IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE VIACOM INC. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. No. 2019-0948-JRS **PUBLIC VERSION AS FILED MARCH 4, 2020**

FIRST AMENDED VERIFIED CLASS ACTION COMPLAINT

Plaintiff California Public Employees' Retirement System ("CalPERS"), Park Employees' and Retirement Board Employees' Annuity and Benefit Fund of Chicago ("Chicago Park"), and Louis M. Wilen (together with CalPERS and Chicago Park, "Plaintiffs") submit this First Amended Verified Class Action Complaint directly on behalf of itself and all other similarly situated public stockholders of Viacom, Incorporated ("Viacom" or the "Company"), against the defendants named herein for breaches of fiduciary duty in their capacity as directors, officers, and/or controlling stockholders of the Company. The allegations in this Complaint are made upon Plaintiffs' knowledge as to themselves, and, as to all other matters, upon information and belief, including the investigation of undersigned counsel of publicly available information and extensive books and records produced by the Company.[1]

[1] Pursuant to the applicable confidentiality agreement, the Company is only entitled to general incorporation of documents produced in response to the Section 220 Demand if it provides specific certification as to the completeness of the production within the scope negotiated amongst the parties. Despite several requests to the Company for certification of completion, the Company has not so certified.

NATURE AND SUMMARY OF THE ACTION

"A Reunited CBS and Viacom Will Mark the End of a Four-Year Battle for Shari Redstone." *Variety*, August 13, 2019.

1. This stockholder class action challenges the long-anticipated yet much-maligned merger (the "Merger") of two controlled companies at the behest of a controlling stockholder that has already admitted in judicial pleadings that the merger triggers the entire fairness standard of judicial review. A discrete number of objective facts illustrate why the Merger is patently unfair to Viacom shareholders.

2. ***First***, Shari Redstone ("Ms. Redstone")[2] vigorously fought for years to assume control of the media empire her father Sumner Redstone ("Sumner Redstone") built so that she can re-unify (and consolidate control over) the two Redstone "family" businesses, Viacom and CBS, Inc. ("CBS"). With Ms. Redstone involved, this Merger was going to happen regardless of whether a fair exchange ratio would ever be set.

3. ***Second***, to get her way, Ms. Redstone steamrolled and effectively reconstituted no fewer than three boards of directors to ensure each would satisfy her demands. Ms. Redstone replaced subversive directors with friends and family

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Therefore, Defendants cannot receive the benefit of incorporation by reference at all, and particularly with respect to any documents produced after November 25, 2019.

[2] To avoid confusion, this Complaint refers to Shari Redstone as "Ms. Redstone" and Sumner Redstone as "Sumner Redstone."

members on the boards of National Amusements, Inc. ("National Amusements" and, together with NAI Entertainment Holdings LLC, "NAI") and Viacom and CBS, in which NAI holds over 80 percent of the voting power but only about 10 percent of the economic interests. In 2016 alone, NAI replaced five Viacom directors, and its President and Chief Executive Officer.

4. ***Third***, after an abortive 2016 merger effort, Ms. Redstone began her second push to merge the two media companies in 2018. At a time when CBS was financially stronger relative to Viacom than CBS is today, the two boards agreed on an exchange ratio of 0.6135 CBS shares for each share of Viacom stock (implying a $12.8 billion Viacom enterprise value). That deal fell through because of Ms. Redstone's insistence that her loyal Viacom CEO, Defendant Robert Bakish ("Bakish"), assume a leadership role over the combined company, which CBS's then-CEO, Les Moonves, vigorously opposed.

5. ***Fourth***, in a lawsuit to block the CBS Board's efforts to protect CBS's minority investors from Ms. Redstone's aggressions (while the Viacom Board sat idly on the sidelines), NAI affirmatively pleaded as follows: "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***."[3]

6. ***Fifth***, when Ms. Redstone resumed her push for the merger upon Moonves's ouster in the wake of his sexual misconduct scandal and NAI's removal of some of the CBS Board rebels, a new problem emerged: Viacom's financial performance not only stabilized but improved dramatically, while CBS's performance and prospects deteriorated far worse than the stock market appreciated, rendering an exchange ratio lower than 0.6135 unfair for Viacom minority holders.

7. ***Sixth***, exhibiting their fealty to Ms. Redstone's wishes and their disloyalty to Viacom minority stockholders, the Viacom special committee made the bad faith decision to pin their exchange ratio negotiations on public research analyst forecasts that objectively ***undervalued*** Viacom and objectively ***overvalued*** CBS.

8. ***Seventh***, when the Viacom Committee tried to create the patina of arm's-length engagement by asserting that the previously-agreed exchange ratio should set a floor for restarted negotiations, the CBS Board countered that Viacom's minority stockholders should receive a lower share of the combined company on account of Ms. Redstone's unshakeable insistence that Robert Bakish assume the reins of the combined company. The Viacom special committee capitulated, ceding

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[3] *In Re CBS Corp. Litig.*, ¶ 106, C.A. No. 2018-0342-AGB (Aug. 3, 2018) (complaint) (emphasis added).

massive amounts of stockholder value—including the proportional value created by Merger synergies—to CBS.

9. ***Eighth***, on August 13, 2019, after three years of on-again, off-again negotiations, CBS and Viacom announced the pending recombination of the two companies based on an exchange ratio of 0.59625 CBS shares for each Viacom share regardless of class (implying only an $11.8 billion Viacom enterprise value). As CBS's legal counsel wrote recently, the final 0.59625 exchange ratio is "objectively favorable to CBS stockholders, well within the range of positive outcomes . . . , and is a particularly good result in light of agreements reached with Viacom regarding the combined company's governance . . . ."[4]

10. ***Ninth***, although the market has slashed CBS's market capitalization by about 22 percent since the Merger announcement and CBS's subsequent disclosure of awful financial projections, Plaintiffs and other aggrieved minority Viacom investors had no opportunity to vote to protect their interests. Ms. Redstone and NAI chose to accept the entire fairness standard of judicial review rather than bear the risk of a majority of the minority condition to the Merger. Reflecting its own misplaced loyalties and lack of independence, the Viacom special committee never even proposed any such condition, much less insisted on it.

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[4] Def.'s Pre-Trial Answering Br. at 17, *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, C.A. No. 2019-0820-JRS (Nov. 21, 2019).

11. Analysts panned the Merger exchange ratio, particularly upon learning of the CBS results and projections that undermined the Street's prior expectations. One analyst at MoffettNathanson summed it up succinctly:

> "***Let's not mince words here, it was an abject disaster*** that forced negative revisions to key metrics (except revenues) at legacy CBS. . . . Over the year, the CBS board and CBS management knew Street numbers were wildly wrong on free cash flow, but somehow never shared that consequential data point."

12. The Viacom special committee fully appreciated both: (i) CBS's not-yet-publicly disclosed "abject disaster" numbers, and (ii) that Viacom already had beaten the management-developed 2018 long range plan ("LRP") that projected cash flows far exceeding the Street's overly conservative Viacom numbers. By basing exchange ratio negotiations on Street numbers, the special committee forcibly traded Viacom minority shares for CBS shares in a process that tactically ignored Viacom's strengths while burying CBS's problems.

13. In sum, even if there is wisdom to merging these companies in the abstract, any exchange ratio had to be fair to Viacom's minority investors (or NAI should directly pay Viacom's minority a fair value for their shares). In accepting a 0.59625 exchange ratio based on market valuations that significantly overpriced CBS stock and refusing to tell NAI to contribute any value or give investors a chance to vote the deal down, Defendants Redstone, NAI, Bakish, and the members of

Viacom's special committee breached their fiduciary duties to Viacom's minority stockholders.

PARTIES AND RELEVANT NON-PARTIES

14. Lead Plaintiff CalPERS held shares of both classes of Viacom stock from prior to the announcement of the Merger until the Merger closed, and was a holder at all times relevant to the conduct giving rise to the claims asserted herein.

15. Additional Plaintiff Chicago Park held Viacom Class B shares from prior to the announcement of the Merger until the Merger closed, and was a holder at all times relevant to the conduct giving rise to the claims asserted herein.

16. Additional Plaintiff Louis M. Wilen held Viacom Class B shares from prior to the announcement of the Merger until the Merger closed, and was a holder at all times relevant to the conduct giving rise to the claims asserted herein.

17. Non-party Viacom, Incorporated was a publicly-traded Delaware corporation headquartered in New York, New York, concentrating on entertainment-related services and products. Its business units included Viacom Media Networks and Paramount Pictures; Viacom also owned numerous cable channels, including MTV, BET, VH1, Nickelodeon, and Comedy Central. The Company's voting Class A Common Stock and non-voting Class B Common Stock were listed and traded on the New York Stock Exchange ("NYSE") under the "VIA" and "VIA.B" tickers, respectively. Viacom was spun off on December 31, 2005 from its predecessor

("Former Viacom"). After the spin-off, Former Viacom was succeeded as a legal entity by CBS Corporation.

18. Non-party CBS Corporation ("CBS") was a publicly-traded Delaware corporation headquartered in New York, New York. CBS was a mass media conglomerate that creates and distributes content across a variety of platforms, including cable, publishing, local TV, film, and streaming services. CBS voting shares were traded on NYSE under the "CBS.A" ticker symbol; non-voting shares are traded under the "CBS" ticker symbol. Fourteen directors served on the CBS Board.

19. CBS's legal predecessor was Former Viacom. National Amusements bought a controlling interest in Former Viacom in 1987. Sumner Redstone then used Former Viacom as a vehicle to make a number of major acquisitions, including of Paramount Communications in 1994 and of CBS itself in 2000. Modern CBS and modern Viacom were created when Former Viacom separated into two publicly traded companies in late 2005.

20. Defendant Shari E. Redstone ("Ms. Redstone"), the daughter of Sumner Redstone, is the controlling stockholder of National Amusements Inc. Ms. Redstone is a director of and owns approximately 20 percent of NAI through the Shari E. Redstone Trust and has served as NAI's president since 2000. From 1994 to 2000, she was Executive Vice President of National Amusements. She served as the Non-

Executive Vice Chair of the boards of directors of both CBS and Viacom from their inceptions on January 1, 2006 until the Merger closed, and was a director of Viacom from 1994 until the Merger closed. Through National Amusements' voting control, Ms. Redstone controlled CBS and Viacom. Following the Merger, Ms. Redstone became the Chair of the combined ViacomCBS.

21. Non-party Sumner M. Redstone ("Sumner Redstone") is the Chairman of the board of NAI and was the Emeritus Chairman of both CBS and Viacom. The Redstone family exerted control of both CBS and Viacom through NAI, which held nearly 80 percent voting control over both entities.

22. After decades of dominating CBS and Viacom, Sumner Redstone resigned as an active member of the boards of both companies in 2016 at age 92, following vicious litigation that involved allegations that Sumner Redstone could no longer read, write, or communicate. He remains the chair, CEO, and owner of National Amusements, Inc., of which he holds approximately 80 percent voting control through the Sumner M. Redstone National Amusements Trust (the "SMR Trust"). That Trust, however, is now under his daughter's effective control.

