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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

________, Individually and on behalf of all others similarly situated, Plaintiff, v. BURGERFI INTERNATIONAL, INC. f/k/a OPES ACQUISITION CORP., JULIO RAMIREZ, IAN H. BAINES, BRYAN MCGUIRE, MICHAEL RABINOVITCH, and OPHIR STERNBERG, Defendants.	**Case No:** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Plaintiff, individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding BurgerFi International, Inc. f/k/a Opes Acquisition

Corp. ("BurgerFi" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired the securities of BurgerFi International, Inc. f/k/a Opes Acquisition Corp. between June 30, 2020 and November 15, 2022, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

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

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

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

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

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased the Company's securities during the Class Period and was economically damaged thereby.

7. Defendant BurgerFi purports to be "a multi-brand restaurant company that develops, markets and acquired fast-casual and premium-casual dining restaurant concepts around the world, including corporate-owned stores and franchises located in the United States, Puerto Rico and Saudi Arabia." As of April 3, 2023, the Company had 172 franchised and corporate-owned restaurants for its BurgerFi and Anthony's brands.

8. Defendant BurgerFi is a Delaware corporation with principal executive offices located at 200 West Cypress Creek Road, Suite 220, Fort Lauderdale, Florida 33309. BurgerFi's common stock and redeemable warrants trade on the NASDAQ exchange under the ticker symbols "BFI" and "BFIIW", respectively. Before the Business Combination, the Company's units, common stock, and redeemable warrants traded on the NASDAQ under the ticker symbols "OPESU", "OPES", and "OPESW", respectively.

9. BurgerFi previously operated as a special purpose acquisition company ("SPAC"), which is a development stage company formed for the purpose of entering a merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other transaction with one or more operating businesses or entities.

10. On December 17, 2020, the Company announced that it had completed a business combination (the "Business Combination" or "Merger") with BurgerFi International, LLC ("Legacy BurgerFi"). Legacy BurgerFi was a private company and organized in Delaware as a limited liability company which was touted as "one of the nation's fastest-growing better

burger concepts". As per the Business Combination, the Company bought 100% of the membership interests of Legacy BurgerFi. The end result of the Merger was that Legacy BurgerFi became a wholly-owned subsidiary of the Company, which changed its name to BurgerFi.

11. Since the Business Combination, the Company and its subsidiaries have owned and franchised fast-casual and premium-casual restaurants.

12. Defendant Julio Ramirez ("Ramirez") served as the Company's Chief Executive Officer ("CEO") from October 16, 2020 to November 8, 2021.

13. Defendant Ian H. Baines ("Baines") has served as the Company's CEO since November 8, 2021.

14. Defendant Bryan McGuire ("McGuire") served as the Company's Chief Financial Officer from prior to the start of the class period to March 31, 2021.

15. Defendant Michael Rabinovitch ("Rabinovitch") has served as the Company's CFO since April 1, 2021.

16. Defendant Sternberg has served as the Company's Executive Chairman at all relevant times. He served as the CEO from prior to the start of the class period (on June 30, 2020) through October 15, 2020.

17. Defendants Ramirez, Baines, McGuire, Rabinovitch, and Sternberg are sometimes referred to herein as the "Individual Defendants."

18. Each of the Individual Defendants:

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

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

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;

(f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

19. BurgerFi is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

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

21. Defendant BurgerFi and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

22. On June 30, 2020, The Company announced its definitive merger agreement with Legacy BurgerFi and filed various proxy materials with the Securities & Exchange Commission (the "SEC"). Included in proxy materials filed on that same day on Form 8-K a press release,

which stated, in pertinent part:

> "BurgerFi's position within the rapidly expanding ***'better-burger' space*** combined with its technology-driven business model and highly-scalable structure makes it poised for significant shareholder value creation," said Ophir Sternberg, Chairman & CEO of OPES. "***We believe that BurgerFi is positioned for rapid growth. Our team is thrilled to partner with BurgerFi's senior management to support the numerous growth initiatives underway and to drive operational excellence***."
>
> **Attractive Scalable Model with Significant Greenfield Opportunity**: With a mix of franchise and corporate openings projected, the Company believes ***BurgerFi has a strong pipeline for rapid expansion***, providing visible growth for the foreseeable future. New immediate-term locations are expected to include developments in BurgerFi's home state of Florida, as well as the Southeast, Mid-Atlantic and Northeast regions where there is high brand awareness.
>
> (Emphasis added).

23. Also included in the proxy materials was an investor presentation, which discussed BurgerFi's growth strategy. If focused on growth through expansion of its "BurgerFi" branded locations, and not through merger & acquisition ("M&A") activity (and particularly, as an acquiror), which would bring on additional risk.

