

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHANDRA AUBERRY,

Plaintiff,

v.

TIVO CORPORATION, JAMES E. MEYER,
RAGHAVENDRA RAU, LAURA J. DURR,
ALAN L. EARHART, EDDY W.
HARTENSTEIN, DAN MOLONEY, DAVE
SHULL, GLENN W. WELLING, and LORIA
D. YEADON,

Defendants.

Case No.:

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS**

Plaintiff, by her undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

BACKGROUND

1. This action concerns a proposed transaction announced on December 19, 2019 pursuant to which TiVo Corporation (“TiVo” or “the Company”) will be acquired by Xperi Corporation (“Xperi”) to form the combined company XRAY-TWOLF HoldCo Corporation (“HoldCo”).

2. On December 18, 2019, TiVo’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger and reorganization (the “Merger Agreement”), pursuant to which TiVo shareholders will receive 0.455 shares of HoldCo for each share of TiVo common stock they own (the “Proposed Transaction”). Following consummation of the Proposed Transaction Xperi shareholders will own approximately

46.5% of the combined business and TiVo shareholders will own approximately 53.5%.

3. On February 18, 2020, in order to convince TiVo's stockholders to vote in favor of the Proposed Transaction, Defendants filed a materially incomplete and misleading preliminary S-4 Registration Statement (the "Registration Statement") with the United States Securities and Exchange Commission ("SEC").

4. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Registration Statement.

5. In addition, a special meeting of TiVo's stockholders will be held to vote on the Proposed Transaction (the "Stockholder Vote"). It is therefore imperative that the material information that has been omitted from the Registration Statement is disclosed prior to the Stockholder Vote so TiVo stockholders can properly exercise their corporate voting rights and make an informed decision on whether to vote in favor of the merger.

JURISDICTION & VENUE

6. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act and 28 U.S.C. §1331 because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

7. This Court has jurisdiction over Defendants because each defendant is either a corporation that conducts business in this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §

78aa, as well as under 28 U.S.C. § 1391, because, among other things: (a) the conduct at issue will have an effect in this District; (b) a substantial portion of the transactions and wrongs complained of herein, occurred in this District; and (c) certain Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District. Additionally, the Company's common stock trades on the NASDAQ, which is headquartered in this District.

THE PARTIES

9. Plaintiff is, and has been continuously throughout all times relevant hereto, an owner of TiVo common stock.

10. Defendant TiVo is a Delaware corporation and a party to the Merger Agreement. TiVo common stock is traded on the NASDAQ under the ticker symbol "TIVO."

11. Defendant James E. Meyer is Chairman of the Board of the Company.

12. Defendant Raghavendra Rau is Vice Chairman of the Board of the Company.

13. Defendant Laura J. Durr is a director of the Company.

14. Defendant Alan L. Earhart is a director of the Company.

15. Defendant Eddy W. Hartenstein is a director of the Company.

16. Defendant Dan Moloney is a director of the Company.

17. Defendant David Shull is President, Chief Executive Officer, and a director of the Company.

18. Defendant Glenn W. Welling is a director of the Company.

19. Defendant Loria B. Yeadon is a director of the Company.

FACTS

20. TiVo's intellectual property portfolio and products aim to help consumers enjoy watching their favorite entertainment. TiVo's technologies enable an integrated entertainment experience, making entertainment content easy to find, watch and enjoy. TiVo's product business delivers movies, video and shows from across live TV, on demand, streaming services and countless apps, helping people discover what to watch as they wish. For content creators and advertisers, TiVo's machine learning for personalized content recommendations, conversational voice solution and targeted advertising methodologies help deliver a watchers to increase viewership and engagement across online video, TV and other entertainment viewing platforms. TiVo's intellectual property business provides a global portfolio of thousands of patents that underlie this entertainment platform as well as across the broader video landscape.

21. Xperi and its brands, DTS, FotoNation, HD Radio, Invensas and Tessera, are dedicated to creating innovative technology solutions that enable experiences for people around the world. Xperi's solutions are licensed by hundreds of leading global partners and have shipped in billions of products in areas including premium audio, broadcast, automotive, computational imaging, computer vision, mobile computing and communications, memory, data storage, and 3D semiconductor interconnect and packaging. Xperi common stock is traded on the NASDAQ under the ticker symbol "XPER."

