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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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

13 Plaintiff,

14 v.

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

19 Defendants.
20

Case No.:

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

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

1 announcements, United States Securities and Exchange Commission (“SEC”) filings, wire
2 and press releases published by and regarding FAT Brands Inc. (“FAT Brands” or the
3 “Company”), and information readily obtainable on the Internet. Plaintiff believes that
4 substantial evidentiary support will exist for the allegations set forth herein after a
5 reasonable opportunity for discovery.
6
7

8 NATURE OF THE ACTION

9
10 1. This is a class action on behalf of persons or entities who purchased or
11 otherwise acquired publicly traded FAT Brands securities between December 4, 2017 and
12 February 18, 2022, inclusive (the “Class Period”). Plaintiff seeks to recover compensable
13 damages caused by Defendants’ violations of the federal securities laws under the
14 Securities Exchange Act of 1934 (the “Exchange Act”).
15

16 JURISDICTION AND VENUE

17
18 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of
19 the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated
20 thereunder by the SEC (17 C.F.R. §240.10b-5).
21

22 3. This Court has jurisdiction over the subject matter of this action under 28
23 U.S.C. §1331 and §27 of the Exchange Act.
24

25 4. Venue is proper in this judicial district pursuant to §27 of the Exchange Act
26 (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the alleged misstatements entered and the
27
28

1 subsequent damages took place in this judicial district. Further, the Company maintains
2 its principal executive offices in Los Angeles County.

3
4 5. In connection with the acts, conduct and other wrongs alleged in this
5 Complaint, Defendants (defined below), directly or indirectly, used the means and
6 instrumentalities of interstate commerce, including but not limited to, the United States
7 mail, interstate telephone communications and the facilities of the national securities
8 exchange.
9

10
11 **PARTIES**

12 6. Plaintiff, as set forth in the accompanying Certification, purchased the
13 Company's securities at artificially inflated prices during the Class Period and was
14 damaged upon the revelation of the alleged corrective disclosure.
15

16
17 7. Defendant FAT Brands purports to be a franchising company which acquires,
18 develops, and markets quick-service, fast casual, and casual dining restaurant concepts
19 including the brands of: Fatburger, Johnny Rockets, Twin Peaks, Fazoli's, Buffalo's Cafe,
20 Buffalo's Express, Ponderosa Steakhouse, Bonanza Steakhouse, Hurricane Grill & Wings,
21 Yalla Mediterranean, and Elevation Burger.
22

23
24 8. Defendant FAT Brands is a Delaware corporation with its principal executive
25 offices at 9720 Wilshire Blvd., Suite 500, Beverly Hills, California 90212. FAT Brands'
26 Class A common stock trades on the NASDAQ exchange under the ticker symbol "FAT,"
27 its Class B common stock trades under the ticker symbol "FATBB," its Series B
28

1 Cumulative Preferred Stock trades under the ticker symbol “FATBP,” and its warrants trade
2 under the ticker symbol “FATBW.”
3

4 9. Defendant Andrew Wiederhorn (“Wiederhorn”) has served as the Chief
5 Executive Officer, President, and a director of the Company throughout the Class Period.
6

7 10. Defendant Ron Roe (“Roe”) served as the Chief Financial Officer (“CFO”)
8 of the Company from 2009 through August 2018. Defendant Roe is currently the Senior
9 Vice President of Finance of the Company.
10

11 11. Defendant Rebecca Hershinger (“Hershinger”) served as the CFO of the
12 Company from August 2018 through May 2021.
13

14 12. Defendant Ken Kuick (“Kuick”) has served as the CFO of the Company since
15 May 2021.
16

17 13. Defendants Wiederhorn, Roe, Hershinger, and Kuick are sometimes referred
18 to herein as the “Individual Defendants.”
19

20 14. The Individual Defendants:

21 (a) directly participated in the management of the Company;

