

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JAMES V. BASILE, Derivatively on Behalf
of Nominal Defendant INTREXON
CORPORATION,

Plaintiff,

vs.

RANDAL J. KIRK, CESAR L. ALVAREZ,
STEVEN R. FRANK, JEFFREY B.
KINDLER, DEAN J. MITCHELL,
ROBERT B. SHAPIRO, JAMES S.
TURLEY, and THIRD SECURITY, LLC,

Defendants,

and

INTREXON CORPORATION,

Nominal Defendant.

No.

JURY TRIAL DEMANDED

2016 09542

FILED
CIVIL INTAKE
2016 JUL -7 AM 8:19
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff James V. Basile ("Plaintiff"), by the undersigned attorneys, submits this Verified Shareholder Derivative Complaint (the "Complaint") against the defendants named herein, and alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, a review of public filings, press releases and reports, and an investigation undertaken by Plaintiff's counsel, as to all other allegations herein, as follows:

NATURE AND SUMMARY OF ACTION

1. Plaintiff brings this action on behalf of nominal defendant Intrexon Corporation ("Intrexon" or the "Company") against its controlling stockholder and the members of the

Company's Board of Directors (the "Board") to remedy Defendants' breaches of fiduciary duty and other violations of law.

2. In October 2015, Intrexon's controlling stockholder, Defendant Randal J. Kirk ("Kirk"), with the help of a Board that he dominated, caused the Company to enter into a grossly unfair and illusory Services Agreement with Kirk's private investment vehicle, Defendant Third Security, LLC ("Third Security"), which has resulted in an unfair transfer of economic value to Third Security and Kirk at the expense of the Company.

3. At all times relevant hereto, Intrexon has been owned, funded, managed and otherwise controlled by defendant Kirk, who is Intrexon's Chairman and Chief Executive Officer. Together with his affiliated entities, Kirk is by far Intrexon's largest stockholder, having beneficially owned over 50% of the Company's common stock at all times relevant hereto. As a result of Defendant Kirk's roles as Chairman and Chief Executive Officer of the Company, as well his position as Intrexon's controlling stockholder, the Company has been forced to engage in a variety of financial and operational transactions with Defendant Kirk and his affiliates, including Third Security.

4. On October 30, 2015, Intrexon entered into a Services Agreement with Third Security. As the controlling stockholder of the Company and owner of 100% of the equity in Third Security, Kirk stood on both sides of this transaction. Thus, the Board was required to ensure that the Services Agreement was entirely fair to Intrexon. The Board utterly failed in this regard and instead approved a grossly unfair and disproportionate contract that enriches Third Security and Kirk at the expense of Intrexon and its stockholders.

5. The Services Agreement provides for Third Security to provide a variety of generic and duplicative services "to support INTREXON and [Kirk in his role as] the Chief

Executive Officer of INTREXON.” The Services Agreement contemplates that the vast majority of these services will be provided only if Kirk, in his sole and exclusive discretion, chooses to request them. The only mandatory services contemplated by the Services Agreement are that of “executive assistant, administrative, and other support services for Mr. Kirk in his role as the Chief Executive Officer of INTREXON.” In exchange for this vague and illusory consideration from Third Security, the Services Agreement provides that Intrexon will pay Third Security a fixed monthly payment of \$800,000 in the form of fully-vested shares of Company common stock. In other words, Intrexon is obligated to pay Third Security \$9.6 million per year, and Third Security is obligated to do nothing more than provide Kirk with an executive assistant unless Kirk requests additional services.

6. Since the Services Agreement was executed, the Company has not elaborated on the specific services that are contemplated by the Services Agreement, nor has Intrexon identified any services Third Security has actually provided to Intrexon under the agreement. Nonetheless, the Company has delivered to Third Security more than 180,000 shares of Intrexon common stock pursuant to the Services Agreement, resulting in a windfall of over \$4.3 million in economic value to Kirk and Third Security at the expense of the Company.

PARTIES

7. Plaintiff is a stockholder of Intrexon, was a stockholder of Intrexon at the time of the wrongdoing alleged herein, and has been a stockholder of Intrexon continuously since that time.

