



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOCAL 464A UNITED FOOD AND)
COMMERCIAL WORKERS UNION)
PENSION FUND,)

Plaintiff,)

v.)

DARCY ANTONELLIS, DAVID C.)
HABIGER, RICHARD S. HILL, JON)
KIRCHNER, V. SUE MOLINA,)
GEORGE A. RIEDEL, and)
CHRISTOPHER A. SEAMS,)

Defendants.)

C.A. No. 2020-_____

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Local 464A United Food and Commercial Workers Union Pension Fund (“Plaintiff”), by and through its undersigned counsel, submits this Verified Class Action Complaint (the “Complaint”), upon knowledge as to itself and its own actions and, as to all other matters, upon information and belief derived from the investigation of counsel, which included review of filings with the United States Securities and Exchange Commission (“SEC”) and other publicly available documents, and alleges as follows:

NATURE OF THE ACTION

1. This stockholder class action challenges the deliberate actions of the members of the Board of Directors (the “Board”) of Xperi Corporation (“Xperi” or the “Company”) in failing to fulfill their continuing fiduciary obligations to Xperi’s stockholders with respect to the December 18, 2019 Agreement and Plan of Merger and Reorganization (the “Merger Agreement”) providing for a combination (the “Combination”) of Xperi and TiVo Corporation (“TiVo”). Xperi and TiVo will through separate mergers become subsidiaries of XRAY-TWOLF Holdco Corporation (“HoldCo”).

2. The Merger Agreement was executed on December 18, 2019, before the current COVID-19 pandemic. In an April 3, 2020 books and records demand under 8 *Del. C.* § 220 (“the Demand”) (attached hereto as Exhibit A), Plaintiff pointed out the contractual and fiduciary obligation of the Xperi Board to meet and consider the Merger Agreement, including whether the impact of the coronavirus pandemic has caused a Material Adverse Effect (“MAE”) and/or Intervening Event (“IE”). The Definitive proxy statement dated April 22, 2020 (the “Proxy”) for the scheduled May 29, 2020 Xperi special meeting to vote on the Merger Agreement (the “Special Meeting”), indicates that the Board has not met to discuss the proposed combination since it approved the Merger Agreement on December 18, 2019, almost five months ago. The Board has therefore breached its duty of loyalty by deliberately

failing to fulfill its contractual and fiduciary obligations to assess whether TiVo, in light of the pandemic and its economic fallout, has suffered a MAE under the Merger Agreement that would enable Xperi to terminate the Merger Agreement or whether there has been an IE that would permit the Board to change its recommendation. Xperi's stockholders are entitled to the Board's continued assessment of the Merger Agreement, particularly in light of these unprecedented intervening circumstances.

3. Additionally, the Xperi Board did not act in good faith on February 23, 2020 in summarily dismissing a February 21, 2020 all-cash *bona fide* Acquisition Proposal from Metis Ventures LLC ("Metis") to acquire Xperi for \$23.30 in cash (the "Metis Proposal"). In claiming it was "unable to conclude at this time" that the Metis Proposal was "reasonably likely to lead to a superior proposal under the terms of [Xperi's] merger agreement [with TiVo]," the Board added requirements that were not contained in the contractual restrictions the Merger Agreement placed on the Board's exercise of its fiduciary duty.

4. Moreover, the Xperi Board has intentionally made materially misleading disclosures and deliberately omitted material information from the Proxy. *First*, either the Board has failed to meet since December 18, 2019 (other than the February 23, 2020 special meeting described in the Proxy as relating only to the Metis Proposal) to discuss the proposed TiVo merger, particularly the effects of the COVID-19 pandemic, or the Proxy is materially misleading because it

identifies December 18, 2019 as the last time the Board considered developments (other than the Metis Proposal) that could impact the Merger Agreement. *Second*, the Proxy discloses no information about Xperi's or TiVo's first quarter results. It purports to incorporate by reference other filings with the SEC. The additional disclosures in the 10-Qs filed by TiVo and Xperi, however, are materially misleading and incomplete partial disclosures. Moreover, the Xperi stockholders should not be required to dig through all SEC filings of the two companies to unearth a partial version of the important facts relating to the Merger Agreement. *Third*, the Proxy's disclosures concerning the actual and potential effects of the COVID-19 pandemic on Xperi, TiVo, and the proposed combined company, contained within the "Cautionary Statement Regarding Forward-Looking Statements" (Proxy at iv-v, item (xvi)) and "Risk Factors" (Proxy at 27) sections, are misleading and incomplete. Plaintiff's Demand pointed out the inadequacy of the COVID-19 disclosure, but the Xperi directors made the deliberate choice to leave that disclosure unchanged in revised and final versions of the Proxy. The Demand also indicated that the COVID-19 disclosures did not provide the information deemed material in SEC guidelines. Defendants' stubborn refusal to provide in the Proxy known facts about the effects of COVID-19 on Xperi and TiVo creates an inference that they are not acting in good faith and are deliberately deceiving the Xperi stockholders. Indeed, the recent earnings releases and 10-Qs of TiVo and Xperi contain some additional facts, but

Defendants deliberately omitted those facts from the Proxy and have not amended or supplemented the Proxy. Instead, in seeking to mislead Xperi stockholders into voting to approve the Merger Agreement, Defendants issued a May 6, 2020 “Transaction Update” which cites forecasts from 2019 that TiVo and Xperi have now disclaimed.

5. Plaintiff’s April 3, 2020 Demand detailed Plaintiff’s concerns about the Merger, including the Board’s bad faith dismissal of the Metis Proposal, the Board’s failure to meet and consider the impact of the COVID-19 pandemic in light of the terms of the Merger Agreement and the directors’ fiduciary duties, and the inadequacy of the disclosures in the then-current version of the Proxy. *See Exhibit A.* On April 16, 2020, Xperi refused the Demand entirely and did not produce a single document. *See Exhibit B attached hereto (the “Response”).*

6. Instead, Xperi issued the definitive Proxy on April 22, 2020. Thus, despite knowledge of the issues raised in the Demand, the Xperi Board has allowed the Merger Agreement to proceed toward a May 29, 2020 stockholder vote without any good faith consideration or compliance with the Board’s contractual and fiduciary obligations in light of the COVID-19 pandemic. Moreover, the Proxy doubled down by repeating misrepresentations and partial disclosures contained in earlier draft versions.

THE PARTIES

7. Plaintiff has, at all relevant times, been a beneficial owner of Xperi common stock.

8. Defendant Darcy Antonellis (“Antonellis”) has been a director of the Company since December 2018. Antonellis has been the Chief Executive Officer (“CEO”) of Vubiquity, Inc. since 2014. Vubiquity, Inc. and TiVo are parties to a contract integrating Vubiquity’s “Any VU Streaming service” into the TiVo user experience. This agreement allows Vubiquity’s “ViewNow” subscription movie service to be streamed on TiVo devices. This commercial arrangement gives Antonellis a conflicting interest in furthering the prospects of TiVo. Antonellis is a designee of Xperi to serve on the HoldCo board of directors.

9. Defendant David C. Habiger (“Habiger”) has been a director of the Company since December 2016. Habiger served on the board of directors of DTS, Inc. (“DTS”) from March 2014 until Xperi acquired DTS in 2016. From 2005 through 2011, Habiger was CEO of Sonic Solutions. Sonic Solutions had significant licensing business with DTS during the time Defendant Jon Kirchner (“Kirchner”) was CEO of DTS and Habiger was CEO of Sonic Solutions, including an agreement for Sonic to integrate DTS technology into its platforms. Habiger is an Xperi designee to the HoldCo board.

10. Defendant Richard S. Hill (“Hill”) has been a director of the Company since August 2012 and has served as Chairman of the Board since March 2013. Hill previously served as Xperi’s Interim Chief Executive Officer from April 15, 2013 until May 29, 2013.

11. Defendant Kirchner has been a director of Xperi and the Company’s CEO since June 2017. Prior to being appointed CEO, Kirchner served as President of the Company. Kirchner previously served as chairman of the board of directors and CEO of DTS from 2010 until Xperi acquired DTS in December 2016. Kirchner was a director of DTS from 2002 until 2016. Prior to joining the board of DTS, Kirchner served in various executive roles at DTS from 1993 until 2001, including president, chief operating officer, and chief financial officer. Kirchner will become a director and CEO of HoldCo.

12. Defendant V. Sue Molina (“Molina”) has been a director of the Company since February 2018. Molina served as a director of DTS from January 2008 until December 2016. From 1977 through 1997, Molina worked at Ernst & Young, including 10 years during which she was a partner. Ernst & Young is TiVo’s auditor. From 1997 through 2004, Molina was a tax partner at Deloitte. During that time, Deloitte was DTS’ auditor.

13. Defendant George A. Riedel (“Riedel”) has been a director of the Company since May 2013.

14. Defendant Christopher A. Seams (“Seams”) has been a director of the Company since March 2013. Seams is an Xperi designee to the HoldCo board.

