ConAgra's income before income taxes in those earlier periods.

3. Certain incentive compensation ConAgra paid to DiFonzo was dependent on ConAgra's profitability. As a result of the accounting practices described herein, DiFonzo received a larger bonus and other performance-based compensation during FY 1999.

4. By engaging in this misconduct DiFonzo aided and abetted ConAgra's violations of the reporting, books and records, and internal controls provisions of the federal securities laws and violated one of the books and records provisions of those laws.

5. Through this action, the Commission requests that the Court, among other things permanently enjoin DiFonzo from further violations of the federal securities laws and order DiFonzo to disgorge and divest his gains from his conduct violating the federal securities laws, including pre-judgment interest.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d)].

7. This Court has jurisdiction over this action pursuant to Sections 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. DiFonzo, directly and indirectly, used the means or instrumentalities of interstate commerce, or of the mails, or the

facilities of a national securities exchange in connection with the transactions, acts, practices and course of business alleged in this Complaint.

8. Certain of the acts, practices and courses of conduct constituting the violations of law alleged in this Complaint occurred within this judicial district, and, therefore, venue is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

9. DiFonzo, directly and indirectly, has engaged in transactions, acts, practices and courses of business that violate Section 13b2-1 [17 C.F.R. § 240.13b2-1] and has aided and abetted violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13]. An injunction is necessary to ensure that DiFonzo will not continue to violate, and aid and abet violations of, the foregoing provisions of the federal securities laws.

DEFENDANT

10. DiFonzo, age 55, resides in Newport Beach, California. DiFonzo was ConAgra's Corporate Controller from May 1994 through February 1999. From February 1999 until May 2004, DiFonzo held other senior positions with the Company. From May 2004 to September 2005, DiFonzo served in an advisory capacity at ConAgra regarding various operational/management issues. DiFonzo is a Certified Public Accountant licensed in Illinois; however, his license has become inactive. From approximately June 1973 to April 1981, he worked as an auditor in public accounting, rising to the position of Senior Manager. Since September 1, 2005, DiFonzo has served as a consultant to the Company.

OTHER RELEVANT ENTITY

11. ConAgra is a Delaware corporation with headquarters in Omaha, Nebraska. ConAgra's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trades on the New York Stock Exchange. At all times relevant to this Complaint, ConAgra was a diversified international food company. ConAgra's fiscal year ends on the last Sunday in May of each year.

ACCOUNTING AT CONAGRA'S CORPORATE HEADQUARTERS DURING FY 1999

12. In FY 1999, ConAgra misstated its income before income taxes, net income, earnings per share and trend of earnings in its periodic and other filings with the Commission and in Company-issued press releases as a result of certain accounting practices. In FY 1999, the improper accounting practices engaged in by DiFonzo involved the use of excess tax, interest, and purchase accounting reserves arising from ConAgra's acquisition of Beatrice Company ("Beatrice"), and the use of ConAgra's Estimated Liabilities account as a "cookie jar" reserve.

A. FY 1999

1. ConAgra's and DiFonzo's Use Of Excess Beatrice Acquisition-Related Tax and Interest Reserves

Excess Reserves Were Kept on ConAgra's Books

13. ConAgra acquired Beatrice in FY 1991. Prior to the acquisition, Beatrice estimated that it had hundreds of millions of dollars of liabilities arising from tax disputes with federal and state authorities. Beatrice recorded these tax liabilities as tax reserves on its books and ConAgra inherited these reserves as part of the acquisition. After the

Beatrice acquisition, ConAgra increased these tax reserves it had inherited from Beatrice by adding tens of millions of dollars of post-acquisition interest.