23. Defendant National Amusements, Incorporated ("National Amusements"), is a privately held Maryland corporation headquartered in Norwood, Massachusetts. National Amusements, a national movie theater operator, was founded by Ms. Redstone's grandfather.

24. Defendant NAI Entertainment Holdings LLC ("NAIEH" and together with National Amusements, "NAI") is a wholly owned subsidiary of National Amusements. NAI was the controlling stockholder of CBS and Viacom, holding nearly 80 percent of the Class A voting shares of each company. Despite controlling nearly 80 percent of the voting power of each company, NAI held only about 10.5 percent of the economic value of CBS and approximately 9.9 percent of the economic value of Viacom at the time of the Merger. Given her father's incapacity, Ms. Redstone is the de facto controller of NAI.

25. Defendant Robert M. Bakish ("Bakish") served on the Board of Viacom from December 2016, when he was officially appointed President and chief executive officer ("CEO") of Viacom, until the Merger closed. A twenty-year veteran of Viacom, Bakish previously served as President and CEO of Viacom International Media Networks and its predecessor, MTV Networks International. Thus, he has owed his employment and principal source of income to the Redstones for over twenty years. Following the Merger, Bakish became President and CEO of ViacomCBS. Bakish owes his rise to Viacom CEO and ViacomCBS CEO to Ms. Redstone. Following his ascension as ViacomCBS CEO, Bakish nearly doubled his annual compensation—from $19.9 million to roughly $37 million.

26. Defendant Thomas J. May ("May") served on the Viacom Board from June 16, 2016, when Ms. Redstone engineered his appointment through NAI, until

the Merger closed. NAI provided indemnification to Mr. May to join the Viacom Board. Mr. May was the co-chair of the special committee. From 1994 through the present, Mr. May has lived on the same street as Ms. Redstone—a mere five-minute walk away—in Westwood, Massachusetts. He also knows Ms. Redstone and Sumner Redstone through their shared time on the Board of Trustees of the Dana-Farber Cancer Institute. All three served as trustees or advisors to the John F. Kennedy Presidential Library and Museum. Mr. May chaired the Viacom board of directors.

27. Defendant Judith A. McHale ("McHale") served on the Viacom Board from June 16, 2016, when Ms. Redstone engineered her appointment through NAI, until the Merger closed. NAI provided indemnification to Ms. McHale to join the Viacom Board. Ms. McHale was a member of the special committee. Previously, McHale had served as general counsel for MTV Networks in the mid-1980s, overseeing MTV, Nickelodeon, and VH-1. McHale left MTV Networks in 1987, two years after it was acquired by Former Viacom. Ms. McHale is thus a former employee of the Redstones. McHale joined the ViacomCBS Board following the Merger.

28. Defendant Ronald L. Nelson ("Nelson") served on the Viacom Board from June 16, 2016, when Ms. Redstone engineered his appointment through NAI, until the Merger closed. NAI provided indemnification to Mr. Nelson to join the

Viacom Board. Mr. Nelson was a member of the special committee. Mr. Nelson was the co-chief operating officer of DreamWorks SKG ("DreamWorks") from 1994 to 2003, during which time DreamWorks and Paramount Pictures co-produced several major films. Before his stint at DreamWorks, Mr. Nelson served as Executive Vice President, CFO, and a director of Paramount Communications, which was acquired by Viacom in 1994. Mr. Nelson joined the ViacomCBS Board following the Merger.

29. Defendant Nicole Seligman ("Seligman") served on the Viacom Board from June 16, 2016, when Ms. Redstone engineered her appointment through NAI, until the Merger closed. NAI provided indemnification to Ms. Seligman to join the Viacom Board. Ms. Seligman was the co-chair of the special committee. From 2001–2016, Seligman was an executive at Sony Corporation, serving as President of both Sony Entertainment Inc. and Sony Corporation of America, and NAI is a "long-term Sony customer." Seligman and both Redstones have served as directors of the John F. Kennedy Library Foundation. After becoming a Viacom director, Seligman accompanied Ms. Redstone annually at events such as the Allen & Company Sun Valley summit. She and Ms. Redstone communicate with each other regarding merger proceedings. Ms. Seligman joined the ViacomCBS Board following the Merger.

30. Defendants May, McHale, Nelson and Seligman collectively are the "Director Defendants." Defendants Ms. Redstone, National Amusements, Inc. and NAI Entertainment Holdings LLC collectively are the "NAI Defendants" or "Controlling Stockholder Defendants." Defendant Bakish is the "Officer Defendant." Collectively they are the Defendants.

JURISDICTION

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

32. The Court has personal jurisdiction over the individual defendants pursuant to 10 *Del. C.* §§ 3104 and 3114.

SUBSTANTIVE ALLEGATIONS

I. Sumner Redstone Divides His Media Empire, Leaving Shari Redstone Out

33. In 1987, Sumner Redstone (through NAI) bought a controlling stake in Former Viacom. He then built a major media empire, acquiring both Paramount Pictures and Former Viacom's old parent, CBS.

34. In 2006, to resolve a succession dilemma and "make everyone happy," Sumner Redstone split Former Viacom into modern Viacom and CBS. He anointed one favorite, Les Moonves, as the head of CBS, and, subsequently his longtime protégé, Philippe Dauman, as the head of Viacom.

35. After the split, CBS and Viacom both adopted corporate governance policies designed to protect public shareholders. The companies' respective proxy statements promised that, despite their status as controlled companies, each would be governed by Boards comprised of a majority of independent directors, with independent compensation and nominating and governance committees.

36. Sumner Redstone also assured the public that his companies would have independent governance. In a 2007 *BusinessWeek* interview, he said: "Control is bad if you use it for your own interests. And everyone in our industry knows I have never done that. . . . So I certainly don't put my interests ahead of the stockholders. I have never used control for my personal interests." Sumner Redstone also sent *Forbes* a July 20, 2007 letter in which he highlighted the importance of independent corporate governance mechanisms:

> I am determined as always that these companies be operated in the best interests of the stockholders. Accordingly, I am determined that in accordance with the rules of good governance, the boards of Viacom and CBS select my successor—and that no person be imposed on the boards. . . . It must be remembered that I gave to my children their stock; and it is I, with little or no contribution on their part, who built these great media companies with the help of the boards of both companies.

37. Through this letter, Sumner Redstone made clear that his daughter was not his chosen successor and fretted about his daughter's ability to lead. In his 2007 letter, he further explained why Ms. Redstone would not replace him as Chairman

of Viacom or CBS: "While my daughter talks of good governance, she apparently ignores the cardinal rule of good governance, that the boards of the two public companies, Viacom and CBS, should select my successor."

38. The next year Sumner Redstone, in a July 2008 CNBC interview, again publicly stated that Ms. Redstone would not become head of Viacom or NAI, stating, "The reason she won't succeed me is not she — that she isn't qualified . . . ."

39. In fact, Sumner Redstone had a favored heir: Viacom CEO Phillippe Dauman. In September 2012, Sumner Redstone publicly stated, "I can't say what will happen after I'm gone—which will be never… [b]ut everyone understands, I think, that Philippe [Dauman] will be my successor."

A. Viacom's Dual Class Structure Creates a Wide Divergence Between the Redstone Economic Ownership and Voting Control

40. Through NAI, the Redstone family owned approximately just 10 percent of CBS and Viacom's equity, yet they control approximately 80 percent of the vote. The wide disparity between the Redstones' control and economic interests placed the brunt of the controllers' decisions on the public investors.

41. Corporate governance experts have long criticized the extremely wide disparity between the Redstone family's voting power and their economic interests. As Professor Charles Elson, a corporate governance expert with an endowed chair at the University of Delaware business school, has observed when discussing the

dual-class structure of CBS and Viacom, "Anytime you separate voting interests from economic interests, there is a problem."

B. To Assume Control Over the Redstone Media Empire, Ms. Redstone Transforms the NAI and Viacom Boards

42. After the split of CBS and modern Viacom and Sumner Redstone's public assertions that his daughter would not ascend to control of the media empire he had built, Ms. Redstone openly criticized her father's corporate decision-making. As one example, Ms. Redstone attacked Sumner Redstone's investment in a video-game company called Midway Games, publicly threatening to sue her father.

43. In 2014, Sumner Redstone continued to question his daughter's competence, writing to CBS Director David Andelman, "Recent dealings with my daughter, Shari, have caused me to believe even more strongly that she does not have the requisite business judgment and abilities to serve as Chair of Viacom or CBS."

44. In July 2015, Ms. Redstone derisively emailed her son as follows: "Your grandfather says I will be chair over his dead body."

45. By late 2015, ninety-two-year old Sumner Redstone had suffered several strokes. Recurrent pneumonia in 2014 had caused oxygen deprivation—and possibly brain damage—so severe that his ability to speak and swallow was severely compromised. His mental and physical capacities badly deteriorated, Sumner Redstone required constant medical care.

46. Sumner Redstone's decline had been an open secret amongst Viacom's directors. He had not attended an investor meeting since 2014, and also did not attend the 2015 annual stockholder meeting. In May 2015, a *Vanity Fair* article reported that Sumner Redstone could not speak, and appeared "pretty out of it" and unaware of "what's going on." By February 2016, Sumner Redstone officially ceded the role of Chairman of Viacom and CBS, becoming Chairman Emeritus.

47. Each board promptly filled the Chairperson position with their respective CEOs.

48. For Viacom, the vote demonstrated that the Viacom Board—including many of its NAI representatives—were loyal to Dauman, Sumner Redstone's chosen heir. Ms. Redstone had the only 'no' vote to Dauman's election.

49. Ms. Redstone first flexed her dual-class voting power muscles around May 20, 2016, when NAI suddenly removed Dauman from the NAI board and as a trustee of SMR Trust, through which Sumner Redstone held majority voting control of NAI and, thus, of CBS and Viacom. Simultaneously, NAI also removed George S. Abrams, a five-decade Sumner Redstone friend and Dauman ally, from the same positions of trust. NAI's abrupt termination decisions blindsided both Dauman and Abrams. The latter protested, "[t]he Sumner Redstone I knew would never have taken this action."

50. Personal allies of Ms. Redstone—abstract artist Jill Krutick and longtime general counsel of NAI, Thaddeus Jankowski—replaced Dauman and Abrams on the boards of the SMR Trust and NAI. NAI also appointed Ms. Redstone's daughter, Kimberlee Korff, to its board.

51. Shaken by Ms. Redstone's swift and tyrannical use of the power of NAI's written consents, on May 30, 2016, Viacom's independent directors issued a letter warning that attempts to remove Viacom directors from the board "would be ***completely inconsistent with Sumner's lifetime commitment to an independent board and professional management for Viacom*** after his incapacity or death" (the "May 30 Letter"). The May 30 Letter also stated that any such attempts would flout Sumner Redstone's "stated judgment for many years that his daughter, Shari, should not control Viacom or his other companies."

