

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

NATIONAL AMUSEMENTS, INC., )  
NAI ENTERTAINMENT HOLDINGS )  
LLC, and SHARI REDSTONE, )  
)  
Plaintiffs, ) C.A. No. \_\_\_\_\_  
)  
v. )  
)  
LESLIE “LES” MOONVES, CBS )  
CORPORATION, GARY L. )  
COUNTRYMAN, CHARLES K. )  
GIFFORD, BRUCE S. GORDON, )  
LINDA M. GRIEGO, MARTHA L. )  
MINOW, JOSEPH A. CALIFANO, )  
JR., WILLIAM S. COHEN, )  
LEONARD GOLDBERG, ARNOLD )  
KOPELSON, and DOUG MORRIS, )  
)  
Defendants. )

**VERIFIED COMPLAINT**

Plaintiffs National Amusements, Inc. (“National Amusements”), NAI Entertainment Holdings LLC (“Holdings,” and together with National Amusements, “NAI”), and Shari Redstone (collectively, with NAI, “Plaintiffs”), by and through their undersigned counsel, upon knowledge as to themselves and otherwise upon information and belief, allege for their Verified Complaint herein as follows:

**NATURE OF THE ACTION**

1. This case is about extraordinary, unjustified and unlawful actions by certain of the Directors (the “Director Defendants”) of CBS Corporation (“CBS” or

the “Company,” and together with the Director Defendants, “Defendants”) to unilaterally dilute the voting rights of its controlling stockholder, NAI, for all purposes and for all time. It is undisputed that the Director Defendants’ actions are unprecedented under Delaware law.

2. The dilutive dividend—which the Director Defendants approved following a hastily called and perfunctory special meeting (“Special Meeting”) of the CBS Board (“Board”) on May 17, 2018, and on a “conditional” basis pending Delaware court review—is invalid for at least four reasons: (i) it was declared in violation of the Company’s bylaws; (ii) it was based on the recommendation of a special committee, comprised of five Director Defendants (“Special Committee”), acting far beyond its authority; (iii) it violates the Company’s charter; and (iv) the Director Defendants’ purported dilution of CBS’s voting stockholders violates the directors’ fiduciary duties in numerous ways. Defendants’ actions have thrust the Company into uncertainty and disarray, damaging *all* CBS stockholders, including stockholders other than NAI for whose benefit the Director Defendants purported to act.

3. *First*, the dividend is plainly invalid under CBS’s bylaws, as amended on May 16, 2018. At the time of the Special Meeting, the Company’s bylaws required adherence to certain procedural requirements and a supermajority vote of at least 90% of the directors to approve any dividend. Even putting aside the

procedural requirements, fewer than 90% of the directors voted in favor of the Special Committee's recommended dilutive dividend. The dilutive dividend is therefore a corporate nullity.

4. *Second*, the dilutive dividend is improper and ineffective because the Board's vote was based on a recommendation of the Special Committee that far exceeded its defined authority. The Special Committee was constituted in February 2018 to "consider[], negotiat[e] and oversee[]" a potential business combination of CBS and Viacom, Inc. ("Viacom"). The Board did not authorize the Special Committee to consider or recommend a dilutive dividend (much less to initiate a lawsuit against NAI to try to render it defenseless against that dividend). The Special Committee certainly lacked any such authority *after* the Special Committee determined not to support a CBS/Viacom combination and the committee's work was therefore complete. The Board's action taken upon the Special Committee's *ultra vires* recommendation is a nullity.

5. *Third*, the dilutive dividend violates CBS's charter. The charter permits the issuance of dividends in the form of voting Class A shares to Class A stockholders, and non-voting Class B shares to Class B stockholders; it does *not* permit issuing Class A shares to Class B stockholders, which is the novel method by which Defendants have purported to strip NAI of its controlling stake in CBS. Indeed, Defendants have consistently disclosed that any dividend must preserve in

all material respects the differences between Class A and Class B stock, and acknowledged that NAI's voting control is "nondilutable." Defendants' convenient *post hoc* interpretation that NAI can be diluted in this way—if it were correct (and it is not)—would have been a material fact requiring disclosure in CBS's SEC filings. Not only did CBS make no such disclosure, but it repeatedly emphasized NAI's voting control.

6. *Finally*, in voting to approve the unprecedented dilutive dividend and, with respect to the Special Committee directors, filing a lawsuit and motion for a temporary restraining order ("TRO") on May 14, Defendants willfully flouted their fiduciary duties to all CBS stockholders, including NAI and CBS's other voting stockholders, in at least three ways. *First*, Defendants did not face even a cognizable threat, let alone extreme, truly extraordinary circumstances, and they did not have a compelling justification to take the action they did. The only purported "threats" cited by Defendants to justify their conduct involved (i) a possible cram down of a merger with Viacom, which was based entirely on unsourced media reports and conjecture; and (ii) vague and unsubstantiated claims that NAI was "interfering" with management. There was no truth to these imagined threats, which in any event do not remotely approach the requisite egregious, extreme conduct and compelling justification for a board to intentionally act to dilute the controlling stockholder. Moreover, even if these

“threats” could ever provide a compelling justification (which they could not), there can be no doubt that the Director Defendants’ response—to strip NAI of its voting control for all purposes and for all time—was grossly disproportionate and ignored other remedies available to Defendants if they were genuinely concerned.

7. *Second*, Defendants breached their fiduciary duties not only through the dilutive dividend itself, but also through a course of conduct leading to the dividend, which was calculated to deprive NAI of its right to protect its voting interest in advance of the Special Meeting. Specifically:

- On or about May 9, the Special Committee conveyed to NAI, through an intermediary, that it had decided to go “pencils down” on its consideration of the potential CBS/Viacom combination until after the then-scheduled CBS annual meeting of stockholders on May 18. Despite this representation, the Special Committee then met between May 11-13 to vote to recommend against the deal *and* implement a secret plan to eliminate NAI’s voting control, commence litigation and seek to enjoin NAI from taking any defensive actions;
- The Board called the Special Meeting to dilute NAI on just three days’ notice, knowing that it would have been impractical, if not impossible, for NAI to exercise its full rights to take action to protect itself as a controlling stockholder. Indeed, Defendants have contested the validity of the action

NAI took on May 16: As was its right, NAI amended the Company's bylaws (the "Bylaw Amendment") that day to impose certain procedural requirements and a supermajority vote of 90% to issue a stock dividend, as a measured response to Defendants' unjustified and grossly disproportionate action. Defendants have asserted that the Bylaw Amendment "cannot become effective" until 20 days after CBS files its information statement on Schedule 14C, which CBS did not do until May 25. Defendants' assertion is wrong, but further exposes their intention to prevent NAI from protecting its voting control before the Special Meeting;

- CBS and the Special Committee simultaneously instituted litigation *and* sought a TRO to preclude whatever opportunity NAI might otherwise have had to take action to protect its interest in advance of the Special Meeting;
- Defendants declined NAI's repeated and good faith requests for a standstill before the TRO hearing, which standstill would have preserved both NAI's ability to act in advance of the Special Meeting and this Court's ability to review the validity of both the proposed dilution and any action taken by NAI;
- Defendants declined NAI's renewed request, after the Court denied Defendants' TRO motion, to delay the Special Meeting so that the parties

could discuss a potential standstill or, if there were no standstill, provide NAI the opportunity to take further action to protect its interests; and

- Defendants postponed the annual meeting of stockholders that had long been scheduled for May 18, with the intended effect of preventing NAI from exercising its voting rights at the meeting.

8. *Third*, contrary to their representations to the Court and to stockholders that the Special Meeting was necessary to “deliberate” on, “debate” and “consider” the Special Committee’s recommendation on a “full record,” Defendants’ haste to hold the Special Meeting on May 17 resulted in a perfunctory and heavily scripted Board meeting that lasted only an hour, with almost no deliberation or debate. Despite the gravity of the issue before the Board, there were no written materials provided to the Board (either in advance of or at the meeting) other than distribution *at the meeting* of (i) a bare-bones agenda, and (ii) the resolutions declaring the dividend, which the Director Defendants apparently already agreed in private they would approve. Absent from the promised “full record” was: any written analysis or fairness opinion sought from or provided by any financial advisor; any consideration given to the dilutive dividend’s economic impact on or damage to Class A stockholders, including the minority Class A stockholders; any discussion of actual or potential conflicts of interest of the Special Committee members or other Director Defendants, all of whom own

significantly more non-voting Class B stock than voting Class A stock; any identification or discussion of less extreme measures to address the supposed “threats” posed by the controlling stockholder; and any threat reassessment in light of NAI’s unequivocal assurances on and after May 14 that it did not have, and never had, any intention of removing directors or taking any other action to force a CBS/Viacom merger.

9. The only cogent, but manifestly improper, explanation for the Director Defendants’ unprecedented action is that Leslie “Les” Moonves, CBS’s long-time CEO, has tired of having to deal with a stockholder with voting control and has taken particular umbrage that the exercise of such stockholder’s control has migrated from Sumner Redstone to his daughter, Ms. Redstone. Mr. Moonves has been a successful CEO and has richly benefitted under CBS’s dual-class share structure, to the tune of nearly \$700 million over his tenure as CEO (making him one of the highest paid CEOs in America, and the highest paid in the media industry). Mr. Moonves apparently gave the Director Defendants an ultimatum: Either you remove NAI’s voting control, or I resign. This ultimatum came against the backdrop of a \$180 million “golden parachute” in Mr. Moonves’s employment



agreement that had been adopted without discussion or approval of the full Board, with the intended purpose of entrenching Mr. Moonves in his position as CEO.<sup>1</sup>

10. For their part, the Director Defendants improperly chose CBS's CEO over its controlling stockholder. They apparently had no qualms about abdicating their fiduciary obligations in order to serve Mr. Moonves's will, leaving it to this Court to protect NAI and CBS's other Class A stockholders from the unlawful dilutive dividend and without pausing to consider the extraordinary injuries that would be inflicted not only upon NAI, but also upon CBS and all of its stockholders in the interim.

