

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

ERIC SABATINI, Individually and On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiff,	)	Case No. _____
	)	
v.	)	JURY TRIAL DEMANDED
	)	
WORLDPAY, INC., CHARLES DRUCKER, LEE ADREAN, KEVIN COSTELLO, MARK HEIMBOUCH, LISA A. HOOK, RON KALIFA, GARY L. LAUER, KAREN RICHARDSON, BOON SIM, JEFFERY STIEFLER, FIDELITY NATIONAL INFORMATION SERVICES, INC., and WRANGLER MERGER SUB, INC.,	)	CLASS ACTION
	)	
	)	
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 March 18, 2019 (the “Proposed Transaction”), pursuant to which Worldpay, Inc. (“Worldpay” or the “Company”) will be acquired by Fidelity National Information Services, Inc. (“Parent”) and Wrangler Merger Sub, Inc. (“Merger Sub,” and collectively with Parent, the “FIS”).
  
2. On March 18, 2019, Worldpay’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 FIS. Pursuant to the terms of the Merger Agreement, Worldpay’s stockholders will receive 0.9287 shares of Parent and \$11.00 in cash for each share of Worldpay common stock

they own.

3. On April 15, 2019, defendants filed a Form S-4 Registration Statement (the “Registration Statement”) with the United States Securities and Exchange Commission (the “SEC”) in connection with the Proposed Transaction.

4. 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**

5. 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.

6. 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.

7. 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**

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

9. Defendant Worldpay is a Delaware corporation and maintains its principal executive offices at 8500 Governor's Hill Drive, Symmes Township, Ohio 45249. Worldpay's common stock is traded on the New York Stock Exchange under the ticker symbol "WP."

10. Defendant Charles Drucker is Chief Executive Officer and Executive Chairman of the Board of the Company.

11. Defendant Lee Adrean is a director of the Company.

12. Defendant Kevin Costello is a director of the Company.

13. Defendant Mark Heimbouch is Chief Operating Officer, President, and a director of the Company.

14. Defendant Lisa A. Hook is a director of the Company.

15. Defendant Ron Kalifa is the Executive Director of the Company.

16. Defendant Gary L. Lauer is a director of the Company.

17. Defendant Karen Richardson is a director of the Company.

18. Defendant Boon Sim is a director of the Company.

19. Defendant Jeffery Stiefler is the Lead Director of the Company.

20. The defendants identified in paragraphs 10 through 19 are collectively referred to herein as the "Individual Defendants."

21. Defendant Parent is a Georgia corporation and a party to the Merger Agreement.

22. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of the Parent, and a party to the Merger Agreement.

### **CLASS ACTION ALLEGATIONS**

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

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

25. The Class is so numerous that joinder of all members is impracticable. As of March 13, 2019, there were approximately 300,811,600 shares of Worldpay common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

26. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

27. 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.

28. 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.

29. 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*

30. Worldpay is a leading payments technology company with unique capability to power global omni-commerce.

31. With an integrated technology platform, Worldpay offers a suite of products and services, delivered globally through a single provider.

32. Worldpay processes over 40 billion transactions annually, supporting more than 300 payment types across 146 countries and 126 currencies.

33. On March 18, 2019, the Company's Board caused the Company to enter into the Merger Agreement with FIS.

34. Pursuant to the terms of the Merger Agreement, the Company's stockholders will receive 0.9287 shares of Parent and \$11.00 in cash for each share of Worldpay common stock they own.

35. According to the press release announcing the Proposed Transaction:

FIS™ (NYSE: FIS), a global leader in financial services technology, and Worldpay, Inc. (NYSE: WP; LSE: WPY), a global leader in eCommerce and payments, announce that they have entered into a definitive merger agreement. This combination greatly expands FIS' capabilities by enhancing its acquiring and payment offerings and significantly increases Worldpay's distribution footprint, accelerating its entry into new geographies. Upon closing, the combined company will be positioned to offer best-in-class enterprise banking, payments, capital markets, and global eCommerce capabilities empowering financial institutions and businesses worldwide.

At the closing, under the terms of the agreement, Worldpay shareholders will be entitled to receive 0.9287 FIS shares and \$11.00 in cash for each share of Worldpay. Upon closing, FIS shareholders will own approximately 53 percent and Worldpay shareholders will own approximately 47 percent of the combined company. The combination of stock and cash values Worldpay at an enterprise value of approximately \$43 billion, including the assumption of Worldpay debt, which FIS expects to refinance. . . .

### Governance and Timing

Upon closing, the combined company's Board of Directors will consist of 12 members, seven of which will come from FIS' Board of Directors and five of which will come from Worldpay's Board of Directors. Gary Norcross will remain as FIS Chairman of the Board, President and Chief Executive Officer. Charles Drucker, Worldpay's current Executive Chairman and CEO, will serve as the Executive Vice Chairman of the Board.

The combined company will retain the name FIS and will be headquartered in Jacksonville, Fla.

The transaction is subject to receipt of required regulatory and shareholder approvals and other customary closing conditions and is expected to close in the second half of 2019.

