

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN D. STONE,

Plaintiff,

v.

JAMBA, INC., MICHAEL A. DEPATIE,
LORNA DONATONE, RICHARD L.
FEDERICO, ANDREW R. HEYER,
DAVID A. PACE, JAMES C. PAPPAS,
GLENN W. WELLING, JAY MERGER
SUB, INC., and FOCUS BRANDS INC.

Defendants.

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff John D. Stone (“Plaintiff”), by his undersigned attorneys, alleges upon information and belief, except for his own acts, which are alleged on knowledge, as follows:

INTRODUCTION

1. Plaintiff brings this action against Jamba, Inc., (“Jamba” or the “Company”) and Jamba’s Board of Directors (collectively, the “Board” or the “Individual Defendants,” as further defined below) for violations of Section 14(e) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(e) and 78t(a). Specifically, Defendants solicit the tendering of stockholder shares in connection with the proposed acquisition of the Company by Focus Brands Inc. (“Parent”), an affiliate of the Atlanta-based private equity firm, Roark Capital Group (“Roark”), and Parent’s direct wholly owned subsidiary Jay Merger Sub, Inc. (“Merger Sub”) (together with Parent, “Focus”), through a recommendation statement filed with the U.S. Securities and Exchange Commission (the “SEC”), that omits material facts necessary to make

the statements therein not false or misleading. Stockholders need this material information to decide whether to tender their shares or pursue their appraisal rights.

2. On August 2, 2018, the Company announced that it had entered into a definitive agreement (the “Merger Agreement”), by which Focus would commence a tender offer (the “Tender Offer”) to acquire all of the outstanding shares of Jamba common stock for \$13.00 per share in cash (the “Merger Consideration”), in a transaction valued at approximately \$200 million (the “Proposed Transaction”). The Tender Offer, commenced on August 15, 2018, and is set to expire one minute following 11:59 p.m. (12:00 midnight), Eastern Time, on September 12, 2018.

3. In connection with the commencement of the Tender Offer, on August 15, 2018, the Company filed a Recommendation Statement on Schedule 14D-9 (the “Recommendation Statement”) with the SEC. The Recommendation Statement is materially deficient and misleading because, inter alia, it omits to disclose material information concerning: (i) the sales process leading up to the Proposed Transaction; (ii) Jamba’s financial projections; (iii) the valuation analyses performed by North Point; and (iv) conflicts of interest involving North Point. Without this material information, Jamba stockholders will be forced to decide whether or not to tender their shares based upon materially incomplete and misleading information. The failure to adequately disclose such material information constitutes a violation of §§ 14(e) and 20(a) of the Exchange Act.

4. For these reasons and as set forth in detail herein, the Individual Defendants have violated federal securities laws. Accordingly, Plaintiff seeks to enjoin the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the

Individual Defendants' violations of these laws. Judicial intervention is warranted here to rectify existing and future irreparable harm to the Company's stockholders.

JURISDICTION AND VENUE

5. The claims asserted herein arise under §§ 14(e) and 20(a) of the Exchange Act, 15 U.S.C. § 78aa. The Court has subject matter jurisdiction pursuant to § 27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. The Court has personal jurisdiction over each of the Defendants because each conducts business in and maintains operations in this District or is an individual who either is present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took effect under the laws in this District; (ii) Jamba is incorporated in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs complained of herein occurred under the laws of this District; (iv) relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

8. Plaintiff is, and has been at all relevant times, the owner of shares of Jamba common stock.

9. Defendant Richard L. Frederico (“Frederico”) is the Chairman of the Board of Jamba. He has been a member of the Company’s Board of Directors since November 2006.

10. Defendant David A. Pace (“Pace”) is the Chief Executive Officer (“CEO”) of Jamba. He has served as a director of the Company since 2012.

11. Defendant Michael A. Depatie (“Depatie”) has served as a director of the Company since 2010.

12. Defendant Lorna Donatone (“Donatone”) has served as a director of the Company since 2013.

13. Defendant Andrew R. Heyer (“Heyer”) has served as a director of the Company since 2009.

14. Defendant James C. Pappas (“Pappas”) has served as a director of the Company since 2015.

15. Defendant Glenn W. Welling (“Welling”) has served as a director of the Company since 2015.

16. Defendants Frederico, Pace, Depatie, Donatone, Heyer, Pappas, and Welling are collectively referred to herein as the “Board” or the “Individual Defendants.”