15. Antonellis, Habiger, Hill, Kirchner, Molina, Riedel, and Seams are referred to collectively hereafter as “Defendants” or the “Board.”

RELEVANT NON-PARTIES

16. TiVo is a Delaware corporation headquartered in San Jose, California. Tivo is engaged in the business of entertainment through its at-home media consumption platforms that facilitate on-demand consumption of live TV, movies, and shows. TiVo trades on the NASDAQ under the ticker symbol “TIVO.”

17. Metis is a Delaware limited liability company. Metis’ managing members are Amir Ansari and Thomas Lacey (“Lacey”). Lacey was Xperi’s CEO from December 2013 until June 2017, when he was replaced by Kirchner.

SUBSTANTIVE ALLEGATIONS

Xperi’s History

18. Xperi is a Delaware corporation headquartered in San Jose, California. Xperi is a publicly traded technology company that creates, develops, and licenses audio, imaging, semiconductor packaging, and interconnect technologies. The Company’s common stock is listed on NASDAQ under the ticker symbol “XPER.”

19. In December 2016, Xperi acquired DTS, a publicly traded developer of sound-based technologies. At the time of the acquisition, the Company was known as Tessera Technologies, Inc.

20. After the DTS acquisition was completed, the Company introduced its new corporate name, Xperi Corporation, launched a new corporate logo, and began trading under the new ticker symbol “XPER.”

21. At the time of the DTS acquisition, Xperi was led by Lacey, Xperi’s then-CEO, who had been CEO since December 2013.

22. Kirchner was DTS’ long-time CEO. After Xperi acquired DTS, Kirchner stayed with the Company and was named its President.

23. On May 3, 2017, five months after the DTS acquisition closed, Xperi announced that Lacey would be retiring as CEO and stepping down from the Company’s Board. The Company also announced that upon Lacey’s retirement, Kirchner would replace Lacey as CEO, effective June 1, 2017.

24. Kirchner has served as CEO and as a director of Xperi since that time.

Xperi and TiVo Announce a “Merger-of-Equals” Transaction Favoring TiVo’s Stockholders

25. On December 19, 2019, Xperi announced that it had entered into the Merger Agreement with TiVo.

26. Pursuant to the Merger Agreement, Xperi and TiVo would combine in an all-stock “merger of equals” transaction (the “TiVo Merger”). The TiVo Merger

is structured such that each share of Xperi common stock will be converted into one share of common stock of the combined company, HoldCo. Xperi stockholders will receive the same number of Holdco shares as the number of shares of Xperi stock that they currently own, whereas each share of TiVo common stock will receive 0.455 shares of common stock of the combined company.

27. As a result of the premium TiVo stockholders will receive in the TiVo Merger, Xperi stockholders will own only approximately 46.5% of the combined company while TiVo stockholders will own approximately 53.5% of the combined company.

28. The TiVo Merger is structured as an acquisition of TiVo by Xperi, despite the “merger of equals” label that the companies have used to describe the transaction. Xperi is the accounting acquiror in the TiVo Merger. TiVo stockholders are receiving a premium for their shares based on the price at the time of announcement. The post-merger company will use the “Xperi” name and trade under the “XPER” ticker symbol. The post-merger company will be headquartered in San Jose at Xperi’s current headquarters. Xperi’s current CEO (Kirchner), Xperi’s Chief Financial Officer (“CFO”), and other members of Xperi senior management will lead the post-merger company. And, of the seven directors that will serve on the post-merger company’s board, four (Kirchner, Seams, Habiger, and Antonellis) will be appointed by Xperi.

29. Thus, the TiVo Merger is beneficial to Kirchner, Xperi's senior management, and a majority of Xperi directors. Current Xperi stockholders, however, will only own a minority of the post-merger company (46.5%) in a deal that, as described below, the market viewed as substantially better for TiVo than Xperi.

30. The TiVo Merger is subject to approval by both TiVo's and Xperi's stockholders. The vote on the TiVo Merger is scheduled for May 29, 2020 and the transaction is expected to close before the end of the second quarter, probably by the end of May.

31. Upon announcement of the TiVo Merger, Xperi's stock price dropped 11% from \$20.94 on December 18, 2019 to \$18.63 the next day. TiVo's share price, however, increased over 6% upon news of the deal. The market response indicates that TiVo stockholders viewed the deal favorably while Xperi stockholders viewed it negatively.

The Board Marches Toward the TiVo Merger Despite the COVID-19 Pandemic

32. The Company filed a Form S-4 registration statement, containing a preliminary proxy statement, with the SEC on February 18, 2020. It filed amended S-4s on March 26, April 13, and April 20, 2020. On March 17, 2020, the Board set April 13, 2020 as the record date for the Xperi stockholders entitled to vote on the

TiVo Merger. None of the preliminary S-4s contained any disclosure regarding the Board evaluating the impact of the COVID-19 pandemic on the TiVo Merger.

33. On April 22, 2020, Xperi filed its Definitive S-4, the final Proxy for the Xperi and TiVo stockholder meetings to vote on the TiVo Merger. The Proxy shows that Xperi and TiVo intend to proceed with special stockholder meetings on May 29, 2020. Because of the COVID-19 pandemic, however, those meetings will be held virtually.

The Metis Proposal

34. On Friday, February 21, 2020, Xperi's Board received an all-cash unsolicited *bona fide* written Acquisition Proposal for Xperi from Metis Ventures LLC. Metis offered to acquire 100% of the outstanding equity of Xperi for \$23.30 per share in cash. Metis is a Delaware limited liability company affiliated with Lacey, Xperi's former CEO.

35. The Metis Proposal outlined several attractive terms for Xperi's stockholders. First, the Metis Proposal offered \$23.30 per share cash consideration, a 33% premium to Xperi's 30-day volume weighted average price immediately prior to February 21, 2020 and a 20% premium to the previous day's closing price. It was also an 11% premium to the Company's stock price on December 18, 2019, the day before the TiVo Merger was announced.

36. The \$23.30 price valued Xperi at \$1.2 billion, which was \$84 million higher than the \$1.116 billion value for Xperi the TiVo Merger implied when announced. Announcement of the TiVo Merger had caused the Company's stock price to plummet in the weeks thereafter, from approximately \$21 per share to \$15 per share just before Xperi received the Metis Proposal.

37. The Metis Proposal also made clear there was likely even more value for stockholders if the Company engaged with Metis, as the Proposal invited. The Metis Proposal stated that it was fully financed and attached a debt commitment letter from Method Investments & Advisory Ltd. ("Method") as proof.

38. The Metis Proposal stated that it would provide up to \$1.5 billion in debt financing for Metis's acquisition of Xperi. Thus, Metis's \$1.2 billion proposal was an opening bid as Metis had an additional \$300,000,000 worth of cash available for the acquisition.

39. The Metis Proposal identified several respects in which it was superior to the TiVo Merger, including: a higher, all-cash value; a faster and more certain path to closing; agreement to a "hell or high-water" covenant as to U.S. antitrust approval; lack of an approval requirement with the Korea Fair Trade Commission; and absence of a need for tax opinions.

The Board Hastily Rejects the Metis Proposal

40. On Sunday, February 23, 2020, only two days after receiving the Metis Proposal, the Company announced both the receipt and summary dismissal thereof.

41. The Company claimed in a February 23, 2020 press release that over the weekend the Board had conducted “a comprehensive review and discussion” of the Metis Proposal, including “consultation with its financial and legal advisors.”

The announcement stated that the Board had determined that:

[B]ased on the current non-binding terms and conditions, as well as lack of information, [the Board] is unable to conclude at this time that Metis Ventures’ non-binding proposal is reasonably likely to lead to a Superior Proposal under the terms of Xperi’s merger agreement with TiVo. Therefore, Xperi will not be engaging in discussions with Metis Ventures and does not intend to make any further comment at this time.

42. The Board did not contend that the written Metis Proposal was not *bona fide*.

43. The February 23, 2020 press release included the several page Metis Proposal, which explained why the proposal was superior to the Combination with TiVo.

44. Section 7.1(b) of the Merger Agreement contains a “fiduciary out” to the No Solicitation covenant of Section 7.1(b), in recognition of the Board’s continuing fiduciary duty to its stockholders.

45. Under Section 7.1(b) of the Merger Agreement, the Board had a duty to make a determination “in good faith” whether the Metis Proposal “constitutes or would reasonably be likely to lead to a Superior Proposal.” Under the definition of Superior Proposal, the Board had to make a determination whether the Metis Proposal was “more favorable to XRAY’s¹ stockholders from a financial point of view” than the TiVo Merger. The Board’s determination was to be made:

. . . taking into account at the time of determination all relevant circumstances, including the various legal, financial and regulatory aspects of the proposal, all the terms and conditions of such proposal and this Agreement, any changes to the terms of this Agreement offered by XRAY in response to such XRAY Acquisition Proposal, the identity of the Person making the XRAY Acquisition Proposal, the anticipated timing, conditions and the ability of the Person making such XRAY Acquisition Proposal to consummate the transactions contemplated by such XRAY Acquisition Proposal, and that if such XRAY Acquisition Proposal is to be financed, such financing is, at the time of the making of such XRAY Acquisition Proposal.

