

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

JOHN GEBHARDT, Individually And On	)	<b>CASE NO.</b>
Behalf Of All Others Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	<b>CLASS ACTION COMPLAINT</b>
vs.	)	<b>FOR VIOLATIONS OF</b>
	)	<b>FEDERAL SECURITIES LAWS</b>
CONAGRA FOODS INC., BRUCE C. ROHDE,	)	
JAMES P. O'DONNELL, KENNETH W. DIFONZO,	)	
and JAY D. BOLDING,	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
Defendants.	)	
	)	

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by ConAgra Foods Inc., ("ConAgra" or the "Company"), as well as regulatory filings and reports, securities analysts reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the common stock of ConAgra between August 28, 1998 and May 23, 2001, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

## **JURISDICTION AND VENUE**

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

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District. Additionally, defendants maintain their chief executive offices and principal place of business within this District.

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

## **PARTIES**

6. Plaintiff John Gebhardt as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of ConAgra during the Class Period and has been damaged thereby.

7. Defendant ConAgra is a Delaware corporation with its principal executive offices located at One ConAgra Drive, Omaha, Nebraska 68102. ConAgra is a foodservice supplier to restaurants, institutions, and concessionaires, and also sells food products through retail channels.

8. The individual defendants identified below (the "Individual Defendants"), served at all times material to the claims set forth herein, as senior officers and/or directors of ConAgra in the positions set forth opposite their names:

<u>Name</u>	<u>Position</u>
Bruce C. Rohde	President since August 1996, Chief Executive Officer since September 25, 1997, and Chairman of the Board of Directors since September 24, 1998.
James P. O'Donnell	Executive Vice President, Chief Financial Officer and Corporate Secretary.
Kenneth W. DiFonzo	Senior Vice President.
Jay D. Bolding	Vice President and Controller.

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

10. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of ConAgra, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved

in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

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

12. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with ConAgra, each of the Individual Defendants had access to the adverse undisclosed information about ConAgra's business prospects and financial condition and

performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about ConAgra and its business issued or adopted by the Company materially false and misleading.

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

14. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of ConAgra common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding ConAgra's business, finances, financial statements and the intrinsic value of ConAgra common stock; and (ii) caused plaintiff and other members of the Class to purchase ConAgra securities at artificially inflated prices.

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

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of ConAgra between August 28, 1998 and May 23, 2001, inclusive, and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, ConAgra had approximately 490 million shares of common stock outstanding which were actively traded on the NYSE. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by ConAgra or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

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

18. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

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

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

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

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

## **SUBSTANTIVE ALLEGATIONS**

### **Background Facts**

21. ConAgra is North America's largest foodservice supplier and the nation's second largest retail food supplier. The Company supplies a wide variety of food products, ranging from agricultural feed to branded consumer products. The Company traces its roots to 1919, when it was called Nebraska Consolidated Mills Company, and changed its name to ConAgra in 1971.

22. On May 23, 2001, ConAgra issued a press release announcing that it would be restating its financial statements for fiscal years 1998, 1999 and 2000. The Company attributed the restatement to

"accounting and conduct matters" at its United Agri Products Companies ("UAP") subsidiary. The press release stated:

--for fiscal 1998, revenues will be reduced from \$24,271 million to \$24,192 million, profit before tax will be reduced from \$1,041 million to \$1,014 million and fully-diluted earnings will be reduced from \$1.35 per share to \$1.32 per share;

--for fiscal 1999, revenues will be reduced from \$25,020 million to \$24,924 million, profit before tax will be reduced from \$1,123 million to \$1,086 million and fully-diluted earnings will be reduced from \$1.46 per share to \$1.41 per share;

--for fiscal 2000, revenues will be reduced from \$25,805 million to \$25,631 million, profit before tax will be reduced from \$1,288 million to \$1,229 million and fully-diluted earnings will be reduced from \$1.67 per share to \$1.60 per share;

--for fiscal 2001, revenues will be increased by \$350 million, profit before tax will be reduced from \$127 million and fully-diluted earnings will be increased to \$.15 per share.

