IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID MILLER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. BOB EVANS FARMS, INC., DOUGLAS N. BENHAM, CHARLES M. ELSON, KEVIN M. SHEEHAN, MARY KAY HABEN, MICHAEL F. WEINSTEIN, LARRY S. MCWILLIAMS, DAVID W. HEAD, PAUL S. WILLIAMS, KATHLEEN S. LANE, J. MICHAEL TOWNSLEY, and EILEEN A. MALLESCH, Defendants.	)	Case No. **CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** **JURY TRIAL DEMANDED**

Plaintiff David Miller ("Plaintiff"), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought as a class action by Plaintiff on behalf of himself and the other public holders of the common stock of Bob Evans Farms, Inc. ("Bob Evans" or the "Company") against the Company and the members of the Company's board of directors (collectively, the "Board" or "Individual Defendants," and, together with Bob Evans, the "Defendants") for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation G, 17 C.F.R. § 244.100 in connection with the proposed merger (the "Proposed Merger") between Bob Evans and Post Holdings, Inc. ("Post").

2. On September 18, 2017, the Board caused the Company to enter into an agreement

and plan of merger ("Merger Agreement"), pursuant to which the Company's shareholders stand to receive $77.00 in cash for each share of Bob Evans stock they own (the "Merger Consideration"), representing $1.5 billion in equity value.

3. On October 24, 2017, in order to convince Bob Evans shareholders to vote in favor of the Proposed Merger, the Board authorized the filing of a materially incomplete and misleading Preliminary Proxy Statement on a Schedule 14A (the "Proxy") with the Securities and Exchange Commission ("SEC"), in violation of Sections 14(a) and 20(a) of the Exchange Act. .

4. While Defendants are touting the fairness of the Merger Consideration to the Company's shareholders in the Proxy, they have failed to disclose certain material information in violation of Regulation G (17 C.F.R. § 244.100) and SEC Rule 14a-9 (17 C.F.R. 240.14a-9), each as required by Section 14(a) of the Exchange Act.

5. In particular, the Proxy contains materially incomplete and misleading information concerning: (i) management's financial projections for the Company that were relied upon by the Board in recommending the Company's shareholders vote in favor of the Proposed Merger (ii) financial projections utilized by the Company's financial advisors, J.P. Morgan Securities LLC ("J.P. Morgan"); and (iii) the timing and nature of negotiations regarding post-closing employment arrangements between the Company's executives and Post.

6. It is imperative that the material information that has been omitted from the Proxy is disclosed prior to the forthcoming stockholder vote in order to allow the Company's stockholders to make an informed decision regarding the Proposed Merger.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act, based on Defendants' violation of (i) Regulation G (17 C.F.R. § 244.100) and (ii) Rule 14a-9 (17 C.F.R. 240.14a-9).

Plaintiff seeks to enjoin Defendants from holding the stockholders vote on the Proposed Merger and taking any steps to consummate the Proposed Merger unless, and until, the material information discussed below is disclosed to Bob Evans stockholders sufficiently in advance of the vote on the Proposed Merger or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. 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 Section 14(a) and 20(a) of the Exchange Act.

9. 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.

10. 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 Bob Evans is incorporated in this District.

PARTIES

11. Plaintiff is, and at all relevant times has been, a holder of Bob Evans common stock.

12. Defendant Bob Evans is incorporated in Delaware and maintains its principal executive offices at 8111 Smith's Mill Road, New Albany, Ohio 43054. The Company's common stock trades on the NASDAQ under the ticker symbol "BOBE."

13. Individual Defendant Douglas N. Benham has served as a director of the Company since 2014 and as Chairman since August 2015.

14. Individual Defendant Charles M. Elson has served as a director of the Company since 2014.

15. Individual Defendant Kevin M. Sheehan has served as a director of the Company since April 2014.

16. Individual Defendant Mary Kay Haben has served as a director of the Company since August 2012.

17. Individual Defendant Michael F. Weinstein has served as a director of the Company since August 2014.

18. Individual Defendant Larry S. McWilliams has served as a director of the Company since April 2014.

19. Individual Defendant David W. Head has served as a director of the Company since 2014.

20. Individual Defendant Paul S. Williams has served as a director of the Company since 2007.

21. Individual Defendant Kathleen S. Lane has served as a director of the Company since April 2014.

22. Individual Defendant J. Michael Townsley has served as a director of the Company since January 2017 when he was appointed President and Chief Executive Officer ("CEO") of the Company.

