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Case No. 2022-1114-NAC

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRICKLAYERS PENSION FUND OF WESTERN PENNSYLVANIA, CITY PENSION FUND FOR FIREFIGHTERS & POLICE OFFICERS IN THE CITY OF PEMBROKE PINES, KEY WEST POLICE AND FIREFIGHTERS' PENSION FUND, and STEVE SILVERMAN, on behalf of themselves and all those similarly situated, Plaintiffs, v. ADVANCE/NEWHOUSE PARTNERSHIP, ADVANCE/NEWHOUSE PROGRAMMING PARTNERSHIP, ROBERT MIRON, STEVEN MIRON, and SUSAN SWAIN, Defendants.	C.A. No. 2022-1114-NAC **PUBLIC [REDACTED] VERSION AS FILED ON DECEMBER 7, 2022**

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs Bricklayers Pension Fund of Western Pennsylvania, City Pension Fund for Firefighters & Police Officers in the City of Pembroke Pines, Key West Police and Firefighters' Pension Fund, and Steve Silverman (collectively, "Plaintiffs"), by and through the undersigned attorneys, hereby submit this Verified Class Action Complaint (the "Complaint"). The allegations of the Complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief,

including the review of publicly available information and internal documents of Discovery, Inc. ("Discovery" or the "Company") produced in response to Plaintiffs' demands for the inspection of books and records pursuant to Section 220 of the Delaware General Corporation Law, as to all other matters.

NATURE OF THE ACTION

1. Delaware corporate law prohibits a director from using his fiduciary access to board meetings and information to extort his fellow board members into transferring corporate value to himself at the expense of other stockholders.

2. This case involves a large stockholder that: (i) designated three board members and an additional "board observer"; (ii) held a contractual veto over a material transaction the board was actively assessing; (iii) chose not to have its designees recuse themselves from the board's assessment of the transaction and actively participated in that process; (iv) had its designees affirmatively join in the board's unanimous approval of the incredibly valuable opportunity and instruction to counsel to finish documenting it for the benefit of the company and all of its stockholders; and (v) then subsequently threatened to use its contractual veto rights to block the deal unless the other board members re-cut the deal to pay the stockholder a more than 45% premium to its contractual conversion right for its preferred shares.

3. Where, as here, the other directors document their anger over their fellow fiduciaries' blackmail but ultimately succumb to those tactics in order to preserve the beneficial deal for the company and its other stockholders, the conflicted fiduciary must establish the entire fairness of that massive diversion of corporate value and side payment.

4. In connection with Discovery's $43 billion purchase of AT&T. Inc.'s ("AT&T") WarnerMedia business (the "Merger"), Advance/Newhouse Partnership and Advance/Newhouse Programming Partnership (together, "A/N") used its nearly 25% equity stake and related board representation to inform its effective sandbagging of the rest of Discovery's Board of Directors (the "Board"), belatedly disclosing its threat to exercise a contractual veto over the otherwise highly desirable deal. Despite the other directors' reluctance to recut the deal, A/N and its designees succeeded in leveraging their fiduciary status to extort a side payment of approximately $1.1 billion based on Discovery's then-trading price (the "Side Deal").

5. When A/N recognized that the Board's evaluation of the Merger could give A/N the opportunity to seek differential consideration, A/N had a simple choice: recuse itself and its Board designees from their fiduciary roles to give A/N more

leeway to act solely in its own interests, or participate in the Board's process as a fiduciary and act for the benefit of all stockholders.

6. Having enmeshed its Discovery director designees into the deal process rather than recuse themselves—indeed, those designees affirmatively ***approved*** the economic terms of the transaction and the post-Merger capital structure ***before*** A/N demanded the Side Deal—and then using the information those designees received about how valuable the rest of the Discovery Board believed the Merger to be to hold the Merger hostage, A/N and the other Defendants must demonstrate the entire fairness of the side payment. They cannot justify the Side Deal short of trial and will not be able to carry their burden at trial.

* * * * * *

7. In early 2021, Discovery found itself in a quandary: streaming services were dominating the media delivery field and the Company had to either (a) find a merger partner that would enable it to dramatically scale up its ownership of content and ability to deliver that content, or (b) see its market and financial position suffer.

8. Pursuing this type of transformational acquisition, Discovery's CEO, David Zaslav ("Zaslav"), met with AT&T's CEO, John Stankey ("Stankey"), to discuss a potential Discovery purchase of AT&T's WarnerMedia division. Zaslav

and Stankey agreed to inform their respective boards of directors and solicit the requisite authorities and proverbial "marching orders."

9. Zaslav informed each member of the Discovery Board about the potential blockbuster deal, and the full Board discussed the concept. Non-party John Malone ("Malone") sat on the Discovery Board, held more than 20% of Discovery's voting power and, thanks to his ownership of Discovery Series B stock, had the ability to veto any WarnerMedia deal. Malone's demonstrated willingness to bear litigation risk as the price of extracting complex side benefits in the context of corporate mergers or recapitalizations litters Delaware precedent.

10. In connection with the potential WarnerMedia deal, Malone knew he had a choice: recuse himself to preserve the option to demand such a side payment (and then show its fairness), or remain active in the Board process to serve the broader interests of all Discovery stockholders. Departing from his own (and the widely accepted) practice of recusing himself when he may seek differential treatment (or at least purporting to do so), Malone decided ***not*** to recuse himself, staying in the process and foregoing any side benefits.

11. A/N contractually appointed three of Discovery's 11 Board members—Robert Miron ("R. Miron"), Steven Miron ("S. Miron") and Susan Swain ("Swain")—as well as Steven Newhouse ("S. Newhouse") to serve as a non-voting

Board representative. A/N attained these contractual rights through its ownership of Discovery preferred stock representing over 23% of the Company's voting power.

12. A/N's contractual rights and preferred equity interests were a vestige of Discovery's prior existence as a privately-held, limited liability company owned by Malone, A/N, and other significant media industry investors, and unusual for a public company capital structure. A/N's contractual protections gave it negative control over Discovery in that A/N could prevent Discovery from effecting a wide range of material transactions that could benefit the Company's common stockholders but could otherwise impair A/N's rights. This veto right gave A/N the same negative control over any WarnerMedia deal that a *de facto* or even a *de jure* controller would have.

13. The certificates of designations for A/N's Discovery Series A-1 and Series C-1 preferred stock also provided a formula dictating how A/N's shares would be converted in various transactions. The certificates predetermined the ratio at which A/N's preferred shares could be converted into Discovery common stock, thus assuring A/N and other stockholders that A/N would receive formulaic conversion followed by the same exchange ratio enjoyed by common stockholders in any material merger transaction.

14. As a result of the rights and obligations embedded in the certificates, A/N, just like an actual corporate controller (and like the similarly situated Malone, who could have vetoed the Merger), faced a clear choice when its fiduciaries on the Discovery Board learned a deal was possible: either recuse its Board designees from the transaction process up front so that A/N could act adverse to the Company and its public stockholders later on, or remain in the process but respect the fiduciary duties to all stockholders that come with Board membership.

15. A/N did not recuse its Board representatives from the Merger process. Nor did A/N inform Zaslav or the rest of the Board that it planned to extract a side payment in lieu of exercising its veto right, regardless of whether A/N itself (or the Board as a whole) viewed the Merger as a strategic benefit to the Company and all of its stockholders.

16. A/N had many opportunities to warn its fellow fiduciaries that it was participating in the deal process with two hats: a fiduciary tasked with achieving the best result for all Discovery stockholders and a self-interested veto-holder intent on scalping for itself as much of the Merger's perceived value as it could.

17. A/N chose to remain silent and maintain improper optionality. A/N chose not to recuse itself and to use its fiduciary power for personal benefit. By participating in every material aspect of the Board's consideration of the Merger

process, A/N learned precisely how much the rest of the Discovery Board valued the Merger and deemed it a strategic imperative for the Company.

