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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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

13 Plaintiff,

14 v.

15 THE CHEESECAKE FACTORY
16 INCORPORATED, DAVID M.
17 OVERTON, and MATTHEW ELIOT
18 CLARK,

19 Defendants.

No.

20 **CLASS ACTION COMPLAINT**
21 **FOR VIOLATIONS OF THE**
22 **FEDERAL SECURITIES**
23 **LAWS**

24 CLASS ACTION

25 (DEMAND FOR JURY TRIAL)

26 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other
27 persons similarly situated, by Plaintiff’s undersigned attorneys, alleges the
28 following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts,
and upon information and belief as to all other matters based on the investigation
conducted by and through Plaintiff’s attorneys, which included, among other things,
a review of U.S. Securities and Exchange Commission (“SEC”) filings The
Cheesecake Factory Incorporated (“Cheesecake Factory” or the “Company”), as

1 well as media and analyst reports about the Company and Company press releases.
2 Plaintiff believes that substantial additional evidentiary support will exist for the
3 allegations set forth herein.

4 **NATURE OF THE ACTION**

5 1. This is a federal securities class action on behalf of a class consisting
6 of all persons and entities other than Defendants who purchased the publicly traded
7 securities of Cheesecake Factory from March 23, 2020 through December 4, 2020,
8 both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable
9 damages caused by Defendants’ violations of the federal securities laws and to
10 pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of
11 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

12 **JURISDICTION AND VENUE**

13 2. The claims asserted herein arise under and pursuant to §§10(b) and
14 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5
15 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

16 3. This Court has jurisdiction over the subject matter of this action under
17 28 U.S.C. §1331 and §27 of the Exchange Act.

18 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
19 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company maintains offices in
20 this district and the alleged misstatements entered and subsequent damages took
21 place within this judicial district.

22 5. In connection with the acts, conduct and other wrongs alleged in this
23 Complaint, Defendants, directly or indirectly, used the means and instrumentalities
24 of interstate commerce, including but not limited to, the United States mail, interstate
25 telephone communications and the facilities of the national securities exchange.
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PARTIES

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

7. Defendant Cheesecake Factory engages in the operation of restaurants. It owns and operates restaurants in the United States and Canada under the brands of The Cheesecake Factory and North Italia; and a collection of Fox Restaurant Concepts, as well as The Cheesecake Factory restaurants operated under licensing agreements internationally. Cheesecake Factory is incorporated in British Columbia Canada with its principal executive offices located in 26901 Malibu Hills Road, Calabasas Hills, Calabasas, CA 91301. The Company’s securities are traded on the NASDAQ under the ticker symbol “CAKE.”

8. Defendant David Overton (“Overton”) has served as Cheesecake Factory’s Chief Executive Officer (“CEO”) and Chairman throughout the Class Period.

9. Defendant Matthew E. Clark (“Clark”) has served as Cheesecake Factory’s Chief Financial Officer (“CFO”) and Executive Vice President throughout the Class Period.

10. Defendants Overton and Clark are sometimes referred to herein as the “Individual Defendants.”

11. 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;

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

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

15 13. The scienter of the Individual Defendants and other employees and
16 agents of the Company is similarly imputed to the Company under *respondeat*
17 *superior* and agency principles.

18 14. The Company and the Individual Defendants are referred to herein,
19 collectively, as the "Defendants."

20 **SUBSTANTIVE ALLEGATIONS**
21 **Materially False and Misleading Statements**

22 15. On March 23, 2020, Cheesecake Factory provided a coronavirus
23 business update via press release, stating, in relevant part:

24 CALABASAS HILLS, Calif., – March 23, 2020 – The Cheesecake
25 Factory Incorporated (NASDAQ: CAKE) today provided a business
26 update related to the impact of COVID-19.

1 All of the Company's restaurants have transitioned to an off-premise
2 operating model as required by state and local officials. The
3 Cheesecake Factory restaurants have a long-standing business in the
4 off-premise channel, with historical sales volumes approaching the size
5 of many stand-alone restaurants, *which is enabling the Company's*
6 *restaurants to operate sustainably at present under this model.*
7 Currently, 27 locations across the Company's concepts, including two
8 The Cheesecake Factory restaurants, are temporarily closed.

