

JAMBA, INC.
Form SC 13D/A
August 03, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO § 240.13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
§ 240.13d-2(a)

(Amendment No. 13)¹

Jamba, Inc.

(Name of Issuer)

Common Stock, \$0.001 par value per share

(Title of Class of Securities)

47023A309

(CUSIP Number)

glenn w. welling

engaged capital, llc

610 Newport Center Drive, Suite 250

Newport Beach, California 92660

(949) 734-7900

STEVE WOLOSKY

OLSHAN FROME WOLOSKY LLP

1325 Avenue of the Americas

New York, New York 10019

(212) 451-2300

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications)

August 1, 2018

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box “.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

1 The remainder of this cover page shall be filled out for a reporting person’s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be “filed” for the purpose of Section 18 of the Securities Exchange Act of 1934 (“Act”) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the *Notes*).

CUSIP NO. 47023A309

1 NAME OF REPORTING PERSON

Engaged Capital Flagship
Master Fund, LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC, OO
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

CAYMAN ISLANDS

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7 SOLE VOTING POWER
2,603,020

OWNED BY EACH REPORTING PERSON WITH

8 SHARED VOTING POWER
- 0 -

PERSON WITH

9 SOLE DISPOSITIVE POWER
2,603,020

10 SHARED DISPOSITIVE POWER
- 0 -

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,603,020

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

16.6%

14 TYPE OF REPORTING
PERSON

PN

CUSIP NO. 47023A309

1 NAME OF REPORTING PERSON

Engaged Capital Flagship Fund, LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7 SOLE VOTING POWER SHARES BENEFICIALLY 2,603,020

OWNED BY 8 SHARED VOTING POWER EACH REPORTING - 0 -

PERSON WITH 9 SOLE DISPOSITIVE POWER

2,603,020 10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,603,020

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

16.6%

14 TYPE OF REPORTING
PERSON

PN

CUSIP NO. 47023A309

1	NAME OF REPORTING PERSON	
	Engaged Capital Flagship Fund, Ltd.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
	OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
7	CAYMAN ISLANDS	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		2,603,020
8	SHARED VOTING POWER	
		- 0 -
9	SOLE DISPOSITIVE POWER	
		2,603,020
10	SHARED DISPOSITIVE POWER	

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,603,020

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

16.6%

14 TYPE OF REPORTING
PERSON

CO

CUSIP NO. 47023A309

1	NAME OF REPORTING PERSON	
	Engaged Capital, LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
	OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	DELAWARE	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		2,834,002
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		2,834,002
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,834,002

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

18.1%

14 TYPE OF REPORTING
PERSON

OO

CUSIP NO. 47023A309

1	NAME OF REPORTING PERSON	
	Engaged Capital Holdings, LLC	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
	OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	DELAWARE	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		2,834,002
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		2,834,002
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,834,002

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

18.1%

14 TYPE OF REPORTING
PERSON

OO

CUSIP NO. 47023A309

1 NAME OF REPORTING PERSON

Glenn W. Welling

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

USA

NUMBER OF 7 SOLE VOTING POWER
SHARES BENEFICIALLY 2,853,427

OWNED BY 8 SHARED VOTING POWER
EACH REPORTING - 0 -

PERSON WITH 9 SOLE DISPOSITIVE POWER

2,853,427
10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,853,427*

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

18.2%*

14 TYPE OF REPORTING
PERSON

IN

* Includes 19,425 Shares beneficially owned directly by Mr. Welling, including 1,304 unvested Restricted Stock Units that will vest within 60 days as of the date hereof.

CUSIP NO. 47023A309

The following constitutes Amendment No. 13 to the Schedule 13D filed by the undersigned (“Amendment No. 13”). This Amendment No. 13 amends the Schedule 13D as specifically set forth herein.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 is hereby amended and restated to read as follows:

The Shares owned by Engaged Capital Flagship Master and held in the Engaged Capital Account were purchased with working capital (which may, at any given time, include margin loans made by brokerage firms in the ordinary course of business) in open market purchases, except as has been previously otherwise noted. The aggregate purchase price of the 2,603,020 Shares beneficially owned by Engaged Capital Flagship Master is approximately \$29,679,847, including brokerage commissions. The aggregate purchase price of the 230,982 Shares held in the Engaged Capital Account is approximately \$2,775,856, including brokerage commissions.

