



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

WESTMORELAND COUNTY )  
EMPLOYEES' RETIREMENT SYSTEM, )  
Individually and on Behalf of All Others )  
Similarly Situated, )

Plaintiff, )

v. )

NATIONAL AMUSEMENTS, INC., NAI )  
ENTERTAINMENT HOLDINGS LLC, )  
DAVID R. ANDELMAN, ROBERT N. )  
KLIEMER AND SHARI REDSTONE, )

Defendants. )

C.A. No. 2018-\_\_\_\_-\_\_\_\_

**VERIFIED INDIVIDUAL AND CLASS ACTION COMPLAINT**

Plaintiff Westmoreland County Employees' Retirement System ("Plaintiff") brings this action for itself and on behalf of CBS Corporation's ("CBS" or the "Company") Class B stockholders, who own a majority of the Company's equity, that are unaffiliated with the defendants, National Amusements, Inc. ("National Amusements"), NAI Entertainment Holdings LLC ("NAIEH" and, together with National Amusements, "NAI"), David R. Andelman ("Andelman"), Robert N. Klieger ("Klieger") and Shari Redstone ("Ms. Redstone") (collectively, "Defendants"). Defendants breached and continue to breach contractual, implied obligations and fiduciary duties that they owe to CBS's Class B stockholders. Plaintiff's allegations are based upon knowledge as to itself, the investigation of

counsel, and sworn pleadings of each member of a special committee of CBS's Board of Directors (the "Board"), CBS, Ms. Redstone and NAI. In support hereof, Plaintiff alleges as follows:

### **NATURE OF THE ACTION**

1. CBS and Viacom Inc. ("Viacom") are companies controlled by NAI, which is dominated by Ms. Redstone. In January 2018, Ms. Redstone proposed a combination of CBS and Viacom (the "Proposed Transaction"). The CBS Board established a special committee consisting of independent directors (the "Special Committee") to consider the Proposed Transaction. The Special Committee determined that the Proposed Transaction was not in CBS's best interests and that Ms. Redstone posed a "significant threat" to CBS and its stockholders. The Special Committee also recommended that the Board convene a May 17, 2018 special meeting (the "Special Meeting") to consider a *pro rata* dividend of 0.5687 shares of Class A Common Stock for each outstanding share of Class A and Class B Common Stock (the "Special Dividend").

2. On May 14, 2018, the CBS Board noticed the Special Meeting for May 17 and CBS, with the Special Committee, moved for a temporary restraining order ("TRO") against Ms. Redstone, NAI and related parties to bar them from taking any action to interfere with the composition of the Board or the Special Dividend. On May 17, 2018, the Board then proceeded with the Special Meeting,

and, with a unanimous vote of directors not affiliated with NAI, declared the Special Dividend.

3. The Special Dividend complies with the unambiguous terms of Article IV, Section (2)(b) of CBS's Amended and Restated Certificate of Incorporation (the "Certificate"), which specifies that "[t]he Board of Directors may, *at its discretion*, declare a dividend of *any* securities of the corporation . . . to the holders of shares of Class A and Class B Common Stock . . . ." (Emphasis added.) The Class B stockholders are, therefore, contractually entitled to share in the Special Dividend.

4. Adopting an erroneous interpretation of Article IV, Section (2)(b), Ms. Redstone and NAI claimed in their opposition to the TRO and, more recently, in a separate action filed against CBS and directors unaffiliated with NAI, that the Special Dividend does not comply with the Certificate because holders of Class A Common Stock must receive Class A shares and holders of Class B Common Stock must receive Class B shares in any dividend. NAI's own conduct contradicts its flawed reading of the Certificate.

5. NAI engaged in self-help before this Court could hear argument on the TRO by purporting to amend CBS's bylaws by written consent (the "Invalid Bylaw Amendments") and unilaterally granting Ms. Redstone and her allies veto power over the Special Dividend. The Certificate, however, is a contract between

CBS and all of its stockholders, and, by interfering with the Board's ability to issue the Special Dividend, Defendants are in breach of the terms of the Certificate. Defendants are also in breach of the implied covenant of good faith and fair dealing because the terms of the Certificate imply that Defendants will not take actions (*e.g.*, the Invalid Bylaw Amendments) that render the rights of the Class B stockholders in the Certificate illusory. Moreover, Defendants' actions, which are intended to deprive the Class B stockholders of the declared Special Dividend solely to further Defendants' interests, constitute breaches of the fiduciary duty of loyalty.

