

KANTROWITZ, GOLDHAMER & GRAIFMAN  
GARY S. GRAIFMAN (GSG-2276)  
210 Summit Avenue  
Montvale, New Jersey 07645  
(201) 391-7000

Local Counsel for Lead Plaintiffs

BERGER & MONTAGUE, P.C.  
Todd S. Collins  
Jacob A. Goldberg  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3000

STULL STULL & BRODY  
Jules Brody  
Mark Levine  
6 East 45<sup>th</sup> Street  
New York, New York 10017  
(212) 687-7230

Co-Counsel for Lead Plaintiffs

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

WALTER W. WILSON, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

ROBERT F. BERNSTOCK and  
MITCHELL P. GOLDSTEIN,

Defendants

Honorable Joseph E. Irenas

CIVIL ACTION NO. 01-0272 (JEI)

**CORRECTED AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATION OF FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Lead Plaintiffs John Bogard, Feivel Gottlieb, Michael and Denise Jeffries, Edward Nerenberg, and Kenneth R. Sweeney, by and through their attorneys, allege the following upon

AMENDED CLASS ACTION COMPLAINT FOR  
VIOLATION OF FEDERAL SECURITIES LAWS

the investigation of counsel, which included without limitation: (a) review and analysis of the public filings made by Vlastic Foods International Inc. ("Vlastic" or "the Company"), with the Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and other publications disseminated by defendants; and (c) other publicly available information about Vlastic.

### SUMMARY OF ALLEGATIONS

1. This action is brought as a class action on behalf of all persons who purchased the common stock of Vlastic on the open market from February 24, 1999 through February 10, 2000, inclusive (the "Class Period"). Lead Plaintiffs allege that Defendants violated section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder, and section 20(a) of the Exchange Act.

2. On March 30, 1998, Campbell Soup Company ("Campbell") spun-off several of its operating units to its shareholders in a tax-free transaction. Bundling these operating units, Campbell created Vlastic with the intent of allowing itself and Vlastic to concentrate better on their own core brands. The added focus on core products, Campbell and Vlastic told shareholders, would enable each to grow far more rapidly than Campbell's diluted focus on disparate brands had enabled them to grow.

3. Campbell and Defendant Bernstock portrayed the spin-off in overwhelmingly positive terms, and analysts received the new Vlastic favorably. Among the positive factors attracting analysts to Vlastic was that the compensation of Vlastic's executives was heavily in options, many of which had been converted from Campbell options. The fortunes of management and the shareholders were, therefore, bound tightly together.

4. Initially, Vlastic was forced to transition from a group of unrelated Campbell's subsidiaries into an independent public company. Initially, Campbell provided certain services to Vlastic under a Transition Services Agreement. Among those services Campbell provided was management information systems ("MIS"), information technology ("IT") necessary for Vlastic to perform, among many other critical tasks, the gathering and reporting of financial data and the tracking of trade marketing and customer deductions critical to accurate financial reporting.

5. By May, 1998, however, Vlastic was well on its way to implementing its own systems, having taken a large charge for transition costs related to the accelerated MIS development in the third quarter of fiscal 1998, ended May 3, 1998. Initially, Vlastic was to have migrated from Campbell's information systems to its own in fiscal 1999. That project was accelerated and undertaken during fiscal 1998.

6. Within seven weeks of the spin-off, however, Vlastic announced that it would not meet analyst expectations. Campbell had engaged in a practice known as "trade-loading" with Vlastic products when Vlastic's operating units were subsidiaries of Campbell. This necessitated Vlastic's reporting purportedly short-term sales declines so that it could realign shipments with consumption. Defendants, however, knew or recklessly disregarded that other consequences of Campbell's trade-loading practices existed. Campbell had induced customers to over-load on its goods by offering relatively huge customer discounts. The discounts on Vlastic products in the form of deductions were likely material and were, as of May, 1998, as yet uncaptured. Not only, therefore, had Campbell cannibalized Vlastic's future sales to make its own then current results, but it subjected Vlastic to future bottom line adjustments when customers sought deductions from

Vlasic. Defendants claimed, however, that the trade-loading issue was behind Vlasic as of August 2, 1998, the end of fiscal 1998.

7. Moreover, defendants claimed as fiscal 1998 came to a close that the transition year was behind it and that Vlasic was beginning a growth phase of the business. Defendants, however, knew or recklessly disregarded that customer deductions would eat into future earnings.

8. The customer deduction issue was an anathema for defendants for two reasons. First, Campbell saddled Vlasic with \$587 million in debt. The covenants that accompanied this debt required Vlasic to maintain certain financial ratios for which its earnings were a key component and which required Vlasic to maintain and present to the lenders accurate financial statements. In fact, throughout Vlasic's existence as a public company it struggled to conform to these debt covenants, renegotiating them almost immediately after the spin-off and again in June, 1999. The prospect of default loomed throughout Vlasic's existence. Further, even if Vlasic's lenders consented to revise the covenants, Vlasic would be subjected to larger fees and raised interest rates.

9. Second, defendants compensation was based heavily on options to purchase Vlasic's common stock, many of which had been converted from Campbell options. Immediately after the spin-off, defendants could not exercise these options. They could not personally afford to allow the price of Vlasic's stock to fall too far, lest their options be and remain worthless.

10. Against this background, in a February 24, 1999, press release announcing Vlasic's results for the second quarter of fiscal 1999, ended January 31, 1999, defendants caused Vlasic to state that, "As of *February 1, 1999* we're operating with our new state-of-the-art IT

systems which includes our own Customer Service and Business Service Centers” and later reported that “as of *April 1999* it had substantially completed all of the operating and management systems and capabilities necessary to handle internally the services that had been previously provided by Campbell.” (Emphasis added).

11. To track marketing “trade deductions,” Vlasic purchased and implemented a system from Gelco Trade Management (“Gelco”). Gelco was to provide its Trade Management Solution to assist Vlasic in automating the trade deduction management and analyze an report on trade activities. Defendants knew or recklessly disregarded, however, that the Gelco system was not on-line in February, 1999 or for several months thereafter.

12. In the face of material and continuously mounting outstanding customer deduction balances attributable both to Campbell’s trade-loading sins and to new trade deductions offered, defendants knew or recklessly disregarded that their Gelco system, which it termed “state-of-the-art,” failed to capture trade marketing expenses. As such defendants failed to warn the public that Vlasic was not properly tracking and reporting trade marketing and customer deductions. Accordingly, defendants misrepresented the adequacy of Vlasic’s internal controls and reported false financial statements during fiscal 1999.

13. Defendants withheld this information from investors for almost a year. In a February 10, 2000, press release, however, defendants caused Vlasic finally to disclose that Gelco’s Trade Marketing Solution had been incapable of capturing and analyzing trade marketing spending and customer deductions. As a result, Vlasic took a material charge of \$14.5 million pre-tax, or \$0.20 per share, for trade marketing and customer deductions related primarily to 1999 and earlier.

14. In that same press release, Vlasic disclosed that it was, once again in violation of its debt covenants and that it was operating under a waiver thereof until February 29, 2000. The Company also announced that it had hired an investment banker to explore "strategic opportunities" and in a subsequent amendment to its Annual Report on Form 10-K for fiscal 1999, Vlasic received a going concern qualified opinion from its auditor.

15. On February 11, 2000, Vlasic stock fell 14% to close at \$3 7/16 per share on relatively large volume of 542,400 shares, down from a close of \$4 per share on February 10, 2000. During trading on February 11, 2000, Vlasic stock traded as low as \$3 per share, down over 76% from its Class Period high of \$14 7/16 per share. Defendants materially false and misleading statements caused shares of Vlasic common stock to trade at artificially inflated prices, directly and proximately caused Lead Plaintiffs and members of the Class to suffer damages.

#### JURISDICTION AND VENUE

16. The claims herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. Sections 78j(b) and 78t(a) (hereinafter cited as only to the provisions of the Exchange Act) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") (17 C.F.R. Section 240.10b-5).

17. Venue is properly laid in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. Section 1391(b). Vlasic has offices located in this District and many violations of law complained of herein occurred in this District, including the preparation and dissemination of statements alleged herein to be materially false and misleading.

18. In connection with the conduct complained of herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and interstate telephone communications and the facilities of a national securities exchange.

#### PARTIES

19. By Order of the Court dated May 22, 2001, John Bogard, Feivel Gottlieb, Michael and Denise Jeffries, Edward Nerenberg, and Kenneth R. Sweeney were designated Lead Plaintiffs. The transactions of the Lead Plaintiffs in Vlastic Stock during the Class Period are set forth in certifications filed with the Court in their motion to serve as Lead Plaintiffs. The transactions of additional Plaintiff Walter W. Wilson are listed on a certification attached to the original complaint file in this case.