Further, Defendant Rohde commented as follows:

"Certain matters were discovered that warranted an investigation into several accounting practices at UAP. Our preliminary findings indicate that certain conduct at UAP circumvented generally accepted accounting practices and violated ConAgra Foods' corporate policy. Those actions will not be tolerated. I have directed that the control systems at UAP be strengthened and that we take additional actions, as appropriate, including personnel changes to deal with circumstances requiring corrective measures. These actions have the full support of our Board of Directors."

The press release further revealed that the Company's Audit Committee had commenced an investigation into accounting matter at UAP in November 2000, stating in pertinent part, as follows:

The investigation has identified improper accounting practices that have financial statement impact in three areas:

1. Revenue recognition for deferred delivery sales and associated vendor rebates
2. Recognition of advance rebate income
3. Accruals for bad debt reserves

With respect to revenue recognition, the press release stated:

After reviewing the results of the investigation, the Company has determined that UAP improperly recorded revenues on deferred delivery sales transactions. The investigation identified sales contracts for fiscal 1999 and 2000 that were not considered binding on the customer as well as instances of fictitious sales contracts at various UAP locations. Further, the investigation identified noncompliance for fiscal 1998, 1999 and 2000 with certain accounting requirements for deferred delivery transactions in other sales contracts. Accordingly, ConAgra Foods will revise its reporting of deferred delivery sales transactions for fiscal 1998, 1999 and 2000 so that such revenue is reported upon transfer of title and shipment of the products. As a result of these circumstances, associated vendor rebate income was also incorrectly accrued.

ConAgra Foods also reviewed the estimating process used by UAP in the recognition of vendor rebates on a quarterly basis. The review indicated that UAP used inconsistent estimating processes on a quarterly and annual basis. As part of the restatement, ConAgra Foods will adopt a consistent quarterly estimating process for the recognition of UAP vendor rebates. The impact of the new process will result in a larger portion of vendor rebates being recognized later in the UAP fiscal year.

These revenue recognition matters are expected to have the following financial statement impact:

--for fiscal 1998, revenue will be reduced by \$79 million and profit before tax will be reduced by \$22 million;

--for fiscal 1999, revenue will be reduced by \$84 million and profit before tax will be reduced by \$7 million;

--for fiscal 2000, revenue will be reduced by \$162 million and profit before tax will be reduced by \$30 million;

--for fiscal 2001, revenue will be increased by 326 million and profit before tax will be increased by \$63 million;

In light of the preliminary results of the investigation, and in order to avoid future compliance issues with deferred delivery accounting requirements, ConAgra Foods is adopting a change in its accounting practices. Effective with fiscal year 2001, UAP will book revenue for all sales transactions upon transfer of title and shipment of the product.

With respect to adverse rebate income, the press release stated:

The investigation identified instances in which UAP prematurely recognized certain rebate payments as income in the fiscal year in which they were received, rather than the fiscal year in which they were earned. As a result, the Company is making an adjustment for

recognition of advance rebate income which is expected to have the following financial statement impact:

- for fiscal 1999, revenue and profit before tax will be reduced by \$12 million;
- for fiscal 2000, revenue and profit before tax will be reduced by \$12 million; and
- for fiscal 2001, revenue and profit before tax will be increased by \$24 million.

Finally, with respect to bad debt reserve, the press release stated:

The investigation indicated that UAP accrued insufficient bad debt reserves in fiscal 1998, 1999 and 2000. UAP substantially increased the write-off of its accounts receivable and increased its bad debt reserves during fiscal 2001. The investigation indicated that certain of the increased write-offs in fiscal 2001 should have been taken in prior fiscal years and, accordingly, adjustments will be made as part of the restatement. ConAgra Foods believes the UAP reserves recorded are now adequate.

The Company's preliminary estimate of the financial statement impact of changes in the bad debt accruals is:

- for fiscal 1998, expenses will be increased and profit before tax will be reduced by \$5 million;
- for fiscal 1999, expenses will be increased and profit before tax will be reduced by \$18 million;
- for fiscal 2000, expenses will be increased and profit before tax will be reduced by \$17 million; and
- for fiscal 2001, expenses will be reduced and profit before tax will be increased by \$40 million.

