

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

Civil Action No.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

JAMES P. O'DONNELL,
JAY D. BOLDING, AND
DEBRA L. KEITH,

Defendants.

COMPLAINT

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

SUMMARY

1. ConAgra Foods, Inc. ("ConAgra" or "Company") engaged in improper accounting practices during its fiscal years ("FY") 1999, 2000 and 2001, thereby materially misstating its financial performance in its public statements and periodic filings with the Commission. ConAgra's improper accounting practices related to the Company's failure to record adequate income tax expense in FY 1999, and its improper reductions of various excess reserves in FY 1999, 2000 and FY 2001, all of which occurred at its Corporate headquarters. In addition, between FY 2002 and FY 2005, ConAgra's corporate tax department made numerous income tax errors, causing the Company to improperly account for tax benefits, understate its income tax

expense and materially overstate reported net income and earnings per share in its public statements and periodic filings with the Commission during this period.

2. Defendant James P. O'Donnell ("O'Donnell"), ConAgra's former Executive Vice President and Chief Financial Officer ("CFO"), should have known that ConAgra failed to record adequate income tax expense in FY 1999 and improperly accounted for excess reserves in FY 2001. Defendant Jay D. Bolding ("Bolding"), ConAgra's former Controller, directed the Company's improper accounting for excess reserves in FY 2000, and he should have known that ConAgra failed to record adequate income tax expense in FY 1999. Bolding knew, or should have known, that ConAgra improperly accounted for excess reserves in FY 2001. In addition, both O'Donnell and Bolding were aware that ConAgra's United Agri-Products ("UAP") subsidiary improperly recognized revenue, and failed to record adequate bad debt expense, in FY 2000. Defendant Debra L. Keith ("Keith"), ConAgra's former Vice President- Taxes, knew, or should have known, that ConAgra failed to record adequate income tax expense in FY 1999, FY 2003, FY 2004 and the first two quarters of FY 2005.

3. As a result of the accounting practices described herein, which were not in accordance with Generally Accepted Accounting Principles ("GAAP"), ConAgra misstated its reported income before income taxes by nearly \$112.8 million, and also overstated its reported net income and earnings per share between the fourth quarter of FY 1999 and the third quarter of FY 2001. As a result of income tax errors, including those described herein, ConAgra misstated its reported income tax expense by \$105 million. During this time, the Company issued and/or filed certain earnings releases, and quarterly and annual reports, and filed a registration statement with the Commission, which were materially false and misleading.

4. In June 2001, as a result of the UAP accounting practices described herein, ConAgra restated its reported financial results. UAP's accounting errors resulted in an overstatement of ConAgra's reported income before income taxes in FY 1998, FY 1999 and FY 2000, and an understatement of its reported income before income taxes in FY 2001. 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. In April 2005, as a result of various income tax errors, including the two income tax errors described herein, ConAgra restated its reported financial results for FY 2002, FY 2003, FY 2004 and the first two quarters of FY 2005. ConAgra's income tax errors resulted in an overstatement of its reported net income after income taxes during the aforementioned periods, and an understatement of its reported net income after taxes in periods prior to FY 2002.

5. Certain incentive compensation ConAgra paid to Defendants O'Donnell, Bolding and Keith was dependent on ConAgra's profitability. As a result of the accounting practices and income tax errors described herein, Defendants O'Donnell and Bolding received larger bonuses and other performance-based compensation during FY 1999 and FY 2000, and Defendant Keith received larger bonuses and other performance-based compensation during FY 1999, FY 2003 and FY 2004.

6. As a result of the conduct described herein, ConAgra violated the reporting, books and records, and internal controls provisions of the federal securities laws. Defendants O'Donnell, Bolding and Keith aided and abetted ConAgra's violations and each of them violated one of the books and records provisions of the federal securities laws.

7. Through this action, the Commission requests that the Court, among other things: (1) permanently enjoin Defendants O'Donnell, Bolding and Keith from further violations of the federal securities laws; (2) order Defendants O'Donnell, Bolding and Keith to disgorge and divest their gains from their conduct violating the federal securities laws, including prejudgment interest; and (3) order Defendants O'Donnell, Bolding and Keith to pay civil money penalties.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)].

9. 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]. The Defendants, 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.

10. 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].

11. O'Donnell, Bolding and Keith, directly and indirectly, have engaged in transactions, acts, practices and courses of business that violate Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1], and have 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 the defendants will not continue to violate, and aid and abet violations of, the foregoing provisions of the federal securities laws.

DEFENDANTS

12. James P. O'Donnell, age 59, is a resident of Omaha, Nebraska. O'Donnell joined ConAgra in 1978. From 1995 until he retired on April 30, 2004, he served as ConAgra's Executive Vice President and CFO. Beginning in around February 2001, Dwight J. Goslee ("Goslee") assumed O'Donnell's responsibilities over ConAgra's Corporate Controller's group, Internal Audit and Tax departments. Since O'Donnell's retirement, he has acted as a consultant to the Company.

13. Jay D. Bolding, age 47, is a resident of Omaha, Nebraska. From January 1997 to the beginning of ConAgra's fourth quarter of fiscal year 1999 (March 1999), he was the head of ConAgra's Internal Audit department. From March 1999 until approximately April 2004, he served as ConAgra's Corporate Controller. Until his resignation on June 1, 2006, he held the position of Senior Vice President for Capital and Marketing Investment Effectiveness. He was licensed as a Certified Public Accountant ("CPA") in Kansas and Tennessee; however, both licenses have lapsed. He worked for approximately 14 years in public accounting as an auditor, rising to the level of Senior Manager.

14. Debra L. Keith, age 49, is a resident of Bellevue, Nebraska. Keith was ConAgra's Vice President - Taxes from 1998 through 2004, when she left the Company. Keith is an attorney and was licensed as a CPA in Nebraska. Her CPA license is inactive. From 1983 to 1993, she held various positions, including director of tax, at a public accounting firm.

OTHER RELEVANT PERSONS AND ENTITY

15. 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. ConAgra's fiscal year ends on the

last Sunday in May of each year. At all times relevant to this Complaint, ConAgra was a diversified international food company. During the same period of time, ConAgra's businesses were classified into three reporting segments: Agricultural Products, Refrigerated Foods and Packaged Foods. ConAgra sold its Agricultural Products subsidiary, UAP, on November 23, 2003. UAP's results of operations were included in the Agricultural Products segment's financial information.

