SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER **PART** IAS MOTION 61EFM

BARRY R. OSTRAGER *Justice*
JSC

---------- X

IN RE XEROX CORPORATION CONSOLIDATED SHAREHOLDER LITIGATION

INDEX NO. 650766/2018

MOTION DATES 05/08/2019, 05/08/2019, 07/25/2019

---------- X

MOTION SEQ. NO. 017/018/022

DECISION + ORDER ON MOTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 017) 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 971

were read on this motion to/for CLASS CERTIFICATION.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 926, 974, 975, 976, 977, 978, 979, 980

were read on this motion to/for APPROVAL OF SETTLEMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 972

were read on this motion to/for ATTORNEYS FEES.

OSTRAGER, BARRY R., J.S.C:

Before the Court are three motions filed by counsel for the purported class in this consolidated shareholder action. The motions seek certification of a class and appointment of class representatives, approval of a class settlement, and an award of attorneys' fees of $7.5 million. The motions were opposed by Xerox shareholder Carmen Ribbe, and comments from some of the 34 prospective class members who opted out of the settlement were read into the record when the motions were heard on September 6, 2019.

Following extensive oral argument on the motions conducted on September 6, 2019, the Court finds that the class representatives are inadequate and the proposed settlement is unreasonable and unfair to Xerox shareholders. Therefore, the Court is denying class plaintiffs' application in its entirety.

In reaching this conclusion, the Court relies on the following largely undisputed facts:

1. On January 31, 2018 the Boards of Directors of Fujifilm and Xerox unanimously agreed to a transaction that would, among other things, make Fujifilm a 50.1% owner of Xerox ("the Transaction").

2. On February 13, 2018 Darwin Deason, the second largest individual shareholder of Xerox, initiated an action to enjoin the Transaction. *Deason v Fujifilm Holdings, et al.,* Index No. 650675/18. On March 2, Deason filed a second suit to enjoin Xerox from enforcing the Advance Notice Bylaw deadline for the nomination of directors to be elected at the 2018 Annual Meeting. *Deason v Xerox Corp., et al.,* Index No. 650988/18. At or about this same period of time, four purported class actions were filed on behalf of Pension Funds for the Asbestos Workers (Index No. 650766/18), the Iron Workers (650795/18), and Carpenters (Index No. 650841/18), as well as by Robert Lowinger (650824/18), each of which also sought to enjoin the Transaction on the ground that, by approving the Transaction, the Xerox Board of Directors had breached its fiduciary duties to the Xerox shareholders.

3. On March 9, 2018 the four putative class actions were consolidated under the caption In *Re Xerox Corporation Consolidated Shareholder Litigation,* Index No. 650766/18 (NYSCEF Doc. 35).

4. Following expedited discovery, this Court held an evidentiary hearing and determined in a written decision dated Friday, April 27, 2018 that the Xerox Board of Directors

and Jeff Jacobson, the then CEO of Xerox, had breached their fiduciary duties in agreeing to the proposed Transaction with Fuji. (NYSCEF Doc. No. 488). The Court also issued a mandatory injunction that directed the Xerox Board to waive its advance notice bylaw to allow Mr. Deason to run a competing slate of directors. The Court's 22-page decision was based on documentary evidence and the Court's assessment of the credibility of witnesses.

5. On Tuesday, May 1, 2018 (*i.e.* the second business day after the issuance of the preliminary injunction) the Court was advised in open Court by counsel for one of the plaintiffs of a potential settlement between the plaintiffs and Xerox. At the hearing, the Court was presented with a fully executed Memorandum of Understanding ("MOU") between the putative class plaintiffs, Darwin Deason, and Xerox (NYSCEF Doc. No. 521). The Court was also asked to approve a stipulation of discontinuance in the actions Mr. Deason had initiated against Xerox, to which the Court responded as follows:

> THE COURT: Mr. Deason has two actions. One action is an action in which the class plaintiffs are party to and the other action is a second action that Mr. Deason has initiated in his own name seeking relief that the class plaintiffs have not sought.
>
> Mr. Deason is free to enter into a settlement with Xerox in connection with the action of Mr. Deason as an individual … initiated against Xerox, provided Mr. Deason and Xerox have reached a mutually satisfactory consensual arrangement as between themselves.
>
> Insofar as the action [that] ha[s] been initiated on behalf of a class, we're familiar with the obligations that purported class representatives have, and I have no authority to allow for the discontinuance of a class action absent full compliance with the procedures that are attendant to the prosecution of class actions so class plaintiffs can advise the class that the class plaintiffs claim to represent what it is the class plaintiffs propose to do and make appropriate disclosure of what it is the class plaintiffs propose to do and set a hearing date for anybody who wishes to object. And I appreciate that this is complicating the processes of Xerox in its negotiations with Fuji and those Xerox annual meetings. I don't know what to do about that, but there are certain procedures that have to be followed and there are no shortcuts to them.