18. The *coup de grace* came on April 30, 2021, when the Board—including A/N's designees and in the presence of A/N's observer—***formally resolved that the Merger as it then stood—including the final valuation and single-class equity structure—was in the Company's and its stockholders' best interests***.

19. Only after the Board as a whole reached that key determination did A/N blackmail the Board, threatening to veto the Merger unless A/N received more than thirteen Series A common shares for each Series A-1 preferred share (instead of its contractual entitlement to nine Series A common shares for each Series A-1 preferred share) in what ultimately became the Side Deal.

20. The Section 220 record demonstrates that Discovery's non-A/N fiduciaries and advisors were correctly offended by A/N's self-interested extortion. Malone himself expressed his offense and anger. The advisors brought on to advise a transaction committee belatedly created to "negotiate" with A/N (the "Transaction Committee" or the "Committee") over its extortionate demands showed the Committee how unfair A/N's tactics and demands were.

21. In the end, while nobody liked or supported A/N's gambit, the Merger was too important to Discovery, and paying the unfair Side Deal to A/N still left the Board with "enough" extra value to recommend it to Discovery stockholders.

22. Stockholders were forced to vote on the Merger and the extra payment to A/N as part of one bundled package. Stockholders could not approve the Merger without paying off A/N. Just as the Board approved the deal despite A/N's overreach, the public stockholders, well-aware of the drastically negative consequence of rejecting the deal to avoid the A/N Side Deal, were substantively coerced by A/N's behavior, and approved the Merger.

23. This case seeks relief against A/N and its fiduciary designees in connection with the Side Deal it improperly extracted. The core issue this case raises is salient: whether the holder of a contractual veto who demanded, assumed, and continually exercised fiduciary powers and privileges throughout a deal process is entitled to leverage its fiduciary role to trade the threat of its veto to extract in excess of $1 billion in side benefits. The Court should reject A/N's and its designees' actions.

PARTIES AND RELEVANT NON-PARTIES

A. Parties

24. **Plaintiff Bricklayers Pension Fund of Western Pennsylvania** ("Bricklayers") was a beneficial owner of Discovery Series A common stock at all

relevant times. At the closing of the Merger, Bricklayers' Discovery Series A shares were exchanged for newly created common stock of Warner Bros. Discovery, Inc. ("Warner Bros. Discovery").

25. **City Pension Fund for Firefighters & Police Officers in the City of Pembroke Pines** ("Pembroke Pines") was a beneficial owner of Discovery Series A common stock at all relevant times. At the closing of the Merger, Pembroke Pines' Discovery Series A shares were exchanged for newly created common stock of Warner Bros. Discovery.

26. **Plaintiff Key West Police and Firefighters' Pension Fund** ("Key West") was a beneficial owner of Discovery Series A common stock at all relevant times. At the closing of the Merger, Key West's Discovery Series A shares were exchanged for newly created common stock of Warner Bros. Discovery.

27. **Plaintiff Steve Silverman** ("Silverman") was a beneficial owner of Discovery Series A and Series C common stock at all relevant times. At the closing of the Merger, Silverman's Discovery Series A and C shares were exchanged for newly created common stock of Warner Bros. Discovery.

28. **Defendant Advance/Newhouse Partnership** is a New York partnership.

29. **Defendant Advance/Newhouse Programming Partnership** is a New York partnership. A/N is a privately-held media company. At all relevant times, A/N owned all of Discovery's outstanding Series A-1 and Series C-1 preferred stock. A/N's Series A-1 preferred stock entitled A/N to select three members of the Company's Board. At the time of the Merger, A/N's three director designees were defendants R. Miron, S. Miron, and Swain. A/N also designated S. Newhouse as a Board observer, giving A/N additional insight and access to the Board's actions, strategic assessments, and discussions.

30. **Defendant R. Miron** served as a director of Discovery from 2008 through the closing of the Merger and the Chair of Discovery from 2014 through the closing of the Merger. R. Miron has worked for A/N in various roles since 1959. R. Miron served as CEO of A/N from 2002 to 2008 and as Chair until 2010. Through at least January 2021, R. Miron continued to serve as an executive of A/N. R. Miron also served as a director of C-SPAN from 1986 to 2021 and as Chairman of the Executive Committee of C-SPAN from 2008 to 2010. R. Miron is the father of S. Miron.

31. **Defendant S. Miron** served as a director of Discovery from 2008 through the closing of the Merger. S. Miron is currently one of A/N's designees to the Board of Warner Bros. Discovery. S. Miron is the CEO of A/N. Miron

previously served as president of A/N and Bright House Networks, LLC from 2002 to 2008, and as CEO of Bright House Networks, LLC from 2008 until 2016, when it was acquired by Charter Communications, Inc. ("Charter"). S. Miron also serves as a director of Charter and C-SPAN (and previously served as a C-SPAN director from 2011 to 2016). S. Miron is the son of R. Miron.

32. **Defendant Swain** served as a director of Discovery from 2016 through the closing of the Merger. Swain was one of A/N's designees to the Discovery Board. Swain has worked at C-SPAN since 1982 and has been C-SPAN's Co-President and CEO since 2012.

33. Defendants A/N, R. Miron, S. Miron and Swain are sometimes collectively, or individually as the context requires, referred to herein as "Defendants."

B. Relevant Non-Parties

34. **S. Newhouse** is a Co-President of A/N. Prior to the Merger, S. Newhouse was a Board observer at Discovery. Upon the closing of the Merger, S. Newhouse was appointed to the Warner Bros. Discovery Board of Directors as one of A/N's designees.

35. **Malone** served as a director of Discovery from 2008 through the closing of the Merger. Upon the closing of the Merger, Malone remained a member

of the Warner Bros. Discovery Board of Directors. Malone previously served as CEO and Chairman of Discovery Holding Company from 2005 until it merged with Discovery in 2008. Malone has been the controlling and/or dominant individual within the "Liberty" family of companies for decades. Malone has served as a director of Liberty Broadband Corporation since 2014, Liberty Media Corporation ("Liberty Media") (including its predecessors) since 2010, Liberty Global plc (including its predecessors) since 2005, and Qurate Retail, Inc. (including its predecessors) since 1994. Malone also served on the board of Liberty Expedia Holdings from 2016 to 2019, the board of GCI Liberty from 2018 to 2020, the board of Liberty Latin America Ltd. from 2017 to 2019, the board of Lions Gate Entertainment Corp. from 2015 to 2018, the board of Charter from 2013 to 2018, and the board of Expedia from 2005 to 2017. Malone served as CEO of Tele-Communications, Inc. ("TCI") for over 25 years until its merger with AT&T in 1999.

36. **Zaslav** has served as Discovery's President and CEO since 2007 and as a director since 2008. Zaslav signed a new employment agreement to maintain his role as CEO in connection with the Merger that makes him one of the most highly compensated public company CEOs in America. Upon the closing of the Merger, Zaslav remained a member of the Warner Bros. Discovery Board of Directors.

37. **Paul Gould** ("Gould") served as a director of Discovery from 2008 through the closing of the Merger. Upon the closing of the Merger, Gould remained a member of the Warner Bros. Discovery Board of Directors. Gould served as a director of Discovery Holding Company from 2005 until it merged with Discovery in 2008. Gould has worked at Allen & Company since 1972, including as Managing Director and Executive Vice President since at least 2017. Discovery paid Allen & Company $75 million for its service as one of the Board's financial advisors in connection with the Merger, $67.5 million of which was contingent on the consummation of the Merger. In the two years prior to the Merger, Allen & Company also received $27 million in fees from a company controlled by AT&T. Gould served on the Discovery Transaction Committee in connection with the Merger.