The Shares owned directly by Mr. Welling represent Shares acquired upon the vesting of Restricted Stock Units granted to Mr. Welling and Shares awarded to Mr. Welling, in each case in his capacity as a director of the Issuer. Mr. Welling directly owns 18,121 Shares and 5,218 unvested Restricted Stock Units, each representing a contingent right to receive one Share, of which 1,304 Restricted Stock Units vest within 60 days of the date hereof.

Item 4. Purpose of Transaction.

Item 4 is hereby amended to add the following:

On August 1, 2018, the Issuer entered into an Agreement and Plan of Merger (the “Merger Agreement”), with Focus Brands Inc., a Delaware corporation (“Parent”), and Jay Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“Merger Sub”). Pursuant to the Merger Agreement, Parent will cause Merger Sub to commence, as promptly as practicable (but in no event later than ten (10) business days after the date of the Merger Agreement), a tender offer (the “Offer”) to acquire all of the Issuer’s outstanding Shares at a purchase price of \$13.00 per Share in cash, without interest, and subject to any required withholding of taxes (the “Offer Price”). The Offer will initially remain open for twenty (20) business days from the date of commencement of the Offer, but may be extended in certain specified circumstances as provided in the Merger Agreement.

The obligation of Merger Sub to purchase Shares tendered in the Offer is subject to customary closing conditions, including among others, that the number of Shares validly tendered and received, and not validly withdrawn, in accordance with the terms of the Offer, together with the Shares otherwise owned by Merger Sub or its affiliates, equals at least a majority of the issued and outstanding Shares of the Issuer. As soon as practicable following completion of the Offer, subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, Merger Sub will merge with and into the Issuer, with the Issuer surviving as a wholly-owned subsidiary of Parent (the “Merger”), pursuant to the procedure provided for under Section 251(h) of the General Corporation Law of the State of Delaware, without adoption of the Merger Agreement by the Issuer’s stockholders.

At the effective time of the Merger (the “Effective Time”), each Share issued and outstanding immediately prior to the Effective Time (other than Shares (i) held in the treasury of the Issuer and Shares owned by Merger Sub, Parent or any wholly-owned subsidiary of Parent or the Issuer immediately prior to commencement of the Offer, (ii) irrevocably accepted for purchase in the Offer or (iii) owned by a holder who was entitled to demand and who has properly demanded appraisal for such Shares) will automatically be converted into the right to receive an amount in cash equal to the Offer Price without interest thereon.

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In connection with the Offer and Merger, and concurrently with entering into the Merger Agreement, Parent and Merger Sub entered into a Tender and Support Agreement, dated as of August 1, 2018 (the "Support Agreement"), with Engaged Capital and certain of its affiliates (collectively, "Engaged"). Pursuant to the Support Agreement, Engaged has agreed to tender its Shares in the Offer and otherwise support the transactions contemplated by the Merger Agreement. The Support Agreement terminates upon the occurrence of certain circumstances, including in the event that the Merger Agreement is terminated in accordance with its terms.

The foregoing description of the Support Agreement is qualified in its entirety by reference to the Support Agreement, which is attached hereto as Exhibit 99.1 and is incorporated herein by reference. In addition, the foregoing description of the Merger Agreement, the Merger and the Offer does not purport to be complete and is qualified in its entirety by reference to the Form 8-K filed by the Issuer on August 2, 2018.

Item 5. Interest in Securities of the Issuer.

Items 5(a) – (c) are hereby amended and restated to read as follows:

(a) The aggregate percentage of Shares reported owned by each person named herein is based upon 15,640,617 Shares outstanding as of August 1, 2018, which is the total number of Shares outstanding as reported in Exhibit 2.1 to the Issuer's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018.

