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Case No. 9425-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GARY LIVINGSTON, derivatively on behalf of CABLEVISION SYSTEMS CORPORATION, Plaintiff, v. CHARLES F. DOLAN, JAMES L. DOLAN, KATHLEEN M. DOLAN, DEBORAH DOLAN-SWEENEY, MARIANNE DOLAN WEBER, THOMAS V. REIFENHEISER, JOHN R. RYAN, and VINCENT TESE, Defendants, -and- CABLEVISION SYSTEMS CORPORATION, a Delaware Corporation, Nominal Defendant.	C.A. No. 9425-VCN

OPENING BRIEF IN SUPPORT OF THE DOLAN DEFENDANTS' MOTION TO DISMISS THE COMPLAINT PURSUANT TO COURT OF CHANCERY RULE 12(b)(6)

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Defendants Charles F. Dolan, James L. Dolan, Kathleen M. Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber (the "Dolan Defendants") respectfully submit this opening brief in support of their motion pursuant to Chancery Court Rule 12(b)(6) to dismiss Counts I, II, and IV of the Complaint filed by Plaintiff Gary Livingston ("Plaintiff"), purportedly on behalf of nominal defendant Cablevision Systems Corporation ("Cablevision" or the "Company").

PRELIMINARY STATEMENT

Plaintiff's claims are premised on the novel theory that the Dolan Defendants should be held liable for merely *receiving* executive or director compensation that Plaintiff believes was unwarranted. There is no support in Delaware law for such a claim. Plaintiff's challenge to Charles and James Dolan's executive compensation packages fails because the compensation at issue was awarded by an independent compensation committee, and in any event Charles and James Dolan breached no independent duty by receiving it. Plaintiff's challenge to Charles and James Dolan's receipt of special stock options likewise fails because those options were awarded by the Compensation Committee as part of a broad-based incentive program, and Plaintiff's unsupported assertion that Charles and James Dolan "were not going anywhere," even if true, would not render them liable for corporate waste. Delaware law does not require an active job search as a

condition of receiving incentive compensation. Finally, Plaintiff's claim that Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber breached the duty of loyalty by receiving standard director compensation notwithstanding occasional absences from Board meetings fails because, absent allegations of an intentional and conscious dereliction of duty, Delaware law does not permit a plaintiff to second-guess a director's level of routine Board involvement. The claims against the Dolan Defendants should be dismissed.

STATEMENT OF FACTS[1]

I. Cablevision and Its Board of Directors

Cablevision is a leading telecommunications and media company headquartered in Bethpage, New York, and incorporated under Delaware law. Complaint ("Compl.") ¶ 11. Cablevision's predecessor company was founded in 1973 by Charles Dolan, whose nearly unparalleled media credentials also include founding HBO and Manhattan Cable Television. *Id.* ¶ 12.

Charles Dolan and members of his family (the "Dolan family") hold more that 50% of the Cablevision stockholder voting power, *id.* ¶ 23, which under the

[1] The facts are taken from the Complaint and Cablevision's 2011, 2012, and 2013 Proxy Statements and FY 2012 Form 10-K, which the Court may consider in addition to the Complaint's allegations because Plaintiff relies on and incorporates these documents as "source[s] for the . . . facts as pled in the complaint." *Orman v. Cullman*, 794 A.2d 5, 16 (Del. Ch. 2002); *In re Gardner Denver, Inc.*, No. CIV.A. 8505-VCN, 2014 WL 715705, at *2 (Del. Ch. Feb. 21, 2014) (Noble, V.C.).

New York Stock Exchange ("NYSE") corporate governance listing standards entitles Cablevision to elect to be designated a "controlled company," *id.* ¶ 26. Cablevision discloses to its stockholders that it is a "controlled company" under the NYSE listing standards and is "controlled by the Dolan family." *Id.*; Cablevision FY 2012 10-K at 29.[2] Cablevision has two classes of stock: Class A and Class B. Compl. ¶ 21. Cablevision Class A common stock is traded on the NYSE and is entitled to one vote per share. *Id.* Class A stockholders have the right to elect at least 25% of the Cablevision Board of Directors. *Id.* Class B common stock is owned by the Dolan family and is entitled to ten votes per share. *Id.* Class B stockholders are entitled to elect up to 75% of the Cablevision Board of Directors. *Id.*

