



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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TANYA E. KNIGHT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 2017-____ - ____
	:	
BOB EVANS FARMS, INC.,	:	
	:	
Defendant.	:	
	:	
_____	x	

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

Plaintiff Tanya E. Knight (née Plummer) (“Plaintiff”), by and through undersigned counsel, respectfully submits this Verified Complaint to Compel Inspection of Books and Records under 8 *Del. C.* §220 (“Section 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 Bob Evans Farms, Inc. (“Bob Evans” or the “Company”), seeking to enforce her right to inspection of books and records in order to determine whether wrongdoing or mismanagement has taken place such that it would be appropriate to file claims for breach of fiduciary duty, and to investigate the independence and disinterestedness of the Company’s directors

generally and with respect to the Company's proposed acquisition (the "Proposed Acquisition") by Post Holdings, Inc. and Haystack Corporation (collectively, Post Holdings, Inc. and Haystack Corporation are referred to herein as "Post").

2. As described in more detail below, the Proposed Acquisition appears to have been driven by pressure from an activist stockholder, which had long advocated for the Company to be broken up and sold (as it ultimately was). It also appears to have been driven by the self-interests of the Company's officers and directors, who stood to gain significantly more from selling the Company (particularly in the manner and to the party they did) than they would have by continuing to operate the Company on a standalone basis. Plaintiff seeks inspection to ascertain the truth of what happened during the sales process, and why.

3. Further, at the time Bob Evans's management was altering the Company's financial projections, including by adjusting longer-term growth rates downward, it appears that they were working toward completing the Proposed Acquisition and knew the general price range that Post was offering to pay. Those changes may have had the intent and effect of making the Proposed Acquisition look more attractive than it truly is. Indeed, one of Delaware's (and the country's) most respected professors of corporate law and governance, who sits on the Company's board of directors (the "Board"), apparently agrees that the Proposed

Acquisition does not appropriately reflect the Company's true prospects, and opposed the Proposed Acquisition. Plaintiff seeks inspection to learn the truth about the Company's management projections.

4. In short, the public information about the Proposed Acquisition supplies a credible basis to suspect wrongdoing that warrants investigation, but the information that is currently available is insufficient for Plaintiff's purpose of investigating that wrongdoing and for her separate but related purpose of investigating the independence of each of the Company's directors. Accordingly, Plaintiff seeks a summary order from this Court ordering the Company to produce the requested books and records for inspection.

THE PARTIES

5. Plaintiff is and has been, at all relevant times, a beneficial owner of shares of common stock in Bob Evans.

6. Bob Evans is a Delaware corporation with its principal place of business in New Albany, Ohio. Bob Evans is a leading producer and distributor of a variety of home-style refrigerated side-dishes, premium pork sausage and frozen food items primarily under the Bob Evans, Owens and Country Creek brand names, as well as the Pineland Farms brand name since the Company's acquisition of the Pineland Farms Potato Company on May 1, 2017. Bob Evans's food products are distributed to retail customers throughout the United States.

Additionally, the Company manufactures and sells similar products to food-service customers, including Bob Evans Restaurants and other restaurants and food sellers. Before it sold Bob Evans Restaurants on April 28, 2017, the Company also owned and operated 523 Bob Evans Restaurants in 18 states.

FACTUAL BACKGROUND

7. Based on the information that is publicly available about the Proposed Acquisition, it appears that the Proposed Acquisition was driven by the self-interests of the Company's directors and/or officers, and that the Company's disclosures to stockholders about the Proposed Acquisition are materially incomplete and/or misleading. Plaintiff seeks inspection precisely because the truth of what happened during the sales process, and why, is not clear from the definitive proxy statement filed with the U.S. Securities and Exchange Commission ("SEC") on November 17, 2017 (the "Proxy"). Nonetheless, below are some of the pertinent publicly available facts that provide Plaintiff a credible basis to suspect potential wrongdoing that warrants investigation, even though Plaintiff does not yet believe she has enough information to determine whether or not an actionable breach of fiduciary duty has actually occurred.