24. These materials were materially false and misleading because Company shareholders were led to believe that the Company's post-Merger growth strategy would be through expansion of BurgerFi locations, not through M&A.

25. Then, on December 1, 2020, the Company filed its Proxy Statement with the SEC. The growth strategy was stated to be the following:

- operating new domestic company-operated restaurants;
- innovating its digital products and capabilities;
- growing same-store sales;
- thoughtfully increasing its franchised restaurants; and
- capitalizing on its brand awareness.

26. BurgerFi did not state in the Proxy Statement that a key part of its growth strategy would be through M&A activity, including buying businesses that sold different products than its current offerings (subjecting it to further commodity fluctuation and other risk).

27. As such, its risk disclosures in the Proxy Statement did not reflect risks relating to engaging in M&A activity.

28. The "Business of BurgerFi" was stated as the following:

> ***BurgerFi is a fast-casual "better burger" concept*** with approximately 119 franchised and corporate-owned restaurants, renowned for delivering an exceptional, all-natural premium burger experience in a refined, contemporary environment. BurgerFi offers a classic American menu of premium burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, shakes, beer, wine and more. Originally founded in February 2011 by John Rosatti in sunny Lauderdale-by-the-Sea, Florida, the purpose was simple – redefining the way the world eats burgers by providing an upscale burger offering, at a fast-casual price point. We've become the go-to burger restaurant for good times, and high-quality food across the United States and beyond. Known for delivering the all-natural burger experience in a fast-casual environment, BurgerFi is committed to an uncompromising and rewarding dining experience that promises fresh food of transparent quality.
>
> Today, ***BurgerFi is among the nation's fastest-growing better burger concepts*** and was ranked as one of the Top 10 Fastest and Smartest-Growing Brands in Franchising and named a leader in its category by Franchise Times in their Fast and Serious list for both 2017 and 2018. BurgerFi was also featured in the fourth annual Chain Reaction antibiotic scorecard by National Resources Defense Council and Consumer Reports with an "A" rating – one of only two brands serving passing grade beef.
>
> Since its inception, ***BurgerFi has grown steadily—with approximately 119 BurgerFi restaurants, as of September 30, 2020, in 3 countries and 23 states, as well as Puerto Rico—and we continue to expand bringing the BurgerFi experience to new guests around the world***.

(Emphasis added).

29. Further, the same section focused on the quality of BurgerFi's products, including its use of high quality, non-hormone or antibiotic-injected, and vegetarian fed beef.

30. In sum, investors were sold on the Merger through BurgerFi's merits as a high-quality hamburger business. They were not on notice that their investment was at risk because

the post-Merger BurgerFi would engage acquire other businesses shortly after the close of the Merger, while the Company was still growing and adding more BurgerFi restaurants around the country.

31. On December 17, 2020, before the market opened, BurgerFi issued a press release during pre-market hours announcing the completion of the Business Combination. The press release states, in relevant part:

> "We believe that combining OPES with BurgerFi will expand the better burger brand's growth nationally and internationally to reach new heights and create significant stockholder value," stated [Defendant] Sternberg. "As I step into my new role, there will be an important focus on taking advantage of the current real estate market to seek growth opportunities, as there is an abundance of prime retail locations with leases on very favorable terms. We will also continue our industry-leading technology development, enhancing user experience and increasing sales through our various online ordering channels."
>
> * * *
>
> "Becoming a publicly traded company is the first of many milestones we envision for BurgerFi, as our opportunities to evolve and develop are seemingly limitless," says [Defendant Ramirez]. "With our leading position as the preferred better burger restaurant in four out of five southern states, we will continue working our way up the eastern seaboard to the Mid-Atlantic and Northeast regions. Our corporate and franchise restaurant growth strategy will cluster in markets we've identified as strategically important, such as Atlanta, Nashville and Richmond."

32. On April 29, 2021, BurgerFi issued a press release announcing the Company's Q4 and full year 2020 results. It stated, in relevant part:

> "As we move forward in 2021, we are eager to continue executing our growth strategy with a significant capital infusion from the closing of the business combination in December 2020. We have already opened four new locations including an additional drive-thru location in Nevada in March and we have eight more restaurants currently under construction. We are excited to bring the best 'better burger' experience to a broader customer base with plans to open approximately 30 locations in existing and new markets primarily throughout the Southeast and Mid-Atlantic regions in 2021. We are also continuing to grow internationally with plans to open our first location in Saudi Arabia during the fourth quarter as part of our multi-unit agreement with Food Supplies Co. We are confident in our financial position and ability to capitalize on the growth opportunities in the future."

