

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA**

RONALD JANTZ , individually and on behalf of all others similarly situated,)	
)	Case No. 1:16-CV-307
)	
Plaintiff,)	
)	
v.)	
)	
RAY BERRY, RICHARD ANICETTI,)	JURY TRIAL DEMANDED
JEFFREY NAYLOR, MICHAEL TUCCI,)	
STEVEN TANGER, RICHARD NOLL,)	
BOB SASSER, JANE THOMPSON,)	
MICHAEL CASEY, ROBERT)	
SHEARER, and THE FRESH MARKET,)	
INC.,)	
)	
Defendants.)	
)	

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

Ronald Jantz (“Plaintiff”), on behalf of himself and all others similarly situated by and through the undersigned counsel, alleges the following upon information and belief, including the investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge as follows:

SUMMARY OF THE ACTION

1. This is a shareholder class action brought by Plaintiff on behalf of holders of the common stock of The Fresh Market, Inc. (“Fresh Market”) against the Company’s Board of Directors (the “Board” or the “Individual Defendants”) and Fresh Market for violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”).

2. On March 14, 2016, the Company announced it had entered into an Agreement

and Plan of Merger (the “Merger Agreement”) in which Pomegranate Merger Sub, Inc. (“Merger Sub”) has agreed to commence a cash tender offer to acquire any and all of the outstanding shares of the common stock of the Company (the “Tender Offer”) for \$28.50 per share in cash (the “Merger Consideration”). Following the consummation of the Tender Offer, Merger Sub will merge with and into the Company (the “Merger”), with the Company surviving as a wholly-owned subsidiary of Pomegranate Holdings, Inc. (“Pomegranate”), an affiliate of Apollo Global Management (“Apollo”), in a deal worth \$1.36 billion.

3. As described more fully herein, the Merger was approved by a conflicted Board with significant ties to private equity firm Apollo. In order to ensure a sale to Pomegranate, the Board gave other interested bidders little time to complete their due diligence, while Pomegranate, the preferred buyer, had been conducting its diligence for several months.

4. As a result of the flawed and inadequate process, the Merger Consideration fails to adequately compensate Fresh Market shareholders for their stake in the Company, despite its strategic positioning as a leader in an expanding marketplace. Fresh Market has shown strong growth over the last few months, and is expected to continue to outperform. In fact, during the first month of 2016 the Company showed a 3.89% share price momentum, which was significantly higher than its peer group performance of -11.75%. Moreover, at least one analyst estimated a per share target price for Fresh Market stock of \$44.00, **35% over** the Merger Consideration of \$28.50

5. The Board and Fresh Market management are receiving preferential treatment of their common stock in the Merger that is not being equally shared by Fresh Market stockholders. Specifically, as part of the Tender Offer, Defendant Ray Berry (“Berry”), the Company’s Chairman, founder and former Chief Executive Officer (“CEO”), along with his son, Brett Berry,

who collectively own approximately 9.8% of Fresh Market's outstanding common stock as of the announcement of the Merger, will roll over their shares of Fresh Market into the new company and maintain an indirect equity ownership. This will allow Defendant Berry and Brett Berry to obtain a benefit from the Merger that Fresh Market shareholders will be precluded from enjoying.

6. Exacerbating matters, Defendants have agreed to lock up the Merger with certain deal protection devices and limited fiduciary outs which preclude other bidders from making successful competing offers for the Company. Under the terms of the Merger Agreement, there are a slew of provisions that unreasonably prevent potential third party bidders from launching topping bids, including: (i) a limited "Go-Shop" provision, which does not provide sufficient time for a third party bidder to come in and make a topping bid, and the expiration of which severely constrains the Individual Defendants' ability to communicate and negotiate with potential buyers who wish to submit or who have submitted unsolicited alternative proposals; (ii) a "last look" provision which allows Pomegranate three business days to re-negotiate with the Board after it is provided written notice of any unsolicited third-party bid for the Company; and (iii) a two-tiered termination fee provision whereby the Board agreed to pay Pomegranate \$17 million in the event that the Company received a higher offer to acquire Fresh Market during the go-shop period and terminated the Merger Agreement or changes its recommendation and \$34 million if the Company terminates the Merger Agreement after the go-shop period has expired. In addition, Fresh Market will be required to reimburse up to \$4 million of expenses incurred by Pomegranate in the event a termination fee becomes payable under the Merger Agreement. The expense reimbursement effectively serves as an additional termination fee.

7. The unreasonable terms, taken together, foreclose on the possibility that a bidder

will assume the significant time and expense required in order to engage in the process at this late stage. In addition, the deal protection provisions substantially and improperly limit the Board's ability to act with respect to investigating and pursuing superior proposal alternatives, including a sale of all or part of Fresh Market.

8. On March 25, 2016, the Defendants caused to be filed a 14D-9 Solicitation/Recommendation Statement, as subsequently amended on March 31, 2016, April 4, 2016, and April 5, 2016 (the "14D-9") with the U.S. Securities and Exchange Commission ("SEC") in an effort to solicit stockholders to tender their Fresh Market shares in the Tender Offer. The 14D-9 is materially deficient and deprives Fresh Market shareholders of the information they need to make an intelligent, informed and rational decision of whether to tender their shares in the Tender Offer. As detailed below, the 14D-9 omits and/or misrepresents material information concerning, among other things: (a) the sales process of the Company; (b) the data and inputs underlying the financial valuation analyses that purport to support the fairness opinion provided by the Company's financial adviser, J.P. Morgan Securities LLC ("J.P. Morgan"); and (c) the Company's financial projections.

9. In pursuing the unlawful plan to sell Fresh Market at a wholly insufficient price pursuant to a defective sales "process," and via a wholly deficient 14D-9, Defendants have violated the federal securities laws.

10. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Tender Offer without first curing their violations of federal securities laws.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges

violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act. This action is not a collusive one to confer jurisdiction on a court of the United States, which it would not otherwise have.

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

13. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) a substantial portion of the transactions and wrongs complained of herein, including defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iii) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

14. Plaintiff is and has been at all material times, a public shareholder of Fresh Market.

15. Defendant Fresh Market is a corporation organized and existing under the laws of the State of Delaware. The Company maintains its principal executive offices at 628 Green Valley Road, Greensboro, North Carolina 27408. Fresh Market common stock trades on the NASDAQ stock exchange under the ticker symbol "TFM."

16. Defendant Ray Berry has been the Chairman of the Board since he founded the Company in 1981, and was the President and Chief Executive Officer ("CEO") of the Company

from 1981 until 2007.

17. Defendant Richard Anicetti (“Anicetti”) has been the President and CEO of the Company since September 2015.

18. Defendant Michael Casey (“Casey”) has been a director of the Company since May 2015. Defendant Casey, Martin Kelly (“Kelly”), the Chief Financial Officer (“CFO”) of Apollo, and Chris Weidler (“Weidler”), Apollo’s Chief Accounting Officer and Controller, were previously associated with PricewaterhouseCoopers LLP (PwC). Defendant Casey worked for Price Waterhouse LLP, a predecessor firm to PwC, from 1982 to 1993, Kelly was employed at PwC from 1987 to 2000, and Weidler was employed at PwC from 1997 to 2005.

19. Defendant Jeffery Naylor (“Naylor”) has been a director of the Company since November 2010. Upon information and belief, Naylor is a resident of the state of Massachusetts.

20. Defendant Richard Noll (“Noll”) has been a director of the Company since August 2011.

21. Defendant Bob Sasser (“Sasser”) has been a director of the Company since March 2012.

22. Defendant Robert Shearer (“Shearer”) has been a director of the Company since May 2015.

23. Defendant Steven Tanger (“Tanger”) has been a director of the Company since June 2012.

24. Defendant Michael Tucci (“Tucci”) has been a director of the Company since August 2011 and the lead independent director since December 2011.

25. Defendant Jane Thompson (“Thompson”) has been a director of the Company since June 2012.

26. Defendants referred to in ¶¶ 16-25 are collectively referred to herein as the “Individual Defendants.”

27. Each of the Individual Defendants at all relevant times had the power to control and direct Fresh Market to engage in the misconduct alleged herein.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public stockholders of Fresh Market (the “Class”). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

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

30. The Class is so numerous that joinder of all members is impracticable. As of March 9, 2016, there were approximately 47,049,217 shares of Fresh Market common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

31. Questions of law and fact are common to the Class, including, among others: (i) whether defendants have violated the federal securities laws; (ii) whether defendants have misrepresented or omitted material information concerning the Merger in the 14D-9; and (iii) whether defendants will irreparably harm Plaintiff and the other members of the Class if defendants’ conduct complained of herein continues.

32. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff’s claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and

adequately protect the interests of the Class.

33. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, 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.

34. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and Its Recent Strong Financial Performance

35. Fresh Market was founded by Ray and Beverly Berry in 1982 in Greensboro, North Carolina and incorporated in the state of Delaware in 2010. The Company was founded as a better grocery store that brought back the feeling of open European-style markets and operates 168 stores in 27 states in the Southeast, Midwest, Mid-Atlantic and Northeast. The Company made its initial public offering in 2010 at a price of \$22.00 per share, and raised \$290 million. On November 5, 2010, Fresh Market began trading on the NASDAQ.

