



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CBS CORPORATION
STOCKHOLDER CLASS ACTION
AND DERIVATIVE LITIGATION

Consolidated C.A. No. 2020-0111-JRS

**PUBLIC INSPECTION VERSION
FILED APRIL 21, 2020**

**VERIFIED CONSOLIDATED CLASS ACTION
AND DERIVATIVE COMPLAINT**

Co-Lead Plaintiffs Bucks County Employees Retirement Fund (“Bucks County”) and International Union of Operating Engineers of Eastern Pennsylvania and Delaware (“International Union”) (together, “Plaintiffs”), by and through their undersigned counsel, submit this Verified Consolidated Class Action and Derivative Complaint (the “Complaint”), upon knowledge as to themselves and their own actions and, as to all other matters, upon information and belief derived from the investigation of counsel, which included review of filings with the United States Securities and Exchange Commission (“SEC”) and other publicly available documents and the inspection of certain books and records of CBS Corporation (“CBS” or, with respect to events predating December 4, 2019, the “Company”), pursuant to 8 *Del. C.* § 220 (the “220 Documents”) and allege as follows:

NATURE OF THE ACTION

1. This stockholder class and derivative action challenges an unfair merger orchestrated by a relentless controlling stockholder who was intent on forcing a combination of CBS with Viacom Inc. (“Viacom”) that has no strategic or

economic merit. Beginning in 2016, Shari Redstone attempted to force CBS and Viacom – both of which she controlled¹ – to merge. CBS’s then-independent board of directors (the “Board”)² staunchly opposed merging the thriving CBS with the foundering Viacom and terminated merger talks. Shari Redstone threatened retribution and again pressed for a merger in 2018. At that time, CBS directors unaffiliated with NAI, Shari Redstone and her friends, ran an independent process and thoroughly evaluated Shari Redstone’s proposal.

2. By May 2018, that CBS special committee determined that Shari Redstone was likely to force a merger of CBS and Viacom whether they approved the merger or not, and they needed to guard against billions of dollars of harm that CBS and its public stockholders would suffer if CBS were forced to rescue Viacom. All of the CBS directors unaffiliated with Shari Redstone then took the extraordinary step of declaring a special dividend to dilute Shari Redstone’s and NAI’s voting control and the CBS special committee asked this Court to declare that dividend lawful (the “2018 CBS Litigation”).³

3. In September 2018, Shari Redstone and CBS settled the 2018 CBS Litigation (the “2018 Settlement” and the “2018 Settlement Agreement”). As a

¹ Shari Redstone controlled CBS and Viacom through National Amusements, Inc. (“NAI”), a private company that she also controls.

² “Board” is used herein to refer generally to CBS’s pre-Merger board of directors.

³ *CBS Corp. et al. v. Nat’l Amusements, Inc. et al.*, C.A. No. 2018-0342-AGB.

condition of the settlement, Shari Redstone and NAI were prohibited from proposing another merger for two years unless two-thirds of the independent CBS directors invited a proposal. In the 2018 Settlement, Shari Redstone filled the CBS Board with loyalists, and within weeks thereafter, forced out other independent CBS directors. With the Board now packed with loyalists and free of most of the directors that previously opposed her, Shari Redstone unilaterally reignited merger talks in violation of the 2018 Settlement Agreement and formed a new special committee (the “2019 CBS special committee”) to evaluate a merger.

4. Compared to the well-functioning and independent 2018 CBS special committee, the 2019 CBS special committee gave Shari Redstone everything she wanted. [REDACTED] On August 13, 2019, a CBS/Viacom merger (the “Merger”) was announced under which Viacom stockholders would receive .59625 shares of newly issued ViacomCBS Inc. (“ViacomCBS” and as to events post-dating December 4, 2019, the “Company”) stock for each Viacom share. The Merger was not subject to a majority-of-the-minority vote condition, or any vote of the minority stockholders; rather, NAI executed a support agreement committing to use its nearly 80% voting control over CBS to act by written consent and unilaterally approve the Merger it orchestrated. With consummation a *fait accompli*, the Merger closed on December 4, 2019. The post-Merger board is now dominated by Shari Redstone and her allies. Viacom management has taken near complete

control of CBS's valuable assets. And corporate governance protections are nearly non-existent.

5. The sole reason for the Merger was to protect Shari Redstone's floundering Viacom investment. Now CBS is saddled with an entity that has long underperformed it in the marketplace. NAI's and Shari Redstone's conduct not only harmed CBS, but also separately harmed the pre-merger CBS Class B public stockholders, who did not receive the same non-ratable benefits the Merger conferred on NAI and Shari Redstone. Class B public stockholders that owned few or no Viacom shares (and were not similarly situated with Shari Redstone who held significant stakes in both CBS and Viacom) suffered this harm most acutely.

6. Moreover, NAI and Shari Redstone caused CBS to massively overpay for Viacom, at a time when CBS knew [REDACTED]

[REDACTED] The market's reaction underscores the Merger's financial unfairness to CBS and its stockholders. In early August 2019, CBS's widely held and publicly traded Class B common stock traded above \$48 per share. Upon the Merger's announcement, the price quickly plummeted below \$40 per share and continued downward thereafter. With Viacom's poor management now controlling CBS's assets, ViacomCBS has cratered since the Merger closed. On February 20, 2020, ViacomCBS announced disastrous results for the fourth quarter and full year ended December 31, 2019, reporting a fourth-quarter net loss of \$258 million. For

comparison, in the fourth quarter of 2018, CBS posted a profit of \$887 million. *See* Meg James, *ViacomCBS Stock Tumbles 18% As Investors Confront Weak Results*, L.A. TIMES (Feb. 20, 2020). Overnight, ViacomCBS Class B common stock dropped \$6.38 to \$29.29 (a decline of more than 17.5%).

7. Though CBS was the putative buyer, the Merger actually amounted to a Viacom acquisition of CBS in which CBS's Class B stockholders had no ability to reject the transaction. The Company is called "ViacomCBS" even though CBS was the Merger's surviving entity. Instead of trading on the New York Stock Exchange ("NYSE"), where CBS traded, ViacomCBS trades on the NASDAQ, where Viacom traded. CBS directors control less than half of the post-Merger Board and the Company is run primarily by a Viacom management team that consistently delivered poor results at Viacom. In addition, CBS's former CEO, Joseph Ianniello ("Ianniello"), who was slated to head the CBS business of the combined company post-Merger, abruptly left within two months of the Merger closing, received payment consistent with a termination without cause, and was immediately replaced with a prior Viacom executive. Therefore, in substance, Shari Redstone and NAI forced a Viacom takeover of CBS, using CBS as a merger vehicle and CBS's stock as merger consideration.

8. Plaintiffs seek to recover derivatively on behalf of CBS and directly on behalf of the Class (defined below) for the substantial harm defendants inflicted on

CBS and the Class. Because a majority of the current ViacomCBS board of directors (the “ViacomCBS Board”) are unable to fairly consider a demand that the Company take action against NAI, Shari Redstone and other CBS directors to remedy the misconduct described herein, demand on the ViacomCBS Board is excused as futile. The entire fairness standard governs Plaintiffs’ claims because Shari Redstone controlled both CBS and Viacom before the Merger, she unilaterally approved the Merger through NAI’s written consent, and the Merger’s consummation was not subject to a majority-of-the-minority vote condition at CBS. Moreover, the S-4 registration statement filed in connection with the Merger (the “Proxy”) was materially incomplete and misleading, as the 220 Documents confirm, which prevented CBS’s public stockholders from making informed investment decisions in the wake of the Merger’s announcement.

THE PARTIES

A. Plaintiffs

9. Bucks County was, at all relevant times, a beneficial owner of CBS Class B common stock and, as a result of the Merger, is now a beneficial owner of ViacomCBS Class B common stock.

10. International Union was, at all relevant times, a beneficial owner of CBS Class B common stock and, as a result of the Merger, is now a beneficial owner of ViacomCBS Class B common stock.

B. Defendant ViacomCBS

11. Defendant ViacomCBS is a publicly traded Delaware corporation with its principal place of business in New York, New York. In the Merger, non-party Viacom merged with and into CBS, with CBS as the surviving entity. Following the Merger, CBS adopted “ViacomCBS Inc.” as the company name. ViacomCBS’s common stock is divided into two classes: Class A voting stock, which has one vote per share, and Class B non-voting stock, which has economic rights but no voting rights. Prior to the Merger, CBS stock was listed on the NYSE under the ticker symbols “CBS.A” and “CBS.B.” As a result of the Merger, CBS common stock was delisted from the NYSE. ViacomCBS’s one-vote Class A common stock and non-voting Class B common stock now trade on NASDAQ under new ticker symbols “VIACA” and “VIAC,” respectively.

C. The NAI Defendants

12. Defendant Shari Redstone is a director and Chair of ViacomCBS. She assumed those positions pursuant to Section 1.06 (a)(iii)(b) of the Agreement and Plan of Merger by and between CBS and Viacom (the “Merger Agreement”). Prior to the Merger, she was a director of CBS and Vice Chair of the CBS Board, and was also the Vice Chair of the Board of Directors of Viacom (the “Viacom Board”). Shari Redstone is the President and a director of defendant NAI. Shari Redstone controls ViacomCBS through stock ownership of NAI.

13. Defendant NAI is a closely held Maryland corporation headquartered in Massachusetts. NAI owns 79.8% of ViacomCBS's one-vote Class A common stock. NAI's ViacomCBS stock is held and beneficially owned through NAI and NAI Entertainment Holdings LLC ("Holdings"). NAI owns all of the membership interests in Holdings. NAI is effectively controlled by Shari Redstone, who exercises control of NAI as a result of her father, Sumner Redstone's, declining health. NAI is controlled through defendant Sumner M. Redstone National Amusements Trust ("SMR Trust"). Through the Shari E. Redstone Trust, Shari Redstone owns the remaining 20% voting interest in NAI not controlled by the SMR Trust. At the time of the Merger, and at all times relevant herein, NAI was the controlling stockholder of both CBS and Viacom, holding approximately 80% of the voting shares of each company, with an approximately 10% economic interest in each company.

14. Defendant SMR Trust is a Massachusetts trust that holds approximately 80% of the common stock of NAI. Shari Redstone [REDACTED]
[REDACTED] Thus, she effectively controls the SMR Trust, NAI, and Viacom.

D. Director Defendants

15. Defendant Candace K. Beinecke ("Beinecke") was appointed to the CBS Board in connection with the 2018 Settlement. She was also the Chair of the

CBS Nominating and Governance Committee (the “N&G Committee”). Pursuant to the Merger Agreement, Beinecke became a ViacomCBS director. According to the Company’s April 3, 2020 annual meeting proxy (the “2020 Proxy”), Shari Redstone and NAI have already agreed to vote their proxies in favor of Beinecke, who will remain a ViacomCBS director. Beinecke is a Senior Partner of Hughes Hubbard & Reed LLP (“Hughes Hubbard”), a firm which has been paid by CBS [REDACTED] for providing “legal advice to CBS and certain members of CBS management from time to time.”⁴ Hughes Hubbard provided legal services to certain CBS managers in connection with new employment agreements executed in connection with the Merger, including a new employment agreement with Ianniello, the former Chairman of the CBS Entertainment division of ViacomCBS. Hughes Hubbard also acted as “Special Counsel” to CBS in connection with the preparation and filing of the Proxy in connection with the Merger. Hughes Hubbard reports on its website that it “represent[ed] CBS Corporation in connection with its merger with Viacom” and that the deal was announced “after three years of negotiations.”⁵ On information and belief, Beinecke has known Shari Redstone for decades. According

⁴ See Proxy at 26; CBS_BC220_00001996, 2018 [REDACTED]
[REDACTED]

⁵ Hughes Hubbard, *Firm Assists CBS in \$30B Merger with Viacom* (Nov. 4, 2019), <https://www.hugheshubbard.com/news/firm-assists-cbs-in-30b-merger-with-viacom>.

to a 1999 *New York Times* article, Viacom was one of Beinecke’s clients in the late 1990s.⁶

16. Defendant Barbara M. Byrne (“Byrne”) became a CBS director as a result of the 2018 Settlement. Pursuant to the Merger Agreement, Byrne became a ViacomCBS director. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Byrne, who will remain a ViacomCBS director. Byrne is the former Vice Chairman, Investment Banking at Barclays PLC. NAI hired Barclays in 2016 to help NAI determine what to do with its voting stake in CBS and Viacom, which evolved into NAI’s plan to merge the two companies.⁷

17. Defendant Gary L. Countryman (“Countryman”) served as a CBS director from 2007 until the Merger.

18. Defendant Brian Goldner (“Goldner”) became a CBS director as a result of the 2018 Settlement and remained one until the Merger. Pursuant to the Merger Agreement, Goldner became a ViacomCBS director. According to the

⁶ Jan Hoffman, *Public Lives; Charm at the Top: It Only Looks Easy, Folks*, The N.Y. Times (June 2, 1999), <https://www.nytimes.com/1999/06/02/nyregion/public-lives-charm-at-the-top-it-only-looks-easy-folks.html>.

⁷ Claire Atkinson, *Sumner Redstone has paid fees to just about everyone this year*, N.Y. Post (Dec. 18, 2016, 4:17 AM), <https://nypost.com/2016/12/18/sumner-redstone-has-paid-fees-to-just-about-everyone-this-year/> (noting that in August 2016, “NAI hired Barclays and Evercore Partners to help figure out how to manage its 80 percent voting stake” in CBS and Viacom).

Company's 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Goldner, who will remain a ViacomCBS director.

19. Defendant Linda M. Griego ("Griego") was a CBS director from 2007 until the Merger. Pursuant to the Merger Agreement, Griego became a ViacomCBS director. According to the Company's 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Griego, who will remain a ViacomCBS director.

20. Defendant Robert N. Krieger ("Klieger") was appointed to the CBS Board on July 27, 2017, at Shari Redstone's behest when Sumner Redstone stepped down from the Board, and he remained a CBS director until the Merger. Pursuant to the Merger Agreement, Klieger became a ViacomCBS director. According to the Company's 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Klieger, who will remain a ViacomCBS director. Klieger has been a partner at the Los Angeles law firm Hueston Hennigan LLP since 2015. Klieger is the Redstones' personal attorney, and has represented Sumner Redstone, Shari Redstone, and Tyler Korff (Shari Redstone's son) in many highly publicized

lawsuits. ViacomCBS, CBS, NAI, and Shari Redstone concede that Klieger is not independent of the Redstones or NAI.⁸

21. Defendant Martha L. Minow (“Minow”) was a CBS director from 2017—when she was nominated at the request of Shari Redstone—until the Merger.

22. Defendant Susan Schuman (“Schuman”) was appointed to the CBS Board in connection with the 2018 Settlement and remained a CBS director until the Merger. Pursuant to the Merger Agreement, Schuman became a ViacomCBS director. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Schuman, who will remain a ViacomCBS director. Schuman is the CEO and Co-Founder of SY Partners LLC (“SY Partners”). SY Partners consulted with Viacom [REDACTED]

[REDACTED]

[REDACTED].⁹

23. Defendant Frederick O. Terrell (“Terrell”) became a CBS director in late 2018—after three other directors resigned—and remained one until the Merger. Pursuant to the Merger Agreement, Terrell became a ViacomCBS director. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already

⁸ See Proxy at Annex A-3, A-4 (including Klieger as an “NAI Affiliated Director” and explicitly excluding Klieger from the definition of “Unaffiliated Independent Director”).

⁹ CBS_BC220_00001849-50.

agreed to vote their proxies in favor of Terrell, who will remain a ViacomCBS director.

24. Defendant Strauss Zelnick (“Zelnick”) was appointed to the CBS Board in connection with the 2018 Settlement and he remained a CBS director until the Merger. He is Shari Redstone’s close friend and ally.¹⁰

25. The CBS directors who approved the Merger—Beinecke, Byrne, Countryman, Goldner, Griego, Minow, Schuman and Terrell—are referred to herein as the “CBS Directors.” The remaining three CBS directors—Shari Redstone, Klieger, and Zelnick—purportedly abstained from the Merger vote.