46. The Board failed to make the determinations required by Section 7.1(b)’s “fiduciary out” provision and, therefore, breached its continuing fiduciary duty to Xperi stockholders.

47. The Board only determined that it was “unable to conclude at this time that Metis Ventures’ non-binding proposal is reasonably likely to lead to a Superior

¹ The Merger Agreement refers to Xperi as XRAY.

Proposal.” Thus, the Board did not determine whether the Metis Proposal was reasonably likely to lead to a Superior Proposal. It did not make a determination that the Metis Proposal was not likely to lead to a Superior Proposal. It merely said it could not reach a conclusion on that question. Thus, it appears the Board did not make the determinations required by Section 7.1(b) and the Board’s continuing fiduciary duty to Xperi stockholders.

48. The Board offered only two reasons for its inability to reach a conclusion about whether the Metis Proposal was reasonably likely to lead to a Superior Proposal.

49. First, it said the Metis Proposal was “non-binding.” Section 7.1(b), however, only requires a “*bona fide*” written “proposal.” It does not say a proposal must be “binding.” A proposal is inherently not “binding.” Because a merger agreement is a complicated contract, a proposal generally only “proposes” the major terms of the transaction.²

50. Moreover, the Metis Proposal stated that Metis “was ready to execute a merger agreement that is substantially the same as the Merger Agreement, except for those changes set forth in our Proposal, including the all-cash consideration.” The

² Moreover, the Merger Agreement defines an “XRAY Acquisition Proposal” as “any offer, inquiry, indication of interest or proposal ... contemplating, involving or otherwise relating to an XRAY Acquisition Transaction,” thereby anticipating non-binding proposals.

Metis Proposal said that it would be a legally binding obligation when the parties executed definitive documentation.

51. A proposal is a form of offer. The Metis Proposal did not become a binding agreement only because the Board refused to accept it and proceed with definitive documentation.

52. Second, the Board claimed there was a “lack of information.” It did not say what information was lacking or why that information could not be obtained. The Merger Agreement does not specify any particular information that must be in an Acquisition Proposal. The Metis Proposal contained information on the relevant circumstances listed in Section 7.1(b), including the identity of the proposer, the terms of the proposal, the financing for the proposed transaction, legal and regulatory aspects of the proposal (such as the lack of need for a TiVo vote, Korean FCC approval or tax opinions and the inclusion of a “hell or high water” antitrust covenant), and the anticipated timing for consummation. In contrast, the Board failed to consider the Section 7.1(b) factors it was required to consider, which factors indicated the Metis Proposal was likely to lead to a Superior Proposal.

53. There is no indication that the Board made any effort to seek the additional information that was purportedly lacking. In that vein, by purportedly determining that the Metis Proposal was not reasonably likely to lead to a Superior Proposal—before it even had all the information on the Metis Proposal it says it

wanted—the Board has unreasonably prohibited itself from reaching out to Metis for that purpose and attempting to negotiate a price increase or other terms that might result in a Superior Proposal.

54. Instead, the Board announced that it planned to move forward with the previously-announced TiVo Merger, reiterating “its continued support and enthusiasm” for that deal. It also said it would have no further comment on the Metis Proposal. Before Plaintiff served its Demand, the preliminary S-4s did not even mention the Metis Proposal or the Board’s response to it, though the making and dismissal of that proposal are plainly material to the stockholder vote. The Proxy (p. 60) only includes two sentences reflecting receipt and summary dismissal of the Metis Proposal and omits the remaining information in the February 23, 2020 announcement (including the text of the Metis Proposal), adding a statement that Xperi has not received further correspondence from Metis.

55. The Board’s hasty and improper dismissal of the all-cash, fully-financed, and premium-offering Metis Proposal, refusal to engage in discussions with Metis, decision to maintain silence about the Metis Proposal, and failure to provide full and accurate disclosure in the preliminary proxies indicate the Board has failed to follow in good faith the procedures and standards of the Merger Agreement and breached its fiduciary duty.

56. Both Xperi's senior management (including CEO Kirchner and the CFO) and all of Xperi's directors would likely lose their positions if the Company reached a cash merger deal with Metis. When the TiVo Merger closes, however, most of management and four of Xperi's seven directors (including Kirchner) will maintain their positions. This creates a conflict of interest in management's and the Board's cursory evaluation and dismissal of the Metis Proposal. Alarming, the conflicted Kirchner appears not to have recused himself from the Board's "unanimous" dismissal of the Metis Proposal.

57. There is a further conflict because the Board members are loyal to their CEO, whom they selected to run the Company just three years ago in place of Lacey—the very person now trying to regain control.

58. Two of the directors on the Board outside of Kirchner—David Habiger and V. Sue Molina—were also DTS directors under Kirchner's stewardship. Habiger's relationship with DTS pre-dates his service on its board, extending back to when Habiger was CEO of Sonic Solutions (which had significant licensing arrangements with DTS). Molina's relationship with DTS also pre-dates her service on the DTS board, extending back to the time when Molina was a tax partner at Deloitte and Deloitte was DTS' auditor. Kirchner was a DTS executive and/or director during the times when Habiger was at Sonic Solutions and Molina was at Deloitte. Habiger and Molina, with long-standing ties to DTS and Kirchner, have

loyalties to Kirchner rendering them non-independent with respect to consideration of the Metis Proposal.³ Habiger has secured a place as director of HoldCo.

59. Antonellis has other conflicting loyalties predisposing her to reject the Metis Proposal in favor of the TiVo Merger. Specifically, Antonellis is CEO of Vubiquity, a company whose subscription service is streamed on TiVo devices. This relationship with TiVo incentivizes Antonellis to act in TiVo's (and therefore Vubiquity's) interests and to reject any alternative transaction or action by Xperi that might put the TiVo Merger at risk. Antonellis has secured a position as a director of HoldCo.

The Board Failed to Consider the Effects of the COVID-19 Pandemic on Xperi, TiVo, the Combined Company and the Merger Agreement

60. When it summarily dismissed the Metis Proposal on February 23, 2020, the Board was or should have been aware of the emerging COVID-19 pandemic. The first coronavirus case in the United States was reported on January 20, 2020. The World Health Organization ("WHO") had declared a global public health emergency on January 30, 2020. The U.S. President had banned foreign travelers from China. COVID-19 outbreaks had begun in Italy and Iran.

61. In the more than two months since then, the spreading pandemic has caused significant damage to the U.S. economy but the Xperi Board has not met to

³ Molina has also had a relationship with TiVo; Ernst & Young, where Molina was a partner for ten years, is TiVo's auditor.

consider whether its effects have caused a Material Adverse Effect and become an Intervening Event under the terms of the Merger Agreement. The last Board meeting disclosed in the Proxy was on February 23, 2020, whereat the Board reportedly discussed only the Metis Proposal. Thus, the Board has not met for more than eight weeks and, even at its last meeting, did not discuss the potential impacts of the COVID-19 pandemic on Xperi's obligations or options under the Merger Agreement. Since that time, the pandemic has continued to cause significant economic damage. The Board has breached its continuing fiduciary duty to act in stockholders' best interests, by not once meeting and obtaining financial and legal advice on whether the effects of the COVID-19 pandemic on Xperi, TiVo, and/or the combined company have potentially caused a MAE and/or have become an IE under the terms of the Merger Agreement.

62. In Section 4.6(a) of the Merger Agreement, TiVo represents and warrants that (i) TiVo has conducted its business in the ordinary course of business and (ii) there has been no event "that has had or would be reasonably expected to have a Material Adverse Effect on [TiVo]." Under Section 8.2(b), it is a condition to closing that the representation and warranty in Section 4.6 (a)(ii) remains true up to the date of the TiVo Merger.

63. Section 8.2(c) makes it a condition of Xperi's obligation to close that TiVo has not suffered a MAE since the date of the Merger Agreement. MAE

includes “any effect, event, change, occurrence, condition or development” which, individually or together, “has had a material adverse change, or material adverse effect on ... (b) the businesses, financial condition or results of operation” of TiVo taken as a whole.⁴ The definition contains exceptions for the effects of industry conditions or general economic, financial or securities market conditions unless the effect on the party is disproportionate relative to others in the industries, geographies and market. A decrease in market price or failure to meet projections are also exceptions, though the underlying causes of those declines may be considered in considering whether an otherwise not excluded MAE has occurred. Other exceptions include “natural disasters, acts of war, terrorism or sabotage, military actions or the escalation thereof . . .” unless there is a disproportionate effect.

A Pandemic is not an Exception to the MAE Condition

64. Under Section 9.1(h) of the Merger Agreement, if TiVo does not satisfy a covenant or one of its representations or warranties have become inaccurate so that the closing conditions of Section 8.2(b) are not satisfied and TiVo does not cure the situation after 15 days’ notice, Xperi may terminate the agreement, provided that Xperi is not in material breach of its representations and covenants giving TiVo the right to terminate.