#### **PARTIES**

6. Plaintiff is, and at all relevant times has been, a beneficial owner of the Company's Class B Common Stock.

7. Defendant National Amusements is a closely held Maryland corporation headquartered in Massachusetts. National Amusements beneficially owns, directly and indirectly through NAIEH, approximately 80% of the Company's outstanding Class A Common Stock ("Class A") and approximately 10% of the Company's outstanding Class A and Class B Common Stock ("Class B") on a combined basis. Ostensibly, Ms. Redstone's father, Sumner Redstone, controls 80% of National Amusements' voting power, while Ms. Redstone controls the remaining 20%. However, Ms. Redstone controls National Amusements due to

Sumner Redstone's advanced age and declining health. Ms. Redstone and NAI acknowledge in their May 29, 2018 Verified Complaint filed against CBS and non-NAI directors (the "NAI Complaint") that "the exercise of such stockholder's control has migrated from Sumner Redstone to his daughter, Ms. Redstone." In 2016, Ms. Redstone reconstituted National Amusements' then-five member board of directors (the "NAI Board") to include herself, Kimberlee Ostheimer (Ms. Redstone's daughter), Jill Krutick (Ms. Redstone's personal friend) and Tyler Korff (Ms. Redstone's son). Sumner Redstone remains Chairman of the NAI Board.

8. Defendant NAIEH, a direct, wholly-owned subsidiary of National Amusements, is a Delaware corporation headquartered in Massachusetts.

9. Defendant Ms. Redstone has been the Non-Executive Vice Chairman of CBS and Viacom since 2006, and has been a director of Viacom since 1994. Ms. Redstone has been the President of National Amusements since 2000 and, prior to that, was its Executive Vice President beginning in 1994. She is a director of the NAI Board and owns 20% of National Amusements' voting interest through a trust.

10. Defendant Andelman has been a CBS director since 2005. Andelman was a director of Viacom from 2000 to 2005 and is currently a director of National Amusements. In a September 2016 letter to the CBS and Viacom boards

requesting that the companies consider the Proposed Transaction, National Amusements stated that Andelman would not vote on the Proposed Transaction or participate in any of the related deliberations.

11. Defendant Klieger has been a CBS director since July 27, 2017. At Ms. Redstone's behest, Klieger filled Sumner Redstone's seat after he stepped down from the CBS Board. Klieger is reported to be instructing management and other directors on Ms. Redstone's and NAI's wishes, including their desire to replace certain CBS directors and merge CBS and Viacom. Klieger has been a partner in the Los Angeles law firm Hueston Hennigan since July 2015. Klieger is the Redstones' personal attorney, and has represented Sumner Redstone, Ms. Redstone and Ms. Redstone's son, Tyler Korff, as lead counsel in the many highly publicized lawsuits stemming from Sumner Redstone's cognitive decline, including *Dauman v. Redstone*, No. 16E0020QC (Mass. Prob. Ct.) (filed May 23, 2016), *In the Matter of the Sumner M. Redstone National Amusements Trust*, No. 16STPB00618 (Cal. Super. Ct.) (filed May 23, 2016), *In re Matter of Advance Health Care Directive of Sumner M. Redstone*, No. BP 168725 (Cal. Super. Ct.) (filed Nov. 25, 2015), *Sumner M. Redstone v. Manuela Herzer*, No. BC638054 (Cal. Super. Ct.) (filed Oct. 25, 2016), *Manuela Herzer v. Shari Redstone and Tyler Korff*, No. BC619766 (Cal. Super. Ct.) (filed May 9, 2016) and *In re Viacom, Inc.*, C.A. No. 12579-CB (Del. Ch.) (filed July 25, 2016).