52. Ms. Redstone was undeterred. On June 16, 2016, NAI issued a written consent purporting to amend Viacom's by-laws to allow stockholders directly to fill vacancies on the board. Through NAI, Ms. Redstone promptly removed and replaced five of the eleven directors on the Viacom board. The removed directors included Dauman and Abrams, who had served on the Viacom board since 1987; Frederic V. Salerno, the lead independent director, who had spearheaded the May 30 Letter; Blythe J. McGarvie, who had been on Viacom's Board since 2007; and William Schwartz, who had served on Viacom's board since 1987 and had a

decades-long association with Sumner Redstone. Both McGarvie and Schwartz had also signed the May 30 Letter.

53. Ms. Redstone retained on Viacom's board Cristiana Sorrell, the spouse of Sir Martin Sorrell, then-chief executive of WPP; Deborah Norville, the longtime anchor of the CBS TV show "Inside Edition"; Charles Phillips, chairman and president of Infor; and Viacom veteran Tom Dooley ("Dooley"), who served as Viacom interim CEO for a few weeks.

54. Exercising the power it had just allocated to itself, NAI appointed the replacement Viacom directors by written consent. The new additions to the Viacom Board included Defendant Nicole Seligman, whose company, Sony, had a long and important business relationship with NAI and who also served on the board of WPP (then-controlled by Cristiana Sorrell's husband); Defendant McHale, who had previously worked for the Redstones at MTV Networks; Defendant May, who was Ms. Redstone's neighbor; Defendant Nelson, who had been the co-chief operating officer of DreamWorks SKG from 1994 to 2003, prior to Viacom's acquisition of that company in 2005; and Mr. Kenneth Lerer, who had also worked for MTV.

55. These five directors were Ms. Redstone's selections. Ms. Redstone and May have lived within a five-minute walk from each other since 1994. According to documents obtained in prior litigation, Mmes. Redstone and Seligman are friends who provide each other frequent updates during merger negotiations. They are also

regularly spotted at the Allen & Company conference in Sun Valley; one article noted that in 2016 "[o]n both Wednesday and Thursday [of the conference], Redstone and Seligman were spotted ducking out of breakfast seminars to grab coffee together at the resort's cafe and bakery." The duo was also photographed walking side by side at the Sun Valley conference in 2017. Redstone has previously emailed Seligman, "I need another you [for the CBS Board], but obviously it can't be you. . . . Miss you tons. . . . we can grab coffee next Friday . . . ."[5] Joe Flint, a media and entertainment reporter for *The Wall Street Journal*, described Seligman and Ms. Redstone as "BFF [best friends forever]" and Alexandra Steigrad of the *New York Post* wrote that some consider Seligman to be Ms. Redstone's "closest advisor."[6]

56. Each of these newly appointed Viacom directors were indemnified ***by NAI*** "from and against all losses, claims, damages, penalties, judgments, awards, settlements, liabilities of any type whatsoever . . . incurred by or on behalf of Indemnitee in connection with any Proceeding" related to their respective

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5 Trial Tr. at 24-25, *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, C.A. No. 2019-0820-JRS (Nov. 22, 2019).

6 Twitter account of Joe Flient, July 10, 2019, available at https://twitter.com/JBFlint/status/1148982061857824768; Alexandra Steigrad, *The CBS-Viacom merger could be a few months away: insiders*, N.Y. Post, Nov. 18, 2018, available at https://nypost.com/2018/11/18/the-cbs-viacom-merger-could-be-a-few-months-away-insiders/.

appointments as Viacom Directors. *See, e.g.*, VIA_WILEN_002382 at 2385; VIA_WILEN_002334 at 2337.[7]

57. The ousted directors sued in courts across the country. After being ejected from the NAI board and SMR Trust, Dauman and Abrams filed suit in Massachusetts probate court in May 2016, on the grounds that Sumner Redstone was essentially incompetent and that Ms. Redstone used illegal written consents to "illegitimately tip the balance of power" from her father to herself. The Redstones countersued in California state court for a declaration that NAI's actions were valid. Ousted Viacom lead independent director Salerno filed an action under 8 *Del. C.* § 225 ("Section 225") in June 2016, seeking to block the Redstones' changes to the Viacom board and challenging the legitimacy of the NAI-appointed Viacom directors, also alleging that the NAI written consents were Ms. Redstone's attempt to "gain control of Viacom and its management in disregard of Sumner Redstone's wishes and to undermine the current board's ability to represent the best interests of all of the stockholders of Viacom."

58. In an apparent resolution of these disputes, on August 18, 2016, the parties announced a near-global settlement. Under the terms of the settlement

[7] This Complaint appends a handful of graphic-heavy Confidential Documents as Exhibits. All confidential Section 220 documents ("Confidential Documents") cited in this Complaint are listed in Exhibit 1 and are available upon request of the Court.

agreement, Dauman walked away from Viacom with a $72 million golden parachute, on condition that his deputy Dooley would be appointed interim acting CEO. On September 21, 2016, merely a month after the settlement papers were signed, Viacom announced that Dooley would step down and it would begin the search for a permanent Viacom CEO. As part of the settlement, Ms. Redstone prevailed, and the board was reformed as she desired.

C. Ms. Redstone's First Bid for Consolidation Fizzles Over Governance Protections for Minority Investors

59. Having finally assumed control over each of NAI, Viacom, and CBS, Ms. Redstone wasted no time asserting herself and making her objective clear. On September 29, 2016, a mere week after Dooley's departure, NAI sent a letter to Viacom and CBS "request[ing] that the boards of Viacom and CBS consider a potential combination of the companies." NAI also indicated that it would neither consider any third-party offer for either company nor "any transaction that would result in NAI surrendering its controlling position in either company." As a result, neither CBS nor Viacom could shop itself to another buyer or propose any transaction that reduced Ms. Redstone's influence. *See* VIA_WILEN_001425 at 1435.

60. Reports indicate that before Ms. Redstone proposed the merger, some CBS executives had been considering selling the network to a large technology company such as Alphabet or merging with Time Warner. NAI's letter signaled

with the full force of Ms. Redstone's controlling stake that there would be no sale of either CBS or Viacom, other than to each other.

61. Viacom complied with Ms. Redstone's demand, establishing a six-person special committee chaired by Defendants Seligman and May, Ms. Redstone's friend and neighbor, respectively, to consider the proposed merger. The special committee also included then-Viacom director Kenneth Lerer, Defendant McHale, Defendant Nelson, and Charles Phillips. Of these six directors, five—all except Phillips—directly owed their directorships to Ms. Redstone. VIA_WILEN_002937 at 2940.

62. The Viacom special committee retained LionTree and Morgan Stanley as of November 7, 2016. *See* VIA_Wilen_002880; VIA_WILEN_002904. LionTree and Morgan Stanley continued to advise Viacom in subsequent merger discussions, seeing firsthand the aggressive demands of its controller.

63. In subsequent litigation between CBS and certain of its directors against NAI, Ms. Redstone and others, the CBS directors made clear that the CBS transaction committee did not support a merger with Viacom on NAI's terms in 2016. Ms. Redstone reacted strongly to this rejection, advising the CBS independent directors that "the failure to get the deal done had caused Viacom to suffer" and made clear that her battle to merge CBS and Viacom was not over, stating "the merger would get done 'even if [she had] to use a different process.'"

64. On December 12, 2016, NAI withdrew the proposal for CBS and Viacom to explore a merger. Media reports at the time asserted that deal talks collapsed after Moonves and the CBS transaction committee had required as a condition to the deal that NAI agree to restrict its ability to act unilaterally and to absolutely guarantee that any combined company would be managed as a non-controlled public company with a majority-independent board for at least five years. Ms. Redstone rejected out of hand the notion that she and NAI would pay and form of consideration to the minority investors.

D. Mr. Bakish Begins the Viacom Turnaround

65. On December 12, 2016, the Viacom board met. In spite of NAI representing two weeks prior that Sumner lacked capacity to make independent legal decisions, Seligman reported to the Board that "Mr. Redstone had requested that he not be re-nominated for election to the Board at the Company's 2017 annual meeting of stockholders…." The directors further resolved that a panel of predominantly NAI-appointed Viacom directors be nominated to stand for election at the next annual meeting.

66. Also in December 2016, the Viacom Board elevated Ms. Redstone's chosen chief executive, Bakish, to the role of Viacom's President and CEO and to the Board.

67. Bakish cultivated Ms. Redstone as a patron, keeping her regularly informed of and including her in all major Viacom decisions. With Ms. Redstone's support, Bakish undertook major changes that have borne fruit.

68. Within a year of Bakish's appointment, Viacom's financial conditions had begun to improve. By the end of 2017, MTV reversed its ratings decline. Ad revenues grew for the first time in four years. Paramount Pictures' adjusted operating income ("AOI") grew each quarter of that year. In 2017, Viacom reported growth in operating margin for the first time since 2014. Its Media Networks and Filmed Entertainment revenues and operating free cash flows increased 26 percent over the prior year. VIA_WILEN_002406 at 2411. It strengthened its balance sheets by reducing gross debt by 23 percent, or $3 billion. *Id.* at 2413.

II. In 2018, Viacom Constitutes A Conflicted and Docile Special Committee

69. Ms. Redstone kept her ultimate objective in sight. On January 12, 2018, news articles reported that Ms. Redstone had again asked the boards of Viacom and CBS to consider a combination of the two companies—i.e., the Merger.

70. Each company constituted a special committee to discuss the Merger.

71. The Viacom special committee was established on February 1, 2018 by the unanimous written consent of the Viacom Board of Directors. The Viacom special committee for this process consisted of four of the six individuals previously selected in 2016: McHale, Nelson, and co-chairs Seligman and May. All four had

been appointed by NAI originally, with indemnification from NAI. Director Charles Phillips, who was not appointed by NAI in 2016, was no longer a member of the special committee. This special committee remained constituted throughout the process that culminated in the August 13, 2019 announcement.

72. The Viacom special committee was aware and never objected that NAI—*i.e.*, Ms. Redstone—was a party to the special committees' confidentiality agreement and received all the materials that each committee received from each other. The minutes from the Viacom special committee meetings showed that the Director Defendants colored inside of the lines NAI had drawn, discussing logistics related to NAI's expectation that diligence materials also would be provided "to NAI as they were being made available to CBS." VIA_WILEN_002401 at 2402.

73. The Viacom special committee accepted unreservedly the terms set forth in a January 31, 2018 email from NAI's legal counsel to Viacom and CBS's respective counsel. VIA_WILEN_002401 at 2403. That email stipulated that the Merger be an "all-stock" combination and mentioned the fact that NAI was "not willing to accept or support (i) any acquisition by a third party of either company or (ii) any transaction that would result in National surrendering its controlling position in either company or not controlling the combined company." VIA_WILEN_002400.