16. Dwight J. Goslee, age 56, is a resident of Elkhorn, Nebraska. From 1992 to 1994, he was ConAgra's Corporate Controller. From 1994 to 2001, he was a Vice President at ConAgra and held other senior management positions, including serving as the head of mergers and acquisitions. In around February 2001, Goslee was promoted to Executive Vice President of Operations and Control. From May 2004 to May 2005, Goslee was ConAgra's Executive Vice President for Strategic Development. He was licensed as a CPA in Minnesota; however, the license has lapsed. He worked for 11 years as an auditor in public accounting, rising to the level of Manager. Since resigning his former position on October 1, 2005, Goslee has served as a consultant to the Company.

17. UAP, at all times relevant to this Complaint, was headquartered in Greeley, Colorado and was a wholly-owned subsidiary of ConAgra engaged in the sale of agricultural, chemical and related products throughout the United States, Mexico and Canada. UAP was composed of 13 Independent Operating Companies ("IOCs"). Its fiscal year ended on the last Sunday in February of each year.

**ACCOUNTING AT CONAGRA'S CORPORATE HEADQUARTERS
DURING FY 1999 THROUGH THE THIRD QUARTER OF FY 2001**

18. At various times in FY 1999, FY 2000 and FY 2001, 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, FY 2000 and FY 2001, the improper accounting practices engaged in by O'Donnell, Bolding and Keith involved the failure to record sufficient income tax expense and/or the accounting for certain excess reserves. Without these practices, ConAgra would have missed the Wall Street analysts' consensus estimates of the Company's earnings per share for at least three of these eleven fiscal quarters.

A. FY 1999

1. ConAgra, Keith, O'Donnell and Bolding Failed To Record Sufficient Income Tax Expense

19. At the end of FY 1999, Keith was aware that ConAgra's income tax expense, or provision, as booked by the Corporate Controller's group, was \$4,658,064 lower than it should have been, causing the Company's net income (after income taxes) to be overstated by \$4,658,064. O'Donnell, Bolding and Keith did not ensure that ConAgra properly accounted for its income tax expense, in accordance with GAAP, causing ConAgra to overstate its reported net income for the fourth quarter and full fiscal year of FY 1999.

20. Documentation supporting ConAgra's FY 1999 income tax provision included a spreadsheet prepared by a Manager in ConAgra's Corporate tax department. The amount of \$4,658,064 was listed in this spreadsheet on a line item entitled "Tax Reserves." ConAgra provided this spreadsheet to its outside auditors in connection with their FY 1999 audit of ConAgra's financial statements. The outside auditors' FY 1999 workpapers contain a copy of this spreadsheet and note that, according to the ConAgra Tax Manager, the \$4,658,064 "cushion was recorded to reduce [ConAgra's] tax expense so that the effective tax rate before restructuring would be 38%." The workpapers also note that there was "no economic substance" underlying this reduction.

21. Keith directed the unsupported \$4,658,064 reduction in ConAgra's FY 1999 income tax provision even though she knew, or should have known, that it was not in accordance with GAAP. The outside auditors reviewed their "Schedule of Differences Identified" for FY 1999, which included this reduction, with O'Donnell and Bolding. This reduction was included as a line item in the portion of the schedule identified as subjective differences. O'Donnell and Bolding did not correct the reduction.

22. The \$4,658,064 reduction lowered ConAgra's FY 1999 effective tax rate, absent the effect of the restructuring charge, from 38.4% to 38.0%. The earnings estimates from the analysts covering ConAgra ranged from \$0.38 to \$0.44 earnings per share during the fourth quarter of FY 1999. Without the reduction, ConAgra would have missed the Wall Street analysts' consensus estimate of \$0.41 earnings per share by \$0.01. The improper reduction was material to ConAgra's financial statements for that quarter, which were included in the Company's FY 1999 Annual Report filed with the Commission on Form 10-K.

23. ConAgra also made materially inaccurate statements about the reduction of its income tax expense in its Form 10-K for FY 1999. In note 14 to the financial statements contained in the Form 10-K and entitled "Pretax Income and Income Taxes," which O'Donnell and Bolding reviewed, ConAgra included the reduction as a component of the \$12.2 million line item amount entitled "Export and jobs tax credits." This line item was contained within a tabular presentation of the Company's income tax expense. O'Donnell and Bolding should have known this disclosure was inaccurate because the arbitrary reduction of ConAgra's income tax provision had nothing to do with export and jobs tax credits.

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

24. ConAgra's accounting for its income tax expense 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, the failure to record adequate income tax expense. As a result, ConAgra's earnings release for the fourth quarter and full fiscal year of FY 1999, and its Annual Report filed on Form 10-K for FY 1999 were materially false and misleading.

25. As a result of the accounting for its income tax expense, ConAgra met the analysts' consensus earnings per share estimate for the fourth quarter of FY 1999, overstated its reported net income for the fourth quarter and full fiscal year of FY 1999 by over \$4.6 million, and overstated its reported earnings per share for the same period.

26. O'Donnell and Bolding, among others, reviewed, and both signed, ConAgra's Form 10-K for FY 1999 even though they should have known that the Company's financial statements and disclosure for the fourth quarter of FY 1999 were inaccurate because ConAgra had understated its income tax expense by \$4,658,064.

B. FY 2000

**1. ConAgra, O'Donnell and Bolding Improperly Kept
Prior Period Excess Reserves on the Company's Books**

27. As outlined in Statement of Financial Accounting Standards ("SFAS") No. 5, Accounting for Contingencies, at paragraph 8, GAAP requires a reserve to be created, and a charge to income to be taken, if it is both probable that a liability has been incurred and the amount of the liability can be reasonably estimated. Conversely, when a liability is no longer probable and reasonably estimable, a reserve should be removed from the books and income should be increased. In addition, paragraph 14 of SFAS No. 5 specifically prohibits the accrual of "reserves for general contingencies" or for "[g]eneral or unspecified business risks."

