

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

MIAMI FIREFIGHTERS' RELIEF & PENSION
FUND, derivatively on behalf of XEROX
HOLDINGS CORPORATION,

Plaintiff,

v.

CARL C. ICAHN, HIGH RIVER LIMITED
PARTNERSHIP, ICAHN CAPITAL LP, KEITH
COZZA, GIOVANNI VISENTIN, JONATHAN
CHRISTODORO, JOSEPH ESCHEVARRIA,
NICHOLAS GRAZIANO, CHERYL GORDON
KRONGARD, and ANDREW SCOTT LETIER,

Defendants,

and

XEROX HOLDINGS CORPORATION,

Nominal Defendant.

INDEX NO. _____

SUMMONS

Date Index No. Purchased:
December 13, 2019

TO THE ABOVE-NAMED DEFENDANT(S)

(See attached List of Defendants with Addresses)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is CPLR § 503(a). Plaintiff designates New York county as the place of trial.

Dated: New York, NY

December 13, 2019

**ABRAHAM, FRUCHTER &
TWERSKY, LLP**

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**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

Plaintiff Miami Firefighters' Relief & Pension Fund ("Plaintiff"), by and through its undersigned attorneys, upon knowledge as to itself and its own acts, and upon information and belief as to all other matters based upon the investigation of its attorneys, including reviewing U.S. Securities and Exchange Commission ("SEC") filings, news reports, press releases, securities analyst reports, the records in *Deason v. Fujifilm, et al.*, Index No. 650675/2018 (N.Y. Sup. Ct.) ("*Deason I*"), *Deason vs. Xerox Corp.*, Index No. 650988/2018 ("*Deason II*"), *In re Xerox Corporation Consolidated Shareholder Litigation*, Index No. 650766/2018 (N.Y. Sup. Ct.) (the "Consolidated Class Action"), and *Fujifilm Holdings Corp. v. Xerox Corp.*, Docket No. 1:18-cv-05458 (S.D.N.Y.) (the "*Fuji Action*"), and other publicly available information, alleges as follows:

NATURE OF THE ACTION

1. This is a shareholder derivative action, brought on behalf of Xerox Holdings Corporation (“Xerox” or the “Company”), with respect to breaches of the fiduciary duty of loyalty and usurpation of a corporate opportunity by defendants Icahn Capital LP (“Icahn Capital”) and High River Limited Partnership (“High River”), entities controlled by defendant Carl C. Icahn (“Icahn”), who is a fiduciary of Xerox through his domination and control of Xerox, and having at least two personal representatives on the Company’s board of directors (the “Board”). Icahn Capital and High River purchased approximately \$1.2 billion of HP Inc. (“HP”) common stock knowing that Xerox was planning to acquire, or considering acquiring, all HP common stock at a premium price, generating a substantial profit for the benefit of Icahn Capital and High River. This action is brought to recover those profits for the benefit of Xerox.

THE PARTIES

Plaintiff

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

Nominal Defendant

3. Nominal Defendant Xerox is incorporated under the laws of the State of New York. Xerox was formed, through a corporate reorganization, as a holding company successor to Xerox Corporation, a designer, developer, and seller of document management systems and solutions. Xerox’s common stock trades on the New York Stock Exchange under the ticker symbol “XRX.”

The Icahn Defendants

4. Defendant Carl Icahn (previously defined as “Icahn”) is the founder and controlling shareholder of Icahn Enterprises L.P., a diversified conglomerate holding company based in New York, formerly known as American Real Estate Partners. Icahn began his career as a stockbroker

and, in 1968, formed Icahn & Co., a securities firm focusing on risk arbitrage and options trading. In 1978, Icahn began taking controlling positions in individual companies. Icahn developed a reputation as a “corporate raider” after his hostile takeover of Trans World Airlines in 1985.

5. Defendant High River Limited Partnership (“High River”) operates as a venture capital firm and maintains its headquarters at 445 Hamilton Avenue, Suite 1210, White Plains, NY 10601. High River is an investment vehicle controlled by defendant Icahn. High River owns 4,691,218 shares of Xerox common stock and purchased 12,580,592 shares of HP common stock in the third quarter of 2019, starting on July 1, 2019 and ending September 30, 2019 (“2019Q3”).