23. Individual Defendant Eileen A. Mallesch has served as a director of the Company since September 2008.

24. The Individual Defendants referred to in paragraphs 13-23 are collectively referred to herein as the "Individual Defendants" and/or the "Board."

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public shareholders of Bob Evans (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.

26. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of October 18, 2017, there were approximately 19,974,924 shares of Bob Evans common stock outstanding, held by hundreds of individuals and entities scattered throughout the country. The actual number of public shareholders of Bob Evans will be ascertained through discovery;

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:

i) whether Defendants disclosed material information that includes non-GAAP financial measures without providing a reconciliation of the same non-GAAP financial measures to their most directly comparable GAAP equivalent in violation of Section 14(a) of the Exchange Act;

ii) whether Defendants have misrepresented or omitted material information concerning the Proposed Merger in the Proxy in violation of Section 14(a) of the Exchange Act;

iii) whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

iv) whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to vote their shares regarding the Proposed Merger based on the materially incomplete and misleading Proxy.

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

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

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

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

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

I. The Proposed Merger

27. Bob Evans produces and distributes refrigerated and frozen food items as well as premium pork sausage to various retail and foodservice customers throughout the United States.

28. On September 19, 2017, Bob Evans and Post issued a joint press release announcing the Proposed Merger, which states in pertinent part:

> **St. Louis, Missouri and New Albany, Ohio - September 19, 2017** - Post Holdings, Inc. (NYSE:POST) ("Post") and Bob Evans Farms, Inc. (NASDAQ:BOBE) ("Bob Evans") today announced that they have entered into a definitive agreement in which Post will acquire Bob Evans for $77.00 per share. The highly complementary combination will significantly strengthen Post's portfolio of brands, expand choices for customers and increase Post's presence in higher growth categories of the packaged food market.
>
> Founded in 1948, Bob Evans is a leading producer and distributor of refrigerated potato, pasta and vegetable-based side dishes, pork sausage, and a variety of refrigerated and frozen convenience food items under the *Bob Evans*, *Owens*, *Country Creek* and *Pineland Farms* brands. Bob Evans also has a growing foodservice business, representing approximately 35% of volume. The foodservice business sells a range of products, including sausage, sausage gravy, breakfast sandwiches and side dishes, which are made to match individual customer specifications.
>
> The addition of Bob Evans' highly complementary portfolio of brands and products will meaningfully enhance Post's refrigerated side dish offering, provide Post with a presence in breakfast sausage and will immediately provide Post with a leading position in the higher growth perimeter of the store. The combination with Bob Evans will also strengthen Post's presence in commercial foodservice, create opportunities for future growth and enhance Post's position as one of North America's largest packaged food companies.
>
> "We have enormous respect for Bob Evans' success and are excited about the growth opportunities this combination will create," said Rob Vitale, President and Chief Executive Officer of Post Holdings. "Combining with Bob Evans expands our portfolio of top brands and gives Post a leading position in the perimeter of the store. We look forward to welcoming the talented Bob Evans team to Post and working to create a successful future together."
>
> "We are pleased at the prospect of combining our complementary portfolios with Post Holdings," said Mike Townsley, President and Chief Executive Officer of Bob Evans Farms. "This transaction creates enhanced and certain value for our

> stockholders, while providing further resources and reach to deliver the Bob Evans experience to a broader audience of consumers and retailers. We are very proud of our 70 year history as a beloved brand and eager to begin this next chapter of growth."
>
> The transaction, which was approved by the Boards of Directors of both companies, is expected to be completed in the first calendar quarter of 2018, Post's second quarter of fiscal year 2018, subject to customary closing conditions including the expiration of waiting periods under U.S. antitrust laws and approval of Bob Evans' stockholders.