17. Defendant Jamba, incorporated in Delaware, is a global healthy lifestyle brand that inspires and simplifies healthful living through freshly blended whole fruit and vegetable smoothies, bowls, juices, cold-pressed shots, boosts, snacks, and meal replacements. Jamba’s blends are made with premium ingredients free of artificial flavors and preservatives, and the Company operates more than 800 Jamba Juice® locations worldwide. The Company maintains its principal executive offices at 3001 Dallas Parkway Frisco, TX 75034. Jamba common stock

is traded on the NASDAQ under the ticker symbol “JMBA.” Defendant Jamba and the Individual Defendants are referred to herein as the Defendants.”

18. Defendant Jay Merger Sub, Inc., is a Delaware corporation and a direct wholly-owned subsidiary of Parent, and is a party to the Merger Agreement. Defendant Merger Sub is named as a defendant herein solely for the purpose of providing full and complete relief.

19. Defendant Parent is a Delaware corporation, and is a party to the Merger Agreement. Focus is an affiliate of the Atlanta-based private equity firm, Roark, and is a leading developer of global multi-channel foodservice brands. Focus, through its affiliate brands, is the franchisor and operator of more than 5,000 restaurants, cafes, ice cream shoppes and bakeries in the United States, the District of Columbia, Puerto Rico and over 50 foreign countries under the brand names Carvel[®], Cinnabon[®], Schlotzsky’s[®], Moe’s Southwest Grill[®], Auntie Anne’s[®] and McAlister’s Deli[®], as well as Seattle’s Best Coffee[®] on certain military bases and in certain international markets. The company maintains its headquarters at 5620 Glenridge Dr. NE, Atlanta, GA 30342. Focus is named as a defendant herein solely for the purpose of providing full and complete relief.

FURTHER SUBSTANTIVE ALLEGATIONS

Company Background

20. Beginning in 2016, Jamba held discussions with representatives of “Party A,” regarding a potential partnership or other strategic transaction. These preliminary discussions soon evolved into an exploration of the feasibility of a strategic transaction, prompting the sharing of confidential information between the two entities. Jamba entered into a non-disclosure agreement with Party A, dated July 7, 2017, and during this period of time, Jamba retained North Point as its financial advisor on a limited engagement focused on a potential transaction with Party A.

21. At an undisclosed point in time, these discussions between Party A and Jamba, which had yet to progress towards any specific offer by either Party A or Jamba, ended abruptly.

22. While discussions between Party A and Jamba failed to progress towards any specific offer by either Party A or Jamba at that time, Jamba was not without options. In fact, during this same period of time, an undisclosed member of Jamba's board was simultaneously pursuing a strategic transaction with a different potential acquirer.

23. The Recommendation Statement discloses that prior to December 2017, an undisclosed member of the Jamba Board held a number of discussions with a representative of Focus regarding a potential partnership or other strategic opportunity with Jamba. Later, in December 2017, this undisclosed member of Jamba's board, after consultation with other members of the Jamba Board, suggested to the representative of Focus that the two entities engage in a preliminary discussion concerning a potential partnership or other strategic opportunities.

24. On January 5, 2018, a representative of Focus contacted the Jamba Board member to schedule a telephonic meeting to discuss such an arrangement. Throughout January and February, representatives of Focus and representatives of Jamba held several discussions regarding potential partnership or other strategic opportunities.

25. On March 7, 2018, during a regularly scheduled meeting of the Jamba Board, the Board directed management to engage North Point as the Company's financial advisor in light of the potential strategic alternative process.

26. During a follow-up meeting on March 26, 2018, the Board decided that it was in the best interests of Jamba stockholders to undertake a strategic alternative process to determine

whether there might be third parties with an interest in acquiring Jamba at a valuation that would deliver more value to the stockholders than continuing to operate Jamba on a standalone basis.

27. During the March 26, 2018 Board meeting, the Board established a special committee, consisting of Board members Michael Depatie, Andrew R. Heyer and Glenn W. Welling (the “Special Committee”), to assist and provide management with guidance and direction with respect to Jamba's strategic alternative process and related matters, with any formal approvals relating to such matters to be subsequently presented for approval to the Jamba Board.