22 (b) were directly involved in the day-to-day operations of the Company at the
23 highest levels;

24 (c) were privy to confidential proprietary information concerning the Company
25 and its business and operations;
26
27
28

- 1 (d) were directly or indirectly involved in drafting, producing, reviewing and/or
2 disseminating the false and misleading statements and information alleged
3 herein;
4
5 (e) were directly or indirectly involved in the oversight or implementation of the
6 Company's internal controls;
7
8 (f) were aware of or recklessly disregarded the fact that the false and misleading
9 statements were being issued concerning the Company; and/or
10
11 (g) approved or ratified these statements in violation of the federal securities
12 laws.
13

14 15. The Company is liable for the acts of the Individual Defendants and its
15 employees under the doctrine of *respondeat superior* and common law principles of
16 agency because all of the wrongful acts complained of herein were carried out within the
17 scope of their employment.
18

19 16. The scienter of the Individual Defendants and other employees and agents of
20 the Company is similarly imputed to the Company under *respondeat superior* and agency
21 principles.
22

23 17. The Company and the Individual Defendants are referred to herein,
24 collectively, as the "Defendants."
25
26
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1 **SUBSTANTIVE ALLEGATIONS**

2 **Materially False and Misleading Statements**

3
4 18. On December 4, 2017, FAT Brands filed with the SEC its quarterly report on
5 Form 10-Q for the period ended September 24, 2017 (the “3Q17 Report”) which was
6 signed by Defendants Wiederhorn and Roe. Attached to the 3Q17 Report were
7 certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants
8 Wiederhorn and Roe attesting to the accuracy of financial reporting, the disclosure of any
9 material changes to the Company’s internal control over financial reporting and the
10 disclosure of all fraud.
11
12

13
14 19. The 3Q17 Report neglected to state Defendant Wiederhorn and/or his son and
15 current FAT Brands Chief Operating Officer (“COO”), Thayer Wiederhorn, had engaged
16 in transactions “for no legitimate corporate purpose” connected to the Company but stated
17 the following, in pertinent part, regarding the debt, loans, and financing concerning
18 Defendant Wiederhorn:
19

20
21 ... On June 21, 2017, the debt was purchased by a limited partnership in which
22 Andrew Wiederhorn, the CEO of the Company, is a general partner. Fog
23 Cutter Capital Group Inc. has agreed to indemnify FAT Brands Inc. and
24 Subsidiaries from costs and liabilities which may arise from this matter.

25 20. The 3Q17 Report stated the following, in pertinent part, regarding the
26 Company’s executive management:

27 **We depend on key executive management.**
28

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

14 (Emphasis added.)

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

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

25 23. The 2017 Annual Report stated the following, in pertinent part, regarding the
26 Company’s executive management:
27
28

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

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

15 (Emphasis added.)

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

22 25. The 2018 Annual Report neglected to state Defendant Wiederhorn and/or
23 Thayer Wiederhorn had engaged in transactions “for no legitimate corporate purpose”
24 connected to the Company but provided other information regarding debt, loans, and
25 financing.
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1 27. On April 28, 2020, FAT Brands filed with the SEC its annual report on Form
2 10-K for the period ended December 29, 2019 (the “2019 Annual Report”) which was
3 signed by Defendant Wiederhorn. Attached to the 2019 Annual Report were certifications
4 pursuant to SOX signed by Defendants Wiederhorn and Hershinger attesting to the
5 accuracy of financial reporting, the disclosure of any material changes to the Company’s
6 internal control over financial reporting and the disclosure of all fraud.
7

8
9 28. The 2019 Annual Report neglected to state Defendant Wiederhorn and/or
10 Thayer Wiederhorn had engaged in transactions “for no legitimate corporate purpose”
11 connected to the Company but provided other information regarding debt, loans, and
12 financing.
13
14

15 29. The 2019 Annual Report stated the following, in pertinent part, touting the
16 Company’s executive management:
17

18 **Competitive Strengths**

19 We believe that our competitive strengths include:

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

(Emphasis added.)

