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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,

v.

FAT BRANDS INC., ANDREW A.
WIEDERHORN, KENNETH J.
KUICK, and ROBERT G. ROSEN,

Defendants.

No.

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

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
3 complaint against Defendants (defined below), alleges the following based upon
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
5 belief as to all other matters, based upon, among other things, the investigation
6 conducted by and through Plaintiff’s attorneys, which included, among other
7 things, a review of the Defendants’ public documents, public filings, wire and press
8 releases published by and regarding Fat Brands Inc. (“Fat Brands” or the
9 “Company”), and information readily obtainable on the Internet. Plaintiff believes
10 that substantial evidentiary support will exist for the allegations set forth herein
11 after a reasonable opportunity for discovery.

12 **NATURE OF THE ACTION**

13 1. This is a class action on behalf of persons or entities who purchased
14 or otherwise acquired publicly traded Fat Brands securities, including Fat Brands
15 Class A common stock (ticker symbol: FAT), Fat Brands Class B common stock
16 (ticker symbol: FATBB), Fat Brands 8.25% Series B Cumulative Preferred Stock
17 (ticker symbol: FATBP), and Fat Brands Warrants (ticker symbol: FATBW)
18 between March 24, 2022 and May 10, 2024, inclusive (the “Class Period”).
19 Plaintiff seeks to recover compensable damages caused by Defendants’ violations
20 of the federal securities laws under the Securities Exchange Act of 1934 (the
21 “Exchange Act”).
22

23 **JURISDICTION AND VENUE**

24 2. The claims asserted herein arise under and pursuant to Sections 10(b)
25 and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
26 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).
27
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1 “FATBP.” Fat Brands warrants trade on the NASDAQ under the ticker symbol
2 “FATBW.”

3 9. Defendant Andrew A. Wiederhorn (“Wiederhorn”) founded the
4 Company and served as the Company’s CEO until May 5, 2023. After May 5,
5 2023, he continued serving as the Company’s Chairman.

6 10. Defendant Kenneth J. Kuick (“Kuick”) served as the Company’s Co-
7 Chief Executive Officer (“CEO”) and Chief Financial Officer from May 1, 2023
8 to the present and previously served as the Company’s Chief Financial Officer.

9 11. Defendant Robert G. Rosen (“Rosen”) served as the Company’s Co-
10 CEO from May 1, 2023 to the present.

11 12. Defendants Wiederhorn, Kuick and Rosen are collectively referred to
12 herein as the “Individual Defendants.”

13 13. Each of the Individual Defendants:

- 14 (a) directly participated in the management of the Company;
- 15 (b) was directly involved in the day-to-day operations of the Company at
16 the highest levels;
- 17 (c) was privy to confidential proprietary information concerning the
18 Company and its business and operations;
- 19 (d) was directly or indirectly involved in drafting, producing, reviewing
20 and/or disseminating the false and misleading statements and information
21 alleged herein;
- 22 (e) was directly or indirectly involved in the oversight or implementation
23 of the Company’s internal controls;
- 24 (f) was aware of or recklessly disregarded the fact that the false and
25 misleading statements were being issued concerning the Company; and/or
26 (g) approved or ratified these statements in violation of the federal
27 securities laws.

1 to the Company and our Chief Executive Officer, Andrew Wiederhorn, and
2 are formally seeking documents and materials concerning, among other
3 things, the Company's December 2020 merger with Fog Cutter Capital
4 Group Inc., transactions between these entities and Mr. Wiederhorn, and
5 compensation, extensions of credit and other benefits or payments received
6 by Mr. Wiederhorn or his family. ***The Company is cooperating with the
7 government regarding these matters, and we believe that the Company is
8 not currently a target of the U.S. Attorney's investigation.*** At this early
9 stage, the Company is not able to reasonably estimate the outcome or
10 duration of the government investigations.

11 (Emphasis added).

12 20. The statement in ¶ 19 was materially false and misleading because the
13 Company did not meaningfully cooperate with the government, and because the
14 statement understated the Company's litigation risk.