28. On March 30, 2018, Jamba executed the engagement letter with North Point.

29. That same day, Jamba entered into a mutual non-disclosure agreement with Focus.

30. In April 2018, at the direction of the Jamba Board, North Point contacted 190 parties, comprised of 24 strategic buyers, including Focus, Party A and Party B, and 166 financial buyers. Of the parties contacted, 87 entered into a mutual non-disclosure agreement with Jamba and were invited to review a confidential information memorandum concerning Jamba in anticipation of their potential participation in a strategic alternative process.

31. All 87 non-disclosure agreements contained a standstill provision that prohibited the prospective bidder from, unless specifically invited in writing by Jamba, seeking to effect or participate in a merger or other business combination with Jamba or acquiring any Jamba securities, and prohibited any requests for a waiver of the standstill provision. Under the terms of each non-disclosure agreement, the standstill provision terminated automatically upon the public announcement of the execution of a merger agreement by Jamba with a third party.

32. Of the 87 parties that executed nondisclosure agreements, Jamba held initial meetings and calls with 21 entities, including Focus and Party A, throughout the months of April and May.

33. On May 14 and 15, 2018, representatives of North Point, at the direction of the Special Committee, delivered an initial bid instruction letter on behalf of Jamba to 78 of the prospective bidders which had expressed continued interest in exploring a potential transaction with Jamba, including Focus and Party A. North Point's letter requested that preliminary offers be submitted by May 24, 2018.

34. On or about May 24, 2018, 15 parties, including Focus and Party A, delivered indications of interest, ranging from \$9.34 to \$13.62 per share. Despite the submission of 15 indications of interest, the Recommendation Statement only discloses the respective offers that Jamba received from Party A and Focus. Focus' preliminary non-binding indication of interest reflected a proposed valuation of \$11.00 to \$12.50 per share, and Party A's non-binding indication of interest reflected a proposed valuation of \$12.21 to \$13.62 per share.

35. These submissions were reviewed by the Jamba Board during a special telephonic meeting on May 29, 2018, following which the Board instructed North Point to continue to engage with eleven of the parties that submitted an initial indication of interest based upon the highest top end of the ranges of bids submitted.

36. Throughout the month of June, North Point contacted the 15 parties who had delivered preliminary non-binding indications of interest. Of the 15 parties that were contacted, 9 parties elected to attend meetings with Jamba's management and were provided access to an electronic data room that contained certain financial and business due diligence information.

37. On July 13, 2018, Party A submitted a revised proposal to acquire Jamba for \$12.75 per share. That same day, Focus refined its initial proposal to acquire Jamba to reflect a proposed valuation of \$12.50 per share and provided a term sheet of material comments to the draft merger agreement. The comments indicated an expectation that the termination fee would equal 4.0% of the equity value of the transaction and that Engaged Capital, LLC (“Engaged”), Jamba’s largest stockholder, would deliver a tender and support agreement at the time of signing the merger agreement.

38. Four days later, Party B submitted an initial non-binding proposal indicating a purchase price range between \$13.00 and \$13.25.

39. Throughout July, Jamba’s representatives and management continued to conduct due diligence and negotiate the terms of the merger with the various interested parties.

40. These efforts were later reviewed by the Board during a July 27, 2018 Board meeting at which time the Board discussed the risks and challenges of delaying any process for Party A’s equity sponsor to complete its due diligence or for Party B to complete its due diligence, the likelihood of either Party A or Party B being able to consummate a transaction at their respective offer prices after conducting due diligence, and the risk of losing Focus’ offer in further delaying the process to allow for Party A and Party B to complete their due diligence. In light of these concerns, the Board directed North Point to communicate to Focus that Focus’ current offer was inadequate, and to encourage Party A and Party B to expedite their process.

41. On July 29, 2018, representatives of Focus sent a revised draft of the merger agreement to Jamba. The revised draft contemplated a termination fee of 4.0% of the equity value of the transaction and provided for a reverse termination fee of 5.25% of the equity value of the transaction.

42. That same day, a representative of Focus informed a representative of North Point that Focus was willing to increase its offer price to \$13.00 per share, payable in cash, and that this offer price represented Focus' best and final offer.

43. Between July 29 and July 31, 2018, representatives of North Point contacted Focus on several occasions to discuss whether Focus would be willing to increase its offer price. In each instance the representative of Focus declined to raise Focus' offer price further.

