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

CARMEN RIBBE, derivatively on behalf of XEROX CORPORATION, Plaintiff, v. 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, CENTERVIEW PARTNERS, LLC and FUJIFILM HOLDINGS CORPORATION, Defendants, and XEROX CORPORATION, Nominal Defendant.	Index No. **SUMMONS** Date Index No. Purchased: May 24, 2018

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: May 24, 2018

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By: /s/ *Amy Miller*

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Dated: May 24, 2018

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Plaintiff Carmen Ribbe ("Plaintiff"), by and through his attorneys, alleges, upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys, a review of litigation documents, including those filed in *Deason v. Fujifilm Holdings Corp., et al.*, Index No. 650675/2018 (Supr. Ct. N.Y. Cnty.) ("*Deason I*") and *In re: Xerox Corp. Consol. S'holder Litig.*, Index No. 650766/2018 (Supr. Ct. N.Y. Cnty.) (the "Class Action"), this Court's Decision & Order dated April 27, 2018 in the Class Action (the "Decision"), as well as news articles, public filings made by Xerox Corporation ("Xerox" or the "Company"), and other publicly available information, except as to those allegations that pertain to Plaintiff himself, which are alleged upon knowledge, as follows:

PRELIMINARY STATEMENT

1. This derivative action arises because Xerox's board of directors (the "Board") and its former Chief Executive Officer ("CEO"), Jeff Jacobson ("Jacobson"), have repeatedly breached their fiduciary duties by favoring their own interests to the detriment of Xerox and its stockholders over the last year while they faced pressure from shareholder activist, Carl Icahn ("Icahn"), who had threatened to launch a proxy contest to force a quick sale of the Company. Now, instead of seeking to hold those fiduciaries responsible for the harm that they caused to Xerox, the Company—through the same self-interested fiduciaries—agreed to a settlement with Icahn and other stockholders who alleged direct claims against the Board members, which not only releases these fiduciaries from liability for their egregious misconduct, but also wrongfully compensates them for those improper actions using Company funds. This settlement further cedes control of the Board, for no consideration and without explanation, to Icahn, who is now able to engineer a prompt sale of Xerox to satisfy his person short-term wishes. Accordingly, Plaintiff brings this lawsuit on Xerox's behalf to: (1) stop the Board from taking further actions that are detrimental to

the Company, including obtaining approval of the proposed settlement; and (2) recover damages from the Board members and others who aided and abetted the directors' breaches of their fiduciary duties to the Company over the last year, causing substantial harm to Xerox.

2. Since the introduction of its photocopying technology to the general public nearly sixty years ago, Xerox has grown into a household name. For most of that time, Xerox has partnered with Fujifilm Holdings Corporation ("Fuji") in a joint venture that distributes Xerox products in Asia and the Pacific Rim ("Fuji Xerox"). Currently, Xerox owns only 25% of Fuji Xerox. The contracts governing Fuji Xerox's operations provide Fuji with considerable power to oppress Xerox if it undergoes a change of control. The Board, however, kept the terms of these "crown jewels" contracts secret from Xerox stockholders until Darwin Deason ("Deason"), the Company's third-largest stockholder, forced their disclosure in early 2018.

3. Unaware of the crown jewels contracts, in November 2015, Icahn began acquiring Xerox stock, and made clear his intention to influence Xerox's strategic direction in ways to maximize his earnings on his recent investment. Specifically, Icahn was determined to push the Board for a near term sale of the Company. As such, during the summer of 2016, Icahn threatened to launch a proxy contest in 2017, unless the Board complied with certain of his demands. For fear of losing their positions, the Board members authorized Xerox to enter into a standstill agreement with Icahn under which Icahn's designee Jonathan Christodoro ("Christodoro") was appointed to the Board, as well as its Corporate Governance and Finance Committees, in June 2016.

4. Several days before Christodoro's appointment, the Board tapped Jacobson, who was then Xerox's Head of Technology, to take over as CEO effective January 1, 2017. Jacobson, therefore, knew from the start that his job security would be at immediate risk due to Icahn's

ceaseless pressure to force a sale of the Company. Moreover, as he would later make clear, Icahn wanted to replace Jacobson from the start, because Jacobson was, in Icahn's words, an "acolyte" of Ursula Burns, Xerox's previous CEO, who was in Icahn's estimation "obvious[ly] . . . not up to the task." Xerox, however, was out-performing the market after spinning off its business process outsourcing assets (the "Conduent Spin-Off"). As such, it appeared as if the Company's fortunes were improving, and it had no immediate need to sell itself regardless of Icahn's short-term compulsions.

5. Shortly after he became CEO, Jacobson went to Japan to meet with Shigetaka Komori ("Komori"), Fuji's Chairman and CEO, and Kenji Sukeno ("Sukeno"), Fuji's President and Chief Operating Officer ("COO"), in March 2017. During their meetings, Komori asked Jacobson whether Xerox would be interested in being acquired by Fuji in an all-cash purchase and sale of all shares of Xerox stock, and indicated that Fuji understood that Xerox would likely require a 30% premium in any deal. Notably, at this time, Fuji had $8 billion in cash reserves. Jacobson responded to this overture by highlighting how Xerox's situation had improved since the Conduent Spin-Off as evidenced by the significant stock price increase post spin-off.

6. Per Jacobson's request, Takashi Kawamura ("Kawamura"), Fuji's Head of Strategy, provided him with a letter confirming Fuji's interest in acquiring Xerox, though the letter did not provide any specifics or deal terms. Despite the lack of details, the Board decided to explore an acquisition with Fuji, and engaged Centerview Partners, LLC ("Centerview") as a financial advisor.

7. In late April 2017, however, Fuji put talks of a potential acquisition on hold when a massive accounting scandal arose at Fuji Xerox. Unsurprisingly, Icahn was not pleased that talks about an all-cash deal with Fuji had stalled, and Icahn redoubled his pursuit of a prompt sale of

the Company that would allow him to exit his Xerox investment while pocketing a short-term profit. In fact, during a dinner in mid-May 2017, Icahn informed Christodoro, Jacobson, and certain other Xerox executives that he would seek to fire Jacobson as CEO unless he quickly engineered a sale of the Company.

8. Not wanting to lose his job, and now viewing Icahn as his "enemy," Jacobson teamed up with Fuji to push through a deal to preserve his job, even though he knew that its terms would be much worse for Xerox's stockholders than the all-cash sale with a 30% premium deal that the parties had tabled while Fuji worked to resolve the accounting issues at Fuji Xerox. Jacobson, with Icahn breathing down his neck, did not have time to wait for that scandal to be resolved.

9. By July 2017, the Board had also lost confidence in Jacobson, and commenced a process to replace him with a new CEO. The Board, however, did not tell Jacobson to stop his discussions with Fuji about a potential deal until November 2017. Nor did the Board insist or even request that another director participate in Jacobson's discussions with Fuji, or do anything else to supervise Jacobson's discussions with Fuji. Consequently, the Board's utter failure to oversee Jacobson's interactions with Fuji allowed him to secure a transaction with Fuji that favored his personal interests over those of the Company.

10. Moreover, when Jacobson learned of the Board's decision to replace him, he doubled down on his efforts to effectuate "Project Juice" – the name for talks between Xerox (Juice) and Fuji (Fruit) which had initially contemplated an all-cash deal with a control premium, but by then had morphed into a potential ***cashless*** change of control transaction that would keep Jacobson employed. Specifically, on November 10, 2017, Xerox Board Chairman, Robert Keegan ("Keegan") advised Jacobson that the Board had identified three candidates to replace Jacobson,

and that he was to cease discussions with Fuji about Project Juice. Contrary to the Board's directive, Jacobson immediately turned to Kawamura, who by now was his confidant at Fuji. Jacobson told Kawamura that the Board had decided to replace him as CEO, and thereafter conspired with Fuji to push Project Juice forward, with the additional caveat that he must remain CEO of the combined company. Fuji was more than ready to help facilitate a transaction, which would provide Fuji with control of Xerox at virtually no cost.

11. Shortly after Keegan informed Jacobson of the Board's instruction to cease all discussions with Fuji, Keegan improperly authorized Jacobson to continue his discussions with Fuji as Jacobson claimed he was key to securing a deal with Fuji. Jacobson then continued his self-interested negotiations with Fuji behind the Board's back. By the end of November 2017, Fuji had provided Jacobson with a proposed term sheet for a transaction that would provide Fuji with majority control of Xerox at no cost to Fuji. Jacobson then enlisted Centerview's assistance to sell this potential transaction to the Board at its December 4, 2017 meeting.

12. After learning of the cashless transaction, Icahn no doubt was anxious to take action against the Board, but was still subject to the standstill agreement because his appointee, Christodoro, was a Xerox director. On December 11, 2017, Icahn announced that Christodoro had resigned from the Board, allowing Icahn to propose a competing slate of directors for Xerox's Board.

13. Icahn's actions caused the Board to perform an about-face about Project Juice, which Jacobson had continued to push forward for his own disloyal reasons. Now the other Board members had their own disloyal reasons to support this deal with Fuji, too. In this regard, if Fuji controlled Xerox, they would not have to face the humiliation of being thrown off the Board after a proxy fight with Icahn. Moreover, as part of the proposed deal, Jacobson had secured the power

to pick five current Xerox directors (in addition to himself) to serve on the combined company's board for a guaranteed five year term, which he was to hand out like political plums to Board members. The Board, including Jacobson, therefore began working with its financial advisor, Centerview, to present the deal with Fuji in a dishonest light to stockholders to gain their approval of the deal. During this entire time, the Board also let Jacobson continue to steer the sales process without any meaningful oversight, notwithstanding that those directors had decided to replace Jacobson several months earlier.

14. For a guaranteed $10 million pay day, Centerview eagerly assisted the Board in its self-interested approval process by issuing a fairness opinion supporting the deal with Fuji. Centerview issued that fairness opinion despite its earlier advice to the Board, which informed the directors that this type of transaction undervalued Xerox and provided no control premium. Centerview had also advised that, even though Xerox was under no pressing need to move forward with a strategic transaction, an all-cash deal would be value maximizing. However, on top of its $10 million payday, Centerview also stood to receive an additional $40 million upon closing. Centerview therefore provided a fairness opinion supporting a deal it knew, as evidenced by its earlier presentations, was not fair.

15. For its part, the Board members, anxious to avoid a proxy contest and secure continuing positions on the combined company's board, in turn unanimously approved a resolution characterizing the deal with Fuji, including its $183 million termination fee and other preclusive deal protection terms, as "fair from a financial point of view and in the best interests of the Corporation and its shareholders," even though they knew that its terms would harm Xerox. On January 31, 2018, Xerox announced that it had agreed to a transaction with Fuji, whereby Fuji

would obtain majority control over Xerox without paying any premium to Xerox's stockholders (the "Fuji Transaction").

16. On February 13, 2018, Deason filed his initial complaint in the Supreme Court of the State of New York, County of New York to stop the consummation of the Fuji Transaction.[1] After expedited discovery and a two-day evidentiary hearing, on April 27, 2018, Justice Barry R. Ostrager issued the Decision enjoining the Fuji Transaction and the enforcement of a by-law provision that would have prevented competing director nominations, including an expanded slate to be advanced by Icahn. The Court found that the director defendants likely breached their fiduciary duty in connection with the Fuji Transaction, with Fuji aiding and abetting those breaches.

17. The Court's Decision had immediate impact on all the directors, who decided to act in their own self-interest yet again to the detriment of the Company and its stockholders. Specifically, within days of its issuance, the Xerox directors, Deason, Icahn and certain entities he controls, and Xerox entered into a Director Appointment, Nomination and Settlement Agreement dated May 1, 2018 (the "Initial Settlement Agreement"). Without regard to the Company's best interests, the Board agreed to the Initial Settlement Agreement, which provided Jacobson and the other resigning directors with complete releases for their numerous breaches of fiduciary duty

[1] Deason first commenced an action seeking injunctive relief with respect to the Fuji Transaction on February 13, 2018, and commenced a second action concerning the director nomination by-law provisions on March 2, 2018. *See Deason I*; *Deason v. Xerox Corp. et al.*, Index No. 650988/2018 (Supr. Ct. N.Y. Cnty.) ("*Deason II*"). After Deason filed his first suit, four additional stockholders filed putative class action seeking related relief. *Asbestos Workers Philadelphia Pension Fund v. Fujifilm Holdings Corp., et al.*, Index No. 650766/2018 (Supr. Ct. N.Y. Cnty.); *Iron Workers District Council of Philadelphia& Vicinity Benefit and Pension Plan v. Xerox Corporation, et al.*, Index No. 650795/2018 (Supr. Ct. N.Y. Cnty.); *Carpenters Pension Fund of Illinois v. Xerox Corporation, et al.*, Index No. 650841/2018 (Supr. Ct. N.Y. Cnty.); *Robert Lowinger v. Fujifilm Holdings Corp.*, Index No. 650824/2018 (Supr. Ct. N.Y. Cnty.). Those four stockholders' cases were consolidated as the Class Action.

while allowing their resignations to be treated as "voluntary" rather than "for cause" so all of these fiduciaries, who the Court found had likely breached their fiduciary duties were still entitled to lucrative compensation packages at the Company's expense on their way out the door.

18. For example, Jacobson, who the entire Board and Icahn wanted to fire for cause, stood to receive a golden parachute likely worth at least $18 million. The outgoing non-employee directors' deferred stock units ("DSUs"), "whether vested or unvested," were to be paid out in cash, totaling approximately $6.8 million. The 2017 and 2018 DSUs alone are worth approximately $1.35 million. In ordinary circumstances, Jacobson and the nonemployee directors would have been terminated for cause in ignominy.

19. Under the terms of the Initial Settlement Agreement, the Board further agreed to allow Icahn and Deason to appoint five new non-employee directors to the Board, and further agreed to appoint as CEO Giovanni (John) Visentin ("Visentin"), who recently worked with Icahn and Deason. As a result, the Board would become majority controlled by Icahn and Deason without allowing any other stockholders to vote on their representation.

20. Accordingly, the Board's decision to approve the Initial Settlement Agreement constituted an independent breach of fiduciary duty, separate and apart from its approval of the Fuji Transaction, because the Initial Settlement Agreement released valuable claims against the members of the Board while providing Jacobson and certain other conflicted directors with releases and tens of millions of dollars in compensation at the Company's expense. In addition, it turned control of the Board over to Icahn without a stockholder vote.

21. On May 3, 2018—just two days after executing the Initial Settlement Agreement—the Board reneged on its agreement. Relying on a technical provision in the Initial Settlement Agreement related to the filing of certain stipulations of dismissal, the Board issued an

announcement that the Initial Settlement Agreement had "expired in accordance with its terms." The Board added that "[a]s a result, the current Board of Directors and management team [would] remain in place." The directors then violated their fiduciary duties again by appealing the Decision, which wasted additional Company funds.

22. After ten days of public posturing, including statements and an open letter by the Board and three open letters by Icahn and Deason, the same parties to the Initial Settlement Agreement announced that they had entered into a new Director Appointment, Nomination and Settlement Agreement dated May 13, 2018 (the "New Settlement Agreement"). Pursuant to the New Settlement Agreement, Jacobson and non-employee directors Keegan, William Curt Hunter ("Hunter"), Charles Prince ("Prince"), Ann N. Reese ("Reese"), and Stephen H. Rusckowski ("Rusckowski") stepped down from the Board in exchange for Xerox purportedly terminating the Fuji Transaction, allegedly due to Fuji's breaches. Those directors, however, breached their fiduciary duties when they approved the Fuji Transaction, and its renegotiation or abandonment was a *fait accompli* given the Court's findings in the Decision. Moreover, the New Settlement Agreement again offers the breaching parties broad releases and exorbitant departure payments, just like the Initial Settlement Agreement.

23. Directors Sara Martinez Tucker ("Tucker"), Gregory Q. Brown ("Brown"), Joseph J. Echevarria ("Echevarria"), and Cheryl Gordon Krongard ("Krongard") will similarly secure full releases and indemnification for their breaches of fiduciary duty, but will retain their positions on the Board. In this regard, the Board members looked after themselves, again, and exposed Xerox to additional liability from a Fuji lawsuit by failing to even try to work a Fuji release into the settlement's terms. The Board, thus, took an already bad settlement and made it considerably worse.

24. In place of outgoing CEO Jacobson, Chairman Keegan, and directors Hunter, Prince, Reese, and Rusckowski, Icahn and Deason have hand-picked the following replacements who were appointed to the Board pursuant to the New Settlement Agreement:

- New CEO Visentin was engaged by Icahn and Deason as a consultant in connection with the abandoned Xerox proxy contest.
- New Chairman Keith Cozza ("Cozza") is President and CEO of Icahn Enterprises L.P., which is related to entities that are parties to the New Settlement Agreement.
- "New," purportedly "independent" director Christodoro was a former Icahn employee and Icahn's designee on the Board prior to his resignation and concomitant termination of Icahn's standstill agreement with Xerox.
- New director Nicholas Graziano ("Graziano") is a Portfolio Manager at Icahn Capital.
- New director A. Scott Letier ("Letier") is the Managing Director of Deason Capital Services, LLC.

These five directors, each of whom is beholden to Icahn and Deason, now collectively constitute a majority of the Board. Moreover, Xerox stockholders will not have an opportunity to voice their opinions about the new Board majority until after they have controlled the Company's strategic direction for over two months. A long-term viewpoint is pivotal, particularly with aspects of the "crown jewels" contracts expiring in March 2021, after which time the Company's value will likely increase dramatically.

25. By virtue of the New Settlement Agreement, Icahn and Deason now exercise control over the Board. In addition, the New Settlement Agreement requires the Company to reimburse Icahn and Deason for all of their out-of-pocket expenses, including legal fees incurred in connection with their involvement with Xerox from May 1, 2017 through May 13, 2018. As a result, Icahn and Deason have essentially gained control over the Board, regardless of the fact that they control just 15% of the voting power of Xerox stock, at no cost whatsoever and without stockholder approval.

26. With their new control, Icahn and Deason will undoubtedly conduct a quick sale of the Company, as they have consistently promised to do. Icahn and Deason will not be stopped by their hand-picked CEO, Visentin, who will benefit from lucrative change-in-control payments in his employment agreement worth between $18.4 and 21.37 million if the Company is sold. In fact, Visentin has already received an $11.5 million signing bonus, and is consequently situated to become the best-compensated auctioneer in history.[2]

27. Moreover, here, any stockholder demand to take corrective action would be futile with respect to the entire nine-member Board. First, the four continuing directors lack independence because they face a substantial risk of liability for their roles in approving the Fuji Transaction, the New Settlement Agreement, and a related memorandum of understanding entered in the Class Action (the "New MOU"). Next, the other five directors are beholden to Deason and Icahn. As such, these directors lack independence to consider derivative claims against third parties, like Fuji, for aiding and abetting the Board's breaches of fiduciary duty related to the Fuji Transaction. In this regard, Deason, with Icahn's support, has already asserted direct individual claims against Fuji as an aider and abettor, which creates a conflict of interest for those five directors to consider asserting concurrent claims on the Company's behalf against Fuji and other third parties, like Centerview. Finally, the five directors, who owe their directorships to the New Settlement Agreement, are incapable of considering a demand to prosecute claims for breach of fiduciary duty against the members of the old Board, which are expressly released by the same New Settlement Agreement and New MOU.

[2] To boot, Visentin will be paid target compensation worth $13 million *per annum* with a ceiling of $18.6 million for so long as he is working as a CEO-cum-auctioneer.

28. In addition, the New MOU filed with the Court in the Class Action makes clear that the putative "class plaintiffs" will seek to ***globally*** release the breach of fiduciary duty claims against wrongdoers who sat on the Board. Adding insult to injury, nearly all of the harms alleged by the "class plaintiffs" are, in fact, derivative harms under New York law, and these plaintiffs are therefore seeking to release claims that they are not able to properly prosecute in the first place. What is more, the surviving aiding and abetting claim against Fuji is, likewise, derivative in nature, and "class plaintiffs" are therefore not proper parties to pursue that claim.

29. Absent intervention by a stockholder pressing derivative claims, Xerox is at imminent risk of forfeiting valuable claims against Board members who breached their fiduciary duties, as well as Fuji and Centerview who aided and abetted those breaches. Moreover, the Company is effectively ceding control of the Board to two activist stockholders, who together control only a little more than one-seventh of the voting power of Xerox stock, and have stated their single-minded intention to sell Xerox. Without a challenge to the releases in the New Settlement Agreement, the Company will have no recourse in the event that Fuji prevails in an action challenging the termination of the Fuji Transaction.

30. Accordingly, Plaintiff brings this action derivatively on behalf of Xerox to: (1) enjoin the Board from taking actions that cause further harm to the Company related to the New Settlement Agreement and the New MOU; and (2) recover significant damages on behalf of the Company from the harm caused by the Board's ever-growing list of breaches of fiduciary duty and the entities that aided and abetted those breaches.

STATEMENT OF JURISDICTION AND VENUE

31. This Court has personal jurisdiction over each of the defendants named herein pursuant to New York Civil Practice Law and Rules ("C.P.L.R.") §§ 301 and 302 because each

defendant is located in New York, resides in New York, or is licensed to do business in New York and is actually transacting business in New York, or has engaged in activities in New York relating to the events described in this Complaint.

32. Venue is proper pursuant to C.P.L.R. § 503(a). Additionally, Article XI, Section 1 of the By-Laws of Xerox Corporation, dated August 15, 2016 (the "By-Laws") provides in relevant part that "[u]nless the Company consents in writing to the selection of an alternative forum, any New York State Supreme Court located in New York County in the State of New York . . . shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee or shareholder of the Company to the Company or the Company's shareholders, (iii) any action asserting a claim arising pursuant to any provision of the New York Business Corporation Law or the Company's Certificate of Incorporation or these By-Laws (with respect to each, as may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine."

PARTIES

Plaintiff

33. Plaintiff Carmen Ribbe is a current stockholder of nominal defendant Xerox and has continually held shares since January 2017. Plaintiff was, therefore, a stockholder at the time of the wrongdoing alleged herein.

Nominal Defendant

34. Nominal Defendant Xerox is incorporated under the laws of the State of New York and maintains its principal executive offices at 201 Merritt 7, Norwalk, Connecticut 06851-1056. The Company's stock is listed on the New York Stock Exchange under the ticker symbol "XRX." As of January 31, 2018, Xerox had 254,673,473 shares of common stock outstanding.

Defendants

35. Defendant Jeffrey Jacobson joined Xerox as President of Xerox's Global Graphic Communications Operations in February 2012. Jacobson was promoted to CEO, and served as a member of the Board, starting in January 2017. Jacobson had also served as a director of Fuji Xerox since November 2016. Pursuant to the New Settlement Agreement, Jacobson voluntarily resigned from his positions as CEO and director of the Company at the effective time of the New Settlement Agreement, namely, 5:30PM on May 13, 2018. Jacobson received compensation that could be worth as much as $14.4 million in 2017, and will receive a golden parachute that is likely worth at least $18 million through the New Settlement Agreement.[3] Moreover, on April 4, 2018, Jacobson was granted 58,078 restricted stock units is worth approximately $1.62 million, and 178,370 stock options. If Jacobson had been fired for cause or forced to resign involuntarily, he would have not have received any additional compensation other than his deferred compensation balance of $293,674.

