



IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

ALAN SKULSKY, On Behalf of
Himself and All Others Similarly
Situated,

Plaintiff,

v.

FRANK BISIGNANO, JOSEPH
PLUMERI, HENRIQUE DE CASTRO,
HENRY R. KRAVIS, HEIDI G.
MILLER, JAMES E. NEVELS,
SCOTT C. NUTTALL, TAGAR C.
OLSON, and BARBARA A.
YASTINE,

Defendants.

C.A. No.

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Alan Skulsky (“Plaintiff”), through undersigned counsel, brings this Complaint on behalf of himself and similarly situated holders of the common stock of First Data Corporation (“First Data” or the “Company”) against the members of the Board of Directors (as defined herein) of First Data for breaching their fiduciary duties in connection with the proposed merger between First Data and Fiserv, Inc. (“Fiserv”), (the “Proposed Merger”). This action also seeks an order requiring that the First Data Board comply with their fiduciary obligations and awarding Plaintiff and the Class (as defined herein) damages suffered as a result of Defendants’ wrongdoing.

The allegations of this Complaint are based on Plaintiff's knowledge as to himself, and on information and belief based upon, among other things, the investigation of counsel and publicly available information, as to all other matters.

SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of similarly situated First Data stockholders against the First Data Board for breaches of fiduciary duty and/or other violations of state law arising out of their efforts to effectuate the merger of First Data with Fiserv pursuant to an unfair process and for an unfair price.

2. On January 16, 2019, First Data announced that it had entered into a definitive merger agreement (the "Merger Agreement"), pursuant to which a direct, wholly owned subsidiary of Fiserv will merge with and into First Data with First Data surviving as a direct, wholly owned subsidiary of Fiserv. First Data stockholders will receive only 0.303 of a share of Fiserv common stock for each share of First Data common stock that they own (the "Merger Consideration").

3. The Proposed Merger fails to maximize shareholder value and to protect the interests of First Data's stockholders. Instead, Defendants engaged in a process that was designed to benefit controlling stockholder KKR & Co. Inc. ("KKR") to the detriment of the Company's non-insider stockholders. As such, the Proposed Merger is subject to exacting entire fairness review, which requires the

Defendants to establish that the Proposed Merger was the result of a fair process and provides First Data stockholders with fair consideration for their shares. For the reasons set forth below, neither can be established.

4. On March 14, 2019, Defendants authorized the filing of a materially incomplete and misleading definitive proxy statement (the “Proxy”) with the Securities and Exchange Commission (“SEC”), in violation of their fiduciary duties. In particular, the Proxy contains materially incomplete and misleading information concerning: (i) the financial compensation and conflicts of interest faced by First Data’s financial advisor, Merrill Lynch, Pierce, Fenner & Smith Incorporated (“BofA Merrill Lynch” or “BAML”); (ii) the details surrounding conflicts of interest faced by the Defendants in negotiating the Proposed Merger; (iii) the financial projections for First Data; and (iv) the valuation analyses performed by BAML and Evercore Group L.L.C.¹ (“Evercore” and together with BAML, the “Financial Advisors”).

5. In facilitating the acquisition of First Data by Fiserv for inadequate consideration, conducting a flawed process, and disseminating an incomplete and

¹ According to the Proxy, Evercore were engaged as financial advisors to the “First Data independent directors.” However, the Proxy fails to identify who the independent directors are, how they were independent, or who/what they were independent from. Moreover, despite retaining separate counsel and a financial advisor, the “independent directors” failed to take the proper steps to form a special committee, bar conflicted directors from the negotiations, or cleanse any of the defects of the deeply flawed sales process.

misleading Proxy, each of the Director Defendants breached their fiduciary duties. As set forth below, instead of working to maximize shareholder value as required, the Director Defendants agreed to hand over the Company to Fiserv for a demonstrably unfair price. If the Director Defendants are able to consummate the Proposed Merger, First Data's public stockholders will not receive the true value of their investment.