28. ConAgra's outside auditors informed O'Donnell and Bolding that they had identified a potential overstatement for legal and environmental reserves in the range of \$16.5 million to \$39.5 million. The outside auditors included this overstatement in their "Schedule of Differences Identified" for FY 1999, as a line item in the portion of the schedule identified as subjective differences. In making this determination, the outside auditors included, among the reserves they reviewed, ConAgra's Estimated Liabilities account and the "general" reserves that ConAgra had created through the improper transfer in the second quarter of FY 1999 of excess reserves relating to ConAgra's acquisition in FY 1991 of Beatrice Company ("Beatrice"), specifically Beatrice acquisition-related tax and interest reserves. ConAgra's attorneys and other Company personnel provided the outside auditors with the exposure estimates and reserve account balances used in making the calculation. O'Donnell and Bolding declined to reduce any of these excess reserves at the end of FY 1999 which was contrary to the requirements of SFAS No. 5.

**2. ConAgra and Bolding Improperly Accounted
For the Reduction of the Estimated Liabilities Account**

29. At least as early as the first quarter of FY 2000, Bolding had learned of the existence of excess reserves in ConAgra's Estimated Liabilities account. Among other things, Bolding learned that the \$5.4 million gain on the sale of a Beatrice plane had been previously booked to the Estimated Liabilities account at the end of FY 1999. This accounting for the gain on the sale of the plane was not in accordance with paragraph 83 of FASB Concepts No. 5, Recognition and Measurement in Financial Statements of Business Enterprises, which requires gains to be recognized when realized or realizable. Bolding was aware that this prior accounting for the gain on the sale of the plane was not in accordance with GAAP. Bolding, however, did not direct that

the gain, or any of the other excess amounts in the Estimated Liabilities account, be reversed during the first or second quarters of FY 2000.

30. After the end of the third quarter of FY 2000, Bolding signed a journal entry offsetting \$6 million of unplanned-for and unreserved-for losses arising from a joint venture in South Africa in that quarter with a dollar-for-dollar reduction of the Estimated Liabilities account.

31. Paragraph 13 of Accounting Principles Board (“APB”) Opinion No. 20, Accounting Changes, states that errors in financial statements result from “mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared.” Paragraphs 36 through 38 of APB Opinion No. 20 require the correction of an error to be reported as a prior period adjustment where the correction has a material effect on current period income before the effect of the change or on the trend of earnings. In addition, paragraph 18 of APB Opinion No. 9, Reporting the Results of Operations, requires a prior period adjustment to be reflected by adjusting the opening balance of retained earnings in the current period and accordingly, to be excluded from current period income.

32. Bolding was aware that the accounting for the \$6 million reduction of the Estimated Liabilities account was not in accordance with SFAS No. 5 and improperly increased ConAgra’s reported income before income taxes by \$6 million for the third quarter of FY 2000. The earnings estimates from the Wall Street analysts covering ConAgra ranged from \$0.38 to \$0.43 earnings per share during that period. Wall Street’s consensus estimate of ConAgra’s earnings per share for the third quarter of FY 2000 was \$0.41. Excluding restructuring charges, ConAgra reported net income of \$195.9 million for the quarter, or \$0.41 per share. Without the \$6 million offset made after the end of the quarter, ConAgra’s reported net income would have been about

\$192.2 million, or \$0.40 per share. Absent the improper excess reserve reduction, ConAgra would have missed the Wall Street analysts' consensus estimate for the third quarter of FY 2000.

33. Bolding also was aware that ConAgra should have treated the removal of the \$6 million of prior period excess reserves from its books as a correction of an error and reported the correction as a prior period adjustment because the \$6 million excess should have been reduced by no later than the end of FY 1999. The \$6 million reduction was material to the Company's income before income taxes, net income, earnings per share and trend of earnings at least by the third quarter of FY 2000, if not earlier. As a result, the \$6 million prior period excess reserves reduction should have been excluded from ConAgra's reported income before income taxes, net income and earnings per share for the third quarter of FY 2000.

34. The improper accounting for this reserve reduction caused ConAgra's financial statements for the third quarter of FY 2000, which were included in the Company's Quarterly Report filed with the Commission on Form 10-Q for the third quarter of FY 2000, to be materially inaccurate.

3. ConAgra and Bolding Improperly Accounted for the Reduction of Excess Beatrice Acquisition-Related Tax and Interest Reserves

35. Near the end of the fourth quarter of FY 2000, Bolding directed that part of the prior period excess in ConAgra's legal and environmental reserves be reduced in order to offset, dollar-for-dollar, more than \$5.4 million in unrelated, unplanned-for and unreserved-for losses resulting from a ConAgra Frequent Flyer Miles promotion.

36. The account ConAgra reduced was labeled "General Rsv [Reserve] – Timing." This was one of the two "general reserve" accounts that had been created during the second quarter of FY 1999 in connection with the improper reduction and reallocation of the excess Beatrice

acquisition-related tax and interest reserves. From that time until the Frequent Flyer expense arose, there had been no entries made to this account.

37. Bolding was aware that no reserve had previously been established to cover the Frequent Flyer losses and that a portion of the Beatrice acquisition related tax and interest reserves would be used to offset the Frequent Flyer losses. Bolding was aware that the Beatrice acquisition related tax and interest reserves were likely in excess and should have been removed from ConAgra's books by no later than FY 1999. Bolding did not direct that the rest of the balance in this "general" reserve account, or any of the remaining excess in ConAgra's legal and environmental reserves that its outside auditors had previously identified on their "Schedule of Differences Identified" for FY 1999 be reduced during the remainder of FY 2000.

38. Bolding was aware that the accounting for the over \$5.4 million reduction of the "general" reserve was not in accordance with SFAS No. 5 and improperly increased ConAgra's income before income taxes by over \$5.4 million for the fourth quarter of FY 2000. The earnings estimates from the Wall Street analysts covering ConAgra ranged from \$0.43 to \$0.47 earnings per share during that period. As a result, Wall Street's consensus estimate of ConAgra's earnings per share for the fourth quarter of FY 2000 was \$0.46. Excluding restructuring charges, ConAgra reported net income of \$219 million for the quarter, or \$0.46 per share. Without the more than \$5.4 million reduction of the "general" reserve, ConAgra's reported net income would have been under \$215.7 million, or \$0.45 per share. Absent that improper reduction, ConAgra would have missed Wall Street analysts' consensus estimate for the fourth quarter.