36. Defendant Gregory Q. Brown has been a member of the Board since 2017, and serves on Xerox's Compensation Committee.

37. Defendant Joseph J. Echevarria has been a member of the Xerox Board since 2017, and serves as a member of Xerox's Audit and Finance Committees.

38. Defendant William Curt Hunter served as a member of the Xerox Board from 2004 until resigning on May 13, 2018 pursuant to the New Settlement Agreement, and also served as a member of Xerox's Audit and Finance Committees. Hunter received $107,500 in cash compensation as a director in 2017, in addition to $180,000 of DSUs. Hunter received an additional $90,000 worth of DSUs on January 12, 2018. Hunter currently owns 12 shares of Xerox

[3] As discussed below, the details of Jacobson's exit compensation have not been disclosed.

common stock. Hunter holds 66,346 DSUs, excluding dividend equivalents issued in 2018, that will be accelerated and paid out pursuant to the New Settlement Agreement.

39. Defendant Robert J. Keegan was a member of the Xerox Board from 2010 until resigning on May 13, 2018 pursuant to the New Settlement Agreement, and also served as Chairman of the Board. Keegan received $214,167 in cash compensation as a director in 2017, in addition to $180,000 of DSUs for serving on the Board. Keegan received an additional $90,000 worth of DSUs on January 12, 2018. Keegan does not own any shares of Xerox common stock, but holds 38,722 DSUs, excluding dividend equivalents issued in 2018, that will be accelerated and paid out pursuant to the terms of the New Settlement Agreement.

40. Defendant Cheryl Gordon Krongard has been a member of the Xerox Board since 2017, and serves as a member of Xerox's Compensation Committee.

41. Defendant Charles Prince was a member of the Xerox Board from 2008 until resigning on May 13, 2018 pursuant to the New Settlement Agreement. Prince also served as Chairman of Xerox's Corporate Governance Committee and a member of its Compensation Committee. Prince received $105,000 in cash compensation as a director in 2017, in addition to $180,000 of DSUs. Prince received an additional $90,000 worth of DSUs on January 12, 2018. Prince currently owns 2,500 shares of Xerox common stock. Prince likewise holds 47,552 DSUs, excluding dividend equivalents issued in 2018, that will be accelerated and paid out pursuant to the New Settlement Agreement.

42. Defendant Ann N. Reese was a member of the Xerox Board from 2003 until resigning on May 13, 2018 pursuant to the New Settlement Agreement, and was also the purportedly Lead Independent Director until May 2017. Reese was Chairman of Xerox's Finance Committee and a member of its Audit and Corporate Governance Committees. Reese received

$127,500 in cash compensation as a director in 2017, in addition to $180,000 of DSUs. Reese received an additional $90,000 worth of DSUs on January 12, 2018. Reese currently owns 1,663 shares of Xerox common stock. Reese also holds 61,686 DSUs, excluding dividend equivalents issued in 2018, that will be accelerated and paid out pursuant to the New Settlement Agreement.

43. Defendant Stephen H. Rusckowski was a member of the Xerox Board from 2015 until purportedly resigning on May 13, 2018 pursuant to the New Settlement Agreement, and served as Chairman of Xerox's Compensation Committee. Rusckowski received $96,250 in cash compensation as a director in 2017, in addition to $180,000 of DSUs. Rusckowski received an additional $90,000 worth of DSUs on January 12, 2018. Rusckowski does not own any shares of Xerox common stock, but holds 17,952 DSUs, excluding dividend equivalents issued in 2018, that will be accelerated and paid out pursuant to the New Settlement Agreement.

44. Defendant Sara Martinez Tucker has been a member of the Xerox Board since 2011. Tucker, who is retired, is Chairman of Xerox's Audit Committee and a member of its Corporate Governance Committee.

45. Defendant Centerview Partners LLC is a Delaware limited liability company that is headquartered at 31 West 52nd Street, 22nd Floor, New York, New York, 10019. Centerview is an investment banking and advisory firm which advises companies in connection with mergers and acquisitions, financial restructurings, valuation, and capital structure.

46. Defendant Fujifilm Holdings Corporation is a multinational photography and imaging company incorporated under the laws of Japan with its principal place of business located in Tokyo, Japan.

47. The Defendants identified in paragraphs 35 through 44 are collectively referred to herein as the "Director Defendants." Together with defendants Fuji and Centerview and nominal defendant Xerox, they are referred to as "Defendants."

Relevant Non-Parties

48. Darwin Deason is Xerox's third-largest stockholder. On February 5, 2010, Deason acquired his substantial stake in the Company when Xerox bought Affiliated Computer Services Inc. ("ACS"), which Deason founded in 1988, in a cash and stock transaction worth $6.4 billion. According to the Form 10-K/A the Company filed with the United States Securities and Exchange Commission ("SEC") on April 30, 2018, Deason beneficially owns 15,322,341 shares of Xerox common stock, entitling him to vote 5.9% of the total voting power of the Company, including the 6,741,572 shares of common stock issuable upon the conversion of 180,000 shares of Series B Preferred Stock owned by Deason and his affiliates.

49. Carl Icahn is Xerox's largest stockholder. Icahn began acquiring his significant stake in the Company on November 11, 2015 with the purchase of 72,218,801 shares of common stock, followed by a purchase of an additional 10,087,023 shares on December 14, 2015. According to the Form 10-K/A the Company filed with the SEC on April 30, 2018, Icahn beneficially owns 23,456,087 shares of common stock (following a 1-for-4 reverse stock split on June 14, 2017), entitling him to vote 9.2% of the total voting power of the Company.

50. Fuji Xerox is a joint venture established between Fuji and Xerox that distributes Xerox products in Asia and the Pacific Rim.

51. Jonathan Christodoro was purportedly appointed to the Board pursuant to the New Settlement Agreement and serves as the Board's New (purportedly) "Independent" Director.

52. Scott Letier was purportedly appointed to the Board pursuant to the New Settlement Agreement.

53. Keith Cozza was purportedly appointed to the Board pursuant to the New Settlement Agreement, and currently serves as Chairman of the Board.

54. Nicholas Graziano was purportedly appointed to the Board pursuant to the New Settlement Agreement.

55. Giovanni (John) Visentin was purportedly appointed to the Board pursuant to the New Settlement Agreement, and is currently Xerox's CEO.

FURTHER SUBSTANTIVE ALLEGATIONS

I. In 2001, Xerox Entered into Certain "Crown Jewels" Agreements With Fuji, Which the Board Kept Secret Until Deason Forced Their Disclosure in 2018.

56. In 1959, Xerox burst onto the national scene with mass introduction of its "Xerox 914" photocopier. The Company expanded aggressively over the next few years. In 1962, it teamed up with Fuji to establish a joint venture, Fuji Xerox, which launched the Xerox 914 in certain foreign markets, and then expanded its operations over the years. At first, Xerox and Fuji were equal partners in Fuji Xerox, with each company taking a 50% equity stake.

57. In addition, over the last twenty years, Xerox and Fuji entered into a series of agreements, styled the "crown jewels" agreements because they concern Xerox's most valuable property and business arrangements and give Fuji an effective veto over any strategic transaction that allows one of its competitors to acquire a 30% stake in Xerox. These agreements impair Xerox's ability to negotiate with potential buyers other than Fuji. Certain aspects of the joint venture agreements, however, are set to expire in the coming years, and Xerox will then be much more marketable for a sale.

A. The Joint Venture Agreements

58. In March 2001, Xerox sold half its stake in Fuji Xerox to Fuji. As a result, Fuji acquired a 75% stake in the joint venture, while Xerox was relegated to minority owner due to its

25% stake. A Joint Enterprise Contract (the "JEC"), dated March 30, 2001, governs certain aspects of Fuji Xerox and makes Fuji responsible for overseeing the day-to-day functions of the joint venture.

59. The JEC also contains several provisions that protect Xerox from abuse as a minority stakeholder in Fuji Xerox. For example, Xerox retains veto rights over certain corporate transactions. Under the JEC, Xerox further designates three of twelve directors on the Fuji Xerox board, including two members of the finance committee, one member of each other board committee, and one of the joint venture's four statutory auditors. The JEC also requires Xerox and Fuji to deal honestly and in good faith and observe reasonable commercial standards of fair dealing with each other. In addition, an incorporated side letter dated March 30, 2001, requires Fuji Xerox to deliver promptly certain financial data, including quarterly and annual financial data prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), as well as "other financial information as either Party may reasonably request" to Xerox.

60. Importantly, the JEC contains a termination provision providing that "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 . . . ."

61. The crown jewels provision of the JEC, however, is not favorable to Xerox. In particular, Fuji maintains a termination right, which would eliminate all of the minority protections set forth in the JEC, in the event that Xerox undergoes a change in control. As set forth in Section 9.1(a)(v) of the JEC:

> 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.

Fuji, therefore, would exercise complete dominance over Fuji Xerox in the event that a competitor acquires 30%, with Xerox losing both its veto rights and its rights to select directors, committee members, and an auditor. Unchecked by the protections set forth in the JEC, Fuji would be free to take a range of actions that could harms Xerox, including: (i) liquidating Fuji Xerox; (2) terminating dividend payments to Xerox; (3) causing Fuji Xerox to abandon certain production programs with Xerox[4]; (4) causing Fuji Xerox to engage with Xerox competitors; (5) managing the Fuji Xerox in a way that benefits Fuji to the exclusion or detriment of Xerox; or (6) manipulating sales to reduce the royalties paid to Xerox under a technology agreement entered into between Xerox and Fuji Xerox in 2006.

62. In addition to the JEC, Xerox has also entered into numerous technology agreements with Fuji Xerox, pursuant to which Xerox has licensed it to use, lease, manufacture,

[4] On September 9, 2013, Xerox and Fuji Xerox entered into a "Master Program Agreement" which sets forth terms for certain program agreements between Xerox and the joint venture. The Master Program Agreement allows Fuji Xerox to terminate agreements governing the purchase of mass-produced products upon a change in control. Deason has alleged, upon information and belief, that "a substantial portion of the products that Xerox purchases from Fuji Xerox are subject to" such agreements. Accordingly, Fuji could cause Fuji Xerox to terminate certain production agreements with Xerox, which would substantially disrupt Xerox's business.

There is significant reason to fear that Fuji would abuse its control over Xerox. As it stands, Fuji uses its control over Fuji Xerox to extract rent through related party transactions, including "consulting fees" on top of legitimate services. As David Hess ("Hess")—a Centerview partner and member of Centerview's technology investment banking team who worked extensively on the Fuji Transaction—wrote to Jacobson on January 7, 2018, "there is $350 mm annual payments from [Fuji Xerox] to [Fuji]. Some of that seems to be for real services. Other is 'consulting' fees."

and distribute Xerox products and property in certain geographic areas.[5] The 2006 Technology Agreement, effective April 1, 2006 (the "Technology Agreement") is the current iteration of the agreement. All computations relating to royalties and payments due under the Technology Agreement must be made in accordance with GAAP, and each royalty payment must be accompanied by a written statement by a company executive certifying that the underlying information is true and accurate. Fuji Xerox is further obligated to keep "full and accurate records and accounts" bearing on amounts payable under the Technology Agreement. Xerox also maintains the right to terminate the Technology Agreement upon a material breach by Fuji Xerox that is not cured within sixty days. If the breach cannot be cured, termination can be effected immediately.

63. Notably, if Fuji terminated the JEC due to a change in control, Fuji Xerox would still maintain its rights under the Technology Agreement. Those rights provide Fuji Xerox with exclusive use of Xerox's intellectual property ("Xerox IP") in certain geographic areas through at least March 2021.

64. The cumulative force of the JEC and incorporated side letter, the Technology Agreement, and the Master Program Agreement create an impediment to the acquisition of Xerox by any entity other than Fuji, making them crown jewels agreements. In this regard, if Xerox sells itself to another bidder, Fuji can terminate various production agreements with Xerox, seize control of Fuji Xerox, and continue to use Xerox IP for years. Xerox's acquirer, contrarily, will be deprived of many of Xerox's most valuable assets.

[5] These areas include Japan, China, Hong Kong, Macau, Taiwan, the Philippines, North Korea, South Korea, Thailand, Cambodia, Laos, Vietnam, Indonesia, Singapore, Malaysia, Myanmar, Australia, New Zealand, Negara Brunei Darussalam, Fiji, Kiribati, Nauru, Papua New Guinea, Tonga, Vanuatu, Western Samoa, Tuvalu, and Micronesia, but exclude U.S. territories, possessions, or dependencies.

65. Notwithstanding the centrality of these agreements, ***they were largely undisclosed*** until Xerox was forced to make them public on January 31, 2018 due to pressure from Icahn and Deason, the latter of whom had sent a private letter dated May 22, 2017 and a public letter dated January 17, 2018 in which he demanded disclosure of the "secret terms" of Xerox's joint venture agreements with Fuji. Xerox had filed only a redacted version of the Technology Agreement and had not disclosed the material terms of the Master Program Agreement or JEC. Xerox did so even though the Company's Disclosure Policy and Guidelines, which were adopted in February 2001 and updated in November 2008, require disclosure of "material" information and provide 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."

66. Until Deason forced their full disclosure, Xerox stockholders were unaware that Xerox had entered into these crown jewel agreements, which constitute an effective lock-up that prohibits Xerox from allowing any of Fuji's competitors from acquiring a 30% or greater stake in Xerox, or any individual, entity, or group other than Fuji from acquiring a 50% or greater stake in Xerox.

II. Unaware of Xerox's Crown Jewel Agreements with Fuji, Stockholder Activist Icahn Begins Acquiring a Stake in Xerox to Attempt to Influence Xerox's Strategic Decision.

A. Icahn's Long History of Shareholder Activism Has Shown That He Can Cause Harm to Companies in His Attempts to Maximize His Own Profits from His Investments in Such Companies.

67. Icahn has a long history of stockholder activism dating back to 1976 when he authored what Icahn's biographer Mark Stevens called the "Icahn Manifesto," a memorandum in which Icahn advocated the acquisition of "large positions" in "asset-rich target companies" to generate "large profits" by "control[ling] the destinies of the companies." Icahn posited that these

large positions would enable investors to "try[] to convince management to liquidate or sell the company to a 'white knight,'" "wag[e] a proxy contest," "mak[e] a tender offer," or "sell[] back [their] position to the company." Icahn noted that, "if all else fails, the target may offer to liquidate." In sum, Icahn had devised a strategy to benefit a short-term, activist investor by extracting money from the "target" company.

68. Icahn gained fame for putting this theory into practice in the 1980s, and soon earned a reputation as the quintessential "corporate raider." Perhaps Icahn's most famous "trophy" was the crippling blow he dealt to Trans World Airlines ("TWA"). In 1985, Icahn bought up more than 20% of TWA stock, and took the company private in 1988. Icahn was paid $469 million in the going-private transaction, while TWA took on $540 million in debt and 4,000 flight attendants lost their jobs. In 1991, he sold TWA's profitable London routes for $445 million, and took the company into bankruptcy the following year. When TWA emerged from bankruptcy in 1993, Icahn, as a creditor, owned 55% of the company, and used this leverage to secure a sweetheart deal from TWA called the "Karabu ticket agreement," pursuant to which Icahn could purchase tickets through St. Louis for the next eight years for 55 cents on the dollar, and resell them at a discount. Icahn opened a website, Lowestfare.com, and immediately began undercutting TWA. American Airlines ("American") would later estimate that this transaction cost TWA $100 million per year. In 2001, TWA announced its third bankruptcy, and that it would be selling itself to American rather than being repurchased by Icahn. Two years later, American disclosed that only half of the 20,000 TWA employees at the time of the merger remained at the combined company.

69. Icahn has engaged in comparable dealings at numerous companies during his run as an "activist investor" née "corporate raider."

70. As UCLA Law Professor and principal investigator for the UCLA-Sloan Foundation Research Program on Business Organizations Lynn A. Stout wrote in an opinion editorial for *The Wall Street Journal* entitled "Why Carl Icahn Is Bad for Investors," Icahn "rob[s] average investors of better returns." Stout argues that strategies like Icahn's, which focus on a quick return, pay off short-term holders at the expense of long-term stockholder value:

> A second favored hedge fund strategy is to demand massive dividend or share repurchase programs, temporarily raising share prices by draining "excess" cash out of a firm. This is exactly what Mr. Icahn got in recent years at Time-Warner and Motorola. The result is often an anemic, over-leveraged company that lacks the funds to invest in long-term projects and that cannot weather economic downturns. This is of no concern to an activist hedge fund, which has already sold its shares. It's a serious problem for long-term average investors trying to save for retirement.

71. Precisely because of the potential threat that raiders like Icahn pose to long-term stockholder value, corporations resort to drastic measures to keep them at bay. One such device that rose to prominence in the 1980s is the stockholder rights plan, commonly known as a "poison pill," pursuant to which existing stockholders are afforded certain rights, such as the right to buy further shares of stock at a discount, if a potential bidder acquires a threshold stake in a company. As explained by Marty Lipton, a partner at Wachtell, Lipton, Rosen & Katz who is commonly credited as the inventor of the poison pill, corporate raiders "create short-term increases in the market price of their stock at the expense of long-term value." Lipton notes that "[t]here is quality empirical evidence that short-termism and activism have an adverse impact on the long-term prospects of companies generally, and not just those who have been attacked but those who have adjusted to forestall attacks."

72. As recounted by *The Globe and Mail*, Lipton told the Ontario Securities Commission that the cost of dealing with raiders is now even visited upon companies that are not facing a present threat, as "the far larger majority of companies that are not directly targeted by

activists are now adopting policies to deter takeovers by cutting costs, reducing spending on research and development and laying off employees to improve short-term profitability."

73. Icahn's reputation for enriching himself without regard to the long-term prospects of a company served as partial inspiration for the character of Gordon Gekko in the movie *Wall Street*, who attempted to strip the assets of an airline for personal profit. Icahn even supplied Gekko's line, "if you want a friend, get a dog," which Icahn had told a TWA worker.

74. As such, any company that Icahn invests in with intent to influence its strategic direction must be armed with an able and vigilant board that is ready to protect both the Company and its stockholders' interests. At Xerox, however, the Board was weak. Moreover, the directors were more concerned with protecting their own interests than those of the Company and its stockholders as their fiduciary duties required.

B. In November 2015, Icahn Begins Working His Activist Strategies on the Xerox Board As He Quickly Acquires Nearly a 10% Position in the Company.

75. In November 2015, Icahn began acquiring his position in Xerox. By December, he had secured an 8.13% stake in the Company. In a required securities filing, Icahn disclosed his intention for his firm to engage Xerox officers and directors "relating to improving operational performance and pursuing strategic alternatives, as well as the possibility of board representation."

76. As soon as Icahn acquired his stake in the Company, he immediately set to work lobbying then-CEO Ursula Burns to spin off the services business. Notwithstanding that the Company had already decided upon proceeding with the Conduent Spin-Off regardless of Icahn's position, Icahn successfully secured for himself three seats on the board of the spun-off company.

77. On January 29, 2016, Xerox announced the Conduent Spin-Off, *i.e.*: the spin-off of its services division, largely comprised of ACS, which it had purchased from Deason for $6.4 billion in 2010.

78. The Conduent Spin-Off, however, was not enough to satisfy Icahn. As he would later reveal in an interview with *Fortune*, Icahn "wanted new, competent management at both Conduent and Xerox" and "told Burns [he] didn't believe she should run either one." Moreover, as Icahn recently stated in an open letter to stockholders dated February 12, 2018, in his opinion, the Board had "kept Ursula Burns on as Chairman and CEO for years after it was obvious to everyone else that she was not up to the task (indeed in 2014 she was ranked number 4 on Time Magazine's list of '9 CEOs With the Absolute Worst Reputations')."

79. On June 23, 2016, Xerox announced that Jacobson, then-head of the Company's technology unit, would take over as CEO after the spin-off, effective January 1, 2017. Icahn, however, remained highly skeptical, as he had hoped that Xerox would name an outside CEO. In his interview with *Fortune*, Icahn criticized the Board's decision: "Jacobson was an acolyte of Burns. . . . He was part of the team that badly hurt Xerox." Icahn therefore took steps to ensure that he could keep his finger closely on the pulse of the Company.

80. On June 27, 2016, Xerox and Icahn announced that that they had entered into a standstill agreement under which Icahn designee Christodoro was appointed to the Board, as well as its Corporate Governance and Finance Committees. Icahn, for his part, agreed not to engage in various activities including the solicitation of proxies, presentation of stockholder proposals, or joining of litigation against Xerox, other than to enforce the terms of the standstill agreement, for so long as Christodoro remained on the Board. However, Icahn—pursuant to a non-disclosure agreement—would also be privy to inside information that was not disclosed to other Xerox stockholders. Icahn thereby cemented himself as a constant threat, watching the Company's every move through Christodoro and otherwise looming over the Board.

81. Shortly after entering into the standstill agreement, Icahn remained displeased and, by the fall 2016, was threatening to start a proxy contest again. Knowing Icahn's reputation and wanting to preserve their director positions, the Board and Icahn settled this proxy contest by appointing Director Defendant Krongard to the Board and hiring Robert Brody to the management team as Head of Competitiveness and Performance Optimization.

82. On January 3, 2017, Xerox announced that it had completed the Conduent Spin-Off. The trading price of Xerox stock increased 20% that day, and Xerox subsequently continued to out-perform the market. In fact, both JP Morgan and Credit Suisse upgraded Xerox to "buy" on the first trading day after the Conduent Spin-Off. As such, it appeared as if the Company's fortunes were improving.

83. As Xerox's new CEO, on March 7, 2017, Jacobson went to Japan to meet with Komori, Fuji's Chairman and CEO, and Sukeno, Fuji's President and COO. During his meetings, Jacobson discussed increased collaboration between Fuji and Xerox in Fuji Xerox, as well as the necessity of improving the profitability and cost competitiveness of this joint venture. Significantly, Komori asked Jacobson whether Xerox would be interested in being acquired by Fuji in an all-cash purchase and sale of all shares of Xerox stock. Notably, Fuji had $8 billion in cash reserves at this time.

84. Jacobson replied that, while Xerox's situation had improved since the Conduent Spin-Off as evidenced by its significant stock price increase, Jacobson was open to an acquisition discussion if it meant maximizing Xerox stockholder value. Komori and Sukeno responded that they believed a combination of Fuji, Xerox, and the joint venture would be value maximizing for all parties, and understood that Xerox would likely require a ***30% premium*** in such a purchase and sale.

85. Jacobson requested that Komori and Sukeno reduce their overture to writing, which Jacobson could present to the Board. The following day (*i.e.*, March 8, 2017) Kawamura, Fuji's Head of Strategy, provided Jacobson with a letter, memorializing the executives' discussions and confirming that Fuji was interested in acquiring Xerox, though the letter did not provide any specifics or deal terms. Fuji requested a response from the Board by March 17, 2017.

86. On March 13, 2017, the Board held a meeting where it discussed Fuji's letter. After a discussion, the Board agreed to explore an acquisition with Fuji, and engaged Centerview as a financial advisor.

