

**IN THE COURT OF COMMON PLEAS  
FOR PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL DIVISION**



Filed and Attested by the  
Office of Judicial Records  
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M. BRYANT

\_\_\_\_\_  
LOUIS LEVINE, on Behalf of Himself  
and All Other Similarly Situated,

Plaintiff,

v.

CHECKPOINT SYSTEMS, INC., WILLIAM  
SMOOT ANTLE, III, GEORGE BABICH, JR.  
STEPHEN N. DAVID, HARALD EISMANN  
JULIE S. ENGLAND, MARC T. GILES,  
DANIEL R. MAURER, JACK W. PARTRIDGE,  
CCL INDUSTRIES INC., and CCL  
INDUSTRIES USA CORP.,

Defendants.

DOCKET NO. \_\_\_\_\_;  
CIVIL ACTION

**CLASS ACTION COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF,  
BREACH OF FIDUCIARY  
DUTY, AND AIDING AND  
ABETTING BREACH OF  
FIDUCIARY DUTY**

**CLASS ACTION COMPLAINT**

Plaintiff Louis Levine (“Plaintiff”) on behalf of himself and all other similarly situated public stockholders of Checkpoint Systems, Inc. (“Checkpoint” or “the Company”), brings this Complaint against Checkpoint, individual members of the Checkpoint Board of Directors, and CCL Industries Inc (“CCL”) and CCL Industries USA Corp (“Merger Sub”) (collectively, “Defendants”), for their conduct in the proposed sale of Checkpoint to CCL (the “Transaction” or “Proposed Transaction”). The allegations of the Complaint are based on the personal knowledge of Plaintiff as to himself and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters.

## NATURE AND SUMMARY OF THE ACTION

1. This action, brought by Plaintiff on behalf of a class of similarly situated Checkpoint shareholders, seeks declaratory and injunctive relief against all defendants. Plaintiff also seeks to hold the directors of Checkpoint accountable for their disregard of their duties to the Class in connection with the sale of the Company to CCL, and to hold CCL accountable for aiding and abetting the Checkpoint directors' breaches of fiduciary duty.

2. The Company is a leading manufacturer and provider of technology-driven, loss prevention, inventory management and labeling solutions to the retail and apparel industries. CCL is a Canadian-based specialty packaging company. On March 2, 2016, the Company announced that it had entered into a merger agreement with CCL and its Merger Sub pursuant to which CCL will acquire all of the outstanding common stock of the Company for \$10.15 per share in cash ("Offer Price"), for a total transaction value of approximately \$443 million.

3. The proposed Offer Price appears, on its face, to be woefully inadequate. Before the announcement of the Proposed Transaction, the Company's stock price had increased 60% in just this year alone. Indeed, North Star Partners, LLC ("North Star"), one of Checkpoint's largest shareholders, owning 3.9% of the Company's shares outstanding, delivered a letter to the Company's Chairman of its Board, defendant Stephen David, the day after the announcement of the Transaction, stating that it opposes the sale of Checkpoint to CCL for \$10.15 per share. As detailed below, North Star stated, "[t]he undervaluation of Checkpoint compared to its intrinsic value is now more acute than ever." And, "North Star will not sit quietly and allow this transfer of value from public stockholders to CCL to go unchallenged."

4. Moreover, the Merger Agreement (defined herein) also contains defensive deal protection provisions that will deter potential bidders from coming forward with alternate bids

and force shareholders into approving the inadequate deal. For example, Section 5.2 of the Merger Agreement prohibits the Board from soliciting other proposals and includes onerous procedures that the Board must follow in the event another proposal is made. Another defensive deal protection is contained in Section 7.3 of the Merger Agreement, which provides for a nearly 3% termination fee equal to \$13 million.

5. For these reasons and others described below, the Proposed Transaction should be enjoined and the members of the Board should be required to comply with the fiduciary duties the Board members owe to the Company's stockholders before allowing CCL or any other corporate buyer to acquire the Company.

#### **PARTIES AND VENUE**

6. Plaintiff is a stockholder of Checkpoint, and has been at all material times alleged in this Complaint, a stockholder of Checkpoint.

