STATE OF NORTH CAROLINA GUILFORD COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION CIVIL FILE NO.:16-CVS-4144
DOLORES BALINT, On Behalf of herself and All Others Similarly Situated, Plaintiff, v. THE FRESH MARKET, INC., RAY BERRY, RICK ANICETTI, MICHAEL CASEY, JEFFREY NAYLOR, RICHARD NOLL, BOB SASSER, ROBERT SHEARER, MICHAEL TUCCI, STEVEN TANGER, JANE THOMPSON, POMEGRANATE HOLDINGS, INC., AND POMEGRANATE MERGER SUB, INC., Defendants.	AMENDED COMPLAINT JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Dolores Balint **("Plaintiff"), by her undersigned attorneys, for this Class Action Complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon,** *inter alia*, **the investigation of her counsel as to all other allegations herein, as follows:**

NATURE OF THE ACTION

1. This is a shareholder class action brought by Plaintiff on behalf of herself and the public shareholders of The Fresh Market, Inc. ("Fresh Market" or the "Company") against Fresh Market, the directors of Fresh Market, Pomegranate Holdings, Inc. ("Pomegranate" or the "Parent"), and Pomegranate Merger Sub, Inc. ("Merger Sub") to enjoin a proposed acquisition of Fresh Market by Pomegranate (the "Proposed Transaction") that was announced on March 14, 2016. In pursuing the Proposed Transaction, each of the defendants has violated applicable law

by directly breaching and/or aiding breaches of fiduciary duties of loyalty and due care owed to Plaintiff and the proposed class.

2. On March 14, 2016, Fresh Market entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which the Company's stockholders will receive $28.50 per share by way of an all-cash Tender Offer. The Merger Agreement, valued in aggregate at $1.36 billion, also provides that, at the Effective Time, all outstanding Company options, and restricted shares will be deemed to be fully vested and converted into the right to receive the merger consideration.

3. The Proposed Transaction is a going private transaction. Pomegranate, and Merger Sub are all currently, in part or whole, affiliates of Apollo Global Management, LLC ("Apollo"), a publicly traded private equity firm. Should the Proposed Transaction allowed to be effectuated, Fresh Market will become a wholly owned subsidiary of Pomegranate, which in turn is a private, wholly owned subsidiary of Apollo.

4. To limit outside bidders from making a proposal, the Board agreed to deal protection devices that all but assure the Proposed Transaction will be consummated. The onerous deal protections include a "no-solicitation" provision, that prevents representatives of the Company from actively seeking out other bidders after a brief "Go-Shop" period; an information rights provision, that requires the Company to inform Pomegranate within one business day if another bidder materializes; a matching rights provision, that requires Fresh Market to consider any changes to the Merger Agreement; and a termination fee of $34 million payable by Fresh Market to Pomegranate in the event Fresh Market accepts an offer from another bidder.

5. The Proposed Transaction is the product of a flawed process and deprives Fresh Market's public stockholders of the ability to participate in the Company's long-term prospects. In approving the Merger Agreement, the Individual Defendants breached their fiduciary duties to Plaintiff and the Class (defined herein). Moreover, as alleged herein, Fresh Market, Pomegranate, and Merger Sub aided and abetted the Individual Defendants' breaches of fiduciary duties.

6. Furthermore, the flawed process was tainted from the outset due to Defendant Ray Berry's ("Berry") and his son Brett Berry's prior back channeling with Apollo. Defendant Berry and his family, who collectively own approximately 9.8% of the outstanding common stock of the Company, were able to initiate the current Proposed Transaction in private conversations with Apollo, unknown to the rest of the Company Board or management, well before the sales process for the Proposed Transaction had even begun.

7. Additionally, Defendant Berry and Apollo shrewdly calculated the most profitable time for them to strike; in the midst of a leadership change of Fresh Market before the Company's new strategic plan was fully formed. By blind siding the company through prior negotiations with Defendant Berry, Apollo was able to influence the sales process from the outset. Notably, they were the only interested party that was afforded the opportunity to speak with Defendant Berry and his family regarding equity rollovers. Furthermore, Apollo was able to cause the Board to completely abandon its plan for a second round of bidding in favor of its own offer, thus shutting out several competing bidders who may have offered a higher valuation for the Company.

8. The Board also failed in their oversight of selecting a financial advisor. J.P. Morgan Securities, LLC ("J.P. Morgan"), the firm retained as Fresh Market's financial advisor

for the sales process leading up to the Proposed Transaction, has done over one hundred and sixteen million dollars' worth of business with Apollo in the past two years, completely negating any semblance of independence and unbiasedness they purported to have in delivering their fairness opinion to Fresh Market in the Proposed Transaction. Despite these facts, the Board deemed J.P. Morgan to be unbiased enough to render an effective fairness opinion.

9. Finally, the Directors further exacerbated their breach of fiduciary duty by causing a false or materially misleading proxy statement on Schedule 14D-9 to be filed with the Securities and Exchange Commission (the "SEC") on March 25, 2016 (the "Proxy"). Notably the Proxy fails to disclose all material information necessary for Fresh market stockholders to make an informed decision regarding the proposed Transaction, and/or contains materially false or misleading information. Specifically, the Proxy omits and/or misrepresents material information concerning, among other things: (1) the background of the Proposed Transaction; (2) the data and inputs underlying the financial valuation exercises that purportedly support the so-called "fairness opinions" provided by Fresh Market's financial advisor, J.P. Morgan; and (3) Fresh Market's financial projections and extrapolated projections relied upon by J.P. Morgan.

10. For these reasons and as set forth in detail herein, Plaintiff seek to enjoin Defendants from soliciting shareholder votes relating to the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the Individual Defendants' (as defined herein) violations of their fiduciary duties and from Fresh Market, Pomegranate and Merger sub for their aiding and abetting of such violations.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter because Defendants conduct business in the County of Guilford. Defendant Fresh Market has a principal business office located within this county at 628 Green Valley Road, Suite 500, Greensboro, North Carolina 27408.

12. Venue is proper in the County of Guilford in that each Defendant systematically conducted business on a regular basis in the County of Guilford, North Carolina and/or resides in the County of Guilford and the wrongful conduct complained of herein occurred in the County of Guilford.

PARTIES

13. Plaintiff has been, at all times relevant hereto, a Fresh Market shareholder.

14. Defendant Fresh Market is a Delaware corporation that maintains its principal executive offices at 628 Green Valley Road, Suite 500, Greensboro, North Carolina 27408. The Company's securities trade on the NasdaqGS under the symbol "TFM." Fresh Market operates as a specialty grocery retailer in the United States and offers various food products for sale at its locations.

15. Defendant Berry has been a Director of Fresh Market at all relevant times and serves as the Chairman of the Board. Berry founded the Company in 1981 and has served as Chairman since that time. In addition Berry served as the Company's Chief Executive Officer ("CEO") from 1981 until 2007.

16. Defendant Rick Anicetti ("Anicetti") has been a Director of Fresh Market at all relevant times and has served as the President and CEO of the Company since September 2015.

