

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

THE VLADIMIR GUSINSKY REV. TRUST, )  
Individually and On Behalf of All Others )  
Similarly Situated, )

Plaintiff, )

v. )

KLX, INC., AMIN J. KHOURY, JOHN T. )  
COLLINS, PETER V. DEL PRESTO, )  
RICHARD G. HAMERMESH, BENJAMIN A. )  
HARDESTY, STEPHEN M. WARD JR., )  
THEODORE L. WEISE, AND JOHN T. )  
WHATES, )

Defendants. )

Case No. \_\_\_\_\_

CLASS ACTION

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934**

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

**NATURE OF THE ACTION**

1. This action stems from a proposed transaction announced on May 1, 2018 (the “Proposed Transaction”), pursuant to which KLX Inc. (“KLX” or the “Company”) will be acquired by The Boeing Company (“Parent”) and its wholly-owned subsidiary, Kelly Merger Sub, Inc. (“Merger Sub,” and together with Parent, “Boeing”).

2. On April 30, 2018, KLX’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with Boeing. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by KLX’s shareholders and completed, KLX’s stockholders will receive

\$63.00 in cash for each share of the KLX common stock they hold.

3. On June 1, 2018, defendants filed a preliminary proxy statement, and subsequently filed an amended proxy statement on June 26, 2018 (the “Proxy Statement”), with the United States Securities and Exchange Commission (the “SEC”) in connection with the Proposed Transaction.

4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy 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 Proxy Statement.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within 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.

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

### **PARTIES**

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of KLX common stock.

9. Defendant KLX is a Delaware corporation and maintains its principal executive offices at 1300 Corporate Center Way, Wellington, Florida 33414. KLX’s common stock is traded

on the NasdaqGS under the ticker symbol “KLXI.” KLX is a party to the Merger Agreement.

10. Defendant Amin J. Khoury (“Khoury”) is the Chairman of the Board and the Chief Executive Officer (“CEO”) of KLX.

11. Defendant John T. Collins (“Collins”) is a director of KLX.

12. Defendant Peter V. Del Presto (“Presto”) is a director of KLX.

13. Defendant Richard G. Hamermesh (“Hamermesh”) is a director of KLX.

14. Defendant Benjamin A. Hardesty (“Hardesty”) is a director of KLX.

15. Defendant Stephen M. Ward, Jr. (“Ward”) is a director of KLX.

16. Defendant Theodore L. Weise (“Weise”) is a director of KLX.

17. Defendant John T. Whates (“Whates”) is a director of KLX.

18. The defendants identified in paragraphs 11 through 17 are collectively referred to herein as the “Individual Defendants.”

### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action as a class action on behalf of itself and the other public stockholders of KLX (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

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

21. The Class is so numerous that joinder of all members is impracticable. As of April 30, 2018, there were 50,732,724 shares of KLX common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

22. Questions of law and fact are common to the Class, including, among others, whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff and the other members of the Class if defendants’ conduct complained of herein continues.

23. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

24. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

25. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

### **SUBSTANTIVE ALLEGATIONS**

#### ***Background of the Company and the Proposed Transaction***

26. KLX, through its two operating segments, provides mission critical products and complex logistical solutions to support its customers' high value assets. KLX serves its customers in demanding environments that face high cost of downtime and require dependable, high quality just-in-time customer support.

27. KLX's aerospace distribution business is the product of both organic growth and a number of strategic acquisitions beginning in 2001. In the latter part of 2013, KLX initiated an expansion into the energy services sector. In 2013 and 2014, the Company acquired seven companies dedicated to providing technical services and related rental equipment to oil and gas

exploration and production companies.

28. KLX's Aerospace Solutions Group is a leading distributor and value added service provider of aerospace fasteners and consumables, offering the broadest range of aerospace hardware and consumables and inventory and supply chain management services worldwide. Through its global facilities network and advanced information technology systems, KLX offers its services to commercial airline, business jet and defense original equipment manufacturers and their subcontractors, airlines, maintenance, repair and overhaul operators, fixed base operators and domestic military depots. The Aerospace Solutions Group sells fasteners and other consumable products to over 7,500 customer locations throughout the world. During the fiscal year ended January 31, 2018, Aerospace Solutions Group generated approximately 82% of the Company's consolidated revenues.