20. Vlastic is a New Jersey Corporation with its executive offices at Vlastic Plaza, Six Executive Campus, Cherry Hill, NJ 07100. Vlastic was a spinoff from Campbell, effective on or about March 30, 1998. The Company produced, marketed, and distributed branded frozen foods, grocery and agricultural products during the Class Period. Vlastic was originally a named defendant. The Complaint was, however, administratively terminated against Vlastic after it filed for protection from creditors under the United States bankruptcy laws. Since that filing, substantially all of the assets of Vlastic have been sold. Vlastic now does business as Pinnacle Foods. But for Vlastic's bankruptcy, it would be named as a defendant in this action.

21. Defendant Robert F. Bernstock ("Bernstock") was at all relevant times President, Chief Executive Officer and a director of Vlastic. Prior to holding that position, defendant Bernstock was President of Campbell's U.S Grocery division. For Fiscal Year 1999, Bernstock's potential bonus awards were subject to a plan pursuant to which the principal factors in awarding

such bonuses were corporate earnings per share and divisional earnings before interest and taxes, targets set at the beginning of the year and certain comparative rate of annual growth targets. On or about January 11, 2001, it was announced that Bernstock had resigned from his positions with the Company.

22. Defendant Mitchell P. Goldstein (“Goldstein”) was at all relevant times Vice President and Chief Financial Officer of Vlasic. Prior to serving as CFO, defendant Goldstein was Vlasic’s Vice President of Strategic Planning and Corporate Development. Before that, Goldstein was head of Strategic Planning for the Specialty Foods division of Campbell. For Fiscal Year 1999, Goldstein’s potential bonus awards were subject to a plan pursuant to which the principal factors in awarding such bonuses were corporate earnings per share and divisional earnings before interest and taxes, targets set at the beginning of the year and certain comparative rate of annual growth targets.

23. Defendants Bernstock and Goldstein (collectively, the “Individual Defendants”) were at all relevant times during the Class Period controlling persons of Vlasic within the meaning of Section 20(a) of the Exchange Act. Because of the Individual Defendants’ positions with the Company, they had access to undisclosed adverse information about its business, operations, real estate and construction programs, balance sheets, accounting and loss reserve policies, accounts receivable, inventories, operational trends, financial condition, and present and future business prospects through access to internal corporate documents (including the Company’s operating plans, budgets, forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance

at management meetings and meetings of the board and committees thereof, and through reports and other information provided to them in connection therewith.

24. 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 Individual Defendants, by virtue of his high-level position 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 level and was privy to confidential proprietary information concerning the Company and its business, operations, prospects, growth, finances and financial condition as alleged herein. Said defendants were involved in drafting, producing, reviewing, approving and/or disseminating the materially false and misleading statements and information alleged herein (including SEC filings, press releases and other publications), were aware of or recklessly disregarded that materially false or misleading statements were being issued regarding the Company and nonetheless approved or ratified these statements in violation of the federal securities laws.

25. As officers, directors and controlling persons of a publicly held company whose common stock was, and is, registered with the SEC, and was traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, earnings, management, 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' material misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

26. The Individual Defendants participated in the drafting, preparation and/or approval of the various public and shareholder and investor reports and other communications concerning Vlastic that are complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and the omissions therefrom, and were aware of their materially false and misleading nature. Because of their positions with Vlastic, each of the Individual Defendants had access to adverse undisclosed information about Vlastic's business prospects and financial condition and performance as particularized herein, and knew (or recklessly disregarded) that these adverse facts rendered the statements complained of herein materially false and misleading.

27. The Individual Defendants, because of their positions of control and authority as officers and controlling persons 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 of the Individual Defendants 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, releases and statements detailed herein and is therefore primarily liable for the representations contained therein.

## CLASS ACTION ALLEGATIONS

28. Lead Plaintiffs bring this action on his behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class consisting of all persons and entities who purchased Vlastic common stock on the open market during the Class Period and were damaged thereby. Excluded from the Class are the Defendants named herein, members of the immediate family of each Individual Defendant, their heirs, successors and assigns, and any subsidiary, affiliate, or division of Vlastic.

29. Members of the Class are so numerous that joinder of all members is impracticable. Specifically:

a. As of June 1, 2000 there were approximately 45,502,234 shares outstanding of Vlastic common stock;

b. During the Class Period, Vlastic was listed and actively traded on the New York Stock Exchange, an efficient and developed securities market, and millions of shares of Vlastic common stock were traded during the Class Period; and

c. While the exact number of Class members is unknown to the Lead Plaintiffs at this time and can only be ascertained through appropriate discovery, Lead Plaintiffs believe that there are hundreds of thousands of Class members who purchased Vlastic common stock in the open market at artificially inflated prices during the Class Period.

30. Lead Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages because of Defendants' unlawful activities alleged herein. Lead Plaintiffs have retained counsel competent and experienced in class and securities litigation and intend to prosecute this action vigorously. Lead

Plaintiffs will fairly and adequately protect the interests of the Class and have no interests which are contrary to or in conflict with those of the Class which they seek to represent.

31. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Lead Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

32. 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 Defendants violated Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder;
- b. whether, Defendants participated in and pursued the common course of conduct complained of herein;
- c. whether documents, filings, releases and statements disseminated to the investing public omitted and/or misrepresented material facts about Vlasic;
- d. whether, the market price of Vlasic common stock was artificially inflated throughout the Class Period due to non-disclosures and/or misrepresentations complained of herein;
- e. whether Defendants acted knowingly or recklessly in omitting to state and/or misrepresenting material facts; and
- f. whether the members of the Class have sustained damages as a result of Defendants' misconduct and, if so, the proper measure of such damages.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE MARKET DOCTRINE**

33. At all relevant times, the market for Vlastic common stock was an efficient market for the following reasons, among others:

a. Vlastic common stock met the requirements for listing, and was listed and actively traded, on the New York Stock Exchange;

b. As a regulated issuer, Vlastic filed periodic public reports with the SEC; and

c. Vlastic stock was followed by 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.

34. As a result, the market for Vlastic securities promptly digested current information with respect to Vlastic from all publicly-available sources and reflected such information in Vlastic's securities prices. Under these circumstances, all purchasers of Vlastic common stock during the Class Period suffered similar injury through their purchase of securities at artificially inflated prices and a presumption of reliance applies.

**INAPPLICABILITY OF STATUTORY SAFE HARBOR**

35. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the statements alleged to be false or misleading in this Complaint to the extent they were intended to be or could be construed as forward-looking in nature (the "forward-looking statements"). None of the statements pleaded herein to be

materially false and misleading were identified as forward-looking statements when made (either expressly or by implication).

### BACKGROUND

36. In a September 9, 1997 press release, Campbell announced that it would spin-off certain of its non-core businesses, allowing Campbell to focus on its most profitable businesses with the highest growth potential. Campbell would spin-off seven businesses with annual revenues of \$1.4 billion, including its Vlasic and Swanson, the number one brands in pickles and frozen dinners respectively. Campbell announced that defendant Bernstock, president of its U.S. grocery business, would assume the role of CEO of the new spin-off. In that press release, Bernstock stated:

The opportunity to lead a global company anchored by such strong brands as Vlasic and Swanson is very exciting. I know many of these businesses well from my 13 years at Campbell. As a separate company, we will be able to focus and compete more effectively. We see great opportunities in our frozen foods and grocery products businesses.

37. Defendant Bernstock made further positive comments about the spin-off. In a January 29, 1998 press release, he stated that “[w]e have a strong portfolio of businesses and icon brands. Seventy percent of our sales come from businesses in which we are the market share leader. This provides a superb foundation for building a growth-oriented company committed to superior shareowner returns.”

38. Campbell announced in a February 26, 1998 press release that its Board of Directors approved the spin off Vlasic Foods International, as of March 30, 1998. Each Campbell shareholder was to receive one Vlasic share for each ten shares of Campbell stock

owned. Defendant Bernstock stated that his “dedicated management team is focused on the vast opportunities within these businesses and delivering superior shareowner returns.”

