



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL PERRY,

Plaintiff,

v.

C.A. No. 8259-VCG

FIRSTCITY FINANCIAL  
CORPORATION, JAMES T. SARTAIN,  
WILLIAM P. HENDRY, C. IVAN  
WILSON, RICHARD E. BEAN, DANE  
FULMER, ROBERT E. GARRISON, II,  
D. MICHAEL HUNTER, F. CLAYTON  
MILLER, VARDE PARTNERS INC.,  
HOTSPURS HOLDINGS LLC, and  
HOTSPURS ACQUISITION  
CORPORATION,

Defendants.

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff Paul Perry (“Plaintiff”), by his undersigned attorneys, for his Verified Class Action Complaint against Defendants (as defined herein), alleges upon knowledge as to his own acts and upon information and belief as to all other matters as follows:

**NATURE OF THE ACTION**

1. This is a shareholder class action brought by Plaintiff on behalf of himself and the other public shareholders of FirstCity Financial Corporation (“FirstCity” or the “Company”) against FirstCity and members of its Board of Directors (the “Board”) arising out of the agreement and plan of merger (the “Merger Agreement”) by and among FirstCity, Varde Partners Inc. (“Varde”), Hotspurs Holdings LLC (“Hotspurs Holdings”), and Hotspurs Acquisition Corporation (“Hotspurs Acquisition”) (the Board, Varde, Hotspurs Holdings, and Hotspurs Acquisition are collectively referred to as “Defendants”). On December 21, 2012, FirstCity announced that it had entered into a

definitive agreement whereby Varde will acquire FirstCity in an all-cash transaction valued at approximately \$106 million, or \$224.9 million when including debt (the “Proposed Transaction”).

2. Pursuant to the Merger Agreement dated December 20, 2012 and filed by FirstCity with the United States Securities and Exchange Commission (“SEC”) on December 26, 2012, FirstCity will merge with and into Hotspurs Acquisition, a subsidiary of Hotspurs Holdings, both of which are affiliates of investment funds managed by Varde (collectively, the “Buyer Defendants”). Upon consummation of the Proposed Transaction, FirstCity will continue to operate as a distressed debt buyer, albeit as a private company.

3. Under the terms of the Merger Agreement, upon consummation of the Proposed Transaction, FirstCity shareholders will receive \$10.00 in cash for each share of FirstCity common stock owned (the “Offer Price”).

4. Despite the assertion made on May 10, 2012, by James T. Sartain (“Sartain”), FirstCity’s Chief Executive Officer and member of the Board, that FirstCity stock was “*way undervalued*” the day that it had traded at \$10.83 per share, Defendant Sartain and the Board unanimously approved the \$10.00 per share Offer Price as being fair to and in the best interests of FirstCity’s shareholders.

5. The Board has also resolved to recommend that FirstCity’s shareholders adopt the Merger Agreement and approve the Proposed Transaction.

6. Subject to approval by FirstCity’s shareholders at a Company shareholder meeting to be convened by FirstCity and receipt of the requisite regulatory approval, the Proposed Transaction is expected to close in the first half of 2013.

7. The Proposed Transaction is the product of a flawed process designed to ensure the sale of FirstCity to the Buyer Defendants at a price substantially below the fair and inherent value of FirstCity under terms and conditions preferential to the Buyer Defendants, but detrimental to FirstCity's shareholders.

8. In approving the Proposed Transaction, each of the Defendants has violated applicable law by directly breaching and/or aiding breaches of fiduciary duties of loyalty and due care owed to Plaintiff and the proposed Class. Plaintiff seeks injunctive relief herein, *inter alia*, to enjoin consummation of the Proposed Transaction.

### **PARTIES**

9. Plaintiff is the owner of FirstCity common stock, which he has held at all times relevant hereto.

10. Defendant FirstCity is a multi-national specialty financial services company organized under the laws of Delaware with its corporate headquarters located at 6400 Imperial Drive, Waco, Texas 76712. FirstCity operates in two primary business segments – Portfolio Asset Acquisition and Resolution business segment and Special Situations Platform business segment.

