

1 Plaintiff Shiva Stein (“Plaintiff”), by her attorneys, makes the following allegations against
2 TiVo Corporation (“TiVo” or the “Company”) and the members of the board of directors of TiVo
3 (the “Board” or “Individual Defendants,” along with TiVo, collectively referred to as the
4 “Defendants”), for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934
5 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and
6 Regulation G, 17 C.F.R. § 244.100 in connection with the proposed acquisition (the “Proposed
7 Transaction”) of TiVo by affiliates of Xperi Corporation (“Xperi”). The allegations in this complaint
8 are based on the personal knowledge of Plaintiff as to herself and on information and belief
9 (including the investigation of counsel and review of publicly available information) as to all other
10 matters stated herein.

11 **INTRODUCTION**

12 1. This is an action brought by Plaintiff to enjoin the Proposed Transaction whereby Xperi
13 and TiVo will each merge with their respective wholly owned subsidiaries, XRAY Merger Sub
14 Corporation (“Xperi Merger Sub”) and TWOLF Merger Sub (“TiVo Merger Sub”) to form a newly
15 formed corporation, named XRAY-TWOLF HoldCo Corporation (“HoldCo”); as a result of such
16 mergers, Xperi and TiVo will become subsidiaries of HoldCo in the Proposed Transaction where
17 TiVo shareholders will receive \$0.455 shares of HoldCo common stock for each share of TiVo
18 common stock owned (the “Merger Consideration”). The Board has unanimously recommended to
19 the Company’s stockholders that they vote for the Proposed Transaction at the special meeting of the
20 TiVo shareholders. TiVo shareholders will own approximately 53.5% of HoldCo immediately
21 following the closing of the Proposed Transaction, and the newly-formed company will use Xperi’s
22 ticker symbol and will be listed on the Nasdaq Stock Market.

23 2. To convince TiVo stockholders to vote in favor of the Proposed Transaction, on
24 February 18, 2020, the Board authorized the filing of a materially incomplete and misleading
25 Registration Statement on Form S-4 (the “Registration Statement”) with the Securities and Exchange
26 Commission (“SEC”). The Registration Statement violates Sections 14(a) and 20(a) of the Exchange
27 Act by noncompliance with Regulation G and SEC Rule 14a-9 (17 C.F.R. § 244.100 and 17 C.F.R. §
28 240.14a-9, respectively).

1 sufficient minimum contacts with California to render the exercise of jurisdiction by the California
2 courts permissible under traditional notions of fair play and substantial justice. All of the Defendants
3 conduct business and/or maintain offices in California. The corporate office of TiVo is located at
4 2160 Gold Street, San Jose, California 95002.

5 9. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C.
6 § 78aa, as well as under 28 U.S.C. § 1391, because TiVo is headquartered in this District.

7 **PARTIES**

8 10. Plaintiff has owned the common stock of TiVo since prior to the announcement of the
9 Proposed Transaction herein complained of and continues to own this stock.

10 11. TiVo is a corporation duly organized and existing under the laws of Delaware and
11 maintains its principal offices in San Jose, California. TiVo is, and at all relevant times hereto was,
12 listed and traded on the NASDAQ Stock Exchange under the symbol “TIVO.”

13 12. Defendant James E. Meyer has been a member of the Board since 1997 and is the
14 Chairman of the Board.

15 13. Defendant Raghavendra Rau has been a member of the Board since 2015.

16 14. Defendant Laura J. Durr has been a member of the Board since April 2019.

17 15. Defendant Alan L. Earhart has been a member of the Board since 2008.

18 16. Defendant Eddy W. Hartenstein has been a member of the Board since 2015.

19 17. Defendant Dan Moloney has been a member of the Board since 2013.

20 18. Defendant Dave Shull has been a member of the Board, President, and Chief Executive
21 Officer of the Company since May 2019.

22 19. Defendant Glenn W. Welling has been a member of the Board since 2015.

23 20. Defendant Loria B. Yeadon has been a member of the Board since April 2019.

24 21. The Defendants referred to in paragraphs 12-20 are collectively referred to herein as the
25 “Individual Defendants” and/or the “Board.”