15 21. On February 24, 2023, Fat Brands filed with the SEC its annual report
16 on Form 10-K for the period ended December 25, 2022 (the "2022 Annual
17 Report"). Attached to the 2022 Annual Report were certifications pursuant to SOX
18 signed by Defendants Wiederhorn and Kuick attesting to the accuracy of financial
19 reporting, the disclosure of any material changes to the Company's internal control
20 over financial reporting and the disclosure of all fraud.

21 22. The 2022 Annual Report contained the following statement:
22 In December 2021, the U.S. Attorney's Office for the Central District of
23 California (the "U.S. Attorney") and the U.S. Securities and Exchange
24 Commission (the "SEC") informed the Company that they had opened
25 investigations relating to the Company and our Chief Executive Officer,
26 Andrew Wiederhorn, and were formally seeking documents and materials
27 concerning, among other things, the Company's December 2020 merger
28 with Fog Cutter Capital Group Inc., transactions between those entities and
Mr. Wiederhorn, as well as compensation, extensions of credit and other
benefits or payments received by Mr. Wiederhorn or his family from those
entities. ***Our Board of Directors has formed a Special Review Committee
(the "SRC") comprised of directors other than Mr. Wiederhorn to oversee
a review of the issues raised by the U.S. Attorney and SEC investigations,
reach findings and make a recommendation to the Board with respect to***

1 *these matters*. The SRC is authorized to review such documents and
2 interview such persons, and retain legal counsel and other consultants on
3 behalf of the Company, as the SRC deems necessary or appropriate to
4 complete its review. *The Company intends to cooperate with the U.S.*
5 *Attorney and the SEC regarding these matters and is continuing to actively*
6 *respond to inquiries and requests from the U.S. Attorney and the SEC.* We
7 believe that the Company is not currently a target of the U.S. Attorney’s
8 investigation. At this stage, we are not able to reasonably estimate or predict
9 the outcome or duration of either of the U.S. Attorney’s or the SEC’s
10 investigations.

11 (Emphasis added).

12 23. The statement in ¶ 22 was materially false and misleading because the
13 Company did not meaningfully cooperate with the government, and because the
14 statement understated the Company’s litigation risk. Further, the statement was
15 materially false and misleading because it gave the impression that the Special
16 Review Committee was empowered to meaningfully review the issues raised by
17 the DOJ and SEC investigations.

18 24. On April 3, 2023, the Company filed with the SEC a current report on
19 Form 8-K, reporting for March 28, 2023. It stated the following:

20 On March 28, 2023, the holder of a majority of the voting power of the
21 outstanding voting stock of FAT Brands Inc. (the “Company”) *took action*
22 *to remove the following directors of the Company pursuant to Section*
23 *141(k) of the Delaware General Corporation Law and Section 5.04 of the*
24 *Company’s Certificate of Incorporation: Kenneth Anderson, Lynne*
25 *Collier, Amy Forrestal, James Neuhauser and Edward Rensi.*

26 Following such action, the sole remaining director of the Company took
27 action to increase the size of the Board of Directors (the “Board”) and
28 appointed the following individuals to fill vacancies on the Board: Donald
Berchtold, Tyler Child, Kenneth Kepp, Carmen Vidal, *Mason Wiederhorn,*
Taylor Wiederhorn and Thayer Wiederhorn. In addition, on March 29,
2023, Lynne Collier was re-appointed as a director on the Board, and on
April 1, 2023, Mark Elenowitz was appointed as a director on the Board.
Edward Rensi was also re-appointed but subsequently decided not to re-join
the Board.

1 In connection with these actions, the size of the Board was increased to ten
2 persons, and is currently comprised of Donald Berchtold, Tyler Child,
3 Lynne Collier, Mark Elenowitz, Kenneth Kepp, Carmen Vidal, *Andrew*
4 *Wiederhorn (Chairman), Mason Wiederhorn, Taylor Wiederhorn and*
5 *Thayer Wiederhorn*. The members of the Audit Committee were re-
6 appointed and consist of Lynne Collier, Mark Elenowitz and Kenneth Kepp,
7 each of whom was determined to be independent under the applicable
8 director independence standards of the Securities and Exchange
9 Commission and The Nasdaq Stock Market.

