

XEROX CORP
Form 4
November 13, 2006

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
Lesko James H

(Last) (First) (Middle)

C/O XEROX CORPORATION, P.O.
BOX 1600 / 800 LONG RIDGE
ROAD

(Street)

STAMFORD, CT 06904-1600

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
XEROX CORP [XRX]

3. Date of Earliest Transaction
(Month/Day/Year)

11/09/2006

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)
Vice President

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Ownership (Instr. 4)
				(A) or (D) Code V Amount (D) Price			
Incentive Stock Rights					9,334	D	
Common Stock					5,447.37	I	Employee Stock Ownership Plan
Common Stock	11/09/2006		M	40,000 A	\$ 0 ⁽²⁾ 54,019	D	
Common Stock	11/09/2006		S	29,600 D	\$ 24,419	D	

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Stock					16.96		
Common Stock	11/09/2006		S	10,400	D	\$ 16.95	14,019 D

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number. SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Underlying Security (Instr. 3 and 4)	
						Date Exercisable	Expiration Date	Title
				Code	V (A) (D)			
Stock Option	\$ 46.875					01/01/1999 ⁽¹⁾	12/31/2008	Common Stock
Stock Option	\$ 59.4375					01/01/2000 ⁽¹⁾	12/31/2006	Common Stock
Stock Option	\$ 47.5					03/01/2003	12/31/2009	Common Stock
Stock Option	\$ 21.7812					01/01/2005	12/31/2009	Common Stock
Stock Option	\$ 10.365					01/01/2003 ⁽¹⁾	12/31/2011	Common Stock
Stock Option	\$ 7.885	11/09/2006		M	40,000	01/01/2004 ⁽¹⁾	12/31/2012	Common Stock
Stock Option	\$ 13.685					01/01/2005 ⁽¹⁾	12/31/2011	Common Stock
Performance Shares	\$ 0 ⁽²⁾					08/08/1988 ⁽²⁾	08/08/1988 ⁽²⁾	Common Stock

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other

Lesko James H
C/O XEROX CORPORATION
P.O. BOX 1600 / 800 LONG RIDGE ROAD
STAMFORD, CT 06904-1600

Vice
President

Signatures

K. Boyle,
Attorney-in-Fact 11/13/2006

__Signature of Reporting
Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

- (1) Options vest over three years, 33.3% per year beginning in year shown.
- (2) Not Applicable

- (3) These performance shares were earned based on achievement of specific annual performance criteria that are not tied solely to the market price of Issuer securities. Performance shares, to the extent earned, are scheduled to vest three years from their respective grant date.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. for Gary or Tom. The combined business is going to have a lot of real estate. What are your thoughts on selling - potentially selling the real estate or not selling the real estate within the combined portfolio?

Tom Reeg: Well Cam what I would say is these are two companies that have made conscious decisions who maintain control of their real estate and have been able to deliver substantial returns to shareholders with that strategy. We obviously see the same things that you guys see in terms of the real estate transactions that have been done.

We will look at anything that provides value for our shareholders going forward. And, you know, to the extent that becomes the right path to go down, that becomes another lever we can potentially pull to deliver returns to shareholders.

But as we sit here today, we've both been happy with our decision to maintain control of our real estate and that's kind of where our heads are at the current time as well.

Cameron McKnight: Okay got it. Thanks. And then based on the synergies - I mean, the \$35 million target represents about 2% of combined revenues, in terms of the synergies as a percentage of your cost base excluding gaming revenues. Are you sort of in the 6 to 7% range there?

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Tom Reeg: I'll have to circle back with you, Cam, on that. We don't - we're not looking at it in that fashion. We're down to a very granular level and, you know, Cam - we have detail on that \$35 million down to the penny. So we're looking at it in actual costs. And just know that, you know, we would not have put a target out there that we're not highly confident we will exceed.

Cameron McKnight: Got it. Thanks Tom. And one last one from me if I may. Are you able to comment just on the consumer generally? I mean, recent monthly results out of some of the regional markets have not been as strong as they were in the beginning of the year. How do you guys feel about the consumer at this point?

Tom Reeg: What I would say is the consumer has certainly gotten better than they were in May and June but we're not seeing the strength that we saw in the beginning of the year. So we're kind of somewhere in between, better than the May and June softness but not as strong in our case as the first three months of the year.