44. On July 30, 2018, the Special Committee held a telephonic meeting, attended by members of management and representatives of North Point, during which the Special Committee members discussed presenting Focus' current offer for consideration to the full Jamba Board at the upcoming regularly scheduled Jamba Board meeting scheduled for August 1, 2018.

45. On July 31, 2018, Focus communicated to North Point that its existing offer of \$13.00 per share would expire on August 1, 2018.

46. With the deadline hovering over the Board's deliberations, on August 1, 2018, at a regularly scheduled meeting of the Jamba Board, the Board met to discuss the terms of the proposed transaction with Focus. During the meeting, the Jamba Board instructed representatives from North Point to contact Focus to seek an increase in the offer price to \$13.25, to lower the termination fee, and to increase the reverse termination fee. During a subsequent phone call between representatives of North Point and a representative of Focus, the representative of Focus reiterated that \$13.00 was Focus' best and final offer, but that Focus would agree to a termination fee of 3.5% of the equity value of the transaction and a reverse termination fee of 5.5% of the equity value of the transaction.

47. With this revised offer in place, the Board discussed the status of the pending offers from Party A and Party B, the likelihood of either Party A or Party B being able to consummate a transaction at all or agreeing to a price higher than that of Focus after conducting their diligence and the risk of losing Focus' offer in further delaying the process to allow for Party A and Party B to complete their due diligence. Shortly thereafter, North Point delivered an oral opinion to the Jamba Board, confirmed by delivery of a written opinion dated as of August 1, 2018, that the \$13.00 per share offer price and merger consideration was fair, from a financial point of view, to holders of Jamba common stock.

48. That same day the Board, following the recommendation of the Special Committee, determined that the merger agreement and the transactions contemplated thereby, including the offer and the merger, were advisable to, and in the best interests of Jamba and its stockholders, and resolved to recommend that the stockholders of Jamba tender their shares in connection with the offer.

49. Following the board meeting, the definitive merger agreement was executed and publicly announced prior to the opening of markets in the United States on August 2, 2018.

The Proposed Transaction

50. In a press release dated August 2, 2018, Focus announced that it had entered into a Merger Agreement with Jamba pursuant to which Focus will commence a Tender Offer to acquire all of the outstanding shares of Jamba for \$13.00 per share in cash.

51. The press release states in pertinent part:

ATLANTA & FRISCO, Texas--(BUSINESS WIRE)--Focus Brands Inc. ("FBI") and Jamba, Inc. (Nasdaq:JMBA) ("Jamba") today announced that the companies have entered into a definitive merger agreement under which FBI will acquire Jamba for \$13.00 per share in cash, in a transaction valued at approximately \$200 million.

Statement by Steve DeSutter, Chief Executive Officer of Focus Brands Inc.

"Benefiting from an extremely loyal customer base and strong franchise operators, Jamba Juice is one of the category leaders in the fast growing smoothie and juice category," said Steve DeSutter, CEO of Focus Brands Inc. "We are excited to welcome Jamba Juice with such an iconic heritage into our family of well-known and highly loved 'fan favorite' brands."

Statement by Dave Pace, Chief Executive Officer of Jamba, Inc.

"We are delighted to have reached this agreement with Focus Brands and are confident that it will result in a positive outcome for our guests, our franchisees and our employees," said Dave Pace, CEO of Jamba, Inc. "Over the last few years, we have worked hard to strengthen our foundation and reposition this iconic brand for the future. Partnering with Focus Brands will allow us to build on this work and further accelerate the Company's growth."

Transaction Details

Under the terms of the agreement, a subsidiary of FBI will commence a tender offer to purchase all of the outstanding shares of Jamba common stock for \$13.00 per share in cash. The tender offer is subject to customary conditions, including antitrust clearance and the tender of a majority of the outstanding shares of Jamba common stock. Following successful completion of the tender offer, FBI would acquire all remaining shares not tendered in the offer through a merger at the same price as in the tender offer. The transaction is expected to close during the third quarter of 2018 and will be funded by FBI using cash on hand and available borrowing capacity under its existing credit facilities.

Following the close of the transaction, Jamba will be a privately-held subsidiary of FBI and will continue to be operated as an independent brand.