6. Defendant Icahn Capital LP (“Icahn Capital”) operates as an investment advisory firm managing investment portfolios. Icahn is the Chief Executive Officer (“CEO”) of Icahn Capital, which maintains its headquarters at 767 Fifth Avenue, 47th Floor, New York, NY 10153. Icahn Capital owns 18,764,869 shares of Xerox common stock and purchased 50,322,378 shares of HP common stock in 2019Q3.

7. Icahn, High River, and Icahn Capital are collectively referred to herein as the “Icahn Defendants.” The Icahn Defendants, together with other investment vehicles owned by Icahn, make joint filings with the SEC, operate as a group, and beneficially own 10.6% of Xerox’s outstanding common stock, making them Xerox’s largest shareholder, and 4.2% of HP common stock, making them HP’s fifth largest shareholder.

The Director Defendants

8. Defendant Keith Cozza (“Cozza”) is, and since May 2018 has been, Chairman of the Board. Cozza serves as the President and CEO of Icahn Enterprises, L.P.; the Chief Financial Officer (“CFO”) of Icahn Associates Holding LLC; the Chief Operating Officer of Icahn Capital; and, a director of wholly owned subsidiaries of Icahn Enterprises L.P., including Icahn Automotive Group LLC and PSC Metals LLC. Cozza was previously a director of several entities while they

were indirectly controlled by Icahn, including Federal-Mogul Holdings LLC; Tropicana Entertainment Inc.; Herbalife Ltd.; CVR Refining, LP; and, MGM Holdings Inc.

9. Defendant Giovanni Visentin (“Visentin”) is, and since May 2018 has been, Xerox’s CEO and a member of the Board. Visentin received total compensation of \$23,459,003 from Xerox in 2018, and his targeted annual compensation for serving as Xerox’s CEO in 2019 is \$13,000,000. Visentin served as a consultant to Icahn Capital in connection with a proxy contest at Xerox from March 2018 to May 2018. That proxy contest, backed by Icahn, resulted in Visentin receiving his positions at Xerox.

10. Defendant Jonathan Christodoro (“Christodoro”) is, and since May 2018 has been, a member of the Board. Christodoro served as Managing Director of Icahn Capital until February 2017, and as a representative of Icahn on the boards of directors of: Sandridge Energy, Inc.; Cheniere Energy, Inc.; American Railcar Industries, Inc.; PayPal Holdings, Inc.; eBay, Inc.; Hologic Inc.; Lyft, Inc.; Talisman Energy Inc.; Enzon Pharmaceuticals, Inc.; and, Herbalife Ltd. Christodoro was appointed to the Board in 2016 as part of a standstill agreement, resigned in December 2017, and was reappointed by Icahn in May 2018.

11. Defendant Joseph Eschevarria is, and since 2017 has been, a member of the Board.

12. Defendant Nicholas Graziano (“Graziano”) is, and since May 2018 has been, a member of the Board. Defendant Graziano has served as Portfolio Manager of Icahn Capital since February 2018 and served or serves as a representative of Icahn-related entities on the boards of directors of Cloudera Inc.; Conduent Incorporated; Herc Holdings Inc.; and, Herbalife Ltd.

13. Defendant Cheryl Gordon Krongard (“Krongard”) is, and since 2017 has been, a member of the Board. Krongard previously served as a director of Federal-Mogul Holdings LLC

when that company was controlled by Icahn. Krongard was appointed to the Board to resolve a proxy fight that Icahn threatened in 2016.

14. Defendant Andrew Scott Letier (“Letier”) is, and since May 2018 has been, a member of the Board. Letier also serves as a Managing Director of Deason Capital Services, LLC (“Deason Capital”), an entity controlled by Darwin Deason (“Deason”), which beneficially owns 6.8% of Xerox’s outstanding common stock. Deason does not file Forms 13F with the SEC and, therefore, has not disclosed any purchases of HP stock by himself or Deason Capital.

15. Defendants Cozza, Visentin, Christodoro, Eschevarria, Graziano, Krongard, and Letier are collectively referred to herein as the “Director Defendants.”

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over Defendants pursuant to New York Civil Practice Law and Rules (“CPLR”) §§ 301 and 302. Each of the Defendants either resides in New York or conducts continuous and systematic business in New York.