10 In connection with these changes, the Company has elected “controlled
11 company” status for purposes of the corporate governance rules of The
12 Nasdaq Stock Market, which provide an exemption from the requirement to
13 maintain a Board comprised of majority independent directors, and the
14 Compensation Committee and Nominating and Corporate Governance
15 Committee of the Board were dissolved.

16 The newly constituted Board also approved an amendment to the standard
17 cash compensation for non-employee directors, changing such amount to
18 \$120,000 per year, from \$80,000 per year plus \$40,000 per year for service
19 on Board committees. The non-employee directors will also continue to
20 receive annual equity awards of stock options to acquire 30,636 shares of
21 Class A common stock of the Company, with an exercise price set at fair
22 market value at the time of grant and vesting over three years.

23 (Emphasis added).

24 25. The statement in ¶ 24 was materially false and misleading because it
25 omitted that Defendant Wiederhorn had removed the independent directors from
26 the Company’s Board because of their attempts to cooperate with government
27 investigations into the Company and Defendant Wiederhorn’s activities.

28 26. On March 12, 2024, Fat Brands filed with the SEC its annual report
on Form 10-K for the period ended December 31, 2023 (the “2023 Annual
Report”). Attached to the 2023 Annual Report were certifications pursuant to the
Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Kuick and Rosen
attesting to the accuracy of financial reporting, the disclosure of any material

1 changes to the Company's internal control over financial reporting and the
2 disclosure of all fraud.

3 27. The 2023 Annual Report contained the following statement on
4 government investigations:

5 In December 2021, the U.S. Attorney's Office for the Central District of
6 California (the "U.S. Attorney") and the U.S. Securities and Exchange
7 Commission (the "SEC") informed the Company that they had opened
8 investigations relating to the Company and our former Chief Executive
9 Officer, Andrew Wiederhorn, and were formally seeking documents and
10 materials concerning, among other things, the Company's December 2020
11 merger with Fog Cutter Capital Group Inc., transactions between those
12 entities and Mr. Wiederhorn, as well as compensation, extensions of credit
13 and other benefits or payments received by Mr. Wiederhorn or his family
14 from those entities prior to the merger. ***From August 23, 2022 until March***
15 ***28, 2023, our Board of Directors maintained a Special Review Committee***
16 ***comprised of directors other than Mr. Wiederhorn to oversee a review of***
17 ***the issues raised by the U.S. Attorney and SEC investigations. The***
18 ***Company intends to cooperate with the U.S. Attorney and the SEC***
19 ***regarding these matters and is continuing to actively respond to inquiries***
20 ***and requests from the U.S. Attorney and the SEC. At this stage, we are not***
21 ***able to reasonably estimate or predict the outcome or duration of either of***
22 ***the U.S. Attorney's or the SEC's investigations.***

23 On February 15, 2024, the Company, Andrew Wiederhorn and one current
24 and one former officer of the Company each received a "Wells Notice" from
25 the Staff of the SEC. The Wells Notice issued to the Company
26 alleges violations of Securities Act Section 17(a)(2), and Exchange Act
27 Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(k), and 14(a) and Rules
28 10b-5(b), 12b-20, 13a-1, 13a-13, 14a-3, and 14a-9 thereunder, relating
solely to conduct occurring during or prior to fiscal year 2020. A Wells
Notice is neither a formal charge of wrongdoing nor a determination that the
recipient has violated any law. ***The Company is continuing its efforts to***
cooperate with the SEC and maintains that its actions were appropriate,
and intends to pursue the Wells Notice process, including submitting a
formal response to the SEC.

(Emphasis added).

1 28. The statement in ¶ 27 was materially false and misleading because it
2 understated the Company’s liability, given the extent of Wiederhorn and the
3 Company’s criminal activity. Further, it was false because it omitted that after
4 March 28, 2023, Wiederhorn removed every member of Fat Brands’ board of
5 directors other than himself, and reconstituted the Board to have a majority of non-
6 independent directors under his control. This action was taken after members of
7 the Board communicated with the government regarding a criminal investigation
8 into Wiederhorn and the Company’s financial dealings.