39. Just prior to announcing that its Board had approved of the spin-off of Vlastic, Campbell engineered a method of squeezing cash from the new Company. on February 20, 1998, Campbell, Vlastic and various banks (the “Banks”), Chase Manhattan Bank as syndication agent and Morgan Guaranty Trust Co. of New York as Administrative Agent, entered into a five year revolving credit facility (the “Credit Facility”) in the amount of \$750 million. Under the terms of the Credit Facility, Campbell was entitled to borrow up to \$500 million. Upon the consummation of the spin-off of Vlastic from Campbell, however, Vlastic *assumed all of the obligations of Campbell to repay that \$500 million and the Banks released Campbell from any such obligation*. Indeed, Campbell imposed upon Vlastic the obligation of indemnifying it against all liabilities under the Credit Facility.

40. On March 5, 1998 Vlastic filed its Form 10-12B with the Securities Exchange Commission (“SEC”), registering its securities pursuant to Section 12(b) of the Securities Act of 1933 (“Form 10-12B”). Vlastic’s future was portrayed with great optimism. According to the Form 10-12B, the Campbell Board of Directors determined to spin-off “to enable the management of each of Campbell and Vlastic to focus on the operational strategies appropriate for its businesses so that each can accelerate growth, decrease overall costs and maximize wealth for its shareholders.” Vlastic became an independent manufacturer and marketer of “high quality, branded convenience food products,” showing pro forma revenues of \$1.5 billion for fiscal 1997 and \$723.2 million for the first six months of fiscal 1998. Pro forma earnings for those periods were \$50.6 million and \$21.2 million respectively.

41. Initially, Vlasic was divided into three units: frozen foods, consisting of its Swanson products in the U.S. and its Freshbake products in the U.K.; Grocery Products, consisting of its Vlasic pickles and condiments, its Open Pit Barbecue sauce, SonA pickles and condiments in the U.K., a German specialty food distributor and Swift canned meats and pates in Argentina; and its Agricultural Products segment consisting of the largest fresh mushroom operation in the U.S. and its Argentinian exporter of processed beef products.

42. Vlasic's marketing of its products consisted primarily of trade promotions and consumer-based marketing such as advertising and coupons. According to the Company's 1999 Annual Report on Form 10-K for the fiscal year ended August 1, 1999, ("1999 10-K"), filed with the SEC on October 31, 1999:

Trade promotions focus on obtaining retail display support, achieving temporary price reduction and securing and increasing retail shelf space. We engage in radio, television and print advertising to build brand equity by emphasizing the heritage and characteristics of our products and promoting new products within brand segments. In January, 1999, we commenced a new advertising campaign entitled "Make New Memories with Swanson." Other consumer promotions included couponing to generate trial usage and increase purchase frequency. Our coupons are printed in magazines and in advertising inserted in magazines and newspapers.

It was essential for the Company properly to track these expenses, for a failure to do so would lead to Vlasic's reporting inflated earnings.

43. To ease Vlasic's transition from a disparate band of subsidiaries into a unified, independent company, Campbell and Vlasic entered a "Transition Services Agreement" ("TSA"). Under the TSA Campbell was to provide Vlasic with "transitional administrative and support

services for a period of time not expected to exceed 12 months.” In return for these services,

Vlasic paid Campbell a fee. With regard to its term, the TSA stated:

The term of this Agreement shall be a period of 12 months, commencing on the Distribution Date and ending on March 29, 1999; provided however, that [Vlasic] may terminate any of the Services provided hereunder on not less than 30 days prior written notice to supplier, unless otherwise indicated on Exhibit A. The parties may extend the term of this Agreement by written agreement signed by both parties.

Thus, Vlasic was under enormous pressure to purchase and implement new MIS and other systems and processes which Campbell had provided on or prior to March 29, 1999.

44. Vlasic had ambitious goals. According to the Form 10-12B, it's stated objective was “to enhance revenue growth and profitability by delivering quality products to its customers, expanding its strong market positions and maximizing operating efficiencies.” Vlasic believed it could improve the performance of its low margin businesses by focusing management energy on them, something Campbell's failed to do, allowing them to maximize productivity. In turn, the cash flow that would stem directly from productivity enhancements, Vlasic claimed would enable it to develop and market its brands without risking financial performance. Further, Vlasic claimed that product innovation and relatively low consumer marketing investment had thwarted the growth of its brands. With management focus, it claimed, those brands could achieve and sustain top-line growth.

45. In the Form 10-12B, Defendant Bernstock stated:

Vlasic Foods International starts public life with an incredibly strong portfolio of businesses, having icon brand names such as Swanson, Vlasic, Freshbake and Swift. Moreover, nearly three quarters of our sales come from businesses in which we occupy the number one market share position, representing a wonderful and

continuing consumer vote of confidence. Our brand and market positions are *a superb foundation for building a lean, growth-oriented company, committed to delivering superior earnings performance and to seeking superior shareholder returns.* (Emphasis added).

46. Analysts, too, cast the spin-off in a positive light. In a report issued on April 6, 1998, analyst T. Bivens of Bear Stearns & Co., Inc. wrote:

In our opinion, the company has strong but neglected brands, which should benefit along with the company's operating results from a more focused management. . . . Robert F. Bernstock, head of Campbell's flagship U.S. soup business and runner-up to Dale F. Morison in the recent CEO race, volunteered to lead the new company. Foregoing much of his annual \$600,000-plus in salaries and bonus, Bernstock and a team of highly capable and accomplished Campbell hands have loaded up on approximately 10% of Vlasic shares through options. . . . [A]fter restoring brand luster and consumer appeal of erstwhile favorites Vlasic and Swanson, we expect cash-rich Vlasic to become an aggressive acquirer of strong brands in the condiment aisle and frozen food case, while shedding much of its lower-margined agricultural lines.

Bivens did note that among the risks of investing in Vlasic was its large debt, projected at 78.4% of total capital, but that strong cash-flow would enable it both to repay its debt and to grow through acquisition.

47. With respect to the compensation of Vlasic's senior officers, senior officers of Vlasic, including defendants, assumed great risk by accepting employment with the fledgling public company. All Campbell stock options held by Vlasic employees which were then as yet unexercisable would be converted into Vlasic options, adjusted based on the "Vlasic Conversion Ratio" defined in an agreement attached to the Form 10-12B. At the time of the spin-off, therefore, Vlasic was to grant "non-qualified" stock options on up to 3,000,000 of its shares to provide for this conversion. In addition, Vlasic was to grant up to 1,800,000 options to purchase

its common stock to senior managers under its long-term incentive plan. As such, the fortunes of the senior managers of Vlastic, defendant Bernstock in particular, were tied to Vlastic's stock price, not to mention its ability to survive.

48. Bear Sterns analyst Bivens portrayed this as a great positive and among the reasons to rate Vlastic a "buy." As he stated, "[a]dditionally, with 70% of the compensation at risk and a 10% ownership stake, it appears to us that management's interest is directly tied to that of the shareholders." Moreover, Bivens noted that Bernstock had presided over new product launches at Campbell's which had enhanced lagging brands. He expected that Vlastic would employ Bernstock's model of new products combined with higher advertising and new packaging and graphics. Bivens projected a near term earnings would grow at 12% and estimated a long term growth rate of 15%.

49. With respect to Vlastic's debt, appended to the Form 10-12B was the actual Credit Facility Agreement. The Form 10-12B makes clear that the Credit Facility was of particular importance to the spin-off of Vlastic. Campbell, in fact, borrowed \$500 million against the Credit Facility and Vlastic began its history as a public company saddled with that debt. In addition, while Vlastic was then entitled to draw upon the remaining \$250 million to satisfy its capital needs, it would be forced to use the first \$58.7 million of that amount to satisfy inter-company payables representing advances by Campbell's to various Vlastic subsidiaries.

50. As with any lending agreement, the Credit Facility agreement contained certain covenants binding the parties thereto. These covenants dealt with, among other things, Vlastic's delivering *accurate financial reports* to the Banks on a timely basis, Vlastic's complying with

applicable laws, and Vlastic's maintaining certain financial ratios. The violation of any of these covenants would place Vlastic's loans in default.

51. According to the Credit Facility Vlastic had to maintain a Debt/EBITDA Ratio and a EBITDA/Interest Expense Ratio. Under the terms of these covenants if the ratio of Vlastic's total long term debt to its Consolidated EBITDA,<sup>1</sup> as defined by the Credit Facility Agreement, rose above a certain level, Vlastic would be in default. Similarly, the Credit Facility Agreement created a "Fixed Charge Coverage Ratio," mandating that if the ratio of Vlastic's Consolidated EBITDA to its Consolidated Interest Expense, as defined by the Credit Facility Agreement, fell below a certain level, Vlastic would be in default. and was unable to support EBITDA to interest expense ratio, Vlastic would be in default on its debt which, at the option of the Banks, could lead to termination of the Credit Facility and acceleration of amounts due.