26 22. The Defendants referred to in paragraphs 11-20 are collectively referred to herein as the
27 “Defendants.”
28

1 **SUBSTANTIVE ALLEGATIONS**

2 ***The Proposed Transaction***

3 23. On December 19, 2019, TiVo and Xperi jointly announced that it had entered into the
4 Agreement and Plan of Merger (the “Merger Agreement”):

5
6 SAN JOSE, Calif.--(BUSINESS WIRE)--Xperi Corporation (Nasdaq: XPER) and
7 TiVo Corporation (Nasdaq: TIVO) today announced they entered into a definitive
8 agreement to combine in an all-stock transaction, representing approximately \$3
9 billion of combined enterprise value. The transaction creates a leading consumer and
10 entertainment technology business and one of the industry’s largest intellectual
11 property (IP) licensing platforms with a diverse portfolio of entertainment and
12 semiconductor intellectual property.

13 The merger agreement provides for a 0.455 fixed exchange ratio, which implies a
14 15% premium to TiVo’s shareholders based on each of Xperi’s and TiVo’s 90-day
15 volume-weighted average share prices. At close, Xperi shareholders will own
16 approximately 46.5% of the combined business, and TiVo shareholders will own
17 approximately 53.5%.

18 **Compelling Benefits of Combining Two Innovative Product and IP Licensing
19 Leaders**

20 This transaction combines two technology pioneers who have shaped how millions
21 of consumers access and experience entertainment content, and whose innovations
22 are found in billions of devices around the world. Serving hundreds of businesses
23 ranging from content providers to consumer electronics and automotive
24 manufacturers, the combined entity will provide an amazing entertainment platform
25 for tens of millions of individual consumers and create a powerful platform for the
26 discovery, delivery, and monetization of content.

27 The volume of entertainment content has exploded, with more ways than ever before
28 to access it. TiVo’s leading content aggregation, discovery, and recommendation
capabilities enable viewers to more easily find, watch, and enjoy entertainment.
When coupled with Xperi’s strong presence and product capabilities in the home,
automotive, and mobile device ecosystems, the combined company will have a
unique industry platform to address an ever-increasing consumer desire to enjoy
entertainment anywhere, anytime, on any device.

Additionally, the combination will create an intellectual property licensing platform
that spans a number of the largest addressable markets in entertainment content,
consumer electronics, and semiconductors. With more than 10,000 patents and
applications between the two companies and minimal licensee overlap, the combined
IP business will be one of the largest licensing companies in the world. Further, the

1 combined business will benefit from greater research and development capabilities,
2 as well as customer diversification.

3 “This landmark combination brings together two highly complementary companies
4 poised to set the industry standard for user experiences across the digital value
5 chain,” said Jon Kirchner, Chief Executive Officer of Xperi. “Together, we will be
6 able to integrate TiVo’s leading content aggregation, metadata, discovery, and
7 recommendation capabilities with our home, automotive, and mobile technology
8 solutions to help our customers create experiences that excite and delight consumers.
9 Additionally, the combined company will continue to unlock the value of our
10 strategic and sizable patent portfolios by bringing together our deep industry
11 expertise and powerful innovation engines. Through greater scale and diversity, we
12 will deliver attractive and sustainable long-term cash flow and shareholder value.”

13 “There is more content, and more ways to enjoy that content, than ever before,” said
14 David Shull, Chief Executive Officer of TiVo. “In a rapidly expanding and
15 fragmenting digital universe, consumers want and need to be able to easily find and
16 enjoy the content that matters to them. TiVo has always been the company that
17 brings entertainment together. Now, we can significantly expand our mission. With
18 Xperi’s annual licensing of more than 100 million connected TV units, and
19 complementary relationships with major content providers, consumer electronics
20 manufacturers, and automotive OEMs, our combined company will transform the
21 home, car, and mobile entertainment experience for the consumer.”

22 **Long-Term Vision and Value Creation**

23 The first step in the combined company’s value creation plan will focus on
24 integrating the companies’ respective product and IP licensing businesses. Together,
25 the companies expect to benefit from a larger and stronger platform to drive growth
26 and innovation, accelerate time-to-market, and improve IP licensing monetization
27 and outcomes. The product business expects to pursue substantial cross-selling
28 opportunities especially in its home and automotive markets.