11. The Portfolio Asset Acquisition and Resolution segment acquires portfolios of performing and non-performing commercial and consumer loans, real estate assets, and certain other assets at a discount to their legal principal balances or appraised values, as well as services and resolves such portfolio assets in an effort to maximize the present value of the ultimate cash recoveries. The Special Situations Platform segment provides investment capital to privately-held middle-market companies through flexible capital structuring arrangements; and engages in other types of investment activity,

including distressed debt transactions and leveraged buyouts. FirstCity has offices throughout the United States and Mexico and a presence in Europe and South America. FirstCity's common stock trades on the NASDAQ Global Select Market under the symbol "FCFC."

12. Defendant Sartain is a member of the Board. Sartain has served as a director and as FirstCity's President since July 1995 and as FirstCity's Chief Executive Officer since January 2001. Prior to January 2001, Sartain served as FirstCity's Chief Operating Officer.

13. Defendant William P. Hendry ("Hendry") is a member of the Board. Hendry has served as a director since August 2010 and as Chairman of the Board since August 2011.

14. Defendant C. Ivan Wilson ("Wilson") is a member of the Board and has served as Vice Chairman of the Board since July 1995.

15. Defendant Richard E. Bean ("Bean") is a member of the Board and has served as a director since July 1995.

16. Defendant Dane Fulmer ("Fulmer") is a member of the Board and has served as a director since May 1999.

17. Defendant Robert E. Garrison, II ("Garrison") is a member of the Board and has served as a director since May 1999.

18. Defendant D. Michael Hunter ("Hunter") is a member of the Board and has served as a director since August 2005.

19. Defendant F. Clayton Miller ("Miller") is a member of the Board and has served as a director since February 2006.

20. Defendants Sartain, Hendry, Wilson, Bean, Fulmer, Garrison, Hunter, and Miller are collectively referred to herein as the “Individual Defendants.”

21. The Individual Defendants, as officers and/or directors of the Company, owe fiduciary duties to the Company’s public shareholders. As alleged herein, the Individual Defendants have breached their fiduciary duties by failing to act in the best interests of FirstCity’s shareholders.

22. Defendant Varde is an alternative investment fund manager with over \$7.5 billion in assets under management. Varde focuses on credit, distressed and special situation investing in a wide range of assets, including corporate securities, consumer loans, structured securities, real estate, and capital equipment. Varde maintains offices in Minnesota, London, and Singapore and invests in markets across the globe.

23. Varde and certain of its affiliates have worked with FirstCity since 1993 and have co-invested in a substantial majority of FirstCity’s U.S. distressed asset acquisitions since 2009. Over the past several years, Varde and FirstCity have jointly invested over \$800 million to purchase distressed assets with an unpaid principal balance of over \$14 billion.

24. Defendant Hotspurs Holdings is a Delaware limited liability company.

25. Defendant Hotspurs Acquisition is a Delaware corporation and subsidiary of Hotspurs Holdings formed for the sole purpose of effectuating the Proposed Transaction. Both Hotspurs Holdings and Hotspurs Acquisition are affiliates of investment funds managed by Varde.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiff brings this action on his own behalf and as a class action pursuant

to Delaware Court of Chancery Rule 23, on behalf of all holders of FirstCity stock who are being and will be harmed by Defendants' actions described herein (the "Class"). Excluded from the Class are Defendants named herein and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

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

28. The Class is so numerous that joinder of all members is impracticable. At the close of business on October 25, 2012, there were 10,556,197 shares of FirstCity common stock outstanding, likely owned by hundreds or thousands of shareholders. The disposition of their claims in a class action will be of benefit to the parties and the Court.

29. There are questions of law and fact that are common to the Class and predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) Whether Defendants have breached, or aided and abetted any breach of fiduciary duties owed to Plaintiff and the other members of the Class in connection with the Proposed Transaction, including the duties of loyalty and care;

(b) Whether the Offer Price is unfair, inadequate, and provides value to Plaintiff and the other members of the Class below the fair and inherent value of the Company; and

(c) Whether Plaintiff and the other members of the Class will be irreparably harmed if the Proposed Transaction is consummated.

30. 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.

31. 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.

32. 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**

33. The Board has unanimously approved the Offer Price as being fair to and in the best interests of FirstCity's shareholders, unanimously approved the Merger Agreement as being fair and advisable, and unanimously resolved to recommend that FirstCity's shareholders vote to approve the Proposed Transaction. In addition, each member of the Board and the Company's senior management team has entered a Support Agreement, through which they have agreed to vote their shares of FirstCity stock, representing 16.6% of FirstCity's total outstanding shares, in favor of the Proposed Transaction.