⁴ Merger Agreement, Annex.

65. Section 7.4(b) of the Merger Agreement provides that the Xperi Board will not fail to make, withdraw, amend, modify or qualify its recommendation or even publicly propose to do so. Section 7.4(b), however, contains a proviso that the Xperi Board, prior to the Xperi stockholders approving the Merger, may:

- (i) if there is an Intervening Event, effect a Change in Board Recommendation if such board concludes in good faith, after consultation with outside counsel, that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law.

66. Intervening Event is defined in the Annex to the Merger Agreement to include a TWOLF Intervening Event, which in turn is defined in the Annex as follows:

“TWOLF Intervening Event” means an event, fact, development or occurrence that materially affects the business, assets or operations of TWOLF (other than any event, fact, development or occurrence resulting from a material breach of this Agreement by TWOLF) that is unknown and not reasonably foreseeable to the TWOLF Board as of the Agreement Date and becomes known to the TWOLF Board after the Agreement Date and prior to the receipt of TWOLF Stockholder ApprovalThe exceptions to the definition are not applicable and, though the sharp decline in TiVo’s stock price is not itself a TiVo Intervening Event, under Section (iii) it may be considered evidence of an Intervening Event because it results from the effects and consequences of the COVID-19 pandemic.

67. On December 18, 2019, the occurrence and development of the COVID-19 pandemic in the United States and elsewhere was not known and was

not reasonably foreseeable to the TiVo Board. Chinese health officials informed the WHO on December 31, 2019, (nearly two weeks after the Merger Agreement was signed) that there was a cluster of 41 patients with a mysterious pneumonia.

68. The COVID-19 pandemic was unknown and not reasonably foreseeable on December 18, 2019 (when China had not yet reported to the WHO even the cluster of pneumonia cases later connected to a new strain of coronavirus), but the pandemic is known now, prior to stockholder approval. The Proxy (at 35-36) concedes that the business and operations of Xperi, TiVo and the combined company could be adversely affected by the COVID-19 pandemic. It states there can be no assurance the pandemic:

[W]ill not have a material and adverse impact on the business, operating results and financial condition of Xperi and TiVo and, in the future, the combined company Xperi and TiVo do not yet know the full extent of potential delays or impacts on our applicable business, operations or the global economy as a whole.

69. The Proxy (at 35) states that “[t]he impact to date” has included “significant volatility in various markets and industries” that could have an “adverse impact” on the companies’ customers, businesses, financial condition, and results of operations and that:

In particular, automotive and consumer electronics industries as well as other industries that include customers of Xperi and TiVo, have and may continue to be impacted by the coronavirus outbreak

70. The Proxy also says that governments' actions easing business closures may have a "significant adverse effect" on the companies' markets.

71. Although materially incomplete and misleading, these disclosures admit the COVID-19 pandemic may cause a "material and adverse impact" on both companies and the combined company. Yet the Board did not meet to determine whether an IE or MAE has occurred or could reasonably be expected to occur. The Board's failure to meet and consider this is a breach of fiduciary duty.

72. Even if the COVID-19 pandemic has not yet caused an MAE, but is reasonably expected to cause one, the Merger Agreement condition in Section 8.2(b) would not be met. That section requires TiVo's representations and warranties in Section 4.6(a) to remain true and correct. Those representations and warranties include that, since September 30, 2019, TiVo and its subsidiaries "have conducted their business in the ordinary course of business" and "there has not been or occurred any 'Effect' that has had or would be reasonably expected to have a Material Adverse Effect" on TiVo. (Emphasis added.)

73. The Board cannot determine whether an IE or MAE has occurred without meeting and being advised by its financial and legal advisors. The Proxy's incomplete but ominous disclosures concerning the COVID-19 pandemic admit that the pandemic has already had, or at least is reasonably likely to have, a material and adverse effect on TiVo and the combined company's business. Indeed, because the

first quarter has now closed, the Board now has certain additional information on how the COVID-19 pandemic has already affected both companies' businesses. The Board's failure to meet to determine whether the pandemic has or is reasonably likely to cause an IE or MAE under the Merger Agreement is a breach of its continuing fiduciary duty to stockholders. Given the developing news about the COVID-19 pandemic and the statements in the Proxy, the Board's failure to meet is not in good faith and is a breach of the directors' duty of loyalty.

74. As recent complaints filed with the Delaware Court of Chancery evidence, many companies have invoked MAE clauses in light of the COVID-19 pandemic. Other mergers, such as the merger of Hexcel Corp. and Woodward, Inc., have been terminated by mutual agreement because of the impact of the COVID-19 pandemic. The Proxy (at 60), however, indicates that the Xperi Board has not even met to consider the impact of the COVID-19 pandemic, whether to approach TiVo concerning possible mutual termination, or whether an IE or MAE has occurred. Instead, the Proxy (at 60) recites that the Board determined to recommend the Merger at its December 17, 2019 meeting, before any coronavirus cases were known. The Proxy (at 62) cites the Xperi Board's right to withdraw or change its recommendation of the Merger, but indicates the Board has not met to consider the possible exercise of that right. The Proxy (at 61) includes as reasons for the Board's recommendation of the Merger the "Strong Financial Position" of the combined

company including “attractive recurring cash flows,” but does not indicate whether this and other factors remain true in light of the COVID-19 pandemic. The Proxy (at 10, 60) repeatedly indicates that the Board’s recommendation of the Merger is as of December 17, 2019. The Proxy (at 62) trumpets the Xperi Board’s knowledge as of December 17, 2019, of the business, operations, financial condition, earnings, and prospects of Xperi and TiVo, but does not indicate that the Board has met to consider how the COVID-19 pandemic has changed the business, operation, financial condition, earnings, and prospects of the two companies and the proposed combined company. Moreover, the fairness opinion of Centerview was as of December 18, 2019, more than five months ago and before the COVID-19 pandemic.

The Proxy’s Misleading Disclosure Regarding the Effects of the Pandemic

75. The Board has breached its fiduciary duties by providing materially misleading and incomplete, partial disclosures concerning the COVID-19 pandemic’s effects on Xperi, TiVo, the combined company, and the Merger Agreement.

76. The special stockholders meeting will be held virtually because of the pandemic. There have been extensive developments in the business impacts from the COVID-19 pandemic between March 26, 2020, when the first amended S-4 was filed, and April 22, 2020, when the Proxy was issued. The Proxy (at 35-36) recognizes that the “outbreak of coronavirus” is a material risk factor in evaluating

the Merger, including its effects on the businesses of Xperi and TiVo and their responses to the COVID-19 pandemic. The Proxy, however, simply repeats the same generic “risk factor” concerning the COVID-19 pandemic and does not provide any additional disclosures concerning the actual and expected effect of the pandemic on the TiVo Merger.

77. Having made a partial disclosure concerning the COVID-19 pandemic, the Board was obligated to fully and accurately disclose all information concerning the pandemic’s risks, effects to-date, and projected effects on Xperi, TiVo, and the combined company. The Proxy’s partial COVID-19 disclosure makes it apparent that material facts have not been disclosed. The disclosure remained the same from March 26 to April 22, 2020 though there were numerous developments during that period, including stay-at-home orders in most U.S. states and many foreign countries, a huge surge in unemployment, and large increases in COVID-19 cases and deaths. Plainly, more was known by April 22, 2020 as to the actual and potential impact of the COVID-19 pandemic on TiVo, Xperi, and the combined company. By April 22, 2020, “new information” had emerged on the severity of the COVID-19 outbreak and its impact. (Proxy at 35.) But the Xperi Board did not make a good faith effort to provide any additional information to stockholders and just issued the same generic disclaimers.

78. The Proxy (at 35-36) confirms that actual effects of the COVID-19 pandemic have already affected the businesses, results of operations, and financial conditions of TiVo and Xperi. It admits that significant volatility in markets and industries has occurred, that the automotive, consumer electronics and other industries where the companies have customers have been impacted, and government actions have been taken. The Proxy, however, makes no disclosure concerning the actual effects of these facts on TiVo and Xperi. Instead, it contains various vague statements that the pandemic and its impact “could” affect TiVo and Xperi without providing any facts on actual effects or any specific information on expected effects.

79. The Proxy (at 35) references “efforts by Xperi, TiVo and the combined company to address the adverse impacts of the coronavirus” but does not describe those efforts or what adverse impacts they address and how. The Proxy admits customers have been impacted but fails to provide any facts as to the nature and severity of those impacts. It says that “the full extent” of impacts and “ultimate impact” of the COVID-19 pandemic is uncertain, but does not disclose the facts concerning the pandemic’s effects on TiVo and Xperi to-date.