17. Venue is proper in this County under CPLR § 503(a). Icahn lives and conducts business in, and Icahn Capital maintains its headquarters in, this County.

SUBSTANTIVE ALLEGATIONS

Xerox

18. Xerox is a large operator in the global document markets, providing document equipment, such as printing and publishing systems, digital copiers, laser and solid ink printers, fax machines, and digital multi-functional devices, which can print, copy, scan and fax. Increasingly, the Company has also aimed at related service markets, including traditional supplies and printer support as well as newer areas, such as document management and business processes.

19. Xerox estimates its core print technology and services market opportunity is sized at around \$67 billion. Primary offerings in this space are spread over Intelligent Workplace

Services, Workplace Solutions and Production Solutions. Xerox also estimates its ConnectKey software platform competes in a digital solutions and software market that is sized at around \$31 billion. The Company's larger competitors include Canon, HP, Konica Minolta, and Ricoh.

20. The print technology industry has been challenged by the increased digitization of workplaces, causing reduced revenues for Xerox and other printing technology companies. Icahn, on May 15, 2017, after acquiring a large stake in Xerox and gaining a more detailed understanding of the print technology business, referred to the industry in which Xerox and HP compete as a "piece of shit" according to a contemporaneous memo written by Xerox's then CEO, as further described below in ¶23. On December 4, 2019, Icahn likened HP to the RMS Titanic and to the bankrupt Eastman Kodak, a comparison he has also made with respect to Xerox.

Icahn Dominates and Controls Xerox

21. Icahn effectively controls Xerox based upon being its largest single shareholder and his close working relationship with Deason Capital. As *The Wall Street Journal* reported on October 19, 2019, Icahn and Deason "took control of [Xerox] after scuttling its planned merger with Fujifilm Holdings Corp." Examples of Icahn's control and domination of Xerox include:

- a. his having been responsible for placing at least five out of the seven Board members including:
 - i. defendants Cozza acting as his personal representatives on the Board and the Board's Chairman, and;
 - ii. defendant Graziano acting as his personal representative on the Board;
- b. causing Xerox to spin-off Conduent and its then-CEO to resign in January 2017, in connection with which Xerox issued a January 29, 2016, press release quoting its then-CEO and Icahn;

- c. threatening proxy contests which resulted in, *inter alia*, Krongard's appointment to the Board, Christodoro's prior appointment to the Board, and the hiring of Bob Brody ("Brody"), as a member of Xerox's management team;
- d. pushing Jeff Jacobson ("Jacobson"), Xerox's CEO, to sell the Company, then:
 - i. blocking a proposed merger with Fujifilm Holdings Corp. ("Fuji");
 - ii. ousting Jacobson as the CEO, and;
 - iii. placing Visentin into the CEO position; and,
- e. On October 3, 2019, Louie Pastor, who had until that time been deputy general counsel of Icahn Enterprises L.P., was appointed as Xerox's executive vice president and general counsel.

22. Icahn is party to a confidentiality agreement with Xerox pursuant to which he and his affiliates receive non-public information regarding the Company. Icahn previously utilized a similar agreement to obtain access to key corporate documents, such as a joint enterprise contract ("the "JEC") governing Xerox's joint venture with Fuji. On May 3, 2017, Christodoro forwarded an e-mail and attachment from William F. Osbourn, Jr. ("Osbourn"), Xerox's CFO, to Icahn's in-house counsel that stated that the attachment was "not a public document." Additionally, pursuant to his prior confidentiality agreement, Icahn tracked the contents of Board deliberations in near real-time.

23. On May 15, 2017, Icahn hosted a dinner at his Manhattan residence with Brett Icahn, who is Icahn's son, Christodoro, Jacobson, Brody, and Osbourn. Jacobson wrote a memo to his file the following day, stating, in part, that the discussion "centered around Icahn and

Christodoro's view that the industry 'was a piece of shit' and the Xerox business was not driving value." Icahn instructed Jacobson to sell Xerox and said if "[Jacobson] could not have it sold, then [Icahn] would push to have [Jacobson] removed and [Icahn] would replace [Jacobson] with" Brody or Osbourn.

24. On or about June 12, 2017, Fuji announced that losses from "accounting irregularities" related to Fuji Xerox Co., Ltd. ("Fuji Xerox" or the "JV"), a joint venture, through which Fuji and Xerox had reciprocal access to products and intellectual property, were larger than first thought.