38. **Robert Bennett** ("Bennett") served as a director of Discovery from 2008 through the closing of the Merger. Upon the closing of the Merger, Bennett remained a member of the Warner Bros. Discovery Board of Directors. Bennett previously served as President of Discovery Holding Company from 2005 until it merged with Discovery in 2008. Bennett served on the Discovery Transaction Committee in connection with the Merger.

39. **J. David Wargo** ("Wargo") served as a director of Discovery from 2008 through the closing of the Merger. Wargo previously served as a director of Discovery Holding Company from 2005 until it merged with Discovery in 2008. Wargo served on the Discovery Transaction Committee in connection with the Merger.

40. **Kenneth Lowe** ("Lowe") was a director of Discovery from 2018 through the closing of the Merger.

41. **Daniel Sanchez** ("Sanchez") was a director of Discovery from 2017 through the closing of the Merger.

SUBSTANTIVE ALLEGATIONS

A. Background of Discovery's Business and its Unique Capital Structure

42. Founded in 1982, Discovery is a global media company that provides entertainment and news-related content across multiple distribution platforms. In June 1985, Discovery launched its flagship Discovery Channel.

43. In 1986, Discovery secured funding from a consortium of cable operators, including (a) Liberty Media; (b) A/N; and (c) Cox Communications, Inc. Liberty Media would eventually distribute its Discovery shares to its stockholders, resulting in Malone becoming a significant direct stockholder of Discovery.

44. In 2008, Discovery completed a reorganization through which A/N received new Series A and Series C Discovery preferred stock.

45. In July 2017, Discovery agreed to acquire Scripps Networks Interactive, Inc. in a cash and stock transaction valued at $14.6 billion (the "Scripps Transaction"). As part of that transaction, A/N exchanged its Series A and Series C Discovery preferred shares for shares of newly created Series A-1 and Series C-1 preferred stock. The certificate of designations of these classes of preferred stock, as described below, closely tracked those of the Series A and Series C preferred stock.

46. From the time of the Scripps Transaction through the time of the Merger, Discovery maintained a consistent capital structure.

47. At the time of the Merger, Discovery had three classes of common stock: Series A, Series B, and Series C. Series A common stock entitled holders to one vote per share and Series B stock entitled holders to ten votes per share. Series A and Series B stock generally voted together as a single class except in limited circumstances. Series C stock generally did not entitle holders to vote except as required by law.

48. Malone owned 95% of Discovery's outstanding Series B shares, which, together with his holdings of approximately 1.1 million Class A shares, entitled him to approximately 20.5% of the overall voting power at Discovery in most elections. However, Series B stockholders were entitled to vote as a class on any transaction

that would eliminate the super-voting nature of the Series B shares, providing Malone a veto right over such transactions.

49. Prior to the Merger, Discovery also had two classes of preferred shares, Series A-1 Preferred Stock and Series C-1 Preferred Stock, all of which were owned by A/N. At the time of the Merger, A/N owned (and Discovery had outstanding) 7,852,583 Series A-1 preferred shares and 4,313,350 Series C-1 preferred shares.

50. Pursuant to the terms of the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock of Discovery Communications, Inc. (the "Series A-1 COD"), each share of Series A-1 preferred stock was convertible into nine shares of Series A common stock.[1] Pursuant to the Certificate of Designation of Series C-1 Convertible Participating Preferred Stock of Discovery Communications, Inc. (the "Series C-1 COD"), each share of Series C-1 preferred stock was convertible into 19.3648 shares of Series C common stock.[2]

51. The Series A-1 COD and Series C-1 COD provided preferred stockholders with protections to ensure their holders would be able to exercise their negotiated conversion rights in the event of a reclassification or other fundamental transaction. Each COD provided that:

[1] Series A-1 COD, §5(a).

[2] Series C-1 COD, §5(a).

> In case of any reclassification or change in the Series A Common Stock, Series B Common Stock or Series C Common Stock . . . [Discovery] shall make appropriate provision so that the holder of a share of the [] Preferred Stock shall have the right thereafter to convert such share into the kind and amount of shares of stock and other securities and property that such holder would have owned immediately after such reclassification . . . if such holder had converted such share immediately prior to the effective date of such reclassification . . . ***and the holders of the [] Preferred Stock shall have no other conversion rights under these provisions***[.][3]

52. As these provisions make clear, A/N negotiated for a specific conversion ratio in the event of a reclassification, thus ensuring no deal could be structured to treat common stockholders better than the preferred holders. A/N was entitled to this protection against adverse treatment, but nothing more.

53. Nothing in the Series A-1 or Series C-1 CODs, the Company's Certificate of Incorporation, or Discovery's organizational documents provided for any modification to the contractually set conversion ratios applicable to the Series A-1 and Series C-1 preferred stock in the event of a merger, consolidation, or other fundamental transaction.

54. Both Series A-1 and C-1 preferred shares entitled their holders to receive dividends and vote with common stockholders on an as-converted basis

[3] Series A-1 COD, §5(e); Series C-1 COD, §5(e). (Emphasis added).

except with respect to directors. As a result, at the time of the Merger, A/N controlled 23% of the voting power of Discovery.

55. The Series A-1 COD provided A/N with the right to separately elect three members to the Discovery Board. Immediately before the Merger, those three appointees were defendants R. Miron, S. Miron, and Swain. In addition to its right to appoint three Board members, A/N also enjoyed further access and insight into Discovery's boardroom since at least 2008, thanks to S. Newhouse's status as a Board observer.

56. The Series A-1 COD also provided A/N with consent rights regarding fifteen different "Special Class Vote Matters" that allowed it to exercise significant control over the day-to-day operations of Discovery and any fundamental transaction it might seek to undertake. Those matters included:

> (i) any increase in the number of members of the Board of Directors to a number of directors in excess of 12;
>
> (ii) any fundamental change in the business of the Corporation and its Subsidiaries from the business of the Corporation and its Subsidiaries as conducted…or the making of any investment, establishment of joint venture, or any acquisition, in each case, constituting a material departure from the current lines of business of the Corporation and its Subsidiaries…;
>
> (iii) the material amendment, alteration or repeal of any provision of this Restated Certificate or the Bylaws…(or the organizational documents of any Subsidiary of the Corporation) or the addition or insertion of other provisions therein…;

(iv) any transaction (a "Related Party Transaction") between (x) the Corporation or any of its Subsidiaries, on the one hand, and (y) any Related Party of the Corporation, on the other hand, including the amendment of any agreement between the Corporation or any of its Subsidiaries and any Related Party of the Corporation…;

(v) the merger, consolidation or other business combination by the Corporation into or with any other entity…;

(vi) the acquisition by the Corporation or any of its Subsidiaries of any assets or properties (including stock or other equity interests of a third party) in one transaction or a series of related transactions, which assets or properties have an aggregate value or funding commitment by the Corporation in excess of $250 million;

(vii) the disposition (by way of sale, distribution to stockholders of the Corporation of any securities or assets, or any other means) by the Corporation or any of its Subsidiaries of any assets or properties (including stock or other equity interests of a third party) in one transaction or a series of related transactions, which assets or properties have an aggregate value in excess of $250 million;

(viii) the authorization, issuance, reclassification, redemption, exchange, subdivision or recombination of any equity securities of the Corporation or its material Subsidiaries…;

(ix) any action resulting in the voluntary liquidation, dissolution or winding up of the Corporation or any material Subsidiary of the Corporation;

(x) any substantial change in Discovery's service distribution policy and practices from the service distribution policy and practices of Discovery and its Subsidiaries as of the Issue Date;

(xi) the declaration or payment of any dividend on, or the making of any distribution to holders of equity securities of the Corporation or any Subsidiary of the Corporation…;