6. For these reasons and as set forth in detail herein, Plaintiffs seek to recover damages resulting from the Defendants' breaches of their fiduciary duties of loyalty, good faith, and due care and/or aiding and abetting such breaches.

PARTIES

I. Plaintiff

7. Plaintiff is, and at all relevant times has been, a continuous stockholder of First Data.

II. Defendants

8. Defendant Frank Bisignano ("Bisignano") has served as Chief Executive Officer of First Data since 2013 and Chairman of the Board since 2014. Upon the consummation of the Proposed Merger, Bisignano will receive exorbitant monetary compensation, detailed further below, *and* continue on with the combined company as president, chief operating officer, and board member.

9. Defendant Joseph Plumeri (“Plumeri”) is vice chairman of the First Data Board of Directors. Plumeri was originally appointed to the Board in August 2013 by KKR where he is employed as a senior advisor. Since then he also has been serving as senior advisor to Bisignano, and as the head of First Data’s client delivery, innovation and marketing organization. He assumed the vice chairman role in May 2014. Plumeri has a long history with KKR dating back to 2000 when KKR appointed Plumeri as the Chairman/CEO of Willis Group Holdings Ltd.

10. Defendant Henrique De Castro (“De Castro”) has served as a director of the Company since July 2017.

11. Defendant Henry R. Kravis (“Kravis”) has served as a director of the Company since September 2009. Kravis co-founded KKR in 1976 and is Co-Chairman and Co-Chief Executive Officer. He is actively involved in managing KKR and serves on each of the regional Private Equity Investment and Portfolio Management Committees.

12. Defendant Heidi G. Miller (“Miller”) has served as a director of the Company since April 2014.

13. Defendant James E. Nevels (“Nevels”) has served as a director of the Company since April 2014.

14. Defendant Scott C. Nuttall (“Nuttall”) has served as a director of the Company since September 2007. Nuttall joined KKR in 1996 and is head of KKR’s

Global Capital and Asset Management Group. He has played a significant role in several of KKR's private equity investments. Nuttall currently serves as the Co-President and Co-Chief Operating Officer of KKR and is a member of their board of directors.

15. Defendant Tagar C. Olson ("Olson") has served as a director of the Company since September 2007. Olson joined KKR in 2002. He heads the Financial Services as well as the Hospitality and Leisure industry teams and sits on the Investment Committee within KKR's Americas Private Equity platform.

16. Defendant Barbara Yastine ("Yastine") has served as a director of the Company since September 2016.n

17. Defendants Bisignano, Plumeri, De Castro, Kravis, Miller, Nevels, Nuttall, Olson, and Yastine form the Board of Directors of First Data and are collectively referred to herein as the "Board" or the "Director Defendants."

III. Relevant Non-Parties

18. First Data is a corporation organized and existing under the laws of the State of Delaware with its principal executive offices located at 225 Liberty Street, 29th Floor, New York, New York 10281. First Data is a global electronic commerce company offering an array of next-generation commerce technologies, merchant acquiring, issuing, and network solutions.

19. Fiserv is a Wisconsin corporation with its principal executive offices located at 255 Fiserv Drive, Brookfield, Wisconsin 53045. Fiserv is a global provider of financial services technology.

20. KKR (until July 1, 2018 KKR & Co. L.P.) is a corporation organized and existing under the laws of the State of Delaware with its principal executive offices located at 9 West 57th Street, Suite 4200, New York, New York 10019. KKR is a global investment firm that manages investments across multiple asset classes. KKR, through its investment vehicle New Omaha Holdings L.P., owns over 39% of First Data common stock and controls 86% of the total aggregate voting power of the shares of First Data.

21. New Omaha Holdings L.P. (“New Omaha”) is an investment vehicle entirely owned by KKR. New Omaha is the beneficial owner of 364,441,146 shares of First Data Class B common stock. Shares of First Data Class B common stock are convertible into shares of First Data Class A common stock on a one-for-one basis at any time at the option of the holder with the prior consent of First Data, upon the election of the holders of a majority of the then-outstanding shares of First Data Class B common stock, automatically upon transfer, with certain exceptions, and upon certain other events. Holders of First Data Class B common stock are entitled to 10 votes per share and holders of First Data Class A common stock are entitled to one vote per share. Accordingly, New Omaha is the beneficial owner of over 39%

of First Data common stock and controls 86% of the total aggregate voting power of the shares of First Data.