39. Bolding also was aware that ConAgra should have treated the removal of the approximately \$5.4 million of prior period excess reserves from its books as a correction of an

error and reported the correction as a prior period adjustment because the over \$5.4 million excess should have been reduced by no later than the end of FY 1999. The approximately \$5.4 million reduction was material to the Company's income before income taxes, net income, earnings per share and trend of earnings at least by the fourth quarter of FY 2000, if not earlier. As a result, the over \$5.4 million prior period excess reserves reduction should have been excluded from ConAgra's reported income before income taxes, net income and earnings per share for the third quarter of FY 2000.

40. The improper accounting for this reserve reduction rendered ConAgra's financial statements for the fourth quarter of FY 2000, which were included in the Company's Annual Report filed with the Commission on Form 10-K for FY 2000, materially inaccurate.

4. ConAgra and Bolding Improperly Accounted for the Reduction of Excess FY 1996 Restructuring Reserves

41. ConAgra recorded certain reserves in connection with a restructuring charge in FY 1996. In FY 1999, ConAgra transferred more than \$24.4 million of unused FY 1996 restructuring reserves from the books of certain of its subsidiaries to the ConAgra Corporate ledger. ConAgra, however, failed to remove these excess reserves from its books by the end of FY 1999 as required by SFAS No. 5.

42. In the fourth quarter of FY 2000, Bolding learned that the more than \$24.4 million of FY 1996 restructuring reserves were no longer needed at the end of FY 1999, and that they should have been reduced at that time. In the fourth quarter of FY 2000, Bolding directed that the remainder of the FY 1996 restructuring reserves be reduced. Over \$24.4 million of the excess FY 1996 restructuring reserves were improperly reduced by lowering the Company's FY 2000 restructuring charge by an identical amount, and thus increased income by that amount.

43. Bolding should have known that the accounting for the more than \$24.4 million reduction of the FY 1996 restructuring reserves was not in accordance with SFAS No. 5 and improperly increased ConAgra's reported income before income taxes, net income and earnings per share for the fourth quarter and full fiscal year of FY 2000, and its quarterly net income and earnings per share. When considered together with the improper reductions of the Estimated Liabilities and "general" reserve accounts in the third and fourth quarters of FY 2000 discussed above, the reductions result in a \$35.8 million, or more than 5%, overstatement of the Company's income before income taxes for FY 2000.

44. Bolding also should have known that ConAgra should have treated the removal of the more than \$24.4 million of prior period excess FY 1996 restructuring reserves from its books as a correction of an error and reported the correction as a prior period adjustment because the excess FY 1996 restructuring reserves should have been reduced by no later than the end of FY 1999. In addition, when considered together with the improper reductions of the Estimated Liabilities and "general" reserve accounts in the third and fourth quarters of FY 2000 discussed above, the removal of the excess restructuring reserves was material to the Company's income before income taxes for FY 2000. As a result, the more than \$24.4 million prior period excess reserves reduction should have been excluded from ConAgra's reported income before income taxes, net income and earnings per share for FY 2000.

45. The improper accounting for this reserve reduction caused ConAgra's financial statements for FY 2000, which were included in the Company's Form 10-K for FY 2000, to be materially inaccurate.

5. ConAgra Filed False and Misleading Reports with the Commission

46. Each of the instances of accounting for the reduction of excess reserves in FY 2000 discussed above was not in accordance with GAAP. None of them were disclosed in a filing with the Commission. The \$6 million reduction of the Estimated Liabilities account in the third quarter of FY 2000, and the approximately \$5.4 million reduction of the “general” reserve in the fourth quarter allowed ConAgra to meet the consensus earnings per share estimate in those respective quarters of FY 2000. In addition, when the Estimated Liabilities and “general” reserve reductions are considered with the over \$24.4 million, improper reduction of the ConAgra’s FY 1996 restructuring reserves, they result in a nearly \$36 million, or over 5%, overstatement of the Company’s reported income before income taxes for FY 2000. As a result, ConAgra’s Form 10-Q for the third quarter of FY 2000, and its Form 10-K for FY 2000, was materially false and misleading.

47. Bolding reviewed and signed ConAgra’s Form 10-Q for the third quarter of FY 2000 and its Form 10-K for FY 2000, even though he knew, or should have known, that they were inaccurate as a result of the improper accounting for the prior period excess reserve reductions.

C. FY 2001

1. ConAgra, O’Donnell and Bolding Continued to Improperly Keep Prior Period Excess Reserves on the Company’s Books

48. In their year-end “Summary of Uncorrected Financial Statement Misstatements” for FY 2000, ConAgra’s outside auditors identified a potential overstatement of legal and environmental reserves in the range of about \$23.8 million to \$51.5 million and provided them with the summary. ConAgra’s attorneys and other Company personnel provided the outside auditors with the exposure estimates and reserve account balances they used in making this calculation. The outside auditors informed O’Donnell and Bolding about this potential

overstatement at the end of FY 2000 and provided them with the summary. Contrary to the requirements of SFAS No. 5, O'Donnell and Bolding declined to reduce any of the excess legal and environmental reserves at the end of FY 2000. These prior period excess reserves remained on ConAgra's books in the first and second quarters of FY 2001.

2. ConAgra, O'Donnell and Bolding Improperly Accounted for the Reduction of At Least \$23.8 Million of Prior Period Excess Reserves

49. On February 13, 2001, as ConAgra was approaching the end of its third quarter of FY 2001, the Company issued a press release, which it filed with the Commission on Form 8-K, in which it lowered its near-term earnings outlook due to "sharply higher energy costs and a slowing economy." In this press release, ConAgra disclosed that it expected its earnings per share for the third quarter of FY 2001 to be in the range of \$0.18 to \$0.20. ConAgra's stock price dropped almost 20% on the day after it issued this press release.

50. In the third quarter of FY 2001, after he assumed responsibility for accounting at ConAgra, Goslee learned that ConAgra's outside auditors had identified legal and environmental reserves that were potentially overstated in the range of \$23.8 million to \$51.5 million at least as early as the end of FY 2000 and in the first two quarters of FY 2001. Goslee made the decision to reverse \$35 million of ConAgra's excess legal and environmental reserves to income for the third quarter of FY 2001.