As a "controlled company," Cablevision may elect not to comply with the NYSE requirement that a listed company must have a majority of independent directors, and has elected not to comply with this requirement. Compl. ¶ 26. The Company has seven independent directors and ten Dolan family directors, five of whom are defendants in this action. *Id.* ¶¶ 2, 28, 29. Although Cablevision may also elect as a "controlled company" not to comply with the NYSE requirement of

[2] The additional documents cited are appended to the Affidavit in Support of the Compensation Committee Defendant's Motion to Dismiss.

having an independent compensation committee, Cablevision does comply with this requirement and has a Compensation Committee comprised of three independent directors: John Ryan, a retired United States Navy Admiral, Vincent Tese, former Director of Economic Development for the State of New York, and Thomas Reifenheiser, former managing director of JP Morgan Chase. *Id.* ¶ 17– 19, 20.

II. Allegations of Wrongdoing

A. The Compensation Paid to Charles Dolan and James Dolan

In 2010, 2011, and 2012, the Compensation Committee determined Charles and James Dolan's compensation, the terms of which were fully disclosed. *Id.* ¶¶ 52–53. As Chairman and CEO, respectively, Charles and James Dolan are responsible for running Cablevision's multi-billion dollar enterprise, and between them have over eight decades of experience running major media companies. *Id.* ¶¶ 12, 13, 23. To determine compensation, the Compensation Committee engaged an independent compensation consultant on whose expertise they relied; reviewed Charles and James Dolan's past performance and compensation; and identified a core peer group of over a dozen companies against which to compare James Dolan's executive compensation. *Id.* ¶ 53; *see, e.g.*, Cablevision 2012 Proxy at 21–22. With the limited exception that James Dolan and the Company's Chief

Financial Officer were permitted to provide input regarding Cablevision's peer companies, the Compensation Committee alone determined and approved Charles and James Dolan's compensation in 2010, 2011, and 2012. Compl. ¶ 56; Cablevision 2012 Proxy at 22.

Cablevision's executive compensation consists of a base salary, perquisites, annual cash incentives, restricted stock awards, and cash performance awards. Compl. ¶ 53. James Dolan's compensation totaled $13.32 million in 2010, $11.24 million in 2011, and $16.62 million in 2012. *Id.* ¶ 54. Charles Dolan's compensation totaled $13.49 million in 2010, $10.68 million in 2011, and $16.09 million in 2012. *Id.*

Plaintiff alleges that the compensation paid to Charles and James Dolan from 2010 through 2012 amounted to "handouts under the guise of executive compensation" and that Charles and James Dolan breached their fiduciary duties by receiving it. *Id.* ¶ 52. To support this conclusion, Plaintiff alleges that James Dolan spends too much of his spare time as the lead singer of a band, and that Charles and James Dolan are at the helm of two other major media companies that were recently spun off from Cablevision: AMC Networks and The Madison Square Garden Company. *Id.* ¶¶ 68, 69. The Complaint says nothing about what Charles and James Dolan do at Cablevision or what their contributions are to the

Company. Instead, Plaintiff concludes that, because of their other responsibilities and pastimes, Charles and James Dolan cannot possibly satisfy their corporate duties at Cablevision.

B. Stock Options Grant

In 2012, the Compensation Committee made a special grant of stock options to a number of Company employees in order to incentivize and retain them. *Id.* ¶¶ 73, 75. Charles and James Dolan were among those receiving options. *Id.* Each option was granted with an exercise price equal to the closing price of the Class A common stock on the date of grant. Cablevision 2013 Proxy at 31. Thus, "[r]ecipients of stock options will only realize value if, and to the extent that, the price of Class A common stock on the date the stock option is exercised exceeds the exercise price." *Id.* The options vested over two years in 50% annual increments based on achieving a revenue-performance goal and continued employment through the vesting date. *Id.* As the Complaint acknowledges, it is "a legitimate business decision" for a compensation committee "to make a special stock option grant in order to 'further incentivize and retain' certain employees." Compl. ¶ 75. The Complaint does not assert any claims against the other Cablevision executives and employees who received the options. The Complaint only claims that stock option grants for Charles and James Dolan constituted a

waste of corporate assets based on the unsupported assertion that they are "not going anywhere"—an assertion at odds with Plaintiff's claim that Charles and James Dolan were overly focused on outside responsibilities and interests. *Id.* ¶ 76.

C. Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber's Board Participation

Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber received Cablevision's standard compensation for non-employee directors during each of the years at issue. In 2011 and 2012, non-employee director compensation consisted of a base fee of $60,000 per year (increased from $50,000 per year on May 24, 2011); $2,000 per Board, committee, and non-management director meeting attended in person; and $500 per Board, committee, and non-management director meeting attended by telephone. *Id.* ¶ 34. In addition, each non-employee director receives a number of restricted Class A stock units valued at $110,000, and complementary cable, voice, and internet services. *Id.* The non-employee director compensation package is set by Cablevision's Board. *Id.* ¶ 33.

Plaintiff does not allege that Cablevision's non-employee director compensation is excessive and notably declines to challenge the compensation of any other non-employee director. Instead, the Complaint alleges that Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber in particular are not

sufficiently qualified for, or engaged in, their Board duties and are thus breaching their duty of loyalty by receiving the standard non-employee director compensation. *Id.* ¶¶ 32, 36. The Complaint claims that their "experience and qualifications are severely lacking" but pleads no facts to support that conclusion, other than acknowledging that all three have experience working at nonprofits and charitable foundations. *Id.* ¶ 42. Although the three women's backgrounds, experience, and contributions to the Company vary, the Complaint lumps them together in making the unsupported accusation that they failed to "place the Company's best interests ahead of their own personal interests" in 2011 and 2012. *Id.* ¶ 43.

The Complaint purports to set out each woman's Board attendance record based on the Company's Proxy statements. Compl. ¶¶ 36, 37. Contrary to Plaintiff's suggestion, however, the Proxy statements do not state how many meetings any particular director attended. *Compare* Compl. ¶¶ 36, 37 *with* Cablevision 2012 Proxy at 18 *and* Cablevision 2013 Proxy at 18. Instead, the Proxy statements indicate the total compensation received by each non-employee director in a given year; the base salary of a Cablevision non-employee director; the compensation for attending a Board meeting in person ($2,000); and the compensation for attending a Board meeting telephonically ($500)—from which

Plaintiff attempted to reverse-engineer attendance records. *See* Cablevision 2012 Proxy at 16–18; Cablevision 2013 Proxy at 16–18. Plaintiff also alleges, contrary to Delaware law, that telephonic Board meeting attendance is insufficient. Compl. ¶ 36.

In some instances, Plaintiff was able to accurately calculate Board attendance. For example, the difference between Deborah Dolan-Sweeney's base salary ($60,000) and total cash compensation ($66,500) in 2012 was $6,500. *See* Cablevision 2013 Proxy at 16, 18. There were six Board meetings that year. Compl. ¶ 36. Plaintiff correctly calculated that Deborah Dolan-Sweeney attended three Board meetings in person and one telephonically, since that is the only possible combination of $2,000 and $500 representing six or fewer meetings and totaling $6,500. *See* Compl. ¶ 36.

Other times, Plaintiff's calculations are unsupported by, or contrary to, the information contained in the Proxy. For example, the difference between Deborah Dolan-Sweeney's base salary ($56,044[3]) and total cash compensation ($63,544) in 2011 was $7,500, *see* Cablevision 2012 Proxy at 16, 18, but Plaintiff only accounted for $6,500, *see* Compl. ¶ 37. Plaintiff thus alleges that in 2011 Deborah

[3] This number reflects that the non-employee directors' base salary increased $10,000, from $50,000 to $60,000, on May 24, 2011.

Dolan-Sweeney only attended three Board meetings in person and one telephonically, and failed to account for the additional two meetings she attended telephonically that the $1,000 difference represents. *Id.*

In the case of Kathleen Dolan's 2011 Board attendance, Plaintiff simply made the most self-serving guess, claiming that the $3,000 difference between her base salary and total cash compensation represented one meeting attended in person and two attended telephonically. *Id.* ¶ 37. An equally plausible (and in fact correct) conclusion would be that Kathleen Dolan attended six meetings telephonically at $500 per meeting. The Complaint makes no allegations about Marianne Dolan Weber's Board participation in 2011.

