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8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 _____, Individually and on behalf
12 of all others similarly situated,

13 Plaintiff,

14 v.

15 FAT BRANDS INC., ANDREW
16 WIEDERHORN, RON ROE,
17 REBECCA HERSHINGER, and KEN
18 KUICK,

19 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

20
21 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other
22 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
23 complaint against Defendants (defined below), alleges the following based upon
24 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
25 belief as to all other matters, based upon, *inter alia*, the investigation conducted by
26 and through Plaintiff’s attorneys, which included, among other things, a review of
27

1 the Defendants’ public documents, announcements, United States Securities and
2 Exchange Commission (“SEC”) filings, wire and press releases published by and
3 regarding FAT Brands Inc. (“FAT Brands” or the “Company”), and information
4 readily obtainable on the Internet. Plaintiff believes that substantial evidentiary
5 support will exist for the allegations set forth herein after a reasonable opportunity
6 for discovery.

7
8 **NATURE OF THE ACTION**

9 1. This is a class action on behalf of persons or entities who purchased or
10 otherwise acquired publicly traded FAT Brands securities between December 4,
11 2017 and February 19, 2022, inclusive (the “Class Period”). Plaintiff seeks to
12 recover compensable damages caused by Defendants’ violations of the federal
13 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

14 **JURISDICTION AND VENUE**

15 2. The claims asserted herein arise under and pursuant to §§10(b) and
16 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5
17 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

18 3. This Court has jurisdiction over the subject matter of this action under
19 28 U.S.C. §1331 and §27 of the Exchange Act.

20 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
21 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered
22 and the subsequent damages took place in this judicial district. Further, the
23 Company maintains its principal executive offices in Los Angeles County.

24 5. In connection with the acts, conduct and other wrongs alleged in this
25 Complaint, Defendants (defined below), directly or indirectly, used the means and
26 instrumentalities of interstate commerce, including but not limited to, the United
27

1 States mail, interstate telephone communications and the facilities of the national
2 securities exchange.

3 **PARTIES**

4 6. Plaintiff, as set forth in the accompanying Certification, purchased the
5 Company's securities at artificially inflated prices during the Class Period and was
6 damaged upon the revelation of the alleged corrective disclosure.

7 7. Defendant FAT Brands purports to be a franchising company which
8 acquires, develops, and markets quick-service, fast casual, and casual dining
9 restaurant concepts including the brands of: Fatburger, Johnny Rockets, Twin Peaks,
10 Fazoli's, Buffalo's Cafe, Buffalo's Express, Ponderosa Steakhouse, Bonanza
11 Steakhouse, Hurricane Grill & Wings, Yalla Mediterranean, and Elevation Burger.

12 8. Defendant FAT Brands is a Delaware corporation with its principal
13 executive offices at 9720 Wilshire Blvd., Suite 500, Beverly Hills, California 90212.
14 FAT Brands' common stock trades on the NASDAQ exchange under the ticker
15 symbol "FAT."

16 9. Defendant Andrew Wiederhorn ("Wiederhorn") has served as the Chief
17 Executive Officer, President, and a director of the Company throughout the Class
18 Period.

19 10. Defendant Ron Roe ("Roe") served as the Chief Financial Officer
20 ("CFO") of the Company from 2009 through August 2018. Defendant Roe is
21 currently the Senior Vice President of Finance of the Company.

22 11. Defendant Rebecca Hershinger ("Hershinger") served as the CFO of
23 the Company from August 2018 through May 2021.

24 12. Defendant Ken Kuick ("Kuick") has served as the CFO of the Company
25 since May 2021.

1 **Andrew Wiederhorn.** The loss of the services of any of our executive
2 management members could have a material adverse effect on our
3 business and prospects, as we may not be able to find suitable
4 individuals to replace such personnel on a timely basis or without
5 incurring increased costs, or at all. We do not maintain key man life
6 insurance policies on any of our executive officers. We believe that our
7 future success will depend on our continued ability to attract and retain
8 highly skilled and qualified personnel. There is a high level of
9 competition for experienced, successful personnel in our industry. Our
10 inability to meet our executive staffing requirements in the future could
11 impair our growth and harm our business.