51. O'Donnell and Bolding were informed of Goslee's decision to reduce the excess legal and environmental reserves by \$35 million. After Goslee made the decision, Bolding was asked to identify the reserves that were to be reduced to effect the \$35 million reserve reduction. Bolding directed staff to ensure that the reduction was reflected on ConAgra's books.

52. Approximately \$21.3 million of the reversed excess reserves were taken from one of the "general" reserve accounts into which the Company had improperly transferred the excess

Beatrice acquisition-related tax and interest reserves in FY 1999. This was also the same account that the Company had improperly reduced to offset the Frequent Flyer Miles promotion expense in FY 2000. There were no other uses of this account in the first three quarters of FY 2001. In addition, over \$10.7 million of the reversals came from excess reserves contained in ConAgra's Estimated Liabilities account which had been improperly used previously as a general reserve.

53. At a minimum, \$23.8 million of the \$35 million of ConAgra's legal and environmental reserves that were reduced had been in excess since at least the end of FY 2000. O'Donnell should have known and Bolding knew, or should have known, that the accounting for this portion of the excess reserves reduction was not in accordance with SFAS No. 5 and improperly increased ConAgra's reported income before income taxes for the third quarter of FY 2001 by nearly 15%. The earnings estimates from the analysts covering ConAgra ranged from \$0.18 to \$0.21 earnings per share during that period. ConAgra's reported earnings of \$0.19 in earnings per share for the third quarter of FY 2001, met the consensus estimate of \$0.19 per share. Without the \$23.8 million reversal to income of the prior period excess reserves, ConAgra would have earned only \$0.16 per share.

54. O'Donnell should have known and Bolding knew, or should have known, that ConAgra should have treated the removal of the at least \$23.8 million of prior period excess reserves from its books as a correction of an error and reported the correction as a prior period adjustment because the \$23.8 million excess should have been reduced by no later than the end of FY 2000. Also, the \$23.8 million reduction was material to the Company's reported income before income taxes, net income, earnings per share and trend of earnings at least by the third quarter of FY 2001, if not earlier. As a result, the \$23.8 million prior period excess reserves

reduction should have been excluded from ConAgra's reported income before income taxes, net income and earnings per share for the third quarter of FY 2001.

55. The Company's Form 10-Q for the third quarter of FY 2001 disclosed that the Company's financial results were positively impacted by the \$35 million reserve reduction and negatively impacted, in part, by a significantly higher bad debt expense at UAP. The disclosure regarding the reserve reduction was misleading because ConAgra failed to disclose that at least \$23.8 million of these reserves were in excess in prior periods. As a result of ConAgra's inaccurate accounting for, and improper disclosure about, the excess legal and environmental reserves reduction, ConAgra's Form 10-Q for the third quarter of FY 2001 was materially inaccurate. O'Donnell and Bolding, among others, reviewed, and both signed, the Company's Form 10-Q for the third quarter of FY 2001.

ACCOUNTING AT CONAGRA'S UAP SUBSIDIARY

A. Accounting Practices at UAP and Operating Results in FY 2000

56. In FY 2000, former UAP senior executives participated in a fraudulent scheme to overstate UAP's operating results through the use of certain improper accounting practices at UAP including, among other things,: (1) the improper recognition of revenue from deferred delivery sales and associated rebates from its suppliers ("associated vendor rebates") and (2) the failure to record bad debt expenses when realized. These actions caused ConAgra to fraudulently and materially overstate its reported income before income taxes for FY 2000.

1. UAP Improperly Recognized Revenue From Deferred Delivery Sales and Associated Vendor Rebates

57. Under GAAP, revenue is typically not recognized until a seller has substantially fulfilled the terms of its arrangement with a buyer, which usually occurs upon delivery of the

good(s) or product(s), or upon performance of the service(s), that are the subject of the arrangement.

58. Deferred delivery sales, by which a sale is made but the goods are retained by the seller at the buyer's request, may be recognized as revenue by the seller before delivery of the goods to the buyer only if certain accounting requirements are met. If these conditions are not met, the seller may not recognize the sales as revenue until the goods are shipped to the customer.

59. In FY 2000, UAP improperly recognized millions of dollars in revenue from deferred delivery sales without assuring that the necessary accounting requirements were met. Additionally, UAP received associated vendor rebates at the time of each deferred delivery sale, and these amounts also were improperly recognized as revenue.

60. The UAP misconduct with respect to deferred delivery sales and associated vendor rebates caused ConAgra to overstate its reported income before income taxes by \$29.5 million, or 4.78%, in FY 2000. At the Agricultural Products' segment level, the misconduct caused that segment's reported operating profit to be overstated by nearly 21.27% in FY 2000. In connection with an inquiry conducted under the direction of ConAgra's Audit Committee, forensic accountants retained by special counsel to the Audit Committee tested a sample valued at \$247,898,360 of UAP's deferred delivery sales originally recorded during the period from FY 1998 through the second quarter of FY 2001 and determined that approximately 40% of the transactions tested were fraudulent in nature.

2. UAP Recorded Insufficient Bad Debt Expense

61. In FY 1999 and continuing through FY 2000, UAP had substantial bad debt problems. In FY 2000, certain former UAP senior executives were informed that UAP needed to

record an additional \$50 million of bad debt expense. Certain former UAP senior executives were aware that in FY 1999 the size of the bad debt at certain IOCs had been substantial enough that it could have negatively impacted those IOC's ability to achieve PBT targets. In addition, just prior to the end of UAP's FY 2000, the Former UAP COO, in the presence of other UAP employees, ordered that UAP's bad debt reserve be reduced by \$7 million in order to assist the Company in meeting its Profit Before Taxes ("PBT") target for the fiscal year.

62. The misconduct with respect to bad debt expense caused ConAgra to overstate its reported income before income taxes by \$7 million, or 1.13%, in FY 2000. At the Agricultural Products' segment level, the misconduct caused that segment's reported operating profit to be overstated by 5.05%.