74. Seligman led the 2018 process, though May acted as co-chair. When the chair of the CBS transaction committee, Bruce Gordon, needed to discuss sensitive issues related to the exchange ratio and management, he "requested an in-person meeting with Ms. Seligman" only. Seligman was also the only director amongst the four Viacom special committee members to attend all the meetings. When Seligman was not present in order to meet with Mr. Gordon, nothing substantive occurred. *See* VIA_WILEN_002860.

75. The Viacom special committee deferred entirely to NAI. First, the committee decided not to even try to obtain a majority of the minority clause in the agreement. It considered and discussed with its advisors "the pros and cons of requiring that the closing of a transaction be subject to the approval of a majority of the minority stockholders in each company," but concluded that "***National Amusements*** did not propose such a condition in the 2016 discussions, ***nor did it propose such a condition in its request this year*** [2018] for the parties to engage in discussions." VIA_WILEN_002485 at 2486.

76. The Viacom special committee treated NAI's unilateral decision not to accept this condition as dispositive—no other comments regarding a majority of the minority clause were recorded. Truly independent and disinterested directors would not merely accept a controlling shareholder's silence on such an important topic as determinative, and would have at least tried to empower the minority stockholders.

77. Second, when Viacom received interest during the 2018 sale process from a [redacted] VIA_WILEN_002833 at 2834. A truly independent committee would try, at a minimum, to explore this avenue to gain negotiation and valuation leverage.

78. Ms. Redstone had in fact already rebuffed one key opportunity for CBS. AT&T's chief executive Randall Stephenson had met with Ms. Redstone in 2017 to express interest in acquiring CBS. Without consulting the CBS board or Moonves, Ms. Redstone rebuffed Stephenson. Everyone involved saw that merging CBS and Viacom was the only option on the table.

79. Third, Ms. Redstone actively monitored and interfered with the Merger process. For example, after several meetings in which CBS resisted including Mr. Bakish as part of the management of the combined company, NAI's lawyers intervened, making clear to both companies that [redacted] VIA_WILEN_002833 at 2834.

A. The CBS Committee Protects Its Minority Stockholders While the Viacom Committee Remains Placid

80. With Ms. Redstone's position made clear, on April 4, 2018, the Viacom special committee sent a letter to the CBS transaction committee proposing that Les Moonves serve as Chairman and CEO and Bakish as President and COO. VIA_WILEN_002850.

81. The struggle for power between the CBS board and Ms. Redstone intensified, with the Viacom Board essentially taking no actions other than those Ms. Redstone had expressly or implicitly endorsed. Press reports soon circulated that Ms. Redstone threatened to replace recalcitrant CBS board members.

82. Through these events, Seligman further revealed her lack of independence. [redacted] VIA_WILEN_002858. Notably, Seligman did *not* express concern that such conduct would pose a risk to the independence of either committee or of the management of either company and, concomitantly, to minority stockholders. Those were simply not her concerns.

83. Into this embattled environment, on March 30, 2018, the CBS Board made an all-stock offer at an exchange ratio of 0.55 that, at CBS's then-current stock price, valued Viacom at ***approximately $11.9 billion***.

84. CBS was in a strong negotiating stance, having just beaten 2017 consensus revenue and EPS expectations, and meeting consensus 2017 EBITDA expectations. *See, e.g.*, VIA_WILEN_002489 at 2490.

85. Rejecting CBS's offer as too low, Viacom counteroffered with a per-share exchange of 0.68 CBS shares per Viacom share, implying a $13.7 billion Viacom value, and creating an implied negotiating midpoint of $12.8 billion.

B. Viacom's Ordinary Course 2018 LRP Financials Reflect Its Successful Turnaround

86. To frame economic negotiations, Viacom provided CBS with its long range projections for fiscal years 2018 through 2021 (the "2018 LRP").

87. The 2018 LRP had [redacted] Rather, according to a March 2018 Morgan Stanley/LionTree presentation shown to the Viacom special committee, [redacted] VIA_WILEN_000143 at 160. *See also* VIA_WILEN_002742 (March 23, 2018 Viacom Board Presentation, stating that [redacted]

[redacted]

88. Minutes from the February 8, 2018 meeting of the Viacom special committee include a statement by Viacom CFO Wade Davis corroborating this fact VIA_WILEN_002485 at 86 (the LRP [redacted]).

89. Viacom management recognized that although the projections in this 2018 LRP were observably [redacted] they were nonetheless [redacted] *Id.* After learning how the LRP would be used to evaluate the transaction, the special committee [redacted] and approved its use. *Id.*

90. Importantly, during the 2018 process, the CBS transaction committee had expressed doubt regarding Viacom's management's ability to meet the LRP projections. Those doubts about Viacom's ability to achieve its plan surely informed the CBS special committee's agreement to pay no more than the 0.6135 exchange ratio it ultimately agreed upon with Viacom. By the same token, if—as subsequently

took place—Viacom could surpass its 2018 LRP, such strong performance would logically support an improved ratio for Viacom minority stockholders.

C. The Parties Agree on Price, But Deal Talks Fail Over Governance

91. By April 22, 2018, Defendant Seligman and her CBS counterpart "had reached a preliminary agreement on economic terms for the transaction, on the assumption of no role for Robert Bakish in the management of the combined company, at a ratio of around ***0.6135*** CBS shares for each Viacom share." VIA_WILEN_002871. At April 2018's prevailing market prices for CBS stock, that implied a valuation of around ***$12.8 billion*** for Viacom (which, as noted, was the midpoint between CBS's initial proposal that implied Viacom value at $11.9 billion and the Viacom Committee's initial counter, which implied a $13.7 billion value).

92. Reflecting Ms. Redstone's control of the proposed Merger and Seligman's deference to Ms. Redstone, when CBS's Gordon asked Seligman to have the two committees [redacted] VIA_WILEN_002871 at 2872.

93. Seligman relayed this discussion to the rest of the Viacom special committee board, which unanimously approved of Seligman's statement of neutrality as to governance of the combined company. *Id.*

94. Thus, Seligman declined Gordon's offer to collaborate on combined company governance—an essential part of Merger negotiations—and entirely deferred the issue to Ms. Redstone. The Viacom special committee then unanimously and officially approved of such deference—and, in turn, of Ms. Redstone's interference in the Merger process.

95. The breakdown in negotiations was not over price. Rather, it stemmed from Moonves, and CBS's opposition to Ms. Redstone's plans for the combined company board—which included Mr. Bakish. VIA_WILEN_002864.

96. From the beginning, CBS and its special committee resisted the proposed Merger with Viacom: Moonves was not supportive, publicly commenting that Viacom was an "albatross" and making clear that he believed that there were better deals for CBS than a merger with Viacom. Also throughout the 2018 negotiations, Viacom management noted to the special committee that [redacted] VIA_WILEN_002638 at 2640.

D. The CBS Transaction Committee Openly Revolts Against NAI

97. After NAI made clear that Ms. Redstone wanted Bakish on the board, CBS tried to shut down negotiations.

98. In early May 2018, the five-member CBS transaction committee concluded that a Merger with Viacom would not be in the best interests of CBS and

its non-controlling stockholders, reasoning that then—as now—Ms. Redstone refused to agree to submit any potential transaction to a vote of all of the unaffiliated public stockholders.

99. Knowing Ms. Redstone's impatience with the continued deadlock, the members of the CBS transaction committee also worried that Ms. Redstone and NAI could use written consents to remove or otherwise neutralize dissenting board members, as she had done with Viacom just two years earlier.

100. Perceiving Ms. Redstone to be a "significant threat" to CBS stockholders, the CBS board responded with the nuclear option: destroying NAI's super-voting stake. The CBS transaction committee scheduled a meeting for May 17, 2018, for the full CBS board to consider issuing a special dividend of voting Class A shares to all stockholders. The dividend would dilute Ms. Redstone and NAI's voting power from 80 percent to approximately 20 percent, without affecting the economic ownership of any CBS stockholders.

101. Perhaps reflecting Sumner Redstone's stated views on empowering outside investors, CBS's certificate of incorporation expressly contemplated the issuance of such a dividend.

102. On May 14, 2018, the CBS transaction committee filed an application for a temporary restraining order ("TRO") against NAI and Ms. Redstone to prevent Ms. Redstone or NAI from:

i. interfering with the composition of CBS's board;

ii. altering CBS's governance documents prior to the effectiveness of the decisions to be made at the planned meeting on May 17; or

iii. taking any other actions to interfere with decisions that may be taken at the meeting.

103. On May 16, 2018, the day before the special meeting and an hour before the TRO hearing, Ms. Redstone showed that sometimes, might makes right. Specifically, NAI delivered written consents amending CBS's bylaws to require that any dividend be approved by at least 90 percent of directors then in office. The written consents further required that revisions to the bylaws be approved by a 90 percent affirmative vote of the CBS board, thus preventing the bylaws from being amended without Ms. Redstone's approval.

104. The CBS transaction committee's TRO application was denied. However, the Chancery Court observed that the complaint filed by the special committee had stated a colorable claim for breach of fiduciary duty against Redstone and NAI.

105. At the May 17, 2018 meeting, of the fourteen CBS directors, all eleven directors not affiliated with NAI voted in favor of the dividend. Ms. Redstone and NAI countersued on May 29, 2018, seeking to invalidate CBS's effort to strip NAI

of voting control. NAI acknowledged in its complaint that exercise of control over NAI had migrated from Sumner Redstone to Shari Redstone.

106. The NAI complaint also denied the CBS transaction committee's allegations that NAI had "refused to agree to typical public company governance," arguing that "NAI had already agreed to subject any deal to approval by two special committees." Further, ***"[w]ith 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."***[8]

E. After Moonves' Downfall, NAI Reconstitutes the CBS Board

107. By summer's end, the battle over CBS's fate found an unlikely resolution after Moonves was pushed out of CBS following revelations that he had engaged in serious sexual misconduct. By early September 2018, CBS and NAI had settled the litigation, with the CBS Board withdrawing the dilutive Class A share dividend, and NAI undoing its Bylaw Amendment. Moonves departed from the CBS board and his deputy, Joseph Ianniello, became interim CEO of CBS.

108. The settlement reconstituted the CBS Board. Directors personally aligned with Les Moonves departed. Aware of the scrutiny NAI's replacements

[8] *In Re CBS Corp. Litig.*, ¶ 106, C.A. No. 2018-0342-AGB (Aug. 3, 2018) (complaint) (emphasis added).

would face, NAI installed Candace Beinecke, a corporate governance lawyer and former senior partner at Hughes Hubbard & Reed; Barbara Byrne, a former vice chair at Barclays; Strauss Zelnick, the head of Take Two Interactive; Brian Goldner, the head of Hasbro, who had close ties to Paramount Pictures due to the Transformers and G.I. Joe franchises; and Susan Schuman, CEO at SYPartners, a corporate coach.

109. The change in the board tightened Ms. Redstone's grip on the reins of her family's media empire and signaled to the markets that a CBS-Viacom merger was inevitable.