22. On December 18, 2019, TiVo's Board caused the Company to enter into the Merger Agreement.

23. The Merger Agreement provides that Tivo has agreed with Xperi, a Delaware Corporation, HoldCo, a Delaware Corporation, XRAY Merger Sub Corporation, a Delaware corporation and wholly-owned subsidiary of Holdco ("XRAY Merger Sub"), and TWOLF Merger

Sub Corporation, a Delaware corporation and wholly-owned subsidiary of Holdco (“TWOLF Merger Sub” and together with XRAY Merger Sub, the “Merger Subs”). Under the Merger Agreement, among other things and subject to terms and conditions set forth therein, (i) XRAY Merger Sub will be merged with and into Xperi, with Xperi surviving as a subsidiary of HoldCo; and (ii) TWOLF Merger Sub will be merged with and into TiVo, with TiVo surviving as a subsidiary of HoldCo. As a result, HoldCo will become the ultimate parent of Xperi, TiVo and their respective subsidiaries (the “Merger”).

24. At the Effective Time (as defined in the Merger Agreement), and as a result of the Merger:

Each issued and outstanding share of TWOLF [TiVo] Common Stock (other than any shares of TWOLF Common Stock to be canceled pursuant to Section 3.1(d)) shall be converted into the right to receive 0.455 (the “TWOLF Exchange Ratio”) fully paid and nonassessable shares of Holdco Common Stock, together with cash in lieu of fractional shares of Holdco Common Stock as specified below, without interest (the “TWOLF Merger Consideration” and, together with the XRAY Merger Consideration, the “Merger Consideration”). As of the Effective Time, all such shares of TWOLF Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist. As of the Effective Time, each holder of a certificate or book-entry share representing any shares of TWOLF Common Stock shall cease to have any rights with respect thereto, except the right to receive, upon the surrender thereof, the TWOLF Merger Consideration in accordance with Section 3.3.

25. The Merger Consideration is unfair because, among other things, the intrinsic value of the Company is in excess of the amount the Company’s stockholders will receive in connection with the Proposed Transaction.

26. It is therefore imperative that the Company common stockholders receive the material information that Defendants have omitted from the Registration Statement so that they can meaningfully assess whether the Proposed Transaction is in their best interests prior to the vote.

27. Section 7.1 of the Merger Agreement provides for a “no solicitation” clause that prevents TiVo from soliciting alternative proposals and constraints its ability to negotiate with potential buyers:

a) Unless this Agreement is terminated pursuant to Section 9.1, TWOLF and XRAY shall not, and shall cause their respective Subsidiaries and their and their respective Subsidiaries’ respective executive officers and directors not to, and shall use their respective reasonable best efforts to cause their other respective Representatives and the other Representatives of their respective Subsidiaries not to, directly or indirectly: (i) solicit, initiate or knowingly take any action to facilitate or encourage any Acquisition Proposal or proposal or inquiry that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal; (ii) participate or engage in any discussions or negotiations with, disclose any information relating to TWOLF or XRAY, as applicable, or any of their respective Subsidiaries to, afford access to their business, properties, assets, books or records, or otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking (or TWOLF or XRAY, as applicable, should know is seeking) to make, or has made, any Acquisition Proposal relating to TWOLF or XRAY, as applicable; (iii) (A) amend or grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of TWOLF or XRAY, as applicable, or any of their respective Subsidiaries (other than provisions in such obligations customarily referred to as “don’t ask” provisions) or (B) approve any transaction under, or any third party becoming an “interested stockholder” under, Section 203 of the DGCL; (iv) approve or enter into any agreement in principle, letter of intent, term sheet, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other Contract relating to any Acquisition Proposal, in each case, whether written or oral, binding or nonbinding, or enter into any agreement or agreement in principle requiring TWOLF or XRAY, as applicable, to abandon, terminate or fail to consummate the transactions contemplated hereby or breach its obligations under this Agreement; or (v) resolve, propose or agree to do any of the foregoing. Each of TWOLF and XRAY shall, and shall cause their respective Subsidiaries and its and their respective Representatives to immediately cease and cause to be terminated, and shall not authorize or knowingly permit any of its or their Representatives to continue, any and all existing activities, discussions or negotiations, with any third party conducted with respect to any Acquisition Proposal and shall request and, if necessary, enforce any rights to require any such third party (or its agents or advisors) in possession of information in respect of TWOLF or XRAY, as applicable, or any of their respective Subsidiaries that was furnished by or on behalf of such party and their respective Subsidiaries to return or destroy (and confirm destruction of) all such information.