34. As discussed herein, the Proposed Transaction is the product of a flawed process designed to ensure the sale of FirstCity to the Buyer Defendants at a price substantially below the true value of FirstCity under terms and conditions preferential to

the Buyer Defendants and members of the Board, but detrimental to FirstCity's shareholders.

**The Offer Price is Grossly Inadequate and Provides Value to FirstCity Shareholders Substantially Below the Fair and Inherent Value of FirstCity**

35. As FirstCity has repeatedly stated in its quarterly financial reports filed with the SEC, “[t]he Portfolio Asset Acquisition and Resolution business has been the Company’s core business segment since it commenced operations in 1986.” FirstCity’s revenues consist primarily of: (1) income from its Portfolio Assets, loan investments and Acquisition Partnerships; (2) servicing fee income and incentive income based on the performance of the Portfolio Assets that it manages; and (3) income generated by its debt and equity investments (consolidated and unconsolidated) in privately-held middle-market companies.

36. The Offer Price undervalues FirstCity and its “core” business segment, as demonstrated by FirstCity’s consistent financial growth in its Portfolio Asset Acquisition and Resolution business and in servicing fee revenues during the past year, as well as FirstCity management’s outlook on the current state of FirstCity’s balance sheet and earnings potential.

37. On May 10, 2012, FirstCity issued a press release announcing its financial results for the first quarter of 2012. FirstCity reported that, during the first quarter, FirstCity acquired \$91.2 million of portfolio assets with a face value of \$210.1 million. FirstCity’s Portfolio Asset Acquisition and Resolution business segment reported \$10.8 million in earnings, an increase of 116% compared to the \$5 million in earnings FirstCity reported for the first quarter of 2011. With respect to servicing fees, FirstCity reported total servicing fees revenue of \$5.7 million for the first quarter of 2012, up 138% from its

total servicing fees revenue of \$2.4 million for the first quarter of 2011.

38. Commenting on those results in that May 10 press release, Sartain announced:

I am very pleased with the strong financial results we reported for the quarter. Increased servicing fees and collections drove the solid results, and our investment activity for the quarter was also solid. Amid the abundant investment opportunities we see in the market, we remain focused on our investment discipline, while continuing to seek optimal funding mechanisms to take advantage of this robust market.

39. During FirstCity's earnings call held on May 10, 2012 to discuss its first quarter financial results, Sartain similarly proclaimed that:

Obviously, as you've read the press release this morning, you realize that if you follow this company for any period of time, we've had an outstanding first quarter; first quarter driven by outstanding collections and outstanding servicing revenues that we achieved in first quarter, obviously, making \$8.4 million or \$0.80 a share for the quarter versus last year \$3.7 million or \$0.36 per share.

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So an outstanding quarter earnings-wise from FirstCity's perspective.

40. Sartain further declared that FirstCity's "[p]ipeline continues to be very, very robust. In active due diligence today, we have on face value \$1.2 billion of U.S. assets that we actually have in active due diligence."

41. Tellingly, Sartain pointed out that "since the disaster in the fourth quarter of '08 and many people had disasters in '08, *we've had 13 straight quarters of positive earnings in the company* and we've continued to add value to the – shareholder value to the company." (Emphasis added).

42. The most notable aspect of that earnings call was Sartain's acknowledgement that FirstCity's stock price was "*way*" undervaluing FirstCity's

business when considering its strong balance sheet and earnings stream and was trading at below FirstCity's book value. During the call, analyst Raymond E. Cabillot, representing Farnam Street Capital, posed the following question:

One question, a question I have – I'm not sure, it might be a difficult question to answer it. ***We look at the book value of your business, the robustness of your marketplace right now, kind of the unearned income and earning opportunity going forward. If you think your stock is tremendously undervalued, and was wondering can you comment at all on that*** or comment on kind of what you think it might take to get people interested in your stock? Have you considered maybe going to couple conferences and telling your story or doing a bit of a roadshow? It just seems like the valuation is so low, generally there aren't a lot of questions in the conference calls, so there might not be that many people listening. I was just wondering if you could kind of comment on that whole theme.

(Emphasis added).

43. In response to that question, Sartain answered:

Ray, I spend most of my time – well, first of all, I think there's an issue that looking at, I think, people and shareholder look at us, we just and just in the last few months sort of fixed our financing structure with Lloyds Bank and that's sunk in.