Focus Brands is majority owned by affiliates of Roark, an Atlanta based private equity firm that focuses on investing in franchised and multi-unit businesses in the restaurant, retail and other consumer sectors.

Certain funds advised by Engaged Capital, LLC and Indus Capital Partners, LLC, which collectively own approximately 27% of the outstanding shares of Jamba, have entered into agreements to tender their shares in the tender offer.

The Recommendation Statement Misleads Jamba Stockholders by Omitting Material Information

52. As noted previously, on August 15, 2018, the Company filed the Recommendation Statement with the SEC in support of the Tender Offer commenced by Focus. As alleged below and elsewhere herein, the Recommendation Statement contains material

misrepresentations and omissions of fact that must be cured to allow Jamba stockholders to make an informed decision with regard to the tendering of their shares. Designed to convince shareholders to tender their shares, the Recommendation Statement is rendered misleading by the omission of critical information concerning: (i) the sales process leading up to the Proposed Transaction; (ii) Jamba's financial projections; (iii) the valuation analyses performed by North Point; and (iv) North Point's potential conflicts of interest. This material information directly impacts the Company's expected future value as a standalone entity, and its omission renders the statements made materially misleading and, if disclosed, would significantly alter the total mix of information available to Jamba's stockholders.

Material Omissions Relating to the Sales Process

53. With regard to the omission of material information relating to the sale process leading up to the Proposed Transaction, the Recommendation Statement indicates that the Board formed a Special Committee composed of Defendants Michael Depatie, Andrew R. Heyer and Glenn W. Welling, and delegated to the Special Committee the authority to assist and provide management with guidance and direction with respect to Jamba's strategic alternative process and related matters. In light of the fact that the discussions between Jamba and Focus were triggered through the unilateral efforts of an undisclosed member of the Jamba Board, the Recommendation Statement must disclose whether this Board member was also a member of the special committee. Here, by failing to disclose the identity of this Board member, Jamba stockholders are left with an incomplete picture as to the alleged independence of the Special Committee.

54. The omission of this information renders statements in the "*Background of the Merger*" and "*Reasons for Recommendation*" sections of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act. The Recommendation

Statement notes that the “resolutions approving the Merger Agreement were unanimously approved by the Jamba Board, which is comprised of a majority of independent directors who are neither affiliated with Purchaser nor employees of Jamba or any of its subsidiaries.” Recommendation Statement at 29. However, without further information regarding these early communications between Focus and an undisclosed member of Jamba’s board, Plaintiff and his fellow Jamba stockholders are unable to fully evaluate the independence of the Special Committee and whether the Company’s decision to pursue a transaction, at a price lower than what was being proposed in competing indications of interest, was free of conflicts and undue influence.

Potential Conflicts on the Part of North Point

55. With regard to the potential conflicts of interest faced by North Point, the Recommendation Statement fails to adequately disclose material information concerning the prior relationship between the financial advisor and Roark.

56. Focus is an affiliate of Roark. As a result of the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives, full disclosure of investment banker compensation and all potential conflicts is necessary for stockholders to have a materially complete sense of the conflicts of interests operating in the background. As noted on Page 23 of the Recommendation Statement, on July 27, 2018:

Representatives of North Point advised the Jamba Board of its past engagements with Parent, Party A and the equity sponsor of Party A, noting that North Point had not received compensation from Party A in the past, nor from Parent for services rendered in the past two years, but had received compensation from the equity sponsor of Party A for services rendered in the past two years.

57. This statement is materially misleading. A financial advisor’s own proprietary financial interest in a transaction must be carefully considered when assessing how much

credence to give its analyses and opinions. While the Recommendation Statement notes the past relationship between North Point and Parent, the Recommendation Statement omits to disclose the past relationship between North Point and Roark. Here, reasonable shareholder would want to know what important economic motivations that the advisor, employed by a board to assess the fairness of the merger to the shareholders, might have. Accordingly, the Recommendation Statement must disclose whether North Point performed **any** work for Roark for which it received any fees. Focus is an affiliate of Roark, and the current statement leaves open the possibility that North Point may have received fees from Roark with regard to other similar acquisitions. Accordingly, without full disclosure of any past work done by North Point for Roark in the last two years, and any fees received for such work, stockholders may be materially misled as to North Point's potential conflicts of interest.