11. Despite all the accusations, speculation and alleged "threats" about what NAI (and Ms. Redstone) might do, the true facts stand in marked contrast:

- NAI and Ms. Redstone did not, and do not, intend to force a CBS/Viacom merger, whether by removing and replacing CBS directors or otherwise.
- In fact, the week *before* the CBS Special Committee purportedly met to recommend against a merger and initiated litigation, NAI had determined that it no longer supported a merger and Ms. Redstone so advised members of a special committee of Viacom's board ("Viacom Special Committee").

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<sup>1</sup> Plaintiffs reserve all rights to contest any payments to Mr. Moonves under his employment agreement, and all claims, whether direct or derivative, with respect to the directors who approved the agreement.

The Viacom Special Committee members expressed their preference to Ms. Redstone that the special committees have an opportunity to complete their assignment.

- Neither NAI nor Ms. Redstone did anything to undermine Mr. Moonves or otherwise interfere with CBS management at any time. Ms. Redstone had specifically declined the position of Chair of CBS's Board when her father stepped down from that position in February 2016, knowing how important it was to Mr. Moonves that he assume that role. When a potential CBS/Viacom transaction was discussed both in 2016 and 2018, NAI and Ms. Redstone were fully supportive of Mr. Moonves, declined to move forward without his blessing, and repeatedly assured him that NAI would want him to lead a combined CBS and Viacom, with a senior management team of his choosing. Indeed, NAI and Ms. Redstone acceded to Mr. Moonves's request in 2018 that Robert Bakish (Viacom's CEO) not be named Mr. Moonves's successor or have a role in a combined company's management while Mr. Moonves was CEO.
- Defendants have invoked events involving Viacom's former board as evidence that NAI supposedly has a history of running roughshod over management and contravening good corporate governance. But NAI intervened there only when faced with underperforming leadership that had

failed to formulate or execute a long-term strategic plan and was actively seeking to divest Viacom of critical assets. And that “intervention” consisted of replacing five members of Viacom’s Board—two of whom were *affiliated* with NAI—with undisputedly qualified and truly independent directors. The five new directors were not Ms. Redstone’s friends or allies; indeed, she had no prior relationship with four of them, and they were instead recommended to NAI based on their commitment to strong corporate governance. Those new directors, working with the rest of the Viacom board and the company’s new CEO, have made quick, meaningful progress on Viacom’s transformation.

- NAI and Ms. Redstone have made clear, including explicitly to Mr. Moonves, that they are open to eventually relinquishing NAI’s voting control. Ms. Redstone and Mr. Moonves discussed, and agreed, that a combination of CBS and Viacom would benefit both companies’ stockholders, providing each company with greater scale as needed for success in today’s media and entertainment landscape, and better positioning the companies for a larger transaction in which the combined entity could fetch an attractive premium that neither CBS nor Viacom alone could command. Ms. Redstone told Mr. Moonves that NAI would consider relinquishing its controlling interest in the context of such a transaction.

12. In the face of these facts, Defendants' extraordinary, unprecedented and unlawful actions do violence to fundamental corporate governance principles and decades of the Delaware courts' precedent. Corporations are owned by, and elections of directors are ultimately in the hands of, their stockholders. Even if those stockholders obtain controlling stakes, and even if management and a board would prefer to have free reign over the company (and believe that the company would be better served thereby), the rights of stockholders are paramount and must be respected.

13. Defendants' actions have directly harmed Plaintiffs and plunged CBS into a world of uncertainty and disarray. Their actions have cast a cloud over CBS's relationships with its customers, vendors and partners; have paralyzed the Company's pursuit of strategic opportunities; and will sap the attention of CBS's Board and management from its proper focus on maximizing value for all stockholders.<sup>2</sup>

### **JURISDICTION**

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

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<sup>2</sup> Plaintiffs reserve the right to assert all claims, whether direct or derivative, to remedy the harms the Director Defendants' wrongful conduct has inflicted on CBS.

15. This Court also has jurisdiction over this action pursuant to 8 *Del. C.* § 111 (“Any civil action to interpret, apply, enforce or determine the validity of the provisions of ... [t]he certificate of incorporation or the bylaws of a corporation”).

16. Furthermore, this Court has jurisdiction over this action pursuant to Article VIII of the Amended and Restated Bylaws of CBS Corporation, which identifies the Court of Chancery of the State of Delaware as the sole and exclusive forum for such actions.

### **PARTIES**

17. Plaintiff National Amusements, a Maryland corporation, is the beneficial owner of 21,631,535 shares of Class A Common Stock of CBS (“Class A stock”). National Amusements is a privately owned theater company that, in addition to directly and indirectly owning controlling stakes in CBS and Viacom, operates approximately 950 movie screens in the U.S., U.K. and Latin America.

18. Plaintiff Holdings, a Delaware limited liability company and wholly-owned subsidiary of National Amusements, is the beneficial owner of 8,251,064 shares of CBS’s Class A stock. Collectively, National Amusements and Holdings own approximately 80% of CBS’s Class A stock.

19. Plaintiff Ms. Redstone is President of both National Amusements and Holdings and Non-Executive Vice Chair of the Boards of Directors of CBS and Viacom. Ms. Redstone is a media executive with a wide-ranging background in

numerous aspects of the entertainment industry and related ventures. Since becoming President of National Amusements and Holdings in 2000, Ms. Redstone has expanded the company's international footprint and its innovative use of new technologies. Ms. Redstone is also Co-Founder and Managing Partner of an investment firm launched in 2011 that focuses on early stage investments in media, entertainment and technology. In addition, she is formerly a member of the Board of Directors and Executive Committee for the National Association of Theatre Owners. Ms. Redstone owns 14,457 shares of CBS Class A stock and 114,112 shares of CBS Class B Common Stock ("Class B stock").

20. CBS is a mass media company, operating businesses in various media and entertainment industries, including the CBS Television Network, cable networks, content production and distribution, television and radio stations, Internet-based businesses and consumer publishing. As of May 25, 2018, CBS had a market capitalization of approximately \$19.3 billion dollars. Shares of CBS Class A stock trade publicly under the symbol CBS.A. Shares of CBS Class B stock trade publicly under the symbol CBS.

21. Defendant Leslie "Les" Moonves has been the CEO and President of CBS since January 2006. Mr. Moonves also became Chairman of the Board of Directors of CBS on February 3, 2016, when Ms. Redstone declined the position.

According to CBS's 2018 annual proxy statement, Mr. Moonves beneficially owns over 3.3 million shares of Class B stock.

22. Defendants Gary L. Countryman, Charles K. Gifford, Bruce S. Gordon, Linda M. Griego, Martha L. Minow, Joseph A. Califano, Jr., William S. Cohen, Leonard Goldberg, Arnold Kopelson, and Doug Morris are directors of CBS. Directors Martha L. Minow, Linda M. Griego, Charles K. Gifford, Gary L. Countryman, and Bruce S. Gordon (the "Special Committee Defendants") constitute the CBS Special Committee. All of the Director Defendants beneficially own Class B stock.<sup>3</sup>

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<sup>3</sup> According to CBS's 2018 annual proxy statement, Mr. Countryman beneficially owns 80,970 shares of Class B stock and 6,652 shares of Class A stock; Mr. Gifford beneficially owns 85,799 shares of Class B stock; Mr. Gordon beneficially owns 62,086 shares of Class B stock; Ms. Griego beneficially owns 47,371 shares of Class B stock; Ms. Minow beneficially owns 2,880 shares of Class B stock and 685 shares of Class A stock; Mr. Califano beneficially owns 86,529 shares of Class B stock and 3,227 shares of Class A stock; Mr. Cohen beneficially owns 99,634 shares of Class B stock and 32,563 shares of Class A stock; Mr. Goldberg beneficially owns 62,792 shares of Class B stock; Mr. Kopelson beneficially owns 85,011 shares of Class B stock and 3,642 shares of Class A stock; and Mr. Morris beneficially owns 81,925 shares of Class B stock and 24,565 shares of Class A stock.

## **BACKGROUND**

### **I. CBS IS, AND HAS ALWAYS BEEN, A COMPANY WITH A DUAL-CLASS STOCK STRUCTURE AND CONTROLLING STOCKHOLDER, AND ALSO WITH A MAJORITY INDEPENDENT BOARD**

23. CBS was formed in 2005, when the former Viacom, Inc. (“Old Viacom”) was split into two stand-alone entities, Viacom and CBS. NAI had voting control of Old Viacom at the time of the split. After the split, NAI retained voting control of each company through the replication of Old Viacom’s dual-class share structure at both Viacom and CBS.

24. NAI’s voting control of both CBS and Viacom is derived from the dual-class stock structure set forth in their charters, under which only Class A shares have voting rights. NAI owned, and continues to own, approximately 80% of the Class A shares of both companies.

25. Like the controlling stockholders of the approximately 700 U.S. public companies that have dual-class capital structures (as of February 2018), NAI has the power to: (1) elect directors; (2) vote its shares in its self-interest, including with respect to merger transactions submitted to a stockholder vote by the Board; and (3) decline to sell its stake and make its unwillingness to do so public, even if doing so would prevent a transaction that the Board might otherwise wish to pursue.