12 (Emphasis added.)

13 21. On April 2, 2018, FAT Brands filed with the SEC its annual report on
14 Form 10-K for the period ended December 31, 2017 (the “2017 Annual Report”)
15 which was signed by Defendant Wiederhorn. Attached to the 2017 Annual Report
16 were certifications pursuant to SOX signed by Defendants Wiederhorn and Roe
17 attesting to the accuracy of financial reporting, the disclosure of any material
18 changes to the Company’s internal control over financial reporting and the
19 disclosure of all fraud.

20 22. The 2017 Annual Report neglected to state Defendant Wiederhorn
21 and/or Thayer Wiederhorn had engaged in transactions “for no legitimate corporate
22 purpose” connected to the Company but provided other information regarding debt,
23 loans, and financing.

24 23. The 2017 Annual Report stated the following, in pertinent part,
25 regarding the Company’s executive management:

26 **We depend on key executive management.**

27 *We depend on the leadership and experience of our relatively small
28 number of key executive management personnel, and in particular
key executive management, particularly our Chief Executive Officer,*

1 *Andrew Wiederhorn. The loss of the services of any of our executive*
2 *management members could have a material adverse effect on our*
3 *business and prospects*, as we may not be able to find suitable
4 individuals to replace such personnel on a timely basis or without
5 incurring increased costs, or at all. We do not maintain key man life
6 insurance policies on any of our executive officers. We believe that our
7 future success will depend on our continued ability to attract and retain
8 highly skilled and qualified personnel. There is a high level of
9 competition for experienced, successful personnel in our industry. Our
10 inability to meet our executive staffing requirements in the future could
11 impair our growth and harm our business.

12 (Emphasis added.)

13 24. On March 29, 2019, FAT Brands filed with the SEC its annual report
14 on Form 10-K for the period ended December 30, 2018 (the “2018 Annual Report”)
15 which was signed by Defendant Wiederhorn. Attached to the 2018 Annual Report
16 were certifications pursuant to SOX signed by Defendants Wiederhorn and
17 Hershinger attesting to the accuracy of financial reporting, the disclosure of any
18 material changes to the Company’s internal control over financial reporting and the
19 disclosure of all fraud.

20 25. The 2018 Annual Report neglected to state Defendant Wiederhorn
21 and/or Thayer Wiederhorn had engaged in transactions “for no legitimate corporate
22 purpose” connected to the Company but provided other information regarding debt,
23 loans, and financing.

24 26. The 2018 Annual Report stated the following, in pertinent part, touting
25 the Company’s executive management:

26 **Competitive Strengths**

27 We believe that our competitive strengths include:

1 ... Seasoned and Passionate Management Team. *Our management*
2 *team and employees are critical to our success. Our senior leadership*
3 *team has more than 200 years of combined experience in the*
4 *restaurant industry, and many have been a part of our team since the*
5 *acquisition of the Fatburger brand in 2003.* We believe that our
6 management team has the track record and vision to leverage the FAT
7 Brands platform to achieve significant future growth. In addition,
8 through their holdings in FCCG, our senior executives own a
9 significant equity interest in the company, ensuring long-term
10 commitment and alignment with our public shareholders. *Our*
11 *management team is complemented by an accomplished Board of*
12 *Directors.*

13 * * *

14 **We depend on key executive management.**

15 *We depend on the leadership and experience of our relatively small*
16 *number of key executive management personnel, and in particular*
17 *key executive management, particularly our Chief Executive Officer,*
18 *Andrew Wiederhorn. The loss of the services of any of our executive*
19 *management members could have a material adverse effect on our*
20 *business and prospects,* as we may not be able to find suitable
21 individuals to replace such personnel on a timely basis or without
22 incurring increased costs, or at all. We do not maintain key man life
23 insurance policies on any of our executive officers. We believe that our
24 future success will depend on our continued ability to attract and retain
25 highly skilled and qualified personnel. There is a high level of
26 competition for experienced, successful personnel in our industry. Our
27 inability to meet our executive staffing requirements in the future could
28 impair our growth and harm our business.

