

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

PAUL PARSHALL, On Behalf of Himself and All Others Similarly Situated,)	Case No. _____
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	CLASS ACTION
)	
ASB BANCORP, INC., PATRICIA S.)	
SMITH, JOHN B. GOULD, SUZANNE S.)	
DEFERIE, JOHN B. DICKSON, LESLIE D.)	
GREEN, KENNETH E. HORNOWSKI,)	
STEPHEN P. MILLER, LAWRENCE B.)	
SEIDMAN, ALISON J. SMITH, WYATT S.)	
STEVENS, KENNETH J. WRENCH, and)	
FIRST BANCORP,)	
)	
Defendants.)	

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon 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 stems from a proposed transaction announced on May 1, 2017 (the “Proposed Transaction”), pursuant to which ASB Bancorp, Inc. (“ASB” or the “Company”) will be acquired by First Bancorp (“First Bancorp” or “FBNC”).

2. On May 1, 2017, ASB’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with FBNC. Pursuant to the terms of the Merger Agreement, shareholders of ASB generally will be entitled to elect to receive 1.44 shares of FBNC common stock, \$41.90 in cash, or a combination thereof, for each share of ASB common stock they own.

3. The stockholders' election is subject to the condition that the total merger consideration will be prorated as necessary to ensure that 10% of the total outstanding shares of ASB common stock will be exchanged for cash and 90% of the total outstanding shares of ASBB common stock will be exchanged for shares of FBNC common stock, and further subject to the condition the number of shares of FBNC common stock to be issued may not exceed 19.9% of the number of shares of FBNC common stock outstanding immediately before the effective time of the Proposed Transaction, and to the extent the total number of shares of FBNC common stock would exceed 19.9%, the foregoing proration of the total merger consideration will be appropriately adjusted.

4. On June 28, 2017, defendants filed a Form S-4 Registration Statement (the "Registration Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.

5. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Registration Statement.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

7. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of

jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

9. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of ASB common stock.

10. Defendant ASB is a North Carolina corporation and maintains its principal executive offices at 11 Church Street, Asheville, North Carolina 28801. The Company is a bank holding company and the parent of Asheville Savings Bank (the “Bank”). ASB’s common stock is traded on the NasdaqGM under the ticker symbol “ASBB.”

11. Defendant Patricia S. Smith (“P. Smith”) is a director and Chairman of the Board of the Company. According to the Company’s website, P. Smith is a member of the Audit Committee, the Compensation Committee, and the Governance and Nominating Committee.

12. Defendant John B. Gould (“Gould”) is a director and Vice Chairman of the Board of the Company. According to the Company’s website, Gould is Chair of the Compensation Committee and a member of the Audit Committee.

13. Defendant Suzanne S. DeFerie (“DeFerie”) is a director, President, and Chief Executive Officer (“CEO”) of the Company.

14. Defendant John B. Dickson (“Dickson”) is a director of the Company. According to the Company’s website, Dickson is Chair of the Audit Committee.

15. Defendant Leslie D. Green (“Green”) is a director of the Company. According to the Company’s website, Green is a member of the Compensation Committee.

16. Defendant Kenneth E. Hornowski (“Hornowski”) is a director of the Company. According to the Company’s website, Hornowski is Chair of the Governance and Nominating Committee and a member of the Compensation Committee.

17. Defendant Stephen P. Miller (“Miller”) is a director of the Company. According to the Company’s website, Miller is a member of the Compensation Committee.

18. Defendant Lawrence B. Seidman (“Seidman”) is a director of the Company. According to the Company’s website, Seidman is a member of the Audit Committee.

19. Defendant Alison J. Smith (“A. Smith”) is a director of the Company. According to the Company’s website, A. Smith is a member of the Audit Committee.

20. Defendant Wyatt S. Stevens (“Stevens”) is a director of the Company. According to the Company’s website, Stevens is a member of the Audit Committee and the Governance and Nominating Committee.

21. Defendant Kenneth J. Wrench (“Wrench”) is a director of the Company.

22. The defendants identified in paragraphs 11 through 21 are collectively referred to herein as the “Individual Defendants.”

23. Defendant FBNC is a North Carolina corporation and maintains its principal executive offices at 300 SW Broad Street, Southern Pines, North Carolina 28387. FBNC is a bank holding company for its subsidiary, First Bank. FBNC’s common stock is traded on the NYSE under the ticker symbol “FBNC.”

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of ASB (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.