Cameron McKnight: Okay. Thank you very much.

Operator: As a reminder, it's star 1 if you'd like to ask a question. And we'll go next to David Farber with Credit Suisse.

David Farber: Hi guys. How are you?

Tom Reeg: Hey David.

Male: David.

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David Farber: Congrats on the announced deal and thanks for the candor and a lot of guys behind the scenes. Appreciate that. I had a couple questions, some operational and some just related to the balance sheet that you touched on.

I guess just first on the regulatory process you touched briefly on that but are you envisioning any issues? I'm thinking of Pennsylvania just given the three there. And then I had a couple follow-up things.

Tom Reeg: No, there's two there in Pennsylvania. And Nemaocolin is a resort license so it's a separate class of license in Pennsylvania. So there's nothing necessary in terms of divesting one or the other. We can close this thing with both of them.

Eric Hausler: Just to be clear, that Nemaocolin license is a management agreement. We do not own the building. And there's ownership restrictions in Pennsylvania but we are not the owner of that facility.

David Farber: Okay. That's helpful, thanks. On the integration side, any thoughts around costs it'll take to achieve the \$35 million?

Tom Reeg: It's early days so difficult to peg that to a number that we have a lot of confidence in. I would say that there's certainly going to be costs. We'd expect them to be in total less than \$5 million.

David Farber: Good. And then lastly and maybe this question's best for Tom some of my questions were already asked but as you guys have sort of previously talked about, you've now increased the float and the size of the company quite dramatically.

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The REIT was already asked but my question I guess is: Are there assets in the portfolio pro forma that you'd feel are not necessarily core? Or any thoughts just on the portfolio now just given how much larger it has become? And that's it for me, thanks.

Tom Reeg: What I would say is we're always looking at our portfolio as a portfolio and looking at, you know, what the opportunities would be for us both to expand it and to prune it. Obviously we'll have more assets to look at here.

But, you know, you should expect us if there's a transaction available to us that we think will create value for our shareholders we would consider divesting any asset in our portfolio. But we really like what we're putting together here.

I've talked to you in the past about management bandwidth. What's nice here is we're going to tap into Isle's operating management that's going to allow us to expand that and to integrate a profit company - or portfolio of this size.

David Farber: Very good. Congrats guys.

Tom Reeg: Thank you.

Male: Thank you.

Operator: And we'll go next to Dennis Farrell with Wells Fargo.

Dennis Ferrall: Great. Thank you very much. First off I'd like to congratulate both corporate and operating teams that have helped both companies manage through the crisis and really put both companies in a position of strength. In terms of details I was wondering if you could just provide us some details around the sales process? Was this like a full sales process or was it - does it just kind of come together in a short period of time? And then two is there a termination fee? I didn't see it in the press release and I was wondering if there's a go shop period as well?

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Tom Reeg: On the mechanics of the transaction there is no go shop period. There are normal fiduciary outs on the Isle side. The breakup fee is 3% of the equity value of ((inaudible)). And on the process I'll leave it to Eric.

Eric Hausler: We're not going to comment a whole lot on the process. Obviously it - details will be in the proxy when they are filed.

Dennis Ferrall: Okay thank you. And then in regards to just the brand, the Isle brand are - do you - you mentioned that \$5 million of cost potentially. I was wondering in - over the long run do you expect the Isle brand to remain outstanding? And if not, you know, I guess in the long run how much would it cost to rebrand them to Eldorado or some other type of brand?

Tom Reeg: The expectation on our side is the Isle brand will remain certainly. There are individual assets where we might consider down the road rebranding as an Eldorado but there's nothing that requires immediate rebrand. What was pleasing to us was when we went through the Isle portfolio.

And I'd encourage you to get out and see these assets because these assets have changed quite dramatically over the past decade in terms of quality. So there's not an asset in the Isle portfolio that we're not proud to call our own at this point. And if we're making a rebranding decision it's going to be likely because we're adding something that makes it a logical thing to consider, not because there's anything wrong with the Isle brand.