I think that the issues that -- issues are the reserves that we took and the impairment we took in Mexico probably scared some people. Obviously, we deemed it appropriate, because we did it and it was the right thing to do. But having said that, ***the earnings stream that we are now able to develop out of these existing assets and the assets that we are putting on with our partner, not only the investments we're making, but the servicing revenues we're getting, I think that we are getting people more comfortable that maybe that balance sheet today is really solid and maybe that earnings stream is lot more solid. And I think that can result in finding more people interested in the stock.***

***I do talk to a lot of potential investors, potential shareholders and people that would like to be in the stock. I agree with you 100%, I think it's way undervalued*** and I continue to try to do that.

(Emphasis added).

44. On that day, May 10, 2012, FirstCity common stock traded at \$10.83 per

share. Despite deeming FirstCity stock to be “way undervalued” at that price and recognizing the strength of FirstCity’s balance sheet and earnings potential, Defendant Sartain and the Board unanimously accepted Varde’s Offer Price of only \$10.00 per share.

45. On August 9, 2012, FirstCity issued a press release announcing its financial results for the second quarter of 2012. FirstCity reported that, in the year to date, it had acquired \$139.6 million of portfolio assets with a face value of \$298.8 million. FirstCity’s Portfolio Asset Acquisition and Resolution business segment reported \$3.1 million in earnings for the second quarter of 2012, an increase of 19% from the \$2.6 million in earnings FirstCity reported for the second quarter of 2011. FirstCity reported Portfolio Asset Acquisition and Resolution business segment earnings of \$13.9 million for the first half of 2012, an 83% increase from the \$7.6 million reported for the first half of 2011.

46. With respect to servicing fees, FirstCity reported total servicing fees revenue of \$3.4 million for the second quarter of 2012, up 38% from its total serving fees revenue of \$2.5 million for the second quarter of 2011. In addition, revenue from servicing fees was up 86% from \$4.9 million in the first half of 2011 to \$9.1 million for the first half of 2012.

47. On November 14, 2012, FirstCity announced its financial results for the third quarter of 2012. FirstCity reported that, in the year to date, it had acquired \$157 million of portfolio assets with a face value of \$343.8 million. FirstCity’s Portfolio Asset Acquisition and Resolution business segment reported \$6.4 million in earnings for the third quarter of 2012, an increase of 103% from the \$3.1 million in earnings FirstCity

reported for the third quarter of 2011. FirstCity also reported Portfolio Asset Acquisition and Resolution business segment earnings of \$20.3 million for the first nine months of 2012, a 90% increase from the \$10.7 million reported for the first nine months of 2011.

48. With respect to servicing fees, FirstCity reported total servicing fees revenue of \$3.7 million for the third quarter of 2012, up 32% from its total serving fees revenue of \$2.8 million for the third quarter of 2011. In addition, revenue from servicing fees was up 68% from \$7.7 million in the first nine months of 2011 to \$12.9 million for the first nine months of 2012.

49. During FirstCity's earnings call held on November 14, 2012 to discuss its third quarter 2012 financial results, Sartain again recognized that FirstCity was trading at a discount to its book value:

***I think our balance sheet is in the best shape it's been in many, many years and is solid.*** From that perspective, though, generating the liquidity becomes a concern. I would say this, we find ourselves – although we're smaller, ***we find ourselves like many other companies, large and small, find themselves in a situation where you're trading at a discount to book value.*** . . . But I believe that ***quality of the assets is much stronger today than – and we have a better handle on the quality of those assets and earnings are going to throw off than we have had in years.***

(Emphasis added).

50. Sartain further elaborated on the value of FirstCity relative to its book value, explaining that “we're very focused on delivering and trying to maximize shareholder value through increasing our earnings, increasing our value, increasing our book value. ***We're sitting at about \$129 million, \$130 million of pure book value, which relates to roughly high \$11 or \$12 a share on a fully diluted basis.***” (Emphasis added).

51. Despite Sartain's recognition of the importance of FirstCity's book value as an accurate measure of FirstCity's fair and inherent value, the Board approved a \$106 million Proposed Transaction that values FirstCity at only 76% of its September 30, 2012 reported book value of \$138.9 million. On a per share basis, the \$10.00 per share Offer Price provides FirstCity's shareholders with only 76% of FirstCity's September 30, 2012 reported book value per share of \$13.15.<sup>1</sup>

52. Indeed, at all times throughout 2012, the \$10.00 per share Offer Price would be considered to be undervaluing FirstCity's value per share, providing shareholders with only 76% of its September 30, 2012 book value per share of \$13.15, only 78% of its June 30, 2012 book value per share of \$12.88, and only 71% of its March 31, 2012 book value per share of \$14.14.

