

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

ROBERT LOWINGER, on Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

JAMBA, INC., DAVID A. PACE,  
RICHARD L. FEDERICO, MICHAEL A.  
DEPATIE, LORNA DONATONE,  
ANDREW R. HEYER, JAMES C. PAPPAS,  
AND GLENN W. WELLING,

Defendants.

Case No.: \_\_\_\_\_

CLASS ACTION

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY DEMANDED**

Plaintiff Robert Lowinger (“Plaintiff”), individually on behalf of himself and all others similarly situated, by his undersigned attorneys, alleges the following based upon personal knowledge as to his own acts and information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, among other things, a review of Defendants’ public documents, conference calls and announcements, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Jamba, Inc. (“Jamba” or the “Company”), advisories about the Company and its proposed acquisition, as described below.

**NATURE OF THE ACTION**

1. This is a federal securities class action brought pursuant to Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14d-9, 17 C.F.R. §240.14d- 9(d) (“Rule 14d-9”), to enjoin the expiration of a tender offer (the “Offer”) which, if completed, will result in Focus Brands Inc., through its affiliate Jay Merger Sub, Inc.

(“Merger Sub” and collectively with Focus Brands Inc., “Parent” or “FBI”) acquiring Jamba (the “Proposed Transaction”).

2. On August 2, 2018, FBI and Jamba issued a joint press release announcing that they had entered into an Agreement and Plan of Merger, dated August 1, 2018 (the “Merger Agreement”), pursuant to which FBI will acquire Jamba for \$13.00 per share in cash (the “Offer Price”), in a transaction valued at approximately \$200 million.

3. Pursuant to the Merger Agreement, FBI commenced the Offer on August 15, 2018. The Offer is scheduled to expire at 11:59 p.m., Eastern Time, on September 12, 2018 (the “Expiration Time”).

4. On August 15, 2018, Jamba filed, with the SEC, a Solicitation/Recommendation Statement under Section 14(d)(4) of the Securities Exchange Act of 1934 on Schedule 14D-9 (the “Recommendation Statement”) which recommends that Jamba’s stockholders tender their shares in favor of the Proposed Transaction. The Recommendation Statement omits or misrepresents material information regarding, among other things: (a) North Point’s potential conflicts of interest; and (b) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by North Point. The failure to adequately disclose such material information constitutes a violation of the Exchange Act.

5. The Proposed Transaction proposes to unlawfully divest Jamba’s public stockholders of valuable Company assets without fully disclosing all material information to them. As a result, Jamba stockholders are unable to make a fully informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal, in violation of the Exchange Act. To remedy Defendants’ violations, Plaintiff seeks to enjoin the expiration of the Offer unless and until such problems are remedied.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this Action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa, 28 U.S.C. §§1331.

7. Venue is proper in this Court pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §1391. Many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District and this is the District in which the Company maintains its principal place of business. In connection with the acts, conduct and other wrongs complained of herein, Defendants used the means and instrumentalities of interstate commerce. Moreover, Jamba is headquartered in this District.

**PARTIES**

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Jamba.

9. Defendant Jamba, Inc., is a Delaware corporation whose registered agent for service of process is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Jamba, Inc., through its subsidiary, Jamba Juice Company, owns, operates, and franchises Jamba Juice stores. The company's restaurants provides blended whole fruit and vegetable smoothies, bowls, juices, cold-pressed shots, boosts, snacks, and meal replacements. As of April 3, 2018, it operated approximately 800 franchised and company-owned Jamba Juice stores worldwide. The company was founded in 1990 and is headquartered at 3001 Dallas Parkway, Suite 140, Frisco, TX 75034. Jamba maintains its publicly available information at <http://www.jambajuice.com>, is incorporated in Delaware, and its common stock is traded on the Nasdaq Stock Market LLC (the "Nasdaq") under the ticker symbol "JMBA."

10. Defendant David A. Pace ("Pace") is and has been Chief Executive Officer and a member of Jamba's Board of Directors (the "Board") at all times relevant hereto.