(Emphasis added.)

27 27. On April 28, 2020, FAT Brands filed with the SEC its annual report on
28 Form 10-K for the period ended December 29, 2019 (the “2019 Annual Report”)
which was signed by Defendant Wiederhorn. Attached to the 2019 Annual Report

1 were certifications pursuant to SOX signed by Defendants Wiederhorn and
2 Hershinger attesting to the accuracy of financial reporting, the disclosure of any
3 material changes to the Company’s internal control over financial reporting and the
4 disclosure of all fraud.

5 28. The 2019 Annual Report neglected to state Defendant Wiederhorn
6 and/or Thayer Wiederhorn had engaged in transactions “for no legitimate corporate
7 purpose” connected to the Company but provided other information regarding debt,
8 loans, and financing.

9 29. The 2019 Annual Report stated the following, in pertinent part, touting
10 the Company’s executive management:

11 **Competitive Strengths**

12 We believe that our competitive strengths include:

13
14 *... Seasoned and Passionate Management Team. Our management*
15 *team and employees are critical to our success. Our senior leadership*
16 *team has more than 200 years of combined experience in the*
17 *restaurant industry, and many have been a part of our team since the*
18 *acquisition of the Fatburger brand in 2003. We believe that our*
19 *management team has the track record and vision to leverage the FAT*
20 *Brands platform to achieve significant future growth. In addition,*
21 *through their holdings in FCCG, our senior executives own a*
22 *significant equity interest in the company, ensuring long-term*
23 *commitment and alignment with our public shareholders. Our*
24 *management team is complemented by an accomplished Board of*
25 *Directors.*

26 (Emphasis added.)

27 30. On May 15, 2020, FAT Brands filed with the SEC an amendment to its
28 2019 Annual Report Form 10-K/A for the period ended December 29, 2019 (the
“2019 Amendment”) which was signed by Defendant Wiederhorn. Attached to the

1 2019 Amendment were certifications pursuant to SOX signed by Defendants
2 Wiederhorn and Hershinger attesting to its accuracy and the disclosure of all fraud.

3 31. On March 29, 2021, FAT Brands filed with the SEC its annual report
4 on Form 10-K for the period ended December 27, 2020 (the “2020 Annual Report”)
5 which was signed by Defendant Wiederhorn. Attached to the 2020 Annual Report
6 were certifications pursuant to SOX signed by Defendants Wiederhorn and
7 Hershinger attesting to the accuracy of financial reporting, the disclosure of any
8 material changes to the Company’s internal control over financial reporting and the
9 disclosure of all fraud.

10 32. The 2020 Annual Report neglected to state Defendant Wiederhorn
11 and/or Thayer Wiederhorn had engaged in transactions “for no legitimate corporate
12 purpose” connected to the Company but provided other information regarding debt,
13 loans, and financing.

14 33. The 2020 Annual Report stated the following, in pertinent part, touting
15 the Company’s executive management:

16
17 **Competitive Strengths**

18 We believe that our competitive strengths include:

19 ... *Seasoned and Passionate Management Team. Our management*
20 *team and employees are critical to our success. Our senior leadership*
21 *team is highly experienced in the restaurant industry, and many have*
22 *been a part of our team since our acquisition of the Fatburger brand*
23 *in 2003. In addition, through their holdings, our senior executives own*
24 *a significant equity interest in the Company, ensuring long-term*
25 *commitment and alignment with our public shareholders. Our*
26 *management team is complemented by an accomplished Board of*
27 *Directors that is highly involved in overseeing our strategic initiatives*
28 *and implementation.*

* * *

1
2 **We depend on key executive management.**

3 *We depend on the leadership and experience of our relatively small*
4 *number of key executive management personnel, in particular our*
5 *Chief Executive Officer, Andrew Wiederhorn. The loss of the services*
6 *of any of our executive management members could have a material*
7 *adverse effect on our business and prospects*, as we may not be able
8 to find suitable individuals to replace such personnel on a timely basis
9 or without incurring increased costs, or at all. We do not maintain key
10 man life insurance policies on any of our executive officers. We believe
11 that our future success will depend on our continued ability to attract
12 and retain highly skilled and qualified personnel. There is a high level
13 of competition for experienced, successful personnel in our industry.
14 Our inability to meet our executive staffing requirements in the future
15 could impair our growth and harm our business.

