



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

ALICE TAWIL,

Plaintiff,

v.

CHECKFREE CORPORATION, MARK A.  
JOHNSON, EUGENE F. QUINN, WILLIAM P.  
BOARDMAN, JAMES D. DIXON, PETER J.  
KIGHT, C. KIM GOODWIN, JEFFREY M.  
WILKINS, and FISERV, INC.

Defendants.

Civil Action No. - 3193-CC

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff, Alice Tawil, alleges the following on information and belief, except as to allegations specifically pertaining to plaintiff and her counsel, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. This is a class action on behalf of the public stockholders of CheckFree Corporation ("CheckFree" or the "Company") in connection with a proposed acquisition of CheckFree by Fiserv, Inc. ("Fiserv") for grossly inadequate consideration and in breach of defendants' fiduciary duties (the "Merger"). Plaintiff alleges that she and the other public stockholders of the Company's common stock are entitled to enjoin the Buyout Transaction, or alternatively, to recover damages in the event the Buyout Transaction is consummated. Plaintiff alleges that the Merger provides CheckFree's public shareholders with inadequate consideration, is the product of a severely flawed sales process, and is being presented for a shareholder vote based upon inadequate disclosures.

**THE PARTIES**

2. Plaintiff Alice Tawil is, and has been at all relevant times, the owner of shares of CheckFree common stock.

3. CheckFree is a Delaware corporation with its principal executive office located in Norcross, Georgia. CheckFree provides financial electronic commerce services and products to organizations around the world. It operates in three divisions: Electronic Commerce, Software, and Investment Services. CheckFree Electronic Commerce's products enable financial services providers and billers to offer the convenience of receiving and paying household bills online, via phone or in person through retail outlets. CheckFree Investment Services provides a broad range of investment management solutions and outsourced services to hundreds of financial services organizations, which manage about \$1.8 trillion in assets. CheckFree Software develops, markets and supports payment processing solutions that are used by financial institutions to process more than two-thirds of the 14 billion Automated Clearing House transactions in the United States, and supports reconciliation, exception management, risk management, transaction process management, corporate actions processing, and compliance within thousands of organizations worldwide.

4. Fiserv provides information management systems and services to the financial and insurance industries. Leading services include transaction processing, outsourcing, business process outsourcing (BPO), software and systems solutions.

5. Peter J. Kight ("Kight") is and at all relevant times has been a Director of the Company, as well as Chief Executive Officer ("CEO") and Chairman of the Board of Directors of CheckFree (the "Board").

6. Mark A. Johnson ("Johnson") is and at all relevant times has been a Director of the Company, as well as Vice Chairman of the Board. He also serves as a director and as Vice Chairman of CheckFree Services Corporation, a subsidiary of the Company, and as a director of OneVu Limited, the Company's joint venture company with Voca Limited in the United Kingdom. Johnson returned to serve as the Company's Vice Chairman in January 2003. Prior to that, he had served as Vice Chairman of the Company from December 1997 to June 2000, as Executive Vice President, Business Development of CheckFree Services Corporation from 1993 to 1997, as Treasurer of CheckFree Services Corporation from 1993 to 1996, as Senior Vice President of CheckFree Services

Corporation from 1991 to 1993, and as a Vice President of CheckFree Services Corporation from 1982 to 1991.

7. Eugene F. Quinn (“Quinn”) is and at all relevant times has been a Director of the Company.

8. William P. Boardman (“Boardman”) is and at all relevant times has been a Director of the Company. During 2001 through 2003, he was a senior advisor to Goldman Sachs & Co. (“Goldman Sachs”), the Company’s sole financial advisor with respect to the Merger.

9. James D. Dixon (“Dixon”) is and at all relevant times has been a Director of the Company.

10. C. Kim Goodwin (“Goodwin”) is and at all relevant times has been a Director of the Company.

11. Jeffrey M. Wilkins (“Wilkins”) is and at all relevant times has been a Director of the Company.

12. The Defendants described in paragraphs 5-11 are collectively referred to herein as the “Individual Defendants.”

13. The Individual Defendants, as officers and/or directors, have stood in a fiduciary position relative to the Company’s public shareholders and owed the public shareholders of the Company the highest duties of good faith, fair dealing, due care, loyalty, and full and candid disclosure.