9 29. On May 10, 2024, after market hours Fat Brands filed with the SEC
10 its quarterly report on Form 10-Q for the period ended March 31, 2024 (the “1Q24
11 Report”). Attached to the 1Q24 Report were certifications pursuant to SOX signed
12 by Defendants Kuick and Rosen attesting to the accuracy of financial reporting,
13 the disclosure of any material changes to the Company’s internal control over
14 financial reporting and the disclosure of all fraud.

15 30. The 1Q24 Report contained the following statement on government
16 investigations:

17 In December 2021, the U.S. Attorney’s Office for the Central District of
18 California (the “U.S. Attorney”) and the U.S. Securities and Exchange
19 Commission (the “SEC”) informed the Company that they had opened
20 investigations relating to the Company and our former Chief Executive
21 Officer, Andrew Wiederhorn, and were formally seeking documents and
22 materials concerning, among other things, the Company’s December 2020
23 merger with Fog Cutter Capital Group Inc., transactions between those
24 entities and Mr. Wiederhorn, as well as compensation, extensions of credit
25 and other benefits or payments received by Mr. Wiederhorn or his family
26 from those entities prior to the merger. ***From August 23, 2022 until March
27 28, 2023, our Board of Directors maintained a Special Review Committee
28 comprised of directors other than Mr. Wiederhorn to oversee a review of
the issues raised by the U.S. Attorney and SEC investigations. The
Company intends to cooperate with the U.S. Attorney and the SEC
regarding these matters and is continuing to actively respond to inquiries
and requests from the U.S. Attorney and the SEC. At this stage, we are not***

1 ***able to reasonably estimate or predict the outcome or duration of either of***
2 ***the U.S. Attorney’s or the SEC’s investigations.***

3 On February 15, 2024, the Company, Andrew Wiederhorn and one current
4 and one former officer of the Company each received a “Wells Notice” from
5 the Staff of the SEC. The Wells Notice issued to the Company
6 alleges violations of Securities Act Section 17(a)(2), and Exchange Act
7 Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(k), and 14(a) and Rules
8 10b-5(b), 12b-20, 13a-1, 13a-13, 14a-3, and 14a-9 thereunder, relating
9 solely to conduct occurring during or prior to fiscal year 2020. A Wells
10 Notice is neither a formal charge of wrongdoing nor a determination that the
11 recipient has violated any law. ***The Company is continuing its efforts to***
12 ***cooperate with the SEC and maintains that its actions were appropriate,***
13 ***and is pursuing the Wells Notice process, including submitting a formal***
14 ***response to the SEC.***

15 (Emphasis added).

16 31. The statement in ¶ 30 was materially false and misleading because it
17 understated the Company’s liability, given the extent of Wiederhorn and the
18 Company’s criminal activity. Further, it was false because it omitted that after
19 March 28, 2023, Wiederhorn removed every member of Fat Brands’ board of
20 directors (the “Board”) other than himself, and reconstituted the Board to have a
21 majority of non-independent directors under his control. This action was taken
22 after members of the Board communicated with the government regarding a
23 criminal investigation into Wiederhorn and the Company’s financial dealings.

24 32. The statements contained in ¶¶ 17, 19, 22, 24, 27, and 30 were
25 materially false and/or misleading because they misrepresented and failed to
26 disclose the following adverse facts pertaining to the Company’s business,
27 operations and prospects, which were known to Defendants or recklessly
28 disregarded by them. Specifically, Defendants made false and/or misleading
statements and/or failed to disclose that: (1) Defendants failed to disclose that
Andrew A. Wiederhorn, the Company’s Chairman and former CEO, had received
improper payments from the Company, exposing Fat Brands to criminal liability

1 and; (2) as a result, Defendants’ statements about its business, operations, and
2 prospects, were materially false and misleading and/or lacked a reasonable basis at
3 all times.

4 THE TRUTH EMERGES

5 33. On May 10, 2024, the United States Attorney’s Office for the Central
6 District of California issued a press release entitled “Former CEO and Controlling
7 Shareholder of Fat Brands Inc., Former CFO, and a Tax Advisor Indicted in
8 Alleged Scheme to Conceal \$47 million Paid to CEO in the Form of Shareholder
9 Loans.” (the “Announcement”).

