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

DARWIN DEASON, Plaintiff, v. FUJIFILM HOLDINGS CORP., XEROX CORP., JEFF JACOBSON, GREGORY Q. BROWN, JOSEPH J. ECHEVARRIA, WILLIAM CURT HUNTER, ROBERT J. KEEGAN, CHERYL GORDON KRONGARD, CHARLES PRINCE, ANN N. REESE, STEPHEN H. RUSCKOWSKI, SARA MARTINEZ TUCKER, and URSULA M. BURNS, Defendants.	Index No. _____ **COMPLAINT**

Plaintiff Darwin Deason, by and through his undersigned counsel, for his Complaint against Defendants Fujifilm Holdings Corp. ("Fuji"), Xerox Corp. ("Xerox" or the "Company"), and Jeff Jacobson, Gregory Q. Brown, Joseph J. Echevarria, William Curt Hunter, Robert J. Keegan, Cheryl Gordon Krongard, Charles Prince, Ann N. Reese, Stephen H. Rusckowski, and Sara Martinez Tucker (the "Director Defendants"), and Ursula M. Burns, alleges as follows:

NATURE OF ACTION

1. Plaintiff is the third-largest shareholder of Xerox and brings this action to enjoin a change of control transaction and fraudulent scheme ("Transaction") whereby Fuji will acquire majority ownership and control of Xerox, a venerable American icon, for virtually nothing. As Shigetaka Komori, Fuji's Chairman and CEO, recently boasted to the Nikkei Asian Review, the "***scheme will allow us to take control of Xerox without spending a penny.***"

2. The Director Defendants—a majority of whom have secured for themselves officer or director positions with the new combined entity—have breached their fiduciary duties to Plaintiff and all other Xerox shareholders by negotiating and approving a transaction that dramatically undervalues Xerox, provides a wholly inadequate control premium, if any, and disproportionately favors Fuji. If the deal is consummated, Xerox shareholders will be virtually powerless over the future direction of their investment and will have no opportunity to receive a true control premium for their shares. Accordingly, the Transaction must be stopped dead in its tracks.

3. Xerox and the Director Defendants are using their long-standing, top-secret joint venture agreements with Fuji as an excuse to justify this one-sided transaction. Last week Xerox publicly admitted in a slide presentation to shareholders that the Fuji-Xerox joint venture agreements *"Limit Xerox's Strategic Flexibility,"* a fact that was never previously disclosed to Xerox shareholders in any of the Company's prior public filings. Specifically, the joint venture agreements contain a "crown jewel" lock-up right that allows Fuji to control Xerox's intellectual property and manufacturing rights in the $36 billion Asia-Pacific market in the event Xerox were to sell just 30% of the Company to another suitor. This effectively blocks any chance of a transparent and fair sale process. Shockingly, Xerox, the Director Defendants, and Defendant Burns fraudulently concealed this material fact from shareholders and other investors for almost ***17 years***, and did not reveal it until after the transaction with Fuji was announced. ***In fact, the "end game" for Xerox—a sale to Fuji—was decided 17 years ago with this undisclosed "crown jewel" lock-up right granted to Fuji, and shareholders had absolutely no clue.***

4. Fuji, however, handed Xerox and the Director Defendants a golden opportunity to terminate the joint venture agreements through Fuji's participation in a "WorldCom"-like

accounting scandal at Fuji Xerox Co., Ltd. ("Fuji Xerox"), the Fuji-Xerox joint venture. In July 2017, Fuji released a more than 200-page independent investigation committee report that contained stunning findings and sharply criticized Fuji for its prominent role in contributing to the accounting scandal, given the substantial control Fuji had over Fuji Xerox's operations. As a result of the misconduct by Fuji and Fuji Xerox, Xerox had the right to terminate the joint venture agreements. The self-interested Director Defendants, however, ignored the opportunity or deliberately chose not to terminate the joint venture agreements. Had the Director Defendants terminated the joint venture agreements, they would have been able to engage in a fair and equitable bidding process and achieve a fair value and control premium for Xerox shareholders. Indeed, the value of Xerox as a standalone company with no encumbrances on its intellectual property and the licensing, manufacturing, and selling of its products in the Asia and Pacific Rim markets is significantly greater than the value being provided to the Company and its shareholders as part of the proposed Transaction.

5. Even worse, the Director Defendants have now agreed to make Fuji's preemptive "crown jewel" lock-up right ***permanent*** by agreeing in the Transaction documents not to terminate any material agreement pending the closing of the Transaction, thereby blocking the possibility of any market-check on the proposed Transaction. By making Fuji's lock-up permanent, the Director Defendants are further misleading Xerox shareholders when stating in the public filings associated with the Transaction that shareholders have the right to accept and consider new "unsolicited" offers, knowing full well such a right is illusory. It is nonsensical to believe that the Director Defendants have the freedom to entertain new offers at this time and that the Transaction with Fuji is not a *fait accompli* when Fuji has a permanent lock-up right over one of Xerox's most valuable assets under the terms of the proposed Transaction. The only way

to facilitate a true market test is to eliminate Fuji's blocking rights under the joint venture agreement and the Transaction documents, and then test the market's interest in the purchase of Xerox with unfettered access to the Asia and Pacific Rim markets.

6. Simply put, the proposed Transaction is the product of deceit and bad faith conduct by the Director Defendants and must be enjoined. The Director Defendants should be compelled to go back to the drawing board, free Xerox from Fuji's deal-restrictive "crown jewel" lock-up, which the Company still has the legal right to do, and pursue a fair, transparent, and equitable bidding process that is truly beneficial to Xerox's shareholders. Without such injunctive relief, Xerox shareholders will be irreparably harmed, as they will be forced to vote on a transaction that was approved by a conflicted board without the benefit of a full and fair shopping of an unencumbered Xerox to the open market. Once the Transaction closes, Xerox shareholders will never get a second chance at a change of control transaction and premium.

7. Moreover, while Xerox has yet to disclose critical information about the manner in which this Transaction was negotiated, considered, and ultimately approved, it is clear even at this point that the conflicted Director Defendants swiftly negotiated the proposed Transaction (over an abbreviated 45-day period) and agreed to terms that are catastrophic to Xerox shareholders. Under the proposed structure of the Transaction, Xerox will combine with Fuji Xerox, a longstanding joint venture created between Xerox and Fuji, with Fuji owning a 50.1% controlling stake in the new, combined Fuji Xerox, and Xerox shareholders owning only 49.9%, a minority stake in the new, combined Fuji Xerox. Shockingly, Fuji is being permitted to purchase 50.1% of Xerox despite the fact that Xerox, relative to Fuji Xerox, has greater revenue, greater EBITDA and greater operating profit. Allowing Fuji to purchase 50.1% of Xerox—just enough to create its control—leaves the other 49.9% of Xerox shareholders hostage and subject

to abuse by Fuji. Indeed, it is highly unusual and not the market-norm for the board of the target company—such as the Director Defendants—to enter into a change of control transaction where the buyer corporation will only own 50.1% of the combined entity as opposed to buying out all of the shareholders in exchange for a customary control premium. Further evidence of the one-sided nature of the Transaction is that Fuji will end up receiving over $120 million more in annual cash dividends than it currently receives from the joint venture, while Xerox shareholders will receive $0 in additional regular annual cash dividends. Notably, since the deal was first disclosed to the market, and through the close of trading on February 9, 2018, Xerox's stock declined. It is unusual for the shares of the target of a M&A transaction to decline post-announcement, but here the market has realized how unfavorable the Transaction is and it has responded accordingly.[1]