9 16. On April 2, 2020, Cheesecake Factory provided preliminary first
10 quarter 2020 sales results, stating, in pertinent part:

11 CALABASAS HILLS, Calif., – April 2, 2020 – The Cheesecake
12 Factory Incorporated (NASDAQ: CAKE) today provided a preliminary
13 first quarter fiscal 2020 sales update given the impact of COVID-19.

14 First quarter fiscal 2020 comparable restaurant sales at The
15 Cheesecake Factory restaurants are expected to be down approximately
16 13%. These results reflect quarter-to-date through February comparable
17 sales growth of approximately 3%, which was above the broader casual
18 dining industry trend during that period. March comparable sales
19 declined approximately 46%, reflecting the impact of COVID-19.

20 The Cheesecake Factory restaurants have a long-standing business in
21 the off-premise channel, which enabled a quick pivot to an off-premise
22 only operating model in all open restaurants as required by state and
23 local officials. The Company has seen off-premise sales recently
24 accelerate approximately 85% since the fiscal fourth quarter 2019 level.
25 On an annualized basis, current off-premise sales would equate to over
26 \$3 million per unit, on average. *The restaurants are operating*
27 *sustainably at present under this model.* Currently, 30 locations across
28 the Company's concepts, including three The Cheesecake Factory
restaurants, are temporarily closed.

17. On June 22, 2020, the Company filed a Form 10-Q for the quarter ended
March 31, 2020 (the "1Q20 10-Q") with the SEC, which provided the Company's
first quarter 2020 financial statements and position. The 1Q20 10-Q was signed by
Defendants Overton and Clark. The 1Q20 10-Q contained signed certifications
pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by Defendants Overton and

1 Clark attesting to the accuracy of financial reporting, the disclosure of any material
2 changes to the Company's internal controls over financial reporting, and the
3 disclosure of all fraud.

4 18. The 1Q20 10-Q stated the following concerning its payments to
5 landlords:

6 Our efforts to address our rent obligations during the COVID-19
7 pandemic are ongoing and our ability to obtain rent concessions will
8 vary by landlord. While we continue to engage in discussions with our
9 landlords, certain of our landlords have alleged that we are in default of
10 our leases with them. If we are unable to reach an agreement with these
11 landlords, we may face eviction proceedings, which could be expensive
to litigate and may jeopardize our ability to continue operations at the
impacted restaurant.

12 19. On August 3, 2020, the Company filed a Form 10-Q for the quarter
13 ended June 30, 2020 (the "2Q20 10-Q") with the SEC, which provided the
14 Company's first quarter 2020 financial statements and position. The 2Q20 10-Q was
15 signed by Defendants Overton and Clark. The 2Q20 10-Q contained signed SOX
16 certifications by Defendants Overton and Clark attesting to the accuracy of financial
17 reporting, the disclosure of any material changes to the Company's internal controls
18 over financial reporting, and the disclosure of all fraud.

19 20. The 2Q20 10-Q stated the following concerning its payments to
20 landlords:

21 Our efforts to address our rent obligations during the COVID-19
22 pandemic are ongoing and our ability to obtain rent concessions has
23 varied by landlord. While we have paid a substantial majority of our
24 rent payment through July after giving effect to various abatement and
25 deferral structures in place for certain lease agreement, certain of our
26 landlords have alleged that we are in default of our leases with them. If
27 we are unable to reach an agreement with these landlords, we may face
28 eviction proceedings and/or incur costs related to litigation which could
be expensive, and may jeopardize our ability to continue operations at
the impacted restaurant. We also may choose to cease operations at
certain restaurants where profitability is especially impacted by

1 challenges related to the COVID-19 pandemic. Should we do so, we
2 will incur significant costs associated with lease terminations and our
winding down of operations at the affected restaurant(s).

3 21. On November 6, 2020, the Company filed a Form 10-Q for the quarter
4 ended September 29, 2020 (the “3Q20 10-Q”) with the SEC, which provided the
5 Company’s first quarter 2020 financial statements and position. The 3Q20 10-Q was
6 signed by Defendants Overton and Clark. The 3Q20 10-Q contained signed SOX
7 certifications by Defendants Overton and Clark attesting to the accuracy of financial
8 reporting, the disclosure of any material changes to the Company’s internal controls
9 over financial reporting, and the disclosure of all fraud.