Gary Carano: I think that was - this is Gary - from my standpoint a very positive like Tom said. When we got to look at these properties very outstanding job that the Goldsteins have done with their team over the last however many years. But these are very quality assets that will fit very nicely with our current Eldorado assets.

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Dennis Ferrall: Great. And then in regards to growing the company I mean do you pro forma do you expect to be going after more greenfield opportunities or just continue with acquisition?

Tom Reeg: We'd expect to be following the same strategy that we've followed to build the company to this point. We will be using free cash flow to pay down debt unless and until there's a - an acquisition opportunity that makes sense for us. Greenfields still are unlikely for us, I - you know, I'll never say impossible but you kind of got to know what you're good at. We think we're good at operating regional gaming assets, particularly ones that we can get in and see and decide how we'll run them and what we'll - what that will look like.

You know, we don't know that we're particularly good at predicting how many people in Atlanta will go to our casino if Georgia were to legalize. So that's really not where our heads are. You should expect us to be going down the same path that we've been going down before. Now in this case this is obviously a large transformative acquisition so you shouldn't expect us to be right back on the field very quickly doing something else.

Dennis Ferrall: Right. And then I just have one follow-up detail question. Can you just provide us with the NOL balance pro forma and then the restricted payments capacity under the Eldorado notes that are going to remain outstanding?

Tom Reeg: I'll have to come back to you offline. There's a pretty big basket in those notes.

Dennis Ferrall: Okay and then what about the net operating loss balance if there is...

(Crosstalk)

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Tom Reeg: The NOLs, Isle s already publicly stated that they expect to exhaust their NOLs in this fiscal year. We have NOLs that will continue to run for the next two calendar years although we would have started to be a cash taxpayer to a limited degree next year.

Eric Hausler: Yes just we had previously stated on the prior conference call that with the sale at Lake Charles we expected to ultimately use the balance of NOLs and other credits we had available to put us in a position to be a cash tax payer in our fiscal 18.

Dennis Ferrall: Okay so on a combined basis Tom you still think that - you think federal taxes should be pretty minimal for the next year or two?

Tom Reeg: I would expect us to be paying some cash taxes in 17. If we close in the second quarter, you know, we would - we have told you we were going to be kind of in the mid to high teens on an effective basis next year. Based on rolling Isle in the second half of the year, you should expect it to be a bit higher than that.

Dennis Ferrall: Okay thank you very much.

Operator: And we ll go next to James Kayler with Bank of America.

James Kayler: Hey guys, how you doing?

Male: Morning James.

James Kayler: Morning. Most of my questions have been asked but I guess maybe just a bigger strategic question. Eldorado obviously been very focused on, you know, food and beverage in particular. I think that was a major focus after MTR. Do you think there s an opportunity here and do you have any sort of early takes on what kind of capital investment you think you might make, you know, after in the time frame after closing?

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Tom Reeg: I would say there is not the same opportunity here generally speaking in the portfolio. The assets that we acquired in the previous acquisition were kind of screaming for capital and particularly in the food and beverage area. Isle s done a very nice job across the portfolio in building out their food and beverage product.

You know, we have Brew Brothers which has worked in Columbus and Erie that s a piece of our brand that we would consider in other markets but there s - one of the nice things about this transaction is there is not a big we need to go fix these number in this transaction. We think we will be using the bulk of our free cash flow right out of the box to de-lever.

James Kayler: Very good. I guess the sort in the same vein would you think that you would have a sort of company-wide loyalty program? Is that a priority or is it maybe more of a wait and see?

Tom Reeg: The expectation is ultimately we would have a company-wide loyalty program, yes.

James Kayler: Very good and just two housekeeping questions. Do you have any guidance on we should use this sort of combined maintenance CAPEX for the new company and then any just a range on where you think the cap structure might be priced pro forma?

Tom Reeg: I m not going to talk about pricing. You ll see in the - you ll see our documents that are filed today. You can look for pricing information that s in there. Your other question was what?

James Kayler: Maintenance CAPEX.

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Tom Reeg: Maintenance CAPEX. We should be spending in the area of \$100 million a year CAPEX post transaction.

James Kayler: Very good. Thank you. Congratulations.

Male: Thank you.

Tom Reeg: Thank you.

Operator: And as a reminder if you'd like to ask a question it's star 1. And we'll go next to Alex Yaggy with Cortina Asset Management.