29. The Merger Consideration appears inadequate in light of the Company's recent financial performance and prospects for future growth since divesting the restaurant portion of the Company's business. For instance, the Company has an average price target of $79.67, which was set by analysts covering the Company, and a high price target of $85.00. Moreover, the Company has seen exponential growth of 61% and 457% in earnings per share over 2016 and 2017, respectively.

30. Further supporting the inadequacy of the Merger Consideration, one of the Company's most qualified directors, Individual Defendant Elson, voted against the merger because "he was not convinced the merger consideration was greater than the value that could be realized through the continued execution of Bob Evans' current strategic plan and/or through a sales process initiated after the passage of more time following the Bob Evans Restaurants transaction, and that the quality of the board's process leading up to the merger did not convince him otherwise." Proxy, 35.

31. In sum, it appears that Bob Evans is well-positioned for financial growth, and that the Merger Consideration fails to adequately compensate the Company's shareholders. It is imperative that Defendants disclose the material information they have omitted from the Proxy, discussed in detail below, so that the Company's shareholders can properly assess the fairness of

the Merger Consideration for themselves and make an informed decision concerning whether or not to vote in favor of the Proposed Merger.

II. The Materially Incomplete and Misleading Proxy

32. On October 24, 2017, Defendants caused the Proxy to be filed with the SEC in connection with the Proposed Merger. The Proxy solicits the Company's shareholders to vote in favor of the Proposed Merger. Defendants were obligated to carefully review the Proxy before it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions. However, the Proxy misrepresents and/or omits both required and material information that is necessary for the Company's shareholders to make an informed decision concerning whether to vote in favor of the Proposed Merger, in violation of Sections 14(a) and 20(a) of the Exchange Act.

Financial Projections that Violate Regulation G and SEC Rule 14a-9

33. The Proxy discloses two sets of financial projections, the *LRSP Base Case Projections* and the *LRSP Sensitivity Case Projections* (collectively, the "Projections") on pages 40 & 41 of the Proxy. However, the Proxy fails to provide material information concerning the Projections, which were developed by the Company's management and relied upon by the Board in recommending that the shareholders vote in favor of the Proposed Merger. Proxy, 39. .

34. Specifically, the Proxy provides values for non-GAAP (generally accepted accounting principles) financial metrics, EBITDA and cash available before dividends & share repurchases, but fails to provide (i) the line item projections detailed below for the metrics used to calculate these non-GAAP measures, or (ii) a reconciliation of the non-GAAP projections to the most comparable GAAP measures, in direct violation of Regulation G and consequently Section 14(a). Proxy, 40-42.

35. When a company discloses non-GAAP financial measures in a Proxy that were relied on by a board of directors to recommend that shareholders exercise their corporate suffrage rights in a particular manner, the Company must, pursuant to SEC regulatory mandates, also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

36. Indeed, the SEC has increased its scrutiny of the use of non-GAAP financial measures in communications with shareholders. Former SEC Chairwoman Mary Jo White has stated that the frequent use by publicly traded companies of unique company-specific non-GAAP financial measures (as Bob Evans included in the Proxy here), implicates the centerpiece of the SEC's disclosures regime:

> In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.[1]

[1] Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-*

37. The SEC has repeatedly emphasized that disclosure of non-GAAP projections can be inherently misleading, and has therefore heightened its scrutiny of the use of such projections.[2] Indeed, the SEC's Division of Corporation Finance released a new and updated Compliance and Disclosure Interpretation ("C&DIs") on the use of non-GAAP financial measures to clarify the extremely narrow and limited circumstances, known as the business combination exemption, where Regulation G would not apply.[3]

38. More importantly, the C&DI clarifies when the business combination exemption does not apply:

> There is an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications subject to Securities Act Rule 425 and Exchange Act Rules 14a-12 and 14d-2(b)(2); it is also intended to apply to communications subject to Exchange Act Rule 14d-9(a)(2). This exemption does not extend beyond such communications. Consequently, if the same non-GAAP financial measure that was included in a communication filed under one of those rules is also disclosed in a Securities Act registration statement, proxy statement, or tender offer statement, this exemption from Regulation G and Item 10(e) of Regulation S-K would not be available for that non-GAAP financial measure.