(xii) the incurrence of Indebtedness after the Issue Date, by or on behalf of the Corporation or any of its Subsidiaries, if (1) such Indebtedness, together with all other Indebtedness of the Corporation and its Consolidated Group, would exceed four (4) times the Cash Flow of the Corporation and its Consolidated Group for the last four (4)

> consecutive calendar quarters (the "Annualized Cash Flow") or (2) the Debt Service for the next twelve (12) calendar months related to such Indebtedness, together with the Debt Service for the next twelve (12) calendar months for all other Indebtedness of the Corporation and its Consolidated Group, would exceed sixty-six percent (66%) of the Annualized Cash Flow of the Corporation and its Consolidated Group;
>
> (xiii) the appointment or removal of the Chairman of the Board of Directors of the Corporation and the appointment or removal of the Chief Executive Officer of the Corporation;
>
> (xiv) any offering of any security of the Corporation or any of its Subsidiaries that would constitute a "public offering" within the meaning of the Securities Act of 1933…; and
>
> (xv) the adoption of the Annual Business Plan of the Corporation and any material deviation therefrom.[4]

57. None of the Certificate of Incorporation, Series A-1 COD, or Discovery's other governing documents provided for the provision of any premium for A/N's relinquishment of its consent rights. In other words, if one of the above-enumerated transactions was harmful to A/N, it could block it.

58. As explained below, A/N voted its Series A-1 preferred stock in favor of the Merger only after it used its fiduciary access to information and Board deliberations in order learn the benefits of the Merger and secure a better conversion ratio than that provided in the Series A-1 COD by threatening to veto the Merger.

[4] Series A-1 COD, §6)(c)(i)-(xv).

B. Discovery Determines that It Needs a Deal, and Begins Merger Discussions with AT&T

1. The Need for Greater Scale Drives a Merger between Discovery and AT&T

59. Following the rise of cable television in the 1970s and 1980s, most consumers obtained access to video programs by subscribing to a cable network (or satellite provider) with a menu of hundreds (or even thousands) of individual channels, each of which offered various programing throughout the day. This is often described as the traditional multichannel video market providing so-called "linear" service.

60. Beginning in the 2010s, new technology allowed the rise of video on demand (VOD) or "streaming" services through which consumers could pick from a wide array of individuals programs (movies, series, documentaries, etc.) rather than being beholden to the schedules set by various cable channels. Traditional cable companies lost millions of subscribers that decade, due primarily to consumers' migration to streaming. This phenomenon is popularly referred to as "cord-cutting." The cable companies then reduced the fees paid to cable channel owners.

61. Discovery and WarnerMedia both earned a significant portion of their revenue from fees paid by linear services, and those revenue streams were increasingly negatively impacted through the end of 2020 and into 2021. While both

Discovery and WarnerMedia offered streaming services such as Discovery+ and HBO Plus, neither was among the larger players in the streaming market.

62. As the media industry shifted increasingly to a streaming world between 2018 to 2021, competition for subscribers ratcheted up. It became clear that content had emerged as a key differentiator amongst the many streaming platforms. High profile content could attract subscribers to a streaming service and keep them from leaving.

63. Demand for both original and licensed content increased, as did the cost of that content. Each of the major streaming services, such as Disney+, Apple TV+, Netflix, Amazon, and Hulu, were spending billions of dollars on content. This elevated content spend was only expected to increase. Discovery thus needed to increase the scale of its operations, likely through mergers or other transactions with complementary partners like WarnerMedia.

64. Discussions of a possible combination of Discovery and WarnerMedia began on February 13, 2021, when Discovery CEO Zaslav reached out to AT&T CEO Stankey. Zaslav expressed to Stankey that WarnerMedia's "wide offering of

complementary, award-winning content" made it an attractive business to combine with Discovery.[5]

2. A/N and Its Designees Used Their Roles as Discovery Fiduciaries to Understand Exactly How Much of the Merger Benefit They Could Misappropriate

65. Talks between Zaslav and Stankey continued on March 2, 2021, when the two met in-person. Later that same day, Zaslav called R. Miron and S. Miron and asked whether A/N would relinquish its special rights in order to facilitate a value-enhancing transaction between Discovery and WarnerMedia.

66. Seeking to preserve its optionality at the expense of Discovery's public stockholders, on March 2, 2021, A/N "indicated that they would need further information before they could consider that request and determine whether to support a transaction."[6] A/N did not suggest that it would seek a premium regardless of the terms of the deal, much less that it would participate in the Board's merger process and approve the economic terms of the Merger before threatening the use of its veto to extract a premium at the eleventh hour.

67. Whether or not it would conclude that a Merger was adverse to A/N's interests, if A/N intended to preserve some option to affirmatively demand a

[5] Discovery, Inc., Prospectus (Rule 424(b)(3)) (Mar. 28, 2022) ("Discovery Prospectus" or "Prospectus") at 152.

[6] Discovery Prospectus at 152–53.

premium not set forth in its contracts with Discovery, its designees should immediately have recused themselves from further Board deliberations.

68. In addition to his call with the Mirons, Zaslav also updated Malone about his meeting with Stankey, and separately updated Bennett and Gould.[7]

69. Zaslav and Stankey continued to discuss the possible combination throughout March 2021, exchanging "preliminary views as to the relative values of Discovery and the WarnerMedia Business and the proposed capital structures of a combined company."[8] During these conversations, Stankey made clear that AT&T was only interested in a transaction where the resulting company would have a "straightforward governance structure with a single class of common stock having no special governance rights."[9] The Board repeatedly heard of AT&T's position.

70. In light of the Mirons' decision not to recuse themselves and the other A/N representatives from Board deliberations about the deal, the rest of the Discovery Board had no reason to expect that A/N would forego its contractual conversion rights and instead seek an extra premium as a price of not vetoing an otherwise valuable and attractive transaction.

[7] Discovery Prospectus at 153.

[8] Discovery Prospectus at 153.

[9] Discovery Prospectus at 153.

71. In mid-March 2021, Discovery engaged Allen & Company as its financial advisor regarding the possible combination. Gould purportedly did not personally receive any portion of Allen & Company's fees in connection with the Merger, which equaled roughly $75 million.[10] Nevertheless, even if Gould himself did not personally receive a portion of this fee directly, the fee would contribute to the financial health of his company, providing Gould indirect benefits, and his colleagues would have directly benefited.

72. On March 30, 2021, Discovery and AT&T entered into a Mutual Confidentiality Agreement.[11] That same day, Zaslav and other members of Discovery's senior management team provided an update to Malone and Gould regarding the status of the possible transaction. The next day, Zaslav provided an update to Lowe.[12]

73. On April 1, 2021, Zaslav and Stankey again met in person, along with other members of Discovery and AT&T's respective senior management teams. That same day, Zaslav emailed R. Miron and S. Miron to report that the meeting was "4 hours in," "going well," and he would call them when it was finished.[13]

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[10] Discovery Prospectus at 39, 153.

[11] Discovery Prospectus at 153. *See also* DISCOV002397.

[12] Discovery Prospectus at 153.

[13] DISCOV002562.

74. Zaslav followed up with the Mirons later to report that the "meeting went very well" and to schedule a call later that day.[14] Zaslav and others among Discovery's senior management later updated the Mirons, as well as Malone, Gould, and Bennett, on the status of the potential transaction.[15] Later on the night of April 1, 2021, S. Miron asked Zaslav to call him and R. Miron.[16] The next morning, Zaslav's administrative assistant emailed Zaslav to "mak[e] sure you called the Mirons," to which Zaslav responded simply "Yes."[17]

75. Yet again, the Mirons were more than happy to use their fiduciary position to enjoy a steady flow of information and insight into how much the Discovery Board valued the potential WarnerMedia acquisition. This information, in turn, informed A/N's later demand for the largest side payment the Mirons could extract for themselves without forcing the Board to abandon the deal entirely.