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

26. The Class is so numerous that joinder of all members is impracticable. As of May 1, 2017, there were approximately 3,788,025 shares of ASB common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

27. Questions of law and fact are common to the Class, including, among others: (i) whether defendants violated the 1934 Act; and (ii) whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

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

29. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

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

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

31. ASB is the holding company for the Bank.

32. The Bank is a North Carolina chartered stock savings bank that offers traditional financial services through thirteen full-service banking centers located in Buncombe, Madison, McDowell, Henderson, and Transylvania counties in western North Carolina.

33. Originally chartered in 1936 and headquartered in Asheville, North Carolina, the Bank is locally managed with a focus on fostering strong relationships with its customers, its employees and the communities it serves.

34. The Bank was recognized as the 2016 #1 Best Overall Bank, #1 Best Mortgage Company, #1 Best Bank Services for Small Business, and #1 Best Business That Gives Back To The Community by the readers of the Mountain Xpress newspaper in western North Carolina.

35. On April 28, 2017, ASB issued a press release wherein it reported its operating results for the three-month period ended March 31, 2017. Among other things, the Company reported that net income for the first quarter of 2017 increased 63.6% to \$1.8 million, or \$0.50 per diluted common share, from \$1.1 million, or \$0.30 per diluted common share, for the first quarter of 2016. Excluding net gains of \$17,000 realized from the sale of investment securities, net of income taxes, earnings for the first quarter of 2017 increased 118.4% to \$1.8 million, or \$0.49 per diluted common share, from \$832,000, or \$0.22 per diluted common share, for the first quarter of 2016. Net interest income increased 4.7% to \$6.1 million for the three months ended March 31, 2017 from \$5.8 million for the three months ended March 31, 2016. Interest income from loans increased 4.5% in the first quarter of 2017 compared to the first quarter of 2016. With respect to the results, Individual Defendant DeFerie commented:

We began the year with a very strong first quarter thanks to focused and successful execution of our strategic business plan and strong market fundamentals. One of our key priorities has been to establish new relationships with commercial clients and to diversify relationships with existing business clients. During the first quarter, we saw favorable growth in the number of new commercial relationships and a corresponding increase in new core deposit accounts and new loan originations, which exceeded loan repayments, prepayments and foreclosures. Overall, deposit growth was strong.

DeFerie concluded: “With a solid business plan, strong capital position and dedicated professionals as our foundation, we expect to continue our momentum and generate attractive returns for our shareholders.”

36. Nevertheless, the Individual Defendants caused the Company to enter into the Merger Agreement, pursuant to which ASB will be acquired by FBNC for inadequate consideration.

37. To the detriment of the Company’s stockholders, the terms of the Merger Agreement substantially favor FBNC and are calculated to unreasonably dissuade potential suitors from making competing offers.

38. For example, the Individual Defendants have all but ensured that another entity will not emerge with a competing proposal by agreeing to a “no solicitation” provision in the Merger Agreement that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Sections 7.3(a) and (c) of the Merger Agreement state:

(a) From the date of this Agreement through the first to occur of the Effective Time or termination of this Agreement, each ASBB Entity shall not, and shall use its commercially reasonable efforts to cause its Affiliates and Representatives not to, directly or indirectly (i) solicit, initiate, or encourage, induce or knowingly facilitate, the making, submission, or announcement of any proposal that constitutes an Acquisition Proposal, (ii) participate in any discussions (except to notify a third party of the existence of restrictions provided in this Section 7.3) or

negotiations regarding, or disclose or provide any nonpublic information with respect to, or knowingly take any other action to facilitate any inquiries or the making of any proposal that constitutes an Acquisition Proposal, (iii) enter into any agreement (including any agreement in principle, letter of intent or understanding, merger agreement, stock purchase agreement, asset purchase agreement, or share exchange agreement, but excluding a confidentiality agreement of the type described below) (an "Acquisition Agreement") contemplating or otherwise relating to any Acquisition Transaction, or (iv) propose or agree to do any of the foregoing[.]

(c) Except as specifically permitted under Section 7.3(a), ASBB shall, and shall use its commercially reasonable efforts to cause its and its Subsidiaries', directors, officers, employees, and Representatives to immediately cease any and all existing activities, discussions, or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal and will use and cause to be used all commercially reasonable efforts to enforce any confidentiality or similar or related agreement relating to any Acquisition Proposal.