May 1, 2018 transcript of proceedings, *In re Xerox Corporation Consolidated Shareholder Litigation*, Index No. 650766/18at pgs. 4-5 (NYSCEF Doc. No. 522).

Counsel for Fuji observed at the May 1, 2018 hearing:

> MR. HOUGH: . . . One paragraph in the MOU requires six directors from Xerox to resign and be replaced, effectively, by directors that will be nominated by Mr. Deason and Mr. Icahn essentially, *that works a change of control of publicly traded company without any opportunity for the shareholders to understand or object or comment on what's happening. None of this has been filed yet.*

May 1, 2018 transcript at p. 7 (NYSCEF Doc. No. 522) (emphasis added).

The Court thereafter observed:

> THE COURT: Well, let me be clear. I received the Memorandum of Understanding fifteen minutes ago and I haven't had a chance to review it. The one thing that's clear to me is that the Xerox's Board of Directors has the unquestioned right to waive its advance notice provision for the nomination of a slate of directors to be elected at the annual meeting. And it's equally clear to me that if Mr. Deason wants to discontinue his action seeking a declaration that the advance notice provision should be waived, and Xerox agrees to waive it, that I can sign a stipulation discontinuing the action that seeks waiver of the advance notice provision of the Xerox bylaws, and I can do that today.

May 1, 2018 transcript at pgs. 9-10 (NYSCEF Doc. No. 522).

Thereafter counsel for Xerox stated:

> MR. COHEN: We are proposing today, in respect of a settlement agreement, a global settlement agreement between Mr. Deason on the one hand and Mr. Icahn on the other and the Xerox defendants on the other hand, that both of those cases be dismissed today on consent with Your Honor's approval so that we can proceed with the settlement.
>
> The settlement will do multiple things as between Deason and Xerox. There's some overlap with what the class is getting, but what will happen immediately upon execution of the stipulation of discontinuance is that the Xerox – first of all, we will waive the advance notice bylaws and open up a window for directors to be nominated at the 2018 meeting.
>
> Second, the size of the Board will be expanded and some number of existing Xerox directors will resign.
>
> Third, Mr. Jacobson is going to resign as CEO, and there is, as you might imagine, releases and relief as part of that Settlement Agreement.

So with respect to the shareholder class action, obviously we will have to follow the class action rules, but all of these corporate events which will resolve both Deason cases are contingent upon an ordinary stipulation of discontinuance under 3217, which as I read 3217(b) requires Your Honor's signature because we've gone through a preliminary injunction . . . .

But the settlement and this change at the Board level are contingent not on class action being resolved, that is up to Your Honor at the appropriate time with notice, and hearing, and objection, but upon the execution of the stipulation of discontinuance which requires Your Honor's signature.

May 1, 2018 transcript at pgs. 10-11 (NYSCEF Doc. No. 522).

It was further stated at the May 1, 2018 hearing:

THE COURT: I understand. You're entering into an agreement with Mr. Deason and the agreement that you are entering into with Mr. Deason contemplates that six of the Xerox directors are going to resign and the Xerox Board is going to replace them with nominees that Mr. Deason and Mr. Icahn suggest, I get that.

I also get that Mr. Deason and Xerox are privately resolving the second Deason action in which Mr. Deason [is] seeking waiver of the past notice provision and the Xerox Board has agreed to Mr. Deason's request for relief and are prepared to enter a stipulation of discontinuance in an action that Mr. Deason has with respect to the advance notice provision, because Xerox has agreed to the relief Mr. Deason is seeking.

. . . I think there should be some public disclosure what it is that you're doing.

. . . THE COURT: I want to facilitate the parties in resolving all issues that have been the subject of a complex and actively litigated dispute. There's just some constraints upon what I can do this afternoon.