> Commenting on the results, [Defendant Sternberg] stated: "I commend the entire organization's ability to not only adapt to the unprecedented challenges experienced this year in the food industry, but also the work being done to lay the foundation for growth as we embark into the new year. As I look at the number of BurgerFi's under development, the recent investments in digital capabilities, the unique expansion opportunities ahead and the bolstered management team and board, I believe that we are just beginning to tap into our true growth potential. We look forward to introducing consumers around the globe to our best-in-class menu."

33. That same day, BurgerFi filed an Annual Report on Form 1-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2020 (the "2020 Annual Report"). Attached to the 2020 Annual Report were certifications pursuant to The Sarbanes Oxley Act of 2002 ("SOX") signed by Defendants Ramirez and McGuire.

34. In discussing the Company's growth strategies, the 2020 Annual Report stated, in relevant part:

> In 2019, BurgerFi opened 15 new restaurants, resulting in the creation of approximately 450 jobs. During the year December 31, 2021 we have opened three company-owned restaurants, eight franchise restaurants and seven delivery-only licensed ghost kitchens.
>
> *Traditional Company and Franchise Restaurant Development*
>
> BurgerFi currently enjoys a larger geographic footprint than several of its "better burger" competitors, with significant growth headroom for new development in greenfield areas as well as clustering in existing markets.
>
> Our goal is to strategically position new units to either cluster within existing markets or to build-out important new [Demographic Market Areas] through multi-unit development. We believe BurgerFi is powerfully positioned with a pipeline of new units projected to open through 2021 and 2022 resulting from a combination of franchise and new corporate restaurant development.
>
> A key indicator of the overall appeal and staying power of the BurgerFi model comes from existing multi-unit franchisees who continue to build on their initial successes by adding new BurgerFi units to their portfolio.

35. On May 19, 2021, the Company issued a press release announcing its 1st quarter of 2021 reports. The press release stated, in relevant part:

“The first quarter of 2021 reflected our return to positive sales growth, achieved through unit growth and same store sales growth in both corporate owned restaurants and franchised locations,” said [Defendant Ramirez]. “Our success demonstrates the continued momentum from the COVID-19 pandemic recovery, supported by growth in our number of locations, strong results from our digital channel, the execution of our marketing strategy and successful limited time offerings.[“]

* * *

“For 2021, we will continue to execute on our restaurant development plan in both new and existing markets with plans to open approximately 30 restaurants this year. We have opened four new restaurants in the first quarter, one in April and currently have 21 restaurants in various stages of development and plan to expand our Ghost Kitchens through our partnerships with Reef and Epic Kitchens through opening 15-20 additional locations by the end of 2021. We are looking forward to bringing the ‘better burger’ experience to more consumers nationwide and internationally as we continue to build our brand. With our ongoing brand recognition efforts, we remain committed to innovating our menu items with unique offerings, like our Swag Burger and Dunkaroo Shake, to drive further excitement with consumers. We are optimistic about our expansion efforts on the eastern seaboard and internationally, and we anticipate that our growing presence will deliver strong results.”

Commenting on the results, [Defendant Sternberg] stated: “BurgerFi started the year strong receiving multiple awards, including being named a top fast casual restaurant by USA Today’s 10Best Readers’ Choice Awards. An increasing number of people continue to be introduced to our best-in-class menu and we look forward to the continued expansion of the brand in 2021 through new restaurant openings. I am also excited that we have topped off our c-suite with our recent appointments of our chief financial, chief technology, and chief marketing officers. With the great talent we have in place, we are well positioned for 2021 and beyond.”

36. On August 12, 2021, the Company issued a press release announcing its Q2 2021 results. The press release stated, in relevant part:

[Defendant Sternberg] stated “The second quarter continued our trend of positive sales growth, driven by increases in same store sales, unit growth, and unit re-openings in both our corporate owned and franchised restaurants. We are particularly impressed with the performance of our corporate owned restaurants, whose sales have outperformed our 2019 levels despite a challenging operating environment. Our top-line growth reflects the continued momentum we are seeing in the Covid-19 recovery, as well as our new store openings and the successful execution of our marketing strategy and programs. Further, we are pleased that careful management of food and beverage costs and our leverage on occupancy costs more than fully offset significant wage pressure and scarcity costs.”

[Defendant Ramirez] added: “We continue to execute on our restaurant development plan as we expect to open between 25 and 30 new restaurants in existing and new markets

> primarily along the Eastern seaboard in 2021. During the second quarter, we opened 3 new company-owned locations and 1 franchised location, representing 8 new restaurants year-to-date. Further, we have over 18 additional new locations currently under various stages of construction and development. We are encouraged by the performance of our Ghost Kitchens and through our partnership with Reef and Epic Kitchens, we continue to expect the opening of 15 to 20 new Ghost Kitchen locations by the end of 2021."