8. Nominal Defendant Intrexon is a Virginia corporation with its principal place of business located at 20374 Seneca Meadows Parkway, Germantown, Maryland. Shares of Intrexon common stock are traded on The New York Stock Exchange under the ticker symbol “XON.” According to its public filings, Intrexon “forms collaborations to create biologically

based products and processes using synthetic biology.” The Company’s business model is to “commercialize [its] technologies through exclusive channel collaborations, or ECCs, with collaborators that have industry expertise, development resources and sales and marketing capabilities to bring new and improved products and processes to market.” According to the Company’s most recent annual report, Intrexon had 640 full-time employees and 94 part-time employees.

9. Defendant Kirk has served as Chairman of the Board since February 2008 and Chief Executive Officer of Intrexon since April 2009. At all times relevant hereto, Kirk and his affiliates (including Third Security) have been the controlling stockholders of Intrexon. In the Company’s proxy statements filed with the United States Securities and Exchange Commission (“SEC”) in 2014, 2015 and 2016, Intrexon listed Kirk and his affiliates as the beneficial owners of at least 50% of the Company’s common stock. Kirk has served as a member of the board of directors of Halozyme Therapeutics, Inc. (“Halozyme”) since May 2007 and as a member of the board of directors of ZIOPHARM Oncology, Inc. since January 2011. Kirk founded and became chairman of the board of directors of New River Pharmaceuticals Inc. (“New River”) in 1996, and served as President and Chief Executive Officer from October 2001 until its acquisition by Shire plc in 2007. Kirk previously served as a member of the board of directors of Clinical Data, Inc. (“Clinical Data”) from September 2002 to December 2004, and as chairman from December 2004 until its acquisition by Forest Laboratories, Inc. in April 2011.

10. Defendant Third Security is a Virginia limited liability company with its principal place of business located at 1881 Grove Avenue, Radford, Virginia. Kirk founded Third Security in March 1999, currently serves as its Senior Managing Director and Chief Executive Officer, and owns 100% of its equity. According to its website, Third Security is a “venture

capital firm . . . principally focuse[d] on emerging through late-stage investments in life-sciences companies.” Third Security manages its investments through “Affiliated Investment Funds,” each of which has its own general partner that is managed by Third Security. According to its website, the portfolio companies of Third Security’s active Affiliated Investment Funds include, *inter alia*, (i) Intrexon; (ii) Halozyme; (iii) Genopaver, LLC (“Genopaver”); (iv) Persea Bio, LLC (“Persea Bio”); and (v) Intrexon Energy Partners (“IEP”).

11. Defendant Cesar L. Alvarez (“Alvarez”) has served as a member of the Board since February 2008. Alvarez serves as the Senior Chairman of the law firm of Greenberg Traurig, LLP (“Greenberg Traurig”). Previously, Alvarez served as Greenberg Traurig’s Chief Executive Officer beginning in February 1997 and as its Executive Chairman beginning in February 2010. Greenberg Traurig has provided legal services to Intrexon in the past.

12. Defendant Steven R. Frank (“Frank”) has served as a member of the Board since February 2008. Frank serves as Chairman of Global Healthcare Investment Banking at J.P. Morgan Securities, LLC (“JP Morgan”), which he joined in June 2008. JP Morgan served as lead underwriter in Intrexon’s August 2013 initial public offering (“IPO”) and as lead underwriter in Intrexon’s January 2015 secondary public offering, and JP Morgan continues to provide financial advisory, investment banking and other services to the Company.

13. Defendant Jeffrey B. Kindler (“Kindler”) has served as a member of the Board since November 2011. At all relevant times, Kindler was a member of the Audit Committee of the Board (the “Audit Committee”).

14. Defendant Dean J. Mitchell (“Mitchell”) has served as a member of the Board since March 2009. At all relevant times, Mitchell was a member of the Audit Committee.

15. Defendant Robert B. Shapiro ("Shapiro") has served as a member of the Board since November 2011.

16. Defendant James S. Turley ("Turley") has served as a member of the Board since April 2014. Now retired, Turley previously served as the Chairman and Chief Executive Officer of Ernst & Young LLP ("Ernst & Young") from 2001 to June 2013, and prior to that, as Regional Managing Partner from 1994 to 2001. Ernst & Young provides valuation and technical accounting services to Intrexon.