16 (Emphasis added.)

17 34. On January 10, 2022, the Company filed with the SEC a current report
18 on Form 8-K which was signed by Defendant Kuick which attached an investor
19 presentation (the “Investor Presentation”). The Investor Presentation touted the
20 Company’s management, including Defendants Andrew Wiederhorn and Thayer
21 Wiederhorn, in the following slides:
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23
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INVESTMENT HIGHLIGHTS

FAT Brands Inc. is a leading multi-brand restaurant franchising company

- Develops, acquires and markets quick-service, fast casual, casual dining and polished casual dining restaurant concepts
- Strategic focus on generating revenue through franchise fees and royalty streams via an asset-light model

Global Restaurant Franchising Company

Asset-Light Business Model

Growth Driven by Organic Measures and Synergistic Acquisitions

Opportunities to Eliminate Overhead by Consolidating Brands onto FAT Platform

Proven History of Acquiring and Integrating Brands onto FAT Platform

Significant Management Team Depth and Expertise



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4

* * *

EXPERIENCED MANAGEMENT TEAM

Management Team

Andrew Wiederhorn | President, CEO & Director

Fog Cutter Capital, Founder of FAT Brands

Ken J. Quick | Chief Financial Officer

Noodles & Company, VICI Properties, Caesars Entertainment

Thayer Wiederhorn | Chief Operating Officer

10+ years w/ Fog Cutter Capital and Fatburger

Rob Rosen | EVP Capital Markets

Kodiak Financial Group, Black Diamond Capital Management

Allen Z. Sussman | EVP & General Counsel

Partner Loeb & Loeb LLP

Taylor Wiederhorn | Chief Development Officer

10+ years w/ Fog Cutter Capital and Fatburger

Jenn Johnston | President QSR Division

Global Franchise Group, NexCen Franchise Management

Carl Howard | President & CEO Fazoli's

Fazoli's, Damon's Int'l, bd's Mongolian Barbeque

Joe Hummel | CEO Twin Peaks

Twin Peaks, La Cima Restaurants, Hooters, Naturally Fresh

Jacob Berchtold | President & COO Fast Casual Division

15+ years w/ Fatburger

Gregg Nettleton | President & COO Casual Dining Division

GBS Enterprises, Black Angus Steakhouses, IHOP

Ron Roe | SVP Finance

Fog Cutter Capital, Piper Jaffray

Mason Wiederhorn | Chief Brand Officer

10+ years w/ Fog Cutter Capital and Fatburger

Justin Nedelman | Chief Real Estate Officer

Eureka! Restaurant Group, Fillmore Street Investments LP

Raphael Tomlin | Chief Supply Chain Officer QSR Division

Global Franchise Group, Country Home Bakers, Mission Foods

Don Berchtold | EVP & Chief Concept Officer

20+ years w/ Fog Cutter Capital

Warren Christiansen | Legal Counsel & Director of Franchise Development

10+ years w/ Fog Cutter Capital

Board of Directors

Edward Rensi | Chairman of the Board

Former President & CEO McDonald's USA, CEO Famous Dave's of America

James Neuhauser, CFA | Director & Chair of Audit Committee

Stifel Nicolas & Co, Turtlerock Capital, Exec Committee FBR & Co, Trident Financial, Bank of New England

Amy V. Forrestal | Director

Brookwood Associates, NationsBanc Montgomery Securities, Bank of America Securities

Squire Junger, CPA | Director

Co-Founder Insight Consulting, Former Partner Arthur Anderson

Kenneth J. Anderson | Director

Cedar Tree Capital, Aspiriant, Co-Founder of Quintile Wealth Management, Arthur Anderson

Andrew Wiederhorn | President, CEO & Director

Fog Cutter Capital, Founder of FAT Brands



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14

1 *member's actions as part of an inquiry into allegations of securities*
2 *and wire fraud, money laundering and attempted tax evasion, court*
3 *records show.*