37. That same day, BurgerFi hosted an earnings call with investors and analysts to discuss the Company's Q2 2021 results (the "Q2 2021 Earnings Call"). During the scripted portion of the Q2 2021 Earnings Call, Defendant Rabinovitch stated, in relevant part:

> We remain optimistic about our short-term and long-term prospects. We plan on opening 25 to 30 company and franchise operated restaurants in new and existing markets for the full year 2021. During the second quarter, we opened three new company owned locations and one franchise site, representing eight new restaurants year-to-date, further we have over 25 signed leases of which 18 restaurants are currently under various stages of construction and development. Most of the new locations are in markets we currently operate in and as a result, we're excited about continuing to build on the strengths and the brand in those areas.

38. Also during the scripted portion of the Q2 2021 Earnings Call, Defendant Ramirez stated, in relevant part:

> Now, I would like to talk about our strategic vision and the growth plans for our brand. Our first priority remains the guest experience. As dining rooms have reopened, we remain laser-focused on providing the guests with a seamless experience with fantastic tasting food. Further, we remain focused on off premise and digital dining, as we have optimized our digital and ordering solutions so that our guests can choose where and when they want to have their BurgerFi meal.
>
> Guests can order pickup and delivery through our BurgerFi mobile app, order through our own website, order from the largest third-party delivery providers in the marketplace. Additionally, to grow our brand in and outside of our existing markets, we have developed ecosystems in the form of delivery only Ghost Kitchens in various markets across the U.S. We are using these kitchens to gain entrance into certain markets where we don't have a physical presence. And more importantly, as well as providing added visibility and awareness in markets where we currently are growing. This allows us to test new growth opportunities, while building brand recognition and integrity without the large upfront fixed cost of opening a new restaurant.

39. On October 11, 2021, BurgerFi issued a press release entitled "BurgerFi to Acquire Anthony's Coal Fired Pizza & Wings." The press release stated, in relevant part:

> With the acquisition of Anthony's, BurgerFi will have 177 systemwide restaurant locations across the country through its two premium casual dining brands, with 61 Anthony's locations and 116 BurgerFi locations. "This is our first acquisition in building a premium multibrand platform. We are well positioned to continue the growth of our existing BurgerFi brand and leverage our scale to unlock value from strategic acquisitions. Our focus on premium fast-casual brands allows us to share expertise, capabilities and best practices across the board," said [Defendant Sternberg].
>
> Anthony's, founded in 2002 and headquartered in Fort Lauderdale, FL, is a leading operator of casual dining pizza restaurants with a loyal fan base and, like BurgerFi, a high concentration of its locations in the state of Florida. Anthony's concept is centered around a 900-degree coal fired oven, and its streamlined menu offers "well-done" pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads. [Defendant Baines] said "Anthony's Coal Fired Pizza & Wings will be a fantastic addition to the BurgerFi family. It is a well-positioned, differentiated pizza and wing concept with industry-leading average unit volumes and strong profitability. BurgerFi is a very dynamic growth brand and I am honored to work with their great team as we continue to pursue and expand on our growth strategy together."

40. On November 4, 2021, BurgerFi issued a press release announcing the completion of the Anthony's Acquisition. That press release stated, in relevant part:

> "We are very excited to officially welcome Anthony's into the BurgerFi family," [stated Defendant Sternberg]. "Anthony's is our first acquisition in our long term inorganic growth strategy to build a premium multibrand platform. It represents a fantastic complement to the BurgerFi brand, and we are well positioned to strategically grow Anthony's as it fits in our focus on high quality fast-casual dining restaurants.["]
>
> [Defendant Baines] commented, "The acquisition of Anthony's marks the beginning of a new chapter for BurgerFi as we establish a restaurant platform well-positioned for growth and success. The BurgerFi and Anthony's brands are strategically aligned, bringing premium ingredients and loyal fanbases to fast-casual and casual dining restaurants. We are committed to our growth strategy here at BurgerFi, and will continue to scan the market for potential M&A opportunities that we can leverage and unlock value from."