8. The Proposed Acquisition has its roots in an activist campaign by Sandell Asset Management Corp. and certain of its affiliates (the "Sandell Group"). The Sandell Group began agitating as early as 2013 for the Company –

which at the time included both a restaurants segment and a packaged foods segment – to be broken up and sold. Following a proxy contest, four Sandell Group nominees (Douglas Benham, Charles Elson, David Head, and Michael Weinstein) were elected to the Board in August 2014, constituting a third of the Board at the time. A few months after the Sandell Group nominees joined the Board, the Company’s then-CEO resigned as an officer and as a director.

9. In March 2015, the Board announced that it had decided not to pursue any form of sale or spinoff, citing the “separation costs” and “tax leakage” that would be involved in such a strategy. The Sandell Group was displeased, and later that year sent multiple letters to the Board (some of which were released publicly) urging the Board to engage a financial advisor and to consider a strategic transaction, including a possible sale to Post. Within two weeks of the Sandell Group’s correspondence becoming public, the Board entered into an engagement letter with J.P. Morgan to act as its financial advisor in connection with the consideration of a potential sale or spinoff of the Company’s restaurant assets. Also in late 2015, the Company hired restaurant executive Saed Mohseni to be the new chief executive officer (“CEO”).

10. Over the ensuing year and a half, the Board discussed its options, including the possibility that Post and Golden Gate Capital Opportunity Fund, L.P. (“Golden Gate”) would jointly acquire the whole Company, including both its

restaurant assets and its packaged foods assets. Growing impatient, in August 2016 the Sandell Group again reared its head, releasing a presentation that urged the separation of the restaurant and packaged foods segments, and then in October 2016 threatening to initiate a consent solicitation in favor of a precatory proposal to recommend to the Board that it publicly commit to a transparent process to separate the segments or pursue another alternative transaction.

11. Not long after the Sandell Group reinitiated its public campaign, Golden Gate agreed to acquire Bob Evans Restaurants (as well as the Company's headquarters) for net proceeds of \$539.3 million in an independent transaction not involving the packaged foods segment. It was also announced that the new CEO, Mr. Mohseni, would leave the Company to run the post-sale Bob Evans Restaurants. Mr. Mohseni, who had served as the Company's CEO for just over a year before the restaurant transaction was announced, received over \$1.3 million as a severance payment, over \$3.3 million for restricted and performance shares that vested on an accelerated basis, and nearly \$900,000 of non-equity incentive compensation in connection with the sale of Bob Evans Restaurants.

12. After the sale of Bob Evans Restaurants, J. Michael Townsley, who had previously been president of the packaged foods business, took over as CEO of the Company. Almost immediately after the Bob Evans Restaurants sale closed, Post reinitiated contact with Bob Evans, and the newly promoted management

team began working on financial projections that would support a sale of the Company.

13. On June 26, 2017, within a week of management presenting its projections to the Board, Messrs. Benham, Townsley, and Hood met with Post's senior management. Before the meeting, management's projections were provided to Post, although it does not appear they were provided to any other potentially interested party then or at any later time. At that meeting, Post said it was interested in acquiring the Company, and specifically revealed that it wanted Mr. Townsley to lead Post's packaged foods business, which would be based near Bob Evans's existing headquarters in New Albany, Ohio.

14. Over the following months, management and a subset of directors continued to work on the projections, including by adjusting the longer-term growth rates lower. This had the effect of making Post's proposed price range seem more attractive, at a time when the officers and directors knew the general price range Post was offering to pay.

15. On August 8, 2017, Post confirmed in writing that it wanted to keep Mr. Townsley and the Bob Evans management team in place and headquarter the post-acquisition business in New Albany. On September 7, 2017, while the transaction price was still being negotiated, Messrs. Townsley and Hood met with Post's senior management specifically to discuss post-closing "organizational

matters.” Further meetings about these issues took place between September 14 and 18, as the parties continued to negotiate various open issues in the Merger Agreement.