26. From its inception, CBS has repeatedly disclosed that it has a stockholder with voting control. For example, in CBS's 2006 annual proxy statement—its first post-separation proxy statement—the CBS Board, which then included Defendants Moonves, Califano, Cohen, Gifford and Gordon, disclosed that the Company had received a stockholder proposal to adopt a recapitalization plan that was premised on concerns that the Redstone family had a disproportionate and “nondilutable” percentage of the stockholder vote. Proxy Statement (Schedule 14A), at 67 (Apr. 14, 2006). Notably, the Board did not dispute the description of NAI's voting control as “nondilutable,” and it recommended against the proposal, expressly stating that “[e]ach stockholder purchasing a share of CBS Corporation stock is aware of the Company's capital structure” and that “many are attracted to CBS Corporation stock by the long-term stability the Class A stockholders provide to the Company.” *Id.*<sup>4</sup>

27. In every annual report that CBS has filed with the SEC since it became a standalone company, the Company has disclosed that NAI has voting control of CBS, including by asserting that “NAI, Through Its Voting Control of

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<sup>4</sup> The Board did, however, correct the stockholder proposal's misstatement that CBS's capital structure gave the Redstone family a disproportionate percentage of the voting stock, stating: “Moreover, the capital structure of the Company does not create, for any stockholder, a disproportionate voting percentage of the stockholder vote. Each share of Class A Common Stock carries the voting power of one vote per share, including each of the shares held by Mr. Redstone and other family members.” *Id.*

the Company, Is in a Position to Control Actions that Require Stockholder Approval.” *See, e.g.*, Annual Report (Form 10-K), at I-25 (Feb. 20, 2018). In light of these clear disclosures, all Class B stockholders have acquired their shares knowing that they will have no voting rights, and that stockholder votes are controlled by NAI.

28. If Defendants (or any predecessor CBS Board) had truly believed that the charter permitted the Company to dilute NAI’s voting control through the issuance of a dividend of Class A shares to all stockholders (which it does not), that would have been a material fact that CBS would have been required to disclose in its SEC filings. Yet before commencing litigation on May 14, CBS had never claimed or disclosed a belief that the charter gave it such power.

29. Notwithstanding NAI’s voting control, which exempts CBS from the requirement to have a majority of independent directors under New York Stock Exchange (“NYSE”) listing rules, CBS (like Viacom) has from inception publicly stated that it would nominate a majority of “independent” directors as defined by the NYSE rules. NAI has at all times voted to elect a majority of independent directors to the CBS (and Viacom) boards based on the directors’ business experience and skills, and not any relationships with NAI or the Redstones. Eleven of CBS’s 14 current directors are independent from NAI. (At Viacom, that figure is 8 of 9, with Ms. Redstone serving as the only NAI-affiliated director.) In every

year since CBS became a standalone company, NAI has voted in favor of the Board's proposed slate of directors.

## **II. MR. MOONVES'S EARLY EFFORTS TO HAVE NAI RELINQUISH ITS VOTING CONTROL**

30. Under this independent board structure, Mr. Moonves has been able to consolidate his power at CBS to an extraordinary degree.

31. During his tenure as CEO, Mr. Moonves has received lucrative compensation, totaling nearly \$700 million in the aggregate. While Forbes' 2018 Survey of America's Largest Public Companies listed CBS as 204<sup>th</sup> by sales, 413<sup>th</sup> by profit, 296<sup>th</sup> by assets, and 272<sup>nd</sup> by market value, Mr. Moonves has been among the highest paid CEOs in America for the entirety of his tenure—including 2017, when Mr. Moonves reportedly was the highest paid executive (by over \$20 million) in the entire media industry.

32. Mr. Moonves's employment agreement, which was last renewed on May 19, 2017, provides, among other things, that his salary and bonus will never be decreased and that the Compensation Committee must consider increasing Mr. Moonves's compensation if it falls below that of any other chief executive of a similar company. Under the same agreement, Mr. Moonves has the right to terminate his employment with CBS and collect approximately \$180 million<sup>5</sup> if he

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<sup>5</sup> See Proxy Statement (Schedule 14A), at 72 (Apr. 6, 2018) (the "2018 Proxy") (disclosing amounts of \$184,030,354 for "without cause" termination and

has certain “good reasons” for doing so, including (i) if a current or former CEO of a competitor media company is nominated or elected to the Board, or (ii) if a majority of the directors of the Board, the Compensation Committee or the Nominating and Governance Committee are not “Original Independent Directors” (as defined in the agreement) or so-called “Qualified Replacement Directors.” That “good reason” provision in Mr. Moonves’s agreement had not been approved by or even discussed with the full Board.

33. The employment contract for Mr. Moonves’s hand-picked number two and COO, Mr. Joseph Ianniello, similarly includes a \$60 million golden parachute in the event he resigns for certain “good reason” events—including if he is not named CEO upon Mr. Moonves’s exit from the Company. As with Mr. Moonves’s golden parachute, and notwithstanding the obvious and significant impact on succession planning, that provision of Mr. Ianniello’s contract was not approved, or even discussed, by the full Board prior to the agreement being signed

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\$181,852,272 for “good reason” termination). CBS’s 2018 Proxy disclosed the potential payments due to Mr. Moonves with respect to arrangements in place as of December 31, 2017. These likely understate the payments and benefits that Mr. Moonves would be entitled to receive as of today upon a current termination of employment “without Cause” or “for Good Reason,” because they do not take into account the value of equity awards granted to him in 2018. In addition, the values may not fully reflect the value of performance share awards granted to him in respect of performance periods commencing in 2015, 2016 and 2017, and a cash performance award granted to him in 2017.

(nor was there any discussion by the full Board about succession after Mr. Moonves).

34. Notwithstanding Mr. Moonves's very lucrative pay package and the broad powers granted to him as CEO of a controlled company, Mr. Moonves has long sought to rid himself of CBS's controlling stockholder.

35. On one occasion, occurring less than a year after the Viacom split in 2005, Mr. Moonves inquired whether NAI would consider a take-private transaction for CBS, which would have resulted in the Company being owned and controlled by Mr. Moonves and his partners. That discussion led nowhere, given Sumner Redstone's statements at the time that he would not give up voting control of either CBS or Viacom.

36. Nearly a decade later, in or about 2015, Mr. Moonves again approached NAI, this time inquiring about the possibility of a transaction in which NAI would be paid a premium in exchange for giving up its voting control of CBS. Mr. Moonves again made no headway with this proposal.

### **III. MS. REDSTONE IS "A STRONG VOICE FOR GOOD CORPORATE GOVERNANCE"**

37. Despite Mr. Moonves's longstanding desire to supplant NAI's voting control of CBS, NAI has never used its voting control to interfere with CBS's management. That was true of Sumner Redstone, and it is equally true of Ms. Redstone.

38. Indeed, Ms. Redstone turned down the opportunity to become the Chair of CBS when her father stepped down from the position in February 2016, instead supporting Mr. Moonves for the position. As CBS explained in a press release at the time:

Before electing Mr. Moonves, the CBS Board offered the position of Non-Executive Chair to Ms. Redstone, but she declined in light of her other professional and personal responsibilities, and in recognition of her confidence in Mr. Moonves.

39. Ms. Redstone also issued a statement explaining her decision:

[M]y singular focus is to act in [CBS and Viacom's] best interests by ensuring that each company has a strong Chair, a Board of Directors which diligently oversees management, and an outstanding leadership team. As has been accurately reported, my father's Trust states his intention that I succeed him as (non-executive) Chair at CBS and Viacom . . . . However, it is my firm belief that whoever may succeed my father as Chair at each company should be someone who is not a Trustee of my father's trust or otherwise intertwined in Redstone family matters, but rather a leader with an independent voice. I was honored to nominate Les as the CBS Chair and am delighted to congratulate him on his new position.

40. Upon assuming the Chairmanship of CBS, Mr. Moonves praised Ms. Redstone's expertise and made clear that he valued and welcomed Ms. Redstone's involvement with CBS, stating:

I am particularly grateful that Shari Redstone has agreed to continue in her role as Vice Chair of the Company. Her business acumen and knowledge of the media space remain very important to me as we move forward, and I greatly appreciate her support and invaluable counsel.

41. Ms. Redstone similarly declined the Chair position at Viacom. However, by June 2016, market prices of Viacom's Class A and Class B stock plunged more than 50% from their high in 2014, wiping out more than \$16 billion of stockholder value. NAI believed that Viacom's leadership was destroying short- and long-term stockholder value, and that leadership's proposed sale of Viacom's crown jewel, Paramount Pictures, would do further harm. NAI thus took appropriate steps to elect new directors (fully independent of NAI), who selected a new management team.

42. Litigation concerning NAI's actions with respect to Viacom was settled on August 18, 2016. The following day, Mr. Moonves provided a statement to the *Los Angeles Times*, stating, "Shari has been a terrific board member and a strong voice for good corporate governance throughout her tenure here at CBS . . . . I am sure she will bring that same good business sense and positive, collegial attitude to the new situation at Viacom as she and the new board work to move that company forward."

43. Subsequent events confirmed that NAI's actions were in the best interests of Viacom. A special committee of the newly constituted board of Viacom, on which Ms. Redstone served, recommended the selection of Mr. Bakish as the new Viacom CEO, and the board appointed him. Mr. Bakish came from Viacom's internal ranks, where he led the company's international businesses,

which had outperformed its domestic businesses. Under the direction of Mr. Bakish, Viacom's outlook has significantly rebounded, its corporate culture and morale have improved dramatically, and the company has been successfully implementing a new strategic plan.

#### **IV. IN SEPTEMBER 2016, NAI EXPLORES A POTENTIAL MERGER OF VIACOM AND CBS**

44. From time to time, Ms. Redstone had discussions with Mr. Moonves regarding a potential recombination of CBS and Viacom, based on NAI's view that such a merger would be in both companies' interests to achieve the scale needed in light of developments in the media and entertainment industry. In those conversations, Ms. Redstone emphasized that NAI was not interested in pursuing a recombination unless Mr. Moonves supported it.

45. On September 29, 2016, shortly after Mr. Moonves confirmed that he would be supportive of a potential recombination, NAI sent a letter to the boards of CBS and Viacom asking them to consider a merger. NAI's letter highlighted the "substantial synergies" that would result from the potential combination, permitting the combined company to more aggressively and effectively respond to the challenges facing the rapidly changing entertainment and media landscape.

46. NAI's letter stressed the need for "full and fair deliberation and negotiation," that "any transaction would proceed only if it is approved by each board" and that none of the directors affiliated with NAI sitting on the CBS and



Viacom boards would vote or participate in any such deliberations. NAI also stated that it was not interested in surrendering its voting control of CBS or Viacom.