8. In an attempt to prevent this negative market reaction for Xerox shareholders, in May 2017, Plaintiff, for the benefit of all Xerox shareholders, sent a letter to Defendant Jacobson, the CEO of Xerox, raising serious concerns with respect to Xerox's relationship with Fuji and demanding that the Company's management and Board immediately explore its legal options with respect to its contractual relationship with Fuji and strategic alternatives to Fuji. Defendant Jacobson, however, ignored Plaintiff's letter and concerns. Again, on January 17, 2018, after being ignored for months and learning that Xerox was now in discussions with Fuji to substantially alter the joint venture relationship between Xerox and Fuji, Plaintiff wrote a public letter to the Director Defendants demanding the (i) release of the "secret" joint venture agreements, and (ii) hiring of new and independent advisors to evaluate the Company's strategic

[1] Specifically, Xerox's stock price went from $30.35, based on closing share price as of January 10, 2018 (*i.e.*, the day prior to a Wall Street Journal story about the proposed Transaction), to $29.61, based on the closing price as of February 9, 2018.

options with Fuji, including the potential termination of the one-sided, value destroying joint venture agreement in light of the Asian "WorldCom" accounting scandal at Fuji Xerox. Plaintiff also voiced his displeasure with Defendant Jacobson's "lethargic approach regarding Fuji." But once again, Plaintiff's concerns fell on deaf ears, and the Director Defendants instead hurried to complete this awful Transaction.

9. In short, by approving this unreasonably one-sided and grossly unfair Transaction, the Director Defendants have breached their fiduciary duties of care, good faith, loyalty, candor, and independence to Plaintiff and other Xerox shareholders, and Fuji, as an active participant in the flawed Transaction, has aided and abetted such breaches of fiduciary duties. Thus, the Court can and should enjoin the proposed Transaction as presently constituted so that Plaintiff and all other Xerox shareholders are not irreparably harmed. If the proposed Transaction is permitted to close, the opportunity for Xerox shareholders to benefit from a full and fair market check and to receive a superior control premium will be lost forever because the improper, but terminable, lock-up rights Fuji has under the joint venture agreements will become permanent.

THE PARTIES

10. Plaintiff is a resident of Dallas, Texas, has been one of the largest shareholders of Xerox since 2010, and is the only shareholder of Xerox Series B preferred stock.

11. Defendant Fuji is a Japanese multinational photography and imaging company. Fuji is incorporated under the laws of Japan with its principal place of business located in Tokyo, Japan.

12. Defendant Xerox is a leading global provider of digital print technology and related solutions. Xerox is incorporated under the laws of the State of New York with its

principal executive offices located at 201 Merritt 7, Norwalk, Connecticut 06856-4505. Xerox is publicly traded on the New York Stock Exchange under the symbol "XRX."

13. Defendant Jeff Jacobson joined Xerox in 2012 and has been the CEO and a member of the Xerox board since January 2017.

14. Defendant Gregory Q. Brown has been a member of the Xerox board since 2017.

15. Defendant Joseph J. Echevarria has been a member of the Xerox board since 2017.

16. Defendant William Curt Hunter has been a member of the Xerox board since 2004.

17. Defendant Robert J. Keegan has been a member of the Xerox board since 2010 and is the current Chairman of the Xerox board.

18. Defendant Cheryl Gordon Krongard has been a member of the Xerox board since 2016.

19. Defendant Charles Prince has been a member of the Xerox board since 2008.

20. Defendant Ann N. Reese has been a member of the Xerox board since 2003.

21. Defendant Stephen H. Rusckowski has been a member of the Xerox board since 2015.

22. Defendant Sara Martinez Tucker has been a member of the Xerox board since 2011.

23. The Defendants identified in paragraphs 13 through 22 are collectively referred to herein as the "Director Defendants."

24. Defendant Ursula M. Burns ("Burns") was the Chairman of the Xerox board between May 2010 and May 2017. Burns also served as the Company's CEO from July 2009

until May 2016. Given her senior positions at the Company, Burns was fully knowledgeable about the Fuji Xerox joint venture, the governing joint venture agreements, and the undisclosed "crown jewel" lock-up rights of Fuji under those agreements.

25. Non-party Fuji Xerox is a joint venture established between Fuji and Xerox dating back to 1962. Fuji Xerox develops, manufactures, and distributes xerographic and document-related products and services in Japan, China, Hong Kong, other areas of the Pacific Rim, Australia, and New Zealand.

JURISDICTION AND VENUE

26. This Court has personal jurisdiction over all of the Defendants pursuant to New York Civil Practice Law and Rules ("CPLR") §§ 301 and 302. Each of the Defendants either resides in New York, or directly and/or through its subsidiaries, conducts continuous and systematic business in New York.

27. Venue is proper in this County under CPLR § 503(a).

28. In addition, under the agreements governing this proposed Transaction, both Fuji and Xerox agreed to submit to "the exclusive jurisdiction of the courts of the State of New York . . . for the adjudication of any Action or legal proceeding relating to or arising out of this Agreement and the Transactions" and "irrevocably and unconditionally waive[d] any objection . . . to the laying of venue in such courts and agrees not to plead or claim in any such court that any such action or legal proceeding brought in any such court has been brought in an inconvenient forum." Also, Xerox's by-laws provide that this Court shall have jurisdiction over the types of claims asserted against Xerox and the Director Defendants in this action.

FACTUAL BACKGROUND

A. The Joint Venture Agreements And "Crown Jewel" Lock-Up The Company Kept Secret And Hidden From Shareholders For Nearly Two Decades

The Joint Enterprise Contract ("JEC")

29. On or about March 30, 2001, after a series of consolidations, acquisitions, and territory expansions by Fuji Xerox, Xerox and Fuji entered into the JEC.[2] A copy of the JEC is attached hereto as Exhibit A.

30. The JEC establishes the ownership structure that is in place today for Fuji Xerox. Pursuant to Section 5.1 of the JEC, as of March 30, 2001, the holdings of Common Stock in Fuji Xerox are as follows: Fuji directly holds 30,000,000 shares, or 75% of the total shares in Fuji Xerox, and Xerox Limited (indirectly owned by Xerox Corp.) holds 10,000,000 shares, or the remaining 25% of the total shares in Fuji Xerox.

31. Pursuant to Section 6.1 of the JEC, the Fuji Xerox board is comprised of 12 members, nine of whom were designated by Fuji and three by Xerox. In addition, pursuant to Section 7.1 of the JEC, the executive directors of Fuji Xerox are nominated and appointed by Fuji and Fuji is responsible "for the day-to-day management and supervision and the execution of policy." Thus, Fuji effectively has control over the day-to-day operations of Fuji Xerox.

32. Pursuant to Section 3.2 of the JEC, Fuji and Xerox are required to "deal with each other in matters relating to Fuji Xerox and this Agreement with honesty and good faith in accordance with the principles embodied in this Agreement and observing reasonable commercial standards of fair dealing."

[2] The named Fuji party to the JEC is Fuji Photo Film Co., Ltd., which was renamed Fuji Holdings Corporation in October 2006.

