

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CBS CORPORATION, GARY L.
COUNTRYMAN, CHARLES K. GIFFORD,
BRUCE S. GORDON, LINDA M. GRIEGO,
and MARTHA L. MINOW,

Plaintiffs,

v.

C.A. No. 2018-0342-AGB

NATIONAL AMUSEMENTS, INC., SHARI
REDSTONE, SUMNER M. REDSTONE,
NAI ENTERTAINMENT HOLDINGS LLC,
and SUMNER M. REDSTONE NATIONAL
AMUSEMENTS TRUST,

Defendants.

AMENDED VERIFIED COMPLAINT

1. Plaintiffs CBS Corporation, the media company, and the members of a Special Committee of independent directors of CBS bring this action to seek a determination that the Board’s recent action to prevent CBS’s controlling stockholder National Amusements, Inc. (“NAI”), Shari Redstone, and Sumner Redstone from breaching their fiduciary duties and harming the Company and its public stockholders through the declaration of a Class A Stock Dividend was effective and permissible.

2. Ms. Redstone, through her recently-obtained domination and control of NAI, has taken actions over the past two years that have led the Special

Committee and all members of the CBS Board that are not affiliated with NAI to conclude that she presents a significant threat of irreparable and irreversible harm to the Company and its stockholders:

- After gaining control of Viacom, Ms. Redstone pushed for a merger of CBS and Viacom, which also is controlled by NAI (refusing to allow all CBS stockholders to vote on a transaction), but promptly shut down discussions when CBS demanded certain governance protections for the 90% of the stock of the combined company that would be owned by unaffiliated public stockholders.
- Ms. Redstone has interfered with the Nominating and Governance Committee process. In 2017, Ms. Redstone filled Mr. Redstone's newly vacant board seat with the Redstones' personal lawyer, Robert Klieger, who has since been instructing management and other directors on Ms. Redstone's/NAI's wishes — including the desire to replace certain directors.
- CBS's management team, led by Leslie Moonves (CEO and Chairman of the Board), is one of the most accomplished and successful in the media business. In a demanding and rapidly changing marketplace, the Moonves-led team articulated a strategic plan, executed on that plan, and consistently delivered superior results. Nevertheless, Ms. Redstone has

acted to undermine the management team, including, without Board authority, talking to potential CEO replacements, deriding the Chief Operating Officer, and threatening to change the Board. These escalating attacks make it difficult for management to perform its duties and threaten continuity of management.

- Most recently, Ms. Redstone has once again proposed a CBS/Viacom merger, which the Special Committee — formed with plenary authority to address the merger proposal — has concluded is not in the best interests of CBS and its stockholders.
- During the course of the Special Committee’s negotiations with respect to a possible merger, Ms. Redstone refused to agree to typical public company governance or to submit any potential transaction to a vote of all of the unaffiliated public stockholders of CBS.
- It has been reported that Ms. Redstone is prepared to replace directors at CBS, including members of the Special Committee, in order to compel a merger regardless of the determination of the Special Committee and the other independent directors of CBS. While Ms. Redstone and NAI have denied having had such intention, they have conspicuously failed to rule out taking such a step.

- As described below, Ms. Redstone used written consents at Viacom to block management's business plans, replace directors, and force out the CEO.
- Ms. Redstone told the CEO of a potential acquirer of CBS that he should not make such an offer, thereby depriving CBS stockholders of a potentially value-enhancing opportunity that the Board or the Special Committee should have been free to evaluate, even if to use as negotiating leverage in connection with discussions concerning Viacom. Remarkably, Ms. Redstone and NAI have defended their purported ability to perform quintessential board functions ahead of the Board and without Board authorization, suggesting they will do so again.

3. This behavior and the uncertainty and negative public attention it has engendered have harmed CBS and its stockholders and will continue to do so. CBS's stock price has dropped from its 2017 high of nearly \$70 per share to nearly \$50 per share since merger talks were reinstated — a loss of billions of dollars in market cap suffered by the Class B stockholders. This loss of market value has occurred despite management consistently delivering excellent results.

4. By way of background, NAI (controlled by Ms. Redstone) controls the Company through dual-class shares. CBS has two classes of stock, both publicly traded on the New York Stock Exchange: Class A common stock,

which has voting power, and Class B common stock, which does not. Ms. Redstone, through NAI, effectively controls approximately 79.7% of the voting power of CBS. But NAI owns only approximately 10.3% of the economic stake in the Company.

5. In 2005, CBS and Viacom were split into the standalone entities they are today. Thereafter, Mr. Redstone (who controlled NAI and CBS at that time) repeatedly made public statements promising that CBS would be run as an independent NYSE-listed public company, with independent management and an independent board. Mr. Redstone also made clear that he intended this commitment to continue even after he no longer had control. Ms. Redstone stood by these public statements and has not retracted them — publicly — since taking the helm of NAI. Against this backdrop of promised independence, CBS flourished for a decade under the leadership of Mr. Moonves and his team.

6. But Ms. Redstone's recent actions show that she will break those promises. She has threatened to impose her and NAI's will on the Company at the expense of all of the Company's stockholders. She has undermined management. It has been publicly reported that she will replace directors who will not do her bidding. She has sought to combine CBS and Viacom regardless of the strategic and economic merits of the transaction and to the exclusion of considering any other potential transaction. While she has claimed in response to

this litigation that she had no intention of forcing a merger not agreed to by the boards of each company, nor had any intention to replace directors with one exception, Ms. Redstone has made no commitment that she will not now replace CBS's independent Board with directors who would be willing to approve a CBS merger with Viacom and has expressly reserved the right to do so. Those actions have damaged, and will continue to damage, CBS and its stockholders.

7. Accordingly, the five members of CBS's Special Committee, all independent directors of the Company, unanimously believed that the CBS Board had a fiduciary duty to act immediately to protect all stockholders and prevent Ms. Redstone from continuing to misuse her power as a controller, in breach of her fiduciary duties. To that end, at the Special Committee's request, and with the support of the other directors not affiliated with NAI, CBS scheduled a properly noticed meeting of the full CBS Board for May 17, 2018 (the "Special Board Meeting") to consider potential responses to Ms. Redstone's conduct, including the issuance of a dividend of voting Class A shares to all stockholders — both Class A and Class B. The contemplated dividend would have the effect of reducing the Redstones' and NAI's voting power — from approximately 80% to approximately 20% — but would not dilute the economic ownership interests of any CBS stockholders, including NAI. This dividend is expressly permitted by the Company's Amended and Restated Certificate of Incorporation (the "Certificate").

8. On May 16, 2018, NAI delivered written consents that purported to amend CBS's Amended and Restated Bylaws (the "Bylaws") to give NAI a veto right over any dividend. NAI did so despite the pendency of a TRO application before this Court. This action was an improper attempt to block CBS's directors from exercising their statutory authority as required by their fiduciary duties in the best interests of all CBS stockholders. However, the attempt was unsuccessful: these purported bylaw amendments are inequitable and invalid under Delaware law and were not effective at the time of the Special Board Meeting pursuant to federal securities laws.

9. The Special Board Meeting was held on May 17, 2018, with all 14 members of the CBS Board present or participating by phone. The Board heard from the Company's Chief Legal Officer, the Special Committee's outside counsel, the Company's outside counsel, a financial advisor to the Company, the Company's CEO, the Chair of the Special Committee, a second member of the Special Committee, Ms. Redstone, Ms. Redstone and NAI's outside counsel (including written presentations from counsel and a financial advisor), and Mr. Klieger, a director who also serves as the Redstones' personal attorney.

10. After deliberation, by a vote of 11 to 3 — *i.e.*, with all directors not affiliated with NAI voting in favor — the Board "determined the ongoing and persistent conduct of the current controlling stockholder, including interference

with the Board's management of the business and affairs of the Corporation, has been and threatens to continue to be substantially injurious to the best interests and welfare of the Corporation and its stockholders, and is detrimental to the Corporation's long-term effectiveness." The Board resolved to declare a dividend of 0.5687 shares of Class A common stock for each share of Class A and Class B stock (the "Stock Dividend"). The payment of the Stock Dividend is conditioned on a final determination by the Delaware courts that the Stock Dividend is permissible. If the Stock Dividend is paid, the public stockholders of CBS would be able to elect the Board of their choice thereafter.

THE PARTIES

11. Plaintiff CBS Corporation is a media corporation headquartered in New York and organized under the laws of Delaware. It is one of the world's largest entertainment companies. The Company's common stock is divided into two classes, both of which are publicly traded on the New York Stock Exchange. CBS Class A common stock (traded as CBS.A) has one vote per share on all issues. CBS Class B common stock (traded as CBS) has no voting rights. CBS has 14 directors on its Board, the majority of whom are independent under NYSE rules.

12. The Special Committee is comprised of five independent directors: Chairman Bruce S. Gordon, Gary L. Countryman, Charles K. Gifford,

Linda M. Griego, and Martha L. Minow. The Special Committee was formed to consider a potential combination with Viacom, at the request of Ms. Redstone, and was vested with the full authority of the Board with respect to any “matters relating to, or arising from,” its “consider[ation], negotiat[ion] and overs[ight] [of] the Potential Transaction.”