E. Officer Defendant

26. Defendant Ianniello served as President and Acting CEO of CBS from his September 9, 2018 appointment—precipitated by the resignation of former Chairman, President, and CEO Leslie Moonves (“Moonves”)—until the Merger. Prior to his stint as President and Acting CEO, Ianniello served as CBS’s Chief Operating Officer, a position he held since June 4, 2013. Prior to that, Ianniello

¹⁰ William D. Cohan, *“The Band-Aid Has Been Ripped Off CBS”*: *A Broken Culture, and Shari Redstone, are still Creating C.E.O.-Search Chaos*, VANITY FAIR (Apr. 8, 2019), <https://www.vanityfair.com/news/2019/04/succession-chaos-at-cbs-shari-redstone> (“[T]here is no question about Zelnick’s loyalty to Shari.”); Josh Kosman, Strauss Zelnick could be the \$120M hire to run CBS/Viacom, *New York Post* (Nov. 26, 2018), <https://nypost.com/2018/11/26/strauss-zelnick-could-be-the-120m-hire-to-run-cbs-viacom/> (“[Zelnick] is a leading contender in the mix to run the media colossus — partially due to his close relationship with mogul Shari Redstone.”).

served as Executive Vice President and Chief Financial Officer (“CFO”) of CBS since 2009. On April 23, 2019, CBS increased Ianniello’s base salary from \$2.5 million to \$3 million, guaranteed a cash bonus for 2019 of \$15 million (up from a potential of \$12 million), and provided him with an immediate, lump sum payment of \$5 million, all of which was memorialized in an amended employment agreement. Pursuant to the Viacom/CBS Merger Agreement, Ianniello became Chairman and CEO of the CBS business of ViacomCBS through a consulting agreement with a fifteen-month term. After the Merger closed in December 2019, he left the Company the following month and was paid out by the Company consistent with a termination without cause. Ianniello was entitled to approximately \$79 million worth of cash compensation when the Merger closed. In total, Ianniello was paid ***\$125 million*** in compensation for 2019 alone.

RELEVANT NON-PARTIES

27. Robert M. Bakish (“Bakish”) is a ViacomCBS director and Shari Redstone’s hand-selected CEO of ViacomCBS. Pursuant to the Merger Agreement, Bakish became a ViacomCBS director. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Bakish, who will remain a ViacomCBS director. For more than twenty years, Bakish’s principal source of income was working for the Redstones. Bakish came to work for Viacom in 1997 and served in various key roles. In November 2016, Bakish was

appointed Viacom's Acting President and CEO. In December 2016, Bakish was officially appointed Viacom's President and CEO and became a member of the Viacom Board. Following the Merger, Shari appointed Bakish as CEO of ViacomCBS, which positioned him to nearly double his annual income from \$19.9 million at Viacom to approximately \$37 million at ViacomCBS.

28. Judith A. McHale ("McHale") is a ViacomCBS director pursuant to the Merger Agreement. According to the Company's 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of McHale, who will remain a ViacomCBS director. Shari Redstone and NAI appointed McHale to the Viacom Board by written consent in August 2016. On information and belief, Shari Redstone has known McHale for decades as she served as general counsel for MTV Networks in the mid-1980s, overseeing MTV, Nickelodeon, and VH-1. McHale was a member of the Viacom special committee in 2016, 2018 and 2019, and voted for the Merger as a Viacom director.

29. Ronald L. Nelson ("Nelson") is a ViacomCBS director pursuant to the Merger Agreement. According to the Company's 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Nelson, who will remain a ViacomCBS director. Shari Redstone and NAI appointed Nelson to the Viacom Board by written consent in August 2016. On information and belief, Shari Redstone has known Nelson for decades, as he was the co-chief operating officer of

DreamWorks SKG from 1994 to 2003, during which time DreamWorks and Paramount Pictures co-produced several major films. Before his time at DreamWorks, Nelson served as Executive Vice President, CFO, and a director of Paramount Communications, which Viacom acquired in 1994. Nelson voted for the Merger as a Viacom director.

30. Charles E. Phillips, Jr. (“Phillips”) is a ViacomCBS director pursuant to the Merger Agreement. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Phillips, who will remain a ViacomCBS director. Phillips joined the Viacom Board in January 2006 and voted for the Merger as a Viacom director.

31. Nicole Seligman (“Seligman”) is a ViacomCBS director pursuant to the Merger Agreement. According to the Company’s 2020 Proxy, Shari Redstone and NAI have already agreed to vote their proxies in favor of Seligman, who will remain a ViacomCBS director. Shari Redstone and NAI appointed Seligman to the Viacom Board by written consent in connection with Shari Redstone’s shakeup of Viacom leadership in 2016. Seligman is loyal to Shari Redstone and NAI. They communicate via e-mail and text message,¹¹ and, in 2017, when Shari Redstone was looking for a new CBS director, she e-mailed Seligman that she really needed

¹¹ CBS_BC220_00004308.

Seligman's help finding a new CBS director, stating: "I need another you" and [REDACTED]"¹² In the same e-mail, Shari Redstone asked Seligman to meet for coffee the following Friday, concluding the e-mail with [REDACTED]¹³ Seligman was co-chair of the Viacom special committee in 2016, 2018 and 2019, and voted for the Merger as a Viacom director.

32. The ViacomCBS Board is comprised of Defendants Shari Redstone, Klieger, Byrne, Beinecke, Griego, Goldner, Schuman and Terrell, and non-parties, Bakish, McHale, Nelson, Phillips and Seligman.

SUBSTANTIVE ALLEGATIONS

A. The Genesis of CBS and Viacom

33. The Columbia Broadcasting System, which would later become CBS, signed onto the air for the first time in 1929. In 1952, the CBS television network created Viacom¹⁴ as a syndication division. Viacom was spun off from the CBS network in 1971.

34. In 1987, NAI bought a controlling interest in Viacom. Under Sumner Redstone's control, Viacom acquired several companies, including CBS in 1999. After operating as a single entity for six years, the Viacom board approved a split of

¹² CBS_BC220_00004124.

¹³ *Id.*

¹⁴ At that time, the entity that later became Viacom was known as "CBS Films." In 1968, it was renamed "CBS Enterprises." It first became known as Viacom in 1970.

the company, re-establishing CBS as an independent company separate from Viacom. Although the expectation in 2005 was that Viacom's value would increase once it was "freed" of the older CBS, CBS ultimately outperformed Viacom.

B. CBS as an Independent Entity

35. When CBS and Viacom separated, each company maintained dual-class structures of Class A voting stock and Class B non-voting stock so that NAI and the Redstones could retain control of both entities. NAI took about 80% of the Class A stock of each entity (and thereby 80% of the voting control of each entity), giving the Redstone family control of both entities through NAI. The Redstones controlled the companies even though they held only about 10% of the economic interest of each company.

36. Sumner remained Chairman of both companies and, according to CBS's public filings, as a controller, Sumner Redstone was a steward of good corporate governance. He ran CBS as an independent—not controlled—company. Sumner Redstone repeatedly and publicly promised that CBS would have independent directors and management. As explained in the registration statement filed in connection with its 2005 spin-off, CBS installed protections such as requiring a majority independent board and independent compensation and governance committees. As CBS's chairman and controller, Sumner repeatedly promised that

the CBS board would remain independent and that he (NAI) would not interfere with the board's business judgment in conducting CBS business.

37. Shari Redstone stood by Sumner Redstone's public statements and did not retract them publicly after taking control of NAI. Her private conduct told a far different story.

C. Shari Redstone Seizes Control of NAI, CBS, and Viacom

38. Shari Redstone had longstanding ambitions to become a media tycoon, and saw CBS and Viacom as her tickets to that elite status. To achieve her goal, Shari Redstone broke Sumner Redstone's promises to maintain CBS's independence.

39. Shari Redstone joined NAI in 1993 and the Viacom board in 1994. At that time, Sumner Redstone considered Philippe Dauman ("Dauman") to be his successor and the future Viacom CEO, which interfered with Shari Redstone's plans to assume a "larger role" at Viacom. As she stated in a May 10, 2004 *New York Times* article: "It was always my intention that when the kids were grown, I would spend more time and play a more significant role at Viacom." Shari Redstone began to "feel like she would have to one day sue Dauman to protect her family's empire."

40. On February 8, 2007, Sumner sent a letter to the trustees of the SMR Trust declaring: "Unfortunately I have come to believe that Shari does not have the requisite business judgment and ability to serve as chairman of the three companies."

In a July 2007 letter to *Forbes*, Sumner stated that he was “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. Moreover, the boards and I are also committed to the principle that my successor will deal with the members of the boards in an appropriate manner.” Sumner closed the letter by stating that it was he who, “with little or no contribution” on the part of his children, “built these great media companies with the help of the boards of both companies.”

41. During 2014, Sumner Redstone’s health began to decline and Shari Redstone resolved to seek control of NAI, CBS, and Viacom. In December 2015, Shari Redstone executed documents purportedly to allow her to participate in Sumner Redstone’s healthcare decisions.¹⁵ In April 2016, she arranged for a new healthcare directive naming her as Sumner Redstone’s healthcare agent.¹⁶

42. By early 2016, Sumner Redstone’s ill health forced him to relinquish his chairmanship of CBS and Viacom. Each board filled the position with its respective CEO: CBS installed Moonves as Chairman, while the Viacom Board appointed long-time CEO Dauman as Viacom’s new Executive Chairman. Shari Redstone was the only Viacom director to vote against Dauman’s appointment.

¹⁵ Verified Complaint Pursuant to 8 *Del. C.* § 225(a) ¶ 61, *Salerno v. Nat’l Amusements, Inc.*, C.A. No. 12473-CB (Del. Ch. June 16, 2016).

¹⁶ *Id.*

43. As Sumner Redstone grew frailer, Shari Redstone continued to consolidate her power. She removed two long-time trustees of the SMR Trust, Dauman and then-Viacom director George Abrams (“Abrams”) (who was also a five-decade friend of Sumner Redstone and Dauman ally), and replaced them with her close friend Jill Krutick (“Krutick”) and Thaddeus Jankowski, NAI’s general counsel, who reported to Shari Redstone at NAI. By reconstituting the board of trustees, Shari Redstone ensured effective control of the SMR Trust. She also removed Dauman and Abrams from the NAI board of directors (the “NAI Board”) and repopulated it with Krutick and Shari Redstone’s children, Kimberlee Ostheimer and Brandon Korff. Shari Redstone and her son Tyler Korff retained their seats on the NAI Board. Thus, Shari Redstone secured majority control of the NAI Board and voting control of CBS and Viacom.

44. Having remade the NAI Board, Shari turned her attention to Viacom and Sumner’s heir apparent, Dauman. Her first order of business was to halt Dauman’s plan to sell Viacom’s minority stake in its film studio subsidiary, Paramount, which Sumner Redstone had famously won in a bidding war many years prior. Shari Redstone vigorously opposed any sale of Paramount, prompting her to threaten to remove any Viacom directors who did not support her vision for the

company.¹⁷ Shari Redstone told then-lead independent director of Viacom, Frederic Salerno (“Salerno”), that if he supported her, she would not remove him.¹⁸ She also made the same veiled threat to another Viacom director¹⁹ and would use similar tactics later to secure a combination of CBS and Viacom.

45. Shari Redstone followed through on her threat to gut the Viacom Board. In a well-publicized coup in June 2016, Shari Redstone used NAI’s control of Viacom to grant NAI veto authority over key Viacom business decisions and unilaterally replace members of the Viacom Board. NAI delivered written consents amending Viacom’s bylaws to require unanimous director approval regarding certain core Viacom Board responsibilities, including any transaction involving Paramount.²⁰ Ten days later, NAI delivered additional written consents removing Salerno, Abrams, Dauman, Blythe McGarvie, and William Schwartz from the Viacom Board, replacing them with Seligman, Nelson, McHale, Thomas May

¹⁷ See Meg James, *Shari Redstone Has ‘No Desire’ to Run Viacom, Says Spokesperson*, THE L.A. TIMES (May 31, 2016, 4:45 PM), <https://www.latimes.com/entertainment/envelope/cotown/la-et-ct-shari-redstone-viacom-20160531-snap-story> (noting that Shari Redstone and Dauman were at odds over whether to sell a stake in Paramount to a foreign investor).

¹⁸ Verified Complaint Pursuant to 8 *Del. C.* § 225(a) ¶ 64, *Salerno*, C.A. No. 12473-CB.

¹⁹ *Id.*

²⁰ See Verified Complaint Pursuant to 8 *Del. C.* § 225(a) ¶ 20, *Salerno*, C.A. No. 12473-CB.

(“May”), and Kenneth Lerer (“Lerer”). Together with Sumner and Shari Redstone, the new directors comprised a majority of Viacom’s eleven-member Board.

46. In litigation in this Court, Salerno accused Shari Redstone of “pulling the strings and playing puppet master behind this invalid removal attempt.”²¹ The parties reached a near-global settlement in August 2016. In a decisive victory for Shari Redstone, the settlement included, *inter alia*, the following terms:

- Dauman resigned as President and CEO of Viacom;
- Thomas Dooley succeeded Dauman as Interim President and CEO;
- Sumner Redstone remained Chairman Emeritus;
- Shari Redstone remained Non-Executive Vice Chair of Viacom;
- New appointee, and Shari Redstone’s friend, Seligman would chair the Viacom Governance and Nominating Committee;
- New appointee Nelson would chair the Audit Committee;
- New appointee McHale would chair the Compensation Committee; and
- The provision adopted by NAI’s written consent in June 2016, requiring unanimous agreement by the Viacom Board for the completion of the sale of an interest in Paramount, remained in effect.

²¹ *Id.* at ¶77.

47. As part of a settlement of the 2016 Viacom litigation, Dauman resigned for “Good Reason” and received \$72 million to leave.²²

48. After Thomas Dooley’s term as Interim President and CEO ended, and he was treated to a \$72 million golden parachute to leave Viacom, the Shari Redstone-controlled Viacom Board appointed Bakish President and CEO in November 2016.

49. As a result of her efforts, Shari Redstone secured majority control of the NAI Board, operational and voting control of Viacom, and voting control of CBS. CBS’s then-independent directors were the last remaining impediment to her scheme to seize power and force CBS to rescue Viacom.

D. Shari’s First Attempt to Orchestrate a CBS/Viacom Merger

50. In September 2016, Shari Redstone, acting through NAI, proposed a CBS-Viacom merger to the very Viacom Board that she had just finished hand-selecting (the “2016 Merger Proposal”). Viacom promptly formed a special committee, comprised mostly of new directors Shari Redstone had just appointed: Seligman (co-chair), May (co-chair), Lerer, McHale, Nelson, and Phillips.²³ Phillips

²² Cynthia Littleton, *Viacom Discloses Details of Philippe Dauman’s \$72 Million Settlement Deal*, Variety (Aug. 23, 2016, 4:54 AM), <https://variety.com/2016/biz/news/viacom-philippe-dauman-72-million-severance-package->; Viacom, Current Report (Form 8-K) (Aug. 22, 2016).

²³ CBS_BC220_00005259.

was the only director who had been with Viacom prior to Shari Redstone's 2016 Viacom coup. CBS's Board empowered an independent special committee to consider the 2016 Merger Proposal, and retained Lazard Frères & Co. LLC ("Lazard") to act as a financial advisor.

51. The CBS special committee had no power to evaluate strategic alternatives. NAI and Shari Redstone told the committee that they would not support any acquisition of CBS by a third party, any other transaction, or any deal that caused them to lose control of CBS or the combined company and would not agree to a public stockholder vote on any proposed merger. Shari Redstone reinforced these positions by rebuffing third parties. For example, AT&T's chief executive, Randall Stephenson, met with Shari Redstone in 2016 to express interest in acquiring CBS, and, without consulting the CBS Board or Moonves, Shari Redstone turned him away.²⁴

52. During these early merger negotiations, CBS insisted that NAI agree to restrictions on NAI's ability to act unilaterally and to guarantee that the combined CBS/Viacom entity would be managed as a non-controlled public company for at least the next five years. Shari Redstone rejected those requirements.

²⁴ Joe Flint & Drew FitzGerald, *AT&T Expressed Interest in CBS to Shari Redstone Before Time Warner Deal*, THE WALL ST. J. (June 24, 2018).

53. In December 2016, after just two months of considering the 2016 Merger Proposal, the CBS special committee rejected it. Shari Redstone complained that “the failure to get the deal done had caused Viacom to suffer,” and threatened that “the merger would get done ‘even if [she had] to use a different process.’”