87. On March 16, 2017, the Board held another meeting in which Centerview provided its initial (and honest) views about Xerox in a presentation analyzing the Company's recent performance, alternative potential buyers, and the economics of an all-cash sale to Fuji. Specifically, Centerview advised the Board that Xerox had a "strong equity story," including "an ambitious and credible long-term vision for the business," a "significant and clearly articulated cost reduction plan," and strong free cash flow generation that would "support balanced shareholder returns, including an attractive dividend yield." In its presentation, Centerview also advised that the Fuji Xerox joint venture agreements as a whole "constrain[]" and "restrict" prospective transactions with suitors other than Fuji. Centerview's presentation further contained an assessment of recent acquisitions of domestic targets by Japanese acquirers since 2010, in which acquisition premiums averaged 27%.

88. Also on March 16, 2017, Jacobson replied to Fuji's overture by advising that Xerox's stock had increased nearly 30% thus far in 2017, which was "indicative of the confidence [Xerox] shareholders have in [Xerox's] prospects." Jacobson indicated that Xerox would "enter into discussions only if [it saw] a likelihood of success," and requested that Fuji provide "an initial

indication of the price per share" it anticipated offering. Jacobson demanded that the price reflect "an appropriate premium to [Xerox's] current trading price," as well as "the exciting opportunities Xerox is executing against" and the "substantial synergies that could result from the combination[.]" Jacobson further requested that Fuji "confirm [its] intention to offer [Xerox] shareholders 100% cash consideration, as well as anticipated sources of funds."

89. On March 23, 2017, Komori (Fuji's Chairman and CEO), replied to Jacobson and informed him that Fuji had a number of questions about Xerox, and requested an in-person meeting between Fuji and Xerox management. At about this time, a developing accounting scandal at Fuji Xerox hit a fever pitch. The scandal had first surfaced in July 2015 when an email alleging accounting irregularities, including overstated revenue for equipment leased by Fuji Xerox in New Zealand, was sent to executives and others at Fuji Xerox and Xerox. That email set in motion a chain of events that resulted in the appointment of an Independent Investigation Committee comprised of lawyers and financial specialists in April 2017.

90. On April 20, 2017, Fuji publicly announced the creation of the Independent Investigation Committee, and also disclosed that it was postponing the announcement of its financial results for the fiscal year ended March 31, 2017.

91. On April 24, 2017, Xerox's Audit Committee met to discuss Fuji Xerox's accounting fraud issues in New Zealand and Australia. The following day, Xerox announced that it was recognizing a $30 million charge in connection with the fraud:

> Fujifilm has publicly stated that it expects the investigation will be completed in May 2017, and that it intends to disclose the results shortly thereafter. Given our status as a minority investor, we have limited contractual and other rights to information and rely on Fuji Xerox and Fujifilm to provide information to us and are not involved in the investigation, including its scope and timing of completion. Although we have no reason not to rely on Fujifilm's estimated adjustment and we are not aware of any additional amounts related to this matter that would have a material effect on our financial statements, this investigation is ongoing and our

> future results may include additional adjustments that are materially different from the amount of the charge that we have already recognized in connection with this matter and the period(s) to which the charge relates, and we can provide no assurances relative to the outcome of any governmental investigations or any consequences thereof.[6]

92. At the end of April, 2017, Fuji advised Xerox that it was unable to continue discussions concerning an all-cash transaction in the "near term" because of the investigation into the Fuji Xerox accounting scandal.

III. Fearing that He Will Lose His Job, Jacobson Conspires with Fuji to Arrange a Transaction That Protects His Personal Interests to the Detriment of the Company and Its Stockholders.

93. On May 16, 2017, Icahn summoned Jacobson, Christodoro, and two Xerox executives, Osbourn and Brody, to his penthouse apartment for dinner. Jacobson discussed with Icahn Xerox's long-range projection, with an increase in earnings per share from 84 cents to 95 cents in five years, but with revenue still declining. Icahn, in turn, told Jacobson that he was disappointed with the Company's performance, did not believe that Jacobson was creating stockholder value or was the right CEO for Xerox, and also believed that Xerox needed to be sold and, in the event that it were not, Icahn would take steps to remove Jacobson. Icahn also said that he was sorry he had ever invested in the company and that he wanted out.

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[6] Xerox, however, did not receive a final audit of Fuji Xerox for 2017 until April 24, 2018, which showed that the losses from the Fuji Xerox accounting scandal were in fact $470 million, or 31% greater than the initial $360 million estimate As a result, Xerox had to revise its earnings for the first quarter of 2018 as its direct share of the losses increased from $90 million to $118 million. Notably, the Decision highlighted that, "[t]he transaction documents required Fuji to deliver the audited financial statement by April 15, 2018, so it appears that there may be further negotiations between Fuji and Xerox." In addition, when Xerox announced its revised earnings on May 2, 2018, the Company disclosed that it had realized an equity income loss of $68 million, $28 million of which was attributable to "its share of a Fuji Xerox charge (of JPY 12 billion) related to the correction of adjustments and misstatements identified in connection with the completion of audits of Fuji Xerox . . . as well as the review of Fuji Xerox's unaudited interim financial statements for the nine months ended December 31, 2017 and 2016. These adjustments and misstatements [were] incremental to those identified by the independent investigation of Fuji Xerox's accounting practices completed in the second quarter 2017."

94. Icahn made this threat to Jacobson even though Jacobson had only been Xerox's CEO for four and a half months. In Icahn's mind, as evidenced by his later statements, the recent upward swing in the price of Xerox stock was attributable to the Conduent Spin-Off. Icahn believed he was responsible for that transaction even though former CEO Ursula Burns had since told Bloomberg that the Conduent Spin-Off was already in the works by the time Icahn had disclosed his stake in the Company. Correspondence subsequent to this dinner makes clear that Icahn's looming threat was a constant presence in Jacobson's mind, and informed every decision he made from that point forward.

95. Just six days after Jacobson's dinner with Icahn, Deason wrote Jacobson the aforementioned May 22, 2017 letter concerning Xerox's relationship with Fuji and potential alternatives to Fuji. Jacobson now had to be concerned about two activists.

96. The Board then also started to question its CEO. As Director Defendant Krongard would later recall to the Board's Chairman, Director Defendant Keegan, the Board was then "exhaust[ing] every ounce of patience and coaching to make our current CEO a success." In fact, Keegan had prepared notes in April 2017 showing that directors were already concerned with Jacobson's performance as CEO. For example, Keegan's notes from an April 20, 2017 Board meeting reflect that directors complained Jacobson was "too slow on the learning curve," "a whiner," "overconfident," and exhibited "poor listening skills." Keegan also wrote: "Do we need him to complete 'Juice'?"

97. On June 10, 2017, the Independent Investigation Committee published its report concerning the Fuji Xerox accounting scandal. Fuji then announced on June 12, 2017, together with its delayed financial results, that the committee had found "certain accounting practices were inappropriate at Fuji Xerox New Zealand Ltd. as well as Fuji Xerox Australia Pty. Ltd., and the

Committee pointed out Fuji Xerox's inadequacy in corporate governance." In fact, the scale of the scandal was massive. The committee found that Australian and New Zealand managers had overstated revenue in a range of $340-$450 million in the five years through 2016. Indeed, this number was later revised upward to $470 million once more information about the fraud was ascertained. As Bill Osbourn, Xerox's Chief Financial Officer, noted in a January 17, 2018 email, KPMG, Fuji's auditor, has identified "over $200M in accounting issues primarily related to accounts receivables" relating to the period after March 31, 2017, in addition to the fraud identified in the Independent Investigation Committee report. Xerox itself has already realized a charge of approximately $30 million, and its share of total adjustments equals $118 million, up from the initial estimate of approximately $90 million. According to Pushkala Aripaka and Stephen Nellis, reporting for Reuters, the financial impact of the fraud was 70% greater than Fuji's initial estimate.

98. The Independent Investigation Committee's report was also very critical of Fuji, and specifically discussed the culpability of individuals all the way up to Sukeno, Fuji's President and COO. The Independent Investigation Committee further found 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 . . . ."

99. In response to the report, Fuji Xerox expressed its "deepest regrets to various stakeholders including our customers, partners and shareholders on this issue," and claimed that it "takes the Committee's findings very seriously" and had "renewed [its] management structure."

On June 12, 2017, the chairman of Fuji Xerox and three senior executives stepped down over the fraud.

100. At this time, Xerox could have terminated the "crown jewels" joint venture agreements with Fuji. Each one of the joint venture agreements offers the right to terminate for cause in the event of a material breach. The JEC, for example, provides that "either Party may terminate this Agreement if the other Party materially breaches any of its covenants or agreements contained herein . . . ." The JEC further requires that Fuji Xerox provide Xerox with GAAP financial statements. While each of the agreements also provides the opportunity to cure and/or submit the matter to mediation in the event that a party gives notice of breach, Xerox never gave any such notice to Fuji Xerox.

101. Notice of breach could have afforded Xerox a way out of the deal-preclusive joint venture agreements, at which time the Company could have pursued bids from other suitors. At the very least, Xerox could have sought to exit the agreements and renegotiate their terms so that future transaction discussions with potential acquirers other than Fuji would not be hamstrung out of the gate. The Board and Xerox's management did nothing, and discontent with the Company's leadership grew.

102. On July 20, 2017, Jacobson gave a presentation to the Board in which he described the status of his talks with Fuji. At this meeting, the Board completely lost confidence in Jacobson. As Keegan would later recall, his "recollection from that meeting is the board said and concluded that we don't think Jeff is stepping up to this. . . . We saw Jeff as overconfident, doesn't know what he doesn't know, and somewhat self-absorbed . . . not strategic." After Jacobson's presentation, the Board went into an executive session and unanimously agreed to begin looking for a new CEO. To that end, the Board formed a "Scan Committee" that day to evaluate potential

replacements for Jacobson. The Scan Committee was comprised of Keegan, Reese, Brown, and Christodoro, Icahn's director appointee. Christodoro's inclusion on the Scan Committee was no accident as Icahn had urged that the Board create such committee.

103. During the next two months, the Scan Committee met regularly to evaluate replacements, and hired a headhunter, Heidrick & Struggles ("Heidrick"), to identify candidates. Together with Heidrick,, the Scan Committee identified three top candidates with whom it met in person on October 13, 2017, including Visentin, who had emerged as a clear favorite and was later described by Keegan as "head and shoulders better than" Jacobson.

104. Facing enormous pressure from the Company's largest stockholder, third-largest stockholder, and later the Board itself, Jacobson started working on his scheme to keep his job with assistance from both Fuji and Centerview. The Board did nothing to stop him. Despite its loss of confidence in Jacobson and active search for his replacement, the Board took no steps to stop Jacobson from negotiating a potentially transformative transaction for Xerox. In fact, the Board did not even bother to supervise or participate in Jacobson's discussions with Fuji about Xerox's future despite believing that he was, at a minimum, incompetent.

IV. Jacobson Abandons His Fiduciary Duties as He "Negotiates" the Terms of the Fuji Transaction While the Board in Turn Breaches Its Fiduciary Duties by Failing to Oversee Jacobson's Actions.

105. At a May 23, 2017 Board meeting, Centerview made a presentation to the Board concerning certain potential strategic transactions, including not only a deal with Fuji—which was stalled due to the Fuji Xerox accounting scandal—but also the possibility of a leveraged buyout or transaction with HP Inc., née the Hewlett-Packard Company ("HP"). Centerview advised the Board that a straight sale would be "value maximizing[.]" In this regard, Centerview explained that Xerox's process in evaluating strategic transactions "must be designed to maximize pressure

on" Fuji and create "competitive tension" between Fuji and other potential deal partners, while the Company was "determining [the] level of potential interest from third parties."

106. In the course of negotiating the Fuji Transaction, Jacobson did precisely none of these things. Jacobson did not put pressure on Fuji or even look for other suitors. On the contrary, when HP came calling he affirmatively impeded them from making a competing offer. Instead, Jacobson focused his efforts on gift-wrapping Xerox for Fuji out of self-interest.

107. Jacobson returned to Japan on or about June 22, 2017, whereupon he met with Komori and Sukeno, as well as Masaru Yoshizawa ("Yoshizawa"), the Corporate Vice President and a director of Fuji. At the time, Director Defendant Krongard had already expressed her reservations about Jacobson holding a solo meeting with Fuji, but did nothing to stop or supervise him.

108. While in Japan, Jacobson sent numerous texts and placed numerous calls to Kawamura, Fuji's Head of Strategy and his confidant, concerning Icahn. Specifically, Jacobson texted Kawamura:

> It is important that we set a date so that we can keep the process moving ***for the reasons I discussed with you***.
>
> Kawamura-San, I am getting a lot of ***pressure from 'the influence'*** [*i.e.*, Icahn] ***that I discussed with you***. If there is a way for you to confirm one of the dates in August for me from Sukeno-San and Yoshizawa-San to meet in New York in August, that would be a great help. Perhaps they can confirm the date in the next couple of hours? Thank you for your assistance. (Emphasis added).

This text makes clear that Jacobson had already told Kawamura about Icahn's stated intention to replace Jacobson and willingness to wage a proxy fight. Icahn's heavy hand had thus started in motion a process that would culminate in the public relations disaster and potentially a massive Fuji lawsuit for a $183 million termination fee.

109. While still on his June 2017 trip to Japan, Jacobson also texted Director Defendant Reese, as well as Centerview partner and co-founder Blair Effron, that

> I sent a message to Sukeno and Yoshizawa, recommending dates in August and asking them to get back to me tomorrow. I will call them in the morning. I also briefed my "inside person" [*i.e.*, Kawamura] and he asked me to bcc him on the message, so that he can be helpful. Regards, Jeff
>
> . . .
>
> Just spoke to FF. He explained that it now looks like they may not be able to file until August 14th and would have to come after that date. I told him that would not work. I just sent him 7 dates in July for an exchange of information. He understands the urgency and need and he committed to getting back to me with a call on Monday. . . .

110. Jacobson next emailed Director Defendant Keegan about his meeting:

> I actually found out more through my channels [and] the deal is not dead [but] was clearly put on the shelf [due to] the New Zealand issues. . . . Komori said that from a strategic standpoint, that the deal still makes sense. However, they know it will be very expensive and it would have to be carefully "spelled out" for the shareholders to understand why they are doing this . . . [Fuji is] prepared to resurrect their team and meet with us in the first half of August . . . . ***I did 'play the Icahn' card, as the reason we need a sense of urgency***, and they appreciate and understand this. . . . ***Komori committed to me that he understands the sense of urgency***, and he committed to proceeding with getting the teams together in early- mid August.

(Emphasis added).

111. This "urgency" was a fiction. Icahn had expressed a desire that the Company be sold or he *would seek Jacobson's resignation* – there was no urgency facing anyone but Jacobson.

112. On June 29, 2017, the Board met and discussed the substance of Jacobson's meeting with Fuji and heard updates from Centerview on the Company's outlook. At this time, Jacobson apprised the Board of his meeting with Fuji's executives, as well as the fact that Fuji representatives would be traveling to New York City in July to discuss the relationship between Fuji and Xerox.

A. Jacobson Throws a "Hail Mary" by Proposing an Equity Swap that Would Cede Control of Xerox to Fuji.

113. On July 10, 2017, Jacobson met with the "Project Juice" team of Fuji executives, including Kawamura, in New York City. At this time, Jacobson proposed the 50.1% / 49.9% equity split which is at the heart of the Fuji Transaction and cedes control of Xerox to Fuji. After the meeting, Jacobson texted Director Defendants Keegan and Reese about his proposal:

> The door is open. ***I threw a Hail Mary and we may have a chance.*** Schumer is great, as he is on vacation in Greece, so he can get some options for the meeting tomorrow morning. Juice delayed the meeting to 10 am as they want to speak to Japan. Still a long way to go, but we have a chance. (Emphasis added).

Robert B. Schumer is a member of the Mergers and Acquisitions Group and chair of the Corporate Department at Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"), counsel for Xerox during negotiation of the Fuji Transaction.

114. On July 16, 2017, Xerox's CFO, Osbourn, emailed Brody, Xerox's head of Competitiveness and Performance Optimization about Centerview and the Fuji Transaction: "They clearly didn't understand the economics of the transaction. Will be interesting to see how the Board responds." Brody responded, ***"Painful, David [Hess, of Centerview] needs to be better at understanding this and bull shitting less."*** (Emphasis added).

115. As would be revealed, Centerview was more interested in pushing forward the Fuji Transaction to receive a lucrative contingency fees. Specifically, Centerview stood to receive $10 million for offering a fairness opinion in connection with the Fuji Transaction, and an additional ***$40 million*** if it was consummated.

116. On July 18, 2017, Brody emailed Jacobson: "For what it's worth *I **think this 51**% **plan doesn't work and the assumptions and math are shaky."*** (Emphasis added). Similarly, in July 2017, Icahn was informed of Jacobson's strategic acquisition concept, and Icahn advised

Keegan that he opposed a transaction that would leave Xerox shareholders with a minority interest in a combined company controlled by Fuji.

117. On July 20, 2017, at the same meeting where the Board decided to begin looking for Jacobson's replacement, Centerview again advised the Board that a cash-only sale would offer stockholders a "maximum premium" and "full exit" with the "[h]ighest probability to achieve [the] maximum strategic and synergy benefits. In contrast, Centerview advised that a deal like the equity split that Jacobson recently pitched to Fuji would present "[o]ngoing execution risk" and no "full exit." Centerview further advised Fuji could not offer an all-cash deal in the "near term," and Fuji considered an "Icahn exit" a condition precedent to any transaction. Jacobson had, after all, already "played the Icahn card" and apprised Fuji brass of his opinion of "the influence."

118. On July 21, 2017, Centerview's Hess emailed Kawamura concerning the mechanics of the 50.1% / 49.9% transaction. Betraying a curious fixation, Kawamura inquired as to whether the proposition included an Icahn exit, as well as whether Xerox anticipated difficulty securing its stockholders' approval. Hess replied that the proposed structure did not call for an Icahn exit, though structures could be designed that would address Icahn's stake. Hess also told Kawamura that if Fuji required an Icahn exit, a transaction could be devised that would require Icahn to give up his director, sell his stock, or enter into a standstill with the surviving company. Hess further advised Kawamura that they need only "***structure a transaction that is attractive enough to win***" Xerox stockholders' support. (Emphasis added). Already, Jacobson had displayed that his fealty was not to maximizing Xerox stockholder return, but to Fuji, which was indulging Jacobson's monomaniacal insistence on keeping his job and ridding himself of Icahn.

119. Internally at Xerox that same day, Joseph Mancini ("Mancini"), the Company's Chief Accounting Officer ("CAO"), sent an email proclaiming that "what is outrageous, is an

extensive fraud and cover-up over a long period of time, with [Fuji Xerox] management aware of and no discussions with at least their 25% owner! And due to the additional lack of oversight from the 75% owner, we now have to absorb at least a 90m cumulative charge, extensive third party fees and potentially be a delayed filer, plus whatever unpleasant consequences downstream (SEC comment letter, potential third party lawsuits etc)."

120. On July 26, 2017, Tetsuya Shiokawa ("Shiokawa"), a Xerox employee based in Japan who was friendly with Fuji's Sukeno and Yoshizawa, emailed Jacobson to report on his meeting Kawamura. At this meeting, they discuss the proposed 50.1% structured transaction. In addition, Shiokawa told Jacobson that thenceforth "***all coordination [was to be] done by you or by Centerview only***," and that Fuji "fully understands [the] ***urgent*** nature of this for" Xerox. (Emphasis added). Shiokawa further advised that the "most desirable structure" for Fuji was an "outright buy-out." Though he reported that Fuji believed that Xerox's stock price was then a "little too high" to accomplish such a transaction, Fuji's second preference was to acquire Xerox in a cash-only deal by partnering with a private equity ("PE") firm, which would enable Fuji to secure control without having to foot the entire bill. Jacobson never did anything to explore these options, or even advise the Board or Centerview of these discussions with Shiokawa.

121. By failing to communicate these preferences to the Board, much less pursue a joint Fuji-PE transaction, Jacobson put his own interests ahead of those of Xerox and its stockholders. Indeed, even after Centerview made contact with two PE firms about a potential transaction, the Board was not advised of the possibility of Fuji teaming up with a PE firm to make an all-cash offer to Xerox.

122. On August 14, 2017, Jacobson texted Kawamura to pressure Fuji to retain a financial advisor to perform due diligence of the proposed 50.1% transaction:

Jacobson: Kawamura-San, I hope you are well and that you had a restful vacation. As I believe FujiFilm is making their financial filing tomorrow, I did not want to disturb you. However, I assume that now that this date will pass, ***you will be able to hire a financial advisor***. What do you see as the next steps, as ***the timing is becoming important***. On a different note, Kevin Warren, our President of Commercial Excellence is meeting with Fuji Xerox next week. He does not know about our discussions, so please do not be confused if he is speaking of collaboration, etc. For the reasons we have been discussing, it is important to FujiFilm and to Xerox that we get together. Regards, Jeff

Kawamura: Jeff, we announced FY17/1Q result today but it doesn't mean that we are now able to hire the advisor. Please wait until the end of August-beg of September. Meanwhile my team is working on the internal study of the possible structure. We will not discuss anything related to this subject with Mr. Warren.

Jacobson: Thank you very much. When we get to beginning of September, ***we will need to work relatively quickly for the known reasons. Do you believe the team will be able to do an expedited joint study?*** Regards, Jeff

Kawamura: I think so. We all understand that ***"he" [i.e., Icahn] is very impatient***...

Jacobson: Thank you. ***Very impatient indeed.*** (Emphasis added).

These texts make clear that "timing" was important to Jacobson only, who faced the looming specter of losing his job if he did not engineer a deal and neutralize Icahn.

123. On August 22, 2017, Jacobson contacted Kawamura to let him know that Jacobson was "receiving questions from 'my Board'" (quotations in original) as to when Xerox and Fuji could "engage." Jacobson said that he knew Kawamura was "doing internal work," and also knew that Fuji would "select an advisor at the end of the month or early in September[.]" Jacobson further reminded Kawamura that "as you know, timing is important[.]" Jacobson then requested additional information about Fuji's timeline for selecting an advisor and arranging a meeting between their companies' senior management and their respective advisors.

124. The following day, Jacobson told Hess that he was "using all of the leverage" he had. Hess replied that it was "great – you're playing it exactly right."

125. Kawamura followed up to request a meeting in New York on September 12. On September 8, Jacobson texted Kawamura that his "board will be very concerned that Mr. Yoshizawa is not attending. They will view this project as not being a priority and it will cause 'others' to question how serious [Fuji] is about this, which will have other implications."

126. Upon information and belief, representatives from Fuji and Xerox met in New York on September 12, 2017, with counsel, to discuss Project Juice.

127. The day after the meeting, Jacobson texted Kawamura to inform him that Jacobson had "conveyed to [Keegan] that it looks like the deal will probably not happen. [Keegan] was obviously disappointed and concerned about 'our friend.'" Upon information and belief, Jacobson and Kawamura were referring to Icahn as "our friend". In his text, Jacobson ***again*** pressed Kawamura to have Fuji retain a financial advisor.