36. The Merger Agreement contains a "no solicitation" provision that prohibits the Individual Defendants from soliciting alternative proposals. Section 6.9(b) of the Merger Agreement provides:

Each of Parent and the Company shall not, and shall cause its Subsidiaries and its and its Subsidiaries' respective executive officers and directors not to, and direct its and its Subsidiaries' respective Representatives that are not executive officers or directors not to, directly or indirectly, (A) solicit, initiate, seek or support or knowingly encourage or facilitate any inquiries or proposals with respect to any Acquisition Proposal, (B) engage or participate in any negotiations with any person concerning any Acquisition Proposal, (C) provide any confidential or nonpublic information or data to, or have or participate in any discussions with, any person relating to any Acquisition Proposal, except to notify a person that makes any inquiry or offer with respect to an Acquisition Proposal of the existence of the provisions of this Section 6.9 or solely to clarify whether any such inquiry or offer constitutes an Acquisition Proposal or (D) enter into any binding acquisition agreement, merger agreement or other definitive transaction agreement (other than a confidentiality agreement entered into in accordance with Section 6.9(c)) relating to any Acquisition Proposal.

37. Additionally, the Company must promptly advise FIS of any proposals or inquiries received from other parties. Section 6.9(d) of the Merger Agreement states:

Each of Parent and the Company will promptly (and, in any event, within twenty-four (24) hours after receipt) notify the Company, in the case of Parent, or Parent, in the case of the Company, in writing following its receipt after the date of this Agreement of any Acquisition Proposal or any inquiry which could reasonably be

expected to lead to an Acquisition Proposal, and the substance thereof (including the terms and conditions of, and the identity of the person making, such inquiry or Acquisition Proposal) and shall promptly (but in no event later than twenty-four (24) hours after receipt) provide to the Company, in the case of Parent, or Parent, in the case of the Company, copies of all material correspondence and written materials sent or provided to Parent or any of its Subsidiaries or the Company or any of its Subsidiaries, as applicable, that describes any terms or conditions of any Acquisition Proposal (as well as written summaries of any material oral communications addressing such matters). In furtherance of the foregoing, Parent, in the case of the Company, or the Company, in the case of Parent, will promptly (and in any event within twenty-four (24) hours after receipt) notify the Company, in the case of Parent, or Parent, in the case of the Company, in writing of any related developments, discussions and negotiations on a current basis (but in no event more than once every twenty-four (24) hours), including any amendments to or revisions of the terms of such inquiry or Acquisition Proposal. Each of Parent and the Company shall enforce (and shall not grant any waiver in respect of) any existing confidentiality, standstill or similar agreements to which it or any of its Subsidiaries is a party.

38. Moreover, the Merger Agreement contains a “fiduciary out” provision permitting the Board to change its recommendation of the Proposed Transaction under limited circumstances, and grants FIS a “matching right” with respect to any “Superior Proposal” made to the Company. Section 6.9(e) of the Merger Agreement provides:

Subject to Sections 8.1 and 8.2, if the Parent Board or the Company Board, after receiving the advice of its outside counsel and its outside financial advisor, determines in good faith that it would be inconsistent with its fiduciary duties under applicable Law to continue to recommend this Agreement, then such Board may effect a Change in Parent Recommendation or Change in Company Recommendation, as applicable (although the resolutions approving this Agreement as of the date hereof may not be rescinded or amended), in which event such Board may communicate the basis for its Change in Parent Recommendation or Change in Company Recommendation, as applicable, to Parent’s shareholders or the Company’s stockholders, as applicable, in the Joint Statement or an appropriate amendment or supplement thereto to the extent required by Law; provided that neither the Parent Board nor the Company Board may effect a Change in Parent Recommendation or a Change in Company Recommendation, as applicable, unless (i)(A) Parent or the Company, as applicable, has received an Acquisition Proposal after the date of this Agreement and prior to the receipt of the Requisite Company Vote or the Requisite Parent Vote, as applicable, that did not result from a breach of this Section 6.9 (and such proposal is not withdrawn) and the Parent Board or the Company Board, as applicable, determines in good faith (after receiving the advice of its outside counsel and its outside financial advisor)

