



IN THE SUPREME COURT OF THE STATE OF DELAWARE

R. A. FEUER, suing derivatively on behalf of )  
VIACOM, INC., )

Plaintiff Below-Appellant, )

v. )

PHILIPPE P. DAUMAN; SUMNER M. )  
REDSTONE; SHARI REDSTONE; GEORGE )  
S. ABRAMS; THOMAS E. DOOLEY; )  
BLYTHE J. MCGARVIE; CHARLES E. )  
PHILLIPS, JR.; FREDERIC V. SALERNO; )  
WILLIAM SCHWARTZ; CRISTIANA )  
FALCONE SORRELL; and DEBORAH )  
NORVILLE, )

Defendants Below-Appellees, )

and )

VIACOM INC., )

Nominal Defendant Below- )  
Appellee. )

**PUBLIC VERSION**  
**Filed on February 22, 2018**

No. 487, 2017

On Appeal from the  
Court of Chancery  
of the State of Delaware,  
C.A. No. 12579-CB

**DEFENDANTS BELOW-APPELLEES BLYTHE J. MCGARVIE,  
CHARLES E. PHILLIPS, JR., FREDERIC V. SALERNO, WILLIAM  
SCHWARTZ, CRISTIANA FALCONE SORRELL AND DEBORAH  
NORVILLE'S ANSWERING BRIEF ON APPEAL**

DATED: February 7, 2018

*Counsel listed on following page.*

OF COUNSEL:

Jay B. Kasner  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
Tel.: (212) 735-3000

Edward B. Micheletti (ID No. 3794)  
Bonnie W. David (ID No. 5964)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
Tel.: (302) 651-3000

*Attorneys for Defendants Below-Appellees  
Blythe J. McGarvie, Deborah Norville,  
Charles E. Phillips, Jr., Frederic V.  
Salerno, William Schwartz and Cristiana  
Falcone Sorrell*

**TABLE OF CONTENTS**

	<b>PAGE(S)</b>
TABLE OF CITATIONS .....	iii
NATURE OF THE PROCEEDINGS.....	1
SUMMARY OF ARGUMENT .....	4
COUNTERSTATEMENT OF FACTS .....	5
ARGUMENT .....	7
I.    THE COURT OF CHANCERY’S DISMISSAL BASED ON THE SETTLEMENT RELEASE SHOULD BE AFFIRMED.....	7
A.    Question Presented.....	7
B.    Scope Of Review. ....	7
C.    Merits Of Argument.....	7
II.   THE COURT OF CHANCERY’S DECISION SHOULD BE AFFIRMED AS TO THE INDEPENDENT DIRECTOR DEFENDANTS ON THE ALTERNATIVE GROUNDS THAT THE COMPLAINT FAILED TO ADEQUATELY PLEAD DEMAND FUTILITY PURSUANT TO COURT OF CHANCERY RULE 23.1. ....	8
A.    Question Presented.....	8
B.    Scope Of Review. ....	8
C.    Merits Of Argument.....	9
III.  THE COURT OF CHANCERY’S DECISION SHOULD BE AFFIRMED AS TO THE INDEPENDENT DIRECTOR DEFENDANTS ON THE ALTERNATIVE GROUNDS THAT THE COMPLAINT FAILED TO STATE A CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDEPENDENT DIRECTOR DEFENDANTS.....	15