36. Since its initial public offering in November 2010, the Company has seen extraordinary growth and is expected to continue its growth trajectory well into the future. For example, at the close of fiscal year 2011, the Company reported net sales of \$787.3 million, an 11.7% increase from the prior year. By the end of fiscal year 2012, net sales further increased 21.8% to \$959.3 million. By the end of 2013, the Company had crossed the one billion mark,

with net sales of \$1.51 billion, a 13.7% increase over the prior year. This only continued to increase into 2014, with year-end net sales increasing 16% to reaching \$1.75 billion.

37. The following year, 2015, was especially successful for Fresh Market. Net sales continued to increase quarter over quarter, with the first quarter net sales increasing 7.2% to \$462 million, second quarter net sales increasing 4.7% to \$442.1 million, and third quarter net sales increasing 3.3% to 433.1 million over the corresponding quarters of 2014.

38. The Company is poised for significant growth in the future. Defendant Anicetti, speaking about the third quarter fiscal 2015, commented,

The Fresh Market is a unique brand with enormous untapped potential and I am excited about the opportunity to guide the company's future direction. As our management team and Board conduct a comprehensive strategic and financial review of the business, we are simultaneously moving forward aggressively with a number of initiatives to strengthen our foundation, increase productivity, drive store traffic, and regain operating momentum. With the holiday season fast approaching, we are making changes as quickly as prudently possible to our productivity, price optimization and brand differentiation to help stabilize traffic trends and drive sales during this key shopping period.

39. As demonstrated in the chart below taken from the Company's Form 10-K, filed with the SEC on March 14, 2016, Fresh Market's stock has been consistently trading well above the Merger Consideration in the Merger Consideration over the last two years. In fact, Fresh Market's common stock traded as high as \$42.07 per share on March 16, 2015.

Our common stock has been quoted on the NASDAQ Global Select Market under the symbol "TFM" since November 5, 2010, subsequent to our initial public offering. Prior to that date, there was no public market for our common stock. The following table shows the high and low sale prices per share of our common stock as reported on the NASDAQ Global Select Market for each quarter during the fiscal years ended January 31, 2016 and January 25, 2015:

	High		Low	
Fiscal year ended January 25, 2015				
January 27, 2014 to April 27, 2014	\$	36.83	\$	31.75
April 28, 2014 to July 27, 2014	\$	37.41	\$	28.70
July 28, 2014 to October 26, 2014	\$	36.94	\$	29.47
October 27, 2014 to January 25, 2015	\$	41.76	\$	34.06
Fiscal year ended January 31, 2016				
January 26, 2015 to April 26, 2015	\$	42.09	\$	35.51
April 27, 2015 to July 26, 2015	\$	38.72	\$	30.97
July 27, 2015 to October 25, 2015	\$	31.71	\$	18.70
October 26, 2015 to January 31, 2016	\$	26.47	\$	17.81

40. Additionally, at least one analyst on Yahoo! Finance estimated a per share target

price for the Company's common stock of \$44.00, **35% over** the Merger Consideration of \$28.50.

The Flawed Process Leading to the Merger

41. As evidenced in the 14D-9, the Board failed to even attempt to maximize stockholder value prior to executing the Merger Agreement.

42. On September 1, 2015, defendant Richard Anicetti became Fresh Market's President and CEO and was elected to the Board.

43. On October 1, 2015, the Board received an unsolicited preliminary non-binding indication of interest from Apollo Management VIII L.P. ("Management VIII"), proposing to acquire Fresh Market in an all-cash transaction for a purchase price of \$30.00 per share, to expire on October 20, 2015 (the "October 1st proposal"). Management VIII's proposal stated that Management VIII had discussed with Defendant Berry, and his son Brett Berry, who collectively owned approximately 9.8% of Fresh Market's outstanding common stock as of the date of the proposal, the opportunity to roll over their Fresh Market shares in a transaction with Management VIII. Management VIII's letter also included a reference that Management VIII and Defendant Berry and Brett Berry would be working in an exclusive partnership in connection with a potential acquisition of Fresh Market.

44. On October 5, 2015, Scott Duggan ("Duggan"), Fresh Market's Senior Vice President and General Counsel, reached out to Defendant Berry to clarify Defendant Berry's relationship with Apollo and his interaction with Apollo prior to Management VIII's October 1st proposal. Defendant Berry stated he had three separate conversations with a representative of Management VIII regarding a potential transaction. The first was a few months prior when Andrew Jhawar ("Jhawar"), senior partner in the private equity group of Apollo, contacted

Defendant Berry to have a general discussion about Fresh Market and the food retail industry. Defendant Berry had a second conversation with Jhawar a few weeks prior to Management VIII's preliminary non-binding indication of interest, during which Jhawar stated that Management VIII was interested in the food retail industry and in Fresh Market and asked if Defendant Berry would be interested in participating in a transaction through an equity rollover. The third conversation, which had taken place shortly prior to the receipt of Management VIII's letter, was a courtesy call in which Management VIII informed Defendant Berry that Management VIII would be sending an offer letter to Fresh Market.

45. The Board held a meeting on October 15, 2015, during which they discussed, among other things, the October 1st proposal. The Board also discussed with Defendant Berry his relationship with Apollo and his role in Management VIII's formulation of its October 1st proposal. The Board decided to create a committee (the "Strategic Transaction Committee"), comprised of Defendants Naylor, Noll, and Shearer, that would be responsible for reviewing and evaluating communications from stockholders and other third parties and reviewing and evaluating, and making recommendations to the Board with respect to, Management VIII's proposal and any other proposals from third parties.

46. The Board also discussed retaining a financial advisor to assist management and the Board in connection with the evaluation of Management VIII's proposal. The Board considered J.P. Morgan for the role of financial advisor.

47. The Board then determined it would be in the best interests of Fresh Market and the stockholders for the Board to conduct a thorough strategic and financial review of Fresh Market and its business and that Fresh Market would issue a press release announcing the commencement of a review of its strategic and financial alternatives. Fresh Market then sent a

letter to Management VIII stating it would evaluate its proposal as part of Fresh Market's announced strategic and financial review. Management VIII then withdrew its proposal on October 21, 2015.

48. The Strategic Transaction Committee met on October 23, 2015, during which representatives from J.P. Morgan informed them that they had received 12 inbound inquiries from financial sponsors regarding a potential acquisition of Fresh Market.

49. On November 25, 2015, Management VIII sent a letter to the Board reaffirming its prior preliminary non-binding indication of interest to acquire Fresh Market in an all-cash transaction for a purchase price of \$30.00 per share. Management VIII stated that it was making the proposal together with Defendant Berry and Brett Berry, and indicated that the proposal would expire on December 3, 2015. On November 28, 2015, Defendant Berry's counsel contacted the representatives of Cravath, Swaine, & Moore LLP ("Cravath"), Fresh Market's legal counsel, and stated Defendant Berry had an oral agreement to roll his equity interest over into the surviving entity if Management VIII were to be successful in agreeing to a transaction with Fresh Market.

50. On December 1 and 2, 2015, the Board met to review Fresh Market's strategic plan that Fresh Market's management had developed, as well as management's financial projections based on that strategic plan, and to review with Fresh Market's management and J.P. Morgan the strategic alternatives available to Fresh Market, including whether to pursue a potential sale transaction or to pursue other strategic or financial alternatives.

51. The Strategic Transaction Committee met on December 2, 2015, with members of management and representatives of Cravath and J.P. Morgan participating, and authorized and directed J.P. Morgan to begin reaching out to potential counterparties starting on December 3,

2015 to evaluate their interest in a potential transaction with Fresh Market. J.P. Morgan contacted a total of 32 parties (including 23 financial sponsors and 9 strategic parties) over a several week period, including all of the 21 parties who had previously contacted J.P. Morgan and expressed an interest in a potential transaction involving Fresh Market. Between December 4, 2015 and January 28, 2016, J.P. Morgan distributed 25 confidentiality agreements to potential counterparties (22 to financial sponsors and three to strategic parties). Twenty of the contacted parties entered into confidentiality agreements with Fresh Market (including 19 financial sponsors and 1 strategic party), which contained customary standstill provisions that would automatically terminate upon the entry by Fresh Market into a definitive acquisition agreement with a third party.

52. On January 25, 2016, J.P. Morgan received first round preliminary indications of interest for a potential acquisition of Fresh Market from five potential counterparties—Management VIII, three other private equity funds referred to as “Financial Sponsor Party A”, “Financial Sponsor Party B” and “Financial Sponsor Party C”, respectively, and a conventional food retailer referred to as “Strategic Party A”.

53. Management VIII submitted a preliminary non-binding indication of interest proposing, on behalf of equity funds managed by it, to acquire Fresh Market in an all-cash transaction at a price of \$31.25 per share, predicated on obtaining exclusivity for a period of three weeks. The other four parties submitted preliminary non-binding indications of interest proposing to acquire Fresh Market in an all-cash transaction at the following price ranges: Financial Sponsor Party A with a price range of \$24.00 to \$26.00 per share; Financial Sponsor Party B with a price range of \$27.00 to \$30.00 per share; Financial Sponsor Party C with a price range of \$28.00 to \$30.00 per share; and Strategic Party A with a price range of \$25.00 to \$30.00

per share.