80. The Proxy’s generic disclosure that the pandemic “could” have a MAE on Xperi, TiVo, and the combined company’s business is no substitute for actual facts. Information concerning the actual impact of the COVID-19 pandemic that

Xperi and TiVo have already experienced (and are expected to experience) is needed for stockholders to cast a fully informed vote.

81. Xperi announced revised guidance on March 10 and its first quarter closed on March 31. Xperi has now announced its first quarter results and what effect the COVID-19 pandemic has had on its business to-date. But that information was not provided to stockholders in the Proxy. The Board also has access to information concerning TiVo's first quarter results, but that information is not provided to stockholders in the Proxy either. Thus, despite its access to first quarter results, the Board has not disclosed any information in the Proxy on what effect the COVID-19 pandemic has had and is expected to have on Xperi, TiVo, or the combined company's business. The Board has not even met to discuss these issues.

82. The Proxy discloses two sets of financial projections for Xperi, Scenario A and Scenario B, financial projections for TiVo provided to Xperi by TiVo and modifications to the TiVo financial projections by Xperi management. The Proxy states that in the "view of Xperi management," the projections "were prepared on a reasonable basis, reflect the best currently available estimates and judgments, and present, to the best of Xperi management's knowledge and belief, the expected future financial performance of Xperi and TiVo and the expected synergies to be derived in connection with the mergers." Proxy at 107. The Proxy further states that these projections are "susceptible to multiple

interpretations and periodic revisions based on actual experience and business developments.” *Id.*

TiVo 1st Quarter Results, Earnings Release, and 10-Q

83. In a May 6, 2020 earnings release (the “TiVo Release”) TiVo said Q1 revenues were \$159.9 million, which was “consistent with our internal plan.” These results, however, were well below the prior quarter and only marginally above the first quarter of 2019:

Q1 2020	Q4 2019	Q1 2019
\$159.9	\$175.2	\$158.2

Nor do the Q1 2020 revenues appear consistent with the 2020 full-year outlook TiVo announced in its earnings release on February 18, 2020, which forecast revenues of \$650 to \$690 million for the year. TiVo’s Q1 2020 results also included a GAAP Loss Before Income Taxes of \$179.6 million. Losses of this magnitude do not appear consistent with the 2020 full-year outlook, which said Current Expectations for GAAP loss before incoming taxes ranged from a low of an \$18 million loss for the entire year to a \$4 million gain.

84. The TiVo Release discloses that in Q1 2020 TiVo recorded a \$171.6 million goodwill impairment charge “driven by a decline in the trading price of TiVo’s common stock during the three months ended March 31, 2020.” (The Q1 2020 goodwill charge is on top of a \$217.1 million goodwill charge in Q4 2019,

which according to the February 18, 2020 earnings release, was “driven by the elimination of an assumed control premium from the fair trade value of estimates following execution of the Xperi Merger Agreement.”) These goodwill charges resulted in large operating losses in the fourth quarter of 2019 (-\$209.5 million) and the first quarter of 2020 (-\$157.6 million).

85. The disclosure in the TiVo Release regarding TiVo’s Q1 2020 goodwill impairments is misleading and incomplete. It does not disclose how the decline in TiVo’s stock caused the goodwill charge.

86. Xperi acknowledged in its 10-Q for the first quarter of 2020 ending March 31, 2020, which was filed with the SEC on May 6, 2020 (the “Xperi 10-Q”), that the COVID-19 pandemic “created unprecedented disruptions in economic activity and financial markets” and required an interim goodwill impairment test for the \$378.1 million in goodwill it allocated to its Product Licensing segment and the \$7.7 million in goodwill it allocated to its Semiconductor and IP Licensing segment. Unlike TiVo, however, Xperi determined that no goodwill impairment charges were necessary following the interim test because the fair value of Product Licensing and Semiconductor and IP Licensing units were greater than the carrying values of each segment.

87. With respect to COVID-19, the TiVo Release states:

To date the COVID-19 pandemic has not had a significant impact on our revenues as the substantial majority of our

revenues come from agreements with pay TV operators and others in the video delivery industry. These agreements also provide us with a good degree of visibility into our 2020 revenue expectations. However, given the pending merger with Xperi Corporation, the Company is not providing its standalone financial outlook for the remainder of the year. We expect the combined company will issue financial expectations after the second quarter.

88. The disclosure in the TiVo Release concerning COVID-19 is materially misleading and incomplete. It represents that COVID-19 has not had a significant impact on TiVo's revenues "[t]o date." The TiVo Release, which is dated May 6, 2020, misleadingly indicates that TiVo has not suffered a significant impact on revenues as of May 6, 2020. But the TiVo Release only discloses TiVo's results for the quarter ended March 31, 2020. If the TiVo Release's conclusions about the impact of COVID-19 were intended to speak only as of March 31, 2020, the TiVo Release should have said so. Moreover, having made partial disclosures concerning the impact of COVID 19, a complete and accurate summary of the impact of the COVID 19 pandemic as of May 6, 2020, and the expected impact after May 6, 2020, should have been provided.

89. TiVo's 10-Q for the quarter ended March 31, 2020 (the "TiVo 10-Q"), which was filed with the SEC on May 6, 2020, contains a disclosure (at 8) concerning the impact of COVID 19 on TiVo that is not found in the Proxy or in the TiVo Release. The TiVo 10-Q states:

The COVID-19 pandemic has recently had adverse impacts on many aspects of the Company's operations, directly and indirectly, including its workforce, consumer behavior, distribution, suppliers and the market generally. For example, in March 2020, the Company announced its workforce would work remotely as a result of the pandemic as it reviewed its processes related to workplace safety, including social distancing and sanitation practices recommended by the Centers for Disease Control and Prevention. As the Company generates the substantial majority of its revenue from pay TV operators and others in the video delivery industry, to date COVID-19 has not had a significant impact on the Company's revenue. However, the impacts of the COVID-19 pandemic could cause delays in obtaining new customers and executing renewals and could also impact the Company's consumer business, including sales of TiVo Stream 4K which was recently launched. Further, the global financial markets have experienced increased volatility and have declined since December 31, 2019. The Condensed Consolidated Financial Statements as of and for the three months ended March 31, 2020 reflect management's assumptions about the economic environment and the Company's ability to realize certain assets, including long-lived assets, such as goodwill, accounts receivable and investments in other companies. Although the response to the COVID-19 pandemic is expected to be temporary, such conditions in the global financial markets and business activities could lead to further impairment of our long-lived assets, including goodwill, increased credit losses and impairments of investments in other companies.

These disclosures are largely repeated on page 43 of the TiVo 10-Q.

90. TiVo's acknowledgment that the COVID-19 pandemic has had adverse impacts on its operations and has caused its workforce to operate remotely are not found in the Proxy. Nor is the expectation that there will be delays in obtaining new

customers and obtaining renewals and impacts on consumer sales including the recently launched TiVo Stream 4K. The TiVo 10-Q also concedes the COVID-19 pandemic could cause further goodwill impairment, increased credit losses, and other impairments. The Proxy discloses none of this information.

91. The TiVo 10-Q does not identify “management’s assumptions about the economic environment and the Company’s ability to realize certain assets.”

92. The TiVo 10-Q states on page 8:

The Company is taking steps to manage its resources by reducing and/or deferring capital expenditures, inventory purchases and operating expenses to mitigate the adverse impact of the COVID-19 pandemic. Future impacts of the COVID-19 pandemic may require further actions by the Company to improve its cash position, including but not limited to, implementing employee furloughs and foregoing capital expenditures and other discretionary expenses.

This information is not disclosed in the Proxy.

93. The information in the TiVo Release and TiVo 10-Q has not been provided to the Xperi stockholders for their consideration in voting on the proposed TiVo Merger. To the extent it is claimed that the TiVo Release and TiVo 10-Q are part of the public mix of information, the disclosures are materially misleading and incomplete. TiVo’s Q1 2020 revenues are purportedly consistent with TiVo’s internal plan, but that plan’s revenue figures are not disclosed. Indeed, though TiVo claims its pay TV and video delivery agreements give it “a good degree of visibility

into our 2020 revenue expectations,” it refused to provide such visibility to the Xperi stockholders, using the TiVo Merger as an excuse to withhold this material information.

94. The Proxy states that it “incorporates important business and financial information about Xperi and TiVo,” from their SEC filings. The Proxy (at 213) asserts that important information “disclosed in documents filed separately with the SEC is considered to be a part of” the Proxy. The Proxy (at 214) provides that future filings with the SEC after the date of the Proxy are considered part of the Proxy effective as of the date of those filings. Therefore, the Xperi Board purports to include the information contained in the TiVo Release and TiVo 10-Q as information included in the Proxy.

95. In Section 7.4(a)(i) of the Merger Agreement TiVo and Xperi covenant that they will not amend or supplement “(including by incorporation by reference)” the disclosure in the Proxy concerning their “business, financial condition or results of operations” without the approval of the other company. The covenants in Section 7.4(a)(i) also include:

If at any time prior to the Effective Time any information relating to TWOLF, XRAY, Holdco, or any of their respective affiliates, officers or directors, should be discovered by TWOLF, XRAY or Holdco that should be set forth in an amendment or supplement to any of the Registration Statement or the Joint Proxy Statement/Prospectus, so that any of such documents would not include any misstatement of a material fact or

omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by applicable Law, disseminated to the stockholders of TWOLF and XRAY.