11. Defendant Richard L. Federico is and has been a member of Jamba's Board, and its Chairman, at all times relevant hereto.

12. Defendant Michael A. Depatie is and has been a member of Jamba's Board at all times relevant hereto.

13. Defendant Lorna Donatone is and has been a member of Jamba's Board at all times relevant hereto.

14. Defendant Andrew R. Heyer is and has been a member of Jamba's Board at all times relevant hereto.

15. Defendant James C. Pappas is and has been a member of Jamba's Board at all times relevant hereto.

16. Defendant Glenn W. Welling is and has been a member of Jamba's Board at all times relevant hereto.

17. The defendants named in ¶¶ 10-16 are collectively referred to herein as the "Board" or the "Individual Defendants."

18. The Individual Defendants, along with defendant Jamba, are collectively referred to herein as "Defendants."

**RELEVANT NON-PARTIES**

19. FBI is an affiliate of the Atlanta-based private equity firm, Roark Capital Group which currently owns the Schlotzsky's, Carvel, Cinnabon, Moe's Southwest Grill, McAlister's Deli, and Auntie Anne's brands. It is based in Sandy Springs, Georgia and operates over 5,000 stores.

20. Merger Sub is a wholly owned subsidiary of Parent and was formed solely for the purpose of facilitating the acquisition of Jamba by Parent. Merger Sub has not carried on any activities other than those related to its formation, the Offer and the Merger. Upon consummation

of the proposed Merger, Merger Sub will merge with and into Jamba and will cease to exist, with Jamba continuing as the Surviving Corporation.

## **SUBSTANTIVE ALLEGATIONS**

### **Background to the Proposed Transaction**

21. In mid-2016, a representative of Party A contacted Jamba regarding a potential partnership or other strategic transaction. Party A and Jamba engaged in a number of preliminary discussions. In mid-2017, these preliminary discussions began to develop towards a desire to explore such a strategic transaction further, including the sharing of confidential information with each other. Jamba entered into a non-disclosure agreement with Party A dated July 7, 2017. During this time, Jamba retained North Point Advisors LLC (“North Point”), as its financial advisor on a limited engagement focused on a potential transaction with Party A. Party A and Jamba each opened an electronic data room, provided the other party with access to confidential information and held initial confidential discussions. However, such discussions with Party A did not progress towards any specific offer by either Party A or Jamba.

22. From time to time, over the years, a representative of Parent had expressed to a member of the Jamba Board an interest in a potential partnership or other strategic opportunity with Jamba. According to Jamba, in December 2017, in light of such historical interest and the Jamba Board’s upcoming regular quarterly board meeting scheduled for March 7, 2018 at which the Jamba Board planned to discuss a strategic review, including a potential broader strategic sale process, after consultation with other members of the Jamba Board, that Jamba Board member suggested to the representative of Parent, who had previously expressed interest in a possible transaction, an introduction of representatives of Parent to Jamba for a preliminary discussion of potential partnership or other strategic opportunities.

23. On January 5, 2018, a representative of Parent contacted the Jamba Board member, who had previously been approached by a representative of Parent, to schedule a telephonic meeting to discuss such an introduction.

24. On January 9, 2018, representatives of Parent held a telephonic meeting to discuss the matter with the Jamba Board member, who thereafter provided an introduction of the representatives of Parent to Jamba's chief executive officer.

25. On January 11, 2018, a representative of Parent contacted a representative of Jamba to schedule a meeting to discuss potential partnership or other strategic opportunities.

26. On January 16, 2018, representatives of Parent and members of senior management of Jamba met for a dinner where they discussed potential partnership or other strategic opportunities.

27. On February 6, 2018, members of Jamba's senior management met with Parent to continue a preliminary dialogue regarding potential partnership or other strategic opportunities. At such meeting Parent indicated an interest in pursuing an acquisition of Jamba.

28. On March 26, 2018, the Jamba Board established a special committee, consisting of Depatie, Heyer and 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.