7. Defendant Checkpoint manufactures and provides technology-driven, loss prevention, inventory management, and labeling solutions to the retail and apparel industries worldwide. The company operates in three segments: Merchandise Availability Solutions, Apparel Labeling Solutions, and Retail Merchandising Solutions. The Merchandise Availability Solutions segment offers electronic article surveillance systems, including antennas and deactivation units, and electronic article surveillance consumables to enable retailers to protect various easily-pocketed, high-shrink merchandise. It also offers merchandise visibility solutions, such as hardware, software, tags, and services based on radio frequency identification ("RFID") technology. The Apparel Labeling Solutions segment provides apparel labeling solutions consisting of tags and labels, as well as Web-based data management services to apparel retailers, brand owners, and manufacturers. The Retail Merchandising Solutions segment offers

hand-held price marking and label application solutions, and retail display systems. The Company, which is a Pennsylvania corporation that regularly conducts business in this county, markets its products through direct distribution and reseller channels. Checkpoint was founded in 1969 and trades on the NYSE under the symbol “CKP.”

8. Defendant William Smoot Antle III has served as a director of the Company since 2003. He served as Chairman of the Board from May 2012 until June 2015. He is also a member of the Audit Committee.

9. Defendant George Babich, Jr. has been a member of the Board of Directors since 2006. He has served as President and Chief Executive Officer (“CEO”) of the Company since February 2013. He served as Interim President and CEO from May 2012 until February 2013.

10. Defendant Stephen N. David has been a member of the Board of Directors since 2012. In June 2015, he was elected Chairman of the Board. He is also the Chairman of the Compensation Committee.

11. Defendant Harald Einsmann has been a member of the Board of Directors since 2005. He is a member of the Compensation Committee and the Governance and Nominating Committee.

12. Defendant Julie S. England has been a member of the Board of Directors since 2010. She is a member of the Governance and Nominating Committee.

13. Defendant Marc T. Giles has been a member of the Board of Directors since 2013. He is a member of the Audit Committee and the Compensation Committee.

14. Defendant Daniel R. Maurer has been a member of the Board of Directors since 2016.

15. Defendant Jack W. Partridge has been a member of the Board of Directors since 2002. He is a member of the Governance and Nominating Committee and the Audit Committee.

16. Defendants Antle, Babich, David, Eismann, England, Giles, Maurer, and Partridge are sometimes referred to herein as the “Checkpoint Directors” or the “Director Defendants” or the “Board.” Each of the Checkpoint Directors was a member of the Board of Checkpoint at all relevant times and participated in the decisions challenged below.

17. Defendant CCL is a Toronto, Ontario-based specialty packaging company that provides packaging products to the home & personal care, food & beverage, healthcare and specialty markets worldwide. The company has three divisions – CCL Label, CCL Container and Avery – with over 97 manufacturing facilities in 31 countries across North America, Latin America, Europe, Asia, Australia and Africa. Shares of CCL trade on the Tokyo Stock Exchange under the symbol “CCL.B”.

### **FACTUAL ALLEGATIONS**

18. Checkpoint makes technology-driven anti-theft tags used by retailers, as well as surveillance systems, radio frequency identification tags, intrusion alarms and digital video recorders for retailers. The business operates in 29 countries. So far in 2016, Checkpoint shares have outperformed the broad markets, with the stock up 60% during the year before the Proposed Transaction was announced. On December 21, 2015, CapitalCube, a website that provides company analysis including on-demand fundamental research, portfolio evaluation, and screening tools on global equities, noted that Checkpoint was undervalued and had upside potential.

## **The Announcement of the Proposed Transaction**

19. On March 2, 2016, Checkpoint announced that it had entered into a definitive agreement to be acquired by an affiliate of CCL for \$10.15 per share in cash, for a total transaction value of approximately \$443 million. The purchase represents a 29% premium over Checkpoint's closing share price before the Proposed Transaction was announced.

20. The agreement and plan of merger is dated March 1, 2016 (the "Merger Agreement"). The Transaction is subject to approval by a majority of Checkpoint's stockholders. The Board has unanimously approved the Merger Agreement and recommends that stockholders vote to approve it. If approved, the Proposed Transaction is expected to close midyear 2016. Assuming the Proposed Transaction is consummated, the name of the surviving entity will be "Checkpoint Systems, Inc." and the Company will operate as a division of CCL.