10 22. The 3Q20 10-Q stated the following concerning its payments to
11 landlords:

12 Our efforts to address our rent obligations during the COVID-19
13 pandemic are ongoing and our ability to obtain rent concessions has
14 varied by landlord. While we have paid a substantial majority of our
15 rent payment through September 2020 after giving effect to various
16 abatement and deferral structures in place for certain lease agreement,
17 certain of our landlords have alleged that we are in default of our leases
18 with them. If we are unable to reach an agreement with these landlords,
19 we may face eviction proceedings and/or incur costs related to litigation
20 which could be expensive and may jeopardize our ability to continue
21 operations at the impacted restaurant. We also may choose to cease
22 operations at certain restaurants where profitability is especially
23 impacted by challenges related to the COVID-19 pandemic. Should we
24 do so, we will incur significant costs associated with lease terminations
25 and our winding down of operations at the affected restaurant(s).

26 23. The statements referenced in ¶¶15-22 above were materially false
27 and/or misleading because they misrepresented and failed to disclose the following
28 adverse facts pertaining to the Company’s business, operational and financial results,
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) internal documents showed that the Company was losing \$6 million in cash per

1 week in March and April; (2) undisclosed to the public, the Company had informed
2 landlords that it would not be able to pay rent in April; and (3) as a result,
3 Defendants' public statements were materially false and/or misleading at all relevant
4 times.

5 The Truth Emerges

6
7 24. On December 4, 2020, the SEC announced that the Company would
8 pay a 125,000 to settle charges levied for making misleading statements. The SEC's
9 press release stated, in pertinent part:

10 Washington D.C., Dec. 4, 2020 — The Securities and Exchange
11 Commission today announced settled charges against The Cheesecake
12 Factory Incorporated for making misleading disclosures about the
13 impact of the COVID-19 pandemic on its business operations and
14 financial condition. The action is the SEC's first charging a public
company for misleading investors about the financial effects of the
pandemic.

15 As set forth in the SEC's order, in its SEC filings on March 23 and April
16 3, 2020, The Cheesecake Factory stated that its restaurants were
17 "operating sustainably" during the COVID-19 pandemic. According to
18 the order, the filings were materially false and misleading because the
19 company's internal documents at the time showed that the company was
20 losing approximately \$6 million in cash per week and that it projected
21 that it had only 16 weeks of cash remaining. The order finds that
22 although the company did not disclose this internal information in its
23 March 23 and April 3 filings, the company did share this information
24 with potential private equity investors or lenders in connection with an
25 effort to seek additional liquidity. The order also finds that, although
the March 23 filing described actions the company had undertaken to
preserve financial flexibility during the pandemic, it failed to disclose
that The Cheesecake Factory had already informed its landlords that it
would not pay rent in April due to the impacts that COVID-19 inflicted
on its business.

26 "During the pandemic, many public companies have discharged their
27 disclosure obligations in a commendable manner, working proactively
28 to keep investors informed of the current and anticipated material

1 impacts of COVID-19 on their operations and financial condition," said
2 SEC Chairman Jay Clayton. "As our local and national response to the
3 pandemic evolves, it is important that issuers continue their proactive,
4 principles-based approach to disclosure, tailoring these disclosures to
5 the firm and industry-specific effects of the pandemic on their business
6 and operations. It is also important that issuers who make materially
7 false or misleading statements regarding the pandemic's impact on their
8 business and operations be held accountable."

9 "When public companies describe for investors the impact of COVID-
10 19 on their business, they must speak accurately," said Stephanie
11 Avakian, Director of the Division of Enforcement. "The Enforcement
12 Division, including the Coronavirus Steering Committee, will continue
13 to scrutinize COVID-related disclosures to ensure that investors receive
14 accurate, timely information, while also giving appropriate credit for
15 prompt and substantial cooperation in investigations."

16 25. On this news, Cheesecake Factory's stock price fell \$0.81 per share, or
17 2%, to close at \$38.62 per share on December 4, 2020, damaging investors.