52. Almost immediately after the spin-off, contrary to the overwhelmingly positive hype, Vlastic's performance was far less stellar. On May 21, 1998, the Company issued a press release announcing that its earnings for the third and fourth quarters of fiscal 1998, ended May 3, and August 2, 1999 respectively, would fall short of analyst expectations. The Company blamed its earnings shortfall on several factors, among them:

The Company's determination *to align shipments with consumption data*. This impact is expected to be felt in the second half of fiscal 1998, especially in the fourth quarter, as the Company expects to exit the year with shipments and consumption more in balance. (Emphasis added).

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<sup>1</sup>"EBITDA" is earnings before income taxes, depreciation and amortization.

53. In the face of the May 21, 1998 press release, Defendant Bernstock remained unabashedly upbeat, stating:

We remain fully confident in our ability to achieve previously discussed goals for fiscal year 1999. Our plans and programs are coming along extremely well.

We are very excited by progress on our major brand-building and cost reduction initiatives. There is absolutely and unequivocally no change in our expectations for fiscal year 1999 earnings per share performance. We are revving the engines for accelerating growth in 1999 and beyond.

54. On May 27, 1998, the Company issued a press release announcing actual earnings for the third quarter of fiscal 1998, ended May 3, 1998. The Company reported pro forma diluted earnings of \$0.10 per share "excluding restructuring, one-time and transition charges." Including these charges, Vlastic suffered a loss of \$0.56 per share. Sales in the quarter were down 10% to \$320 million from the same period in fiscal 1997, "*driven equally by both a reduction of retail inventories and by reduced consumption*, linked to a lack of product innovation and a lack of advertising support." (Emphasis added).

55. Once again, Vlastic informed investors that it had accelerated the transition to its own MIS, stating, "it is ahead of schedule in the development of its independent infrastructure, including the implementation of a state-of-the-art MIS system."

56. Concerning these results, defendants was, once again, overwhelmingly positive, stating:

Fiscal 1998 is a transition year on our road to becoming a truly great food company. We are now even more confident of delivering our fiscal 1999 financial goals which have never changed. *We have made conscious decisions to do the right things in the short-term, such as investing in brand building and*

*aligning shipments with consumption, because they are necessary for the long-term health and growth of the business.*

We're making investments now and will ramp-up support next year using funds from cost savings programs. We will invest as we deliver on our financial goals.

57. Also in the May 27, 1998 press release, the Company stated that it would reverse the current decline in volume of sales for its Swanson and Vlastic businesses using a series of marketing initiatives, including "new and bigger advertising campaigns for its 'Vlastic' and 'Swanson' brands." Defendant Bernstock promised to triple advertising spending over the next two years. Thus, Defendant Bernstock manifest that marketing and advertising were fundamental to Vlastic's turnaround and evidenced not only knowledge of marketing and sales expenses at that time, but an intention to track such spending, as this was his answer to the problems Vlastic suddenly faced.

58. Vlastic was forced to "align shipments with consumption" because Campbell had engaged in the sales policy known as trade-loading at the end of a given period. This caused excess inventory of Vlastic products to exist throughout Vlastic's network of customers. This practice of Campbell, therefore, had a adverse affect on Vlastic's sales in the second half of fiscal 1998.

59. Defendants, however, while disclosing that Vlastic had to align shipments with consumption, had failed to inform investors of the truth behind the trade-loading practices at Campbell which they knew or recklessly disregarded at the time. As alleged in the a class action complaint currently pending in this District against Campbell, among other improper practices engaged in by Campbell was the practice of trade-loading or channel stuffing. According to the

complaint against Campbell, among other means of perpetuating its scheme, Campbell induced customers to load up on its soup by offering substantial discounts, well in excess of its typical 2-3%.

60. Accordingly, Campbell had engaged in its trade-loading practices with respect to Vlasic products while the latter was a group of disparate subsidiaries of Campbell. While Vlasic was attempting to align shipment with consumption more accurately to reflect sales, defendants knew or recklessly disregarded that serious customer deductions would follow. These customer deductions resulted from customers seeking the deductions Campbell had promised in exchange for purchasing Vlasic products those customers otherwise did not need.

61. As a former manager of financial planning and analysis, whose responsibility it was to oversee actual spending on promotions and who summarized and interpreted financial performance results at one of Vlasic's operating units stated, any person with experience at Campbell would know that customer deductions always follow trade-loading. Defendants knew or recklessly disregarded that by aligning shipments with consumption, thereby reporting a purportedly near term decline in sales, Vlasic may partially have atoned for Campbell's cannibalizing Vlasic's future sales to achieve Campbell's then current revenue expectations, Vlasic had not yet paid in full for the sins of its parents.

62. As such, by May 21, 1998, fully eight months before the beginning of the Class Period, defendants Bernstock knew of, and claimed to be cleaning up, the pre-spin-off trade-loading practices of Campbell, relating to Vlasic products. Defendants knew or recklessly disregarded, therefore, that unpaid trade deductions existed, relating to Campbell's fraudulent

practices of inducing trade loading of Vlastic products by offering large discounts to customers on Vlastic products.

63. Indeed, Vlastic claimed to be cleaning up this trade-loading problem. For instance, In its Quarterly Report on Form 10-Q for the period ended May 3, 1998 filed with the Securities Exchange Commission on June 16, 1998, Defendants stated:

The sales decrease was primarily due to lower sales in the U.S. frozen food and pickle businesses. The decreases were driven about equally by a reduction of retail inventories in connection with the Company's efforts to align inventories and shipments with consumption and by a reduced consumption linked to a lack of product innovation and a lack of advertising support.

64. Similarly in Vlastic's Annual Report on Form 10-K for the year ended August 2, 1998, the Company stated that "[t]he decreased volumes were driven about equally by a reduction of retail inventories in connection with the Company's efforts to align shipments with consumption and by reduced consumption linked to a lack of product innovation and advertising support." In fact, Vlastic's fourth quarter fiscal 1998 sales had decreased by 22% from fiscal 1997 due to lower sales. Management claimed, however, to have successfully reduced retail inventories of Vlastic products such that trade-loading was no longer an issue affecting Vlastic sales.

65. Moreover, the Company later confirmed that it had successfully resolved the trade-loading issues by the end of fiscal 1998. In Vlastic's Quarterly Report on Form 10-Q for the period ended November 1, 1998, filed with the SEC on December 15, 1998, the Company informed investors of a sales decrease due primarily "to lower sales in the Swanson U.S. frozen food and Vlastic pickle businesses as a result of decreased volumes driven by lower consumption

attributable to reduced merchandising and increased competitive activities.” Absent from this disclosure is any reference to aligning shipments with consumption. Also absent from this disclosure was any reference to material unaccrued customer deductions of which defendants were aware or should have been aware.

66. The purportedly near term sales decline resulting from Vlastic’s aligning shipments with consumption, however, was not without other consequences. Indeed it caused Vlastic problems with the Banks. As the Company disclosed in its Quarterly Report on Form 10-Q for the period ended May 3, 1998:

As of May 3, 1998, the Company was in compliance with these [debt] covenants. As a result of accelerated and higher than anticipated transition charges and lower than anticipated earnings, it is expected that Vlastic will not be in compliance with the financial ratio requirements as of the fiscal year ending August 2, 1998 which could allow the banks to demand repayment of the debt. The Company is currently in discussion with its lenders to renegotiate the financial ratio requirements of the credit facility and is confident the agreements will be amended during the fourth quarter of fiscal 1998 so that the Company will be in compliance with amended financial ratio requirements, although no assurances can be given. Although the amended terms are expected to result in a higher interest rate, the Company does not believe they will have a material impact on its results of operations, financial position or cash flows.

67. Indeed, appended to Vlastic’s Annual Report on Form 10-K for the fiscal year ended August 2, 1998, filed with the SEC on October 20, 1998 (“1998 10-K), was an Amended and Restated Credit Agreement, dated September 30, 1998. As Vlastic had disclosed, while the financial ratio requirements were eased, the interest rate and fees increased.

68. On September 17, 1998, Vlastic issued a press release announcing its results for the fourth quarter and fiscal year ended August 2, 1998. As expected, Vlastic suffered a loss for

the quarter of \$0.05 per share before restructuring, one-time and transition charges. It also suffered a net loss of \$23.7 million or \$0.52 per share, including certain transition and restructuring costs. Of these results, Defendant Bernstock stated:

This past year we took the difficult steps all newly formed companies face, *to create the infrastructure and develop the strategies that will help us unleash the potential of our businesses beginning in 1999*. With the transition almost completed, we are implementing a series of business building and cost reduction initiatives that are designed to generate both short-term and longer-term returns for shareowners.