28. In addition, Section 9.3 of the Merger Agreement requires TiVo to pay up to a \$10,000,000.00 “termination fee” to Xperi in the event this agreement is terminated by TiVo and improperly constrains the Company from obtaining a superior offer.

29. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

30. As alleged herein, the Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading.

31. First, the Registration Statement omits material information regarding HoldCo’s, TiVo’s, and Xperi’s financial projections.

32. With respect to HoldCo’s financial projections, the Registration Statement fails to disclose (i) all line items used to calculate (a) Billings and (b) adjusted EBITDA; and (ii) a reconciliation of all non GAAP to GAAP metrics.

33. With respect to TiVo’s financial projections, the Registration Statement fails to disclose (i) all line items used to calculate (a) adjusted EBITDA, (b) EBIT, (c) Billings, and (d) Unlevered Free Cash Flows; and (ii) a reconciliation of all non GAAP to GAAP metrics.

34. With respect to Xperi’s financial projections, the Registration Statement fails to disclose (i) all line items used to calculate (a) Billings, (b) adjusted EBITDA, (c) EBIT, and (d) Unlevered Free Cash Flows; and (ii) a reconciliation of all non GAAP to GAAP metrics.

35. The disclosure of projected financial information is material information necessary for stockholders to gain an understanding of the basis for any projections as to the future financial performance of the combined company. In addition, this information is material and necessary for stockholders to understand the financial analyses performed by the companies’ financial advisor rendered in support of any fairness opinion.

36. Second, the Registration Statement omits material information regarding the analyses performed by the Company's and Xperi's financial advisors, LionTree Advisors LLC ("LionTree") and Centerview Partners LLC ("Centerview"), respectively, in connection with the Proposed Transaction.

37. With respect to LionTree's *Sum-of-the-Parts DCF Analysis for TiVo*, the Registration Statement fails to disclose (i) terminal values, (ii) LionTree's basis for applying a terminal multiples of 8.0x to 10.0x and 4.75x to 5.75x, (iii) the individual inputs and assumptions underlying the range of discount rates ranging from 9.0% to 11.0%, and (iv) the Company's weighted average cost of capital ("WACC"). This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

38. With respect to LionTree's *Sum-of-the-Parts DCF Analysis for Xperi*, the Registration Statement fails to disclose (i) terminal values, (ii) LionTree's basis for applying a terminal multiples of 9.0x to 11.0x and 3.0x to 5.0x, (iii) the individual inputs and assumptions underlying the range of discount rates ranging from 8.75% to 10.75%, and (iv) the Xperi's WACC. This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

39. With respect to LionTree's *Estimated Synergies Valuation Analysis*, the Registration Statement fails to disclose (i) LionTree's basis for applying a terminal multiples of 6.0x to 8.0x and 7.0x to 9.0x, (ii) the individual inputs and assumptions underlying the range of discount rates ranging from 8.9% to 10.9%, (iii) the Company's WACC, and (iv) the Xperi's WACC. This

information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

40. With respect to LionTree's *Dis-Synergy Avoidance Valuation*, the Registration Statement fails to disclose (i) LionTree's basis for applying a EBITDA multiples of 6.0x to 8.0x, (ii) the individual inputs and assumptions underlying the range of discount rates ranging from 8.9% to 10.9%, (iii) the Company's WACC, and (iv) the Xperi's WACC. This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

41. With respect to Centerview's *Selected Public Company Analysis—TiVo*, the Registration Statement fails to disclose the individual multiples and metrics for the companies observed by Centerview in the analysis. This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

42. With respect to Centerview's *Sum-of-the-Parts Discounted Cash Flow Analysis—TiVo*, the Registration Statement fails to disclose (i) implied terminal value, (ii) Centerview's basis for applying perpetuity growth rates ranging from (2.0)% to 0.0% and 1.0% to 2.0%, and (iii) the individual inputs and assumptions underlying the range of discount rates ranging from 9.25% to 11.00% and 8.00% to 9.50%. This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