54. Shari Redstone’s vow to get the merger done at all costs was inimical to the interests of CBS and its stockholders. At the time, Viacom was [REDACTED] [REDACTED]²⁵ and, as NAI has conceded, was “tremendously underperforming.”²⁶ Further, CBS’s management team was viewed as vastly superior to Viacom’s. In fact, in response to the 2016 Merger Proposal, CBS’s then-outside counsel, Wachtell, Lipton, Rosen & Katz (“WLRK”), warned NAI’s counsel that “putting in place an appropriate governance framework will be critical to the success of a potential combination” and further explained that the “independent directors [of CBS] do not want to entertain the prospect of a combination and invest the time and resources toward the necessary diligence and negotiation in connection with a possible transaction, unless they are satisfied that the [CBS] CEO and management team . . . would have complete operating and strategic authority going forward.”²⁷ WLRK also counseled that the CBS directors felt it was their “fiduciary

²⁵ CBS_BC220_00005827.

²⁶ *CBS Corp. v. Nat’l Amusements, Inc.*, C.A. No. 2018-0342-AGB, at 58 (Del. Ch. May 16, 2018) (TRANSCRIPT) (the “May 16, 2018 Transcript”).

²⁷ CBS_BC220_00005248-49.

duty to ensure, as a threshold matter, that the management and structure that have produced the great [CBS] success would not be diluted or lost in a potential combination with Viacom.”²⁸

55. The market also understood that a Merger would have been good for Viacom but bad for CBS. On December 12, 2016, the day CBS terminated merger talks, Viacom’s stock dropped 9%, while CBS’s stock remained unchanged. Given the reality of the companies’ disparate performance, something other than CBS’s best interests was driving Shari Redstone’s desire to get the merger done even if she had to use a “different process.” Shari Redstone wanted to preserve the Redstone legacy and save her family’s investment in Viacom.

E. Viacom Continues to Decline and Shari Redstone Thwarts a Potential Sale of CBS

56. After the special committee declined a merger in 2016, CBS continued to flourish as an independent company. Viacom, in contrast, continued to falter. In October 2017, Shari Redstone wrote to her personal attorney Robert Klieger (who was then a CBS director) that “Viacom is tanking”²⁹ Shari Redstone further lamented that [REDACTED]

[REDACTED]³⁰

²⁸ CBS_BC220_00005249.

²⁹ CBS_BC220_00004135.

³⁰ CBS_BC220_00004205.

57. A January 5, 2018 presentation prepared by Evercore and Cleary
Gottlieb Steen & Hamilton (the financial and legal advisors to Shari Redstone and
NAI) [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

58. NAI's advisors further advised that, [REDACTED]

[REDACTED]

³¹ CBS_BC220_00004217

³² CBS_BC220_00004233.

³³ CBS_BC220_00004234.

³⁴ CBS_BC220_00004235.

³⁵ CBS_BC220_00004237.

³⁶ CBS_BC220_00004236

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁸

59. Shari Redstone took this advice to heart and, despite market interest in CBS, prevented CBS from engaging in any third-party transactions that did not include a Viacom bailout. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁷ CBS_BC220_00004218.

³⁸ CBS_BC220_00004219.

³⁹ CBS_BC220_00004207.

⁴⁰ *Id.*

⁴¹ CBS_BC220_00004209 [REDACTED]

60. CBS and its outside, non-NAI affiliated directors would later allege that Shari Redstone's and NAI's demand that CBS rescue Viacom before CBS was allowed to consider other strategic options in the rapidly changing and consolidating media industry was a clear breach of NAI's fiduciary duty. Presented with these and other allegations, the Court of Chancery held that "particularly given CBS's proclaimed commitment to independent board governance, [CBS's] allegations are sufficient to state a colorable claim for breach of fiduciary duty against Ms. Redstone and NAI as CBS's controlling stockholder."⁴²

F. CBS's Special Committee Again Refuses to Bail Out Viacom and Sues Shari Redstone To Prevent Her From Trying To Force A Merger

61. In early 2018, Shari Redstone again proposed that CBS and Viacom merge to rescue Viacom (the "2018 Merger Proposal"). CBS's Class B stockholders lost approximately \$8.7 billion in value from CBS's 52-week high after news leaked that Shari Redstone had restarted merger talks. In contrast, between November 2017 and May 2018, when the market anticipated a possible Viacom bailout, Viacom's stock price rose 20%.

62. On February 1, 2018, CBS's N&G Committee met to consider, *inter alia*, the formation of a special committee. Shari Redstone attended part of that

⁴² *CBS Corp. v. Nat'l Amusements, Inc.*, 2018 WL 2263385, at *4 (Del. Ch. May 17, 2018).

meeting, but left before a discussion about the possibility of a combination between CBS and Viacom.⁴³ [REDACTED]

[REDACTED]

Later that same day, the full CBS Board—after the three NAI-affiliated directors (Shari Redstone, Klieger and Andelman) departed the meeting—resolved to appoint a special committee.⁴⁴

63. On February 1, 2018, Viacom also formed a special committee. It was comprised of Shari Redstone’s allies May, McHale, Nelson, and Seligman, each of whom Shari Redstone had installed in the 2016 Viacom Board takeover. That special committee would remain intact and ultimately approve the 2019 Merger.

64. In this second round of merger negotiations, Viacom argued to CBS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁴ CBS_BC220_00004740.

⁴⁵ CBS_BC220_00005827.

⁴⁶ CBS_BC220_00005933.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48

65. By April 5, 2018, CBS's special committee had serious concerns about a merger and worried about [REDACTED]

[REDACTED]

49 In mid-April and May 2018, the special committee again discussed [REDACTED]

[REDACTED]

50 Given Shari Redstone's past conduct in seizing control of Viacom to further her own interests, [REDACTED] was well founded.

66. The 2018 CBS special committee recognized that ensuring the independence of the board of the combined company would be essential should the transaction go forward. Indeed, it concluded in a May 8, 2018 meeting [REDACTED]

[REDACTED]

⁴⁷ CBS_BC220_00006001.

⁴⁸ CBS_BC220_00005121.

⁴⁹ CBS_BC220_00005130.

⁵⁰ CBS_BC220_00004952; CBS_BC220_00005136.

[REDACTED]⁵¹ The CBS special committee was also concerned that [REDACTED] They believed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵² Those concerns would prove prescient in 2019.

67. The CBS special committee concluded by May 13, 2018, that a deal with Viacom was “not in the best interest of all the Company’s stockholders.”⁵³ Among other things, Shari Redstone refused to agree to a majority-of-the-minority vote condition. Special committee chairman Bruce Gordon (“Gordon”) expressed his concern that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵⁴ The CBS special committee and all other members of the CBS Board not affiliated with NAI concluded that Shari Redstone “present[ed] a significant threat of irreparable and irreversible harm to the Company and its

⁵¹ CBS_BC220_00005137.

⁵² CBS_BC220_00005723.

⁵³ CBS_BC220_00005143.

⁵⁴ *Id.*

stockholders” because she was seeking “to combine CBS and Viacom regardless of the strategic and economic merits of the transaction.”⁵⁵ To protect against those threats, the CBS special committee recommended that the CBS Board declare a dividend of Class A stock to all CBS stockholders, which would reduce NAI’s voting power from around 80% to around 17% (the “Dividend”).⁵⁶

68. CBS’s special committee filed preemptive litigation in the Court of Chancery on May 14, 2018 (i.e., the 2018 CBS Litigation), seeking a declaration that the Dividend would be valid and alleging breach of fiduciary duty claims against Shari Redstone, NAI, Sumner Redstone, Holdings, and the SMR Trust. “By any reckoning, the Dividend Proposal [was] an extraordinary measure, presumably reflective of the depth of concern the independent members of the Special Committee [had] about Ms. Redstone’s intentions.”⁵⁷

69. The CBS special committee also sought a temporary restraining order (“TRO”) to prevent Shari Redstone from interfering with the composition of the CBS Board, the scheduled May 17 CBS Board meeting to approve the Dividend, and the Dividend.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *CBS Corp.*, 2018 WL 2263385, at *2.

70. Right before the TRO hearing on May 16, Shari Redstone’s counsel informed the Court that Shari Redstone and NAI had executed and delivered written consents to amend CBS’s bylaws, which effectively granted Shari Redstone veto control over the Dividend. The Court derided that “act of self-help” as a tactic that echoed the “dropping [of] consents in the dark of the night in the [2016] Viacom matter.”⁵⁸ At the TRO hearing, the CBS special committee’s counsel cautioned that Shari Redstone’s “private conduct doesn’t often match the public statements.”⁵⁹ Even the Court—while ultimately denying a TRO—noted that Shari Redstone had made representations “about NAI’s intentions as a controlling stockholder” in a brief, but not under oath.⁶⁰

71. A majority of the CBS Board resolved on May 17, 2018, to declare the Dividend.⁶¹ They did so because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] as Gordon—chair of the 2018 special committee—

⁵⁸ May 16, 2018 Transcript at 58, 76.

⁵⁹ May 16, 2018 Transcript at 29.

⁶⁰ *CBS Corp.*, 2018 WL 2263385, at *1 n.1.

⁶¹ The Dividend was approved in an 11-3 vote, with just Shari Redstone and her allies rejecting it. The special committee conditioned issuance of the Dividend on the Court’s approval of its validity.

explained.⁶² The directors indicated that they had to protect the stockholders over their own Board seats, as they were all willing to resign so long as the Court upheld the Dividend.

72. Shari Redstone, NAI and Holdings counter-sued CBS, its non-NAI directors, and certain officers, including Moonves and Ianniello for, *inter alia*, breaches of fiduciary duty.

73. As to Ianniello, NAI and Shari Redstone alleged that he provided “active participation [and] material assistance” in seeking to issue the Dividend to dilute NAI’s control.⁶³ They also alleged that Ianniello “knowingly breached his own fiduciary duties and knowingly and actively assisted the Director Defendants in breaching their fiduciary duties, including through his participation in and encouragement of the Director Defendants’ decision to declare the extraordinary dilutive dividend”⁶⁴ Even before the 2018 CBS Litigation, Moonves and Ianniello had discussed diluting NAI’s stake, even though it would take “away Ms. Redstone’s whole life.”⁶⁵ Ianniello wrote that Viacom was her life, and added that he had Moonves’ back “to the end.”⁶⁶

⁶² CBS_BC220_00006185.

⁶³ CBS_BC220_00004004.

⁶⁴ CBS_BC220_00004073.

⁶⁵ CBS_BC220_00004048.

⁶⁶ CBS_BC220_00004048-49.

74. Shari Redstone also objected to Ianniello’s compensation, which she claimed was excessive, and reserved the right to contest any payments to him.⁶⁷ Under his July 1, 2017 employment agreement (the “Ianniello Original Agreement”), Ianniello was entitled to a payout of more than \$60 million if he resigned for “Good Reason,” which was triggered, among other circumstances, if “a person other than [Ianniello] or Leslie Moonves [is appointed] as President and/or Chief Executive Officer of CBS.” Shari Redstone questioned the validity of this golden parachute provision, arguing that it “was not approved, or even discussed, by the full Board prior to the agreement being signed.”⁶⁸

G. The Settlement of the 2018 CBS Litigation and Subsequent Changes at CBS

75. Moonves’ ouster from CBS, related to allegations of sexual misconduct, overshadowed the 2018 CBS Litigation, which ended in a quick settlement in September 2018 (i.e., the 2018 Settlement).⁶⁹

76. As part of the settlement, seven CBS directors resigned⁷⁰ and six new directors joined: Beinecke, Byrne, Goldner, Richard Parsons, Schuman and Zelnick (the “New Director Appointees”). Shari Redstone, Klieger, Countryman, Gordon,

⁶⁷ CBS_BC220_00004012.

⁶⁸ CBS_BC220_00004024.

⁶⁹ CBS_BC220_00006097.

⁷⁰ Moonves, Charles Gifford, Joseph Califano, Arnold Kopelson, Doug Morris, Leonard Goldberg and David Andelman.

Minow, Griego and Cohen remained on the Board, and Gordon was confirmed as CBS's lead independent director. Countryman, Gordon, Minow, Griego and Cohen were designated as the "Continuing Independent Directors" under the Settlement Agreement.

77. CBS reconstituted the Compensation, N&G, and Audit Committees in the 2018 Settlement. These committees were to include directors "not affiliated with any of the NAI Entities or their respective affiliates," and for good reason, as they are tasked with, *inter alia*, identifying Board nominees, overseeing all aspects of good corporate governance, and reviewing related-party transactions, including those with NAI. The Compensation Committee was comprised of Zelnick (Chair), Cohen and Griego. The N&G Committee was comprised of Beinecke (Chair), Gordon, Minow and Parsons.

78. More changes in the Board's composition further undermined the independence of the Board. Almost immediately after the 2018 Settlement, additional independent directors left the Company. On September 23, 2018, Gordon and Cohen—two of the five "Continuing Independent Directors" pursuant to the 2018 Settlement Agreement—abruptly quit. According to reports in *The Wall Street Journal*, Gordon quit because of the Board's decision to name an interim Chairman (the newly elected Parsons), which sidelined Gordon's role and compromised the

Board’s ability to recruit a strong CEO who might want the chairman title.⁷¹ Two days after Gordon’s and Cohen’s resignations, the CBS Board confirmed Parsons as Interim Chairman.⁷²

79. Gordon had chaired the 2018 special committee and had been a key negotiator, including directly against Seligman, who co-chaired Viacom’s special committee. Gordon had been in charge of almost every 2018 CBS special committee meeting and took the lead on presenting the Dividend proposal at the May 2018 CBS Board meetings. On information and belief, Shari Redstone effectively forced Gordon to resign.⁷³ Meanwhile, Cohen was portrayed in the press as a staunch supporter of Moonves, which upset him.⁷⁴ On information and belief, Shari

⁷¹ Keach Hagey & Joe Flint, *A Drama CBS Can’t Cancel—the One in Its Boardroom*, The Wall Street Journal (Oct. 15, 2018, 5:30 AM), <https://www.wsj.com/articles/a-drama-cbs-cant-cancelthe-one-in-its-boardroom-1539595801>.

⁷² CBS_BC220_00006195.

⁷³ The Wall Street Journal reported that his “conduct . . . during the saga” was under investigation at CBS prior to his resignation. There is reason to believe Shari Redstone sought the investigation.

⁷⁴ Keach Hagey & Joe Flint, *A Drama CBS Can’t Cancel—the One in Its Boardroom*, THE WALL. ST. J. (Oct. 15, 2018), <https://www.wsj.com/articles/a-drama-cbs-cant-cancelthe-one-in-its-boardroom-1539595801>.

Redstone, who was known to weaponize the media to her advantage, also effectively forced Cohen out.⁷⁵

80. *The Wall Street Journal* reported at the time that Gordon's and Cohen's Board seats would not be filled. That proved true. Despite filling 13 CBS Board seats in the 2018 Settlement, Shari Redstone and NAI effectively kicked out two independent directors (including the director who led the opposition to the 2018 Merger), leaving CBS's Board with 11 directors. The forced resignations also left both the Compensation Committee and N&G Committee without one of the non-NAI directors originally allocated in the 2018 Settlement.

81. At the September 25, 2018 Board meeting at which Parsons was named Interim Chairman, the CBS Board amended CBS's Corporate Governance Guidelines to provide that the Chairman "shall preside at meetings of non-management directors and independent directors." Parsons resigned from the CBS Board less than a month later, on October 21, 2018, and was replaced by Terrell Zelnick, a friend of Shari Redstone's and one of the New Director Appointees, took over as Interim Chairman. Thus, when the purported "independent" directors met

⁷⁵ See *CBS Corp. v. Nat'l Amusements, Inc.*, C.A. No. 2018-0342-AGB ¶¶ 58, 59 (Del. Ch. May 23, 2018) (Amended Verified Complaint) (where CBS and its 2018 special committee accused Shari Redstone and her advisors of leaking confidential information during negotiations to the press).

in 2019 to consider a potential merger with Viacom for the third time, Zelnick presided.