17. Defendants Kirk, Alvarez, Frank, Kindler, Mitchell, Shapiro, and Turley may be referred to herein as the "Individual Defendants."

18. The Individual Defendants and Third Security may be referred to herein as the "Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

19. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, loyalty and candor, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to the Company and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets and the highest obligations of fair dealing.

20. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

21. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of the Company were required to, among other things:

- a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, businesslike manner so as to make it possible to provide the highest quality performance of their business;
- b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and
- c. Refrain from unduly benefitting themselves and other Company insiders at the expense of the Company and its shareholders.

SUBSTANTIVE ALLEGATIONS

Intrexon, Third Security and Kirk

22. Intrexon was founded in 1998 by Thomas D. Reed, Ph.D., the Company's current Chief Science Officer. In 2004, Reed moved Intrexon from Cincinnati, Ohio to Blacksburg, Virginia, and subsequently began receiving investment funding from Kirk and his affiliates. Since 2005, Intrexon has been controlled, managed and primarily funded by Kirk and his affiliates. Kirk took over as Chairman of the Board in 2008 and became Chief Executive Officer of the Company in 2009.

23. Third Security was founded by Kirk and a group of associates in 1999 to help with the management of their personal investments and affiliated entities. Kirk serves as Senior

Managing Director and Chief Executive of Third Security, and owns 100% of the equity in Third Security. Kirk's son Julian serves as Managing Director of Third Security. Third Security beneficially owns 47.8% of Intrexon's outstanding common stock, and the Company is by far Third Security's largest investment.

24. A substantial amount of managerial overlap exists between Intrexon and Third Security. For example, Jeffrey Perez, the Company's current Senior Vice President, Intellectual Property Affairs, previously served as Managing Director and Associate General Counsel at Third Security. Moreover, Krish S. Krishnan, Intrexon's former Chief Operating Officer, formerly served as Senior Managing Director, Chief Operating Officer, and Director of Business Development and Strategy at Third Security from 2001 to 2008.

25. As Chairman of the Board and Chief Executive Officer of Intrexon, Kirk's combined roles provide him broad authority, and the Company affords him deference with respect to matters that come before the Board. Intrexon's public filings acknowledge that:

The Board believes that because Mr. Kirk owns a majority of our common stock and has unique and extensive experience and understanding of our business, he is well-situated to lead and execute strategy and business plans to maximize shareholder value. The Board believes that combining the Chairman of the Board and Chief Executive Officer positions is the right corporate governance structure for us at this time because it most effectively utilizes Mr. Kirk's extensive experience and knowledge regarding the Company, including by allowing him to lead Board discussions regarding our business and strategy and provides us with unified leadership.

(Emphasis added).

Kirk is therefore the "gatekeeper" for the Board because he "lead[s] Board discussion regarding [Intrexon's] business and strategy."

26. According to the Company's public filings, as of March 31, 2014, March 31, 2015, and March 31, 2016, respectively, Kirk beneficially owned 63.2%, 59.6%, and 53.0% of

Intrexon's outstanding common stock through his direct ownership interests as well as those of his affiliates over which Kirk holds voting and dispositive power. Consequently, during all times alleged herein, Kirk has had the ability to dominate, control and exert substantial influence over any matter coming before the Board.

27. In light of his positions as Chairman and Chief Executive Officer of Intrexon, as well as his beneficial ownership of a majority of the Company's common stock, Intrexon's annual reports have acknowledged that:

Kirk is able to control or significantly influence all matters requiring approval by our shareholders, including the election of directors and the approval of mergers or other business combination transactions. The interests of Mr. Kirk may not always coincide with the interests of other shareholders, and he may take actions that advance his personal interests and are contrary to the desires of our other shareholders.

Intrexon's Long History of Related-Party Transactions with Kirk and His Affiliates

28. The Company admits in its public filings that because it "has historically been owned, funded, and managed by [Kirk and his affiliates] . . . [Intrexon] ha[s] engaged in a variety of financial and operational transactions with [Kirk] and these affiliates." The following is just a sample of these related-party transactions.