43. With respect to Centerview's *Selected Public Company Analysis—Xperi*, the Registration Statement fails to disclose the individual multiples and metrics for the companies observed by Centerview in the analysis. This information must be disclosed to make the

Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

44. With respect to Centerview's *Sum-of-the-Parts Discounted Cash Flow Analysis—Xperi*, the Registration Statement fails to disclose (i) implied terminal value, (ii) Centerview's basis for applying growth rates ranging from (4.0)% to 0.0%, 1.0% to 2.0%, and 3.0% to 5.0%, and (iii) the individual inputs and assumptions underlying the range of discount rates ranging from 9.5% to 11.25% and 15.0% to 18.0%, and (iv) why analysis of Xperi's IP licensing business was not done under scenario A. This information must be disclosed to make the Registration Statement not materially misleading to TiVo stockholders and provide stockholders with full and relevant information in considering how to vote.

45. Third, the Registration Statement fails to disclose whether LionTree has provided past services to Xperi or its affiliates, as well as the timing and nature of such services and the amount of compensation received by LionTree for providing such services.

46. Full disclosure of investment banker compensation and all potential conflicts is material information stockholders of TiVo are entitled to receive in deciding what weight to place on the opinions and roles played by the investment banks in the Proposed Transaction.

47. Fourth, the Registration Statement fails to disclose whether the Company entered into any confidentiality agreements that contained standstill and/or "don't ask, don't waive" ("DADW") provisions that are or were preventing the counterparties from submitting superior offers to acquire the Company.

48. The Registration Statement provides that the Company entered into confidentiality agreements with a number of potentially interested parties. However, the terms of these confidentiality agreements, including whether they contain standstill and/or DADW provisions, are undisclosed. Without further information regarding the terms of these agreements, and whether they contained

standstill and/or DADW provisions, including whether those provisions have fallen away or are still in effect, Company stockholders are unable to properly evaluate the ability of these parties that earlier expressed interest in acquiring the Company to offer them a better deal. If the confidentiality agreements contained standstill provisions – and especially if they contained DADW provisions – then those counterparties have been and will be hindered or even completely precluded from making a superior proposal. The extent of such hindrances is material information of which the stockholders must be informed before voting on the Proposed Transaction. The omission of this information renders the descriptions of the confidentiality agreements the Company entered into materially incomplete and misleading, as the failure to disclose the existence of standstill and/or DADW provisions creates the false impression that any of the parties who signed non-disclosure agreements could make a superior proposal.

49. The omission of the above-referenced material information renders the Registration Statement false and misleading.

50. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

CLAIMS FOR RELIEF

COUNT I

(AGAINST ALL DEFENDANTS FOR VIOLATIONS OF SECTION 14(a) OF THE EXCHANGE ACT AND RULE 14a-9 PROMULGATED THEREUNDER)

51. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

52. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, requires that proxy communications with stockholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the

statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

53. Defendants issued the Registration Statement with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Registration Statement and the use of their name in the Registration Statement, which fails to provide critical information regarding, among other things, the financial projections that were prepared by the Company and relied upon by the Board in recommending the Company’s stockholders vote in favor of the Proposed Transaction.

54. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. By virtue of their roles as officers and/or directors, each of the Individual Defendants were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Registration Statement, but nonetheless failed to obtain and disclose such information to stockholders as required.

55. The preparation of a Registration Statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. Defendants were negligent in preparing and reviewing the Registration Statement. Defendants were also negligent in choosing to omit material information from the Registration Statement or failing to notice the material omissions in the Registration Statement upon reviewing it, which they were required to do carefully.

56. The misrepresentations and omissions in the Registration Statement are material to Plaintiff, who will be deprived of his right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff has no adequate

remedy at law.

COUNT II

(AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT)

57. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

58. The Individual Defendants acted as controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of the Company, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Registration Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are materially incomplete and misleading.

59. Each of the Individual Defendants was provided with or had unlimited access to copies of the Registration Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

60. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Registration Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction.

The Individual Defendants were thus directly involved in the making of the Registration Statement.

61. In addition, as the Registration Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Registration Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

62. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

63. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

64. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to disseminate a Registration Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: March 4, 2020

MOORE KUEHN, PLLC

/s/Justin Kuehn

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