33. Moreover, pursuant to Section 7.3 of the JEC, Fuji Xerox is required to "promptly deliver to Fuji and Xerox: (i) annual audited consolidated financial statements prepared in accordance with U.S. GAAP; (ii) quarterly unaudited financial statements; and (iii) such other financial information as either Party may reasonably request in order to comply with reporting requirements to which it is subject under applicable law or contractual obligations."

34. Section 9.1 of the JEC governs the termination rights of the JEC. Specifically, pursuant to Section 9.1(a)(iii), "either Party may terminate this Agreement if the other Party materially breaches any of its covenants or agreements contained herein, and, if such breach is susceptible of cure, the breaching Party has not cured such breach within sixty (60) days from the date the Party seeking termination gives notice of breach . . . ."

35. In addition, pursuant to Section 9.1(a)(v):

> ***if a Change of Control occurs and a Competitor (a) becomes the beneficial owner of more than thirty percent (30%) of the total voting power of XEROX*** CORP as described in clause (i) of the "Change of Control" definition, (b) acquires control of more than thirty percent (30%) of the total voting power of the surviving Person as described in clause (ii) of the "Change of Control" definition or (c) acquires assets of XEROX CORP as described in clause (iii) of the "Change of Control" definition, **[*FUJI*] *may terminate this Agreement*** upon written notice to XEROX CORP. (Emphasis added.)

Thus, under the JEC, if Xerox engages in a transaction with a competitor for just 30% of Xerox, Fuji has the right to terminate the JEC, which would then completely eliminate Xerox's governance and decision-making power with respect to the Fuji Xerox joint venture. At the same time, however, Fuji would still retain the exclusive rights to Xerox intellectual property and the manufacturing and selling of Xerox products in the Asia and Pacific Rim markets under the

separate Technology Agreement, as described below. Indeed, Fuji would retain such exclusive rights through at least March 2021.[3]

36. Pursuant to Section 9.3 of the JEC, if the JEC is terminated or there is a winding up of Fuji Xerox, the tradenames "Fuji" and "Xerox" and all rights thereto, as well as all other intellectual property and rights thereto granted by the Parties to Fuji Xerox, shall continue or be disposed of in accordance with applicable agreements, including without limitation the Technology Agreement.

37. Pursuant to Sections 10.1 and 10.2 of the JEC, all disputes concerning the agreement shall be referred to an independent arbitrator to be appointed by the Japan Commercial Arbitration Association of Tokyo, Japan, in accordance with whose rules the arbitration shall be conducted, and governed by Japanese law.

38. On March 30, 2001, Xerox filed a Form 8-K with the SEC, disclosing that it entered into the JEC with Fuji. The 8-K provides, in pertinent part, as follows:

> Registrant today confirmed that it has completed the sale of half of its stake in Fuji Xerox Co., Ltd. to Fuji Photo Film Co., Ltd. for 160 billion Yen in cash, approximately $1.3 billion based on the current exchange rate.
>
> Under the agreement, Fujifilm's ownership interest in Fuji Xerox increases from 50 percent to 75 percent. . . . .

39. Nowhere in that 8-K or any of the Company's public filings with the SEC prior to the announced change of control transaction on January 31, 2018—*a 17-year period*—did the Company ever attach a copy of the JEC or disclose the material terms described above, particularly the change of control provision that amounts to a "crown jewel" lock-up when

[3] This lock-up right also effectively blocks any sales to non-competitors because no private equity firm would buy Xerox without access to the Asian-Pacific market.

combined with the intellectual property, licensing, and manufacturing rights Xerox granted to Fuji and Fuji Xerox, as described below.

40. For example, in the Company's Form 10-K for fiscal 2016, the Company described the Fuji Xerox joint venture as follows:

> Fuji Xerox is an unconsolidated entity in which we own a 25 percent interest, and [Fuji] owns a 75 percent interest. Fuji Xerox develops, manufactures and distributes document processing products in Japan, China, Hong Kong, other areas of the Pacific Rim, Australia and New Zealand. We retain significant rights as a minority shareholder. Our technology licensing agreements with Fuji Xerox ensure that the two companies retain uninterrupted access to each other's portfolio of patents, technology and products.

Nowhere in the 2016 10-K, which was signed by Director Defendants Jacobson, Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski and Tucker, and Defendant Burns, did the Company disclose the existence of the JEC or any of its material terms, particularly the preclusive change of control provision therein.

41. Likewise, the Company's Form 10-K for fiscal 2015, which was signed by the Director Defendants Hunter, Keegan, Prince, Reese, Rusckowski, and Tucker, and Defendant Burns, contained the same barebones description of the Fuji Xerox joint venture and failed to disclose the existence of the JEC or any of it its material terms, including the preclusive change of control provision therein. In fact, by not disclosing the material joint venture agreements to shareholders over the past 17 years, the Company and its officers and directors throughout that period were asking shareholders to vote on the hundreds of director elections and multiple compensation and governance matters, and the hundreds of Xerox-related M&A transactions during that period, based on wholly incomplete and misleading information.

42. On January 31, 2018, nearly two decades after signing the JEC, the Company and the Director Defendants finally released a copy of the JEC in response to Plaintiff's persistent

demand that they do so. And now that the JEC has been released, it is obvious why the Company and the Director Defendants wanted to keep the terms of the JEC a secret from investors and the general public all these years—they did not want shareholders and the public at large to know that Fuji essentially had a blocking position on Xerox and its ability to sell itself to anyone other than Fuji.

43. Notably, the Company's deliberate decision to keep the terms of the JEC hidden from Xerox shareholders violated its own corporate governance policy. Xerox's Disclosure Policy and Guidelines, adopted in February 2001 and updated on November 15, 2008, require the Company and its board to disclose all material information to investors. Specifically, the Disclosure Policy and Guidelines state that "[a]ny information concerning the company is considered material if there is a substantial likelihood that a reasonable investor would consider it important in determining whether to buy, sell or hold, or engage in other transactions concerning the company's securities." Clearly, a reasonable investor would find the JEC's restrictive change of control provision important in deciding whether to buy, sell, or hold Xerox stock. Indeed, Plaintiff's persistent demand for the release of the JEC, as described below, confirms its materiality to his investment in Xerox. By keeping the JEC and its material terms a secret and omitted from the Company's SEC filings, Xerox and the Director Defendants defrauded Plaintiff (and all other Xerox shareholders), and the Director Defendants breached their fiduciary duties of disclosure to Plaintiff (and all other Xerox shareholders).

The March 2001 Side Letter

44. Along with the JEC, Xerox and Fuji entered into a Side Letter on or about March 30, 2001, whereby they agreed, among other things, that ***"[t]he Parties shall cause [Fuji Xerox]*** to continue to deliver ***to [Xerox]*** in a timely manner and in English financial and other data,

including but not limited to the following: (a) annual audited financial data prepared in accordance with U.S. GAAP and XC disclosure requirements; (b) quarterly unaudited financial data in accordance with U.S. GAAP; and (c) tax receipts, tax returns, balance sheet and profit and loss by legal entity, tax packages for depreciation, fixed assets, reserves and other financial information and local statutory annual reports." A copy of the Side Letter is attached hereto as Exhibit B. Thus, under the Side Letter, which was also kept a secret from Plaintiff and other shareholders until very recently, Fuji is required to ensure that Fuji Xerox deliver to Xerox financial statements in accordance with U.S. GAAP—which it failed to do, as described below.