13. Bruce S. Gordon is an independent director of CBS and serves as Chair of the Special Committee. Mr. Gordon completed a 35-year career in the telecommunications industry in 2003 when he retired from Verizon, where he served as President of the Retail Markets Group since 2000. Before that, Mr. Gordon served as President of Enterprise Business of Bell Atlantic (Verizon’s predecessor) since December 1998. Mr. Gordon is also a director of Northrop Grumman and was formerly a director of ADT Corp. Mr. Gordon became the first business executive to head the National Association for the Advancement of Colored People, which he led from 2005 to 2007. He has been a director of CBS since 2006 and is a Class B stockholder.¹

14. Special Committee member Gary L. Countryman is an independent director of CBS. Mr. Countryman is a 40-year veteran of the insurance industry, and has been Chairman Emeritus of Liberty Mutual since 2000. He served as Chairman of Liberty Mutual from 1986 to 2000 and as its Chief

¹ The directors’ stock ownership may include cash-settled units as described further in the Company’s proxy statement.

Executive Officer from 1986 to 1998. He has been a director of CBS since 2007 and is a Class A and Class B stockholder.

15. Special Committee member Charles K. Gifford is an independent director of CBS. Mr. Gifford has been Chairman Emeritus of Bank of America since February 2005, and was a director of Bank of America for 12 years. He was Chairman and Chief Executive Officer of BankBoston before its 1999 merger with Fleet Financial and became President and Chief Operating Officer of the combined companies. Mr. Gifford became Chief Executive Officer of FleetBoston Financial in 2001 and Chairman in 2002. He has been a director of CBS since 2006 and is a Class B stockholder.

16. Special Committee member Linda M. Griego is an independent director of CBS. Ms. Griego has served, since 1986, as President and Chief Executive Officer of Griego Enterprises, Inc., a business management company. From 1990 to 2000, Ms. Griego held a number of government-related appointments, including Deputy Mayor of Los Angeles, President and Chief Executive Officer of the Los Angeles Community Development Bank, and President and Chief Executive Officer of Rebuild LA. Over the past two decades, she has also served on a number of government commissions and boards of directors of nonprofit organizations, including current service on the boards of the David and Lucile Packard Foundation, the MLK Health and Wellness CDC, and

the Board of Trustees of the Charles R. Drew University of Medicine and Science.

Ms. Griego has served as a director of publicly traded and private corporations, and is presently serving as director of AECOM. She has been a director of CBS since 2007 and is a Class B stockholder.

17. Special Committee member Martha L. Minow is an independent director of CBS. Ms. Minow's 37-year career at Harvard Law School, including her tenure as Dean of Harvard Law School, reflects exceptional achievements in academia. She is the Carter Professor of General Jurisprudence at Harvard Law School and a Harvard University Distinguished Service Professor. A fellow of the American Academy of Arts & Sciences since 1992, Ms. Minow has also been a senior fellow of Harvard's Society of Fellows, a Fellow of the American Bar Foundation, and a Fellow of the American Philosophical Society. She has served extensively on government commissions and boards of directors of nonprofit organizations, and currently serves as Vice-Chair of the Legal Services Corporation, a trustee of the MacArthur Foundation and an advisory council member of the MIT Media Lab, among others. Ms. Minow has been a director since 2017, when she was nominated at the request of Ms. Redstone, and is a Class A and Class B stockholder.

18. Defendant NAI is a Maryland corporation headquartered in Massachusetts and the controlling stockholder of CBS. NAI beneficially owns,

directly and indirectly through its co-defendant and wholly-owned subsidiary NAI Entertainment Holdings LLC, approximately 79.7% of CBS's outstanding Class A common stock and approximately 10.3%, on a combined basis, of CBS's outstanding Class A common stock and Class B common stock. In 2016, the board of directors of NAI was reconstituted to include Ms. Redstone's daughter, Kimberlee Ostheimer, Ms. Redstone's son, Brandon Korff, and her friend, Jill Krutick. They joined existing NAI board members Ms. Redstone, her son, Tyler Korff, Mr. Redstone, and David Andelman (who is also a director of CBS). Ms. Redstone effectively controls NAI.

19. Defendant NAI Entertainment Holdings LLC (hereinafter referred to together with NAI as "NAI"), a direct, wholly-owned subsidiary of NAI, is a Delaware corporation headquartered in Massachusetts.

20. Defendant Sumner M. Redstone is Chairman Emeritus of CBS and previously served as Executive Chairman of CBS until February 2016. He is also the CEO and Chairman of the Board of NAI. Mr. Redstone has been named as a defendant to ensure appropriate relief.

21. Defendant Sumner M. Redstone National Amusements Trust (the "SMR Trust") is the irrevocable trust of defendant Sumner M. Redstone. The SMR Trust owns 80% of the voting interest of NAI. The governance documents of the SMR Trust provide that, in the event of Mr. Redstone's death or incapacity,

voting control of the NAI voting interest held by the SMR Trust will pass to the board of trustees, which will include Ms. Redstone and her son, Tyler Korff. In 2016, Mr. Redstone's estate plan was changed to reconstitute the board of trustees of the SMR Trust to include Thaddeus Jankowski (the general counsel of NAI) and Ms. Krutick, thereby ensuring Ms. Redstone's continued effective control of the SMR Trust.

22. Defendant Shari Redstone is the daughter of Sumner Redstone, Vice Chair of the CBS and Viacom boards, and President and a director of NAI. Ms. Redstone is also set to become a trustee of the SMR Trust upon Mr. Redstone's death or incapacity and effectively controls the SMR Trust, NAI and Viacom, though the legitimacy of Ms. Redstone's control remains subject to challenge and ongoing litigation. Through the Shari E. Redstone Trust, Ms. Redstone owns the remaining 20% voting interest in NAI not controlled by the SMR Trust.

JURISDICTION

23. This Court has jurisdiction over this action pursuant to 10 *Del. C.* §§ 341 and 342, as this matter is a cause in equity for which there is no adequate remedy at law.

BACKGROUND

I. CBS's governance structure and leadership following the split from Viacom.

24. CBS began as a radio broadcaster almost 100 years ago. In 1970, CBS spun off its cable television business, Viacom. NAI, under the control of Sumner Redstone, acquired Viacom in 1987. In 2000, NAI acquired CBS and merged it into the old Viacom.

25. In November 2005, NAI announced the separation of CBS and Viacom, which was completed on December 31, 2005. The certificates of incorporation of both companies provided that the common stock would consist of Class A and Class B stock, which were to be identical except as otherwise specified, with the primary difference being that the Class A stock would be able to vote and the Class B would not. By virtue of its Class A stock ownership, NAI holds approximately 80% of the voting power of each company, but only approximately 10% of the economic interest.

26. CBS's Certificate vested in the Board the right to declare stock dividends — and, notably, gave the Board the right to declare a dividend of Class A voting stock to all the stockholders, including the Class B stockholders. Article IV, Section 2(b) of the Certificate provides in relevant part:

The Board of Directors may, at its discretion, declare a dividend of any securities of the Corporation . . . to the holders of shares of Class A Common Stock and Class B

Common Stock (i) on the basis of a ratable distribution of identical securities to holders of shares of Class A Common Stock and Class B Common Stock or (ii) on the basis of a distribution of one class or series of securities to holders of shares of Class A Common Stock and another class or series of securities to holders of Class B Common Stock,

The second subsection is subject to a proviso on how those different classes of securities may differ.²

27. Therefore, the plain language of the Certificate authorizes the Board to issue a stock dividend of either “identical” securities to both classes of stockholders, or different securities to the different classes. The Certificate thus clearly vests in the Board the power and authority to grant a stock dividend that would provide voting power to the non-voting stockholders provided only that

²The proviso to the section 2(b)(ii) states:

provided that the securities so distributed (and, if the distribution consists of convertible or exchangeable securities, the securities into which such convertible or exchangeable securities are convertible or for which they are exchangeable) do not differ in any respect other than (x) differences in their rights (other than voting rights and powers) consistent in all material respects with differences between Class A Common Stock and Class B Common Stock and (y) differences in their relative voting rights and powers, with holders of shares of Class A Common Stock receiving the class or series of such securities having the higher relative voting rights or powers (without regard to whether such voting rights or powers differ to a greater or lesser extent than the corresponding differences in the voting rights or powers of Class A Common Stock and Class B Common Stock provided in Section (2)(a) of this Article IV).

identical voting shares so issued are issued ratably to the Class A and Class B stockholders. The Viacom certificate of incorporation is identical.

28. The Company reiterated this authorization to issue a dividend in the form of Class A stock in its registration statement in 2005: the Company informed its investors that, if the Board were to declare a stock dividend, “the board of directors will determine whether the holders of CBS class A common stock and CBS class B common stock are to receive identical securities or to receive different classes or series of securities.” (CBS Corp., Form S-4/A, Nov. 23, 2005.) The Company described the Board’s power to approve stock dividends similarly in subsequent registration statements.³

29. Following the 2005 split, CBS continued to be the home to the CBS broadcasting network and steward of government-regulated broadcast licenses that CBS is obligated to use in the public interest. Mr. Redstone became Chairman of CBS, Ms. Redstone became the Company’s Vice Chair, and Mr. Moonves became President and Chief Executive Officer. Mr. Moonves has held senior management positions at CBS since 1995, including President of CBS Entertainment, and President, CEO, and Chairman of CBS Broadcasting.