Id.

39. Thus, the C&DI makes clear that the so-called "business combination" exemption from the Regulation G non-GAAP to GAAP reconciliation requirement applies solely to the extent

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GAAP, and Sustainability (June 27, 2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html.

[2] *See, e.g.*, Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation (June 24, 2016), https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/; Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016, http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0.

[3] *Non-GAAP Financial Measures*, U.S. Securities and Exchange Commission (Oct. 17, 2017), *available at* https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm#101. To be sure, there are other situations where Regulation G would not apply but are not applicable here.

that a third-party such as financial banker has utilized projected non-GAAP financial measures to render a report or opinion to the Board. To the extent the Board also examined and relied on internal financial projections to recommend a transaction, Regulation G applies.

40. Because the Proxy explicitly discloses that the Projections were utilized by the Company and the Board "for the purposes of considering, analyzing and evaluating Bob Evans' strategic and financial alternatives, including the merger[,]" Proxy, 40, no exemption from Regulation G is applicable.

41. Thus, in order to bring the Proxy into compliance with Regulation G as well as cure the materially misleading nature of the Projections under SEC Rule 14a-9 as a result of the omitted information on pages 40 through 41, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures.

42. At the very least, the Company must disclose the line item projections for the financial metrics that were used to calculated the aforementioned non-GAAP measures. Such projections are necessary to make the non-GAAP projections included in the Proxy not misleading. Indeed, the Defendants acknowledge the misleading nature of non-GAAP projections as Bob Evans stockholders are cautioned:

> The presentation of EBITDA and cash available before dividends & share repurchases should not be considered as an alternative to measures determined in accordance with GAAP such as net income and cash flows from operating activities as an indicator of Bob Evans' operating performance, as an indicator of cash flows, or as a measure of liquidity. Not all companies calculate these financial measures in the same manner, and Bob Evans' calculation of these financial measures may not be comparable to similarly titled measures used by other companies.

Proxy, 42.

Financial Projections that Violate SEC Rule 14a-9

43. Moreover, certain line items of the Projections were also utilized by the Company's financial advisor, J.P. Morgan to render a report to the Board of its opinion regarding the fairness

of the Proposed Transaction. Proxy 40, 41. Specifically, J.P. Morgan utilized certain of management projected line item financial measures, which were reviewed and approved by the Company, including stock-based compensation expense, depreciation and amortization, capital expenditures, and increases in net working capital, in order to calculate the Company's unlevered free cash flows ("UFCF"). Proxy, 41.[4]

44. The definition of UFCF is, in and of itself, and separate and apart from the mandates of Regulation G, materially false and/or misleading in violation of SEC Rule 14a-9 (17 C.F.R. 240.14a-9). Specifically, it appears J.P. Morgan deducted depreciation and amortization from UFCF only to add it back again. *See* Proxy, 41 ("J.P. Morgan calculated, for purposes of its financial analyses, 'unlevered free cash flows' as EBITDA (after deducting stock-based compensation expense), less depreciation and amortization, less taxes (based on an assumed tax rate of approximately 35% as provided by Bob Evans management), plus depreciation and amortization, less capital expenditures and less increases in net working capital."). Without further clarification, stockholders are unable to discern the veracity of this definition as it seems unlikely that depreciation and amortization would, in fact, be removed and then included in the very same calculation. Thus, the Company's stockholders are being materially misled regarding the value of the Company.

45. These key inputs are material to Bob Evans shareholders, and their omission renders the summary of J.P. Morgan's DCF valuation analysis incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in

[4] Plaintiff alleges, based on the clear and plain language of Regulation G, that all non-GAAP internal financial projections that were relied on by the Board must comply with Regulation G, even if J.P. Morgan also utilized those financial projections.

a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value…" *Id*. As Professor Davidoff explains:

> There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value… The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

Id. at 1577-78.