Throughout fiscal 1999 and beyond, we will implement a 5-part program to build shareholder wealth. This program includes sustained growth initiatives for our core 'Vlasic' and 'Swanson' brands; cost savings actions; asset management actions to maximize returns; portfolio reconfiguration; and capital structure management. (Emphasis added).

Thus, defendants began their attempt to convince investors that Vlasic's problems related to transition and that Vlasic was poised for growth in fiscal 1999.

69. In an October 23, 1998 press release, Vlasic announced that William R. Lewis, then its CFO, had resigned. Vlasic replaced Lewis with Defendant Goldstein. Goldstein had served Campbell as director of strategic planning at Campbell's grocery division prior to moving to Vlasic as Vice President, strategic planning and corporate development. Of Goldstein's elevation to CFO, Defendant Bernstock stated, "[a]s we move now from transition into our growth phase, we are equally fortunate to have the talents of Mitch Goldstein as the leader of the Vlasic financial team. I look to Mitch and the team with confidence as we continue to unleash the potential of Vlasic Foods and build a truly great food company."

70. On November 30, 1998, Defendants caused Vlasic to issue a press release announcing the Company's results for the first quarter of fiscal 1999, ended November 1, 1998. Vlasic announced sales of \$327 million for the quarter, down from \$348 million in the same quarter of fiscal 1998. Earnings per share, including certain charges were \$0.10. Of these results, Defendant Bernstock stated:

We are laying the foundation of a truly great food company. As we continue building this company, we are increasing efficiencies and investing in the long-term growth of our 'Vlasic' and 'Swanson' businesses as well as the capabilities of our Company moving forward.

*Our capabilities across our entire infrastructure, including information technology, sales, and research and development, should be as good as, if not better than those of the large-cap food companies. We will use these capabilities for competitive advantage. Our investments in these areas – as well as in our brands – are beginning to pay-off now and are expected to continue even more so in the future.* (Emphasis added).

Thus, Defendants Bernstock publicly stated that the MIS systems Vlasic was implementing were superior and that Vlasic was poised for growth in fiscal 1999, unfettered by, among other transition problems, the issue of trade-loading.

71. In a November 3, 1998 analyst report, Merrill Lynch analyst Teitelbaum discussed Vlasic's MIS conversion. He stated:

By 3Q of this 7/99 year, Vlasic should have taken all necessary steps to be a fully independent company. As terms of the spin, Vlasic had been utilizing its former parent's MIS and other systems for a fee. *Once the transition is complete, Vlasic will be better able to monitor and control its entire costs structure, including administration. Cost reduction programs across the board and other clean-up initiatives should begin to yield significant margin improvement in 2H F1999.* We expect to see gross margin expansion of 280 basis points in F1999. We also anticipate some

SG&A savings, although of a lesser magnitude. All in all, we look for operating margin growth from 5.9% to 9.0% in F99, and 9.2% in F2000. (Emphasis added).

72. On December 15, 1998, Vlasic filed with the SEC its Quarterly Report on Form 10-Q for the period ending November 1, 1998, signed by Defendant Goldstein. In the section of this Form 10-Q entitled "Year 2000," the Company detailed its shift in information systems from those previously provided by Campbell. Vlasic stated:

The Company has completed a global business impact assessment and has plans for timely correction, retirement, replacement or updating of non-ready systems. The Company has been aided in this effort [to be Year 2000 compliant] by the fact that it was only recently spun-off as an independent entity on March 30, 1998 and many of its business and information systems in the U.S. have been newly purchased and implemented with Year 2000 compliant technology. *The implementation of newly purchased systems is targeted for completion from April 2, 1999 and is approximately 70% completed.* (Emphasis added).

Thus, as Vlasic had implied, the implementation of its new MIS system was an ongoing process during the second half of fiscal 1998 and the first quarter of fiscal 1999, by the end of which interim period that process was substantially complete.

73. By the end of the second quarter of fiscal 1999, ended January 31, 1999, therefore, Vlasic portrayed itself as a on the cusp of a breakthrough as a public company both in terms of operations and, in turn, earnings. Integral to that was its MIS system conversion.

74. On February 22, 1999, Merrill Lynch analyst Teitelbaum wrote two separate reports about "recent stock activity" at Vlasic and about Vlasic's presentation at the "CAGNY conference." In the first report, Teitelbaum wrote, "[i]n this, the debut year for Vlasic Foods, the company has taken action to rebuild and remodel itself, ant the January quarter should be the last

of the 'bad quarters'. As expected, there will be balance between divisions with some up and some down." And, with regard to Vlastic's presentation at the CAGNY conference, he wrote:

Vlastic Management's presentation at the CAGNY conference gave a candid view of its inherited businesses and the steps it has taken and will take to repair what was once broken.

This is the last quarter of the old Vlastic. There is no question that there is a learning curve for both current management and the Street on the new Vlastic. We think management understands clearly that their goal is to under promise and over deliver. This theory should be tested soon. We are willing to bet with management at this stage. . . .

### THE GELCO TRADE MARKETING SOLUTION

75. To process, analyze, and account for trade deductions after the service agreement with Campbell expired, Vlastic outsourced this function to Gelco. Gelco, a leading provider of trade and commerce management solutions to the consumer goods industry, was to provide a system that would enable Vlastic to manage trade activities more profitably and efficiently.

76. Gelco Trade Management Solution ("TMS") is a web-based system hosted by Gelco. TMS includes funds and deduction management plus spending analysis and reporting and allows for electronic exchange and tracking of trade payments over the internet. Vlastic implemented TMS to enable it to plan and execute more effective promotions while gaining financial control over what it spent. Gelco claimed to be able to integrate its system with Vlastic's BPCS financial reporting system to, in theory give management "immediate visibility of deductions."

77. The foundation of TMS is "Funds Management, a system that was to automate Vlastic's promotion planning, tracking and communications processes, combining rigorous,

proven financial controls with flexible field payment options.” Among other uses for the sales staff, this enabled finance, sales and marketing management “to track activity - watching for trends, staying on top of liabilities, and modifying the plan on-the-fly to capture new opportunities or head off trouble.” Among the capabilities of Funds Management were the ability to track spending against plan for each representative or team, to settle accounts immediately, and to keep settlements from exceeding commitments. Among the purported benefits of Funds management were the improvement of management control, the streamlining of the allocation process, the automatic tracking of allocations against plan, the early recognition of liabilities, and the reduction of deductions.

78. Another value added component of TMS was Gelco’s Deduction Management, designed to save Vlastic time and money while dramatically reducing its balance of open deductions. Deduction Management was designed to allow Vlastic to automate its system for identifying, managing and resolving deductions, to manage deductions directly from its accounts receivable on a daily basis, to allow managers to access the system to clear, reassign, reinstate or hold open deductions, and to update its general ledger and accounts receivable daily. Deduction Management was designed to provide a single integrated system that worked across Vlastic’s entire business and was compatible with Vlastic’s existing internal systems, to improve efficiency in the reallocation of funds, status, and deduction resolutions, and eliminate unnecessary spending.

79. TMS also had an Analysis & Reporting function, enabling Vlastic to generate certain standard reports and also to modify the reporting function to produce far more

sophisticated analyses. Vlastic should have been able to use this feature to uncover trends and to share and distribute valuable information.

80. Accordingly, Vlastic had employed a system that theoretically enabled it accurately to track the trade deductions it expected as a result of the trade loading practices while its various divisions were part of Campbell. Unbeknownst to investors, however, according to the former manager of financial planning and analysis at Vlastic, "integration issues" made the implementation of Gelco's TMS "messy." Management was aware that their efforts to implement TMS were proceeding far slower than they had wanted. Indeed, with knowledge or reckless disregard that material issues relating to customer deductions existed, defendants failed to disclose to investors that the system intended to capture these expenses was not on-line for months after February 1, 1999.

81. A former director of Vlastic's supply chain, who had been with Campbell since 1980 and went with Vlastic after the spin-off, confirmed that while his knowledge of Vlastic's customer deduction problems was not intimate, even he was aware that significant problems existed relating to customer deductions at or around February, 1999, and that Vlastic devoted ever increasing resources to clearing customer deductions. Further, a former customer marketing manager who started with Vlastic in November, 1999, who was responsible for trade marketing for the Vlastic's eastern division and who managed a large trade budget, claimed that when he first started, he became aware that a large deduction balance existed and that Vlastic's information technology and finance personnel should have known that Gelco's TMS had failed to capture and analyze the trade marketing spending and customer deductions.