29. On March 30, 2018, Jamba executed the engagement letter with North Point, which had been previously approved at the March 26, 2018 meeting of the Jamba Board.

30. On March 30, 2018, Jamba and Parent entered into a confidentiality agreement (the "Confidentiality Agreement") in connection with a possible transaction involving Jamba.

31. After negotiations among the multiple parties involved in the transaction, on August 1, 2018, the Merger Agreement was executed and Parent and Merger Sub entered into Tender and Support Agreements (the “Support Agreements”) with certain Jamba stockholders (the “Supporting Stockholders”), pursuant to which the Supporting Stockholders have agreed, among other things, to tender all of their Shares in the Offer and take certain other actions in furtherance of the Merger. The Shares subject to the Support Agreement represent approximately 27% of the outstanding Shares as of August 1, 2018.

### **The Proposed Transaction**

32. Prior to the opening of markets in the United States on August 2, 2018, Jamba and Parent issued a joint press release announcing the Proposed Transaction. The press release stated, in 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.

### **Advisors**

North Point Advisors LLC is serving as financial advisor and DLA Piper LLP is serving as legal counsel to Jamba. Paul, Weiss, Rifkind, Wharton & Garrison LLP is serving as legal counsel to FBI.

### **Insiders' Interests in the Proposed Transaction**

33. Jamba insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Jamba.



34. Company insiders stand to reap a substantial financial windfall for securing the deal with FBI. Pursuant to the Merger Agreement, all unvested equity-based awards held by Company executives will be converted into the right to receive cash payments. The following tables set forth the cash payments Jamba's executive officers and directors stand to receive in connection with their vested and unvested equity awards:

Name	Number of Shares(1)	Value of Shares(2) (\$)	Shares subject to Options(3)(*)	Value of Shares subject to Options(4) (\$)	Shares subject to RSUs, other than PRSUs(5)(*)	Value of Shares subject to RSUs, other than PRSUs(6) (\$)
David A. Pace	39,011	507,143	200,000	97,500	0	0
Marie L. Perry	2,000	26,000	75,000	101,250	4,000	52,000
Claudia Schaefer	0	0	35,000	115,150	10,000	130,000
Joe Thornton	0	0	15,000	56,250	5,000	65,000
Loma C. Donatone	19,710	324,064	0	0	10,436	67,834
Michael A. Depatie	34,073	442,949	7,500	9,875	5,218	67,834
Richard L. Federico	22,795	413,504	14,000	35,525	18,026	117,169
Andrew R. Heyer	33,697	505,895	0	0	10,436	67,834
James C. Pappas	420,036(7)	5,528,302	0	0	10,436	67,834
Glenn W. Welling	2,846,905(8)	37,077,599	0	0	10,436	67,834

- (1) This column includes the number of shares of Jamba common stock beneficially owned (excluding shares underlying Jamba Compensatory Awards) as of August 1, 2018.
  - (2) The consideration payable for each share of Jamba common stock is the Offer Price.
  - (3) This column includes the number of shares of Jamba common stock subject to outstanding and unexercised Options as of August 1, 2018.
  - (4) The consideration for each Option is the excess, if any, of the Offer Price over the applicable exercise price per Share.
  - (5) This column includes the number of shares of Jamba common stock subject to outstanding RSUs, other than RSUs subject to performance based vesting, as of August 1, 2018.
  - (6) The consideration payable for each RSU is equal to the Offer Price.
  - (7) Represents 407,133 shares owned by JCP Investment Partnership, LP (with its affiliates, "JCP Partnership") and 18,121 shares held by Mr. Pappas directly. Mr. Pappas, solely by virtue of his position as the managing member of JCP Investment Management, LLC, the investment manager of JCP Partnership, and as the sole member of JCP Investment Holdings, LLC, the general partner of JCP Investment Partners, LP, which serves as the general partner of JCP Partnership, may be deemed to beneficially own the shares owned directly by JCP Partnership. Mr. Pappas expressly disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein.
  - (8) Represents 2,603,020 shares owned by Engaged Capital Flagship Master Fund, LP, 230,982 shares held by Managed Account of Engaged Capital, LLC and 18,121 shares held by Mr. Welling directly, based on a Form 4 filed June 28, 2018 jointly by Engaged Capital Flagship Master Fund, LP, Engaged Capital Flagship Fund, LP, Engaged Capital Flagship Fund, Ltd., Engaged Capital, LLC, Engaged Capital Holdings, LLC and Glenn W. Welling Engaged Capital, LLC (together, "Engaged")
- \* Awards include all outstanding and unexercised or unsettled awards as of August 1, 2018. All unvested awards, subject to certain exceptions for outstanding RSUs subject to performance-based vesting, will immediately and fully vest at the Effective Time in accordance with the terms of the Merger Agreement.

