

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

JONATHAN REIGROD, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ZOE'S KITCHEN, INC., GREG
DOLLARHYDE, KEVIN MILES,
THOMAS BALDWIN, SUE COLLYNS,
CORDIA HARRINGTON, and ALEC
TAYLOR,

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

- 1. VIOLATIONS OF SECTION 14(a)
OF THE SECURITIES EXCHANGE
ACT OF 1934 AND RULE 14a-9**
- 2. VIOLATIONS OF SECTION 20(a)
OF THE SECURITIES EXCHANGE
ACT OF 1934**

Jonathan Reigrod ("Plaintiff"), on behalf of himself and all others similarly situated, by and through his attorneys, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. This is a class action brought by Plaintiff on behalf of himself and the other shareholders of Zoe's Kitchen, Inc. ("Zoe's Kitchen" or the "Company"), except Defendants (defined below) and their affiliates, against Zoe's Kitchen and the members of Zoe's Kitchen's board of directors (the "Board" or the "Individual Defendants") for their violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15.U.S.C. §§ 78n(a) and 78t(a) and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the proposed merger (the "Proposed Transaction") between Zoe's Kitchen and Cava Group, Inc. ("Cava Group").

2. On August 16, 2018, the Board caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with the Cava Group, pursuant to which, Zoe’s Kitchen shareholders will receive \$12.75 in cash in exchange for each share of common stock they own (the “Merger Consideration”).

3. On, September 25, 2018, the Board authorized the filing of a materially incomplete and misleading preliminary proxy statement (the “Proxy”) with the Securities and Exchange Commission (“SEC”), in violation of Sections 14(a) and 20(a) of the Exchange Act, recommending shareholders vote in favor of the Proposed Transaction.

4. While Defendants are touting the fairness of the Merger Consideration to the Company’s shareholders in the Proxy, they have failed to disclose material information that is necessary for shareholders to properly assess the fairness of the Proposed Transaction, thereby rendering certain statements in the Proxy incomplete and misleading. Specifically, the Proxy contains materially incomplete and misleading information concerning: (i) background information, including potential conflicts of interest; and (ii) the valuation analyses performed by the Company’s financial advisor, Piper Jaffray & Co. (“Piper Jaffray”), in support of its fairness opinion.

5. It is imperative that the material information omitted from the Proxy is disclosed to the Company’s shareholders prior to forthcoming special meeting of Zoe’s Kitchen shareholders to vote on the Proposed Transaction (the “Shareholder Vote”), so that they can properly exercise their corporate suffrage rights.

6. For these reasons as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act, and Rule 14a-9. Plaintiff seeks to enjoin Defendants from holding the shareholder vote on the Proposed

Transaction and taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Zoe's Kitchen shareholders, or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

7. 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 and SEC Rule 14a-9.

8. 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.

9. 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) Zoe's Kitchen is incorporated in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, occurred in this District; and (iv) 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

10. Plaintiff is, and has been at all relevant times, the owner of Zoe's Kitchen common stock and held such stock since prior to the wrongs complained of herein.

11. Defendant Zoe's Kitchen, a fast-casual restaurant serving a menu of Mediterranean-inspired dishes, is a Delaware corporation whose registered agent for service of process is The Corporation Trust Company, Corporation Trust Center 1209 Orange St, Wilmington, Delaware, 19801. Zoe's Kitchen maintains its principal executive offices at 760 State Highway 121, Suite 250, Plano, Texas 75024. Zoe's Kitchen's common stock is listed on the NYSE under the ticker symbol "ZOES."

12. Individual Defendant Greg Dollarhyde is a director of Zoe's Kitchen and is the Chairman of the Board.

13. Individual Defendant Kevin Miles is a director of Zoe's Kitchen and is the President and Chief Executive Officer of the Company.