29. KLX's Energy Services Group provides completion, intervention and production services to the major onshore oil and gas producing regions of the United States, including the Northeast Region (the Marcellus and Utica Shales as well as the Mid-Continent STACK and SCOOP and Haynesville), the Rocky Mountains Region (the Bakken formation, Williston, DJ, Uinta and Piceance Basins and Niobrara Shale) and the Southwest Region (including the Permian Basin and Eagle Ford Shale), serving the leading companies engaged in the exploration and development of North American onshore unconventional oil and natural gas reserves. The Energy Services Group has increased the number of its agreements with customers by over 140% from over 400 as of January 31, 2016 to over 1,000 as of January 31, 2018. These agreements enable the Company to work for substantially all of the major, regional and independent oil and gas exploration and production companies in North America.

30. On April 30, 2018, the Individual Defendants caused the Company to enter into the

Merger Agreement with Boeing.

31. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by KLX's shareholders and completed, KLX's stockholders will receive \$63.00 in cash for each share of the KLX common stock they hold.

32. In connection with the Proposed Transaction, Merger Sub will merge with and into KLX, with KLX surviving the merger as a wholly owned subsidiary of Boeing. Prior to or simultaneously with the consummation of the merger, KLX will transfer its Energy Services Group business to KLX Energy Services Holdings, Inc. ("KLX Energy Services"), a newly formed subsidiary of KLX, followed by a pro rata distribution of common stock representing 100% of the equity interests of KLX Energy Services to KLX stockholders (the "Spin-Off"). After the Spin-Off is completed, KLX Energy Services will be a separate, publicly held company that will own and operate KLX's Energy Services Group business.

33. According to the press release announcing the Proposed Transaction:

Boeing [NYSE: BA] announced today it has entered a definitive agreement to acquire KLX Inc. [NASDAQ: KLXI] to enhance its growing services business. The agreement comprises an all-cash transaction for \$63 per share and the assumption of approximately \$1.0 billion of net debt, totaling \$4.25 billion.

Boeing's acquisition of KLX Inc. will include KLX Inc.'s Aerospace Solutions Group, and is conditional upon the successful divestment and separation of KLX Inc.'s Energy Services Group.

KLX Inc. is a major independent provider of aviation parts and services in the aerospace industry. Its capabilities include global parts distribution and supply chain services for aerospace and defense industries worldwide. KLX Inc. will be part of Boeing Global Services and fully integrated with Aviall.

KLX Inc. is also a leading supplier of chemical composites, with this combination broadening the scope of what Aviall can offer to customers in this space. . . .

KLX Inc.'s Aerospace Solutions Group employees and operations will be integrated with Aviall, providing a clear path for the business to accelerate growth. The Miami facilities are expected to continue to remain the principal operating

location. . . .

KLX Inc.'s Aerospace Solutions Group FY2017 revenue was \$1.4 billion. Boeing expects the acquisition to have a neutral earnings impact through 2019 and accretion thereafter, with annual cost savings growing to approximately \$70 million by 2021 and further improvements realized over time. The transaction will be financed primarily with cash on hand, supplemented with debt.

The completion of the transaction is subject to customary conditions, including regulatory clearance and the approval by a majority of KLX Inc. shareholders. The sale is expected to close by 3Q 2018. The transaction is also subject to the successful divestment and separation of KLX Inc.'s Energy Services Group.

***The Proxy Statement Omits Material Information, Rendering It False and Misleading***

34. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction. As set forth below, the Proxy Statement omits material information with respect to the Proposed Transaction.

35. The Proxy Statement omits material information regarding the Company's financial projections, as well as the valuation analyses performed by the Company's financial advisor in connection with the Proposed Transaction, Goldman Sachs & Co. LLC ("Goldman").

36. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

37. Defendants failed to disclose KLX's projected 2023 unlevered free cash flow, despite the fact that Goldman relied on that financial projection in its Illustrative Discounted Cash Flow Analysis. The failure to disclose this information was material because it was used by

Goldman to calculate the Company's terminal value, which is a critical component of the Discounted Cash Flow Analysis. Without this information, the Proxy Statement is misleading because defendants are attempting to mislead stockholders into believing that the merger consideration is fair.

38. Further, the Proxy Statement discloses certain projections of KLX for non-GAAP (generally accepted accounting principles) metrics that were used by Goldman to perform its valuation analyses in connection with the Proposed Transaction. Specifically, the Proxy Statement discloses non-GAAP projections of EBITDA, EBIT, free cash flow, and unlevered free cash flow. The Proxy Statement, however, fails to provide stockholders with the necessary line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures.