29. The vast majority of Intrexon's related-party arrangements with Kirk and his affiliates have been in the form of Exclusive Channel Collaborations ("ECCs") or joint venture agreements, which have historically comprised a substantial portion of Intrexon's revenue. For example, the Company has recognized \$77,354,000, \$41,030,000, and \$22,783,000 of so-called "collaboration revenues" from related parties in the years ended December 31, 2015, 2014 and 2013, respectively. For the year ended December 31, 2015, this figure represented 88% of the Company's total collaboration and licensing revenues and 44.5% of the Intrexon's total revenue.

30. At present, the Company currently maintains several ECCs and/or joint venture agreements with Third Security and/or its affiliates. In March 2013, the Company entered into an ECC with Genopaver, a Third Security affiliate formed for the development and commercialization of certain products “in the field of the fermentative production of alkaloids through genetically modified cell-lines and substrate feeds for use as active pharmaceutical ingredients or as commercially sold intermediates in the manufacture of active pharmaceutical ingredients.” In December 2014, Intrexon entered into an ECC with Persea Bio, a Third Security affiliate formed for the development and commercialization of “a food program.” In March 2014, the Company and NRM VII Holdings I, LLC, a Third Security affiliate, entered into a limited liability company agreement which governs the affairs and conduct of business of IEP, which the Company has described as “a joint venture formed to optimize and scale-up our gas-to-liquid bioconversion platform for the production of certain fuels and lubricants.” In June 2015, the Company entered into an agreement with Harvest Intrexon Enterprise Fund I, L.P. (“Harvest”), an investment fund affiliated with Third Security that “was established to invest in life science research and development opportunities that [Intrexon] offered to Harvest.” For each opportunity it decides to pursue, Harvest will establish new collaboration entities which will enter into an ECC with Intrexon in a designated endeavor. In addition to this arrangement, the Company maintains at least three ECCs or joint ventures with Harvest affiliates.

31. These related-party ECCs and joint ventures have recently come under scrutiny from analysts. On April 27, 2016, Spotlight Research issued a report on Intrexon’s business titled “Intrexon: The Public Markets’ Theranos, Parts 2-8” (the “Spotlight Research Report”). Part 2 of the Spotlight Research Report, titled “The Related Party Business Model,” states in part:

XON thinks of themselves as a royalty company. The idea is that they find an interesting application for their technology, create a JV or Exclusive Channel Collaboration ("ECC") with an independent third party interested in pursuing that application, and take a royalty from the sales in that area if/when the technology is commercialized. While that idea is noble enough, in practice, XON does not do this in our view.

In reality, we believe that XON is creating revenues through round-tripping their own cash via related parties. These transactions represent almost half of XON's total revenues.

The transactions are simple to understand. First, XON (together with CEO RJ Kirk's private investment vehicle Third Security) gives cash to the JV/ECC partner. Then, the JV/ECC partner gives that cash right back to XON in exchange for "services" rendered. We see no meaningful products being commercialized or material advancements being made. Yet XON is able to recognize substantial revenue growth through moving their own cash via these transactions.

(Emphasis in original).

32. The Company also found a way to enrich Third Security in the months prior to the Company's August 2013 IPO. From March 1, 2013 to April 30, 2013, in connection with various stock financings the Company issued to Third Security and/or its affiliates 6,857,302 shares of preferred stock at a price of \$7.88 per share. When Intrexon completed the IPO approximately three months later on August 13, 2013, these preferred shares were converted into shares of Intrexon common stock on a one-for-one basis. The IPO, which was conducted at a price of \$16 per share, thus doubled the value of Third Security's investments in these private placements in the span of a few months, giving Third Security a windfall of roughly \$55 million.

The Vague and Illusory Services Agreement

33. On October 30, 2015, Intrexon filed with the SEC a Form 8-K disclosing that the Company had entered into the Services Agreement with Third Security effective as of November 1, 2015. The Form 8-K disclosed that at the time of the transaction, Kirk and his affiliates

beneficially owned approximately 53% of Intrexon's voting stock. The Form 8-K also noted that Kirk owned 100% of the equity of Third Security, and that Third Security, by virtue of its management of certain funds that own shares of Intrexon common stock, beneficially owned approximately 48.7% of the Company's voting stock at the time of the transaction.