And the lawyers in this case are across the board uniformly excellent. You understand what I'm saying and why I'm saying it, and I'll work with you to try and get to a point of closure that's consistent with the law and consistent with the interest of the shareholders who I think need to have some notice of what it is that is being transpired, and Xerox stops its trading as we speak. And there were 200 people in the Courtroom during the preliminary injunction hearing. There is nobody in the Courtroom today. Nobody knows anything about what it is that you propose to do.

May 1, 2018 transcript at pgs. 12-15 (NYSCEF Doc. No. 522).

Two days later on May 3, 2018 the parties again appeared in open Court at which point the Court stated in response to correspondence from the parties:

THE COURT: All right, I've asked all the parties to appear because I wanted to level set where we are in this case and where we're going in this case.

Last Friday I preliminarily enjoined the Xerox Board from consummating the transaction with Fuji that the Xerox Board approved. I also issued a mandatory injunction that directed the Board to waive its advance notice by-law to allow Mr. Deason to run a competing slate of directors.

I did not prohibit Xerox from exploring other transactions with Fuji. I did not direct any director to resign from the Board. I certainly didn't suggest that the Board effect a change of control of Xerox which potentially might be challenged as a breach of fiduciary duty.

On May 1st, counsel for Deason, Xerox and the class plaintiffs requested a conference to discuss an unsigned *[sic]* memorandum of understanding that purportedly contained certain settlement terms. I directed Xerox to publicly disclose any material non-public information as and how it chose to do so. And I told the parties that Mr. Deason could likely discontinue the Deason II action and made it clear to counsel for the class plaintiffs that any developments in the Deason I case which is consolidated with the in re Xerox class action that might affect the interests of absent class members had to be shared with absent class members by formal notice that makes provision for absent class members to be heard, appear and potentially object.

. . . Irrespective of the right of Deason, Xerox and the Xerox directors to agree that Mr. Deason can discontinue Deason II. The Court is not approving any settlement terms in Deason I without a formal motion and appropriate notice to absent class members impacted post-settlement on the in re Xerox class action.

Now, with respect to the Deason II action, 3217(b) of the CPLR provides that after a case has been submitted to the Court or jury to determine facts, the Court may not order an action discontinued except upon stipulation of all parties appearing on the case.

Now, I take it that Fuji has no objection to Mr. Deason and Xerox settling the Deason II action by agreeing to allow Mr. Deason to run a slate of directors if Xerox waives its advance notice by-law.

MR. HOUGH [counsel for Fuji]: That's entirely correct, Your Honor, as we explained in the letter we filed last night.

THE COURT: All right, so then with respect to the Deason II action, I will sign a stipulation of discontinuance.

I'll hear the parties with respect to the Deason I action.

MR. MAROONEY [counsel for Deason]: Yes, Your Honor. So, Deason I, as Your Honor knows is not a class action.

THE COURT: Understood.

MR. MAROONEY [counsel for Deason]: It's brought individually by Mr. Deason; same thing for Deason II. And so following Your Honor's decision on Friday night or given that decision, the parties got together, the Xerox defendants and Mr. Deason and along with Mr. Icahn and negotiated settlements of both Deason II and Deason I. Those settlement agreements are private, obviously, between the parties, although we've now made them public pursuant to Your Honor's ask, and there was a press release but those agreements don't need any kind of Court approval at all because they're not class action agreements. They're just private agreements between private litigants.

So we're not seeking Your Honor's approval of the contract of the settlement agreement between these parties at all. All that we were doing is once we've reached this agreement, the contract between us, is submitting the stipulation of dismissal for efficacy to dismiss Deason I as to the Xerox defendants, and to dismiss Deason II as to the Xerox defendants, as well. It's as simple as that.

And so we don't need Court approval, we don't need to send notices. We are a private litigant.

THE COURT: The Xerox Board of Directors can take whatever action the Xerox Board of Directors believed that they can take, and maybe it gets challenged or maybe it doesn't get challenged. But to the extent that you've entered into a private settlement agreement that releases the Xerox directors from any liability that is something that potentially affects third parties. It eliminates the possibility of a derivative action, it potentially affects the in re Xerox class action. It doesn't really let – the Xerox Board of Directors isn't free to act however they choose to do with whatever consequences attend the actions that they take.