47. Both CBS and Viacom formed special committees to explore a possible merger.

## V. THE 2016 MERGER TALKS BREAK DOWN

48. The next day, on September 30, counsel to CBS sent a letter directly to NAI’s counsel—preempting the special committee process—making extraordinary statements and demands that would have neutered NAI’s voting rights and insulated Mr. Moonves against any meaningful Board oversight.

49. Purporting to state the views of the CBS Board and management, the letter stated that they “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” (emphasis added). The letter also stated that “one of the key concerns” was whether Mr. Moonves would have “*complete and irrevocable* authority to manage the combined businesses” (emphasis added).

50. An attachment to the letter contained extraordinary demands:

- Mr. Moonves and “senior officers” of CBS would continue in their roles in the combined company (with no mention of a role for Viacom management).

- Mr. Moonves would be responsible for all strategic and operational decisions.
- Removal of Mr. Moonves would require approval by two-thirds of the independent directors.
- At least 75% of the board of the combined company would consist of independent directors, with the board size capped at 13; no more than two independent Viacom directors would be permitted to join the board of the combined company; and the committees of the board of the combined company would be comprised of the CBS directors currently on those committees.
- The Class A shares could only act at a stockholder meeting and not by written consent.
- Special stockholder meetings could only be called by the board.
- NAI would “not amend the charter or bylaws in any way that either restrain[ed], or require[d], business decisions by the Board or by shareholder approval.”

51. On October 6, NAI’s counsel advised the CBS special committee’s counsel that NAI would discuss any governance proposal when requested by both special committees in the context of their consideration of the broader transaction.

52. Over the next two months, the special committees of CBS and Viacom engaged in discussions and negotiations regarding a potential merger, without any interference by NAI.

53. By early December 2016, NAI had heard that CBS was losing interest in a potential combination, and NAI determined that the recombination discussions were no longer productive.

54. On or about December 11, Ms. Redstone spoke with Mr. Moonves and asked whether he agreed with NAI's view. Mr. Moonves supported NAI's suggestion that the process be terminated.

55. NAI announced the following day that it had requested that the boards of both companies discontinue exploration of a potential combination of CBS and Viacom, and NAI took no further steps to advance a possible merger.

56. At no time during the process did NAI ever "refuse" the extraordinary demands in CBS's September 30 letter, as they were never discussed with NAI during the special committee process.

#### **VI. NAI AND MS. REDSTONE DID NOT INTERFERE WITH CBS'S 2017 CONSIDERATION OF STRATEGIC OPTIONS OR PLAN TO REFRESH THE BOARD**

57. Defendants have asserted that NAI and Ms. Redstone blocked CBS from receiving a strategic proposal from some third party within the last year (although without specifying such party). That is false.

58. Ms. Redstone spoke with a senior executive of Verizon on two occasions in the summer and fall of 2017. During those conversations, the Verizon executive volunteered his understanding that NAI was not interested in giving up voting control of CBS or Viacom (which Ms. Redstone confirmed), and the two discussed finding other ways for Verizon to work together with each company. At no point during those conversations (or any other time) did Ms. Redstone

discourage Verizon from speaking with any member of the CBS Board or management about a potential merger or any other topic. In fact, Ms. Redstone understood that the same Verizon executive was engaged in direct discussions with Mr. Moonves.

59. Demonstrating that Ms. Redstone “blocked” nothing, Verizon’s CEO later confirmed to the media that although Verizon had “looked at” the assets of CBS and its peers “over [a] period of time,” it had “made the decision that digital is the way for us to go. We have no interest in a linear content company.”

60. In the fall of 2017, the CBS Nominating and Governance Committee, at the urging of NAI (given that 8 of 9 independent directors were over 70 and had an average board tenure of over 11 years) began discussing a process to refresh the Board by recruiting new independent directors. At a September 2017 meeting of the committee in which Ms. Redstone participated, the committee agreed that they would collect suggestions for potential board candidates and, at the next committee meeting, discuss the list and then decide whether or not it was necessary to engage a search firm. Before the next committee meeting, however, CBS hand-picked its own search firm, without informing Ms. Redstone and contrary to the agreed-upon plan. Still, neither Ms. Redstone nor NAI made any effort to halt the search process; instead they continued to support it. The committee later came to the

conclusion that the process should be put on hold pending a second round of discussions regarding a potential merger of CBS and Viacom, as described below.

## **VII. NAI, WITH MR. MOONVES'S SUPPORT, RE-INITIATES DISCUSSION OF A POTENTIAL STRATEGIC MERGER BETWEEN CBS AND VIACOM**

61. Between late 2016 and late 2017, the media industry experienced a number of developments, including rapid technological changes, heavy consolidation through M&A activity, and even more intensified pressure for scale, with the pace of changes accelerating faster than anticipated. As a result, traditional media companies were being forced to revisit their strategies going forward.

62. Against this background, NAI again came to the view (working with its financial advisor) in late 2017 that it was in the best interest of both CBS and Viacom to explore a possible merger, in order to achieve greater scale and position themselves for any further M&A activity. This was not only NAI's view; numerous independent analysts recognized the benefits of such a combination.<sup>6</sup>

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<sup>6</sup> See, e.g., Michael Nathanson, "CBS + VIAB: Now More Than Ever!" MOFFETTNATHANSON, at 1 (Jan. 16, 2018) ("For the past decade, we have believed that CBS and Viacom would be more valuable if they were combined."); Richard Greenfield, "Les Moonves May Have to Deal with the Unimaginable . . . Unless CBS Merges With Viacom," BTIG RESEARCH (Jan. 30, 2018) ("We continue to believe the most logical first step for CBS [to scale up meaningfully] is a recombination with Viacom . . ."); John C. Hodulik, "A closer look at CBS-VIAB," UBS, at 1 (Jan. 31, 2018) ("[W]e believe there would be opportunities for

63. Just as it had in late 2016, NAI first raised with Mr. Moonves the concept of a potential CBS/Viacom combination, to ensure that he supported it.

64. Ms. Redstone discussed the issue with Mr. Moonves in several conversations in late 2017, again emphasizing that NAI was not interested in a potential combination unless he supported it. Mr. Moonves stated that he would not “stand in the way” of a potential transaction. Mr. Moonves also shared with Ms. Redstone that he was ready for the “next chapter” of his life, but was not sure what that was.

65. On January 5, 2018, Robert Klieger, a director of CBS and an advisor to NAI and the Redstones, met with Mr. Moonves. Mr. Klieger repeated to Mr. Moonves that NAI fully supported him and wanted to pursue a potential merger of Viacom and CBS only if Mr. Moonves believed in and enthusiastically supported such a transaction—as opposed to simply “not standing in the way” of it. Mr. Klieger further told Mr. Moonves that NAI viewed a merger as only the first step toward achieving the scale necessary to compete in the rapidly changing media landscape, and that NAI was prepared to consider relinquishing control in connection with further M&A activity. Mr. Moonves responded that he supported a potential merger of Viacom and CBS and expected it to go forward.

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operational synergies [between CBS and Viacom] . . . giving the combined entity more scale and breadth of content offerings.”).

66. Ms. Redstone met again with Mr. Moonves on January 16. Ms. Redstone discussed NAI's long-term plans for CBS, focusing on a two-step process starting with a merger with Viacom that would strengthen both entities, and continuing thereafter with a sale or merger of the stronger combined entity, with NAI open to the possibility of relinquishing its voting control as part of that second transaction. Mr. Moonves reiterated that he was supportive of a possible merger of CBS and Viacom.

67. At the January 16 meeting, Ms. Redstone told Mr. Moonves (as she had told others and him before) that she was looking forward to being able to focus more on her family and her other business and non-profit interests, and she again asked Mr. Moonves about his future plans. Mr. Moonves again responded that while unsure of his future plans, he was ready for the "next stage" of his life and did not see himself continuing in his CEO role in two years' time. Ms. Redstone explained to Mr. Moonves that his uncertainty would require the start of a process to explore options for when he retired from the Company, and Mr. Moonves stated that he understood.

68. Also at the January 16 meeting, Ms. Redstone told Mr. Moonves that NAI would like to nominate Richard Parsons, a highly respected media executive (formerly Chairman and CEO of Time Warner), to the CBS Board as a

replacement for a departing director, but that it would do so only with Mr. Moonves's support.

69. Mr. Moonves ultimately supported Mr. Parsons's nomination to the Board, but raised the specter that the nomination would trigger the "good reason" provision in his golden parachute. Mr. Moonves eventually agreed to waive one trigger (that a new director cannot be a current or former CEO of a competitor or media company), but declined NAI's request that he support Mr. Parsons's qualification as a "Qualified Independent Director" (which would make it less likely that a second trigger would be satisfied in the future). Mr. Parsons was to be elected as a director, with the support of NAI and the full CBS Board, at the annual stockholder meeting then scheduled for May 18.

### **VIII. CBS AND VIACOM AGAIN UNDERTAKE TO EXPLORE A POTENTIAL RECOMBINATION**

70. On February 1, 2018, each of CBS and Viacom announced that they had formed special committees of their boards of directors to again consider a potential recombination of the companies.

71. The CBS and Viacom special committees each retained separate financial and legal advisors.

72. The February 1, 2018 Board resolutions creating the CBS Special Committee, as well as the Special Committee's charter annexed thereto, authorized it to "act . . . for the purpose" of "considering, negotiating, and overseeing" a



potential combination of CBS and Viacom, “including if appropriate recommending in favor of or against” that potential transaction. The resolutions also provided that the Board would not approve any CBS/Viacom deal without a prior favorable recommendation from the Special Committee.

73. The special committees then began due diligence and discussions to consider the advisability of the transaction and specific terms.

74. Although NAI played no role in the special committees’ financial discussions (including on exchange ratio), NAI, as the controlling stockholder in both companies that would ultimately need to approve any transaction, was involved in discussions concerning management and board composition of the combined entity.<sup>7</sup>

75. On March 17, Ms. Redstone and Mr. Moonves met to further discuss the proposed transaction, with Ms. Redstone reiterating NAI’s support for Mr. Moonves and NAI’s desire for him to lead the combined company. Mr. Moonves indicated that he needed to retain “his team” as management for the combined company, including Mr. Ianniello as COO, and that he wanted to have four of “his people” on the board, including Defendants Bruce Gordon, William Cohen, Gary Countryman and Charles Gifford. Ms. Redstone responded that NAI was

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<sup>7</sup> NAI received materials being exchanged by the parties, so that it could have some visibility into the process and assess whether the parties’ discussions were productive and continuing to be so.

supportive of all, except for Mr. Gifford's continuing service on the board for reasons she had previously discussed with Mr. Moonves.