76. On April 2, 2021, Discovery's Chief Development, Distribution & Legal Officer, Bruce Campbell ("Campbell"), spoke with representatives of A/N to update them on the potential transaction. The next day, Discovery's senior management and Discovery's outside legal counsel, Debevoise & Plimpton LLP

[14] DISCOV002552.

[15] Discovery Prospectus at 153.

[16] DISCOV002551.

[17] DISCOV002548.

("Debevoise"), discussed the potential deal with representatives of A/N, including its outside counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss").[18]

77. Despite several updates on the proposed merger, A/N had neither indicated that it might demand an additional premium for its preferred shares in lieu of accepting the contractual conversion protections A/N had previously negotiated, nor did its Discovery Board designees recuse themselves from the process.

3. Negotiations between Discovery and AT&T Progress, then Stall

78. Talks between Discovery and AT&T continued to progress through early April 2021, as Zaslav and Stankey traded offers regarding economic terms and possible structures for the deal.[19]

79. On April 9, 2021, Discovery and AT&T provided each other with access to their virtual data rooms "to facilitate the parties' respective due diligence work streams."[20]

80. Talks continued through the middle of April 2021, but "no material progress had been made with respect to relative valuations and other key deal terms"

[18] Discovery Prospectus at 154.

[19] Discovery Prospectus at 154.

[20] Discovery Prospectus at 154.

by April 18, 2021, at which time AT&T revoked Discovery's access to its virtual data room.[21] That same day, Malone's long-time M&A advisor LionTree LLC (acting as one of AT&T's financial advisors for purposes of this Merger) spoke with Zaslav to try to find a path forward for the transaction.[22]

81. On April 19, 2021, Zaslav and other senior management updated Malone and Gould on the status of the potential transaction.[23]

82. On April 21, 2021, Zaslav and other senior management, along with Discovery's legal counsel at Debevoise, discussed the potential transaction with representatives of A/N, joined by A/N's financial advisor, RBC Capital Markets ("RBC") and legal counsel Paul Weiss.[24]

83. Among the identified topics of discussion were the "strategic benefits of combining Discovery with the WarnerMedia Business."[25] Discovery management reviewed with A/N's representatives in detail a 29-page slide deck touting the strategic and economic benefits of the potential Merger, explaining, among other things, that it would: create "one of the largest media companies" in

[21] Discovery Prospectus at 154.

[22] Discovery Prospectus at 155.

[23] Discovery Prospectus at 155.

[24] Discovery Prospectus at 155.

[25] Discovery Prospectus at 155.

the world, with a combined value of [redacted]; create a "viable competitor to [the] largest streaming services by pairing strong IP, deep content offering and high-quality production capabilities;" generate over [redacted] in cost synergies; and enhance Discovery's "domestic traditional business" through the addition of "strong networks," "leading news networks," and "key sports rights."[26]

84. The presentation also highlighted the combined company's potential to compete with Netflix and Disney+ in the streaming market, noting that it would "possess [the] largest content library in the world," have the "highest rated content among streamers," cover "all major genres," and increase Discovery's "consumer proposition" in international markets.[27]

85. The presentation also emphasized Discovery's limited options outside of a combination with WarnerMedia, noting that targets for acquisition and "the potential acquirer universe" were limited.[28]

86. On April 22, 2021, Campbell forwarded the 29-page slide deck directly to R. Miron in advance of a meeting of Discovery's Executive Committee, a body tasked with "exercising powers of the Board on matters of an urgent nature that arise

[26] DISCOV002456; DISCOV002457 at 002459, 002467-68.

[27] DISCOV002457 at 002476-77, 002479.

[28] *Id.* at 002482.

between regularly scheduled Board meetings." The Executive Committee's membership included R. Miron (as Chair), Bennett, Malone, and Zaslav.[29]

4. Discovery's Board, Including the A/N Designees, Encourages Further Negotiations with AT&T

87. On April 23, 2021, Discovery's Executive Committee met to discuss the proposed transaction.[30] With everyone knowing that A/N's contractual rights already provided a formula for converting its Series A-1 and Series C-1 preferred stock in the planned Merger and that A/N had not to date made any demand for differential treatment, R. Miron participated as Chairman of the committee.[31]

88. Zaslav explained to the Executive Committee how the proposed transaction arose, and noted that he had already spoken with A/N representatives regarding the transaction. At the Executive Committee meeting, R. Miron made no indication to the other Executive Committee members that A/N was using its access to and participation in the process to inform its ultimate demand for a massive side payment that would misappropriate a large portion of the benefits the Board sought to secure for all of Discovery's stockholders.

[29] DISCOV000995.

[30] Discovery Prospectus at 155.

[31] DISCOV000995.

89. The Executive Committee (including R. Miron) proceeded to have a wide-ranging discussion about the potential transaction, including presentations regarding Discovery's long-range plans, an "advocacy case" and "management case" prepared by management for use in negotiating the economic and other terms with AT&T, a preliminary valuation analysis and projections for the proposed combined company, and the debt to be taken on in the proposed transaction.

90. The Executive Committee also discussed the corporate governance structure of the proposed combined company. The Executive Committee ended its meeting supportive of management continuing to explore the potential transaction.[32]

91. R. Miron did not express that A/N might demand an additional premium for its preferred shares in derogation of its contractual conversion protections as the price for A/N supporting the transaction. To be sure, the time to have recused A/N from the Board's deliberations about the Merger had already long passed, since by this time, A/N clearly knew that the Company's Board and senior management viewed the Merger as both highly attractive and valuable, and a strategic imperative. The damage from misusing their fiduciary powers for personal benefit was already done. But with each passing meeting, the harm from A/N's strategic silence increased.

[32] DISCOV000995 at 000998.

92. On April 25, 2021, Discovery's senior management, including Zaslav, and counsel from Debevoise again met with representatives of A/N, RBC, and Paul Weiss to discuss the potential transaction, "the status of various work streams and certain financial matters."[33] Those scheduled to be on the call for A/N included S. Miron, R. Miron, Michael Newhouse, S. Newhouse, and Sam Newhouse, among others.[34]

93. Also on April 25, 2021, Zaslav and Stankey spoke about the transaction. On this call, Zaslav proposed a 68/32 split of the outstanding shares in the combined company, as well as a debt transfer of $42 billion. Stankey did not make a counteroffer. Sometime after the call, AT&T reinstated Discovery's access to its virtual data room.[35]

94. On April 27, 2021, AT&T shared a draft term sheet, which contemplated a 73/27 ownership split and $44 billion debt transfer from AT&T to the new company. Under the terms of AT&T's offer, A/N's preferred stock would be eliminated, the capital structure would be collapsed into a single class of common stock with each share having one vote, and Zaslav would be the CEO of the

[33] Discovery Prospectus at 155.

[34] DISCOV002151.

[35] Discovery Prospectus at 155.

combined company, which would have a 13-person board of directors—seven AT&T designees and six from Discovery.[36]

95. Discovery's full Board met on April 27, 2021, to discuss the proposed transaction. R. Miron, S. Miron, and Swain chose not to recuse themselves, and S. Newhouse was present as a Board observer. These four representatives of A/N were among those to receive Zaslav's oral report on the Merger, as well as a written presentation of its "strategic rationale."[37] The presentation touted the "highly complementary brands and characters" of WarnerMedia and Discovery and noted that the combination would create "one of the largest media companies" in the world, with a combined value of [redacted].[38] The Merger would help Discovery strengthen its "traditional Pay TV business," as well as "general entertainment and kids' content globally."[39] It would further position Discovery as a "viable competitor to [the] largest streaming services" and generate over [redacted] in cost synergies.[40]

[36] Discovery Prospectus at 155–56.

[37] Discovery Prospectus at 156.