**MATERIALLY FALSE AND MISLEADING STATEMENTS**

82. Against this background, on February 24, 1999, Defendants caused Vlastic to issue a press release, announcing its results for the second quarter of fiscal 1999, ended January 31, 1999. The Company reported earnings before one-time items of \$10.8 million or \$0.24 per share. Further, the Company stated that the one-time items marked “the end of one-time items associated with the spin-off of the Company.” Vlastic reported net sales of \$356,625,000 for the quarter and marketing and selling expenses of \$61,635,000.

83. Of these results, Defendants Bernstock continued to portray Vlastic’s operations as well positioned for the future, stating:

It has been only 10 months since we became a separate, independent company and in that short amount of time we’ve completed building our infrastructure for the future growth of the Company. *As of February 1, 1999, we’re operating* with our new, state-of-the-art IT systems which include our own Customer Service and Business Service Centers. We’ve done all this and more as we have invested in the long-term growth of our core ‘Vlastic’ and ‘Swanson’ businesses. (Emphasis added).

On February 24, 1999, Vlastic’s shares closed at \$14 7/16 per share on the New York Stock Exchange.

84. Among the systems Vlastic employed in early February, 1999, was the Gelco’s TMS.

85. On March 16, 1999, Vlastic filed its Quarterly Report on Form 10-Q with the SEC for the second quarter of fiscal 1999, ending January 31, 1999 (“Second Quarter 1999 10-Q”), signed by Defendant Goldstein, in which Vlastic essentially repeated the results from the February 24, 1999 press release. The Second Quarter 1999 10-Q contained a section entitled “Notes to

Consolidated Financial Statements". A subsection entitled "Interim Financial Information" contained the following statement:

The accompanying unaudited consolidated financial statements for the three and six month periods ended January 31, 1999 and February 1, 1998 have been *prepared in accordance with generally accepted accounting principles for interim financial information*. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. *In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary for a fair presentation of the consolidated financial statements have been included.* (Emphasis added).

86. The Second Quarter 1999 10-Q also set forth Vlastic's Consolidated Statement of Earnings and balance sheet for the quarter ended January 31, 1999, which reported, among other things, that Vlastic reported sales of \$356,625,000, net earnings of \$11,805,000, total costs and expenses of \$329,025,000. *Pro forma* Statement of Earnings for that quarter reported pro forma net sales of \$356,625,000, *Pro forma* earnings of \$11,805,000 and expenses of \$329,025,000.

The Second Quarter Form 10-Q stated that:

the Pro Forma Statements of Earnings presented below produce more meaningful comparisons as the three and six month periods ended February 1, 1998 include interest expense on a pro forma basis. Our historical Statements of Earnings for the three and six month periods ended January 31, 1999 include interest expense on the incremental debt incurred as of the spin-off. The pro forma information assumes the spin-off occurred at the beginning of fiscal 1998.

87. The above statements were materially false and misleading. Defendants knew, or recklessly disregarded, that Gelco's TMS was not running sufficiently well, if at all, to capture

material customer deductions relating both to Campbell's trade-loading practices and to ongoing operations of Vlastic. As a result, Vlastic's internal controls were inadequate and its financial statements were, in turn, unreliable. Vlastic had materially understated its marketing and selling expenses during the first two quarters of 1999 and earlier. Under pressure to transition its MIS system from Campbell before the TSA expired, Defendants implemented Gelco, a system they knew or recklessly disregarded was unable, at that time, accurately to capture material customer deductions.

88. On June 8, 1999, Vlastic filed with the SEC its Form 10-Q for the quarter ended May 2, 1999 ("Third Quarter 1999 Form 10-Q"). The Third Quarter 1999 Form 10-Q was signed on June 8, 1999 by defendant Goldstein.

89. The Third Quarter 1999 Form 10-Q contained a section entitled "Notes to Consolidated Financial Statements". A subsection, entitled "Interim Financial Information", contained the following statement:

The accompanying unaudited consolidated financial statements for the three and nine month periods ended May 2, 1999 and May 3, 1998 have been *prepared in accordance with generally accepted accounting principles for interim financial information*. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. *In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary for a fair presentation of the consolidated financial statements have been included.* (Emphasis added).

90. The Third Quarter 1999 Form 10-Q also set forth Vlastic's Consolidated Statements of Earnings for the quarter ended May 2, 1999, which reported, among other things,

that Vlastic reported net (loss) earnings of \$(140,128,000), total costs and expenses of \$437,869,000, *pro forma* earnings for that quarter of \$(140,128,000) and expenses of \$437,869,000. The Third Quarter 1999 results reported were materially impacted by special items, one time charges and tax impact of repatriated dividends. Excluding such items, Vlastic would have reported income for the quarter of \$6.7 million or \$.15 per diluted share. The Third Quarter Form 10-Q stated that:

the Pro Forma Statements of Earnings presented below produce more meaningful comparisons as the three and nine month periods ended May 3, 1998 include interest expense on a pro forma basis. Our historical Statements of earnings for the three and nine month periods ended May 2, 1999 include interest expense on the incremental debt incurred as of the spin-off. The pro forma information assumes the spin-off occurred at the beginning of fiscal 1998.

91. The Third Quarter 1999 Form 10-Q was false and misleading because it failed to disclose any problems with the Gelco TMS system or that Vlastic's financial statements were materially false and misleading or more particularly, that TMS and the financial statements' analyses did not correctly capture marketing costs and customer deductions.

92. On October 15, 1999, Vlastic filed its 1999 Form 10-K for the year ended August 1, 1999 (the "1999 Form 10-K"). It was signed on October 5, 1999 by, among other persons, defendants Goldstein and Bernstock. The 1999 Form 10-K also set forth Vlastic's Consolidated Balance Sheet and Consolidated Statement of Earnings for the year ended August 1, 1999 which reported, among other things, that Vlastic reported earnings (loss) of (\$126,331,000), which

included the special charges incurred in the Third Quarter of 1999, and total costs and expenses of \$1,374,735,000.

93. The 1999 Form 10-K also makes reference to the commencement of Vlastic's information technology systems in Management's Discussion and Analysis, which stated: "... as of *April 1999* we have substantially completed all of the operating and management systems and capabilities necessary to handle internally the services that had previously been provided by Campbell." (Emphasis added). No mention was made of any problems with the Gelco TMS system.

94. The 1999 Form 10-K contained a "Report of Management", dated September 15, 1999 and signed by Defendants Bernstock, among others, which states in part:

The accompanying financial statements have been prepared by our management in conformity with generally accepted accounting principles to reflect the financial position of Vlastic and our operating results. Financial information appearing throughout this Annual Report is consistent with that in the financial statements Management is responsible for the information and representations in such financial statements. In order to meet its responsibility, *management maintains a system of internal controls designed to assure that assets are safeguarded and that financial records properly reflect all transactions.* We also maintain a worldwide auditing function to periodically evaluate the adequacy and effectiveness of such internal controls, as well as our administrative procedures and reporting practices. (Emphasis added).

95. On December 10, 1999, Vlastic filed its Form 10-Q for the quarter ended October 31, 1999 ("First Quarter 2000 Form 10-Q"). The First Quarter 2000 Form 10-Q also set forth Vlastic's Consolidated Statement of Earnings and Consolidated Balance Sheets for the quarter

ended October 31, 1999, which reported, among other things, that Vlastic reported net sales of \$264,404,000, net earnings of \$4,109,000, total costs and expenses of \$246,121,000.

96. The First Quarter 2000 Form 10-Q did not disclose any problems with Gelco system or that Vlastic's financial statements were materially false and misleading in that, as noted above, they did not correctly capture marketing costs and customer deductions.

97. The First Quarter 2000 Form 10-Q contained a section entitled "Notes to Consolidated Financial Statements". A subsection entitled "Interim Financial Information" contained the following statement:

The accompanying unaudited consolidated financial statements for the three months ended October 31, 1999 and November 1, 1998 have been prepared in accordance with generally accepted accounting principles for interim financial information. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary for a fair presentation of the consolidated financial statements have been included.