12. Non-party CBS is a media corporation headquartered in New York and organized under the laws of Delaware. CBS's common stock is divided into two classes: Class A, which has one vote per share, and Class B, which has no voting rights. CBS has approximately 37.5 million shares of Class A outstanding and 341.5 million shares of Class B outstanding. Both the Class A and Class B trade on the New York Stock Exchange ("NYSE") under the ticker symbols "CBS.A" and "CBS," respectively. CBS has 14 members on its Board, the majority of whom qualify as independent under NYSE rules.

### **SUBSTANTIVE ALLEGATIONS**

#### ***The Certificate's Share Distribution Provision***

13. Before 2005, CBS and Viacom were part of one company, known as Viacom, that NAI controlled. In June 2005, Viacom split into two standalone entities. Viacom was renamed CBS, and the new publicly traded company was named Viacom. NAI remained in control of both companies.

14. After the split, CBS adopted the Certificate with provisions in Article IV, Section (2)(b) that govern the stockholders' contractual rights to Class A and Class B dividends (the "Share Distribution Provision").

15. The first portion of the second sentence of Article IV, Section (2)(b) provides that:

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 and Class B Common Stock . . . .

(Emphasis added.) The Board's discretion is not limited to circumstances where the Class A has threatened harm to CBS or the Class B stockholders.

16. The sentence then defines two forms that such a share distribution may take:

(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[.]

(Emphasis added.)

17. The second type of share distribution, which involves the Class A and Class B stockholders receiving different securities rather than identical securities, includes a proviso defining what the differences in the securities may be:

*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.

(Emphasis added.)

18. The Share Distribution Provision grants broad power to the CBS Board to distribute by dividend *any* security, which includes Class A stock. It then specifies the rights of the Class A and Class B with respect to particular types of share distributions. Under Article IV, Section (2)(b)(i), if the Class A and Class B are to be distributed “identical securities,” the Class A and Class B are entitled to share ratably in the distribution. The provision does not impose any restrictions on what voting rights the identical securities may have.

19. If the securities to be distributed to the Class A stockholders are *not* identical to the securities to be distributed to the Class B stockholders, the Share Distribution Provision contains a proviso that establishes what differences between securities are permissible. With respect to matters other than voting rights, any differences between the two securities must be consistent with differences between the Class A and Class B. If there are differences in voting rights between the two securities, the Class A is to receive the class or series with the higher relative voting rights. However, the difference in voting rights of the two securities may be greater or less than the difference between the one-vote Class A and the no-vote Class B. For example, the securities dividended to the Class A could have 2 votes per share, while the securities dividended to the Class B could have 1.9 votes per share. Thus, the Share Distribution Provision recognizes that a distribution of different securities to Class A and Class B may alter the relative voting power of

the Class A and Class B holders. Of course, Section (2)(b)(ii) and its proviso have no application to a distribution of identical securities to Class A and Class B because by definition the “identical” securities will have the same voting rights.

20. As controlling stockholder, director and officer of CBS, Sumner Redstone controlled the drafting of the Certificate. According to *The Wall Street Journal*, CBS adopted the Share Distribution Provision when then-Chairman Sumner Redstone was “concerned about any appearance that voting shareholders at [Viacom and CBS] were favored over nonvoting shareholders, because of the potential drag that could create on the stock prices.” Thus, Sumner Redstone included the Share Distribution Provision in the Certificate to convince investors to pay a higher price for the Class B non-voting stock.

21. The Special Committee and the Board invoked the Share Distribution Provision on May 17, 2018. The following events led the Board to exercise its discretion to declare the Special Dividend.

***The Special Committee Considers and Rejects the Proposed Transaction and Recommends the Special Dividend***

22. Viacom and CBS explored a possible merger in 2016 at the request of Ms. Redstone, but the companies determined not to pursue a deal. In January 2018, Ms. Redstone again prompted merger discussions between Viacom and CBS. CBS announced on February 1, 2018 that the Board formed the Special

Committee with five independent directors, including Chairman Bruce S. Gordon, Gary L. Countryman, Charles K. Gifford, Linda M. Griego and Martha L. Minow, to consider and negotiate the Proposed Transaction.

23. In the course of meetings and discussions from May 7 through May 13, 2018, the Special Committee determined that a merger with Viacom was not in the best interests of CBS and its stockholders. The Special Committee also determined that Ms. Redstone's conduct as a controlling stockholder was inimical to the best interests of CBS and its stockholders.