17. Defendant Michael Casey ("Casey") has been a Director of Fresh Market at all relevant times.

18. Defendant Richard Noll ("Noll") has been a Director of Fresh Market at all relevant times. In addition Noll is designated as the Company's lead independent director.

19. Defendant Bob Sasser ("Sasser") has been a Director of Fresh Market at all relevant times.

20. Defendant Robert Shearer ("Shearer") has been a Director of Fresh Market at all relevant times.

21. Defendant Michael Tucci ("Tucci") has been a Director of Fresh Market at all relevant times.

22. Defendant Steven Tanger ("Tanger") has been a Director of Fresh Market at all relevant times.

23. Defendant Jane Thompson ("Thompson") has been a Director of Fresh Market at all relevant times.

24. The defendants named above in paragraphs 11 - 19 are sometimes collectively referred to herein as the "Individual Defendants" and/or the "Board."

25. The Individual Defendants, as officers and/or directors of the Company, owe fiduciary duties to its public shareholders. As alleged herein, they have breached their fiduciary duties.

26. Defendant Pomegranate is a Delaware corporation and wholly owned subsidiary of Apollo, created for the sole purpose of effectuating the Proposed Transaction. Pomegranate can be served care of its agent for Service of Process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

27. Defendant Merger Sub is a Delaware corporation and wholly owned subsidiary of Apollo, created for the sole purpose of effectuating the Proposed Transaction. Pomegranate can

be served care of its agent for Service of Process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801

28. Fresh Market, Pomegranate, the Merger Sub, and the Individual Defendants are collectively referred to herein as the "Defendants".

CLASS ACTION ALLEGATIONS

29. Plaintiff bring this action on their own behalf and as a class action pursuant to Rule 23 on behalf of all holders of Company stock who are being and will be harmed by defendants' actions described herein (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any defendants.

30. This action is properly maintainable as a class action.

31. The Class is so numerous that joinder of all members is impracticable. According to recent filings with the United States Securities and Exchange Commission ("SEC"), Fresh Market has over forty-six million shares of common stock outstanding, likely owned by thousands of shareholders.

32. There are questions of law and fact that are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) Whether Defendants have breached their fiduciary duties of undivided loyalty, independence, or due care with respect to Plaintiff and the other members of the Class in connection with the Proposed Transaction;

(b) Whether the Individual Defendants have breached their fiduciary duties to secure and obtain the best price reasonable under the circumstances for the sale of Fresh Market;

(c) Whether the other defendants have aided and abetted the Individual Defendant's breach of fiduciary duties; and

(d) Whether Plaintiff and the other members of the Class will be irreparably harmed were the transactions complained of herein consummated.

33. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

34. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

35. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

36. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FACTUAL ALLEGATIONS

Background of the Company

37. Fresh Market operates as a specialty grocery retailer in the United States. The company offers various food products that focus on perishable product categories, including meat, seafood, produce, deli, bakery, floral, sushi, and prepared foods; and on non-perishable

product categories, such as traditional grocery, frozen, and dairy products, as well as bulk, coffee and candy, beer and wine, and health and beauty products. As of September 24, 2015, it operated 177 stores in 27 states. The Company was founded in 1982 and is headquartered in Greensboro, North Carolina.

38. Over the past year, the Company has exhibited strong operational execution and financial performance across the businesses in which it operates. For example, November 19, 2015, Fresh Market released its Q3 2015 financial results. Notably, the Company saw a sales increase of 3.3% year-on-year for a total sales figure of $433.1 million. Furthermore, gross profit increased 4.3% or $5.9 million year-on-year, with a related increase in the Company's gross margin rate of 30 basis points to 33.2%. Additionally the Company opened six new stores in this period, including stores in Florida, South Carolina, Georgia, Alabama and Connecticut, increasing the Company footprint as of October 25, 2015 to 180 stores in 27 states.

39. Defendant Anicetti, speaking on these results, noted that the future prospects of the Company looked positive, saying, "The Fresh Market is a unique brand with enormous untapped potential..."

40. Fresh Market's strong recent performance is not an anomaly, but rather part of a trend of upward financial mobility. On August 20, 2015 the Company released its Q2 2015 financial results which showcased a net sales increase of 4.7% year-on-year. Additionally the Company's gross profits increased 3.7% year-on-year and the Company's gross margin rate increased 30 basis points from the same quarter in 2014. Also of note was that the Company opened six new stores with locations in Texas, North Carolina, Georgia, Louisiana and New York, bringing the Company's total footprint to 174 stores in 27 states. Speaking positively on

these results, Interim CEO Sean Crane ("Crane") stated that the Company's financial health was "sound".

41. Looking further back, Fresh Market reported a net sales increase of 7.2% in the first quarter of 2015, as stated in the Company's May 21, 2015 press release announcing 2015 Q1 financials. Additional positive results from the period included a gross profit increase of 8.4% or $12.4 million compared to Q4 of 2014 and a 40 basis point jump in gross margin year-on-year. Additionally, the Company exhibited further growth in this period, opening two new stores in Missouri.

42. Despite the consistent increase in net income, gross profits, and gross margins throughout the 2015 year the Proposed Transaction seeks to deny the Plaintiff and other public stockholders of Fresh Market the ability to reap the benefit on their investments in the Company.

The Flawed Process Leading to the Proposed Transaction

43. As revealed by the Proxy, the Proposed Transaction is the product of a flawed bidding process which allowed for Defendant Berry and Apollo to circumvent the entire process implemented by the Board of Directors and force an undervalued transaction to fruition.

44. On September 1, 2015, the Company announced that it had named Defendant Anicetti as the President and CEO of the Company, and announced that it had elected Anicetti to the Board. Anicetti immediately began working with the rest of Company Management on a long term strategy to guide the company to improved performance.

45. On October 1, 2015, the Board received an unsolicited preliminary non-binding indication of interest from Apollo, on behalf of equity funds managed by it, proposing to acquire the Company in an all-cash transaction for a purchase price of $30.00 per share. This figure was based upon publicly available information. Apollo had previously discussed this matter with

Defendant Berry and his son Brett Berry, who collectively owned approximately 9.8% of the outstanding common stock of the Company as of the date of the proposal. The Apollo letter also indicated that the Berry's would roll over their shares into the new company and would be working in an exclusive partnership in connection with a potential acquisition of the Company.

46. On October 5, 2015, Scott Duggan, the Company's Senior Vice President – General Counsel, contacted Defendant Berry to clarify Defendant Berry's relationship with Apollo and his interactions with Apollo prior to Apollo's submission of its October 1, 2015 proposal. Defendant Berry had informed Mr. Duggan that he had engaged in three separate conversations with a representative of Apollo regarding a potential transaction. The first conversation had taken place a few months prior to Apollo's letter when Andrew Jhawar, senior partner with Apollo, had contacted Defendant Berry to have a general discussion about the Company and the food retail industry. The second conversation had taken place a few weeks prior to Apollo submitting its October 1, 2015 proposal and again involved discussions with Mr. Jhawar wherein Mr. Jhawar indicated to Defendant Berry that he was interested in the food retail industry and the Company and had asked Defendant Berry if he would be interested in participating in a transaction through an equity rollover. Defendant Berry advised Mr. Duggan that he told Mr. Jhawar that the Board would ultimately need to make any decision with respect to a transaction, but that if there were a transaction that he Board supported, Mr. Berry would consider an equity rollover depending upon the terms, but that he would also be willing to sell his shares for cash at an appropriate valuation fi the Board supported such a transaction. The third conversation took place shortly before Apollo's letter, and was a courtesy call in which Defendant Berry was informed that Apollo would be sending the letter.