54. On January 28, 2016, the Strategic Transaction Committee met and discussed, amongst other things, providing exclusivity to Management VIII. Ultimately, the Strategic Transaction Committee decided that Management VIII's offer price was not sufficiently differentiated from the top end of the price ranges proposed by other bidders, and it was too early in the process to offer exclusivity. The Strategic Transaction Committee also determined not to permit Financial Sponsor Party A into the next round of the process given the lower price range of Financial Sponsor Party A's offer compared to the other four preliminary indications of interest.

55. On February 4, 2016, J.P. Morgan received a written unsolicited preliminary non-binding indication of interest, based on publicly available information, from a private equity firm which had investments in food retail companies, referred to as "Financial Sponsor Party D", to acquire Fresh Market in an all-cash transaction at a price range of \$27.00 to \$30.00 per share.

56. On February 6, 2016, J.P. Morgan received a written preliminary non-binding indication of interest from the financial advisors of a specialty food retailer, referred to as Strategic Party B to acquire Fresh Market in an all-cash transaction at price range of \$27.00 to \$30.00 per share. Fresh Market then entered into a confidentiality agreement with Strategic Party B on February 9, 2016.

57. On February 11, 2016, a news outlet reported that Fresh Market was exploring a sale and speculated about which parties were participating in the process. On February 12, 2016, following the publication of this story, a representative of a large supermarket chain, referred to as "Strategic Party C", contacted J.P. Morgan indicating that Strategic Party C would be interested in a potential transaction with Fresh Market and requested a confidentiality agreement,

which was provided by J.P Morgan on that same day.

58. On February 15, 2016, Strategic Party C decided to withdraw from the process.

59. On February 18, 2016, the Strategic Transaction Committee met and determined that Fresh Market should target March 14, 2016 as the deadline for the submission of final bids.

60. Following this meeting, J.P. Morgan contacted representatives of each of Management VIII, Financial Sponsor Party B, Financial Sponsor Party C and Strategic Party A to discuss next steps in the process and the timing of submission of final bids.

61. Unsurprisingly, Management VIII stated that they wanted to move more quickly, bolstered by the fact that it had already completed a significant amount of its due diligence work prior to the Board's exploration of any other alternatives. Strategic Party A stated that they did not believe that they would be able to submit a final bid prior to mid-March. The representatives of Financial Sponsor Party B stated that they did not believe an early March bid deadline was feasible, but that a mid-March bid deadline could be potentially achieved. The representatives of Financial Sponsor Party C also stated that a mid-March bid deadline might be achievable, but expressed concern to J.P. Morgan about Financial Sponsor Party C's view that Fresh Market was in the early stages of execution of its strategic plan and the execution risk embedded in the plan. In order to facilitate Financial Sponsor Party C's assessment of a possible transaction and Fresh Market's strategic plan, J.P. Morgan organized additional discussions with Fresh Market's management so that Financial Sponsor Party C could obtain additional information with respect to Fresh Market's strategic plan.

62. On February 24, 2016, Strategic Party B withdrew from the process. On that same day, Strategic Party A indicated it would have difficulty executing a potential acquisition of Fresh Market on its own but would be potentially interested in partnering with a private equity

firm. On February 25, 2016, Financial Sponsor Party C contacted J.P. Morgan and stated it was having difficulty seeing how it could move forward in light of the early stages of Fresh Market's executing on its strategic plan.

63. The Strategic Transaction Committee met on February 25, 2016, and discussed how Management VIII continued to press for an earlier bid deadline in light of the amount of work they had already undertaken and their confidence in being able to pull together a final bid and the associated financing on a much earlier timeframe. The Strategic Transaction Committee and the advisors discussed that any bid would need to include a merger agreement markup, and that the approach taken by Management VIII in the markup would give a good indication of whether Management VIII was willing to move quickly. It was determined that J.P. Morgan should ask Management VIII to submit a merger agreement markup in the near term to determine if a transaction with Management VIII on an earlier timeframe was doable, and to see if a potential transaction with Management VIII would be actionable if a joint bid between Strategic Party A and either Financial Sponsor Party B or Financial Sponsor Party C did not materialize

64. On March 3, 2016, the Strategic Transaction Committee also discussed the status of discussions between Strategic Party A and Financial Sponsor Party B or Financial Sponsor Party C regarding a potential partnership and the timeline for a potential co-investment. The Strategic Transaction Committee then discussed the possibility that Strategic Party A and either Financial Sponsor Party B or Financial Sponsor Party C may not be able to agree on terms regarding a potential joint acquisition quickly or at all, and determined that if Management VIII submitted a final, fully financed proposal that was compelling from both a value and certainty perspective, it could make sense to move forward with Management VIII if it appeared at that time that Strategic Party A would not be able to submit a competing bid in the near term or at all.

65. On March 8, 2016, Management VIII submitted a definitive proposal, on behalf of equity funds managed by it, to acquire Fresh Market in an all-cash transaction for \$27.25 per share of Fresh Market common stock.

66. On March 8, 2016, the Strategic Transaction Committee met and determined that Management VIII would need to improve its offer in order for the Strategic Transaction Committee to recommend to the Board that Fresh Market move forward with them and execute a transaction.

67. On March 9, 2016, Management VIII, on behalf of equity funds managed by it, submitted its best and final offer to acquire Fresh Market in an all-cash transaction for \$28.50 per share of Fresh Market common stock – well below its previous indication of interest and firmly within the ranges of interest expressed by other parties earlier in the process.

68. Despite the fact that the Merger Consideration was well below even what Management VIII had offered at the outset of the sales process and there existed no exigency that required a distressed sale of Fresh Market, on March 11, 2016, the Board unanimously approved the Merger Agreement and the related agreements and the proposed transactions contemplated thereby. Also on March 11, 2016, the Board granted permission to Management VIII to engage in negotiations with Defendant Berry and Brett Berry regarding a potential rollover of their existing shares of Fresh Market common stock, an agreement that had all but been wrapped up behind the Board's back prior to Management VIII even approaching the Company.

69. On March 12, 2016, Pomegranate entered into a rollover, contribution and exchange agreement with the Defendant Berry and Brett Berry, pursuant to which they agreed to contribute their Rollover Shares to Pomegranate in exchange for shares of its common stock. On the same date, Defendant Berry and Brett Berry also entered into a support agreement with

Pomegranate, pursuant to which they agreed not to tender the Rollover Shares in the Offer and otherwise to support the transaction.

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

The Unfair Merger and Coercive Deal Protection Provisions

71. In a press release dated March 14, 2016, Fresh Market announced that the Company had entered into the Merger Agreement with Pomegranate pursuant to which Pomegranate will acquire Fresh Market through a Tender Offer, with a total transaction valued at approximately \$1.36 billion.

72. As a result of the Merger, the post-transaction entity would have approximately \$1.36 billion in assets with 168 stores across 27 states.

73. Given the Company's size, recent financial performance, and expectations of continued growth, the Merger Consideration is inadequate and significantly undervalues the Company. The Merger Consideration represents a -32% premium based on Fresh Markets high trading price of \$42.07 per share on March 16, 2015.

74. The Tender Offer is thus beneficial to Apollo and Defendant Berry, who will gain from the innovative design of Fresh Market's stores, with their efforts to bring European style market stateside, while Fresh Market shareholders will receive an unfair price for their shares.

75. In light of the significant advantages that Apollo will receive for completing the Tender Offer through Pomegranate, the Fresh Market Board failed to secure a value-maximizing price for the Company.

76. To the detriment of Plaintiff and Fresh Market's public shareholders, the Merger Agreement also includes terms that serve to make the Merger a *fait accompli* and prevent other

Companies from emerging with a competing offer for the Company.

77. For example, Section 5.02 provides a limited 21-day “Go-Shop” period for the Company to solicit interest from other potential acquirers in order to procure a price in excess of the amount offered by Pomegranate. Upon the expiration of the go-shop period, the Company was required to immediately cease any solicitation, discussion or negotiation with any person that may have been ongoing, with respect to an alternative offer to acquire Fresh Market.

78. Pursuant to this section of the Merger Agreement, should a bidder submit a takeover proposal which the Company believes to be a superior proposal, then the Company must notify Pomegranate promptly, or within one business day, of the bidder’s identity and the terms of the bidder’s offer.

79. Further, if the Board decides that the alternative proposal is a bona fide, superior proposal, the Board may not change its recommendation to stockholders regarding the Merger without granting Pomegranate three business days during which the Company is contractually obligated to negotiate with Pomegranate in good faith and permit Pomegranate to amend the terms of the Merger Agreement. In other words, the Merger Agreement gives Pomegranate access to any rival bidder’s confidential information and allows Pomegranate to easily make a superior offer simply by matching it. Accordingly, no rival bidder is likely to emerge and act as a stalking horse in light of the potential risks associated with disseminating a rival bidder’s confidential information and the ability of Pomegranate to easily piggy-back upon the due diligence of the foreclosed second bidder.