45. In addition, the Side Letter provides that it shall be governed by, and construed in accordance with, the internal laws of Japan. Also, the Side Letter constitutes an integral part of the JEC and shall be deemed incorporated therein.

The Technology Agreement And Master Program Agreement

46. As part of the joint venture, Xerox had a Technology Agreement with Fuji Xerox, which began in 1999, was amended in March 2001, and further amended in April 2006. The term of the Technology Agreement is five years, automatically renewed for an additional five years unless either party gives notice not to renew at least six months prior to any renewal expiration date. A copy of the Technology Agreement is attached hereto as Exhibit C.

47. Under the Technology Agreement, Xerox granted Fuji Xerox a "royalty-free, exclusive license" to, among other things, Xerographic patents, technical information and copyrights of Xerox and its Subsidiaries so Fuji Xerox could manufacture, use, lease, sell, distribute, and reproduce Xerox products in the listed territories. In addition, Xerox agreed "to use commercially reasonable efforts to prevent the sale by a third party inside the Territory of Xerox's Xerographic Products unless such sale has been approved in writing by Fuji Xerox."

48. The "Territory" covered by the 2006 Technology Agreement included Japan, the People's Republic of China, the Special Administrative Region of Hong Kong of the People's Republic of China, the Special Administrative Region of Macau of the People's Republic of China, Taiwan, the Philippines, the Democratic People's Republic of Korea (North Korea), the Republic of Korea (South Korea), Thailand, Kampuchea (Cambodia), Laos, Vietnam, Indonesia, Singapore, Malaysia, Myanmar (Burma), Australia, New Zealand, Negara Brunei Darussalam, Republic of Fiji, Republic of Kiribati, Republic of Nauru, Papua New Guinea, Kingdom of Tonga, Republic of Vanuatu, Western Samoa, Tuvalu, Micronesia, but excluding United States territories, possessions or dependencies (the "Territory").

49. Xerox also granted Fuji Xerox "(i) an exclusive license to use Xerox Trademarks to manufacture, have made, use, lease, sell, distribute or otherwise dispose of Xerographic Products in the Territory; (ii) a non-exclusive license to use Xerox Trademarks to manufacture, have made, use, lease, sell, distribute or otherwise dispose of all other Products in the Territory; and (iii) a limited right, on a case by case basis and upon the prior written permission of Xerox, to use the 'Fuji Xerox Co., Ltd.' name on the nameplate attached to certain products sold outside of the Territory . . . ."

50. Xerox also granted Fuji Xerox (i) an option to receive a non-exclusive right and license to non-Xerographic, non-marking, Document Processing Activities ("DPA") technical information, copyrights and patents, subject to a royalty for certain products; and (ii) a right of first offer with respect to non-Xerographic marking products.

51. The Technology Agreement provides that "[a]ll computations relating to the determination of the amount of royalties and payments due and payable under this Agreement shall be made in accordance with generally accepted accounting principles in the United States

of America, as reflected in the practice of independent certified public accountants of international reputation acceptable to both Parties." In addition, "[e]ach payment of royalties by Fuji Xerox or Xerox shall be accompanied by a written statement in English, certified as true and accurate by a responsible executive of the reporting Party . . . ." Also, Fuji Xerox must "keep full and accurate records and accounts which may bear upon amounts, if any, payable pursuant to this Agreement." The Technology Agreement further provides that each Party shall "comply with all applicable laws and regulations" and shall be responsible "for making all legally required notification to all federal, state and local agencies in each Party's respective territory."

52. Under the clear terms of the Technology Agreement, Xerox has the right to terminate the Technology Agreement upon a material breach by Fuji Xerox of *any* of the covenants or provisions, and upon the expiration of a 60-day cure period, unless such breach is not capable of being cured—in which case, the termination is effective immediately.

53. In light of the admitted, massive accounting fraud committed by Fuji Xerox, as described below, Fuji Xerox materially breached its obligations and covenants under the Technology Agreement and, therefore, Xerox had the legal right to terminate the Technology Agreement. Moreover, the breaches by Fuji Xerox were not capable of being cured and would permit Xerox to terminate the Technology Agreement immediately.

54. Importantly, a termination of the Technology Agreement immediately terminates all rights and licenses of Fuji Xerox to Xerox intellectual property under the Technology Agreement, except with respect to the licenses relating to the Xerox trademarks, which terminate after a thirty-day period. Thus, by terminating the Technology Agreement, Xerox would take back full control over its intellectual property and the licensing, manufacturing, and selling of its products in the Asia and Pacific Rim markets. In addition, a termination of the Technology

Agreement constitutes a termination of the prior Technology Agreements by and between Xerox and Fuji Xerox, dated March 1, 1999, as amended and restated in March 2001.[4]

55. On September 9, 2013, Xerox and Fuji Xerox entered into a Master Program Agreement ("Master Agreement") under which the parties determined their rights and relationship concerning product development and mass production deals. A copy of the Master Agreement is attached hereto as Exhibit D. The Master Agreement is automatically terminated, without action of either party, if the Technology Agreement is terminated. However, individual program specific agreements ("PSA"), which are agreements that govern program specific terms and conditions for the design and development and the sale and purchase of certain products and deliverables, remain in effect and can be terminated or expire in accordance with their terms. Thus, for the same reasons Xerox had the legal right to terminate the Technology Agreement, it also had the legal right to terminate the Master Agreement.

56. Like the JEC, the specific terms of the Technology Agreement and Master Agreement were only recently disclosed to investors due to Plaintiff's repeated demand for their release. Thus, the Company and its officers and directors during a 17-year period of non-disclosure were deceiving Xerox shareholders and asking them to vote on Company-related matters based on incomplete and misleading information.

B. The Recent "Asian WorldCom" Accounting Fraud Scandal At Fuji Xerox Under Fuji's Watch

57. In April 2017, Fuji publicly announced that its board of directors had formed an independent investigation committee to conduct a review of suspected fraudulent accounting practices at Fuji Xerox. On June 12, 2017, Fuji announced that it received the investigation

[4] The Technology Agreement provides that the "Brand Provisions" of the agreement are governed by New York law and all other provisions of the agreement are governed by Japanese law. In addition, all disputes shall be submitted to the International Chamber of Commerce in San Francisco, California, and the language of such proceeding shall be English.

report from the independent investigation committee. On July 26, 2017, Fuji released a full English translation of the more than 200-page independent investigation committee's report and a 75-page summary of the report. A copy of the full report and summary is attached hereto as Exhibit E.

58. The report detailed a massive accounting fraud at Fuji Xerox, which had a profound impact on Fuji Xerox's financial statements and, in turn, Xerox's own financial statements. In total, the investigation committee identified aggregate adjustments to Fuji Xerox's financial statements of approximately 40 billion Japanese Yen, or U.S. $360 million, which primarily related to overstatements in revenue at Fuji Xerox's New Zealand and Australian subsidiaries. According to news reports, the financial impact of the accounting fraud was "70 percent over [Fuji's] initial estimate" after Fuji discovered the involvement of a second overseas unit, Fuji Xerox Australia. Pushkala Aripaka & Stephen Nellis, *Fujifilm flags bigger hit from improper accounting at overseas units*, Reuters (June 11, 2017 8:42 a.m.).

59. The report also sharply criticized ***Fuji*** for its prominent role in contributing to the accounting scandal, given the substantial control Fuji had over Fuji Xerox's operations. The report featured Fuji's President and Chief Operating Officer, Kenji Sukeno.