24. The Special Committee recommended that the Board convene the Special Meeting to consider the Special Dividend, which would diminish NAI's voting power from approximately 80% to approximately 20%. The Special Dividend, if declared at the Special Meeting, would comply with the unambiguous terms of the Share Distribution Provision, which specifies that "[t]he Board of Directors may, *at its discretion*, declare a dividend of *any* securities of the corporation . . . to the holders of shares of Class A *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 . . .*" (Emphasis added.)

25. On May 14, 2018, CBS noticed the Special Meeting for May 17 at 5:00 p.m. and, with the Special Committee's authorization, moved for a TRO to bar NAI, Ms. Redstone and certain related parties from taking any action to

interfere with the composition of the Board or the Special Dividend. The Court scheduled a TRO hearing for May 16, 2018 at 2:00 p.m.

26. In opposition to the TRO, Ms. Redstone and NAI claimed that the Special Dividend violated the terms of the Certificate because the holders of Class A must receive Class A shares and holders of Class B must receive Class B shares in any dividend. In the NAI Complaint, Ms. Redstone and NAI claim the Share Distribution Provision requires that “any dividend must preserve in all material respects the differences between Class A and Class B stock.” They further assert that their voting control is “nondilutable.” Their interpretation of the Share Distribution Provision is contrary to its plain language.

27. The phrase “a ratable distribution of identical securities to holders of Class A Common Stock and Class B Common Stock” in Article IV, Section (2)(b)(i) cannot mean that Class A holders must receive “identical” Class A shares and Class B holders must receive “identical” Class B shares. Under such a construction, the Class A would receive one class of securities (Class A) and the Class B would receive another class of securities (Class B). That scenario falls under Article IV, Section (2)(b)(ii), which applies to dividends of “one class or series to holders of shares of Class A Common Stock and another class or series to holders of shares of Class B Common Stock.” Thus, Ms. Redstone’s and NAI’s

interpretation is wrong, as it renders Article IV, Section (2)(b)(i) superfluous in contravention of basic principles of contract interpretation.

28. The Share Distribution Provision also refers to “identical securities,” not identical shares of Class A and identical shares of Class B. The distribution of identical securities is to “holders of Class A . . . *and* holders of Class B.” (Emphasis added.) It does not say the Class A is to receive securities identical to the existing Class A shares and the Class B is to receive securities identical to the existing Class B shares.

29. Other provisions of Article IV also show that the Special Dividend is authorized by Section (2)(b)(i). The first sentence of Article IV, Section (2) states that:

Except as otherwise expressly provided in this Amended and Restated Certificate of Incorporation, all issued and outstanding shares of Class A Common Stock and Class B Common stock shall *be identical and shall entitle the holders thereof to the same rights and powers.*

(Emphasis added.) Thus, Article IV, Section (2) defines what “identical” means: “the same rights and powers.” Therefore, when the Share Distribution Provision authorizes a dividend of any securities to the Class A and Class B “on the basis of a ratable distribution of identical securities” that means the securities distributed are to have the same rights and powers.

30. Article IV, Section 4 reinforces that the Board may alter the controlling voting power of NAI and Ms. Redstone. It empowers the Board to “authorize by resolution the issuance of any and all shares of Class A Common Stock” in the amounts and to the persons “all as the Board of Directors in its discretion may determine and without any vote or other action by any of the stockholders of the Corporation, except as otherwise required by law.” This provision specifically gives the Board the power to issue Class A shares to persons other than NAI and Ms. Redstone, which would dilute their voting power, and it specifically provides the Board may do so without the approval of any stockholders, including NAI and Ms. Redstone.

***Defendants Attempt to Render the  
Share Distribution Provision a Nullity***

31. Cognizant of their erroneous interpretation of the Share Distribution Provision, Ms. Redstone and NAI purported to interfere with the Board’s discretion to declare the Special Dividend. On May 16, 2018, NAI delivered to CBS the Invalid Bylaw Amendments seeking to (i) impose notice requirements and change the vote required for the Board to declare a dividend from majority director approval at a single meeting, to a 90% majority director approval at two separate meetings scheduled at least 20 business days apart, (ii) make similar changes regarding the notice and Board vote required to change the bylaws and (iii) revise

the Company's forum bylaw to expand its coverage to actions related to Certificate or bylaw provisions and to require unanimous director consent to an alternative forum. NAI informed the Court of the Invalid Bylaw Amendments via letter approximately one hour before the May 16 TRO hearing.