128. The next day, on September 14, 2017, Jacobson continued to text Kawamura about Fuji hiring a financial advisor for a potential deal with Xerox. Jacobson also told Kawamura that "our friend" knew about the meeting between Fuji and Xerox. In response, Kawamura thanked Jacobson for informing him about the substance of Jacobson's conversation with Keegan and providing an "update of Mr. I." Kawamura added that he had "made appointments with [Morrison Foerster]-legal advisor as well as Sukeno, Yoshizawa and Makaya[,]" and would try to hire a financial advisor promptly to perform due diligence with Jacobson and Centerview. Thereafter, Fuji hired Morgan Stanley as its financial advisor for a potential deal with Xerox.

129. On October 18, 2017, Jacobson, with Centerview's assistance, led a meeting between Xerox and Fuji to discuss Project Juice. Notwithstanding that just two days earlier the Board had essentially decided to replace Jacobson with Visentin, no other Board members attended this meeting or otherwise supervised or directed Jacobson's interactions with Fuji.

130. At the October 18th meeting, Centerview made a presentation that asserted "[Fuji's] interest in a transaction [was] contingent on a satisfactory resolution of Icahn ownership[.]" In fact, Centerview dedicated an entire slide to "Potential mechanisms to Effect Icahn Exit[.]" On that slide, Centerview suggested buying out of Icahn's shares, exchanging his voting stock for non-voting stock, entering into a standstill / voting agreement, or entering into an agreement for Icahn to eventually sell his shares.

131. Notably, Centerview's presentation also set forth a table showing the magnitude of a dividend that would be needed to yield control premiums of various sizes. A 40% premium would have required a dividend between $4.8 and $6.3 billion, and the lowest premium in the table—20%—would have required a dividend between $3.9 and $5.4 billion. In contrast, the Board-approved Fuji Transaction provided Xerox stockholders with a dividend of $2.5 billion, equal to—as Jacobson's notes indicate—"no premium."

132. On October 24-25, 2017 Jacobson again exchanged texts with Kawamura:

Jacobson: Kawamura-San. I spoke to Blair Effron of Centerview and told him the situation. Due to the time constraints with 'our friend' and the fact that I told the Board I was seeing Mr. Komori on November 7th, he strongly suggests we have a new date for me to meet with Mr. Komori before I communicate the postponement to the Board. Otherwise, 'our friend' will not believe we will be able to finalize a transaction. As I will see you and Mr. Yoshizawa on November 14th, can you see if it is possible for me to meet with Mr. Komori in Japan on Tuesday, November 21? Thank you. Jeff.

Kawamura: Jeff, thank you for the message. I will check Komori's availability on Nov. 21 and tell Yoshizawa that you agreed to postpone your visit to Japan but need to meet with Komori after the discussion on November 14 in New York due to the situation with Mr. I and your Board's strong request.

Jacobson: It sounds like Yoshikawa does not want me to meet with Mr. Komori? Is that correct, which would be concerning. Are we confirmed with Mr. Komori and Mr. Sukeno for Nov 21 in Tokyo and what time? I will need it to be a solid commitment, because Icahn's representative is on my Board and if I tell the Board and then we cancel/postpone again, it will be a big issue. Thank you.

Kawamura: Regardless of Yoshizawa's intention, you can do whatever you need to do. I will carefully consider the best approach to make it as the solid commitment as soon as possible. Please give me a few more days. Situation is somewhat sensitive here.

Jacobson: As Mr. Yoshizawa does not support the visit, should we still plan on the 21st for Tokyo instead of the original date of the 7th? I will go with what you tell me. I have total trust in you. Thank you.

Kawamura: Thank you very much. Please plan on November 21. It is important for Yoshizawa to see you and discuss with you and Centerview on November 14 in New York.

At the same time that Jacobson was making this strong pitch to nail down the Fuji Transaction, the Board continued taking substantial steps to replace Jacobson as CEO. For example, on October 30, 2017, Director Defendants Keegan and Reese agreed to meet with Visentin. Visentin made a presentation to the Board detailing his plans if hired as Xerox's CEO. Keegan also texted Reese that fellow Director Defendants Rusckowski and Brown were "comfortable" with Visentin. Keegan further told Reese that he had texted Heidrick to inquire after Visentin's availability date and compensation range. The Board then tendered Visentin a term sheet to propose his compensation for serving as Xerox's CEO. In fact, the Board even identified a start date for Visentin of December 11, 2017.

B. The Board Tells Jacobson that He Is Being Replaced, and Jacobson Disobeys the Board's Directive by Going All-in on the Fuji Transaction.

133. With Visentin lined up to take the reins, the Board belatedly instructed Keegan to advise Jacobson that the Board "was disappointed by his performance" and that he was "to discontinue any and all" communications with Fuji about Project Juice. Keegan relayed the message on November 10, 2017, and noted that it was "in Xerox's best interests" to "postpone the high level meetings with Fuji planned for the next two weeks." Accordingly, the Board, through Keegan, specifically instructed Jacobson to cancel Project Juice meetings in New York and Japan that were scheduled for November 14 and November 21, 2017, respectively.

134. On November 12, 2017, Jacobson emailed copies of his employment agreement (which the Company has never disclosed) and pension plan to his personal email account. Tellingly, in its Decision the Supreme Court of New York determined that, while "Jacobson testified that he was unaware of any efforts to replace him prior to November 10, [his] testimony is suspect given the large number of people aware of the work of the Scan Committee."

135. In any event, after Keegan relayed the Board's message to Jacobson, Reese texted Keegan about his conversation with Jacobson, and asked whether he had told Jacobson that the Board had selected a candidate. Keegan replied that he told Jacobson that the Board had "talked to three candidates" but not yet reached a decision, to which Jacobson responded that he "hope[d Visentin] was not one of them." Keegan added "Incredible . . ."

136. The next day, Jacobson texted Reese:

> Thank you Ann. You are in Austin to be with your daughter, so we can catch up when you return. Obviously disappointed, and candidly, I believe it is a mistake for the Company, the shareholders, customers and employees, but what's done is done. What the Board believes is the right decision will be a significant surprise to these constituencies. Please enjoy your weekend. Thank you for reaching out.

137. Once Jacobson learned that the Board was formally ousting him, and after the Board's ***explicit instruction to stop pursuing the Fuji Transaction***, Jacobson texted Kawamura and asked him to call him "at [his] earliest convenience." Like Damocles ruling from under a sword, Jacobson knew that his days at Xerox were numbered. He told Kawamura about the Board's imminent decision to replace him as CEO. Jacobson then disloyally conspired with Kawamura to ensure that Fuji insisted that any transaction with Xerox be conditioned on Jacobson remaining CEO.

138. On November 11, 2017, Keegan texted Reese that Jacobson had told Keegan that Fuji was "extremely unhappy and want[ed] to talk about Juice when they" came to New York on November 14. Keegan, supposedly under the belief that Fuji would not pursue a transaction

without Jacobson on board, disloyally authorized Jacobson to continue negotiations with Fuji. Jacobson, Keegan, and Reese, therefore, were the only directors who knew that Jacobson was violating the Board's instructions to cease all negotiations with Fuji. Despite this knowledge and their misgivings about Jacobson's performance as Xerox's CEO, neither Reese nor Keegan did anything to supervise Jacobson's future negotiations with Fuji. Indeed, as the Decision recognized, the mere authorization of Jacobson to pursue the Fuji Transaction even though the Board had decided upon his ouster was a breach of Keegan's fiduciary duty.

139. On November 13, 2017, Jacobson texted Hess stating that, whether at Xerox or elsewhere, he would work with Hess again. In these texts, Jacobson told Hess that he "want[ed him] to know that [he was] a great friend," to which Hess replied that it his "privilege to fight the wars together!" Upon information and belief, Jacobson and Hess forged a strong personal bond after the Board hired Centerview as its financial advisor. That bond caused Centerview to assist Jacobson to facilitate the Fuji Transaction, even though Centerview knew that it was in Xerox's best interests to pursue other transactions or remain a standalone company for the near term.

140. The previous day (*i.e.*, November 12, 2017), Kawamura texted Jacobson that Komori liked Jacobson "a lot," and would "certainly try to help" Jacobson if the he asked Komori for "his understanding and support." Kawamura further texted Jacobson that Komori was "looking forward to seeing" Jacobson in Japan on November 21, and advised that if Jacobson canceled or postponed his trip on account of the Board's direction, Komori "would be very disappointed" and the deal would "lose . . . momentum." ***Kawamura added: "As we should be the one team to fight against our mutual enemy, I think two CEOs should sit down and discuss our future vision." Jacobson replied: "We are aligned my friend."*** (Emphasis added).

141. And so, "aligned" with the potential acquirer of the Company that he was purportedly leading (and to which he unquestionably owed fiduciary duties), Jacobson attended the November 14, 2017 meeting in New York between Xerox executives, Fuji executives, Centerview, and Morgan Stanley.

142. After the November 14 meeting, Keegan disloyally authorized Jacobson to go to Japan on November 20, 2017 to meet with Fuji executives, including Komori, without informing the full Board. Moreover, Keegan did not instruct Jacobson about how to handle those negotiations, much less attempt to participate in them.

143. On November 15, 2017, Centerview delivered to Morgan Stanley a preliminary term sheet describing components of a proposed transaction akin to the Fuji Transaction's final form. According to the term sheet, Fuji would receive a 51% stake in Xerox. As "consideration" for its acquisition of control, Fuji would transfer its 75% stake in Fuji Xerox to Xerox and agree to certain governance arrangements for new Xerox.

144. The day before Jacobson's November 21, 2017 meeting with Komori, Kawamura texted Jacobson:

> Welcome to Japan! Hope you had a good flight. I met Komori twice today. He made a lot of questions. He's looking forward to seeing you tomorrow. I gave your discussion material today. ***He said he understands the contents and no need to spend much time on the presentation. He would focus on hearing current situation surrounding you and XC and what we can do.*** I will share his main concern in advance. But basically he's ready to send the term sheet unless anything unexpected happens tomorrow. The only issue is Yoshizawa didn't even ask Komori to invite [Hess]. Yoshizawa is very against the idea because he thinks Komori feels uncomfortable. I tend to agree. Because Komori is in the good mood now. ***Better not to do anything which may make Komori feel uncomfortable.*** Let's talk tomorrow. Take a good rest and see you tomorrow. Best regards. (Emphasis added).

Jacobson replied that it was "good that Mr. Komori does not want to spend much time on the presentation and that he wants to discuss the 'environment.'"

145. Jacobson also texted Hess at Centerview:

> Sounds like a lot of people here know what is going on, and have heard from Komori personally. You will meet with Mr. Tamai at lunch who heard from Komori that we are coming together and he said he looks forward to working with me. ***Kawamura told me that there is no deal without me***, so we'll have to figure where this goes. (Emphasis added).

146. After the November 21 meeting, Kawamura told Jacobson: "Strong relationship and trust you built with Komori will enable our long cherished project come true."

147. As the deadline to nominate directors approached, Jacobson became increasingly concerned with getting a deal done to preempt any challenge by Icahn. Jacobson, therefore, emailed Kawamura, informing him that Jacobson had "spoke[n] to our Chairman," *i.e.* Keegan, and the Company was "getting close to 'our friend's deadline" such that it would "be important that the initial offer being made on December 1st is 'substantial enough' to continue the negotiations." Kawamura replied that Fuji was working on a term sheet, and requested that Jacobson disclose further information about Icahn to Fuji.

148. On November 29, Jacobson texted Hess at Centerview: "***I just don't want the Board to get greedy and blow this up***, because [Kawamura] went around Sukeno and Yoshizawa, and had Komori approve the '2' [billion dollar dividend]. [Kawamura] said he is counting on us to be able to sell this. Thanks and have a good night." (Emphasis added). Hess replied: "Whenever [the term sheet] comes in - ***let's review together before we distribute to Board members***, etc." (Emphasis added). The following day, Jacobson texted Hess: "***We will also have to justify to the Board the*** relative value of [Fuji] and [Xerox] from a ***premium*** standpoint." (Emphasis added). These texts provide examples of how the Company's financial advisor conspired with the Company's CEO to prevent the Board from seeking greater consideration from Fuji by working together to convince the Board to cede control of Xerox for what Jacobson had already acknowledged was "no premium" deal.

149. Fuji produced its proposed term sheet on November 30, 2017. The term sheet contemplated Jacobson's proposed 50.1% / 49.9% equity split. Fuji would cede its position in Fuji Xerox as part of the deal. But ultimately, Fuji would still control Fuji Xerox because it would control new Xerox, which would own Fuji Xerox as a subsidiary. Under the proposed terms, Fuji would acquire control over Xerox, in the words of Komori, "without paying a penny." The term sheet called for the deal to close on January 31, 2018 so that Fuji could announce the Fuji Transaction in conjunction with its 2017Q4 earnings.

150. The day after Fuji produced its term sheet, Kawamura texted Jacobson about his recent conversation with Hess:

> Jeff, I talked with David. I explained just as I did earlier. I emphasized the trust and relationship you built with Komori made the 2bn offer possible. He understood and appreciated my input. I didn't say anything about our conversation. Good luck with your board tomorrow morning. Good night.

151. On December 4, 2017, Centerview presented Fuji's term sheet to the Board.

152. After the December 4 meeting, Director Defendant Krongard wrote three fellow directors:

> If you try to argue both sides of the transaction I can argue strongly that ***we are not acting in our shareholders' best interest in this transaction. No premium, minority position, no governance and a base case from the LRP which comprises fictional numbers***. (Emphasis added).

Krongard also pointed out that the anticipated 'synergies' of the proposed transaction can be accomplished only 'with thoughtful leadership,' which she strongly believed did not exist with Jacobson at the helm.

153. Also on December 4, 2017, Keegan texted Reese: "Having gotten two blasts today from Icahn, I'm still expecting [Christodoro] to explode."

C. Christodoro Resigns, Icahn Launches a Proxy Contest, and Jacobson, Centerview, and Fuji Redouble Their Efforts to Obtain Board Approval of the Fuji Transaction.

154. On December 8, 2017, Icahn's appointee Christodoro, predictably, resigned as a director of Xerox. Christodoro joined a slate of three other nominees Icahn put forward for election at the 2018 Annual Meeting of Shareholders, and gave notice as follows:

> As you know, the Board has been addressing issues I consider vital to Xerox's current and future wellbeing. Until the last few weeks, it appeared that the Board's decisions would be consistent with my views on the best interests of Xerox and our shareholders. It now appears, however, that the Board will make decisions and take Xerox in a direction with which I strongly disagree.
>
> My resignation terminates the June 27, 2016 agreement between Xerox and the Icahn Group. I will be joining it and its other nominees, Keith Cozza, Jay Firestone and Randolph Read, in seeking election to the Board. Both during the campaign and if re-elected as a director, I will advocate my views and urge the Board to get back on track and make decisions that are in the best interests of Xerox and our shareholders.

155. Icahn's director was not the only one with a lingering distaste for the Fuji Transaction. On December 7, 2017, Krongard wrote Keegan concerning Jacobson and the Fuji Transaction, still unaware that Keegan had disloyally allowed Jacobson to negotiate it. In a handwritten letter spanning five pages, Krongard wrote:

> Dear Bob –
>
> Over the past year I have come to know and admire you as a professional, gentleman and leader (also a beloved family man).
>
> The situation at Xerox is complicated by many factors I need not enumerate. You know them better than I will ever know them.
>
> As one Director, I believe we are at, perhaps, the most defining moment of the company's future. To succeed, Xerox will need leadership and clarity of purpose. ***We know the right leadership is not there now.***
>
> Let me digress a bit. ***This Board exhausted every ounce of patience and coaching to make our current CEO a success. We then decided, unanimously, for a variety of reasons, he was not the leader we need. You and the "Scan" Committee" conducted a very thorough talent review and have identified an individual you***

> ***described to me as "head and shoulders better than Jeff"*** [*i.e.*, Visentin]. ***Jeff was told by you, as directed and supported by the Board, that the Board was disappointed by his performance and would likely look at outside talent. Additionally, you told him in no uncertain terms, that he was to discontinue any and all conversations with FX and F regarding Juice. He blatantly violated a clear directive.*** Which brings us to where we find ourselves today.
>
> ***We have a rogue executive, together with an advisor(s) who only gets a big payday if there is a deal*** (I will argue the merits of the deal or lack thereof after learning more next week), ***who have placed us in a precarious position with our valued partner.*** Regardless of our actions next week, they will remain our valued partner.
>
> I need not tell you leadership positions and decisions are tough. I feel strongly we are in the middle of a ruse with our valued partner. While we are well aware of the need to manage and fix the operations of FX, we should want to be honorable partners***. Jeff has put us, and mostly you, in a horrible situation. He is asking us to lie!*** In my most heartfelt and emotional outreach to you, I implore you not to let this happen!
>
> Were it I, I would contact Shigetaka Komori personally and bow as low as possible (figuratively) and tell him of our rogue executive's behavior and beg his forgiveness. Simultaneously, ***we need to get new leadership ASAP. This distraction is allowing the business of Xerox and the morale of the executive and management team to sink further.***
>
> I am writing this and sending it so you know it is a personal communication between just us.
>
> Whatever happens with the deal, IEP and governance, we need to be honorable.
>
> Most sincerely,
>
> Cheryl (Emphasis added).

Keegan did not respond, and the Board took no action against Jacobson.

156. On December 10, Jacobson forwarded a message to Keegan and Reese:

> This is from Kawamura. When he refers to Board dynamics, he means explaining [Christodoro's] departure to Komori and the impact. I told him to feel free to call me if he needs me to speak to Komori. I also told him to brief me if he has success on his own. I will let David and Bob Schumer know. Jeff
>
> > Jeff, I will meet with Komori and Sukeno in a couple of hours. In case Komori doesn't like my proposal, I may call you from his office so that you can tell him directly regarding the dynamics within xerox board. Are you available to talk from 7pm to 8pm your time? Sorry to disturb you in Sunday.

Notably, after Fuji's term sheet was pitched to the Board, Jacobson was not immediately concerned with ***his own Company's directors' reactions***, including ***the resignation of the director who represented the Company's largest stockholder***, but with "selling" the deal to the acquirer's CEO. Jacobson was so brazen that he took it upon himself to let Xerox's advisor and legal counsel know as much, to boot.

157. On December 10, 2017, Fuji sent its "best and final offer" for the deal. The only "improvement" from Xerox's perspective was a minimal increase in the dividend to be paid to Xerox stockholders, but even that was illusory because it was insufficient to provide an actual control premium. Centerview's projections showed that a 40% premium would have required a dividend between $4.8 and $6.3 billion, and in Jacobson's own words stockholders would be receiving "no premium." Moreover, Hess testified under oath that Fuji had $8 billion in cash reserves. Fuji therefore had the adequate cash to fairly compensate Xerox stockholders and offer an appropriate premium of 30%, in line with precedent change-in-control transactions. But it did not because Jacobson was pushing Fuji to do a deal for free as soon as possible to keep his job.

158. With Christodoro's resignation and the standstill agreement no longer in effect, Icahn began a proxy contest on December 11, 2017 by proposing a slate including Christodoro, Keith Cozza, Jay Firestone, and Randolph Read.

159. When Jacobson learned of the contest, he texted Kawamura.

Jacobson: Tak, you will see on the internet, that Icahn has publicly called for Xerox to hire a new CEO. This is what we expected. We will finish our mission and win!

Kawamura: We are supporting you Jeff!

160. The following day, Icahn filed additional non-management proxy solicitation materials, this time targeting Jacobson and charging that Jacobson could not change "the current alarming revenue trajectory of 'mid-single digit' year-over-year percentage decreases[.]" Icahn

also attached an article published by TheStreet.com, which reported that Icahn "suggested" that Keegan, Reese, Hunter, and Prince had served on the Board for too long. In this regard, the article quoted Icahn as stating: "The long-tenured members of the board seem to have their heads in the sand . . . ." Icahn further stated the Company desperately needed new leadership in the solicitation. This filing was Icahn's first public criticism of Xerox's management.

161. Icahn then wrote an open letter to Xerox stockholders dated December 12, 2017, introducing his competing slate of directors and criticizing Xerox's current directors:

> As has become readily apparent, Xerox desperately needs new leadership. Despite our efforts, the "old guard" directors still remarkably defend a CEO that is incapable of (1) introducing new products that do more than play catch-up to competitors and (2) acknowledging that cost-cutting alone, particularly in sales, marketing, R&D and customer service, is not a formula for changing the current alarming revenue trajectory of "mid-single digit" year-over-year percentage decreases. Perhaps their defense is not so remarkable given that Jacobson himself is part of the old guard, having served as an executive at Xerox since 2012.
>
> If the long-tenured directors at Xerox continue to refuse to acknowledge that change is needed, then we believe it is mandatory for shareholders to speak up and demand that further new blood be introduced into the boardroom. We have shown time and time again that replacing an ineffective CEO can lead to billions and billions of dollars of value creation for ALL shareholders. To name just a few examples over the last few years, simply look at eBay, Forest Laboratories, Hologic and Manitowoc. We are hopeful that a change in senior leadership will lead to similar value creation at Xerox. The long-tenured members of the board seem to have their heads in the sand just like at Eastman Kodak. There is still time for change – but very little time. Stay tuned for more.

162. Also on December 12, 2017, Kawamura texted Jacobson, to inform him about his meeting with Komori to explain the Icahn "situation" and how "we must win with Jeff." Kawamura also texted that Komori "was energized" and "keen to know any developments surrounding Icahn[.]" Jacobson replied: "Please thank Komori for me. I appreciate his support and loyalty!" Again, Jacobson acted in bad faith because his loyalty was owed to Xerox (and its stockholders), the target, not Fuji, the acquirer, and his potential new boss.

163. On December 13, 2017, the Board held a meeting where Centerview gave a presentation concerning Fuji's "best and final offer." Centerview noted that stockholders were not receiving a control premium.

164. Also on December 13, Jacobson and Hess spoke with Kawamura. After that call, Hess texted Jacobson that he "love[d] Tak's spirit," and was "zooming ahead to the announcement." Hess also texted that he "[h]ope[d] he appreciate[d] what need[ed] to get done between" that time and the announcement date. Jacobson replied stating his opinion that Fuji "would probably sign without much due diligence." Hess responded that it "would be fun if they were buying us for cash."

165. Unfortunately for the Company and its stockholders, Centerview, the Company's financial advisor, was assisting Jacobson in his efforts to avoid a value maximizing all-cash sale for Xerox, by steering the Board into approving a deal that harmed both the Company and its stockholders' interests. Centerview did this to secure lucrative payouts for itself.

166. On December 18, 2017, Kawamura texted Jacobson about Yoshizawa, his direct boss:

Kawamura: One more note to you. This is rather private. I had a dinner with Sukeno tonight. He asked me about Yoshizawa. I told him my honest view about Yoshizawa. He should not play the key role in our new combined company. It was a kind of gamble for me but Sukeno did not deny my view. Looks like he was feeling in the same way. If Komori or Sukeno ask you the same question, I think they will during the course of management discussion, I would appreciate your honest input. This is VERY important. . . .

Jacobson: Why do you think Sukeno asked? Does he have doubts? ...

If he asked you, then he probably knew the answer and was looking for confirmation.

Sounds good. I am here for you.

167. Two days later, on December 25, 2017 (*i.e.,* Christmas), Jacobson texted Kawamura to conspire about Jacobson serving as CEO of new Xerox:

> At some point, [Komori] will need a phone call with our Chairman on this issue, ***as it is a conflict if I directly discuss it without the Chairman's knowledge. The Chairman is aware that Mr. Komori would like me to run the new company,*** but if I come for that purpose, it would be good for them to have a phone call. (Emphasis added).

