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Case No. 12243-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ELIZABETH MORRISON, Plaintiff, v. THE FRESH MARKET, INC., Defendant.	C.A. No.

VERIFIED COMPLAINT TO COMPEL INSPECTION OF BOOKS AND RECORDS UNDER 8 *DEL. C.* § 220

Plaintiff Elizabeth Morrison ("Plaintiff"), by and through undersigned counsel, respectfully submits this Verified Complaint to Compel Inspection of Books and Records Under 8 *Del. C.* § 220, and upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. This is an action under Section 220 of the Delaware General Corporation Law, by a stockholder of The Fresh Market, Inc. ("Fresh Market" or the "Company"), seeking to enforce her right to inspection of books and records in order to (1) determine whether to demand appraisal rights with respect to the Company's acquisition, (2) determine whether wrongdoing or mismanagement has taken place such that it would be appropriate to file claims for breach of fiduciary duty and/or aiding and abetting, and (3) investigate the independence and

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disinterestedness of the Company's directors generally and with respect to the Company's acquisition.

2. As described in more detail below, the Company has agreed to be acquired following a process in which its founder and Chairman covertly reached an exclusive agreement with a private-equity buyer, Apollo (as defined below), that he and his son would roll over their substantial equity stake in the Company into an acquisition by Apollo, then broadcasted that agreement to the market while simultaneously misleading the Company's board of directors about the extent of his dealings with Apollo. The board of directors also retained a financial advisor that had been paid more than $116.7 million in fees by Apollo in the last two years and thus had every incentive to ensure the Company wound up agreeing to a deal with Apollo. Apollo was ultimately able to capitalize on its leg-up and reached an agreement to acquire the Company for the inadequate price of $28.50 per share.

3. Based on the public information about the Company's acquisition, there is a credible basis to suspect wrongdoing that is worthy of investigation, but the information that is currently available is insufficient for Plaintiff's purpose of investigating that wrongdoing and for its separate but related purposes of determining whether to demand appraisal and investigating the independence of each of the Company's directors. Accordingly, Plaintiff seeks a summary order

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from this Court ordering the Company to produce the requested books and records for inspection.

THE PARTIES

4. Plaintiff is and has been, at all relevant times, a beneficial owner of shares of common stock in The Fresh Market, Inc. ("Fresh Market" or the "Company"), a Delaware corporation.

5. Founded by its current Chairman Ray Berry in 1982, Fresh Market is a specialty grocery retailer focused on providing high-quality products in a unique and inviting atmosphere with a high level of customer service. Fresh Market is a Delaware corporation with its principal place of business is at 628 Green Valley Road, Suite 500, Greensboro, NC 27408. As of March 14, 2016, the Company operates 186 stores in 27 states across the United States.

FACTUAL BACKGROUND

6. On March 14, 2016, Fresh Market, Pomegranate Holdings, Inc. ("Parent"), its wholly-owned subsidiary Pomegranate Merger Sub, Inc. ("Merger Sub"), Apollo Global Management, LLC ("Apollo Global"), and Apollo Management VIII, L.P. ("Management VIII" and with Parent, Merger Sub and Apollo Global, "Apollo") announced a definitive merger agreement (the "Merger Agreement") under which Fresh Market would be acquired by Apollo (the "Acquisition") via a tender offer and second-step merger in exchange for $28.50

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per share of Fresh Market common stock. The Tender Offer is set to expire at midnight on April 21, 2016.

7. Based on the information that is currently available to the Company's stockholders, the Acquisition is, at bottom, an interested transaction in which certain Fresh Market insiders, including founder and Chairman Ray Berry, decided to take Fresh Market private, selected the private-equity fund with whom they would participate in a going-private transaction, and then engineered the sale of Fresh Market to that private-equity fund. These insiders effectively agreed to participate in the Acquisition before the rest of the Board even knew an acquisition was or would be proposed, and at a particularly inopportune time for an acquisition when the Company had just hired a new CEO who was trying to develop and implement a new long-term stand-alone business strategy. By the time the Board became involved, Ray Berry had spoken to Apollo multiple times and had an understanding with Apollo that they would work together to take the Company private. Indeed, Apollo's initial unsolicited indication of interest (the "Initial Bid") stated that Apollo would be working in an "exclusive partnership" with Ray Berry and his son Brett Berry in connection with a potential acquisition of Fresh Market.