18 26. As a result of Defendants' wrongful acts and omissions, and the
19 precipitous decline in the market value of the Company's securities, Plaintiff and
20 other Class members have suffered significant losses and damages.

21 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

- 16 (a) Defendants made public misrepresentations or failed to disclose
17 material facts during the Class Period;
18 (b) the omissions and misrepresentations were material;
19 (c) the Company's securities are traded in efficient markets;
20 (d) the Company's securities were liquid and traded with moderate to
21 heavy volume during the Class Period;
22 (e) the Company traded on the NASDAQ, and was covered by multiple
23 analysts;
24 (f) the misrepresentations and omissions alleged would tend to induce a
25 reasonable investor to misjudge the value of the Company's securities;
26 Plaintiff and members of the Class purchased and/or sold the
27 Company's securities between the time the Defendants failed to
28 disclose or misrepresented material facts and the time the true facts

1 were disclosed, without knowledge of the omitted or misrepresented
2 facts; and

3 (g) Unexpected material news about the Company was rapidly reflected in
4 and incorporated into the Company's stock price during the Class
5 Period.

6 34. Based upon the foregoing, Plaintiff and the members of the Class are
7 entitled to a presumption of reliance upon the integrity of the market.

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

13 **COUNT I**

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

15 **Against All Defendants**

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

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

21 38. During the Class Period, the Company and the Individual Defendants,
22 individually and in concert, directly or indirectly, disseminated or approved the false
23 statements specified above, which they knew or deliberately disregarded were
24 misleading in that they contained misrepresentations and failed to disclose material
25 facts necessary in order to make the statements made, in light of the circumstances
26 under which they were made, not misleading.
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1 39. The Company and the Individual Defendants violated §10(b) of the
2 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to
3 defraud; made untrue statements of material facts or omitted to state material facts
4 necessary in order to make the statements made, in light of the circumstances under
5 which they were made, not misleading; and/or engaged in acts, practices and a course
6 of business that operated as a fraud or deceit upon plaintiff and others similarly
7 situated in connection with their purchases of the Company's securities during the
8 Class Period.

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

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

28

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

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

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

17 45. By reason of the foregoing, the Company and the Individual Defendants
18 have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder
19 and are liable to the Plaintiff and the other members of the Class for substantial
20 damages which they suffered in connection with their purchases of the Company's
21 securities during the Class Period.

22 **COUNT II**

23 **Violation of Section 20(a) of The Exchange Act**

24 **Against The Individual Defendants**

25 46. Plaintiff repeats and realleges each and every allegation contained in
26 the foregoing paragraphs as if fully set forth herein.
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1 47. During the Class Period, the Individual Defendants participated in the
2 operation and management of the Company, and conducted and participated, directly
3 and indirectly, in the conduct of the Company’s business affairs. Because of their
4 senior positions, they knew the adverse non-public information regarding the
5 Company’s business practices.

6 48. As officers and/or directors of a publicly owned company, the
7 Individual Defendants had a duty to disseminate accurate and truthful information
8 with respect to the Company’s financial condition and results of operations, and to
9 correct promptly any public statements issued by the Company which had become
10 materially false or misleading.

11 49. Because of their positions of control and authority as senior officers,
12 the Individual Defendants were able to, and did, control the contents of the various
13 reports, press releases and public filings which the Company disseminated in the
14 marketplace during the Class Period. Throughout the Class Period, the Individual
15 Defendants exercised their power and authority to cause the Company to engage in
16 the wrongful acts complained of herein. The Individual Defendants therefore, were
17 “controlling persons” of the Company within the meaning of Section 20(a) of the
18 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
19 which artificially inflated the market price of the Company’s securities.

20 50. Each of the Individual Defendants, therefore, acted as a controlling
21 person of the Company. By reason of their senior management positions and/or
22 being directors of the Company, each of the Individual Defendants had the power to
23 direct the actions of, and exercised the same to cause, the Company to engage in the
24 unlawful acts and conduct complained of herein. Each of the Individual Defendants
25 exercised control over the general operations of the Company and possessed the
26 power to control the specific activities which comprise the primary violations about
27 which Plaintiff and the other members of the Class complain.

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