16. On September 18, 2017, the Board voted to approve the Merger Agreement over the objection of director Charles M. Elson, the distinguished Edgar S. Woolard, Jr. Chair in Corporate Governance and the director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, who has been named one of the “100 most influential players in corporate governance” by *Directorship*, one of the “100 most influential people in finance” by *Treasury & Risk Management*, one of the top 10 governance “stars” by *Global Proxy Watch*, and one of the “100 most influential people in business ethics” by *Ethisphere*. Professor Elson opposed the Proposed Acquisition because he was not convinced the merger consideration was greater than the value that could be realized through the continued execution of Bob Evans’s strategic plan and/or a more thorough sales process.

17. It is not clear from the Proxy what drove Professor Elson to reach a different conclusion than his colleagues about the potential for the Company to realize greater value as an independent company. There is, however, at least a credible basis to suspect that this was at least in part the result of manipulation of the Company’s projected earnings, as described below, to make the Proposed

Acquisition look more attractive, and Professor Elson's belief (consistent with other public statements by the Company) that Bob Evans could and would achieve significantly better results than the self-interested members of management suggested through the disclosed projections.

18. From the publicly available information, it appears that the process leading to the Proposed Acquisition was influenced by the personal financial interests of Bob Evans's officers and/or directors. For example, Mr. Townsley – who received over \$1.4 million worth of accelerated-vesting restricted shares and performance shares in connection with the Bob Evans Restaurant transaction – also has a right to nearly \$2.8 million in golden parachute compensation in connection with the Proposed Acquisition. That is more than double what he would have been entitled to if the whole Company had been sold in early 2017, before he was promoted to CEO. Mr. Townsley also stands to receive over \$6.5 million in equity-based payments relating to the Proposed Acquisition, which similarly dwarfs what he would have received in a single full-Company sale before he became CEO.

19. Given that senior management engaged in numerous unsupervised meetings and communications with Post, and that the Board's and management's receptiveness to Post's advances significantly increased after Post indicated that it would retain the Company's existing management, Plaintiff is entitled to

investigate whether wrongdoing occurred in connection with (or as a result of) these side benefits to the Company's senior officers.

20. In addition, Bob Evans's non-employee directors have a material personal interest in pursuing the Proposed Acquisition that is not shared with the Company's public stockholders. Instead of simply receiving payment for their shares, each non-employee director will also receive a cash payment of \$80,000 upon closing of the Proposed Acquisition. By contrast, the annual cash retainer for non-employee directors is \$75,000.

21. In addition, the Proposed Acquisition permits the directors to liquidate their substantial blocks of shares in the Company, which is particularly important because those directors are subject to stock ownership requirements that otherwise prevent them from liquidating their stakes, as they are required to hold at least 12,500 shares of Company stock. Indeed, five of the Company's eight non-employee directors owned fewer shares than required under the guidelines at the time the Proxy was issued, and thus were in compliance with requirements only because of the Company's "grace period" for relatively new directors.

22. That is, the Proposed Acquisition gave non-employee directors a nearly-six-figure cash bonus as well as equity payouts ranging from \$554,169 to \$2,702,777, when most of those directors otherwise not only could not obtain any such payout but actually would have been required to accumulate additional

shares. These payments are inferably material since, collectively, they dwarf the directors' compensation which, in turn, was material enough to each director to induce that director to serve on the Board.

23. Moreover, there is a basis to suspect that at least some of the directors nominated by the Sandell Group, whose agenda specifically included a sale of the Company, viewed themselves as having a mandate to follow the Sandell Group's wishes by breaking up and selling the Company, regardless of whether it was in the best interests of the Company's public stockholders. This issue is most starkly shown by Mr. Benham's apparent hands-on involvement in the Company's strategic processes and its ultimate decisions first to sell the restaurant business and then to sell the rest of the Company, and by all of the directors' (except Professor Elson) apparent change of heart as to the advisability of the Sandell Group's proposed strategies after, in late 2016, it began increasing pressure on the Board again.