47. Defendant Berry further advised Mr. Duggan that he had not been involved in the formulation, nor had he committed to participate in any transaction, in regards to the Apollo offer, and was not working with Apollo on an exclusive basis.

48. On October 15, 2015, Apollo sent a follow up letter reaffirming its October 1, 2015, proposal and advising that such proposal would expire at 5:00pm Pacific time on October 20, 2015. The letter also indicated the proposal remained non-binding and subject to due diligence and receipt of debt financing.

49. Also on October 15, 2015, the Board met to discuss Apollo's proposal. Attending and assisting the Board were members of Company management and representatives of Cravath, Swaine & Moore LLP ("Cravath") and Richards, Layton & Finger, P.A. ("Richards Layton"), outside counsel to the Company. The fiduciary duties of the Board were discussed at this meeting in consideration of the Apollo proposal.

50. Also discussed at the meeting was Defendant Berry's relationship with Apollo and his role in the Apollo formulation of its October 1 proposal. Defendant Berry recused himself from the meeting so that the members of the Board could engage in a discussion without him present.

51. After Defendant Berry's recusal from the meeting, the Board discussed that Defendant Anicetti had served as CEO for roughly a month and that his team was still in the process of developing a strategic plan, and that the Board did not yet have a set of financial forecasts stemming from the strategic plan. After discussion, the Board determined that Defendant Anicetti and the rest of Management needed to complete development of the Company strategic plan and financial forecast before the Board could effectively evaluate the Apollo proposal.

52. Also at the October 15, 2015, meeting the Board created the a committee that would be responsible for reviewing and evaluating communications form stockholders and other third parties and reviewing and evaluating, and making recommendations to the Board with respect to Apollo's proposal and any other proposals from third parties (the "Strategic Transaction Committee"). The Strategic Transaction Committee was comprised of Defendants Naylor, Noll and Shearer, all of whom were independent directors. The Board instructed Mr. Duggan to work with the Strategic Transaction Committee and outside counsel to prepare a written response to Apollo consistent with the finding that Fresh Market management needed to finish preparation of the Company strategic plan before the Board could effectively evaluate the proposal.

53. Also at the October 15, 2015 meeting the Board considered J.P. Morgan for the role of financial advisor in connection with evaluating Apollo's proposal and instructed the Strategic Transaction Committee and Mr. Duggan to work on the terms of a potential engagement with J.P. Morgan.

54. On October 16, 2015, before the Board had conveyed their response to Apollo, a news outlet published an article speculating that Defendant Berry was exploring a bid to take the Company private with the help of a private equity firm and that Apollo had agreed to work with Defendant Berry on a potential offer for the Fresh Market.

55. On October 18, 2015, the Strategic Transaction Committee met, with Mr. Duggan and Outside Counsel participating, to further discuss engaging J.P. Morgan as Fresh Market's financial advisor. At this time Mr. Duggan was instructed to finalize the terms of the engagement letter with J.P. Morgan.

56. Also on October 18, 2015, the Board met, with Mr. Duggan and Outside Counsel participating, to discuss the next steps in regards to the Apollo offer. Defendant Berry had submitted a written waiver of notice of any future Board meetings at which the Apollo proposal or any other inquiries from potential acquirers would be discussed, and was therefore not in attendance, nor did he attend any Board meetings through the date of the entry into the Merger Agreement. At the meeting the Board determined that it would be in the best interests of the Company and the stockholders for the Board to conduct a thorough strategic and financial review of the Company and its business and that the Company would issue a press release announcing the commencement of a review of its strategic and financial alternatives. The Board also authorized the Company to retain an outside consulting firm to assist management in the strategic evaluation of its business.

57. On October 19, 2015 the Strategic Transaction Committee, with Mr. Duggan and outside counsel participating, met for further discussion regarding the finalizing of J.P. Morgan as the financial advisor to the Company. Also reviewed was the scope of the Strategic Transaction Committee's authority delegated to it by the Board and their fiduciary duties as members of the Committee.

58. Also on October 19, 2015 J.P. Morgan's engagement letter was finalized and the terms entered into by the Company and J.P. Morgan.

59. On October 20, 2015 the Company announced that it would conduct a strategic and financial review of its business which could result in the Company continuing on a standalone basis, a capital structure optimization, a sale of the Company, or other business combination. Also on that day the Company sent a letter to Apollo in response to its October 1, 2015 proposal informing Apollo that it would evaluate the proposal as part of the Company's

announced strategic and financial review. The letter also stated that the Company had confirmed with Defendant Berry that he did not have an arrangement with Apollo to work together on an exclusive basis with respect to a potential transaction.

60. On October 21, 2015, Apollo delivered a letter to the Board withdrawing its previous offer.

61. On October 23, 2015, the Strategic Transaction Committee met to further discuss the Company's strategic business review and noted that J.P. Morgan had received 12 inbound inquiries from financial sponsors regarding a potential acquisition of the Company, some of which had commented positively to J.P. Morgan regarding the Company's announcement.

62. On November 17, 2015, Company management finalized its forecast for the Fresh Market based on its development of its strategic plan.

63. On November 25, 2015, Apollo, on behalf of equity funds managed by it, sent a letter to the Board reaffirming its prior offer for an all-cash transaction with a $30.00 per share valuation. Apollo stated it was making its proposal together with Defendant Berry and Brett Berry, and indicated it would expire at 5:00 p.m. Pacific time on December 3, 2015.

64. On November 28, 2015, after previous inquiries from Company outside counsel, counsel for Defendant Berry, stated that since the expiration of the original Apollo offer on October 20, 2015, Defendant Berry had engaged in one conversation with Apollo and that during said conversation he had orally agreed to roll his equity interest over into the surviving entity if Apollo was successful in the transaction proposed to the Fresh Market. Defendant Berry's counsel also indicated that during that conversation Defendant Berry stated he would also consider rolling his equity interest over in the event a third party purchased the Fresh Market.

65. On December 1 and December 5, 2015, the Company Board met, along with management, outside counsel and J.P. Morgan, to discuss the Apollo offer. J.P. Morgan discussed, among other things, the industry landscape, key trends facing the industry, and the Company's recent trading history and performance. Management reviewed the Company's recent results and outlook as well as the strategic evaluation of the Company's business and strategic plan and forecast that it had developed, and the various cost saving and growth initiatives contained in the strategic plan. Also reviewed by management was a set of financial forecasts based on the strategic plan (the "November 17 Management Case"); the Board approved the November 17 Management Case for use in connection with the sales process.

66. At these meetings J.P. Morgan also presented preliminary valuation analyses and noted that there were significant risks in executing the Company's strategic plan. J.P. Morgan also reviewed sensitivities to the November 17 Management Case in the event that revenue or gross margin fell short of what was reflected in those projections. J.P. Morgan also reviewed different strategic alternatives with the Company.