1 30. On May 15, 2020, FAT Brands filed with the SEC an amendment to its 2019
2 Annual Report Form 10-K/A for the period ended December 29, 2019 (the “2019
3 Amendment”) which was signed by Defendant Wiederhorn. Attached to the 2019
4 Amendment were certifications pursuant to SOX signed by Defendants Wiederhorn and
5 Hershinger attesting to its accuracy and the disclosure of all fraud.
6
7

8 31. On March 29, 2021, FAT Brands filed with the SEC its annual report on Form
9 10-K for the period ended December 27, 2020 (the “2020 Annual Report”) which was
10 signed by Defendant Wiederhorn. Attached to the 2020 Annual Report were certifications
11 pursuant to SOX signed by Defendants Wiederhorn and Hershinger attesting to the
12 accuracy of financial reporting, the disclosure of any material changes to the Company’s
13 internal control over financial reporting and the disclosure of all fraud.
14
15

16 32. The 2020 Annual Report neglected to state Defendant Wiederhorn and/or
17 Thayer Wiederhorn had engaged in transactions “for no legitimate corporate purpose”
18 connected to the Company but provided other information regarding debt, loans, and
19 financing.
20
21

22 33. The 2020 Annual Report stated the following, in pertinent part, touting the
23 Company’s executive management:
24

25 **Competitive Strengths**

26 We believe that our competitive strengths include:

27 ... *Seasoned and Passionate Management Team. Our management team and*
28 *employees are critical to our success. Our senior leadership team is highly*
 experienced in the restaurant industry, and many have been a part of our

1 *team since our acquisition of the Fatburger brand in 2003.* In addition,
2 through their holdings, our senior executives own a significant equity interest
3 in the Company, ensuring long-term commitment and alignment with our
4 public shareholders. *Our management team is complemented by an*
5 *accomplished Board of Directors that is highly involved in overseeing our*
6 *strategic initiatives and implementation.*

7 * * *

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

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

21 (Emphasis added.)

22 34. On January 10, 2022, the Company filed with the SEC a current report on
23 Form 8-K which was signed by Defendant Kuick which attached an investor presentation
24 (the “Investor Presentation”). The Investor Presentation touted the Company’s
25 management, including Defendants Andrew Wiederhorn and Thayer Wiederhorn, in the
26 following slides:
27
28

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

 FRESH. AUTHENTIC. TASTY. 4

* * *

EXPERIENCED MANAGEMENT TEAM

Management Team		
Andrew Wiederhorn President, CEO & Director Fog Cutter Capital, Founder of FAT Brands	Jenn Johnston President QSR Division Global Franchise Group, NovGen Franchise Management	Mason Wiederhorn Chief Brand Officer 10+ years w/ Fog Cutter Capital and Fatburger
Ken J. Kulick Chief Financial Officer Noodles & Company, VICI Properties, Caesars Entertainment	Carl Howard President & CEO Fazoli's Fazoli's, Danner's Int'l, bds Mongolian Barbecue	Justin Nadelman Chief Real Estate Officer Bunkal Restaurant Group, Filmore Street Investments LP
Thayer Wiederhorn Chief Operating Officer 10+ years w/ Fog Cutter Capital and Fatburger	Joe Hussell CEO Twin Peaks Twin Peaks, La Cima Restaurants, Heebers, Naturally Fresh	Raphael Tomlin Chief Supply Chain Officer QSR Division Global Franchise Group, Country Home Bakers, Mission Foods
Rob Resen EVP Capital Markets Kedak Financial Group, Black Diamond Capital Management	Jacob Berchtold President & COO Fast Casual Division 15+ years w/ Fatburger	Don Berchtold EVP & Chief Concept Officer 20+ years w/ Fog Cutter Capital
Aiken Z. Sussman EVP & General Counsel Partner Laeb & Loeb LLP	Gregg Nettleton President & COO Casual Dining Division GDS Enterprises, Black Angus Steakhouses, IHOP	Warren Christiansen Legal Counsel & Director of Franchise Development 10+ years w/ Fog Cutter Capital
Taylor Wiederhorn Chief Development Officer 10+ years w/ Fog Cutter Capital and Fatburger	Ron Roe SVP Finance Fog Cutter Capital, Piper Jeffrey	