### **CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all public stockholders of the Company (except the defendants herein and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the defendants) and their successors in interest, who are or will be threatened with injury arising from defendants’ actions as more fully described herein (the “Class”).

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

(a) The Class is so numerous that joinder of all members is impracticable. There are approximately 47.01 million shares of CheckFree common stock outstanding owned by hundreds, if not thousands, of holders other than defendants. The Company's common stock is listed and actively traded on the Nasdaq National Market System.

16. There are questions of law and fact which are common to the Class including, inter alia, the following: (a) whether the Individual Defendants have breached their fiduciary and other common law duties owed by them to plaintiff and the other members of the Class; (b) whether defendants are pursuing a scheme and course of business designed to eliminate the public stockholders of the Company to the detriment of plaintiff and the other public stockholders who are members of the Class; and (c) whether the Class is entitled to injunctive relief and/or damages as a result of the wrongful conduct committed by defendants.

17. 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 other members of the Class, and plaintiff has the same interests as the other members of the Class. Plaintiff will fairly and adequately represent the Class.

18. Defendants have acted in a manner which affects plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

19. 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 defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

## SUBSTANTIVE ALLEGATIONS

20. Before trading opened on August 2, 2007, CheckFree announced that it had entered into a definitive agreement (the “merger agreement”) to be acquired by Fiserv, in a Merger for approximately \$4.4 billion in equity value, under the terms of which CheckFree’s public stockholders will receive \$48 in cash for each of their shares (the “Buyout Price”) and that CheckFree CEO and Chairman Kight would continue on as a member of Fiserv’s Board of Directors.

The press release stated in part:

Fiserv, Inc. (NASDAQ: FISV - News), a leading provider of technology solutions, and CheckFree Corporation, (NASDAQ: CKFR - News), a leading provider of financial e-commerce services and products, today announced that they have entered into a definitive agreement whereby Fiserv will acquire CheckFree in an all-cash transaction valued at approximately \$4.4 billion. Under terms of the agreement, CheckFree shareholders will receive \$48.00 in cash for each share of common stock.

\* \* \*

“By joining our complementary technology and capabilities with Fiserv and its unparalleled footprint, this new combined entity will broaden Fiserv’s offerings to customers worldwide,” said Pete Kight, CheckFree Chairman and Chief Executive Officer. “In particular, it will significantly accelerate the delivery of next-generation services to financial institutions and their customers. CheckFree’s broad range of offerings will also enable Fiserv to round out its ability to deliver solutions that address the challenges of an evolving U.S. payments landscape and help facilitate the growth of the managed accounts industry.”

In conjunction with the closing of the transaction, Kight will be employed by Fiserv and appointed to its board of directors.

“Pete’s demonstrated results in building one of the world’s leading payment and transaction processing companies are a testament to his energy, vision and strategic leadership,” said Donald F. Dillon, Fiserv Chairman. “We will be thrilled to have him on our board.”

Fiserv expects to realize more than \$100 million in annualized cost savings and more than \$125 million in annualized revenue synergies. For 2008, the transaction is expected to be accretive to Fiserv’s underlying cash earnings per share.

The transaction is expected to be completed by December 31, 2007, subject to regulatory approvals, approval by the CheckFree shareholders and customary closing conditions. After closing, the combined company will have pro-forma revenue of about \$6 billion, employ more than 27,000 associates world-wide and be the leading provider of technology processing solutions to banks and financial institutions.

“We are impressed by the people of CheckFree. Their cultural commitment to clients is consistent with how we do business and this combination will create significant

growth opportunities for all of our people,” said Yabuki.

21. The press release further stated that, in connection with the Merger, CheckFree’s sole financial advisor is Goldman, Sachs & Co. (“Goldman Sachs”) and its sole legal advisor is Wachtell, Lipton, Rosen & Katz.

22. On August 22, 2007, the Company filed a preliminary proxy statement (the “Preliminary Proxy”) with the U.S. Securities and Exchange Commission (“SEC”).