10 34. The Announcement specified that the indicted parties were Fat Brands
11 itself, Andrew Wiederhorn (the former CEO and current controlling Fat Brands
12 shareholder), Rebecca Hershinger (the former Fat Brands CFO), and William J.
13 Amon (a one-time managing director of Andersen’s Los Angeles office, who
14 provided tax-advisory services to Wiederhorn, Fat Brands, and Fog Cutter Capital
15 Corporation, a former Fat Brands affiliate).

16 35. The Announcement further stated that “Andrew A. Wiederhorn, the
17 former CEO and current controlling shareholder of [Fat Brands], has been indicted
18 on federal charges alleging a scheme to conceal \$47 million in distributions he
19 received in the form of shareholder loans from the IRS, FAT’s minority
20 shareholders, and the broader investing public[.]”

21 36. It further stated that “Wiederhorn-assisted by FAT’s [CFO] and his
22 outside accountant at advisory firm Andersen – concealed millions of dollars in
23 reportable compensation and taxable income and evaded the payment of millions
24 of dollars in taxes, *while causing FAT itself to violate the Sarbanes-Oxley Act’s*
25 *prohibition on direct and indirect extensions of credit to public-company CEOs*
26 *in the form of a personal loan.*” (Emphasis added).

1 37. The Announcement quoted United States Attorney Martin Estrada as
2 stating the following:

3 This defendant [. . .] is alleged to have engaged in a long-running scheme to
4 defraud investors and the United States Treasury to the tune of millions of
5 dollars[.] Instead of looking out for shareholders, the defendant allegedly
6 treated the company as his personal slush fund, in violation of federal law.

7 38. The Announcement quoted Krysti Hawkins, the Acting Assistant
8 Director in Charge of the FBI’s Los Angeles Field Office as stating that “[t]he
9 indictment alleges that with the assistance of his co-defendants, Mr. Wiederhorn
10 repeatedly evaded his taxes and the law as he engaged in a cover-up to avoid being
11 accountable to shareholders[.]

12 39. The Announcement stated that “[b]eginning no later than 2010 and
13 continuing through early 2021, Wiederhorn allegedly caused employees [of Fat
14 Brands] and [Fog Cutter Capital Corporation, or “FOG”, a former Fat Brands
15 affiliate] to compensate him by distributing to him approximately \$47 million for
16 his personal use and benefit.” Further, “Wiederhorn, Amon, Hershinger and others
17 miscategorized these distributions as ‘shareholder loans’ and failed to disclose as
18 reportable compensation to the IRS, SEC and the broader investing public, the
19 indictment alleges.”

20 40. The Announcement stated that “[n]either FAT nor FOG required
21 Wiederhorn to post collateral, make interest payments or observe any of the other
22 commercial requirements and realities of true loans.”

23 41. Attached to the Announcement was the indictment against Andrew
24 Wiederhorn, William J. Amon, Rebecca D. Hershinger, and Fat Brands (the
25 “Indictment”).

26 42. The Indictment stated, in pertinent part, the following:
27
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1 After defendant [Fat Brands] became an issuer of securities through its IPO,
2 defendant [Wiederhorn] caused millions of dollars from defendant [Fat
3 Brand’s] accounts to be disbursed to defendant [Wiederhorn] and his family
4 members for their personal benefit. ***These disbursements were used to fund
5 the purchase of private-jet travel, vacations, a Rolls Royce Phantom, other
6 luxury automobiles, jewelry, and a piano.*** Defendant [Wiederhorn] caused
7 employees of defendant [Fat Brands] to account for the disbursements
8 directly from defendant [Fat Brands] to his accounts as: (i) an increase in an
9 intercompany loan between defendant [Fat Brands] and FOG; and (ii) an
10 increase in FOG’s shareholder loan “balance” or “receivable” to defendant
11 [Wiederhorn].”

12 (Emphasis added).