39. Further, the Company must promptly advise FBNC of any proposals or inquiries received from other parties. Section 7.3(b) of the Merger Agreement provides:

(b) In addition to the obligations of ASBB set forth in this Section 7.3, as promptly as reasonably practicable, after any of the directors or executive officers of ASBB become aware thereof, ASBB shall advise Buyer of any request received by ASBB for nonpublic information which ASBB reasonably believes could lead to an Acquisition Proposal or of any Acquisition Proposal, the material terms and conditions of such request or Acquisition Proposal, and the identity of the Person or Group making any such request or Acquisition Proposal. ASBB shall keep Buyer informed promptly of material amendments or modifications to any such request or Acquisition Proposal.

40. Moreover, the Merger Agreement contains a highly restrictive "fiduciary out" provision permitting the Board to withdraw its approval of the Proposed Transaction under extremely limited circumstances, and grants FBNC a "matching right" with respect to any "Superior Proposal" made to the Company. Section 7.1(b) of the Merger Agreement states:

(b) Neither ASBB's board of directors nor any committee thereof shall, except as expressly permitted by this Section 7.1, (i) withdraw, qualify or modify, or propose publicly to withdraw, qualify or modify, in a manner adverse to Buyer, the ASBB Recommendation, or (ii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal (each, an "Adverse Recommendation Change"). Notwithstanding the foregoing, prior to the receipt of

the Requisite ASBB Shareholder Approval, ASBB's board of directors may make an Adverse Recommendation Change if and only if:

(A) ASBB's board of directors determines in good faith, after consultation with the ASBB Financial Advisor (or such other financial advisor as ASBB may use) and outside counsel, that it has received an Acquisition Proposal (that did not result from a breach of Section 7.3) that is a Superior Proposal;

(B) ASBB's board of directors determines in good faith, after consultation with ASBB's outside counsel, that a failure to make such Adverse Recommendation Change would be inconsistent with ASBB's board of directors' fiduciary duties to ASBB and its shareholders under applicable Law;

(C) ASBB's board of directors provides written notice (a "Notice of Recommendation Change") to Buyer of its receipt of the Superior Proposal and its intent to announce an Adverse Recommendation Change on the third business day following delivery of such notice, which notice shall specify the material terms and conditions of the Superior Proposal (and include a copy thereof with all accompanying documentation, if in writing) and identify the Person or Group making such Superior Proposal (it being understood that any amendment to any material term of such Acquisition Proposal shall require a new Notice of Recommendation Change, except that, in such case, the three business day period referred to in this clause (C) and in clauses (D) and (E) shall be reduced to two business days following the giving of such new Notice of Recommendation Change);

(D) after providing such Notice of Recommendation Change, ASBB shall negotiate in good faith with Buyer (if requested by Buyer) and provide Buyer reasonable opportunity during the subsequent three business day period to make such adjustments in the terms and conditions of this Agreement as would enable ASBB's board of directors to proceed without an Adverse Recommendation Change (provided, however, that Buyer shall not be required to propose any such adjustments); and

(E) ASBB's board of directors, following such three business day period, again determines in good faith, after consultation with outside counsel, that such Acquisition Proposal nonetheless continues to constitute a Superior Proposal and that failure to take such action would be inconsistent with their fiduciary duties to ASBB and its shareholders under applicable Law.

41. Further locking up control of the Company in favor of FBNC, the Merger Agreement provides for a "termination fee" of \$6.8 million, payable by the Company to FBNC if the Individual Defendants cause the Company to terminate the Merger Agreement.

42. By agreeing to all of the deal protection devices, the Individual Defendants have locked up the Proposed Transaction and have precluded other bidders from making successful competing offers for the Company.

43. Additionally, the Company's executive officers and directors have entered into a voting and support agreement, pursuant to which they have agreed to vote their Company shares in favor of the Proposed Transaction. Accordingly, such shares are already locked up in favor of the merger.

44. Meanwhile, certain of the Company's officers and directors stand to receive significant benefits as a result of the Proposed Transaction. For example, Individual Defendant DeFerie and another member of the Board will be appointed to the FBNC and First Bank boards of directors. DeFerie will also be employed by FBNC "in a market leadership capacity."

The Registration Statement Omits Material Information, Rendering It False and Misleading

45. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

46. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading.

47. First, the Registration Statement omits material information regarding ASB's financial projections and the financial analyses performed by the Company's financial advisor, Keefe, Bruyette & Woods, Inc. ("KBW"), in support of its so-called fairness opinion.