41. On November 11, 2021, BurgerFi issued a press release announcing the Company's Q3 2021 results. The press release stated, in relevant part:

> [Defendant Sternberg] stated "The third quarter continued the positive momentum for BurgerFi driven by strong sales growth resulting from the addition of new units, same-store sales growth, improved operating margins and continued unit reopenings in our franchise network. We are also excited to have closed on the acquisition of Anthony's Coal Fired Pizza & Wings on November 3, 2021, which we purchased from L Catterton for $156.6 million. We look forward to our ongoing strategic partnership with L

> Catterton as we set out on building this premium multibrand platform as they have become one of BurgerFi's largest shareholders and Andrew Taub, Managing Partner at L Catterton, has joined our board."
>
> [Defendant Baines] added "The Anthony's transaction is a historic moment for BurgerFi as it marks our first acquisition on our long- term growth strategy. We are thrilled to combine the BurgerFi and Anthony's brands and see enhanced profitability and growth opportunities as we look out over the next several years. We are encouraged by the sales and operational recovery in performance of both of our brands despite a very challenging operating environment. I have the utmost confidence in our management teams leading these brands as we begin the integration process, take advantage of strategic synergies and execute on the combined company strategy."
>
> [Defendant Ramirez] stated, "During the third quarter, we opened 2 corporate owned restaurants, bringing our new restaurant count to 11 so far this year including one franchised location in October. Leases are signed for another 32 locations, 17 corporate owned and 15 franchised within our development pipeline, of which, 14 are in various stages of construction. While the restaurant industry is facing macro headwinds, we are resilient and continue to be proud of our operations teams and franchisee's focus leading through the challenges presented in this unprecedented time. I'm very pleased with the team's continued progress in driving improvements in restaurant operating margins through the effective management of price and cost programs and look forward to the benefits they will bring when challenges presented by COVID-19 subside."

42. That same day, BurgerFi hosted an earnings call with investors and analysts to discuss the Company's Q3 2021 results (the "Q3 2021 Earnings Call"). During the scripted portion of the Q3 2021 Earnings Call, Defendant Baines stated, in relevant part:

> We're excited to bring together these two fantastic brands. As a reminder, on November 3, 2021, BurgerFi closed on the transaction to purchase 61 company-owned premium casual dining locations operating under the name Anthony's Coal Fired Pizza & Wings for $156.6 million. Anthony's was a very attractive acquisition for BurgerFi given its strong profitability potential and top-tier unit economics, with the average unit volumes of 2.3 million sales -- $2.3 million; sales per square foot nearing $700 and 19% restaurant-level margins on a pre-COVID basis.
>
> In addition to Anthony's core restaurants, we see additional growth opportunities through a smaller concept footprint and a new virtual brand called The Roasted Wing. There is also a significant overlap in our geography with both brands having a strong foothold in the Florida market. Through this transaction, we aim to strengthen our profitability, and we expect this will be an accretive acquisition for the BurgerFi and provide a solid foundation for additional growth.

43. On January 10, 2022, BurgerFi issued a press release providing a fiscal year 2021 business update and setting initial guidance for fiscal year 2022. The press release stated, in relevant part:

> [Defendant Sternberg] stated, "I am encouraged by the opportunities that lie ahead from the Anthony's acquisition and impressed by the speed of execution our refreshed management team is preparing Anthony's for integration into the BurgerFi system to begin realizing synergies. I am thrilled for the year ahead, and confident we now have the right management team in place to maximize the potentials of our two strong restaurant brands."
>
> [Defendant Baines] added, "In the fourth quarter, we focused on laying the groundwork for the efficient integration of Anthony's Coal Fired Pizza into our network, while navigating the challenges presented by the new Omicron variant on our core business. In 2022, we expect to begin to realize the synergies from the combination of the BurgerFi and Anthony's brands, providing improved financial performance and additional growth strategies. Lastly, we plan to continue our investment in technological advancements and innovation to provide our customers with a seamless omni-channel experience at all touch points. We are very excited to continue progressing on each vertical of our growth strategy here at BurgerFi in 2022, and I believe this will be a great year for the Company."

44. On April 14, 2022, BurgerFi issued a press release announcing the Company's fourth quarter and full year 2021 results. The press release stated, in relevant part:

> [Defendant Sternberg] stated, "2021 was a fantastic year of growth and transformation at BurgerFi despite the many industry-wide effects of COVID-19. We were able to lay the foundation for significant growth through opening 16 BurgerFi restaurants and through the acquisition of Anthony's in November. I have the utmost confidence in our strengthened management team to execute on our business initiatives, maximize the potential of our two great restaurant brands, and deliver value to our shareholders as we head into 2022."
>
> [Defendant Baines] added, "The fourth quarter capped off a year of significant growth for BurgerFi. In the quarter, we initiated the integration of Anthony's into the BurgerFi system. The BurgerFi brand also performed strongly with a 23% growth in systemwide sales, driven primarily through new store openings and a 7% increase in same store sales. Of note, we retained nearly all of our digital channel sales when compared to peak COVID-19 levels, which is very encouraging. In 2022, we expect to realize $2 million in our first wave of cost synergies from the BurgerFi and Anthony's combination, with additional opportunity for 2023. We plan to expand access and convenience for our guests through continued investments in technological advancements, innovation and our digital ecosystem, accompanied by the 15 to 20 expected new BurgerFi brand restaurant openings we have planned for 2022. This unit growth and enhanced omni-

channel customer experience, combined with the incredible food we offer should provide the foundation for an outstanding 2022."