80. The Merger also includes a termination fee to be paid by the Company to Pomegranate in the amount of \$17 million in the event that the Company received a higher offer to acquire Fresh Market during the go-shop period and terminates the Merger Agreement or

changes its recommendation, and \$34 million if the Company terminates the Merger Agreement after the go-shop period has expired. In addition, Fresh Market will be required to reimburse up to \$4 million of expenses incurred by Pomegranate in the event a termination fee becomes payable under the Merger Agreement. Effectively, this fee requires that a competing bidder agree to pay a naked premium for the right to provide the stockholders with a superior offer.

81. Ultimately, these deal protection provisions unreasonably 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.

The Conflicted Board Members and Executives of Fresh Market

82. What is more, Company insiders will have an opportunity to cash in unvested equity awards through the Merger. The executive officers and directors of Fresh Market will be able to cash in on their stock that would otherwise have been illiquid. The executive officers and directors own in aggregate 68,975 shares, excluding rollover shares, company restricted shares, shares issuable upon exercise of Company options and shares issuable with respect to Company RSUs, Company DSUs or PSU Awards. Therefore, if the Tender Offer is completed, the executive officers and directors would be entitled to receive an aggregate amount of \$1,965,788 in cash.

83. The chart below shows the amount of stock owned by each executive officer and director of Fresh Market:

Name	Position	Number of Shares(1)	Consideration Payable in Respect of Shares
Rick Anicetti	President and Chief Executive Officer; Director	—	—
Jeff Ackerman	Executive Vice President and Chief Financial Officer	3,328	\$ 94,848
Pamela Kohn	Executive Vice President and Chief Merchandising Officer	—	—
Scott Duggan	Senior Vice President—General Counsel	8,073	\$ 230,081
Matt Argano	Senior Vice President—Human Resources	4,655	\$ 132,668
Randy Young	Senior Vice President—Real Estate and Development	2,369	\$ 67,517
Karen Stout	Senior Vice President—Store Operations	5,132	\$ 146,262
Ray Berry	Director	— (2)	—
Michael D. Casey	Director	149	\$ 4,247
Jeffrey Naylor	Director	16,683	\$ 475,466
Richard Noll	Director	5,956	\$ 169,746
Bob Sasser	Director	4,287	\$ 122,180
Robert K. Shearer	Director	149	\$ 4,247
Michael Tucci	Director	9,042	\$ 257,697
Steven Tanger	Director	5,076	\$ 144,666
Jane Thompson	Director	4,076	\$ 116,166
TOTAL		68,975	\$ 1,965,788

84. On top of being able to cash in their common stock ownership, executive officers and directors will also be entitled to other benefits if the Tender Offer is completed.

85. For example, if the Merger is consummated, it will trigger change-in-control payments, under which the executive officer will be entitled to certain “golden parachute” payments and benefits, including: (i) severance pay in an amount equal to the product of the executive officer’s (a) annual base salary and target annual bonus (or, if the executive officer does not have a target annual bonus at the time of termination, the average bonus for the previous three years, or portion thereof) and (b) a severance multiple, which for Defendant Anicetti is two and for the other executive officers is 1.5; (ii) a prorated annual bonus on actual performance achievement; (iii) full vesting of all equity-based awards held by the executive officer on the date of termination; and (iv) continued medical and welfare benefits for the executive officer and his or her spouse and dependents for a number of years equal to the executive’s severance multiple.

86. The following chart shows the potential change-in-control payments to named executive officers:

Name	Position	Number of Shares ⁽¹⁾	Consideration Payable in Respect of Shares
Rick Anicetti	President and Chief Executive Officer; Director	—	—
Jeff Ackerman	Executive Vice President and Chief Financial Officer	3,328	\$ 94,848
Pamela Kohn	Executive Vice President and Chief Merchandising Officer	—	—
Scott Duggan	Senior Vice President—General Counsel	8,073	\$ 230,081
Matt Argano	Senior Vice President—Human Resources	4,655	\$ 132,668
Randy Young	Senior Vice President—Real Estate and Development	2,369	\$ 67,517
Karen Stout	Senior Vice President—Store Operations	5,132	\$ 146,262
Ray Berry	Director	— ⁽²⁾	—
Michael D. Casey	Director	149	\$ 4,247
Jeffrey Naylor	Director	16,683	\$ 475,466
Richard Noll	Director	5,956	\$ 169,746
Bob Sasser	Director	4,287	\$ 122,180
Robert K. Shearer	Director	149	\$ 4,247
Michael Tucci	Director	9,042	\$ 257,697
Steven Tanger	Director	5,076	\$ 144,666
Jane Thompson	Director	4,076	\$ 116,166
TOTAL		68,975	\$ 1,965,788

87. Lastly, certain executives and officers will receive additional payments as a result of their Company RSUs and other Company stock options. The following chart shows the cash consideration that each executive officer would be entitled to receive in respect of his or her outstanding Company Options, Company Restricted Shares, Company RSUs and PSU Awards:

Name	Number of Shares Subject to Company Options	Total Consideration for Company Options	Number of Restricted Shares	Total Consideration for Restricted Shares	Number of RSUs	Total Consideration for RSUs	Number of Shares Underlying PSU Awards ⁽¹⁾	Total Consideration for PSU Awards	Aggregate Consideration for Equity Awards
Rick Anicetti President and Chief Executive Officer	563,469	\$ 4,292,631	—	\$ —	24,077	\$ 686,195	32,102	\$ 914,907	\$ 5,893,732
Jeff Ackerman Executive Vice President and Chief Financial Officer	61,355	\$ 217,919	6,876	\$ 195,966	42,417	\$ 1,208,885	11,235	\$ 320,198	\$ 1,942,967
Pamela Kohn Executive Vice President and Chief Merchandising Officer	21,156	\$ 207,540	—	\$ —	20,709	\$ 590,207	10,700	\$ 304,950	\$ 1,102,697
Scott Duggan Senior Vice President —General Counsel	97,331	\$ 297,615	660	\$ 18,810	29,460	\$ 839,610	8,025	\$ 228,713	\$ 1,384,748
Matt Argano Senior Vice President —Human Resources	40,924	\$ 118,299	352	\$ 10,032	22,301	\$ 635,579	6,099	\$ 173,822	\$ 937,731
Randy Young Senior Vice President —Real Estate and Development	36,248	\$ 124,518	3,481	\$ 99,209	10,306	\$ 293,721	6,420	\$ 182,970	\$ 700,418
Karen Stout Senior Vice President —Store Operations	58,936	\$ 291,523	—	\$ —	10,965	\$ 312,503	6,420	\$ 182,970	\$ 786,995

88. Personal conflicts of interest also exist amongst the directors of Fresh Market. Specifically, Defendant Michael Casey, Martin Kelly (“Kelly”), the Chief Financial Officer (“CFO”) of Apollo, and Chris Weidler (“Weidler”), Apollo’s Chief Accounting Officer and Controller, were previously associated with PricewaterhouseCoopers LLP (PwC). Defendant Casey previously worked for Price Waterhouse LLP, a predecessor firm to PwC, from 1982 to 1993, where he was Senior Manager. Kelly spent thirteen years at PwC from 1987 to 2000, including serving in the Financial Services Group in New York from 1994 to 2000, and was appointed a Partner of the firm in 1999. Weidler was also a former employee of PwC for eight years from 1997 to 2005 in both the New York and London offices.

89. Finally, the process was overrun by personal interest, as Defendant Berry negotiated with Management VIII well before Management VIII ever made any indication of interest in the Company, concealing this information from the Board. It was only after Defendant Berry secured for himself and his son, Brett Berry, a position as rollover shareholders in the post-close Company, that the Board became aware of these negotiations.

Fresh Market’s Conflicted Financial Advisor

90. In preparation for the Tender Offer, Fresh Market retained J.P. Morgan to act as a financial advisor. Unfortunately, J.P. Morgan has substantial history with Apollo and is therefore impermissibly conflicted.

91. During the two years preceding the date of its opinion, J.P. Morgan and its affiliates have had commercial or investment banking relationships with Apollo and its affiliates, for which J.P. Morgan and its affiliates have received customary compensation. These services included: (i) acting as joint bookrunner on Apollo’s offering of debt securities in May 2014; (ii) providing financial advisory, bank financing and debt and equity underwriting services to

portfolio companies of Apollo that are unrelated to the Transactions, for which J.P. Morgan and its affiliates have received customary compensation; and (iii) providing treasury services to Apollo, for customary compensation.

92. J.P. Morgan is also conflicted because it also holds a financial interest in the Tender Offer. J.P. Morgan owns outstanding shares in Fresh Market and outstanding common stock in Apollo. J.P. Morgan has also received considerable compensation from both Fresh Market and Apollo over the last two years up until January 31, 2016, receiving aggregate fees of \$204,372 from Fresh Market and \$116,780,392 from Apollo. The disparate nature of compensation received in the recent past unfairly swayed J.P. Morgan in support of a transaction with Apollo and its affiliates, and against any alternative transaction.

93. The retention of J.P. Morgan as the financial advisor for Fresh Market, because of J.P. Morgan's previous dealings with Apollo invites the perception that J.P. Morgan may have been interested in the deal and advised Fresh Market with less than the best intentions. J.P. Morgan is undoubtedly interested in retaining business with Apollo in the future, and therefore it benefits them to help Apollo in such a way as to recommend a less than fair market price for Fresh Market.