25. On November 30, 2017, Xerox received a term sheet from Fuji pursuant to which Xerox and Fuji Xerox would merge, with Xerox shareholders owning 49.9% of the combination and receiving a \$2.5 billion cash dividend funded by Xerox (the "Proposed Transaction").

26. On December 8, 2017, defendant Christodoro resigned from the Board, terminating a standstill agreement between Xerox and Icahn, and stating it appeared the Board would "take Xerox in a direction with which [he] strongly disagree[d.]" Defendant Christodoro informed Xerox he would be joining a slate of nominees of the Icahn Group in a proxy contest, including defendant Cozza.

27. Icahn launched a proxy contest with a December 12, 2017, open letter to Xerox shareholders stating that Xerox "paints a rosy picture of what is in reality a bleak situation that I fear could turn out like that of Eastman Kodak" where the Board's chairman and Jacobson had served as executives. Icahn wrote there was "much to unpack and debunk in Xerox's statement" but he wanted to immediately address the "outrageous claim" about shareholder returns. In addressing that claim, Icahn claimed credit for the returns from the prior year.

28. On January 22, 2018, Icahn and Deason disclosed that, as the “first and third largest shareholders of Xerox” they had formed a group to solicit proxies. They wrote to Xerox’s shareholders that: (1) the JV should be renegotiated or terminated in light of Fuji Xerox’s accounting scandal, (2) Xerox should explore strategic alternatives, (3) the JV’s terms should be disclosed, and (4) Jacobson should be replaced immediately, along with any directors unwilling to replace him.

29. On January 31, 2018, Xerox and Fuji disclosed, *inter alia*, the Proposed Transaction and the terms of the JEC between the Company and Fuji.

30. On or about February 13, 2018, *Deason I* and several lawsuits later consolidated as Consolidated Class Action were filed, challenging the Proposed Transaction. Deason and Icahn shared the costs of litigating *Deason I*, *Deason II* (seeking a declaration that Xerox must waive its advanced notice deadline to nominate Board members), and a consulting arrangement with defendant Visentin to assist in their proxy fight over Xerox.

31. On April 27, 2018, Justice Ostrager preliminarily enjoined the Proposed Transaction.

32. On May 13, 2018, a Director Appointment, Nomination, and Settlement Agreement (the “*Deason Settlement Agreement*”) was entered into between, *inter alia*, Xerox, Icahn, Icahn Capital, High River, Deason, Eschevarria, and Krongard, resolving *Deason I* and *Deason II* by: (a) six Board members, including Jacobson, resigning; and (b) Icahn and Deason selecting and appointing five new directors and a new CEO. The five directors appointed by Icahn and Deason are: Christodoro (identified as a “New Independent Director”), Visentin, Letier (identified as a “Deason Designee”), and Cozza and Graziano (identified as the “Icahn Designees”).

33. On May 13, 2018, immediately prior to entering the *Deason* Settlement Agreement, Xerox delivered a written notice of termination of the Proposed Transaction to Fuji (the “Termination Notice”).

34. On May 15, 2018, the Company entered into a confidentiality agreement with the Icahn Defendants, certain of their affiliates, and Deason (the “Confidentiality Agreement”), which allows the Icahn Defendants and Deason to gain access to non-public information. In addition, on May 15, 2018, subject to the Confidentiality Agreement, Xerox provided certain representatives of Icahn and his affiliates, and Deason, with Board observer rights.

Icahn Buys HP Common Stock in Breach of his Fiduciary Duties to Xerox

35. On February 5, 2019, during an investor conference held shortly after Icahn installed Visentin as Xerox’s CEO, Visentin raised the issue of “why we have to be acquired, why can’t we be the acquirers?”

36. On April 25, 2019, Visentin stated during a call with analysts and investors that “we’re never going to comment on the potential targets. But we’re focused on building a deep M&A pipeline that will support our revenue road map.”

37. On June 4, 2019, HP and Xerox disclosed that they had reached an agreement pursuant to which they expanded their relationship, with Xerox: sourcing from HP certain A4 and entry-level A3 products, with the majority running on Xerox’s ConnectKey software; supplying toner to HP for those and other products; partnering with HP in the Device-as-a-Service (“DaaS”) market; becoming a DaaS specialist in HP’s Partner First program; being authorized to sell HP PCs, displays and accessories; and, expanding its software presence by making Xerox’s DocuShare Flex content management platform available on certain HP PCs.