THE DIRECTOR DEFENDANTS' FIDUCIARY DUTIES

22. By reason of the Director Defendants' positions with the Company as officers and/or directors, they are in a fiduciary relationship with Plaintiff and the other public stockholders of First Data and owe them a duty of care, loyalty, good faith, candor, and independence.

23. By virtue of their positions as directors and/or officers of First Data, the Director Defendants, at all relevant times, had the power to control and influence First Data, did control and influence First Data, and caused First Data to engage in the practices complained of herein.

24. To diligently comply with their fiduciary duties, the Director Defendants may not take any action that: (a) adversely affects the value provided to the Company's stockholders; (b) favors themselves or discourages or inhibits alternative offers to purchase control of the corporation or its assets; (c) adversely affects their duty to search and secure the best value reasonably available under the circumstances for the Company's stockholders; (d) will provide the Director Defendants with preferential treatment at the expense of, or separate from, the public stockholders; and/or (e) contractually prohibits the Director Defendants from complying with or carrying out their fiduciary duties.

25. In accordance with their duties of loyalty and good faith, the Director Defendants are obligated to refrain from: (a) participating in any transaction where the Director Defendants' loyalties are divided; (b) participating in any transaction where the Director Defendants receive, or are entitled to receive, a personal financial benefit not equally shared by the public stockholders of the corporation; and/or (c) unjustly enriching themselves at the expense or to the detriment of the public stockholders.

26. Arising from their duties of loyalty and good faith the Director Defendants had a duty to take all reasonable and necessary actions to maximize shareholder value and to produce to each stockholder the best possible return for his investment. This duty also requires the Director Defendants to reject inadequate offers to purchase the Company and to maintain the Company's operations as a standalone entity if the alternative was a sale at an inadequate price. The Director Defendants were obligated to seek the path offering the best value reasonably available to the stockholders, which could be remaining independent and not engaging in any transaction at all.

27. Plaintiff alleges herein that the Director Defendants, separately and together, in connection with the Proposed Merger, are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith, and independence owed to the Company.

CLASS REPRESENTATION ALLEGATIONS

28. Plaintiff brings this action on behalf of himself and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery on behalf of all other holders of First Data common stock who are being and will be harmed by Defendants' actions described below (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

29. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of March 11, 2019, there were approximately 942,795,351 outstanding shares of First Data common stock. The actual number of public stockholders of First Data will be ascertained through discovery.

b. There are questions of law and fact that are common to the Class, including:

- i) whether the Director Defendants have breached their fiduciary duties with respect to Plaintiff and the other members of the Class in connection with the Proposed Merger;
- ii) whether the Director Defendants have breached their fiduciary duty to obtain the best price available for the

benefit of Plaintiff and the other members of the Class in connection with the Proposed Merger;

- iii) whether the Director Defendants have breached their fiduciary duty to disclose fully and fairly all material information within the Board's control in connection with the Proposed Merger;
- iv) whether Plaintiff and other members of the Class are entitled to damages as a result of the Defendants' wrongful conduct.

c. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

d. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

I. Corporate Background

30. First Data, incorporated on April 7, 1989, is a provider of commerce-enabling technology and solutions for merchants, financial institutions, and card issuers. The Company provides merchant transaction processing and acquiring; credit, retail, and debit card issuing and processing; prepaid services; and check verification, settlement, and guarantee services. The Company's segments are Global Business Solutions, Global Financial Solutions, Network & Security Solutions, and Corporate.