60. More specifically, the report stated that ***"[n]o adequate system has been built and managed at [Fuji]*** in order to share [Fuji Xerox's] information, and it cannot be denied ***that this point very likely delayed the discovery of the inappropriate accounting practice*** . . . ." The report further found that "[t]here were occasions when ***[Fuji]*** should have started its own, independent investigation, and this point . . . ***presumably is one of the factors that caused a delay in discovery of the inappropriate accounting practice in the Matter***." (Emphases added.)

The findings of Fuji's independent investigation committee show that Fuji failed to exercise proper oversight of Fuji Xerox.

61. The report also exposed Fuji's "hands off" approach to managing and monitoring the operations of Fuji Xerox, despite Fuji's obligation under the JEC to be responsible "for the day-to-day management and supervision" of Fuji Xerox. Among other things, the report states:

> [Fuji Xerox] has an Officer Nomination and Compensation Committee, and two of the four members are Mr. VV and Mr. WW from [Fujifilm Corporation]. However, according to an interview with [Fuji] General Manager of Corporate Planning Division Mr. UU, it seems that in reality the Officer Nomination and Compensation Committee accepted personnel proposals from [Fuji Xerox] as-is, and there are doubts as to whether it functioned adequately to monitor the execution of [Fuji Xerox's] individual operations.

62. The Fuji Xerox accounting scandal had devastating and far-reaching effects. In June 2017, New Zealand First's Leader, Winston Peters, released a statement on the fraud, stating that it "could be one of the largest corporate frauds in New Zealand history." Anne Gibson, *Fuji Xerox NZ operations had 'inappropriate' accounting: report*, NZ Herald (June 13, 2017 7:21 a.m.). Peters continued, "This will be big news internationally and drags our country's name through the mud."

63. Critically, the Fuji Xerox fraud had a substantial impact on the reported financial statements of Xerox. On August 7, 2017, Xerox publicly disclosed in its Form 10-Q for the period ending June 30, 2017 that it had determined that its cumulative share of the revised amount of the total adjustments identified as part of the investigation into the Fuji Xerox fraud was approximately $90 million and impacted fiscal years 2009 through 2017. In fact, as a result of Fuji Xerox's fraud, Xerox needed to restate its previously issued annual and interim consolidated financial statements for 2014, 2015, and 2016, and the first quarter of 2017.

C. The Director Defendants' Unjustified Failure To Exercise Xerox's Termination Rights Under The Joint Venture Agreements Prior To Negotiating And Approving The Proposed Transaction

64. In light of the admitted and indisputably massive accounting fraud at Fuji Xerox, and Fuji's lack of proper management and supervision of Fuji Xerox, which led to Fuji Xerox providing Xerox with financial statements that were false and not in accordance with U.S. GAAP and Xerox having to restate its own financial statements, Fuji and Fuji Xerox breached their respective contractual obligations and covenants under the JEC, Side Letter, and Technology Agreement.

65. As a result of these breaches, the Company had the legal right and the Director Defendants had the fiduciary obligation to pursue termination of these joint venture agreements, and even seek damages against Fuji Xerox and Fuji resulting from the accounting fraud. By doing so, the Company would have freed itself from Fuji's "crown jewel" lock-up right and taken back complete control over its intellectual property and the licensing, manufacturing and selling of its products in the Asia and Pacific Rim markets. With such freedom and control, Xerox would be in a significantly greater position to negotiate a strategic alternative with Fuji or another competitor or third party.

66. But instead of pursuing Xerox's legal rights and remedies, the Company and the Director Defendants decided to keep the JEC and related agreements in place and pursue the extremely unfavorable Transaction with Fuji and Fuji Xerox, as described in more detail below. In fact, there is no evidence that the Director Defendants even explored such termination options or legal remedies against Fuji and Fuji Xerox as a result of the acknowledged massive accounting fraud. The Director Defendants' failure to pursue obvious and advantageous legal

remedies available to Xerox is incomprehensible and constitutes a violation of their fiduciary obligations to the Company and all its shareholders.

D. Plaintiff Raises Serious Concerns With Xerox Management And Xerox's Relationship With Fuji, And Demands Exploration Of Strategic Alternatives To Fuji And Release Of The Top-Secret Joint Venture Agreements

67. For nearly a decade, Plaintiff has been one of the top five shareholders of Xerox. In May 2017, acting for the benefit of all Xerox shareholders and their investments in the Company, Plaintiff sent a letter to Defendant Jacobson, the CEO of Xerox, raising "critical and timely" concerns with respect to Xerox's relationship with Fuji and demanding that the Company's management and board immediately explore its legal options with respect to its contractual relationship with Fuji and strategic alternatives to Fuji. A copy of Plaintiff's May 2017 letter to Jacobson is attached hereto as Exhibit F.

68. Specifically, Plaintiff told Defendant Jacobson the following:

> The market's perception of Xerox's relationship with Fuji is concerning. The lack of clarity regarding the parties' relative rights, the importance of Asia to Xerox's future, and the off-market nature of the terms of the arrangement all give me great pause. The recent accounting scandal at Fuji Xerox has only exacerbated my concerns. *I believe that it is urgent for Xerox to explore its strategic alternatives regarding Fuji, including exercising Xerox's rights under its agreements to market check the overall relationship and its terms.*
>
> Further, the perception by the market that Xerox is inextricably intertwined with Fuji in a market as important as Asia has created a potentially major loss in value for Xerox in any change in control of the company. *It is difficult to conceive of a matter which would require more focus and energy from the board than this.*
>
> While I firmly support your review of these matters, I also want to caution you and the board that time is not our friend and that this matter should be concluded with all haste as the window of opportunity to optimize Xerox's relationship, to the extent it continues, with Fuji is now.
>
> *The joint venture was entered into over 50 years ago, and its terms appear to have only become worse for Xerox over time. Looking in from the outside given the opaque disclosures, the arrangement now favors Fuji and I see today's circumstances as a great opportunity to build value for Xerox.* This management team and board did not get Xerox into this situation, but a revised relationship with Fuji or others that is more favorable to the company and its shareholders

> would be a great start to the new era at Xerox. I will continue to pursue updates from you, and thank you for your discussions with my firm. Please advise the board of directors of this letter and my concerns. (Emphases added.)

69. Despite the justifiable and sound concerns raised by Plaintiff in his May 2017 letter, Defendant Jacobson and the rest of the Xerox board ignored Plaintiff's pleas and, instead, furthered and expanded Xerox's relationship with Fuji as evident by the contemplated Transaction.

70. In December 2017, Jonathan Christodoro, a Xerox board member at the time, sent a letter to Defendant Keegan, the Chairman of the board, announcing his resignation given his belief that the board was making decisions and going down a path that was inconsistent with his beliefs and not in the best interest of the Company and its shareholders.