38. On July 30, 2019, Visentin repeated in his prepared remarks during a call with analysts and investors that “[w]hile we don’t comment publicly about potential targets, we have a broad M&A pipeline that is designed to support our strategic initiatives.”

39. Xerox paved the way for future acquisitions by reorganizing on July 31, 2019, to form a holding company. No later than August 2019, Xerox and HP began engaging in private discussions about a proposed strategic transaction pursuant to which Xerox would purchase HP.

40. On October 29, 2019, Osbourn stated in a call with analysts and investors that as part of Xerox’s “business transformation” into a holding company, it had “embarked on a comprehensive strategic review of [its] entire business[.]”

41. On November 5, 2019, Xerox sent a letter to HP’s board of directors (the “HP Board”), proposing that Xerox acquire HP for \$33.5 billion, or \$22 a share – \$17 in cash and 0.137 Xerox shares for each HP share. On November 6, 2019, news of the proposal was publicly reported before markets opened, causing HP’s stock, which had closed the prior day at a price of \$18.40 per share, to jump to \$21.64 per share at the opening bell, and to close at \$19.57 per share on November 6, 2019.

42. On November 14, 2019, Icahn filed a Form 13F-HR with the SEC publicly disclosing holdings of 12,580,592 and 50,322,378 shares of HP common stock as of September 30, 2019, by High River and Icahn Capital, respectively, or about 4.63% of his \$25.69 billion equity portfolio, and significantly more than his Xerox holdings of \$701.5 million. The nonconfidential portions of Icahn’s prior Form 13F, filed August 14, 2019, listed no HP common stock as of June 30, 2019. While the dates of Icahn’s purchases are undisclosed, on October 2, 2019, two days after the end of the quarter in which Icahn acquired his common HP common stock, Gordon Haskett analyst Don Bilson speculated that an activist investor could be targeting HP

common stock because: a huge spike in recent trading volume came despite a lack of an obvious catalyst; Nomura and UBS, which are used by activists to get into swaps, were among the largest purchasers of HP common stock; and, HP common stock had traded more than its average of 10 million shares in eight of the last nine days, including two days with volume over 20 million.

43. On November 17, 2019, HP rejected Xerox's November 5, 2019, offer as insufficient and not in HP's shareholders' best interests. The HP Board expressed confidence in HP's direction and said "the highly conditional and uncertain nature of the proposal, including the potential impact of outsized debt levels" created concerns. HP recognized the "potential benefits of consolidation[.]" stated an openness to exploring a strategic transaction, and requested due diligence of Xerox's trajectory, prospects, and potential synergies of a combination.

44. In a December 6, 2019, letter to HP's shareholders, Icahn said HP's standalone restructuring plan, which was announced on October 3, 2019, "**seems to amount to little more than rearranging the deck chairs on the Titanic[.]**" compared HP to Eastman Kodak, and expressed skepticism in its turnaround plan and of its prospects.

45. A December 9, 2019, presentation from Xerox to HP's shareholders states that Xerox's proposed acquisition of HP is based upon "Undisputed Strategic Logic" including that "each can cross-sell one another's technology into its existing install base and drive incremental revenue, all while eliminating Direct Enterprise Direct SMB Indirect duplicative SG&A costs." Xerox's claim about the obvious merits of its acquisition of HP echoed a statement by Icahn on December 4, 2019, that "the combination of HP and Xerox is one of the most obvious no-brainers I have ever encountered in my career – one where activism should not even be necessary at all because the merits of the combination are so obvious to everybody involved."

46. Since Xerox's proposal to acquire HP was disclosed, the Icahn Defendants' 62,902,970 shares of HP common stock have risen in market value by approximately \$128 million, from approximately \$1.16 billion on November 5, 2019, to approximately \$1.285 billion as of the close of trading on December 12, 2019, and the Icahn Defendants are entitled to a dividend of approximately \$11,070,922.72, on or about January 2, 2020, based upon a record date of December 11, 2019, bringing their total profits from acquiring HP common stock to approximately \$140 million.