110. The remaining question would be the level of resistance Ms. Redstone would still face at CBS. Four of the five members of the CBS independent special committee that had attempted to strip NAI of its supermajority voting power—William Cohen, Gary Countryman, Linda Griego, and Martha Minow—remained on the CBS Board.

111. In contrast, the Viacom Board and special committee had already shown their pliability when it came to keeping their controller happy, had already agreed to the 0.6135 exchange ratio, and already knew what they needed to know about Ms. Redstone's priorities, *i.e.*, seating Bakish in charge of the whole company and never (ever) putting any combination to a majority of the minority vote.

112. A final stipulation from the settlement mandated that Ms. Redstone and NAI would not propose a CBS-Viacom merger for two years. Neither NAI nor Ms. Redstone needed to formally propose a third round of merger talks. The second round never really ended—everyone knew what Moonves's fall meant.

III. As Deal Talks Resume in 2019, the Market Continues to Misprice Viacom and CBS

A. CBS and Ms. Redstone Restart Merger Talks, with Viacom's Board Notified After the Fact

113. In spite of the 2018 settlement stipulation, CBS interim CEO Joseph Ianniello twice privately discussed with Ms. Redstone a potential combination of CBS with Viacom in late 2018 and early 2019. These talks occurred well before Ianniello first contacted Viacom CEO Bakish in mid-April 2019 to "initiate" merger discussions.

114. In an opinion relating to a books and records request by a CBS stockholder, this Court held that:

> It is certainly reasonable to infer that [Ms.] Redstone recommended the 2019 Merger at the February 22 [CBS] meeting without an invitation, in apparent violation of the Settlement Agreement, and the other directors, undeterred by the Settlement Agreement or the Board's past opposition to a merger with Viacom, acted swiftly to [Ms.] Redstone's wishes.[9]

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[9] *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, 2019 WL 6311106, at *7 (Del. Ch. Nov. 25, 2019).

115. On March 9, 2019, the non-NAI affiliated directors of CBS met to discuss a combination of CBS and Viacom. During those discussions, they "deliberated regarding the majority of the minority vote condition."

116. After this discussion and in March 2019, NAI's advisors at Cleary Gottlieb contacted representatives of Paul Weiss, CBS's advisors, to discuss the possible Merger. During these discussions Paul Weiss informed Cleary that the CBS directors were considering conditioning the Merger on a majority of the minority vote. Proxy at 82.

117. At this point, Cleary advised Paul Weiss that "NAI had not been willing to commit to such a condition in the prior discussions in 2016 and 2018." Cleary then contacted Viacom's advisors to "remind" them of the same. Proxy at 82. Thus, even before CBS contacted Viacom to restart negotiations, NAI had already determined the negotiation framework.

118. The CBS board constituted a special committee on April 7, 2019, filled with a who's who of corporate governance and mergers and acquisitions experts: Candace Beinecke, Barbara Byrne, Linda Griego, Martha Minow, Susan Schuman, Gary Countryman, Frederick O. Terrell, and Brian M. Goldner. Director Beinecke, is a highly respected corporate governance lawyer who had chaired Hughes Hubbard & Reed LLP for seventeen years. Two others are former bankers: Director Terrell had been the executive vice chairman of Investment Banking and Capital Markets at

Credit Suisse, while Director Byrne had been a senior vice president at Barclays. Three other directors on CBS's special committee had previously shown relative independence from Ms. Redstone by suing to eliminate NAI's supervoting power.

B. The Viacom Special Committee Continues Its Pliability

119. On April 11, 2019, Ianniello contacted Bakish to restart discussions between CBS and Viacom regarding a potential combination. Without consulting with the Viacom transaction committee, Bakish advised Ianniello that Viacom's previously engaged financial advisors "should engage in further discussions to consider potential terms for a transaction and to conduct due diligence."

120. On April 15, 2019, the four-person Viacom special committee picked up where they had left off before the CBS rebellion and Moonves scandal. As discussed above, the entire Viacom special committee had already shown its lack of independence from Ms. Redstone by, *inter alia*, (1) not asking for a majority of the minority vote provision in 2018, and (2) refusing to join the 2018 CBS special committee to independently derive a joint proposal on combined company governance to NAI.

121. On the latter point, the Viacom special committee had unanimously approved of Seligman re-directing CBS director Gordon away from negotiating with herself, as co-chair of Viacom special committee, to speaking to NAI about combined company governance. In other words, the Viacom special committee had

unanimously approved of Seligman's ***express*** deference to Ms. Redstone on behalf of Viacom's interests regarding combined company governance—and, in turn, of Ms. Redstone's domination of the combined company.

122. Seligman's deference to Ms. Redstone is predictable. Not only did the two communicate about Merger negotiations as they were ongoing, [redacted] *See* Exh. 2, VIA_WILEN_002063 at 2073.

123. Whatever the reason, neither the Viacom special committee nor any of its members ever proposed to NAI a majority of the minority condition. The Viacom special committee also dismissed the idea of engaging in an alternative transaction to the Merger.

124. In contrast, the CBS special committee expressly considered strategic alternatives, including other transactions with other potential counterparties, such as [redacted] *See* Proxy at 85, 87, 89 (discussing Company A); VIA_WILEN_001642 at

1643 (May 22, 2019 Viacom special committee minutes discussing reports regarding [redacted] deal talks).

C. The Market Severely Undervalued Viacom

125. As the Merger talks resumed, Viacom stood in its best position yet. It was now "significantly deliver[ing]" on its results.

126. On December 31, 2016, as Bakish started as CEO, Viacom's debt-to-equity ratio hovered around 2.61. Over next two years, management's careful deleveraging process had more than halved that debt-to-equity ratio, to 1.12. Viacom also increased operating income for the first time since 2014. Exh. 3, VIA_WILEN_001497 at 1503.

127. Several key business growth areas had also materialized. Viacom's new head of Paramount Pictures, Jim Gianopulos, triggered an economic renaissance. In 2018, revenue at the formerly troubled studio rose 84 percent over the prior year. Bakish also concentrated on "next gen" distribution systems, including making entertainment streaming acquisitions such as Pluto TV.

128. As stated in the May 31, 2019 Viacom special committee minutes, not only had "certain issues that had had a negative effect on the Company's valuation a year ago" resolved in Viacom's favor, [redacted]

[redacted]

VIA_WILEN_001578 at 1580.

129. For various reasons, however, Viacom's financial position was not reliably reflected in its stock price or public analyst projections.

130. First and foremost, even though Viacom's financial results had significantly improved into 2019, the market consistently trailed in pricing those results and incorporating the improved outlook into their analyses. In 2018, the market did not understand the value of Paramount Pictures.[10] As of March 5, 2018, a "Special Committee Update" deck by Morgan Stanley and LionTree observed that the improvement at Paramount was not reflected in Viacom's stock price. *See* VIA_WILEN_002601 at 2611 ("Management Case is ahead of consensus –

[10] In July 2016, numerous media organizations reported that Viacom was in advanced discussions with the Dalian Wanda Group to sell 49% of Paramount Pictures in a deal that would value Paramount at $8 billion to $10 billion. An August 30, 2016 memorandum to the Viacom Board [redacted] The Redstone family, however, strongly opposed the sale because it would purportedly "chill the interest of parties that may be interested in a larger transaction involving all of Viacom."

[Paramount] being the primary driver for the difference"), and 2622 ("[Viacom] trading at even bigger discount when adjusting for the value of [Paramount]").[11]

131. In early 2019, Viacom purchased Pluto TV, a streaming service. As Defendant Bakish observed on May 14, 2019 at the JPMorgan Global Technology, Media, and Communications conference: "Pluto TV is a tremendous value-creation opportunity for Viacom that I think people are only starting to understand."

132. Moreover, the Viacom special committee was reminded on April 24, 2019 that Viacom not only achieved its 2018 LRP projections, it had "***[o]utperformed in 2018*** [versus the] LRP." Exh. 3, VIA_WILEN_001497 at 1565; *see also* 1557 ("2018 actual results exceeded results projected in 2018 LRP").

133. However, the public markets did not know that Viacom had not only achieved but exceeded its own 2018 LRP forecasts for that year. Analysts also did not—and could not—know that [redacted]

134. The Director Defendants were aware that the market undervalued Viacom stock. On March 14, 2018, Morgan Stanley and LionTree indicated to the Viacom Committee that Viacom was "meaningfully undervalued in the market," including because its multiple "remains undervalued relative to peers" and the "share

[11] Morgan Stanley and LionTree's 2018 materials valued Paramount Pictures at between [redacted].

price includes no value for [Paramount Pictures], which is a highly strategic asset." VIA_WILEN_000143 at 157.

135. In 2019, Viacom's results continued outperforming market (and budget) projections. One May 21, 2019 presentation updated the Viacom Board regarding the Company's year-to-date performance. Viacom had achieved $637 million in AOI for its second fiscal quarter, beating consensus AOI expectations of $566 million by 12.5 percent. [redacted] *See* Exh. 4, VIA_WILEN_00001229 at 1235:

[redacted]

136. Nevertheless, the Viacom Special Committee understood that Viacom's stock price did not reliably reflect its true value. Prior public disclosures

regarding the 2018 negotiations—including the clear message that Shari Redstone would stop at nothing to get the Merger to take place and that the parties had already agreed on the 0.6135 exchange ratio—also inextricably tied Viacom's share price to CBS's share price.

137. Viacom's special committee knew that an overhang affected Viacom's stock price. The special committee minutes state that Viacom's advisors had noted that "the current stock prices for the Company and CBS appear[ed] to be affected by market reports regarding a potential transaction." VIA_WILEN_001578 at 1580 (May 31, 2019 Special Committee Minutes).

138. The public market also knew that Viacom's stock price had become "anchor[ed] to [the] CBS stock [price]," which caused it to trade at a discount. *See, e.g.*, Kannan Venkateshwar, *CBS/VIAB: Have numbers been derisked enough?*, BARCLAYS, Oct. 21, 2019.

139. In all events, by beating its own internal projections as well as street estimates, Viacom management gave the special committee all that was needed to negotiate an even better exchange ratio than the 0.6135 they had achieved in 2018.

As described below, rather than seizing their opportunity, the Viacom special committee rolled over and submitted.

D. The Market Severely Overvalued CBS

140. Meanwhile, until the October 2019 release of the Form S-4 for the Merger itself, the stock market was wildly overoptimistic about CBS's performance and prospects.

141. In February 2019, CBS issued guidance for the next three years, forecasting a "high-single-digit" compound annual growth rate for revenues and double-digit growth in adjusted earnings per share.

142. [redacted]

143. As of April 24, 2019, the market predicted a near-term outlook for CBS operating income of $3.3 billion in 2019 and $3.6 billion in 2020. By contrast, [redacted] Exh. 5, VIA_WILEN_001676 at 1692.