Jacobson was fully aware of the impropriety of what he was doing. Two days later, Jacobson followed up:

> Tak, also, I spoke to David Hess. You may want to have a conversation with him, as he has some concerns whether we will be able to make the January 31 date. We all want to make the date, but he has some concerns. Perhaps if you understand those concerns, we can expedite things to minimize his concerns on the timing. Thanks, Jeff

Kawamura replied:

> Understood. I will have a call with him tomorrow morning JST.

168. Later that day, Jacobson texted Hess, telling him that Reese "believes the 1/31 date is very important. ***If we announce very good Q-4 results, we eat into the premium bump*** we will get from the Deal." (Emphasis added). Jacobson was more concerned with the appearance of a premium than actually maximizing value for Xerox and its stockholders.

169. On January 6, 2018, Osbourn (Xerox's CFO) emailed Hess to, like Krongard, express skepticism concerning the "synergies" that were being cited to support the Fuji Transaction: "I would point out it is key for us to be able to differentiate between synergies created as a result of the transaction vs those that can be done without a transaction."

170. On January 10, 2018, the *Wall Street Journal* reported, based on interviews with "people familiar with the matter," that a potential transaction between Xerox and Fuji was being considered. The news article further disclosed that the deal might include Xerox ceding control to

Fuji. This *Wall Street Journal* article was the first public indication of a transaction between Xerox and Fuji.

V. Facing Increasing Public Scrutiny, the Defendants Engage in End-Game Scheming to "Sell" the Unfair Fuji Transaction to Xerox Stockholders.

171. On January 12, 2018, the Board held a meeting where Centerview provided another update. Specifically, Centerview apprised the Board of "selected information gaps" in the due diligence, including an audit of Fuji Xerox ***that would not be complete until the week of March 26 – i.e., two months after the supposed completion of due diligence by Xerox***.

172. On January 17, 2018, Deason wrote his aforementioned public letter concerning the opacity of the Company's relationship with Fuji:

> 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.

173. After hearing of Deason's complaint, Farooq A. Muzaffar ("Muzaffar"), Xerox's Chief Strategy & Marketing Officer, wrote Brody to observe that "someone should have informed [Deason] of the terms of the current" joint venture agreements.

174. On January 16-17, 2018, senior Xerox executives and Centerview employees met with Fuji and Morgan Stanley in Tokyo.

175. On January 17, 2017, Kawamura and Jacobson texted one another:

Kawamura: Jeff, hope you had a good flight. I met with Komori again today. He is concentrating on the new management and the board.

Jacobson: That is good. Are things on track as we discussed for you role and my role?

Kawamura: I think so. But he did not mention the name.

I heard you gave him your idea about the continuing directors. Can you give me top five candidates?

Jacobson: It is important that Mr. Komori tell Bob Keegan what he wants. I told Mr. Komori this. I believe the directors who will want to continue (to be confirmed) are Keegan, Reese, Rusckowski, Prince, Tucker and Echevarria. Of the 6, there are 5 spots and all should be fine. . . . Do you think Sukeno will be able to persuade Mr. Komori? . . .

Kawamura: Thank you. I mean Sukeno is not as excited as Komori about this deal. . . . I clearly told Komori to tell Keegan that he wants Jeff to be the CEO.

176. At this point, Fuji wanted to keep Jacobson as CEO because Jacobson was the means through which Fuji was able to manipulate the Xerox Board. As stated in an internal Fuji memo:

> As the 12/11 deadline for submission of the shareholder's proposal approaches, there has been a recent drop in stock price. The director under Mr. [Icahn's] control was putting very strong pressure on CEO Jacobson ... and was trying to dismiss Mr. [Jacobson] from his position as CEO. ***Hypothetically, if Mr. [Jacobson] was dismissed, then the next CEO would be someone associated with Mr. [Icahn], resulting in [Fuji] losing control of the [Xerox] board of directors through association with Mr. [Jacobson].*** (Emphasis added).

When later pressed on the meaning of "control," Kawamura explained that this was simply Fuji's way of saying that Jacobson was the only member of the Board known to Fuji. As the Court wrote in its Decision, however, it was "clear from all that testimony that Fuji knew from Jacobson that without Jacobson the momentum for what Fuji considered to be a very attractive deal for Fuji would be lost."

177. In addition to the continuing directorship idea that Jacobson had concocted to entice the Board to support the Fuji Transaction for their own interests, Xerox and Fuji worked together to play up the "synergies" arising from the Fuji Transaction since Xerox's stockholders would not have received an actual control premium. For example, Jacobson texted Kawamura that Keegan would be "emphasiz[ing] the importance of a relatively high synergy number."

178. The day after Deason issued his public letter to Xerox stockholders, Icahn followed suit. In this letter, dated January 18, 2018, Icahn argued that "[w]ith respect to Mr. Deason's view

that the Fuji Xerox joint venture should be revised or terminated in light of the recent accounting scandal at Fuji Xerox, it is hard to see how any Xerox shareholder could disagree (even given the paucity and opacity of the company's public disclosures regarding the terms of the arrangement). We are obviously in favor of renegotiating the joint venture agreement to make it more favorable for Xerox. This should have been done a long, long time ago. It is self-evident that the current management team is clearly incapable of doing so. If the "old guard" directors are similarly incapable, or unwilling to do the work necessary to rectify this dire situation for shareholders, then they must be replaced. And if the joint venture is standing in the way of opportunities to create long term value for Xerox shareholders, then we believe scrapping it entirely should be on the table. It goes without saying that we are in complete agreement with Mr. Deason's view that Xerox should immediately disclose the joint venture agreement with Fuji."

179. Less than two weeks out from the Fuji Transaction's announcement date – a date that Fuji had determined – certain Director Defendants were still pessimistic about the chances that all directors would approve the Fuji Transaction. For instance, on January 19, 2018, Reese texted Keegan that they were "going the wrong way" and needed "to really be careful about how we characterize" Fuji, as they would not be able "to get [Brown] with this story and others are going to waffle." Lost on Reese and Keegan was that whether a strategic transaction is in a company's best interests is objectively apparent on its face, and a director who votes to proceed on terms that are bad for a company breaches her fiduciary duty.

180. On January 20, 2018, Mancini, Xerox's CAO, emailed Osbourn, Xerox's CFO, about a mark-to-market analysis that "suggests no control premium for [Xerox] shareholders . . ." in the Fuji Transaction. The next day Mancini emailed Osbourn again to pose a series of questions

that they could anticipate from "the opposition" – in other words, objective stockholders concerned with the Board actually maximizing value for them:

> Why now? you said you had a strategy, you are saying you are on track for year one, you seemingly have a decent Q4, you have this 50 year relationship with FX, why now?
>
> Neither of you have ever been low cost providers in an increasing commodity market - why should we believe this deal changes anything other than more cost reductions and hope of something competitive downstream when nothing in your dna supports this?
>
> What do you get for conceding control?
>
> Valuation doesn't seem rationale - explain why this is a great deal for Xerox and again should be done now?
>
> Didn't they just have a massive fraud, fired mgmt, have a report of weak processes throughout- don't they need to fix this first?
>
> Your international operations have historically performed much worse than the US - how does this newco expect to manage all of this new international business successfully?
>
> How do you plan on dealing with culture differences and language differences?
>
> This deal is predicated on cost reductions and mostly with them - why don't they do those first and Xerox shareholders only pay 25% of their cost versus 100% after this deal?
>
> Bottom line, did you really have a viable strategy before? How does this deal align with your prior strategy? What product gaps does this solve and when?
>
> Wouldn't a deal with a low cost provider make more sense? What other options did you consider?
>
> How did you land on this is the best thing for Xerox?
>
> Have a lot more but here are a few to consider. I suspect the opposition will be prepared to press these and many more very aggressively.

181. On January 22, 2018, Deason and Icahn published a joint open letter telling Xerox stockholders that, because they were "completely aligned regarding our views on the following subjects," they had "agreed to act in concert and have formed a 'group' with respect to the

contemplated solicitation of proxies to elect 4 new individuals to the board[.]" Deason and Icahn also called for: (1) the termination or renegotiation of Fuji Xerox's governing agreements, (2) a new process with independent advisors to explore strategic transactions for Xerox, (3) disclosure of Fuji Xerox's joint venture agreements, (4) replacement of Jacobson, and (5) if necessary, replacement of the "old guard" Director Defendants as well.

182. Perhaps most appallingly, Jacobson actively worked to deter other potential partners from a strategic transaction with Xerox. For example, on January 23, 2018, Jacobson received a call from the president of HP about a possible combination with Xerox. Jacobson told HP that, if it were interested in a deal, it should offer its proposal "aggressively and quickly." HP was interested in a Reverse Morris Trust ("RMT"), a combination strategy in which a company spins off a subsidiary that is subsequently acquired by a second company in a tax free transaction. Centerview had identified a RMT with HP as a possible alternative to a transaction with Fuji in May 2017, but neither Jacobson nor any other Director Defendant put serious effort into such a transaction at the time. Moreover, when Jacobson met with HP in August 2017, he did not even discuss the possibility of a RMT transaction. Similarly, when HP contacted Xerox on January 23, 2018, Jacobson effectively dissuaded HP from making a proposal so that Xerox could proceed with the Fuji Transaction.

183. On January 24, 2018, Hess emailed Kawamura:

> We have spoken with Mr. Keegan, who understands the need for a call with Komori-san and is willing to participate.
>
> HOWEVER, it is critical to us that Komori-san have the full picture of our current status. We think it will be highly counter-productive for him to hear these issues from us the first time. Therefore, I need to ask you to please confirm that you will speak to him directly about our issues prior to the call.
>
> To clarify where we are:
>
> . . . .

Situation

1) Our financial due diligence on [Fuji Xerox] is incomplete and requires more work and disclosure.

2) The current financial projections we have created together do not create enough value for [Xerox] shareholders. We are not prepared to support a deal on this basis, as it is unlikely to achieve shareholder support. It requires a more aggressive financial plan and, potentially, new ideas on transaction structure."

. . . .

Next Steps

• January 31 announcement is not possible. [Xerox] will be announcing earnings alone on that date.

184. Also on January 24th, Hess prepared talking points concerning Xerox's outstanding due diligence and delaying the announcement of the Fuji Transaction in anticipation for his call with Komori:

• [F]inancial due diligence is incomplete

. . .

• Like you, just discovered that our financial pro[j]ections do not create the shareholder value that we [absolutely] need

• Not likely to gain shareholder support with current model

• Therefore we need to take a fresh look at our financial plans and, if necessary, search for new ideas on structure

. . .

• Given these comments, a Jan 31 announcement does not appear to be possible

. . .

• No sense in announcing a transaction that does not get shareholder support

Key Issue: Financial Due Diligence

. . .

• We have known from the beginning that Fuji Xerox would not have audited financial information at the time of signing

• However, we as a Board have not yet reached final conclusion on this topic

• There is more work to do to ensure that we can tell our shareholders that we are completely comfortable with the status of Fuji Xerox numbers.

• *We cannot have negative accounting issues between signing and closing.

• *This issue was further exposed yesterday with the ratings agencies; they have asked for information Fujifilm has not yet been able to provide

Key Issue: Value to Xerox Shareholders

. . .

• We have understood from the beginning that Fujifilm would need to control the combined company, and that our structure would not provide a traditional cash merger premium

• *However, the basis for the transaction was that our shareholders would receive an attractive cash dividend at closing, plus a large equity interest in an exciting new document technology company

• As the teams have concluded their work, it has become clear that the current value opportunity for our shareholders is not as attractive as it needs to be

• The most fundamental reason is that we have a financial plan that is too conservative

• *We need a much more aggressive plan before our Board and shareholders will endorse it

. . .

Icahn/Deason

. . .

• Our belief is that if we do a smart transaction, our shareholders - including our largest - will support it

• However, if there is a fight after announcement, we will work together to win the fight

• Underscores importance of transaction - Icahn will attack both of us if there is no deal

Next Steps

> • As disappointed as I am to say it, we will not be in a position to announce a transaction next week

185. Despite Jacobson's disloyal efforts to show otherwise, it was blatantly apparent to all that a mere week prior the Board's approval of the Fuji Transaction, Fuji's cashless terms were not in the best interests of the Company. In addition, Xerox's due diligence was "incomplete", and therefore, no way existed for the Board members to adequately inform themselves as to whether the Fuji Transaction would in fact maximize Xerox's value. In fact, Centerview's preliminary due diligence indicated the exact opposite—that the terms of the Fuji Transaction "do not create the shareholder value that we [absolutely] need."

186. Notably, the terms of the Fuji Transaction that Centerview argued on January 24, 2018 did not create enough value for Xerox were not changed prior to the Board's approval of the Fuji Transaction on January 30, 2018.

187. Moreover, prior to the January 24, 2018 teleconference between Komori and Keegan, ***no*** Xerox director had participated in ***any*** meeting with Fuji executives, except Jacobson.

188. Knowing that the Board was not yet ready to approve the Fuji Transaction, Jacobson explained the Board's issues with the Transaction to Fuji:

> • Financial due diligence is incomplete and "I have just discovered that our financial projections do not create the shareholder value that we absolutely need."
>
> • If necessary, we can share ideas regarding transaction structure.
>
> • "Given these issues, we do not believe Jan 31 announcement is possible" [later referred to as "next week"] The deal is "too attractive . . . to lose."
>
> • Although Fuji will control NewCo "minority shareholder protections are critical"
>
> • Regarding Icahn / Deason: "if we do a smart transaction, our shareholders-including our largest-will support it"
>
> • "[I]f there is a fight after announcement, we will work together to win that fight . . . Icahn will attack both of us if there is no deal

189. Notwithstanding this push by Jacobson and Hess for more time, Kawamura told Hess that he would tell Komori and Sukeno "that there's still some difficulties on your side and the announcement may have to be delayed before the meeting," and that it was "critical to do [that day's] meeting in a friendly manner. So please let Komori start his speech first. You and Mr. Keegan can ask for more support and commitment from Mr. Komori but please show your even stronger commitment to get this deal done as soon as possible. Otherwise, he would change his mind and walk away. That's the end of the story."

190. Kawamura also texted Jacobson and Hess later that day:

> David and Jeff, I called David but couldn't reach. Komori says Fujifilm will walk away from this deal if you won't keep the announcement schedule.

191. Almost immediately thereafter, Kawamura texted Jacobson individually to admonish him to listen to Komori because "[t]here's nothing makes more sense than our project."

192. On January 25, 2018, Keegan wrote a letter to Komori on behalf of the Board requesting reassurances about Fuji Xerox's financial state, including the delivery of three years of Fuji Xerox's financial statements that PriceWaterhouseCoopers audited. Keegan further requested that the continuing director period be reduced to five years from seven years to "properly protect the public shareholders of Xerox," that there be just one CEO of the new Xerox entity, and that both parties ensure that the Fuji Transaction would be consummated after being announced.

193. On January 26, 2018, Kawamura emailed Jacobson to advise that Mizayaki would be COO of new Xerox and that "Komori agrees to have [Jacobson] as the single CEO of the combined company. Congratulations!"

194. Keegan texted Reese that same day: "It appears that [Fuji] has agreed to all aspects of my letter. This includes CEO. YES! I remain uncertain re Governance, we will see."

195. None of Keegan's "demands" cured the underlying unfairness of the Fuji Transaction, and his push for just one CEO only served to reward Jacobson, whom each member of the Board had recently agreed to replace.

196. On January 27, 2018, Kawamura sent Jacobson a copy of Komori's letter to Keegan. In this letter, Komori advised that he had "made a decision to accept all of four requests by you if the Xerox Board accepts a January 31st signing[.]" Notably, those requests included that Jacobson be the sole CEO of new Xerox.

197. Kawamura separately texted Jacobson: "Jeff, it was such a challenge for me the last few days. Komori didn't like to compromise from him in writing. I called him at home three times yesterday to get his approval. I was terribly scolded. He will never compromise any more. Now I just hoping to hear the good news from you."

198. Also on January 27, 2018, Jennifer A. Horsley, a Xerox employee, emailed Centerview: "I need support on [] what the value we put on Fuji Xerox [is] and how to address the concern that despite a very attractive pro forms model ***the Xerox shareholder share of these greater profits some could argue doesn't appear to be as good a trade as what Fuji is receiving*** . . . [W]e know ***our activist investors will be going after us***," to which Centerview replied that ***it would not "be disclosing the value [it was] putting on [Fuji Xerox]***." (Emphasis added).

199. On January 29, 2018 – two days before the Fuji Transaction announcement date – Kawamura emailed Jacobson to tell him that "[t]here was a strong resistance" at Fuji to accept an upward revision of synergies to $1.7 billion "because this request was influenced by the unfriendly member of the board." Critically, at this time Kawamura also requested that Xerox abandon its intention to file the JEC and "explain why you have to file JEC and get our consent[.]" Kawamura

noted that filing the JEC would "certainly create even further controversy" on Fuji's side, adding that "[t]hings are going toward the wrong direction."

200. That same day, Hess sent an email discussing an "Implied Premium" and stating that: "We are not talking about premium publicly. ***That is a made up number.*** But we are trying to come up with a way to talk about relative value." (Emphasis added).

201. On January 30, 2018, Reese circulated a "Project Juice: Tough Q&A" outline with certain talking points to address likely investor questions about the Fuji Transaction, including but not limited to:

- "We have left no stone unturned in exploring all strategy alternatives available to the Company to unlock value for Xerox shareholders and determined that combining Xerox with Fuji Xerox is clearly the best option." (emphasis in original). [stated six times in some fashion]
- "Jacobson will be CEO and is the right leader for the combined company. He has the full support of the Xerox board of directors . . . ."
- "Today's announcement follows a comprehensive review of strategic and financial external advisors."

202. On January 30, 2018, Centerview presented the Fuji Transaction to the Board. Centerview also provided a fairness opinion for a guaranteed $10 million fee, in which ***Centerview determined that the Fuji Transaction was fair to Xerox notwithstanding significant risk areas identified and open due diligence questions***. Centerview did so despite its earlier acknowledgement that the dividend yielded no control premium, and its knowledge that it had failed to adequately explore alternative transactions with, for example, PE firms.

203. On January 30, 2018, the Board disloyally passed the following resolution approving the Fuji Transaction:

> the Board, upon consideration of, among other things, the advice of its advisors, the Centerview Fairness Opinion and such other factors as the Board deems appropriate (including the Series B Anti-Dilution Adjustment), hereby deems the

Transaction to be fair from a financial point of view and in the best interests of the Corporation and its shareholders.

VI. Defendants Announce the Fuji Transaction.

204. On January 31, 2018, Xerox and Fuji announced that they had entered into a definitive agreement, pursuant to which Fuji Xerox was to be combined into Xerox, which was in turn to be acquired by Fuji. Under the terms of the Fuji Transaction agreements—specifically, a Redemption Agreement and a Share Subscription Agreement that the Company filed with the SEC on February 5, 2018—Fuji Xerox, which is currently owned 75% by Fuji and 25% by Xerox, was to 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 was to 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 was to 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. After the closing, the combined entity was to repay the loan taken out by Fuji Xerox to fund the acquisition of Fuji's ownership interest. As Fuji CEO Komori told the Nikkei Asian Review, the "scheme will allow [Fuji] to take control of Xerox without spending a penny."

205. Importantly, Fuji has announced its intention to sue Xerox and compel it to move forward with the Fuji Transaction or subject the Company to a $183 million termination fee. Therefore, a very real possibility remains that the Fuji Transaction can cause significant harm to Xerox and its stockholders.

206. Jacobson was to serve as CEO of new Xerox, which was to have a twelve member board comprised of seven members appointed by Fuji, including Jacobson, and five directors from the Xerox Board as it was then constituted.

207. Notwithstanding that the Fuji Transaction constituted a change-in-control, the Xerox stockholders were not going to receive a control premium. Such premiums typically average 25-30% of the trading price of the target's stock.

208. Moreover, the financial aspects of the Fuji Transaction were designed to make the Transaction look better to Xerox stockholders than it actually was. For instance, Xerox valued itself (excluding its 25% stake in Fuji Xerox) at a lower EBITDA (*i.e.*, earnings before interest, tax, depreciation, and amortizations) multiple than its current market value (including its 25% stake in Fuji Xerox). Moreover, Fuji was walking away as the controlling entity notwithstanding that Xerox has greater revenue, EBITDA, and operating profit. Fuji also stood to receive more than $120 million more in annual cash dividends than it currently receives from Fuji Xerox, while Xerox stockholders would not have received any additional cash dividends.

209. In addition, the Fuji Transaction was specifically structured to deny Xerox stockholders any appraisal rights. Specifically, by structuring the merger as a redemption, whereby Fuji Xerox redeemed for cash Fuji's 75% ownership in the joint venture, and a subscription, whereby Fuji purchased shares entitling them to control 50.1% of the voting power of outstanding Xerox stock for the same cash price paid by Fuji Xerox in the redemption, Fuji, Centerview, Jacobson, and the other Board members consciously devised a transaction type that would not allow subsequent appraisal actions. As such, since the Fuji Transaction offered no control premium, the decision to structure the Fuji Transaction this way is facial evidence of Defendants' bad faith.

210. The Director Defendants also agreed to a host of improper deal protections as part of the Fuji Transaction, including an inordinately restrictive $183 million termination fee and a 6 day unlimited Fuji matching right. Consequently, Fuji may well seek this $183 million from Xerox as an alternative to compelling Xerox to consummate the Fuji Transaction.

211. In addition, although the Fuji Transaction contemplated a boilerplate "fiduciary-out" provision that would have allowed the Board to consider unsolicited offers, its terms guaranteed that no unsolicited superior bids would have emerged. In this regard, the Board agreed to a non-solicitation "no-shop" provision, which forbade it from conducting an active sales process. While "no-shop" provisions are often found in strategic transaction agreements, they are usually only appropriate where a company has conducted a robust process prior to the consummation of the transaction, unlike the illusory "process" conducted by the Xerox Board.

212. These onerous deal protection devices actually precluded competing offers as intended. For example, in his May 10, 2018 open letter (discussed below), Icahn revealed that he was approached by multiple potential acquirers who were interested in conducting further due diligence, but were unwilling to do so until the termination fee and Fuji's matching rights were eliminated.

213. As part of the Fuji Transaction, the Board also agreed to make the deal-preclusive "crown jewel" lock-up provisions of the joint venture agreements permanent through the Share Subscription Agreement, pursuant to which the Director Defendants agreed not to amend, waive, or terminate any "Material Contract," including the JEC, the Technology Agreement, and the Master Program Agreement.

214. Ironically, on February 1, 2018, Director Defendant Prince discussed the preclusive effect of the Fuji Xerox agreements:

> Indeed. In some ways, sad: a (formerly iconic) US company selling control to a Japanese company.
>
> But there is a Joint Venture agreement, entered into 55 years ago (!). which made it practically impossible for Xerox to sell to anyone else. It's pretty amazing: when the JV was entered into, no one ever imagined that Xerox would ever need to sell itself and no one ever imagined that Asia (which Xerox is locked out of by the JV) would be the fastest growing region. A really amazing problem.