³ See, e.g., CBS Corp., Form S-3ASR, Nov. 3, 2017; CBS Corp., Form S-3ASR, Nov. 3, 2011.

II. Sumner Redstone promises strong corporate governance practices to protect public stockholders at CBS and Viacom.

30. Sumner Redstone's super-majority voting control was long recognized as a potential cloud and depressant on the market value of CBS stock, which Wall Street dubbed the "Redstone Discount." As Michael Nathanson, an analyst at Sanford Bernstein, explained: "There is definitely a Redstone discount on [CBS and Viacom]." "Investors will say, 'I don't want to be involved with any of these because we don't know what Sumner will do.'" (*New York Times*, Nov. 25, 2008.)

31. In an effort to mitigate this "Redstone discount," from its beginnings as a stand-alone company, CBS (and Viacom) adopted and maintained, with Sumner and Shari Redstone's public support, corporate governance policies and procedures that were designed to protect the public stockholders. On multiple occasions, from the Form S-4 filing in connection with its spinoff in 2005 up to its most recent proxy statement (which Ms. Redstone reviewed and approved), CBS touted the independence of its Board and, with Sumner Redstone's agreement, represented that CBS was — and would be — governed by an independent Board "despite being a 'controlled company.'"

32. For instance, in the registration statement filed in connection with its 2005 spin-off, CBS represented that:

- “a majority of the CBS Corp. directors must be independent, as ‘independence’ is defined in the NYSE listing standard and in the CBS Corp. Guidelines”; and that
- “[i]n several areas, CBS Corp.’s practices will go beyond the requirements of the NYSE listing standards. For example, despite being a ‘controlled company,’ CBS Corp. will have a majority of independent directors on its board of directors and will have an independent compensation committee and an independent nominating and governance committee”

33. CBS made materially identical representations on many subsequent occasions, including in all 13 of the proxy statements it filed between 2006 and 2018.⁴

34. In its SEC filings, the Company also “encourages its stockholders to read” its principal governance documents, including its Corporate Governance Guidelines and its Nominating and Governance Committee Charter, “as the Company believes they illustrate CBS Corporation’s commitment to good governance practices.” The Corporate Governance Guidelines provide:

- “The Board has adopted these guidelines to reflect CBS’s commitment to the highest standards of corporate governance”
- “The Board currently has 14 members. The Board will regularly evaluate its size in connection with the director nomination process and at such other times as it deems appropriate.”

⁴ See CBS Corp. Schedules 14A issued April 14, 2006; April 13, 2007; April 11, 2008; April 24, 2009; April 16, 2010; April 15, 2011; April 13, 2012; April 12, 2013; April 11, 2014; April 10, 2015; April 15, 2016, April 7, 2017, and April 6, 2018.

- “*Independence.* A majority of CBS’s directors will meet the criteria for independence established by the New York Stock Exchange (NYSE) corporate governance listing standards.”
- “The Nominating and Governance Committee [which is composed of independent directors] will recommend director candidates to the Board in accordance with the criteria, policies and principles set forth in its Charter and in these Guidelines. Qualified candidates for the Board recommended by stockholders shall be reviewed in accordance with the policies established by the Nominating and Governance Committee.”

35. The Nominating and Governance Committee Charter, which is referenced in the Corporate Governance Guidelines, states:

- “The Nominating and Governance Committee is established by the Board for the following purposes: (i) assisting the Board by identifying individuals qualified to become Board members and recommending to the Board director nominees to stand for election at the next annual meeting of stockholders, (ii) making recommendations to the Board as to the independence of each director, (iii) monitoring significant developments in the law and practice of corporate governance and of the duties and responsibilities of directors of public companies”
- “The committee shall identify and recommend to the Board candidates for election or re-election to the Board, or for appointment to fill any vacancy that is anticipated or has arisen on the Board, in accordance with the criteria, policies and principles set forth in the Company’s Corporate Governance Guidelines and this Charter.”
- “The committee shall review qualified candidates for the Board recommended by stockholders. The process for stockholders to submit their recommendations for candidates for the Board will be disclosed in the Company’s annual proxy statement.”

36. From the outset, CBS, its Board, and the investing public understood that Mr. Redstone, on behalf of NAI, was fully committed to the

principle expressed in these corporate filings: that CBS should be and would be governed by an independent board of directors for the benefit of the Company and all its stockholders, not just the controlling stockholder. For example, in an October 4, 2006 appearance on television, Mr. Redstone said of CBS and Viacom: “*I have never operated these companies as controlled companies. I do not operate that way. I never will.*” And, on August 6, 2007, *BusinessWeek* published an excerpted interview with Mr. Redstone in which he stated: “Control is bad if you use it for your own interests. And everyone in our industry knows I have never done that. . . . So I certainly don’t put my interests ahead of the stockholders. I have never used control for my personal interests.”

37. In a widely quoted and publicized letter addressed to Robert Lenzner of *Forbes* on July 20, 2007, Mr. Redstone wrote: “I am determined as always that these companies be operated in the best interest of stockholders. Accordingly, I am determined that in accordance with the rules of good governance, the boards of Viacom and CBS select my successor — and that no person be imposed on the boards. . . . It must be remembered that I gave to my children their stock; and it is I, with little or no contribution on their part, who built these great media companies with the help of the boards of both companies.”

38. As the chairman of the board of CBS’s controlling stockholder, NAI, Mr. Redstone reiterated these sentiments on countless occasions. Each time,

he extolled the CBS Board's independence and reiterated that CBS's controlling stockholder would not interfere with the business judgment of the Board in conducting the business and affairs of CBS.

39. As a director of both CBS and NAI, Ms. Redstone approved and never publicly contradicted the foregoing statements. Moreover, in the past she has publicly stated her own support of the CBS Board and intention not to interfere with the Company's management. Indeed, when CBS and Viacom separated in 2005, Ms. Redstone remarked, "Today's announcement reflects our determination to have each Board comprised of a majority of independent directors who have significant financial and management expertise, and diverse backgrounds." By way of further example, in a July 8, 2011 interview on Bloomberg TV, Ms. Redstone said: "We have super management in both companies [CBS and Viacom]. They know what they're doing. . . . They certainly don't need me to tell them how to run their business."

40. But Ms. Redstone failed to respect these promises at Viacom and is now threatening to do the same at CBS.

III. CBS performs strongly for more than a decade.

41. All the while, CBS has experienced tremendous success and has been a market leader. That success continues today: CBS has been the most-watched television network in primetime for 14 out of the past 15 seasons and for

the last nine consecutive years. For the 2017-18 season, the CBS Television Network has three of the top five scripted series, and seven of the top 10 scripted series — far more than all of the other networks combined. In addition, CBS has 14 time-period-winning programs, also more than all the other networks combined. This includes the #1 new series and the #1 news magazine. Thirteen CBS series are averaging more than 10 million viewers, more than any other network.

42. At a time when many media companies are losing subscribers because of cord-cutting, CBS is winning subscribers through its strategy of distributing its premium content across all the platforms that viewers want, including traditional multichannel video programming distributors (“MVPDs”), virtual MVPDs (through “skinny bundles”), and its direct-to-consumer streaming services, CBS All Access and Showtime OTT. The Company has now grown its paid subscribers at CBS and Showtime for three quarters in a row, both sequentially and year over year. This is a rare, significant, and telling metric in today’s media environment.

43. The Company’s strategic success has translated into record financial results year after year, with 2017 marking the company’s eighth straight year of earnings per share (“EPS”) growth, and the company achieving significant returns for stockholders and positioning CBS for further long-term success. CBS had an “exceptional” 2016, and “achieved a record level of revenue” in 2017.

(CBS Schedules 14A, Apr. 7, 2017, Apr. 6, 2018.) Both years' proxy filings attributed these banner results to the continued leadership of Mr. Moonves and the senior management team. This success continued in the most recent earnings report, when CBS posted EPS growth of 26% in the first quarter of 2018, marking the Company's 33rd consecutive quarter of EPS growth. In connection with the release of those earnings, Mr. Moonves recently stated "there is so much more to come."

IV. Ms. Redstone Acquires Control of NAI and Viacom.

44. In February 2016, as Mr. Redstone's health continued to decline, he retired from his role as Chairman of both CBS and Viacom. Acting under circumstances that have been and continue to be the subject of litigation, Ms. Redstone then effectively took control of the SMR Trust, NAI, and Viacom. In the litigation attacks on Ms. Redstone's conduct, it has been alleged in detail that Ms. Redstone and her son devised and executed a plan illegally to wrest control of NAI (and thus, CBS) from Mr. Redstone using means and under circumstances, if proven, that would render Ms. Redstone's effective control of NAI (and CBS) inoperative.