76. Ms. Redstone stated that NAI believed it was important for Viacom's CEO, Mr. Bakish, to have a significant role in the combined company given his track record at Viacom. Mr. Moonves asked if Ms. Redstone would insist that Mr. Bakish be his "number two" or named his successor. Ms. Redstone responded that she would not, and instead simply requested that Mr. Moonves identify some meaningful role for Mr. Bakish that would entice him to stay.

77. At the close of the meeting, Ms. Redstone and Mr. Moonves both affirmed their mutual desire for "peace" and agreed that if they had any disagreements, they would be frank with each other and attempt to address them privately, rather than fighting publicly.

## **IX. MERGER DISCUSSIONS CONTINUE THROUGHOUT MARCH AND APRIL 2018**

78. On March 29, the CBS Special Committee made an initial offer to the Viacom Special Committee. Over the next few weeks, the parties traded several further offers and counterproposals.

79. On April 11, in response to unsubstantiated press rumors that Ms. Redstone was considering actions to try to replace Mr. Moonves, CBS and NAI each issued statements of support of Mr. Moonves. CBS stated: "The industry and the marketplace know Leslie Moonves's record and we think it speaks for itself."

NAI stated: “National Amusements has tremendous respect for Les Moonves and it has always been our intention that he run a combined company.”

80. On or about April 24, the Viacom Special Committee informed NAI that the two special committees were close to an agreement on the exchange ratio, but that agreement had not been reached as to the management or board composition of the combined company.

81. Around the same time, counsel to the CBS Special Committee informed NAI’s counsel that the committee was considering requesting a “freeze” of the board in connection with a merger, *i.e.*, that NAI would not be permitted to make changes to the board of the combined entity for a period of time. However, no such request was ever made.

**X. ON MAY 1, MS. REDSTONE AND MR. MOONVES MEET TO DISCUSS TWO OPEN ISSUES**

82. On May 1, Ms. Redstone and Mr. Moonves met to discuss what appeared to be the principal open issues: Mr. Bakish’s role in a combined company and Mr. Gifford’s continuing service as a director. Mr. Parsons and Defendant Bruce Gordon were also present at that meeting.

83. Ms. Redstone informed Mr. Moonves that NAI would support a scenario in which Mr. Bakish was not part of the management team and would serve only as a board member of the combined company. Mr. Moonves repeatedly bemoaned that Ms. Redstone liked Mr. Bakish more than him, and Ms. Redstone

had to repeatedly assure Mr. Moonves that was not the case, that she actually had a closer personal relationship with Mr. Moonves than Mr. Bakish, and that she wanted Mr. Moonves to run the combined company.

84. Mr. Moonves also complained that Ms. Redstone disliked Mr. Ianniello. Ms. Redstone explained that she did not dislike Mr. Ianniello, and in fact barely knew him, and that she thought Mr. Ianniello was a great COO. She stated that she simply did not believe Mr. Ianniello was the right candidate to be Mr. Moonves's successor as CEO.

85. Finally, Ms. Redstone again reiterated her discomfort with Mr. Gifford's continuing service on the CBS Board. Ms. Redstone explained that, on two occasions in 2016 and 2017, Mr. Gifford had acted in an intimidating and bullying manner, including on one occasion by grabbing her face and directing her to listen to him.<sup>8</sup> Ms. Redstone proposed that the matter be handled privately and discreetly by not nominating Mr. Gifford to the board of the new combined company or, in the event of no merger, by not including him in the CBS-recommended slate.

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<sup>8</sup> After hearing that Ms. Redstone was upset by his conduct, Mr. Gifford later told her that he meant no offense, and that was how he treats his daughters when he wants their attention. Ms. Redstone clarified that she was not Mr. Gifford's daughter but instead the Vice Chair of CBS.

86. Messrs. Moonves and Gordon committed to get back to Ms. Redstone and Mr. Parsons by May 4 concerning the two issues discussed.

87. At no time during this May 1 meeting, or during any of the negotiations from February 1 forward, did the CBS Special Committee make or convey any governance requests to NAI.

## **XI. MERGER TALKS BREAK DOWN**

88. Starting around end of April, Ms. Redstone began reaching out to members of the Viacom Special Committee to tell them that, although no decision had been made, NAI was questioning the viability and continuing rationale of a CBS/Viacom merger given Mr. Moonves's clear reluctance to agree to a role for Mr. Bakish in the combined company (which NAI believed was critical to the success of the merger) and increasing press reports purporting to quote inside CBS sources disparaging Viacom. The Viacom Special Committee members told Ms. Redstone that they believed a recombination still made sense.

89. On May 4, the date by which Messrs. Moonves and Gordon had committed to get back to Ms. Redstone concerning the issues discussed on May 1, Mr. Gordon conveyed to Mr. Parsons that they required additional time to consider those issues, and pushed off any response to May 8.

90. Ms. Redstone continued to express her concerns to the Viacom Special Committee, and NAI became more steadfast in its belief that a merger did

not make sense under the circumstances. At neither that nor any other time did NAI have any intention of forcing a deal by removing directors or by taking any other action, and NAI was instead focusing on a standalone Viacom.

91. On approximately May 9, Mr. Gordon informed Mr. Parsons that CBS and the Special Committee had decided, in light of the busy schedule the following week, to go “pencils down” on further merger discussions until after CBS’s annual stockholder meeting, then scheduled for May 18.

92. Ms. Redstone spoke with the Viacom Special Committee members again to convey that NAI had decided it no longer supported a merger. The Viacom Special Committee members told Ms. Redstone that the special committees had reached a “handshake” deal on economic terms, and expressed their preference that the special committees have an opportunity to complete their assignments.

93. Ms. Redstone also spoke with Mr. Bakish regarding the standalone strategy for Viacom, which she now believed would be Viacom’s path forward.

94. Also in light of these developments, NAI realized that the plan to discreetly refrain from nominating Mr. Gifford to the board of a combined company would likely no longer be an option.<sup>9</sup>

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<sup>9</sup> Previously, on April 4, NAI’s counsel had confirmed to CBS’s General Counsel that NAI was comfortable with CBS including in its proxy statement (as in prior years) a statement to the effect that NAI intended to vote in favor of the CBS-

95. Accordingly, on Friday, May 11, Mr. Klieger communicated to Mr. Gordon NAI's desire to consider other ways to facilitate Mr. Gifford's exit from the CBS Board with minimal disruption and public attention. Mr. Klieger and Mr. Gordon agreed to further discuss that matter on Monday, May 14. This was the only issue that NAI raised with respect to any current CBS Board member's service, and the reasons were completely unrelated to the potential transaction.

## **XII. CBS AMBUSHES NAI BY NOTICING A SPECIAL MEETING AND FILING SUIT**

96. Mr. Moonves and Mr. Gordon never provided a response on the issues discussed at the May 1 meeting, and Mr. Gordon had no further discussions with Mr. Klieger concerning Mr. Gifford's continuing service on the Board.

97. Instead, on May 14, just days after Mr. Gordon conveyed to Mr. Parsons that the CBS Special Committee would be giving no further consideration to a potential Viacom/CBS combination until after CBS's annual stockholder meeting on May 18, the CBS Special Committee took the extraordinary step of noticing a Special Meeting of the Board to occur on May 17. The stated purpose of the Special Meeting was to consider declaring, on the recommendation of the

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nominated slate of directors at the 2018 annual meeting of stockholders. On or about May 8, counsel to the CBS Special Committee asked NAI's counsel whether NAI's intention had changed. NAI's counsel responded that, other than the issue with Mr. Gifford's conduct that had already been raised and that was unrelated to the potential transaction, there was no change in intention.

Special Committee and on a conditional basis pending Delaware court review, an unprecedented dividend of Class A shares for the *sole purpose* of stripping NAI of its voting control for no consideration.

98. The Special Committee Defendants made their extraordinary recommendation on the dilutive dividend despite the fact that they had already voted to recommend against the merger, which fulfilled the committee's purpose and extinguished its authority under its mandate. Any further action by the Special Committee, including any recommendation to the Board about a dilutive dividend and a lawsuit to render NAI defenseless against it, was beyond its authority.

99. The Special Committee Defendants also took their *ultra vires* actions despite having a conflict of interest on account of their ownership of Class B stock, such that they would be enriched by the voting rights (and concomitant economic benefits) that a dilutive dividend would bestow upon Class B stockholders, at the expense of NAI and other Class A stockholders.

100. Immediately after issuing notice of the Special Meeting, CBS and the Special Committee Defendants filed a complaint (the "May 14 CBS Complaint") in this Court and moved for a TRO and preliminary injunction, seeking to tie NAI's hands from taking any action to protect its rights in advance of the Special Meeting to vote on the dilutive dividend or prior to a court determination of its permissibility.



101. The May 14 CBS Complaint, along with allegations in an Amended Complaint filed May 23 (the “May 23 CBS Complaint,” and collectively with the May 14 CBS Complaint, the “CBS Complaint”), alleges that this extraordinary action was justified by NAI’s supposed past and threatened breaches of fiduciary duty and “interference” with CBS.