21. CCL said the deal was a "compelling" opportunity to increase its breadth and scale, building on Checkpoint's blue-chip customer base of global retailers and apparel brands. The acquisition is also expected to produce cost-saving synergies of about \$40 million, with Checkpoint operating as a new segment of CCL following the closure of the Proposed Transaction.

22. According to a March 2, 2016 article on [www.philly.com](http://www.philly.com) discussing the Proposed Transaction, the sale price is less than the Company's value from 2013 until Spring 2015.

23. In a March 4, 2016 article on [www.securityelectronicsandnetworks.com](http://www.securityelectronicsandnetworks.com), CCL President and CEO Geoffrey T. Martin said CCL has admired Checkpoint for many years. "They built a unique, leading global position providing technology-driven label solutions to the retail and apparel industry," he said. "We are very pleased to welcome their deeply experienced people

to CCL where they will continue to focus on this important industry for emerging smart label technologies.”

24. Imperial Capital analyst Jeffery Kessler had an Outperform recommendation and a \$13 price target for Checkpoint immediately prior to the deal announcement. Kessler told *Security Systems News* that after the Proposed Transaction, “CCL will have a more complete solution [encompassing] anti-counterfeiting, anti-theft, inventory management, asset management and logistics.” Checkpoint directly competes with Tyco’s Sensormatic division and once it is combined with CCL, the Company will be a “better competitor to Tyco,” according to Kessler. Kessler further noted that CCL has “done a spectacular job making acquisitions of companies that fit into its mold over the last five years.” Kessler further stated that the Checkpoint deal “adds more arrows to their quiver, **and they bought it at a really good price.**” He further noted that the Proposed Transaction “should allow CCL to expand its international operating platform and realize immediate earnings accretion.”

25. According to an article published in *RFID Journal*, Al Green, CCL’s Vice President of Technology Development, stated that CCL intends to leverage Checkpoint’s products to forge further into the market for RFID labels, especially in the apparel retail market. Further, according to Green, CCL was attracted to Checkpoint’s strength in the retail market, in addition to the RFID solutions the Company provides. Green noted that Checkpoint has a long-term customer base among global apparel brands and retailers, as well as reliable recurring revenue.

26. According to the *RFID Journal* article, Green stated “[a]pparel has been an area with a lot of growth,” and CCL hopes to increase its presence in the apparel and retail market. Further, “[t]hat RFID piece that Checkpoint brings is certainly exciting,” Green states,

adding that CCL and Checkpoint management and engineers will collaborate throughout the next year or more to design solutions for customers that would further CCL's involvement in apparel and retail labeling solutions utilizing RFID technology. "Checkpoint brings a lot of expertise in [RFID label] antenna design."

27. The *RFID Journal* article also notes that by 2018, CCL's management estimates, RFID labels and tag sales worldwide in apparel and footwear will reach more than 6 billion units annually, while about 3 billion more labels will be sold for other industries, such as logistics, airline baggage, access control and ticketing, and asset management. That would represent a rise from what were fewer than 5 billion labels sold last year, the company reports.

28. The growth and potential of the RFID and the Company's prospects in this area were not accounted for in the Proposed Transaction and, thus, the Offer Price appears to be grossly inadequate.

29. Defendant Babich, CEO of Checkpoint, stands to reap an enormous financial windfall as a result of the Proposed Transaction. Pursuant to paragraph 10.2(f) of Babich's employment agreement with the Company, upon termination without cause within 12 months of a change-in-control, he stands to receive a lump sum payment totaling 2.5x his prior year base salary. In 2014, Babich's base salary was \$850,000 and he received a cash bonus of \$1.23 million. Additionally, Babich's employment agreement contains a provision providing for an additional cash payment in the amount of 1x his prior year cash bonus if the Company's stock has averaged at least \$12/share for any 30 trading day period after January 1, 2013 (a threshold which has been met). This does not include accelerated vesting of equity awards or other non-cash compensation benefits, upon termination after a change-in-control.

## **North Star Partners, a Large Stockholder, Opposes the Sale of Checkpoint to CCL**

30. On March 3, 2016, the day after the Proposed Transaction was announced, North Star Partners, LLC (“North Star”), one of the Company’s largest shareholders, owning 3.9% of Checkpoint’s outstanding shares, sent a letter to Defendant Stephen David, Chairman of the Board, announcing that it opposed the sale of Checkpoint to CCL for \$10.15 per share because it significantly undervalues Checkpoint and its prospects. Additionally, on March 1, 2016, North Star nominated three persons to serve as independent directors on the Board to ensure that shareholder value is protected and maximized.