31. Fiserv, incorporated on February 19, 1992, is a provider of financial services technology. They provide account processing systems; electronic payments processing products and services, such as electronic bill payment and presentment services, card-based transaction processing and network services, automated clearing house transaction processing, account-to-account transfers, and person-to-person payments; Internet and mobile banking systems; and related services, including document and payment card production and distribution, check processing and imaging, source capture systems, and lending and risk management products

and services. Fiserv operates through two segments: Payments and Industry Products (Payments) and the Financial Institution Services (Financial). The Payments segment provides electronic bill payment and presentment services, Internet and mobile banking software and services, person-to-person payment services, debit and credit card processing, and other electronic payments software and services. The Financial segment provides banks, thrifts, credit unions, and leasing and finance companies with account processing services, item processing and source capture services, loan origination and servicing products, cash management and consulting services, and other products and services. Fiserv serves banks, thrifts, credit unions, investment management firms, leasing and finance companies, retailers, merchants, mutual savings banks, and building societies.

32. KKR is a global investment firm that manages investments across multiple asset classes, including private equity, energy, infrastructure, health care, real estate, credit, and hedge funds. Their business offers a range of investment management services to its fund investors, and provides capital markets services to its firm, its portfolio companies, and third parties. KKR conducts its business with offices across the world, providing it with a global platform for sourcing transactions, raising capital, and carrying out capital markets activities. Through KKR's Private Markets segment, KKR manages and sponsors a group of private equity funds and co-investment vehicles. Primarily, they operate through four

segments: Private Markets, Public Markets, Capital Markets, and Principal Activities.

33. On September 24, 2007, KKR acquired First Data in a \$29 billion leveraged buyout—one of the largest of all time. Since then, KKR has further invested billions of dollars into First Data, including capital from its own balance sheet, solidifying First Data as KKR’s largest investment ever and the largest on its own balance sheet. First Data went public in late 2015. In the ensuing years, First Data’s business has weighed down the KKR’s overall profitability, before KKR began unloading shares through secondary offerings in 2017.

II. The Flawed Sales Process That Failed to Maximize Shareholder Value

34. The Defendants conducted a severely flawed sales process that yielded wholly inadequate Merger Consideration for First Data stockholders. The entire process was controlled by KKR and the Proposed Merger was agreed to for the benefit of KKR and company insiders, not First Data minority stockholders.

35. Despite the fact that KKR controlled 86% of the vote and had employees serving in at least four of the ten board seats, the Board decided not to implement a special committee to protect the interests of First Data minority stockholders. In fact, quite the opposite. Defendants allowed Nuttall—the Co-President and Co-Chief Operating Officer of KKR—free reign to operate the sales process as he saw fit.

36. And what Nuttall saw fit was to drive a sale of the Company obstinately into the arms of Fiserv. No other potential buyers were reached out to. No market check was performed. KKR and Nuttall decided Fiserv would receive the exclusive right to merge with First Data, no matter the cost to the Company's minority stockholders.

37. Exacerbating matters is the fact that the Company's financial advisor, BAML, was patently conflicted with respect to the only bidder. BAML, through its affiliate Bank of America, N.A., stood to receive substantial sums of money from participating in the merger related financing of Fiserv. See *infra* at 51. Additionally, BAML positioned itself well to participate in the much larger financing that is in line for the combined company if, and only if, the Proposed Merger is consummated.

38. Thus, a conflicted Board and a conflicted banker were sent in to negotiate with the controlling stockholder's chosen, and only, bidder without constructing any procedural safeguards to protect the rights of minority stockholders.

39. On the morning of January 16, 2019, BAML rendered its fairness opinion to the Board. The Board then unanimously voted to approve and adopt the Merger Agreement for the inadequate Merger Consideration.

40. That same day, New Omaha entered into a voting and support agreement to irrevocably and unconditionally execute and deliver its written consent covering all 86% of its shares of First Data common stock.

III. The Proposed Merger Fails to Adequately Compensate First Data Stockholders

41. Pursuant to the terms of the Merger Agreement, First Data stockholders will receive only 0.303 of a share of Fiserv common stock for each share of First Data common stock that they own. This consideration is inadequate and undervalues the Company.

42. As an initial matter, the Merger Consideration does not reflect the Company's actual value, but rather a discount thereto, which is perhaps best illustrated by the fact that implied value of the Merger consideration represents a *discount* to First Data's 52-week high trading price of \$26.62.