[38] DISCOV000864 at 00085–66.

[39] *Id.* at 000866

[40] *Id.*

96. During the April 27 meeting, Campbell discussed the strategic advantages of a combination with WarnerMedia. Campbell highlighted "how the transaction could potentially enhance the Company's existing linear business and commented on the attractiveness of [WarnerMedia's] U.S. news business and sports rights." He further noted that the combined company could "meaningfully grow the Company's direct-to-consumer business."

97. Explaining the defensive necessity of the deal, Campbell stated that Discovery's "potential acquisition opportunities" besides WarnerMedia were "very limited." He described WarnerMedia as the "most attractive opportunity for the Company," and Allen & Company's representative added that Discovery could "possibly be an attractive target for acquisition" after the combination with WarnerMedia.[41]

98. The Board (including the A/N representatives) also considered Discovery's updated long-range plan and extended long-range plan, as well as management's "advocacy case" and "management case" forecasts regarding the potential merger. Allen & Company presented a preliminary valuation analysis, as well as pro forma financials for a combined Discovery/WarnerMedia entity.

[41] DISCOV000143 at 000145.

99. The April 27 meeting concluded after Campbell reviewed next steps and noted that AT&T "was looking to sign and announce a deal by mid-May." By the end of the meeting, "the Board was supportive of management continuing to explore the proposed [merger] and should report back to the Board as its negotiations with [AT&T] progressed."[42] None of the four A/N representatives in attendance expressed the view or even hinted that A/N might threaten to veto the transaction unless it received an additional premium for its preferred stock.

100. On April 28, 2021, Zaslav offered AT&T a 70/30 ownership split and $43 billion debt transfer.

101. On April 29, 2021, Stankey indicated the split was not good enough. Discovery's senior management reconvened and agreed, subject to the Board's approval, to offer a 71/29 ownership split.[43] AT&T agreed to the split. That same day, Zaslav and other members of management again updated representatives of A/N regarding the status of the proposed transaction.

[42] *Id*. at 000147.

[43] Discovery Prospectus at 156.

C. The Board—A/N Representatives Included—Approves Merger Terms that Treat All Stockholders Equally, as A/N's Contractual Provisions Contemplate

102. By April 30, 2021, the ***full*** Discovery Board and AT&T had agreed to the core economic terms of the Merger, as well as the post-closing governance and capital structure of Discovery: (a) AT&T stockholders would receive 71% of the equity of post-closing Discovery, with pre-Merger Discovery stockholders retaining the remaining 29% (previously defined as the "Merger"), and (b) as had always been contemplated in prior Board-level discussions, Discovery's preferred stock would be eliminated, with post-closing Discovery's capital structure collapsed into a single class of common stock with one vote each (referred to herein as the "Reclassification").[44]

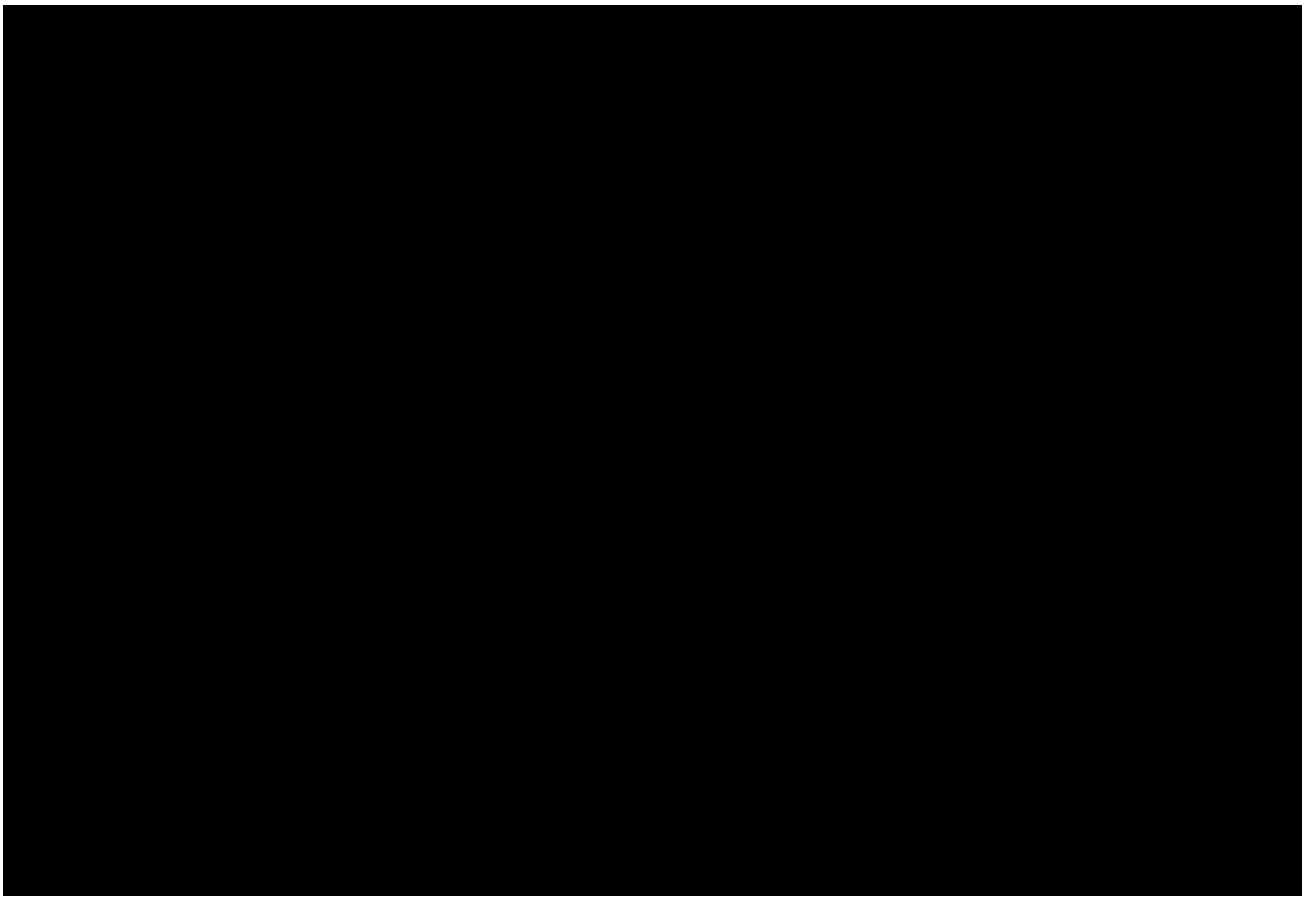
103. AT&T did not care how that 29% would be allocated among existing Discovery stockholders. Yet, AT&T insisted on—and Discovery agreed to—a simplification of the capital structure of the combined company, such that post-Merger Discovery would have a single class of common stock.