The Materially Incomplete and Misleading 14D-9

94. Defendants filed the 14D-9 with the SEC in connection with the Tender Offer on March 25, 2016. As discussed below and elsewhere herein, the 14D-9 omits material information that must be disclosed to Fresh Market's stockholders to enable them to render an informed decision with respect to the Tender Offer.

95. The 14D-9 fails to address the misstatements and omissions raised by Plaintiff herein. Specifically, the 14D-9 omits/or misrepresents the material information set forth below

in contravention of Sections 14(d)(4), 14(e), and 20(a) of the Exchange Act, rendering shareholders unable to make a fully informed decision as to tendering their shares in the Tender Offer.

96. The omitted information described herein, if and when disclosed, would significantly alter the totality of information available for consideration by the average Fresh Market shareholder. Specifically, the 14D-9 fails to provide the Company's shareholders with material information and/or provides materially misleading information regarding: (i) the process leading to the Merger; (ii) the financial analyses performed by the Company's financial advisor, J.P. Morgan; and (iii) the Company's financial projections. As such, if Fresh Market shareholders are forced to determine the future of the Company in the Tender Offer based upon the inadequate 14D-9, they will be irreparably harmed.

97. Notably, the 14D-9 fails to fully and fairly disclose the following material information about the process that led to the Merger Agreement:

(a) the reasoning behind Defendant Berry's failure to disclose his discussions with Apollo, considering there were multiple discussions over several months, until after Management VIII made its October 1, 2015 proposal, and only after Defendant Berry was approached by Duggan regarding his relationship with Apollo;

(b) the underlying assumptions of Fresh Market's strategic plan, including the numbers of new stores opened, required capital expenditures, and plans for reversing the decline in same store sales;

(c) the reasons why Management VIII was continually given an advantage over other potential bidders, and was the only party who Defendant Berry and Brett Berry spoke with during the entire process; and

(d) the reasons why Fresh Market ultimately decided to end the bidding process in favor of entering into a merger agreement with Management VIII, despite previous efforts only days prior to introduce and encourage Strategic Party A, Financial Sponsor Party B, and Financial Sponsor Party C to submit a joint bid.

98. The omission of the above information makes the following information materially misleading:

(a) On page 17 of the 14D-9, the statement:

On October 1, 2015, the Board received an unsolicited preliminary non-binding indication of interest from Management VIII, on behalf of equity funds managed by it, proposing to acquire TFM in an all-cash transaction for a purchase price of \$30.00 per share. Management VIII's indication of interest was based on public information available at the time, and was subject to due diligence and the receipt of debt financing. Management VIII's proposal stated that Management VIII had discussed with Ray Berry, the chairman of the Board, and his son Brett Berry, who collectively owned approximately 9.8% of TFM's outstanding common stock as of the date of the proposal, the opportunity to roll over their TFM shares in a transaction with Management VIII. Management VIII's letter also included a reference that Management VIII and Messrs. Ray and Brett Berry would be working in an exclusive partnership in connection with a potential acquisition of TFM. Ray and Brett Berry would be working in an exclusive partnership in connection with a potential acquisition of TFM.

(b) On page 18 of the 14D-9, the statements:

The Board then discussed Management VIII's October 1st proposal. The directors considered the fact that Mr. Anicetti had served as Chief Executive Officer for just over a month and that Mr. Anicetti and his team were in the process of developing a strategic plan, which had not yet been completed, as well as the fact that the Board did not yet have a set of financial forecasts stemming from the strategic plan. After discussion, the Board determined that Mr. Anicetti and the rest of the management team needed to complete development of TFM's strategic plan and financial forecast before the Board could effectively evaluate Management VIII's proposal.

Also at the October 15, 2015 Board meeting, to enhance efficiency in light of the fact that TFM could become the subject of shareholder pressure and communications and potentially additional unsolicited acquisition proposals in light of TFM's recent stock performance, the Board decided to create a committee (which we refer to as the "**Strategic Transaction Committee**") that would be responsible for reviewing and evaluating communications from stockholders and

other third parties and reviewing and evaluating, and making recommendations to the Board with respect to, Management VIII's proposal and any other proposals from third parties. The Strategic Transaction Committee was comprised of Jeffrey Naylor, Richard Noll and Robert Shearer, all of whom are independent directors, who were chosen for their experience in similar situations and their knowledge of TFM and its industry. Mr. Naylor was named as the chair of the Strategic Transaction Committee. The Board instructed Mr. Duggan to work with the Strategic Transaction Committee and TFM's outside counsel to prepare a written response to Management VIII consistent with the Board's determination that TFM's management needed to finish preparation of TFM's strategic plan before the Board could effectively evaluate Management VIII's proposal.

(c) On page 19 of the 14D-9, the statements:

On October 21, 2015, Management VIII delivered a letter to the Board withdrawing the proposal set forth in its prior letters dated October 1, 2015 and October 15, 2015. On October 23, 2015, the Strategic Transaction Committee met, with members of management and representatives of Cravath, Richards Layton and J.P. Morgan participating, to discuss, among other things, the market reaction to TFM's press release and the status of TFM's strategic business review, TFM management's development of its strategic plan and forecast and the evaluation of potential strategic and financial alternatives. At the meeting, representatives of J.P. Morgan informed the Strategic Transaction Committee that J.P. Morgan had received 12 inbound inquiries from financial sponsors regarding a potential acquisition of TFM and also reviewed with the Strategic Transaction Committee preliminary feedback from certain strategic parties that had contacted J.P. Morgan after the announcement.

On October 29, 2015, November 5, 2015, November 12, 2015 and November 23, 2015, the Strategic Transaction Committee met, with members of management and representatives of Cravath, Richards Layton, J.P. Morgan and TFM's outside consulting firm participating, to discuss, among other things, progress in completing and timeline for the strategic evaluation of TFM's business, the development by TFM's management of the strategic plan and forecast, the status of the strategic review being undertaken by TFM, general market conditions, new inbound expressions of interest received from potential acquirers and TFM's investor communications plan.

On November 17, 2015, TFM's management finalized its forecast for TFM based on its development of its strategic plan.

(d) On page 20 of the 14D-9, the statements:

On November 19, 2015, TFM released its financial and operating results for the quarter ended October 25, 2015 and announced TFM's strategic plan initiatives.

On November 25, 2015, Management VIII, on behalf of equity funds managed by

it, sent a letter to the Board reaffirming its prior preliminary non-binding indication of interest to acquire TFM in an all-cash transaction for a purchase price of \$30.00 per share. Management VIII stated that it was making the proposal together with Ray Berry and Brett Berry, and indicated that the proposal would expire at 5:00 p.m., Pacific time, on December 3, 2015. Like its prior proposal, Management VIII's offer was subject to engaging in due diligence and obtaining debt financing commitments.

After receiving the November 25th letter from Management VIII, representatives of Cravath and Richards Layton contacted Mr. Berry's legal counsel to determine if Management VIII's proposal accurately reflected any arrangement between Management VIII and Messrs. Ray and Brett Berry. Mr. Berry's legal counsel said that he would consult with Mr. Berry and get back to Cravath and Richards Layton if there had been any changes in circumstances since Mr. Berry had last spoken with the Board.

On December 1, 2015 and December 2, 2015, the Board met in person, with members of TFM's management and representatives of Cravath, Richards Layton, J.P. Morgan and TFM's outside consulting firm present. The purpose of the Board meeting was to review TFM's strategic plan that TFM's management had developed, as well as management's financial projections based on that strategic plan, and to review with TFM's management and J.P. Morgan the strategic alternatives available to TFM, including whether to pursue a potential sale transaction or to pursue other strategic or financial alternatives.

TFM's management reviewed TFM's recent results and outlook. TFM's management also reviewed the strategic evaluation of TFM's business and the strategic plan and forecast that it had developed, and the various cost saving and growth initiatives contained in the strategic plan. TFM's management also reviewed a set of financial forecasts based on the strategic plan, which are referred to as the "**November 17 Management Case**", and the Board approved the November 17 Management Case for use in connection with the process for the solicitation of indications of interest. For more information about the November 17 Management Case and the Additional Scenario Information, see "Item 4. The Solicitation or Recommendation—Certain TFM Forecasts".

J.P. Morgan then presented preliminary valuation analyses. At the meeting, the Board discussed that if TFM was not successful in executing on the new strategic plan, that could have a significant downward effect on TFM's valuation, and that there was significant risk in successfully executing the strategic plan, especially in light of the industry and competitive pressures TFM was facing. TFM's management and 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 the November 17 Management Case. Representatives of J.P. Morgan then reviewed the different strategic and financial alternatives that might be available to TFM other than the stand-alone plan, including pursuing a leveraged

recapitalization, pursuing strategic M&A and pursuing a sale to a financial or strategic buyer.