43. At the time the Proposed Merger was negotiated, First Data's stock price was artificially deflated from poor Q3 results. However, on February 6, 2019, just three weeks after announcing the Proposed Merger, First Data announced positive results for Q4, showing that the previous quarter was just an aberration. In Q4, First Data beat revenue estimates by \$310 million and EPS estimates by 22.5%.

44. Given the Company's strong financial results and growth potential, the Merger Consideration is simply not a fair price.

IV. The Proposed Merger Was the Result of a Conflicted Process

45. The Merger Agreement and the insufficient Merger Consideration were the result of a flawed and conflicted process. The Proposed Merger was the product of KKR steering the Company, through its control of the Board and the 86% voting power it wields, to the Proposed Merger with Fiserv. Seemingly every party involved in the Proposed Merger has either conflicted interests or directly opposing interests to minority First Data stockholders.

46. As stated above, four of the Directors, including Nuttall who ran the merger negotiations, were employed by KKR. Additionally, four of the ten directors of the combined company will be continuing First Data directors.

47. Further, the executive officers of First Data, including Bisignano, stand to receive millions of dollars in exorbitant “golden parachute” compensation upon the completion of the Proposed Merger, as shown in the Proxy:

Golden Parachute Compensation

Name	Cash (\$)(1)	Equity (\$)(2)	Pension / NQDC (\$)	Perquisites / Benefits (\$)(3)	Tax Reimbursement (\$)(4)	Total (\$)
Frank J. Bisignano	\$ 9,500,000	\$ 137,954,517	—	\$ 326,590	\$ 25,996,963	\$ 173,778,070*
Himanshu A. Patel	\$ 960,000	\$ 12,243,100	—	\$ 15,883	—	\$ 13,218,983
Guy Chiarello	\$ 1,920,000	\$ 18,765,409	—	\$ 10,137	—	\$ 20,695,546
Christopher Foskett	\$ 860,000	\$ 9,502,334	—	\$ 8,235	—	\$ 10,370,569
Jeffrey M. Shanahan ⁽⁵⁾	—	—	—	—	—	—

48. Additionally, in connection with the entry into the Merger Agreement, on January 16, 2019, Fiserv and Bisignano entered into lucrative employment and severance agreements. Pursuant to these agreement, Bisignano will serve as Fiserv’s president and chief operating officer receiving compensation between \$10

and \$15 million dollars each year, equity awards valued at \$30 million, and millions of dollars in potential severance compensation and benefits. All of this is in addition to the golden parachute compensation stated above.

49. As a result of the flawed sales process conducted by a conflicted Board with members beholden to KKR, KKR—either directly or through New Omaha—received unique benefits that were not shared equally by First Data’s minority stockholders. First, the Merger Agreement guarantees KKR at least one, and potentially up to three, seat(s) on the board of the combined company. Second, KKR was unable to move such a large block of First Data shares rendering their position illiquid; however, as a result of the Proposed Merger, KKR will have a much more liquid stake in the combined company. This explains why KKR, through the conflicted directors, was so intent on engaging in a deal with Fiserv—a company large enough to dilute its massive ownership position. Third, as part of the Proposed Merger, Fiserv will refinance approximately \$17 billion of First Data’s debt. According to the form S-1 filed in October 2015 prior to First Data’s IPO, KKR Capital Markets LLC, an affiliate of KKR, held a substantial portion of that debt. Thus, KKR will receive the additional unique benefit of having that debt repaid.