144. The CBS 2019 LRP was [redacted] *Id.*

145. Although the CBS LRP projected [redacted] *Id.*

146. Extending the timeline did not improve matters. From 2019 through 2023, [redacted] *Id.*

147. Most importantly, as described below, the [redacted]

[redacted]

E. Rather Than Use CBS's Financial Disaster to Protect The Investors They Represent, the Viacom Special Committee Breaches Its Duty of Loyalty to Impose an Unfair Deal

1. May 2019: The Viacom Special Committee Learns About CBS's Financial Troubles

148. Even before May 2019, the Viacom special committee knew that Viacom had not only beaten consensus estimates (as would be the case had management merely achieved the numbers in the 2018 LRP), management had even beaten the 2018 LRP itself. Exh. 3, VIA_WILEN_001497 at 1507 ("The outperformance of 2018 Actuals vs. LRP underscores the progress made in executing and evolving our business") (April 24, 2019 Presentation to Viacom Special Committee).

149. On April 18 and April 24, 2019, Viacom management described its 2019 LRP to the special committee. [redacted]

[redacted] Exh. 3, VIA_WILEN_001497 at 1507, 1565; VIA_WILEN_001383.

150. Viacom's success in meeting or beating its own expectations should have given the special committee comfort in the reliability of its projections and the consistency of management's execution. As observed by at least one analyst, the special committee could leverage these proven wins into negotiating an exchange ratio better than the 0.6135 the parties had agreed on the prior year, when the 2018 LRP and Viacom management remained relatively unproven.

151. However, because CBS stock would be the currency, in theory the Viacom special committee would still have to address any argument by CBS that it, too, was outperforming, and that the prior exchange ratio remained fair.

152. By no later than May 2019, however, the playing field had completely shifted. During a meeting of the Viacom special committee on May 9th, after Viacom had received and begun to analyze CBS's long-range projections, Viacom's CFO, Wade Davis, and its SVP for Corporate Development, Alex Berkett, informed the Committee that not only had CBS [redacted] CBS had [redacted] The import of their message to the Committee could not be mistaken:

> Next, Mr. Davis and Mr. Berkett walked the Committee through a comparison of CBS's current LRP to the version CBS had previously provided in 2018. Mr. Berkett

> explained that CBS [redacted] He also noted that CBS's [redacted]

VIA_WILEN_001567 at 1568. Messrs. Davis and Berkett directly identified CBS's [redacted]

153. As mentioned above, on May 21, 2019, the Viacom Board heard that the Company's Q2 2019 results [redacted]

154. The next day, on May 22, 2019, Morgan Stanley and LionTree informed the Viacom special committee that, [redacted]

[redacted]

155. The Viacom special committee also saw and discussed how [redacted]

[redacted]

156. Consensus estimates projected a 2019 free cash flow growth rate of 4 percent and 2020 growth rate of 29 percent, while CBS's updated LRP predicted 2019 free cash flow [redacted]

2. Viacom's Special Committee Realizes the CBS Projections Changes the Playing Field

157. At the next Viacom special committee meeting, on May 31, 2019, Viacom CFO Davis reiterated that the 2019 Viacom LRP reflected "a realistic but best case scenario. . . ." During the May 31 meeting, Morgan Stanley's Rob Kindler also recognized that Viacom's outperformance and CBS's newfound business troubles would allow the Committee to easily benefit its minority investors:

[redacted]

VIA_WILEN_001580.

158. Viacom's absolute and relative (to CBS) success in meeting and exceeding its 2018 LRP, internal budget, and even consensus projections should have emboldened any independent directors to trust in its management projections and seek improved terms vis-à-vis the poorly performing team at CBS.

159. This variance between [redacted]—warranted moving the exchange ratio far in Viacom's favor. On May 31, 2019, the Director Defendants saw both the

above comparisons slides again, as well as the slide below (Exh. 7, VIA_WILEN_001717 at 1726):

[redacted]

160. The Committee thus saw that if it negotiated by focusing on the respective Viacom and CBS historical and near-term projected financials, the exchange ratios implied by each company's respective projected contributions to combined revenue ([redacted]), EBITDA ([redacted]), and levered free cash flow ([redacted]) for the combined company would far exceed the ratio implied by crediting the market equity values of each company ([redacted]).

161. Moreover, the special committee saw that if Viacom's management DCF was used, [redacted] Exh. 7, VIA_WILEN_001717 at 1730 (Viacom management DCF resulted in exchange ratios around [redacted]).

[redacted]

162. At least one analyst agreed that Viacom should receive a premium to the prior ratio of 0.6135. Marci Ryvicker of Wolfe Research stated in a May 29, 2019 analyst report that she was using a "0.75 exchange ratio (***we think VIAB deserves a premium this time around***)." She continued:

> Since the last evaluation, CBS has underperformed the peer group . . . while VIAB has successfully embarked on a turnaround under Bakish's leadership. . . . [O]ur issue in

> just using the prior 0.6135 is two-fold: 1) VIAB is in a much stronger position operationally and financially today that it was the last two times these two attempted to dance; and 2) doesn't CBS need VIAB just as much as VIAB needs CBS – if not more – to pay for the upcoming NFL renewal?

163. At that same May 31, 2019 meeting, the Viacom special committee also heard that the "the current stock prices for the Company and CBS appear[ed] to be affected by market reports regarding a potential transaction." VIA_WILEN_001578 at 1580.

164. The Viacom special committee had negotiating ballast to use for the Viacom minority. However, despite reviewing this presentation, they shied away from using their leverage, directing their bankers and management to explain "how to reconcile the [DCF] valuations with the Company's current trading price." Focusing on a truism that applies to any projection, the Viacom special committee "noted that the outer years of the LRP were the most speculative," and directed management "to provide further perspective on the Company's LRP at a future meeting." VIA_WILEN_001578 at 1581.

165. On June 7, 2019, CFO Davis provided that perspective. He again explained the mechanics and reliability of the Viacom LRP, which had [redacted] While acknowledging the risks inherent

to any long-term projections, Davis's bottom line was that the Committee should feel comfortable relying on the 2019 LRP to negotiate the exchange ratio:

[redacted]

VIA_WILEN_001664 at 1665.

166. After learning from the Committee's financial advisors that the [redacted]—the Committee discussed with its advisors "***how it could perhaps look at both the LRP and consensus analyst estimates***." VIA_WILEN_001664 at 1666. This statement suggests misplaced priorities, as a special committee trying to get a fair deal for its minority investors would obviously concentrate on financial analyses based on the LRPs and actual performance rather than giving extra weight to public analyst views, which undervalued the company.

3. The Viacom Special Committee Acts in Bad Faith to Benefit CBS and Ms. Redstone

167. At the following meeting, on June 14, 2019, the Viacom special committee noted that while it aimed to negotiate on the economics to benefit the

Viacom investors, Ms. Redstone would have strong views and controlling weight on governance. As reflected in the minutes:

> In particular, the Committee discussed its preference to focus on the exchange ratio and not make board seats part of a negotiation. The Committee also discussed that National Amusements, Inc. ("NAI") would have a view on these topics, such that it was ***unrealistic*** to negotiate governance and board items just with CBS. . . .

VIA_WILEN_001672 at 1674. In short, the Committee again ceded responsibility over negotiating a key part of the deal to Ms. Redstone and NAI.

168. The most significant disloyal act, however, was the formal decision to minimize the negotiating leverage that Viacom's management was working so hard to achieve. During the Executive Session on June 14, 2019, the committee "determined to direct its financial advisors to use both the LRP and the consensus analyst estimates, with ***greater weight given to consensus analyst estimates*** in light of the fact that (1) [redacted] (2) the outer years of any forecast provide disproportionate weight to the discounted cash flow ('DCF') value of the company and (3) the outer years were least certain."

169. The Committee incorrectly asserted that the foregoing considerations were likely to have the same effect on CBS's LRP: supposedly, "in the outer years . . . CBS's forecast was . . . [redacted] VIA_WILEN_001672 at 1675.

170. That statement is belied by their financial advisors' analyses. While CBS's management projected [redacted]

171. Specifically, in its terminal year (the year based off which the majority of the value of the company is typically calculated), CBS's LRP cash flows [redacted] As the special

committee knew, DCF valuations discount *cash flows* and not revenues or operating income. The [redacted]—not the higher revenue—matter far more for valuation purposes. Thus, [redacted]

172. Nonetheless, the Committee directed its financial advisors to place "***greater weight . . . [on] consensus analyst estimates***." The ***Viacom*** special committee stated that this instruction would "allow the Committee to look at the Company and CBS on a comparable basis, and [redacted]

173. The Viacom special committee's decision smacks of bad faith. As discussed, the statement in the minutes regarding CBS projections being [redacted] is misleading at best. The decision to use consensus projections also benefits CBS in the short term. Moreover, the Viacom special committee's express reason for this decision was to help [redacted]

174. In making this decision, the Viacom special committee knowingly negotiated against itself, benefiting CBS while harming Viacom. Such an instruction runs so counter to Viacom stockholders' best interests and is so bizarre that it indicates bad faith.

175. Similarly, the decision to use consensus projections for Viacom was also bad faith given that [redacted] The decision flies in the face of the months that Viacom management spent demonstrating that the public market undervalued the Company.

176. Looking at consensus analyst estimates for the two companies creates a "comparable basis" only insofar as they're comparably ***wrong*** and misstate the two companies' cash flows. And, as Michael Nathanson of MoffettNathanson later observed, it is hard to "understand how ***either the board or their advisors agreed on an exchange ratio using a public equity with free cash flow estimates that were this materially wrong***." Negotiators use the wrong figures when they are trying to back into a result.

177. As seen above, the Viacom special committee knew that using consensus estimates rather than the LRPs results in a *lower* range of appropriate exchange ratios and a smaller portion of Viacom stockholder ownership of the combined company. They saw that the effect of that instruction was to move the negotiating range to center the market ratio (and, relatedly, the 2018 agreed-on ratio of 0.6135) and to justify a lower value for Viacom shares. By contrast, [redacted]

[redacted] *See* Exh. 7, VIA_WILEN_001717 at 1730 (exchange ratios based on Viacom management DCF ranged from [redacted], while exchange ratios based on consensus estimates ranged from [redacted]).

178. In short, negotiators acting in good faith would at least try to secure the best ratio for Viacom investors. These negotiators worked for Ms. Redstone only.

F. Despite Another Quarter of Outperformance, the Viacom Special Committee Trades Value for Ms. Redstone's Governance Preferences

179. Viacom's special committee primed its advisors to enter negotiations with CBS's financial advisors with valuations weighted to benefit CBS. As negotiations began, the market contemplated Viacom receiving a premium to or at the market ratio. As Marci Ryvicker at Wolfe Research wrote on June 28, 2019, "There seems to be two camps here. Some believe VIAB should get a premium, others say the best way to stave off shareholder lawsuits … is the current [market ratio] of 0.60."