32. Article IX, Section 1 of CBS's Amended and Restated Bylaws, effective December 11, 2014 (the "Existing Bylaws"), had read:

Dividends upon the capital stock of the Corporation, subject to the provisions of the Amended and Restated Certificate of Incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of any statute, the Amended and Restated Certificate of Incorporation and these bylaws.

33. NAI purported to replace Article IX, Section 1 of the Existing Bylaws to provide:

Dividends upon the capital stock of the Corporation, subject to the provisions of the Amended and Restated Certificate of Incorporation, if any, may be declared by the board of directors, pursuant to law, only upon approval and declaration by the vote of directors specified below and compliance with the following procedures and notice requirements: 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 (specifying the form and amount of the proposed dividend payable to holders of each class or series of stock); 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 last 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. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of any statute, the Amended and Restated Certificate of Incorporation and these bylaws (including, without limitations, the foregoing procedures).

34. Ms. Redstone, Andelman and Klieger – all aligned with NAI – are three of CBS’s 14 directors. Thus, the 90% threshold cannot be met without their blessing. Moreover, because NAI controls the outcome of director elections, NAI can ensure the 90% threshold will not be met, even if the Board voted to enlarge the Board.

35. The NAI amendment replacing Article IX, Section 1 of the Existing Bylaws does not just apply to dividends that may affect the voting power of the Class A stock, but gives Ms. Redstone and her allies a veto over all dividends of any kind.

36. The NAI amendment replacing Article X of the Existing Bylaws (the “Bylaw Amendment Bylaw”) gives Ms. Redstone and her allies a similar veto over any Board adopted change to any bylaw. The provision also asserts that a majority of the outstanding voting power is required for all stockholder adopted modifications of the bylaws “Notwithstanding” any provisions of the Certificate.

37. The NAI amendment replacing Article VIII of the Existing Bylaws extends the Company's exclusive forum provision to any action asserting a claim against CBS or any director or officer relating to any Certificate or bylaw provision and requires unanimous director consent to any other forum. Thus, NAI and Ms. Redstone, as Class A controlling stockholders, are purporting to control where the Class B stockholders can assert their rights under the Share Distribution Provision and where they can challenge the Invalid Bylaw Amendments NAI and Ms. Redstone purported to adopt.

38. The Invalid Bylaw Amendments refute Ms. Redstone's claims to be a strong voice for good corporate governance, to refrain from using her voting control to interfere with the management of CBS and to have an independent Board at CBS. Ms. Redstone has interfered in the management of CBS and has now adopted the Invalid Bylaw Amendments purporting to wrest control of dividends and the bylaws from the Board. There is no independent Board if the controlling stockholder is allowed to thwart the Board's ability to act independently. There is no good corporate governance when the controlling stockholder acts to nullify the rights of the non-controlling stockholders under the Certificate. Finally, Ms. Redstone has purported to determine unilaterally where the non-controlling stockholders can challenge her denial of their rights and abuse of her power.

39. The Invalid Bylaw Amendments render illusory the Class B stockholders' contractual rights under the Share Distribution Provision to receive dividends as declared by, and in the discretion of, the Board. The Invalid Bylaw Amendments, therefore, constitute a breach of the Certificate and the implied contractual covenant of good faith and fair dealing as set forth in Counts I and II below.

40. The Invalid Bylaw Amendments also fail to comply with 17 C.F.R. § 240.14c-2(a)-(b) ("Rule 14c-2"), which requires 20-day advance notice through an information statement to stockholders prior to the taking of corporate action by written consent. NAI delivered the written consents to CBS on May 16, 2018, but the requisite information statement was not filed with the U.S. Securities and Exchange Commission until May 25, 2018.