45. Though Ms. Redstone temporarily acquiesced in the selection of Mr. Moonves as the new Chairman of CBS, she had soured on Viacom CEO Phillippe Dauman and was the sole director to vote against his election as the new

Chairman of Viacom. Though he was elected Chairman by the vote of the remaining directors, he soon became the first target of Ms. Redstone, who attempted to use written consents to block management's business plans, replace directors, and push Mr. Dauman out of Viacom.⁵

V. In 2016, Ms. Redstone makes her first attempt to shore up Viacom through a merger of CBS and Viacom.

46. Immediately after ensconcing new directors on the Viacom board, NAI, under Ms. Redstone's control and with Mr. Redstone's purported acquiescence, sent letters to the boards of Viacom and CBS recommending that they consider a merger. NAI would not agree to a public stockholder vote on any proposed merger, and its letters made clear to the public that NAI would not accept any other transaction. The deal foundered because CBS insisted, as a precondition to further talks, that NAI agree to restrictions on NAI's ability to act unilaterally and to guarantee absolutely that the combined CBS/Viacom entity would be managed as a non-controlled public company with a majority-independent board for at least the next five years. Ms. Redstone — contrary to the long-expressed promises of her father — would not agree to that.

⁵ As discussed further below, in light of a negotiated settlement, it was not determined whether the consents were valid under Delaware law or effective at the time they were delivered.

47. On the day the merger talks were called off, December 12, 2016, Viacom's stock price fell 9% from the previous business day's close, while CBS's shares were flat.

VI. Starting in late 2017, Ms. Redstone makes her second attempt to combine CBS and Viacom to the detriment of CBS stockholders.

48. To strengthen Viacom at the expense of CBS's stockholders, Ms. Redstone yet again set out to merge CBS and Viacom. Rumors that Ms. Redstone was planning this move started circulating in late 2017.

49. By early January 2018, in the face of analysts and investors viewing Viacom's prospects as a standalone business as grim, Ms. Redstone once again formally approached the boards of CBS and Viacom and pressed for a combination of the two companies. Viacom's stock price leapt as a result. Between the start of November 2017 (when speculation about Ms. Redstone's potential actions first began) and early May 2018, Viacom's stock price soared nearly 20%, while the S&P 500 has been virtually flat, rising a mere 3%. By contrast, the market understood that the deal would not be beneficial for CBS. In April 2018, CBS's stock price sank to a low of \$49.20 per share because of the Viacom-related speculation, representing an \$8.7 billion loss in market cap from its 52-week high for the Class B public stockholders. The "Redstone Discount" was back.

50. Ms. Redstone has also made clear that she will not entertain any third-party offers for control of CBS, even if they offer a high premium to CBS's stock price, just as publicly stated in NAI's letters initiating merger talks in 2016.

51. But her actions went further than simply stating that she would not entertain other offers for CBS. In the past year, Ms. Redstone took it upon herself to tell the CEO of a potential acquirer that he should not even make an offer for CBS to the CBS Board. The refusal even to allow the Board to consider such an offer deprived CBS's stockholders of a value-enhancing opportunity that the Special Committee or the Board, not Ms. Redstone, should have been free to evaluate and potentially use as leverage in other negotiations, including the Special Committee's negotiations with Viacom.

52. In response to Ms. Redstone's demand that CBS again consider a merger of CBS and Viacom, the CBS and Viacom boards each formed special committees to evaluate and negotiate a potential combination, just as they had in late 2016. As detailed above, the CBS Special Committee consists of five independent directors.

53. The Board granted its full authority to the Special Committee to, among other things, "take such actions as it may deem necessary or desirable to consider, negotiate and oversee the Potential Transaction, including with respect to making recommendations to the Board and stockholders of the Corporation in

favor of or against the Potential Transaction, [and] determine whether any such Special Committee Matters are in the best interest of the Corporation and its stockholders and to report its recommendation to the Board and/or the stockholders of the Corporation.” The Board further determined that it would not approve any transaction without a prior favorable recommendation of the Special Committee. The Special Committee members were to serve until a successor was duly appointed and qualified, or until their death or resignation. There was no contemplation that any of these directors would not continue to be directors throughout the full process of considering a potential transaction, including all matters arising from or relating to a potential transaction. Likewise, there was no contemplation that the Board would not be permitted to consider the appropriate actions to take following a decision to end discussions of a combination.

54. At least publicly, Ms. Redstone and NAI professed support for “the processes announced by CBS and Viacom to evaluate a combination of the two companies, which we believe has the potential to drive significant, long-term shareholder value.” But, as recounted below, behind the scenes it was quite different. Ms. Redstone refused to submit any potential transaction to a vote of all of the CBS public stockholders, and insisted that she be party to the special committees’ confidentiality agreement and receive all the materials the committees

received. At critical moments, she has injected herself into the process and made it difficult for the two independent committees to function free of her interference.

55. On February 1, 2018, the Company confirmed publicly that the Special Committee had been formed. Given the Company's long-time commitment to independent governance, stockholders reasonably expected that the Special Committee would operate free from the influence of NAI.

56. On February 20, 2018, at least one analyst upgraded its outlook on CBS, based on the "thinking that rational heads would prevail" and that any merger between Viacom and CBS would see a premium flowing to CBS, not the other way around. As the analyst later put it, "Viacom needs CBS, not vice versa." (*Huber Research*, Apr. 5, 2018.)

57. But the parties began negotiations very far apart with respect to an appropriate exchange ratio and the relative values of the companies. As the negotiations continued through March and April of this year, the parties also disagreed on the other key terms — management and governance of the combined companies. Indeed, the CBS Special Committee members had misgivings as to whether a merger was in the best interests of CBS stockholders other than NAI and would not agree to any combination absent the appropriate management structure and corporate governance protections of a combined entity.

58. The two sides were able to move closer on some terms, but the negotiations were repeatedly undermined by public leaks of confidential offer terms and the substance of the negotiations and by Ms. Redstone's improper influence. Indeed, critical corporate governance issues designed to protect the independence of any merged entity could never be resolved because the Viacom special committee advised the CBS Special Committee that these points had to be resolved with Ms. Redstone. Ms. Redstone was unwilling to agree to a governance structure essential to the success of the combined entity. As news of the parties' differences continued to leak, the public (as well as the Special Committee) began to anticipate Ms. Redstone's feared next step — replacing the CBS Board and management to force through the merger. Indeed, the *Wall Street Journal* predicted that “[h]er next move may be to oust CBS board members loyal to Mr. Moonves” in order to force through a deal with her chosen successor, no matter the potential harm to CBS stockholders. (*Wall Street Journal*, Apr. 5, 2018.)

59. On numerous occasions, press reports have been sourced to “persons close to Ms. Redstone” or “persons with knowledge of Ms. Redstone’s thinking” or similar formulations, indicating that Ms. Redstone was the source of the leaks. These instances have, among other things, expressed Ms. Redstone’s disregard for CBS’s COO and her criticism of the CBS Board of Directors as lacking independence and (in her view) being overly deferential to Mr. Moonves.

Those reports also included Ms. Redstone's assertion and belief that Mr. Moonves could be "fired" if he did not agree to a deal, and that if necessary she would replace Board members to make it happen. And it was reported that Ms. Redstone falsely suggested there was a general lack of long-range strategic planning at the Company. These reports, which were widely re-covered by many media outlets after their initial appearances, demonstrably damaged CBS.

60. Lending credence to these harmful leaks, Ms. Redstone and her associates tried to intimidate the Board by improperly interfering with the nominating and governance process at CBS. Each year in advance of the Company's annual meeting, CBS has sought confirmation that NAI intends to vote in support of all items recommended by the management and the Board so CBS can disclose this information in its annual proxy statement. Historically, this has been a ministerial exercise, because NAI has representatives on the CBS Board who participate in the Board meeting where those items and recommendations are discussed. As a result, from 2006 through 2017, NAI readily and consistently confirmed its intention to vote in accordance with the recommendations of management and the Board, well in advance of CBS's deadline to file its proxy statement in each of those years.

61. But this year was different. Ms. Redstone attempted to use her position as a controlling stockholder to interfere with the functioning of the

Nominating and Governance Committee and to bypass the Board's role with respect to oversight of the CEO and his compensation. She halted the process the Nominating and Governance Committee had undertaken with a search firm for director candidates. And although NAI's representatives on the Board joined their fellow directors in endorsing management's recommendations at the Board meeting where they were considered, NAI, initially via Mr. Klieger, threatened to withhold its vote at the annual meeting unless and until Mr. Moonves agreed to certain terms. Specifically, NAI demanded that Mr. Moonves waive or effectively modify his employment agreement in a manner that would expand NAI's ability to make changes to the CBS Board without triggering certain rights to severance payments under that agreement. NAI also demanded that Richard Parsons — Ms. Redstone's newest nominee to the CBS Board who is slated for election at the Company's 2018 Annual Meeting — serve as the chair of the Nominating and Governance Committee of a combined company. Only after heated negotiations and the intercession of the Special Committee did NAI finally confirm that it would vote its shares in accordance with the Board's recommendation at the annual meeting.