MR. MAROONEY [counsel for Deason]: *Your Honor, but all that we are doing is releasing Mr. Deason's claims. We're not releasing any claims of any other shareholder.*

Deason v. Fujifilm Holdings Corp, No. 650675/18, May 3, 2018 transcript at pgs. 3-7 (NYSCEF Doc. No. 1045) (emphasis added).

6. After the May 3, 2018 hearing, Xerox apparently reversed course and issued a press release on May 4, 2018 stating:

> NORWALK, Conn., May 4, 2018 – Xerox (NYSE: XRX) today announced that it has taken an appeal from the decision enjoining the Fuji Xerox combination. Xerox strongly believes that the decision is contrary to well-established New

> York law vesting the Board of Directors of Xerox with the business judgment to enter into the transaction agreement with Fujifilm (the "Transaction") and that the decision to approve should rest with Xerox's shareholders, not the court.
>
> The appeal disputes the court's finding that the Xerox Board breached their fiduciary duties in approving the Transaction. To the contrary, the Xerox Board unanimously authorized the transaction after months-long discussions and deliberations, and based on its good faith judgment that the transaction represented the value-maximizing alternative for the company's shareholders.

7. The next thing that occurred was the execution on May 13, 2018 of a settlement between Deason and Xerox pursuant to which six directors of Xerox resigned and were replaced by directors nominated by Deason and Carl Icahn, thereby effectively giving Deason and Icahn control of the Xerox Board. Mr. Icahn had supported the *Deason* action and with Deason was waging a proxy contest to oust the Xerox directors. The Whereas clause of the *Deason* May 13, 2018 settlement recites:

> WHEREAS, immediately prior to entry into this Agreement, the Company delivered by facsimile and email, with the original to follow by hand delivery, a written notice of termination (the "**Notice of Termination**") of that certain Share Subscription Agreement, dated as of January 31, 2018, by and between the Company [Xerox] and Fujifilm (the "**SSA**"), to Fujifilm, which such notice was substantially in the form previously provided to parties hereto.

Deason v. Fujifilm Holdings Corp., Index No. 650675/18 NYSCEF Doc. No. 1064. The only fair inference that can be drawn from the existence of this Whereas clause is that termination of the Fuji Transaction was a condition of the Deason/Icahn settlement with Xerox, but that neither Deason nor Icahn could be held liable for the decision.

8. Also, on May 13, counsel for the purported class resubmitted the Memorandum of Understanding pursuant to which the counsel for the purported class agreed to the releases for all the directors in exchange for no consideration other than the terms of the private Deason settlement. The release contemplated by the Memorandum of Understanding would release the resigning and continuing directors from any liability relating to the change in control of the

Xerox Board and any liability arising out of the termination of the Fuji Transaction. The Memorandum of Understanding recited that neither Xerox nor Deason would oppose, and Xerox would fund, an award of counsel fees of $7.5 million to counsel for the class plaintiffs, provided the Court approved the class settlement. (NYSCEF Doc. No. 521).

9. Xerox concedes that the Memorandum of Understanding was not a binding settlement with individual plaintiffs and that what was contemplated by the Memorandum of Understanding was a class settlement for which there had to be certification for settlement purposes and the appointment of class counsel. Critically, Xerox also concedes that it would not have entered into a settlement with Deason without the Memorandum of Understanding with the purported class plaintiffs.

10. On May 24, 2018 Carmen Ribbe initiated a purported derivative action against the resigning and continuing directors for breach of fiduciary duty because, among other things, of the possibility that Fuji might sue Xerox over termination of the Fuji Transaction. *Ribbe v. Jacobson, et al.,* Index No. 652613/18. That action was dismissed by decision entered December 6, 2018 without prejudice based on issues related to demand futility. (NYSCEF Doc. Nos. 114-118). Ribbe commenced a second derivative action under Index No. 652147/19 on April 11, 2019 and is still awaiting a response from Xerox on its demand.

11. On June 18, 2018 Fuji initiated an action against Xerox in the United States District Court for the Southern District of New York seeking $1 billion in damages for breach of the January 31, 2018 Transaction agreement. *Fujifilm Holdings Corp. v. Xerox Corp.*, 1:18-cv-05458. Xerox's motion to dismiss that case was subsequently denied and that case is being actively litigated.