8. Public disclosures by Fresh Market and Apollo show that Ray Berry was not candid to his fellow directors about his interactions and relationship with Apollo. Fresh Market's Solicitation/Recommendation Statement on Schedule

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14D-9 filed with the SEC on March 25, 2016 (the "Schedule 14D-9") states that Fresh Market's General Counsel asked Ray Berry about his relationship and interactions with Apollo prior to the Initial Bid. Ray Berry disclosed to Fresh Market three conversations with Apollo and advised that he had not been involved with Apollo's formulation of its proposal and was not working with Apollo on an exclusive basis. Apollo's Tender Offer Statement on Schedule TO (the "Schedule TO"), however, states that Ray Berry and Apollo's principal were "long-time professional and social acquaintances," that Ray Berry told Apollo to contact his son, Brett Berry, "to explore structural alternatives for an equity rollover transaction" and that Apollo's principal and Brett Berry then had "several communications regarding potential transaction structures" prior to Apollo's Initial Bid.

9. Apollo and Ray Berry ensured the market received the message that they were working together on an exclusive basis to take the Company private and that, whatever the Board and its advisors might try to say, Apollo had a leg up from the start. With the public disclosure that Ray Berry had teamed up with Apollo to acquire Fresh Market, they forced the Board's hand, effectively putting the Company in play at an inopportune time after it had just hired a new CEO who was in the midst of developing his long-term strategy for Fresh Market. This forced the Board to respond by engaging advisors and issuing a press release that

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the Company was conducting a strategic review, i.e., that it was considering selling itself.

10. Then, even after the Board belatedly became aware of Ray Berry's relationship with Apollo, it waited another two months to tell him not to speak any more with potential acquirors about a potential equity rollover, and to instruct him that he had to hold himself out as willing to consider a rollover with other potential acquirors as well. In the intervening months while the rest of the Board did nothing to take control of the situation, Ray and Brett Berry had spoken again with Apollo and had actually agreed to roll over their equity into the surviving entity if Apollo were to acquire the Company. As a result, the Board's belated attempt to sequester Ray Berry from speaking to potential acquirors only cemented Apollo's advantage—whereas Apollo knew it needed only enough funds to buy about 90% of the Company's equity, any other bidder would have to assume it needed enough to buy all 100%. When credit markets tightened, Apollo took advantage of its side-deal with Ray and Brett Berry to flex its muscles, lowering its offer price and then agreeing to acquire the Company at the price of $28.50 per share, significantly less than the $31.25 offer it submitted in January 2016.

11. Apollo's Schedule TO confirms that Ray Berry and Apollo undercut the sale process for Fresh Market. In December 2015, Ray Berry represented to the Board that he would not engage in any discussions regarding an equity rollover

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with any potentially interested party, including Apollo, until authorized to do so by the Board. Also in December 2015, Apollo signed a confidentiality agreement prohibiting Apollo from contacting any potential financing sources, including with respect to an equity rollover, without Fresh Market's prior authorization. Yet, Apollo's Schedule TO makes clear that Ray Berry and Apollo's principal had prohibited conversations throughout the sale process.

12. In fact, the Company's Schedule 14D-9 suggests that the Board may never have been truly aware of the extent of these conversations. For example, as one of the reasons for the Board's recommendation of the Acquisition, the Schedule 14D-9 says that "there were restrictions on the ability of [Apollo] (and other potential bidders) to enter into any discussions or arrangements regarding an equity rollover with Ray Berry, Brett Berry and any other stockholders without the Strategic Transaction Committee's or the consent [of the Board], and that no such negotiations took place prior to the execution of the Merger Agreement." But it is clear that Ray Berry and Apollo had at least four conversations before the Merger Agreement was executed, at least two conversations in which the topic of Ray Berry participating in a transaction through an equity rollover came up, and one discussion in which Ray Berry "agreed that he would roll his equity interest over into the surviving entity if [Apollo] were to be successful in agreeing to a transaction with [Fresh Market]." Ray Berry's lack of candor with the Board, and

the Board's lack of candor with Fresh Market stockholders, strongly suggest that Ray Berry and the Board breached their fiduciary duty in connection with the Acquisition.

13. Moreover, it appears that the Acquisition is driven by self-interest on the part of all members of the Board in obtaining liquidity for their illiquid holdings in Fresh Market stock. If the Acquisition closes, the Board and management and the former CEO will receive ***over $31 million*** from the sale of their illiquid holdings and from special payments—not being made to ordinary stockholders—for currently unvested stock options, performance units, and restricted shares, all of which shall, upon completion of the transaction, become fully vested and exercisable, and for the Company's senior management, change-of-control payments. For example, CEO and Board member Rick Anicetti will receive over $9 million if the deal closes for ***less than eight months of service***. This is all in addition to the opportunity Ray Berry and his son Brett Berry obtained for themselves to roll over their shares into the post-merger entity, and thus share in the future profits obtained under Apollo's management, including the built-in profit from the Board and the Berrys giving Apollo a leg up in the acquisition process that enabled Apollo to buy Fresh Market for less than fair value.