14. Individual Defendant Thomas Baldwin is, and has been at all relevant times, a director of the Company.

15. Individual Defendant Sue Collins is, and has been at all relevant times, a director of the Company.

16. Individual Defendant Cordia Harrington is, and has been at all relevant times, a director of the Company.

17. Individual Defendant Alec Taylor, and has been at all relevant times, a director of the Company.

18. The parties identified in ¶¶ 11-17 are collectively referred to as the "Defendants".

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on his own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all holders of Zoe's Kitchen common stock who are being and will be harmed by Defendants' actions described below (the

“Class”). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

20. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of the close of business on September 25, 2018, Zoe’s Kitchen had 19,838,800 shares of common stock outstanding held by hundreds to thousands of individuals and entities—the actual number of public shareholders of Zoe’s Kitchen will be ascertained through discovery;

(b) The holders of these shares are believed to be geographically dispersed through the United States;

(c) There are questions of law and fact which are common to the Class and which predominate over questions affecting individual Class members. The common questions include, *inter alia*, the following:

- i. Whether Defendants have violated Section 14(a) of the Exchange act and/or Rule 14a-9 promulgated thereunder;
- ii. Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
- iii. Whether Plaintiff and the other members of the Class would suffer irreparable injury were they required to vote on the Proposed Transaction as presently anticipated;

(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; and

(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.

SUBSTANTIVE ALLEGATIONS

I. Background and the Proposed Transaction

21. Zoe's Kitchen, incorporated on October 24, 2007, develops and operates fast-casual restaurants serving a menu of Mediterranean-inspired dishes delivered with Southern hospitality. The Company's menu offers meals made from scratch using produce, proteins, and other ingredients, including its appetizers, soups, salads, and kabobs. Its food, including both hot and cold items, is suited for catering to a range of business and social occasions. The Company caters to a range of dietary needs by offering vegetarian, vegan, gluten-free, and its calorie conscious, Simply 500 menu selections. The Company's party packs serve groups of approximately 10 and are each filled with their own combination of fresh fruits, veggies, proteins, and grains. The Company serves dishes for various occasions, such as Guilt-Free Girls Night, Game Day Goodies, Shower Sensations, and Kids' Party Pack. As of December 26, 2016, the Company had operated 201 Company-owned restaurants and three franchise restaurants in 20 states across the United States.

22. Cava Group is a private company that owns and operates a chain of Greek and Mediterranean restaurants. It offers salads, dips, spreads, toppings, and dressings. The company has strategic partnerships with Garden School Foundation, Sow Much Good, Urban Roots, and

Future Chefs. Cava Group, Inc. was founded in 2010 and is headquartered in Washington, District of Columbia.

23. On August 17, 2018, Cava Group and Zoe’s Kitchen issued a joint press release to announce the Proposed Transaction stating, in relevant part, as follows:

Zoe’s Kitchen, Inc. to be Acquired by CAVA Group, Inc.

\$12.75 per share purchase price represents approximately 33% premium to Zoe’s Kitchen NYSE 30-day volume weighted average price

Joins together two brands with distinct service models and a shared passion for healthy, no-compromise Mediterranean cuisine

Enables additional growth for CAVA and Zoës Kitchen— leveraging scale and a larger footprint to expand investments in people, culinary, and tech innovation

FOR IMMEDIATE RELEASE

August 17, 2018, Plano, TX: Zoe’s Kitchen, Inc., (“Zoës Kitchen” or the “Company”) (NYSE: ZOES), a fast-casual restaurant group with 261 domestic restaurant locations, today announced that it has entered into a definitive agreement to be acquired in a transaction by privately held Cava Group, Inc., (“CAVA”) a fast-growing Mediterranean culinary brand with 66 restaurants. The combined companies will have 327 restaurants in 24 states throughout the U.S.

Under the terms of the agreement, Zoës Kitchen shareholders will receive \$12.75 in cash for each share of common stock they hold. This represents a premium of approximately 33% to Zoës Kitchen’s closing share price on August 16, 2018 and a premium of approximately 33% to Zoës Kitchen 30-day volume weighted average price ended on August 16, 2018, and an enterprise value of approximately \$300 million.

The acquisition of Zoës Kitchen will be financed through a significant equity investment in CAVA led by Act III Holdings, the investment vehicle created by Ron Shaich, founder, chairman, and former CEO of Panera Bread, and funds advised by The Invus Group, with participation from existing investors SWaN & Legend Venture Partners and Revolution Growth.

After closing, Brett Schulman, current Chief Executive Officer of CAVA, will serve as Chief Executive Officer of the combined company and will work closely with the existing leadership teams at Zoës Kitchen and CAVA to oversee their

growth and evolution. Ron Shaich will serve as Chairman of the combined company.