As of the date hereof, Engaged Capital Flagship Master beneficially owned 2,603,020 Shares, constituting approximately 16.6% of the Shares outstanding. Each of Engaged Capital Fund and Engaged Capital Offshore, as feeder funds of Engaged Capital Flagship Master, may be deemed to beneficially own the 2,603,020 Shares owned by Engaged Capital Flagship Master, constituting approximately 16.6% of the Shares outstanding.

As of the date hereof, 230,982 Shares were held in the Engaged Capital Account, constituting approximately 1.5% of the Shares outstanding.

As of the date hereof, Mr. Welling directly beneficially owned 19,425 Shares, including 1,304 unvested Restricted Stock Units that will vest within 60 days as of the date hereof, constituting less than 1% of the Shares outstanding.

Engaged Capital, as the general partner and investment adviser of Engaged Capital Flagship Master and the investment adviser of the Engaged Capital Account, may be deemed to beneficially own the 2,834,002 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, constituting approximately 18.1% of the Shares outstanding. Engaged Holdings, as the managing member of Engaged Capital, may be deemed to beneficially own the 2,834,002 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, constituting approximately 18.1% of the Shares outstanding. Mr. Welling, as the Founder and CIO of Engaged Capital and sole member of Engaged Holdings, may be deemed to beneficially own the 2,834,002 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, which, together with the Shares he directly beneficially owns, constitutes an aggregate of 2,853,427 Shares, constituting approximately 18.2% of the Shares outstanding.

CUSIP NO. 47023A309

Each Reporting Person, as a member of a “group” with the other Reporting Persons for the purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), may be deemed the beneficial owner of the Shares directly owned by the other Reporting Persons. The filing of this Schedule 13D shall not be deemed an admission that the Reporting Persons are, for purposes of Section 13(d) of the Exchange Act, the beneficial owners of any securities of the Issuer he or it does not directly own. Each of the Reporting Persons specifically disclaims beneficial ownership of the securities reported herein that he or it does not directly own.

(b) By virtue of their respective positions with Engaged Capital Flagship Master, each of Engaged Capital Fund, Engaged Capital Offshore, Engaged Capital, Engaged Holdings and Mr. Welling may be deemed to have sole power to vote and dispose of the Shares reported owned by Engaged Capital Flagship Master.

By virtue of their respective positions with the Engaged Capital Account, each of Engaged Capital, Engaged Holdings and Mr. Welling may be deemed to have sole power to vote and dispose of the Shares held in the Engaged Capital Account.

Mr. Welling has the sole power to vote and dispose of the Shares directly owned by him.

(c) Except for the 5,218 Shares and 5,218 Restricted Stock Units awarded to Mr. Welling, in each case in his capacity as a director of the Issuer, on June 26, 2018, there have been no transactions in the securities of the Issuer by the Reporting Persons during the past 60 days.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.
Item 6 is hereby amended to add the following:

On August 1, 2018, Engaged, Parent and Merger Sub entered into the Support Agreement as defined and described in Item 4 above and attached as Exhibit 99.1 hereto.

Item 7. Material to be Filed as Exhibits.
Item 7 is hereby amended to add the following exhibit:

99.1 Support Agreement, dated August 1, 2018.

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SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: August 3, 2018

Engaged Capital Flagship Master Fund, LP

By: Engaged Capital, LLC
General Partner

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Founder and Chief Investment Officer

Engaged Capital Flagship Fund, LP

By: Engaged Capital, LLC
General Partner

By: /s/ Glenn W. Welling
Name: Glenn W. Welling

Title: Founder and Chief Investment Officer

Engaged Capital Flagship
Fund, Ltd.

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Director

Engaged Capital, LLC

By: /s/ Glenn W. Welling
Name: Glenn W. Welling

Title: Founder and Chief Investment Officer

Engaged Capital Holdings,
LLC

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Sole Member

/s/ Glenn W. Welling
Glenn W. Welling