67. Also at these meetings the Board began the process for soliciting indications of interests from third parties. As such, J.P. Morgan was instructed on December 3, 205, to evaluate potential counterparties' interest in a potential transaction. The Strategic Transaction Committee also sought a confirmation that Defendant Berry was not working with any party in the process on an exclusive basis, and that he would confirm his prior position that he would work with a party other than Apollo if such a third party was the ultimate successful bidder. As such on December 3, 2015, outside counsel contacted Defendant Berry's Counsel to confirm his prior statement and to request that he not engage in discussions regarding equity rollover with

any potentially interested party until authorized to do so by the Company. Defendant Berry's Counsel confirmed he would act in such a manner.

68. On December 3, 2015, J.P. Morgan began to reach out to potential interested parties. In total 32 parties were contacted, 23 of which were financial in nature and 9 of which were strategic in nature. Of the 32 parties 21 had previously contacted J.P. Morgan and expressed an interest in the Fresh Market. Between December 4, 2015 and January 28, 2016, J.P. Morgan distributed 25 confidentiality agreements to potential counterparties, of which 22 went to financial parties and 3 to strategic parties. Twenty (20) of the contacted parties entered into confidentiality agreements ("NDAs") (including 19 financial parties and 1 strategic party), which contained customary standstill provisions that would automatically terminate upon the entry by the Fresh Market into a definitive acquisition agreement with a third party. The confidentiality agreements also prohibited all process participants from having discussions with any potential co-bidders in connection with a potential acquisition of the Company, contacting any potential sources of debt or equity financing for a potential acquisition of the Company (including with respect to an equity rollover) or entering into any exclusive financing arrangements, in each case without the prior authorization of the Company.

69. Beginning on December 18, 2015, the Company began providing confidential information to those parties who entered into NDAs, which included the November 17 Management Case for the years 2016-2018.

70. On January 12, 2016, the Company stated that the deadline for the first round of preliminary indications of interests from interested parties would be due January 25, 2016. The Company also indicated that Defendant Berry would have conversations regarding a potential

rollover of his existing equity in the Company with parties that advance sufficiently towards completion of the process.

71. On January 25, 2016, J.P. Morgan received first round preliminary indications of interest from five potential parties: (i) Apollo, (ii) Financial Sponsor Party A, (iii) Financial Sponsor Party B, (iv) Financial Sponsor Party C, and (v) Strategic Party A. The valuations offered by each party at this time were as follows:

(a) Apollo offered $31.25 per share in an all cash transaction, and included a three week exclusivity period. The offer noted that if no exclusivity period was agreed to the valuation would be "significantly lower". The offer also stated that if the parties worked in good faith towards a transaction the exclusivity period would be automatically extended by successive seven-day periods unless either party gave written notice to the other of a refusal to extend at least 48 hours prior to the end of the then-current exclusivity period;

(b) Financial Sponsor Party A offered a price range of $24.00 to $26.00 per share;

(c) Financial Sponsor Party B offered a price range of $27.00 to $30.00 per share;

(d) Financial Sponsor Party C offered a price range of $28.00 to $30.00 per share;

(e) Strategic Party A offered a price range of $25.00 to $30.00 per share.

72. The remaining 15 potential counterparties did not submit indications of interest on by the deadline or had declined to continue in the process.

73. On January 28, 2016, the Strategic Transaction Committee met, along with Company management, outside counsel, and J.P. Morgan, to discuss the five bids. Items

discussed included debating the Apollo offer's exclusivity provision, the differentiation of top-end prices amongst the bids, the potential synergies with Strategic Party A, and Financial Sponsor Parties B and C's extensive experience in the food retail industry. The Committee determined to continue with a second round of bidding but to exclude Financial Sponsor Party A due to its offer's lower price range.

74. On January 30, 2016 the Company provided the remaining four interested parties to a virtual data room to conduct due diligence. Such due diligence was conducted from January 30, 2016 until March 6, 2016.

75. On February 1, 2016, J.P. Morgan provided disclosure regarding relationships between J.P. Morgan and all remaining interested parties.

76. On February 2, and February 3, 2016 the Board met with Management, outside counsel, and J.P. Morgan to discuss the sales process. Discussed at the meeting was Apollo's, and Financial Sponsor Parties B and C's requests to begin contacting financing sources. The Board granted such requests.

77. Also discussed was J.P. Morgan's relationships with the remaining interested bidders. After questioning, the Board determined that it did not believe any relationships would impair J.P. Morgan's independence and objectivity.

78. On February 4, 2016, J.P. Morgan received a written unsolicited bid from a private equity firm ("Financial Sponsor Party D") to acquire the Company for an all-cash range of $27.00 to $30.00. Financial Sponsor Party D also indicated that it owned just below 5% of the Fresh Market's outstanding stock.

79. On February 5, 2016, advisors of a specialty food retailer ("Strategic Party B") contacted J.P. Morgan to express interest in the Company. Thereafter, on February 6, 2016,

Strategic Party B submitted a bid to acquire the Company for an all-cash range of $27.00 to $30.00 per share.

80. Between February 5, and February 11, 2016, after review, the Strategic Transaction Committee decided to include Financial Sponsor Party D and Strategic Party B in the second round of bidding and provided draft NDAs to each party, which contained customary standstill provisions comparable to those included in the NDAs previously signed.

81. On February 9, 2016, Strategic Party B entered into the NDA previously sent to it.

82. On February 11, 2016, a news outlet reported that the Company was exploring a sale and speculated about which parties were participating in the process.

83. On February 12, 2016, a large supermarket chain ("Strategic Party C") contacted J.P. Morgan indicating it was interested in a potential transaction and requested and NDA, which was provided the same day.

84. Also on February 12, 2016, Financial Sponsor Party D returned a marked-up version of the NDA sent to it by the Company. Between February 12, 2016 and February 25, 2016, outside counsel negotiated with legal counsel for Financial Sponsor Party D regarding the NDA terms. Financial Party D ultimately refused to enter into the NDA and as a result did not move forward in the sales process.

85. On February 15, 2016, Strategic Party C indicated it would not be moving forward in the sales process.

86. On February 18, 2016, the Strategic Transaction Committee met, with management and outside counsel participating, to discuss the due date for the secondary bids from interested parties and in what capacity would contact with Defendant Berry and his family be allowed. A target date of March 14, 2016 was determined as a deadline for secondary bids.

87. Following the meeting the Board contacted Apollo, Financial Sponsor Party B, Financial Sponsor Party C and Strategic Party A with their desired bid deadline. While Apollo stated it could have a bid prepared by March 7, 2016, the remaining parties expressed concern with the immediacy of the date and noted that they may not be able to submit a bid by such time.

88. On February 19, 2016 J.P. Morgan provided disclosures regarding relationships with Financial Sponsor Party D and Strategic Party B.