39. To avoid misleading stockholders with non-GAAP financial measures in business combinations such as the Proposed Transaction, publicly traded companies must provide a reconciliation of the differences between the non-GAAP financial measures with the most comparable financial measures calculated and presented in accordance with GAAP. Indeed, defendants acknowledge in the Proxy Statement that: "Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with GAAP, and non-GAAP financial measures as used by KLX may not be comparable to similarly titled amounts used by other companies." As such, KLX's stockholders are entitled to the line item projections used to calculate the Company's non-GAAP projections or a reconciliation of the non-GAAP projections to the most comparable GAAP measures.

40. With respect to Goldman's Selected Companies Analysis, the Proxy Statement fails to disclose: (i) the individual multiples and financial benchmarking metrics for each of the



companies observed by Goldman in its analysis; and (ii) whether Goldman derived implied values of KLX based on the 2019 multiples observed by Goldman in its analysis.

41. The disclosure of this information is necessary because the utility of this analysis depends upon the similarity between the target company and the companies that are selected for comparison. Without this information, stockholders cannot observe whether the selected companies truly are comparable to the Company, or whether the companies were selected to make the merger consideration appear fair. Notably, although the range of 2018 EV/adjusted EBITDA multiples of the selected companies is 8.6x to 23.1x, Goldman selected and applied a range of multiples of only 10x to 13x to the Company's 2018 adjusted EBITDA. The failure to disclose the individual multiples and financial metrics of the selected companies therefore was a material omission and renders the Proxy Statement materially misleading by wrongly implying that Goldman's analysis supports the fairness of the merger consideration.

42. Further, although Goldman observed the 2018 and 2019 multiples of the selected companies (and KLX), the Proxy Statement only discloses the implied values of the Company based on Goldman's analysis of the 2018 multiples and not the 2019 multiples. The Proxy Statement must disclose a fair summary of Goldman's analysis of the 2019 multiples (including the range of multiples selected by Goldman and the implied values of the Company derived from the analysis), or if Goldman did not perform such an analysis, the Proxy Statement must disclose Goldman's reason for failing to do so. The Proxy Statement is misleading without this material information.

43. With respect to Goldman's Illustrative Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the Company's projected 2023 unlevered free cash flow that was used by Goldman to determine the Company's terminal value in its analysis; (ii) the line item

projections of KLX's unlevered free cash flow projections; (iii) KLX's federal net operating losses ("NOLs") and its amortization of goodwill for the period from January 31, 2018 through January 31, 2032, as approved by KLX management and used by Goldman in its analysis; and (iv) the specific, numerical inputs and assumptions underlying the discount rates of 9.0% to 10.0% calculated and applied by Goldman.

44. The failure to disclose the foregoing information renders the Proxy Statement misleading. This information is material because defendants have relied upon Goldman's fairness opinion to approve the Proposed Transaction, and have touted it to stockholders and encouraged them to vote in favor of the Proposed Transaction. If the omitted information is disclosed, stockholders can properly assess the efficacy of Goldman's valuation analyses, which could cause stockholders to vote against the Proposed Transaction.

45. The omission of this material information renders the Proxy Statement false and misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) Opinion of Goldman Sachs & Co. LLC; and (ii) Financial Projections.

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

### **COUNT I**

#### **Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and KLX**

47. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

48. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. KLX is liable as the issuer of

these statements.

49. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

50. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

51. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

52. The Proxy Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

53. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

54. Because of the false and misleading statements in the Proxy Statement, plaintiff and the Class are threatened with irreparable harm.

## **COUNT II**

### **Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants**

55. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

56. The Individual Defendants acted as controlling persons of KLX within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of KLX and participation in and/or awareness of the Company's operations and/or

intimate knowledge of the false statements contained in the Proxy Statement, 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 false and misleading.

57. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement 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 them to be corrected.

58. 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 and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Proxy Statement.

59. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the 1934 Act.

60. 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) of the 1934 Act 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 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for judgment and relief as follows:

- A. 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 file a Proxy 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 TRIAL DEMAND**

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

Dated: July 6, 2018

**RIGRODSKY & LONG, P.A.**

**OF COUNSEL:**

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