24. In addition, the Board's financial advisor, J.P. Morgan, was incapable of rendering an impartial opinion on the Proposed Acquisition because it was incentivized by the terms of its engagement to advise the Board that the Proposed Acquisition was fair to common stockholders, which it did. The Board agreed to pay J.P. Morgan \$20 million, \$3 million of which was contingent on providing an opinion and the remainder of which is contingent on the Proposed Acquisition

being consummated. J.P. Morgan and its affiliates also own equity in Post, and J.P. Morgan has worked for Post in the past and hopes to obtain more work from it in the future. In light of these issues, Plaintiff seeks to investigate whether the Board and management have acted and are acting in the best interests of the Company and all of its stockholders, or in pursuit of their own self-interest.

25. Plaintiff also seeks to investigate whether the consideration offered in connection with the Proposed Acquisition is fair to stockholders and whether the stockholders have been adequately informed of all material facts necessary to make that determination. Among other concerns, the disclosed multi-year financial projections were evidently being adjusted continually throughout the process leading to the Proposed Acquisition, at a time that the officers working on the projections knew approximately how much Post was offering for the Company, and that they could stand to gain nicely if Post successfully acquired it.

26. That Bob Evans officers were adjusting the financial projections at a time they had a motive to ensure those projections would justify accepting Post's offer might explain why the disclosed management projections are inconsistent with the Company's own contemporaneous statements about its expected growth. In particular, the Company released an Investor Presentation, dated September 14, 2017 (just four days before the Merger Agreement was executed), which said Bob Evans expected "[l]ong-term annual sales growth of mid- to high-single digits and

EBITDA growth of high-single to low-double digits.” By contrast, the disclosed projections reflected revenue growth from 4.2% to 5.6% in the “Sensitivity Case,” and 4.9% to 7.0% in the “Base Case.” They also reflected EBITDA growth that peaked at 8.7% in the first years of the projection period, with growth in the last five years of the projection period at 3.5% for 2023 and then 7% per year in the Base Case, and at 0.9% in 2023 and 4.2% thereafter in the Sensitivity Case.

27. Especially as to EBITDA growth, the disparity between the projections contained in the Proxy and those implied in management’s other public statements suggests that the disclosed projections have been manipulated downward to make the Proposed Acquisition look more favorable to investors, to ensure a lucrative payday for Bob Evans’s officers and directors. This suspicion is further heightened by Professor Elson’s objection to the Proposed Acquisition and his apparent belief that the Company could achieve better results on a standalone basis (or through a more thorough sales process) than the \$77.00 per share offered in the Proposed Acquisition. Professor Elson’s position is consistent with the conclusion that the disclosed projections do not reflect the Company’s true expected growth. Plaintiff is entitled to inspection to investigate the suspicion that the disclosures regarding the Company’s projections (and the financial analyses based thereon) are materially incomplete or misleading.

28. In short, Plaintiff seeks, through inspection, to learn the material facts that were not disclosed to stockholders. Based on the public information, however, Plaintiff has more than a credible basis to suspect that the Proxy omits material information relating to the Proposed Acquisition, the process that led to it, and its financial fairness or unfairness.

THE DEMAND FOR INSPECTION

29. On December 28, 2017, Plaintiff made a written demand on Bob Evans to inspect and copy certain books and records of the Company pursuant to Section 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 Bob Evans’s Board or any others breached their fiduciary duty in connection with the negotiation and approval of a merger and related transactions, as well as to investigate the independence and disinterestedness of the Board members. A copy of the Demand Letter is attached hereto as Exhibit 1.