Board of Directors	
Edward Rensi Chairman of the Board Former President & CEO McDonald's USA, CEO Rensco Davies of America	Squire Jungler, CPA Director Co-Founder Insight Consulting, Former Partner Arthur Anderson
James Neuhouser, CFA Director & Chair of Audit Committee Siffrid Nicolas & Co, Turlock Capital, Exec Committee FDR & Co, Trident Financial, Bank of New England	Kenneth J. Anderson Director Cedar Tree Capital, Aperture, Co-Founder of Quindie Wealth Management, Arthur Anderson
Amey V. Forrestal Director Brookwood Associates, National Banc Managers' Securities, Bank of America Securities	Andrew Wiederhorn President, CEO & Director Fog Cutter Capital, Founder of FAT Brands

 FRESH. AUTHENTIC. TASTY. 14

35. The statements referenced in ¶¶ 18-34 above, made by or attributed to Defendants, were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business,

1 operational and financial results, which were known to Defendants or recklessly
2 disregarded by them. Specifically, Defendants made false and/or misleading statements
3 and/or failed to disclose that: (1) the Company and the Wiederhorns engaged in
4 transactions “for no legitimate corporate purpose”; (2) the Company ignored warning
5 signs relating to transactions with the Wiederhorns; (3) as a result, the Company was likely
6 to face increased scrutiny, investigations, and other potential issues; (4) certain executives,
7 who are touted as critical to the Company’s success, were at great risk of scrutiny—
8 potentially, at least in part, due to the Company’s actions; (5) the Company’s touted CEO
9 and COO were under investigation regarding transactions with the Company; and (6) as a
10 result, Defendants’ public statements were materially false and/or misleading at all
11 relevant times.

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17 **The Truth Emerges**

18 36. On Saturday February 19, 2022, the Los Angeles Times published an article
19 entitled “Family behind Fatburger under investigation for alleged fraud, money
20 laundering, records show” which revealed the investigations into Defendant Wiederhorn
21 and his son and Company COO Thayer Wiederhorn in connection with the Company.
22

23 37. The Los Angeles Times article stated the following, in pertinent part,
24 regarding the investigation:
25

26 ***Federal authorities have been investigating Andrew Wiederhorn, chief***
27 ***executive of the company that owns the Fatburger and Johnny Rockets***
28 ***restaurant chains, and examining one of his family member’s actions as***

1 *part of an inquiry into allegations of securities and wire fraud, money*
2 *laundering and attempted tax evasion, court records show.*

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

6 * * *

7 Agents hauled away phones, digital storage devices, tax documents and other
8 records from the couple's residence, according to court filings.

9 *Federal investigators also sought a judge's permission to search the elder*
10 *Wiederhorn's Beverly Hills mansion, although court filings do not indicate*
11 *whether that raid took place.* They also monitored him walking his dogs by
12 the property last year.

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

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

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

25 *The agent concluded there was probable cause that Wiederhorn "engaged*
26 *in the following criminal conduct," including tax offenses,*
27 *misrepresentations to investors, and fraud offenses "relating to personal*
28 *expenses that Wiederhorn caused FAT ... to pay."*

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

* * *

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

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

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

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

* * *

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

Part of the inquiry outlined in the affidavit examined whether Wiederhorn filed a false tax return, citing discrepancies between loan applications. His 2018 tax return listed income of \$403,311 and, in 2017, income of \$395,508, according to the court filing.