82. Of significant importance to the 2018 Board, the 2018 Settlement Agreement provided that Shari Redstone and NAI were prohibited for two years from proposing “directly or indirectly . . . whether publicly or privately” that CBS merge with Viacom, unless at least two-thirds (2/3) of the directors who were not affiliated with NAI proposed one or asked for a proposal.

83. Also in connection with the 2018 Settlement, Ianniello was appointed President and Acting CEO and the Ianniello Original Agreement was amended on September 9, 2018 (the “First Ianniello Amendment”). Although Shari Redstone previously objected to Ianniello’s \$60 million golden parachute provision, she did not substantively modify it in the First Ianniello Amendment. Instead, the First Ianniello Amendment clarified that Moonves not being CEO was no longer a “Good Reason” sufficient to trigger payment (because Moonves was being forced out in the 2018 Settlement). It also permitted Ianniello to resign for “Good Reason” if CBS did not name a permanent CEO by June 30, 2019, or if CBS hired someone other than him for that position.⁷⁶ These terms would prove useful to Shari Redstone in

⁷⁶ See CBS_BC220_00006196 [REDACTED]
[REDACTED]
[REDACTED]

garnering Ianniello's support for a merger between Viacom and CBS. Having previously sought and failed to diminish Shari Redstone's and NAI's control of CBS, Ianniello knew he would never be named CEO. A combined company with someone else at the helm seemed inevitable. But so long as Ianniello stuck around long enough without upsetting Shari Redstone, Ianniello could leave CBS with a \$60 million parting gift – which was, not surprisingly, very close to Dauman's \$72 million payout when he was forced out of Viacom.

84. CBS purportedly embarked on a CEO search and formed a “Search Committee” in connection with the 2018 Settlement that included Shari Redstone as a member.⁷⁷ There is no evidence in the 220 Documents that the Search Committee ever worked to locate a permanent CEO at CBS. On information and belief, Shari Redstone foreclosed any meaningful CEO recruitment, as a new CEO would only stand as a potential impediment to a merger. With Ianniello well-incentivized to support (or, at least, not oppose) the merger she wanted, Shari Redstone had no reason to hire a permanent CEO.

H. Shari Redstone Pushes for a CBS-Viacom Merger

85. In September 2018, Ianniello immediately let Shari Redstone know that he was willing to play ball. Ianniello met Shari Redstone for lunch at the Pierre Hotel in New York to let her know that he had an apparent change of heart, in less

⁷⁷ CBS_BC220_00006214.

than four months, and now suddenly believed “there were benefits to a potential business combination of CBS and Viacom.”⁷⁸ Although the 2018 Settlement had just been inked, and Shari Redstone was prohibited from unilaterally proposing a business combination between CBS and Viacom, she nevertheless inserted herself in the process.

86. By January 2019—only four months after the 2018 Settlement—Shari Redstone prompted a discussion of “strategic alternatives,” but made sure that CBS focused solely on a business combination with Viacom. To do that, she closely monitored the N&G and Compensation Committees—both of which should have been free of NAI’s influence.

87. On January 30, 2019, Shari Redstone attended a joint meeting of the Compensation and N&G Committees solely focused [REDACTED] [REDACTED] and a Compensation Committee meeting that same day to discuss [REDACTED] [REDACTED] including Ianniello’s. The next day, the CBS Board heard from management regarding the Company’s long-range business plans and representatives of Centerview and Lazard regarding [REDACTED]

[REDACTED]⁷⁹ Nothing in the 220 Documents indicates who invited Centerview and Lazard to the meeting. Neither the Board nor any

⁷⁸ Proxy at 81.

⁷⁹ CBS_BC220_00001749.

committee of CBS independent directors determined at that meeting to proceed with a Viacom transaction or to invite a proposal.

88. Just over a week later, [REDACTED]

[REDACTED]⁸⁰ Pruzan is a co-founder of Centerview Partners and had attended the January 31, 2019 CBS Board meeting.

89. [REDACTED] Shari Redstone publicly confirmed that the CBS-Viacom Merger was back on. On February 16, 2019, Shari Redstone and Bakish spoke at a Viacom virtual town hall. Bakish asked Shari Redstone directly about a CBS/Viacom merger. She responded: “I do believe scale matters and we probably will look for transactions to accelerate our strategy.”⁸¹ Shari Redstone was beginning to put her Viacom bailout into overdrive.

90. CBS directors did not take long to heed Shari Redstone’s ambitions. A group of CBS directors, purportedly independent of NAI, met on February 21, 2019, with Shari Redstone’s friend Zelnick presiding. Centerview and Lazard discussed

⁸⁰ CBS_BC220_00006244.

⁸¹ *Shari Redstone: Viacom’s Culture is Back*, ViacomCBS (Feb. 16, 2019), <https://www.viacbs.com/news/life-at-viacom/shari-redstone-bob-bakish-viacom-spark-2019>.

“strategic acquisition opportunities and reviewed certain potential acquisitions.”⁸²

Pruzan was in attendance. The advisors presented the CBS directors [REDACTED]

[REDACTED] Viacom reported \$10.2 billion in revenue in 2014, \$9.9 billion in 2016, \$10 billion in 2018, and was projecting \$9.9 billion in 2019, \$10.1 billion in 2020, and \$10.2 billion in 2021.⁸³ Meanwhile, Viacom’s operating income before depreciation and amortization (“OIBDA”) fell from \$4.4 billion in 2014, to \$3.7 billion in 2016, to \$3.3 billion in 2018, and to an expected \$3.2 billion in 2019, 2020 and 2021.⁸⁴

91. The Board concluded the meeting “by discussing next steps in the process for considering strategic alternatives.”⁸⁵ Again, neither the Board nor any committee of CBS independent directors determined at that time to proceed with a Viacom transaction or to invite a proposal.

I. Shari Redstone Initiates Merger Talks at an N&G Committee Meeting

92. Still without an invitation from the Board to present a merger proposal, Shari Redstone began to increase the pressure on CBS and its Board to evaluate a

⁸² CBS_BC220_00001743.

⁸³ CBS_BC220_00001322.

⁸⁴ *Id.*

⁸⁵ CBS_BC220_00001744.

potential transaction with Viacom. On February 21, 2019, Shari Redstone attended a Compensation Committee meeting where, among other issues, [REDACTED] [REDACTED]⁸⁶ At that meeting, the Compensation Committee and Shari Redstone met in executive session to [REDACTED] The meeting minutes omit all details of that discussion.⁸⁷

93. The next day, Beinecke (as Chair) and Minow attended a telephonic February 22, 2019 N&G Committee meeting. Zelnick, [REDACTED] [REDACTED] for undisclosed reasons.⁸⁸ That same day, he executed a director conflict questionnaire belatedly disclosing [REDACTED] On information and belief, Zelnick's execution of the questionnaire was precipitated by Shari Redstone demanding that the CBS Board immediately form a special committee (as discussed below).

94. Although not a member, Shari Redstone joined the February 22 N&G Committee meeting. The N&G Committee Charter requires that "[t]he Chair of the Committee will determine in advance of each meeting whether non-Committee

⁸⁶ CBS_BC220_00005149.

⁸⁷ CBS_BC220_00005153.

⁸⁸ CBS_BC220_00002035.

members may attend the meeting.” There is no evidence of any such “determination” in the Section 220 Documents.

95. During the N&G Committee’s “executive session,” Shari Redstone discussed the return of Centerview and Lazard [REDACTED]

[REDACTED]

[REDACTED]⁸⁹ Shari Redstone also discussed [REDACTED]

[REDACTED]⁹⁰ Upon information and belief, Shari Redstone demanded the formation of a CBS special committee, because after Shari Redstone purportedly left the meeting, [REDACTED] and they determined to recommend that the Board form a special committee.⁹¹

96. That Viacom was the contemplated merger partner for CBS is an obvious reason for the prompt formation of a CBS special committee to review “strategic possibilities,” specifically in light of Shari Redstone’s meeting intrusions and prior demands. The events described in the aforementioned minutes indicate that Shari violated the 2018 Settlement Agreement by “directly or indirectly” proposing a merger of Viacom and CBS.

⁸⁹ CBS_BC220_00002036.

⁹⁰ *Id.*

⁹¹ *Id.*

97. The February 22, 2019 N&G Committee meeting is not mentioned anywhere in the Proxy. Furthermore, the N&G Committee Charter requires the committee to “report regularly to the entire Board and . . . submit to the Board the minutes of its meetings.” There is no indication in the Section 220 Documents that the N&G Committee relayed Shari Redstone’s conduct at the meeting, or the minutes of the meeting, to the full Board.

98. CBS’s then-Chief Legal Officer, Lawrence Tu (“Tu”), attended the February 22 N&G Committee meeting. He abruptly resigned the same day for “Good Reason.” Under Tu’s employment agreement, he was permitted to resign for Good Reason if, *inter alia*, he was assigned “duties or responsibilities . . . materially inconsistent with [his] position, titles, offices or reporting relationships as they existed on the Effective Date or that materially impair [his] ability to function as Senior Executive Vice President and Chief Legal Officer of CBS.” As a result of that “Good Reason” resignation, CBS paid Tu more than \$9 million in severance and he executed a “Separation Agreement.”

J. Beinecke and Minow Take Shari Redstone’s Demands to the Board and a Special Committee Purportedly Forms

99. On February 25, 2019—the next business day after the February 22 meeting—Tu’s former associate, deputy CBS General Counsel Jonathan Anshell (“Anshell”), [REDACTED]

[REDACTED]

demonstrate that the Board did *not* determine to proceed with a Viacom deal or request a merger proposal at any time in February 2019.

102. The March 9 minutes also reflect that the directors “determined to engage Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”), with Robert B. Schumer as lead counsel, to serve as counsel to the independent directors in connection with their continued evaluation of a potential business combination of CBA [sic] and Viacom.”⁹⁶

103. There is no indication of how Paul Weiss or Mr. Schumer came to be the selected counsel, and no suggestion in the minutes that the purportedly independent directors considered other legal advisors. Upon information and belief, Shari Redstone recommended Paul Weiss at the February 22 N&G Committee meeting where [REDACTED]

[REDACTED]⁹⁷ Paul Weiss had been Viacom’s counsel as recently as 2013.⁹⁸ On its website, Paul Weiss touts Viacom as a former client.⁹⁹

⁹⁶ CBS_BC220_00001742.

⁹⁷ CBS_BC220_00002036.

⁹⁸ *See Winshall v. Viacom Int’l Inc.*, C.A. No. 6074-CS (Del. Ch.).

⁹⁹ *Paul, Weiss Knocks Out Delaware Suit Over Harmonix Deal* (Nov. 15, 2011), <https://www.paulweiss.com/practices/litigation/mergers-acquisitions-litigation/news/paul-weiss-knocks-out-delaware-suit-over-harmonix-deal?id=7447>.

104. The purportedly independent director committee—which would ultimately be denominated a special committee after Zelnick was removed—was a ship without a real captain but with a pre-ordained destination. On March 22, the directors decided that the committee should not have a chair. Directors who had served on the Board for short periods of time (but who had been hand selected by Shari Redstone) were put in charge: Beinecke (who had been on CBS’s Board a mere six months) was tasked with interfacing with Paul Weiss; Byrne and Terrell (who had been on the CBS Board for six and four months, respectively) were tasked with interfacing with Centerview and Lazard. Longer tenured directors who had not been hand-picked by Shari Redstone (and who had demonstrated willingness to oppose her) were marginalized to the point of irrelevance. None of Countryman, Minow and Griego – each of whom was on the 2018 CBS special committee that sued NAI and Shari Redstone – is substantively mentioned in the “Background of the Merger” section of the Proxy. There is no indication in the Proxy or the Section 220 Documents that any of these holdover directors shared highly relevant information about the 2018 process with the CBS Board, including the bases for the Board’s prior determinations that a Viacom merger was not in CBS’s best interest. Instead, the Proxy and the 220 Documents suggest that these holdover directors were pushed to the side in favor of the directors chosen by Shari Redstone to deliver her desired merger.

105. Two weeks later, on April 4, 2019, the purported independent directors (with Zelnick in attendance) turned to Ianniello to [REDACTED] [REDACTED]¹⁰⁰ He was a terrible candidate. Ianniello was aligned with Shari Redstone, rather than CBS and its stockholders, and stood to gain at least \$60 million if he was not named permanent CEO. Delivering a Viacom merger assured that outcome and thus Ianniello’s receipt of his \$60 million golden parachute. Furthermore, back in September 2018, he had already signaled to Shari Redstone that he was willing to deliver the merger to her.

106. On April 9, 2019, the CBS Board purportedly established a special committee. That committee’s charter—signed by Shari Redstone and her allies, Klieger and Zelnick—[REDACTED] authorized the special committee to evaluate and negotiate a “combination of the Company with Viacom Inc.”—[REDACTED] [REDACTED] It also specifically withheld from the special committee authority:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰¹

¹⁰⁰ CBS_BC220_00000269.

¹⁰¹ CBS_BC220_00001794.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Neither the 2016 nor the 2018 CBS special committee charters contained similar limitations.¹⁰² These limitations significantly hindered the committee’s ability to say “no” to Shari Redstone and NAI.

107. On April 12, 2019, the Compensation Committee met to discuss a possible extension of Ianniello’s employment agreement.¹⁰³ Again, Shari Redstone attended. At that meeting, the committee purportedly discussed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰⁴

108. On April 23, 2019, Ianniello and CBS again amended Ianniello’s employment agreement (the “Second Ianniello Amendment”), increasing his base salary from \$2.5 million to \$3 million, guaranteeing a cash bonus for 2019 of \$15 million (up from a potential of \$12 million), and providing him with an immediate, lump sum payment of \$5 million. According to reporting from Bloomberg, Ianniello

¹⁰² See CBS_BC220_00004761-62 and CBS_BC220_00004752-53.

¹⁰³ CBS_BC220_00004779.

¹⁰⁴ *Id.*

agreed to this “hefty payout” “in exchange for supporting the deal [with Viacom] without having a shot at the top job.”¹⁰⁵

109. In the Second Ianniello Amendment, Ianniello and CBS modified the Good Reason trigger to include additional language about what would occur in the obvious event that he would not be named successor CEO:

Definition of Good Reason. The definition of Good Reason in paragraph 7(c)(i) of the Agreement is amended to replace the reference to “June 30, 2019” in clause (A) with a reference to “December 31, 2019.” Notwithstanding the first paragraph of paragraph 7(c)(i), if you should be entitled to resign your employment with Good Reason under circumstances described in paragraph 7(c)(i)(A) (as amended by the preceding sentence), (B), (C), (E) or (G) of the Agreement, CBS acknowledges and agrees that such circumstances shall not be capable of cure by CBS, and that you may resign your employment for Good Reason effective as of a date that may be as early as immediately upon the provision of written notice to CBS; provided, however, that *if you resign your employment with Good Reason under circumstances described in paragraph 7(c)(i)(B) of the Agreement due to the appointment of someone other than yourself as Chief Executive Officer of CBS*, the effective date of termination of your employment *will be postponed until the expiration of the Consulting Period under Section 7(b) of this letter agreement*, if applicable, or earlier termination of your employment during the Consulting Period under Section 7(d) of this letter agreement, if applicable. (Emphases added).

The Second Ianniello Amendment makes repeated references to “the appointment of a permanent Chief Executive Officer of CBS other than yourself.” Everyone knew that this provision would be triggered, so the parties negotiated for even more

¹⁰⁵ *ViacomCBS Names Cheeks as CBS President, Replacing Ianniello*, BLOOMBERG NEWS (Jan. 31, 2020).

compensation to be paid to Ianniello during a “Consulting Period,” cementing Ianniello’s support for Shari Redstone’s long-sought merger.

K. Shari Redstone Pressures the CBS Special Committee

110. Shari Redstone, NAI and their advisors regularly communicated with the CBS and Viacom special committees and their advisors “throughout the process,”¹⁰⁶ imposing their views on nearly every aspect of the transaction, including the exchange ratio, a majority-of-the-minority vote, and governance and management of the combined company, including composition of the post-merger board, senior management, and the appointment of Bakish as CEO. NAI was so involved in the process that it even requested that CBS and Viacom reimburse it for its transaction-related expenses.