The new company had \$1.09 billion in TiVo revenue and Xperi billings and more
than \$250 million in operating cash flow on a pro forma basis for the twelve months
ended September 30, 2019. The combined company expects to deliver revenue
synergies by bringing new, innovative solutions to consumer electronics and
automotive companies to help address the massive shift in media and entertainment
distribution and consumption.

Additionally, the companies expect to achieve at least \$50 million of annualized run-
rate cost savings by year-end 2021 through the integration of their respective product
and IP licensing businesses, the majority of which are expected within the first
twelve months after closing. These cost savings are incremental to those that are
expected as a result of TiVo’s ongoing cost-transformation plan.

1
2 In light of the business combination, TiVo has suspended its near-term plans to
3 separate its product and IP businesses. Upon closing of the transaction, each
4 company's respective product and IP businesses will be integrated and operated as
5 separate IP licensing and product business units. This will facilitate a potential
6 separation of the combined businesses at a later date.

7 David Shull said, "TiVo's management team and board have engaged in a
8 comprehensive review of TiVo's businesses over the past year, and we are confident
9 that this combination with Xperi is the right path forward for all our stakeholders.
10 While we previously planned to separate our product and IP licensing businesses in
11 April 2020, we believe today's combination with Xperi will enable us to create even
12 more value for our shareholders in both the near and long term by allowing each to
13 go to market with greater financial and operational scale."

14 **Transaction Details**

15 Under the terms of the merger agreement, the shares of TiVo and Xperi stockholders
16 will be converted into the shares of the new parent company based on a fixed
17 exchange ratio of 0.455 Xperi share per existing TiVo share. Upon completion of the
18 merger, Xperi stockholders will own approximately 46.5% and TiVo stockholders
19 will own approximately 53.5% of the new parent company on a fully diluted basis.

20 In connection with the transaction each company's debt will be refinanced on a
21 combined basis. To meet this objective, the companies have secured \$1.1 billion of
22 committed financing from Bank of America and Royal Bank of Canada.

23 **Management and Board of Directors**

24 Following the completion of the transaction, Xperi's Chief Executive Officer, Jon
25 Kirchner, will serve as Chief Executive Officer of the new parent company and
26 Xperi's CFO, Robert Andersen, will serve as Chief Financial Officer. TiVo's Chief
27 Executive Officer, David Shull, will continue as a strategic advisor to ensure a
28 successful integration.

The Board of Directors of the new parent company will consist of seven directors,
including Xperi CEO Jon Kirchner, in addition to three directors appointed by Xperi
and three directors appointed by TiVo. The Chair of the Board will be selected by the
independent directors of the Board.

The new parent company will assume the Xperi name but will continue to provide
entertainment services under the TiVo brand, alongside Xperi's premium DTS®, HD
Radio®, and IMAX® Enhanced brands. The company will be headquartered in San
Jose, California.

1 **Timing and Approvals**

2 This transaction has been approved by the Boards of Directors of both companies
3 and is expected to close during the second quarter of 2020, subject to regulatory
4 approvals, the approval by the shareholders of each company, and other customary
5 closing conditions.

6 **NOL Rights Plan**

7 Concurrent with the approval of this transaction, TiVo's Board approved the
8 adoption of a Stockholder Rights Plan (the NOL Rights Plan) designed to protect
9 TiVo's \$1 billion federal Net Operating Losses (NOLs) from the effect of Section
10 382 under the US Internal Revenue Code, which can limit the use of the NOLs. The
11 completion of the TiVo deal would move TiVo closer to the 50 percent ownership
12 change outlined in Section 382 and increase the risk of a loss of TiVo's valuable
13 NOLs. TiVo believes that its tax attributes represent an important corporate asset that
14 can provide long-term stockholder benefits and should be protected. The NOL Rights
15 Plan is similar to those adopted by numerous other public companies with significant
16 tax assets. The NOL Rights Plan is set to expire at the earlier of completion or
17 termination of the TiVo transaction.