A.	Question Presented.....	15
B.	Scope Of Review. ....	15
C.	Merits Of Argument.....	15
	CONCLUSION.....	17

## TABLE OF CITATIONS

CASES	PAGE(S)
<i>Aronson v. Lewis</i> , 473 A.2d 805 (Del. 1984).....	2, 10, 11
<i>In re BJ's Wholesale Club, Inc. S'holders Litig.</i> , C.A. No. 6623-VCN, 2013 WL 396202 (Del. Ch. Jan. 31, 2013).....	16
<i>Brehm v. Eisner</i> , 746 A.2d 244 (Del. 2000).....	14
<i>Cent. Laborers Pension Fund v. News Corp.</i> , 45 A.3d 139 (Del. 2012).....	8
<i>In re Chelsea Therapeutics Int'l Ltd. Stockholders Litig.</i> , Consol. C.A. No. 9640-VCG, 2016 WL 3044721 (Del. Ch. May 20, 2016).....	15, 16
<i>In re Cornerstone Therapeutics Inc. Stockholder Litig.</i> , 115 A.3d 1173 (Del. 2015).....	16
<i>Freedman v. Adams</i> , C.A. No. 4199-VCN, 2012 WL 1345638 (Del. Ch. Mar. 30, 2012), <i>aff'd</i> , 58 A.3d 414 (Del. 2013) .....	11
<i>In re Gen. Motors (Hughes) S'holders Litig.</i> , 897 A.2d 162 (Del. 2006).....	7, 15
<i>Lyondell Chem. Co. v. Ryan</i> , 970 A.2d 235 (Del. 2009).....	16
<i>Rales v. Blasband</i> , 634 A.2d 927 (Del. 1993).....	2, 9, 10, 11
<i>Stone ex rel. AmSouth Bancorporation v. Ritter</i> , 911 A.2d 362 (Del. 2006).....	13

<i>Teamsters Union 25 Health Servs. &amp; Ins. Plan v. Baiera</i> , 119 A.3d 44 (Del. Ch. 2015) .....	9, 12
<i>White v. Panic</i> , 793 A.2d 356 (Del. Ch. 2000), <i>aff'd</i> , 783 A.2d 543 (Del. 2001) .....	12
<i>White v. Panic</i> , 783 A.2d 543 (Del. 2001) .....	8

**AUTHORITIES**

8 <i>Del. C.</i> § 141(e) .....	14
Supr. Ct. R. 8 .....	8

## NATURE OF THE PROCEEDINGS

To avoid unnecessary repetition, Defendants Below-Appellees Blythe J. McGarvie, Deborah Norville, Charles E. Phillips, Jr., Frederic V. Salerno, William Schwartz<sup>1</sup> and Cristiana Falcone Sorrell (the “Independent Director Defendants”) hereby incorporate the Nature of the Proceedings contained in the Answering Brief of Appellees/Defendants (the “Viacom Answering Brief”) as if fully set forth herein.<sup>2</sup>

This appeal challenges the Court of Chancery’s dismissal of derivative litigation based on a presumptively valid release contained in a comprehensive settlement agreement among Viacom, Defendants and certain other parties (the “Settlement Release”), which resolved four separate cases in three jurisdictions concerning the corporate governance of Viacom. As explained in the Viacom Answering Brief, the Court of Chancery correctly dismissed the action based on the Settlement Release.

---

<sup>1</sup> Mr. Schwartz passed away on December 20, 2017, after this appeal was filed.

<sup>2</sup> Unless otherwise noted, capitalized terms shall have the meaning ascribed to them in the Viacom Answering Brief (cited as “Viacom Ans. Br.”). Citations to “A\_\_” refer to the Appendix to Appellant’s Opening Brief, and citations to “B\_\_” refer to the Appendix to Answering Brief of Appellees/Defendants Below.

In the case below, the Independent Director Defendants moved to dismiss the claims asserted against them in Plaintiff's Verified Derivative Complaint for Breach of Fiduciary Duties (the "Complaint") pursuant to Court of Chancery Rule 23.1 for failure to plead demand futility and Rule 12(b)(6) for failure to state a claim for breach of fiduciary duty. Although those arguments were fully briefed, the Court of Chancery did not address them because it dismissed the Complaint based on the Settlement Release. To the extent this Court does not affirm the Court of Chancery's dismissal of the Complaint based on the Settlement Release, the Court of Chancery's decision should be affirmed on the additional, independent grounds that the Complaint failed to adequately plead demand futility or a viable claim for breach of fiduciary duty against the Independent Director Defendants.

*First*, the Complaint fails to adequately plead demand futility. Under the standards articulated in *Rales v. Blasband*, 634 A.2d 927 (Del. 1993), and *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), the conclusory allegations of the Complaint fail to cast doubt on the disinterestedness or independence of the Independent Director Defendants, who comprised a majority of Viacom's eleven-member "demand board," nor do they support a reasonable inference that the challenged compensation decisions were not the product of a valid exercise of business judgment.