12. On June 21, 2018 the Court granted on consent the Deason and Xerox motions to discontinue the *Deason I* action "on the express condition that the discontinuance of the *Deason* action in no way, shape or form constitutes approval of any elements of any settlement agreement among any parties," thereby terminating all litigation between Deason and Xerox. (Index No. 650766/18, NYSCEF Doc. No. 640 at 8). The Court also denied class plaintiffs' motion to stay the litigation as to the Xerox defendants only and to vacate the preliminary injunction as to the Xerox defendants only, notwithstanding purported class counsel's representation that "part of the settlement between us and Xerox defendants was that we would move the Court for an order lifting the injunction...." *Id.* at 13.

13. Nevertheless, on July 13, 2018, the newly constituted Xerox Board approved the settlement of the *In Re Xerox* litigation on the same basis contemplated by releases in the Memorandum of Understanding. (NYSCEF Doc. No. 856).

14. Shortly after Fuji filed the federal court suit, class plaintiffs moved in this Court for preliminary approval of the proposed settlement and filed supporting papers. (NYSCEF Doc. No. 608). At the July 16, 2018 hearing on class plaintiffs' motion, the Court declined to preliminarily approve the proposed settlement and advised class plaintiffs as follows:

> THE COURT: So you can't enter into a settlement on behalf of the class if the class hasn't been certified and you haven't been designated as counsel for the class and your clients haven't been designated as class representatives.
>
> MR. RELIFORD [Class Counsel]: Yes, Your Honor. And we're asking for those things to be decided at the final approval hearing, all at the same time.
>
> THE COURT: All I'm doing today is ordering that a notice be sent to all of the members of the class apprising them of the status of the proceedings.
>
> And I would note that I read, whether it's so or not, that Mr. Jacobson waived the $21 million golden parachute arrangement in order to be indemnified by Xerox and Deason for any wrongdoing that may be found that he committed.

> MR. RELIFORD: Your Honor, part of the terms of the class action settlement was for Mr. Jacobson to resign voluntarily and waive the golden parachute payments. We, other than the scope of the release in this class action notice, have nothing to do with any indemnification agreements that Mr. Jacobson –
>
> THE COURT: Well, that's something that the members of the class should know about; isn't it?
>
> MR. RELIFORD: As far as the terms –
>
> THE COURT: Your clients released Mr. Jacobson, did they not?
>
> MR. RELIFORD: Yes, they did.

July 16, 2018 transcript at pgs. 11-12 (NYSCEF Doc. No. 682).

The Court further instructed the parties that "whatever the true state of facts are, that should be fairly and lucidly explained to all of the members of the class, which includes all of the shareholders of Xerox, except Mr. Icahn and Mr. Deason, who have made their own separate arrangements and have no interest in what benefits do or don't apply to the remaining 85 percent of the Xerox shareholders." The Court indicated that it was "prepared to allow notice to go [out] to the class that this action has been taken by the three individual plaintiffs and that there will be a hearing on whether this action should proceed as a class action and whether plaintiffs are suitable class representatives and whether plaintiffs' counsel should be appointed as class counsel."

15. On October 16, 2018 the Appellate Division, First Department, dissolved the injunctions put in place by this Court, finding that the Xerox Board's conduct was protected by the business judgment rule, at least for purposes of a preliminary injunction, 165 A.D.3d 501. Notwithstanding the existence of the Memorandum of Understanding, the massively conflicted counsel for the class zealously opposed the appeal from the April 27 injunction and purported class counsel advocated in favor of sustaining the breach of fiduciary duty claims against Xerox

directors to whom the purported class counsel had conditionally issued a release. Counsel for the purported class did not seek leave from the Court of Appeals to appeal the decision of the First Department.

16. During the many months preceding the September 6, 2019 hearing on the motions, counsel for the purported class submitted different versions of their proposed notice to the class of the proposed settlement. On May 7, 2019 this Court directed that the notice "disclose everything about potential consequences of the settlement class being approved". On May 23, 2019, the Court approved the form of notice, a finalized copy of which was filed with the Court on June 3, 2019 (NYSCEF Doc. No. 951).