34. The Form 8-K did not disclose the text of the Services Agreement, but provided a telling preview of the agreement. In particular, the Form 8-K stated:

Pursuant to the terms of the Services Agreement, Third Security will provide Intrexon with the services necessary or appropriate to support Intrexon and Mr. Kirk in his role as Chief Executive Officer of Intrexon. Third Security will provide a wide variety of resources to Intrexon at the direction of Mr. Kirk, including the efforts of professionals with significant experience in areas such as accounting, corporate finance, research and analysis, law, tax, due diligence support, complex transaction structuring and support, mergers and acquisitions, and strategic relationship development and opportunity sourcing. Third Security also will provide executive assistant, administrative, and other support services for Mr. Kirk in his role as Chief Executive Officer of Intrexon. Additionally, Third Security will provide such other general support services to Intrexon as directed by Mr. Kirk in such role.

* * *

In exchange for the foregoing services, Intrexon shall pay to Third Security a fee of \$800,000 per month, which payment shall be made in fully-vested shares of Intrexon Common Stock. The shares of Common Stock will be valued based on the closing price of Intrexon Common Stock on the 15th day of the applicable month (or the most recent trading day prior to such date if such date is not a trading day).

* * *

The Services Agreement has a term of one year, and may be extended only by agreement of the parties. An extension of the agreement will require, on behalf of Intrexon, approval of a majority of the independent members of the Board of Directors. The Services Agreement may be terminated at any time by Intrexon upon delivery of written notice to Third Security. Third Security may terminate the agreement upon 30 days' prior written notice.

35. On November 3, 2015, the Company filed with the SEC a Form 8-K/A enclosing, *inter alia*, the full text of the Services Agreement.

36. Paragraph 1 of the Services Agreement provides that “THIRD SECURITY will provide or cause to be provided to INTREXON those services necessary or appropriate to support INTREXON and the Chief Executive Officer of INTREXON as set forth on Schedule A, as the same may be amended from time to time by mutual agreement of the parties (the ‘Services’).” Schedule A defines the Services as follows:

THIRD SECURITY will provide the services necessary or appropriate to support INTREXON and the Chief Executive Officer of INTREXON. THIRD SECURITY will provide a wide variety of resources at the direction of the Chief Executive Officer of INTREXON, including the efforts of professionals with significant experience in areas such as accounting, corporate finance, research and analysis, law, tax, due diligence support, complex transaction structuring and support, mergers and acquisitions, and strategic relationship development and opportunity sourcing. THIRD SECURITY will provide executive assistant, administrative, and other support services for Mr. Kirk in his role as the Chief Executive Officer of INTREXON. Additionally, THIRD SECURITY will provide such other general support services to INTREXON as directed by Mr. Kirk in his role as Chief Executive Officer of INTREXON.

37. A plain reading of Schedule A demonstrates that the Services Agreement is largely illusory because the vast majority of the Services contemplated by the agreement are to be provided solely “at the direction of” Kirk, *i.e.*, only if and to the extent Kirk requests such services. The only category of Services to be provided by Third Security that could arguably be construed as mandatory is the provision of “executive assistant, administrative, and other support services.”

38. In exchange for Third Security’s illusory promise to provide Services “as directed by Mr. Kirk,” the Services Agreement provides that Intrexon will pay Third Security a fixed monthly payment of \$800,000 in the form of fully-vested shares of Company common stock. As

of May 31, 2016, Intrexon had issued to Third Security over 180,000 shares of Company common stock, presently valued at over \$4.3 million, as payment for Services purportedly rendered under the Services Agreement.

39. The payments of Intrexon common stock under the Services Agreement serve two self-interested purposes for Kirk by (i) lining his pocket with millions of dollars of Intrexon stock, and (ii) increasing his ownership of Intrexon and thereby enhancing his position as controlling stockholder of the Company.