B. O'Donnell and Bolding Were Aware of Improper Accounting Practices at UAP in FY 2000

1. UAP's Revenue From Deferred Delivery Sales Was Overstated

63. During ConAgra's FY 2000, O'Donnell and Bolding, among others, received information from several sources regarding UAP's improper revenue recognition practices with respect to deferred delivery sales. These sources included, among others, anonymous letters, a UAP employee acting as an informant, ConAgra's Director of Financial Reporting and ConAgra's Internal Audit department. In response, O'Donnell and Bolding did not take adequate measures to ensure that UAP's financial results were accurate, and to ensure that ConAgra's financial statements were fairly stated in accordance with GAAP.

64. In November 1999 and February 2000, O'Donnell and Bolding, among others, received copies of the two anonymous letters alleging ongoing fraudulent practices at UAP. The November 1999 letter raised concerns about certain deferred delivery sales practices, among other things. The February 2000 letter stated that "[w]e have sales contracts [i.e. deferred

delivery sales] being booked to revenues that really don't exist in the customers' minds.

Millions and millions of dollars of these fraudulent transactions exist today, and we aren't even close to achieving our 'mandated' goal, dictated by Greeley [UAP's headquarters] administration."

65. In January 2000, O'Donnell agreed to meet together with ConAgra's Director of Internal Audit and a UAP employee who indicated that UAP senior officials and other personnel were engaging in fraudulent practices in order to meet sales targets. During the meeting, the UAP employee provided them with some documentation supporting the allegations. The allegations included, among other things, that: (1) UAP personnel were engaging in fraudulent deferred delivery transactions; (2) UAP was not in compliance with certain deferred delivery accounting requirements; and (3) this lack of compliance had caused an overstatement of UAP's FY 1999 earnings and would cause a material overstatement of UAP's FY 2000 earnings. Shortly after the meeting, O'Donnell directed ConAgra's Internal Audit department to commence a document-based revenue recognition review of UAP's deferred delivery sales, and ConAgra engaged outside counsel in connection with the review. O'Donnell informed Bolding and others of these allegations, and in August 2000 Bolding received a copy of the employee's supporting documentation.

66. ConAgra's Director of Financial Reporting provided additional information that pointed to improper accounting for deferred delivery sales at UAP. In around January 2000, the Director of Financial Reporting informed Bolding that prior to a meeting on January 24th with former UAP senior executives, the Company's outside auditors and others, a UAP Vice President who was a CPA had raised concerns with him about UAP's accounting practices for deferred delivery sales. More specifically, the Director of Financial Reporting reported that the

UAP Vice President: (1) did not believe that the accounting criteria were being met in order for UAP to recognize revenue for deferred delivery sales; (2) had stated that certain former UAP senior executives did not appreciate the accounting rules for deferred delivery sales; and (3) had added that UAP's Controller at the time and other UAP accounting personnel would not stand up to the Former UAP COO.

67. As a result of the January 2000 meeting, ConAgra's Director of Financial Reporting conducted a survey on UAP's deferred delivery practices. The February 23, 2000 results of this survey, which were distributed to Bolding and others, indicated that contrary to the accounting requirements for bill and hold sales: (1) substitution occurred at several of UAP's IOCs, sometimes as much as 25% of the time; (2) there was not always a fixed delivery date; (3) UAP's salespersons, not the buyers, frequently initiated the bill and hold transactions; and (4) the products were not always complete and ready for shipment at the time of invoicing. On or about August 9, 2000, O'Donnell received a copy of the survey results.

68. On or about March 16, 2000, the Director of Financial Reporting provided Bolding an e-mail from the UAP Vice President and told him that in it the Vice President had stated that he was so concerned about UAP's bill and hold practices that he needed to retire because of those concerns.

69. Between February and July 2000, O'Donnell and Bolding had several communications with members of ConAgra's Internal Audit department concerning the revenue recognition review of UAP's deferred delivery sales. At least three of these communications came in the form of briefings during which the internal auditors provided written outlines to summarize the review's findings thus far. An internal audit outline used in a February 2000 briefing stated that UAP had recorded \$2.5 million of "fictitious" sales during the fourth quarter

of FY 1999; that at least \$19.2 million of deferred delivery sales were improperly recognized as revenue in the fourth quarter of FY 1999; and that in FY 2000, many of the IOCs had failed to comply with one or more of the following accounting requirements: segregation, fixed delivery date, signed storage agreements and the transfer of title to the customer.

70. In March 2000, O'Donnell was informed during a telephone call with Internal Audit that \$50 million of the \$60 million of deferred delivery sales reviewed as of that time were questionable because of, among other things, false billing addresses, forgeries of customer signatures and improper completion of sales contracts by sales personnel.

71. At another Internal Audit briefing in March, O'Donnell and Bolding were told that the premature revenue recognition of deferred delivery sales in the fourth quarter of FY 1999 had increased from \$19.2 to \$30.2 million and that the amount of unsupported sales was \$5.2 million. They further learned that certain FY 2000 deferred delivery sales lacked customers' signatures or had uncertainties with respect to the signature. Moreover, all but one of the IOCs visited had failed to segregate for deferred delivery sales.

72. At a July 2000 Internal Audit briefing, O'Donnell and Bolding were told of additional issues concerning UAP's deferred delivery sales. The briefing outline indicated that \$30.5 million of UAP's deferred delivery sales had been excluded from its revenue in FY 2000, and that an additional \$46.3 million were questionable due to various deficiencies in the documentation supporting the sales.

73. In August 2000, O'Donnell and Bolding received copies of Internal Audit's draft written report assessing revenue recognition within 8 of the 13 UAP operating companies. The draft report found that: (1) UAP employees at certain locations during FY 2000 signed customers' signatures on warehouse storage agreements and/or sales contracts; (2) committed

inventory was not physically segregated from other inventory available for sale at any of the locations visited by Internal Audit; (3) during the fourth quarter of FY 1999, sales managers in the Great Lakes IOC instructed sales personnel to invoice customers for prepayments based on purchases from prior growing seasons; (4) in the Great Lakes IOC, some FY 1999 monthly statements were withheld from customers to conceal that UAP had billed these customers without their authorization; (5) during FY 2000 in the Midsouth IOC, the mailing addresses for some customers were changed to that of the UAP sales location; (6) \$46.3 million in questionable deferred delivery sales was recognized as revenue in FY 2000, consisting of over 1,200 transactions involving unsigned and unsubstantiated sales agreements and questionable customers' signatures; and (7) in certain instances during FY 2000, UAP used documents which did not contain proper language for transferring title, risk of loss, or a definite delivery date, all of which were necessary for revenue recognition. The report concluded that UAP had increased its use of aggressive year-end deferred delivery sales, and that the aggressive sales practices sent a confusing or negative message throughout UAP. In August 2000, O'Donnell and Bolding discussed the issues raised in the draft written report with others.