Alex Yaggy: Yes good morning. Thank you, two quick questions. One, I'm wondering if this transaction changes your plans and expectations for the Mountaineer Resort which I know has had struggle a little bit of late and two whether this delays or defers any of your capital spending plans for the Reno properties? Thank you?

Tom Reeg: It doesn't change our capital spending plans on either side at all certainly between now and closing and afterward. And in terms of specific question on Mountaineer as we said we look at all of the properties in our portfolio. And if there were an opportunity for a transaction we made - that made sense we would look at that. But there - we're not particularly targeting any assets that we need to get rid of.

Alex Yaggy: Thank you.

Operator: And we'll go next to Sachin Shah with Albert Fried.

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Sachin Shah: Hi. Good morning. Congratulations on the deal. So I - the MTR deal a few years back just a little over a year, 375 I think days and I think you're expecting this to be about nine months, just wanted to understand are you expecting a faster regulatory approval process? And just specifically aside from Pennsylvania can you just maybe go over some of the other regulatory approvals and aside from Pennsylvania and HSR whether state approvals are required here? Thank you.

Tom Reeg: We've got approvals necessary in all ten states that we'll be doing business in. So for us that means new licenses in Colorado, Iowa, Florida and Mississippi, you know, and Missouri. And I would tell you - that the difference this time is we're in much better shape on our side in terms of applications. We would expect to have applications filed in most of these jurisdictions this week. So we're comfortable with the timeframe that we've laid out.

Sachin Shah: Okay so you mentioned no overlap. So as far as the regulatory process it's more just a procedural thing than anything else relative to how you handled the - how the deal with MTR a few years were - is conducted right? So that's the difference?

Tom Reeg: Correct. There are no - there is nothing regulatory that would get involved in the transaction other than normal approvals from state licensing boards.

Sachin Shah: Okay, all right thank you.

Operator: At this time I'd like to turn the conference back to Gary Carano for any additional or closing remarks.

Gary Carano: Thank you very much (Tracy) and to everyone on the phone and both Eldorado and Isle shareholders we're very excited about this opportunity and look forwards to being back with you in the near future. And with that have a great day and thank you very much for this opportunity. Thank you.

Operator: This does conclude today's conference. We thank you for your participation. You may now disconnect.

END

Important Information for Investors and Stockholders

The information in this communication is not a substitute for the prospectus/proxy statement that Eldorado Resorts, Inc. (Eldorado) and Isle of Capri Casinos, Inc. (Isle) will file with the SEC, which will include a prospectus with respect to shares of Eldorado common stock to be issued in the merger and a proxy statement of each of Eldorado and Isle in connection with the merger between Eldorado and Isle (the

Prospectus/Proxy Statement). The Prospectus/Proxy Statement will be sent or given to the stockholders of Eldorado and Isle when it becomes available and will contain important information about the merger and related matters, including detailed risk factors. ELDORADO S AND ISLE S SECURITY HOLDERS ARE ADVISED TO READ THE PROSPECTUS/PROXY STATEMENT CAREFULLY WHEN IT BECOMES AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED MERGER. The Prospectus/Proxy Statement and other documents that will be filed with the SEC by Eldorado and Isle will be available without charge at the SEC s website, www.sec.gov, or by directing a request when such a filing is made to Isle of Capri Casinos, Inc. by mail at 600 Emerson Road, Suite 300, Saint Louis, Missouri 63141, Attention: Investor Relations, by telephone at (314) 813-9200, or by going to the Investors page on Isle s corporate website at www.islecorp.com. A final proxy statement or proxy/prospectus statement will be mailed to stockholders of Eldorado and Isle as of their respective record dates.