96. In Section 7.4(a)(vi), TiVo and Xperi covenant:

Each of TWOLF and XRAY agrees that none of the information supplied or to be supplied by or on behalf of itself for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Each of TWOLF and XRAY agrees that none of the information supplied or to be supplied by or on behalf of itself for inclusion or incorporation by reference in the Joint Proxy Statement/Prospectus, will, at the time the Joint Proxy Statement/Prospectus or any amendment thereof or supplement thereto is first mailed to the stockholders of TWOLF and the stockholders of XRAY, respectively, and at the time of the TWOLF Stockholder Meeting and the XRAY Stockholder Meeting, respectively, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. If at any time prior to the TWOLF Stockholder Meeting or the XRAY Stockholder Meeting any fact or event relating to TWOLF or any of its Affiliates, or XRAY or any of its Affiliates, which should be set forth in an amendment or supplement to the Joint Proxy Statement/Prospectus should be discovered by

TWOLF or XRAY or should occur, as the case may be, TWOLF or XRAY, as applicable, shall, promptly after becoming aware thereof, inform the other of such fact or event, and an appropriate amendment or supplement describing such fact or event shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the stockholders of TWOLF and XRAY.

97. The covenants in Section 7.6 of the Merger Agreement give Xperi broad access to TiVo's books and records, including operating and financial reports.

98. Based on the provisions of the Merger Agreement and on information and belief: (i) Xperi management, including Kirchner, who is a director, were aware of and approved the TiVo Release and TiVo 10-Q; and (ii) the Xperi Board is aware of the contents of the TiVo Release and TiVo 10-Q. Under the Merger Agreement, Xperi's management and the Board have the contractual right to require an amendment or supplement to the Proxy to include the additional information found in the TiVo Release and TiVo 10-Q, to correct any materially misleading and incomplete partial disclosure contained in the TiVo Release and TiVo 10-Q, and to obtain complete and accurate information from TiVo regarding the matters referred to in those documents, including the impact of COVID-19, TiVo's internal plan, revenue expectations, financial outlook and goodwill charges. The continuing fiduciary duty of the Xperi directors and officers requires them to enforce Xperi's contractual rights and to cause accurate and complete disclosure on the matters discussed in the TiVo Release and TiVo 10-Q to be sent to the Xperi stockholders.

99. While the COVID-19 disclosures in the TiVo 10-Q are misleadingly incomplete, those disclosures do provide material information about the impact of the COVID-19 pandemic on TiVo. Pursuant to Section 7.4(a)(i), the knowledge of Xperi and its directors and officers of this information requires an amendment and supplement to the Proxy. The Xperi stockholders cannot be expected to scour all SEC filings of TiVo, a separate company, to uncover material information on the effects of COVID-19 on TiVo.

Xperi's Q1 2020 Release and 10-Q

100. On May 6, 2020 Xperi issued its earnings release for the first quarter of 2020 ending March 31, 2020 (the "Xperi Release"). The Xperi Release said that, even with "the backdrop of current COVID-19 challenges," Xperi had "a strong first quarter with billings above the high end of the increased outlook range we provided on March 10th." Billings for the quarter were \$112.8 million, which was higher than the March 10 guidance of \$108-110 million. The Xperi Release stated:

The Company's Q2 2020 outlook for billings is \$85-90 million. Given the uncertainties around the impact of COVID-19 on product licensing end markets, and the upcoming merger with TiVo, the Company is suspending its previously provided billings outlook.

Thus, the Company has said all bets are off as far as performance after the TiVo Merger, using the TiVo Merger as an excuse for suspending the guidance.

101. The Xperi Release does not explain why billings are expected to fall from \$112.8 million in the first quarter to only \$85-90 million in the second quarter, approximately a 20-25% decline. Xperi's suspension of previously issued guidance because of COVID-19 makes the facts concerning the effects of the pandemic to date and expected effects highly material. Yet the Xperi Release provides no facts about those effects and anticipated effects.

102. Xperi's 10-Q for the period ending March 31, 2020, filed with the SEC on May 6, 2020 (the "Xperi 10-Q"), contained disclosures that are not found in the Proxy:

In an effort to protect the health and safety of our employees, we took proactive, aggressive action from the earliest signs of the outbreak to adopt social distancing policies at our locations around the world, including working from home, limiting the number of employees attending meetings, and suspending employee travel. In an effort to contain COVID-19 or slow its spread, governments around the world have also enacted various measures, including orders to close all business locations not deemed "essential," isolate people to their places of residence, and practice social distancing when engaging in essential activities. We anticipate that these actions and the resulting global economic impacts will negatively impact our consolidated financial results in the second quarter and in later periods of 2020. The impact to date has included significant volatility and a decline in demand in various markets and industries, particularly the automotive market, which will adversely impact our revenue and billings. In addition, we recorded an incremental provision for credit losses of approximately \$2.0 million due to heightened risk of nonpayment on existing accounts receivable as a result of the impaired

financial condition and liquidity positions of certain of our customers.

We have been closely monitoring the COVID-19 pandemic and its impacts on our business, including legislation to mitigate the impact of COVID-19 such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act which was enacted on March 27, 2020. More than half of our anticipated billings for 2020 are derived from fixed-fee and minimum-guarantee arrangements, primarily from large, well-capitalized customers which we believe somewhat mitigates the risks to our business. Although at present time we are unable to predict the full impact and duration of COVID-19 on our business, we are actively managing our financial expenditures in response to the current uncertainty.

103. The Xperi 10-Q provides additional, if still incomplete, disclosure concerning the actual and potential effects of COVID-19 on Xperi and the combined company, including Xperi employees working from home. Unlike the vague disclosure in the Proxy, the Xperi 10-Q discloses that the COVID-19 pandemic “will negatively impact our consolidated financial results in the second quarter and in later periods of 2020.” While the Proxy contains a general reference that the impact of COVID-19 on the automobile and consumer electronics industries “could” have some adverse impact on Xperi, the Xperi 10-Q states the effect on those industries “will adversely impact our revenue and billings.”

104. The Xperi 10-Q also acknowledges recording a \$2 million reserve for the “heightened risk of nonpayment on existing accounts receivable as a result of impaired financial condition and liquidity positions of our certain customers.” Given

that Xperi uses billings as a metric of financial performance “due to the close alignment between billings and cash receipts,” the fact that a reserve has been created because some billings may not turn into receipts is highly material.

105. The statement in the Xperi 10-Q that more than half of Xperi’s anticipated billings are from “fixed-fee and minimum-guarantee arrangements, primarily from large, well-capitalized customers” is also highly material. The statement reflects that a substantial portion of Xperi’s anticipated billings are not from such arrangements and customers.

106. None of the above information was included in the Proxy. Stockholders should not be required to hunt for information that could have been provided in the Proxy and that should be provided directly to them in an amendment and supplement to the Proxy.

107. Xperi also disclosed in its first quarter 2020 10-Q that it is suspending previously issued guidance and not providing full-year guidance because of uncertainties surrounding the COVID-19 pandemic. This is an admission that the COVID-19 pandemic has and continues to have an effect on the Company’s ability to estimate its future performance.

108. The Proxy does not disclose whether the financial projections have been revised based on actual experience and business developments as a result of the COVID-19 pandemic. If Xperi management’s view has changed, and it most

likely has or should have changed, the Proxy should disclose the change and any revised projections it has prepared for Xperi, TiVo or the combined company.

109. The Proxy also does not disclose that Xperi has suspended providing guidance. Instead, in discussing the projections, it states that “Xperi has prepared and provided public guidance regarding its financial results for the upcoming fiscal quarter and/or fiscal year in press releases announcing its financial results for the immediately preceding quarter or year, as applicable.” Proxy at 105. As a result of these misleading, partial disclosures, the Proxy leads stockholders to believe that Xperi continues to issue guidance and the financial projections included in the Proxy continue to be Xperi management’s best available estimates of future performance.

The May 6, 2020 Transaction Update

110. Instead of sending an amendment and supplement to fix the disclosure deficiencies in the Proxy, Xperi and TiVo issued a materially misleading May 6, 2020 Transaction Update which they are using to promote stockholder approval. The Transaction Update (at 5, 9, 27, 29) projects over \$1 billion in combined revenues/billings and over \$400 million of adjusted EBITDA for the combined company for 2020. These numbers, however, are based on the 2020 mean estimates in the Proxy (at 105-118) for Xperi, TiVo, and the combined company. Xperi and TiVo have now abandoned their projections for 2020, but have refused to provide updated figures reflecting actual results to-date and revised forecasts reflecting the

actual and expected impacts of the COVID-19 pandemic. To use estimates that the companies know are not accurate is deliberately misleading stockholders.