53. Accordingly, as demonstrated by FirstCity's consistent increases in its Portfolio Asset business and servicing fee revenue, FirstCity's reported book value, and management's outlook on the current state of FirstCity's balance sheet and earnings growth potential, the intrinsic value of FirstCity's equity is materially greater than the consideration contemplated by the Offer Price.

54. To the benefit of the Buyer Defendants, but to the detriment of FirstCity's shareholders, the Board approved the Proposed Transaction at an Offer Price that it had previously acknowledged as undervaluing FirstCity and which provides FirstCity shareholders with only 76% of the fair per share value of their FirstCity common stock.

55. Consequently, should the Proposed Transaction be consummated, it will deny FirstCity's shareholders their right to receive fair value for their shares of FirstCity

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<sup>1</sup> Book value per share represents (total equity – preferred stock)/total shares of common stock outstanding.

stock proportionate to FirstCity's current value as well as their ability to share in any of the future growth anticipated by FirstCity's management.

**The Merger Agreement Contains Terms and Conditions That are not in the Best Interests of FirstCity's Shareholders**

56. Defendants have approved the Merger Agreement under terms and conditions that are not in the best interests of FirstCity's shareholders. To the benefit of the Buyer Defendants, but to the detriment of FirstCity's shareholders, these provisions are designed to ensure the sale of FirstCity to the Buyer Defendants by deterring potential third party bidders from coming forward with a competitive offer and deterring the Board from properly evaluating competitive offers.

57. The Merger Agreement does not permit the Board to "withdraw, change, amend, modify or qualify, or publicly propose to withdraw, change, amend, modify or qualify" its recommendation to FirstCity shareholders that they approve the Proposed Transaction. The Board also may not "approve, endorse or recommend or publicly propose to approve, endorse or recommend" a competing offer to acquire FirstCity or "approve or publicly propose to approve, endorse or recommend or cause the Company or any of its Subsidiaries to enter into, any letter of intent, agreement in principle or other agreement relating to" a competing offer to acquire FirstCity.

58. The "No Solicitation" provision of Section 6.3 of the Merger Agreement further states that FirstCity shall not, directly or indirectly, "solicit, initiate, knowingly facilitate or knowingly encourage the submission or announcement of any Acquisition Proposal<sup>2</sup> or any inquiries with respect to the submission or announcement of any

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<sup>2</sup> The Merger Agreement defines an "Acquisition Proposal" as:

Acquisition Proposal.” The “No Solicitation” provision further states that FirstCity shall not, directly or indirectly:

participate in discussions or negotiations regarding, or furnish any non-public information relating to, the Company or any of its Subsidiaries with respect to, or otherwise cooperate in any way with, any effort or attempt by any Person (other than Parent or its Affiliates) to make an inquiry in respect of or make any proposal or offer that constitutes, or may reasonably be expected to lead to, any Acquisition Proposal[.]

59. Thus, rather than provide the Board with a limited go-shop period during which time the Board could actively solicit and negotiate competing bids, at the moment the Merger Agreement was entered into, the Board surrendered its ability to take *any* action in connection with a competing offer to acquire the Company, including holding any discussions or negotiations and providing any information to potential third party bidders, regardless of whether the offer is for a higher price than \$10.00 per share.

60. In addition to surrendering its ability to take any action with respect to considering future competitive bids from third parties, the Board agreed to “immediately cease and terminate any existing solicitations, discussions, negotiations or other activity

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any inquiry, contract, proposal or offer (whether or not in writing and whether or not delivered to the stockholders of the Company generally) relating to any of the following (other than the transactions contemplated by this Agreement or the Merger): (a) any merger, share exchange, tender offer for capital stock, recapitalization, consolidation or other business combination transaction directly or indirectly involving the Company or any of its Subsidiaries, (b) the acquisition in any manner, directly or indirectly, of any business segment of the Company or its Subsidiaries that generates 15% or more of the Company’s consolidated net revenues or net income or assets representing 15% or more of the book value of the assets of the Company and its Subsidiaries, taken as a whole, in each case in a single transaction or a series of related transactions, (c) any proposal for the issuance or sale by the Company of 15% or more of the Shares or (d) any direct or indirect acquisition of beneficial ownership (as defined under Section 13(d) of the Exchange Act) of 15% or more of the Shares of the Company whether in a single transaction or a series of related transactions[.]