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

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

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

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

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

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

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

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

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

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

(Emphasis added.)

1 38. On February 22, 2022¹, before trading hours, the Company filed with the SEC
2 a Form 8-K, in which the Company announced the following, in relevant part, regarding
3 the investigation:
4

5 *... the U.S. Attorney's Office for the Central District of California (the "U.S.*
6 *Attorney") and the U.S. Securities and Exchange Commission informed the*
7 *Company in December 2021 that they have opened investigations relating*
8 *to the Company and our Chief Executive Officer, Andrew Wiederhorn, and*
9 *are formally seeking documents and materials concerning, among other*
10 *things, the Company's December 2020 merger with Fog Cutter Capital*
11 *Group Inc., transactions between these entities and Mr. Wiederhorn, and*
12 *compensation, extensions of credit and other benefits or payments received*
13 *by Mr. Wiederhorn or his family. The Company is cooperating with the*
14 *government regarding these matters, and we believe that the Company is not*
currently a target of the U.S. Attorney's investigation. At this early stage, the
Company is not able to reasonably estimate the outcome or duration of the
government investigations.

15 (Emphasis added.)

16 39. On this news, FAT Brands' class A common stock price fell \$2.42 per share,
17 or 23%, to close at \$8.14 per share on February 22, 2022, on unusually heavy trading
18 volume, damaging investors.
19

20 40. On this news, FAT Brands' class B common stock price fell \$1.83 per share,
21 or 17%, to close at \$8.89 per share on February 22, 2022, on unusually heavy trading
22 volume, damaging investors.
23
24
25
26
27
28

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

1 41. On this news, FAT Brands' preferred stock price fell \$5.36 per share, or 30%,
2 to close at \$12.37 per share on February 22, 2022, on unusually heavy trading volume,
3
4 damaging investors.

5 42. On this news FAT Brands' warrants' price fell \$2.41, or 35%, to close at
6
7 \$4.47 per warrant on February 22, 2022, on unusually heavy trading volume, damaging
8
9 investors.

10 43. As a result of Defendants' wrongful acts and omissions, and the decline in
11 the market value of the Company's securities, Plaintiff and other Class members have
12
13 suffered significant losses and damages.

14 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15 44. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
16
17 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
18
19 otherwise acquired the publicly traded securities of FAT Brands during the Class Period
20
21 (the "Class") and were damaged upon the revelation of the alleged corrective disclosure.
22
23 Excluded from the Class are Defendants herein, the officers and directors of the Company,
24
25 at all relevant times, members of their immediate families and their legal representatives,
26
27 heirs, successors or assigns and any entity in which Defendants have or had a controlling
28
interest.

45. The members of the Class are so numerous that joinder of all members is
impracticable. Throughout the Class Period, the Company's securities were actively

1 traded on the NASDAQ. While the exact number of Class members is unknown to
2 Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff
3 believes that there are hundreds or thousands of members in the proposed Class. Record
4 owners and other members of the Class may be identified from records maintained by the
5 Company or its transfer agent and may be notified of the pendency of this action by mail,
6 using the form of notice similar to that customarily used in securities class actions.
7

8
9 46. Plaintiff's claims are typical of the claims of the members of the Class as all
10 members of the Class are similarly affected by Defendants' wrongful conduct in violation
11 of federal law that is complained of herein.
12

13
14 47. Plaintiff will fairly and adequately protect the interests of the members of the
15 Class and has retained counsel competent and experienced in class and securities litigation.
16 Plaintiff has no interests antagonistic to or in conflict with those of the Class.
17

18 48. Common questions of law and fact exist as to all members of the Class and
19 predominate over any questions solely affecting individual members of the Class. Among
20 the questions of law and fact common to the Class are:
21

- 22 (a) whether Defendants' acts as alleged violated the federal securities laws;
23
24 (b) whether Defendants' statements to the investing public during the Class
25 Period misrepresented material facts about the financial condition, business,
26 operations, and management of the Company;
27
28