45. That same day, BurgerFi filed an Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the year ended December 31, 2021 (the "2021 Annual Report"). In providing an overview of the Company's business, the 2021 Annual Report stated, in relevant part:

> The Company is a leading multi-brand restaurant company that develops, markets and acquires fast-casual and premium-casual dining restaurant concepts around the world, including corporate-owned stores and franchises.
>
> * * *
>
> ***Anthony's***. Anthony's is a premium pizza and wing brand, operating 6 corporate-owned casual restaurant locations, as of December 31, 2021. Anthony's prides itself on serving fresh, never frozen, high-quality ingredients. The concept is centered around a 900-degree coal fired oven, and its menu offers "well-done" pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads. The restaurants also feature a deep wine and craft beer selection to round out the menu. The pizzas are prepared using a unique coal fired oven to quickly seal in natural flavors while creating a lightly charred crust. Anthony's provides a differentiated offering among its casual dining peers driven by its coal fired oven, which enables the use of fresh, high-quality ingredients with quicker ticket times.
>
> Since its inception in 2002 in Ft. Lauderdale, Florida, the Anthony's brand has grown to 61 corporate-owned locations, as of December 31, 2021, primarily along the East coast and has restaurants in eight states, including Florida (28), Pennsylvania (12), New Jersey (8), New York (5), Massachusetts (4), Delaware (2), Maryland (1), and Rhode Island (1).
>
> Anthony's was named "The Best Pizza Chain in America" by USA Today's Great American Bites and "Top 3 Best Major Pizza Chain" by Mashed in 2021.
>
> Beyond our current brand portfolio, we intend to acquire other restaurant concepts that will allow us to grow and also offer additional food categories. In evaluating potential acquisitions, we specifically seek concepts with, among others, the following characteristics:
>
> - established, recognized brands;
> - long-term, sustainable operating performance;
> - consistent cash flows; and
> - growth potential, both geographically and through co-branding initiatives across our portfolio.

Intending to leverage our developing management platform, we expect to achieve cost synergies post-acquisition by reducing the corporate overhead of the acquired company. We also plan to grow the top line revenues of newly acquired brands through support from our management and systems platform, franchising, marketing and advertising, supply chain assistance, site selection analysis, staff training and operational oversight and support.

46. Further, in discussing the Company's competitive strengths, the 2021 Annual Report stated, in pertinent part:

> ***Two Leading, Differentiated Brands Serving High-Quality, Freshly Prepared Foods with Broad Customer Appeal***. Our BurgerFi and Anthony's brands are differentiated from other dining options and offer distinct concepts and fresh, natural menu choices that we believe have broad consumer appeal, which attract a diverse customer base and drive guest loyalty. BurgerFi and Anthony's are committed to our brand voice: serving freshly prepared, all-natural food using quality ingredients, including BurgerFi's American Wagyu beef and 100% natural, cage-free chicken from all-natural farms. At Anthony's, our 900-degree coal fired oven sets us apart from other premium pizza brands. At BurgerFi, we believe our premium wine and craft beer selection also differentiates us from the other fast-casual burger concepts. As such, we believe we are uniquely positioned to offer premium products at a premium price, including with chef-driven menu offerings, as well as eco-friendly restaurant design at the BurgerFi brand.
>
> * * *
>
> ***Management Platform for Growth***. We are developing a management and systems platform designed to support the expansion of our existing brands while enabling the efficient acquisition and integration of additional restaurant concepts. We dedicate our resources and industry knowledge to promote the success of our franchisees, offering them various support services such as marketing and advertising, supply chain assistance, site selection analysis, staff training and operational oversight and support. Furthermore, we are developing our platform to be scalable and adaptable, allowing us to incorporate new concepts into the Company with minimal incremental corporate costs. We intend to grow our existing brands as well as make strategic and opportunistic acquisitions that complement our existing portfolio of concepts providing an entrance into targeted restaurant segments.

47. Finally, in discussing the Company's growth strategies, the 2021 10-K stated, in relevant part:

> Our long-term strategy is focused on profitably building our base brands and growing new distribution channels, including franchised locations and acquiring new concepts. We believe the Company's growth strategies primarily include the following:

Opportunistically Acquire New Brands. We are developing a management platform to cost-effectively scale new restaurant concept acquisitions. Our recent acquisition of Anthony's is the first example of this growth strategy. We seek concepts with established, widely recognized brands; steady cash flows; stable relationships with franchisees; sustainable operating performance; and growth potential, both geographically and through cobranding initiatives across our portfolio.