18 **Advisors**

19 Centerview Partners, LLC served as exclusive financial advisor to Xperi and
20 Skadden, Arps, Slate, Meagher & Flom LLP served as legal advisor. LionTree
21 Advisors LLC served as exclusive financial advisor to TiVo and Cooley LLP served
22 as legal advisor.¹

23 ***The Materially Misleading and Incomplete Solicitation Statement***

24 24. On February 18, 2020, Defendants caused the Registration Statement to be filed with
25 the SEC in connection with the Proposed Transaction. The Registration Statement solicits the
26 Company's shareholders to vote in favor of the Proposed Transaction. Defendants were obligated to
27 carefully review the Registration Statement before it was filed with the SEC and disseminated to the
28 Company's shareholders to ensure that it did not contain any material misrepresentations or
29 omissions. However, the Registration Statement misrepresents and/or omits material information that
30 is necessary for the Company's shareholders to make an informed decision concerning whether to

31 ¹ *Xperi and TiVo to Combine, Creating a Leader in Consumer & Entertainment Technology*
32 *and IP Licensing*, BUSINESSWIRE (Dec. 19, 2019), [businesswire.com/news/home/20191219005365/](https://www.businesswire.com/news/home/20191219005365/en/Xperi-TiVo-Combine-Creating-Leader-Consumer-Entertainment)
33 en/Xperi-TiVo-Combine-Creating-Leader-Consumer-Entertainment.

1 vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange
2 Act.

3 ***Financial Forecasts***

4 25. The Registration Statement discloses tables for forecasts for both TiVo and Xperi (the
5 “Projections”). However, the Registration Statement fails to provide material information concerning
6 these Projections, which were developed by the Company’s management and relied upon by the
7 Board in recommending that the shareholders vote in favor of the Proposed Transaction. These
8 financial forecasts were also relied upon by the Company’s financial advisor, LionTree, in rendering
9 its fairness opinion.

10 26. With respect to the TiVo Projections, the Registration Statement fails to provide:
11 (i) the value of certain line items used to calculate (a) Adjusted EBITDA, (b) EBIT, and (c)
12 Unlevered Free Cash Flow, all of which are non-GAAP measures; (ii) a reconciliation to its most
13 comparable GAAP measures, in direct violation of Regulation G and, consequently, Section 14(a);
14 and (iii) stock-based compensation.

15 27. With respect to the Xperi Projections, the Registration Statement fails to provide:
16 (i) the value of certain line items used to calculate (a) Billings (b) Adjusted EBITDA, and (c)
17 Unlevered Free Cash Flow, all of which are non-GAAP measures; (ii) a reconciliation to its most
18 comparable GAAP measures, in direct violation of Regulation G and, consequently, Section 14(a);
19 and (iii) stock-based compensation.

20 28. With respect to the pro forma Projections, the Registration Statement fails to provide:
21 (i) the value of certain line items used to calculate (a) Billings (b) Adjusted EBITDA, and (c)
22 Unlevered Free Cash Flow, all of which are non-GAAP measures; (ii) a reconciliation to its most
23 comparable GAAP measures, in direct violation of Regulation G and consequently Section 14(a); and
24 (iii) stock-based compensation.

25 29. The SEC has indicated that if the most directly comparable GAAP measure is not
26 accessible on a forward-looking basis, the company must disclose that fact, provide any reconciling
27 information that is available without unreasonable effort, identify any unavailable information and
28 disclose the probable significance of that information. A company is permitted to provide the

1 projected non-GAAP measure, omit the quantitative reconciliation and qualitatively explain the types
2 of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-
3 GAAP measure to arrive at the most directly comparable GAAP measure, without attempting to
4 quantify all those items.

5 30. When a company discloses non-GAAP financial measures in a registration statement
6 that were relied on by a board of directors to recommend that shareholders exercise their corporate
7 suffrage rights in a particular manner, the company must, pursuant to SEC regulatory mandates, also
8 disclose all forecasts and information necessary to make the non-GAAP measures not misleading, and
9 must provide a reconciliation (by schedule or other clearly understandable method) of the differences
10 between the non-GAAP financial measure disclosed or released with the most comparable financial
11 measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