(e) On page 28 of the 14D-9, the statement:

The Strategic Transaction Committee also discussed the timeline for a potential transaction. J.P. Morgan explained that Strategic Party A, Financial Sponsor Party B and Financial Sponsor Party C had stated they would need until at least mid-March to be in a position to submit a final bid. In light of the fact that Strategic Party A was potentially interested in pursuing a joint bid with a private equity firm and that conversations with Financial Sponsor Party C and Financial Sponsor Party B were being set up to facilitate that, the Strategic Transaction Committee decided to continue targeting mid-March as a bid deadline. The Strategic Transaction Committee discussed how Management VIII continued to press for an earlier bid deadline in light of the amount of work they had already undertaken and their confidence in being able to pull together a final bid and the associated financing on a much earlier timeframe. The Strategic Transaction Committee and the advisors discussed that any bid would need to include a merger agreement markup, and that the approach taken by Management VIII in the markup would give a good indication of whether Management VIII was willing to move quickly. It was determined that J.P. Morgan should ask Management VIII to submit a merger agreement markup in the near term to determine if a transaction with Management VIII on an earlier timeframe was doable, and to see if a potential transaction with Management VIII would be actionable if a joint bid between Strategic Party A and either Financial Sponsor Party B or Financial Sponsor Party C did not materialize.

(f) On Page 29 of the 14D-9, the statement:

The Strategic Transaction Committee also discussed the status of discussions between Strategic Party A and Financial Sponsor Party B or Financial Sponsor Party C regarding a potential partnership and the timeline for a potential co-investment. The Strategic Transaction Committee then discussed the possibility that Strategic Party A and either Financial Sponsor Party B or Financial Sponsor Party C may not be able to agree on terms regarding a potential joint acquisition quickly or at all, and determined that if Management VIII submitted a final, fully financed proposal that was compelling from both a value and certainty perspective, it could make sense to move forward with Management VIII if it appeared at that time that Strategic Party A would not be able to submit a competing bid in the near term or at all.

(g) On page 31 of the 14D-9, the statement:

Later in the day on March 9, 2016, J.P. Morgan informed Management VIII that, while their final bid would need to be reviewed by the Board, based on Management VIII's revised offer, the Strategic Transaction Committee determined that Management VIII could have an introductory conversation with Mr. Berry

and other members of the Berry family regarding a potential equity rollover, but that J.P. Morgan would participate in those discussions to ensure that no specific price information was shared between Management VIII and the Berry family. Also on that day, representatives of Cravath and Richards Layton had a similar conversation with Mr. Berry's counsel. Introductory conversations between Mr. Berry and Brett Berry occurred with representatives of Management VIII, with J.P. Morgan present, that evening.

(h) On page 34 of the 14D-9, the statement:

Also on March 11, 2016, the Board granted permission to Management VIII to engage in negotiations with Ray Berry and Brett Berry regarding a potential rollover of their existing shares of TFM common stock.

99. The above statements are rendered misleading by the omissions because they give a materially incomplete and misleading picture of the sales process, and in particular, fail to disclose all material facts necessary for shareholders to determine whether the Board carried out a full and fair sales process designed to maximize the sales price.

100. Additionally, the 14D-9 fails to disclose material information about the financial analyses performed by J.P. Morgan in rendering its fairness opinion.

101. The description of J.P. Morgan's *Public Trading Multiples* on pages 42-43 is materially misleading and deficient because it fails to disclose:

(a) the individual multiples used in conducting the analysis for each of the selected companies; and

(b) whether any benchmarking analysis was performed for Fresh Market in comparison to the selected companies.

102. The omission of this information renders the following statements misleading:

(a) On pages 42-43 of the 14D-9:

Public Trading Multiples

Using publicly available information, J.P. Morgan compared selected financial data of TFM with similar data for selected publicly traded companies engaged in businesses that J.P. Morgan judged to be analogous to TFM or aspects thereof.

The companies selected by J.P. Morgan were as follows:

Specialty food retail:

- Fairway Group Holdings Corp
- Natural Grocers by Vitamin Cottage, Inc.
- Smart & Final Stores, Inc.
- Sprouts Farmers Market, Inc.
- Whole Foods Market, Inc.

Conventional food retail:

- The Kroger Company

These companies were selected, among other reasons, because they are publicly traded companies with operations and businesses that, for purposes of J.P. Morgan's analysis, may be considered comparable to those of TFM based on sector participation, financial metrics and form of operations. However, certain of these companies may have characteristics that are materially different from those of TFM. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies differently than would affect TFM.

Multiples were based on closing stock prices on March 4, 2016. For each of the following analyses performed by J.P. Morgan, estimated financial data for the selected companies were based on information J.P. Morgan obtained from FactSet Research Systems, filings with the SEC and, in the case of TFM, the management of TFM. The multiples and ratios for each of the selected companies were based on such information. Among other calculations, with respect to TFM and the selected companies, J.P. Morgan calculated and compared the multiple of firm value, which we refer to as FV (calculated as the market value of the company's common stock on a fully diluted basis, plus any debt and minority interest, less cash and cash equivalents), as of March 4, 2016 to estimated EBITDA for the 2016 fiscal year, adjusted for charges related to impairments and store closure costs (as calendarized to reflect TFM's fiscal year end). J.P. Morgan also calculated and compared the multiple of price per share to estimated earnings per share, which we refer to as P/E, for the 2016 fiscal year (as calendarized to reflect TFM's fiscal year end).

103. The description of J.P. Morgan's *Selected Transaction Analysis* on pages 43-44 of the 14D-9 is materially misleading and deficient because it fails to disclose:

- (a) the multiples that were applied to Fresh Market's projected 2016

EBITDA;

(b) whether any benchmarking analysis was performed for Fresh Market in comparison to the selected companies.

(c) why J.P. Morgan only used the November 17 Management Case to determine the range of implied per share equity value for Fresh Market common stock; and

(d) the individual multiples, median, average, and so on for the public companies that were compared.

104. The omission of this information renders the following statements misleading:

(a) On pages 43-44 of the 14D-9:

Selected Transaction Analysis

Using publicly available information, J.P. Morgan examined selected transactions involving businesses that J.P. Morgan judged to be analogous to TFM's business or aspects thereof based on J.P. Morgan's experience and familiarity with TFM's industry. The transactions examined in the table below were selected by J.P. Morgan as relevant in evaluating the Transactions.

Acquiror	Target	Announcement Date
Sun Capital Partners, Inc.	Marsh Supermarkets Inc	April 2006
SuperValu Inc.	Albertsons Companies, Inc.	January 2006
The Kroger Company	Harris Teeter Supermarkets, Inc.	July 2013
Koninklijke Ahold N.V.	Delhaize Group	June 2015
The Kroger Company	Roundy's Supermarkets Inc.	November 2015

Using publicly available information, J.P. Morgan calculated, for each selected transaction, the ratio of the target company's firm value (based on the relevant transaction value) to the target company's EBITDA for the twelve-month period prior to the announcement date of the applicable transaction, which is referred to in this section as LTM EBITDA.

Based on the results of this analysis and other factors that J.P. Morgan considered appropriate, J.P. Morgan selected a multiple reference range of 7.0x-9.0x for FV to LTM EBITDA for TFM. After applying such range to the appropriate metrics for TFM, the analysis indicated the following range of implied per share equity value for the TFM Common Stock, rounded to the nearest \$0.25:

November 17 Management Case:

<i>TFM Implied Per Share Equity Range</i>			
	FV / 2015P EBITDA*		FV / 2016E EBITDA
High	\$ 36.50	\$	34.25
Low	\$ 28.75	\$	27.00

* Based on preliminary financial results for FY 2015 provided by TFM's management.

J.P. Morgan compared the ranges of implied per share equity values for TFM Common Stock to (a) the closing price per share for TFM Common Stock of \$22.82 on March 4, 2016 and (b) consideration per Share payable in the Transactions of \$28.50 in cash.

105. The description of J.P. Morgan's *Illustrative Discounted Cash Flow Analysis* on page 44 of the 14D-9 is materially misleading and deficient because it fails to disclose:

(a) what macro-economic assumptions and estimates of risk were used in determining the discount rate range of 9.0% to 10.0%;

(b) what structure was used in estimating Fresh Market's weighted average cost of capital;

(c) how the perpetuity growth rate range of 1.5%-2.5% was determined; and

(d) whether EBITDA exit multiples were considered.

106. The omission of this information renders the following statements misleading:

(a) On page 44 of the 14D-9:

Illustrative Discounted Cash Flow Analyses.

J.P. Morgan conducted illustrative discounted cash flow analyses for the purpose of determining the fully diluted equity value per share for the TFM Common Stock. A discounted cash flow analysis is a method of evaluating an asset using estimates of the future unlevered free cash flows generated by the asset, and taking into consideration the time value of money with respect to those future cash flows by calculating their present value. The "unlevered free cash flows" refers to a calculation of the future cash flows generated by an asset without

including in such calculation any debt servicing costs. Specifically, 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. “Present value” refers to the current value of the cash flows generated by the asset, and is obtained by discounting those cash flows back to the present using a discount rate that takes into account macro-economic assumptions and estimates of risk, the opportunity cost of capital and other appropriate factors.

J.P. Morgan conducted four illustrative discounted cash flow analyses using four sets of projections provided by TFM’s management (see the “—Certain TFM Forecasts” under “Item 4. The Solicitation or Recommendation”).