41. Following the May 16, 2018 TRO hearing, the Court preliminarily granted CBS's and the Special Committee's TRO application, because as to the Invalid Bylaw Amendments, the Court had "never seen anything quite like what transpired [] in terms of moving parts before a TRO hearing" and, in light of Ms. Redstone's conduct, the Court was compelled to "protect [its] jurisdiction." The following day, the Court determined that CBS and the Special Committee alleged a colorable claim for breach of fiduciary duty against Ms. Redstone and NAI but

lifted the TRO because judicial review could afford full relief to vindicate the interests of CBS and its stockholders.

***The Board Approves the Special Dividend***

42. The Special Meeting proceeded as noticed on May 17, 2018. The Special Committee presented to the full Board its process and determinations, the reasons for the proposed Special Dividend, its economics and mechanics, and management's concerns. In particular, the Chairman of the Special Committee and the Special Committee's outside counsel described the Special Committee's considerations, including alternatives to the Special Dividend, the reasons for the Special Committee's ultimate determination not to move forward with the Proposed Transaction, and the Special Committee's recommendation to approve the Special Dividend. CBS Chief Executive Officer Leslie Moonves described the past and ongoing negative effects of Ms. Redstone's and NAI's interference with management and the Company, and concluded that his duty to all stockholders led him to believe the Special Dividend was necessary.

43. Later in the Special Meeting, Klieger read aloud the first proposed resolution of the Board:

RESOLVED, that the Board has determined the ongoing and persistent conduct of the current controlling stockholder, including interference with the Board's management of the business and affairs of the Corporation, has been and threatens to continue to be

substantially injurious to the best interests and welfare of the Corporation and its stockholders, and is detrimental to the Corporation's long-term effectiveness[.]

44. After deliberation, the Board approved the resolution and voted 11-3 in favor of the Special Dividend. Ms. Redstone, Andelman and Klieger—all directors affiliated with NAI—voted against the Special Dividend.

45. According to CBS's May 18, 2018 Form 8-K, on May 17, the Board "declared a pro rata dividend of 0.5687 shares of Class A common stock for each share of the Company's Class A common stock and Class B common stock to stockholders of record on the record date, as is permitted under CBS's charter."

***Defendants File Suit to Further Interfere with the Special Dividend***

46. On May 29, 2018, NAI and Ms. Redstone filed the NAI Complaint concerning, *inter alia*, the Special Dividend. The 65-page NAI Complaint includes only two pages that address Ms. Redstone's and NAI's substantive interpretation of the Share Distribution Provision, which is recycled from the TRO proceedings.

47. If Ms. Redstone and NAI believed in their reading of the Certificate, they would not have executed written consents just hours before the TRO hearing. Instead, NAI and Ms. Redstone admit in the NAI Complaint that NAI acted by written consent "to protect its controlling interest." They further admit that NAI approved the Invalid Bylaw Amendments solely to interfere with the Board's ability to distribute the Special Dividend. Indeed, Count I of the NAI Complaint

asserts that the Special Dividend cannot be distributed because of the Invalid Bylaw Amendments.

48. The NAI Complaint requests various forms of relief that would bar the issuance of the Special Dividend, including: (i) declaring the Special Dividend invalid, ineffective and void; (ii) directing the Board to rescind the resolutions declaring the Special Dividend; (iii) enjoining issuance and payment of the Special Dividend; and (iv) enjoining the Board from taking any further action to carry out the payment of the Special Dividend. Ms. Redstone and NAI are thus continuing their efforts to deprive the Class B stockholders of their contractual rights to the Special Dividend.

### **CLASS ACTION ALLEGATIONS**

49. Plaintiff brings this action individually and as a class action, pursuant to Court of Chancery Rule 23(a) and (b)(1) and (2), on behalf of a class of CBS Class B stockholders on May 14, 2018 and thereafter (the “Class”). Excluded from the Class are Defendants, any person, firm, trust, corporation or other entity related to or affiliated with any of Defendants.

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

51. The Class is so numerous that joinder of all members is impracticable. As of May 5, 2018, CBS had approximately 341.5 million shares of Class B

outstanding, which are publicly traded and held by thousands of individual beneficial owners.