40. The Company's public filings state that "[t]he Services Agreement was unanimously approved by the Audit Committee and the independent members of Intrexon's Board of Directors in accordance with Intrexon's policy on related person transactions." The Company, however, discloses nothing further about the process by which the Board or the Audit Committee purportedly evaluated and approved the Services Agreement. For example, the Company does not disclose, *inter alia*, the following details regarding the transaction: (i) when the Services Agreement was initially presented to the Board; (ii) how, if at all, the Services Agreement was negotiated between Intrexon and Third Security, including, *inter alia*, how the Services came to be defined, and how the \$800,000 per month payment was calculated; (iii) whether the Board formed a special committee and/or retained independent counsel in connection with the evaluation, negotiation and approval of the Services Agreement; (iv) how many times the Board or any committee thereof met to discuss the Services Agreement; and (v) Kirk's role in the presentation, negotiation and approval of the Services Agreement by the Company.

41. The Company's public disclosures since the filing of the Services Agreement do not answer these fundamental questions. Moreover, Intrexon has not disclosed any meaningful

information about the actual services, if any, Third Security has provided to the Company under the Services Agreement since its execution. The Company's public filings have only disclosed that its legal and professional expenses for the quarter ended March 31, 2016 increased by \$3.7 million over the same period last year due to a list of five factors which included "share-based payments due pursuant to our services agreement with Third Security, LLC which we entered into in November 2015."

42. Despite the lack of information regarding the Services Agreement and the Services provided thereunder, it is apparent from their descriptions in the agreement that many of the Services are duplicative of functions Intrexon itself performs. As of December 31, 2015, Intrexon had 640 full-time employees and 94 part-time employees, and Intrexon's executive management includes, *inter alia*, over a dozen specialists in a wide array of business disciplines, such as a Chief Legal Officer, a Chief Financial Officer, a Senior Vice President – Corporate Development, and a Senior Vice President of Finance. Thus, it is highly likely that Intrexon's existing personnel already provide, or have the capability to provide, most if not all of the Services contemplated by the Services Agreement.

43. It further appears that the Services to be provided by Third Security under the Services Agreement are duplicative of those provided to the Company by other third party providers. The Company currently utilizes PricewaterhouseCoopers LLP, one of the so-called "Big 4" accounting firms, as Intrexon's independent auditor and tax advisor. Additionally, Intrexon has received financial advice and counseling from a wide range of well-regarded companies, including, but not limited to, JP Morgan, Barclays Capital Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated. The Company has also utilized outside counsel from

nationally regarded law firms such as Troutman Sanders LLP and Greenberg Traurig to provide, *inter alia*, legal, financial and other strategic services.

44. In light of the abundance of Intrexon's in-house and external resources, the Company has not disclosed how or why the Services to be provided by Third Security are necessary and/or otherwise non-duplicative of those services that are either already being provided or could be provided to the Company. On the contrary, the Services Agreement appears to be nothing more than the latest in a long line of schemes to enrich Kirk and his affiliates at the expense of Intrexon and its shareholders.

DERIVATIVE AND DEMAND ALLEGATIONS

45. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

46. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress the Defendants' breaches of fiduciary duties and other violations of law.

47. Plaintiff is a shareholder of Intrexon, was a shareholder of Intrexon at the time of the wrongdoing alleged herein, and has been a shareholder of Intrexon continuously since that time.

48. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

49. On March 7, 2016, Plaintiff made a demand on the Board to take action against the Defendants to remedy the misconduct alleged herein (the "Demand"). A copy of the Demand is attached hereto as Exhibit A.

50. As of the filing of this Complaint, Plaintiff has received no substantive response to the Demand.

51. Because more than ninety (90) days have passed since the submission of the Demand, Plaintiff is entitled to proceed with the prosecution of the claims asserted herein.

COUNT I

Against the Individual Defendants for Breach of Fiduciary Duty

52. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

53. As directors and/or officers of Intrexon, each of the Individual Defendants had a fiduciary duty to, among other things, act in furtherance of the best interests of the Company and its stockholders and not in furtherance of their personal interests.

54. Each of the Individual Defendants breached his fiduciary duty of loyalty by knowingly causing and/or allowing Intrexon to enter into the unfair Services Agreement with Third Security, which was intended to, and did, unduly benefit defendant Kirk and his affiliates at the expense of the Company and was not entirely fair to the Company.

55. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duty, the Company has sustained damages, as alleged herein.

COUNT II

Against Kirk for Breach of Fiduciary Duty as Controlling Stockholder

56. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

57. As the controlling stockholder of Intrexon, Kirk had a fiduciary duty to, among other things, act in furtherance of the best interests of the Company and its stockholders and not in furtherance of his personal interests.