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14. The Board also breached its duties by retaining a conflicted financial advisor, J.P. Morgan Securities LLC ("J.P. Morgan"), that among other things has received over ***$116.7 million in fees from Apollo in the last two years alone*** (compared to fees received from Fresh Market during the same period of $204,372). In addition, J.P. Morgan owns a proprietary equity interest in Apollo. Beyond that, the Board has agreed to pay J.P. Morgan a fee of approximately $15 million, $2 million of which was payable upon the delivery by J.P. Morgan of its fairness opinion, and the remainder of which is ***wholly contingent*** upon the consummation of the Acquisition.

15. The conflicted and unfair process led to an unfair acquisition price of only $28.50 per share—far less than the $42.07 per share 52-week high market price of the Company's common stock as of the time of announcement. In support of the unfair acquisition price, J.P. Morgan performed, and the Board disclosed in the Schedule 14D-9, flawed financial analyses designed to make the Acquisition look more attractive than it is. As just one example, J.P. Morgan used a very small sample size in the comparable companies and comparable transaction analyses, and ignored many comparable transactions that would suggest a higher range of values. Indeed, in advising on one of the transactions that J.P. Morgan itself says is comparable to the Acquisition, J.P. Morgan selected 24 comparable transactions, whereas in this instance J.P. Morgan based its analysis on a total of just five

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transactions. Of course, J.P. Morgan was incentivized to make the transaction appear more attractive than it is because of its own conflicts of interest.

16. To protect against the threat of alternate bidders out-bidding Apollo after the Acquisition was announced, the Board agreed to specific deal protection devices which effectively preclude any competing bids for the Company. Those deal protection devices will preclude a fair sales process for the Company and lock out competing bidders, and include (i) Rollover and Support agreements under which Ray Berry and Brett Berry have agreed to support the Acquisition; (ii) a "no-solicitation" clause that will now preclude the Company from soliciting potential competing bidders; (iii) a matching rights provision that would require the Company to disclose confidential information about competing bids to Apollo, and allow Apollo to match any competing proposal; (iv) a termination and expense fee provision that would require the Company to pay Apollo $34 million if the Acquisition is terminated in favor of a superior proposal; and (v) a tender-offer transaction structure that minimizes the amount of time for which the Acquisition is pending and thus makes it more difficult for any other party to come forward with a competing offer. Although the Merger Agreement contains a 21-day go-shop provision, the go-shop period was meaningless in light of the deal protection devices in the Merger Agreement and the reality (which was obvious to any interested party) that the Berry family, and the substantial portion of Fresh

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Market's equity that they own, were committed to Apollo and the Acquisition. Not surprisingly, no alternate bidders stepped forward during the go-shop period. Thus, the deal-protection provisions unduly bound the Board to the Acquisition and effectively precluded the Board from fulfilling its fiduciary duties.

17. Unsurprisingly, given the Board's conflicts of interests and the problematic nature of the sales process, it appears that the Schedule 14D-9 contains material omissions and/or misstatements in violation of defendants' fiduciary duty of disclosure. This includes material omissions and misstatements concerning the sales process leading up to the execution of the Merger Agreement and the potential and/or actual conflicts of interest present in the process leading to the Proposed Acquisition. As noted above, one of the Board's purported "Reasons for the Recommendation" that stockholders tender their shares relies on a false representation that no discussions or negotiations regarding an equity rollover took place before the Merger Agreement was signed, when in fact the opposite appears to be true. Without this material information, Fresh Market stockholders are prevented from making a fully informed decision as to the adequacy of the Tender Offer and whether to tender their shares. Although the Company filed supplemental disclosures with the SEC on April 13, 2016, those disclosures did not address any of these issues. Accordingly, inspection of the Company's books and

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records is necessary to investigate the credible evidence suggesting the disclosures in support of the Acquisition contained material omissions and/or misstatements.

THE DEMAND FOR INSPECTION

18. On April 14, 2016, Plaintiff made a written demand on Fresh Market to inspect and copy certain books and records of the Company pursuant to 8 *Del. C.* § 220 (the "Demand Letter"). The Demand Letter meets all of the requirements of Section 220, and is targeted to seek the information that is necessary for Plaintiff to investigate whether Fresh Market's board of directors (the "Board") or any others engaged in wrongdoing in connection with the negotiation and approval of a merger and related transactions, as well as to determine whether to seek appraisal and to investigate the independence and disinterestedness of the Board members. A copy of the Demand Letter is attached hereto as Exhibit 1 (with limited additional redactions to the account number on Plaintiff's accompanying brokerage statement).