74. By the time O'Donnell and Bolding signed ConAgra's Form 10-K for FY 2000 in late August 2000, they, among others, were aware that at least \$76.8 million, or 25%, of the \$306.5 million of deferred delivery sales that UAP salespersons had initially booked in FY 2000 were either reversed, questioned by Internal Audit or unsupported for revenue recognition purposes according to GAAP.

2. UAP's Bad Debt Expense Was Understated

75. By the end of FY 2000, O'Donnell and Bolding, among others, had learned of problems related to UAP's bad debt reserves through periodic reports from ConAgra's Internal

Audit department and from information contained in ConAgra's outside auditors' annual summaries of the misstatements in the Company's financial statements, which they received.

76. Over the course of FY 1998 through FY 2000, O'Donnell and Bolding, among others, received copies of Internal Audit reports which identified, among other things, repeated problems at several of its IOCs with UAP credit practices that contributed to UAP's failure to record sufficient bad debt expense, including: (1) improper "freshening" of receivables, that is, improperly reclassifying past due accounts receivables as current notes receivables, thereby enabling UAP to exclude the past-due receivables from the bad debt reserve calculation; (2) inadequate or insufficient bad debt reserves at certain IOCs; (3) an informal and undocumented process for granting credit; and (4) numerous customer balances which exceeded their approved credit limits.

77. On February 22, 2000, Bolding sent an e-mail to UAP's Controller at the time indicating his longstanding awareness of UAP's Company-wide problems related to bad debt in response to a UAP Midwest IOC's C-grade Internal Audit report for FY 2000. A "C" grade was the lowest grade possible under ConAgra's Internal Audit system, and was reported to ConAgra's Audit Committee. Bolding wrote that the report "depicted an A/R [accounts receivable] function in need of much leadership and guidance," and added that he had "had personal concerns for some time regarding control weaknesses within UAP's credit function and needless to say this report did nothing to change my mind." Despite having these concerns, Bolding continued to rely upon UAP management and Internal Audit to resolve systemic problems with bad debt at the Company.

78. Additionally, in their "Summary of Uncorrected Financial Statement Misstatements" for FY 2000, ConAgra's outside auditors had identified a potential understatement of UAP's

allowance for doubtful accounts or bad debt reserve of \$4.6 million. The outside auditors discussed this summary with Bolding and O'Donnell as part of their audit procedures. Bolding and O'Donnell declined to make this adjustment before signing the Form 10-K for FY 2000.

3. ConAgra Filed a False and Misleading Form 10-K for FY 2000

79. O'Donnell and Bolding, among others, reviewed and signed ConAgra's Form 10-K for FY 2000, which was filed with the Commission on August 25, 2000. When ConAgra restated the financial statements contained in the FY 2000 Form 10-K, it lowered the Company's previously reported income before income taxes by \$36.5 million, or 5.91%, as a result of UAP's improper accounting for deferred delivery sales and associated vendor rebates and bad debt expense. These errors also improperly contributed 26.32% of ConAgra's Agricultural Products segment's previously reported operating profit for FY 2000. These amounts were material to ConAgra's financial statements for FY 2000. Based on all of the information that had come to their attention by the end of FY 2000 with respect to UAP's accounting improprieties, O'Donnell and Bolding should have known that ConAgra's FY 2000 Form 10-K and the financial statements contained in it were materially inaccurate.

INCOME TAX ERRORS AT CONAGRA'S CORPORATE HEADQUARTERS BETWEEN FY 2002 AND FY 2005

1. ConAgra and Keith Improperly Calculated the Stock Basis From the Sale of Multiple Beef/Pork Subsidiaries

80. On September 19, 2002, during its second quarter of FY 2003, ConAgra sold several beef/pork subsidiaries (hereinafter referred to as the "U.S. beef/pork business"). Keith, who headed ConAgra's Tax Department, calculated the stock basis of the U.S. beef/pork business utilizing, among other things, the acquisition basis reflected in ConAgra's 1991 tax return. Keith

worked on the basis calculations in FY 2003, but she did not complete the basis calculation until September 2003 (FY 2004), approximately one year after the sale occurred.

81. Keith improperly calculated the stock basis of the U.S. beef/pork business because, among other things, she did not take into consideration certain liabilities in the basis calculation. As a result, Keith incorrectly determined that the sale had resulted in a capital loss for tax purposes of approximately \$242.6 million and had created a tax benefit of \$84.9 million. ConAgra, however, had not actually suffered a capital loss from the sale; instead, after discovering the error in FY 2005, ConAgra determined that the transaction had resulted in a net capital gain for tax purposes of approximately \$44.6 million.

82. Statement of Financial Accounting Standard 109 (Accounting for Income Taxes) (“SFAS 109”), among other things, addresses accounting for tax assets, such as capital losses. As the Vice President-Taxes, Keith was responsible for ensuring ConAgra’s compliance with SFAS 109. Contrary to SFAS 109, Keith, at the time of the sale in September 2002 (FY 2003), did not complete the analysis to determine whether the expected \$84.9 million tax benefit from the capital loss would be realized. Accordingly, the required journal entries to record the expected tax benefit, could not be made until Keith completed the analysis in FY 2004, approximately one year after the sale.

83. During FY 2004, ConAgra used the \$84.9 million of improper tax benefits to offset taxes on capital gains the Company had generated or expected to generate in the future. ConAgra thus improperly understated its income tax expense for FY 2004 by a total of \$84.9 million.

84. The \$84.9 million tax benefit improperly reduced ConAgra's effective income tax rate for the first quarter of FY 2004 from approximately 30.2% to approximately 9.3%, increased the Company's earnings per share by \$0.09, and overstated ConAgra's net income after income taxes for the full fiscal year by \$84.9 million.