For each of the above scenarios, J.P. Morgan calculated the present value of unlevered free cash flows that TFM is expected to generate during fiscal years 2016 (ended January 2017) through 2025 (ended January 2026) for each of the November 17 Management Case, the Comparable Growth Scenario, the Gross Margin Scenario and the Comparable Growth and Gross Margin Scenario. J.P. Morgan also calculated a range of terminal values for TFM at January 31, 2026 by applying a perpetual growth rate ranging from 1.5% to 2.5% to the unlevered free cash flow of TFM during the terminal period of the projections. The unlevered free cash flows and the range of terminal values were then discounted to present values using a discount rate range of 9% to 10%, which was chosen by J.P. Morgan based upon an analysis of the weighted average cost of capital of TFM. The present value of the unlevered free cash flows and the range of terminal values were then adjusted for TFM net cash of \$38 million as of April 30, 2016 based on estimates provided management. “Terminal value” refers to the present value of all future cash flows generated by the asset for periods beyond the projections period.

The adjusted present values were then divided by the number of fully diluted shares of TFM Common Stock outstanding as of January 31, 2016 to arrive at the following reference ranges of implied per share equity values for the TFM Common Stock, on a stand-alone basis rounded to the nearest \$0.25:

	November 17 Management Case	Comparable Growth Scenario	Gross Margin Scenario	Comparable Growth Scenario and Gross Margin Scenario
High	\$ 42.25	\$ 32.75	\$ 32.00	\$ 26.00
Low	\$ 33.75	\$ 26.25	\$ 25.50	\$ 21.00

J.P. Morgan compared the ranges of implied per share equity values for the TFM Common Stock to (a) the closing price per share for TFM Common Stock of \$22.82 on March 4, 2016 and (b) consideration per Share in the Transactions of \$28.50 in cash.

107. Additionally, the 14D-9 is deficient as it provides for several projections with varying results. The 14D-9 provides four forecasts for the company, including *November 17 Management Case*, *Comparable Growth Scenario*, *Gross Margin Scenario*, and *Comparable Growth and Gross Margin Scenario* on pages 46-49. This information is materially misleading and deficient because it fails to disclose:

- (a) the projected capital expenditures, depreciation and working capital requirements for each of these four forecasts; and
- (b) which projection management believes to be the most appropriate so that shareholders are able to make a more informed decision regarding the projections.

108. The omission of this information renders the following statements misleading:

- (a) On pages 46-49 of the 14D-9:

Certain TFM Forecasts

Important Information Concerning TFM's Forecasts

Other than quarterly and annual financial guidance provided to investors, which may cover such areas as sales and adjusted earnings per diluted share among other items, and which it may update from time to time, TFM does not, as a matter of course, publicly disclose long-term forecasts or internal projections as to future revenues, earnings or other results, due to, among other reasons, the unpredictability of the underlying assumptions and estimates.

However, in connection with the Strategic Transaction Committee's and the Board's review of strategic and financial alternatives and evaluation of the Transactions, TFM's management prepared certain unaudited prospective financial information for the years 2016 through 2025, which included the November 17 Management Case (described in greater detail below). The November 17 Management Case was first developed by TFM management in November 2015 in connection with TFM management's development of its strategic plan. The strategic plan and November 17 Management Case were presented to the Board on December 1-2, 2015, and the Board authorized the dissemination of the November 17 Management Case for the years 2016 through 2018 to potentially interested parties in the process leading to the Transactions, including to Management VIII.

At the time that the Board reviewed and authorized the use of the November 17 Management Case in December 2015, the Board also received certain sensitivity

information regarding different assumptions as to revenue and gross margin in the event that TFM was not able to execute on its strategic plan or the timing of certain initiatives contained in the strategic plan was later than anticipated. In light of the overall softness of the financial markets, the continuing difficulty in macroeconomic trends in the specialty food retail industry, and TFM's performance during the fourth quarter of 2015 and early 2016, at the request of the Strategic Transaction Committee TFM's management prepared the Additional Scenario Information (as described in greater detail below) to reflect different assumptions as to revenue and gross margin based on these developments. The Additional Scenario Information was provided to the Strategic Transaction Committee and the Board for purposes of considering and evaluating the Transactions. The November 17 Management Case and the Additional Scenario Information were also provided to J.P. Morgan in connection with the rendering of J.P. Morgan's opinion to the Board and in performing its related financial analyses, as described above under "Item 4. The Solicitation or Recommendation—Financial Analyses and Opinion—Opinion of TFM's Financial Advisor".

November 17 Management Case

The following is a summary of the unaudited prospective financial information for the years 2016 through 2025 prepared by TFM's management (the "**November 17 Management Case**"), based on the information available to TFM's management at the time the November 17 Management Case was developed. The November 17 Management Case was developed by TFM's management as part of the development of management's strategic plan and in connection with TFM's review of strategic and financial alternatives. The projections contained in the November 17 Management Case for the years 2016 through 2018 were prepared by TFM's management based on management's strategic plan and the projections contained in the November 17 Management Case for the years 2019 through 2025 were developed by TFM management based on an extrapolation of estimates in the November 17 Management Case.

November 17 Management Case **(\$ in millions)**

Fiscal Year⁽¹⁾	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
	E	E	E	E	E	E	E	E	E	E
Revenue	1,97	2,27	2,59	2,88	3,19	3,49	3,78	4,06	4,31	4,52
	\$ 7	\$ 8	\$ 7	\$ 8	\$ 4	\$ 6	\$ 8	\$ 2	\$ 0	\$ 5
EBITDA⁽²⁾										
	\$ 179	\$ 216	\$ 256	\$ 287	\$ 322	\$ 352	\$ 382	\$ 409	\$ 434	\$ 456
Unlevered free cash flow⁽³⁾										
	\$ 26	\$ 33	\$ 63	\$ 111	\$ 140	\$ 153	\$ 165	\$ 176	\$ 186	\$ 195

(1) TFM's fiscal year ends on the last Sunday of January (*e.g.*, 2016E refers to the fiscal year ending on the last Sunday of January 2017).

(2) EBITDA is defined as net income before interest expense, provision for taxes and depreciation, net of impairments and store closure costs.

(3) Free cash flow means tax-affected EBIT (earnings before interest expense and provision for taxes, net of impairments and store closure costs), plus depreciation and other noncash items, less capital expenditures and increases in working capital. Tax-affected EBIT is calculated by multiplying EBIT by a percentage equal to (i) 100% less (ii) TFM's assumed tax rate (which is 37.70% for 2016E and 37.75% in all other years).

(1) TMF's fiscal year ends on the last Sunday of January (*e.g.*, 2016E refers to the fiscal year ending on the last Sunday of January 2017).

(2) EBIDTA is defined as earnings before interest expense, provision for taxes and depreciation, net of impairments and store closure costs.

Additional Scenario Information: Comparable Growth Scenario

TFM's management prepared an alternate version of the November 17 Management Case (the "**Comparable Growth Scenario**"), to sensitize the November 17 Management Case for the possibility of lower revenue growth over the projection period as compared to the November 17 Management Case. The Comparable Growth Scenario was prepared assuming that TFM management's planned growth initiatives would be less effective and take longer to implement than as assumed under the November 17 Management Case.

Comparable Growth Scenario (\$ in millions)

Fiscal Year⁽¹⁾	2016 E	2017 E	2018 E	2019 E	2020 E	2021 E	2022 E	2023 E	2024 E	2025 E
Revenue	1,95	2,23	2,52	2,80	3,08	3,36	3,62	3,86	4,08	4,29
	\$ 9	\$ 2	\$ 0	\$ 2	\$ 4	\$ 1	\$ 5	\$ 8	\$ 6	\$ 0
EBITDA⁽²⁾										
	\$ 174	\$ 203	\$ 233	\$ 261	\$ 289	\$ 312	\$ 333	\$ 351	\$ 367	\$ 386
Unlevered free cash flow⁽³⁾										
	\$ 23	\$ 24	\$ 47	\$ 95	\$ 119	\$ 127	\$ 133	\$ 139	\$ 143	\$ 150

(1) TFM's fiscal year ends on the last Sunday of January (*e.g.*, 2016E refers to the fiscal year ending on the last Sunday of January 2017).

(2) EBITDA is defined as net income before interest expense, provision for taxes and depreciation, net of impairments and store closure costs.

(3) Free cash flow means tax-affected EBIT (earnings before interest expense and provision for taxes, net of impairments and store closure costs), plus depreciation

and other noncash items, less capital expenditures and increases in working capital. Tax-affected EBIT is calculated by multiplying EBIT by a percentage equal to (i) 100% less (ii) TFM's assumed tax rate (which is 37.70% for 2016E and 37.75% in all other years).

Additional Scenario Information: Gross Margin Scenario

TFM's management also prepared an alternate version of the November 17 Management Case (the "**Gross Margin Scenario**"), to sensitize the November 17 Management Case for the possibility of lower gross margins over the projection period as compared to the November 17 Management Case. The Gross Margin Scenario was prepared assuming greater investment in pricing and that TFM management's initiatives to reduce shrink and improve TFM's supply chain would be less effective than as assumed under the November 17 Management Case.