4 *During the probe, federal agents in December raided the Beverly*
5 *Grove home of Wiederhorn's son Thayer and daughter-in-law*
6 *Brooke Wiederhorn, according to search warrant records filed in*
7 *court.*

8 * * *

9 Agents hauled away phones, digital storage devices, tax documents and
10 other records from the couple's residence, according to court filings.
11 *Federal investigators also sought a judge's permission to search the*
12 *elder Wiederhorn's Beverly Hills mansion, although court filings do*
13 *not indicate whether that raid took place.* They also monitored him
14 walking his dogs by the property last year.

15 *In a November affidavit outlining the investigation, a special agent*
16 *for the FBI focusing on complex financial crimes alleged that*
17 *Wiederhorn, 56, had "devised and executed a fraudulent scheme" to*
18 *avoid paying taxes and received "millions of dollars in sham loans"*
19 *through his companies.*

20 The affidavit identifies years of credit card purchases by Wiederhorn,
21 his children, and other relatives — \$183,500 at a London jeweler;
22 \$150,000 apparently for a down payment on a Rolls-Royce; more than
23 \$100,000 to a Beverly Hills divorce attorney — and *alleges they were*
24 *"paid primarily" out of accounts held by an affiliate of the publicly*
25 *traded FAT Brands.*

26 The filing also alleges that Wiederhorn generated millions of American
27 Express rewards points by routing company money through his son's
28 PayPal account.

The agent concluded there was probable cause that Wiederhorn
"engaged in the following criminal conduct," including tax offenses,

1 *misrepresentations to investors, and fraud offenses “relating to*
2 *personal expenses that Wiederhorn caused FAT ... to pay.”*

3 The status of the investigation is unclear. No charges have been filed
4 against any person or against FAT Brands, of which Wiederhorn is the
5 largest shareholder.

6 * * *

7 *Beverly Hills-based FAT Brands said late Friday: “The government*
8 *has informed FAT Brands of its investigation and the Company is*
9 *fully cooperating.”*

10 The inquiry comes nearly two decades after Wiederhorn was first
11 ensnared in financial crimes. In 2004, he pleaded guilty in U.S. District
12 Court in Oregon to charges of paying an illegal gratuity to an associate
13 and to filing a false tax return. He spent 15 months in federal prison in
14 Sheridan, Ore., and paid a \$2-million fine.

15 The day before he pleaded guilty, the company he led, Fog Cutter
16 Capital, awarded him a \$2-million bonus and agreed to keep paying
17 him during his incarceration.

18 The arrangement prompted New York Times columnist Nicholas
19 Kristof to bestow on Wiederhorn his inaugural “award for greed,”
20 writing: “I can’t think of a board that has ever so disgraced the
21 principles of corporate governance by overpaying a CEO even as he
22 sits in prison.”

23 * * *

24 It is unclear what prompted the recent investigation by the FBI, whose
25 agents appear to have pored over Wiederhorn’s banking, loan and tax
26 records.

27 Part of the inquiry outlined in the affidavit examined whether
28 Wiederhorn filed a false tax return, citing discrepancies between loan

1 applications. His 2018 tax return listed income of \$403,311 and, in
2 2017, income of \$395,508, according to the court filing.

3 But in applications for a car loan and home purchase in 2018, he
4 reported earning \$200,000 per month, or about \$2.4 million per year.

5 The affidavit makes ample references to Wiederhorn’s “luxurious
6 lifestyle” — a \$24,739 bill at Hotel Byblos in Saint-Tropez and \$29,913
7 at Hotel Arts Barcelona — while the Internal Revenue Service has
8 clamored for unpaid income taxes over the last decade.

9 Wiederhorn has entered into several “installment agreements” to pay
10 back taxes. The filing notes he was complying with his current
11 installment plan, but as of November 2021, he owed nearly \$3 million
12 in personal income taxes, penalties and interest.

13 The FBI agent also outlined how he believes Wiederhorn “converted”
14 money from FAT Brands and its affiliates via credit cards that show
15 purchases at Dolce & Gabbana, Giorgio Armani and Restoration
16 Hardware.