111. The special committee negotiated in the shadow of Shari Redstone’s control. In March 2019, before negotiations had begun, NAI’s legal counsel reminded Paul Weiss that NAI had been unwilling to commit to a majority-of-the-minority provision in the 2016 and 2018 merger discussions, signaling Shari Redstone’s unwillingness to do so here.¹⁰⁷ Having been “reminded” of Shari Redstone’s position, CBS’s special committee did as expected: it adopted Shari Redstone’s 2016/2018 stance and *never even asked* that the Merger be conditioned


¹⁰⁶ Proxy at 88.

¹⁰⁷ Proxy at 82.

on a majority-of-the-minority vote of CBS's stockholders. A truly independent special committee would have aggressively negotiated something of value in exchange for giving up a majority-of-the-minority vote. The CBS special committee simply abandoned the best governance protection for CBS stockholders and got nothing in return. The CBS special committee's negotiating torpor evinces Shari Redstone's tight control.

112. With the table set for a merger by written consent, in June 2019 the parties set about "negotiating" the terms. Centerview and Lazard laid out the important issues to negotiate.¹⁰⁸

¹⁰⁸ CBS_BC220_00000621.



In the end, CBS would fold on nearly every one of these [REDACTED] issues.

113. On June 14, 2019, CBS’s special committee decided to begin negotiations. Because CBS had not named a permanent CEO, the CBS special committee had little leverage to demand that Ianniello lead the combined company. Nor did they expect that Shari Redstone would ever approve of Ianniello for that position. Thus, the CBS special committee did not push to have Ianniello named CEO and merely discussed the “desire to appoint Mr. Ianniello to a position in which he would have an important role at the combined company.”¹⁰⁹ Setting the stage for

¹⁰⁹ CBS_BC220_00000068.

Shari Redstone’s loyalist Bakish to take control of the combined company, the CBS special committee – with Ianniello in the room – discussed meeting with Bakish to discuss who should serve as CEO. The committee further tasked Shari Redstone’s friend Byrne with updating Shari Redstone on the special committee’s progress to date.¹¹⁰

114. Two days later, Shari Redstone provided Byrne [REDACTED]

[REDACTED]¹¹¹ [REDACTED]

[REDACTED] on June 20, 2019,

the CBS special committee:

[A]cknowledged that, [REDACTED]

[REDACTED] it was unlikely that the Special Committee would be able to successfully make progress in evaluating or negotiating a Potential Transaction unless the Special Committee [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹²

This conversation occurred while Ianniello listened telephonically.

115. CBS’s decision [REDACTED]

[REDACTED] is contrary to CBS’s positions in

¹¹⁰ *Id.*

¹¹¹ CBS_BC220_00000076.

¹¹² *Id.*

discussions regarding the 2018 Merger Proposal, when [REDACTED]

[REDACTED]¹¹³

116. Shari Redstone then sent other allies to exert influence over the CBS special committee’s work. For reasons not disclosed in the Proxy or Section 220 Documents, after Byrne spoke with Shari on June 16, [REDACTED]

[REDACTED]¹¹⁴ Parsons briefly served as a CBS director in late 2018, but had no role with CBS in 2019. However, Shari Redstone was friendly with Parsons and had trusted him as a close ally [REDACTED]

[REDACTED]¹¹⁵ Upon information and belief, Parsons’s involvement in the 2019 special committee process was another part of Shari Redstone’s invasion of the special committee’s work and further demonstrates her undue influence over the process. But Shari Redstone was not done yet.

117. [REDACTED]

[REDACTED]

[REDACTED]¹¹⁶ [REDACTED]

[REDACTED] Given Shari Redstone’s relationship with Zelnick, it is reasonable to

¹¹³ CBS_BC220_00005652 [REDACTED]
[REDACTED]

¹¹⁴ CBS_BC220_00000076.

¹¹⁵ CBS_BC220_00004958.

¹¹⁶ CBS_BC220_00000272.

L. CBS Caves to Shari Redstone's Demands

120. After Shari Redstone insisted that the process begin in earnest on February 22, 2019, and after making her demands repeatedly known to Byrne and Beinecke, she received the strongest possible signal that the special committee would give her everything she wanted. A months-long, Kabuki-like negotiation then ensued.

121. On July 15, 2019, the CBS special committee made the first offer, and [REDACTED] The CBS special committee gave away the CEO seat to Bakish with the understanding that Ianniello would have a meaningful role post-Merger “in order to help enhance the value of the combined company’s CBS assets.”¹²² [REDACTED].¹²³ CBS also proposed that it only select *half* the post-Merger board. In other words, CBS’s opening position was control of half of the combined company board even though it would be the putative buyer in the deal and had already given away the CEO position to Viacom.¹²⁴

¹²² Proxy at 89; *see also id.* at 97, 113 and 114 (where the CBS Board noted Ianniello’s continued employment as a reason to approve the Merger).

¹²³ CBS_BC220_00000334.

¹²⁴ Proxy at 94.

122. Days later, [REDACTED]

[REDACTED]¹²⁵ In it, Viacom/NAI (i) [REDACTED] (ii) rejected CBS's request that a change in the number of total directors require approval by a majority of non-NAI directors, (iii) provided no protection from removal for any executives other than Ianniello, (iv) [REDACTED]
[REDACTED]
[REDACTED] (vi) proposed that CBS be renamed "Viacom," and (vii) proposed a 15-member board.¹²⁶ Shari Redstone's fingerprints were all over the counterproposal, and the Viacom special committee was apparently eager to help her get her deal.

123. The CBS special committee delivered a meager revised proposal on July 25, 2019, demanding that the combined company's board consist of twelve directors, with only six directors designated by CBS, four directors designated by Viacom, and two directors designated by NAI (one of which could be the CEO, Bakish).¹²⁷ The CBS special committee also indicated that it [REDACTED]
[REDACTED]

¹²⁵ CBS_BC220_00000062; CBS_BC220_00000332 [REDACTED]
[REDACTED]

¹²⁶ CBS_BC220_00000331-33.

¹²⁷ Proxy at 96.

[REDACTED]¹²⁸ It did not seek to bargain for anyone else to lead the N&G Committee, despite learning in the 2018 CBS Litigation of the close friendship between Shari Redstone and Seligman.

124. Viacom’s counterproposal days later was “informed by discussions between the representatives of Viacom and Shari Redstone.”¹²⁹ That counterproposal included [REDACTED] and that the combined company’s board would be comprised of thirteen directors, with six directors designated by CBS, four directors designated by Viacom, two directors designated by NAI, and the chief executive officer of the combined company (i.e., Bakish). In other words, NAI and Viacom’s joint proposal had them designating 7 of the 13 directors, with CBS designees relegated to a minority.

125. On July 31, 2019, Paul Weiss (for the CBS special committee) spoke to Shari Redstone’s counsel about open governance issues. During that call, Paul Weiss stated that [REDACTED]

[REDACTED]¹³⁰ [REDACTED]

[REDACTED]. NAI even got the final say on the name of the post-merger company being



¹²⁸ CBS_BC220_00000128.

¹²⁹ CBS_BC220_00000053.

¹³⁰ CBS_BC220_00000060.

“ViacomCBS” instead of “CBSViacom.”¹³¹ As one market analyst pointed out, the name of the combined company is an “ugly portmanteau Viacom is a name without a brand.”¹³²

126. After Shari Redstone and Viacom secured their preferred management and board composition, the purported negotiation turned to the exchange ratio. This was a complete about-face from CBS’s position in 2018, when the CBS special committee only agreed to discuss the exchange ratio after achieving management and other governance victories for CBS, including board composition and minority stockholder protections.¹³³ By failing to successfully negotiate for any key management positions, board seats or substantial governance protections up front, this CBS special committee had no leverage to negotiate an exchange ratio that would be beneficial and fair to CBS Class B stockholders.

127. On August 1, 2019—in the midst of exchange ratio negotiations—
 CBS did not use this information to negotiate a better deal, as one would expect of faithful fiduciaries out to achieve the best deal for CBS and its non-NAI-affiliated stockholders.¹³⁴ Within

¹³¹ Proxy at 99.

¹³² *CBS Corporation*, Cowen Equity Research, Aug. 14, 2019, at 1.

¹³³ CBS_BC220_00004915; CBS_BC220_00004918-19.

¹³⁴ CBS_BC220_00000111.

two weeks, the CBS special committee agreed to exchange 0.59625 shares of CBS Class A or B stock for each Viacom Class A or Class B share, respectively. This was effectively an at-the-market exchange.

128. In purportedly endorsing the Merger, Centerview and Lazard opined on the fairness of the exchange ratio, not the fairness of the Merger. Moreover, those advisors had powerful incentives to find that a deal – any deal – was fair. Centerview and Lazard had worked for the CBS independent directors in connection with the earlier failed mergers. Because the lion’s share of their fees had been dependent on those deals closing, Centerview and Lazard had earned just \$3.75 million and \$1.25 million, respectively, for their prior work, including on the contentious negotiations that wound up in this Court in 2018. Rubber-stamping the Merger allowed Centerview and Lazard to finally cash in on their prior efforts and each bank was paid \$25 million when the Merger closed.

M. A Weakened CBS Board Dominated by Shari Redstone Sells Out CBS’s Class B Stockholders

129. On August 13, 2019, CBS and Viacom announced the Merger. Shari Redstone won on nearly every key item she sought:

- a. CBS’s minority stockholders had no vote, and NAI would approve the Merger by written consent;
- b. Bakish leads ViacomCBS;
- c. D’Alimonte is General Counsel of ViacomCBS;

- d. Shari Redstone chairs the Board;
- e. Seligman chairs the N&G Committee;
- f. Ianniello would only stay on for a short transition period before being let go and cashed out;
- g. Directors and an officer currently aligned with Viacom's and Shari Redstone's interests control the ViacomCBS Board; and
- h. The combined company's name begins with Viacom.

CBS was taken over by Viacom, despite the fact that the Merger was structured so that Viacom merged into CBS with CBS surviving the Merger. Shari Redstone and NAI control ViacomCBS through their ownership of 79.4% of the Class A voting stock.

130. Aside from Shari Redstone and Klieger, only six members of the 13-member ViacomCBS Board are former CBS directors, most of whom Shari Redstone installed in the 2018 Settlement and who helped Shari Redstone finally get her deal (Beinecke, Byrne, Goldner, and Schuman). Terrell, who joined in late 2018 to replace Parsons, and Griego also remain. The other seven members of the ViacomCBS Board are Shari Redstone, Klieger (her attorney), four existing Viacom directors who voted for the Merger as Viacom directors (McHale, Nelson, Phillips, and Seligman), and Bakish. Shari Redstone installed three of those seven directors – Seligman, McHale, and Nelson – on the Viacom Board in connection with her June 2016 Viacom takeover.

131. Shari Redstone chairs the ViacomCBS Board.¹³⁵ There is no Vice Chair (as there was at CBS), [REDACTED]

[REDACTED]¹³⁶ In fact, the 220 Documents indicate [REDACTED]
[REDACTED]
[REDACTED]

132. In connection with the Merger, Ianniello’s employment agreement was amended again to clarify that he was entitled to the “Good Reason” termination payments (in excess of \$70 million), but also to provide for a new contract that paid him an additional \$3 million per year, a minimum annual target bonus of \$15 million, and 450,000 restricted stock units.¹³⁷

133. After the Merger was announced, things quickly deteriorated for CBS’s stockholders, and then got worse still. CBS’s Class B stock price plummeted upon the announcement of the 2019 Merger. Since April 1, 2019, CBS’s Class B stock had consistently traded well above \$45 per share—reaching \$53.51 on July 16. After the deal was announced on August 13, the Class B stock price dropped from \$48.70 to \$44.65 overnight, and continued tumbling thereafter, closing at \$39.34 on December 3, 2019, the day before the Merger closed.

¹³⁵ CBS_BC220_00000737.

¹³⁶ CBS_BC220_00000720.

¹³⁷ CBS_BC220_00001117.

134. CBS knew that agreeing to rescue Viacom was going to cause CBS’s stock price to plummet because it had happened the year before when news of the renewed 2018 merger talks surfaced, “representing an \$8.7 billion loss in market cap.”¹³⁸ Despite this evidence from the 2018 experience, the CBS special committee never bargained for a majority-of-the-minority vote for the CBS Class B stockholders. On this point, the Court has already described the CBS special committee’s actions as “inexplicabl[e],” particularly in light of CBS’s firm stance in 2018.¹³⁹

135. [REDACTED]

[REDACTED]¹⁴⁰ Recognizing that it gave CBS away to Viacom, CBS agreed to announce only the bare minimum about the future of the combined company at closing, withholding key information such as committee composition and key management holdovers.¹⁴¹ After the Merger was announced, CBS continued to dribble out worse news for its stockholders.

¹³⁸ *CBS Corp. v. Nat’l Amusements, Inc.*, C.A. No. 2018-0342-AGB ¶ 49 (Del. Ch. May 23, 2018) (Amended Verified Complaint).

¹³⁹ *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, 2019 WL 6311106, at *6 (Del. Ch. Nov. 25, 2019) (the “220 Op.”)

¹⁴⁰ CBS_BC220_00000722.

¹⁴¹ CBS_BC220_00000735 [REDACTED]

136. On August 29, 2019, Julia Phelps was named Executive Vice President, Chief Communications and Corporate Marketing Officer of ViacomCBS. Phelps had served in that same role at Viacom since April 2017 and had worked at Viacom since 2005.

137. On October 8, 2019, Doretha Lea was named Executive Vice President, Global Public Policy and Governmental Relations of ViacomCBS. Lea had served as Executive Vice President, Global Government Affairs of Viacom since 2013 and had worked at Viacom since 1997.

138. On October 16, 2019, CBS and Viacom amended the Merger Agreement to announce that ViacomCBS stock, which under the Merger Agreement was supposed to remain on the NYSE, instead would be listed on the NASDAQ (Viacom's existing and preferred exchange) and trade under entirely new stock ticker symbols reflecting Viacom's control: VIACA (for class A) and VIAC (for class B). The Merger Agreement required the parties to take reasonable best efforts to remain listed on the NYSE, but no explanation was ever given as to why the NYSE would not list the ViacomCBS stock on the NYSE.

139. On October 25, 2019, the SEC declared the Proxy "effective." The following business day, October 28, NAI delivered written consents to CBS in favor of the Merger, approving the deal on behalf of all CBS stockholders.

140. On October 30, 2019, CBS announced that 4 of the 7 senior leaders for the ViacomCBS lines of revenue would be Viacom holdovers.

141. On November 11, 2019, CBS announced content leadership and digital leadership, which concern ViacomCBS's ability to "deliver on its distinct competitive position as one of the most important content producers and providers in the world."¹⁴² For content, 3 of the 5 leaders came from Viacom. For digital leadership, Viacom appointed 2 of the 4 leaders.

142. On November 14, 2019, Viacom reported that third-quarter profits fell 22% from the same time last year and that per-share earnings slid to 76 cents, down from 98 cents. Viacom's revenue was *\$50 million lower* in FY2019 than FY2018. Its operating income was down 4%, and its net earnings were down 10%. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴³ The 220 Documents do not indicate that CBS ever asked Viacom about the issue after Viacom failed to publicly disclose

¹⁴² *Viacom and CBS Announce Content and Digital Leadership*, Business Wire (Nov. 11, 2019), <https://www.businesswire.com/news/home/20191111005169/en/Viacom-CBS-Announce-Content-Digital-Leadership>.

¹⁴³ CBS_BC220_00000111.

145. Following the closing, ViacomCBS announced new ViacomCBS Board committees, with 4 members serving on each. As previously discussed, Seligman was designated Chair of the N&G Committee without objection from CBS. The other three members of the N&G Committee are Phillips (who Shari Redstone appointed to Viacom in the 2016 takeover), Beinecke (who allowed Shari Redstone to steamroll the N&G Committee in 2019), and Schuman. Shari Redstone allies McHale and Nelson serve on both the Audit Committee and Compensation Committee.

146. While CBS and Viacom were negotiating protections for non-NAI directors, the parties agreed that for non-NAI director vacancies within two years of closing, any nominee must be recommended by a majority vote of the N&G Committee. By allowing Shari Redstone's friends to control a majority, the N&G Committee is poised to rubberstamp all of Shari Redstone's nominations.

147. A December 4 ViacomCBS Form 8-K disclosed that Katherine Gill-Charest will serve as Vice President, Controller and Chief Accounting Officer of ViacomCBS. She has been at Viacom since 2007.