COMMENTS BY LEADERSHIP

Kevin Miles, Zoës Kitchen Chief Executive Officer said: “Zoës Board of Directors and Management are pleased to announce today’s transaction. Our mission was to deliver the highest value obtainable for our shareholders and pursuant to the transaction announced today our shareholders will be receiving a substantial premium to the Company’s unaffected stock price. I am proud of the significant work the team has executed over recent years to grow the Zoës Kitchen footprint, build brand affinity and secure a leadership position in the Mediterranean and better-for-you category. These efforts made it an attractive candidate for a transaction of this kind. I’d like to thank each and every team member who will continue to make Zoës a differentiated dining experience every day.”

Brett Schulman, CAVA Chief Executive Officer said: “Today’s announcement is an exciting milestone for CAVA, and we’re thrilled to welcome Zoës Kitchen to our family. Together, these two brands are united by a shared heritage and passion for exceptional Mediterranean cuisine. Now with the addition of Zoës Kitchen, we will be able to broaden our geographic footprint and meet the needs of even more guests — whether in Bethesda or Birmingham, Plano or Pasadena — who crave delicious, healthy food without compromise. As part of the CAVA family, Zoës Kitchen will benefit from CAVA’s track record of bold culinary innovation and leveraging data and technology to drive growth and convenience.”

Ron Shaich, Act III Holdings Chief Executive, CAVA board member, and CAVA investor said: “As a close observer of the fast-casual restaurant industry, I am thrilled at the prospect of what CAVA and Zoës Kitchen can accomplish together. Together these businesses will create the leading company in one of the most important categories in fast casual today — Mediterranean — with the capabilities to drive extraordinary customer satisfaction and powerful growth.”

TERMS

Consummation of the merger is subject to certain closing conditions, including the adoption of the merger agreement by the holders of a majority of the Company’s outstanding common stock, and the expiration or early termination of all applicable waiting periods under the HSR Act. CAVA has agreed to pay to the Company a \$17 million termination fee if the merger agreement is terminated under certain circumstances and the merger does not occur. The parties expect the merger to close in the fourth quarter of 2018.

Under the terms of the merger agreement, the Company is permitted to actively solicit, for a 35-day period, alternative acquisition proposals from potential buyer

and business combination candidates. There can be no assurance that any superior proposals will be received during this solicitation process or that any alternative transaction providing for a superior proposal will be consummated. Except as may be required by law, the Company does not intend to disclose any developments with respect to such a solicitation process unless and until the Company's board of directors determines that it has received a superior proposal. The Company would be required to pay to CAVA an \$8.5 million termination fee if the Company terminates the merger agreement to accept a superior proposal under certain circumstances.

The Company's Board of Directors has determined that the merger agreement with CAVA is fair to and in the best interests of the Company and the holders of the Company's common stock.

Zoës Kitchen also announced that it will not hold its previously scheduled second quarter 2018 earnings conference call and web simulcast on the morning of Friday, August 17 and will not issue a press release with second quarter 2018 financial results. The Company expects to file its quarterly report with second quarter 2018 financial results on or before August 20, 2018.

TRANSACTION ADVISORS

Piper Jaffray served as financial advisor to Zoës Kitchen, and Greenberg Traurig, LLP acted as legal advisor to Zoës Kitchen on the transaction.

Morgan Stanley & Co. LLC acted as financial advisor to Act III Holdings (Ron Shaich) and The Invus Group. Citigroup Global Markets Inc. acted as financial advisor to CAVA. Skadden, Arps, Slate, Meagher & Flom acted as legal advisors to CAVA. Sullivan & Cromwell and Simpson Thacher & Bartlett served as legal advisors to Act III Holdings (Ron Shaich) and The Invus Group, respectively.

