



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF PONTIAC REESTABLISHED
GENERAL EMPLOYEES'
RETIREMENT SYSTEM, on behalf of
itself and all other similarly situated,

Plaintiff,

v.

EMILIE AREL, TORRENCE N.
BOONE, ASHLEY BUCHANAN,
MARIE CHANDOHA, NAVEEN K.
CHOPRA, DEIRDRE P. CONNELLY,
JILL GRANOFF, WILLIAM H.
LENEHAN, SARA LEVINSON, TONY
SPRING, PAUL C. VARGA, TRACEY
ZHEN, and MACY'S, INC.

Defendants.

C.A. No. 2024-_____ - _____

VERIFIED CLASS ACTION COMPLAINT

Plaintiff City of Pontiac Reestablished General Employees' Retirement System ("Plaintiff"), on behalf of itself and similarly situated stockholders of Macy's, Inc. ("Macy's" or the "Company"), brings this Verified Class Action Complaint (the "Complaint") asserting breach of fiduciary duty claims. The allegations herein are based on Plaintiff's knowledge as to itself and, as to all other matters, on information and belief, including counsel's investigation and review of publicly available information.

INTRODUCTION

1. This action (the “Action”) arises from the refusal of the Macy’s board of directors (the “Board”) to disable approvable proxy puts (the “Approvable Proxy Puts”) and instead use the threat of more than \$1 billion in potential debt acceleration to impermissibly tilt the scales in their favor in a pending proxy contest.

2. Storied department store operator Macy’s has struggled in recent years. Macy’s struggles have attracted activist activity and buyout interest, including from investment firms Arkhouse Management Co. (“Arkhouse”) and Brigade Capital Management (“Brigade”).

3. Arkhouse and Brigade offered to acquire Macy’s on December 1, 2023, for \$21 per share in cash. However, the incumbent Board has refused to meaningfully engage with Arkhouse and Brigade, forcing Arkhouse to launch a proxy contest (with the help of Brigade) at Macy’s upcoming annual meeting scheduled for May 17, 2024 (the “2024 Annual Meeting”).

4. On February 14, 2024, Arkhouse submitted its formal notice of intent to nominate nine director candidates to Macy’s Board. As explained herein, the Arkhouse Nominees (defined below) each have impressive academic and/or professional credentials and there is no indication that any of them are individuals of ill-repute, known looters or criminals. Indeed, the Board has presumably learned

as much during its interviews of each of the Arkhouse Nominees over the last six weeks.

5. On April 1, 2024, the incumbent Board disseminated revised proxy materials that—for the first time—threatened stockholders that voting for the Arkhouse Nominees could potentially trigger over \$1 billion in debt acceleration as a result of the Approvable Proxy Puts embedded in Macy’s outstanding note indentures. However, under the relevant note indentures, Macy’s incumbent directors are contractually permitted to “approve” the dissident directors for the limited purpose of disabling the proxy puts. Indeed, under well-established Delaware law, the incumbents are legally required to approve the dissidents for this limited purpose unless the dissidents are individuals of ill-repute, known looters or criminals. Nevertheless, the incumbents are strategically withholding their “approval” of the Arkhouse Nominees to keep their thumb on the scale of the stockholder franchise at the rapidly approaching 2024 Annual Meeting.

6. Through this Action, Plaintiff seeks prompt judicial intervention in advance of the 2024 Annual Meeting to remedy the Board’s coercive use of the approvable proxy puts.

PARTIES

7. Plaintiff City of Pontiac Reestablished General Employees’ Retirement System has continuously owned Macy’s stock at all relevant times.