31. Specifically, Andrew R. Jones, CFA, the Founder, Managing Member and Principal of North Star, stated: “[t]he undervaluation of Checkpoint compared to its intrinsic value is now more acute than ever.... North Star will not sit quietly and allow this transfer of value from public stockholders to CCL go unchallenged.” The full text of the letter states (emphasis in original):

Dear Mr. David:

NS Advisors, LLC (“North Star”, “North Star Partners”, or “us”) currently owns 1,612,046 shares, or approximately 3.9%, of Checkpoint Systems, Inc. (“Checkpoint”, “CKP”, or the “Company”), and we are writing to express our extreme disappointment with your decision to endorse a takeover of our Company by CCL Industries, Inc. (“CCL”) for \$10.15 per share, a price that we believe to be substantially below the true intrinsic value of the business.

As you know from our previous correspondence with the Board of Directors (the “Board”), North Star acquired its Checkpoint shares because we considered, and continue to consider, Checkpoint’s stock to be substantially undervalued. We believed (and continue to believe) that the Company has significant upside potential as an independent company under the appropriate leadership team.

The undervaluation of Checkpoint, compared to its intrinsic value, is now more acute than ever. The inadequacy of the deal price is most visible in the 6.7 times trailing EBITDA<sup>1</sup> multiple that is inferred from the press release issued by CCL on March 2,

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<sup>1</sup> “EBITDA” means earnings before interest, taxes, depreciation and amortization and is an indicator of a company’s financial performance.

2016 (Checkpoint's press release fails to highlight the low valuation). The actual trailing EBITDA multiple is likely much lower, after adjusting for \$15 million in cost savings that management has identified for 2016, the \$7-10 million decline in extraordinary consultant and R&D expense hitting 2015 numbers, and the growth in the core business that is widely expected. While the trailing EBITDA multiple has been depressed under the current management team, it still has averaged 8.2 times over the last 3 years. If the Company were sold at a 20% deal premium to just this 8.2 average, shareholders would have realized a price closer to \$15 per share, not the \$10.15 per share that the Board approved.

The opportunity that exists in Checkpoint is evident in CCL's March 2<sup>nd</sup> presentation, in which it specifically highlighted, among other things:<sup>1</sup>

- *Meaningful earnings accretion with an attractive return profile;*
- *Checkpoint's blue chip customer base;*
- *Attractive recurring revenue model;*
- *Up to \$40 million (\$30 million in US) in annual synergies achieved within 18 months of the transaction;*
- *Opportunity to improve net working capital efficiency;*
- *Checkpoint's asset-light business model and working capital opportunities = robust free cash flow and drive rapid de-leveraging; and*
- *RFID opportunity growing approximately 24% per year, 2015-2018*

These highlights certainly don't seem to describe a business that should sell for less than 6.7 times trailing EBITDA, a fact that is underscored by the confidence expressed during CEO George Babich's discussion of the Company's growth prospects during the last earnings call.<sup>2</sup>

George made the following statement while commenting on the Company's sales pipeline:

*“... the conversion of just a small handful of these RFID, EAS or R&D projects to an enterprise-wide rollout will dramatically change our near-term top and bottom line financial trajectory.”*

George also made a bullish statement while commenting on The Global Retail Theft Barometer:

*“ . . . we believe that after a report such as this reflecting an increase in shrinkage, retailers will shift more investment spending back into loss prevention solutions, and we expect that will be the case in 2016.”*

In the Q&A following CCL’s presentation to its shareholders on March 2, 2016, CCL management was asked about the underperformance of Checkpoint and the opportunity for cost savings. In their response they noted:

*“ . . . it’s a company that had many changes of management. So it’s all an indication that things are not quite right . . . . And to us, it’s clearly underperforming, clearly could do much better, clearly has a nice position in the retail and apparel marketplace. I think it’s just performance”*

We are not alone in our belief that a sale of Checkpoint for \$10.15 per share grossly undervalues the business. In a note issued by sell-side analyst Imperial Capital shortly after the transaction was announced, Imperial stated:

*“We believe that the stated valuation of US\$443mn is disappointing, relative to the company’s prospects several years ago, the reportedly ‘large pipeline discussion’ Checkpoint has been having with key retailers, and the 6.9x FY15E EV/EBITDA valuation which the company is being valued at by CCL (which is below average for our select group of applied security technology vendors).”*

**North Star will not sit quietly and allow this transfer of value from public stockholders to CCL Industries go unchallenged.**

Over the last year, through several in-person meetings, telephone calls and detailed letters to the full Board, we have actively encouraged the Company to address its poor corporate governance; poor governance that facilitated the Board’s decision to endorse such an obviously unfair transaction.