14. Although ConAgra reduced the Beatrice reserves at various times in years prior to 1998, by no later than the end of FY 1998, DiFonzo knew, or should have known, that ConAgra no longer had any probable and reasonably estimable tax liabilities that justified maintaining the remaining Beatrice acquisition-related tax and interest reserves on the Company's books. At that time, these reserves exceeded \$181 million. Documents that DiFonzo and others prepared after the end of FY 1998 referred to these tax and interest reserves as "free" and "surplus," respectively. Moreover, at or around the end of FY 1998, ConAgra's outside auditors performed a written analysis of the manner in which the excess Beatrice acquisition-related tax and interest reserves should be removed from ConAgra's books and provided it to ConAgra. GAAP required that these excess tax and interest reserves be removed from ConAgra's books.

Excess Reserves Were Reduced to Offset Losses in Russia

15. During the first quarter of FY 1999, DiFonzo signed an accounting journal entry reducing an account containing the excess Beatrice-related post-acquisition interest reserves by \$21.2 million to offset, dollar-for-dollar, unrelated, unplanned-for and unreserved-for inventory losses arising from ConAgra's attempt to sell meat and poultry into Russia. This journal entry was posted after the end of the fiscal quarter.

16. DiFonzo knew, or should have known, that the accounting for the \$21.2 million excess reserves reduction was not in accordance with GAAP and improperly increased ConAgra's reported income before income taxes for the first quarter of FY 1999 by 12%. The earnings per share ("EPS") estimates from the analysts covering

ConAgra ranged from \$0.21 to \$0.25 per share during that period. ConAgra's EPS of \$0.23 in the first quarter of FY 1999 exceeded the Wall Street analysts' consensus EPS estimate of \$0.22 per share by \$0.01. Absent the \$21.2 million reserve reduction, ConAgra would have missed the consensus estimate by \$0.02.

*Excess Reserves Were Used to Offset Additional Losses in Russia
and to Offset Increased Legal and Environmental Expenses*

17. During the second quarter of FY 1999, DiFonzo signed an accounting journal entry reducing the excess Beatrice-related post-acquisition interest reserves to offset, dollar-for-dollar, additional unrelated, unplanned-for and unreserved-for inventory losses arising from ConAgra's attempted sale of meat and poultry into Russia, this time by over \$11.8 million.

18. Separately, but at the same time as he reduced the excess Beatrice acquisition-related interest reserves to cover the ConAgra losses in Russia, DiFonzo signed a journal entry improperly transferring over \$93 million of the remaining, approximately \$148 million of excess Beatrice acquisition-related tax and interest reserves, into two, newly-created, "general" reserve accounts. About \$60 million of these transferred reserves were reallocated to cover unrelated, unplanned-for and unreserved-for exposures related to legal and environmental matters. Without the reallocation of these reserves, ConAgra would have taken a \$60 million charge to income for legal and environmental expense in that quarter without an offset to that charge. The other, approximately \$33 million of transferred acquisition-related tax and interest reserves, was unsupported by any probable and reasonably estimable liabilities. Nonetheless, DiFonzo failed to remove the \$33 million of excess reserves from ConAgra's books even though this was required by GAAP.

19. DiFonzo knew, or should have known, that the accounting for the over \$11.8 million reserves reduction to offset ConAgra's losses in Russia, and the \$60 million excess reserves transfer to cover unreserved-for legal and environmental exposures, was not in accordance with GAAP and improperly increased ConAgra's reported income before income taxes for the second quarter of FY 1999 by over 20%. The EPS estimates from the analysts covering ConAgra ranged from \$0.42 to \$0.48 per share during that period. ConAgra's earnings of \$0.46 per share in the second quarter of FY 1999 exceeded the Wall Street analysts' consensus estimate of \$0.45 per share by \$0.01. Absent the over \$71.8 million reduction and transfer of the excess Beatrice acquisition-related tax and interest reserves, ConAgra would have missed the consensus estimate by at least \$0.08.

**2. ConAgra's and DiFonzo's Use of ConAgra's
Estimated Liabilities Account**

Excess Reserves Were Kept on ConAgra's Books

20. From at least as early as the end of FY 1998 through the third quarter of FY 1999, DiFonzo improperly used an Estimated Liabilities account as a general, or "cookie jar," reserve prohibited by GAAP. During this time period, DiFonzo increased this reserve by millions of dollars by transferring into it miscellaneous excess reserves and accruals, and gains from the sale of certain ConAgra assets. In addition, at the same time, DiFonzo used this reserve to offset current period operating expenses.