that such Acquisition Proposal constitutes a Superior Proposal or (B)(1) in the case of Parent, a Parent Intervening Event shall have occurred and the Parent Board determines in good faith (after receiving the advice of its outside counsel and its outside financial advisor) that continuing to make the Parent Recommendation would be inconsistent with its fiduciary duties under applicable Law or (2) in the case of the Company, a Company Intervening Event shall have occurred and the Company Board determines in good faith (after receiving the advice of its outside counsel and its outside financial advisor) that continuing to make the Company Recommendation would be inconsistent with its fiduciary duties under applicable Law, (ii) Parent gives the Company, in the case of the Parent Board, or the Company gives Parent, in the case of the Company Board, at least four (4) business days' prior written notice of its intention to take such action (such period, as it may be extended by delivery of any subsequent notices, the "notice period") and a reasonable description of the event or circumstances giving rise to its determination to take such action (including (A) in the case of an Acquisition Proposal, the latest material terms and conditions of, and the identity of any third party making, any such Acquisition Proposal and any amendment or modification thereof or (B) in the case of a Parent Intervening Event or a Company Intervening Event, as applicable, the nature of the Parent Intervening Event or the Company Intervening Event, as applicable, in reasonable detail) and (iii) at the end of such notice period, each of the Parent Board and the Company Board, as applicable, takes into account any amendment or modification to this Agreement proposed by the Company, in the case of the Parent Board (which shall be negotiated in good faith by Parent and the Company during such period if requested by the Company), or by Parent, in the case of the Company Board (which shall be negotiated in good faith by the Company and Parent during such period if requested by Parent), and after receiving the advice of its outside counsel and its outside financial advisor, determines in good faith that it would nevertheless be inconsistent with its fiduciary duties under applicable Law to continue to recommend this Agreement. Any material amendment to any Acquisition Proposal will be deemed to be a new Acquisition Proposal for purposes of this Section 6.9, except that references to "four (4) business days" shall be deemed to be references to "two (2) business days."

39. The Merger Agreement also provides for a "termination fee" of \$1,000,000,000 payable by the Company to FIS if the Individual Defendants cause the Company to terminate the Merger Agreement.

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

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

41. As set forth below, the Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading.

42. The Registration Statement omits material information regarding the Company's and FIS's financial projections, as well as the analyses performed by the Company's financial advisor in connection with the Proposed Transaction, Credit Suisse Securities (USA) LLC ("Credit Suisse").

43. With respect to the Company's financial projections, the Registration Statement fails to disclose, for all sets of projections: (i) all line items used to calculate Adjusted EBITDA; (ii) all line items used to calculate Adjusted Earnings Per Share; (iii) all line items used to calculate unlevered free cash flow; and (iv) a reconciliation of all non-GAAP to GAAP metrics.

44. With respect to FIS's financial projections, the Registration Statement fails to disclose, for all sets of projections: (i) all line items used to calculate Adjusted EBITDA; (ii) all line items used to calculate Adjusted Earnings Per Share; (iii) all line items used to calculate unlevered free cash flow; and (iv) a reconciliation of all non-GAAP to GAAP metrics.

45. With respect to Credit Suisse's *Discounted Cash Flow Analysis Regarding Worldpay*, the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash flow; (ii) Credit Suisse's basis for applying a range of terminal value multiples of 15.5x to 17.5x; and (iii) the individual inputs and assumptions underlying the discount rates ranging from 8.5% to 10.0%.

46. With respect to Credit Suisse's *Discounted Cash Flow Analysis Regarding FIS*, the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash flow; (ii) Credit Suisse's basis for applying a range of terminal value multiples of 12.5x to 14.5x; and

(iii) the individual inputs and assumptions underlying the discount rates ranging from 8.0% to 9.5%.

47. With respect to Credit Suisse's *Pro Forma Discounted Cash Flow Analysis*, the Registration Statement fails to disclose: (i) the individual inputs and assumptions underlying the range of discount rates of 8.5% to 10.0%; (ii) Credit Suisse's basis for applying a range of terminal value multiples of 14.0x to 16.0x; and (iii) the incremental debt expected to result from the merger.

48. With respect to Credit Suisse's *Equity Research Price Targets*, the Registration Statement fails to disclose: (i) the price targets observed by Credit Suisse in the analysis; and (ii) the sources thereof.

49. 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. Moreover, 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.

50. The Registration Statement also omits material information regarding potential conflicts of interest of Credit Suisse.

51. The Registration Statement fails to disclose the actual amount of compensation Credit Suisse will receive in connection with its engagement, as well as the circumstances under which Credit Suisse will be paid a transaction fee of at least \$38 million but up to \$43 million.

52. The Registration Statement fails to disclose whether Credit Suisse has performed past services for FIS or its affiliates, as well as the timing and nature of such services and the amount of compensation received for the services.

53. The Registration Statement fails to disclose the amount of fees Credit Suisse and its affiliates have received or will receive for serving as lenders to Worldpay, FIS, and their affiliates.

54. 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.

55. The omission of the above-referenced material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) Background of the Merger; (ii) Recommendation of the Worldpay Board; Worldpay's Reasons for the Merger; (iii) Opinion of Credit Suisse, Worldpay's Financial Advisor; and (iv) Certain Unaudited Prospective Financial Information.

56. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company'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 Worldpay**

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

58. 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. Celgene is liable as

the issuer of these statements.

59. 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.

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

61. 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.

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

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

64. 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 FIS**

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

66. The Individual Defendants and FIS acted as controlling persons of Worldpay 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 Worldpay 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.

67. Each of the Individual Defendants and FIS 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.

68. 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 involved in the making of the Registration Statement.

69. FIS 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.

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

71. As set forth above, the Individual Defendants and FIS 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 hereby requests a trial by jury on all issues so triable.

Dated: April 30, 2019

**RIGRODSKY & LONG, P.A.**

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