215. Only on February 9, 2018 did Xerox actually explain to its stockholders that that the Fuji Xerox joint venture agreements effectively precluded a change-in-control transaction with any entity other than Fuji. Specifically, the Company disclosed that:

> • If a named competitor acquires more than 30% of Xerox, Fujifilm can terminate the joint venture contract
>
> • If any other person acquires more than 50% of Xerox, Fujifilm can terminate certain Xerox approval rights
>
> . . .
>
> • Xerox is restricted by IP rights from selling xerographic products in Asia; Fuji Xerox has exclusive and non-exclusive rights to certain Xerox intellectual property and trademarks in Asia
>
> > • Through March 2021, if Xerox is acquired by a third party these restrictions would continue to restrict Xerox and its subsidiaries
> >
> > • If Xerox acquires a third party, then such third party would become subject to the restrictions and obligations described above
>
> . . .
>
> • Fuji Xerox can terminate certain supply agreements if (i) Xerox undergoes a "substantial change" in the composition of its Board and/or management and (ii) Fuji Xerox can demonstrate it has a "reasonable basis" to believe the benefits it expected to derive from the master program agreement governing such supply agreements are in "substantial jeopardy"

VII. Deason's Litigation Efforts Enjoins the Fuji Transaction, but Do Not Remedy the Board's Past Breaches of Fiduciary Duty, and In Fact, Leads the Board to Commit Additional Breaches of Fiduciary Duty

216. On January 22, 2018, Deason and Icahn announced that they had formed a group to work together to support Icahn's Board nominees and oppose the Fuji Transaction.[7]

217. On February 12, 2018, Deason and Icahn wrote another joint letter to Xerox stockholders, wherein they drew stockholders' attention to Komori's boast to the Nikkei Asian Review that the "scheme will allow [Fuji] to take control of Xerox without spending a penny." Icahn and Deason observed that "[i]t really is a remarkable achievement by Fuji. Without putting up any cash, they will acquire majority control and ownership of a venerable American icon. In exchange, we – the existing Xerox shareholders – will receive (1) an additional, indirect 25% interest in a Fuji subsidiary that just last year disclosed a $360 million accounting scandal caused by a 'culture of concealment' and Fuji's failure to have adequate management systems and (2) a one-time special dividend financed with our own assets."

218. On February 13, 2018, Deason filed the initial complaint in *Deason I* in the New York Supreme Court, County of New York. That same day, Deason moved for an Order to Show Cause seeking an expedited hearing and pre-hearing discovery on his motion for a preliminary injunction. The Court entered the Order to Show Cause on February 15, 2018.

219. On February 20, 2018, Deason and Icahn wrote a long, joint letter to stockholders, reminding them that "**THERE [WE]RE VIABLE ALTERNATIVES TO THE PROPOSED FUJI SCHEME**" (emphasis in original) and explaining their view that the "synergies" touted in support of the Fuji Transaction were bogus:

[7] They later announced that Icahn would share with Deason the litigation costs of *Deason I* and *Deason II*, discussed below. This "cost," however, would prove to be $0 as the New Settlement Agreement calls for the Company and/or its insurers to reimburse Deason's legal fees and expenses related to these lawsuits.

> We sincerely believe that Fuji is buying control of Xerox not because they believe in synergies but rather to eliminate the possible major catastrophe they know would occur for them if we continued to have influence at Xerox. They are terrified of that possibility. **They don't really believe in the $1.7 billion of synergies they are touting. If they truly do, then why are they not willing to buy us out at a large premium over the current price?** We all can calculate what $1.7 billion of synergies are worth.

(Emphasis in original). Deason and Icahn added that "**[t]he Board's most recent letter to shareholders was rife with misleading obfuscations, basic mathematical errors and convenient omissions**," and explained how, given the centrality of Xerox to Fuji's bottom line, "Fuji needs Xerox more than Xerox needs Fuji." Icahn and Deason also called the joint venture agreements "awful," and explained certain errors in the Board's assertions, including that the Board's recent analysis "includes both a 49.9% ownership interest in the 75% joint venture contribution from Fuji *and* ownership of 49.9% of standalone Xerox, which itself includes a 25% ownership interest in the joint venture. Added together, that indicates Xerox shareholders will own approximately 62.4% of the joint venture after the scheme closes (which we all know is not true) and leads to an overstatement in value of almost $5 per share based on the Board's own methodology." Icahn and Deason also blasted the Board's assertion that "Fujifilm, as owner of 50.1% of the combined company, will bear the debt incurred to finance the dividend as the combined company will be fully consolidated by Fujifilm[.]" In fact, they noted that Xerox was taking on the debt, and thus current Xerox shareholders would also bear the burden of servicing that debt. Icahn and Deason added that if the Board members "sincerely believe[d] that to be in principal what Fuji agreed to, then why not restructure the transaction to have Fuji itself borrow $2.5 billion (at almost surely more attractive domestic borrowing rates than Xerox can achieve) and pay the proceeds to Xerox shareholders directly?" Icahn and Deason raised "numerous [other] additional problems and inconsistencies in the Board's valuation analysis" in a follow-up letter dated March 2, 2018.

220. On March 2, 2018, Deason filed the initial complaint in *Deason II*. Whereas the *Deason I* action challenged the Fuji Transaction, *Deason II* attacked the suspension of Xerox's by-laws requiring director nominations to be made by a date certain, in light of materially changed circumstances. Specifically, in *Deason II*, Deason moved for a preliminary injunction to require the Board to waive the advance notice by-law that would have required Deason to propose, on or before December 11, 2017, a slate of directors for election at the 2018 Xerox annual meeting of stockholders to run against the incumbent director slate. This lawsuit was necessary because, on February 26, 2018, Deason wrote the Board requesting waiver of the by-laws. The Board, however, in violation of its members' fiduciary duties, "concluded that [Deason did] not have any right to a waiver."

221. Deason and the Xerox-affiliated defendants entered into a scheduling stipulation with respect to both *Deason I* and *Deason II* that was So Ordered on March 12, 2018. The defendants agreed to file their motion to dismiss on March 16, with opposition due on April 2 and a return date of April 12, 2018. Fact witnesses were to be deposed between March 23 and April 9, 2018. Deason was to file his brief in support of a preliminary injunction on April 10, with opposition due on April 17, a reply due on April 20, and an evidentiary hearing to be held on April 26, 2018 and continued until such time as it was completed.

222. Pursuant to the stipulations entered in *Deason I* and *Deason II*, Deason secured hundreds of thousands of pages of documents from numerous sources and questioned numerous individuals, including five director defendants, several senior Fuji executives, and several third parties.

223. On March 14, 2018, Icahn wrote an open letter to Xerox stockholders to "introduc[e] John Visentin" and relay that Icahn and Deason had engaged him "as a consultant

both in connection with the upcoming proxy contests and to explore strategic alternatives for Xerox on our behalf."

224. On April 17, 2018, Icahn and Deason publicly released a 44-page presentation (the "April 17th Presentation"), titled: *XEROX CORPORATION[:] Rescuing and Revitalizing an American Icon*, in which they described in detail the Company's mismanagement, the Transaction with Fuji, and their plan to maximize value of Xerox. The April 17th Presentation began by discussing the Company's poor returns relative to its peers over the preceding five years. Moreover, it noted that while Xerox management had touted approximately $1.2 billion in "cost cuts" over the past two years, only approximately $30 million of those "cuts" flowed to the bottom line.

225. The April 17th Presentation also iterated that Xerox had failed to disclose the "crown jewel" lock-up agreements with Fuji for nearly two decades. Deason and Icahn challenged the Company's reliance upon the "crown jewel" terms as its basis for failing to conduct a sufficient process because, they claimed, Xerox should have been able to terminate the lock-up based on a material breach, namely: the massive accounting scandal at Fuji Xerox. Similarly, under the Technology Agreement's terms, Fuji Xerox's exclusive rights to Xerox IP expire in March 2021, and Xerox could use this point as leverage to renegotiate its terms now.

226. In the April 17th Presentation, Deason and Icahn further criticized the unusual nature of the Fuji Transaction's structure, which was to provide Fuji with control of Xerox for just its stake in Fuji Xerox, which Fuji would still control after the Transaction. They highlighted that this structure also entitled Fuji to receive $120 million in additional annual dividends from Xerox. They also noted that Fuji would receive all of these benefits from the Fuji Transaction without Fuji having to "spend[] a penny." Icahn and Deason attributed the disastrous terms of the Fuji

Transaction to the poorly-run process, which did not consider a proper market check and was at all times led by a conflicted Xerox CEO who "serve[d] as a loyal agent of the acquirer" in "a process that ignore[d] other bidders."

227. In the April 17th Presentation, Icahn and Deason also presented their purported plans for Xerox as a standalone company, which they claimed would create a total value of $54 to $64 per share compared to the approximate $28 per share in the Fuji Transaction, while also retaining operating control of Xerox and the prospect of receiving a true control premium in the future. As would become clear in time, however, Deason and Icahn actually want to sell off Xerox to the highest bidder, as soon as practicable, which may not be in Xerox's best interests.

VIII. The Court Enjoins the Fuji Transaction and Enforcement of the Director By-laws.

228. On April 26-27, 2018, the Court conducted an evidentiary hearing, where live testimony was presented concerning Deason's motions for preliminary injunctions.

229. In its Decision, the Court made numerous findings of fact in accordance with the foregoing allegations that the Director Defendants breached their fiduciary duties with respect to the Fuji Transaction.

230. As to whether Xerox could have terminated the joint venture agreements on the basis of, *inter alia*, the Fuji Xerox accounting scandal, the Court observed that "[t]here [we]re conflicting Japanese law expert reports on the issue of whether, under Japanese law (which governs the joint venture agreements and the joint venture transactional documents), Xerox could have withdrawn from the joint venture agreements because of the accounting scandal." The Xerox Board, however, did not even try to use the accounting scandal to terminate the joint venture agreements or as leverage during the negotiations of the Fuji Transaction.

231. Next, the Court determined that "the weight of the evidence adduced at the hearing, including Xerox's financial performance in 2017, established that ***on and before January 31, 2018***

there was no exigent necessity for Xerox to engage in any change of control transaction. The evidence also established that Mr. Icahn had a strong desire to have Xerox sold in an all-cash transaction at a premium over Xerox's market value." (Emphasis added). In other words, the Court determined that, while there was no pressing need for Xerox to sell itself, it was nevertheless Icahn's strong desire—as it is now—to see the Company sold.

232. Ultimately, the Court granted Deason's motions to enjoin the Fuji Transaction and compel waiver of the director nomination by-law provision to allow Deason to appoint a competing slate of directors. The "lynchpin" of the Decision turned "on the conduct of Xerox CEO Jeff Jacobson." As the Court elaborated:

> Jacobson's role in negotiating the ultimate transaction must be viewed against the background of events that commenced on and after May 15, 2017 when Jacobson participated in a dinner with Carl Icahn at which Icahn told Jacobson, in the presence of two of Jacobson's direct reports, that Icahn did not believe Jacobson was the right person to be Xerox CEO and that Icahn wanted Xerox sold. Icahn further stated that Jacobson would be fired if Jacobson was unable to produce a sale transaction. Jacobson memorialized his recollection of his meeting with Icahn and shared it with the Xerox Board.
>
> . . .
>
> [T]he testimony established that Jacobson, working with Xerox's investment banker, Centerview, developed a transaction concept that would allow Fuji to make a cashless acquisition of Xerox. . . . For all intents and purposes, Jacobson's cash-free acquisition concept took off the table any type of all-cash sale transaction with Fuji even though one of Xerox's financial advisors, David Hess of Centerview, testified that Fuji has cash reserves of $8 billion.

233. With respect to Jacobson's continued service as CEO of new Xerox, Director Defendant Krongard testified that both Centerview and Paul Weiss told the Board that Jacobson had to be the CEO of the combined companies. As the Court discussed:

> The most benign explanation of Keegan's insistence that Jacobson be the CEO of the much larger combined company is, as Director Krongard testified, that the Xerox Board trusted Komori to replace Jacobson if Jacobson did not perform. The Court finds this rationale perplexing.

> Notwithstanding testimony to the contrary from Jacobson and Keegan, it is simply counter-intuitive and not credible to the Court that Jacobson was not conflicted with respect to his dealings with Fuji on behalf of Xerox at least as of November 10, 2017. It is equally counter-intuitive and not credible to the Court that Jacobson did not both explain his personal circumstances to Fuji and attempt to enlist Fuji's assistance in preserving his position as the contemporaneous documents established. Indeed, in one text message to Jacobson, Kawamura states that he and Jacobson should "be the one team to fight against [their] mutual enemy" in reference to Icahn. Keegan and Reese, who, like Jacobson, owed a duty of loyalty to all Xerox shareholders, both saw this email. Jacobson responded to Kawamura stating: "We are aligned my friend." By the same token, notwithstanding the quality and experience of Xerox's Board, it was a breach of fiduciary duty for Keegan to authorize Jacobson to continue to be the primary interface with Fuji after Keegan both told Jacobson he could be imminently terminated and, for that reason, he should cease communications with Fuji about any transaction.

(Citations omitted).

234. The Court determined that the business judgment rule did not protect the Fuji Transaction because of the egregious facts facing the Court. Specifically, the Court wrote in its Decision that: "The circumstance that the transaction that was ultimately approved by the Board transferred control of Xerox to Fuji without any payment to Xerox shareholders, with Jacobson as the CEO of the combined entity and privileged to opine to Komori on the five members of the Xerox Board who might be directors of the combined entity for five years, takes this transaction out of the realm of cases in which courts defer to the business judgment of independent directors. This transaction was largely negotiated by a massively conflicted CEO in breach of his fiduciary duties to further his self-interest and approved by a Board, more than half of whom were perpetuating themselves in office for five years without properly supervising Xerox's conflicted CEO."

235. In concluding its finding of facts, the Court wrote that the "arresting irony of the transaction" was that there was "scant evidence" that Xerox had an "exigent necessity" to do any transaction, and there was sparser evidence that "Xerox came close to exhausting various alternative transactions with other parties that could have been more advantageous to Xerox."

236. With respect to Fuji's liability, the Court found that "Fuji cannot be faulted to for taking advantage of the opportunity Jacobson presented Fuji which, in Komori's words, enabled Fuji to 'take control of Xerox without spending a penny.' But, that does not mean Fuji did not aid and abet a breach of fiduciary duty." (Citation omitted).

237. The Court determined that Deason had demonstrated a likelihood of success on the merits of his claim that the Director Defendants breached their fiduciary duty in approving the Fuji Transaction, and were aided and abetted by Fuji. The Court applied the "entire fairness" doctrine and determined that Deason would be able to show that the Director Defendants acted in bad faith and that Xerox stockholders would incur damages without an injunction as a result of the unfair process.

238. The Court also determined that the "Board made several significant decisions regarding a change of control transaction with Fuji, as well as significant disclosures regarding the terms of the Fuji Xerox joint venture, six weeks after the director nomination deadline in Xerox's bylaws." These decisions and disclosures were material, and the Court therefore granted the injunction requested by Deason to force waiver of the nomination by-law provision for all stockholders.

IX. The Board Enters into, and Immediately Abandons, the Initial Settlement Agreement.

239. Just a few days after the Court issued its Decision, Deason and the Director Defendants entered into the Initial Settlement Agreement providing, *inter alia*, that: (1) the Board would attempt to renegotiate the Fuji Transaction; (2) Jacobson would step down as CEO; and (3) six directors would also resign, to be replaced by nominees put forward by Icahn (*i.e.,* a majority of the Board). All parties, including the four additional stockholder-plaintiffs in *In re: Xerox Corp.*

Consol. S'holder Litig., also entered into an initial memorandum of understanding incorporated into the Initial Settlement Agreement (the "Initial MOU").

240. The Initial Settlement Agreement also provided that Deason would file stipulations of discontinuance in both *Deason I* and *Deason II*, which were to be entered by the Court by 8 P.M. on May 3, 2018.

241. In announcing the Initial Settlement Agreement, the Board made the following statement:

> After careful consideration of shareholders' feedback on the proposed combination with Fuji Xerox, ***Xerox approached Fujifilm regarding a potential increase in consideration to be received by Xerox shareholders.*** As yet, Fujifilm has not made a proposal to enhance the transaction terms.
>
> Following the court's decision last week to enjoin Xerox's proposed combination with Fuji Xerox, ***the Board considered the significant risk and uncertainty of a prolonged litigation, during which the company would be prohibited from negotiating with Fujifilm, as well as the potential instability and business disruption during a proxy contest***. ***As a result, the Xerox Board of Directors determined that an immediate resolution of the pending litigation and proxy contest is in the best interest of our company and all stakeholders***.
>
> This agreement will help ensure that Xerox and its employees will be able to continue to focus on serving customers and building on the company's financial and operational performance."

(Emphasis added).

242. The Board claimed that the resolution of Deason's litigation, as called for by the Initial Settlement Agreement, was in the best interest of Xerox and its stockholders. Notably, the Board was silent as to resolution of potential exposure from the Fuji Transaction, stating only that they would approach Fuji concerning the consideration to be received by Xerox stockholders. That said, the Initial Settlement Agreement did not foreclose the possibility of resolving matters with Fuji. Indeed, it expressly contemplated additional negotiations with Fuji, one of Xerox's most important partners.

243. The Initial Settlement Agreement and the Initial MOU in the Class Action, however, did purport to foreclose the possibility of recovery against the Board members for breaching their fiduciary duties by failing to oversee Jacobson's negotiations with Fuji, and ultimately approving the Fuji Transaction. In this regard, the settlement contemplated releases for the Board members for all wrongdoing that could have been alleged based on the Fuji Transaction. Making matters worse, the settlement terms also called for exorbitant payouts to the outgoing directors.

244. Although the Director Defendants did not even disclose Jacobson's golden parachute, in a subsequent open letter Icahn complained that the Director Defendants "repeatedly demanded that . . . Jacobson be awarded an $18 million golden parachute and that the other directors have their outstanding equity awards vested and paid out immediately." As a result, it is reasonable to infer that Jacobson was to receive $18 million under the Initial Settlement Agreement. Similarly, it is reasonable to assume that the other Board members who were stepping down would receive accelerated equity vesting totaling $6.8 million. Accordingly, the Initial Settlement Agreement was to reward these disloyal fiduciaries with nearly $25 million of the Company's funds after they, who had spent the preceding months—or, in Jacobson's case, nearly a year, during which time he was paid compensation that could be worth up to $14.4 million—actively working against Xerox's best interests. Only this deeply conflicted Board would tout its approval of the Initial Settlement Agreement as in the Company's best interests. The Board was actually protecting its directors' interests in the face of a scathing Decision which found that those directors had likely breached their fiduciary duties in multiple ways in connection with the Fuji Transaction.

245. On May 1, 2018, the Court held a hearing in Deason's litigation concerning the Initial MOU. Counsel for Fuji observed that the changing of six directors contemplated by the Initial Settlement Agreement and Initial MOU amounted to a "change in control" concerning directors selected by Xerox stockholders, without any input from Xerox stockholders. Fuji's counsel further argued that the Court should allow stockholders "an opportunity to understand what's going on and if they have objections, to come in and explain that to Your Honor before this change of control happens." The Court instructed the parties that it would require "briefing from the parties and appropriate disclosure," and "le[ft] it to the Xerox management and Board of Directors to decide what needs to be publicly disclosed from this moment forward."

246. On May 3, 2018, counsel for Deason and the Xerox-affiliated defendants wrote a joint letter to the Court stating that Fuji should not be allowed to object to a stipulation of discontinuance in an individual suit. In their letter, they did not meaningfully challenge that they were allowing Icahn and Deason to take control of the Board without a stockholder vote. Notably, the Class Action plaintiffs did not advocate for Xerox stockholders to have a vote either, as they were supporting the settlement which gave away control to Icahn and Deason.

247. Also on May 3, 2018, the Court held another hearing where it agreed to enter a stipulation of dismissal disposing of *Deason II* because nobody objected to waiver of the nomination by-law provision. The Court, however, declined to enter a stipulation of dismissal in *Deason I* "without a formal motion and appropriate notice" to Xerox stockholders and directed either the Company or Deason to "make a motion . . . submit briefs and [the Court would] hear argument on the briefs."

248. The Board used the Court's insistence on "proper procedure" as a flimsy pretext to back out of its commitments and look after the directors' own self-interest. Later on May 3, 2018, the Board issued an announcement as follows:

> NORWALK, Conn. —
>
> Xerox (NYSE: XRX) today announced that the settlement agreement it had reached with Carl Icahn and Darwin Deason on May 1, 2018 ***has expired in accordance with its terms***. As previously stated, the agreement would have become effective upon execution of stipulations discontinuing the Deason litigation with respect to the Xerox defendants. In the absence of such stipulations, the agreement expired at 8:00 p.m. ET on May 3, 2018.
>
> As a result, ***the current Board of Directors and management team will remain in place***.
>
> Xerox and its Board of Directors recognize the uncertainty caused by the developments of the past several days among the company's investors and other stakeholders.

(emphasis added).

249. On May 4, 2018, the Board further announced that Xerox had appealed the Court's Decision preliminarily enjoining the Fuji Transaction and enforcement of the director nomination by-law provision. In announcing the appeal, the Board claimed, at odds with the express findings of the Court, that it had "unanimously authorized the Transaction after months-long discussions and deliberations, and based on its good faith judgment that the Transaction represented the value-maximizing alternative for the company's shareholders." This statement was made just three days after the very same Board had announced that the Initial Settlement Agreement, ***which was to include renegotiation of the Fuji Transaction***, was in the "best interest of [the C]ompany and all stakeholders." The Board did not explain how proceeding with the Fuji Transaction and renegotiating the Fuji Transaction could both be in the best interests of Xerox, as if they were in some state of transactional superposition.

250. Moreover, in its Decision, the Court made clear that it did not apply the business judgment rule because the Board generally, and Jacobson specifically, did not negotiate the Fuji Transaction in good faith. The Court's Decision on this point was grounded in pages of findings of fact reached after a searching review of an expansive evidentiary record, including an evidentiary hearing that poured over into a second day. Xerox pointed to no clear error in the Court's Decision, and its appeal was grounded in the same bad faith that motivated the Director Defendants during all of the wrongdoing discussed herein. Accordingly, the Board's decision to appeal the Decision for self-interested reasons constituted yet another breach of its fiduciary duties as the Board continued to waste the Company's assets on a frivolous appeal.

251. On May 9, 2018, the Board issued a public letter to stockholders in which it claimed to "set[] the record straight[.]" In its letter, the Board argued, among other things, that they had engaged in a "robust strategic review process" since the fall of 2015 that resulted in the Fuji Transaction. The Board then continued to assert that the Fuji Transaction was "the most attractive option available," even though the record before the Court made clear that the Board had not bothered to look for another option. The Board also defended its decision to abandon the Initial Settlement Agreement just a few days after agreeing to it.

252. Specifically, the Board claimed that it did so because "[i]n the days following the announcement of the settlement, which was conditioned on stipulations dismissing the litigation against Xerox, our shareholders spoke clearly and expressed their views about Xerox's prospects under an Icahn/Deason regime. Xerox's share price fell over 12 percent and, in our conversations with our long-term investors, it became obvious that a number of them were strongly averse to the settlement terms that we entered." As a result of these alleged discussions with "long-term

investors" the Board members alleged that they "concluded that it was in our shareholders' best interests" to renege on the settlement and maintain their position of control over the Company.