*Second*, the Complaint also fails to state a claim against the Independent Director Defendants because it contains no non-conclusory allegations suggesting that any of the Independent Director Defendants were interested in, or lacked independence with respect to, any corporate transaction, or acted in bad faith. Because the Complaint fails to plead any non-exculpated wrongdoing by the Independent Director Defendants, the exculpation provision pursuant to 8 *Del. C.* § 102(b)(7) in Viacom's certificate of incorporation requires that the Complaint be dismissed as to them.

For these reasons, explained in more detail below, the Court of Chancery's decision dismissing the Complaint should be affirmed.

## **SUMMARY OF ARGUMENT**

I. Denied. For the reasons explained in the Viacom Answering Brief, the Court of Chancery correctly dismissed the action based on the Settlement Release. (Viacom Ans. Br. at 12-24.)

II. In the event the Court does not affirm based on the Court of Chancery's reasoning below, the Court of Chancery's decision also should be affirmed on the alternative grounds that the Complaint failed to adequately plead demand futility, as required by Court of Chancery Rule 23.1. The conclusory allegations of the Complaint fail to impugn the disinterestedness or independence of any of the Independent Director Defendants, nor do they support a reasonable inference that the Independent Director Defendants acted in bad faith with respect to Mr. Redstone's compensation. As a result, the Complaint failed to adequately plead that demand would have been futile.

III. In the event the Court does not affirm based on the Court of Chancery's reasoning below, the Court of Chancery's decision should be affirmed on the additional alternative grounds that the Complaint failed to state a claim for breach of fiduciary duty against the Independent Director Defendants. For the same reasons that the Complaint fails to plead demand futility, Plaintiff also fails to plead any non-exculpated wrongdoing by the Independent Director Defendants.

## COUNTERSTATEMENT OF FACTS

A detailed summary of the facts alleged in the Complaint is contained in the Viacom Answering Brief, which is incorporated herein. (Viacom Ans. Br. at 4-11.)

The allegations in the Complaint directed at the Independent Director Defendants are wholly conclusory and do not support a reasonable inference that they were interested in, or lacked independence with respect to, Mr. Redstone's compensation. The Complaint identifies each of the Independent Director Defendants, the time period during which they served on Viacom's board of directors (the "Board"), the respective committees on which each of the Independent Director Defendants served,<sup>3</sup> and the compensation the directors earned for their Board service from 2012 through 2015. (A34-A35 ¶¶ 20-25, 27.)

The Complaint also alleges that, in 2016, Mr. Salerno contested the purported removal of five Viacom directors in a Section 225 proceeding in the

---

<sup>3</sup> The Complaint alleges that Ms. McGarvie served on the Compensation Committee and the Governance and Nominating Committee, and as Chair of the Audit Committee (A34 ¶ 20); Mr. Phillips served on the Audit Committee and the Compensation Committee (A34 ¶ 21); Mr. Salerno served on the Audit Committee and the Governance and Nominating Committee, and as Chair of the Compensation Committee (A34-A35 ¶ 22); Mr. Schwartz served on the Compensation Committee and as Chair of the Governance and Nominating Committee (A35 ¶ 23); Ms. Falcone Sorrell served on the Audit Committee (A35 ¶ 24); and Ms. Norville served on the Compensation Committee (A35 ¶ 25).

Court of Chancery, and previously served as a director of CBS Corporation (A34-A35 ¶ 22, A56-A57 ¶ 85), and that Ms. Norville is “the host of CBS’s Inside Edition.” (A35 ¶ 25.) Plaintiff does not plead that such allegations excused pre-suit demand, and the Complaint contains no other particularized allegations against the Independent Director Defendants. (A59-A60 ¶¶ 93-97.) Moreover, both in briefing and at oral argument on the motions to dismiss, Plaintiff’s counsel failed to address the Independent Director Defendants or proffer any reason why they should remain in the case.

## ARGUMENT

### **I. THE COURT OF CHANCERY'S DISMISSAL BASED ON THE SETTLEMENT RELEASE SHOULD BE AFFIRMED.**

#### **A. Question Presented.**

Did the Court of Chancery properly dismiss the Complaint based on the presumptively valid Settlement Release?