50. Moreover, BAML faced debilitating conflicts of interest from their involvement in providing the financing for the Proposed Merger. Bank of America, N.A. was a syndication agent, issuing bank, and lender under the existing credit

facility for Fiserv. Then, Fiserv amended its existing credit facility to, among other things, facilitate the merger and borrowings under the existing revolving credit facility in connection with the merger, *refinance certain outstanding indebtedness of First Data and its subsidiaries on the closing date*, make cash payments in lieu of fractional shares as part of the merger consideration, and pay fees and expenses related to the merger, the refinancing, and the related transactions. Proxy at 143-144 (emphasis added). Fiserv intends to further amend its existing revolving credit facility to obtain an increase of up to \$1.5 billion in the commitments available to it under the existing revolving credit facility and to seek certain additional amendments to facilitate the operation of the combined business. *Id.* Furthermore, Fiserv currently expects to issue \$12 billion in new debt securities and to incur \$5 billion in new term loans in connection with the permanent financing. *Id.*

51. Thus, the Board abdicated the fiduciary duties they owed to First Data minority stockholders by conducting the unfair merger process to push through the Proposed Merger at an unfair price. By failing to erect any procedural protections to shield the merger process from the blatant conflicts of interest that permeated the majority of the Board and deciding not to require any type of majority of the minority provision, the Defendants now bear the burden of proving the Proposed Merger is entirely fair to First Data stockholders.

V. The Materially Incomplete and Misleading Proxy

52. Directors of Delaware corporations are under a fiduciary duty to disclose fully and fairly all material information within the board's control related to major corporate transactions. The Board has breached this duty by causing the materially incomplete and misleading Proxy to be filed with the SEC on March 14, 2019. As discussed below, the Proxy omits material information that must be disclosed to enable First Data stockholders to make an informed decision about whether to sell their stock now or retain their reduced equity interest in the combined company.

53. First, the Proxy fails to adequately disclose BAML's participation in the financing associated with the Merger, including the compensation that they stand to receive. The text of the Proxy is silent as to BAML's participation to in the merger financing. The closest Defendants come to disclosing this information is in the summary of BAML's fairness opinion:

In addition, BofA Merrill Lynch and its affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to Fiserv and certain of its affiliates and have received or in the future may receive compensation for the rendering of these services, including (i) having acted as a book runner for a debt offering by Fiserv, (ii) having acted *or acting* as book runner, arranger, syndication agent for, and a lender under, certain credit facilities, leasing facilities and letters of credit of Fiserv and certain of its affiliates, (iii) having provided or providing certain foreign exchange trading services to Fiserv and certain of its affiliates and (iv) having provided or providing certain treasury and management services and products to Fiserv and certain of

its affiliates. From January 1, 2017 through December 31, 2018, BofA Merrill Lynch and its affiliates derived aggregate revenues from Fiserv and its affiliates of approximately \$20 million for investment, corporate banking, and other financial services.

Proxy at 114. However, the Proxy fails to disclose the truth that Bank of America is a syndication agent, issuing bank, and lender under the amended credit facility. Nowhere do Defendants disclose the amount of compensation BAML, or its affiliate Bank of America, NA, stand to receive therewith. And nowhere do Defendants disclose whether Bank of America, in any capacity, will participate in the billions of dollars of loans planned for the combined company.

54. Accordingly, the above disclosure is wholly inadequate to inform stockholders of the significant conflict of interest BAML faced when advising the Board and analyzing the fairness of the Merger Consideration. Defendants owe a duty of candor to make such an important disclosure explicit to stockholders. Defendants must plainly state both that BAML is providing financing to the company acquiring them, and the amount of compensation BAML stands to receive from such financing.

55. Financial advisors play a critical role in the merger process. Their fairness opinions are heavily relied upon by both boards of directors and stockholders. Accordingly, it is necessary for stockholders to be fully aware of what factors might influence a financial advisor's analytical efforts, so that stockholders may determine how much, if any, reliance to place on their derivation of fairness.

56. In short, the compensation and potential conflicts of interest of the Board’s advisors are important facts that must be disclosed to stockholders. The failure to do so is an obvious breach of the Board’s fiduciary duty.

57. Second, the Proxy fails to properly disclose the conflicts of interest the Defendants faced. It takes over 200 pages—well after the description of the flawed Nuttall-run sales process—for the Proxy to disclose in footnotes to the *Security Ownership of First Data Directors and Executive Officers* that each of Kravis, Nuttall, and Olson “serves as an executive of Kohlberg Kravis Roberts & Co. L.P.” Proxy at 203. However, the Proxy fails to complete the disclosure. The Proxy is silent to the fact that First Data Vice Chairman Joseph Plumeri is also an employee of KKR. This is significant because the four KKR employees—Kravis, Nuttall, Olson, and Plumeri—when added to Bisignano present a majority of conflicted First Data Board of Directors.