23. The Preliminary Proxy revealed additional facts that call into question the impartiality of the Board and CheckFree management in entering into the merger agreement with Fiserv. For instance:

- (a) In addition to Kight, other CheckFree executives Stephen E. Olsen, David E. Mangum, Alex P. Hart, Jardon T. Bouska, Michael P. Gianoni, Mark A. Johnson (also a Board member and named herein as a defendant), Leigh Asher and Laura E. Binion had entered into retention agreements with Fiserv.
- (b) All of the Company’s directors have been named as defendants in a derivative action in the United States District Court for the Northern District of Georgia (the “derivative action”). Preliminary Proxy, p. 26. Not only will the directors likely escape judgment by depriving shareholders of standing to maintain the derivative action through the Merger, but Fiserv has further agreed to indemnify and hold harmless each current and former director and officer of CheckFree against any costs or expenses (and will advance expenses as incurred), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any actual or threatened action arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred before the completion of the Merger. Preliminary Proxy, p. 23. Thus, even if the District Court for the Northern District of Georgia permits the derivative action to continue, the Individual

Defendants will be insulated from liability through this protection given them by Fiserv.

24. In addition, the Preliminary Proxy fails to disclose information that is materially important to the shareholder vote. The Preliminary Proxy contains the fairness opinion of Goldman Sachs, the sole financial advisor to the Board concerning the Merger. However, the Preliminary Proxy provides insufficient information concerning the analysis that was done by Goldman Sachs. For example, the “Illustrative Discounted Cash Flow Analysis” section references management projections for the Company as a basis underlying the analysis, but nowhere are those internal projections disclosed. Preliminary Proxy, p. 19-20. The relevant section states in pertinent part as follows:

*Illustrative Discounted Cash Flow Analysis*

Goldman Sachs performed several illustrative discounted cash flow analyses of our expected unlevered free cash flows, all of which were based on underlying estimates provided by our management.

Goldman Sachs calculated indications of net present value of expected unlevered free cash flows for us for the years 2008 through 2012 and added to this amount the net present value of the terminal value at the end of calendar year 2012, using an illustrative range of terminal year EBITDA multiples of 9.5x to 12.5x. Present values were calculated using discount rates ranging from 11.0% to 14.0%...

Goldman Sachs also performed an illustrative discounted cash flow analysis assuming an illustrative range of compound annual revenue growth rates of 9.0% to 12.0% for years 2008 through 2012. Assuming a terminal year EBITDA multiple of 11.5x and a discount rate of 12.0% were held constant, Goldman Sachs calculated indications of net present value of implied unlevered free cash flows for us for the years 2008 through 2012 and added to this amount the implied net present value of the terminal value at the end of calendar year 2012, using an illustrative range of EBITDA margins of 25.0% to 31.0%.

25. Moreover, Goldman Sachs’ independence and impartiality is in question given that the Preliminary Proxy reveals that “a principal portion” of its \$27 million fee “is contingent upon the consummation of the transaction.” Preliminary Proxy, p. 22. However, the Preliminary Proxy fails to disclose exactly what percentage of that fee is represented by the phrase “a principal portion.”

26. Additionally, the Preliminary Proxy fails to disclose that defendant director Boardman was a senior advisor to Goldman Sachs from 2001 through 2003, a fact which further calls into

question the impartiality and independence of both Boardman and Goldman Sachs.

27. In connection with the Merger, the Individual Defendants have initiated a process to sell CheckFree that imposes a heightened fiduciary responsibility on them and requires enhanced scrutiny by the Court. The Individual Defendants owe fundamental fiduciary obligations to the Company's shareholders to take all necessary and appropriate steps to maximize the value of their shares in implementing such a transaction. In this regard, the Individual Defendants have the responsibility to conduct fair and active bidding procedures or other mechanisms for reliably checking the market to assure that the highest possible price is achieved.