8. Defendant Emilie Arel has served as a director of Macy's since 2022.
9. Defendant Torrence N. Boone has served as a director of Macy's since 2019.
10. Defendant Ashley Buchanan has served as a director of Macy's since 2012.
11. Defendant Marie Chandoha has served as a director of Macy's since 2022.
12. Defendant Naveen K. Chopra has served as a director of Macy's since 2023.
13. Defendant Deirdre P. Connelly has served as a director of Macy's since 2008.
14. Defendant Jill Granoff has served as a director of Macy's since 2022.
15. Defendant William H. Lenehan has served as a director of Macy's since 2016.
16. Defendant Sara Levinson has served as a director of Macy's since 1997.
17. Defendant Tony Spring has served as a director of Macy's since 2023. Spring has been an officer of Macy's since 2021 and currently serves as Macy's CEO and Chairman elect.
18. Defendant Paul C. Varga has served as a director of Macy's since 2012.
19. Defendant Tracey Zhen has served as a director of Macy's since 2021.

20. The Defendants listed in paragraphs 8-19. above are referred to herein as the “Director Defendants.”

21. Defendant Macy’s is a Delaware corporation headquartered in New York, NY. Macy’s is named as a Defendant herein solely to the extent it is a necessary party for relief to be granted.

RELEVANT NON-PARTIES

22. Arkhouse is a specialized investment firm with significant experience investing in private and public real estate markets with a proven track record of unlocking substantial stockholder value. Arkhouse has closed over \$25 billion worth of real estate transactions and has an 18-year shareholder activism track record.

23. Brigade is a global asset management firm with \$25 billion of assets under management. Brigade focuses on the consumer and retail industry with historical investments including JCPenny, Sears, Bon-Ton, and Barneys.

SUBSTANTIVE ALLEGATIONS

I. BACKGROUND OF MACY’S AND ITS APPROVABLE PROXY PUTS

24. Macy’s and its predecessors have operated department stores since 1830. As of February 3, 2024, Macy’s operated 718 stores across forty-three states, the District of Columbia, Puerto Rico, and Guam.

25. Macy’s has a wide array of notes and debentures outstanding, including: (i) \$367 million in 4.50% senior notes due 2034 (the “2034 Notes”); (ii) \$192 million in 6.375% senior notes due 2037 (the “2037 Notes”); (iii) \$250 million

in 5.125% senior notes due 2042 (the “2042 Notes”); and (iv) \$250 million in 4.30% senior notes due 2043 (the “2043 Notes” and, together with the 2034 Notes, the 2037 Notes, and the 2042 Notes, the “Relevant Notes”).

26. Each of the Relevant Notes are governed by their own indentures; however, the relevant terms of each indenture for this Action are substantially identical. The indenture for each Relevant Note contains an “Approvable Proxy Put.”

27. The Company will be forced to make an offer to repurchase the Relevant notes at a price equal to 101% of the principal plus accrued interest if the Company experiences both: (i) a “Change of Control” (as defined in the indentures); and (ii) either the specific notes are rated below investment grade by specified ratings agencies or the rating on the notes is lowered by specified ratings agencies below investment grade during a certain period following the Change of Control.¹

28. For each of the Relevant Notes, a “Change of Control” occurs on “the first day on which a majority of the members of the [Macy’s] Board are not Continuing Directors.”

29. The indentures for the Relevant Notes define “Continuing Directors” as:

¹ The Company’s ABL credit facility also defines a “Change of Control” as an event of default, but the Company currently has no outstanding borrowings under this facility.

any member of the Board of Directors of [Macy's] who (1) was a member of such Board of Directors on the date of the Supplemental Indenture; or (2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election (either by a specific vote or by approval of the [Macy's] proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

30. In other words, if half of the Board is replaced in a proxy contest, that would constitute a Change of Control under the terms of the Relevant Notes unless the incumbent Board simply “approves” the dissident nominees. The incumbent directors can approve dissident director nominees for the limited purpose of disabling debt acceleration while simultaneously recommending that stockholders vote to elect the incumbent candidates over the dissident candidates. Moreover, under well-established Delaware law, the incumbent directors have a duty to approve dissident nominees unless they have a good faith belief that the dissidents are known looters or would implement a business program that would cause the Company to be unable to meet its legal obligations to creditors.

31. If the Company were forced repurchase the Relevant Notes at 101% of their principal, it could be devastating to Macy's financial health. Overall, the Company has \$1.059 billion outstanding under the Relevant Notes and only \$1.034 billion in cash and cash equivalents as of February 3, 2024.