148. As Shari Redstone continues to eliminate any remaining vestige of CBS, CBS also lost its famous headquarters. Three days after the Merger closed, Bakish publicly confirmed that ViacomCBS would sell CBS's Manhattan headquarters, known as "Black Rock." CBS had been headquartered at "Black

Rock” since 1964. Black Rock was designated a New York City landmark in 1997. ViacomCBS will instead operate out of Viacom’s Times Square headquarters.

149. On January 31, less than two months after the Merger closed, Ianniello abruptly left ViacomCBS with thirteen months remaining on his consulting agreement. ViacomCBS did not disclose why Ianniello left; however, the Company disclosed he was given compensation and benefits consistent with a “termination without cause.” Ianniello was replaced by George Cheeks, who has known Bakish for years, previously working with him at Viacom in 2012. As the New York Times reported, with the change, Bakish now had his “own team in place.”

150. On February 20, 2020, ViacomCBS announced disastrous results for the fourth quarter and full year ended December 31, 2019. The Company reported a fourth-quarter net loss of \$258 million (compared to an \$887 million profit in Q4 2018). Overnight, ViacomCBS Class B common stock dropped \$6.38 to \$29.29 (a more than 17% decline).

151. In addition to allowing Shari Redstone to orchestrate the Merger, the CBS special committee also gave Shari Redstone final say over this litigation. Throughout negotiations, NAI repeatedly requested [REDACTED]

[REDACTED]

[REDACTED]¹⁴⁶ CBS capitulated. In an August 13, 2019 “Support Agreement,” CBS agreed that in the event of “any stockholder litigation or claim against CBS or any of its directors or officers” concerning the Merger in which any NAI party was also named (among others, Shari Redstone), CBS could not settle any such litigation without prior written consent of NAI.¹⁴⁷ That Support Agreement provided a limited carve out in a Schedule III (which was not publicly disclosed),

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

N. The 2019 Merger is Not Entirely Fair

152. In the 2018 CBS Litigation, NAI and Shari Redstone would not commit to a majority-of-the-minority provision, recognizing that “any transaction would

¹⁴⁶ CBS_BC220_00000110.

¹⁴⁷ CBS_BC220_00001374.

¹⁴⁸ CBS_BC220_00001386.

. . . be subject to ‘entire fairness’ review.”¹⁴⁹ In the 220 Op. at *6, the Court held that “by declining to submit the merger to CBS’s unaffiliated stockholders for approval, the CBS Board has tacitly agreed to submit the transaction to entire fairness review if challenged.”¹⁵⁰

153. In the 2018 CBS Litigation, CBS’s Board repeatedly explained that Shari Redstone’s self-interested motivations in forcing CBS to bail out Viacom were breaches of fiduciary duty. In 2019, Shari Redstone finally succeeded in using CBS to save Viacom. The process by which the Merger was negotiated was fatally flawed and dominated by Shari Redstone and her allies. Neither the process nor the price was entirely fair to CBS or its Class B stockholders.

1. The Merger Was the Product of An Unfair Process

154. As shown above, the process leading to the CBS-Viacom Merger had few, if any, indicia of fairness to CBS or the Class B stockholders.

¹⁴⁹ *Nat’l Amusements, Inc. v. Moonves*, C.A. No. 2018-0374-AGB ¶ 102 (Del. Ch. May 29, 2018) (Complaint) (“With respect to a majority-of-the-minority vote, NAI stated only that it would not commit *upfront* to such a condition, and recognized that any transaction would be subject to ‘entire fairness’ review.”).

¹⁵⁰ *See also id.* at *8 (“This, coupled with the fact that the 2019 Merger is a conflicted controller transaction that likely will be subject to entire fairness review if challenged, more than adequately supports Plaintiff’s proffered purpose for inspection.”).

i. Shari Redstone Improperly Influenced The Special Committee Process

155. The CBS special committee and Board could not independently evaluate the 2019 Merger due to Shari Redstone’s control and her substantial and persistent influence over the CBS special committee’s process. Individuals close to Shari Redstone led the CBS special committee. In particular, it is reasonable to infer that Shari Redstone has known Byrne and Beinecke for many years. Shari Redstone was comfortable reaching out to them repeatedly during the process to impose her views. Shari Redstone also had allies Zelnick and Parsons exert influence during the process.

156. Shari Redstone’s prior conduct loomed large throughout the process. As detailed above, when Shari Redstone is not satisfied with directors (including directors at NAI, Viacom, and CBS), she removes them. Shari Redstone also threatened after the 2016 Merger process failed that “the merger would get done ‘even if [she had] to use a different process.’”¹⁵¹

157. The CBS special committee members designated to lead the process were new to the Board. They delegated the task of negotiating the Merger to

¹⁵¹ The CBS Parties’ Opposition to the NAI Parties’ Motion to Compel (quoting Response No. 3 to Martha L. Minow’s Responses and Objections to the NAI Parties’ First Set of Interrogatories and Response No. 3 to Bruce S. Gordon’s Responses and Objections to the NAI Parties’ First Set of Interrogatories) (in the 2018 CBS Litigation).

Ianniello, who was incentivized to support any deal that Shari Redstone wanted and accept the massive golden parachute awaiting him if he was not awarded the CEO role at the combined company (a role that he had no prospect of landing). They failed to take any action when Shari Redstone interfered in Compensation and N&G Committee meetings and in all likelihood indirectly proposed a Viacom merger in breach the 2018 Settlement Agreement. They did not ask for a majority-of-the-minority voting provision. They did little to negotiate an advantageous price for CBS and the Class B stockholders, and did not attempt to negotiate a better price after learning that [REDACTED]

ii. Shari Redstone, NAI and SMR Trust Have Unique and Non-Ratable Interests in the Merger

158. Shari Redstone had a personal interest in causing CBS to rescue Viacom, as it would allow NAI to explore other options, including a potential sale of NAI. In November 2017 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁵³

159. In 2018, NAI's legal and financial advisors advocated to Shari Redstone [REDACTED]

¹⁵² CBS_BC220_00004137.

¹⁵³ CBS_BC220_00004205.

stockholders, when they were deciding whether to remain invested in the combined company, is further evidence that the Merger was not entirely fair.

163. The Proxy did not fully and fairly disclose that CBS and Viacom discussed potential combinations in 2016 and 2018. It did not disclose that CBS terminated discussions in 2016 and that Shari Redstone threatened CBS directors that she would get the merger done even if she had to find another way. The Proxy also failed to fully and fairly disclose all of the reasons CBS's 2018 special committee terminated discussions with Viacom and then sued Shari Redstone and tried to dilute NAI through the Dividend.

164. The Proxy omitted the material fact that [REDACTED]

[REDACTED]. The Proxy also omits that at a February 22, 2019 N&G Committee meeting, Shari Redstone told that committee to (i) bring Centerview and Lazard back [REDACTED] and (iii) raised "strategic alternatives." The Proxy also omits that, immediately after speaking with Shari Redstone, the N&G Committee determined to form a special committee. These omissions concealed that Shari Redstone's conduct at the February 22 meeting likely violated the 2018 Settlement Agreement by indirectly proposing a Viacom merger.

165. The Proxy is materially misleading because it lumps together the CBS Board meetings on February 21, 2019 and March 9, 2019, to obscure Shari Redstone's misconduct at the February 22 N&G Committee meeting.

166. [REDACTED]

[REDACTED]

[REDACTED] The Proxy omits [REDACTED]

[REDACTED]

167. This is all information that a reasonable CBS Class B stockholder would have found material in determining whether to sell CBS stock before the Merger closed or maintain that stock post-Merger.

2. The Price is Unfair

168. In the Merger, each share of Viacom Class A and Class B stock converted into 0.59625 shares of ViacomCBS Class A and Class B common stock, respectively. CBS massively overpaid for Viacom, causing the Company substantial harm because it is now saddled with struggling and depleting assets, while Shari Redstone's friends run a company they know little about. There is also little economic merit, from CBS's perspective, to merging with Viacom. A majority of the 2018 CBS Board knew this – hence their rejection of the merger and attempt to dilute NAI.

i. CBS's Strong Performance Is Compromised by the Merger

169. CBS's performance had been consistently strong. For example, on May 3, 2016, CBS reported a 31% boost in earnings for the first quarter of 2016 to \$1.02 a share “that blew past analysts’ expectations. The company also beat consensus estimates with a 10% hike in revenue to \$3.85 billion.”¹⁵⁷ One 2016 article characterized CBS as the media business’s “lone superstar,” while, in contrast, it characterized Viacom as the “central character” of the story of the “internet’s decimation of the media business.”

170. CBS's stellar performance continued into 2017. For example, on August 7, 2017, CBS reported second quarter 2017 EPS of \$1.04, \$0.06 better than analysts’ estimates of \$0.98. Revenue for the quarter came in at \$3.26 billion versus the consensus estimate of \$3.09 billion. Entertainment revenue was \$2.18 billion, above the \$2.02 billion that analysts had projected.

171. CBS continued to perform well into 2018. CBS's results for the fourth quarter and full year 2018 likewise demonstrated that the Company's strategy of creating premium content and making it available across new and traditional

¹⁵⁷ *The Street, CBS Blows Past Earnings Estimates On Strength Of Super Bowl, Robust Prime Time Ratings* (May 3, 2016), available at <https://www.thestreet.com/opinion/cbs-blows-past-earnings-estimates-on-strength-of-super-bowl-robust-prime-time-ratings-13554129>.

platforms was paying off. On February 14, 2019, CBS reported all-time highs in revenues, adjusted operating income and adjusted diluted EPS for both the fourth quarter and full year 2018: fourth quarter revenues of \$4.02 billion, up 3%; fourth quarter EPS of \$1.49, adjusted diluted EPS of \$1.50, up 25%; full year revenues of \$14.51 billion, up 6%; full year EPS of \$5.14, up 60%, and adjusted diluted EPS of \$5.19, up 18%.

172. In contrast, Viacom’s overall financial picture was bleak. As of May 2019, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁵⁹

173. Viacom “remain[ed] growth challenged in its core cable networks business due to several years of unfavorable affiliate renewals, a fragmented audience outside of Nickelodeon, and years of ratings declines.”¹⁶⁰ Ratings are critical to advertising and Viacom’s cable network ratings were declining as consumers began to use other viewing formats, such as streaming. As a result, Viacom had to pay distributors more to distribute its content. [REDACTED]

¹⁵⁸ CBS_BC220_00000803.

¹⁵⁹ CBS_BC220_00000806.

¹⁶⁰ *CBS Corporation*, Deutsche Bank Research, Aug. 13, 2019 at 1-2.

[REDACTED]

174. Viacom’s Paramount division was also faltering, as the movie business segment’s performance declined as well. Paramount’s domestic gross box office revenue in each of the years 2015-2018 was lower than in each of the years in the 2012-2014 period. Paramount’s 2018 box office revenue was also lower than in 2016. Paramount was not even profitable in 2016, 2017, or 2018. For 2018-2021,

[REDACTED]

175. CBS had little to gain from a merger with Viacom in light of this dismal performance. Underscoring this point, CBS’s stock has for years “suffer[ed] from the overhang of a potential combination with Viacom,” which has “ke[pt CBS] shares from fully reflecting fair value for the company.”¹⁶¹ Analysts generally agreed with this point in early-May 2019. According to a Guggenheim analyst “[I]nvestor focus on a potential recombination with [Viacom] and recent uncertainty around leadership have weighed on sentiment for [CBS] shares.” Morgan Stanley

¹⁶¹ CBS_BC220_00000440, CBS_BC220_00000606.

concluded, indicating that CBS shares “trade in a fairly narrow exchange ratio range with [Viacom] shares, given multiple press reports about a potential combination going back a couple years. In our view, this keeps shares from fully reflecting fair value for the company.” Likewise, J.P. Morgan wrote that a “lack of clarity around leadership and strategic direction has weighed on valuation” and would continue to do so until those issues were resolved.

176. After the announcement of the 2019 Merger, it became even more apparent that the merits of the deal simply are not there. While the Proxy (at 104) touts that there is “stronger industrial logic supporting a potential transaction at present compared to [2018],” that is not the case. As one market analyst put it in late September 2019, “deal fatigue seems to have set in [and] the long term strategy is unclear.”¹⁶² The analyst further stated that “it’s not clear what this deal does for shareholders beyond NAI[,] synergies at \$500mm are probably not much larger than transaction fees. . . . To us, this deal is mostly about [NAI] consolidating its control. . . . We think the real winner is NAI, as this merger is the consummation of a multiyear process to put in place directors and executive officers that will not

¹⁶² *Viacom Inc. VIAB: Initiating an Underperform Rating*, Wells Fargo Securities Equity Research, Sept. 23, 2019 at 1.

challenge its strategy. What is that strategy? We don't know.”¹⁶³ “[T]he industrial logic of Viacom-CBS is not compelling.”¹⁶⁴

ii. The CBS Special Committee's Rationale for the Merger is Insufficient to Withstand Scrutiny

177. According to the 2019 CBS special committee, the Merger was beneficial to CBS because it would provide scale, add synergies, and support CBS's investment in content. This rationale for the Merger does not withstand scrutiny.

178. By adding scale, the CBS special committee purportedly intended to address increasing consolidation in the industry. In March 2019, for example, Disney closed on its \$71.3 billion acquisition of 21st Century Fox. In 2018, AT&T bought Time Warner in an \$85 billion deal. Proponents of the Merger argued that CBS would have difficulty competing with companies that were many times larger than it. This reasoning is unpersuasive because, even as a combined company, ViacomCBS is still just a fraction of the size of its competitors.¹⁶⁵ Thus, to the extent CBS needed to partner with another entity to grow its scale, Viacom was not the company with which to accomplish that aim.

¹⁶³ *ViacomCBS – What's Love Got to Do With It?*, Wells Fargo Securities Equity Research, Sept. 23, 2019 at 1-2.

¹⁶⁴ *Id.*

¹⁶⁵ Rani Molla and Peter Kafka, *Here's Who Owns Everything in Bed Media Today*, Vox (Dec. 5, 2019).

179. The CBS special committee further claimed that the Merger would provide significant synergies. [REDACTED]

[REDACTED] For example, when Bakish assumed the CEO role in early 2017, Viacom prepared a Long-Range Plan (“LRP”).¹⁶⁶ Viacom’s LRP [REDACTED]

[REDACTED] In FY2017, Viacom earned just \$13.3 billion [REDACTED] and in FY2018, it earned \$12.9 billion [REDACTED] Likewise, [REDACTED] in FY2017, the company earned \$3 billion in OIBDA [REDACTED] and in 2018, it earned \$3.0 billion again [REDACTED]¹⁶⁷

180. [REDACTED]

¹⁶⁶ CBS_BC220_00000282.

¹⁶⁷ *Id.*

[REDACTED]

[REDACTED] ¹⁶⁹

181. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ¹⁷²

182. The CBS special committee also claimed that Viacom could support CBS’s investment in content. But Viacom was an albatross, anchored in outdated content and technology. Because of the Merger, CBS is now saddled with cable channels with dimming prospects, diminishing brands and franchises, difficult negotiations with pay-TV distributors because of its sinking ratings, and a company focused on aging technology while consumers instead “cut” their tie to cable companies, focusing on streaming through the internet instead. This was one of the primary reasons CBS resisted a merger in 2018: it did not wish to have to try to

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ CBS_BC220_00000284.

¹⁷¹ *Id.*

¹⁷² CBS_BC220_00000803.

repair a faltering business, particularly during a time in which it would increasingly need to focus on cutting-edge technology and new content.

iii. The Financial Advisors Relied on Unreliable Projections and Made Improper Valuation Adjustments

183. Centerview and Lazard based their fairness opinions on valuations of CBS and Viacom. With respect to Viacom, both financial advisors used Viacom management's LRP, which [REDACTED] and Viacom's own board considered "aggressive."¹⁷³ Even with purported adjustments downward by the CBS special committee, Viacom management's projections were far too high and unreliable. Those projections should never have factored into the analysis conducted by or for the CBS special committee. Instead, the special committee should have considered Street projections.

184. Most tellingly, Viacom's own special committee found valuations performed of Viacom using the Viacom projections to be "well in excess" of the company's market valuation. The Viacom committee therefore directed its financial advisors to also consider the consensus estimates of analysts—and indeed to give greater weight to the consensus analyst estimates than to Viacom management's own projections.