Material Omissions Concerning the Company's Financial Projections

58. With respect to Jamba's projected financial information, the Recommendation Statement omits material information pertaining to the financial projections, and the valuation analyses performed by the Board's financial advisor in connection with the Proposed Transaction.

59. As disclosed in the Recommendation Statement, in connection with its evaluation of the mergers, Jamba's management prepared certain unaudited internal financial forecasts with respect to Jamba that was reviewed by the Board and North Point in connection with its preparation of its fairness opinion (the "Management Projections"). However, the prospective financial information provided in the Recommendation Statement fails to disclose the company's unlevered free cash flow. Free cash flow is one of the most important metrics that a stockholder

can use to ascertain the operating value of a company, and its use in a number of valuation analyses is central to valuing a company, especially in the context of a merger.

60. In detailing North Point's Discounted Cash Flow Analysis ("DCF") of Jamba, North Point used Jamba's Management Projections for various operational metrics, revenue, and earnings for the remainder of fiscal year 2018 and for fiscal years 2019 through 2023. Working from the Management Projections, North Point then prepared base case projections (the "North Point Projections") that did not assume the successful execution of management's business. North Point then performed two DCF analyses using both the Management Projections and the North Point Projections. Despite performing two DCF analyses using both Management Projections and the North Point Projections, the Recommendation Statement fails to disclose the cash flow projections that were calculated and used in either analysis. Furthermore, only one of the two DCF analyses is presented in the Recommendation Statement. In explaining away this discrepancy, the Recommendation Statement notes that "[u]pon discussion, the Jamba Board decided that the base case was the more realistic projection and the more appropriate basis for a discounted cash flow analysis, given the risks to the successful execution of the management plan . . . and that using two discounted cash flow analyses to analyze and present the proposed transaction may lead to confusion." Recommendation Statement at 37.

61. Here, the only confusion to Jamba stockholders stems from the Boards decision to shield values for free cash flow, one of the most important metrics that a stockholder can use to ascertain the operating value of a company, from stockholders.

Material Omissions Concerning the Financial Analyses of Jamba

62. With respect North Point's financial analyses of the Proposed Transaction, the Recommendation Statement details the financial advisor's fairness opinion and the various

valuation analyses performed to render such opinion, but omits to disclose necessary underlying data, support for conclusions, or the existence of, or basis for, underlying assumptions.

63. Specifically, with respect to North Point's *Comparable Precedent Transaction Analysis*, the Recommendation Statement omits to disclose the individual multiples and financial metrics for each transaction observed by North Point in its analysis.

64. Furthermore, North Point's *Discounted Cash Flow Analysis* is missing several key components that North Point used in its analysis. Specifically, with respect to North Point's *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose: (i) the calculated unlevered free cash flows used by North Point in the analysis and all underlying line items; (ii) the inputs and assumptions comprising North Point's analysis of Jamba's Weighted Average Cost of Capital ("WACC") and research of historical global private equity median internal rates of return ("IRRs") that were then used in the selection of discount rates of 9.4% to 14.4%; (iii) the range of illustrative terminal asset values of the Company.

65. Finally, as noted above, North Point performed two separate DCF analyses using both the Management Projections and the North Point Projections. However, Jamba shareholders were only provided the DCF analysis utilizing the North Point Projections, the same set of projections which had curiously been adjusted downward to reflect "the risk that the full benefits of the management case may not be achieved for a variety of reasons." The resulting implied equity values per share of this analysis ranged from \$12.60 to \$17.09, barely justifying the per share consideration to be paid pursuant to the Merger Agreement of \$13.00. Conversely, the only details in the Recommendation Statement concerning the results of a DCF analysis using the Management Projections, is a single sentence on page 37 of the Recommendation Statement that alludes to a significantly higher valuation of Jamba:

The implied prices per share of the Jamba common stock were higher for the analysis based on the management case (which, as noted, contemplated the successful execution of all aspects of the management's business and operational plan) than for the analysis based on the base case.

66. The DCF analysis based on the Management Projections utilized the same set of projections that had been widely disseminated to potential bidders in the sales process. The results of this DCF analysis evidenced a higher valuation of Jamba than the DCF analysis utilizing the North Point Projections, but the results of this analysis have not been disclosed to Jamba stockholders. Accordingly, this analysis is material to Jamba stockholders as it would permit them to properly evaluate Jamba and the consideration that they stand to receive in the Tender Offer.