with any Person (other than Parent or its Affiliates) being conducted with respect to any Acquisition Proposal or inquiry that may reasonably be expected to lead to, any Acquisition Proposal on the date hereof” and “promptly request that each Person (other than Parent or its Affiliates) that has received confidential information in connection with a possible Acquisition Proposal return to the Company or destroy all confidential information heretofore furnished to such Person by or on behalf of the Company or any of its Subsidiaries[.]”

61. To further deter potential third party bidders from making competing bids to acquire FirstCity, even at prices above \$10.00 per share, the Merger Agreement requires the Board to “enforce, and not amend, terminate, modify or grant any waiver under, any confidentiality, standstill or other agreement to which the Company is a party (such agreement, a “Standstill Agreement”)[.]”

62. Although the Merger Agreement provides a limited exception to its “No Solicitation” restrictions, that exception only permits the Board to take any action with respect to a competing offer if that offer constitutes a “Superior Proposal,” which under the Merger Agreement must be a proposal that:

did not result from a breach of Section 6.3 made by a third party on terms which the Board of Directors of the Company determines in good faith by a vote of a majority of the entire Board of Directors of the Company (after consultation with the Company’s legal and financial advisors), taking into account all legal, financial, regulatory and other aspects of the proposal and the Person making such proposal, that such proposal (i) would, if consummated in accordance with its terms, be more favorable, from a financial point of view, to the holders of the Shares than the transactions contemplated by this Agreement (after giving effect to all adjustments to the terms thereof which may be offered by Parent, including pursuant to Section 6.3(e)(C)), (ii) contains conditions which are all reasonably capable of being satisfied in a timely manner and (iii) is not subject to any financing contingency or to the extent financing for such proposal is required, that such financing is then committed; provided, that for

purposes of this definition of “Superior Proposal,” the references to “15%” in the definition of “Acquisition Proposal” shall be deemed to be references to “50%.”

63. However, as detailed above, the Board would be in breach of Section 6.3 of the Merger Agreement if it actively sought out potential third party bidders and discussed or provided any information in connection with potential competing bids higher than the \$10.00 per share Offer Price. The Board was also required to cease and terminate any existing discussions it had or was having with potential third party bidders and is unable to “waive any Standstill Agreement or voting restriction.”

64. Further evidencing Defendants’ intent to consummate the Proposed Transaction, concurrently with the execution of the Merger Agreement, the Individual Defendants entered into Support Agreements with the Buyer Defendants, pursuant to which they each agreed to, among other things:

vote their shares in favor of the adoption and approval of the Merger Agreement and the transactions contemplated thereby and the approval of any proposal to adjourn or postpone a meeting, if there are not sufficient votes for the adoption and approval of the Merger Agreement and the transactions contemplated thereby at the special meeting, and against certain other actions, proposals, transactions or agreements that would be detrimental to the consummation of the Merger.

65. At the same time, these Support Agreements require the Board to vote their shares against “any Acquisition Proposal” or:

any action or agreement which would in any material respect impede, interfere with or prevent the Merger, including, but not limited to, any other extraordinary corporate transaction, including, a merger, acquisition, sale, consolidation, reorganization, recapitalization, extraordinary dividend or liquidation involving the Company and any Person (other than Parent or its Affiliates), or any other proposal of any Person (other than Parent or its Affiliates) to acquire the Company or all or substantially all of the assets thereof[.]

66. To further that end, the Support Agreements state that each Individual

Defendant shall not directly or indirectly “solicit, initiate, knowingly facilitate or knowingly encourage the submission or announcement of any Acquisition Proposal or any inquiries with respect to the submission or announcement of any Acquisition Proposal” or:

participate in discussions or negotiations regarding, or furnish any non-public information relating to, the Company or any of its Subsidiaries with respect to, or otherwise cooperate in any way with, any effort or attempt by any Person (other than Parent or its Affiliates) to make an inquiry in respect of or make any proposal or offer that constitutes, or may reasonably be expected to lead to, any Acquisition Proposal, except as permitted by the Merger Agreement.