¹⁷³ Proxy at 84.

O. Bucks County's Section 220 Investigation

185. After CBS announced the Merger on August 13, 2019, it withheld most information about the Merger until late October. To investigate the wrongdoing that was apparent at the outset, Bucks County served a Section 220 Demand on September 27, 2019.

186. On October 15, 2019, Bucks County filed its Section 220 Complaint. The Court held a one-day, paper trial on November 22, 2019. In response to Bucks County's Section 220 Demand, CBS made limited documents available for inspection, and the Court ordered additional inspection, together as follows:

- a. The minutes, written consents and/or resolutions establishing and/or defining the powers of the special committee established for the 2019 merger;
- b. Director conflict questionnaires for each member of the special committee established for the 2019 Merger, the New Director Appointees and Terrell;
- c. All documents reviewed or considered by the CBS Board in connection with the nomination and appointment of each member of the CBS Board to the special committee for the 2019 Merger;
- d. The minutes and materials of any meeting of the CBS Board, committee or subcommittee thereof, including the special committee, that

concern (i) the 2016 Merger, (ii) the 2018 Merger, (iii) the 2019 Merger, (iv) the Merger Agreement for the 2019 Merger, (v) the actual or potential value of CBS stock, (vi) the actual or potential value of Viacom stock, and (vii) the potential value of a combined CBS and Viacom company; . . . presentations, memoranda, and analyses provided by any financial advisors to the CBS Board, committee or subcommittee thereof, including the special committee;

e. Board-level documents regarding Ianniello's compensation from September 1, 2018 through September 27, 2019; and

f. Electronic communications between or among Shari Redstone and the members of the Nominating and Governance Committee from February 8, 2019 through March 8, 2019 and non-privileged electronic communications from these parties to Lawrence Tu and vice versa, during that same time-span, that concern, relate to or reference (i) the February 22, 2019 CBS Nominating and Governance Committee meeting, any action taken or issues discussed at that meeting, or communications concerning any actions taken as a result of that meeting, and (ii) the resignation of Lawrence Tu as CBS's General Counsel and the reasons for Lawrence Tu's resignation.

187. The Court denied Bucks County's inspection into the following categories of documents:

a. All documents reviewed or considered by the CBS Board in connection with the September 9, 2018 meeting where the New Director Appointees were appointed as directors by the CBS Board;

b. All documents reviewed or considered by the Nominating and Governance Committee of the CBS Board for the purpose of determining whether to recommend that at least eight directors were purportedly independent;

c. Reports prepared by any experts retained by or on behalf of CBS, Moonves, Ianniello, Gordon, Gary L. Countryman, Charles K. Gifford, Linda M. Griego, Martha L. Minow, Joseph A. Califano, Jr., William S. Cohen, Leonard Goldberg, Arnold Kopelson, and/or Doug Morris in the 2018 CBS Litigation that concerned the 2018 Merger;

d. Electronic documents concerning Ianniello's employment with ViacomCBS and his compensation (including bonuses and equity compensation) at CBS and ViacomCBS, limiting this request to Board-level documents; and

e. Electronic documents that any member of a special committee of the CBS Board sent to or received from NAI, Shari Redstone or any of their advisors or representatives, concerning the 2019 Merger . . . exchanged between Shari Redstone and any member of a special committee of CBS or

Viacom concerning the 2019 Merger, and . . . exchanged between Shari Redstone and Ianniello during March, April, May and June of 2019 concerning: (i) Ianniello's compensation, (ii) any face-to-face meeting between Ianniello and Shari Redstone, and/or (iii) a combination of Viacom and CBS.

188. Thus, Bucks County and International Union were not able to fully investigate all of Shari Redstone's and NAI's misconduct in connection with the Merger. Plaintiffs also do not have complete information concerning conflicts among the CBS Board, despite Bucks County's best efforts to use the tools at hand.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

189. Plaintiffs bring Counts I, II, V and VI derivatively on behalf of CBS, now ViacomCBS, to redress breaches of fiduciary duty.

190. Plaintiffs were holders of Class B shares of CBS common stock, were holders of such shares at the time of the wrongdoing alleged herein, and have been holders of such shares continuously since that time. As a result of the Merger, Plaintiffs now own ViacomCBS Class B stock.

191. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

192. The ViacomCBS Board is comprised of Shari Redstone, Klieger, Seligman, McHale, Nelson, Phillips, Bakish, Byrne, Beinecke, Griego, Goldner,

Schuman and Terrell. Plaintiffs have not made a demand on the ViacomCBS Board to institute this action. Such a demand would be a futile and useless act because a majority of the thirteen-member ViacomCBS Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action. Many of them, including Shari Redstone and the CBS Directors, face a substantial threat of personal liability in connection with the Merger.

A. Shari Redstone Is Not Independent and the Entire Board Lacks Independence from Shari Redstone

193. **Shari Redstone.** Shari Redstone is incapable of making an independent and disinterested decision to institute and prosecute derivative litigation. ViacomCBS admits that NAI is its controlling stockholder. Shari Redstone controls the NAI Board and the ViacomCBS Board and thereby controls ViacomCBS. She is also Chair of the ViacomCBS Board. After her father became incapacitated, Shari Redstone took over NAI, Viacom and CBS. During that period, she insisted that CBS bail out the failing Viacom, for the self-interested reason of saving NAI's Viacom investment and facilitating an eventual sale of NAI that would personally enrich Shari Redstone. Prior to the Merger, CBS admitted in SEC filings that Shari Redstone was not an independent director¹⁷⁴ and in the 2018 Settlement

¹⁷⁴ CBS Corporation, Definitive Proxy Statement (Schedule 14A) (Apr. 12, 2019), at 2.

Agreement¹⁷⁵ the “NAI/Redstone Parties” were defined to include Shari Redstone, among others. CBS did not consider Shari Redstone independent for purposes of the Merger and Shari Redstone did not vote on the Merger as a CBS director.¹⁷⁶ The 2020 Proxy admits that Shari Redstone is not independent.

194. In 2016 and 2018, independent CBS directors rejected Shari Redstone’s prior efforts at merging the companies, deciding that CBS should not be saddled with Viacom’s depleting assets in a rapidly consolidating market. However, once Shari Redstone put her chosen directors on the Board, CBS no longer took measures to block Shari Redstone, nor did the CBS Board (or special committee) even seek to enforce the 2018 Settlement Agreement that Shari Redstone appears to have breached. Despite Viacom’s bleak prospects, the special committee and the full CBS Board [REDACTED] and voted in favor of the Merger. These actions and omissions demonstrate that the current Board lacks independence from Shari Redstone.

¹⁷⁵ 2018 Settlement Agreement at 1, 18.

¹⁷⁶ Proxy at 7.

B. Eleven Demand Board Members Cannot Impartially Consider a Demand Because Of Their Relationships with Defendants or Other Interested Parties

195. In addition to Shari Redstone’s control over the Board, additional facts demonstrate that eleven demand board members are interested in the Merger and/or lack independence from other CBS Board members.

196. **Klieger.** Klieger is not independent of Shari Redstone or NAI. Klieger was appointed to the CBS Board in 2017 at Shari Redstone’s behest upon Sumner Redstone stepping down from the Board. Klieger has been a partner at the Los Angeles law firm Hueston Hennigan LLP since 2015. Klieger is the Redstones’ personal attorney, and has represented Sumner Redstone, Shari Redstone, and Tyler Korff (Shari Redstone’s son) in many highly publicized lawsuits. ViacomCBS, CBS, NAI, and Shari Redstone concede that Klieger is not independent of the Redstones or NAI.¹⁷⁷ Prior to the Merger, CBS admitted in SEC filings that Klieger was not an independent director and in the 2018 Settlement Agreement, the “NAI/Redstone Parties” were defined to include Klieger, among others. Klieger was not independent of Shari Redstone for purpose of the Merger and did not vote on the Merger as a CBS director.¹⁷⁸ The 2020 Proxy admits that Klieger is not independent.

¹⁷⁷ See Proxy at Annex A-3, A-4 (including Klieger as an “NAI Affiliated Director” and explicitly excluding Klieger from the definition of “Unaffiliated Independent Director”).

¹⁷⁸ Proxy at 7.

If Klieger leaves the ViacomCBS Board prior to December 4, 2021, NAI has the right, pursuant to the Merger Agreement, to designate his replacement.

197. **Bakish.** Bakish is not independent of Shari Redstone or NAI. Bakish became President and CEO of Viacom as a result of Shari Redstone's shakeup of Viacom leadership in 2016. Prior to that, Bakish served in various other key roles at Viacom beginning in 1997. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

198. Bakish also cannot impartially consider a demand because he was interested in the Merger. For years, Shari Redstone advocated for Bakish to become CEO of the combined CBS/Viacom. As CEO of ViacomCBS, Bakish stands to make over \$31 million in 2020, which he owes to Shari Redstone insisting that he serve as CEO of ViacomCBS.¹⁸¹ By comparison, in 2018, Bakish made just \$19.9 million.

199. **Seligman.** Seligman is not independent of Shari Redstone or NAI. She was appointed to the Viacom Board by Shari and NAI by written consent in

¹⁷⁹ CBS_BC220_00004126.

¹⁸⁰ CBS_BC220_00004133.

¹⁸¹ Proxy at 169.

connection with Shari Redstone’s shakeup of Viacom leadership in 2016. When Shari Redstone and NAI unilaterally appointed Seligman to the Viacom Board, she reached “an understanding with NAI concerning indemnification” for Shari Redstone’s and NAI’s misconduct.¹⁸²

200. Seligman is loyal to Shari Redstone and NAI. As the Court wrote in the 220 Op. at *4 n.50, “Nicole Seligman, whom Redstone had previously installed on the Viacom board, and with whom Redstone has a close personal relationship, will Chair the Nominating and Governance Committee, which will review related party transactions for the combined company.” Shari Redstone and Seligman have lived within blocks of one another in Manhattan for years. They are frequently seen together at industry events (such as the Allen & Co. conference in Sun Valley) and in personal company.¹⁸³ Seligman serves with Shari Redstone as two of the trustees of the JFK Library Foundation. Seligman has also been on the board of WPP plc since 2014. WPP is the parent company of Finsbury, the public relations firm Shari hired three weeks after Seligman was appointed to the Viacom Board. Finsbury’s website prominently highlights Shari as a client.

¹⁸² Viacom Inc., Current Report (Form 8-K) (June 22, 2016).

¹⁸³ See Emily Jane Fox, *Shari Redstone Goes Shopping in Sun Valley*, VANITY FAIR (July 8, 2016).

201. In 2017, when Shari Redstone was looking for a new CBS director, she wrote to Seligman that she really needed Seligman’s help finding a new CBS director, stating: “I need another you” and [REDACTED]

[REDACTED]¹⁸⁴ Demonstrating their close friendship, in that e-mail, Shari Redstone asked Seligman to meet for coffee the following Friday, concluding the e-mail with

[REDACTED]¹⁸⁵ Seligman voted to approve the Merger that her friend Shari Redstone wanted as a Viacom director and, having done so, cannot reasonably be expected to fairly evaluate or challenge the fairness of the Merger from the perspective of the transactional counterparty.

202. **McHale.** Mchale is not independent of Shari Redstone and NAI. Mchale was appointed to the Viacom Board by Shari Redstone and NAI by written consent in August 2016. When Shari Redstone and NAI unilaterally appointed Mchale to the Viacom Board, she reached “an understanding with NAI concerning indemnification” for Shari Redstone’s and NAI’s misconduct.¹⁸⁶ Shari Redstone has long known Mchale, who served as general counsel for MTV Networks in the mid-1980s, overseeing MTV, Nickelodeon, and VH-1. She voted to approve the Merger as a Viacom director and, having done so, cannot reasonably be expected to

¹⁸⁴ CBS_BC220_00004124.

¹⁸⁵ *Id.*

¹⁸⁶ Viacom Inc., Current Report (Form 8-K) (June 22, 2016).

fairly evaluate or challenge the fairness of the Merger from the perspective of the transactional counterparty.

203. **Nelson.** Nelson was appointed to the Viacom Board by Shari Redstone and NAI by written consent in August 2016. When Shari Redstone and NAI unilaterally appointed Nelson to the Viacom Board, he reached “an understanding with NAI concerning indemnification” for Shari Redstone’s and NAI’s misconduct.¹⁸⁷ Shari Redstone has long known Nelson, who was the co-chief operating officer of DreamWorks SKG from 1994 to 2003, during which time DreamWorks and Paramount Pictures co-produced several major films. Before his time at DreamWorks, Nelson served as Executive Vice President, CFO, and a director of Paramount Communications, which Viacom acquired in 1994. He voted to approve the Merger as a Viacom director and, having done so, cannot reasonably be expected to fairly evaluate or challenge the fairness of the Merger from the perspective of the transactional counterparty.

204. **Phillips.** Like Seligman, McHale and Nelson, Phillips voted to approve the Merger as a Viacom director and, having done so, cannot reasonably be expected to fairly evaluate or challenge the fairness of the Merger from the perspective of the transactional counterparty.

¹⁸⁷ Viacom Inc., Current Report (Form 8-K) (June 22, 2016).

205. Phillips cannot independently consider a demand because he is beholden to Viacom and has a number of nonprofit ties to individuals who face substantial threats of liability for having voted to approve the Merger as CBS directors.

206. Phillips and CBS special committee members Beinecke, Byrne, Griego, and Terrell are all members of the Council of Foreign Relations (“CFR”), a tightknit and exclusive advisory body. Because their relationships extend beyond the CBS board, Phillips is less likely to institute legal action against these directors challenging their approval of the Merger.

207. Phillips also has significant connections to the Lincoln Center, of which Beinecke’s husband is Chairman Emeritus. Phillips serves on the Center’s board and has donated \$250,000 to \$500,000 to the Center. Given their mutual support of Lincoln Center, Phillips is less likely to institute legal action against Beinecke challenging her approval of the Merger.

208. **Beinecke.** Beinecke is not independent of Shari Redstone or NAI. She was appointed a CBS director as part of the 2018 Settlement. On information and belief, Beinecke has known Shari Redstone for decades. According to a *New York*

Times article from 1999, Beinecke's clients at that time included Viacom.¹⁸⁸ Shari Redstone's and Beinecke's conduct during the Merger negotiations confirm their close friendship. Shari Redstone crashed the February 22, 2019 N&G Committee meeting, where Shari Redstone's conduct and demands likely violated the 2018 Settlement Agreement. Rather than use that as leverage, Beinecke instead demonstrated her fealty to Shari Redstone by *implementing* Shari Redstone's demands and concealing the misconduct from the full CBS Board. Shari Redstone also trusted Beinecke enough to speak with her directly during the negotiations, making specific leadership demands to Beinecke for the post-merger company. Beinecke took Shari Redstone's demands back to the CBS special committee. As a result of Beinecke's loyalty, she has been seated on the ViacomCBS Board.

209. Further, Beinecke is a top partner of Hughes Hubbard, a law firm at which she has worked for decades. Hughes Hubbard has provided legal advice to CBS and members of CBS management, including Ianniello, Spade, and Franco regarding the negotiations over their new employment agreements. Beinecke was part of the legal team representing Viacom when Sumner Redstone acquired control over it. Beinecke is unlikely to institute action against Shari Redstone or Ianniello

¹⁸⁸ Jann Hoffman, *Public Lives; Charm at the Top: It Only Looks Easy, Folks*, THE N.Y. TIMES (June 2, 1999), <https://www.nytimes.com/1999/06/02/nyregion/public-lives-charm-at-the-top-it-only-looks-easy-folks.html>.

for fear that doing so would jeopardize Hughes Hubbard's relationships with these clients and interfere with its ability to obtain future business from them.

210. Beinecke also cannot impartially consider a demand against numerous fellow directors. As noted *supra*, Beinecke is a member of the CFR with defendants Byrne, Griego, Phillips, and Terrell. Given the interrelationship on this exclusive body, there is additional reason to doubt that Beinecke could impartially consider a demand.