21. At the end of FY 1998 and during the first three quarters of FY 1999, DiFonzo either directed, or was aware of, the activity in this reserve.

22. During the fourth quarter of FY 1998, DiFonzo directed that this reserve be increased by transferring an over \$8 million "unused" reserve on certain deferred tax

assets into the Estimated Liabilities account. This transfer comprised most of the approximately \$9.6 million balance in this account at the end of FY 1998. This nearly \$9.6 million balance was unsupported by any probable and reasonably estimable liabilities. Nonetheless, DiFonzo failed to remove the \$9.6 million of excess reserves from ConAgra's books even though this was required by GAAP.

*Excess Reserves Were Used To Offset Expenses
Resulting from a Legal Settlement and Other Expenses*

23. In the first quarter of FY 1999, DiFonzo directed that the Estimated Liabilities account be used for claims arising out of a legal settlement for which no reserve had previously been created. DiFonzo signed a journal entry reducing the account by over \$9.6 million for the bulk of these expenses.

24. As DiFonzo knew, or should have known, the accounting for the over \$9.6 million reduction of the Estimated Liabilities account to cover the legal settlement was not in accordance with GAAP and improperly increased ConAgra's reported income before income taxes for the first quarter of FY 1999 by 5.4%.

25. In addition, while DiFonzo was Controller in FY 1999, there were many smaller, but similar reductions of this reserve. As a result, ConAgra improperly overstated its reported income before income taxes, net income and earnings per share by additional amounts during FY 1999.

26. There also were numerous improper additions to the Estimated Liabilities account in FY 1999. During the second quarter, DiFonzo authorized and approved adding approximately \$10.5 million of the deferred gain remaining from ConAgra's FY 1998 sale of its Country General stores business to the Estimated Liabilities account. The

accounting for the gain was not in accordance with GAAP because this gain should have been recognized in FY 1998.

3. ConAgra's and DiFonzo's Use Of Beatrice Acquisition-Related Purchase Accounting Reserves

27. At the end of FY 1998, ConAgra still maintained on its books more than \$50 million in purchase accounting reserves related to its acquisition of Beatrice in FY 1991. All of the probable and reasonably estimable liabilities related to these reserves were identified by no later than the end of FY 1995. Almost four years later, in the first quarter of FY 1999, DiFonzo reduced these reserves by over \$3.1 million to offset the unrelated, unplanned-for and unreserved-for payoff of certain bonds Beatrice originally guaranteed. At that time, DiFonzo considered covering the loss from the bond pay-off with certain of the excess Beatrice acquisition-related tax reserves. Instead of doing so, DiFonzo waited until early in FY 1999 to take the bond pay-off loss, and offset it by reducing the Beatrice acquisition-related purchase accounting reserves.

28. As DiFonzo knew, or should have known, the accounting for the reduction of the purchase accounting reserves to offset the unrelated, unplanned-for and unreserved-for reduction to ConAgra's earnings from the bond payoff was not in accordance with GAAP and improperly overstated ConAgra's reported income before income taxes by over \$3.1 million for the first quarter of FY 1999, and increased its quarterly net income and earnings per share.

4. ConAgra Issued Public Earnings Releases and Filed Reports With the Commission that Were False and Misleading

29. Each of the uses of the excess reserves in FY 1999 was not in accordance with GAAP. ConAgra never disclosed to the public, in a filing with the Commission, a ConAgra earnings release or otherwise, any of these reserves reductions.

30. Absent these reductions, ConAgra would not have met Wall Street analysts' consensus EPS estimates for the first and second quarters of FY 1999. Also, the reductions made to the Company's excess reserves caused ConAgra to overstate its reported income before income taxes during FY 1999 by 19% for the first quarter, by 20% for the second quarter, by 13% for the nine months ending at the end of the third quarter, and by 15% for the full year of FY 1999.