52. There are questions of law and fact which are common to the Class including, *inter alia*, the following:

(a) whether the Special Dividend is a valid dividend to which Class B stockholders are contractually entitled;

(b) whether Defendants breached their contractual and implied duties to the Class B stockholders by interfering with the Special Dividend;

(c) whether Defendants breached their fiduciary duties of loyalty owed to the Class B stockholders by interfering with the Special Committee's duly delegated responsibility to take appropriate action in response to the Proposed Transaction;

(d) whether the Invalid Bylaw Amendments are invalid, unenforceable and/or inequitable;

(e) whether Plaintiff and the other members of the Class will be harmed by the wrongs complained of herein; and

(f) whether Plaintiff and the Class are entitled to damages or other relief.

53. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are

typical of claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. All holders of CBS's Class B stock, other than Defendants, will, absent relief, continue to be subjected to Defendants' disloyal conduct and will continue to be prejudiced by the Invalid Bylaw Amendments and deprived of the Special Dividend that all the independent directors on the Board, at the Special Committee's recommendation, deemed appropriate and necessary. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

54. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

55. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, corresponding declaratory relief on behalf of the Class, as a whole, is appropriate.

## COUNT I

### **(Declaratory Judgment that the Certificate Authorizes the Special Dividend)**

56. Plaintiff repeats and realleges the allegations above as if fully stated herein.

57. The Certificate is a contract among the Company and its stockholders.

58. The Certificate expressly authorizes the Special Dividend. Article IV, Section (2)(b) of the Certificate sets forth the contractual rights to dividends of the Class B stockholders. The Share Distribution Provision provides that “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 and Class B Common Stock . . . .”

59. The Share Distribution Provision grants broad power to the Board to distribute by dividend any security, which includes Class A shares. Article IV, Section (2)(b) delineates that the holders of Class A and Class B may receive either “a ratable distribution of identical securities” or “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[.]”

60. The Share Distribution Provision specifies the rights of the Class A and Class B with respect to particular types of share distributions. Under Article

IV, Section (2)(b)(i), if the Class A and Class B are to be distributed “identical securities,” the Class A and Class B are entitled to share ratably in the distribution.

61. In accordance with the Existing Bylaws, the Board declared a dividend of Class A shares payable to all CBS stockholders at a duly noticed Special Meeting on May 17, 2018. Because that declared dividend is authorized by the Certificate, the Class B stockholders have a contractual right to that dividend.

62. The Share Distribution Provision permits share distributions that are dilutive to the exclusive voting power of the Class A. It is intended to protect the Class B stockholders from the precise circumstances that now exist. Sumner Redstone is no longer in control of CBS. His daughter has seized control, interfered with the management of the Company and pressured the Company to pursue her self-interested plan to combine CBS with Viacom. The Board concluded that the time had come to reduce the Redstones’ voting power to twice the percentage of their equity interest.

63. NAI and Sumner Redstone were aware of, drafted and consented to the inclusion of the Share Distribution Provision in the Certificate. NAI and Sumner Redstone limited their voting control by agreeing in the Certificate that the Class A’s voting power could be reduced through a dividend of Class A such as the Special Dividend.

64. Defendants are breaching the Certificate by interfering with the Board's ability to issue the Special Dividend and are causing substantial harm to the Class B stockholders.

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

## **COUNT II**

### **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

66. Plaintiff repeats and realleges the allegations above as if fully stated herein.

67. The Certificate is a contract among the Company and its stockholders. NAI, which controlled CBS prior to the implementation of the current Certificate, and the other Defendants are parties to that contract, including the terms of the Share Distribution Provision.

68. The Board declared the Special Dividend, pursuant to the terms of the Share Distribution Provision, at a duly noticed Special Meeting. The Share Distribution Provision grants broad power to the Board to issue the Special Dividend.

69. Implied in the Certificate is a covenant of good faith and fair dealing, embodying the expectation that the parties to the Certificate will act with good faith toward the other parties with respect to the subject matter of the Certificate.

Parties are not permitted to act in ways that render the terms of the Certificate illusory and frustrate its overarching purpose.