48. For example, with respect to KBW's Discounted Cash Flow Analysis of ASB, the Registration Statement fails to disclose: (i) the exact "financial forecasts and projections relating to the net income and assets of ASBB provided by ASBB management" and the "excess cash flows that ASBB could generate over the period from December 31, 2017 through 2022 as a

standalone company”; (ii) ASB management’s basis for instructing KBW to use a 5% annual net income growth rate assumption for years 2020 through 2022 in its discounted cash flow analysis; (iii) the terminal values derived for the ASB; (iv) the inputs underlying the discount rate range of 9% to 13% applied by KBW; and (v) the implied perpetuity growth rates derived from this analysis.

49. With respect to KBW’s Selected Companies Analyses of each of ASB and FBNC, the Registration Statement fails to disclose the individual multiples and financial benchmarking metrics for each of the companies observed by KBW in its analyses.

50. With respect to KBW’s Selected Transactions Analysis, the Registration Statement fails to disclose the individual multiples and financial benchmarking metrics for each of the transactions observed by KBW in its analysis.

51. When a banker’s endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed. Moreover, the disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company’s financial advisor in support of its fairness opinion.

52. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) “Opinion of ASBB’s Financial Advisor;” and (ii) “Certain First Bancorp and ASBB Unaudited Prospective Financial Information.”

53. Second, the Registration Statement omits material information regarding potential conflicts of interest of the Company's officers and directors.

54. The Registration Statement fails to disclose the timing and nature of all communications regarding future employment and/or directorship of ASB's officers and directors, including who participated in all such communications.

55. In particular, the Registration Statement indicates that Individual Defendant DeFerie entered into an employment agreement with FBNC on May 1, 2017, pursuant to which she will serve as Regional President – Asheville Region following the completion of the Proposed Transaction, and will receive substantial amounts of compensation. The Registration Statement, however, fails to disclose who first proposed such an agreement, as well as the timing and nature of the discussions regarding DeFerie's post-merger employment.

56. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.

57. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) "Background of the Merger;" and (ii) "Interests of the Directors and Officers of ASBB and Asheville Savings Bank in the Merger."

58. Third, the Registration Statement omits material information regarding potential conflicts of interest of KBW.

59. For example, the Registration Statement indicates that: “During the two years preceding the date of its opinion, KBW has provided investment banking and financial advisory services to First Bancorp and received compensation for such services. KBW acted as financial advisor to First Bancorp in connection with its acquisition of Carolina Bank Holdings, Inc. that was completed in March 2017.” The Registration Statement, however, fails to disclose the amount of compensation that KBW earned from FBNC in connection with its past engagement by FBNC.

60. Additionally, although the Registration Statement indicates that KBW will receive from ASB a total cash fee equal to 1.2% of the aggregate merger consideration, it fails to quantify and disclose the actual amount of compensation KBW expects to earn in connection with its engagement by ASB in the Proposed Transaction.

61. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

62. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) “Background of the Merger;” and (ii) “Opinion of ASBB’s Financial Advisor.”

63. Fourth, the Registration Statement omits material information regarding the background of the Proposed Transaction. The Company’s stockholders are entitled to an accurate description of the process the directors used in coming to their decision to support the Proposed Transaction.

64. In particular, the Registration Statement indicates that the Company entered into nondisclosure agreements with several interested parties, but the Registration Statement fails to

disclose whether any of those nondisclosure agreements contained standstill and/or “don’t ask, don’t waive” provisions that prevented, or are preventing, those counterparties from submitting topping bids to acquire the Company or requesting a waiver of standstill provisions.

65. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the “Background of the Merger” section of the Registration Statement.

66. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to ASB’s stockholders.

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and ASB

67. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

68. The Individual Defendants disseminated the false and misleading Registration Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. ASB is liable as the issuer of these statements.

69. The Registration Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Registration Statement.

70. The Individual Defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

71. The omissions and false and misleading statements in the Registration Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Registration Statement and in other information reasonably available to stockholders.

72. The Registration Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

73. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

74. Because of the false and misleading statements in the Registration Statement, plaintiff and the Class are threatened with irreparable harm.

COUNT II

Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and FBNC

75. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

76. The Individual Defendants and FBNC acted as controlling persons of ASB within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of ASB and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Registration Statement, 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 false and misleading.

77. Each of the Individual Defendants and FBNC was provided with or had unlimited access to copies of the Registration Statement 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 them to be corrected.

78. 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 and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Registration Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly in the making of the Registration Statement.

79. FBNC also had direct supervisory control over the composition of the Registration Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Registration Statement.

80. By virtue of the foregoing, the Individual Defendants and FBNC violated Section 20(a) of the 1934 Act.

81. As set forth above, the Individual Defendants and FBNC had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act 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 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to disseminate a Registration Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

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

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

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: July 19, 2017

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