As you well know, each of our attempts to compel the Company to improve its remarkably substandard governance has been blatantly ignored by the Board. It’s important to note that we are not alone in our concerns about the poor governance at Checkpoint: Institutional Shareholder Services (ISS), in its report on May 21, 2015, gave the Company a risk rating of “10”, the lowest possible rating that can be awarded to any company.

ISS also recommended that shareholders vote against the advisory vote on executive compensation held at the June 2015 annual meeting, citing the lack of alignment of pay with stock price performance and the use of above-median benchmarking for executive compensation despite Checkpoint’s negative total shareholder returns. In a stunning rebuke, shareholders wisely and overwhelmingly voted against the Company’s compensation plan, sending a strong message to the Board that dramatic change was needed to protect shareholders’ interests. Again, the Company predictably ignored shareholders’ wishes, and, instead of implementing overdue change, the Board rewarded you - the head of the compensation committee responsible for orchestrating and approving this poorly designed plan, by promoting you to Chairman of the Board! A disconcerting vote of confidence that clearly demonstrates the Board must be

reconstituted with individuals who will ensure shareholder value is protected and maximized.

Because of this Board's longstanding refusal to adopt improved corporate governance practices, on March 1, 2016, we provided notice to the Company of our intention to nominate an alternate slate of three directors for election at this year's annual meeting. We are confident that our nominees, if elected, will vastly improve the Board's composition and create a sense of urgency to reset the Company on a path to recovering the value that has been destroyed by current management under the supervision of a Board that as currently composed is apparently disconnected with the interests of shareholders.

No doubt you and the rest of the Board were keenly aware that you would likely face opposition to the election of such deeply entrenched and ineffective directors at this year's annual meeting. Instead of allowing shareholders the opportunity to elect representatives that would truly represent their interests and hold management accountable, the Board has entered into a poorly conceived transaction that significantly undervalues the future prospects and earnings potential of our business. It appears that the Board is leaving no stone unturned in its attempts to avoid the indignity of losing its hand-picked members. Why else would it agree to sell the Company at a price that is 25% below where the stock traded just a year ago?

While Checkpoint's shareholders are clearly aware of the shortcomings of the Board's poor decision making and management's underperformance, the solution here is not to give the Company away at a cheap price. The solution is to focus on improving Checkpoint -- under the oversight of a strengthened Board, and to make the changes necessary to correct the performance issues so that the current owners of the Company can reap the full benefit, not some opportunistic third party! This Board's lack of appropriate oversight that has done nothing about management's failure to improve results is not an acceptable reason to sell the Company at a discounted price. If an appealing opportunity exists to pursue strategic alternatives, then a reconstituted and improved Board should be charged with evaluating the options with the best interests of shareholders in mind. In contrast, the proposed transaction with CCL clearly fails to reflect the Company's long term intrinsic value and there is no justifiable reason to sell the Company today at such a deep discount. From the shareholders' perspective, this transaction would close out the bright future we have in RFID, lock in losses for your long-term shareholders and likely reward a big pay day to an undeserving management.

Your duty as Chairman of the Board is to protect shareholders from precisely this kind of harm. We are calling on you to fulfill your responsibilities.

Sincerely,

Andrew R. Jones, CFA

<sup>1</sup> See CCL Industries Checkpoint Systems Acquisition, Investor Update, March 2, 2016. Available at: <http://www.cclind.com/investors/presentations>

<sup>2</sup> See Checkpoint Systems Inc., Q3 2015 Earnings Call Transcript, November 4, 2015.