211. **Byrne.** Byrne is not independent of Shari Redstone or NAI. She was appointed a CBS director as part of the 2018 Settlement. Byrne is the former Vice Chairman, Investment Banking at Barclays PLC. NAI hired Barclays in 2016 to help NAI determine what to do with its voting stake in both companies, which quickly turned into NAI's plan to merge CBS and Viacom.¹⁸⁹ Shari Redstone's and Byrne's conduct during the Merger negotiations confirm their close friendship. On June 14, the special committee designated Byrne to update Shari Redstone on the special committee's progress. Throughout June 2019, Shari Redstone repeatedly spoke directly to Byrne about (i) Shari Redstone's views as to the leadership and

¹⁸⁹ Claire Atkinson, *Sumner Redstone has paid fees to just about everyone this year*, N.Y. POST (Dec. 18, 2016, 4:17 AM), <https://nypost.com/2016/12/18/sumner-redstone-has-paid-fees-to-just-about-everyone-this-year/> (noting that in August 2016, "NAI hired Barclays and Evercore Partners to help figure out how to manage its 80 percent voting stake" in CBS and Viacom).

management of the combined company, (ii) the progress of the special committee process, and (iii) specific names for management of the combined company. Further demonstrating Byrne’s allegiance, [REDACTED]

[REDACTED] As a result of Byrne’s loyalty, she has been seated on the ViacomCBS Board. Byrne is also a member on the CFR. Given the interrelationship on this exclusive body, there is additional reason to doubt that Byrne could impartially consider a demand, including as to Beinecke, Griego, Phillips and Terrell.

160. **Goldner.** Goldner cannot impartially consider a demand because he is conflicted, as he relies on Viacom’s subsidiary for the success of his company. Goldner serves as the CEO of Hasbro. In recent years, under Goldner’s leadership, Hasbro has increasingly looked to the film industry to expand Hasbro’s business. Goldner has “steered [Hasbro] through a strategic shift toward Hollywood that has yielded major film and streaming deals”¹⁹⁰

161. To that end, in October 2017, Hasbro entered into a production and distribution partnership with Viacom’s subsidiary, Paramount Pictures.¹⁹¹ At that time, Goldner commented that Hasbro and Paramount “would like to expand our

¹⁹⁰ Dade Hayes, *Hasbro’s Brian Goldner Talks Peppa Pig, EOne Deal and State of Paramount Slate*, DEADLINE (Aug. 22, 2019).

¹⁹¹ *Id.*

relationship to get more of Hasbro IP into theatres around the world and activate our blueprint across multiple elements.”¹⁹² Hasbro has acknowledged the importance of the Paramount partnership to the performance of the company. In its annual proxy for 2017, Hasbro highlighted the Paramount partnership. Hasbro, Inc.¹⁹³ In its most recent Form 10-Q, Hasbro indicated that one of the major risks the company faced was “the ability of the Company to develop, produce and distribute movies under its relationship with Paramount Pictures Corporation, and consumer interest in those movies and related merchandise.”¹⁹⁴

162. **Terrell and Griego.** Terrell and Griego cannot impartially consider a demand due to their service on the CFR. Given the interrelationship on this exclusive body, there is reason to doubt that these directors could impartially consider a demand, including as to one another, Beinecke, Byrne, and Phillips.

163. For each these reasons, a demand on the current Board would be futile and is therefore excused.

CLASS ACTION ALLEGATIONS

212. Plaintiffs bring Counts III and IV on their own behalf and as a class action, pursuant to Court of Chancery Rule 23, on behalf of all former holders of

¹⁹² *Id.*

¹⁹³ Schedule 14A, at 11, 31 (Apr. 2, 2019).

¹⁹⁴ Hasbro, Inc. Form 10-Q (Sept. 29, 2019).

CBS Class B stock (the “Class”) as of December 3, 2019, and their successors in interest. Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants.

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

214. The Class is so numerous that joinder of all members is impracticable.

241. As of November 12, 2019 (prior to the Merger), there were more than 351 million shares of CBS Class B common stock outstanding, most of which were held by the Company’s minority stockholders. NAI beneficially owned approximately 21 million Class B shares prior to the Merger. Upon information and belief, there are thousands of members of the Class.

215. There are questions of law and fact that are common to the Class, including, but not limited to:

a. Whether Defendants breached their fiduciary duties to Plaintiffs and other members of the Class; and

b. Whether Plaintiffs and the other members of the Class are entitled to equitable relief or damages as a result of Defendants’ breaches of fiduciary duties.

216. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs’ claims are typical of claims of the other members of the Class, and Plaintiffs have the same

interests as the other members of the Class. All members of the Class have suffered the same harm.

217. Defendants caused the same equitable harm and damages to the Class through their breaches of fiduciary duty.

218. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

219. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual Class members that would establish incompatible standards of conduct for Defendants. Adjudications with respect to individual Class members would, as a practical matter, be dispositive, or would substantially impair the interests of the Class members.

220. Defendants have acted or refused to act on grounds that apply generally to the Class, such that injunctive or declaratory relief is appropriate with respect to the Class as a whole.

221. The questions of law and fact common to the members of the Class predominate over any questions affecting only its individual members, such that a class action is superior to any other available method for fairly and efficiently adjudicating the controversy.

COUNT I

Breach of Fiduciary Duty (Derivatively on behalf of ViacomCBS against Shari Redstone, NAI and SMR Trust)

222. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

223. As a director and controlling stockholder of CBS (now ViacomCBS), Shari Redstone owed and continues to owe CBS and its other stockholders fiduciary duties. NAI and SMR Trust, as controlling stockholders of CBS, likewise owe CBS and its other stockholders fiduciary duties.

224. Shari Redstone, NAI and SMR Trust violated their fiduciary duty of loyalty by putting their own interests ahead of the interests of CBS by forcing CBS to bail out Viacom. Shari Redstone, NAI and SMR Trust forced the Merger because they feared their significant investment in Viacom would be worthless if they could not package it with CBS. Indeed, Shari Redstone believed that Viacom could be orphaned if CBS did not take on Viacom's depleting assets. NAI's advisors [REDACTED]

[REDACTED]

[REDACTED]

225. Shari Redstone further breached her fiduciary duty of loyalty to CBS by directly or indirectly proposing a merger of CBS and Viacom in violation of the 2018 Settlement Agreement.

226. Shari Redstone's and NAI's misconduct tainted the entire Merger process. After being rebuffed by independent CBS directors in 2016 and 2018, Shari Redstone stacked the Board with loyalists and friends who rubber-stamped her long-desired Merger. Throughout negotiations, Shari Redstone improperly injected her demands, including that her friends and allies run the combined company.

227. Now, with Shari Redstone's friends in charge of a company they know nothing about, ViacomCBS's performance has suffered and its stock price has plummeted.

228. The Merger was not entirely fair to CBS.

229. As a result of Shari Redstone's, NAI's and SMR Trust's breaches of fiduciary duty, CBS (and now ViacomCBS) has been harmed and continues to be harmed.

230. Plaintiffs have no adequate remedy at law.

COUNT II

Breach of Fiduciary Duty (Derivatively on behalf of ViacomCBS against the CBS Directors and Ianniello)

231. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

232. The CBS Directors owed and continue to owe fiduciary duties to CBS (now ViacomCBS). The CBS Directors breached their fiduciary duties to CBS by

folding under the pressure of CBS's controlling stockholders (Shari Redstone, NAI and SMR Trust). The CBS Directors permitted a Merger of CBS and Viacom that served only the controllers' interests in saving their investment in Viacom. Their actions disregarded CBS's interests in remaining a standalone entity and pursuing alternative and more beneficial strategic transactions. When faced with this same prospect just a year earlier, CBS's then-outside, non-NAI affiliated directors told this Court that Shari Redstone's and NAI's demand that CBS rescue Viacom before CBS was allowed to consider other strategic options in the rapidly changing and consolidating media industry was a clear breach of Shari Redstone's and NAI's fiduciary duty. Shari Redstone's board loyalists and friends have now caved to her demands.

233. The CBS Directors allowed Shari Redstone to interfere with N&G and Compensation Committee meetings that, pursuant to the 2018 Settlement Agreement, should have remained free of Shari Redstone's and NAI's influence. The CBS Directors also did nothing to address Shari Redstone's likely violation of the 2018 Settlement Agreement at the February 22 N&G Committee meeting.

234. During the process, the CBS Directors took direction from Shari Redstone, ultimately capitulating to her board, management, and governance demands. As a result, ViacomCBS's performance has suffered and its stock price has plummeted.

235. Ianniello owed CBS fiduciary duties of loyalty and care. Only a year ago, Ianniello stood behind the 2018 CBS Board's opposition to a merger with Viacom. Shari Redstone sued him as a result. However, after Moonves's ouster and Ianniello's elevation to Acting CEO, Ianniello changed his tune. In a September 2018 meeting with Shari Redstone, he advocated for the Merger and never disclosed that meeting to the Board, despite being tasked with leading negotiations against Viacom. He continued his advocacy during another meeting with Shari Redstone on March 25, 2019¹⁹⁵ and at multiple special committee meetings in 2019.¹⁹⁶

236. Rather than continue to oppose a Merger that he knew was unfair to CBS, Ianniello suddenly supported the Merger, knowing that if he did not cross Shari Redstone, he would leave the Company with a payout that was recently reported to be \$125 million. Ianniello breached his fiduciary duties to CBS and the CBS Class B stockholders for his own gain.

237. The Merger was not entirely fair to CBS.

238. As a result of the CBS Directors' and Ianniello's breaches of fiduciary duty, CBS (and now ViacomCBS) has been harmed and continues to be harmed.

¹⁹⁵ Proxy at 82.

¹⁹⁶ CBS_BC220_00001742; CBS_BC220_00000064; CBS_BC220_00000099; CBS_BC220_00000268; CBS_BC220_00000159-60; CBS_BC220_00000143; CBS_BC220_00000072; CBS_BC220_00000138; CBS_BC220_00000108.

239. Plaintiffs have no adequate remedy at law.

COUNT III

Breach of Fiduciary Duty (Individual and Class Claim Against Shari Redstone, NAI and the SMR Trust)

240. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

241. Even though Viacom was the purported Merger target, Shari Redstone, NAI and SMR Trust effectively caused Viacom to acquire CBS by using CBS as a merger vehicle and CBS's stock as merger consideration.

242. Shari Redstone, NAI and SMR Trust, as controlling stockholders of CBS, breached their fiduciary duty of loyalty by forcing former CBS Class B stockholders to enter into a Merger that effectively took their CBS stock in exchange for stock of a substantively new company with reduced public ownership. That new company has a new name, new stock listing on a new exchange, new management and directors, and a new set of declining, depleted assets. Since the Merger closed, Viacom's leaders have taken complete control the combined company, leading nearly every department and with significant representation on each Board committee. CBS's public stockholders effectively received new, rapidly depleting stock in the Merger without any vote.

243. NAI's and Shari Redstone's conduct harmed the pre-merger CBS Class B public stockholders, who did not receive the same non-ratable benefits the Merger conferred on NAI and Shari Redstone. Class B public stockholders that owned few or no Viacom shares (and were not similarly situated with Shari Redstone who held significant stakes in both CBS and Viacom) suffered this harm most acutely.

244. Prior to the Merger, CBS's former independent directors told this Court that CBS's public stockholders could receive a premium in a third-party transaction. Shari Redstone and NAI, however, denied CBS's public stockholders that opportunity.

245. The Merger was unfair to CBS's public Class B stockholders and harmed their investments.

246. As a result of these breaches of fiduciary duty, Plaintiffs have been harmed and have no adequate remedy at law.

COUNT IV

Breach of Fiduciary Duty

(Individual and Class Claim Against Shari Redstone, the CBS Directors, Ianniello, Klieger and Zelnick)

247. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

248. The CBS Directors, Shari Redstone, Klieger and Zelnick owed CBS's public stockholders fiduciary duties of loyalty and care.

249. The CBS Directors breached their fiduciary duties of loyalty and care by, *inter alia*, allowing Ianniello to negotiate the Merger he already signaled to Shari Redstone he was willing to force CBS to pursue, failing to advocate for the interests of CBS and its public stockholders, allowing Shari Redstone to improperly influence the Merger negotiations, and entering into the Merger, which has harmed CBS's public stockholders.

250. The CBS Directors accepted an unfair Merger that forced CBS's public stockholders to enter into a Merger that effectively took their CBS stock in exchange for stock of a substantively new company with reduced public ownership. That new company has a new name, new stock listing on a new exchange, new management and directors, and a new set of declining, depleted assets. Viacom's leaders now have complete control the combined company, leading nearly every department and with significant representation on each Board committee.

251. CBS's public stockholders effectively received new, rapidly depleting stock in the Merger.

252. Prior to the Merger, CBS's former independent directors told this Court that CBS's public stockholders could receive a premium in a third-party transaction. The CBS Directors, however, denied CBS's public stockholders that opportunity in agreeing to the Merger.

253. The CBS Directors, Shari Redstone, Klieger and Zelnick further breached their fiduciary duties by issuing a materially misleading and incomplete Proxy at a critical time when CBS's public stockholders were deciding whether to cash out their investment.

254. Only a year ago, Ianniello stood behind the 2018 CBS special committee's opposition to a merger with Viacom. Shari Redstone sued him as a result. Rather than continue to oppose a Merger that he knew was unfair to CBS, Ianniello suddenly supported the Merger, knowing that if he did not cross Shari Redstone, he would leave the Company with a payout that was recently reported to be \$125 million. Ianniello breached his fiduciary duties to CBS Class B stockholders for his own gain.

255. The Merger was unfair to CBS's public Class B stockholders.

256. As a result of these breaches of fiduciary duty, Plaintiffs have been harmed.

257. Plaintiffs have no adequate remedy at law.

COUNT V

Waste (Derivatively Against the CBS Directors, Klieger, Zelnick and Shari Redstone)

258. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

259. In 2018, Ianniello stood behind the CBS Board's opposition to a merger with Viacom and attempt to dilute Shari Redstone and NAI. Shari Redstone sued him as a result. When the disputes settled and Ianniello was named Acting CEO, the CBS Board, management and controllers all knew that Ianniello would never be named permanent CEO.

260. Through various amendments to Ianniello's employment agreement, the aforementioned defendants granted Ianniello increased compensation intended to garner his support for the Merger. There was no rational business justification or purpose for increasing these financial benefits. Ianniello was paid tens of millions of dollars to steer the CBS Directors toward approving a Merger that Ianniello knew was unfair.

261. As a result of the defendants' misconduct, CBS (now ViacomCBS) has been harmed by being forced to pay Ianniello approximately \$125 million to garner his support for the Merger.

262. Plaintiffs have no adequate remedy at law.

COUNT VI

Unjust Enrichment (Derivatively Against Ianniello)

263. Plaintiffs repeat and reallege the paragraphs above as if fully set forth herein.

264. Ianniello accepted a substantially increased severance payment from CBS (now ViacomCBS) in exchange for his support of the Merger.

265. There was no rational business justification or purpose for increasing the financial benefits that would be paid to Ianniello when the CBS Board, management and controllers all knew, even before the Merger talks restarted, that Ianniello would not be named permanent CEO and thus would become entitled to the substantial golden parachute he stood to receive in that event. Ianniello was paid tens of millions of dollars to steer the CBS Directors toward approving a Merger that Ianniello knew was unfair.

266. CBS (now ViacomCBS) has been harmed by paying Ianniello more than \$125 million to garner his support for the Merger.

267. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring that demand on the Board would be excused as futile;

- B. Declaring that Defendants breached their fiduciary duties of loyalty and care;
- C. Granting appropriate equitable relief to remedy Defendants' breaches of fiduciary duty, including, but not limited to issuing Class members shares of ViacomCBS stock and cancelling ViacomCBS stock held by Shari Redstone, NAI and SMR Trust;
- D. Awarding the Class damages as a result of Defendants' breaches of fiduciary duty;
- E. Awarding ViacomCBS damages it sustained as a result of Defendants' breaches of fiduciary duty;
- F. Ordering Ianniello to disgorge the compensation he has received in connection with the Merger and his Employment Agreement;
- G. Awarding Plaintiffs their reasonable attorneys' fees, expenses, and costs; and
- H. Granting such other and further relief as the Court deems just and equitable.

Dated: April 14, 2020

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I, Corinne Elise Amato, hereby certify that on April 21, 2020 true and correct copies of the foregoing documents were served via File and Serve*Xpress* upon the following counsel:

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