About Zoës Kitchen

Founded in 1995, Zoës Kitchen is a fast-casual restaurant group serving a distinct menu of fresh, wholesome, made-from-scratch, Mediterranean-inspired dishes delivered with warm hospitality. With no microwaves, or fryers, grilling is the predominate method of cooking along with an abundance of fresh fruits and vegetables, fresh herbs, olive oil and lean proteins. With 261 locations in 20 states across the United States, Zoës Kitchen delivers goodness to its guests by sharing simple, tasty and fresh Mediterranean meals that inspire guests to lead a balanced lifestyle and feel their best from the inside out. For more information, please visit www.zoeskitchen.com, Facebook, Instagram, Twitter or follow #LiveMed.

About CAVA

CAVA was born out of a desire to fuel full lives through a bold and innovative food culture rooted in the heritage of the culinary brand's founders Ted Xenohristos, Ike Grigoropoulos and Executive Chef Dimitri Moshovitis. The three first-generation Greek Americans are childhood friends who wanted to bring the authentic Mediterranean flavors and experiences of their Greek upbringing to a wider audience in a modern, accessible format. The trio then partnered with CAVA CEO Brett Schulman to grow the company. Together, CAVA has evolved into an organization with more than 60 chef-casual restaurants across 10 states and a successful line of chef-crafted dips and spreads sold in more than 250 Whole Foods Market locations and other speciality grocery stores around the country. By the end of 2018, CAVA will have 75 locations nationwide. For a full list of open and upcoming locations, visit: cava.com/locations. For more information, please visit www.cava.com and follow CAVA on social media.

About ACT III Holdings

Act III Holdings is a Boston-based investment fund formed by Ron Shaich, founder and chairman of Panera Bread. Act III is actively making evergreen investments in restaurant and consumer-facing enterprises that are building better competitive alternatives and have the potential to dominate significant market niches. Act III portfolio companies benefit from the experience of Act III's partners in building companies of value and with values. Existing Act III investments include Cava, Clover Food Lab, Open World, Tatte Bakery and Life Alive Organic Cafe.

About The Invus Group

Invus is a private investment firm based in New York. Invus benefits from an evergreen investment structure managing family capital with a long-term strategic perspective. Invus and its affiliates have been investing in companies that seek to transform their industries since 1985. For more information, please visit at <http://www.invus.com>.

II. The Proxy Is Materially Incomplete and Misleading

24. On September 25, 2018, Zoe's Kitchen filed the Proxy with the SEC in connection with the Proposed Transaction. The Proxy solicits the Company's shareholders to vote in favor of the Proposed Transaction. 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 material information that is necessary for the Company's shareholders to cast an informed vote regarding Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange Act.

25. First, the Proxy fails to provide complete and accurate information regarding the nature of the Proposed Transaction and Ronald Shaich's role in the process. The Proxy states on page 36 that Shaich is a holder in Misada Capital—the Company's largest shareholder. The Proxy states on page 73 that Shaich is providing financing for the Proposed Transaction. However, the Proxy somehow fails to disclose that Shaich will be the Chairman of the Board of the post-merger combined entity.¹ Additionally the Proxy omits Shaich's ownership percentage or financial interest in Misada Capital. Finally, the Proxy fails to state Shaich's beneficial ownership of Zoe's Kitchen stock or any quantified financial interest in the Company leading up to and during the negotiation of the Proposed Transaction. The omission of this information misrepresents the nature of the Proposed Transaction. It is important that the Proxy inform shareholders of Shaich's controlling role—from all sides—in executing the Proposed Transaction. This material omission renders the disclosed statements describing Shaich's role misleading.

26. Second, with respect to the *Discounted Cash Flow Analysis* prepared by the Piper Jaffray, the Proxy fails to disclose the following key components used in their analyses: (i) the inputs and assumptions underlying the calculation of the various discount rate ranges (including

¹ In fact, the Proxy only once in over 200 pages even passingly mentions that Shaich was on the Board of Cava at the time of the deal negotiations: "The Special Committee reviewed Parent's profile, including its position in the Mediterranean fast casual restaurant industry as a direct competitor to the Company, Mr. Shaich's role as a director of Parent, and the role of Invus as a substantial investor in Parent." Proxy at 40-41.

the WACC components); (ii) the inputs and assumptions underlying the selected EBITDA exit multiples; and (iii) the terminal values calculated.