- 1 (c) whether Defendants' statements to the investing public during the Class
2 Period omitted material facts necessary to make the statements made, in light
3 of the circumstances under which they were made, not misleading;
4
5 (d) whether the Individual Defendants caused the Company to issue false and
6 misleading SEC filings and public statements during the Class Period;
7
8 (e) whether Defendants acted knowingly or recklessly in issuing false and
9 misleading SEC filings and public statements during the Class Period;
10
11 (f) whether the prices of the Company's securities during the Class Period were
12 artificially inflated because of the Defendants' conduct complained of
13 herein; and
14
15 (g) whether the members of the Class have sustained damages and, if so, what
16 is the proper measure of damages.
17

18 49. A class action is superior to all other available methods for the fair and
19 efficient adjudication of this controversy since joinder of all members is impracticable.
20 Furthermore, as the damages suffered by individual Class members may be relatively
21 small, the expense and burden of individual litigation make it impossible for members of
22 the Class to individually redress the wrongs done to them. There will be no difficulty in
23 the management of this action as a class action.
24
25

26 50. Plaintiff will rely, in part, upon the presumption of reliance established by the
27 fraud-on-the-market doctrine in that:
28

- 1 (a) Defendants made public misrepresentations or failed to disclose material
2 facts during the Class Period;
3
4 (b) the omissions and misrepresentations were material;
5
6 (c) the Company's securities are traded in efficient markets;
7
8 (d) the Company's securities were liquid and traded with moderate to heavy
9 volume during the Class Period;
10
11 (e) the Company traded on NASDAQ, and was covered by multiple analysts;
12
13 (f) the misrepresentations and omissions alleged would tend to induce a
14 reasonable investor to misjudge the value of the Company's securities;
15 Plaintiff and members of the Class purchased and/or sold the Company's
16 securities between the time the Defendants failed to disclose or
17 misrepresented material facts and the time the true facts were disclosed,
18 without knowledge of the omitted or misrepresented facts; and
19
20 (g) Unexpected material news about the Company was rapidly reflected in and
21 incorporated into the Company's stock price during the Class Period.

22 51. Based upon the foregoing, Plaintiff and the members of the Class are entitled
23 to a presumption of reliance upon the integrity of the market.
24

25 52. Alternatively, Plaintiff and the members of the Class are entitled to the
26 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the*
27 *State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted
28

1 material information in their Class Period statements in violation of a duty to disclose such
2 information, as detailed above.

3
4 **COUNT I**

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

6
7 **Against All Defendants**

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

10
11 54. This Count is asserted against the Company and the Individual Defendants
12 and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 promulgated thereunder by the SEC.

14
15 55. During the Class Period, the Company and the Individual Defendants,
16 individually and in concert, directly or indirectly, disseminated or approved the false
17 statements specified above, which they knew or deliberately disregarded were misleading
18 in that they contained misrepresentations and failed to disclose material facts necessary in
19 order to make the statements made, in light of the circumstances under which they were
20 made, not misleading.

21
22
23 56. The Company and the Individual Defendants violated §10(b) of the 1934 Act
24 and Rule 10b-5 in that they: employed devices, schemes and artifices to defraud; made
25 untrue statements of material facts or omitted to state material facts necessary in order to
26 make the statements made, in light of the circumstances under which they were made, not
27
28

1 misleading; and/or engaged in acts, practices and a course of business that operated as a
2 fraud or deceit upon plaintiff and others similarly situated in connection with their
3 purchases of the Company's securities during the Class Period.
4