89. Between February 19, 2016 and the entry into the merger agreement on March 11, 2016, Apollo had numerous conversations with J.P. Morgan where it indicated that they wanted to move very expeditiously towards the announcement of a transaction in light of the fact that they had substantially completed their due diligence review. Apollo also stated it was able to finalize debt financing commitments for a bid, and that they were willing to agree to a "go-shop" to encourage Fresh Market to enter into an agreement with Apollo earlier than the middle of March.

90. On February 24, 2016, Strategic Party B withdrew from the sales process.

91. Also on February 24, 2016, Strategic Party A contacted J.P. Morgan indicating it would have difficulty executing a potential acquisition of Fresh Market on its own but indicated it would be potentially interested in partnering with a private equity firm in an arrangement pursuant to which Strategic Party A would be a minority investor.

92. Also on February 25, 2016, Strategic Party C contacted J.P. Morgan reiterating that following its due diligence so far, it would be difficult to move forward in light of the early stages of the Fresh Market executing on its strategic plan.

93. On February 25, 2016, the Strategic Transaction Committee met and instructed J.P. Morgan to discuss the possibility of partnering a strategic buyer with each of Financial Sponsor Party B and C.

94. Also at the February 25, 2016, meeting Committee discussed the need for additional scenario analyses with respect to the November 17 Management Case in light of the Company's recent business performance, risks, and trends facing the industry. Also discussed were the interested parties' comments on the high risk inherent in the Company's strategic plan. The Strategic Transaction Committee requested that Company management develop additional financial projection scenarios to reflect updated assumptions for Company projected revenue and gross margin.

95. Also at the February 25, 2016, meeting the Strategic Transaction Committee instructed J.P. Morgan to request that Apollo submit a merger agreement markup based on its proposed expedited timeframe.

96. On February 26, 2016, J.P. Morgan posted an auction draft of the merger agreement to the data room. The draft merger agreement provided for a 30-day "go-shop" period with an up to 15-day extension for certain excluded parties who submitted an acquisition proposal during the initial period. It also contained a termination fee equal to 0.75% of the transaction's equity value payable by the Company if the merger agreement was terminated in favor of a superior proposal during the go-shop period and a similar termination fee of 1.75% payable if the merger agreement was terminated in favor of a superior proposal after the go-shop period. The draft merger agreement also provided for a reverse termination fee equal to 8.50% of the transaction's equity value payable by a private equity buyer if the failure was a result of the buyer's failure to obtain debt financing.

97. On February 27, 2016 each of Financial Sponsor Party B and C provided to J.P. Morgan indicative term sheets for a potential partnership with a strategic part, which the representatives of J.P. Morgan shared with Strategic Party A.

98. On March 1, 2016, J.P. Morgan facilitated discussions between Strategic Party A and Financial Sponsor Party B and between Strategic Party A and Financial Sponsor Party C. These discussions happened separately.

99. On March 2, 2016, Company outside counsel received a mark-up of the merger agreement from Apollo which provided for a 10-day "go-shop" period and a termination fee structure of 1.50%/3/75% for go-shop/post-go-shop periods and a reverse termination fee of 6.25%.

100. On March 3, 2016, the Strategic Transaction Committee met with Company management, outside counsel, and J.P. Morgan to discuss the Apollo mark-up of the merger agreement. The Committee determined to respond with a 21-day "go-shop" period and a termination fee structure of 1.25%/2.50% for go-shop/post-go-shop periods and a reverse termination fee of 7.25%. On March 4, 2016 J.P. Morgan sent such revisions to Apollo.

101. Also on March 3, 2016, J.P. Morgan and the Company finalized the terms of and entered into an engagement letter in connection with a potential sale transaction involving the Company.

102. On March 8, 2016, Apollo submitted a definitive proposal, on behalf of equity funds managed by it, to acquire the Fresh Market in an all-cash transaction for $27.25 per share of Company common stock. The proposal was fully financed with equity commitments from certain funds managed by Apollo and debt commitments from Apollo's debt financing sources.

Apollo indicated that its offer was to remain open until 4:00 p.m. Eastern time, on March 13, 2016.

103. Apollo explained that its March 8, 2016 proposal offered a lower valuation than their January 25, 2016 offer for the following reasons: (i) the magnitude of the turnaround necessary in the Company's business was greater than expected as there would have to be a much more significant investment in price required to be competitive and regenerate traffic growth; (ii) a significantly greater re-merchandising of the Company's overall assortment and offering would be required in order to be competitive with the realities of the present day competitive food retail marketplace and it would create risk and would be significantly capital intensive; (iii) continued sales pressure over the last quarter and through the first period of the fiscal year 2016 at a worse than expected level; and (iv) significantly less available funded debt financing than previously believed to be available and at a substantially higher cost of capital and with less overall flexibility in relevant terms. Apollo further explained that its March 8 proposal was not contingent on an equity rollover by Defendant Berry or any member of his family but that Apollo would prefer if they could begin such discussions prior to the announcement of such a transaction.

104. Also on March 8, 2016, the Strategic Transaction Committee met, along with members of Company management, outside counsel, and J.P. Morgan, to consider Apollo's March 8 offer. After discussion the Strategic Transaction Committee directed J.P. Morgan to contact Apollo to request an increase in the offer price.

105. On March 9, 2016, Apollo submitted its best and final offer, on behalf of equity funds managed by it, to acquire the Fresh Market in an all-cash transaction for $28.50 per share of Company common stock. In a conversation with J.P. Morgan later that day Mr. Jhawar said

that his increase in purchase price was predicated on obtaining a $4 to $5 million expense reimbursement in circumstances where the Fresh market was required to pay a termination fee, but indicated Apollo would consider increasing the reverse break-up fee above the 6.75% reflected in its bid the prior day. Mr. Jhawar also reiterated Apollo's interest in speaking with members of the Berry family regarding a potential equity rollover.

106. Also on March 9, 2016, following discussions between the Strategic Transaction Committee and Mr. Duggan, the Strategic Transaction Committee determined that it would allow Apollo to engage in discussions with Defendant Berry and other members of the Berry family regarding a potential equity rollover. The Committee also decided that all such discussions would be chaperoned by J.P. Morgan and that no specific price details would be shared at such time, and that further, non-chaperoned discussions would only be possible if the Board had determined if it was willing to move forward with a transaction.

107. On March 10, 2016, the Strategic Transaction Committee met, with Company management, outside counsel, and J.P. Morgan participating, to consider Apollo's latest offer. Management reviewed three additional projection scenarios (the "Additional Scenario Information"), which management had developed to illustrate and quantify these risks.

108. Also discussed at the March 10, 2016 meeting were J.P. Morgan updated preliminary financial analyses of the Fresh Market as a stand-alone company and of the potential transaction with Apollo. After discussing this and several other items, the Strategic Transaction Committee determined it would recommend Apollo's best and final offer to the Board. With respect to the remaining open issues in the merger agreement, the Company agreed to a $4 million expense reimbursement to Apollo in circumstances where the Company was to pay a

termination fee and Apollo agreed that the reverse break-up fee would be 7.0% of the transaction's equity value.

109. Also on March 10, 2016, outside counsel received a draft of a rollover, contribution and exchange agreement and a draft support agreement in connection with the Berry family potential rollover of their Company shares in the transaction.