58. Kirk breached his fiduciary duty of loyalty by causing Intrexon to enter into the self-dealing Services Agreement in order to unduly benefit himself at the expense of the Company.

59. As a direct and proximate result of Kirk's breaches of fiduciary duty, the Company has sustained damages, as alleged herein.

COUNT III

Against Kirk for Unjust Enrichment

60. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

61. The Services Agreement confers substantial economic benefits upon Kirk, through its monthly payments of Intrexon common stock to defendant Third Security, an entity in which he owns 100% of the equity interests and serves as Senior Managing Director and Chief Executive Officer.

62. As Chairman of the Board and Chief Executive Officer of Intrexon, and as Senior Managing Director, Chief Executive Officer, and 100% owner of Third Security, Kirk was aware of the payments made under the Services Agreement and the need to ensure that adequate consideration was provided in exchange for these benefits.

63. Nonetheless, Kirk has accepted and retained these payments without providing adequate consideration in return

64. To remedy Kirk's unjust enrichment, the Court should enter an order compelling Kirk to disgorge the Company the improper benefits he has received as a result of the Services Agreement.

COUNT IV

Against Third Security for Aiding and Abetting the Individual Defendants' Breach of Fiduciary Duty

65. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

66. Third Security knew or had reason to know that the Board's actions in causing and/or allowing Intrexon to enter into the unfair Services Agreement was a breach of the Individual Defendants' fiduciary duties, yet Third Security nonetheless encouraged the Board to approve this agreement.

67. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duties, aided and abetted by Third Security, the Company has sustained damages, as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Against Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties and Third Security's aiding and abetting thereof;
- B. Ordering Kirk and Third Security to disgorge to the Company the improper benefits they have received as a result of the Services Agreement;
- C. Granting appropriate equitable relief to remedy Defendants' misconduct, including rescinding the Services Agreement and ordering the Company to cease making payments thereunder to Third Security;
- D. Awarding Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- E. Granting such other and further relief as the Court deems just and proper.

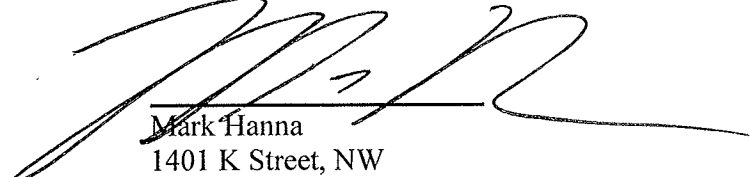
JURY TRIAL DEMANDED

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

Dated: July 7, 2016

Respectfully submitted,

MURPHY ANDERSON PLLC



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Exhibit A

Writer's Direct Dial: 610-822-2209
E-Mail: czagar@ktmc.com
Please reply to the Radnor Office

March 7, 2016

VIA FEDEX

Randal J. Kirk
Chief Executive Officer and Chairman of the
Board of Directors
Intrexon Corporation
20374 Seneca Meadows Parkway
Germantown, Maryland 20876

Re: Shareholder Demand

Dear Mr. Kirk:

This firm and the law firm of Andrews & Springer, LLC represent James V. Basile (the "Stockholder"), a holder of shares of common stock of Intrexon Corporation ("Intrexon" or the "Company") continuously since July 2015. I write on behalf of the Stockholder to demand that the Board of Directors of Intrexon (the "Board") take action to remedy breaches of fiduciary duties and/or unjust enrichment by certain members of the Board, including yourself, in connection with a Services Agreement the Company has entered into with Third Security, LLC ("Third Security").

As you are aware, by reason of their positions as officers and/or directors of Intrexon and because of their ability to control the business and corporate affairs of the Company, the officers and directors of Intrexon owe the Company and its stockholders the fiduciary obligations of loyalty, good faith and due care. The Stockholder believes that you and the following Board members violated these core fiduciary principles, causing Intrexon to suffer damages: Cesar L. Alvarez, Steven Frank, Jeffrey B. Kindler, Dean J. Mitchell, Robert B. Shapiro, and James S. Turley. The Stockholder further believes that Third Security aided and abetted the Board in their breaches of fiduciary duties.