5 57. The Company and the Individual Defendants acted with scienter in that they
6 knew that the public documents and statements issued or disseminated in the name of the
7 Company were materially false and misleading; knew that such statements or documents
8 would be issued or disseminated to the investing public; and knowingly and substantially
9 participated, or acquiesced in the issuance or dissemination of such statements or
10 documents as primary violations of the securities laws. These defendants by virtue of their
11 receipt of information reflecting the true facts of the Company, their control over, and/or
12 receipt and/or modification of the Company's allegedly materially misleading statements,
13 and/or their associations with the Company which made them privy to confidential
14 proprietary information concerning the Company, participated in the fraudulent scheme
15 alleged herein.
16
17
18
19
20

21 58. Individual Defendants, who are the senior officers and/or directors of the
22 Company, had actual knowledge of the material omissions and/or the falsity of the material
23 statements set forth above, and intended to deceive Plaintiff and the other members of the
24 Class, or, in the alternative, acted with reckless disregard for the truth when they failed to
25 ascertain and disclose the true facts in the statements made by them or other personnel of
26 the Company to members of the investing public, including Plaintiff and the Class.
27
28

1 59. As a result of the foregoing, the market price of the Company's securities was
2 artificially inflated during the Class Period. In ignorance of the falsity of the Company's
3 and the Individual Defendants' statements, Plaintiff and the other members of the Class
4 relied on the statements described above and/or the integrity of the market price of the
5 Company's securities during the Class Period in purchasing the Company's securities at
6 prices that were artificially inflated as a result of the Company's and the Individual
7 Defendants' false and misleading statements.
8
9

10
11 60. Had Plaintiff and the other members of the Class been aware that the market
12 price of the Company's securities had been artificially and falsely inflated by the
13 Company's and the Individual Defendants' misleading statements and by the material
14 adverse information which the Company's and the Individual Defendants did not disclose,
15 they would not have purchased the Company's securities at the artificially inflated prices
16 that they did, or at all.
17
18

19 61. As a result of the wrongful conduct alleged herein, Plaintiff and other
20 members of the Class have suffered damages in an amount to be established at trial.
21

22 62. By reason of the foregoing, the Company and the Individual Defendants have
23 violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are
24 liable to the Plaintiff and the other members of the Class for substantial damages which
25 they suffered in connection with their purchases of the Company's securities during the
26 Class Period.
27
28

COUNT II

Violation of Section 20(a) of The Exchange Act

Against The Individual Defendants

1
2
3
4
5 63. Plaintiff repeats and realleges each and every allegation contained in the
6
7 foregoing paragraphs as if fully set forth herein.

8
9 64. During the Class Period, the Individual Defendants participated in the
10 operation and management of the Company, and conducted and participated, directly and
11 indirectly, in the conduct of the Company's business affairs. Because of their senior
12 positions, they knew the adverse non-public information regarding the Company's
13 business practices.
14

15
16 65. As officers of the Company, the Individual Defendants had a duty to
17 disseminate accurate and truthful information with respect to the Company and to correct
18 promptly any public statements issued by the Company which had become materially false
19 or misleading.
20

21
22 66. Because of their positions of control and authority as senior officers,
23 Individual Defendants were able to, and did, control the contents of the various reports,
24 press releases and public filings which the Company disseminated in the marketplace
25 during the Class Period. Throughout the Class Period, Individual Defendants exercised
26 their power and authority to cause the Company to engage in the wrongful acts complained
27 of herein. The Individual Defendants therefore, were "controlling persons" of the
28

1 Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they
2 participated in the unlawful conduct alleged which artificially inflated the market price of
3 the Company's securities.
4

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

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendants as follows:
20

21 A. Determining that the instant action may be maintained as a class action under
22 Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class
23 representative;
24

25 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by
26 reason of the acts and transactions alleged herein;
27
28

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

5 D. Awarding such other and further relief as this Court may deem just and
6
7 proper.

8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiff hereby demands a trial by jury.

10
11 Dated: April 15, 2022

Respectfully submitted,

12 POMERANTZ LLP

13 /s/ Jennifer Pafiti

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Fatburger Investors Were Harmed Financially After CEO Fraud Probe Made Public](#)