The few facts that are well-pled[4] demonstrate that Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber attended at least, and generally well more than, 50% of the Board meetings in the years at issue.

[4] Specifically, the only well-pled facts indicate that of six meetings held in 2012, Kathleen Dolan attended three; Deborah Dolan-Sweeney attended four; and Marianne Dolan Weber attended four. Compl. ¶ 37. The Complaint contains no well-pled facts respecting their Board meeting attendance in 2011 for the reasons discussed *supra*. The Proxy on which Plaintiff purports to rely indicates that of nine Board meetings in 2011, Deborah Dolan-Sweeney attended six (earning $7,500 for Board meeting attendance) and Marianne Dolan Weber attended eight (earning $14,500 for Board meeting attendance). Cablevision 2012 Proxy at 18.

ARGUMENT

I. Standard of Review

In ruling on a motion to dismiss under Court of Chancery Rule 12(b)(6), "the Court accepts as true all well-pled factual allegations contained in the . . . complaint, but conclusory statements—those unsupported by well-pled factual allegations—are not accepted as true." *Beam v. Stewart*, 833 A.2d 961, 970 (Del. Ch. 2003), *aff'd*, 845 A.2d 1040 (Del. 2004). The Court "will draw all inferences logically flowing" from the Complaint in favor of the plaintiff "but only if such inferences are reasonable." *Id.* The Court may consider proxy statements, SEC filings, or other documents "integral to a plaintiff's claim and incorporated into the complaint." *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996). Moreover, the Court "need not accept as true [a] fact as alleged in the complaint" where that fact "is unambiguously contradicted by an integral document incorporated into the complaint." *Orman*, 794 A.2d at 16 n.9.

II. Plaintiff cannot state a claim for breach of fiduciary duty against Charles and James Dolan on the basis that they received executive compensation.

As explained in detail in the Compensation Committee's brief, which the Dolan Defendants adopt and incorporate by reference to the extent applicable to their defenses, Plaintiff has failed to state a claim against the Compensation

Committee in connection with Charles and James Dolan's executive compensation because the Committee's independent compensation decisions are protected by the business judgment rule. It follows that the Complaint fails to state a breach of fiduciary duty claim against Charles and James Dolan for "causing" or receiving their compensation. Compl. ¶ 113. No authority supports the illogical proposition that although an officer's compensation was determined by a process protected by the business judgment rule, receiving the compensation nevertheless constitutes a breach of the duty of loyalty. *See, e.g.*, *Wayne Cnty. Employees' Ret. Sys. v. Corti*, No. CIV.A. 3534-CC, 2009 WL 2219260, at *12 (Del. Ch. July 24, 2009), *aff'd*, 996 A.2d 795 (Del. 2010) (although plaintiff alleged that executives received excessive compensation, claim failed because compensation committee "exercised their independent and disinterested business judgment in approving the employment agreements"); *see also In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 757– 58 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006) (holding former CEO "did not breach [his] fiduciary duties" by receiving generous severance package).

III. Plaintiff cannot state a claim against Charles and James Dolan for waste of corporate assets where the relevant stock options vested over time.

The Compensation Committee's decision to award Charles and James Dolan stock options in 2012, and Charles and James Dolans' receipt of those options, is likewise insulated from the Plaintiff's second-guessing. A claim for waste of corporate assets—which is how the Complaint pleads the stock-options allegations against Charles and James Dolan—succeeds only in "the rare, unconscionable case" where the plaintiff has "shoulder[ed] the burden of proving that the exchange was 'so one sided that no business person of ordinary, sound judgment could conclude that the corporation has received adequate consideration.'" *In re Walt Disney Co. Derivative Litig.*, 906 A.2d at 74 (citing *Brehm v. Eisner*, 746 A.2d 244, 263 (Del. 2000)). "A corporate waste claim must fail if there is *any substantial* consideration received by the corporation." *White v. Panic*, 783 A.2d 543, 554 (Del. 2001) (internal citations omitted) (emphasis in original). "This onerous standard for waste is a corollary of the proposition that where business judgment presumptions are applicable, the board's decision will be upheld unless it cannot be attributed to any rational business purpose." *Freedman v. Adams*, 58 A.3d 414, 417 (Del. 2013) (internal citations omitted).