Enhance Existing Markets. We anticipate that our new and existing franchisees will continue to expand further as we focus our efforts on the franchise business, including our planned launch of the Anthony's franchise
brand in 2022. We plan to leverage our position as a leading "better burger" and "premium pizza and wings" concept in Florida, as well as along the Eastern seaboard and other important markets in the Southeast, Mid- Atlantic, and Northeast. Many of our franchisees have grown their businesses over time, increasing the number of stores operated in their organizations. To capitalize on these relationships, we also hope to be able to cross-sell concepts across the Company's brands.

48. Appended to the 2021 10-K as exhibits were signed certifications pursuant to SOX by Defendants Baines and Rabinovitch, attesting that "[t]he information contained in the [2021 Annual Report] fairly presents, in all material respects, the financial condition and results of operations of the Company."

49. On May 16, 2022, BurgerFi issued a press release announcing the Company's Q1 2022 results. The press release stated, in relevant part:

[Defendant Sternberg] stated, "After a transformative year in 2021, we continued to effectively execute on our growth strategy in the first quarter of 2022 and remain well on track to deliver on our business targets for the fiscal year. We are pleased to have opened six new BurgerFi locations in the quarter positioning us to meet our growth target of 15-20 new BurgerFi locations in 2022. Further, we are encouraged by our performance as we grew our total revenues by more than 300% and drove over 200% in growth in adjusted EBITDA during the first quarter as compared to the prior year through the acquisition of Anthony's Coal Fired Pizza & Wings. I am excited about the synergies resulting from the acquisition by BurgerFi of Anthony's as it has provided access to greater competencies between the two brands and leadership teams and expanded our addressable market for future growth."

[Defendant Baines] added, "In the first quarter we built a solid foundation for growth for 2022. We saw a 20% growth in BurgerFi corporate restaurant sales driven by new store openings in the last year while, we continued to retain a significant portion of our digital sales. We were also very encouraged by the sales recovery in our Anthony's business, which produced year-over-year same-store sales growth of 13%. For the year, we are on

> track to achieve the previously guided $2.0 million in year cost synergies from the Anthony's transaction in November, and I am pleased to report that those synergies are expected to ramp up as we progress through 2022, which we expect will drive accelerated EBITDA in 2022. Despite the impact of the Omicron variant of COVID-19 in January, and the continued presence of labor and supply chain pressures, our expectations remain the same for the year and we are confident in reiterating our previous guidance for 2022. Given continued unit growth, our enhanced omni-channel customer experience, and anticipated cost savings, I believe we are on track for a fantastic 2022."

50. That same day, BurgerFi hosted an earnings call with investors and analysts to discuss the Company's Q1 2022 results (the "Q1 2022 Earnings Call"). During the scripted portion of the Q1 2022 Earnings Call, Defendant Baines stated, in relevant part:

> During the fourth quarter of 2021, BurgerFi completed its acquisition of Anthony's Coal Fired Pizza & Wings. So as such, the first quarter of 2022 marks the first quarter that I led the combined company as CEO. And we are enthusiastic about the way the teams are coming together, learning from each other, and our ability to realize our planned synergies and continue to grow our two strong brands. It's a very exciting time here at BurgerFi.
>
> Anthony's was a very natural fit for BurgerFi as both brands have a strong foothold in the Florida market and other parts of the Southeast, which has created instant synergies. Further, Anthony's was a compelling opportunity given the brand's strong profitability -- profitability history and future potential and top-tier unit economics. In addition to the revenues and EBITDA contribution from Anthony's core restaurants, we see additional long-term growth opportunities through unlocking the franchising growth opportunity. The acquisition of Anthony's by BurgerFi has enhanced our profitability, provided access to greater competencies between the two brands and leadership teams and expanded our addressable market for future growth. The integration of Anthony's into the BurgerFi's system is going very well. and we are on track to realize $2 million in synergies in 2022, which is our first wave of the cost savings.
>
> The acquisition of Anthony's provided us the necessary scale we needed to continue our strategy of building a strong multi-platform growth company in the fast casual and casual dining industries, and we are making significant progress towards that end. I'll now turn the call over to our CFO, Mike Rabinovitch, who will provide additional commentary on our performance for the first quarter 2022 financial results.