Gross Margin Scenario (\$ in millions)										
Fiscal Year⁽¹⁾	2016 E	2017 E	2018 E	2019 E	2020 E	2021 E	2022 E	2023 E	2024 E	2025 E
Revenue	1,97	2,27	2,59	2,88	3,19	3,46	3,78	4,06	4,31	4,52
	\$ 7	\$ 8	\$ 7	\$ 8	\$ 4	\$ 9	\$ 8	\$ 2	\$ 0	\$ 5
EBITDA⁽²⁾										
	\$ 149	\$ 182	\$ 217	\$ 243	\$ 274	\$ 300	\$ 325	\$ 348	\$ 370	\$ 388
Unlevered free cash flow⁽³⁾										
	\$ 11	\$ 12	\$ 38	\$ 84	\$ 110	\$ 120	\$ 130	\$ 138	\$ 146	\$ 153

(1) TFM's fiscal year ends on the last Sunday of January (e.g., 2016E refers to the fiscal year ending on the last Sunday of January 2017).

(2) EBITDA is defined as net income before interest expense, provision for taxes and depreciation, net of impairments and store closure costs.

(3) Free cash flow means tax-affected EBIT (earnings before interest expense and provision for taxes, net of impairments and store closure costs), plus depreciation and other noncash items, less capital expenditures and increases in working capital. Tax-affected EBIT is calculated by multiplying EBIT by a percentage equal to (i) 100% less (ii) TFM's assumed tax rate (which is 37.70% for 2016E and 37.75% in all other years).

Additional Scenario Information: Comparable Growth and Gross Margin Scenario

TFM's management also prepared an alternate version of the November 17 Management Case (the "**Comparable Growth and Gross Margin Scenario**"), to sensitize the November 17 Management Case for the possibility of both lower revenue growth and lower gross margins over the projection period as compared

to the November 2017 Management Case as described under each of the Comparable Growth Scenario and the Gross Margin Scenario above. The Comparable Growth Scenario, the Gross Margin Scenario and the Comparable Growth and Gross Margin Scenario are collectively referred to as the “**Additional Scenario Information**”.

Comparable Growth and Gross Margin Scenario										
(\$ in millions)										
Fiscal Year⁽¹⁾	2016 E	2017 E	2018 E	2019 E	2020 E	2021 E	2022 E	2023 E	2024 E	2025 E
Revenue	1,95	2,23	2,52	2,80	3,08	3,36	3,62	3,86	4,08	4,29
	\$ 9	\$ 2	\$ 0	\$ 2	\$ 4	\$ 1	\$ 5	\$ 8	\$ 6	\$ 0
EBITDA⁽²⁾										
	\$ 154	\$ 180	\$ 207	\$ 232	\$ 257	\$ 277	\$ 295	\$ 311	\$ 324	\$ 340
Unlevered free cash flow⁽³⁾										
	\$ 13	\$ 10	\$ 31	\$ 77	\$ 99	\$ 105	\$ 110	\$ 114	\$ 116	\$ 122

(1) TFM’s fiscal year ends on the last Sunday of January (*e.g.*, 2016E refers to the fiscal year ending on the last Sunday of January 2017).

(2) EBITDA is defined as net income before interest expense, provision for taxes and depreciation, net of impairments and store closure costs.

(3) Free cash flow means tax-affected EBIT (earnings before interest expense and provision for taxes, net of impairments and store closure costs), plus depreciation and other noncash items, less capital expenditures and increases in working capital. Tax-affected EBIT is calculated by multiplying EBIT by a percentage equal to (i) 100% less (ii) TFM’s assumed tax rate (which is 37.70% for 2016E and 37.75% in all other years).

TFM’s management provided the non-GAAP measures included in the November 17 Management Case and the Additional Scenario Information to the Strategic Transaction Committee and the Board because TFM’s management believed such measures could be useful in evaluating the Transactions and other strategic and financial alternatives available to TFM. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in accordance with GAAP, including earnings (loss). TFM’s calculation of these non-GAAP measures may differ from others in its industry and is not necessarily comparable with similar titles used by other companies.

The summary of the November 17 Management Case and the Additional Scenario Information is included in this Schedule 14D-9 solely to give TFM stockholders access to certain financial information that was made available to the Strategic Transaction Committee, the Board and J.P. Morgan and, with respect to certain of this information, to Management VIII, and is not being included in this Schedule 14D-9 to influence a TFM stockholder’s decision whether to tender Shares in the

Offer or for any other purpose. The November 17 Management Case and the Additional Scenario Information were generated solely for internal use and not developed with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial data, published guidelines of the SEC regarding forward-looking statements or GAAP. The November 17 Management Case and the Additional Scenario Information summarized in this section were prepared by the management of TFM.

109. The omission of key information and figures related to Company management's projections renders the above statements materially misleading because, without full access to Fresh Market's estimates of their future financial performance, shareholders cannot reliably assess the credibility of the various analyses performed by J.P. Morgan that incorporated these projections, and thus cannot determine whether the merger is indeed fair, as defendants and their financial advisor claim.

110. Cumulatively, the information requested above is necessary for one to be able to evaluate and understand the sales process and analysis rendered in connection with the Merger. Therefore, the aforementioned omitted information is highly relevant and material to Fresh Market shareholders.

111. Accordingly, because the foregoing material misstatements and omissions represent a violation of federal laws, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

COUNT I

(Against Fresh Market and the Individual Defendants for Violations of 14(e) of the Securities Exchange Act of 1934)

112. Plaintiff repeats all previous allegations as if set forth in full herein.

113. Section 14(e) of the Exchange Act requires full and complete disclosure in

connection with tender offers. Specifically, Section 14(e) provides that:

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

114. Defendants issued the 14D-9 with the intention of soliciting shareholder support of the Merger. Each of the defendants reviewed and authorized the dissemination of the 14D-9, which fails to provide critical information regarding, among other things, the future value of the Company, the key inputs and assumptions of the financial analyses performed by J.P. Morgan in support of its fairness opinion, and the background leading up to the Tender Offer.

115. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(e).

116. Specifically, and as detailed above, the 14D-9 violates Section 14(e) because it omits material facts concerning: (i) the projected financial information prepared by Fresh Market management and relied upon by J.P. Morgan in its financial analyses supporting its fairness opinion; (ii) key inputs and assumptions underlying J.P. Morgan's financial analyses; and (iii) certain material information regarding the process leading up to the consummation of the Merger Agreement.

117. In the exercise of reasonable care, Defendants should have known that the 14D-9 is materially misleading and omits material facts that are necessary to render them non-misleading.

118. The misrepresentations and omissions in the 14D-9 are material to Plaintiff, and Plaintiff and the Class were deprived of their entitlement to make a fully informed decision on whether to tender their shares in the Tender Offer and have been damaged thereby.

119. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

COUNT II

(Against Fresh Market and the Individual Defendants for Violations of Section 14(d)(4) of the Exchange Act)

120. Plaintiff repeats all previous allegations as if set forth in full herein.

121. Defendants have caused the 14D-9 to be issued with the intention of soliciting stockholder support for the Tender Offer and the Merger.

122. Section 14(d)(4) of the Exchange Act, and SEC Rule 14d-9 (17 C.F.R. § 240.14d-9) promulgated thereunder, require full and complete disclosure in connection with a tender offer.

123. Section 14(d)(4) of the Exchange Act states that:

Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

124. In order to comply with SEC Rule 14d-9, a Company and its directors are required to, “[f]urnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.”

125. The 14D-9 violates Section 14(d)(4) of the Exchange Act because it omits

material facts, as set forth above, which renders the 14D-9 materially false and/or misleading.

126. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the 14D-9, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Merger, they allowed it to be omitted from the 14D-9, rendering certain portions of the 14D-9 materially incomplete and therefore misleading.

127. The misrepresentations and omissions in the 14D-9 are material to Plaintiff and the Class, and Plaintiff and the Class will be deprived of their entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the expiration of the Tender Offer.

COUNT III

(Against the Individual Defendants for Violations of Section 20(a) of the Securities Exchange Act of 1934)

128. Plaintiff repeats all previous allegations as if set forth in full herein.

129. The Individual Defendants acted as controlling persons of Fresh Market within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Fresh Market, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the 14D-9 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 that Plaintiff contend are false and misleading.

130. Each of the Individual Defendants was provided with or had unlimited access to

copies of the 14D-9 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

131. 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 Exchange Act violations alleged herein, and exercised the same. Projected financial information was reviewed by the Board periodically at meetings. The 14D-9 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Tender Offer. They were, thus, directly involved in the making of this document.

132. In addition, as the 14D-9 sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The 14D-9 purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

133. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

134. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Sections 14(d)(4) and 14(e), by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

135. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's

equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;

B. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Merger, unless and until the Company: (i) adopts and implements a procedure or process to obtain a merger agreement providing the best possible terms for the Company's stockholders; and (ii) discloses the material information discussed above which has been omitted from the 14D-9;

C. In the event defendants consummate the Tender Offer, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

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

E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

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

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

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Dated: April 11, 2016

Respectfully submitted,

By: /s/David G. Schiller

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