32. As of February 3, 2024, Moody's, Standard & Poor's, and Fitch rated the Company's debt as Ba1, BB+, and BBB-, respectively. This represents below investment grade ratings from Moody's and Standard & Poor's and the lowest level of investment grade rating from Fitch.

33. Moreover, the Federal Reserve's current federal funds target interest rate is 5.25% to 5.5%, which means if Macy's was forced to refinance the Relevant Notes in the near future, it would have to pay significantly higher interest rates.

34. Therefore, a loyal board acting in the best interests of the Company and not motivated by a desire to perpetuate its term in office would do everything in its power to avoid triggering the Change of Control provisions in the Relevant Notes in connection with a contested director election unless the dissident candidates were criminals or known looters.

II. MACY'S POOR PERFORMANCE DRAWS ACTIVIST INTEREST

35. Macy's stock price has languished in recent years after reaching a peak of nearly \$35 per share in November 2021. Since that time, the Company's stock price has fallen over 45%:



36. Through November 30, 2023, stockholders suffered negative total returns over one-year (-29.7%), five-year (-42.9%) and ten-year (-55.9%) timeframes.

37. In 2023, Macy's reported diluted earnings per share of only \$0.38, down from \$4.19 per share in 2022. Compared to 2022, net sales decreased 5.5%, digital sales decreased 7%, brick-and-mortar sales decreased 5%, and "other revenue" decreased 23%. Overall, Macy's net income was only \$105 million in 2023, down from \$1.177 billion in 2022.

38. The Company's poor performance led Arkhouse and Brigade to submit an offer to acquire Macy's for \$21 per share on December 1, 2023. This offer represented a 32.4% premium over Macy's closing price on November 30, 2023 of \$15.86 per share and a 56.8% premium over the Company's 30-day volume-weighted adjusted stock price for the 30 days immediately preceding that date.

39. Arkhouse and Brigade's proposal included a letter from Jefferies confirming that Jefferies was highly confident of its ability to arrange the necessary financing for an acquisition of Macy's.

40. Arkhouse and Brigade also confirmed that they envisioned growing Macy's over the long-term.

III. THE BOARD SLOWWALKS AND REBUFFS THE ACTIVIST

41. Following receipt of Arkhouse and Brigade's December 1 offer, the Company never meaningfully engaged with Arkhouse and Brigade.

42. On December 6, 2023, Arkhouse followed up with Macy's seeking a response to the December 1 offer. Macy's responded that it was continuing to consider the proposal and would respond once the Company concluded its review.

43. On December 10, 2023, the *Wall Street Journal* publicly reported that Arkhouse submitted an offer to acquire Macy's. Macy's declined to publicly respond to the article.

44. On December 14, 2023, the Board responded to Arkhouse and Brigade, requesting additional information regarding their ability to finance the proposal, stating that, based on the information provided, the Board did not view their proposal as actionable.

45. On December 19, 2023, Macy's financial advisors, Bank of America and Wells Fargo, met with Jefferies to gain insight into Arkhouse and Brigade's

financing plan. Jefferies explained that Arkhouse and Brigade's financing plan (i) contemplated a proposed common equity contribution of 25% of the required capital and (ii) was reliant on a significant amount of debt-like payment-in-kind preferred securities.

46. Following this meeting, Macy's continued to rebuff the December 1 offer. On January 9, 2024, Arkhouse followed up with Macy's again about Macy's response and proposed that the parties enter into a non-disclosure agreement. Yet again, Macy's failed to provide any meaningful response, informing Arkhouse that it was purportedly continuing to consider the December 1 proposal.

47. On January 17, 2024, Macy's again informed Arkhouse that the Board was still reviewing the proposal and would respond once it completed its review.

48. On January 21, 2024, the *Wall Street Journal* reported that Arkhouse and Brigade confirmed the proposal to acquire Macy's for \$21.00 per share in cash. Arkhouse and Brigade concurrently sent a second letter to the Board discussing its non-binding proposal and requesting a response within the week.