71. On January 17, 2018, after being ignored for months and learning that Xerox was now in discussions with Fuji to substantially alter the joint venture relationship between Xerox and Fuji, Plaintiff wrote a public letter to the Director Defendants (a copy of which is attached hereto as part of Exhibit F), which stated as follows:

> For nearly a decade, I have been one of the top five shareholders of Xerox Corporation (the "Company" or "Xerox") and today am the third largest shareholder of the Company. During that period, despite a litany of challenges and disappointments too numerous to list here, I have not taken the step of writing a public letter to the Board of Directors of the Company (the "Board"), instead preferring to engage with Xerox privately, following the sale of my company, Affiliated Computer Services, Inc., to Xerox in 2010.
>
> Today, in order to protect all Xerox shareholders and to ensure that the Company does not take further steps to damage our collective shareholding investment, I am changing my long-standing position to publicly demand that Xerox immediately disclose its critical joint venture agreement with Fujifilm Holdings Corporation ("Fuji") in accordance with the unambiguous disclosure requirements of the U.S. securities laws. I further demand that the Board hire new and independent advisors following discussions with us to evaluate the Company's strategic options with Fuji, including the potential termination of what I suspect but am unable to yet confirm is a one-sided value destroying agreement disfavoring Xerox, that Fuji has repeatedly breached, including last year through the Asian "WorldCom" accounting scandal at Fuji Xerox. I wrote to the Board over eight

> months ago on this matter (attached), and I have repeatedly spent time and resources to explore these issues and request the relevant documents from the Company to no avail. I am very disappointed in Mr. Jacobson and his lethargic approach regarding Fuji.
>
> As you well know, shareholders and potential shareholders have been perplexed and put off of the Company by the venture with Fuji, speculating at the incredible materiality of its secret terms, from change of control provisions to manufacturing most of Xerox's products to all manner of potential terms that incredibly in 2018 are not disclosed by the Company at all. In this era of corporate governance, to omit disclosures of this magnitude and materiality is breathtaking.
>
> Furthering the harm, we read with interest that Xerox is now in discussions with Fuji to substantially alter its relationship with Fuji, which was material enough to warrant front page news in many of the most prominent financial news services, but left shareholders and potential shareholders guessing as to how to evaluate a change to a bedrock agreement guiding the Company's future that is nowhere disclosed in its voluminous public filings.
>
> It is now on record in a recent Wall Street Journal article that the venture has raised serious doubts in the minds of many Xerox investors and has moved overwhelmingly in Fuji's favor over time (see Wall Street Journal, "*In Talks, Fujifilm Outshines Xerox*"). At a time when the Board should be aggressively pursuing our shareholder rights to terminate the Fuji venture and liberate the Company globally, to instead plot in secret in violation of the law to cook up a short term band-aid is insufficient and unwise in the extreme and warrants shareholder action.
>
> All shareholders deserve to know now what Xerox's rights are under the central existing agreement governing the Company's future so that they can engage the Company, provide their views and make their investment and voting decisions with at least the minimum cards on the table. At a time when the Company appears to be bellying back up to a bar that has been unforgiving to Xerox that is doubly so.

72. Once again, Plaintiff's demand that the Director Defendants explore the Company's ripe termination rights of the joint venture agreements and liberate the Company to explore strategic alternatives to its relationship with Fuji fell on deaf ears. Instead, the Director Defendants finally disclosed copies of the joint venture agreements—which only further confirmed the serious concerns raised by Plaintiff about Xerox's one-sided, value-destroying agreements with Fuji—and hurried to complete this awful Transaction.

E. The Conflicted Director Defendants Approve A Dramatically One-Sided, Undervalued Change Of Control Transaction With Fuji And Shockingly Make Fuji's "Crown Jewel" Lock-Up Right Permanent

73. On January 31, 2018, Xerox and Fuji announced that they have entered into a definitive agreement to combine Xerox into Fuji Xerox. On February 5, 2018, Xerox filed a Form 8-K and attached copies of the Transaction agreements, including a Redemption Agreement and a Share Subscription Agreement. Pursuant to the terms of these agreements, Fuji Xerox, which is currently owned 75% by Fuji and 25% by Xerox, will become a wholly-owned subsidiary of Xerox, with Fuji Xerox taking out a loan for an amount up to $6.1 billion, along with cash on hand (if any), to acquire Fujifilm's ownership interest in Fuji Xerox. Following the acquisition, Fuji will use the $6.1 billion of proceeds to purchase newly issued shares of Xerox, giving it a 50.1% of ownership interest in Xerox, with Xerox's current shareholders owning 49.9% of the combined company. Xerox will then take out a $2.5 billion loan to pay current Xerox shareholders a special cash dividend of $2.5 billion, approximately $9.80 per share of common stock of Xerox. In addition, after closing, the combined entity will repay the loan taken out by Fuji Xerox to fund the acquisition of Fuji's ownership interest.

74. With respect to the corporate governance of the new, combined entity, Defendant Jacobson, the current CEO of Xerox and a member of the Xerox board, will serve as the CEO of the new combined entity. Additionally, the board of the new combined entity will have twelve members, seven appointed by the Fuji board (one of whom will be Jacobson) and five independent directors from the current Xerox board. Thus, a majority of the current ten (10) member Xerox board who approved this proposed Transaction will obtain executive or board positions in the new Fuji Xerox.

75. This complex and opaque Transaction approved by the conflicted Director Defendants dramatically undervalues the Company and gives Fuji majority ownership and control over Xerox without Fuji having to spend a single penny or having to provide any realistic control premium to Xerox shareholders. Notably, change of control premiums for comparable transactions generally average approximately 25%-30% over market price. In fact, to the extent there is any premium or value creation through this Transaction, that is because the overwhelming majority of synergies would come from Xerox, and not Fuji. Not surprisingly, in the Company's recent public disclosures concerning this Transaction, and in a clear effort to mislead shareholders and make the Transaction look more attractive than it really is, the Company valued itself (excluding its 25% share in the Fuji Xerox joint venture) at a lower EBITDA multiple than its current market value (including its 25% share in the joint venture).

76. Moreover, the conflicted Director Defendants failed to comply with their fiduciary duties by agreeing to terms that disproportionately favor Fuji and create extreme post-Transaction risk for Xerox shareholders. For example, Fuji is being allowed to purchase only 50.1% of Xerox despite the fact that Xerox, relative to Fuji Xerox, has greater revenue, greater EBITDA, and greater operating profit. Also, allowing Fuji to purchase 50.1% of Xerox—just enough to create its control—leaves the other 49.9% of Xerox shareholders hostage and subject to abuse by Fuji. Indeed, it is highly unusual and not the market-norm for the board of the target company—such as the Director Defendants—to approve a change of control transaction where the buyer corporation only owns 50.1% of the combined entity, as opposed buying out all of the shareholders in the deal.

77. Further evidence of the one-sided nature of the Transaction is that under the new dividend structure agreed to by Fuji and Xerox for the new combined Fuji Xerox, Fuji will end

up receiving over $120 million more in annual cash dividends than it currently receives from the joint venture, while Xerox shareholders will receive $0 in additional regular annual cash dividends. Simply put, this is a one-sided, disastrous deal for Xerox shareholders. It is therefore no surprise that Xerox's stock price has not experienced the usual rise after an announced change of control transaction, but instead has seen a decline in its stock price as Xerox shareholders clearly understand how unfavorable this transaction is for them.