110. On the Morning of March 11, 2016, prior to the Company Board meeting, J.P. Morgan reached out to Strategic Party A to see if they were interested in submitting a proposal. Strategic Party A stated they would not be moving forward in the sales process.

111. On March 11, 2016 the Company Board held a special telephonic meeting to consider the proposed transaction with Apollo. At this meeting J.P. Morgan rendered its oral opinion which considered the transaction to be fair to Company stockholders, from a financial point of view. Also reviewed at this time were items related to directors and employee benefit related provisions of the merger agreement. Also discussed was the inclusion of a forum selection clause. Finally the Strategic Transaction Committee unanimously recommended the Apollo transaction to the Board.

112. Also at the March 11, 2016 meeting the Board unanimously (with the exception of Defendant Berry who had recused himself from the meeting) approved the merger agreement and the related agreements. Additionally the Board approved an amendment to the Company's bylaws to provide that courts in the state of Delaware to be the exclusive form for actions arising out of the merger.

113. Also on March 11, 2016 the Board granted permission to Apollo to engage in negotiations with Defendant Berry and Brett Berry regarding a potential rollover of their existing shares of Company common stock.

114. At the conclusion of the March 11, 2016 meeting the merger agreement was executed.

115. On March 12, 2016 the rollover, contribution and exchange agreement was entered into.

116. Prior to the opening of markets in the United States on March 14, 2016, the Fresh Market and Apollo and its subsidiaries jointly announced the execution of the merger agreement.

The Proposed Transaction

117. Despite the Company's recent financial strength and the positive developments throughout 2015, the Company and Apollo announced the Proposed Transaction on March 14, 2016 – cashing out shareholders and capping the future profits they would experience from Fresh Market's continued growth and performance. The press release stated:

> GREENSBORO, N.C. & NEW YORK, N.Y. – March 14, 2016 – The Fresh Market, Inc. (NASDAQ: TFM) ("The Fresh Market" or the "Company"), a growing specialty grocery retailer, and an affiliate of Apollo Global Management, LLC (NYSE:APO) (together with its consolidated subsidiaries, "Apollo") today announced that they have entered into a definitive agreement (the "Merger Agreement") whereby certain funds managed by Apollo, a leading global alternative investment manager, will acquire The Fresh Market for approximately $1.36 billion.
>
> The $28.50 per share all-cash offer by the Apollo Funds represents a premium of approximately 24% over The Fresh Market's closing share price on March 11, 2016, and a premium of approximately 53% over the February 10, 2016 closing share price, the day prior to press speculation regarding a potential transaction.
>
> The announcement follows an open and thorough review of strategic alternatives undertaken by The Fresh Market Board of Directors to maximize stockholder value. The transaction will be implemented through a cash tender offer at $28.50 per share. The transaction was unanimously approved by the Board of Directors of The Fresh Market, other than Ray Berry, Chairman and Founder of The Fresh Market, who recused himself from all Board discussions related to the review and from the Board vote approving the transaction. Ray Berry and Brett Berry, who collectively own approximately 9.8% of The Fresh Market's outstanding shares, have agreed not to tender shares held by them into the tender offer and will both

participate and rollover the vast majority of their holdings in the transaction with Apollo. In addition, George Golleher, with whom Apollo has had a long-term operating partner consulting relationship and who was formerly Chief Executive Officer of Smart & Final and Ralphs Grocery Company/Food-4-Less during ownership by other Apollo affiliated funds, will be a co-investor with the Apollo funds in the transaction.

"We are pleased to have reached this agreement with Apollo, which follows a comprehensive review of strategic and financial alternatives that generated interest from numerous parties. After an open and thorough process, our Board concluded that this offer maximizes value for our stockholders," said Rich Noll, The Fresh Market's Lead Independent Director.

"We are excited about this transaction with Apollo, which recognizes the value of The Fresh Market's strong brand and significant growth prospects while providing stockholders with an immediate and substantial premium," said Rick Anicetti, The Fresh Market's President and Chief Executive Officer. "Apollo is a highly-regarded investor, bringing deep industry expertise and financial resources, and we look forward to working with them to build on our progress in achieving our strategic plan to deliver long-term profitable growth."

"We are delighted about this transaction with The Fresh Market, which was one of the early pioneers in small-box grocery, offering unique, delicious and healthy food with a keen focus on perishables," said Andrew S. Jhawar, Senior Partner and Head of the Retail and Consumer Group at Apollo. "We believe there is a significant opportunity to enhance the brand, merchandise offering and price value combination to make The Fresh Market a primary destination for food shoppers, while at the same time being committed to social responsibility through partnerships with local vendors and communities. Our team at Apollo has had the tremendous fortune of having executed transactions in several consumables retailers and brands – such as Sprouts Farmers Market, Smart & Final, Hostess Brands and General Nutrition Centers, among others – that have undergone significant transformations under our strategic guidance and we intend to bring that experience to bear at The Fresh Market. We look forward to partnering with Ray Berry, Brett Berry and George Golleher, and beginning our discussions with the executive management team and the over 13,000 team members at The Fresh Market so that we can assist the company in delivering the most inspiring and engaging food shopping experience in the industry with best-in-class customer service."

The transaction – which is expected to close in the second quarter of 2016 – is conditioned upon satisfaction of the minimum tender condition which requires that shares representing more than 50 percent of the Company's common shares (other than shares held by Ray and Brett Berry that are being rolled over) be tendered, the receipt of approval under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976 and other customary closing conditions.

> Under the terms of the Merger Agreement, the Company may actively solicit alternative acquisition proposals during a 21-day period following the execution date of the definitive agreement, continuing until midnight on April 1, 2016. There can be no assurances that this process will result in a superior proposal, and The Fresh Market does not intend to discuss any developments with regard to this process unless and until the Company's Board of Directors makes a decision with respect to any potential superior proposal.
>
> The transaction has fully committed financing in place. It will be financed primarily through the incurrence of $800 million in new senior secured notes and an equity contribution of approximately $525 million from funds managed by Apollo in addition to the equity rollover from the Berrys. The Fresh Market will also enter into a new $100 million revolving credit facility concurrently with the closing of the merger.
>
> J.P. Morgan Securities LLC is serving as the exclusive financial advisor to The Fresh Market, and Cravath, Swaine & Moore LLP and Richards, Layton & Finger, P.A. are serving as its legal advisors. Barclays, RBC Capital Markets, LLC, Jefferies and Macquarie Capital are serving as financial advisors to Apollo. The debt financing is being committed to by Barclays, Royal Bank of Canada, Jefferies Finance and Macquarie, and Davis Polk & Wardwell LLP is serving as their legal counsel. Morgan, Lewis & Bockius LLP and Morris, Nichols, Arsht & Tunnell LLP are acting as legal advisors to Apollo and Paul, Weiss, Rifkind, Wharton & Garrison LLP is acting as legal advisor to Apollo as it relates to the debt financing.

The Effects of the Inadequate Process

118. The Proposed Transaction is the product of a failed sales process in which Defendant Berry was able to back channel with Apollo before the process even began, giving Apollo an unfair advantage and setting up a process by which it was impossible for the Proposed Transaction to not occur.