49. On January 22, 2024, the Company issued a press release disclosing the Board's determination that the December 1 proposal did not constitute a basis to enter into a non-disclosure agreement or provide due diligence information.

50. On February 14, 2024, Arkhouse Value Fund I submitted to the Company its formal notice of intent to nominate nine candidates to the Macy's Board

following weeks of the Company having failed to constructively engage with Arkhouse and Brigade's acquisition offer.

51. Arkhouse's nine director nominees are Richard Clark, Richard L. Markee, Mohsin Y. Meghji, Mitchell Schear, Nadir Settles, Gerald L. Storch, Sharen J. Turney, Andrea M. Weiss and Isaac Zion (collectively the "Arkhouse Nominees"). *See* attached Exhibit 1 for the biographies of each Arkhouse Nominee. Each of the Arkhouse Nominees have impressive academic and/or professional credentials and there is no indication that any of them are individuals of ill-repute, known looters or criminals.

52. Between February 26, 2024 and April 2, 2024, Macy's interviewed each of the nine Arkhouse Nominees.

53. On March 3, 2024, Arkhouse and Brigade submitted a revised offer to acquire Macy's for \$24 per share in cash, to which the Company has yet to meaningfully respond as of the date of the filing of this Complaint.

IV. THE DIRECTOR DEFENDANTS INEQUITABLY DEPLOY THE APPROVABLE PROXY PUTS TO ENTRENCH THEMSELVES

54. Following Arkhouse's nomination of a dissent slate, Macy's weaponized the Approvable Proxy Puts lying dormant in the Relevant Notes in an attempt to coerce stockholders to vote in favor of the incumbent directors.

55. On March 14, 2024, Macy's filed a preliminary proxy statement (the "March 14 Proxy") ahead of the Company's annual stockholders' meeting scheduled

for May 17, 2024 (the “2024 Annual Meeting”). Notably, the March 14 Proxy is devoid of any discussion—or threat—of triggering the Approvable Proxy Puts if stockholders elect the Arkhouse Nominees.

56. Then, on April 1, 2024, Macy’s filed a revised preliminary proxy statement (the “April 1 Proxy”) in connection with the 2024 Annual Meeting. The April 1 Proxy threatened in relevant part:

Impact on Our Outstanding Debt Agreements Where Majority of Board Members are Not Continuing Directors

If at least seven of the Arkhouse Group nominees were to be elected as directors at the Annual Meeting such that they constitute a majority of our Board, it would constitute a “change of control” under the agreements governing certain of our outstanding debt, unless our Board approves the election of such nominees. Under the terms of the indentures governing our 4.50% senior notes due 2034 (the 2034 Notes), 6.375% senior notes due 2037 (the 2037 Notes), 5.125% senior notes due 2042 (the 2042 Notes) and 4.30% senior notes due 2043 (the 2043 Notes), if there is both a change of control and, depending on the series of notes, either (a) the applicable series of notes are rated below an investment grade rating by specified rating agencies or (b) the rating on the applicable series of notes is lowered by specified rating agencies and the rating on such notes is below an investment grade rating by specified rating agencies, each on any day during a specified period of time, we would be required to offer to repurchase such notes at a price equal to 101% of their principal amount plus accrued and unpaid interest. As of February 3, 2024, there were outstanding \$367.0 million aggregate principal amount of 2034 Notes, \$192.0 million aggregate principal amount of 2037 Notes, \$250.0 million

aggregate principal amount of 2042 Notes and \$250.0 million aggregate principal amount of 2043 Notes.

57. In other words, the incumbent directors have suggested to Macy's stockholders that if they vote for the Arkhouse Nominees it could trigger potentially devastating debt acceleration.

58. The fact that the Board has not already "approved" the Arkhouse Nominees—the identity of which the incumbent directors have known about since February 14, 2024 (and since which time the Board interviewed all nine Arkhouse Nominees)—and have instead decided to use the potential for debt acceleration in an attempt to coerce stockholders into opposing the Arkhouse Nominees is a breach of fiduciary duty.