Because the Cablevision 2013 Proxy—on which Plaintiff repeatedly relies to plead facts about the stock-options grant—unequivocally illustrates that there was sufficient consideration for the stock-options award, the Complaint does not satisfy the onerous pleading burden required to state a waste claim. *See Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001) ("[A] claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law."). "[C]onsideration for stock options is often the reasonable prospect of obtaining the employee's valued future services." *Zupnick v. Goizueta*, 698 A.2d 384, 387– 88 (Del. Ch. 1997). That is the case here. The options granted had an exercise price equal to the closing price of the Class A common stock on the date of the grant, and the options then vested over a two-year period based on the achievement of a pre-established net revenue performance goal and continued employment through the vesting date. Because the options here are "exercisable at some future date after their issuance," they function "to motivate the recipient to continue to perform valuable service for the corporation," which Delaware courts have long held is ample consideration to defeat a waste claim. *Zupnick*, 698 A.2d at 387; *see Beard v. Elster*, 160 A.2d 731, 735–36 (Del. 1960).

The Complaint even acknowledges that it "may be a legitimate business decision" for the Compensation Committee "to make a special stock option grant in order to 'further incentivize and retain' certain employees," but concludes that such incentives would not apply to Charles or James Dolan because "they are not going anywhere." Compl. ¶ 75. But nothing in Delaware law requires employees to demonstrate active plans to depart in order to receive a retention bonus. Because the 2012 options vested over time, the "[r]ecipients of stock options," including Charles and James Dolan, "will only realize value if, and to the extent that, the price of Class A common stock on the date the stock option is exercised exceeds the exercise price." Cablevision 2013 Proxy at 31. Under Delaware law, this built-in incentive for the recipients of options to increase the Company's profitability is ample consideration for the options grant. *Zupnick*, 698 A.2d at 387.

IV. Plaintiff cannot state a breach of loyalty claim against Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber by merely alleging insufficient Board involvement.

Plaintiff's claim for breach of fiduciary duty against Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber must be dismissed because there is no claim under Delaware law permitting a plaintiff to second-guess a director's level of routine Board involvement. Plaintiff is asking the Court to take

the unprecedented step of permitting a breach of loyalty claim against these women for receiving Cablevision's standard non-employee director compensation—the level of which Plaintiff does not challenge—based only on inaccurate Board meeting attendance records and nonspecific allegations about their supposed lack of qualifications. This is a particularly troubling request where there are no allegations that these women in particular or the Board as a whole took specific action in violation of their duties or failed in their oversight of the Company as a result of their occasional absence from a Board meeting.

The Complaint does not and cannot allege Kathleen Dolan, Deborah Dolan-Sweeney, or Marianne Dolan Weber engaged in either "conduct motivated by subjective bad intent" or an "intentional dereliction of duty . . . [or] a conscious disregard for one's responsibilities" as necessary to state a breach of loyalty claim. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d at 66. The Complaint alleges only that the three women received the standard Cablevision non-employee director compensation while occasionally missing a Board meeting. The Complaint contains no allegations whatsoever regarding the reasons for these occasional absences or the three women's other actions as Board members, and thus makes no attempt to allege that they engaged in the first category of "classic, quintessential bad faith." *Id.* at 64.

Nor does the Complaint allege facts about Kathleen Dolan, Deborah Dolan-Sweeney, or Marianne Dolan Weber indicating a *conscious* or *intentional* dereliction of their duties. At most, the allegations that they missed Board meetings from time to time would rise to the level of gross negligence—for which all Cablevision directors are exculpated pursuant to the corporate charter. *See id.* at 66 ("grossly negligent conduct, without more, does not and cannot constitute a breach of the fiduciary duty to act in good faith"); *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d 106, 123 (Del. Ch. 2009) ("[A] plaintiff must show that the directors *knew* they were not discharging their fiduciary obligations or that the directors demonstrated a *conscious* disregard for their responsibilities such as by failing to act in the face of a known duty to act.") (emphasis in original).