180. However, despite Viacom being healthier and its prospects more proven than in the prior year, the negotiated ratio quickly dropped under the 0.6135 exchange rate Viacom had secured the year before.

181. On June 19, 2019, during opening exchange ratio discussions, Viacom's advisors attempted to establish 0.6135 as "the floor for future negotiations." During these discussions, CBS's financial advisors indicated that the exchange ratio should be "at-or-near market" for a deal to occur. They also stated that the prior ratio was "irrelevant to the current negotiations," partially because of "***differences in the proposed governance terms of the currently proposed transaction as compared with the proposed governance terms***" in the 2018 transaction—namely, the front-runner for the role of Chief Executive Officer. Proxy at 90.

182. Besides NAI's resistance to a majority of the minority clause, Ms. Redstone also made clear her preference for Bakish as the CEO of the combined company. Bakish's fealty to Ms. Redstone made him the obvious choice to the lead the combined company. As a February 11, 2019 *Vanity Fair* article, titled "Shari's Choice: Should Redstone Give Up on a CBS-Viacom Merger and See the Light of a CBS-Discovery Deal," put it, Ms. Redstone "prizes fealty, and has long wanted Bakish to succeed Moonves once CBS and Viacom were combined. She may still want Bakish to lead CBS, and that lone could scotch a CBS merger with Discovery. Certainly Bakish would be much easier for Shari to control that [Discovery Inc. CEO David] Zaslav."

183. The Viacom special committee, aware that governance and value were traded off and that CBS viewed Bakish's appointment as CEO of the combined

company as [redacted] chose to prefer Ms. Redstone's governance demands over retaining economic value for its shareholders. As for Ms. Redstone, given her economic indifference to the terms of the Merger, she had no problem sacrificing economic value for personal wins: installing her loyalists at the helm of the combined company.

184. On July 8, 2019, Bakish met individually with four members of the CBS special committee, who informed Bakish that:

> a path to a potential transaction, from CBS' perspective, would require that (1) first, the CBS special committee agree with Mr. Bakish on the vision for the combined company, (2) second, the respective special committees agree on governance and management matters and (3) third, the respective special committees agree on an exchange ratio, and that the CBS special committee intended to work through items (1) and (2) prior to working through item (3).

185. The parties expressly understood that value was being horse-traded away for governance—for the position of CEO, among others. The Viacom Committee knew Ms. Redstone's demands for a loyal management team overshadowed other priorities. When Bakish informed the Viacom special committee later that day of CBS's requirement, the committee knew it would stand at a disadvantage discussing governance before the exchange ratio.

186. Nonetheless, the very next day, the Viacom special committee caved to the CBS special committee's demand purportedly because [redacted]

[redacted] In other words, the Viacom special committee allowed CBS to dictate the negotiations because it prioritized effectuating the transaction consistent with Ms. Redstone's wishes over the interests of Viacom stockholders.

187. Under the shadow of Ms. Redstone's control and CBS's insistence that value must be traded for governance, Viacom also failed to take advantage of its continuing market outperformance and ceded the benefit of synergies.

188. In July 2019, the Viacom special committee saw a Morgan Stanley and LionTree synergy analysis. The analysis showed the exchange ratios created after synergies were added to the then-current market ratio exchange ratio at a fifty-fifty attribution between CBS and Viacom. [redacted] *See* VIA_WILEN_001776 at 1783 (July 17, 2019 Viacom Special Committee Presentation, Implied Adjusted Exchange Ratio in the shaded box):

[redacted]

189. On August 1, 2019, economic negotiations began in earnest after CBS management informed the CBS special committee of its "expectations . . . regarding Viacom's quarterly earnings announcement scheduled to be held on August 8, 2019" derived from due diligence—specifically, that Viacom would again outperform. Proxy at 99.

190. Viacom formally proposed an initial exchange ratio that "reflect[ed] a 50/50 sharing of synergies" at a low synergies estimate of $600 million. Reacting "extremely negatively," the CBS representatives soundly rejected this offer.

VIA_WILEN_1608 at 1609 (August 2, 2019 Viacom Special Committee Minutes). Over the course of the next few days, to achieve Ms. Redstone's goal of consolidation, Viacom's advisors dropped their bid several times to 0.6125, ceding more and more value—including the benefit of synergies—to CBS stockholders.

191. On August 8, 2019, Viacom reported results from the preceding quarter.

192. As the CBS special committee were told, Viacom's Q3 results surpassed market expectations yet again. A Deutsche Bank analyst remarked that Viacom's third quarter results "exceeded Adj. OI estimates for both Media Networks and Paramount." UBS remarked that the 3Q results were again "[b]etter than expected." A J.P. Morgan analyst noted how "impressed" he was by Viacom management's accomplishments and remarked that "these accomplishments and more favorable outlook ***strengthens management's hands a bit, suggesting a possible slight premium to the .6135 previous exchange ratio***."

193. Despite its strengthened hand, when negotiations recommenced on August 11, Viacom folded. After the Viacom special committee was informed by its advisors that CBS would only accept an exchange ratio under 0.60, Viacom's representatives quickly capitulated. On August 12, the parties agreed on an inadequate exchange ratio of 0.59625 for each Viacom share, regardless of class.

194. CBS was thus able to leverage Ms. Redstone's personal governance preferences and her expectation that an agreement be reached to impose unfair economic terms on the Viacom minority stockholders.

195. As agreed, the board of the combined company will consist six former CBS directors (Beinecke, Byrne, Goldner, Griego, Schuman, and Frederick O. Terrell), four "independent" Viacom directors (McHale, Nelson, Phillips, and Seligman), and three NAI designatees (Ms. Redstone, Klieger, and Bakish).

196. Mr. Bakish will serve as combined company CEO. Ms. Redstone will serve as chair of the combined company, having stationed at its helm an administrator known to defer to her.

197. Once the two entities are combined, Redstone will be able to sell stakes in the combined company to a digital giant such as Comcast, Sony, Apple or Disney, obtaining liquidity for her family and securing the Redstone "legacy" for her children. Regardless of how the CBS and Viacom non-affiliated stockholders might benefit from any future payout of a sale of ViacomCBS, the unfair exchange ratio currently and permanently injures Viacom stockholders by giving them an inadequate portion of the combined company.

198. For his loyalty to Ms. Redstone, Defendant Bakish may receive up to $37 million per year in base salary, equity grants, and cash bonuses—almost doubling the $19.9 million in salary, bonus, and stock he received last year.

199. Non-party Joseph Ianniello will be retained as head of a newly designated CBS unit. His current employment contract provides that, in connection with not being promoted to CEO, Ianniello will receive a one-time $70 million dollar cash golden parachute to be paid when the Merger closes; combined with a one-time stock grant valued at around $20 million that he is due to receive, Ianniello will walk away from this transaction $100 million richer. Viacom minority investors could have used that value, but NAI prioritized eliminating the last remnant of the Moonves era.

200. The members of the Viacom special committee, too, have met their mandate. They can rest easy, as they are indemnified—by the Company at least, if not by NAI.

G. The Special Committee Eschews Basic Minority Protections

201. As noted, in addition to failing to secure fair value, this conflicted Viacom special committee failed to seek, much less institute, established corporate governance protections.

202. First, there will be no majority of the minority condition to permit Viacom minority shareholders to weigh in on the transaction. Thus, regardless of what any minority investor thinks, Shari Redstone’s 78.9 percent voting control of CBS and 79.8 percent voting control of Viacom assures that the Merger is completed.

203. In the 2018 stage of the Merger discussions, the Director Defendants had not pursued a majority of the minority vote condition because "National Amusements, Inc. did not propose such a condition in the 2016 discussions, nor did it propose such a condition in its request this year for the parties to engage in discussions." VIA_WILEN_002485 at 2486.

204. The decision to forgo seeking a majority of the minority provision shows Ms. Redstone's continued shadow over the entire process. After all, if NAI genuinely stayed out of the process—as the 2018 settlement agreement required—it is inconceivable that any independent director acting in good faith would fail to press for this protection.

205. Here, NAI signaled the committee to ignore a majority of the minority provision. As mentioned, in March 2019—*even before* CBS representatives contacted Viacom management to resume Merger talks—NAI counsel called to "remind" the Viacom special committee counsel that although NAI was "not permitted at that time to . . . express a view as to whether any potential combination should be conditioned on receipt of a majority of the minority vote, . . . NAI had not been willing to commit to such a condition in the prior discussions in 2016 and in 2018." Proxy at 82.

206. The Viacom special committee correctly read NAI as having given an interdiction, and abdicated any responsibility to seek a majority of the minority approval condition to protect the minority shareholders and the Company.

207. In short, NAI threw the weight of its voting shares around in the developing Merger talks to express its own views regarding the advisability of a majority of the minority clause, even before the Viacom special committee had the opportunity to discuss the issue. While refusing to let the minority investors have a say in the deal is Ms. Redstone's prerogative, that decision comes with legal consequences.

208. The minutes do not reflect that the Viacom special committee ever discussed the obvious benefits that Viacom's own stockholders would attain through such a condition, particularly since CBS had yet to disclose its financial troubles. VIA_WILEN_001660. Instead, ***Viacom*'s** special committee, which lacked authority to recommend or institute a majority of the minority approval condition for ***CBS***, discussed the risk that ***CBS's minority stockholders*** would use any leverage created by such a clause to force a renegotiation of the exchange ratio in their favor. VIA_WILEN_001642 at 1644.

209. Second, the minutes and other materials reveal that the Viacom special committee made no attempt to institute a collar on the deal price or other minority

protections (such as the ability to effect a change in recommendation tied to a stock price drop).

210. This failure is glaring. As described above, Viacom's special committee was aware from at least May 9, 2019 that the CBS [redacted] VIA_WILEN_001567 at 1568-69.

211. Any fiduciary who is asked to approve a stock-for-stock merger with another company whose market price plainly reflects incorrect and overstated financial data would consider imposing a collar or similar mechanism to protect their own stockholders from the known downside risk created by those [redacted]

212. There is no indication in the entire Section 220 record that the Viacom special committee ever contemplated, much less proposed or demanded, protection for a post-announcement stock drop for Viacom stockholders, despite the known [redacted] The Viacom special committee acted to benefit NAI—not minority stockholders.

H. The Merger Exchange Ratio Is Unfair to Viacom Stockholders

213. In the end, the Viacom special committee accepted a final exchange ratio of 0.59625. The history of prior proposals confirms the unfairness of the final ratio being imposed on Viacom stockholders.

214. In 2018, the Viacom special committee countered CBS's initial offer of a 0.55 exchange ratio by stating that ***0.60 was "the starting point***." At the time, this rejected ratio of 0.55 impliedly valued Viacom at approximately ***$11.9 billion***.

215. In 2018, with CBS in a strong financial position and Viacom just beginning to execute on Bakish's turnaround plan, the parties had agreed to a 0.6135 exchange ratio that valued Viacom at about ***$12.8 billion***.