## **The Merger Agreement Prevents the Checkpoint Directors from Fulfilling their Duties to Checkpoint Shareholders**

32. The Merger Agreement contains provisions that make superior, competing bids unlikely. Specifically, Section 5.2 of the Merger Agreement is a no solicitation clause, which provides that the Company shall not “(i) initiate, solicit, knowingly encourage or knowingly facilitate any inquiries regarding, or the making of any proposal or offer that constitutes or would reasonably be expected to lead to, an Acquisition Proposal; (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or provide any information or data concerning the Company or any Company Subsidiary to any Person relating to, any Acquisition Proposal; or (iii) approve, endorse, recommend, execute or enter into any letter of intent, agreement in principle, merger agreement, acquisition agreement or other similar agreement (other than an Acceptable Confidentiality Agreement as contemplated by Section 5.2(b)) relating to an Acquisition Proposal.” The provision further requires the Company to “immediately cease all discussions and negotiations with any Person that may be ongoing with respect to any Acquisition Proposal.” The Company can provide information or data in response to a bona fide written Acquisition Proposal only if the Board determines in good faith, based on the information then available and after consultation with its financial advisor and outside legal counsel, that such Acquisition Proposal either constitutes a Superior Proposal or could reasonably be expected to lead to a Superior Proposal. Also, before providing any such information or data, the Company must execute a confidentiality agreement and give the Company access to such data. The restrictive terms will deter alternate bidders from expressing interest in the Company.

33. Section 5.2 also mandates that the Board may not “withdraw, withhold, qualify or modify (or publicly propose to withdraw, withhold, qualify or modify” the Board’s

recommendation with respect to the Proposed Transaction; or cause the Company to enter into any acquisition agreement, merger agreement or similar contract (other than any Acceptable Confidentiality Agreement) with respect to an acquisition proposal.

34. The Board also reduced the possibility of maximizing stockholder value through a superior competing offer by agreeing to the termination fee of \$13 million in Section 7.3 of the Merger Agreement.

35. The terms of the Merger Agreement deter competing bids and prevent the Checkpoint Directors from exercising their duties to obtain the best available price for the Company.

### **CLASS ACTION ALLEGATIONS**

36. Plaintiff brings this action as a class action pursuant to Rules 1701 *et seq.* of the Pennsylvania Rules of Civil Procedure on behalf of himself and a class, consisting of all the public stockholders of Checkpoint (the “Class”). Excluded from the Class are defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest, who are or will be threatened with injury arising from Defendants’ wrongful actions, as more fully described herein.

37. The members of the Class are so numerous that joinder of all members is impracticable. As of February 26, 2016, there were over 41 million shares of Checkpoint’s common stock outstanding, held by individuals and entities too numerous to bring separate actions. It is reasonable to assume that holders of Checkpoint common stock are geographically dispersed throughout the United States.

38. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct as alleged herein.

39. In accordance with Pennsylvania Rule of Civil Procedure 1709, Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class litigation, Plaintiff has no interests antagonistic to or in conflict with those of the Class, and Plaintiff has or can acquire adequate financial resources to assure that the interests of the Class will not be harmed.

40. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. The questions of law and fact common to the Class are, *inter alia*:

- whether the Defendants' actions violated their obligations to the Class in connection with the Proposed Transaction or consideration of any alternatives;
- whether the Checkpoint Directors breached their duties by agreeing to the Merger Agreement which contains preclusive deal protection devices;
- whether the Defendants acted knowingly in taking the actions set forth herein;
- whether CCL aided and abetted the Checkpoint Directors' breaches of duty by enticing them to agree to the Proposed Transaction;
- whether the Defendants have disclosed all material facts in connection with the challenged Transaction;
- whether Plaintiff and the other members of the Class would be irreparably damaged if the Defendants are not enjoined from effectuating the conduct described herein and whether the Class is entitled to declaratory and/or injunctive relief with respect to the Proposed Transaction; and
- whether members of the Class have sustained damages and, if so, what is the proper measure of damages.

41. A class action will provide for the fair and efficient adjudication of this controversy in accordance with Pennsylvania Rule of Civil Procedure 1708 for a number of reasons, including:

- Common questions of law or fact predominate over any question affecting only individual members;

- The sufficient size of the class;
- There will be no difficulty in the management of this action as a class action;
- The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications which would confront the parties opposing the Class with incompatible standards of conduct.
- In view of the complexities of the issues and the expense of litigation, the separate claims of individual class members may be insufficient in amount to support separate actions.
- The parties opposing the class action have acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM**

#### **(DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO 42 Pa. C.S. § 7531, *et seq.* AGAINST ALL DEFENDANTS)**

42. The averments of paragraphs 1 through 41 above are incorporated as if fully set forth herein.

43. Under Pennsylvania law, shareholders have a right to enjoin a proposed fraudulent or fundamentally unfair corporate action. 15 Pa. C.S. § 1105. They also have the right to secure declaratory relief concerning a proposed corporate action.