59. It is well established under Delaware law that an incumbent board must approve dissident nominees to disable proxy puts unless:

[T]he incumbent board determined ... that the rival candidates lacked ethical integrity, fell within the category of known looters, or made a specific determination that the rival candidates proposed a program that would demonstrably material adverse effects for the corporation's ability to meet its legal obligations to its creditors, the incumbent board should approve the rival slate and allow the stockholders to choose the corporation's directors without fear of adverse financial consequences, and also eliminate the threat to the corporation of a forced refinancing.

Kallick v. SandRidge Energy, Inc., 68 A.3d 242, 246 (Del. Ch. 2013).

60. Despite the unambiguous holding in the seminal case on proxy puts, the Board has unjustifiably delayed exercising its approval right to disable potential debt acceleration. Indeed, nearly two months have passed since Arkhouse first revealed the identities of its nominees and the Board has interviewed all nine of the Arkhouse candidates but still has not “approved” the dissidents for the limited purpose of avoiding the economic damage that the Approvable Proxy Puts are threatening to wreak.

61. Rather, the incumbents are strategically withholding their “approval” of the Arkhouse Nominees in an effort to entrench themselves in office. Weaponizing the Approvable Proxy Puts is nothing more than a thinly-veiled attempt to put their thumbs on the proverbial scale at the upcoming stockholders’ meeting in their favor.

62. Macy’s 2024 Annual Meeting is currently scheduled for May 17, 2024. Accordingly, Plaintiff seeks Court intervention to correct Defendants’ coercive use of the Approvable Proxy Puts.

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action on behalf of themselves and a class of all other similarly situated holders of Macy’s common stock (“Macy’s”). Excluded from the Class are Defendants and the Company’s other directors and officers (collectively, the “Excluded Persons”), as well as every Excluded Person’s

immediate family members, personal and legal representatives, heirs, successors, transferees, or assigns, and any entity in which an Excluded Person has a controlling interest.

64. The Action is properly maintainable as a class action.

65. The Class members are so numerous that joinder of all members is impracticable. As of March 1, 2024, Macy's had 274,271,536 common shares outstanding.

66. Plaintiff's claims present questions of law and fact common to the Class, including:

- (a) whether the Director Defendants breached their fiduciary duties;
and
- (b) whether Plaintiff and the other Class members have been harmed
and are entitled to relief.

67. Plaintiff's claims are typical of the claims of the members of the Class, and Plaintiff does not have any interests adverse to the Class.

68. Plaintiff is an adequate representative of the Class, has retained skilled counsel with extensive relevant litigation experience, and will fairly and adequately protect the interests of the Class.

69. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

70. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I

Direct Count For Breach of Fiduciary Duty Against the Director Defendants

71. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

72. As directors of Macy's, the Director Defendants owe Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate material disclosures to Company stockholders.

73. These duties required them to place the interests of Macy's stockholders above their personal interests.

74. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by failing to approve Arkhouse's director nominees and then disclosing that failure to coerce stockholders into voting for the Director Defendants' re-election for fear of a potential debt acceleration.

75. As a result, Plaintiff and the Class have been and will continue to be harmed.

76. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

- A. Declaring that this Action is properly maintainable as a class action;
- B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;
- C. Certifying the proposed Class;
- D. Until they have approved the Arkhouse nominees consistent with their fiduciary duties, enjoining Defendants from:
 - i. soliciting proxies for the director election;
 - ii. relying upon or otherwise giving effect to any proxies already received for the director election;
 - iii. impeding Arkhouse's efforts to solicit proxies; and
 - iv. holding the 2024 Annual Meeting.²
- E. Awarding Plaintiff its reasonable attorneys' and experts' witness fees

² Plaintiff seeks a 30-day preliminary injunction in advance of a merits trial at which Plaintiff will seek a permanent injunction.

and other costs; and

F. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

LABATON KELLER SUCHAROW LLP

/s/ Ned Weinberger

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