23. As now revealed, at all times during the Class Period, defendants issued materially false and misleading financial statements and press releases concerning ConAgra's revenues, income and earnings per share. The financial statements of the Company made during the Class Period, all of which implicitly and/or expressly were prepared in conformity with generally accepted accounting principles (GAAP), were materially false and misleading because the Company materially overstated its revenues, income and earnings.

**Materially False And Misleading  
Statements Made During The Class Period**

24. The Class Period begins on August 28, 1998, when ConAgra filed its Form 10-K for fiscal year 1998 with the SEC, which was signed by defendants Rohde, O'Donnell, and DiFonzo, among others. The 1998 10-K reported earnings of \$1.36 per share and purported to contain audited financial statements.

25. On September 23, 1998, ConAgra issued a press release announcing its fiscal results for the first quarter of 1999, the period ending August 30, 1998. The Company reported net sales of \$6,483,400,000, and net income of \$109,300,000, or \$0.23 basic earnings per share. Defendant Rohde commented on the results, in pertinent part, as follows:

Most ConAgra businesses continued to perform well, as indicated by double digit operating growth in our Grocery & Diversified Products and Food Inputs & Ingredients segments.

26. On October 13, 1998, ConAgra filed its Form 10-Q with the SEC for the first quarter of 1999, the period ending August 30, 1998, which was signed by defendants O'Donnell and DiFonzo, and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the results of operations, financial position, and cash flows for the periods presented.

27. On December 23, 1998, ConAgra issued a press release announcing its financial results for the second quarter and first half of its fiscal year 1999, the period ending November 29, 1998. For the second quarter of 1999, the Company reported net sales of \$6,404,400,000, and net income of \$219,000,000, or \$0.47 basic earnings per share. For the first half of fiscal 1999, ConAgra reported net sales of \$12,887,800,000, and net income of \$328,300,000 or \$0.70 basic earnings per share.

28. On January 12, 1999, the Company filed a Form 10-Q with the SEC for the second quarter of 1999, the period ending November 29, 1998, which was signed by defendants O'Donnel and DiFonzo and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the results of operations, financial position, and cash flows for the periods presented.

29. On March 25, 1999, ConAgra issued a press release announcing its financial results for the third quarter and nine months of its fiscal year 1999, the period ending February 28, 1999. For the third quarter of 1999, the Company reported net sales of \$5,693,300,000, and net income of \$171,400,000, or \$0.36 basic earnings per share. For the first nine months of its fiscal 1999, ConAgra reported net sales of \$18,581,100,000, and net income of \$499,700,000 or \$1.06 basic earnings per share.

30. On April 14 1999, the Company filed its Form 10-Q with the SEC for the third quarter of 1999, the period ending February 28, 1999, which was signed by defendants O'Donnell and Bolding and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the results of operations, financial position, and cash flows for the periods presented.

31. On July 1, 1999, ConAgra issued a press release announcing its financial results for the fourth quarter and fiscal year-ended May 30, 1999. For the fourth quarter of 1999, the Company reported net sales of \$6,013,200,000, and a net loss (including non-recurring charges) of \$141,300,000, or a net loss of \$0.30 basic earnings per share. For its fiscal 1999, the Company reported net sales of

\$24,594,300,000, and net income of \$358,400,000 or \$0.76 basic earnings per share. Defendant Rohde commented on the results in pertinent part as follows:

Our strengths across multiple segments of the food chain proved to be a strategic advantage. We began fiscal 1999 in the midst of difficult conditions. U.S. and international markets and economic conditions were affected by decelerating Asian demand, and the protein markets were depressed due to an abnormally high supply of protein. . . I am very pleased that we closed the year on a strong note. Although the first half of fiscal 1999 resulted in a 2.8 percent decline in diluted earnings per share, earnings per share in the second half rebounded with 20.3 percent growth before non-recurring charges and changes in accounting.