78. Additionally, the Director Defendants abdicated their fiduciary duties to Xerox shareholders by lying to Xerox shareholders in the current disclosures related to the proposed Transaction. Specifically, the Director Defendants have led Xerox shareholders to believe that they had no way out of Fuji's deal-restrictive "crown jewel" lock-up rights under the joint venture agreements and, therefore, they are essentially forced to do a deal with Fuji. This is simply not true. The Director Defendants have had the legal right to terminate the joint venture agreements and Fuji's "crown jewel" lock-up right since last year, *prior to* any negotiation or approval of this proposed Transaction, in light of the massive accounting fraud committed by Xerox Fuji, under the watchful eye of Fuji. And had they exercised such rights, the Company would have freed itself from Fuji's "crown jewel" lock-up right and taken back complete control over the use of its intellectual property and the licensing, manufacturing, and selling of its products in the Asia and Pacific Rim markets. With such freedom and control, Xerox would be in a significantly greater position to negotiate a strategic alternative with Fuji, another competitor, or third party. Yet, the Director Defendants consciously chose not to take such action and instead proceeded with the totally one-sided and economically starved Transaction with Fuji.

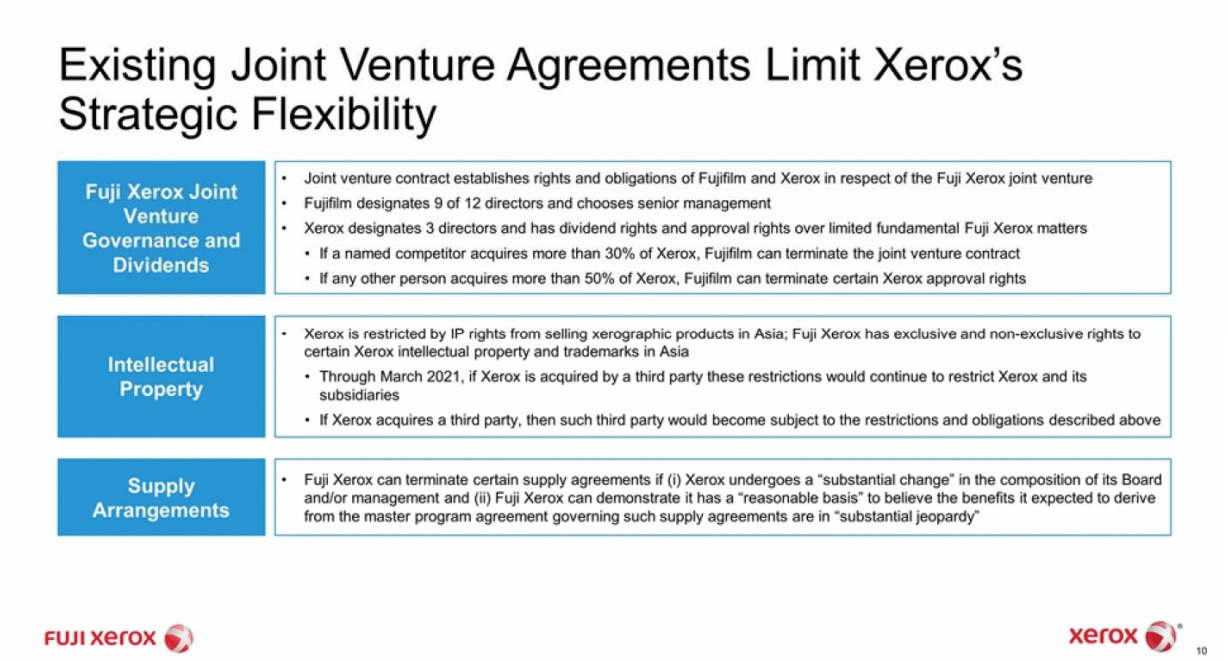
79. Even worse, the Director Defendants have made it impossible to now consider any alternative proposal prior to the shareholder vote because, under the Share Subscription

Agreement entered into as part of this Transaction, the Director Defendants have shockingly made the previously undisclosed, terminable and admitted deal-restrictive "crown jewel" lock-up right of Fuji under the joint venture agreements ***permanent***. A copy of the Share Subscription Agreement is attached hereto as Exhibit G. Specifically, under Section 4.01(b)(xiv) of the Share Subscription Agreement, the Director Defendants have agreed not to amend, waive or ***terminate*** any Xerox "Material Contract," which includes the joint venture agreements, and to allow Fuji to seek specific performance if Xerox breaches this provision of the Agreement. In other words, the Director Defendants have effectively given Fuji a "get-out-of-jail-free" card and released the Company's ability to pursue legally sound and ripe termination rights under the joint venture agreements and thereby undo the prohibitive "crown jewel" lock-up right Fuji has therein. Thus, Xerox shareholders were left in the dark about Fuji's "crown jewel" lock-up right for nearly two decades and, when finally informed about it, they are left to discover that the Director Defendants have actually agreed to make Fuji's lock-up permanent. Such bad faith conduct by the Director Defendants is simply inexcusable.

80. In fact, by making Fuji's "crown jewel" lock-up right permanent, the Director Defendants are further misleading shareholders by stating in the public filings associated with the Transaction that they have the right to accept and consider new "unsolicited" offers, knowing full well such a right is illusory. It is absurd to believe that the Director Defendants truly have the freedom to entertain new offers at this time when Fuji has a permanent lock-up right under the terms of the proposed Transaction. Also, the Company will have to pay a whopping $183 million to Fuji if it accepts another offer. The reality is that the only way the Director Defendants can truly engage in a fair and equitable bidding process is if Fuji's "crown jewel"

lock-up is immediately terminated, which the Company has the legal right to do, and potential bidders can then make a bid for Xerox with complete access to the Asia and Pacific Rim markets.

81. On February 9, 2018—more than a week after announcing the proposed Transaction—Xerox finally came clean to shareholders and admitted in its public disclosures concerning the Transaction that Fuji's "crown jewel" lock-up right under the joint venture agreements—which it kept hidden from Plaintiff and other shareholders for nearly two decades—has prevented the Company from entering into a change of control transaction with anyone other than Fuji. As Xerox stated in a recent slide presentation to shareholders: *"Existing Joint Venture Agreements Limit Xerox's Strategic Flexibility."* A copy of the Xerox slide presentation is attached hereto as Exhibit H. The following is the portion of the presentation confirming Fuji's stranglehold on Xerox as a result of the "crown jewel" lock-up rights Fuji has under the joint venture agreements:



82. Given such an admission, it is abundantly clear that the Director Defendants could not—and did not—conduct any true and fair bidding process in connection with this proposed

Transaction and, even worse, without Court intervention, they are precluded from doing so now because of the ***permanent*** blocking rights Fuji has under the Share Subscription Agreement.

CLAIMS FOR RELIEF

COUNT I

BREACH OF FIDUCIARY DUTY (AGAINST THE DIRECTOR DEFENDANTS)

83. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–82 above as if fully set forth herein.

84. The Director Defendants stand in a fiduciary relationship with Plaintiff and the other public shareholders of Xerox and owe them, as well as the Company, fiduciary duties of care, good faith, loyalty, candor, and independence. To this end, the Director Defendants are required to not act in bad faith, with deceit, and to avoid conflicts of interest. In addition, in undertaking a change of control transaction, the Director Defendants are required to act in the best interest of Xerox shareholders and attempt to obtain a control premium that is fair and adequate. Indeed, shareholders do not get a second bite at the apple when dealing with a change of control premium. The Director Defendants are also required to ensure that the process surrounding the negotiation, consideration and approval of such transaction is fair and free of "deal protection" devices that impede the Company and shareholders ability to conduct a market-check on the proposed Transaction.