62. The market is in no doubt *why* Ms. Redstone believes she can force the deal on CBS. On April 9, on the *Faber Report*, CNBC analyst David Faber warned that Ms. Redstone would replace CBS's Board if the CBS Special

Committee did not agree that Bob Bakish, her handpicked CEO of Viacom, should be given a senior role in the combined company and ultimately succeed Mr. Moonves. Mr. Faber pointed out that Ms. Redstone's actions left CBS's public stockholders, who owned 90% of the equity, helpless:

What I continue to hear, Jim, is the following. If Bob Bakish is not appointed COO and President under a deal that is hammered out—and they've got a lot of math to get through here—but if that doesn't happen, Leslie—*I mean, Shari Redstone's going to start replacing board members.* And by the way, Dick Parsons takes his role today—he was announced as a new board member—*that's a shot across the bow right there from Shari Redstone in terms of what she can do.* If you're a CBS shareholder, you may be saying, 'Really? I've got to overpay? I think my Special Committee has to overpay for this company? Do I have any role here? Do I have any say?' I guess the answer's no!

63. Faber concluded: “[The leadership of the combined company] is the crucial issue. . . . Either one of [CBS or Shari Redstone] backs off, *or, I believe, Shari Redstone will begin the process of replacing board members at CBS, who will agree with her view, and therefore, do the deal that she wants.*”

The day after this action was filed, the *Wall Street Journal* quoted “one person close to Ms. Redstone”: “It was getting to a place where it was either do the deal or start to replace the board.” (Joe Flint & Keach Hagey, *CBS Ups Stakes in Feud With Redstones*, WALL ST. J., May 14, 2018.)

64. While Ms. Redstone and NAI waged their private threat campaign, the market continued to react negatively to the prospect of a CBS-Viacom deal. On January 28, 2018, shortly after word leaked that the talks had resumed, a Wells Fargo analyst issued a report titled “CBS-VIAB? No Thank You” and downgraded her view on CBS. On April 9, 2018, Macquarie issued a research report downgrading CBS’s share price target from \$63 to \$54 — 14% — because a deal would be “expensive, costly and risky.” Like the CBS Special Committee, Macquarie “fail[ed] to see deal accretion.” Macquarie concluded: “CBS shouldn’t want to bother with this.” But Macquarie also believed that Ms. Redstone would cram down the “forced” deal on CBS and regarded its consummation as “inevitable.” Other analyst reports and industry observers agreed that the potential merger would not be a deal CBS would pursue under normal circumstances.

65. On April 10, 2018, Todd Juenger of Sanford Bernstein issued a report predicting that the transaction would be a disaster for CBS. In the Sanford Bernstein analyst’s view, CBS should “absolutely not” be “pursuing a bid for [Viacom].” Sanford Bernstein cut its price target for CBS from \$66 per share, which assumed that CBS would continue to be an independent entity, to \$56 per share, which assumed an 80% chance of a deal with Viacom.

66. On April 11, 2018, both CBS and NAI were forced to issue statements of support for Mr. Moonves amidst growing rumors that Ms. Redstone was prepared to oust the CBS Board and Mr. Moonves. CBS stated: “The industry and the marketplace know Leslie Moonves’ record and we think it speaks for itself.” NAI stated: “National Amusements has tremendous respect for Les Moonves and it has always been our intention that he run a combined company.” That NAI issued a statement evinces its recognition that the doubt surrounding Mr. Moonves’ future at the Company had a big impact on CBS’s business. Notably, though, the statement did not address Mr. Moonves’ future in the event the deal negotiations failed and there was no combined company, despite reports that he would be fired in such a circumstance. The issuance of such statements did not quiet the well-founded speculation that, despite NAI’s “intention,” Ms. Redstone was contemplating replacing members of the CBS Board and/or Mr. Moonves in order to secure her merger on her terms.

VII. The Special Committee determines to reject a CBS/Viacom merger and seeks to take action to protect the Company’s stockholders.

67. In meetings and informal discussions during the week of May 7, 2018 and continuing over the weekend of May 11–13, 2018, the CBS Special Committee finally determined that a CBS/Viacom merger is not in the best interests of CBS stockholders (other than NAI). The Special Committee was genuinely concerned that once Ms. Redstone learned of this determination, CBS

would face a situation identical to what Ms. Redstone executed at Viacom: the immediate attempt to replace members of the Board, and the use of the new directors to force through a merger, and the potential replacement of the CEO. This situation would in the Special Committee's view harm the interests of the CBS stockholders, however much it might instead benefit NAI, Ms. Redstone, and Viacom. The Special Committee also developed concerns that NAI would make other changes to the CBS organizational documents that will adversely impact the ability of the CBS Board to exercise its fiduciary duties and protect CBS stockholders.

68. Specifically, in mid-2016, the Viacom board had begun considering a potential sale of all or part of its film subsidiary, Paramount, a proposal suggested by Viacom management. But on June 6, 2016, rather than allow the directors to freely exercise their fiduciary duties to all stockholders and consider the matter, NAI delivered written consents to Viacom amending the company's bylaws to require, among other things, unanimous director approval of any transaction involving Paramount. This amendment effectively killed the idea without any consideration or discussion by the board as Ms. Redstone, one of Viacom's directors, had made clear her opposition. Ms. Redstone in effect used her disproportionate voting power — like at CBS, NAI's voting power at Viacom

comes not through economic ownership, but through a dual-class stock structure — to grant herself a veto on board actions.

69. Ten days later, Ms. Redstone caused a second written consent to be delivered, this time removing five directors from the Viacom board, including Mr. Dauman. Ms. Redstone's unilateral action was, simply, a corporate coup effected via the disproportionate voting power afforded her by Viacom's dual-class stock structure.

70. Litigation in this Court followed.⁶ Both NAI and the directors sued seeking an expedited determination pursuant to 8 *Del. C.* § 225(a) as to the proper composition of the Viacom board and the validity of the bylaw amendments. *See In re Viacom, Inc.*, C.A. No. 12472-CB (Del. Ch.). The directors, led by Fred Salerno, the lead independent director and a well-known and well-regarded business executive, alleged that Mr. Redstone had not validly caused NAI to issue the written consents, but that the consents had been procured by the improper influence of Ms. Redstone and were invalid. In a hearing on July 29, 2016, this Court rejected a host of arguments from NAI and Ms. Redstone as to why the directors' suit should be dismissed, and allowed discovery to proceed. (Tr. of Oral Arg., *Viacom*, C.A. No. 12472-CB (July 29, 2016)). Within three weeks, NAI, Mr. Redstone, and Ms. Redstone entered into a settlement, and

⁶ Litigation had already begun in both California and Maryland regarding the proper trustees of the SMR Trust following the events of the second half of 2015.

thereby avoided having to prove the validity of the actions taken. The result of this settlement was that Ms. Redstone's nominees would remain on and effectively control the Viacom board. It was not determined whether or not Mr. Redstone actually had valid power to issue the consents or whether the consents were otherwise valid under Delaware law or effective at the time they were delivered.

71. Ms. Redstone's actions at Viacom broke the promises that NAI and Mr. Redstone had consistently made to Viacom's stockholders and demonstrated her willingness to use consents to block director action and remove independent directors.

72. Even if Ms. Redstone now abides by her new statement not to cause a merger between CBS and Viacom — after two stalled efforts over the past three years — the Special Committee lacks confidence that Ms. Redstone and NAI will adhere to their public commitment to operate the Company in accordance with well-accepted principles of good corporate governance because of the multiple departures from those principles both at CBS and Viacom. The overhang of these past events poses both a genuine risk and a widely perceived danger that Ms. Redstone and NAI will stack the CBS Board with individuals loyal to them, or change the Company's Certificate or Bylaws to allow Ms. Redstone and NAI to thwart the efforts by the independent directors to protect the 90% majority economic stockholders. The Special Committee believes that Ms. Redstone's

actions, taken together, require exercise of the explicit provision present in the Company's Certificate to ensure that the directors perform their fiduciary duties to all stockholders free of the interference of the controlling stockholder.

73. Ms. Redstone's misconduct and interference have made it difficult for the CBS management team installed by the CBS Board to effectively manage the Company's affairs and implement the Board's and management's views on the long-term interests of the Company and its stockholders. Ms. Redstone has already destroyed billions of dollars of stockholder value, and she threatens to do even more harm if she does not get "her way" — a threat she has made good on at Viacom.

74. No management team could perform in the shadow of a controller who consistently fails to act in accordance with the promises she has made to both public stockholders and the market and repeatedly jeopardizes the strength and good governance of the Company. While Ms. Redstone has on occasion issued public statements saying that she supports current CBS management, her conduct belies those words. Ms. Redstone has made disparaging comments to high-profile industry participants about senior CBS management integral to the Company's long-term success. Ms. Redstone has also talked with industry participants about replacing CBS's management, as if she and she alone — not the Board statutorily empowered to manage the Company's business affairs

— can make such a decision without regard to the consequences to the Company and its other stockholders.

75. Thus, the Special Committee recommended that the Board convene a special meeting to consider the issuance of a dividend of Class A voting stock to all Class A and Class B stockholders, as further discussed below, in order to protect the long-term interests of CBS's stockholders going forward, especially in light of the decision to deny Ms. Redstone the merger she so desperately seeks. CBS noticed the meeting for May 17, 2018 in accordance with CBS's Bylaws, which provide that the notice of the meeting must be sent at least 24 hours before the meeting takes place. Even though the Bylaws do not require that the notice specify the purpose of a meeting, the notice for the Special Board Meeting stated that the CBS Board would discuss the issuance of a dividend of Class A voting stock to all the Class A and Class B stockholders. Such a dividend is permitted by CBS's Certificate.