17 One of Wiederhorn’s cards had subaccounts for credit cards issued to
18 his six children, his mother, personal household employees, his ex-wife
19 and others. Their charges include “significant expenses, which appear
20 to be personal in nature,” such as doctor bills, clothing, shoes,
21 mattresses, groceries, tutoring services and pet care.

22 ***From October 2017 — the date of FAT Brands’ initial public offering
23 — to May 2019, about \$5 million from the company or its subsidiaries
24 went to cover various Wiederhorn credit card balances, according to
25 the court filing.***

26 Thayer Wiederhorn, an executive at FAT Brands, is referenced
27 specifically in connection with an alleged scheme to route millions of
28 dollars of company money through American Express charges to a
PayPal account bearing his name. The FBI agent suggests the apparent
goal was to generate credit card rewards points for his father.

1 *The court records describe the scheme as “round-trip transactions,”*
2 *with money traveling from the younger Wiederhorn’s PayPal*
3 *account, to his personal Bank of America accounts, and back to FAT*
4 *or its subsidiaries.*

5 *The FBI agent tabulated a cost more than \$250,000 in fees to PayPal*
6 *out of about \$9 million that traveled “round trip.”*

7 *Those \$250,000 in fees were spent “for no legitimate corporate*
8 *purpose,” the FBI agent wrote, but “to further Wiederhorn’s*
9 *fraudulent scheme.”*

10 (Emphasis added.)

11 38. On February 22, 2022¹, before trading hours, the Company filed with
12 the SEC a Form 8-K, in which the Company announced the following, in relevant
13 part, regarding the investigation:

14 *... the U.S. Attorney’s Office for the Central District of California*
15 *(the “U.S. Attorney”) and the U.S. Securities and Exchange*
16 *Commission informed the Company in December 2021 that they have*
17 *opened investigations relating to the Company and our Chief*
18 *Executive Officer, Andrew Wiederhorn, and are formally seeking*
19 *documents and materials concerning, among other things, the*
20 *Company’s December 2020 merger with Fog Cutter Capital Group*
21 *Inc., transactions between these entities and Mr. Wiederhorn, and*
22 *compensation, extensions of credit and other benefits or payments*
23 *received by Mr. Wiederhorn or his family. The Company is*
24 *cooperating with the government regarding these matters, and we*
25 *believe that the Company is not currently a target of the U.S. Attorney’s*
26 *investigation. At this early stage, the Company is not able to reasonably*
27 *estimate the outcome or duration of the government investigations.*

28 ¹ On February 21, 2022, the market was closed in observance of President’s Day.

1
2 (Emphasis added.)

3 39. On this news, FAT Brands' stock price fell \$2.42 per share, or 23%, to
4 close at \$8.14 per share on February 22, 2022, on unusually heavy trading volume,
5 damaging investors.

6 40. FAT Brands stock price continued to fall over the next two trading days
7 to close at \$7.06 per share on February 24, 2022—a decline of \$3.05 per share or
8 33% over three trading days from its close on February 18, 2022.

9 41. As a result of Defendants' wrongful acts and omissions, and the decline
10 in the market value of the Company's securities, Plaintiff and other Class members
11 have suffered significant losses and damages.

12 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

13 42. Plaintiff brings this action as a class action pursuant to Federal Rule of
14 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
15 purchased or otherwise acquired the publicly traded securities of FAT Brands
16 during the Class Period (the "Class") and were damaged upon the revelation of the
17 alleged corrective disclosure. Excluded from the Class are Defendants herein, the
18 officers and directors of the Company, at all relevant times, members of their
19 immediate families and their legal representatives, heirs, successors or assigns and
20 any entity in which Defendants have or had a controlling interest.

21 43. The members of the Class are so numerous that joinder of all members
22 is impracticable. Throughout the Class Period, the Company's securities were
23 actively traded on the NASDAQ. While the exact number of Class members is
24 unknown to Plaintiff at this time and can be ascertained only through appropriate
25 discovery, Plaintiff believes that there are hundreds or thousands of members in the
26
27

1 proposed Class. Record owners and other members of the Class may be identified
2 from records maintained by the Company or its transfer agent and may be notified
3 of the pendency of this action by mail, using the form of notice similar to that
4 customarily used in securities class actions.