51. The statements contained in ¶¶ 22-50 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly

disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company misrepresented to its pre-Merger investors what its growth strategy would be for once the Merger was completed; (2) the Company had overstated the effectiveness of its acquisition and growth strategies; (3) the Company had misrepresented to investors the purported benefits of the Anthony's Acquisition and its post-Anthony's combination business and financial prospects; and (4) as a result, the Company's public statements were materially false and misleading at all relevant times.

THE TRUTH EMERGES

52. On August 11, 2022, during pre-market hours, BurgerFi issued a press release announcing the Company's Q2 2022 results. The press release reported Q2 revenue of $45.3 million, missing consensus estimates by $2.28 million. In addition, the press release stated, in relevant part:

> Restaurant-level operating expenses for the second quarter of 2022 were $36.2 million compared to $8.0 million in the second quarter of 2021, the increase driven by the inclusion of a full quarter of Anthony's operations. For the BurgerFi brand, restaurant-level operating expenses, as a percentage of sales, increased 60 basis points for the second quarter of 2022, compared to the second quarter of 2021, primarily due to higher food, beverage and labor costs offset by significant savings in other operating expenses primarily driven by improved efficiency of the delivery service provider programs.
>
> ***Net loss in the second quarter was $60.4 million compared to a net income of $9.0 million in the year-ago quarter. This loss is primarily the result of goodwill impairment charges of $55.2 million in relation to BurgerFi and Anthony's coupled with higher depreciation, amortization of intangibles, share-based compensation, interest expense resulting from the acquisition-related debt.***
>
> (Emphasis added).

53. On this news, BurgerFi's stock price fell $0.10 per share, or 3.03%, to close at $3.20 per share on August 11, 2022.

54. Then, on November 16, 2022, during pre-market hours, BurgerFi issued a press

release announcing the Company's Q3 2022 results. That press release stated, in pertinent part:

> Total revenue in the third quarter of 2022 increased 290% to $43.3 million[, missing consensus estimates by $0.84 million,] compared to $11.1 million in the year-ago quarter, primarily driven by the addition of the Anthony's business acquired on November 3, 2021 and additional revenue from new restaurants opened during the period. For the BurgerFi brand, same-store sales decreased 11% and 6% in corporate-owned and franchised locations, respectively. For the Anthony's brand, same-store sales for the third quarter increased 3% over the prior year period.
>
> Restaurant-level operating expenses for the third quarter of 2022 were $35.2 million compared to $7.8 million in the third quarter of 2021, the increase driven by the inclusion of a full quarter of Anthony's operations. For the BurgerFi brand, restaurant-level operating expenses, as a percentage of sales, increased 370 basis points for the third quarter of 2022, compared to the third quarter of 2021, primarily due to losing leverage driven by lower sales. For the Anthony's brand, restaurant-level operating expenses, as a percentage of sales, improved 210 basis points for the third quarter of 2022, compared to the third quarter of 2021, primarily due lower food costs as we are beginning to see a stabilization of commodity costs, especially in chicken wing prices.
>
> (Emphasis added).

55. On this news, BurgerFi's stock price fell $0.24 per share, or 10.57%, to close at $2.03 per share on November 16, 2022.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

57. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired BurgerFi securities publicly traded on NASDAQ during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of BurgerFi, members of the Individual Defendants' immediate families and their

legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

58. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, BurgerFi securities were actively traded on NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

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

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

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

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of BurgerFi;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

- whether the Defendants caused BurgerFi to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of BurgerFi securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

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

- BurgerFi shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- As a public issuer, BurgerFi filed periodic public reports;
- BurgerFi regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

- BurgerFi's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- BurgerFi was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

64. Based on the foregoing, the market for BurgerFi securities promptly digested current information regarding BurgerFi from all publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

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

COUNT I
For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants

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

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

68. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to

disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

69. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of BurgerFi securities during the Class Period.

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

71. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class,

or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other BurgerFi personnel to members of the investing public, including Plaintiff and the Class.

72. As a result of the foregoing, the market price of BurgerFi securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of BurgerFi securities during the Class Period in purchasing BurgerFi securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

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

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

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

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

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

77. During the Class Period, the Individual Defendants participated in the operation and management of BurgerFi, and conducted and participated, directly and indirectly, in the conduct of BurgerFi's business affairs. Because of their senior positions, they knew the adverse non-public information about BurgerFi's false financial statements.

78. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to BurgerFi's financial condition and results of operations, and to correct promptly any public statements issued by BurgerFi which had become materially false or misleading.

79. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which BurgerFi disseminated in the marketplace during the Class Period concerning BurgerFi's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause BurgerFi to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of BurgerFi within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of BurgerFi securities.

80. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by BurgerFi.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

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

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

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

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated:

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