32. On August 25, 1999, ConAgra filed its Form 10-K for fiscal year 1999 with the SEC, which was signed by defendants Rohde, O'Donnell and Bolding, among others, and confirmed the previously announced financial results and purported to contain audited financial statements.

33. On September 21, 1999, ConAgra issued a press release announcing its financial results for the first quarter of 2000, the period ending August 29, 1999. For the first quarter of 2000, the Company announced net sales of \$6,593,600,000, and net income of \$101,800,000 or \$0.22 basic earnings per share. Defendant Rohde commented on the results as follows:

We are very pleased by the strong results in our first quarter of fiscal 2000. We have been picking up momentum with strong operating results in the third and fourth quarters of our recently completed fiscal year, and entering fiscal 2000 we planned and are achieving double-digit earnings growth (before non-recurring charges and other restructuring-related items).

34. On October 15, 2000, the Company filed its Form 10-Q with the SEC for its first quarter of 2000, the period ending August 29, 1999, which was signed by defendants O'Donnell and DiFonzo, and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of

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

35. On December 21, 1999, ConAgra issued a press release announcing its financial results for the second quarter and first half of its fiscal year 2000, the period ending November 28, 1999. For the second quarter of 2000, the Company reported total sales of \$6,602,900,000, operating profit of \$554,700,000, and diluted earnings per share of \$0.53. For the first half of its fiscal 2000, ConAgra reported total sales of \$13,196,500,000, operating profit of \$941,000,000, and diluted earnings per share of \$0.80. Defendant Rohde commented on the results as follows:

We continue to achieve significant sales and earnings momentum. All three of our operating segments, Packaged Foods, Refrigerated Foods and Agricultural Products improved their margins and achieved earnings performance increases in the second quarter.

36. On January 11, 2000, the Company filed its Form 10-Q with the SEC for the second quarter of 2000, the period ending November 28, 1999, which was signed by defendants O'Donnel and Bolding and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the results of operations, financial position, and cash flows for the periods presented.

37. On March 23, 2000, ConAgra issued a press release announcing its financial results for the third quarter and nine months of 2000, the period ending February 27, 2000. For the third quarter of 2000, the Company had total sales of \$5,797,800,000, operating profit of \$468,600,000, and diluted earnings per share of \$0.41. For the first nine months of its fiscal 2000, ConAgra reported total sales of \$18,994,300,000, operating profit of \$1,408,600,000, and diluted earnings per share of \$1.21. Defendant

Rohde stated that "We are very pleased with the sales and profit trends in our food business, which are our largest business segments."

38. On April 11, 2000, the Company filed its Form 10-Q with the SEC for the third quarter of 2000, the period ending February 27, 2000, which was signed by defendants O'Donnell and Bolding and confirmed the previously announced financial results. In addition, with respect to the financial statements contained therein, the Form 10-Q stated:

The unaudited interim financial information included herein reflects the adjustments (consisting solely of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the results of operations, financial position, and cash flows for the periods presented.

39. On June 29, 2000, ConAgra issued a press release announcing its financial results for the fourth quarter and fiscal year of 2000, the period ended May 28, 2000. For the fourth quarter of 2000, the Company reported total sales of \$6,391,500,000, operating profit of \$501,000,000, and earnings per share of \$0.46. For its fiscal 2000, ConAgra reported total sales of \$25,385,800,000, operating profit of \$1,909,700,000, and diluted earnings per share of \$1.67. Defendant Rohde stated that, "As our financial performance this year indicates, ConAgra's strength continues to grow."

40. On August 25, 2000, ConAgra filed its Form 10-K for fiscal year 2000 with the SEC which was signed by defendants Rohde, O'Donnell and Bolding, among others. The Form 10-K reported the Company's fiscal year 2000 sales as \$25,385,800,000, and net income of \$413,000,000, or \$0.87 basic earnings per share, and represented that the financial statements included in the Form 10-K were audited.

41. The statements referenced above in paragraphs 24-40 were each materially false and misleading when made because they failed to disclose:

(a) that UAP was engaged in improper accounting practices which had the effect of materially overstating Conagra's reported earnings;

(b) that Conagra's financial statements issued during the Class Period were not prepared in accordance with GAAP and were therefore materially false and misleading; and

(c) that UAP's business was deteriorating such that its management was employing improper accounting practices in an effort to conceal this negative trend.