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

1. Copies of all books and records provided to or referred to by the individuals who drafted the definitive proxy statement filed with the SEC on November 17, 2017 (the “Proxy”), including all correspondence described in the Proxy;

2. Minutes of meetings of the Board or any committee thereof since December 1, 2014 (final versions or the most recent draft where final versions are not available), together with any attachments, presentations, reports, or other materials provided to Board members in preparation for or reviewed at those meetings, relating to the Merger Agreement, the Proposed Acquisition or any other strategic transactions/alternatives;
3. Any indications of interest, term sheets, draft acquisition agreements, or similar offers relating to the Company, together with any presentations or materials in support of such offers, provided to Bob Evans by Post or any other actual or potential acquirors of Bob Evans;
4. Materials provided by Bob Evans to its financial or other advisors, including J.P. Morgan Securities LLC (“J.P. Morgan”), since December 1, 2014 regarding the Proposed Acquisition and/or consideration of strategic alternatives (including, but not limited to, projections);
5. Presentations or memoranda prepared by J.P. Morgan or any other financial advisors, before or after they were officially engaged, and provided to the Board or the Company’s named executive officers since December 1, 2014 regarding the Proposed Acquisition and/or consideration of strategic alternatives;
6. Monthly, quarterly and/or other periodic financial summaries provided to the Board or any committee thereof in connection with meetings held since December 1, 2014 concerning Bob Evans’ historical and projected financial performance;
7. Documents, correspondence, reports or drafts thereof concerning any business plan, valuation, budget, financial guidance, forecast or projection concerning any of the assets to be acquired pursuant to the Proposed Acquisition, including, but not limited to, projected cash flows, revenues, income, EBIT, EBITDA or earnings per share, used for any purpose, whether relating to existing or new products or lines of business;

8. Books and records sufficient to show the interests, financial or otherwise, of any director or officer of the Company in the Proposed Acquisition or any strategic alternative;
9. Any materials created, modified or provided to the Board or any committee thereof since August 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;
10. All books and records reflecting communications between J. Michael Townsley, Mark Hood, Douglas Benham, Mary Kay Haben, or Saed Mohseni on the one hand, and any officer, director, employee or agent of J.P. Morgan, UBS Securities LLC (“UBS”), Post, or any other potential acquiror of the Company or any part thereof, on the other hand, including notes, calendar entries and electronic communications regarding the Proposed Acquisition or any other potential strategic alternatives involving Bob Evans;
11. Copies of all confidentiality agreements between the Company and any potential acquiror of the Company or any part thereof;
12. Copies of all engagement letter agreements between the Company and J.P. Morgan and any amendments thereto;
13. All documents produced to any other stockholder or their counsel in response to a demand pursuant to §220 or in connection with any stockholder litigation that relates to the Proposed Acquisition, including but not limited to *Miller v. Bob Evans Farms, Inc., et al.*, Case No. 1:17-CV-01538-VAC-CJB (D. Del.) and *Franchi v. Bob Evans Farms, Inc., et al.*, Case No. 2:17-CV-00961-MHW-CMV (S.D. Ohio), as well as transcripts of any depositions of Bob Evans officers or directors taken in connection with any such litigation.

Ex. 1 at 2-3 (footnotes omitted).

31. Plaintiff's purpose for the Demand Letter was and is proper. Plaintiff seeks: (a) to determine 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 (b) to investigate the independence and disinterestedness of the directors generally and with respect to the Proposed Acquisition. As summarized above, Plaintiff has more than a credible basis to suspect wrongdoing that is worthy of investigation with respect to the Proposed Acquisition.

32. On January 5, 2018, Bob Evans responded to the Demand Letter, refusing to produce any books and records for inspection. A copy of the response letter is attached as Ex. 2.

33. 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 Section 220(c) requiring Defendant to produce all of the requested documents forthwith.

FIRST CAUSE OF ACTION

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

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

35. On December 28, 2017, Plaintiff made a written demand upon the Company for the inspection of the books, records, and documents identified in Plaintiff's Demand Letter.

36. 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.

37. Plaintiff's demand for inspection is made for a proper purpose, which includes investigating possible breaches of fiduciary duty by members of the Board and/or others in connection with the negotiation and approval of the Proposed Acquisition, and investigating the independence of the members of the Board.

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

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

40. 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

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

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Dated: January 8, 2018

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