DERIVATIVE ALLEGATIONS

47. Plaintiff will adequately and fairly represent the interests of Xerox and its shareholders and has retained competent counsel experienced in shareholder derivative actions.

48. The wrongful acts complained of herein have caused harm to Xerox and will continue to subject Xerox to harm because the adverse consequences of the injurious actions are still in effect and ongoing.

49. Plaintiff has not made a demand upon the Board to institute this action as it would be a futile and useless act.

50. There are currently seven (7) members of the Board. A majority of those directors are not independent with respect to the claims being alleged based on their personal and business relationships with Icahn or their participation in the wrongdoing alleged herein.

51. **Keith Cozza** lacks independence with respect to any decision to sue the Icahn Defendants because of their close business relationship, and because he was designated to serve on the Board and several other boards of directors at Icahn's behest. Cozza was installed as a director pursuant to the *Deason* Settlement Agreement and has served as the President, Chief Executive Officer of Icahn Enterprises L.P. since 2014. Cozza is also a director of other subsidiaries of Icahn Enterprises. Cozza received total compensation from Icahn Enterprises of

\$6,539,608 in 2018 (which included a \$5 million discretionary bonus), \$5,522,144 in 2017 (which included a \$4 million discretionary bonus), and \$4,068,515 in 2016 (which included a \$2.5 million discretionary bonus).

52. **John Visentin** lacks independence with respect to any decision to sue the Icahn Defendants because of their close business relationship. Visentin consulted for Icahn Capital in connection with the proxy contest at Xerox that resulted in Visentin becoming Xerox's CEO. Visentin serves on the Board, and as Xerox's CEO, because of Icahn's influence and the *Deason* Settlement Agreement, and Icahn has ended the tenures of Xerox's prior two CEOs.

53. **Jonathan Christodoro** lacks independence with respect to any decision to sue the Icahn Defendants because of their close business relationship, and because he was twice designated to serve on the Board, and has served on several other boards of directors, at Icahn's behest. From July 2012 through February 2017, Christodoro was a Managing Director of Icahn Capital LP. Christodoro was installed as a director per the *Deason* Settlement Agreement and had previously served on the Board as to resolve a proxy contest that Icahn had threatened. When he was first appointed to the Board, *The Wall Street Journal* called Christodoro "a top lieutenant of Carl Icahn[.]" After Christodoro was no longer employed by Icahn Capital LP, Christodoro requested the non-public JEC from Xerox's management and immediately forwarded it to Icahn's general counsel.

54. **Nicholas Graziano** lacks independence with respect to any decision to sue the Icahn Defendants because of their close business relationship, and because he was designated to serve on the Board and several other boards of directors at Icahn's behest. Graziano serves as a Portfolio Manager of Icahn Capital, and as Icahn's representative on the Board.

55. Defendant **Cheryl Gordon Krongard** lacks independence with respect to any decision to sue the Icahn Defendants because (a) she has a pre-existing social relationship with Icahn, (b) Krongard was nominated to the Board in December of 2016 to resolve a proxy contest that Icahn had threatened, (c) her husband serves as a director of Icahn Enterprises, L.P., and (d) according to her sworn testimony in *Deason I* and the Consolidated Class Action, when initially asked to serve on the Board she said she would be willing to do so “if our largest shareholder would be placated by that fact”, referring “[p]articularly [to] Mr. Icahn.”

56. Defendant **Andrew Scott Letier** lacks independence with respect to any decision to sue the Icahn Defendants because of their close business relationship. Letier has been Managing Director of Deason Capital since July 2014 and was installed as a director pursuant to the *Deason* Settlement Agreement. Deason and the Icahn Defendants acted in concert and formed a “group” to appoint Xerox directors, including Letier, to the Board. Additionally, Letier serves on the board of directors of Conduent, which is 11.64% owned by Icahn-related entities (its largest shareholder) and 5.8% owned by Deason, with three Icahn designees, including Graziano.

FIRST CLAIM FOR RELIEF

Breach of Fiduciary Duty of Loyalty Against the Icahn Defendants

57. Plaintiff incorporates by reference and re-alleges every allegation contained above, as though fully set forth herein.

58. The Icahn Defendants owe fiduciary duties to Xerox based upon their control and domination of Xerox, and by serving on the Board through their representatives and nominees.