### **The Truth Begins To Emerge**

42. On February 13, 2001, Conagra issued a press release announcing that it was "altering the company's near-term earnings outlook." The Company blamed its reduction in earnings to rising energy costs. With respect to Conagra's crop input business, which includes UAP, the Company represented that a "variety of factors" had "changed management's outlook for the crop input business over the balance of the fiscal year" and noted that it expected these "factors" to reduce second-half pre-tax profits by \$110 million, or \$0.13 per share.

43. The above-referenced statement was a partial disclosure that failed to disclose that the earnings shortfall at UAP was primarily related to the cessation of the improper accounting practices at UAP. Because Conagra continued to conceal the truth about UAP and the accounting improprieties, the price of Conagra continued to trade at artificially inflated levels.

44. Following Conagra's February 13, 2001 announcement, the price of Conagra common stock dropped from \$24.86 per share to \$20.01 per share -- erasing billions of dollars of market capitalization.

45. Then, as detailed above in paragraph 22, on May 23, 2001, Conagra announced the restatement of its financial statements. Following this announcement, the price of Conagra common stock declined to \$20.07 per share.

### **Undisclosed Adverse Information**

46. The market for ConAgra's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, ConAgra's common stock traded at artificially inflated prices during the Class Period. The artificial inflation continued until May 23, 2001, when ConAgra acknowledged that it, along with the SEC, was conducting an internal investigation into its accounting practices and this admission was communicated to, and/or digested by, the securities markets. Plaintiff and other members of the Class purchased or otherwise acquired ConAgra securities relying upon the integrity of the market price of ConAgra's securities and market information relating to ConAgra, and have been damaged thereby.

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

(a) that the Company's financial statements were not prepared in accordance with generally accepted accounting principles and in accordance with the federal securities laws and SEC regulations concerning fair reporting;

(b) that the Company had violated GAAP and its own accounting policies by improperly recognizing revenues, income and earnings;

(c) that the Company's seeming growth was the result of fictitious and improper accounting entries; and

(d) that the Company's estimates, projections and opinions as to its expected revenues, earnings, income and value of its stock were lacking in reasonable basis at all relevant times.

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

## **SCIENTER ALLEGATIONS**

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

### **Applicability Of Presumption Of Reliance: Fraud-On-The-Market Doctrine**

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

- (a) ConAgra's stock met the requirements for listing, and was listed and actively traded on the NYSE Stock Exchange, a highly efficient and automated market;
- (b) As a regulated issuer, ConAgra filed periodic public reports with the SEC and the NYSE;
- (c) ConAgra regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

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

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

#### **NO SAFE HARBOR**

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

## **FIRST CLAIM**

### **Violation Of Section 10(b) Of The Exchange Act Against And Rule 10b-5 Promulgated Thereunder Against All Defendants**

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

54. During the Class Period, ConAgra and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of ConAgra's securities; and (iii) cause plaintiff and other members of the Class to purchase ConAgra's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

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

56. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in

SEC Regulation S-X (17 C.F.R. Sections 210.01 et seq.) and Regulation S-K (17 C.F.R. Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's securities would be based on truthful, complete and accurate information.

57. ConAgra and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of ConAgra as specified herein. 58. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of ConAgra's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about ConAgra and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of ConAgra's securities during the Class Period.

59. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed

significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

60. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing ConAgra's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

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

Class acquired ConAgra securities during the Class Period at artificially high prices and were damaged thereby.

62. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true financial condition and business prospects of ConAgra, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their ConAgra securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

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

## **SECOND CLAIM**

### **Violation Of Section 20(a) Of The Exchange Act Against Individuals Defendants**

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

66. The Individual Defendants acted as controlling persons of ConAgra within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or

intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

67. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

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

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

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

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

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

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

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury in Omaha, Nebraska.

Dated: August 10, 2001

**WELCH WHITE & WULFF**

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