13 43. The Indictment further stated the following:

14 On or around December 1, 2021, defendants [Wiederhorn] and [Fat Brands]
15 learned that defendant Wiederhorn was the target of a federal criminal
16 investigation into defendant [Wiederhorn’s] and defendant [Fat Brands’]
17 financial dealings. On or around February 22, 2022, defendant [Fat Brands]
18 publicly claimed that it was “cooperating with the government regarding
19 these matters.” ***After members of defendant [Fat Brand’s] Board
20 communicated with the government regarding that federal criminal
21 investigation, however, defendant [Wiederhorn] removed every director
22 other than himself on or around March 28, 2023, and reconstituted
23 defendant [Fat Brand’s] Board with a majority of non-independent
24 directors under his control.***

25 (Emphasis added).

26 44. On the same day, the SEC filed a civil lawsuit against the Company,
27 Defendant Wiederhorn, Ron Roe, and Rebecca Hershinger in the United States
28 District Court for the Central District of California (the “SEC Complaint”).

45. The SEC Complaint stated the following:

Between October 2017 and March 2021 (the “Relevant Period”),
[Wiederhorn] [. . .] used almost \$27 million of FAT’s cash on his personal
expenses included private jets, first class airfare, luxury vacations, his rent
and mortgage payments, shopping, and jewelry. During this time,

1 Wiederhorn falsely told the Company’s auditors, board of directors, and
2 investors that neither he nor his family members had any direct or indirect
3 material interest in the FAT cash that Wiederhorn used for those personal
4 expenditures.

5 (Emphasis added).

6 46. On this news, the price of Fat Brands Class A common stock fell by
7 \$2.08 per share, or 27.73%, to close at \$5.42 on May 10, 2024. Fat Brands Class
8 B common stock fell by \$2.02 per share, or 28.85%, to close at \$4.98 on May 10,
9 2024. Fat Brands 8.25% Series B Cumulative Preferred Stock fell by \$1.08 per
10 share, or 7.24% to close at \$13.82 on May 10, 2024. Fat Brands warrants fell by
11 \$1.05 per warrant, or 21.6%, to close at \$3.80 on May 10, 2024.

12 47. As a result of Defendants’ wrongful acts and omissions, and the
13 precipitous decline in the market value of the Company’s common shares, Plaintiff
14 and other Class members have suffered significant losses and damages.

15 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

16 48. Plaintiff brings this action as a class action pursuant to Federal Rule
17 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons
18 other than defendants who acquired the Company’s securities publicly traded on
19 NASDAQ during the Class Period, and who were damaged thereby (the “Class”).
20 Excluded from the Class are Defendants, the officers and directors of the Company,
21 members of the Individual Defendants’ immediate families and their legal
22 representatives, heirs, successors or assigns and any entity in which Defendants
23 have or had a controlling interest.

24 49. The members of the Class are so numerous that joinder of all members
25 is impracticable. Throughout the Class Period, the Company’s securities were
26 actively traded on NASDAQ. While the exact number of Class members is
27 unknown to Plaintiff at this time and can be ascertained only through appropriate
28

1 discovery, Plaintiff believes that there are hundreds, if not thousands of members
2 in the proposed Class.

3 50. Plaintiff's claims are typical of the claims of the members of the Class
4 as all members of the Class are similarly affected by Defendants' wrongful conduct
5 in violation of federal law that is complained of herein.

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

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

- 13 • whether the Exchange Act was violated by Defendants' acts as alleged
14 herein;
- 15 • whether statements made by Defendants to the investing public during
16 the Class Period misrepresented material facts about the business and
17 financial condition of the Company;
- 18 • whether Defendants' public statements to the investing public during
19 the Class Period omitted material facts necessary to make the statements
20 made, in light of the circumstances under which they were made, not
21 misleading;
- 22 • whether the Defendants caused the Company to issue false and
23 misleading filings during the Class Period;
- 24 • whether Defendants acted knowingly or recklessly in issuing false
25 filings;

1 • whether the prices of the Company securities during the Class Period
2 were artificially inflated because of the Defendants' conduct complained of
3 herein; and

4 • whether the members of the Class have sustained damages and, if so,
5 what is the proper measure of damages.