253. The following day, Icahn and Deason issued a public letter to stockholders in which they attempted to refute, point-by-point, the Board's contentions. In their May 10, 2018 letter, Icahn and Deason challenged the Board's claim that they conducted a "robust strategic review process" by citing to Hess's testimony that the Board never asked Centerview to conduct a broad process and that Centerview was not permitted to contact more than three parties. Icahn and Deason also challenged the Board's claim that it "continu[ed] to explore options to maximize shareholder value" by noting that the terms of the Fuji Transaction terms included "a 'no-shop' that prohibit[ed] Xerox and its advisors from even speaking with competing bidders and a perpetual match right in favor of Fuji, which effectively eliminate[d] the prospect that any competing bidder w[ould] approach the company."

254. While the Board claimed that it received support from "long-term investors," a poll of 250 Xerox stockholders conducted on May 8-9, 2018 by the Rochester Business Journal paints the opposite picture. A majority of respondent-stockholders polled supported changes at the Company, and only 26% of stockholders polled supported Jacobson and the Board in their fight with Deason and Icahn. However, that poll showed stockholders did not necessarily want Icahn and Deason to be in control of Xerox either. For example, a Xerox stockholder told the pollster: "I do not trust Carl Icahn, nor his partner to have Xerox's and its employees' best interest at heart. All they wish to accomplish is sell off parts of the company for enriched profits and let the highly diminished company wither and die. It might be good business in some circles, but not for Xerox, its employees, nor Rochester." Likewise, a different stockholder responded: "Icahn is not an 'activist shareholder.' He is a predatory investor who places short-term boosts in stock price above

long-term growth. Rochester cannot afford to have another wave of layoffs at a major employer, and Icahn's track record points to a probability of massive cuts and the likelihood that Xerox would be broken up into smaller chunks and sold. Rochester's media needs to stop glorifying Icahn and Deason, but instead take a serious look at the devastating consequences of an Icahn 'victory.'"

255. Moreover, as of May 10, 2018, Fuji denied having received a new offer from Xerox, notwithstanding that, in announcing the Initial Settlement Agreement, Xerox said that it had approached Fuji regarding a potential increase in consideration. Xerox further claimed that it proposed a $1.25 billion increase in the dividend to be paid by Fuji.

X. Knowing that They Still Face Liability Related to Multiple Breaches of Fiduciary Duty Concerning the Fuji Transaction, the Board Members Enter into the New Settlement Agreement.

256. On the evening of Sunday, May 13, 2018, Xerox announced that Icahn, entities related to Icahn, Deason, the other stockholder-plaintiffs, the Board, and (individuals purporting to represent) Xerox had agreed upon the terms of a new settlement as embodied in the New MOU and the New Settlement Agreement. The Board's approval of the New Settlement Agreement, like its approval of the Initial Settlement Agreement, constituted a breach of fiduciary duty as it favored the Director Defendants' interests to the detriment of the Company's interests. In particular, the New Settlement Agreement provides for, among other things:

a) Termination, not renegotiation, of the Fuji Transaction, with the same failure to negotiate a mutual walk-away provision with Fuji;

b) The "voluntary" resignation of Jacobson as CEO and director, resulting in an undisclosed golden parachute, which it is reasonable to infer is worth at least $18 million;

c) The "voluntary" resignation of Hunter, Keegan, Prince, Reese, and Rusckowski from the Board, resulting in more than $6.8 million in accelerated equity awards payable to them;

d) The purported appointment of Visentin, who was retained by Icahn and Deason during the 2018 proxy contest, as Vice Chairman and CEO;

e) The purported appointment of Christodoro, Cozza, Graziano, and Letier to the Board, as opposed to Jaffrey Firestone, Randoph Read, Cozza, Graziano, and Letier (as called for in the Initial Settlement Agreement), each of whom was nevertheless still hand-picked by Icahn and Deason and has longstanding ties to Icahn and/or Deason; and

f) Waiver of Xerox's advance nomination by-law and thirty day period for Xerox stockholders to nominate candidates for seats on the Board.

257. The New Settlement Agreement further provides releases and indemnification to each member of the Board that approved the Fuji Transaction "[t]o the fullest extent permitted by applicable law" for their numerous breaches of fiduciary duty. Specifically, Section 2(j) of the New Settlement Agreement provides full and unconditional releases to the current and former officers and directors of the Company for:

> (A) matters that are the subject of the Deason Litigations, (B) (x) that certain Redemption Agreement, dated as of January 31, 2018, by and among Fuji Xerox Co., Ltd. ("FX"), Fujifilm and the Company and (y) that certain Share Subscription Agreement, dated as of January 31, 2018, by and between the Company and Fujifilm, (C) any agreement relating to FX that is publicly disclosed as of the date hereof (and any agreements entered into in connection with, or in furtherance of, such agreements), including (x) the Joint Enterprise Contract, between Xerox and Fujifilm, dated March 30, 2001, (y) the Technology Agreement, dated April 1, 2006, by and between the Company and FX and (z) the Master Program Agreement made and entered into as of September 9, 2013 by and between the Company and FX and (D) serving as a member of the board of directors of FX or any of its subsidiaries; provided that nothing in this Agreement shall waive, release, bar, discharge, enjoin, or otherwise affect any Retained Claims.

258. The New MOU likewise includes an overly broad release of the Company's claims against its current and former directors and offices:

> Plaintiffs, on behalf of themselves and the other Class members, will agree to ***customary releases*** of, upon the effective date of the Settlement, any and all claims, causes of action, actions, rights, judgments, obligations, damages, fines, penalties, amounts, demands, losses, controversies, contentions, complaints, promises, accountings, bonds, bills, debts, liabilities, dues, sums of money, expenses, specialties, interest, and fees and costs (whether direct, indirect or consequential, incidental or otherwise including, without limitation, attorneys' fees, expert or consulting fees, accountants' fees and court costs, of whatever nature) of any kind whatsoever, in any capacity, in law or in equity, whether arising under federal, state,

> foreign, or common law or the laws of any other relevant jurisdiction, whether now known or unknown, suspected or unsuspected, that any Plaintiff (i) asserted in the Amended Complaint; or (ii) ***could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions set forth in the Amended Complaint***.

New MOU § 13.

259. These releases will effectively enshrine the damages suffered by the Company in connection with the Fuji Transaction by foreclosing any opportunity for Xerox to recover from the Director Defendants for their breaches of fiduciary duty. Specifically, in connection with the Fuji Transaction, the Company wrongfully paid at least $10 million in fees to Centerview for a bogus "fairness" opinion, as well as undisclosed legal fees and other expenses incurred defending the Fuji Transaction. In addition, the Company now faces the costs, risks, and uncertainties of defending a claim by Fuji to enforce the terms of the Fuji Transaction or, in the alternative, collect the $183 million termination fee.[8] Critically, the very same parties that are signatories to these releases, including the anticipated "customary releases" of class and derivative causes of action, are the individuals responsible for causing the Company to incur damages.

260. The New Settlement Agreement and the New MOU further provide for lucrative benefits to the outgoing Director Defendants and Jacobson in the form of accelerated vesting of deferred stock units worth more than $6.8 million and payment of a golden parachute likely worth at least $18 million, respectively. Each of the outgoing and continuing Director Defendants,

[8] While Fuji materially breached the terms of the Fuji Transaction by failing to turn over required financial information, certain Defendants' attempt to waive claims against former Board members for entering into the Fuji Transaction while wholesale failing to secure a walk-away from Fuji as part of the New Settlement Agreement constitutes a new breach of fiduciary duty in and of itself. This issue will likely be judicially decided and there is a possibility that a judgment of $183 million will be entered against Xerox. Regardless of the outcome of any litigation against Fuji, the Company will incur additional legal expenses.

including Jacobson, should have been terminated involuntarily for cause, yet Icahn, Deason, and the "class plaintiffs" are seeking to allow them to "voluntarily resign." *Id*.

261. In its Decision, the Court found that breach of fiduciary duty claims against the Director Defendants for approving the Fuji Transaction had a likelihood of success on the merits. In particular, Justice Ostrager explicitly found that the facts "clearly show" that Jacobson had divided loyalties, and that the other "director defendants, a majority of whom would have future directorship positions on the board of the combined entity, acted in bad faith in structuring and negotiating the proposed transaction."

262. Despite these judicial findings, the New Settlement Agreement and the New MOU would let Jacobson and the other Director Defendants leave Xerox without facing any consequences, monetary or otherwise, for their breaches of fiduciary duty. Indeed, the New Settlement Agreement and New MOU will allow Jacobson to likely walk off with over $18 million, and the outgoing nonemployee Director Defendants will each receive between approximately $532,000 and $1.94 million. While the New MOU claims that Jacobson would not have left Xerox without these releases, such a contention ignores the obvious: the Board always retains the power to terminate Jacobson for cause.

263. The false narrative embraced by the New Settlement Agreement is farcical in this regard. Annexed to the agreement is a draft letter of resignation letter for the directors, the last line of which reads: "I note that my resignation is not because of any disagreements with the Company or any of its subsidiaries regarding any matter related to the Company's operations, policies or practices." The history of the last six months at Xerox is one of disagreements over the Company's operations, policies, and practices. To pretend that the Director Defendants, whether

outgoing or continuing, did not breach their fiduciary duties to Xerox and that they are not resigning due to disagreements with the Company is an exercise in fiction.

264. Moreover, according to the revised Preliminary Proxy Statement filed with the SEC on April 25, 2018 (the "Proxy"), had Jacobson been involuntarily terminated for cause for "engag[ing] in detrimental activity against the Company," Xerox's compensation plans provide that "there would be no payments [made] to [Jacobson] other than [his] deferred compensation plan balances . . . , and vested qualified pension benefits, if any." Further, "[a]ll unvested shares and any non-qualified pension benefits would be immediately cancelled upon termination for cause for all named executive officers."[9] However, that is not what will happen under the terms of the New Settlement Agreement and the New MOU, and the Company will suffer as a result. While plaintiffs in the Class Action may submit that "Jacobson needs to leave for Xerox to move forward" and that "[a]bsent this settlement, it is class plaintiffs' understanding that Jacobson will not voluntarily leave his post," such an "understanding" is flawed. The Fuji Transaction was already enjoined, and Jacobson's departure was inevitable, given all that came to light in *Deason I*, so there was no reason to pay Jacobson to leave when a properly functioning Board could and would have involuntarily terminated him for cause.

265. The New Settlement Agreement and the New MOU provide Deason and Icahn with undue and disproportionate representation on the Board. In this regard, Deason and Icahn only control approximately 15% of the total voting power of Xerox stock, yet through the New Settlement Agreement they have usurped control of a majority of seats on the Board. The exercise of this control presents an imminent risk to Xerox because Icahn and Deason's personal interests

[9] As of the end of fiscal year 2017, Jacobson's deferred compensation plan balance was $293,674.

are not wholly-aligned with the Company's best interests.[10] Separate and apart from their private litigation, Icahn and Deason have thrown their full weight behind the sale of the Company as soon as practicable, regardless of whether long term stockholder value would be maximized by Xerox remaining a standalone entity. In its Decision, the Court recognized that it is Icahn's strong preference to sell the Company. Likewise, the day after the New Settlement Agreement was announced, Deason gave an interview to Bloomberg TV in which he indicated that Xerox, through Visentin, would auction off Xerox as soon as possible. In addition, under the terms of the New Settlement Agreement, the next annual meeting of stockholders was not required to be held until four months after May 13, 2018 (*i.e.*, September 13, 2018). Although the Company has since announced that the meeting will be held on July 31, 2018 with a record date of June 13, 2018, Icahn's Board now has months to negotiate a sale before stockholders can even vote on director nominees. By working a *de facto* change in control through usurpation of control over the Board, Icahn and Deason have taken significant steps in their plan to auction off Xerox without regard to long-term stockholder value.

266. In Visentin they have found a willing accomplice. Visentin has ties to both HP and Apollo Global Management, both of whom have been linked to Xerox in takeover rumors, and can swing a transaction to either company if expediency serves the interests of Icahn and Deason. Visentin is being handsomely rewarded for his efforts. He is receiving an $11.5 million up front signing bonus, and, likely, from $13 million (target) to $18.6 million (maximum) more in annual compensation. According to a May 16, 2018 Xerox press release, "[i]n order to replace the value of certain compensation Visentin is forfeiting in order to join Xerox, the independent members of

[10] Indeed, Icahn and Deason's interest in Xerox seems to have taken on a sporting aspect. As reported by *Fortune*, Icahn and Deason "wagered $50,000—in cash—that Deason would lose his lawsuit to push back the deadline for nominating directors."

the Board of Directors approved an award of 350,755 restricted shares of Xerox common stock which will vest upon the earliest of (1) May 1, 2019, subject to his continuous employment through such date, (2) voluntary termination for good reason or termination by the company without cause, (3) termination due to death or disability or (4) a change in control. The award was granted outside of the Xerox Corporation 2004 Performance Incentive Plan (as amended and restated) and was approved by the independent members of the Board of Directors." These purportedly "independent" members either face a substantial risk of liability arising from the wrongdoing complained of herein, or are controlled by Icahn and Deason.

267. Visentin is further incentivized to accede to Icahn and Deason's demand to sell the Company as soon as practicable, regardless of Xerox's best interests, because of the exorbitant change in control payouts contemplated by his employment agreement. Visentin will receive between $18.4 and $21.37 million if the Company is sold, depending on the circumstances in which he leaves the Company. Together with his signing bonus and regular compensation, Visentin stands to be paid around $35 million for simply retaining a financial advisor to auction off the Company to the highest bidder.

268. Moreover, the so-called "class plaintiffs" are not positioned to look after the interests of Xerox. As proponents of direct stockholder suits, their interests are not the same as Xerox's interests. Indeed, ever since enforcement of the by-law provision was enjoined by the Court's Decision, it is unclear what direct claims are left for the class plaintiffs to prosecute. Under New York law, their purported dilution claim is properly alleged as a derivative harm. Likewise, each of the breaches of fiduciary duty not relating to the stockholder franchise that they allege resulted in an injury to the Company, not the stockholders in their individual capacities. By extension, the aiding and abetting claims they seek to retain are likewise Xerox's claims to

prosecute. In fact, even though their only valid claim is now moot, the class plaintiffs nevertheless seek to sign off on global releases that will forfeit Xerox's valuable claims against the Director Defendants.

269. Such global releases could be devastating given the possibility of a suit brought by Fuji. On May 18, 2018, (Fuji's COO) Sukeno disclosed that Fuji was "currently in talks with lawyers on the schedule for filing the lawsuit and plan[s] to go to court as soon as possible." Xerox is by no means out of the woods with respect to the Fuji Transaction and the concomitant $183 million termination fee. Releasing any claims related to the Fuji Transaction at this time could prove disastrous for Xerox.

270. Accordingly, the New Settlement Agreement and the New MOU, if given full force and effect, will make permanent one set of Xerox harms, and introduce a host of additional damages to be borne by the Company, all while letting the principal wrongdoers, the Xerox Board, evade liability. As such, the Board breached its fiduciary duties when it abandoned its duties to Xerox by approving the New Settlement Agreement and the New MOU to protect the Director Defendants' own interests.

DUTIES OF DEFENDANTS

271. By reason of the Director Defendants' positions with the Company as officers and/or directors, each of the Director Defendants is in a fiduciary relationship with Xerox and its public stockholders and owes Xerox and its public stockholders a duty of highest good faith, loyalty, and due care, and were and are required to:

(a) act in furtherance of the best interests of Xerox and its public stockholders;

(b) refrain from abusing their positions of control; and

(c) candidly and fully disclose all material information concerning its business, including the joint venture agreements and the Fuji Transaction.

272. Each of the Director Defendants is required to act in good faith, in the best interests of the Company's stockholders and with such care, including reasonable inquiry, as would be expected of an ordinarily prudent person. In a situation where the directors of a publicly traded company undertake a transaction that may result in a change in corporate control applicable law requires the directors to take all steps to adequately inform themselves and ensure that the transaction is of fair value, rather than use a change of control to benefit themselves, and to disclose all material information concerning the change in control transaction, here: the Fuji Transaction.

273. To comply diligently with this duty, the directors of a corporation may not take any action that:

(a) adversely affects the value provided to the corporation's stockholders;

(b) contractually prohibits them from complying with or carrying out their fiduciary duties;

(c) discourages, inhibits, or deters alternative offers to purchase control of the corporation or its assets;

(d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's stockholders; and/or

(e) will provide the officers and/or directors with preferential treatment at the expense of, or separate from, the public stockholders.

274. In addition, the Director Defendants have the responsibility to act independently so that the interests of the Company will be protected and to consider properly all bona fide offers for the Company and to reject offers that are clearly not in the interest of the Company.

275. Further, the Director Defendants, as directors of Xerox, must adequately ensure that no conflict of interest exists between the Director Defendants' own interests and their fiduciary obligations to the Company or, if such conflicts exist, ensure that all such conflicts will be resolved in the best interests of the Company's stockholders.

276. In addition to the Director Defendants' common law fiduciary duties, Xerox's governing documents impose specific obligations upon Company executives and directors.

277. The By-Laws specifically account for conflicted transactions, such as the Transaction. Section 15(a) of the By-Laws provides:

> No contract or other transaction between the Company and one or more of its Directors, or between the Company and any other corporation, firm, association or other entity in which one or more of its Directors are directors or officers, or are financially interested, shall be either void or voidable for this reason alone or by reason alone that such Director or Directors are present at the meeting of the Board of Directors, or of a committee thereof, which approves such contract or transaction, or that his or her or their votes are counted for such purpose, provided that the parties to the contract or transaction establish affirmatively that it was fair and reasonable as to the Company at the time it was approved by the Board, a committee, or the shareholders.

278. Section 15(b) of the By-Laws further provides that conflicted transactions described in subsection (a) are only permitted where "the material facts as to such Director's interest in such contract or transaction" are disclosed in good faith to the Board or stockholders.

279. In the Company's Corporate Governance Guidelines, as amended May 23, 2017, (the "Guidelines") further detail the duties of Xerox insiders. On the Company's website, the Board represents that "[the] Guidelines reflect the Board's commitment to monitor the effectiveness of policy and decision making both at the Board and management level, with a view

to enhancing long-term shareholder value." In the Guidelines, the Board acknowledges that it "represents the owners' interest in the operation of a successful business, including optimizing long-term financial returns." Notably, the Guidelines state that "[w]hen it is appropriate or necessary, it is the Board's responsibility to remove the Chief Executive Officer and to select his or her successor."

280. As to public disclosures, the Company has implemented the Xerox Corporation Disclosure Policy and Guidelines (the "Disclosure Policy"), adopted February 2001 and updated November 15, 2018, which "govern[s] the disclosure of material, non-public information in a manner designed to provide broad, non-exclusionary distribution of information so that the public has equal access to the information[,]" in compliance with SEC Fair Disclosure Rules (Regulation FD). Among other things, the Disclosure Policy defines "material information" that must be disclosed: "Any 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 [C]ompany's securities." The Disclosure Policy enumerates a non-exhaustive list of material information, including, "[p]ublic or private sale of additional securities;' "[m]ergers, acquisitions, joint ventures, divestitures, or other changes in company assets;" "[m]anagement changes or changes in control of Xerox Corporation;' and "[m]ajor litigation pending or threatened."

281. The Company has also adopted a Code of Business Conduct and Ethics for Members of the Board of Directors, amended February 15, 2007 (the "Code of Conduct"). The Code of Conduct explicitly states that "[d]irectors must avoid conflicts of interest with the Company. Any situation that involves, or may reasonably be expected to involve, a conflict of interest with the Company must be disclosed immediately to the Chairman of the Governance

Committee and the Chairman of the Board." A "conflict of interest" is defined in the Code as "when a director's private interest interferes in any way, or appears to interfere, with the interests of the Company as a whole. Conflicts of interest also arise when a director, or a member of his or her immediate family, receives improper personal benefits as a result of his or her position as a director of the Company."

282. One of the three delineated examples of a conflict of interest is the "[r]elationship of [the] Company with third-parties. Directors may not engage in any conduct or activities that are inconsistent with the Company's best interests or that disrupt or impair the Company's relationship with any person or entity with which the Company has or proposes to enter into a business or contractual relationship." The Code also iterates that "[d]irectors are prohibited from: (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or the director's position; (b) using the Company's property, information, or position for personal gain[.]" Relatedly, the Code states that no director "[s]hould take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing practices."

A. The Board Breached Its Duty of Candor by Keeping the Xerox Stockholders in the Dark.

283. Consistently throughout the relevant time period discussed above, the Board withheld and knowingly misled stockholders about key aspects of the Company's relationship with Fuji and the Fuji Transaction itself.

284. The most far-reaching and impactful omission was the Board's failure to disclose the terms of its joint venture agreements with Fuji. For seventeen years the Board purposefully omitted from *all* of its public disclosures that it had agreed to onerous "crown jewel" lock-up

provisions, which the Board has since acknowledge impede Xerox's ability to conduct a robust sales process.

285. The Board also misled stockholders when it announced the Fuji Transaction by claiming that the Board agreed to the Fuji Transaction after conducting "a comprehensive review of [Xerox's] strategic alternatives led by Xerox's independent directors" and that the Fuji Transaction was only approved after "careful consideration of all alternatives to the [C]ompany" and "is clearly the best path to create value[.]" These statements are plainly false. The Board's purportedly "comprehensive review" was in fact dictated by Jacobson, who at all times after dining with Icahn acted with shocking disloyalty. Far from "consider[ing] all alternatives," Jacobson affirmatively deterred those few entities other than Fuji who expressed interest in a transaction from going forward. The fault was not Jacobson's alone. Centerview's Hess testified that the Board never asked for him to conduct an active or broad process. Rather, the Board limited Centerview's process to contacting only three potential parties. Jacobson also did not inform the Board that Centerview identified HP as a potential acquirer, nor did Jacobson inform the Board that the Company later received a call from HP. For its part, Centerview knew that it had not conducted a fair and robust process, yet nevertheless offered a fairness opinion in support of the Fuji Transaction.

286. The Company's assertion that the Fuji Transaction was "clearly the best path to create value" is belied by the Company's own financial advisor's statements. A mere week prior to the Company's January 31, 2018 announcement, Centerview informed the Board that the Fuji Transaction "d[id] not create the shareholder value that we [absolutely] need."

287. The Board's efforts to consummate the deal and thereby advance their own interests only exacerbated their deception and misrepresentations. To their selfish ends, the Board filed the

Proxy, in which the Board went to great lengths to cloak the Fuji Transaction in a façade of legitimacy. At the same time, the Board purposefully omitted and misrepresented, among other things, certain aspects of the Company's relationship with Fuji and the Board's purported process.

288. In particular, the Proxy fails to disclose that Fuji had originally proposed, and the Board had originally rejected, a similar proposal in 2007. "Project Chess" would have seen Xerox issue 51% of its stock to Fuji in exchange for Fuji's 75% stake in Fuji Xerox. Notably, Xerox's Board rejected that proposal because it would have caused Xerox to cede control without securing a control premium for Xerox stockholders.

289. Nor does the Proxy disclose that Jacobson conducted a "rogue" process after the Board told him (first) to pursue an all-cash transaction and (second) to cease communications with Fuji about Project Juice.