76. Given her reported threats and her history at Viacom, the Special Committee feared that Ms. Redstone would seek to preempt the Board from having the opportunity to consider whether to take these actions by replacing directors or otherwise preventing the Board from effectively considering the recommended dividend. Therefore, the Special Committee authorized this litigation and Plaintiffs' request for a temporary restraining order to prevent Ms.

Redstone, Mr. Redstone, or NAI from interfering with the effectiveness of the decisions to be made at the Special Board Meeting. The Court noted in its TRO ruling: “it appears that plaintiffs acted in a sensible and timely manner by filing their motion promptly after the Special Committee concluded on May 13 that a CBS/Viacom merger was not in the best interest of the Company, when the prospect of retributive action by the controlling shareholder became acute.” (Dkt. 40 at 8-9.)

VIII. Developments since the filing of the action confirm the Special Committee’s fears.

A. NAI purports to amend CBS’s Bylaws.

77. After the Court set a briefing schedule and hearing date for consideration of Plaintiffs’ motion, Plaintiffs’ counsel wrote to Defendants’ counsel, “[W]e assume that in light of the Court’s scheduling of the hearing, no actions will be taken in the interim.” Defendants never informed Plaintiffs that their assumption was inaccurate, despite participating in multiple conversations about a potential agreement to obviate the need for the TRO hearing and exchanging briefs per the Court’s instructions.

78. Yet, just one hour before the TRO hearing, NAI delivered to CBS documents purporting to reflect actions by written consent by which NAI purported to amend CBS’s Bylaws (the “Purported Bylaw Amendments”). The Purported Bylaw Amendments claim to rewrite Article IX of CBS’s Bylaws to

impose extreme restrictions on the Board’s ability to declare dividends (the “Purported Dividend Bylaw”). Specifically, the Purported Dividend Bylaw would require that any dividend be recommended “by the affirmative vote of at least 90% of directors then in office.” Then, unless this first vote is unanimous, the Purported Dividend Bylaw would require a second vote, again “of at least 90% of directors then in office,” to approve the dividend, which vote must be held at a separate meeting at least 20 days after the initial vote. The Purported Bylaw Amendments also would impose the same double 90% voting requirement for the Board to subsequently adopt, amend, alter, change, and repeal any provisions of the Bylaws.

79. These restrictions are concededly designed to achieve a substantive goal: prevent the Board from adopting the Stock Dividend or reverting the Bylaws back to their original form. In addition to Ms. Redstone, two CBS directors — Robert Klieger and David Andelman — are affiliated with NAI and the Redstones. Mr. Andelman sits on NAI’s board. Mr. Klieger is a personal attorney for the Redstones who, according to Vanity Fair, is “deeply in the Redstones’ orbit,” has stated that “he meets with Sumner ‘regularly’ but ‘at least once a week,’” and “has billed Sumner and Shari more than \$10 million for more than 14,000 hours of work in connection with the various litigation that his firm has been working on for them.” (William D. Cohan, *The Muscle Behind Shari Redstone’s War*, Vanity Fair, May 18, 2018).

80. The 90% voting requirement was therefore designed to give NAI and Ms. Redstone an effective veto on the Stock Dividend, or indeed any dividend or subsequent bylaw amendment — whether they were to vote against it or abstain on any basis, including self-interest — even if the other 11 CBS directors believe that the dividend is proper and required by their fiduciary duties. Moreover, the second 90% vote was presumably designed to afford Ms. Redstone time to replace Mr. Klieger and/or Mr. Andelman as directors in the event that they voted to approve the Stock Dividend or a bylaw amendment.

81. On May 16, 2018, this Court heard oral argument on Plaintiffs' motion for a temporary restraining order. During that hearing, NAI defended the Purported Bylaw Amendments and essentially argued that it, and not the Board, should manage the business and affairs of CBS. NAI claimed that a controlling stockholder has the right to “shut[] the door to information coming into the board that somebody wishes to communicate to the board.” (Tr. of Oral Argument on Plaintiffs' Motion for a TRO (“Tr.”) 69:18-24.) NAI also contended that a controlling shareholder has the right to “talk with anybody,” even if that controller is “out in the market trying to figure out ‘What can we do for succession? Who else is out there?’” (*Id.* at 70:18-20) — never once suggesting that these conversations should be cleared by or even reported to the Board.

82. Although the Court denied the TRO application, the Court held that any NAI action taken “preemptively to protect its control interest . . . is subject to judicial review, which can afford full relief in this circumstance . . . to vindicate the interests of CBS and its stockholders, if appropriate.” (Dkt. 40 at 17.) The Court also found that the allegations in the Verified Complaint were “sufficient to state a colorable claim for breach of fiduciary duty against Ms. Redstone and NAI as CBS’s controlling stockholder.” (*Id.* at 11–12.)

B. The Board approves the Stock Dividend at the Special Board Meeting.

83. On May 17, 2018, the full Board convened for the Special Board Meeting at CBS’s headquarters in New York City. All 14 directors participated, with 11 present in person, including Ms. Redstone, and three directors participating by phone. Also present in person were: certain members of CBS management, including its Chief Legal Officer, Lawrence Tu; outside counsel to the Special Committee, including Michael Aiello of Weil, Gotshal & Manges LLP; outside counsel to the Company, including Martin Lipton of Wachtell, Lipton, Rosen & Katz; financial advisor to the Company, Navid Mahmoodzadegan, of Moelis & Company; and outside counsel to NAI, including Christopher Austin of Cleary Gottlieb Steen & Hamilton LLP and Matthew Fischer of Potter Anderson & Corroon LLP. The meeting lasted a little over one hour and all meeting participants were given an opportunity to speak for as long as they wished.

84. The Board first heard from representatives of the Company, including Mr. Moonves; members of the Special Committee; the Special Committee and CBS's outside counsel; and CBS's financial advisor. These individuals presented on the Special Committee process and determinations, the reasons for the proposed Stock Dividend, its economics and mechanics, and management's concerns. They discussed, among other things, the allegations in the Verified Complaint and developments since the filing of the litigation, including (i) the Purported Bylaw Amendments, which the Company believes were ineffective at the time of the Special Board Meeting because they were invalid under Delaware law and ineffective under federal law; and (ii) the statements made by NAI in this Court the prior day, confirming NAI's views regarding a controlling stockholder's power.

85. In particular, Mr. Gordon, the Chairman of the Special Committee, and the Special Committee's outside counsel described the Special Committee's considerations, including alternatives to the Stock Dividend, and the reasons for the Special Committee's ultimate determination not to move forward with a Viacom transaction and the Special Committee's recommendation to approve the Stock Dividend to protect all of the Company's stockholders. In his presentation, Mr. Gordon stressed the Special Committee's significant concerns with respect to Defendants' ongoing interference with management. Mr. Gordon

emphasized that the members of the Special Committee expressed their willingness to resign in an orderly fashion to avoid any suggestion that their recommendation was based on any type of desire to secure their positions on the Board.

86. In his remarks, Mr. Moonves described the past and ongoing negative effects of Defendants' interference with management and the Company, disparagement of CBS employees and officers, and attacks on the independence of directors. Mr. Moonves said that he did not think he could successfully lead the Company under these circumstances. He said that the soul of CBS and its success derived from the independence of its Board and management. He concluded that his duty to all stockholders led him to believe the Stock Dividend was necessary.

87. After these presentations, discussion was opened to the full Board and attendees. Ms. Redstone made two brief statements. She first stated that NAI did not and does not intend to force a transaction with Viacom. She also stated that, aside from the one director named in an affidavit of Mr. Klieger in these proceedings, there had been no intention to remove directors. Ms. Redstone stated that on advice of counsel she could say nothing further.

88. Counsel for NAI and Ms. Redstone then presented their views on the validity of the Stock Dividend. NAI's Delaware counsel stated, among other things, that the Court's letter opinion had held that it would be "exceptional" to allow a board to dilute a controlling stockholder and threatened that if a court

later found the dividend invalid, the directors will have been found to have breached their duties of loyalty in bad faith — which he said would be a non-exculpated breach of fiduciary duty and thus that the directors would be liable for Ms. Redstone’s and NAI’s legal fees and potentially other damages. NAI’s counsel also presented its financial advisor’s view of the economic impact of the Stock Dividend.

89. Mr. Klieger read aloud the first proposed resolution of the Board:

RESOLVED, that the Board has determined the ongoing and persistent conduct of the current controlling stockholder, including interference with the Board’s management of the business and affairs of the Corporation, has been and threatens to continue to be substantially injurious to the best interests and welfare of the Corporation and its stockholders, and is detrimental to the Corporation’s long-term effectiveness[.]

90. He then presented his views on the justification for, and appropriateness of, the Stock Dividend as well as the rights of the controlling stockholder. While disagreeing with the need for the Stock Dividend, Mr. Klieger commended the Special Committee for recommending that the Stock Dividend be conditioned on Court approval, and expressed that he did not mean by his comments to suggest that the Special Committee had not acted carefully.

91. After hearing from these parties, Mr. Gordon confirmed the Special Committee was confident in the advice it had received and in its process, and that he disagreed with the views of the facts presented by Mr. Klieger.