67. When a bankers' endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses are crucial to a fair presentation of the material facts. Furthermore, the disclosure of projected financial information provides stockholders with the best basis to project the future financial performance of a company, and allows stockholders to understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Here, the Management Projections, which had been disclosed to potential bidders in the sales process, were provided to shareholders but the discounted cash flow information utilizing this information was not and the Recommendation Statement omits to detail the cash flow calculations that were actually used in the analysis. This information is therefore material, and must be disclosed if Jamba stockholders are to make a fully informed decision. The omission of this information renders the statements made concerning the financial advisor's analyses and opinions materially misleading.

68. Without such undisclosed information, Jamba stockholders cannot evaluate for themselves whether the financial analyses performed by the financial advisor was based on reliable inputs and assumptions or whether they were prepared with an eye toward ensuring that a positive fairness opinion could be rendered in connection with the Proposed Transaction. In other words, full disclosure of the omissions identified above is required in order to ensure that stockholders can evaluate the extent to which North Point's opinions and analyses should factor into their decision whether to tender their shares or seek appraisal.

69. Based on the foregoing, the Recommendation Statement violates Section 14 of the Exchange Act and applicable SEC regulations by materially misleading Jamba stockholders. Jamba public shareholders lack critical information necessary to evaluate the Proposed Transaction. Moreover, without the key financial information and related disclosures, Jamba public shareholders cannot gauge the accuracy and reliability of the financial analyses performed by North Point, and whether they can reasonably rely on North Point's fairness opinion.

70. Without disclosure of the above referenced information, the Recommendation Statement violates SEC regulations and materially misleads Jamba stockholders. Accordingly, Plaintiff seeks, among other things, the following relief: (i) enjoinder of the Proposed Transaction; or (ii) rescission of the Proposed Transaction in the event that it is consummated and to recover damages resulting from Defendants' misconduct.

CLAIMS FOR RELIEF

COUNT I

Claims Against All Defendants for Violations of § 14(e) of the Securities Exchange Act of 1934

71. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

72. Section 14(e) of the Exchange Act provides that it is unlawful “for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading...” 15 U.S.C. § 78n(e).

73. As discussed above, Jamba filed and delivered the Recommendation Statement to its stockholders, which defendants knew or recklessly disregarded contained material omissions and misstatements as set forth above.

74. Defendants violated § 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in connection with the tender offer commenced in conjunction with the Proposed Transaction. Defendants knew or recklessly disregarded that the Recommendation Statement 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.

75. The Recommendation Statement was prepared, reviewed and/or disseminated by defendants. It misrepresented and/or omitted material facts, in connection with the Merger as set forth above.

76. In so doing, defendants made untrue statements of material facts and omitted material facts necessary to make the statements that were made not misleading in violation of § 14(e) of the Exchange Act. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Recommendation Statement, defendants were aware of this information and their obligation to disclose this information in the Recommendation Statement.

77. The omissions and incomplete and misleading statements in the Recommendation Statement are material in that a reasonable stockholder would consider them important in deciding whether to tender their shares or seek appraisal. In addition, a reasonable investor would view the information identified above which has been omitted from the Recommendation Statement as altering the “total mix” of information made available to stockholders.

78. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading.

79. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

COUNT II

Against the Individual Defendants for Violations of § 20(a) of the 1934 Act

80. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

81. The Individual Defendants acted as controlling persons of Jamba within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Jamba and participation in and/or awareness of the Company’s operations and/or intimate knowledge of the false statements contained in the Recommendation

Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

82. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

83. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Recommendation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Recommendation Statement.

84. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the 1934 Act.

85. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14 of the 1934 Act and Rule 14d-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, Plaintiff is threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendants jointly and severally, as follows:

- (A) declaring that the Recommendation Statement is materially false or misleading;
- (B) enjoining, preliminarily and permanently, the Proposed Transaction;
- (C) in the event that the transaction is consummated before the entry of this Court's final judgment, rescinding it or awarding Plaintiff rescissory damages;
- (D) directing that Defendants account to Plaintiff for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties.
- (E) awarding Plaintiff the costs of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and
- (F) granting Plaintiff such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: August 23, 2018

O'KELLY ERNST & JOYCE, LLC

/s/ Ryan M. Ernst

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