98. On February 10, 2000, the defendants issued a press release on *PR Newswire* stating that for the second quarter fiscal year 2000, ending January 30, 2000, Vlastic would report a loss from continuing operations \$ 0.32-\$ 0.36 per share and that

... [a]dditional charges from trade marketing and customer deductions, related primarily *to fiscal 1999 and earlier*, contributed approximately \$ 0.20 per share to the expected second quarter loss. These charges resulted primarily from revised estimates based on new information that provided better estimates and insight to the Company following the conversion to new billing and trade marketing systems and processes after the

conclusion of Vlastic's transition service agreement with Campbell Soup. The company is conducting a review of these systems and is continuing to implement processes and procedures to properly capture and analyze trade marketing spending and customer deductions...." (Emphasis added).

99. Vlastic also announced that "[t]he Company previously received from its lenders a waiver of certain covenants of its senior credit facility until February 29, 2000 and is currently in discussion with its lenders to extend the waiver period. Management will also be working toward having an amended senior credit agreement, although no assurances can be given that the amendment will be completed." The customer deduction problem of which defendants were aware, or which they recklessly disregarded, which existed prior to the Class Period, had contributed to yet another default situation for Vlastic.

100. The closing price of Vlastic's common shares on the New York Stock Exchange on February 11, 2000, the following day, was \$3.438, a decline of 15% from the day preceding the announcement.

101. On March 15, 2000 Vlastic filed its Form 10-Q for the Quarter ended January 30, 2000 ("Second Quarter 2000 Form 10-Q"). The Second Quarter 2000 Form 10-Q disclosed a three-month loss of \$ 21.7 million compared to earnings of \$ 11.8 million for the comparable year earlier period. The Second Quarter 2000 Form 10-Q further states "Charges of approximately \$14.5 million incurred in the second quarter of fiscal 2000 for trade marketing and customer deductions resulting from revised estimates, *principally for 1999 and earlier*, based on new information following our conversion to new billing and trade marketing systems and processes." (Emphasis added). The Second Quarter 2000 Form 10-Q reported marketing and

selling expenses for the second quarter ended January 30, 2000 of 31.1 % on sales of \$238,648,000 compared to 18.8 % for the January 1999 quarter on sales of \$324,393,000.

102. In the Second Quarter 2000 10-Q, the Company also reported on its Credit Facility and that it required, yet again, a waiver from the covenants. The Company stated:

On January 18, 2000, we received a waiver from the senior credit facility bank syndicate for the debt/EBITDA ratio and the fixed charge coverage ratio through February 29, 2000. Effective February 29, 2000, we received a further waiver from the senior credit facility bank syndicate covering the debt/EBITDA ratio and the fixed charge coverage ratio of the facility through June 20, 2000. This waiver required the payment of a fee, and increase in interest rates, delivery and compliance with a cash budget, and also established a minimum EBITDA test. If the minimum EBITDA test is not met as of the end of the third quarter fiscal 2000, the waiver period will end on May 31, 2000. . . . The waiver also required that the senior credit facility be secured by liens on substantially all U.S. owned real property on or before April 20, 2000. We fully expect to be in compliance with the minimum EBITDA test and the terms and conditions set forth in the waiver for the third quarter fiscal 2000.

103. On April 28, 2000, the Company filed a Form 10-K/A for the year ending August 1, 1999 ("1999 Form 10-K/A"), amending the original 1999 Form 10-K with a disclosure of a subsequent event relevant to Vlasic's status as a going concern. A "Subsequent Events" footnote was added to the audited report concerning this subsequent event.. The footnote states:

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As discussed in Note 22, we have significant borrowings which require, among other things, compliance with certain financial ratios, specifically a debt/EBITDA ratio and a fixed charge coverage ratio, on a quarterly basis. As a result of operating losses incurred during the quarter ended January 30, 2000, we were not in compliance with the financial ratio covenants under our senior credit facility; however, we requested and received a waiver

through February 29, 2000. We have received a further waiver of these financial ratio covenants from our lenders through June 20, 2000 in consideration for the payment of a fee and an increase in interest rates. The waiver required delivery of and compliance with a cash budget and established a minimum EBITDA test to be met as of April 30, 2000. If the minimum EBITDA test is not met, the waiver will expire on May 31, 2000. Additionally, if the cash budget is not met, we will be unable to borrow under the senior credit facility. The waiver also required that the senior credit facility be secured by liens on substantially all of our real property in the United States on or before April 30, 2000.

We fully expect to be in compliance with the minimum EBITDA test and the other terms and conditions of the waiver and we do not anticipate needing any additional borrowings through June 20, 2000.

We are exploring strategic opportunities including, but not limited to, potential divestitures, joint manufacturing or marketing ventures, acquisitions, a merger, a recapitalization or other actions. The investment banking firm of Lazard Freres & Co. has been hired to assist with this strategic review and to formulate proposed plans and actions for the consideration of our Board of Directors. Because Lazard Freres & Co. is currently conducting its review and formulation of proposed plans and actions, no assessment can be made of the likelihood that such plans and actions can be effectively implemented. Moreover, regardless of the outcome of the strategic review, an extension of the existing waiver, a new waiver covering certain terms and conditions of the senior credit facility, an amendment of the senior credit facility, a de novo senior credit facility or some combination of the above will be required. Without such an action, we will be in default on June 20, 2000. Although no assurances can be given, we expect that the plans and actions proposed by the strategic review and to be acted upon by our Board of Directors will enable us to successfully fulfill such requirement and that we will be able to effectively implement them. In particular, we anticipate being able to negotiate with our present senior credit bank syndicate, as is necessary, for an extension of the existing waiver or for a new waiver, before the current waiver expires on June 20, 2000, so as to preclude any acceleration of our indebtedness. Our continuation as a going concern is dependent upon our ability to successfully establish the

necessary financing arrangements and to comply with the terms thereof.

A breach of any of the terms and conditions of the waiver, or subsequent breaches of the financial covenants under the senior credit facility could result in acceleration of our indebtedness, in which case the debt would become immediately due and payable. Based upon our current projections, we do not believe we will comply with the existing financial covenants, we may not be able to repay our debt or borrow sufficient funds to refinance it. Even if new financing is available, it may not be on terms that are acceptable to us. We have, however, received such modifications in the past in the form of waivers and an amendment to our senior credit facility.

Our ability to operate as a going concern is pendent on our ability to successfully negotiate with our senior credit bank syndicate to preclude acceleration after June 20, 2000. However, although no assurances can be given, we remain confident that we will be able to continue operating as a going concern.

104. Although the footnote stated that a waiver had been obtained until June 20, 2000, the waiver was subsequently extended to February 28, 2001.

105. Vlastic's 1999 Form 10-K for the year ending August 1, 1999 dated October 15, 1999 and its 1999 Form 10-K/A (amending the 10-K) filed April 28, 2000 refers to its marketing program as consisting of trade promotions and consumer based marketing such as advertising and coupons. Trade promotions focus on obtaining retail display support, achieving temporary price reductions and securing shelf space.

106. The 1999 Form 10-K/A also contained an amended certificate from Vlastic's outside auditors, PricewaterhouseCoopers, which expressed "substantial doubt about [Vlastic's] ability to continue as a going concern due to Vlastic's inability to maintain compliance with certain financial ratios under its bank agreements."

## VIOLATIONS OF GAAP

107. Vlastic violated Generally Accepted Accounting Principles ("GAAP") in that its internal controls were inadequate to address the weaknesses in the information technology systems which produced inaccurate financial information until, at the earliest, the second quarter of fiscal 2000 when the revisions resulting in additional charges of \$14.5 million were met. This contradicted management's representations referred to above in the Form 10-K for the year ended August 2, 1998 and 1999 Form 10-K and 1999 Form 10-K/A for the year ended August 1, 1999 pertaining to Vlastic's internal controls. The weaknesses in Vlastic's internal controls relating to its information technology systems were not disclosed until February 10, 2000.

108. Vlastic's financial statements issued during the class period failed to:

- a. Comply with the accounting principle of reliability, which requires that reported information be reliable to the extent that users can depend on it to represent economic conditions or events that it purports to represent and the such information is reasonable free from error or bias. FASB Statement of Concepts No 2.
- b. Comply with the accounting principle of completeness, which requires financial information to be complete and that it validly, represents the underlying events and conditions. FASB Statement of Concepts No 2.
- c. Comply with the accounting principle of relevance which requires that the reported information have the capacity to make a difference in a decision by helping users form predictions about the outcome of past, present and future events. FASB Concepts No. 2.
- d. Failed to provide for contingencies for trade marketing and customer deductions arising from sales of its products. FASB No 5.