119. Notably, despite the numerous meetings of the Board, Special Transaction Committee, and J.P. Morgan, Apollo was able to completely circumvent the original plan for a second round of bidding, instead forcing the Company to alter its timeframe to better accommodate its own.

120. Clearly such actions were influenced by the prior backroom dealing between Defendant Berry, members of his family, and Apollo. As is admitted in the Proxy, several meetings occurred between these parties before the rest of the Board and the management were even aware that Apollo was interested in the Company.

121. Further exacerbating matters was that Apollo and Defendant Berry's actions were calculated to catch the Company off guard during a transition period between CEO leadership, and when Fresh Market's new strategic plan was yet to be fully developed. Such timing cannot be coincidentally and is most likely the product of Defendant Berry attempting to maximize his own and his family's profits at the expense of the Company and public stockholders of Fresh Market.

122. Finally, despite Defendant Berry's recusal after the sales process had begun, the Board completely failed to insulate their decision making from the effects of his back channeling. For example, Apollo was continually given preferential treatment throughout the process, including abandoning entirely the framework it had maintained for a second round of bidding and thus not allowing several interested parties the ability to submit bids, which very well may have pushed the valuation of Fresh Market upwards.

123. In addition to Defendant Berry's inappropriate conduct, the Board failed to properly question J.P. Morgan's independence regarding its relationship with Apollo. Notably, the Proxy reveals that, during the two year period up to January 31, 2016, the aggregate fees received by J.P. Morgan from Apollo were ***in excess of $116 million***. In Contrast J.P. Morgan's aggregate of fees received by the Fresh Market during the same period was $204,372; it is plain to see whose business is more important to J.P. Morgan.

124. It goes without saying that $116 million over two years is an incredibly large amount of revenue flow from one client, and it is clear from such an amount that Apollo is one of J.P. Morgan's most valuable customers. Such undue influence was completely glossed over and/or ignored by the Special Transaction Committee and the larger Board during the sales process.

125. Taken together, the undue influence and impropriety of Defendant Berry's relationship with Apollo, and the improper relationship and undue influence of Apollo and J.P. Morgan, combine to create a situation in which Apollo was designed, from the outset, to be the eventual acquiring party.

126. The sales process was little more than a hamstrung show, orchestrated by Defendant Berry and Apollo, overseen by a compromised and biased financial advisor, to ensure the Proposed Transaction played out as planned, thus depriving Fresh Market public stockholders of the opportunity to participate in the growth of the Company in which they have loyally invested.

The Inadequate Merger Consideration

127. The Proposed Transaction values Fresh Market stock at $28.50 per share. The Company's extraordinary growth, healthy gross margins, and analyst expectations establish the inadequacy of the merger consideration.

128. As discussed herein, the current fiscal year has been one of great success for Fresh Market. The Company has posted increases in net income, gross profits, and gross margins in every financial report released in 2015.

129. Significantly, the Company has traded significantly higher than the merger valuation recently, hitting a high valuation point of $41.70 within the last year. Significantly such a valuation is over 46% greater than that considered in the Proposed Transaction.

130. Additionally, a group of twenty *Yahoo! Finance* analysts have valued the Company as high as $44.00 per share recently, a valuation over 54% greater than that considered in the Proposed Transaction.

131. While Plaintiff and the Class will be cashed out for inadequate consideration and will be unable to share in the future success of the Company, the same cannot be said of the Individual Defendants that may have been motivated by their own self-interest when they voted to approve the deal. Pursuant to the terms of the Merger Agreement, at the Effective Time, all outstanding Company options, and restricted shares will be deemed to be fully vested and converted into the right to receive the merger consideration. According to Fresh Market's most Recent Proxy Statement, collectively, the Company's senior executive officers and directors own beneficially own over $29 million in Company Options and other restricted units. As a result of the Proposed Transaction, these individuals will receive immediate liquidity for their currently illiquid stock holdings.

132. In addition, several Company insiders will receive large cash payouts when the Proposed Transaction is consummated due to change-in-control or "golden parachute" agreements they have with the Company. Upon a change-in-control resulting in their termination (of which the Proposed Transaction qualifies), eligible Company insiders collectively stand to receive over $6.4 million, further benefits which will not be shared amongst the public stockholders of Fresh Market.

133. Furthermore according to the Merger Announcement, Defendant Berry and brother, Brett Berry, who collectively own 9.8% of the outstanding shares of the Company will be rolling over their stake in the company with Apollo Global, allowing them the opportunity to invest in the future of the Company that has seen consistent growth throughout 2015. This is an opportunity not afforded to Plaintiff or other public stockholders of Fresh Market.

134. Accordingly, while the Board and Company Executives will continue to benefit from the future success of the Company, Plaintiff and the Class will be cashed out for inadequate consideration and will be unable to share in these benefits.

The Preclusive Deal Protection Devices

135. The Merger Agreement provides Pomegranate with benefits that all but assure it will acquire the Company.

136. The Company has agreed to a no-solicitation provision which, after a brief "Go-Shop Period" ending on April 1, 2016, will prevent the Company or its affiliates from actively seeking another bidder. According to Section 5.02(a) of the Merger Agreement, the Company cannot initiate, solicit, facilitate and encourage, whether publicly or otherwise" any Takeover Proposals (as defined in the Merger Agreement) after the brief Go-Shop Period.

137. According to Section 5.02(d) of the Merger Agreement, Fresh Market must also notify Pomegranate within one business day if it receives an unsolicited offer to acquire the Company. This provision also requires the Company to provide Pomegranate with any and all written materials from the unsolicited bidder – including the identity of the bidder – and to keep Pomegranate informed of all developments regarding the other potential bidder.

138. Further, even if another offer were made to acquire the Company, Pomegranate has received a "matching right," which permits Pomegranate the right to make a topping offer.

In the event an unsolicited offer to acquire the Company materializes, section 5.02(d) of the Merger Agreement requires the Company to negotiate in good faith with Pomegranate for of the lessor of three business days prior to the then scheduled expiration of the Tender Offer or ten business days consider any changes to Pomegranate's offer to acquire the Company. In other words, the Merger Agreement gives Pomegranate access to any rival bidder's information and allows Pomegranate a free right to top any superior offer simply by matching it. Accordingly, no rival bidder is likely to emerge and act as a stalking horse because the Merger Agreement unfairly assures that any "auction" will favor Pomegranate and piggy-back upon the due diligence of the foreclosed second bidder.

139. Finally, a potential bidder would have to address a termination fee of $34 million if it accepts an unsolicited offer to acquire the Company. The termination fee, as outlined in section 7.03 of the Merger Agreement, thereby essentially requires that a competing bidder agree to pay a naked premium for the right to provide the shareholders with a superior offer.

140. Ultimately, these preclusive deal protection provisions illegally restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective "fiduciary out" under the circumstances.

141. Unless enjoined by this Court, the defendants will continue to breach and/or aid the breaches of fiduciary duties owed to Plaintiff and the Class, and may consummate the Proposed Transaction to the irreparable harm of the Class.