#### **B. Scope Of Review.**

The standard of review with respect to dismissal for failure to state a claim pursuant to Court of Chancery Rule 12(b)(6) is *de novo*. See *In re Gen. Motors (Hughes) S'holders Litig.*, 897 A.2d 162, 167-68 (Del. 2006).

#### **C. Merits Of Argument.**

For the reasons explained in the Viacom Answering Brief, incorporated herein, the Court of Chancery properly dismissed the Complaint based on the presumptively valid Settlement Release, and the Court of Chancery's decision should be affirmed on that basis. (Viacom Ans. Br. at 12-24; B38; B358-B359.)

**II. THE COURT OF CHANCERY’S DECISION SHOULD BE AFFIRMED AS TO THE INDEPENDENT DIRECTOR DEFENDANTS ON THE ALTERNATIVE GROUNDS THAT THE COMPLAINT FAILED TO ADEQUATELY PLEAD DEMAND FUTILITY PURSUANT TO COURT OF CHANCERY RULE 23.1.**

**A. Question Presented.**

Did the Complaint fail to adequately plead demand futility pursuant to Court of Chancery Rule 23.1? This issue was preserved for appeal. (B22-B37; B358-B362.)

**B. Scope Of Review.**

The Independent Director Defendants moved to dismiss the Complaint because demand was not excused pursuant to Court of Chancery Rule 23.1. Although that issue was fully briefed, the Court of Chancery did not address it because the Court dismissed the Complaint based on the Settlement Release. This Court “may rest its appellate decision on any issue that was fairly presented to the Court of Chancery, even if that issue was not addressed by that court,” and, accordingly, “may affirm the judgment of the Court of Chancery on the basis of a different rationale.” *Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 141 (Del. 2012); Supr. Ct. R. 8.

The standard of review with respect to dismissal of a claim for failure to plead demand futility pursuant to Court of Chancery Rule 23.1 is *de novo*. See *White v. Panic*, 783 A.2d 543, 550 (Del. 2001).

### C. Merits Of Argument.

The Complaint alleges that Plaintiff was not required to make a demand on the Board prior to bringing his derivative claims because doing so would have been futile. (A59-A60 ¶¶ 93-97.) The purported basis for Plaintiff's claims is that the Independent Director Defendants wasted corporate assets and breached their fiduciary duties by allegedly "failing to address and covering up the known incapacity of Sumner, his non-performance of any services of value to Viacom, and by approving excessive compensation packages to him," and by "providing materially false and misleading statements in the Company's SEC filings, public statements, and in proxy statements issued to shareholders regarding Sumner's mental capacity, physical condition and entitlement to compensation." (A61 ¶¶ 100-01.)

Demand futility for Plaintiff's waste claim should be analyzed under *Rales v. Blasband*, 634 A.2d 927 (Del. 1993), because that claim is premised on compensation awards that were approved by Viacom's five-member Compensation Committee. See *Teamsters Union 25 Health Servs. & Ins. Plan v. Baiera*, 119 A.3d 44, 56-57 (Del. Ch. 2015). Under *Rales*, Plaintiff must plead "particularized factual allegations" that "create a reasonable doubt that, as of the time the complaint is filed, the board of directors could have properly exercised its

independent and disinterested business judgment in responding to a demand.”

*Rales*, 634 A.2d at 934.

Plaintiff’s disclosure claim should be analyzed under *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), which requires Plaintiff to make particularized allegations giving rise to a “reasonable doubt” that “the directors are disinterested and independent” or that “the challenged transaction was otherwise the product of a valid exercise of business judgment.” *Id.* at 814.

Under either *Rales* or *Aronson*, the conclusory allegations of the Complaint fail to impugn the disinterestedness or independence of the Independent Director Defendants, who comprised a majority of Viacom’s eleven-member “demand board.” Plaintiff’s counsel conceded as much at oral argument on the motions to dismiss:

THE COURT: Let me go at it this way. So there’s sort of three roads to home: interests, right, a majority of the directors have a self-interest. You’re not contending that.

MR. deLEEUEW: We’re not arguing that.

THE COURT: The second road to home is a lack of independence because somebody is so beholden to somebody who is interested.

MR. deLEEUEW: We’re not arguing that.

THE COURT: You’re not contending that. So your only road to home is bad faith, that somebody acted in bad faith so that they have a significant exposure to liability. Right?