67. The aforementioned terms and conditions of the Merger Agreement are collectively designed to ensure that the Buyer Defendants acquire FirstCity at the Offer Price, while improperly restraining the Board’s exercise of its unremitting fiduciary duty to obtain the best possible price that would be in the best interests of FirstCity’s shareholders.

68. By approving the Proposed Transaction at the Offer Price and recommending that FirstCity shareholders approve the Proposed Transaction, despite the Merger Agreement’s restrictions on the Board’s ability to consider alternative offers, the Board is acting in the best interests of the Buyer Defendants at the expense of the interests of FirstCity’s shareholders.

### **FIRST CAUSE OF ACTION**

#### **Breach of Fiduciary Duties (Against the Individual Defendants)**

69. Plaintiff repeats and re-alleges each allegation set forth herein.

70. The Individual Defendants have violated their fiduciary duties of care and loyalty owed to the public shareholders of FirstCity. By the acts, transactions, and

courses of conduct alleged herein, the Individual Defendants are attempting to unfairly deprive Plaintiff and other members of the Class of the true value of their investment in FirstCity.

71. As demonstrated by the allegations above, the Individual Defendants have breached their duties of loyalty and care owed to Plaintiff and the other shareholders of FirstCity by, among other things:

(a) Accepting, and advising the Company's shareholders to accept, an Offer Price that provides value to the Company's shareholders substantially below the fair and inherent value of the Company;

(b) Failing to conduct a reasonably informed evaluation of whether the Proposed Transaction was in the best interests of FirstCity's shareholders;

(c) Failing to take all reasonable steps necessary to maximize the value received by the Company's shareholders for their shares of FirstCity stock; and

(d) Agreeing to terms and conditions contained in the Merger Agreement that are designed to ensure the Company's sale to the Buyer Defendants at the Offer Price while deterring other potential buyers from making alternative bids to acquire the Company.

72. As a result of the actions of the Individual Defendants, Plaintiff and the other members of the Class are, and will be, prevented from obtaining the highest value reasonably available for their shares of FirstCity common stock.

73. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the other members of the Class, and may consummate the Proposed Transaction, which will deprive the Class of its fair

proportionate share of the Company's valuable assets and businesses, to the irreparable harm of the Class.

74. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the irreparable injury which Defendants' actions threaten to inflict.

## **SECOND CAUSE OF ACTION**

### **Aiding and Abetting Breach of Fiduciary Duties (Against FirstCity and the Buyer Defendants)**

75. Plaintiff repeats and re-alleges each allegation set forth herein.

76. FirstCity and the Buyer Defendants, by reason of their status as parties to the Merger Agreement, and their possession of material, non-public information, have aided and abetted the Individual Defendants in the aforementioned breaches of fiduciary duties.

77. The breaches of fiduciary duties by the Individual Defendants could not and would not have occurred but for the conduct of FirstCity and the Buyer Defendants, who have aided and abetted such breaches in connection with the Proposed Transaction.

78. In negotiating and gaining Board approval of the Proposed Transaction at the Offer Price under the terms and conditions set forth in the Merger Agreement which, as discussed above, were not in the best interests of FirstCity's shareholders, FirstCity and the Buyer Defendants knowingly participated in the Individual Defendants' breaches of fiduciary duty by approving of the Proposed Transaction under terms and conditions which require the Board to prefer the interests of the Buyer Defendants at the expense of the interests of FirstCity's shareholders.

79. Unless enjoined by this Court, FirstCity and the Buyer Defendants will continue to aid and abet the Individual Defendants' breaches of their fiduciary duties owed to Plaintiff and the other members of the Class, and may consummate the Proposed Transaction, which will cause irreparable harm of the Class.

80. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury which Defendants' actions threaten to inflict.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this lawsuit is properly maintainable as a class action and certifying Plaintiff as the representative of the Class;

B. Declaring that the Individual Defendants have breached their fiduciary duties owed to Plaintiff and the other members of the Class;

C. Permanently enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Transaction;

D. In the event the Proposed Transaction is consummated, rescinding it and setting it aside;

E. Directing that Defendants account to Plaintiff and the other members of the Class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

F. Awarding Plaintiff and the Class their costs and disbursements and reasonable allowances for Plaintiff's counsel and experts' fees and expenses; and

G. Granting such other and further relief as may be just and proper.

DATED: January 29, 2013

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

By: /s/ Brian D. Long

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