46. Clearly, shareholders would find this information material since the Board's unanimous recommendation that shareholders vote in favor the Proposed Merger was based, in part on the following:

- The financial analyses presented to the board by J.P. Morgan on September 18, 2017, as more fully described under the section entitled "— Fairness Opinion of J.P. Morgan Securities LLC," and the assessment by the board, taking into account these financial analyses, of Bob Evans' value on a standalone basis relative to the $77.00 per share of Bob Evans common stock in cash to be paid in the merger, which the board noted exceeded the midpoints of the valuation ranges produced in each of the financial analyses presented by J.P. Morgan.

- The oral opinion from J.P. Morgan rendered to the board on September 18, 2017, which was subsequently confirmed by delivery to the board of a written opinion, dated September 18, 2017, to the effect that, as of such date and based upon and subject to the factors, procedures, qualifications, assumptions and any limitations set forth in its written opinion, of the merger consideration of $77.00 per share of Bob Evans common stock to be paid to the holders of Bob Evans common stock in the proposed merger was fair, from a financial point of view, to such holder, as more fully described under the section entitled "— Fairness Opinion of J.P. Morgan Securities LLC."

- Bob Evans' business and operations, strategy, current and historical financial condition and results of operations, and projected performance.

- The perceived challenges and risks of Bob Evans continuing as a standalone public company, taking into account business, competitive, industry and

> market risks inherent in Bob Evans' business and market position, including the highly competitive nature of the food products business, the presence of numerous competitor companies with multiple product lines and substantially greater financial and other resources available to them than Bob Evans, and the relatively low barriers to entry in Bob Evans' core markets, as well as continuing risks related to the Bob Evans Restaurants transaction, including ongoing efforts to separate operational and information technology functions of the two businesses and Bob Evans' continued liability as guarantor with respect to certain lease obligations of the Bob Evans Restaurants business despite the fact that the business is no longer within Bob Evans' control.

Proxy, 37.

Post-Close Employment

47. The Proxy is also materially false and/or misleading because it fails to adequately disclose information about the timing and nature of negotiations regarding post-closing employment arrangements between the Company's executives and Post.

48. More specifically, the Proxy discloses:

> Mr. Vitale also contacted Messrs. McWilliams and Benham to request a meeting between Post and senior management of Bob Evans to discuss the potential organizational structure of the business following the closing of a transaction. On Mr. McWilliams' authorization, on September 7, 2017, Messrs. Townsley and Hood and representatives of J.P. Morgan met with Messrs. Vitale and Zadoks to discuss these organizational matters. No discussion of individual roles or compensation in the combined organization following the closing of a transaction took place at this meeting.

Proxy, 33.

49. Despite the Proxy omitting any further information surrounding the timing and nature of discussions about the post-close employment arrangement of certain executives of the Company, the press release announcing the Proposed Merger states: "Upon closing of the acquisition, Post expects to combine its existing refrigerated retail egg, potato and cheese business

with Bob Evans, establishing a refrigerated retail business within Post, which will be led by Mike Townsley, Bob Evans' current President and CEO."[5]

50. As a result, shareholders are, at best, misled by the omission of further information regarding the timing and nature of at least Individual Defendant Townsley's post-close employment arrangements. At worst, the quoted language referenced above from page 33 of the Proxy is false. The Company's shareholders would find it material to know the timing and nature of the negotiations surrounding post-close employment, especially in light of Individual Defendant Townsley's involvement in the sale process as disclosed throughout the section of the Proxy titled "Background of the Merger" on pages 23-36 of the Proxy.

51. In sum, the Proxy independently violates both (i) Regulation G, which requires a presentation and reconciliation of any non-GAAP financial to their most directly comparable GAAP equivalent, and (ii) Rule 14a-9, since the material omitted information renders certain statements, discussed above, materially incomplete and misleading. As the Proxy independently contravenes the SEC rules and regulations, Defendants violated Section 14(a) and Section 20(a) of the Exchange Act by filing the Proxy to garner votes in support of the Proposed Merger from Bob Evans shareholders.

52. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Merger, Plaintiff and the other members of the Class will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Merger, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

[5] https://www.sec.gov/Archives/edgar/data/33769/000119312517287786/d266660ddfan14a.htm

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 and 17 C.F.R. § 244.100 Promulgated Thereunder)

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

54. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

55. As set forth above, the Proxy omits information required by SEC Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G, among other things, requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the "most directly comparable" GAAP measure, and a reconciliation "by schedule or other clearly understandable method" of the non-GAAP measure to the "most directly comparable" GAAP measure. 17 C.F.R. § 244.100(a).