MR. deLEEuw: Correct.

(A348.)

This is not one of the “rare cases” in which the conduct alleged in the Complaint is “so egregious” that the directors face a “substantial likelihood” of liability. *Aronson*, 473 A.2d at 815; *see also Rales*, 634 A.2d at 936. Viacom’s certificate of incorporation contains a provision pursuant to 8 *Del. C.* § 102(b)(7) exculpating directors for monetary damages arising from breaches of the duty of care; thus, Plaintiff’s only remaining avenue is to attempt to plead bad faith or waste. But as explained below, the Complaint does not come close to meeting the high bar for pleading bad faith or waste.

*First*, Plaintiff’s broad-brush assertions that all of the individual defendants, as a group, were “conflicted by their self-interest in maintaining the *status quo*,” or were “personally complicit in the *quid pro quo* arrangement . . . pursuant to which they remained directors” (A59 ¶ 93), are insufficient to demonstrate demand futility. *See Freedman v. Adams*, C.A. No. 4199-VCN, 2012 WL 1345638, at \*8 (Del. Ch. Mar. 30, 2012) (allegation of a *quid pro quo* agreement with directors was rejected as conclusory where the only supporting allegations were claims of generous director compensation and where no “causal” connection was adequately alleged), *aff’d*, 58 A.3d 414 (Del. 2013). Indeed, Plaintiff withdrew this argument at oral argument on the motions to dismiss. (*See*

A339 (“[I]t’s obvious from our answering papers, that we’re not hanging our hat on that [*quid pro quo* argument] to plead demand futility.”).)

*Second*, Plaintiff fails to put forth any individual allegations as to the six Independent Director Defendants that could cast doubt on their independence or disinterestedness. *See, e.g., Baiera*, 119 A.3d at 58 (noting that a complaint “must plead facts specific to each director”) (citation omitted). The Complaint’s halfhearted reference to Ms. Norville’s employment with CBS (A35 ¶ 25) is wholly conclusory, and Plaintiff failed even to raise it as a basis for demand futility. (A58-A60 ¶¶ 90-97.) In addition, the Complaint includes a chart showing the director fees paid to the members of the Board (A35-A36 ¶ 27), but it “contains no allegations of fact tending to show that the fees paid were material to these outside directors” individually. *White v. Panic*, 793 A.2d 356, 366 (Del. Ch. 2000), *aff’d*, 783 A.2d 543 (Del. 2001). Plaintiff did not raise any other arguments attacking the interests or independence of the Independent Director Defendants on an individual basis, and, again, conceded at oral argument on the motions to dismiss that he was not challenging the Independent Director Defendants’ interests or independence.<sup>4</sup>

---

<sup>4</sup> Plaintiff’s conclusory assertion that the Independent Director Defendants lacked independence from Mr. Redstone also cannot be squared with the undisputed fact that six members of the demand board, including three of the six Independent Director Defendants, have now stepped down from the

*Third*, the Complaint concedes that the Independent Director Defendants took steps to reduce, and did reduce, Mr. Redstone’s responsibilities and compensation over time. (See A24-A25 ¶ 2, A48 ¶ 57.) This is the opposite of the sort of “conscious disregard for their responsibilities” that is needed to plead bad faith. *Stone ex rel. AmSouth Bancorporation v. Ritter*, 911 A.2d 362, 370 (Del. 2006).

Indeed, Plaintiff’s own allegations and the documents incorporated in or integral to the Complaint reveal that the Independent Director Defendants acted in good faith with respect to Mr. Redstone’s compensation. The Independent Director Defendants (five of whom sat on the Compensation Committee during the relevant period<sup>5</sup>) met numerous times and informed themselves prior to exercising their business judgment as to all compensation matters, including by retaining and relying on an independent, outside compensation consultant, who provided expert advice on these issues. (B18, B21, B28.) As Delaware courts have repeatedly recognized, when a plaintiff lodges conclusory challenges to good faith compensation decisions, directors are “entitled to the presumption that [they]

---

Board, undermining any entrenchment-based innuendo proffered by Plaintiff. (Viacom Ans. Br. at 20.)

<sup>5</sup> Cristiana Falcone Sorrell was not a member of the Compensation Committee. (A35 ¶ 24.)

exercised proper business judgment, including proper reliance on the expert.”