28. However, it is unclear from the Preliminary Proxy what steps the Individual Defendants took prior to executing the merger agreement to fulfill their fiduciary obligations to the public shareholders. There was never a public announcement regarding a potential sale of the Company and, while the Preliminary Proxy states that Company representatives "met with several potentially interested parties," nowhere does it disclose exactly how many parties were contacted. Preliminary Proxy, p. 12. The Preliminary Proxy further fails to disclose whether any of those "several potentially interested parties" placed or were invited to place bids for the Company, nor whether Fiserv's bid was the highest received.

29. Additionally, there was no "go-shop" provision included in the merger agreement in order to conduct a post-signing market check to ascertain the transactional value of the Company—a deficiency which was only compounded by the unreasonably high termination fee that, at \$176 million, represents approximately 4% of the total deal price, effectively discouraging any potential third party bidders.

30. The consideration of \$48 in cash per share to be paid to Class members pursuant to the Merger is unfair and inadequate because, among other things:

(a) the intrinsic value of the stock of the Company is materially in excess of \$48 per share, giving due consideration to the prospects for growth and profitability of the Company in light of its business, earnings and earnings power, present and future;

(b) the \$48 per share price offers an inadequate premium to the public stockholders of the Company as it represents only a 19.8% premium over the July 23, 2007, closing price of \$40.06 per share, just as the market entered its current dip, and had been trading at over \$40 per share for nearly a month by then; and

(c) On August 3, 2007, just after the Merger was announced, the Company also released improved financial results for the Company's prior fiscal year, with \$972.6 million in revenues for the year, an 11% increase over fiscal 2006, and \$183.8 million in free cash flow, up 7% from 2006. Defendant Kight, in connection with the release of those financial results, stated: "Solid execution and good product strength provided CheckFree with results just ahead of our expectations for the fourth quarter and the year... The performance of our core business, and the integration of our newly acquired operations, all ended the year on track or slightly ahead."

31. Fiserv has knowingly aided and abetted the breaches of fiduciary duty committed by the Individual Defendants. Fiserv has agreed to the CheckFree's senior management's continued employment and insulation of the Board from liability in the derivative action, thereby assuring the Board and management's agreement and cooperation in, and to, a transaction which will not maximize value for CheckFree's shareholders. Fiserv has so agreed to enable it to acquire CheckFree at the lowest possible price although its dealings with CheckFree's Board and management have necessarily injected personal motives into the negotiations and compromised the undivided loyalty which fiduciaries owe to CheckFree's public shareholders.

32. As a result of defendants' unlawful actions, plaintiff and the other members of the Class will be irreparably damaged in that they will not receive their fair portion of the value of the Company's assets and business, will not be able to vote on whether to approve the Merger on a fully informed basis, and will be prevented from obtaining or retaining the real value of their equity ownership of the Company.

33. Unless the proposed Merger is enjoined by the Court, the Individual Defendants, aided and abetted by Fiserv, will continue to breach their fiduciary duties owed to plaintiff and the

other members of the Class, and will consummate and close the Merger to the irreparable harm of plaintiff and the members of the Class.

34. Plaintiff and the other members of the Class have no adequate remedy at law.

**WHEREFORE**, plaintiff demands judgment, as follows:

(1) declaring this to be a proper class action and certifying plaintiff as the Class representative and plaintiff's counsel as Class counsel;

(2) enjoining, preliminarily and permanently, the Buyout Transaction complained of herein;

(3) to the extent, if any, that the Buyout Transaction is consummated prior to the entry of this Court's final judgment, rescinding the same or awarding the Class rescissory damages;


(4) directing that defendants account to plaintiff and the other members of the Class for all damages caused to them and for all profits and any special benefits obtained by defendants as a result of their wrongful conduct;

(5) awarding plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of plaintiff's attorneys and expert(s); and

(6) granting such other further relief as the Court may deem just and proper.

Dated: August 30, 2007

ROSENTHAL, MONHAIT & GODDESS, P.A.

By:   
Carmella P. Keener (DSBA No. 2810)  
919 N. Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, Delaware 19899-1070  
(302) 656-4433

*Attorneys for Plaintiff*

OF COUNSEL:

WOLF POPPER LLP  
845 Third Avenue  
New York, NY 10022  
(212) 759-4600