31. As a result of DiFonzo's conduct, ConAgra's earnings releases for the first, second and third quarters of FY 1999, its earnings release for the fourth quarter and full fiscal year of FY 1999, its Quarterly Reports filed with the Commission on Form 10-Q for the first, second and third quarters of FY 1999, and its Annual Report filed on Form 10-K for FY 1999 were materially false and misleading.

32. DiFonzo reviewed and signed ConAgra's Forms 10-Q for the first and second quarters of FY 1999 and reviewed the Company's earnings releases for those quarters. He knew, or should have known, that each of these reports and earnings releases was false and misleading. In addition, DiFonzo knew that the Company's financial statements contained in its Forms 10-Q and earnings releases for the first and second quarters of FY 1999 would be included in the Company's Form 10-Q for the third quarter of FY 1999 and its Form 10-K for FY 1999, and in the Company's earnings releases for the third quarter, and the fourth quarter and full fiscal year, of FY 1999. As a

result, DiFonzo knew, or should have known, that these additional filings and earnings releases also would be false and misleading.

**DIFONZO BENEFITED FROM CONAGRA'S
IMPROPER ACCOUNTING**

33. DiFonzo received increased bonuses, restricted stock, stock options and other compensation based on ConAgra's overstated FY 1999 financial performance.

CLAIMS FOR RELIEF

FIRST CLAIM

**DiFonzo Aided and Abetted ConAgra's Violations of Section 13(a)
Of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13**

34. Paragraphs 1 through 32 above are re-alleged and incorporated herein by reference.

35. As a result of DiFonzo's conduct described above, ConAgra filed with the Commission annual and quarterly reports for FY 1999 that were materially false and misleading or failed to include material information necessary to make the required statements in those reports, in light of the circumstances under which they were made, not misleading. These reports included ConAgra's Forms 10-Q for the first, second and third quarters of FY 1999, and its Form 10-K for FY 1999.

36. ConAgra violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

37. As a result of his conduct described above, DiFonzo, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t], aided and abetted ConAgra's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20,

13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13], thereby aiding and abetting ConAgra in the commission of these violations.

SECOND CLAIM

DiFonzo Violated Exchange Act Rule 13b2-1 and Aided and Abetted ConAgra's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

38. Paragraphs 1 through 32 above are re-alleged and incorporated herein by reference.

39. Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] provides that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

40. As a result of his conduct described above, DiFonzo violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

41. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires public companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the Company's transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires public companies, among other things, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the Company's transactions were recorded as necessary to permit preparation of financial statements conforming with GAAP.

42. ConAgra violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]. As a result of his conduct described above, DiFonzo, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t], aided

and abetted ConAgra's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, The Commission respectfully requests that this Court:

I.

Issue a Final Judgment of Permanent Injunction and Other Relief restraining and enjoining DiFonzo from directly or indirectly violating Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13];

II.

Order DiFonzo to disgorge the value of and divest certain performance-based compensation he received based on ConAgra's inflated FY 1999 earnings per share, together with prejudgment interest thereon;

III.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

IV.

Grant such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: June 29, 2007

Respectfully submitted,

s/Polly A. Atkinson

Polly A. Atkinson

Arthur Lowry (Trial Counsel)

Antonia Chion

Christopher R. Conte

Daniel Chaudoin

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Polly A. Atkinson, SEC, 1801 California St. Ste 1500, Denver, CO 80202-

2656 303/844-1046

DEFENDANTS

Kenneth W. DiFonzo

County of Residence of First Listed Defendant Orange County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See attached

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| PTF | DEF | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC secs 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and related rules and 17 CFR sec 240.13b2-1

Brief description of cause:

Defendant violated and aided and abetted violations of federal securities laws in scheme to falsely overstate public company's financial results

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$

Inj./disgorgement

CHECK YES only if demanded in complaint:

JURY DEMAND:☐ Yes ☒ No

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/29/07

s/Polly A. Atkinson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Attachment to Civil Cover Sheet

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.