44. In the context of merger transactions, the concept of fairness has two basic aspects, fair dealing and fair pricing. Fair dealing embraces, *inter alia*, questions of the timing of the transaction, how it was initiated, structured, negotiated, disclosed to the directors and how the approvals of the directors and the stockholders were obtained. Fair price relates to the economic and financial consideration of the proposed merger, including assets, market value, earnings, future prospects and any other elements that affect the intrinsic or inherent value of the company.

45. As set forth herein, there are a number of reasons why the Proposed Transaction involves neither fair dealing nor fair pricing. These include, but are not necessarily limited to, the following:

- (a) the Proposed Transaction offers inadequate compensation to Checkpoint shareholders, who are being forever cashed out of their investment;
- (b) the Checkpoint Directors agreed to preclusive deal protection devices that prevent other bidders from making superior offers for the Company; and
- (c) the Checkpoint Directors failed to give full and adequate consideration to all alternatives to a sale of the Company;

46. If the Proposed Transaction is consummated, Checkpoint will cease to exist as a separate corporate entity and its current shareholders will not share in its future prospects and earnings. As a result, Plaintiff and the Class will be irreparably harmed if they are not awarded declaratory and/or injunctive relief.

WHEREFORE, Plaintiff should be granted declaratory and injunctive relief establishing that the Proposed Transaction is fundamentally unfair and preventing its consummation.

## **SECOND CLAIM**

### **(BREACH OF DUTY AGAINST CHECKPOINT DIRECTOR DEFENDANTS)**

47. The averments of paragraphs 1 through 46 above are incorporated as if fully set forth herein.

48. By virtue of their positions as directors of Checkpoint, the Checkpoint Director Defendants owed a duty directly to Plaintiff and the Class to manage the affairs of Checkpoint, including any decision to enter into the Proposed Transaction, so as to promote the common interests of Checkpoint stockholders, as opposed to their own personal interests.

49. The Checkpoint Director Defendants, by agreeing to the Proposed Transaction, have acted knowingly and willfully, in disregard of their duties to Plaintiff and the Class.

50. Plaintiff and the Class have been or will be injured as a result of the Checkpoint Director Defendants' breach of their duties or responsibilities to them.

WHEREFORE, the Checkpoint Director Defendants are liable for compensatory damages resulting therefrom.

### **THIRD CLAIM**

#### **(AIDING AND ABETTING BREACHES OF FIDUCIARY DUTIES AGAINST CCL)**

51. The averments of paragraphs 1 through 50 above are incorporated as if fully set forth herein.

52. As set forth above, the Checkpoint Directors breached the duties they owe to the Plaintiff and the Class.

53. CCL aided and abetted the Checkpoint Directors' breaches of duty. CCL actively and knowingly induced the Checkpoint Directors to breach their duties.

54. As alleged herein, the Class has been harmed by CCL's aiding and abetting the Checkpoint Directors' breaches of fiduciary duty.

WHEREFORE, CCL is liable for compensatory and punitive damages resulting therefrom.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiff demands judgment as follows:

(a) Preliminarily and permanently enjoining Checkpoint and any of the Checkpoint Directors and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing, during the pendency of

this action, from taking any action to consummate the Proposed Transaction until such time as the Checkpoint Directors have fully complied with their duties owed to Plaintiff and the Class, including but not limited to their duty to maximize shareholder value;

(b) Awarding the Class compensatory damages, together with pre- and post-judgment interest;

(c) Finding the Checkpoint Directors liable for breaching their fiduciary duties to the Class;

(d) Finding CCL liable for aiding and abetting the breaches of fiduciary duty by the Checkpoint Directors;

(e) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

(f) Awarding such additional or different relief as the interests of law or equity may require or support.

### **JURY DEMAND**

Plaintiff demands a trial by jury of twelve jurors on all issues so triable.

Dated: March 7, 2016

**BARRACK RODOS & BACINE**

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