27. These key inputs are material to Zoe's Kitchen shareholders, and their omission renders the summary of the *Discounted Cash Flow 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 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. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars....This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices. 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. Without the above-omitted information Zoe's Kitchen shareholders are misled as to the reasonableness or reliability of the Piper Jaffray's analysis, and unable to properly assess the fairness of the Proposed Transaction. As such, these omissions render the summary of the *Discounted Cash Flow Analysis* included in the Proxy materially incomplete and misleading.

28. With respect to Piper Jaffray's *Selected Public Companies Analysis* and *Selected Precedent Transaction Analysis*, the Proxy fails to disclose the individual multiples calculated

for each company and transaction utilized. The omission of these multiples renders the summary of the analyses and the implied per share equity value reference ranges materially misleading. A fair summary of a companies or transactions analysis requires the disclosure of the individual multiples for each company/transaction; merely providing a high and low range that a banker applied is insufficient, as shareholders are unable to assess whether the banker applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the implied share price ranges. This is particularly important here, where the upper end of the companies analysis implied equity value range is nearly double the value of the Merger Consideration. Accordingly the omission of this material information renders the summaries of these analyses provided in the Proxy misleading.

29. Similarly, with respect to Piper Jaffray's *Premiums Paid Analysis*, the Proxy fails to disclose the individual premiums observed from each deal. Showing the individual premiums observed—or even disclosing the transactions selected—is important for shareholders given the relative simplicity of this valuation analysis compared to the others rendered by Piper Jaffray. A premiums paid analysis allows shareholders to directly compare the premium they are receiving in their transaction to the premiums received in similar transactions. However, since the summary of this analysis omits the individual deals and premiums, shareholders are precluded from making such comparisons. Accordingly, the failure to disclose this material information renders the summary of this analysis provided in the Proxy misleading.

30. In sum, the omission the of the above-referenced information renders statements in the Proxy materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Transaction, Plaintiff and the other members of the Class will be unable

to cast a fully-informed vote either for or against the Proposed Transaction. Thus, they are threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

On Behalf of Plaintiff and the Class Against All Defendants for Violations of Section 14(a) of the Exchange Act

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

32. 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).

33. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that Proxy communications with shareholders shall not 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.

34. The omission of information from a proxy statement will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

35. Defendants have issued the Proxy with the intention of soliciting shareholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the

dissemination of the Proxy and the use of their name in the Proxy, which fails to provide critical information regarding: (i) background information related to the Proposed Transaction; and (ii) the valuation analyses performed by the Piper Jaffray.

36. 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, 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.

37. 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 most, if not all, of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction. Indeed, the Proxy states that Defendants were privy to and had knowledge of the financial projections for Zoe's Kitchen and the details surrounding discussions with other interested parties and Piper Jaffray. 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. Indeed, the Individual Defendants were required to review the Piper Jaffray's analyses in connection with their receipt of the fairness opinions, question the bankers as to their derivation of fairness, and be particularly attentive to the procedures followed in preparing the Proxy and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

38. 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. 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. Indeed, Defendants were intricately involved in the process leading up to the signing of the Merger Agreement, the preparation and review of strategic alternatives, and the review of Zoe's Kitchen's financial projections.

39. Zoe's Kitchen is also deemed negligent as a result of the Individual Defendants negligence in preparing and reviewing the Proxy.

40. The misrepresentations and omissions in the Proxy are material to Plaintiff and the Class, and will deprive them of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the shareholder vote on the Proposed Transaction. 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

On Behalf of Plaintiff and the Class Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

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

42. The Individual Defendants acted as controlling persons of Zoe's Kitchen within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of Zoe's Kitchen, and participation in and/or awareness of the Zoe's Kitchen'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 Zoe's Kitchen, including the content and dissemination of the statements that Plaintiff contends are materially incomplete and misleading.

43. 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.

44. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of Zoe's Kitchen, 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 omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Proxy.

45. In addition, as the Proxy sets forth at length, and as described herein, 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.

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

47. 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 the Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

48. 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.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands relief in his favor and in favor of the Class and against the Defendants jointly and severally, 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. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees, and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Proxy;

C. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as a result of their wrongdoing;

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

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

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: October 3, 2018

Respectfully submitted,

OF COUNSEL

COOCH AND TAYLOR, P.A.

MONTEVERDE & ASSOCIATES PC

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