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

12 54. Plaintiff will rely, in part, upon the presumption of reliance
13 established by the fraud-on-the-market doctrine in that:

- 14 • the Company's shares met the requirements for listing, and were listed
15 and actively traded on NASDAQ, an efficient market;
- 16 • as a public issuer, the Company filed periodic public reports;
- 17 • the Company regularly communicated with public investors via
18 established market communication mechanisms, including through the
19 regular dissemination of press releases via major newswire services and
20 through other wide-ranging public disclosures, such as communications with
21 the financial press and other similar reporting services;
- 22 • the Company's securities were liquid and traded with moderate to
23 heavy volume during the Class Period; and
- 24 • the Company was followed by a number of securities analysts
25 employed by major brokerage firms who wrote reports that were widely
26 distributed and publicly available.

- 1 • made untrue statements of material facts or omitted to state material
- 2 facts necessary in order to make the statements made, in light of the
- 3 circumstances under which they were made, not misleading; or
- 4 • engaged in acts, practices and a course of business that operated as a
- 5 fraud or deceit upon plaintiff and others similarly situated in connection with
- 6 their purchases of the Company's securities during the Class Period.

7 61. Defendants acted with scienter in that they knew that the public
8 documents and statements issued or disseminated in the name of the Company
9 were materially false and misleading; knew that such statements or documents
10 would be issued or disseminated to the investing public; and knowingly and
11 substantially participated, or acquiesced in the issuance or dissemination of such
12 statements or documents as primary violations of the securities laws. These
13 defendants by virtue of their receipt of information reflecting the true facts of the
14 Company, their control over, and/or receipt and/or modification of the Company's
15 allegedly materially misleading statements, and/or their associations with the
16 Company which made them privy to confidential proprietary information
17 concerning the Company, participated in the fraudulent scheme alleged herein.

18 62. Individual Defendants, who are the senior officers of the Company,
19 had actual knowledge of the material omissions and/or the falsity of the material
20 statements set forth above, and intended to deceive Plaintiff and the other members
21 of the Class, or, in the alternative, acted with reckless disregard for the truth when
22 they failed to ascertain and disclose the true facts in the statements made by them
23 or any other of the Company's personnel to members of the investing public,
24 including Plaintiff and the Class.

25 63. As a result of the foregoing, the market price of the Company's
26 securities was artificially inflated during the Class Period. In ignorance of the
27 falsity of Defendants' statements, Plaintiff and the other members of the Class
28

1 relied on the statements described above and/or the integrity of the market price of
2 the Company's securities during the Class Period in purchasing the Company's
3 securities at prices that were artificially inflated as a result of Defendants' false and
4 misleading statements.

5 64. Had Plaintiff and the other members of the Class been aware that the
6 market price of the Company's securities had been artificially and falsely inflated
7 by Defendants' misleading statements and by the material adverse information
8 which Defendants did not disclose, they would not have purchased the Company's
9 securities at the artificially inflated prices that they did, or at all.

10 65. As a result of the wrongful conduct alleged herein, Plaintiff and other
11 members of the Class have suffered damages in an amount to be established at trial.

12 66. By reason of the foregoing, Defendants have violated Section 10(b)
13 of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the
14 plaintiff and the other members of the Class for substantial damages which they
15 suffered in connection with their purchase of the Company's securities during the
16 Class Period.

17 **COUNT II**

18 **Violations of Section 20(a) of the Exchange Act**

19 **Against the Individual Defendants**

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

22 68. During the Class Period, the Individual Defendants participated in the
23 operation and management of the Company, and conducted and participated,
24 directly and indirectly, in the conduct of the Company's business affairs. Because
25 of their senior positions, they knew the adverse non-public information about the
26 Company's business practices.

1 (c) awarding Plaintiff and the Class reasonable costs and expenses
2 incurred in this action, including counsel fees and expert fees; and

3 (d) awarding Plaintiff and other members of the Class such other and
4 further relief as the Court may deem just and proper.

5 **JURY TRIAL DEMANDED**

6 Plaintiff hereby demands a trial by jury.

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8 Dated: June 7, 2024
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