12 31. Indeed, the SEC has increased its scrutiny of the use of non-GAAP financial
13 measures in communications with shareholders. Former SEC Chairwoman Mary Jo White has stated
14 that the frequent use by publicly traded companies of unique company-specific, non-GAAP financial
15 measures (as TiVo included in the Registration Statement here), implicates the centerpiece of the
16 SEC's disclosures regime:

17 In too many cases, the non-GAAP information, which is meant to supplement the
18 GAAP information, has become the key message to investors, crowding out and
19 effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant,
20 Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I,
21 along with other members of the staff, have spoken out frequently about our concerns
22 to raise the awareness of boards, management and investors. And last month, the
23 staff issued guidance addressing a number of troublesome practices *which can make*
24 *non-GAAP disclosures misleading*: the lack of equal or greater prominence for
25 GAAP measures; exclusion of normal, recurring cash operating expenses;
26 individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and
the use of cash per share data. I strongly urge companies to carefully consider this
guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I
did last December, that appropriate controls be considered and that audit committees
carefully oversee their company's use of non-GAAP measures and disclosures.²

27 ² Mary Jo White, *Keynote Address, International Corporate Governance Network Annual*
28 *Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-*
GAAP, and Sustainability (June 27, 2016), [https://www.sec.gov/news/speech/chair-white-icgn-](https://www.sec.gov/news/speech/chair-white-icgn-speech.html)
[speech.html](https://www.sec.gov/news/speech/chair-white-icgn-speech.html) (last visited July 3, 2019) (emphasis added).

1 32. The SEC has repeatedly emphasized that disclosure of non-GAAP forecasts can be
2 inherently misleading and has therefore heightened its scrutiny of the use of such forecasts.³ Indeed,
3 the SEC’s Division of Corporation Finance released a new and updated Compliance and Disclosure
4 Interpretation (“C&DI”) on the use of non-GAAP financial measures to clarify the extremely narrow
5 and limited circumstances, known as the business combination exemption, where Regulation G would
6 not apply.⁴

7 33. More importantly, the C&DI clarifies when the business combination exemption does
8 not apply:

9 There is an exemption from Regulation G and Item 10(e) of Regulation S-K for non-
10 GAAP financial measures disclosed in communications subject to Securities Act
11 Rule 425 and Exchange Act Rules 14a-12 and 14d-2(b)(2); it is also intended to
12 apply to communications subject to Exchange Act Rule 14d-9(a)(2). This exemption
13 does not extend beyond such communications. Consequently, if the same non-GAAP
14 financial measure that was included in a communication filed under one of those
15 rules is also disclosed in a Securities Act registration statement, proxy statement, or
16 tender offer statement, this exemption from Regulation G and Item 10(e) of
17 Regulation S-K would not be available for that non-GAAP financial measure.

18 *Id.*

19 34. Thus, the C&DI makes clear that the so-called “business combination” exemption
20 from the Regulation G non-GAAP to GAAP reconciliation requirement applies solely to the extent
21 that a third-party, such as a financial advisor, has utilized projected non-GAAP financial measures to
22 render a report or opinion to the Board. To the extent the Board also examined and relied on internal
23 financial forecasts to recommend a transaction, Regulation G applies.

24 35. Thus, to bring the Registration Statement into compliance with Regulation G as well

25 ³ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC’s*
26 *Evolving Views*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (June 24, 2016),
27 <https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/>
28 (last visited Mar. 7, 2019); Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses*
Into Profits, N.Y. TIMES, Apr. 22, 2016, http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0 (last visited Mar. 7, 2019).

⁴ *Non-GAAP Financial Measures*, U.S. SECURITIES AND EXCHANGE COMMISSION (Apr. 4,
2018), <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm#101> (last visited Mar. 7,
2019). To be sure, there are other situations where Regulation G would not apply but are not
applicable here.

1 as cure the materially misleading nature of the forecasts under SEC Rule 14a-9 as a result of the
2 omitted information, Defendants must provide a reconciliation table of the non-GAAP measures to
3 the most comparable GAAP measures.