111. The Transaction Update contains not a single reference to COVID-19. The Transaction Update (at 33-35) cites the Xperi process and unanimous support of the Xperi Board for the TiVo Merger, but does not indicate the Board has ever again considered the TiVo Merger since its December 17, 2019 approval.

The Xperi Earnings Transcript

112. The transcript of Xperi's May 6, 2020 earnings call ("Xperi Earnings Transcript") reveals additional information concerning the impact of COVID-19 on Xperi that is not contained in the Proxy. Xperi's CFO acknowledged that, as to Xperi's product licensing segment, "we've analyzed the potential impact of COVID-19 to the various end markets and do expect some variance versus what we had in the prior outlook." That analysis, however, has not been disclosed in the Proxy. The CFO also stated, "[w]e anticipate slightly less of an impact in our home and mobile markets," but failed to say how much less. The CFO also said Xperi had high certainty as to about 70% of Xperi's initial billings outlook for the year, but the remaining 30% will likely be impacted by the pandemic. He estimated that 10% of total year billings are at risk because of the COVID-19 pandemic compared to prior guidance. The Xperi Board, however, has decided not to include any description of management's updated analysis or estimates in the Proxy.

113. In providing inadequate COVID-19 disclosures, the Board deliberately ignored SEC guidance specifically addressing what disclosure should be made. The SEC's March 25, 2020 guidance provided a list of questions a company should address in its COVID-19 disclosures, including:

- How has COVID-19 impacted your financial condition and operations? In light of changing trends and the overall economic outlook, how do you expect COVID-19 to impact your future operating results and near-and-long-term financial condition? Do you expect that COVID-19 will impact future operations differently than how it has affected the current period?
- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook? Has your cost of or access to capital and funding sources, such as revolving credit facilities or other sources changed, or is it reasonably likely to change? Have your sources or uses of cash otherwise been materially impacted? Is there a material uncertainty about your ongoing ability to meet the covenants of your credit agreements? If a material liquidity deficiency has been identified, what course of action has the company taken or proposed to take to remedy the deficiency? Consider the requirement to disclose known trends and uncertainties as it relates to your ability to service your debt or other financial obligations, access the debt markets, including commercial paper or other short-term financing arrangements, maturity mismatches between borrowing sources and the assets funded by those sources, changes in terms requested by counterparties, changes in the valuation of collateral, and counterparty or customer risk. Do you expect to disclose or incur any material COVID-19-related contingencies?
- How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets? For example, will there be significant changes in judgments in determining the fair-value of assets measured in accordance with U.S GAAP or IFRS?
- Do you anticipate any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets,

investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?

- Have COVID-19-related circumstances such as remote work arrangements adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting and disclosure controls and procedures? If so, what changes in your controls have occurred during the current period that materially affect or are reasonably likely to materially affect your internal control over financial reporting? What challenges do you anticipate in your ability to maintain these systems and controls?
- Have you experienced challenges in implementing your business continuity plans or do you foresee requiring material expenditures to do so? Do you face any material resource constraints in implementing these plans?
- Do you expect COVID-19 to materially affect the demand for your products or services?

114. The SEC has encouraged “tailored” disclosures to provide “material information about the impact of COVID-19 to investors.” The SEC said facts about how COVID-19 has already impacted financial conditions, operations, liquidity, and other aspects of the business should be disclosed. It also said it was necessary to disclose expected impacts and known trends. The Board’s wholesale failure to address numerous disclosure issues in the Proxy, despite SEC guidance, or to even meet to discuss these issues, is a breach of the directors’ fiduciary duties. The Board’s reckless “we don’t know and we don’t care” attitude and failure to comply with SEC guidelines evidences a lack of good faith and a breach of loyalty.

Plaintiff Sends 220 Demand, which the Company Belatedly Rejects in Toto

115. On April 6, 2020, Xperi received the Demand from Plaintiff to inspect certain of Xperi's books and records pursuant to 8 *Del C.* § 220 ("Section 220"), pertaining to the TiVo Merger, the Metis Proposal, and the Board's COVID-19 pandemic response.

116. Plaintiff's Demand complied in all respects with Section 220's requirements for a stockholder inspection demand, including by providing evidence of Plaintiff's beneficial ownership of Xperi stock in three different accounts, stating a proper investigative purpose for the inspection demand, and demanding only such information from Xperi necessary and essential to fulfill Plaintiff's proper investigative purpose. Under Section 220, Xperi had until April 14, 2020 to respond to the Demand.

117. On April 16, 2020, after Xperi's statutory deadline for responding to the Demand, Xperi sent the Response through counsel rejecting it *in toto*, claiming without substantial basis that the Demand failed to comply with Section 220 because the account statements were not sufficient documentary evidence of ownership. The Response said Plaintiff must submit "[a] new demand letter;" which would restart the Section 220 process.

118. The Company's Response also asserted that Plaintiff had not satisfied Section 220's proper purpose requirement. The Response claimed that despite the

five pages of facts contained in the Demand, the Demand was a mere statement of purpose without support. The Response contained over four pages of legal argument which made it clear that the Company would not produce any documents even if a new demand was made.

119. In light of the Company's refusal to provide a single document, its position that a new demand was required, its position that Plaintiff had to prove its case in the demand, and the issuance of the definitive Proxy and setting of the May 29, 2020 stockholder vote for the TiVo Merger, Plaintiff determined that it was unlikely to be able to obtain any materials under Section 220 in time to meaningfully use them in advance of the stockholder vote. The repeated practice of Delaware corporations of refusing demands and requiring stockholders to engage in Section 220 litigation that will not be resolved until after the transaction closes renders Section 220 an infective tool.

120. Despite Plaintiff's Demand, Xperi made no additional disclosures concerning its assessment, if any, of the TiVo Merger in light of the COVID-19 pandemic. Instead, it issued the definitive Proxy with the same disclosure and scheduled the Special Meeting for May 29, 2020.

121. After Plaintiff served the 220 Demand, however, Xperi issued an amended Form S-4 on April 13, 2020, disclosing the Metis Proposal for the first time in TiVo Merger materials and stated that:

[O]n February 23, 2020, the Xperi board held a special meeting to review the non-binding proposal from Metis Ventures LLC. Representatives of Centerview and Skadden attended. After a comprehensive review and discussion of Metis Ventures LLC's proposal conducted in consultation with representatives of Centerview and Skadden, the Xperi board unanimously determined that, based on the terms and conditions of Metis Ventures LLC's proposal, as well as lack of information, it was unable to conclude that Metis Ventures' non-binding proposal was reasonably likely to lead to a superior proposal under the terms of the merger agreement. Xperi has not received any further correspondence from Metis Ventures LLC.

122. The Proxy's disclosure purporting to explain "How do I calculate the value of the Xperi merger consideration and the TiVo merger consideration?" is a materially misleading and incomplete partial disclosure. (Proxy at vii-viii.) The disclosure states that because the exchange ratio is fixed, "the implied value of consideration" will fluctuate and will "be affected by the market value of Xperi common stock and TiVo common stock." The Proxy then says the closing prices of Xperi and TiVo were \$20.94 and \$7.89 per share on December 18-, 2019 and \$14.19 and \$6.64 per share on April 16, 2020. The same disclosure is repeated on page 6 of the Proxy, which cross-references page 121, but that section of the Proxy does not give any information on how to calculate the value of the merger consideration.

123. The Proxy (at ix, 6, and 46) indicates that in 2021 it is contemplated that HoldCo will effect "a separation of the combined company's product business and IP licensing business through a tax-efficient transaction, resulting in two

independent, publicly traded companies.” The separation will occur via “a pro-rata spin-off transaction” in which HoldCo stockholders receive shares of the spin-off company. While the Proxy (at 6) promises that “more information on the anticipated business mix of each independent company” will be found on page 46, the disclosure on that page simply says the product business will consist of the product businesses of Xperi and TiVo and the licensing business will consist of the licensing businesses of Xperi and TiVo, without identifying which specific businesses fit which category or how much of the combined company may be subject to the spin-off.

124. The Proxy even mis-discloses basic facts, evidencing the Board’s reckless approach to disclosure. On page 120, the Proxy says “Xperi most recently paid a quarterly cash dividend of \$0.20 per share ... on December 18, 2019.” It then represents that the Xperi Board declared a \$0.20 dividend on January 30, 2020 “payable on March 25, 2020.” The disclosures imply that Xperi did not pay that most recent dividend and is, at best, ambiguous as to whether that dividend was paid. Particularly because the Proxy (at x, 120) indicates HoldCo may or may not pay dividends, a reasonable Xperi stockholder would consider it important whether Xperi paid the dividend on March 25, 2020.