85. As described above, in negotiating and approving the proposed Transaction, the Director Defendants, individually and acting as a part of a common plan, breached their fiduciary duties of care, good faith, loyalty, candor, and independence to Plaintiff and Xerox's other shareholders.

86. Among other things, the Director Defendants did not act in the best interests of the Company and its shareholders by negotiating and ultimately approving a Transaction that disproportionately favors Fuji, significantly undervalues the Company, and provides a wholly inadequate, if any, change of control premium to Plaintiff and all other Xerox shareholders. The Director Defendants also improperly structured the Transaction in a manner that leaves the remaining, minority 49.9% of Xerox shareholders hostage to Fuji, the majority shareholder. It also enables Fuji to receive over $120 million more in annual cash dividends than it currently receives from the joint venture, while Xerox shareholders, in contrast, receive $0 in additional regular annual cash dividends.

87. The Director Defendants also failed to pursue a fair and transparent bidding process given the existence of the unlawful and secretive "crown jewel" lock-up right Fuji has under the joint venture agreements. Indeed, the Director Defendants have admitted that Fuji's "crown jewel" lock-up limited Xerox's strategic alternatives. Even worse, the Director Defendants agreed to make Fuji's deal-prohibitive lock-up rights permanent. Such a permanent lock-up right clearly prevents the proposed Transaction from undergoing a fair and equitable market-check.

88. Moreover, the Director Defendants have knowingly made disclosures to Plaintiff and other Xerox shareholders concerning the Transaction that are false and misleading and violate the Company's own disclosure policies. These misleading disclosures include failing to adequately inform shareholders of the existence of Fuji's "crown jewel" lock-up right under the joint venture agreements and the Company's legal right to terminate such lock-up right prior to any negotiation and approval of the proposed Transaction. In fact, the Director Defendants

participated in the Company's 17-year fraud about the nature and material terms of the joint venture agreement.

89. Also, the Director Defendants, who are part of the "old guard" and are beholden to the Defendant Jacobson, the CEO, were conflicted when they approved the Transaction. In fact, at least a majority of the Director Defendants will have executive and board positions with the new combined entity.

90. As a result of the Director Defendants' numerous breaches of their fiduciary duties, Plaintiff faces an imminent risk of irreparable injury and has no adequate remedy at law. Indeed, if the proposed Transaction is permitted to close, the opportunity for Xerox shareholders to benefit from a full and fair market check and receive a superior control premium will be lost forever because the improper, but terminable, lock-up rights Fuji has under the joint venture agreements will become permanent. Accordingly, the Court should enjoin the proposed Transaction.

COUNT II

AIDING AND ABETTING BREACHES OF FIDUCIARY DUTIES (AGAINST FUJI)

91. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–90 above as if fully set forth herein.

92. Fuji is a knowing and active participant in this flawed and unfair Transaction approved by the Director Defendants. Thus, Fuji has aided and abetted the Director Defendants' breaches of fiduciary duties to Plaintiff and all other Xerox shareholders.

93. Among other things, in negotiating the Transaction, Fuji knew that the proposed Transaction disproportionately favored Fuji both on the economics and structure. Even Fuji's CEO has acknowledged this fact when boasting to the Nikkei Asian Review, the "*scheme will*

allow us to take control of Xerox without spending a penny." Indeed, Fuji exploited its already superior position to obtain a deal patently unfair to Xerox shareholders.

94. Moreover, Fuji knew that the Company and the Director Defendants were not being truthful and candid with Xerox shareholders about Fuji's "crown jewel" lock-up rights under the joint venture agreements. Indeed, Fuji assisted the Director Defendants in continuing to deceive Xerox shareholders and keep the existence of Fuji's "crown jewel" lock-up rights a secret until after the proposed Transaction was announced and Fuji's "crown jewel" lock-up rights became permanent.

95. Fuji also knew that the permanent "crown jewel" lock-up right it received and demanded from the Director Defendants as part of the Transaction was an improper preclusive "deal protection" device and would prevent the Director Defendants from engaging in any true market-check.

96. As a direct result of Fuji's aiding and abetting of the Director Defendants' breach of their fiduciary duties, Plaintiff has been harmed and faces an imminent risk of irreparable injury, and has no adequate remedy at law.

97. The Court should therefore preliminarily, and if necessary, permanently enjoin Fuji, and all persons acting in concert with it, from proceeding with the contemplated Transaction and any further aiding of the Director Defendants' breaches of their fiduciary duties to Plaintiff and other shareholders.

COUNT III

COMMON LAW FRAUD
(AGAINST XEROX, THE DIRECTOR DEFENDANTS AND BURNS)

98. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–97 above as if fully set forth herein.

99. As a major shareholder and investor in Xerox, Plaintiff relied on the truth and accuracy of the Company's public statements and filings. Plaintiff had every reason to believe that the public filings signed by the Director Defendants and Burns were truthful and did not omit information that would be material to him and other Xerox investors.

100. As described above, however, the Company, the Director Defendants and Burns knowingly and repeatedly made public statements and filings that were false and misleading. To this end, the Company, Director Defendants and Burns—many of whom were officers or directors of the Company for many years—were fully aware of the material terms of the joint venture agreement, particularly the "crown jewel" lock-up rights these agreements provided to Fuji; yet they kept that critical information a secret from Plaintiff and other shareholders for many years.

101. In fact, nowhere in the Company's annual financial reports for fiscal 2015 or 2016, which were signed by the Director Defendants and Burns, did they disclose the material terms of the joint venture agreements, particularly the "crown jewel" lock-up rights these agreements provided to Fuji. Significantly, there was nothing stopping the Company, the Director Defendants, or Burns from disclosing these material terms to Plaintiff and other Xerox shareholders.

102. Had Plaintiff been made aware of the material provisions in the joint venture agreements, particularly the "crown jewel" lock-up rights these agreements provided to Fuji, he would have altered his decision-making with respect to the purchase and sale of his Xerox stockholdings.

103. As a result, Plaintiff has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, including:

a) preliminarily and permanently enjoining the Director Defendants and Fuji, and all persons acting in concert with them, from proceeding with the proposed Transaction;

b) directing the Director Defendants to immediately comply with their fiduciary obligations to Plaintiff, the Company and other Xerox shareholders;

c) directing the Director Defendants to eliminate the improper lock-up provisions in the joint venture agreements and Transaction agreements;

d) directing the Director Defendants to remedy all of their false and misleading disclosures to Plaintiff and Xerox shareholders;

e) directing Fuji to cease its unlawful aiding and abetting the Director Defendants' breaches of fiduciary duty;

f) awarding damages in favor of Plaintiff and against the Director Defendants as a result of their fraudulent conduct and breaches of fiduciary duties in an amount to be determined at trial;

g) reimbursement of Plaintiff's costs and expenses incurred in this action, including his reasonable attorneys' fees; and

h) such other and further relief as may be just and proper.

Dated: February 13, 2018
New York, New York

KING & SPALDING LLP

By: */s/ Israel Dahan*
Israel Dahan
Richard T. Marooney, Jr.
Peter Isajiw
1185 Avenue of the Americas
New York, NY 10036

Telephone No.: (212) 556-2114
Email: idahan@kslaw.com

Robert E. Meadows
(*pro hac vice application forthcoming*)
1100 Louisiana, Suite 4000
Houston, TX 77002
Telephone No.: (713) 276-7370
Email: rmeadows@kslaw.com

Counsel for Plaintiff