104. On April 30, 2021, the full Board met to discuss the Merger, including the 71/29 ownership split, the $43 billion in net cash that would be paid to AT&T, and the "single class share structure, with one vote per share and no special rights

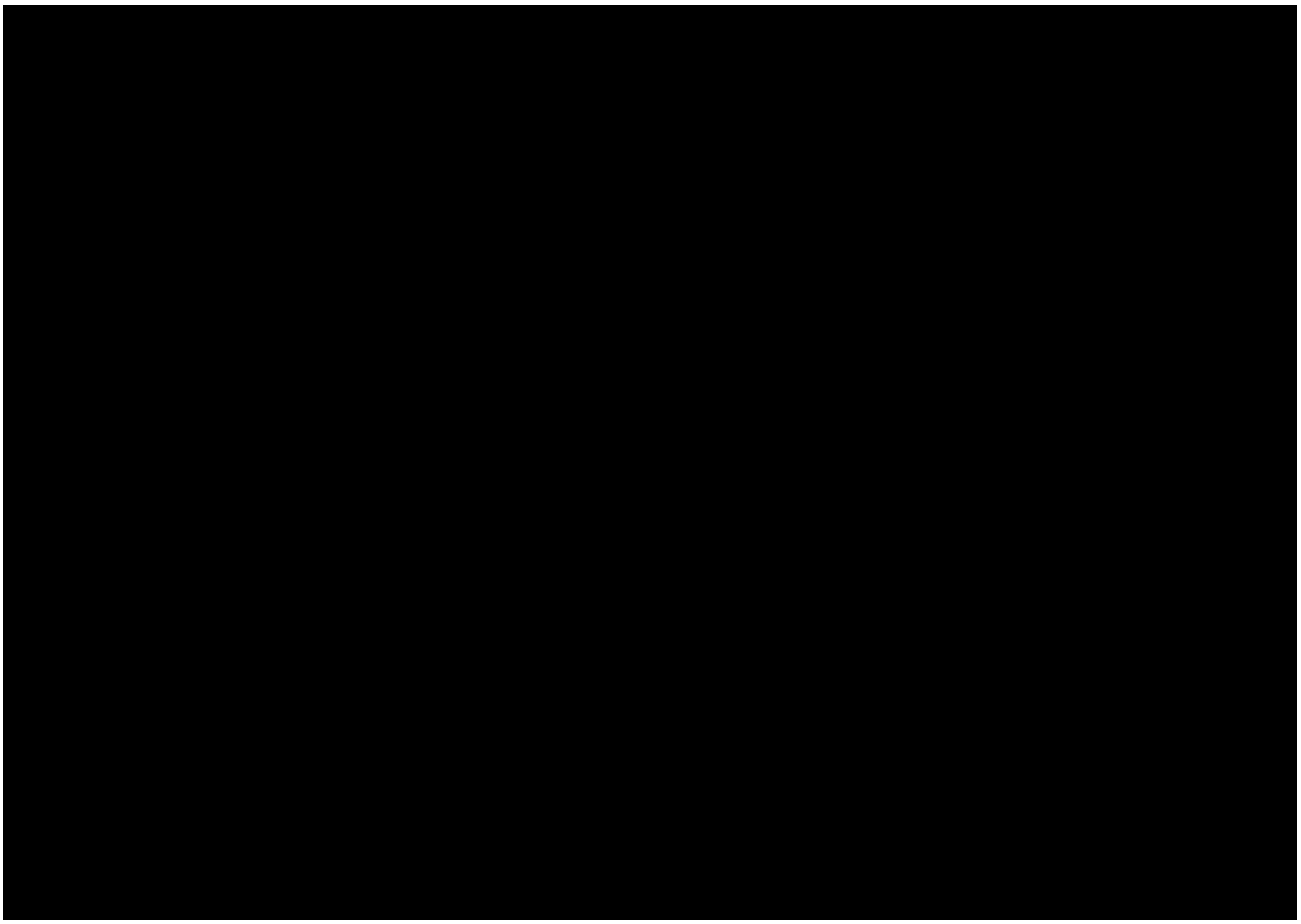
[44] Discovery Prospectus at 157.

assigned to stockholders."[45] In attendance were R. Miron, S. Miron, and Swain, as well as Newhouse (in his capacity as a Board observer).

105. At the meeting on April 30, 2021, the Board received the following summary of the proposed deal terms, which included "***Share structure – One class, one vote***" and "***Special governance – No preferred, veto or other special stockholder rights***":



[45] DISCOV000148 at 000150.



106. As discussed above, prior to the Merger, Discovery had three classes of common stock and two classes of preferred stock. Under the single class, one-vote-per-share Merger proposal, each share of Discovery's Series A common stock, Series B common stock, and Series C common stock would be converted into a single share of a newly created class of post-Merger Discovery common stock. Discovery's outstanding Series A-1 and C-1 preferred stock would also be converted into common stock.

107. During the Board's discussions on April 30, 2021, Campbell "explained that the proposed Project Home Run transaction [*i.e.*, the merger with

AT&T] would require specific approval from Advance/Newhouse, the Company's Series A-1 Preferred stockholder."[46] There is no indication in the minutes that any of the A/N representatives on the Board or at this meeting objected to the terms of the deal proposed by AT&T.

108. The transaction would also require approval from Malone. In the past, when Malone contemplated seeking any form of differential consideration, he has recused himself (whether or not he did so sufficiently has been litigated, but he did go through the well-established practice of recusal when interests may diverge). Having previously determined not to recuse himself and thus deciding to exercise his fiduciary powers for the benefit of the Company and all its stockholders ahead of his own personal interests, Malone had already informed Discovery management that he would not seek "any additional consideration with respect to conversion of his shares of Series B common stock."

109. Thereafter, "[f]ollowing the discussion, ***the Board***"—including Defendants R. Miron, S. Miron, and Swain—"***accepted the terms as proposed by Aaron*** [*i.e.*, AT&T] and authorized Mr. Zaslav and the other officers of the Company to move forward with negotiations with Aaron."[47]

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[46] *Id.* at 000151.

[47] *Id.*

D. A/N Holds the Deal Hostage to Extract an Unfair Side Payment

110. After the Board—including the A/N representatives—formally determined that the Merger was in the best interests of Discovery and its stockholders writ large, Defendants breached their fiduciary duties by holding the unquestionably beneficial Merger hostage unless A/N was paid a more favorable conversion ratio than provided to it in the Series A-1 COD.

111. Although the Board discussed that the Merger "would require specific approval from [A/N,]" nothing in the minutes of the April 30 meeting suggests that A/N told the Board it would demand an enormous side payment before providing that consent. Indeed, unless A/N's plan was to lock in the Board to the Merger before leveraging its veto to extract personal benefits, any such demand would be inconsistent with the A/N designees' approval of the Merger terms at this meeting.

112. The Prospectus claims that at some point on April 30, 2021, representatives of A/N called Zaslav to inform him that while it would consider supporting the proposed transaction depending on its terms, it would not approve a deal unless it "was appropriately compensated for the relinquishments of the Special Rights as part of the proposed transaction."[48]

[48] Discovery Prospectus at 157.

113. According to the Prospectus, having heard just before the proverbial stroke of midnight that A/N would make personal demands for side payments despite participating throughout the process and knowing the deal terms and benefits that made the Board support the deal, the Board supposedly "determined that, if Advance/Newhouse were to require additional consideration in connection with its consent [for the Merger] . . . it would be advisable for the Discovery Board to form an independent transaction committee" to negotiate with A/N.[49] Notably, the Board minutes from the meeting at issue make no mention of any such determination, and the Board did not actually resolve to form such a committee.

114. In other words, while A/N as an entity was finally and belatedly raising the prospect of seeking an additional side payment at the direct expense of Discovery's other stockholders, the A/N designees to the Discovery Board were endorsing the terms of the Merger as a matter of fiduciary duty.

115. Either A/N did not even raise any potential extortion effort based on its threatened veto exercise at the April 30 meeting, or it did so and the minutes excluded a plainly material event. Either way, A/N's demand for massive payments in lieu of exercising a veto on a deal it already approved and endorsed as beneficial was an improper abuse of fiduciary power. A/N had previously negotiated a

[49] Discovery Prospectus at 157.

contractual conversion ratio for its Series A-1 preferred shares if it were to convert those shares into common shares as part of a reclassification.

116. If A/N did not want to provide its consent to the agreement negotiated between AT&T and Discovery—an agreement its own Board designees supported—it could have simply said no. Indeed, even a stockholder with mathematical voting control has the right to refuse a deal it does not like. What they cannot do is participate as a fiduciary in assessing the transaction, and then belatedly say no to the deal unless it received more shares than it originally negotiated for.