58. The failure to disclose a director conflict, or even a full factual record so stockholders could discern the conflict, is clearly a breach of fiduciary duty. Given the lack of a special committee² to attempt to shield the Board from its inherent conflicts of interest, it is unquestionable that a stockholder would find the fact that a

² The Proxy repeatedly refers to First Data “independent directors,” but entirely fails to identify who the independent directors are, how they were independent, or who/what they were independent from.

majority of their Company's Board was conflicted and that four of the ten members of the Board were beholden to the largest, controlling stockholder to alter the total mix of information.

59. Third, the Proxy entirely fails to disclose the unlevered free cash flows from the First Data projections prepared by First Data management. First Data management projections were explicitly reviewed by the Financial Advisors in preparing their fairness opinions, discussed with the management of First Data in assessing the relative likelihood of achieving the future financial results reflected in the First Data management projections, and the unlevered free cash flow projections were utilized in the Financial Advisors' Discounted Cash Flow Analyses of First Data. It is indisputable that the unlevered free cash flows are the most important input in the Financial Advisors Discounted Cash Flow Analyses—the entire analysis is based upon discounting the cash flows to present value. However, Defendants elected to exclude the unlevered free cash flows from the Proxy, despite the fact that they simultaneously elected to include a purported “summary” of the Discounted Cash Flow Analyses and the First Data management projections.

60. Fourth, the Proxy provided materially incomplete and misleading summaries of the financial analyses performed by the Financial Advisors in support of their fairness opinions, including, among others, the Financial Advisors' DCF analyses (by failing to disclose the relevant cash flow projections) and BAML's

Selected Precedent Transactions Analysis (by failing to disclose the relevant individual valuation multiples).

61. In sum, the Board conducted a flawed sales process that failed to maximize shareholder value, and caused the materially incomplete and misleading Proxy to be filed with the SEC. The Board has prevented Plaintiff and the Class from being adequately compensated for their First Data shares and has deprived the Company's stockholders of material information with respect to the Proposed Merger.

FIRST CAUSE OF ACTION

(Against the Director Defendants for Breaches of Fiduciary Duties)

62. Plaintiff repeats and realleges each allegation set forth herein.

63. The Defendants have violated fiduciary duties owed to the public stockholders of First Data.

64. By the acts, transactions, and courses of conduct alleged herein, the Director Defendants have failed to obtain for the public stockholders of First Data the highest value available for First Data in the marketplace, thereby depriving them of the true value of their investment.

65. As alleged herein, the Defendants initiated a process to sell First Data that undervalues the Company and vests them with benefits that are not shared equally by First Data's public stockholders. Defendants failed to sufficiently inform

themselves of First Data's value, or disregarded the true value of the Company, in an effort to benefit themselves and KKR. Further, any alternate acquirer will be faced with engaging in discussions with a management team and Board that is committed to the Proposed Merger. Defendants failed to take the requisite actions to protect minority stockholders from the majority conflicted Board. Defendants failed in their duty of oversight to allow a conflicted financial advisor to participate in negotiations and opine on the fairness of the Proposed Merger. Defendants failed to provide First Data's public stockholders with all material information in connection with the Proposed Merger. Finally, Defendants failed to provide First Data stockholders any chance to exercise their corporate suffrage rights through a majority of the minority, or any other similar provision.

66. As a result of the Defendants' actions, Plaintiff and the Class will suffer damages in that they have not and will not receive a fair price for their First Data common stock. The actual amount of such damages will be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands relief in his favor and in favor of the Class and against Defendants, as follows:

- A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as the Class representative and his counsel as Class counsel;
- B. Rescinding, to the extent already implemented, the Proposed Merger or

any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

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

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

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

Dated: April 3, 2019

OF COUNSEL

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