2. ConAgra and Keith Improperly Determined ConAgra's Overall Foreign Loss and Associated Foreign Tax Credits

85. Each year ConAgra, through its foreign business operations, generated either foreign income or losses. Under regulations promulgated by the Internal Revenue Service, ConAgra was required to apportion certain corporate U.S. expenses to its foreign business operations in order to determine its overall foreign loss and its ability to utilize foreign tax credits for the foreign income taxes it paid on its foreign operations.

86. As a result of the sale of the beef/pork business in FY 2003, ConAgra, for the first time in many years, realized foreign source income sufficient to recapture the overall foreign loss and thus, was able to utilize foreign tax credits against its U.S. income tax. The utilization of foreign tax credits permitted ConAgra to take a dollar-for-dollar offset to its U.S. income tax expense.

87. In calculating the apportionment of corporate expenses to its foreign business operations, ConAgra's tax department improperly used a combination of tax basis and book value for its calculation of the overall foreign loss. As a result, in FY 2003 and FY 2004, the Company miscalculated the overall foreign loss, utilized incorrect amounts of foreign tax credit benefits, and miscalculated its income tax expense.

88. Keith and others in ConAgra's tax department knew, or should have known, that ConAgra's tax department had historically used and, in FY 2003 was still using, an incorrect

methodology to calculate the overall foreign loss and, as a result, ConAgra's tax liability had been calculated incorrectly. Keith and others set up a tax reserve in FY 2003 to cover the potential liability arising from the historical practice. However, Keith knew, or should have known, that the tax department's continued use of an incorrect methodology for the determination of its overall foreign loss would extend ConAgra's liability beyond FY 2003, but Keith did not increase ConAgra's tax reserves to reflect this future increased liability.

89. Keith and others in ConAgra's tax department knew, or should have known, that SFAS 109 required consideration of appropriate tax strategies in calculating the Company's overall foreign loss. Keith and others did not consider those tax strategies in FY 2003 when ConAgra was able to utilize foreign tax credits. Additionally, ConAgra's accounting department, which was responsible for reviewing and recording the journal entries to reflect these tax transactions on the Company's books and records, failed in FY 2003 to determine whether ConAgra had complied with the requirements of SFAS 109.

90. If Keith and the tax department had considered the appropriate tax strategies in FY 2003, as required by SFAS 109, ConAgra would have realized increased tax benefits because ConAgra's overall foreign loss would have been reduced and the Company would have been able to utilize more foreign tax credits. As a result, ConAgra failed to record sufficient tax benefits related to its foreign tax credits and, therefore, understated its net income after income taxes by \$63.95 million in FY 2003 and by \$23.35 million in FY 2004, and overstated its net income after income taxes by \$2.42 million in FY 2005.

3. ConAgra Filed False and Misleading Reports with the Commission in FY 2003, 2004 and FY 2005

91. Keith knew, or should have known, that she did not ensure that ConAgra reported the correct amount of income tax expense. This caused ConAgra's financial statements reported in ConAgra's Form 10-K for FY 2003 and FY 2004, for certain quarterly periods related thereto, and for the second quarter of FY 2005, reported in ConAgra's Forms 10-Q, to be materially inaccurate.

**O'DONNELL, BOLDING AND KEITH BENEFITED
FROM CONAGRA'S IMPROPER ACCOUNTING**

92. O'Donnell and Bolding received increased bonuses, restricted stock, stock options and other compensation based on ConAgra's overstated FY 1999 and FY 2000 financial performance. Keith received increased bonuses, restricted stock, stock options and other compensation based on ConAgra's overstated FY 1999, FY 2003 and FY 2004 financial performance.

CLAIMS FOR RELIEF

FIRST CLAIM

**O'Donnell and Bolding 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**

93. Paragraphs 1 through 79 above are re-alleged and incorporated herein by reference.

94. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material

information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

95. As a result of the conduct described above, ConAgra filed with the Commission annual and quarterly reports during FY 1999 to FY 2001, and during FY 2003 to FY 2005 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 were ConAgra's Forms 10-Q for the fourth quarter of FY 1999, its Form 10-K for FY 1999, its Form 10-Q for the third quarter of FY 2000, its Form 10-K for FY 2000, its Form 10-Q for the third quarter of FY 2001, its Forms 10-Q for the second and third quarters of FY 2003, its Form 10-K for FY 2003, its Forms 10-Q for the first and third quarters of FY 2004, its Form 10-K for FY 2004 and its Forms 10-Q for the second quarter of FY 2005.

96. By reason of the foregoing, 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].

97. As a result of their conduct described above, O'Donnell and Bolding, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t], aided and abetted defendant 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].

SECOND CLAIM

O'Donnell and Bolding 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

98. Paragraphs 1 through 79 above are re-alleged and incorporated herein by reference.

99. 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.

100. As a result of their conduct described above, O'Donnell and Bolding violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

101. 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.

102. As described above, 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 their conduct described above, O'Donnell and Bolding, 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)].

THIRD CLAIM

Keith 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

103. Paragraphs 1 through 26, and 80-91, and 94-95 above are re-alleged and incorporated herein by reference.

104. As described above, 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].

105. As a result of her conduct described above, Keith, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t], aided and abetted defendant 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].

FOURTH CLAIM

Keith 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

106. Paragraphs 1 through 26, and 80-91, 99 and 101 above are re-alleged and incorporated herein by reference.

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

108. As described above, 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 her conduct described above, Keith, 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: O'Donnell, Bolding and Keith 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 O'Donnell and Bolding to disgorge the value of and divest certain performance-based compensation they received based on ConAgra's inflated FY 1999 and FY 2000 earnings per share, together with prejudgment interest thereon, and order Keith to disgorge the value of and divest certain performance-based compensation she received based on ConAgra's inflated FY 1999, FY 2003 and FY 2004 earnings per share, together with prejudgment interest thereon;

III.

Order O'Donnell, Bolding and Keith to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

IV.

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

V.

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
Noel Gittens
E. Laurita Finch
Peggy Ellen

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
1801 California Street
Suite 1500
Denver, Colorado 80202-2656
(303) 844-1046 (Atkinson)
(303) 844-1068 (fax)
E-mail: atkinsonp@sec.gov

SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Mail Stop 8549-C
Washington, D.C. 20549
(202) 551- 4918 (Lowry)
(202) 772-9245 (fax)
lowrya@sec.gov