35. Moreover, if they are terminated in connection with the merger, Jamba's named executive officers will receive substantial severance benefits, including cash payments, in the form of golden parachute compensation, as set forth in the following table:

Name	Cash \$(1)(2)	Equity \$(3)	Benefits \$(4)	Reimbursements \$(5)	Other \$(5)	Total \$(5)
David A. Pace, Chief Executive Officer	2,500,000(5)	32,500	24,000	0	0	2,556,500
Marie Perry, Executive Vice President, Chief Financial & Administrative Officer	1,029,000(6)	59,750	24,000	0	0	1,112,750
Joe Thornton, Senior Vice President, Chief Operations Officer	690,000(7)	102,500	24,000	0	0	816,500
Claudia Schaefer, Vice President and Chief Marketing Officer	690,000(7)	245,150	24,000	0	0	959,150

- (1) Calculated based on the assumption that such termination occurred on July 30, 2018.
- (2) Includes base salary severance, payments under the Severance Plan, and bonuses under the Cash Bonus Plan.
- (3) The amount shown includes the value of, as of August 1, 2018, (a) all outstanding and unvested RSUs held by the named officer calculated based on an assumed price per share of Jamba common stock of \$13.00 (the fixed dollar amount of the per share Merger Consideration), and (b) all outstanding, unexercised, and unvested Options, calculated based on the positive difference, if any, between \$13.00 (the fixed dollar amount of the per share Merger Consideration) and the applicable exercise price. Such Options and RSUs will immediately and fully vest at the Effective Time in accordance with the terms of the Merger Agreement.
- (4) Assumes a termination date of July 30, 2018 and maximum payment of COBRA premiums for the entire severance period covered by the applicable agreement.
- (5) Includes eighteen (18) months of annual base salary and 100% of incentive bonuses.
- (6) Includes 125% of annual base salary for Executive Vice President and 100% of incentive bonuses.
- (7) Includes 100% of annual base salary for Senior Vice President and 100% of incentive bonuses.

36. Substantial awards to the Company's Chief Executive Officer, Chief Financial Officer and Senior Vice Presidents will be also made under the Company's Cash Bonus Plan as a result of the Proposed Transaction.

### **MATERIAL MISSTATEMENTS OR OMISSIONS**

#### **The Recommendation Statement**

37. The Recommendation Statement filed with the SEC and disseminated to Jamba's stockholders was materially incomplete and misleading. As a result, Company's stockholders cannot make an informed decision whether to tender their shares in connection with the Offer or seek appraisal.

38. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (a) North Point's potential conflicts of interest; and (b) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by North Point. Accordingly, Jamba stockholders are being asked to make a decision whether to tender their shares in connection with the Offer or seek appraisal without all material information at their disposal.

#### **North Point's Financial Analyses**

39. The Recommendation Statement describes North Point's fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of North Point's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Jamba's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on North Point's fairness opinion in determining whether to tender their shares in connection with the Offer or seek appraisal. This omitted information, if disclosed, would significantly alter the total mix of information available to Jamba's stockholders.

40. With respect to North Point's *Comparable Precedent Transaction Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the transactions observed by North Point in the analysis.