The information in this communication is neither an offer to sell nor the solicitation of an offer to sell, subscribe for or buy any securities, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. This communication is also not a solicitation of any vote in any jurisdiction pursuant to the proposed transactions or otherwise. No offer of securities or solicitation will be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Proxy Solicitation

Eldorado and Isle, and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transactions and may have direct or indirect interests in the proposed transactions. Information about the directors and executive officers of Eldorado is set forth in the proxy statement for its 2016 annual meeting of shareholders, which was filed with the SEC on April 29, 2016, and in its Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which was filed with the SEC on March 15, 2016. Information about the directors and executive officers of Isle is set forth in the proxy statement for its 2016 annual meeting of shareholders, which was filed with the SEC on August 22, 2016, and in its Annual Report on Form 10-K for the fiscal year ended April 24, 2016, which was filed with the SEC on June 21, 2016. Investors may obtain additional information regarding the interests of such participants in the proposed transactions by reading the Prospectus/Proxy Statement for such proposed transactions when it becomes available.

Forward-Looking Statements

Any statements contained in this communication other than statements of historical fact, including statements about management s beliefs and expectations of the proposed merger and related transactions and future results, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and should be evaluated accordingly. These statements are made on the basis of management s views and assumptions regarding future events and business performance. Words such as estimate, believe, anticipate, expect, intend, target, may, will and similar expressions and their negative forms are intended to identify forward-looking statements.

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Forward-looking statements involve risks and uncertainties that may cause actual results to differ materially from any future results, performance or achievements expressed or implied by such statements. These risks and uncertainties include the ability to complete the proposed merger and related transactions between Eldorado and Isle; the receipt of regulatory and shareholder approvals; the availability of financing contemplated by the bank commitment obtained by Eldorado; the ability to successfully integrate Eldorado and Isle's operations, product lines, technologies and employees; the ability to realize revenue and customer growth opportunities, combined revenue

goals, marketing and cost synergies from the proposed merger between Eldorado and Isle in a timely manner or at all; factors related to the businesses of Eldorado and Isle including economic, political and financial market conditions generally and economic conditions in Eldorado and Isle's target markets; dependence on fixed-price contracts and the risks associated with those contracts, including actual costs exceeding estimates and method of accounting for contract revenue; changes in or developments with respect to any litigation or investigation; unknown, underestimated or undisclosed commitments or liabilities; the potential impact of the announcement or consummation of the proposed transactions on the parties' relationships with third parties, which may make it more difficult to maintain business relationships; the substantial amount of debt expected to be incurred in connection with the proposed merger and Eldorado's ability to repay or refinance it, incur additional debt in the future or obtain a certain debt coverage ratio; diversion of management time from each of Eldorado's and Isle's ongoing operations; and the impact of federal, state or local government regulations, particularly with respect to the gaming industry.

These and other risks and uncertainties are discussed in more detail in Eldorado's and Isle's current and future filings with the SEC, including Eldorado's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 under the heading "Item 1A. Risk Factors," which was filed with the SEC on March 15, 2016 and Isle's Annual Report on Form 10-K for the fiscal year ended April 24, 2016 under the heading "Item 1A. Risk Factors," which was filed with the SEC on August 22, 2016. Many of these risks are beyond management's ability to control or predict. Should one or more of these risks or uncertainties materialize, or should the assumptions prove incorrect, actual results may vary in material aspects from those currently anticipated. Investors are cautioned not to place undue reliance on such forward-looking statements as they speak only as of the date the statement is made. All forward-looking statements attributable to Eldorado or Isle or persons acting on behalf of either Eldorado or Isle are expressly qualified in their entirety by the cautionary statements and risk factors contained in this communication and Eldorado's and Isle's respective filings with the SEC. Forward-looking statements speak only as of the date they are made. Except as required under the federal securities laws or the rules and regulations of the SEC, neither Eldorado nor Isle undertakes any obligation to update or review any forward-looking statement or information, whether as a result of new information, future events or otherwise, except as required by law.