As you know, on October 30, 2015, the Company announced that it had entered into a Services Agreement with Third Security, effective as of November 1, 2015. You stood on both sides of this transaction. You exercise control over Intrexon as Chief Executive Officer and Chairman of the Board, as well as through your beneficial ownership of approximately 53% of the Company's common stock, and you exercise control over Third Security as Senior Managing Director and Chief Executive Officer, as well as through your 100% equity ownership of that entity. Due to your relationships with Intrexon and Third Security, you have an interest in the Services Agreement that differs from those of the Company and its stockholders.

Indeed, as a result of these conflicting interests, you and your fellow Board members have caused Intrexon to grossly overpay Third Security under the Services Agreement. The Services Agreement contemplates that Third Security is to provide you with the following services in your capacity as Chief Executive Officer of Intrexon (the "Services"):

THIRD SECURITY will provide the services necessary or appropriate to support INTREXON and the Chief Executive Officer of INTREXON. THIRD SECURITY will provide a wide variety of resources at the direction of the Chief Executive Officer of INTREXON, including the efforts of professionals with significant experience in areas such as accounting, corporate finance, research and analysis, law, tax, due diligence support, complex transaction structuring and support, mergers and acquisitions, and strategic relationship development and opportunity sourcing. THIRD SECURITY will provide executive assistant, administrative, and other support services for Mr. Kirk in his role as the Chief Executive Officer of INTREXON. Additionally, THIRD SECURITY will provide such other general support services to INTREXON as directed by Mr. Kirk in his role as Chief Executive Officer of INTREXON.

As is readily apparent from the foregoing, the Services Agreement is largely illusory because the vast majority of the Services contemplated by the agreement are to be provided to you by Third Security *at your sole discretion*. To wit, the Services Agreement provides: "Each party acknowledges that the Services will be provided only with respect to INTREXON's business . . . as requested from time to time by INTREXON." The only category of Services to be provided by Third Security that is arguably mandatory is the provision of "executive assistant, administrative, and other support services." In exchange for this vague and potentially illusory consideration, the Services Agreement provides that Intrexon will pay Third Security a fixed monthly payment of \$800,000.00 in the form of fully-vested shares of Company common stock.

The Company's filings with the U.S. Securities and Exchange Commission state that "[t]he Services Agreement was unanimously approved by the Audit Committee and the independent members of Intrexon's Board of Directors in accordance with Intrexon's policy on related person transactions." The Company, however, discloses nothing further about the process by which the Board or the Audit Committee evaluated and approved the Services Agreement. For example, the Company does not disclose, *inter alia*, the following details regarding the transaction: (1) when the Services Agreement was initially presented to the Board; (2) how the Services Agreement was negotiated between Intrexon and Third Security; (3) whether any special committee was formed and/or any independent counsel was retained in connection with the evaluation, negotiation and approval of the Services Agreement; (4) how many times the Board or any committee thereof met to discuss the Services Agreement; and/or (5) your role in the presentation, negotiation, and approval of the Services Agreement by the Company.

Randal J. Kirk
March 7, 2016
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Accordingly, on behalf of the Stockholder, I hereby demand that the Board: 1) rescind the Services Agreement and preclude the Company from making any further payments thereunder; and 2) require Third Security to disgorge to the Company any payments received pursuant to the Services Agreement.

If within ninety (90) days from the date of this letter the Board has not taken the action demanded herein, or in the event that the Board refuses to take the action demanded herein, the Stockholder will commence a shareholder derivative action on behalf of the Company seeking appropriate relief.

Very truly yours,

KESSLER TOPAZ
MELTZER & CHECK, LLP

A handwritten signature in black ink, appearing to read "Eric L. Zagar", written over a horizontal line.

Eric L. Zagar

ELZ/ cmw

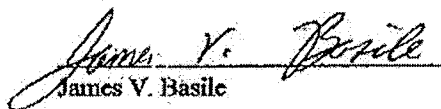
cc: Craig J. Springer, Esq.

Exhibit B

VERIFICATION

I, James V. Basile, hereby verify that I have authorized the filing of the attached Verified Shareholder Derivative Complaint, that I have reviewed the Verified Shareholder Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

Date: 6/29/16


James V. Basile