41. With respect to North Point's *Premiums Paid Analysis*, the Recommendation Statement fails to identify and disclose the implied premium for each of the transactions used and the reasons for any parameters used in selecting the transactions selected, instead only disclosing that "North Point analyzed the premium paid for acquired public entities in the

consumer staple and consumer discretionary transactions with implied enterprise values ranging from \$50 million to \$5 billion since 2012....” These data are especially important here because, as the Recommendation Statement says:

No company or transaction utilized in the precedent transactions or premiums paid analysis is identical to Jamba or to the Merger. In evaluating the precedent transactions, North Point made judgments and assumptions with regard to industry performance, general business, market and financial conditions and other matters, which are beyond the control Jamba, such as the impact of competition on the business of Jamba or the industry generally, industry growth and the absence of any adverse material change in the financial condition of Jamba or the industry or in the financial markets in general, which could affect the public trading value of the companies and the enterprise value of the transactions to which they are being compared. Mathematical analysis (such as determining the mean or median) is not in itself a meaningful method of using precedent transactions or premiums paid data.

42. With respect to North Point’s *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose: (i) the unlevered free cash flows utilized by North Point in this analysis and the line items used to calculate unlevered free cash flows;<sup>1</sup> (ii) the inputs and assumptions underlying the discount rates ranging from 9.4% to 14.4%.; (iii) the inputs and assumptions underlying North Point’s basis for using illustrative terminal values in the year 2023 based on multiples ranging from 9.0x EBITDA to 11.0x EBITDA; (iv) the inputs and assumptions underlying the implied terminal value multiples resulting from the analysis; and (v) the value of additional tax savings from the usage of net operating loss carry forwards of Jamba for the projected period used by North Point in the analysis.

43. With respect to North Point’s *Illustrative Leveraged Buyout Scenario Analysis*, the Recommendation Statement fails to disclose: (i) the inputs and assumptions behind assuming

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<sup>1</sup> To the extent such data are not included in the disclosure of “Certain Unaudited Prospective Financial Information of Jamba”, they must also be disclosed.

all of Jamba's existing debt; and (ii) the inputs and assumptions behind using an EBITDA exit multiple of 10.0x.

44. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed. Moreover, the disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion and to reach an informed decision as to whether or not to tender their shares or seek an appraisal.

45. The omission of this information renders the "Financial Analyses" section of the Recommendation Statement materially incomplete in contravention of the Exchange Act.

#### **North Point's Potential Conflicts of Interest**

46. The Recommendation Statement provides:

...North Point and/or its affiliates have provided investment banking services to Roark and other entities affiliates with Parent. Such services have included various advisory services for several entities, including Pet Valu Canada Holding Corporation, FASTSIGNS Holding Corp., and Mississippi Restaurant Holdings Inc. (dba McAlister's Deli), in each case for which North Point has received customary fees. All of these engagements were in 2016 or earlier years.

Recommendation Statement at 40. The Recommendation Statement, however, fails to disclose: the amount of "customary fees" North Point and its affiliates received in connection with its investment banking services to Roark and other entities affiliates with Parent.

47. Full disclosure of investment banker compensation and any other potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

48. The omission of this information renders the “Background of the Merger; Reasons for the Recommendation of the Jamba Board” and “Financial Analyses” sections of the Recommendation Statement materially incomplete in contravention of the Exchange Act.

### **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

49. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) and/or (b)(3) on behalf of a class consisting of all public holders of the Company’s common stock (the “Class”). Excluded from the Class are Defendants, FBI, Merger Sub, North Point and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant or other excluded entity.

50. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members in the proposed Class. As of August 1, 2018, there were 15,640,617 shares of Jamba common stock issued and outstanding.

51. Record owners and other members of the Class may be identified from records maintained by Jamba and/or its transfer agent(s) and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

52. 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.

53. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

54. 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:

- a. Whether Defendants have violated Section 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder;
- b. Whether the Individual Defendants have violated Section 14(e) of the Exchange Act;
- c. Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
- d. Whether Plaintiff and the other members of the Class would suffer irreparable injury were the Proposed Transaction consummated.