290. Furthermore, the Proxy purposefully leads stockholders to believe that Fuji outright rejected an all-cash offer, which was not the case, as Fuji had expressed interest in pursuing an all-cash deal together with a PE firm. The Proxy also does not disclose that it was Jacobson who initially proposed a structure whereby the Company would cede control to Fuji and Jacobson who proposed that he continue on as CEO, nor does it disclose that Fuji agreed to Jacobson continuing as CEO so that they would not lose "control of the Board." The Proxy also does not disclose that, as described by Defendant Director Prince privately, the terms of the Fuji Xerox joint venture agreement make it "practically impossible" for Xerox to sell to anyone other than Fuji. The Proxy also does not disclose that Centerview explicitly told certain Board members on January 24, 2018, that it would not be able to complete due diligence prior to January 30, 2018, and that the Fuji Transaction would not provide enough value to Xerox.

291. Even after the filing of the Proxy, the Board engaged in a vicious letter writing campaign with Deason and Icahn in which they repeated numerous misrepresentations, half-truths, and outright falsities. *See supra*, ¶¶ 22 & 251.

DEMAND FUTILITY

292. Pursuant to New York Business Corporation Law § 626(c), Plaintiff brings this action derivatively on behalf of Xerox to redress injuries suffered, and to be suffered, by the Company as a direct and proximate result of Defendants' misconduct.

293. Plaintiff owns, and has owned, Xerox stock continuously during the time of the wrongful course of conduct.

294. Plaintiff will adequately and fairly represent the interests of Xerox in enforcing and prosecuting its rights and has retained counsel competent and experienced in stockholder derivative litigation.

295. At the time of this filing, the Board consists of the following nine directors: Brown, Echevarria, Krongard, Tucker, Christodoro, Letier, Cozza, Graziano, and Visentin.

296. Plaintiff did not make a demand on the Board prior to instituting this stockholder derivative litigation because a pre-suit demand upon the Board would be futile.

A. A Majority of the Board Is Interested and/or Lacks Independence, Making Demand Futile.

297. Demand is excused because a majority of the Board are neither independent nor disinterested in the Fuji Transaction, the New Settlement Agreement, and the New MOU.

298. First, the four continuing directors, Brown, Echevarria, Krongard, and Tucker face a substantial risk of liability with respect to the Fuji Transaction, the approval of which the Court has already determined was likely a breach of the Board's fiduciary duty. In this regard, as members of the Board, these four directors went from deciding to inform Jacobson on November

10, 2017 that he was being terminated imminently and must cease Project Juice negotiations, to approving the Fuji Transaction, which made no sense financially because it kept Jacobson as CEO and gave away control of the Company for no premium. On top of that, these directors approved the Fuji Transaction even though their own financial advisor did not believe that it created sufficient value for the Company and its stockholders. As such, in voting to approve the Fuji Transaction, which was unfair to Xerox on its face and the result of a deficient process, each of Brown, Echevarria, Krongrad, and Tucker breached their fiduciary duties to Xerox. Brown, Echevarria, Krongard, and Tucker therefore lack independence to consider a derivative demand concerning the Fuji Transaction.

299. Brown, Echevarria, Krongard, and Tucker are likewise incompetent to consider a demand to recover damages for the independent breaches of fiduciary duty arising from their roles in the Board's approval of the Company entering into the Initial Settlement Agreement, which in turn contemplated the Initial MOU. Each of Brown, Echevarria, Krongard, and Tucker was materially interested in the Initial Settlement Agreement and the Initial MOU, which together purported to release these directors from liability for the facts, circumstances, and wrongdoing surrounding the Fuji Transaction. Moreover, each of Brown, Echevarria, Krongard, and Tucker faces a substantial risk of liability for their roles in the Board's approval of the Company entering into the Initial Settlement Agreement. This Agreement purported to release valuable claims against the outgoing Director Defendants and afforded those Director Defendants millions of dollars of compensation, in the form of DSUs and Jacobson's golden parachute, in exchange for illusory consideration, at Xerox's expense. These directors' decision to approve the Company's entry into the Initial Settlement Agreement, which benefitted their colleagues to the detriment of Xerox, was a breach of the fiduciary duty of loyalty. Brown, Echevarria, Krongard, and Tucker

are therefore unable to consider a demand to commence a derivative action challenging the Board's decision to approve the Company's entry into the Initial Settlement Agreement and the Initial MOU.

300. Similarly, Brown, Echevarria, Krongard, and Tucker lack independence to consider a demand to recover damages for the independent breaches of fiduciary duty arising from their approval of the Company's entry into the New Settlement Agreement, which in turn contemplates the New MOU. Each of Brown, Echevarria, Krongard, and Tucker is materially interested in the New Settlement Agreement and the New MOU, which together purport to release these directors from liability for the facts, circumstances, and wrongdoing surrounding the Fuji Transaction. Moreover, each of Brown, Echevarria, Krongard, and Tucker faces a substantial risk of liability for approving Xerox's entry into the New Settlement Agreement. In this regard, that Agreement releases valuable claims against the outgoing Director Defendants and affords them millions of dollars of compensation, in the form of DSUs and Jacobson's golden parachute, in exchange for illusory consideration, at Xerox's expense. This decision, which benefitted their colleagues to the detriment of Xerox, was a breach of the fiduciary duty of loyalty. Brown, Echevarria, Krongard, and Tucker, thus, lack independence to consider a demand to commence a derivative action challenging the Board's decision to bind the Company to the New Settlement Agreement and the New MOU.

301. In addition, Christodoro, Letier, Cozza, Graziano, and Visentin are unable to consider a demand relating to the Fuji Transaction, the New Settlement Agreement, and the New MOU because they are beholden to Icahn and Deason, who are acting in their own interests, not

necessarily the Company's best interests.[11] In addition, these directors are interested in the effectuation of the New Settlement Agreement because they owe their Board positions to that Agreement.

302. First and foremost, however, these directors owe their positions at Xerox to Icahn and Deason. As further described below, each of these directors enjoy longstanding relationships with Icahn and Deason such that they are beholden to Icahn and Deason's interests, which do not necessarily track the best interests of Xerox.

a) *Christodoro* – Christodoro was Icahn's employee, and served as a Managing Director of Icahn Capital LP, where he was responsible for identifying, analyzing and monitoring investment opportunities and portfolio companies, from July 2012 to February 2017. Chistodoro also served as a director of American Railcar Industries, which was indirectly controlled by Icahn, from June 25, 2015 to February 17, 2017. Christodoro has further served on other boards in which Icahn has a non-controlling interest through the ownership of securities, including PayPal, eBay, Lyft, Cheniere, Hologic, Talisman, Enzon and Herbalife. In addition, Christodoro was named to a competing slate of nominees for the board of directors of SandRidge Energy Inc. advanced by Icahn as part of his "activist" activities at that company. Christodoro's relationship with Icahn is so intimate that, when he was appointed to the Board pursuant to Icahn's standstill agreement, *The Wall Street Journal* characterized him as a "top lieutenant of Carl Icahn."

b) *Letier* – Letier is styled the "Deason Designee" under the terms of the New Settlement Agreement. Letier has been Managing Director of Deason Capital Services, LLC, which is Deason's family office since July 2014.

c) *Cozza* – Cozza is styled an "Icahn Designee" under the terms of the New Settlement Agreement. Cozza is Icahn's employee, and has served as COO of Icahn Capital LP, the subsidiary of Icahn Enterprises L.P. through which Icahn manages investment funds, since February 2013. Cozza was also was a member of the Executive Committee of American Railcar Leasing LLC, which is indirectly controlled by Carl C. Icahn, from June 2014 to June 2017, and was previously a director at Herbalife, in which Icahn has a non-controlling interest, from April 2013 to April 2018. Cozza further serves as a director of the following companies, each of which are wholly owned subsidiaries of Icahn Enterprises L.P.: PSC Metals, Inc. since February 2014; and Federal-Mogul

[11] Moreover, the same analysis applies to explain why these five directors lack independence to consider a demand related to the Initial Settlement Agreement and the Initial MOU.

Holdings LLC since January 23, 2017. In addition, Cozza served and continues to serve as a director of the following companies, each of which are indirectly controlled by Icahn: CVR Refining, LP, from January 2013 to February 2014; and Tropicana Entertainment Inc. since February 2014.

d) *Graziano* – Graziano is styled an "Icahn Designee" under the terms of the New Settlement Agreement. Graziano is Icahn's employee, and has served as Portfolio Manager of Icahn Capital LP, the entity through which Icahn manages investment funds, since February 2018. Graziano was nominated by Icahn to the board of Sandridge Energy Inc. as part of Icahn's proxy contest for control of that company. Graziano also joined Corvex Management LP when it was founded in 2010 by Keith Meister ("Meister"), a former protégé of Carl Icahn. Graziano further served alongside Icahn on the board of WCI Communities, Inc. as part of a resolution of Icahn's attempted takeover of that company. Meister also sat on the board of WCI Communities, Inc.

e) *Visentin* – Visentin was a consultant to Deason and Icahn in connection with the proxy contest at Xerox from March 2018 to May 2018, during which time he was employed by Icahn Enterprises L.P. as a Senior Consultant.

303. Due to their deep ties to Icahn and Deason, Christodoro, Letier, Cozza, Graziano, and Visentin will always put Icahn and Deason's interests above Xerox's best interests. As such, they lack independence to consider a demand to bring derivative claims against third parties, like Fuji and Centerview, in connection with the Fuji Transaction. In this regard, Deason, with Icahn's support, has already asserted direct individual claims against Fuji for aiding and abetting the Board's approval of the Fuji Transaction. As a result, those directors, who lack independence from Icahn and Deason, cannot independently consider asserting a concurrent derivative lawsuit concerning the same wrongdoing against Fuji, due to a conflict of interests. Similarly, the conflicts of interests raised by Deason's direct claim against Fuji makes Christodoro, Letier, Cozza, Graziano, and Visentin also unable to consider bringing derivative claims against Centerview for aiding and abetting the Board's breaches of fiduciary duties related to the Fuji Transaction.

304. Moreover, each of Christodoro, Letier, Cozza, Graziano, and Visentin owe their positions at the Company to the effectuation of the New Settlement Agreement's terms, and are

therefore interested in the New Settlement Agreement and related New MOU. Visentin, in particular, is receiving extremely lucrative compensation, and stands to imminently reap outsize benefits from a change in control transaction due to his position at Xerox. Because each of Christodoro, Letier, Cozza, Graziano, and Visentin owe their position at Xerox to the New Settlement Agreement and related New MOU, they lack independence to consider a derivative demand related thereto.

305. In this regard, the New Settlement Agreement and related New MOU provide broad releases to the Director Defendants for their actions related to the Fuji Transaction. Without these releases, those Director Defendants would not have agreed to the New Settlement Agreement and the New MOU on behalf of themselves and purportedly the Company. Without those agreements (and their appointments by Icahn and Deason), Christodoro, Letier, Cozza, Graziano, and Visentin would not have their current Xerox positions. Accordingly, Christodoro, Letier, Cozza, Graziano, and Visentin lack independence to bring derivative claims against the Director Defendants related to the Fuji Transaction, the New Settlement Agreement, and the New MOU.

B. The Board's Actions Were Not a Valid Exercise of Business Judgment.

306. Demand is also excused as to Brown, Echevarria, Krongard, and Tucker because the Board's actions related to the Fuji Transaction, the New Settlement Agreement, and the New MOU were not valid exercises of business judgment.

307. Approval of the Fuji Transaction was not a valid exercise of business judgment as its primary purpose was to entrench Jacobson and certain other Director Defendants through the continuing directorship aspect of the Transaction. As a result of the Fuji Transaction, the Company would have ceded control of itself to Fuji for no control premium. Even the Board's own financial advisor, Centerview, opined that the Fuji Transaction did not create enough value for the Company and its stockholders. The Board also did not properly inform itself before approving the Fuji

Transaction. On January 24, 2018, Centerview stated that financial due diligence had not been completed and the scheduled January 31, 2018 announcement was not possible. Despite these concerns, the Board went ahead and approved the Fuji Transaction on January 30, 2018. Indeed, the Court in its Decision determined that the Fuji Transaction fell outside the auspices of the business judgment rule.

308. Similarly, the New Settlement Agreement and New MOU are not valid exercises of business judgment because they forfeit valuable claims and pay out millions of dollars of compensation in exchange for illusory consideration. Each of the Director Defendants who left Xerox pursuant to the New Settlement Agreement and related New MOU had breached their fiduciary duty in connection with the Fuji Transaction. Jacobson should have been involuntarily terminated for cause. Because the Company received nothing in return, the decision to release claims against the Director Defendants and accelerate and pay DSU equity awards and, in Jacobson's case, pay out a golden parachute package was a waste of corporate assets. This decision is not of the sort that courts have recognized as valid consideration for past services rendered. As detailed herein, the Director Defendants breached their fiduciary duties and, consequently, were entitled to precisely nothing.

CAUSES OF ACTION

COUNT I
BREACH OF FIDUCIARY DUTY
(derivatively against Jacobson as an Officer and Director)

309. Plaintiff repeats and re-alleges each and every allegation above as if set forth fully herein.

310. As an officer and director of the Company, Jacobson owed to the Company fiduciary duties of loyalty, good faith, care, and candor. These fiduciary duties required him to place the interests of the Company above his own interests and/or the interests of others.

311. In complete abrogation of his duties, Jacobson instead negotiated the Fuji Transaction in furtherance of his own interests. Jacobson refused to abide by an unambiguous directive from the Board to cease further negotiations, and instead proceeded with a full head of steam to commit the Company to the Fuji Transaction, which did not offer a control premium.

312. Jacobson refused to pursue a transaction with any other bidder. By way of example and not limitation, in his negotiations with HP, Jacobson did not discuss the possibility of a RMT transaction, notwithstanding that Centerview advised that such a transaction might be possible with HP. Jacobson did not consider any other bidder because Fuji, and Fuji alone, offered Jacobson an opportunity to keep his lucrative and prestigious position as CEO of Xerox.

313. Jacobson also kept the other members of the Board in the dark about the opportunities communicated to him. For instance, Jacobson did not relay the possibility of Fuji pairing with a PE partner to pursue an all-cash purchase of Xerox, even though Centerview had told Jacobson and the other members of the Board that an all-cash transaction would maximize value for Xerox and its stockholders. Jacobson looked out only for his own best interests, and in so doing not only forewent potentially superior transactions, but instead caused the Company to agree to the Fuji Transaction, which caused significant harm to Xerox and, derivatively, its stockholders.

314. As a result of the foregoing, the Company has been harmed, and will continue to be harmed absent relief from the Court.

315. The Company has no adequate remedy at law.

COUNT II
BREACH OF FIDUCIARY DUTY
(derivatively against Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski, and Tucker as directors)

316. Plaintiff repeats and re-alleges each and every allegation above as if set forth fully herein.

317. As directors of the Company, Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski, and Tucker owe(d) to the Company fiduciary duties of loyalty, good faith, care, and candor. These fiduciary duties require(d) them to place the interests of the Company above their own interests and/or the interests of the Company's executive management and directors.

318. In abrogation of their duties, Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski, and Tucker allowed Jacobson to negotiate the Fuji Transaction. These individual defendants did not take obvious measures to keep themselves informed of the negotiations, such as meeting with Centerview and Fuji earlier in the process or commissioning a designated committee to explore possible alternative transactions.

319. Moreover, each of Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski, and Tucker failed to oversee Jacobson's actions. These individuals unanimously committed as early as July 2017 to replace Jacobson, and affirmatively selected his replacement in November 2017 to start in December 2017. When Jacobson unveiled the Fuji Transaction, however, these individual defendants did not push forward with replacing Jacobson notwithstanding that they had selected a candidate who, in Keegan's own words, was "head and shoulders" better than Jacobson.

320. Indeed, Keegan and Reese specifically were complicit in aiding Jacobson with his unauthorized negotiations. Keegan, in his capacity as Chairman, subverted the instruction of the

entire Board, without telling the full Board, and authorized Jacobson to proceed with negotiations of the Fuji Transaction even though the Board was then in talks with candidate Visentin concerning a December 11, 2017 start date.

321. By virtue of failing to oversee negotiations and failing to take corrective action when Jacobson finally unveiled the Fuji Transaction, each of defendants Brown, Echevarria, Hunter, Keegan, Krongard, Prince, Reese, Rusckowski, and Tucker breached their fiduciary duties.

322. As a result of the foregoing, the Company has been harmed, and will continue to be harmed absent relief from the Court.

323. The Company has no adequate remedy at law.

COUNT III
BREACH OF FIDUCIARY DUTY
(derivatively against the Director Defendants)

324. Plaintiff repeats and re-alleges each and every allegation above as if set forth fully herein.

325. As executives and directors of the Company, the Director Defendants owe(d) to the Company fiduciary duties of loyalty, good faith, care, and candor. These fiduciary duties require(d) them to place the interests of the Company above their own interests and/or the interests of the Company's executive management and directors.

326. The Director Defendants breached their fiduciary duty in connection with causing the Company to enter into the Fuji Transaction for the primary purpose of entrenching Jacobson as CEO and themselves as directors. Rather than pursue a proper transaction, the Director Defendants caused the Company to enter into a transaction in which it would cede control of itself without being paid any control premium, while paying Centerview a $10 million fee to issue a fairness opinion to aid and abet the Director Defendants' breaches of their fiduciary duties. On

top of that, the Director Defendants bound the Company to going forward with the Fuji Transaction, notwithstanding that Xerox would need to pay a massive termination fee—$183 million—in order to terminate it. As further alleged above, the Director Defendants' disloyal actions have already cost the Company tens of millions of dollars, and potentially subject the Company to more than $200 million in damages.

327. The Director Defendants also breached their fiduciary duty by failing to disclose all material terms of the Fuji Transaction and knowingly issuing false and misleading statements in advance of the Company's annual meeting. In particular, the Director Defendants failed to disclose the primary reasons for the Transaction, *inter alia*, Fuji's "crown jewel" lock-up rights under the Joint Enterprise Contract and the Board's intention to fire Defendant Jacobson. Further, the Director Defendants failed to disclose that Xerox's own financial advisor, Centerview, had not completed due diligence prior to approval of the Fuji Transaction and the advisor's concerns about whether the deal was in the Company and its stockholders' best interests. The Director Defendants' failure to disclose such material information caused harm to Xerox by prolonging the proxy contest and causing Xerox to incur related fees and expenses.

328. The Director Defendants also breached their fiduciary duty by approving the Company entering into the Initial Settlement Agreement and related Initial MOU, which together contemplated waivers of claims for breach of fiduciary duty worth potentially many millions of dollars, as well as payment of millions of dollars of ill-deserved moneys to individuals who breached their duties of loyalty, care, and/or candor at Xerox's expense.

329. The Director Defendants also breached their fiduciary duties by approving the Company's entry into the New Settlement Agreement, which was negotiated together with the New MOU. The new settlement will also cause Xerox to waive claims for breach of fiduciary

duty worth potentially hundreds of millions of dollars, as well as pay out millions of dollars of ill-deserved moneys to individuals who breached their duties of loyalty, care, and/or candor at Xerox's expense. Additionally, the new settlement failed to take into account the possibility that Fuji might sue Xerox over termination of the Fuji Transaction, and has exposed the Company to up to $183 million in damages on account of the exorbitant Fuji Transaction termination fee to which the Director Defendants foolishly agreed.

330. As a result of the foregoing, the Company has been harmed, and will continue to be harmed absent relief from the Court.

331. The Company has no adequate remedy at law.

COUNT IV
WASTE OF CORPORATE ASSETS
(derivatively against the Director Defendants)

332. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

333. By causing the Company to enter into the Fuji Transaction for the primary purpose of entrenching Jacobson as CEO and the Director Defendants as directors, the Director Defendants caused the Company to waste millions of dollars pursing a deal that had no proper purpose. Furthermore, the Company faces the specter of having to pay the massive termination fee of $183 million to Fuji, with whom the Director Defendants failed to negotiate a walk away agreement.

334. In addition, by reneging on the Initial Settlement Agreement and then appealing the Decision to the First Department, the Director Defendants caused the Company to waste corporate assets, including money paid to lawyers to litigate the appeal, for the purpose of safeguarding their own self-interests in buying time to bargain for releases.

335. Moreover, the Director Defendants, as parties to the New Settlement Agreement, agreed to pay out millions of dollars in compensation to the outgoing directors for "consideration" that was wholly illusory.

336. No director of ordinary sound business judgment would have caused the Company to have entered into the Fuji Transaction, taken the appeal, or paid out compensation pursuant to the New Settlement Agreement. By doing so, the Director Defendants have wasted corporate assets.

337. As a result of the foregoing, the Company has been harmed.

338. The Company has no adequate remedy at law.

COUNT V
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(derivatively against Fuji and Centerview)

339. Plaintiff repeats and re-alleges each and every allegation above as if set forth fully herein.

340. As directors of the Company, the Director Defendants owe(d) to the Company fiduciary duties of loyalty, good faith, and candor. These fiduciary duties require(d) them to place the interests of the Company above their own interests and/or the interests of the Company's executive management, directors, and controller.

341. The Director Defendants breached their fiduciary duties when they approved the Fuji Transaction. In this regard, the Director Defendants pursued the Fuji Transaction for the primary purpose of entrenching Jacobson as CEO and themselves as directors.

342. As alleged in more detail above, defendant Fuji knowingly aided and abetted the Director Defendants' breaches of fiduciary duties. Fuji, through, among others, Komori and Kawamura, was directly informed by Jacobson that Icahn and others were attempting to remove him as the Company's CEO and proceeded to work with him to crafted a transaction that ensure

that he remained as CEO. By helping Jacobson keep his job, Fuji was able to enter into the Fuji Transaction, which if consummated, would have allowed Fuji to acquire control over Xerox without paying a penny.

343. As alleged in more detail above, Defendant Centerview knowingly aided and abetted the Director Defendants' breaches of fiduciary duties. Centerview knew that the Fuji Transaction was unfair to the Company and its stockholders, yet still issued a fairness opinion for the Fuji Transaction to earn its $10 million fee. For example, on January 24, 2018, Centerview emailed Fuji, raising concerns that financial due diligence had not been completed and the current financial projections for the Fuji Transaction did not create enough value of the Company shareholders. In light of these concerns, Centerview stated that the scheduled January 31, 2018 announcement was not possible. These concerns notwithstanding, less than one week later, January 30, Centerview issued a fairness opinion. In exchange for the fairness opinion, Centerview was paid $10 million and would have received an additional $40 million had the Fuji Transaction been consummated.

344. As a result of the foregoing, the Company has been harmed.

345. The Company has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. An award to the Company of the amount of damages it sustained as a result of the Defendants' breaches of fiduciary duties;

B. Rescission or reformation of the New Settlement Agreement and New MOU;

C. Restitution of funds wrongly paid to the Defendant Directors pursuant to the New Settlement Agreement

D. Injunctive and equitable relief against Defendants from hereafter engaging in the wrongful practices particularized above;

E. An award to Plaintiff of the costs and disbursements of this action, including reasonable accountants, experts and attorneys' fees; and

F. A grant of such other, further relief, whether similar or different, including damages, as this Court may deem just and proper.

Dated: New York, New York
May 24, 2018

LEVI & KORSINSKY, LLP

/s/ *Amy Miller*

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