BOTTOM">

Director

August 4, 2017

/s/ Charles B. Seidler

Charles B. Seidler

Director

August 4, 2017

/s/ Grover T. Wickersham

Grover T. Wickersham

Director

August 4, 2017

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INDEX TO EXHIBITS

Exhibit No.	Description
2.1	<u>Asset Acquisition Agreement among the Registrant, Imperial Valley Seeds, Inc. ("IVS"), Glen D. Bornt, Fred Fabre and the Bornt Family Trust, dated September 28, 2012 (incorporated by reference to the Registrants' Current Report on Form 8-K, filed with the SEC on October 2, 2012).</u>
2.2	<u>Asset Purchase and Sale Agreement between the Registrant and Pioneer Hi-Bred International, Inc. ("Pioneer"), dated December 19, 2014 (incorporated by reference to the Registrants' Current Report on Form 8-K, filed with the SEC on December 29, 2014).</u>
2.3	<u>First Amendment to Asset Purchase and Sale Agreement between the Registrant and Pioneer, dated December 31, 2014 (incorporated by reference to the Registrants' Current Report on Form 8-K, filed with the SEC on January 1, 2015).</u>
2.4	<u>Second Amendment to the Asset Purchase and Sale Agreement between the Registrant and Pioneer, dated April 23, 2015 (incorporated by reference to the Registrants' Annual Report on Form 10-K, filed with the SEC on September 28, 2015).</u>
2.5	<u>Third Amendment to Asset Purchase and Sale Agreement between the Registrant and Pioneer, dated July 23, 2015 (incorporated by reference to the Registrants' Annual Report on Form 10-K, filed with the SEC on September 28, 2015).</u>
2.6	<u>Asset Acquisition Agreement between the Registrant and SV Genetics Pty Ltd, dated May 26, 2016 (incorporated by reference to the Registrants' Current Report on Form 8-K, filed with the SEC on May 31, 2016).</u>
4.1	<u>Articles of Incorporation of the Registrant (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on December 19, 2011).</u>
4.2	<u>Second Amended and Restated Bylaws of the Registrant (incorporated by reference to the Registrants' Current Report on Form 8-K, filed with the SEC on December 16, 2015).</u>
4.3	<u>Form of Common Stock Certificate.</u>
4.4	<u>Registration Rights Agreement by and among the Registrant the parties named therein, dated July 19, 2017 (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on July 19, 2017).</u>
4.5(1)	<u>Assignment Agreement of Plant Variety Certificates, Plant Breeders' Rights, Maintenance Rights and Registration Rights between the Registrant and Pioneer, dated December 31, 2014 (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on January 7, 2015).</u>
4.6	<u>First Amendment to the Assignment Agreement of Plant Variety Certificates, Plant Breeders' Rights, Maintenance Rights and Registration Rights between the Registrant and Pioneer, dated April 23, 2015 (incorporated by reference to the Registrants' Annual Report on Form 10-K, filed with the SEC on September 28, 2015).</u>
4.7	<u>Form of Registration Rights Agreement among the Registrant and purchasers of the 8% Senior Secured Convertible Debentures and Warrants (incorporated by reference to the Registrants Current Report on Form 8-K, filed with the SEC on December 31, 2014).</u>
4.8	<u>Registration Rights Agreement between the Registrant and MFP Partners, L.P., dated November 23, 2015 (incorporated by reference to the Registrants Current Report on Form 8-K, filed with the SEC on November 24, 2015).</u>
4.9	<u>Securities Purchase Agreement between the Registrant and MFP Partners, L.P., dated December 31, 2014 (incorporated by reference to the Registrants Current Report on Form 8-K, filed with the SEC on December 31, 2014).</u>

- 4.10 Form of Securities Purchase Agreement between the Registrant and each of the purchasers of 8% Senior Secured Convertible Debentures and Common Stock Purchase Warrants, dated December 30, 2014 (incorporated by reference to the Registrants Current Report on Form 8-K, filed with the SEC on December 31, 2014).
- 4.11 Form of Common Stock Purchase Warrant (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on December 31, 2014).

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- 4.12 Securities Purchase Agreement between the Registrant and MFP Partners, L.P. dated November 23, 2015 (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on November 24, 2015).
 - 4.13 Securities Purchase Agreement by and among the Registrant and the purchasers named therein, dated July 19, 2017 (incorporated by reference to the Registrant's Current Report on Form 8-K, filed with the SEC on July 19, 2017).
 - 5.1 Opinion of Jolie Kahn, Esq.
 - 23.1 Consent of Crowe Horwath LLP.
 - 23.2 Consent of Jolie Kahn, Esq. (included in Exhibit 5.1).
 - 24.1
Powers of Attorney (included in the signature page hereto).
- (1) Exhibits and schedules to this agreement have been omitted pursuant to Item 601(b) of Regulation S-K. The Registrant hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule to the Securities and Exchange Commission upon request.