19. The Demand Letter requested inspection of the following categories of documents:

> 1. Minutes of meetings of the board of directors of the Company (the "Board") or any committee thereof, since July 1, 2015 (final versions or the most recent draft where final versions are not available), together with any attachments or materials relating to the

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Merger Agreement, the Proposed Acquisition,[1] or any other strategic transactions/alternatives provided to Board members in preparation for or reviewed at those meetings;

2. Any materials provided by actual or potential acquirors of Fresh Market to the Company or its representatives, including, but not limited to, any indications of interest;

3. Materials provided by Fresh Market to its financial advisors, including J.P. Morgan Securities LLC ("J.P. Morgan"), since July 1, 2015 regarding the Proposed Acquisition and/or consideration of strategic alternatives (including, but not limited to, projections);

4. Materials received by Fresh Market from its financial advisors (*e.g.*, Board books prepared by the financial advisors) since July 1, 2015 regarding the Proposed Acquisition and/or consideration of strategic alternatives;

5. Monthly, quarterly, and/or other periodic financial summaries provided to the Board since January 1, 2015 concerning Fresh Market's historical and projected financial performance;

6. Books and records sufficient to show the interests, financial or otherwise, of any director or officer of the Company in the Proposed Acquisition;

7. Any materials created, modified, or provided to the Board or any committee thereof since January 1, 2015, concerning the independence or non-independence of any director, including any disclosure questionnaires and any books and records relating to appointment of directors to serve on any committee of the Board;

8. Any materials created, modified, or provided to the Board or any committee thereof since January 1, 2015, concerning the possibility of "shareholder pressure" and potential "unsolicited acquisition proposals," as referenced in the Company's Recommendation Statement on Schedule 14D-9 in support of the Proposed Acquisition;

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[1] The Demand Letter used the term "Proposed Acquisition" to refer to the transaction defined in this Complaint as the "Acquisition."

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9. All books and records reflecting communications between Ray Berry, Brett Berry, or Rick Anicetti and any officer, director, employee, or agent of Apollo, J.P. Morgan, or any other potential acquiror of the Company, including notes, calendar entries, and electronic communications regarding the Proposed Acquisition or any other potential strategic or financial transactions involving Fresh Market;

10. A copy of the "Phase I" confidential information memorandum about the Company provided to potential counterparties who had signed confidentiality agreements with the Company;

11. Copies of all confidentiality agreements between the Company and any potential counterparty, and

12. Copies of all letters from the Company to any potential counterparty, described as "process letters" in the Company's Schedule 14D-9, and any written responses to indications of interest.

20. Plaintiff's purpose for the Demand Letter was and is proper. Plaintiff seeks the necessary information to determine (1) whether to demand appraisal rights with respect to the Acquisition, pursuant to Section 262 of the DGCL; (2) whether wrongdoing or mismanagement has taken place such that it would be appropriate to file a breach of fiduciary duty action against the Board (and any officers who may have breached their fiduciary duties), and/or aiding and abetting claims against Apollo or any other party, in the Delaware Court of Chancery; and (3) to investigate the independence and disinterestedness of the directors generally and with respect to the Acquisition. As summarized herein, Plaintiff has far more than a credible basis to suspect wrongdoing that is worthy of investigation with respect to the Acquisition.

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21. On April 21, 2016, the Company responded to the Demand Letter with a letter that flatly refused to allow any inspection, arguing—incorrectly—that Plaintiff already has enough information for her stated purposes and that there is no credible basis to suspect wrongdoing. A true and correct copy of the Company's refusal letter is attached hereto as Exhibit 2.

22. In short, although Plaintiff is entitled to inspection of the categories of documents articulated in the Demand Letter, Defendant has wrongfully refused to make those documents available to Plaintiff. Accordingly, Plaintiff seeks a summary order pursuant to 8 *Del. C.* § 220(c) requiring Defendant to produce all of the requested documents forthwith.

COUNT I
(Inspection of Books and Records Under 8 *Del. C.* § 220)

23. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

24. On April 14, 2016, Plaintiff made a written demand upon the Company for the inspection of the books, records, and documents identified in Plaintiff's Demand Letter.

25. Plaintiff has fully complied with all of the requirements of Section 220 with respect to the form and manner of making a demand for the inspection of the Company's books and records.

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26. Plaintiff's demand for inspection is made for a proper purpose, which includes making an informed decision regarding whether to seek appraisal of her shares, investigating possible breaches of fiduciary duty by members of the Board and/or aiding and abetting of such breaches in connection with the negotiation and approval of the Acquisition, and investigating the independence of the members of the Board.

27. The Company has refused to provide Plaintiff with access to the books and records demanded in the Demand Letter.

28. By reason of the foregoing and pursuant to Section 220, Plaintiff requests a summary order permitting her to inspect and make copies of the books and records identified in Plaintiff's Demand Letter.

29. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court summarily enter judgment in favor of Plaintiff and against Defendant:

A. Ordering the Company to produce to Plaintiff the books and records identified in Plaintiff's Demand Letter;

B. Awarding Plaintiff her costs and expenses incurred in this action, including reasonable attorneys' fees; and

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C. Granting Plaintiff any and all further relief as the Court deems just and proper.

FRIEDLANDER & GORRIS, P.A.

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