92. Ms. Minow, a member of the Special Committee, was last to speak. She emphasized that no one on the Special Committee was happy about the situation. She thanked Mr. Klieger for his comments. She expressed her view of certain considerations the Special Committee found particularly important in reaching its recommendation, including that the interference with the Company's extraordinary, "A+" management team was so extreme that the CEO and Chair made clear he could not manage successfully under these conditions. She reconfirmed the Committee's recommendation that the Board approve the Stock Dividend as the unfortunate but necessary step for protecting the Company and its majority economic stockholders.

93. The Board then took a roll call vote on the proposed resolutions to declare the Stock Dividend, with all members of the Special Committee, Mr. Moonves, and all directors not affiliated with NAI (including the former U.S. Secretary of Health, Education, and Welfare, Joseph A. Califano, Jr., and the former U.S. Secretary of Defense, William S. Cohen) voting in favor. Messrs. Andelman and Klieger and Ms. Redstone voted against. The resolutions declaring the Stock Dividend thus passed by a vote of 11-3.

94. Immediately following the vote, both CBS and NAI issued press releases announcing the results of the vote. CBS's release stated in part: "The Board of Directors has taken this step because it believes it is in the best interests of all CBS stockholders, is necessary to protect stockholders' interests and would unlock significant stockholder value. If consummated, the dividend would enable the Company to operate as an independent, noncontrolled company and more fully evaluate strategic alternatives." NAI's statement claimed the vote "was pure pretext. CBS management and the special committee cannot wish away the reality that CBS has a controlling shareholder."

95. On May 22, 2018, CBS filed an 8-K announcing the Purported Bylaw Amendments and made clear its intention to challenge their validity and effectiveness. The Company also stated that it "intends to file an Information Statement on Schedule 14C . . . pursuant to Regulation 14C and Rule 14c-2 of the Securities Exchange Act of 1934, as amended, in order to provide stockholders with required information regarding the Purported Bylaw Amendments at least 20 calendar days prior to the earliest date on which such corporate action may be taken."

C. Defendants' statements in this litigation confirm that the stockholders remain at risk.

96. As of the filing of this Amended Verified Complaint, Ms. Redstone has made no commitment that she will not replace CBS's independent

Board with directors who would be willing to approve a CBS merger with Viacom and otherwise do her bidding. Indeed, NAI's letter to the Court on May 16 set forth NAI's view that it "has every right to do [so]," and that it had not done so yet "[i]n deference to the Court." (Dkt. 36 at 4.) In its letter, NAI expressly reserved the right to do so.

97. In addition, despite contending in Defendants' brief opposing the TRO application that NAI "does not have, and has never had, any intention of replacing the CBS Board," Dkt. 24 at 1, as the Court noted, Ms. Redstone submitted no affidavit to that effect. (Tr. 57; *see also* Dkt. 40 at 2 n.1.) Instead, NAI's counsel noted at argument that NAI could "engage in a second set of self-help and . . . remove them," (Tr. 76), and further stated that without a court order to the contrary, NAI "could take different protective interests. . . . [I]f it did remove one or some [directors], you know, they could rescind, they could amend [the Stock Dividend]." (Tr. 80.)

98. In sum, Ms. Redstone, both through her own words and those of her agents, has made clear that she will not abide by the prior public commitments to operate CBS as if it were an independent public company. Instead, by her actions in pushing for a deleterious merger, interfering with the management and Board of the Company, blocking important information from even being considered by the Board and other steps harmful to the interests of all

stockholders — and her position in this matter that as controller she may do so — Ms. Redstone has made clear that she poses a substantial threat to the best interests and welfare of the Company and its stockholders, and that her control is detrimental to the Company's long-term effectiveness.

Deadline

COUNT ONE

Declaratory Judgment

The Stock Dividend is valid and permissible

99. Plaintiffs repeat and incorporate by reference the allegations above.

100. Section 2(b) of Article IV of CBS's Certificate authorizes the Board to declare a stock dividend either:

(i) on the basis of a ratable distribution of identical securities to holders of shares of Class A Common Stock and Class B Common Stock or (ii) on the basis of a distribution of one class or series of securities to holders of shares of Class A Common Stock and another class or series of securities to holders of Class B Common Stock, *provided* that the securities so distributed . . . do not differ in any respect other than (x) differences in their rights (other than voting rights and powers) consistent in all material respects with differences between Class A Common Stock and Class B Common Stock and (y) differences in their relative voting rights and powers, with holders of shares of Class A Common Stock receiving the class or series of such securities having the higher relative voting rights or powers

101. Thus, the plain language of the Certificate authorizes the Board to issue either "identical" stock dividends to both classes of stockholders or different securities (subject to the proviso on how those securities may differ) to the different classes. The Stock Dividend is a ratable distribution of identical Class A securities to holders of both Class A and Class B stock.

102. As alleged above, CBS has confirmed in multiple registration statements that “the board of directors will determine whether the holders of CBS class A common stock and CBS class B common stock are to receive identical securities or to receive different classes or series of securities.”

103. Plaintiffs are entitled to a declaration that the Certificate permits the Stock Dividend.

104. At the Special Board Meeting, 11 out of 14 directors voted in favor of the Stock Dividend. This vote is sufficient to effectuate the action under CBS’s Certificate and Bylaws as they existed when NAI executed written consents purporting to adopt the Purported Dividend Bylaw. This Board action was a proper exercise of business judgment.

105. Because the Purported Dividend Bylaw is invalid as a matter of law, for any or all of the reasons set forth in Count Two, the vote of the Board at the Special Board Meeting effectively approved the Stock Dividend. In the alternative, even if the Purported Bylaw Amendments were to be considered legally permissible, they were not effective at the time of the Special Board Meeting for the reasons set forth in Count Three.

106. The Board has a fundamental duty and obligation to ensure the best interests of the Company and all of its stockholders, as well as to protect the corporate enterprise, which includes stockholders, from harm reasonably

perceived, irrespective of its source. The Board has the power under the Certificate to issue the Stock Dividend and it determined to do so in good faith in order to further the best interests of the Company and all of its stockholders, as well as to protect the Company and its stockholders.

107. The Board passed resolutions that included a determination that “the ongoing and persistent conduct of the current controlling stockholder, including interference with the Board’s management of the business and affairs of the Corporation, has been and threatens to continue to be substantially injurious to the best interests and welfare of the Corporation and its stockholders, and is detrimental to the Corporation’s long-term effectiveness.” This finding was a reasonable exercise of the directors’ good faith business judgment and based on careful deliberation and advice of advisors.

108. The existing controversy regarding the Stock Dividend is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the Stock Dividend.

109. Plaintiffs are entitled to a declaration that the Stock Dividend was a permissible exercise of the directors’ fiduciary duties and is valid and permissible.

110. Plaintiffs have no adequate remedy at law.

COUNT TWO

Declaratory Judgment

The Purported Bylaw Amendments are inequitable, impermissible and invalid under Delaware law

111. Plaintiffs repeat and incorporate by reference the allegations above.

112. The Purported Bylaw Amendments are invalid under Delaware law, including Section 109(b) of the Delaware General Corporation Law (the “DGCL”), Section 141(a) of the DGCL, and/or Section 170 of the DGCL.

113. Section 109(b) of the DGCL provides that a corporation’s bylaws may not contain provisions that are “inconsistent with law,” including other aspects of the DGCL itself.

114. Section 141(a) of the DGCL states, “The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.” Section 141(a) therefore prohibits stockholders from adopting bylaws that mandate how the board of directors should decide specific substantive business decisions.

115. The Purported Bylaw Amendments result in a shareholder predetermining and “rigging” what the Board would do in violation of Sections 109(b) and 141(a) of the DGCL. The Purported Bylaw Amendments were

intended to mandate that the Board not adopt the Stock Dividend, because the Purported Bylaw Amendments require 90% of CBS's directors to approve the dividend, and more than 10% of CBS's directors are not independent of NAI. Moreover, the Purported Bylaw Amendments also would not permit the Board to adopt any other dividend without NAI's consent.

116. Further, Section 170(a) of the DGCL states, “[t]he directors of every corporation, *subject to any restrictions contained in its certificate of incorporation*, may declare and pay dividends” (emphasis added). The Company's Certificate contains the substantive provisions governing the Board's issuance of dividends, and the Company's Bylaws state that the Board may declare dividends “subject to the provisions of the Certificate of Incorporation.” Consistent with Section 170(a) of the DGCL and with the Company's governing documents, NAI may not impose restrictions on dividends by amending the Company's Bylaws.

117. Moreover, the Purported Bylaw Amendments are also invalid because they are inequitable. For the reasons stated in Count Four, the Purported Bylaw Amendments were executed in violation of fiduciary duties owed to the Company and its majority economic stockholders by Defendants.

118. The Purported Bylaw Amendments were adopted for inequitable purposes, including to prevent the independent directors from taking

actions they believed to be in the best interest of the Company and all its stockholders, contrary to established principles of corporate democracy and principles of independent governance that NAI, Mr. Redstone, and Ms. Redstone had previously supported publicly.