Plaintiff does not and cannot allege, as he must to state a dereliction-type loyalty claim, that Kathleen Dolan, Deborah Dolan-Sweeney, or Marianne Dolan Weber were faced with a duty to act but consciously and with purpose eschewed that duty to the detriment of the Company. *Cf. In re China Agritech, Inc. S'holder Derivative Litig.*, No. CIV.A. 7163-VCL, 2013 WL 2181514, at *17 (Del. Ch. May 21, 2013) (declining to dismiss a breach of loyalty claim against directors of a company where the Complaint and Proxy showed that the audit committee failed to meet at all for two years); *Ryan v. Lyondell Chem. Co.*, No. CIV.A. 3176-VCN,

2008 WL 4174038, at *4 (Del. Ch. Aug. 29, 2008) (Nobel, V.C.) (declining to dismiss on summary judgment a breach of loyalty claim where the Complaint alleged that the directors failed to act although they knew the Company was potentially for sale and that Delaware law mandated pursuit of the best transaction available). On the contrary, the Complaint identifies no harm to the Company arising from the three women's alleged failure to have perfect attendance at Board meetings or to attend enough meetings in person.

Nor is there any legal basis for Plaintiff's contention that the three women's occasional participation in Board meetings via conference call was somehow insufficient. To the contrary, Delaware law explicitly provides that participation in a board meeting "by means of conference telephone or other communications equipment" constitutes "presence in person at the meeting." 8 *Del. C.* § 141(i).

Instead, the allegations against these women boil down to a recitation of what Plaintiff has calculated—at times incorrectly—to be their Board attendance in 2011 and 2012, and suggestions that they are "not qualified to serve on the [B]oard" because they only have management experience working at charitable foundations and nonprofit companies. Compl. ¶¶ 32, 42. Plaintiff's allegations that Kathleen Dolan attended only three and Deborah Dolan-Sweeney only four of nine Board meetings in 2011 are not supported by, or are contrary to, the Proxy on

which Plaintiff purports to rely and should be disregarded for purposes of deciding this motion. *Orman*, 794 A.2d at 16 n.9 (the Court "need not accept as true the fact as alleged in the complaint" where that fact "is unambiguously contradicted by an integral document incorporated into the complaint"); *Beam*, 833 A.2d at 970 ("conclusory statements—those unsupported by well-pled factual allegations—are not accepted as true" when deciding a motion to dismiss). These are the only instances in which one of the women is alleged to have attended fewer than 50% of the Board meetings in a particular year, and both are unsupported. The only well-pled facts in the Complaint demonstrate that each woman attended at least, and generally well more than, 50% of each year's Board meetings.

In addition, the Complaint plainly acknowledges that Cablevision non-employee directors are paid per meeting attended, and does not and cannot allege that Kathleen Dolan, Deborah Dolan-Sweeney, or Marianne Dolan Weber received payment for any meetings that they did not attend. Compl. ¶ 34. The Complaint also ignores that attending Board meetings is only one of the many things that a company's directors do. The structure of Cablevision's Board compensation—in which non-employee directors receive a base salary for their basic director duties including reading and preparing Board materials; a per-meeting fee for Board meetings attended; additional compensation for committee service; stock options to

align their financial interest with the success of the Company; and complementary Cablevision cable, voice, and internet services—implicitly recognizes this principle. *See id.* The Complaint contains no allegations regarding the three women's level of engagement in Board activities or in Company oversight generally.

Finally, Plaintiff's belief that Kathleen Dolan, Deborah Dolan-Sweeney, and Marianne Dolan Weber are not qualified to serve on the Cablevision Board does not state any claim against them under Delaware law. Plaintiff presents no allegations regarding their actual conduct while on the Board, and nothing in Delaware law suggests a fiduciary obligation to decline Board membership when a majority of those entitled to vote on their election believe them to be qualified.

CONCLUSION

For the reasons set forth above, the Dolan Defendants respectfully request that the Court grant their motion dismissing the Complaint pursuant to Rule 12(b)(6).

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CERTIFICATE OF SERVICE

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