102. The CBS Complaint’s allegations are unsupported, false and pretextual:

- First, the CBS Complaint alleges, based on rumors and unsourced media reports, that NAI was planning to remove the independent directors of CBS to cram down a CBS/Viacom merger. That is false. The only director NAI was considering removing was Mr. Gifford, for reasons unrelated to the potential merger. NAI never had any intent to force a merger, whether by removing and replacing CBS directors or otherwise. To the extent the Special Committee had these concerns, neither the Special Committee nor its counsel or advisors contacted NAI or its advisors to express them.
- Second, the CBS Complaint alleges that NAI shut down the 2016 merger process “when CBS demanded certain governance protections at the combined company.” That is false. Nothing was “shut down” because of the extraordinary governance demands in the September 30 letter from CBS’s counsel. NAI agreed to discuss any governance proposal when requested by the special committees in the context of their consideration of the broader transaction—which never came.
- Third, the CBS Complaint alleges that during the 2018 merger process, NAI “refused to agree to typical public company governance.” That is false. Setting aside the fact that “typical public company governance” does not apply to companies with controlling stockholders, no such governance requests were ever made to anyone at NAI (including Ms. Redstone) or its advisors. The CBS Complaint also alleges that NAI refused to agree to submit a CBS/Viacom merger to a majority-of-the-minority stockholder vote. NAI never so refused. NAI had already agreed to subject any deal to approval by two special committees. With respect to a majority-of-the-

minority vote, NAI stated only that it would not commit *upfront* to such a condition, as was its right, and recognized that any transaction would therefore be subject to “entire fairness” review.

- Fourth, the CBS Complaint alleges that Ms. Redstone prevented CBS from pursuing discussions with another potential bidder (presumably, Verizon). That is false. Ms. Redstone did not block any third party, including Verizon, from speaking directly with CBS management or the Board about a potential acquisition of CBS or anything else (and no proposal was ever made). Regardless, NAI and Ms. Redstone understand that Verizon had ongoing communications with Mr. Moonves on any number of topics, and any third party (including Verizon) was free to raise any issue directly with Mr. Moonves or any other member of the CBS Board.
- Fifth, the CBS Complaint alleges that NAI “interfered” with management by (i) exploring Mr. Moonves’s “replacement,” and (ii) “disparaging” Mr. Ianniello. Both are false. As to the former, Ms. Redstone never had a conversation with any individual about replacing Mr. Moonves. As to the latter, Ms. Redstone never disparaged Mr. Ianniello. She believed Mr. Ianniello was a capable COO, and told Mr. Moonves so; she simply did not believe Mr. Ianniello was the right person to succeed Mr. Moonves—which, while perhaps not what Mr. Ianniello or Mr. Moonves wanted to hear, was far from disparaging.
- Sixth, the CBS Complaint makes several additional vague allegations of “interference.” All are false, or none constitutes interference, improper or otherwise.
  - The CBS Complaint alleges that NAI interfered with CBS’s Nominating and Governance Committee process by purportedly “halting” a search firm process to recruit new independent directors. That is false. Ms. Redstone simply voiced her objection when the committee departed from an approach that had been agreed upon at a September 2017 meeting and engaged a search firm without any discussion with Ms. Redstone. She “halted” nothing, and instead participated in the subsequent process with the search firm.
  - The CBS Complaint alleges that NAI’s request that Mr. Moonves waive certain triggers to his \$180 million golden parachute was somehow improper. This appears to be a reference to NAI’s request that Mr. Moonves agree that Mr. Parsons constitute a “Qualified

Independent Director” for purposes of the “good reason” provisions in Mr. Moonves’s employment agreement. Far from “interference,” this was a prudent request that was in the interest of all CBS stockholders.

- The CBS Complaint alleges that NAI demanded that Mr. Parsons, “Ms. Redstone’s newest nominee,” serve as Chair of the Nominating and Governance Committee. That is false. Ms. Redstone suggested Mr. Parsons as one of two possible chairs of the combined company’s Nominating and Governance Committee, were such a combination to occur. Mr. Moonves expressed his support for Mr. Parsons.
- The CBS Complaint insinuates that it is somehow inappropriate that Ms. Redstone has nominated *any* members of the CBS Board who are affiliated with NAI. There is nothing remotely improper about this—particularly given that the Board is, and has always been, otherwise comprised of a majority of independent directors and, with the exception of a short period following Sumner Redstone’s resignation in 2016, the Board has always included three NAI-affiliated directors.<sup>10</sup>

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<sup>10</sup> There is no dispute that the NAI affiliated directors are well-qualified and credentialed, as CBS’s own proxy statement has set forth, and play an important role in, among other things, fostering communication between NAI and the CBS Board. Aside from Ms. Redstone herself, the two directors affiliated with NAI are Mr. Andelman and Mr. Klieger: “Mr. Andelman is an accomplished attorney, practicing law for over 53 years with a focus in tax, estate and business planning. His legal acumen positions him as an invaluable advisor in the Company’s deliberations. Mr. Andelman also provides institutional knowledge of the Company and continuity on the Company’s Board, having served on the Board for 18 years. . . . Mr. Klieger is recognized as one of the most prominent attorneys in the entertainment industry, with a practice focused on complex civil litigation and counseling in the areas of media, entertainment and intellectual property and clients that include leading enterprises in television, film and digital media. With his exceptional legal acumen and distinguished reputation for his trial practice and counsel, Mr. Klieger brings to the Board legal and strategic expertise in matters germane to the Company’s businesses and complex business transactions.” 2018 Proxy at 19.

103. The CBS Complaint also alleges that CBS’s charter, which had not changed since the company split from Viacom in 2005, permitted the dilutive dividend. CBS’s charter provides that:

*Dividends. . . .* The Board of Directors may, at its discretion, declare a dividend of any securities of the Corporation . . . to the holders of shares of Class A Common Stock and Class B Common Stock (i) on the basis of a ratable distribution of identical securities to holders of shares of Class A Common Stock and Class B Common Stock or (ii) on the basis of a distribution of one class or series of securities to holders of shares of Class A Common Stock and another class or series of securities to holders of Class B Common Stock, *provided* that the securities so distributed . . . do not differ in any respect other than (x) differences in their rights (other than voting rights and powers) consistent in all material respects with differences between Class A Common Stock and Class B Common Stock and (y) differences in their relative voting rights and powers, with holders of shares of Class A Common Stock receiving the class or series of such securities having the higher relative voting rights or powers (without regard to whether such voting rights or powers differ to a greater or lesser extent than the corresponding differences in the voting rights or powers of Class A Common Stock and Class B Common Stock provided in Section (2)(a) of this Article IV).

The CBS Complaint asserts that the dilutive dividend was permitted under the first prong of this section, seizing on the word “identical” and ignoring the proviso.

104. The CBS Complaint also quotes from CBS’s 2005 Registration Statement in support of its novel interpretation, but omits the italicized text:

If the CBS Corp. board of directors declares a dividend of any securities of CBS Corp. or another entity, the board of directors will determine whether the holders of CBS Corp. Class A common stock and CBS Corp. Class B common stock are to receive identical securities or to receive different classes or series of securities, ***but only to the extent such differences are consistent in all material respects with any differences***

*between CBS Corp. Class A common stock and CBS Corp. Class B common stock.*<sup>11</sup>

Amendment No. 1 to Form S-4 Registration Statement (Form S-4/A), at 217 (Nov. 23, 2005) (emphasis added). This disclosure confirms that any stock dividend issuance must respect the differential voting rights structure.

105. Further, the CBS Complaint ignores the Company’s repeated public disclosures about NAI’s voting control—which never mentioned even the possibility that NAI could be unilaterally diluted. If CBS truly believed such a dilution were possible (which it is not), the absence of any such disclosure would have been a material omission.

106. The CBS Complaint and TRO motion, which must have taken significant advance time to prepare, took NAI by complete surprise. Indeed, just days earlier, Mr. Gordon had conveyed to Mr. Parsons that discussions on the potential deal were “pencils down” until after May 18, and NAI had been advised that there was a handshake deal on economic terms. No one had asked NAI about any intention to force a merger, whether by removing directors or otherwise.

107. NAI issued a public statement following the filing of the May 14 CBS Complaint and TRO motion reiterating that it “had absolutely no intention of

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<sup>11</sup> The May 14 CBS Complaint also cited the relevant charter provision, but omitted the proviso making the italicized point. The proviso was added to the May 23 CBS Complaint only after Plaintiffs pointed out the omission in their TRO opposition.

replacing the CBS board or forcing a deal that was not supported by both companies.”

108. On the evening of May 14, NAI offered to enter into a standstill agreement that would have maintained the status quo until the Special Meeting, and would have obviated the need for a TRO hearing. Specifically, the proposed standstill agreement included:

- A delay of the annual meeting of stockholders
- No Board meeting to consider the stock dividend
- NAI agrees not to take action to interfere with the status quo (including, for the avoidance of doubt, the composition of the Board or any actions with respect to a proposed combination with Viacom)

All this would be pending a substantive hearing and ruling on NAI’s rights to act as stockholder and the existing Board’s ability to implement the stock dividend.

109. NAI confirmed this offer by letter the next morning, May 15. In that letter, NAI again reiterated that it “had, and has, no intention of forcing a merger, whether by removing and replacing the members of the Special Committee or otherwise.”

110. The parties continued to discuss a standstill throughout the day and evening on May 15, but negotiations ultimately broke down when CBS would not agree to preserve NAI’s right to take protective action in advance of any meeting to consider the proposed dilutive dividend.

111. Shortly after discussions broke down, NAI filed its opposition brief (one day after the May 14 CBS Complaint and TRO motion were filed), and yet again repeated that it did not have, and never had, an intention to remove and replace CBS Board members to force through a merger.

112. In their reply brief in support of the TRO, filed May 16, CBS and the Special Committee Defendants represented to the Court that the TRO was necessary so that the Board could consider the Special Committee's recommended dilutive dividend "on a *full record* that could later be considered by this Court" and only following "a *full airing* of views at a board meeting."

#### **XIV. NAI APPROPRIATELY ACTS TO PROTECT ITS INTERESTS**

113. In light of CBS's and the Special Committee Defendants' rejection of NAI's standstill offers, NAI considered various responses and determined that it was required to take a calibrated step to protect its interests, including its voting rights.

114. On May 16, NAI exercised its right as a controlling stockholder and executed and delivered written consents to amend CBS's bylaws. The Bylaw Amendment imposed a supermajority voting requirement and procedural requirements for the CBS Board to issue a dividend, and imposed similar voting and procedural requirements for any further Board-adopted bylaw amendments. If NAI had *not* taken this action, it would have lost forever its ability to exercise its

rights under Delaware law to take action, before the hastily called Special Meeting, to protect its controlling interest.