119. The Purported Bylaw Amendments were adopted to serve NAI's self-interest at the expense of the public stockholders.

120. The Purported Bylaw Amendments have a present and continuing adverse effect on stockholders' interests, and make a claim for invalidation of the provision ripe for adjudication.

121. The existing controversy regarding the effectiveness of the Purported Bylaw Amendments is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability of the Purported Bylaw Amendments.

122. Plaintiffs are entitled to an order declaring that the Purported Bylaw Amendments are invalid under 8 *Del. C.* § 109(b) due to their inconsistency with 8 *Del. C.* § 141(a), and therefore are invalid, unlawful, null, void, and of no further effect.

123. Plaintiffs are also entitled to an order declaring that the Purported Bylaw Amendments are invalid under 8 *Del. C.* § 109(b) due to their

inconsistency with 8 *Del. C.* § 170(a), and therefore are invalid, unlawful, null, void, and of no further effect.

124. Plaintiffs are also entitled to an order declaring that the Purported Bylaw Amendments are inequitable, and therefore invalid, unlawful, null, void, and of no further effect.

125. Plaintiffs have no adequate remedy at law.

COUNT THREE

Declaratory Judgment

The Purported Bylaw Amendments were ineffective on the date of the Special Board Meeting

126. In the alternative, even if the Purported Dividend Bylaw were to be considered legally permissible, the Purported Bylaw Amendments were not effective at the time of the Special Board Meeting.

127. SEC Rule 14c-2 requires that before action by written consent can become effective, stockholders of CBS must receive a “written information statement” prior to “the taking of corporate action by the written authorization or consent of security holders,” which statement “shall be sent or given . . . at least 20 calendar days prior to the earliest date on which the corporate action may be taken.” 17 C.F.R. § 240.14c-2(a)-(b).

128. Thus Rule 14c-2 prohibits a corporate action taken by written consent from becoming effective until at least 20 days after an information

statement is provided to CBS stockholders. No information statement was sent before the Purported Bylaw Amendments were delivered. Consequently, even were some or all of the Purported Bylaw Amendments to be determined valid notwithstanding the arguments in Count Two, as a matter of federal law, they are without force or effect until 20 days after such information statement is provided.

129. Defendants have previously acknowledged the implications of Rule 14c-2. On August 18, 2016, NAI and related entities, Shari Redstone, and Sumner Redstone entered into a settlement agreement with, among others, Viacom and members of its board of directors. Among other things, that settlement agreement provided for amendments to Viacom's certificate of incorporation. Because of this negotiated settlement, it was not determined whether the previously issued consents purporting to amend Viacom's bylaws and remove directors were valid under Delaware law or effective at the time they were delivered.

130. NAI used its super-majority voting power to approve and adopt by written consent the amendments contemplated by the settlement agreement. As the settlement agreement acknowledged, those amendments would "become effective in accordance with applicable laws and regulations."

131. Viacom subsequently issued an information statement pursuant to Rule 14c-2. As that information statement made clear, the amendments by written consent could not take immediate effect:

EFFECTIVENESS OF CORPORATE ACTION

Under Rule 14c-2 of the Securities Exchange Act of 1934, as amended, the Charter Amendments will not be effective until 20 days after this Information Statement is first mailed or otherwise delivered to our stockholders entitled to receive notice thereof.

Viacom, Inc., Definitive Information Statement (Form DEF14C) (Sept. 12, 2016).

The notice accompanying the information statement also stated that the information statement would be “considered the notice required under Section 228(e) of the [DGCL].”

132. Therefore, as defendants are aware, although NAI need not have provided notice before *delivering* the written consents, the Purported Bylaw Amendments cannot be effective until at least 20 days after an information statement is sent pursuant to Rule 14c-2, and thus were not effective at the Special Board Meeting.

133. The Purported Bylaw Amendments have a present and continuing adverse effect on stockholders’ interests, and make a claim for invalidation of the provision ripe for adjudication.

134. The existing controversy regarding the effectiveness of the Purported Bylaw Amendments is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability of the Purported Bylaw Amendments.

135. Plaintiffs are entitled to an order declaring that the Purported Bylaw Amendments were not effective at the time of the Special Board Meeting.

136. Plaintiffs have no adequate remedy at law.

COUNT FOUR

Breach of Fiduciary Duty

137. Plaintiffs repeat and incorporate by reference the allegations above.

138. The Defendants collectively through their beneficial ownership and domination of NAI form a controlling stockholder group.

139. Defendants have at all times owed fiduciary duties to CBS and its public stockholders. By virtue of, among other things, NAI's super-majority interest in the voting shares of CBS, Defendants owe fiduciary duties as a controlling stockholder notwithstanding the fact that NAI owns only a small minority economic stake in the Company. Additionally, Ms. Redstone owes fiduciary duties to CBS and its public stockholders as a director of CBS.

140. Defendants cannot exploit NAI's controlling stockholder position in CBS to secure benefits unavailable to, and at the expense of, the other stockholders of CBS who own a majority of the Company's equity but only a minority of its voting shares. Rather, Defendants owe uncompromising duties of loyalty and good faith that preclude them from profiting inequitably at the expense of the Company or its other public stockholders.

141. "The business and affairs of every corporation," whether under the voting control of a stockholder or not, "shall be managed by or under the direction of a board of directors." 8 *Del. C.* § 141(a). Because of this statutory mandate, it is the exclusive province of the board to set corporate strategy and oversee management of the corporation. A controlling stockholder's actions, or threats, to interfere with these statutorily protected board prerogatives in order to secure unique benefits for itself at the expense of other stockholders are inherently self-interested and subject to entire fairness review. The risks posed by a controller's self-interested actions are heightened exponentially where, as here, the controller's voting power is misaligned with its economic stake in the company, making such strict scrutiny all the more important.

142. Defendants violate, and threaten to continue to violate, their fiduciary duties by abusing their control to undermine the independent corporate governance of CBS, which they have repeatedly and publicly supported in the past,

at the expense of the Company and its public stockholders. Defendants' use of written consents to attempt to amend CBS's Bylaws to interfere with the Board's consideration of the Stock Dividend was a self-interested action that was not in the best interests of CBS and its majority economic stockholders. And threats by Defendants to stack the Board or replace Board members with new directors loyal to them would likewise be an abuse of control that attempts to reap private benefits for themselves at the expense of CBS and its majority economic stockholders.

143. These actions and threats by Defendants are disloyal, inequitable, and not entirely fair. Relief from such actions and threats is necessary to protect CBS and its public stockholders from exploitation by its controlling stockholder.

144. Defendants' unlawful and inequitable actions threaten irreparable harm to the Company and its public stockholders. Defendants would suffer no injury from being subject to an injunction barring them from taking further self-interested action to exploit their voting control for their benefit and to the detriment of CBS and its majority economic stockholders. Any actions taken in breach of fiduciary duty are void.

145. Plaintiffs have no adequate remedy at law.

COUNT FIVE

Estoppel

146. Plaintiffs repeat and incorporate by reference the allegations above.

147. Defendants were aware that CBS stockholders and the members of the CBS Board valued the controlling stockholder's public commitment to the independent governance of CBS, notwithstanding CBS's status as a controlled company, and attributed significant value to the strength of CBS's independent Board in all matters of corporate governance.

148. CBS stockholders agreed to invest in CBS on the basis of Defendants' commitment to continue to operate CBS as an independent company. Defendants are estopped from taking action that is inconsistent with their prior representations.

149. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

150. Plaintiffs seek the following relief:

- A. A declaration that the Stock Dividend is valid and permissible;
- B. A declaration that the Purported Dividend Bylaw is invalid under 8 *Del. C.* § 109(b) due to its inconsistency with 8 *Del. C.* § 141(a);
- C. A declaration that the Purported Dividend Bylaw is invalid under 8 *Del. C.* § 109(b) due to its inconsistency with 8 *Del. C.* § 170(a);
- D. A declaration that the Purported Bylaw Amendments are inequitable, and therefore invalid, unlawful, null, void, and of no further effect;
- E. In the alternative, a declaration that the Purported Bylaw Amendments were not effective at the time of the Special Board Meeting;
- F. A declaration that any action by Defendants, each of their directors, officers, agents, servants, employees, attorneys, and any persons in active concert or participation with them to interfere with the composition of CBS's Board (other than

electing the slate previously nominated for election at the now-postponed May 18, 2018 annual meeting of stockholders) or to modify its governance documents before the issuance of any shares pursuant to the Stock Dividend would constitute a breach of their fiduciary duties;

- G. An injunction against any action by Defendants, each of their directors, officers, agents, servants, employees, attorneys, and any persons in active concert or participation with them, to interfere with the composition of CBS's Board (other than electing the slate previously nominated for election at the now-postponed May 18, 2018 annual meeting of stockholders) or to modify CBS's governance documents before the issuance of any shares pursuant to the Stock Dividend;
- H. Costs and attorneys' fees incurred in maintaining this action; and
- I. Any other relief the Court deems proper.

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/s/ David E. Ross

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May 23, 2018

CERTIFICATE OF SERVICE

I, David E. Ross, hereby certify that on May 23, 2018, I caused a true and correct copy of the foregoing *Amended Verified Complaint* to be served through File & ServeXpress on the following counsel of record:

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