216. Nevertheless, in 2019—even after a successful operational turnaround, beating its own "ambitious" 2018 projections and consistently beating consensus—the Viacom board and special committee accepted an exchange ratio that effectively valued Viacom at ***$11.8 billion***—less than the amount it rejected the year prior.

217. This allocation of the combined company materially undervalues Viacom's contributions of, among other things, operating income and cash flows to the combined company.

218. Viacom stockholders have suffered a significant injury: an unfair exchange ratio, negotiated through an unfair process, which gives Viacom stockholders less than their fair share of the combined company.

219. Besides the unfair exchange ratio between CBS and Viacom, nothing stopped the Viacom special committee from demanding from NAI sufficient value to make this deal fair. The fact that it made no such demand speaks volumes.

IV. The Market Reacts Poorly to the Merger

220. After details of the transaction were confirmed on August 13, 2019, both companies' closing stock price declined. Viacom's stock declined 7.1 percent from August 12 (the day before the announcement) to August 14 (the day after the announcement. CBS's stock declined 6.9 percent over the same period. By the end of the week, CBS stock sank 10 percent, while Viacom stock sank 13 percent.

221. Market commentary was also negative. These included that the "final share exchange ratio between the two companies is . . . certainly not as much as we hoped for given our view on VIA.B since upgrading our rating on 1/11/19." Another analyst commented that the governance structure was "less than ideal," and "could result in more operational volatility post-deal." A Wells Fargo Securities analyst commented that it was "not clear what this deal does for shareholders beyond NAI (National Amusements). . . . To us, this deal is mostly about National Amusements consolidating its control."

A. The Form S-4 Begins to Disclose CBS's Financial Troubles

222. After the S-4 was released in October 2019, the market discovered that CBS's outlook was much worse than initially signaled.

223. Mr. Nathanson of MoffettNathanson slammed CBS for failing to "disclose the massive variance to 2019 free cash flow and 2020 earnings estimates and cash flows," despite having "ample time" since it had given guidance in the

beginning of the year. It was clear that "CBS management knew Street numbers were ***wildly wrong*** on free cash flow, but somehow never shared that" important information. The report indicates that the "negative revisions to key metrics (except revenues)" were an "***abject disaster***."

224. The key metrics that incited shock and negative commentary were the free cash flows. According to Mr. Nathanson's report, due to structural pressures in the industry, "***free cash flow yields are usually the valuation backstop***" appropriate to use to value media and entertainment companies. The report also notes that CBS's cash flow forecasts were down 20 percent over the last two quarters of 2019 as compared to Moffett's projections; its 2020 cash flow forecast was 37 percent lower than Moffett had been forecasting; and the "differential keeps growing." CBS's stock price in fact dropped 3.8 percent on disclosure of this information.

225. After the S-4 issued, analysts have noted that the market incorrectly prices Viacom's assets. As Barclays analyst Kannan Venkateshwar noted on October 21, 2019, "at present levels, proforma [combined] CBS is implicitly pricing in zero value for Paramount," and "VIAB is trading at an earnings multiple of just ~5.7x due to its anchor to CBS stock."

B. Viacom Again Outperforms its LRP

226. On November 14, 2019, Viacom reported its FY'2019 results. Paramount had become profitable for the full year for the first time in four years,

having shown three straight years of year-over-year AOI improvement. The Company had returned to full year growth for its U.S. advertising and U.S. affiliate sales businesses. Viacom had exceeded both its 2019 LRP and consensus expectations in AOI in FY'19 of $2.7 billion—4 percent higher than the $2.6 billion in AOI forecasted by the market [redacted] It also met consensus projected free cash flows of $1.4 billion, [redacted]

227. Meanwhile, CBS has stated in Court filings that the 0.59625 exchange ratio is "***objectively favorable*** to CBS stockholders, well within the range of positive outcomes [for CBS] . . . and is a particularly good result in light of agreements reached with Viacom regarding the combined company's governance . . . ."[12] Given Defendants' disloyal conduct, it is no surprise that the exchange ratio is "objectively favorable" to CBS stockholders—and unfair to Viacom stockholders.

CLASS ALLEGATIONS

228. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery individually and as a class action on behalf of all holders of VIA and VIA.B common stock (except Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants or their

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12 Def.'s Pre-Trial Answering Br. at 17, *Bucks Cty. Emps. Ret. Fund v. CBS Corp.*, C.A. No. 2019-0820-JRS (Nov. 21, 2019).

successors in interest) who are or will be threatened with injury arising from the defendants' wrongful actions, as more fully described herein (the "Class").

229. This action is properly maintainable as a class action because:

(a) The members of the Class are so numerous that joinder of all members is impracticable. The Company has thousands of stockholders who are scattered throughout the United States. As of November 22, 2019, there are approximately 354 million shares of Class B Viacom common stock outstanding, of which stockholders unaffiliated with Defendants hold approximately 92 percent, and approximately 49 million shares of Class A Viacom common stock, of which stockholders unaffiliated with Defendants hold approximately 20 percent.

(b) There are questions of law and fact that are common to members of the Class, including: (i) whether Defendants breached their respective fiduciary duties in connection with the Merger of Viacom with CBS; (ii) whether Defendants acted in furtherance of their own self-interest to the detriment of the Class; (iii) the existence and extent of any injury to the Class or Plaintiffs created by the breach, and (iv) the proper measure of damages.

(c) Plaintiffs are committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other Class members, and Plaintiffs have the same interests as the other Class members. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

(d) No difficulties are likely to be encountered in the management of this action as a class action.

(e) A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duties
Directly Against Shari Redstone and NAI as Controlling Stockholders

230. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

231. Redstone and NAI were the controlling stockholders of Viacom; as such, they owed Plaintiffs and the Class the highest fiduciary duties of care, loyalty, good faith and candor.

232. By virtue of their positions as controlling shareholders (in addition to Ms. Redstone's position of director) of Viacom and their exercise of control over the business and corporate affairs of the Company, including the Merger, they at all relevant times had the power to control, influence and cause—and actually did control, influence and cause—the Company to engage in the wrongful conduct alleged herein.

233. The Merger was inadequate and unfair, reflecting an unfair price and an unfair process.

234. Through the events and actions described herein, Ms. Redstone and NAI breached their fiduciary duties to Plaintiffs and the Class.

235. As a result, Plaintiffs and the Class were harmed by the failure to receive fair consideration for their Viacom shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

COUNT II
Breach of Fiduciary Duties Directly Against the Director Defendants

236. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

237. By virtue of their positions as directors of Viacom, the Director Defendants owed fiduciary duties of care, loyalty, and good faith to nonaffiliated Viacom stockholders. Those duties required them to place the interests of Viacom's stockholders above the interests of any controller, third-party and/or the Director Defendants themselves.

238. The Director Defendants breached their fiduciary duties by preferring Ms. Redstone's dream to combine Viacom and CBS and governance demands over the rights of nonaffiliated stockholders and subsequently approving an exchange ratio that deprived Viacom stockholders of fair value. The Director Defendants

breached their fiduciary duties by conducting the unfair process alleged above, which resulted in an unfair price.

239. As a result, Plaintiffs and the Class were harmed by the failure to receive fair consideration for their Viacom shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

COUNT III
Breach of Fiduciary Duties
Directly Against Officer Defendant Robert M. Bakish

240. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

241. As an officer of Viacom, Defendant Bakish owed fiduciary duties of care, loyalty, and good faith to Viacom stockholders. Those duties required him to place the interests of Viacom and its stockholders above his own interests and/or the interests of the Controlling Shareholders. As an officer, Bakish is not exculpated for breaches of his duty of care.

242. The Merger was inadequate and unfair, reflecting an unfair price and an unfair process.

243. Through the events and actions described herein, Defendant Bakish violated his fiduciary duties of care, loyalty, and good faith in connection with the Merger and by pursuing self-enrichment as the chief executive of ViacomCBS over the interests of Viacom stockholders.

244. As a result, Plaintiffs and the Class were harmed by the failure to receive fair consideration for their Viacom shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter an order:

A. Declaring that this action is properly maintainable as a class action and certifying the Class and the Plaintiffs as the Class representatives;

B. Declaring that the Director Defendants breached their fiduciary duties;

C. Declaring that Defendant Shari Redstone and NAI breached their fiduciary duties as controlling stockholders;

D. Declaring that Defendant Robert Bakish breached his fiduciary duties in his capacity as an officer of Viacom;

E. Awarding damages, together with pre- and post- judgment interest, for harm arising from the foregoing misconduct, in an amount to be proven at trial;

F. Awarding the costs, expenses and disbursements incurred in this action, including experts' and attorneys' fees; and

G. Awarding such other relief as the Court deems just and proper.

DATED: February 28, 2020

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ Gregory V. Varallo
Gregory V. Varallo (Bar No. 2242)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

Counsel for Lead Plaintiff California Public Employees' Retirement System

OF COUNSEL:

Mark Lebovitch
Jeroen van Kwawegen
Edward G. Timlin
Andrew E. Blumberg
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Counsel for Lead Plaintiff California Public Employees' Retirement System

Chad Johnson
Noam Mandel
Desiree Cummings
ROBBINS GELLER RUDMAN & DOWD LLP
125 Park Avenue, 25th Floor
New York, NY 10017
(212) 693-1058

Christopher H. Lyons
ROBBINS GELLER RUDMAN & DOWD LLP
414 Union Street
Nashville, TN 37219
(615) 244-2203

Counsel for Additional Plaintiff Park Employees' and Retirement Board Employees' Annuity and Benefit Fund of Chicago

Francis A. Bottini, Jr.
Anne B. Beste
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
(858) 914-2001

Counsel for Additional Plaintiff Louis M. Wilen

CERTIFICATE OF SERVICE

I, Gregory V. Varallo, do hereby certify that on this 4th day of March, 2020, I caused copies of the foregoing *Public [redacted] version of the First Amended Verified Class Action Complaint* to be filed via File & Serve*Xpress* e-Filing and served upon counsel as follows:

Jon E. Abramczyk, Esq.
D. McKinley Measley, Esq.
Alexandra M. Cumings, Esq.
MORRIS, NICHOLS,
ARSHT & TUNNELL LLP
1201 N. Market Street
Wilmington, DE 19801

Matthew E. Fischer, Esq.
Michael A. Pittenger, Esq.
J. Matthew Belger, Esq.
Jacqueline A. Rogers, Esq.
Callan R. Jackson, Esq.
POTTER ANDERSON
& CORROON LLP
Herculaes Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19899

Gregory P. Williams, Esq.
Blake K. Rohrbacher, Esq.
Kevin M. Regan, Esq.
RICHARDS, LAYTON
& FINGER, P.A.
One Rodney Square
920 N. King Street
Wilmington, DE 19801

Ned Weinberger, Esq.
LABATON SUCHAROW LLP
300 Delaware Ave., Suite 1340
Wilmington, DE 19801

/s/ Gregory V. Varallo
Gregory V. Varallo (Bar No. 2242)