115. The Bylaw Amendment was duly adopted and effective as of May 16.

116. That afternoon, the parties appeared in Court for the hearing on CBS and the Special Committee Defendants' TRO motion. Counsel for CBS and the Special Committee Defendants represented to the Court that NAI posed an imminent threat, and that they needed the TRO to ensure that the Special Meeting would go forward as planned to create a record of the Board's deliberations regarding their proposed dividend. Counsel to CBS and the Special Committee Defendants stated:

- “The meeting is tomorrow. *Maybe there are statements that can be made that address the situation. But the board gets to deliberate.* And everything we've seen occur is an effort to undermine the ability of the board to make a decision . . . .”
- “I think one of the reasons we need the TRO today is because you need a *factual record*. . . . I don't think [the claims] can be decided, Your Honor, *without a factual record*.”
- “[T]he meeting should take place. We should vote, and it will take place, and then there will be a *full record* for Your Honor to decide if the vote is in favor of the dividend. . . . *It hasn't been debated*.”

117. NAI's counsel again repeated at the hearing that NAI had no intention of removing directors or otherwise taking action to force a Viacom merger.

118. A TRO was temporarily entered at the end of the hearing, to preserve the Court's jurisdiction until it issued its ruling on the TRO motion.



119. On the morning of May 17, the Court denied the TRO motion. The Court noted that CBS and the Special Committee Defendants had cited “[n]o precedent . . . in which this (or any other court) has granted” the requested relief, which “suggests that a truly extraordinary set of circumstances would be necessary to grant such a request.”

#### **XIV. CBS MOVES FORWARD WITH ITS SHAM MEETING**

120. Following the TRO decision, NAI once again proposed that CBS postpone the Special Meeting by 30 days in order to:

(i) allow the parties to consider and discuss appropriate next steps (including any potential standstill); (ii) give the Board time to adequately inform itself and act consistent with its obligations of due care and good faith, including determining whether there is a compelling justification for any action it might consider and a measured response, if any; and (iii) if there is no standstill, provide NAI the opportunity to consider whether any additional action is necessary to protect its interests in light of the board’s renewed stated intent to tonight adopt a dilutive dividend. To be clear, NAI agrees that it will not assert that the issues raised by the proposed dividend are unripe because of the postponement.

121. CBS and the CBS Special Committee again rejected this proposal, and instead issued a press release stating that the Special Meeting was going forward as scheduled. The press release asserted as the rationale for the dividend that it “would more closely align economic and voting interests of CBS stockholders without diluting the economic interests of any stockholder”—which, of course, was not the justification cited by the Special Committee Defendants in their

recommendation of the dividend (or in their lawsuit and TRO motion) and also is not true: wholesale dilution of NAI's voting control forever and for no compensation would result in substantial economic harm to NAI.

122. The unnecessarily compressed schedule between the Special Committee's recommendation and the Special Meeting was a clear attempt by the Director Defendants to preclude NAI from further exercising its right to act by written consent before the meeting. This is underscored by CBS's announcement, in its recent 8-K filing challenging the Bylaw Amendment, that such amendment "cannot become effective" until 20 days after the Company files its information statement on Schedule 14C. CBS Corporation, Current Report (Form 8-K) (May 22, 2018). While NAI strongly disputes this incorrect interpretation of federal law, it confirms that the Director Defendants intended to insulate their usurpation of NAI's voting control from stockholder challenge—as made even further evident by their scheduling of the Special Meeting on three days' notice to the directors, seeking a TRO against NAI, rejecting NAI's repeated standstill offers, and refusing NAI's request to adjourn the Special Meeting notwithstanding the Bylaw Amendment.

123. The Special Meeting went forward as scheduled on May 17. However, despite repeatedly representing to the Court that the Board needed to "deliberate" on and "debate" the Special Committee's proposal on a "full record,"

the actual meeting was over in approximately one hour and was a heavily scripted sham with no debate. The result of the meeting was pre-ordained:

- No written materials were distributed to Board members before the meeting.
- No written materials were distributed by the Special Committee Defendants or CBS at the meeting, other than an eight-line agenda (comprised of 23 words) and the resolution for the dilutive dividend to be voted on.
- No fairness opinion or written financial analysis from any of the Special Committee's or Board's financial advisors (there were three) was sought, much less provided, regarding the proposed dilutive dividend.
- No consideration was given to the economic impact on or damage to Class A stockholders (including non-NAI Class A stockholders) from the dilutive dividend.
- No discussion took place regarding actual or potential conflicts of interest of members of the Special Committee or other Director Defendants, who own significantly more non-voting Class B stock than voting Class A stock.
- No identification or discussion of less extreme measures to combat the alleged threats posed by the controlling stockholder occurred.
- No threat reassessment was conducted or discussed after NAI's repeated confirmation on and after May 14 that it would not seek to remove directors to force through a merger, including Ms. Redstone's unequivocal statement at the Special Meeting itself.
- No questions were asked by any of the Director Defendants to the Special Committee.

124. Mr. Moonves made a statement that he could not continue to lead CBS if NAI retained voting control, without providing any detail other than

referencing the false, vague and conclusory allegations from the CBS Complaint that NAI was “interfering” with management and forcing a merger.

125. NAI’s counsel gave a presentation, and Mr. Klieger separately offered his views as a CBS director. They emphasized, among other things, that there was no reason to rush this critical decision and that the Board should take more time to fully discuss and address a myriad of open questions that had not yet been answered regarding the impact of the proposed dilutive dividend. NAI’s counsel also provided certain information as to the potential harm the dilutive dividend would cause holders of the Class A shares.

126. The Board declined to discuss the issues raised by NAI’s counsel and Mr. Klieger, with Mr. Gordon responding to Mr. Klieger by simply stating that “the Special Committee was confident in the advice it had received and in its process,” and that he disagreed with the views expressed by Mr. Klieger.

127. Martha Minow, a member of the CBS Special Committee, more candidly explained that the Special Committee Defendants had been told by what she described as the “A+ management” team at CBS that, in effect, it was either Mr. Moonves or Ms. Redstone—and the Special Committee felt it had no choice but to side with Mr. Moonves. Ms. Minow stated that in light of this, and also the fact that CBS did not have the ability to unilaterally pursue other strategic options given that it has a controlling stockholder, she would vote in favor of the dilutive

dividend. Neither of these rationales was the basis for the Special Committee's recommendation that was disclosed to stockholders in any of the prior public CBS statements, nor the basis for the lawsuit and TRO initiated by CBS and the Special Committee Defendants. And of course, even putting aside that NAI acted appropriately at all times, neither of these rationales would even approach the level of egregious conduct that, under Delaware law, would justify dilution of voting control rights for all purposes and for all time.

128. Without deliberation, the Board then immediately proceeded to vote 11 to 3 in favor of the unprecedented dilutive dividend.

129. Under the Bylaw Amendment that had been validly adopted on May 16, the purported declaration was ineffectual because fewer than 90 percent of the directors had voted in favor of it and the procedural requirements set forth in the Bylaw Amendment were not complied with.

130. Although not included on the meeting notice or agenda, the Director Defendants then introduced a proposal to indefinitely delay the annual stockholder meeting that had been scheduled for the following day. With no deliberation, the Board proceeded to vote on the proposal, which again carried 11 to 3. The annual stockholder meeting has still not been rescheduled as of the date of this Verified Complaint, again demonstrating Defendants' intent to disenfranchise NAI.

**CLAIMS FOR RELIEF**

**COUNT I**

**DECLARATORY JUDGMENT**

**VIOLATION OF ARTICLE IX, SECTION 1 OF THE BYLAWS AS  
AMENDED  
AGAINST ALL DEFENDANTS**

131. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 130, as if fully set forth herein.

132. Article IX, Section 1 of CBS's bylaws, as amended on May 16, 2018, states the process by which dividends must be declared:

First, the directors, at any regular or special meeting, by the affirmative vote of at least 90% of directors then in office, shall adopt a resolution recommending the dividend ... second, if such resolution recommending the proposed dividend is approved by the required vote, the dividend may be approved and declared by the directors at a second meeting (and not before such second meeting), held, on notice to all directors stating the purpose thereof, not earlier than 20 business days after the meeting at which the resolution recommending the dividend was passed, by the affirmative vote of at least 90% of directors then in office; *provided, however*, that a dividend may be declared without the need for such a second meeting if and only if such dividend is approved and declared by the affirmative vote of all the directors then in office at any regular or special meeting, pursuant to law.

133. As set forth herein, the Director Defendants purported to approve a dividend at the May 17 Special Meeting, after CBS's bylaws had been amended and without complying with the procedural requirements of Article IX, Section 1 of CBS's bylaws. The resolution to approve the dilutive dividend also did not

receive the requisite vote of 90 percent of directors, with 3 out of the 14 directors voting “No.”

134. Thus, the Director Defendants’ purported approval of the dilutive dividend violated Article IX, Section 1 of CBS’s bylaws, as amended on May 16, 2018.

135. Plaintiffs have no adequate remedy at law.

## COUNT II

### DECLARATORY JUDGMENT

#### **VIOLATION OF DGCL § 141(c), BREACH OF THE CBS BYLAWS AND BREACH OF DUTY OF LOYALTY AGAINST ALL DIRECTOR DEFENDANTS**

136. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 135, as if fully set forth herein.

137. Delaware General Corporation Law (“DGCL”) § 141(c) provides that a committee of the board of a Delaware corporation may exercise board powers only “to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation.”

138. Article III, Section 13 of CBS’s Bylaws provides that “[a]ny [board] committee, *to the extent provided in the resolution of the board of directors*, shall have and may exercise all the powers and authority of the board of directors

to the extent provided by Section 141(c) of the Delaware General Corporation Law as it exists now or may hereafter be amended” (emphasis added).