56. The failure to reconcile the numerous non-GAAP financial measures included in the Proxy violates Regulation G and constitutes a violation of Section 14(a).

COUNT II

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

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

58. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in proxy communications that contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

59. Regulation G similarly prohibits the solicitation of shareholder votes by "mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure…not misleading*." 17 C.F.R. § 244.100(b).

60. Defendants have issued the Proxy with the intention of soliciting shareholder support for the Proposed Merger. Each of the Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide critical information regarding, amongst other things, the financial projections for the Company.

61. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. 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(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Proxy, but nonetheless failed to obtain and disclose such information to shareholders although they could have done so without extraordinary effort.

62. The Individual Defendants knew or were negligent in not knowing that the Proxy is materially misleading and omits material facts that are necessary to render it not misleading.

The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Merger.

63. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading.

64. The Individual Defendants were, at the very least, negligent in preparing and reviewing the Proxy. The preparation of a proxy statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The Individual Defendants were negligent in choosing to omit material information from the Proxy or failing to notice the material omissions in the Proxy upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

65. Bob Evans is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Proxy.

66. The misrepresentations and omissions in the Proxy are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Merger.

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

COUNT III

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

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

69. The Individual Defendants acted as controlling persons of Bob Evans 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 Bob Evans, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy 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 contends are materially incomplete and misleading.

70. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy 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.

71. 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. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Merger. They were thus directly involved in preparing the Proxy.

72. In addition, as described herein and set forth at length in the Proxy, the Individual

Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy 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.

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

74. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the shareholder vote on the Proposed Merger or consummating the Proposed Merger, unless and until the Company discloses the material information discussed above which has been omitted from the Proxy;

C. Directing the Defendants to account to Plaintiff and the Class for all damages

sustained as a result of their wrongdoing;

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

E. 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.

Dated: October 31, 2017

Respectfully submitted,

FARUQI & FARUQI, LLP

By: */s/ Michael Van Gorder*
Michael Van Gorder (#6214)
20 Montchanin Road, Suite 145
Wilmington, DE 19807
Tel.: (302) 482-3182
Email: mvangorder@faruqilaw.com

Counsel for Plaintiff

OF COUNSEL:

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Email: jwilson@faruqilaw.com

Counsel for Plaintiff

CERTIFICATION OF PROPOSED LEAD PLAINTIFF

I, David Miller ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft complaint against Bob Evans Farms, Inc. ("Bob Evans") and its board of directors and has authorized the filing of a complaint substantially similar to the one I reviewed.

2. Plaintiff selects Faruqi & Faruqi, LLP and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.

3. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.

4. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

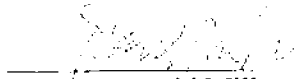
5. Plaintiff's transactions in Bob Evans securities that are the subject of the complaint during the class period specified in the complaint are set forth in the chart attached hereto.

6. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws, except as specified below:

7. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 30th day of October 2017.



David Miller

Transaction (Purchase or Sale)	**Trade Date**	**Quantity**
Purchase	09/01/16	200

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Miller, David

(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Faruqi & Faruqi, LLP
20 Montchanin Road, Suite 145, Wilmington, DE 19807
(302) 482-3182

DEFENDANTS

Bob Evans Farms, Inc., Benham, Douglas N., Elson, Charles M., Sheehan, Kevin M., Haben, Mary Kay, Weinstein, Michael F., McWilliams, Larry S., Head, David W., Williams, Paul S., Lane, Kathleen S., Townsley, J. Michael, Mallesch, Eileen A.

County of Residence of First Listed Defendant Franklin County, OH
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Sections 14(a) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78n(a), 78t(a)

Brief description of cause:
Violation of Securities Exchange Act in Acquisition of Bob Evans Farms Incorporation

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
10/31/2017

SIGNATURE OF ATTORNEY OF RECORD
/s/ Michael Van Gorder

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____