Discussion

After careful consideration of the competing arguments, the Court declines to certify the class or approve the proposed settlement and the award of attorney's fees. The Court declines to certify the class, as the Court cannot find on the record presented that "the representative parties will fairly and adequately protect the interests of the class" as CPLR 901(a)(4) requires for class certification. The purported class representatives entered into the July 13, 2018 Stipulation and Agreement of Settlement "on behalf of themselves individually and on behalf of each member of the Class ..." (NYSCEF Doc No. 856 at p 1). Notwithstanding that the Stipulation expressly indicates that it is subject to the approval of the Court, and although all counsel repeatedly acknowledged that fact during various court appearances as detailed above, material terms of the settlement took effect on May 13, 2018, at least insofar as it called for the resignation of certain Board members and the designation of new Board members.

Practically speaking, then, the purported class representatives bound a class that had not been certified to major corporate actions. By agreeing to the Memorandum of Understanding,

which contained broad releases for the resigning Board members, the class representatives failed to fairly and adequately protect the interests of the class because the class representatives were potentially shielding the Xerox directors from any potential liability for the subsequently filed *Fuji* action. *See Small v Lorillard Tobacco Co.*, 94 NY2d 43 (1999) (class representatives were inadequate in light of the manner in which they limited damages claims to the purchase price of cigarettes, which discounted the more substantial personal injury claims of some class members).

Turning to the proposed settlement, the Court is guided by the recent decision of the Appellate Division, First Department, in *Gordon v. Verizon Communications, Inc.*, 148 A.D.3d 146 (2017). The appellate court in *Gordon* emphasized that when the trial court is called upon to approve a proposed nonmonetary settlement in a putative class action, the Court must consider whether the proposed settlement "is in the best interests of the putative class as a whole, and whether the settlement is in the best interest of the corporation." 148 AD3d at 158. Applying that test, this Court concludes that the proposed settlement is not in the best interests of the shareholders as it achieves no material benefit for shareholders other than Icahn and Deason. On the contrary, the proposed settlement releases any claims shareholders may have concerning the change of control orchestrated by Deason and Icahn and any liability for the subsequently filed *Fuji* case. The benefit to Xerox as a company is also questionable in light of the $1 billion lawsuit by Fuji that remains pending.

As the *Gordon* court indicated, the "best interests" test requires that the court evaluate the "reasonableness of the 'give' and 'get' or what class members receive in exchange for ending the litigation." *Gordon* at 162, quoting *Matter of Trulia, Inc. Stockholder Litig.*, 129 A.3d 884, 890-91 (Del. Ch. 2016). The purported class members will "get" no financial benefit, and they are being asked to "give" broad releases of any derivative claims they may have. The Memorandum

of Understanding contemplated full releases to the directors at a time when this Court had held the directors to be faithless fiduciaries, largely in exchange for fees to the purported class counsel of $7.5 million. There were no exigent circumstances requiring purported class counsel to enter into the Memorandum of Understanding other than the desire of Deason and Icahn to achieve control of the Xerox Board, which purported class counsel facilitated. The purported class counsel had no authority to settle on behalf of the class without having been appointed as counsel for the class, without a class having been certified, and without their clients having been designated as class representatives. The net result of the actions of the purported class representatives and purported class counsel was to transfer control of a public corporation to Messrs. Deason and Icahn via a private agreement that offered no tangible benefit to the interests of the class.

In short, the settlement is disapproved. The purported class representatives are inadequate representatives for the class, and the purported class counsel have not rendered any benefit to the purported class to justify the $7.5 million fee they seek. There is no reason for this litigation to proceed as a class action and no reason to appoint class counsel. Since purported class counsel conferred no benefit on the Xerox shareholders, there is no basis for any award of counsel fees.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for class certification (seq. no. 017), the motion for approval of the settlement (seq. no. 018), and the motion for an award of attorney's fees to plaintiffs' counsel (seq. no. 022) are all denied in their entirety. Counsel shall appear before this

Court in this action and the related derivative action, *Ribbe v. Jacobson*, Index No. 652147/19, on November 19, 2019 at 11:30 a.m. for a conference to determine how to proceed.

9/10/2019
DATE

BARRY R. OSTRAGER, J.S.C.

BARRY R. OSTRAGER
JSC

CHECK ONE:		CASE DISPOSED			[X]	NON-FINAL DISPOSITION	
		GRANTED	[X]	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

650766/2018 In Re Xerox Corporation Consolidated Shareholder Litigation
Motion Nos. 017, 018, 022