55. Defendant has acted or refused to act on grounds generally applicable to the entire class, making final injunctive relief appropriate.

56. 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.

**CAUSES OF ACTION**

**COUNT I**

**AGAINST ALL DEFENDANTS  
FOR VIOLATIONS OF SECTION 14(d) and SEC RULE 14d-9**

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

58. Defendants have caused the Recommendation Statement to be issued with the intention of soliciting Jamba stockholders to tender their shares in the Offer.

59. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure of all material information in connection with tender offers.

60. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omission renders the Recommendation Statement materially false and/or misleading.

61. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the other members of the Class, who will be deprived of their right to make an informed decision whether to tender their shares or seek appraisal if such misrepresentations and omissions are not corrected prior to the expiration of the Offer. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.



**COUNT II**

**AGAINST ALL DEFENDANTS  
FOR VIOLATIONS OF SECTION 14(e)**

62. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

63. Defendants violated Section 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 light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Offer.

64. Defendants knew that Plaintiff and the other members of the Class would rely upon the Recommendation Statement in determining whether to tender their shares pursuant to the Offer or seek appraisal.

65. As a direct and proximate result of these Defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff and the other members of the Class have sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender their shares or seek appraisal.

**COUNT III**

**AGAINST THE INDIVIDUAL DEFENDANTS  
FOR VIOLATIONS OF SECTION 20(a)**

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

67. The Individual Defendants acted as controlling persons of Jamba within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as

officers or directors of Jamba and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Recommendation Statement filed with the SEC, 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 which Plaintiff contends are false and misleading.

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

69. 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 or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Recommendation Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

70. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Recommendation Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

71. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of

Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Class Counsel;

(b) Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

(c) In the event Defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

(d) Awarding compensatory, including appraisal damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(e) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(f) Awarding such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: August 23, 2018

NAPOLI SHKOLNIK, LLC

/s/ R. Joseph Hrubiec

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*Attorneys for Plaintiff*

**PLAINTIFF CERTIFICATION**

I, Robert Lowinger ("Plaintiff") hereby state:  
[Printed Name]

1. Plaintiff has reviewed the complaint and has authorized the filing of the complaint on his behalf.

2. Plaintiff did not purchase any Jamba, Inc. (the "Company") securities at the direction of his counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a lead plaintiff and/or representative party on behalf of a class, including providing testimony at deposition and trial if necessary. I understand that the litigation is not settled, this is not a claim form, and sharing in any recovery is not dependent upon execution of this Plaintiff Certification. I am willing to serve as a lead plaintiff either individually or as part of a group. A lead plaintiff is a representative party who acts on behalf other class members in directing the action.

4. Plaintiff currently owns, and has held 840 shares of Jamba, Inc. at all times relevant hereto.

5. I have not sought to serve or served as a class representative under the federal securities laws in the last three years, other than as listed below (if any):

6. Plaintiff will not accept any payment for serving as a representative party on behalf of a class except to receive his pro rata share of any recovery, or as ordered or approved by the court including the award to a representative party of reasonable costs and expenses including lost wages relating to the representation of the class.

Plaintiff declares under penalty of perjury that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of August, 2018

Robert Lowinger

Signature

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
ROBERT LOWINGER, On Behalf of Himself and All Others Similarly Situated
(b) County of Residence of First Listed Plaintiff Queens County, NY
(c) Attorneys (Firm Name, Address, and Telephone Number)
R. Joseph Hrubiec, Esq., Napoli Shkolnik LLC, 919 N. Market Street, Suite 1801, Wilmington, DE 19801; (302) 330-8025

DEFENDANTS
JAMBA, INC., et al
County of Residence of First Listed Defendant New Castle County, DE
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Sections 14(d), 14(e) and 20(a) of the Securities Exchange Act of 1934
Brief description of cause:
Omitted, False, and/or misleading statements in violation of Sections 14(d), 14(e) and 20(a) of the Exchange Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 08/23/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ R. Joseph Hrubiec

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.