4 ***Financial Analyses***

5 36. With respect to LionTree's *Sum-of-the-Parts Discounted Cash Flow Analysis -- TiVo*,
6 the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash
7 flows; (ii) the underlying inputs used to derive the discount rate of 9.0% to 11.0%; (iii) the terminal
8 values for TiVo; (iv) the basis for applying terminal multiples ranging from 8.0x to 10.0x and 4.75x
9 to 5.75x; (v) the number of fully diluted outstanding shares of TiVo common stock; and (vi) the
10 estimated consolidated net debt of the Company.

11 37. With respect to LionTree's *Sum-of-the-Parts Discounted Cash Flow Analysis – Xperi*,
12 the Registration Statement fails to disclose: (i) all line items used to calculate unlevered free cash
13 flows; (ii) the underlying inputs used to derive the discount rate of 8.75% to 10.75%; (iii) the terminal
14 values for Xperi; (iv) the basis for applying terminal multiples ranging from 9.0x to 11.0x and 3.0x to
15 5.0x; (v) the number of fully diluted outstanding shares of Xperi common stock; and (vi) the
16 estimated consolidated net debt of Xperi.

17 38. With respect to LionTree's *Pro Forma Financial Analysis*, the Registration Statement
18 fails to disclose: (i) the individual inputs and assumptions underlying the discount rates ranging from
19 8.9% to 10.9%; (ii) the terminal values of the pro forma company; and (iii) LionTree's basis for
20 applying the terminal value multiples ranging from 6.0x to 8.0x and 7.0x to 9.0x.

21 39. The Registration Statement also fails to disclose whether the Company had entered
22 into any confidentiality agreements that contained standstill and/or "don't-ask-don't-waive"
23 provisions and if they are still in effect.

24 40. In sum, the Registration Statement independently violates both: (i) Regulation G,
25 which requires a presentation and reconciliation of any non-GAAP financial measure to their most
26 directly comparable GAAP equivalent; and (ii) Rule 14a-9, since the material omitted information
27 renders certain statements, discussed above, materially incomplete and misleading. As the
28 Registration Statement independently contravenes the SEC rules and regulations, Defendants violated

1 Section 14(a) and Section 20(a) of the Exchange Act by filing the Registration Statement to garner
2 votes in support of the Proposed Transaction from TiVo shareholders.

3 41. Absent disclosure of the foregoing material information prior to the special
4 shareholder meeting to vote on the Proposed Transaction, Plaintiff will not be able to make a fully
5 informed decision regarding whether to vote in favor of the Proposed Transaction, and she is thus
6 threatened with irreparable harm, warranting the injunctive relief sought herein.

7
8 **FIRST CAUSE OF ACTION**

9 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act
and 17 C.F.R. § 244.100 Promulgated Thereunder)**

10 42. Plaintiff repeats and re-alleges each allegation set forth above as if fully set forth
11 herein.

12 43. Section 14(a)(1) of the Exchange Act makes it “unlawful for any person, by the use of
13 the mails or by any means or instrumentality of interstate commerce or of any facility of a national
14 securities exchange or otherwise, in contravention of such rules and regulations as the Commission
15 may prescribe as necessary or appropriate in the public interest or for the protection of investors, to
16 solicit or to permit the use of his name to solicit any proxy statement or consent or authorization in
17 respect of any security (other than an exempted security) registered pursuant to section 78l of this
18 title.” 15 U.S.C. § 78n(a)(1).

19 44. As set forth above, the Registration Statement omits information required by SEC
20 Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G,
21 among other things, requires an issuer that chooses to disclose a non-GAAP measure to provide a
22 presentation of the “most directly comparable” GAAP measure, and a reconciliation “by schedule or
23 other clearly understandable method” of the non-GAAP measure to the “most directly comparable”
24 GAAP measure. 17 C.F.R. § 244.100(a).

25 45. The failure to reconcile the numerous non-GAAP financial measures included in the
26 Registration Statement violates Regulation G and constitutes a violation of Section 14(a).

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SECOND CAUSE OF ACTION
(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

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

47. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in registration statements that 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.

48. Regulation G similarly prohibits the solicitation of shareholder votes by “mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure . . . contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure . . . not misleading.” 17 C.F.R. § 244.100(b).

49. Defendants have issued the Registration Statement with the intention of soliciting shareholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Registration Statement, which fails to provide critical information regarding, amongst other things, the financial forecasts for the Company.

50. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, 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 shareholders although they could have done so without extraordinary effort.

51. The Individual Defendants knew or were negligent in not knowing that the Registration Statement is materially misleading and omits material facts that are necessary to render it

1 not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted
2 information identified above in connection with their decision to approve and recommend the
3 Proposed Transaction.

4 52. The Individual Defendants knew or were negligent in not knowing that the material
5 information identified above has been omitted from the Registration Statement, rendering the sections
6 of the Registration Statement identified above to be materially incomplete and misleading.

7 53. The Individual Defendants were, at the very least, negligent in preparing and
8 reviewing the Registration Statement. The preparation of a registration statement by corporate
9 insiders containing materially false or misleading statements or omitting a material fact constitutes
10 negligence. The Individual Defendants were negligent in choosing to omit material information from
11 the Registration Statement or failing to notice the material omissions in the Registration Statement
12 upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the
13 Individual Defendants were intricately involved in the process leading up to the signing of the Merger
14 Agreement and the preparation of the Company's financial forecasts.

15 54. TiVo is also deemed negligent as a result of the Individual Defendants' negligence in
16 preparing and reviewing the Registration Statement.

17 55. The misrepresentations and omissions in the Registration Statement are material to
18 Plaintiff, who will be deprived of her right to cast an informed vote if such misrepresentations and
19 omissions are not corrected prior to the vote on the Proposed Transaction.

20 56. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's
21 equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that
22 Defendants' actions threaten to inflict.

23 **THIRD CAUSE OF ACTION**
24 **(Against the Individual Defendants for**
25 **Violations of Section 20(a) of the Exchange Act)**

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

28 58. The Individual Defendants acted as controlling persons of TiVo within the meaning
of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or

1 directors of TiVo, and participation in and/or awareness of the Company's operations and/or intimate
2 knowledge of the incomplete and misleading statements contained in the Registration Statement filed
3 with the SEC, they had the power to influence and control and did influence and control, directly or
4 indirectly, the decision making of the Company, including the content and dissemination of the
5 various statements that Plaintiff contends are materially incomplete and misleading.

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

10 60. In particular, each of the Individual Defendants had direct and supervisory
11 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the
12 power to control or influence the particular transactions giving rise to the Exchange Act violations
13 alleged herein, and exercised the same. The Registration Statement at issue contains the unanimous
14 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
15 were thus directly involved in preparing the Registration Statement.

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

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

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

28 64. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's

1 equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that
2 Defendants' actions threaten to inflict.

3 **RELIEF REQUESTED**

4 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

5 A. Preliminarily and permanently enjoining Defendants and their counsel, agents,
6 employees and all persons acting under, in concert with, or for them, from proceeding with,
7 consummating, or closing the Proposed Transaction, unless and until the Company discloses the
8 material information discussed above which has been omitted from the Registration Statement;

9 B. In the event that the proposed transaction is consummated, rescinding it and setting it
10 aside, or awarding rescissory damages;

11 C. Awarding compensatory damages against Defendants, individually and severally, in
12 an amount to be determined at trial, together with pre-judgment and post-judgment interest at the
13 maximum rate allowable by law, arising from the Proposed Transaction;

14 D. Awarding Plaintiff the costs and disbursements of this action and reasonable
15 allowances for fees and expenses of Plaintiff's counsel and experts; and

16 E. Granting Plaintiff such other and further relief as the Court may deem just and
17 proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial by jury.

20
21 DATED: March 9, 2020

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

22
23 By: /s/ Rachele R. Byrd
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Of Counsel:

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Counsel for Plaintiff

808331

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Shiva Stein

(b) County of Residence of First Listed Plaintiff Kings, New York (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Rachele R. Byrd (190634) WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP 750 B Street, Suite 1820, San Diego, CA 92101; Tel: 619/239-4599

DEFENDANTS

TiVo Corporation, James E. Meyer, Raghavendra Rau, Laura J. Durr, Alan L. Earhart, Eddy W. Hartenstein, Dan Moloney, Dave Shull, Glenn W. Welling, Loria B. Yeadon

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78n(a) and 78t(a)

Brief description of cause:

Violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 03/09/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Rachele R. Byrd

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.