59. The Icahn Defendants breached their fiduciary duties to Xerox in acquiring HP common stock based upon their knowledge that Xerox was either considering making an offer to

purchase HP, had already approached HP about a possible merger into or acquisition by Xerox, or of the obvious merits of Xerox's potential acquisition of HP.

60. Purchasing HP common stock also represented a corporate opportunity which Xerox could have utilized for its own profit, but which was instead seized by the Icahn Defendants.

61. Equity demands the Icahn Defendants' profits be returned to Xerox.

SECOND CLAIM FOR RELIEF

Breach of Contract Against the Icahn Defendants

62. Plaintiff incorporates by reference and re-alleges every allegation contained above, as though fully set forth herein.

63. The Icahn Defendants' May 15, 2018, Confidentiality Agreement with Xerox is a contract that (i) explains that all confidential materials received by the Icahn Defendants "shall remain the property of" Xerox and that the Icahn Defendants acquire no rights with respect thereto, and (ii) prohibits Icahn and his representatives from engaging in any derivative or securities transaction, based on confidential materials received, in violation of securities laws.

64. By purchasing HP common stock while knowing Xerox was either considering an offer to acquire HP or negotiating such an acquisition, Icahn breached the contract and deprived Xerox of the benefit of its bargain.

65. By reason of the foregoing, Icahn is liable to Xerox for damages in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

Unjust Enrichment Against the Icahn Defendants

66. Plaintiff incorporates by reference and re-alleges every allegation contained above, as though fully set forth herein.

67. The Icahn Defendants were enriched at Xerox's expense. It is against equity and good conscience to permit the Icahn Defendants to retain any profits made, or dividends received, from investing in HP common stock.

68. The Icahn Defendants acquired HP common stock under circumstances that would render it equitable for the Icahn Defendants to transfer all incidents of their ownership to Xerox.

69. The Icahn Defendants would be unjustly enriched if permitted to retain their HP common stock, or any benefit accruing therefrom, including any dividends received appurtenant thereto.

70. Permitting the Icahn Defendants to retain the HP common stock they acquired and any dividends received appurtenant thereto is unjust, in light of the circumstances, under equitable principles of New York law.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty Against the Director Defendants

71. Plaintiff incorporates by reference and re-alleges every allegation contained above, as though fully set forth herein.

72. The Director Defendants owed Xerox and its shareholders the highest duties of loyalty, good faith, honesty, and care in conducting their affairs and the business of Xerox.

73. To the extent the Director Defendants consented to Icahn's purchases of HP common stock while Xerox was considering acquiring HP, then they breached their fiduciary duty of loyalty to Xerox.

74. As a direct and proximate result of these breaches of fiduciary duty, Xerox has sustained damages, for which the Individual Defendants are liable to the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. Entering judgment against the Icahn Defendants and the Director Defendants for breaching the fiduciary duties they owed to Xerox;
- B. Entering judgment declaring that Icahn breached the Confidentiality Agreement;
- C. Imposing a constructive trust with respect to the investments of Icahn Capital and High River in HP common stock or securities, including any dividends received appurtenant thereto;
- D. Directing Icahn Capital and High River to disgorge to Xerox any profits they earned through purchasing or trading in HP common stock or securities, including any dividends received appurtenant thereto;
- E. Ordering the Director Defendants to pay the Company for any damages caused by their failure to act in accordance with their fiduciary duties;
- F. An award to Plaintiff of the costs and disbursements of this action, including reasonable accountants, experts, and attorneys' fees; and
- G. Such other, further relief, whether similar or different, including damages, as this Court may deem just and proper.

Dated: December 13, 2019

**ABRAHAM, FRUCHTER &
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AFFIDAVIT OF VERIFICATION

STATE OF FLORIDA)
) s.s.:
COUNTY OF MIAMI-DADE)

I, Andrew McGarrell, Administrator of the Miami Firefighters’ Relief & Pension Fund (the “Fund”), on behalf of the Fund, hereby verify that I am familiar with the allegations in the Verified Shareholder Derivative Complaint (the “Complaint”), that the Fund authorized the filing of the Complaint, and that the foregoing is true and correct to the best of my knowledge, information and belief.



Andrew McGarrell, Administrator
Miami Firefighters’ Relief & Pension Fund