70. NAI, Ms. Redstone and her allies breached the implied covenant of good faith and fair dealing by using NAI's position as a controlling Class A stockholder to nullify the Share Distribution Provision through the Invalid Bylaw Amendments. If deemed effective, the Invalid Bylaw Amendments would render the terms of the Share Distribution Provision meaningless. The Invalid Bylaw Amendments require 90% of the Board's directors to approve a dividend, and more than 10% of the Board are not independent of NAI. Thus, the Invalid Bylaw Amendments condition the Board's issuance of any dividend upon the approval of Ms. Redstone and other directors affiliated with the Company's controlling Class A stockholder. This denies the Class B stockholders the protection that the Share Distribution Provision was intended to afford them against an overreaching controlling stockholder.

71. The Class B stockholders are being irreparably harmed by Defendants' breach of the implied covenant of good faith and fair dealing.

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

### **COUNT III**

#### **(Breach of Fiduciary Duty)**

73. Plaintiff repeats and realleges the allegations above as if fully stated herein.

74. As a controlling stockholder of CBS, NAI owes the Class B stockholders a fiduciary duty of loyalty. Ms. Redstone, Andelman and Klieger owe fiduciary duties of loyalty to the Class B stockholders by virtue of their positions as CBS directors.

75. The Certificate expressly permits the Special Dividend that the Board declared.

76. Defendants are breaching their fiduciary duties by interfering with the Class B stockholders' right to the Special Dividend solely to serve the interests of NAI and Ms. Redstone, to the detriment of the Class B stockholders. Defendants' conduct is causing substantial harm to Plaintiff and the Class.

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

### **COUNT IV**

#### **(Declaratory Judgment That the Invalid Bylaw Amendments Are Unlawful, Inequitable and Invalid)**

78. Plaintiff repeats and realleges the allegations above as if fully stated herein.

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

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

81. Section 141(a) of the DGCL prohibits stockholders from adopting bylaws that mandate how the board of directors should decide specific substantive business decisions.

82. The Invalid Bylaw Amendments result in a stockholder predetermining what the Board would do in violation of Sections 109(b) and 141(a) of the DGCL. Defendants intended the Invalid Bylaw Amendments to mandate that the Board could not adopt the Special Dividend, because the Invalid Bylaw Amendments require 90% of the Board’s directors to approve the dividend, and more than 10% of the Board is affiliated with NAI.

83. Further, Section 170(a) of the DGCL states, “[t]he directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends . . . .” The Certificate contains the substantive provisions governing the Board’s issuance of dividends, and the Company’s bylaws state that the Board may declare dividends “subject to the provisions of the

Certificate of Incorporation.” Consistent with Section 170(a) of the DGCL and with the Company’s governing documents, NAI may not impose restrictions on dividends by amending the Company’s bylaws.

84. Moreover, the Invalid Bylaw Amendments are also invalid because they are inequitable, as they were executed in violation of Defendants’ fiduciary duties owed to the Class B stockholders.

85. The Bylaw Amendment Bylaw also violates the Certificate and Section 109. The Invalid Bylaw Amendments were adopted for inequitable purposes, including to prevent the directors not affiliated with NAI from taking actions they believed to be in the best interest of the Company and all of its stockholders and to have Defendants determine the forum for any action involving the Share Distribution Provision and the Invalid Bylaw Amendments.

86. Plaintiff and the Class are entitled to an order declaring that the Invalid Bylaw Amendments are inequitable, and therefore invalid and of no further effect.

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

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands the following relief:

- A. A declaratory judgment that the Certificate authorizes the Special Dividend;

- B. A judgment that Plaintiff and the Class are entitled to the Special Dividend;
- C. A judgment that Defendants are in breach of the Certificate and/or the implied covenant of good faith and fair dealing;
- D. A judgment that Defendants are in breach of their fiduciary duties to the Class B stockholders by putting NAI's and Ms. Redstone's interests ahead of the Class B stockholders and seeking to evade the terms of the Share Distribution Provision;
- E. A declaratory judgment that the Invalid Bylaw Amendments are inequitable, ineffective and invalid;
- F. An order certifying the Class;
- G. An order awarding Plaintiff attorneys' fees and expenses of this action; and
- H. An order awarding further and additional relief as the Court may deem appropriate under the circumstances.

Dated: May 31, 2018

**PRICKETT, JONES & ELLIOTT, P.A.**

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