CLASS ACTION ALLEGATIONS

125. Plaintiff brings this action on its own behalf and as a class action, pursuant to Court of Chancery Rule 23, on behalf of all holders of Xperi common

stock (the “Class”) as of February 21, 2020, and their successors in interest. Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

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

127. The Class is so numerous that joinder of all members is impracticable. As of April 13, 2020, there were 50,534,650 shares of Xperi common stock outstanding. Upon information and belief, there are hundreds, if not thousands, of members of the Class.

128. There are questions of law and fact that are common to the Class, including, but not limited to:

a. Whether Defendants breached their fiduciary duties to Plaintiff and other members of the Class; and

b. Whether Plaintiff and the other members of the Class are entitled to equitable relief or damages as a result of Defendants’ breaches of fiduciary duties.

129. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff’s claims are typical of claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. All members of the Class have suffered the same harm.

130. Defendants caused the same equitable harm and damages to the Class through their breaches of fiduciary duty.

131. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

132. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual Class members that would establish incompatible standards of conduct for Defendants. Adjudications with respect to individual Class members would, as a practical matter, be dispositive, or would substantially impair the interests of the Class members.

133. Defendants have acted or refused to act on grounds that apply generally to the Class, such that injunctive or declaratory relief is appropriate with respect to the Class as a whole.

134. The questions of law and fact common to the members of the Class predominate over any questions affecting only its individual members, such that a class action is superior to any other available method for fairly and efficiently adjudicating the controversy.

COUNT I

(Breach of Fiduciary Duty of Loyalty Against All Defendants for Failure to Properly Consider and Disclose the Metis Proposal)

135. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

136. As Xperi directors, Defendants owed and continue to owe Xperi and its stockholders fiduciary duties. The Xperi directors breached their fiduciary duty of loyalty to the Xperi stockholders by summarily dismissing the Metis Proposal and failing to properly consider and make a determination as to whether or not it was reasonably likely to lead to a “Superior Proposal” pursuant to the terms of Section 7.1 of the Merger Agreement. The Xperi directors did not act in good faith but instead imposed various requirements on the Metis Proposal that were not part of the Merger Agreement’s no-shop provisions. They then concealed their misconduct by failing to provide full and accurate disclosure concerning the Metis Proposal.

137. Rather than receiving and evaluating in good faith whether the Metis Proposal was likely to lead to a transaction superior to the TiVo Merger, the Board hastily rushed, in just one weekend, to reject the Metis Proposal to preserve both Kirchner’s position and, upon information and belief, the incoming directorships for Seams, Habiger, and Antonellis. The Board did not even seek to obtain the purportedly unknown information needed to fully evaluate the Metis Proposal. The Board further breached its fiduciary duties by allowing conflicted directors,

including Kirchner, Seams, Habiger, and Antonellis, to participate in the rejection of the Metis Proposal, despite their personal interests in seeing the Metis Proposal rejected, independent of its merits.

138. In the Proxy, the Board has deliberately withheld from the stockholders material information concerning the Metis Proposal, including the text of the proposal. The preliminary versions of the Proxy contained no disclosure at all concerning the Metis Proposal. After the Demand raised the blatant disclosure flaw, the Board begrudgingly put in one sentence reflecting the Board's receipt of the Metis Proposal and one sentence on its dismissal of the Metis Proposal. A third sentence said Xperi has not received further correspondence from Metis, but fails to include that on February 23, 2020 the Board announced "Xperi will not be engaging in discussions with Metis Ventures." A reasonable stockholder could conclude that the reason Xperi has not heard further from Metis is that Xperi told Metis it would not engage with Metis.

139. The Xperi stockholders are entitled to a full and fair summary of the Metis Proposal and the Board's dismissal thereof. The Proxy disclosure references "the current non-binding terms and conditions" of the Metis Proposal as a basis for the Board's refusal to pursue that proposal but does not disclose the text of the Metis Proposal stating those terms and conditions. Proxy statements routinely include the full text of alternative offers.

140. The disclosure cites “lack of information” as a further reason for the Board’s stiff-arming the Metis Proposal, but the Proxy fails to disclose the text of the Metis Proposal, which contains a great deal of information about Metis, its principals and its financial and legal advisors, the structure, financing and timing of the Metis Proposal; the willingness of Metis to adopt substantially the same agreement as the Merger Agreement; and six reasons why the Metis Proposal was superior to the Combination with TiVo. The Proxy does not identify a single piece of material information the Board lacked.

141. The Proxy’s disclosure concerning the Board’s determination as to the Metis Proposal is misleading partial disclosure. Citing “lack of information,” the Proxy says the Board “was unable to conclude” that the Metis Proposal was reasonably likely to lead to a Superior Proposal under the Merger Agreement. The disclosure might read as a rejection of the merits of the Metis Proposal but alternatively could be interpreted as saying that the Board simply was not able to reach a conclusion as to whether the Metis Proposal was likely to result in a Superior Proposal because it did not have enough information. The stockholders are entitled to a clear and accurate statement of what the Board determined.

142. Nearly three months ago the Board disclosed the text of the Metis Proposal in a press release that was not sent to stockholders. The February 23, 2020 press release was fifty days before the record date and fifty-nine days before the

Proxy went out. Though Plaintiff specifically called attention to the lack of disclosure concerning the Metis Proposal, the Xperi directors deliberately omitted the text of the Metis Proposal from and instead included a materially misleading partial disclosure in, the Proxy sent to Xperi stockholders.

143. As a result of the Board's breaches of fiduciary duty, Xperi's stockholders have been harmed and continue to be harmed.

144. Plaintiff has no adequate remedy at law.

COUNT II

(Breach of Fiduciary Duty of Loyalty Against All Defendants for Violation of Their Continuing Fiduciary Duty to Evaluate the TiVo Merger in Light of the COVID-19 Pandemic)

145. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

146. The Board has continuing contractual and fiduciary obligations to assess whether, in light of changed conditions, there has been a MAE under the Merger Agreement that would enable Xperi to terminate the Merger Agreement, whether there has been an IE that would permit the Board to change its recommendation, and whether terminating the Merger Agreement or changing its recommendation would be in Xperi stockholders' best interests.

147. The Merger Agreement was executed on December 18, 2019, before the current COVID-19 pandemic. According to the Proxy, except for the February

23, 2020 Special Meeting which was limited to the Metis Proposal, the Board has not met since that time and, therefore, has never discussed the impact of the COVID-19 pandemic on Xperi, TiVo, or the proposed Combination. Under the extraordinary circumstances wrought by the pandemic, the Board's failure to meet and consider the implications of the COVID-19 pandemic for Xperi, TiVo, and HoldCo, including the implications under the terms of the Merger Agreement, evidences a lack of good faith and an intentional omission and implicates the directors' duty of loyalty.

148. The Board has breached its duty of loyalty by utterly failing to fulfill its contractual and fiduciary obligations to assess whether a MAE or IE has occurred under the Merger Agreement, whether it should terminate the Merger Agreement or modify its recommendation to stockholders as a result, and to inform Xperi stockholders regarding its assessment and conclusions in light of these unprecedented intervening circumstances.

149. As a result of the Xperi Directors' breaches of fiduciary duty, stockholders have been harmed and continue to be harmed.

150. Plaintiff has no adequate remedy at law.

COUNT III

(Breach of Fiduciary Duty of Loyalty Against All Defendants for Deliberately Misleading and Incomplete Disclosure)

151. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

152. As part of their duty of loyalty as Xperi directors, Defendants have a duty to fully disclose to Xperi's stockholders all material facts germane to the vote on the Merger Agreement.

153. In the Proxy, Defendants have deliberately made materially misleading disclosures and partial disclosures and have deliberately omitted material information.

154. As detailed above, Defendants have not made a good faith effort to provide a full and accurate summary concerning the Metis Proposal, and the effects of the COVID-19 pandemic.

155. They intentionally omitted from the Proxy information on these subjects that was known at the time the Proxy was issued. They included misleading partial disclosure in order to convince the stockholders to accept the Board's recommendation of the Merger Agreement. Rather than issue corrective and supplemental disclosure to the stockholders, they issued the May 6, 2020 Transaction Update supporting the Combination based on projections Xperi and TiVo have disowned, thereby deliberately misleading stockholders.

156. Having contractually bound Xperi to an improvident Merger Agreement, Defendants are intentionally depriving the Xperi stockholders of full and accurate information in an effort to deceive the stockholders into approving the TiVo Merger.

157. As a result of the Xperi Directors' breaches of their fiduciary duties of disclosure, stockholders have been harmed and continue to be harmed.

158. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring that Defendants have breached their fiduciary duty of loyalty, including through deliberately misleading and incomplete partial disclosure;
- B. Granting appropriate equitable relief depriving Defendants of all benefits they realize as a result of the Combination aided by their breaches of the fiduciary duty of loyalty;
- C. Awarding the Class damages as a result of Defendants' breaches of fiduciary duty;
- D. Awarding Plaintiff its reasonable attorneys' fees, expenses, and costs; and
- E. Granting such other and further relief as the Court deems just and equitable.

Dated: May 15, 2020

PRICKETT, JONES & ELLIOTT, P.A.

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