142. Plaintiff and the other members of the Class have no adequate remedy at law.

The False and Misleading Proxy

143. Finally, it is critical that stockholders receive complete and accurate information about the Proposed Transaction prior to deciding whether to tender their shares. To date, however, the Individual Defendants have failed to provide Fresh Market stockholders with such information. As set forth in more detail below, the Proxy omits and/or misrepresents material information concerning, among other things: (1) the background of the Proposed Transaction; (2) the data and inputs underlying the financial valuation exercises that purportedly support the so-called "fairness opinion" of J.P. Morgan; and (3) Fresh Market's financial projections, relied upon by J.P. Morgan.

1. The Proxy fails to adequately describe the process that resulted in the Proposed Transaction and the conflicts of interest infecting it.

144. The Proxy fails to fully and fairly disclose certain material information concerning the process leading to the Proposed Transaction and the conflicts of interest that infected it, including, among other things:

(a) Why Defendant Berry did not disclose his discussions with Apollo until after Apollo had submitted its October 1, 2015 bid;

(b) Whether any of the NDAs signed by any interested party during the sales process contained either standstill or "don't-ask-don't-waive" provisions or both;

(c) Whether the NDAs signed by any interested party during the sales process were identical in material terms and conditions to one another, and, if not, what where the difference in said material terms and conditions;

(d) The reasons why Apollo was allowed to continually have an advantage over competing interested parties in the bidding process given that it was the only party that had

the ability to speak to Defendant Berry and the Berry family regarding a potential rollover of their equity as part of a proposed transaction;

(e) Why the bidding process was completely abandoned in favor of entering into a transaction with Apollo

2. The Proxy fails to disclose key financial metrics underlying J.P. Morgan's analyses.

145. In the Proxy, J.P. Morgan describes its fairness opinion and the various valuation analyses it performed to render its opinion. However, J.P. Morgan's description fails to include necessary underlying data, support for conclusions, or the existence of, or basis for, underlying assumptions. Without this information, one cannot replicate the analyses, confirm the valuations, or evaluate the fairness opinion.

146. For example, the Proxy does not disclose material details concerning the analyses performed J.P. Morgan in connection with the Proposed Transaction, including (among other things):

a. Public Trading Multiples (Proxy at 42-43)

i. The financial metrics, calculations and multiples observed for each of the selected companies.

ii. Whether J.P. Morgan conducted any type of benchmarking analysis for TFM in relation to the selected companies.

iv. The conclusions drawn by J.P. Morgan from this analysis, including how this analysis factored into J.P. Morgan's opinion that the Proposed Transaction was fair.

b. Selected Transaction Analysis (Proxy at 42-43)

i. The actual financial metrics and multiples for each of the selected

transactions observed in the analysis.

ii. The criteria used by J.P. Morgan in choosing the selected transactions.

iii. Whether J.P. Morgan conducted any type of benchmarking analysis for TFM in relation to the selected transactions.

iv. Why J.P. Morgan only utilized that November 17 Management Case for the selected transactions.

iv. The conclusions drawn by J.P. Morgan from this analysis, including how this analysis factored into J.P. Morgan's opinion that the Proposed Transaction was fair.

c. Illustrative Discounted Cash Flow Analyses (Proxy at 44)

i. The specific inputs and assumptions used to determine the discount rate range of 9.0% to 10.0% used in this analysis.

ii. The basis for the implied perpetuity growth rate range of 1.5%-2.5% resulting from this analysis.

iii. The number of fully diluted shares of TFM Common Stock outstanding as of January 31, 2016.

iv. The assumptions underlying J.P. Morgan's estimate of TFM's weighted average cost of capital.

3. The Proxy fails to disclose the financial projections underlying J.P. Morgan's analyses.

147. The Proxy also fails to disclose key information regarding certain projections prepared by TFM management and provided to, and relied upon, by J.P. Morgan. A shareholder's decision to accept or reject the proposed transaction rests on knowing

management's projection of free cash flow and is improved by understanding how specific factors (i.e., the disclosed line items described below) affected unlevered cash flow. The definition of unlevered free cash flow can vary depending on the financial advisor and the subject company; therefore, it is important to understand the individual components comprising the calculation of unlevered free cash flow and the resulting impact on the value indications from the DCF Analysis.

148. Here, for example, the Proxy states that "unlevered free cash flow represents unlevered net operating profit after tax, adjusted for depreciation, capital expenditures, changes in net working capital and *certain other expenses as applicable*." (Emphasis added.) Thus, the Proxy should disclose:

i. EBIT

ii. Taxes on EBITA

iii. D&A and other non-cash charges affecting EBIT

iv. Changes in deferred taxes

v. CapEx

vi. Increases in non-cash working capital

vii. Stock-based compensation

FIRST CAUSE OF ACTION

CLAIM FOR BREACHES OF FIDUCIARY DUTIES AGAINST THE INDIVIDUAL DEFENDANTS

149. Plaintiff repeat and re-allege each allegation set forth herein.

150. The Individual Defendants have violated their fiduciary duties of care and loyalty owed to the public shareholders of Fresh Market. By the acts, transactions, and courses of

conduct alleged herein, the Individual Defendants are attempting to unfairly deprive Plaintiff and other members of the Class of the value of their investment in Fresh Market.

151. As demonstrated by the allegations above, the Individual Defendants have failed to exercise the necessary care required and breached their duties of loyalty because, among other reasons:

(a) They have failed to properly value the Company; and

(b) They have failed to take steps to maximize the value of Fresh Market to its public shareholders.

152. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the other members of the Class, and may consummate the Proposed Transaction, which will deprive the Class of its fair proportionate share of Fresh Market's valuable assets and businesses, to the irreparable harm of the Class.

153. Plaintiff and 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 which the Individual Defendants' actions threaten to inflict.

SECOND CAUSE OF ACTION

AGAINST FRESH MARKET, POMEGRANATE, AND MERGER SUB FOR AIDING AND ABETTING BREACHES OF FIDUCIARY DUTIES

154. Plaintiff repeat and re-allege each allegation set forth herein.

155. Defendants Fresh Market, Pomegranate and Merger Sub, by reason of their status as parties to the Merger Agreement and their possession of non-public information, have aided and abetted the Individual Defendants in the aforesaid breaches of their fiduciary duties.

156. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of defendants Fresh Market, Pomegranate and Merger Sub who, therefore, have aided and abetted such breaches in the possible sale of Fresh Market to Pomegranate.

157. As a result of the unlawful actions of defendants Fresh Market, Pomegranate and Merger Sub, Plaintiff and the other members of the Class will be irreparably harmed in that they will not receive fair value for Fresh Market's assets and business. Unless the actions of Fresh Market, Pomegranate and Merger Sub are enjoined, they will continue to aid and abet the Individual Defendants' breaches of their fiduciary duties owed to Plaintiff and the members of the Class.

158. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demand injunctive relief, in Plaintiff' favor and in favor of the Class and against defendants, as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Enjoining defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Transaction, unless and until the Company adopts and implements a procedure or process to obtain the highest possible price for shareholders;

C. Directing defendants to account to Plaintiff and the Class for their damages sustained because of the wrongs complained of herein;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

E. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: March 31, 2016

Respectfully submitted,

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