*Brehm v. Eisner*, 746 A.2d 244, 261 (Del. 2000); *see also* 8 *Del. C.* § 141(e).<sup>6</sup>

The Independent Director Defendants and other defendants raised each of these points in briefing below. (B22-B37; B358-B362.) Nevertheless, Plaintiff continuously failed even to attempt to provide any reason why the Independent Director Defendants should remain as defendants in the case or to respond to the Independent Director Defendants’ arguments in support of dismissal.

For these reasons, this Court should affirm the Court of Chancery’s decision on the alternative grounds that the Complaint fails to adequately plead demand futility.

---

<sup>6</sup> For the reasons explained in the Viacom Answering Brief, Plaintiff’s waste claims also lack merit. (Viacom Ans. Br. at 25-28.)

**III. THE COURT OF CHANCERY’S DECISION SHOULD BE AFFIRMED AS TO THE INDEPENDENT DIRECTOR DEFENDANTS ON THE ALTERNATIVE GROUNDS THAT THE COMPLAINT FAILED TO STATE A CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDEPENDENT DIRECTOR DEFENDANTS.**

**A. Question Presented.**

Did the Complaint fail to state a claim for breach of fiduciary duty against the Independent Director Defendants pursuant to Court of Chancery Rule 12(b)(6)? This issue was preserved for appeal. (B37-B38; B358-B359, B362-B363.)

**B. Scope Of Review.**

The standard of review with respect to dismissal for failure to state a claim pursuant to Court of Chancery Rule 12(b)(6) is *de novo*. See *In re Gen. Motors*, 897 A.2d at 167-68.

**C. Merits Of Argument.**

Even if Plaintiff could get past the Rule 23.1 analysis (which he cannot), the Complaint also fails to state a claim against the Independent Director Defendants because it contains no non-conclusory allegations suggesting that any of the Independent Director Defendants acted in bad faith.

As explained in Argument Section II *supra*, the Complaint falls far short of showing the “extreme set of facts [needed] to establish that disinterested

directors were intentionally disregarding their duties.” *In re Chelsea Therapeutics Int’l Ltd. Stockholders Litig.*, Consol. C.A. No. 9640-VCG, 2016 WL 3044721, at \*7 (Del. Ch. May 20, 2016) (internal quotation marks and citation omitted); *see also Lyondell Chem. Co. v. Ryan*, 970 A.2d 235, 243 (Del. 2009). Plaintiff’s tired argument that the Independent Director Defendants “should have done more” or should have done something differently “does not implicate bad faith.” *In re BJ’s Wholesale Club, Inc. S’holders Litig.*, C.A. No. 6623-VCN, 2013 WL 396202, at \*9 (Del. Ch. Jan. 31, 2013).

Because the Complaint fails to plead any non-exculpated wrongdoing by the Independent Director Defendants, the exculpation provision pursuant to 8 *Del. C.* § 102(b)(7) in Viacom’s certificate of incorporation requires that the Complaint be dismissed as to them. (B27.) *See also, e.g., In re Cornerstone Therapeutics Inc. Stockholder Litig.*, 115 A.3d 1173, 1176 (Del. 2015).

Accordingly, this Court should affirm the Court of Chancery’s decision on the additional alternative grounds that the Complaint fails to state a claim for breach of fiduciary duty against the Independent Director Defendants.

**CONCLUSION**

For all of the foregoing reasons, the Court of Chancery's decision dismissing the Complaint should be affirmed.

Respectfully submitted,

/s/ Edward B. Micheletti

Edward B. Micheletti (ID No. 3794)

Bonnie W. David (ID No. 5964)

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP

One Rodney Square

P.O. Box 636

Wilmington, Delaware 19899-0636

Tel.: (302) 651-3000

OF COUNSEL:

Jay B. Kasner

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP

Four Times Square

New York, New York 10036

Tel.: (212) 735-3000

*Attorneys for Defendants Below-Appellees*

*Blythe J. McGarvie, Deborah Norville,*

*Charles E. Phillips, Jr., Frederic V.*

*Salerno, William Schwartz and Cristiana*

*Falcone Sorrell*

DATED: February 7, 2018