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

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

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

- 15 (a) whether Defendants' acts as alleged violated the federal securities
16 laws;
17
18 (b) whether Defendants' statements to the investing public during the
19 Class Period misrepresented material facts about the financial
20 condition, business, operations, and management of the Company;
21
22 (c) whether Defendants' statements to the investing public during the
23 Class Period omitted material facts necessary to make the statements
24 made, in light of the circumstances under which they were made, not
25 misleading;

- 1 (d) whether the Individual Defendants caused the Company to issue false
2 and misleading SEC filings and public statements during the Class
3 Period;
- 4 (e) whether Defendants acted knowingly or recklessly in issuing false and
5 misleading SEC filings and public statements during the Class Period;
- 6 (f) whether the prices of the Company's securities during the Class Period
7 were artificially inflated because of the Defendants' conduct
8 complained of herein; and
- 9 (g) whether the members of the Class have sustained damages and, if so,
10 what is the proper measure of damages.

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

18 48. Plaintiff will rely, in part, upon the presumption of reliance established
19 by the fraud-on-the-market doctrine in that:

- 20 (a) Defendants made public misrepresentations or failed to disclose
21 material facts during the Class Period;
- 22 (b) the omissions and misrepresentations were material;
- 23 (c) the Company's securities are traded in efficient markets;
- 24 (d) the Company's securities were liquid and traded with moderate to
25 heavy volume during the Class Period;
- 26
27
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- 1 (e) the Company traded on NASDAQ, and was covered by multiple
2 analysts;
- 3 (f) the misrepresentations and omissions alleged would tend to induce a
4 reasonable investor to misjudge the value of the Company's securities;
5 Plaintiff and members of the Class purchased and/or sold the
6 Company's securities between the time the Defendants failed to
7 disclose or misrepresented material facts and the time the true facts
8 were disclosed, without knowledge of the omitted or misrepresented
9 facts; and
- 10 (g) Unexpected material news about the Company was rapidly reflected
11 in and incorporated into the Company's stock price during the Class
12 Period.

13
14 49. Based upon the foregoing, Plaintiff and the members of the Class are
15 entitled to a presumption of reliance upon the integrity of the market.

16 50. Alternatively, Plaintiff and the members of the Class are entitled to the
17 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
18 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
19 Defendants omitted material information in their Class Period statements in
20 violation of a duty to disclose such information, as detailed above.

21 **COUNT I**

22 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**

23 **Against All Defendants**

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

1 Defendants exercised their power and authority to cause the Company to engage in
2 the wrongful acts complained of herein. The Individual Defendants therefore, were
3 “controlling persons” of the Company within the meaning of Section 20(a) of the
4 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
5 which artificially inflated the market price of the Company’s securities.

6 65. The Individual Defendants, therefore, acted as controlling persons of
7 the Company. By reason of their senior management positions, the Individual
8 Defendants had the power to direct the actions of, and exercised the same to cause,
9 the Company to engage in the unlawful acts and conduct complained of herein. The
10 Individual Defendants exercised control over the general operations of the
11 Company and possessed the power to control the specific activities which comprise
12 the primary violations about which Plaintiff and the other members of the Class
13 complain.
14

15 66. By reason of the above conduct, the Individual Defendants are liable
16 pursuant to Section 20(a) of the Exchange Act for the violations committed by the
17 Company.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

20 A. Determining that the instant action may be maintained as a class action
21 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as
22 the Class representative;

23 B. Requiring Defendants to pay damages sustained by Plaintiff and the
24 Class by reason of the acts and transactions alleged herein;
25
26
27

1 C. Awarding Plaintiff and the other members of the Class prejudgment
2 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees,
3 and other costs; and

4 D. Awarding such other and further relief as this Court may deem just and
5 proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.

8
9 Respectfully submitted,

10
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19 *Counsel for Plaintiff*