139. The February 1, 2018 CBS Board resolutions (“Resolutions”) created the Special Committee solely “to act . . . for the purpose of considering, negotiating and overseeing the Potential Transaction” (the “Special Committee Matters”), and empowered the Special Committee only to take action with respect to Special Committee Matters. The Resolutions did not authorize the Special Committee to take action unrelated to the Potential Transaction, or matters after the Special Committee had determined to recommend against the transaction. Each of the Director Defendants voted for, and was aware of, the Resolutions defining the scope of the Special Committee’s responsibilities and authorities.

140. The Special Committee Defendants acted beyond the scope of the power granted them by the Resolutions, and thereby violated DGCL § 141(c) and CBS’s bylaws, and breached their duties of loyalty, by taking various actions—recommending the dilutive dividend and authorizing the filing of the CBS Complaint and TRO motion—outside the scope of Special Committee Matters and *after* they had already decided to recommend to the Board that CBS should not enter into the Potential Transaction.

141. The remaining Director Defendants also violated DGCL § 141(c), breached CBS’s bylaws and breached their duties of loyalty, because they allowed



the Special Committee Defendants to act outside of the authority granted them by the Resolutions and further took actions based on the unauthorized recommendations.

142. Plaintiffs have no adequate remedy at law.

### **COUNT III**

#### **DECLARATORY JUDGMENT**

#### **VIOLATION OF CERTIFICATE OF INCORPORATION AGAINST ALL DEFENDANTS**

143. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 142, as if fully set forth herein.

144. Article IV, Section 2(b) provides:

*Dividends.* . . . The Board of Directors may, at its discretion, declare a dividend of any securities of the Corporation . . . to the holders of shares of Class A Common Stock and Class B Common Stock (i) on the basis of a ratable distribution of identical securities to holders of shares of Class A Common Stock and Class B Common Stock or (ii) on the basis of a distribution of one class or series of securities to holders of shares of Class A Common Stock and another class or series of securities to holders of Class B Common Stock, *provided* that the securities so distributed . . . do not differ in any respect other than (x) differences in their rights (other than voting rights and powers) consistent in all material respects with differences between Class A Common Stock and Class B Common Stock and (y) differences in their relative voting rights and powers, with holders of shares of Class A Common Stock receiving the class or series of such securities having the higher relative voting rights or powers (without regard to whether such voting rights or powers differ to a greater or lesser extent than the corresponding differences in the voting rights or powers of Class A Common Stock and Class B Common Stock provided in Section (2)(a) of this Article IV).

145. The dilutive dividend violates Section 2(b) because it does not respect the differences in relative voting rights and powers delineated in Section 2(a), as required.

146. The Director Defendants were aware, prior to their vote, of these provisions and that their actions would violate CBS's Certificate of Incorporation but nevertheless voted to approve the dilutive dividend.

147. Plaintiffs have no adequate remedy at law.

#### **COUNT IV**

#### **BREACH OF FIDUCIARY DUTY OF LOYALTY — ACTION TO IMPEDE NAI'S STOCKHOLDER FRANCHISE AGAINST ALL DIRECTOR DEFENDANTS**

148. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 147, as if fully set forth herein.

149. The Director Defendants owe CBS's stockholders, including NAI, unremitting fiduciary duties of loyalty and due care.

150. The fiduciary duties of loyalty owed by the Director Defendants precluded them from taking actions for the primary purpose of interfering with and impeding the effectiveness of NAI's stockholder franchise absent extreme and truly extraordinary circumstances and a compelling justification, and even then from acting in a manner disproportionate to the identified harm.

151. The Director Defendants breached their fiduciary duties of loyalty by voting for and taking steps to implement the dilutive dividend for the primary purpose of interfering with and impeding the effectiveness of NAI's stockholder franchise, without any compelling justification and in a manner that was grossly disproportionate to the supposed harm identified. Specifically, the Director Defendants, among other improper conduct (1) effectuated the dilutive dividend for the primary purpose of diluting NAI's voting control; (2) pretextually claimed that such action was in response to a non-existent threat of a forced merger between CBS and Viacom and vague, unsubstantiated and false claims of "interference" with management; and (3) responded to the unreasonably perceived and nonexistent threats and conduct by taking an extreme, unjustified and disproportionate course of action, acting to dilute NAI's voting control for all purposes and for all time.

152. Moreover, in breaching their fiduciary duties of loyalty, the Director Defendants also breached the CBS Bylaws and Certificate of Incorporation.

153. Plaintiffs have no adequate remedy at law.

## COUNT V

### **BREACH OF FIDUCIARY DUTY OF LOYALTY — ACTION TO DEPRIVE NAI OF THE OPPORTUNITY TO PROTECT ITS VOTING POWER AGAINST DILUTION AGAINST ALL DIRECTOR DEFENDANTS**

154. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 153, as if fully set forth herein.

155. The Director Defendants owe CBS's stockholders, including NAI, unremitting fiduciary duties of loyalty and due care.

156. As controlling stockholder of CBS, NAI is fully entitled to exercise its voting power to prevent the dilution of such power, and has the right to a meaningful opportunity to act in advance of any such dilutive steps.

157. The Director Defendants violated their fiduciary duties of loyalty to Plaintiffs by misleading them about, failing to disclose to them in advance, and taking actions to prevent NAI from exercising its voting power to prevent the dilution of such power and to deprive NAI of a meaningful opportunity to act in advance of the Special Meeting.

158. The Director Defendants also breached their duties of loyalty by secretly planning and filing a lawsuit in this Court seeking approval of the dilutive dividend and seeking to enjoin Plaintiffs from taking any actions to protect their voting control in advance of the Special Meeting.

159. The Director Defendants further violated their duties of loyalty to Plaintiffs by unreasonably refusing Plaintiffs' repeated offers of a standstill in advance of the Special Meeting, which would have protected Plaintiffs' rights to act in advance of the vote on the dilutive dividend while preserving the Director Defendants' ability to obtain court review.

160. The Director Defendants also violated their duties of loyalty by postponing the CBS annual meeting of stockholders that had been long scheduled for May 18, preventing NAI from exercising its voting rights at the meeting.

161. In breaching their fiduciary duties of loyalty, the Director Defendants also breached the CBS Bylaws and Certificate of Incorporation.

162. Plaintiffs have no adequate remedy at law.

## **COUNT VI**

### **BREACH OF FIDUCIARY DUTIES OF LOYALTY AND CARE — SHAM MEETING AGAINST ALL DIRECTOR DEFENDANTS**

163. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 to 162, as if fully set forth herein.

164. The Director Defendants owe CBS's stockholders, including NAI, unremitting fiduciary duties of loyalty and due care.

165. The fiduciary duties of loyalty and care owed by the Director Defendants required that they inform themselves of all material information

reasonably available to them; consider any potential conflicts that they themselves had; have a decision-making process allowing for the directors to identify and explore alternatives in a deliberate and knowledgeable way before making a business decision; and consider the impact of their actions on Class A stockholders.

166. The Director Defendants violated the fiduciary duties of loyalty and care owed to CBS's stockholders, including NAI, by approving the extraordinary dilutive dividend at a hastily scheduled Special Meeting that lasted only an hour, for which there were no written materials provided in advance and no written materials provided during the meeting (save for a one-page agenda and the proposed resolutions); no written analysis or fairness opinion requested or provided; no consideration given to economic impact on Class A stockholders; no discussion of conflicts of interest; no discussion of less extreme measures to address the purported threats; no threat reassessment; and during which the Director Defendants did not ask questions of the Special Committee members, or debate or deliberate.

167. The Director Defendants also took these actions despite having a material conflict of interest because they own significantly more non-voting Class B stock than voting Class A stock, and thus are enriching themselves by giving themselves enhanced voting rights at the expense of Class A stockholders and

shifting significant value from NAI and the other holders of Class A stock to the holders of Class B stock.

168. The Director Defendants thus breached their duties of loyalty and care, and acted with bad faith, with gross negligence, and/or in conscious disregard of their duties, in approving the dilutive dividend.

169. In breaching their fiduciary duties, the Director Defendants also breached the CBS Bylaws and Certificate of Incorporation.

170. Plaintiffs have no adequate remedy at law.

## **COUNT VII**

### **UNJUST ENRICHMENT AGAINST ALL DEFENDANT DIRECTORS**

171. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 to 170 of this Complaint, as though fully set forth herein.

172. The Director Defendants, who own substantial amounts of Class B stock, and other Class B stockholders stand to receive windfalls under the dilutive dividend, through the taking of the economic value of Plaintiffs' voting rights as Class A stockholders and NAI's control premium as controlling stockholder. The Director Defendants have thus sought to unjustly enrich themselves and others without justification and in contravention of the fundamental principles of justice, equity and good conscience.

173. The unjust enrichment of the Director Defendants and others is at Plaintiffs' expense.

174. Plaintiffs have no adequate remedy at law.



WHEREFORE, Plaintiffs pray that this Court enter an order:

A. Declaring that the Bylaw Amendment is valid and was effective as of May 16, 2018;

B. Declaring the dilutive dividend invalid, ineffective and void as in breach of CBS's Bylaws, as amended on May 16, 2018, the Special Committee charter, CBS's Certificate of Incorporation and the Director Defendants' fiduciary duties of loyalty and due care;

C. Directing Defendants to rescind the resolutions declaring the dilutive dividend;

D. Enjoining issuance and payment of the dilutive dividend;

E. Enjoining Defendants from taking any further action to carry out the payment of the dilutive dividend or otherwise dilute NAI's voting control of CBS in violation of their fiduciary duties of loyalty and due care, CBS's Bylaws, as amended on May 16, 2018, and CBS's Certificate of Incorporation;

F. Awarding Plaintiffs restitution, or other due compensation, for the value of any loss suffered as a result of the dilutive dividend, or any of the other conduct alleged herein;

G. Awarding Plaintiffs damages, including, but not limited to, their attorneys' fees and costs arising from Defendants' wrongful conduct alleged herein, together with pre- and post-judgment interest; and

H. Awarding such other and further relief as the Court deems just, equitable, and proper.

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