109. The Forms 10-Q released during the class period stated:

The accompanying unaudited consolidated financial statements for [the relevant time period] have been prepared in accordance with generally accepted accounting principles for interim financial information. Accordingly they do not include all of the financial information and footnotes required by generally accepted accounting principles for complete financial statements. In our opinion *all adjustments (consisting solely of normal recurring adjustments) necessary for a fair presentation of the consolidated financial statements have been included...* (Emphasis added).

110. Directly contrary to defendants' representations, all adjustments had not been made to provide a fair presentation of the financials, since adjustments in the amount of \$ 14.5 million primarily relating to fiscal 1999 and prior were required to be made in the second quarter of fiscal 2000.

111. As a result of Vlasic's failure to implement proper internal control procedures, its financial statements contained in Forms 10-Q for the quarters May 2, 1999, October 31, 1999 and the Form 10-K for the year ended August 1, 1999 were materially false and misleading and materially overstated its assets and stockholders' equity and earnings and understated its expenses and losses.

**COUNT I**  
**Violation of Section 10(b) Of the Exchange  
Act and Rule 10b-5 By All Defendants**

112. Lead Plaintiffs incorporates ¶¶ 1-111 by reference as if fully sets forth herein.

113. At all relevant times, the Defendants named herein had actual knowledge that the statements complained of herein were materially false and misleading or with reckless disregard for the truth failed or refused to ascertain and disclose such facts as would have revealed the materially false and misleading nature of the statements complained of herein, although such

facts were readily available to such Defendants. Defendants knew, or recklessly disregarded, that material facts were being concealed from the public as alleged herein.

114. Both defendants: (a) knew or with recklessness disregarded the material adverse non-public information about Vlastic's reported net income (and losses) and expenses which was not disclosed; and (b) participated in drafting, reviewing, and/or approving the materially misleading statements, releases, reports, and other public representations of and about Vlastic's internal controls, information technology systems, reported income, expenses and financial condition.

115. Information showing that Defendants acted knowingly or with deliberate or conscious reckless disregard for the truth regarding Vlastic's reported income expenses and financial condition is peculiarly within their knowledge and control, because among other things:

a. since Defendants had reported as early as February, 1999 that Vlastic's new state of the art computer system was in operation, the system provided or should have provided the information to management substantially earlier than the Second Quarter of 2000.

b. Defendant Bernstock knew or with recklessness disregarded that Vlastic's accounting practices and trade marketing with customer deductibles, as alleged herein, artificially inflated reported income (or reduced reported losses) because he was involved in the day-to-day operations of Vlastic and signed the Form 10-K for fiscal 1999. He knew that the state of the trade market costs system and processes was one of the foundation of Vlastic's business.

c. Defendant Goldstein was the Vice President of Finance, Chief Financial Officer and, as such, was responsible for the reporting of Vlastic's financial results. He knew or was reckless in not knowing of Vlastic's accounting practices which caused Vlastic's financial statements to be presented in violation of GAAP, as alleged herein.

d. Defendants had the potential to benefit from their conduct which inflated the price of Vlastic securities because their compensation was directly tied to the reported financial performance of Vlastic.

116. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or were reckless in not knowing were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

117. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

a. Employed devices, schemes, and artifices to defraud;

b. Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or

c. Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of Vlastic securities during the Class Period.

118. The undisclosed adverse information concealed by Defendants during the Class Period is the type of information which, because of SEC and national stock exchange regulations,

as well as customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed. For example: Under Item 303 of Regulation S-K, promulgated by the SEC under the Exchange Act, there is a duty to disclose in periodic reports filed with the SEC "known trends or any known demands, commitments, events or uncertainties" that are reasonably likely to have a material impact on a company's sales revenues, income or liquidity, or cause previously reported financial information not be indicative of future operating results. 17 C.F.R. § 229.303 (a)(1)-(3) and Instruction 3. In addition to the periodic reports required under the Exchange Act, management of a public company has a duty "to make full and prompt announcements of material facts regarding the company's financial condition." SEC Release No. 34-8995, 3 Fed. Sec. L. Rep. (CCH) ¶23,120A, at 17,095, 17 C.F.R. ¶241.8995 (10/15/70).

119. Lead Plaintiffs and the other members of the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Vlastic securities. Lead Plaintiffs and the other members of the Class would not have purchased Vlastic securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## COUNT II

### For Violation of § 20(a) Of The Exchange Act Against Defendants Bernstock and Goldstein

120. Lead Plaintiffs incorporate ¶¶1-119 by reference as if fully set forth herein.

121. Defendants Bernstock and Goldstein acted as controlling persons of Vlastic withing the meaning of §20(a) of the Exchange Act. By reason of the Individual Defendants' positions as directors and/or officers of Vlastic and, with respect to defendants Bernstock and Goldstein, their status as senior officers of the Company, they had the power and authority to cause Vlastic to engage in the wrongful conduct complained of herein and were, therefore, culpable participants.

122. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other member of the Class suffered damages in connection with their purchases of Vlastic securities during the Class Period.

### BASIS OF ALLEGATIONS

123. Because the PSLRA requires complaints to be pleaded in conformance with Federal Rule of Civil Procedure 11, Plaintiff has alleged the foregoing based upon the investigation of their counsel, which included a review of Vlastic's SEC filings, including the Forms 10-K for fiscal 1998, 1999 and 2000, the Forms 10-Q for the first three quarters of fiscal 1999, and first two quarters of fiscal 2000, Forms 14a for fiscal 1999 and 2000, securities analysts' reports about the Company, press releases issued by the Company, media reports about the Company, including and information disseminated on the *Dow Jones News Wire*, *Business*

*Wire* and *Bloomberg News Service*, a review of website sources, discussions with an accounting consultant and interviews of various former Vlasic employees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

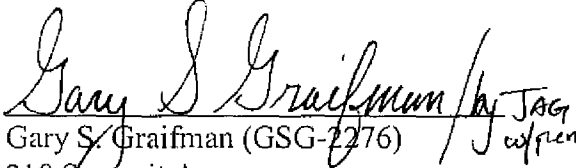
- a. Declaring this action to be a proper class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;
- b. Against Defendants, jointly and severally, and in favor of Lead Plaintiffs and the other members of the class compensatory damages;
- c. Awarding Plaintiffs and the other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs; and
- d. Awarding such other relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Date: July 2, 2001

KANTROWITZ, GOLDHAMER  
& GRAIFMAN

  
Gary S. Graifman (GSG-2276) / JAG  
210 Summit Avenue  
Montvale, NJ 07645  
(201) 391-7000  
with permission

Local Counsel for Plaintiffs

BERGER & MONTAGUE, P.C.  
Todd S. Collins  
Jacob A. Goldberg  
1622 Locust Street  
Philadelphia, PA 19103

(215) 875-3000

STULL STULL & BRODY

Jules Brody

Mark Levine

6 East 45<sup>th</sup> Street

New York, NY 10017

(212) 687-7230

Co-Counsel for Plaintiffs

WEISS & YOURMAN

Joseph H. Weiss

551 Fifth Avenue

New York, New York 10176

(212) 682-3025

LAW OFFICES OF HAROLD B. OBSTFELD

Harold B. Obstfeld

260 Madison Ave., 19th Fl.

New York, New York 10016

(212) 696-1212

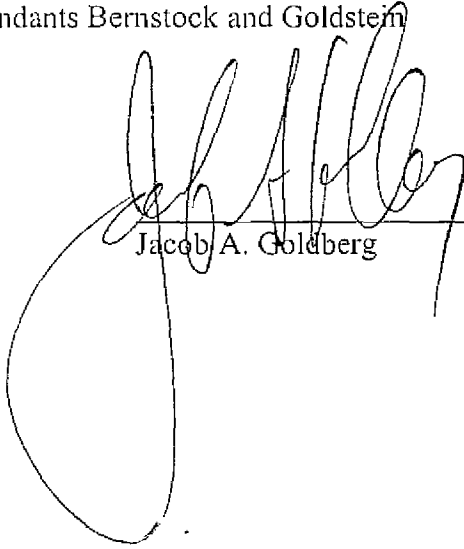
Additional Counsel for Plaintiffs

CERTIFICATION OF SERVICE

I, Jacob A. Goldberg, hereby certify that on this 2<sup>nd</sup> day of July, 2001, I caused a true and correct copy of **CORRECTED AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS** to be served by **HAND DELIVERY** upon counsel listed below:

Gay Parks Rainville, Esq.  
PEPPER HAMILTON LLP  
3000 Two Logan Square  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2799

Counsel for Defendants Bernstock and Goldstein



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Jacob A. Goldberg