117. Long after A/N understood exactly how beneficial the Discovery management team, the rest of the Board, and the Company's advisors thought the Merger would be for Discovery based on information that A/N's designees learned in their capacity as Discovery fiduciaries, and after being told that AT&T wanted to close the deal in two weeks thereby increasing A/N's veto leverage, A/N decided to hold the entire deal hostage for its own benefit. However, A/N had not made a specific economic demand at this point.

118. Detailed discussions between Discovery and AT&T proceeded into early May, tackling matters that included "human resources aspects of the proposed transaction," as well as financial, legal, and tax due diligence.[50] An initial draft of

[50] Discovery Prospectus at 158.

the Merger Agreement was shared by Sullivan & Cromwell LLP ("Sullivan & Cromwell") —AT&T's legal advisor—on May 3, 2021. The draft included voting agreements in support of the transaction to be signed by Malone and A/N.[51]

119. On May 8, 2021, Campbell updated representatives from A/N on the status of negotiations.

120. On May 9, 2021, A/N's advisors, Paul Weiss and RBC, spoke with Discovery's advisors, Debevoise and Allen & Company, and indicated that "while Advance/Newhouse remained in favor of continuing to explore the proposed transaction, [it] was not able to determine whether it would be willing to support the proposed transaction" at that time.[52]

121. Zaslav reported on the progress being made on the finalization of the Merger as well as "the parties' desire to be in a position to sign definitive agreements and publicly announced the deal by Monday [*i.e.*, May 17, 2021]."[53] With the target date for signing only eight days away, the A/N designees still had not given any indication of the massive size of the side payment they would demand to provide their consent.

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[51] Discovery Prospectus at 158.

[52] Discovery Prospectus at 158–59.

[53] DISCOV000127 at 000128.

122. The Board met again on May 11, 2021, with A/N's designees in attendance to discuss the status of the last remaining open points of negotiation with AT&T and the new employment agreement being negotiated with Zaslav. R. Miron served as chair of the meeting. That same day, Discovery management spoke with representatives of A/N and RBC and answered their due diligence questions.[54] With the target signing date now only six days away, the A/N designees still did not tell the Board it would demand an enormous side payment or hold up the Merger.

123. On May 12, 2021, Debevoise received a revised draft of the Merger Agreement from Sullivan & Cromwell. Debevoise promptly shared the draft with Paul Weiss and A/N.[55]

124. The Board met again on May 12, 2021, with A/N's designees only permitted to attend a portion of the meeting. In other words, once A/N finally floated its demand for differential consideration as a bribe to forego a bad faith exercise of its veto rights, both the Board and A/N accepted that the A/N representatives had to recuse themselves from the discussions in which A/N's interests were in conflict with that of the other Discovery stockholders.

[54] Discovery Prospectus at 161.

[55] Discovery Prospectus at 161.

125. While the A/N representatives were in attendance, the Board discussed remaining issues with Zaslav's new employment agreement, including the pricing of certain stock options. Those discussions assumed that the parties would announce the Merger before the market opened on Monday May 17, making the stock's closing price on Friday May 14 the relevant metric for the pricing of Zaslav's options.

126. The A/N designees then left the meeting and the Board proceeded to form a purportedly independent Transaction Committee to negotiate to secure A/N's formal approval of the Merger. The Board appointed Bennett, Gould, and Wargo to the Transaction Committee. While A/N still had not made any specific financial demand as a price for its consent, the formation of the Transaction Committee itself shows that the Board finally recognized that such a demand was likely.

127. In determining who to appoint to the Transaction Committee, the Board only considered potential members' independence vis-à-vis A/N, not vis-à-vis the Merger as a whole. As a result, the Transaction Committee was conflicted.

128. Specifically, as discussed above, Gould has worked at Allen & Company since 1972, and is currently a Managing Director and Executive Vice President. Discovery agreed to pay Allen & Company $75 million in connection with the Merger, $67.5 million of which was contingent on the consummation of the Merger. Gould had a strong incentive to ensure A/N consented to the Merger.

129. The Transaction Committee appointed Bennett as chair and hired Perella Weinberg Partners LP ("PWP") as a financial advisor. The Transaction Committee agreed to pay PWP $5 million for its work.

130. The Transaction Committee met for the first time later that day. The minutes from that meeting make clear the Transaction Committee's dilemma. The Transaction Committee discussed "management's belief that the Transaction was expected to be highly beneficial to the Company and its stockholders, including A/N as the largest stockholder, and also noted that based on Board discussions to date, the Board also shared this view."[56]

131. The Committee also discussed the risks to the Company if it did not reach a deal, including challenges to the Company's standalone plan and the further risks to the Company's standalone prospects if AT&T reached a deal with a competitor. Indeed, Discovery insiders thought the Merger was so beneficial to the Company that the deal's internal code name was "Project Home Run."

132. This backdrop dominated the Committee's deliberations and discussions with A/N. The Transaction Committee, and indeed the entire Board including the A/N designees, considered the Merger extremely important for

[56] DISCOV001635 at 001638.

Discovery's long-term future. A/N knew this fact and utilized that knowledge to hold the Company and its other stockholders hostage.

133. Also at this meeting, PWP described its [redacted][57]

134. PWP [redacted][58]

135. Later that day, A/N delivered its initial demand that it misleadingly characterized as a 25% premium on its investment in Discovery, with 10% coming in the form of incremental common shares on its Series C common and Series C-1 preferred shares and 15% on its Series A-1 preferred shares coming in the form of voting preferred shares. A/N also demanded a 6.5% annual dividend on the preferred shares and the right to appoint three directors in the combined company.

[57] *Id.*

[58] *Id.*

136. PWP [redacted]

137. Although the high value of A/N's demand was itself unreasonable and a nonstarter for all involved, it was also impossible to accept because AT&T had consistently insisted on a single-class share structure, without any preferred stock, for the combined entity—which A/N ***knew*** given the information its designees had learned in their fiduciary capacity as Discovery directors. In other words, A/N made an opening demand it knew could never be accepted, thus making any subsequent deal seem like a compromise.

138. The Committee met with PWP to discuss A/N's proposal on May 13, 2021. After discussing A/N's requested massive premium amounting to a [redacted] side payment for not exercising its veto right over the concededly beneficial Merger, PWP noted [redacted][59]

[59] DISCOV001862 at 001863.

In a later presentation, PWP noted [redacted]"[60]

139. Over the following days, the Transaction Committee negotiated the side deal with A/N. These negotiations were conducted under extreme time pressure, as the parties targeted May 16, 2021 (or only four days after A/N made its initial proposal for a side payment) as the Merger's signing date.

140. The Committee met again on the morning of May 14, 2021, and Bennett relayed that "AT&T had a very negative reaction [to A/N's proposal], saying it went against the agreed vision for the post-Transaction company as a major public company which, like AT&T, had a large and diffuse shareholder base."[61] AT&T also indicated to Zaslav "that it was unwilling to bear any portion of the economic cost of a premium payable to A/N in respect of its consenting to the Transaction."[62]

141. Additionally, Bennett relayed that Malone believed A/N's demand "was unreasonable, and further indicated that he felt that the A/N negotiating stance could put the overall deal at risk given the nature of the terms being requested by A/N and the proposed timing for the Transaction."[63] The Transaction Committee

[60] DISCOV001920 at 001926.

[61] DISCOV001635 at 001645.

[62] *Id.*

[63] *Id.*

agreed, relaying to the Board later that day that they viewed A/N's "requests as unacceptable, both in quantum and form, inconsistent with the deal terms established with [AT&T] and representing an excessive premium to [A/N] relative to consideration to other stockholders."[64]

142. Against the backdrop of A/N's "unreasonable" and "unacceptable" request, the Transaction Committee again discussed on May 14, 2021, that "each of the Board, senior members of the Company and Dr. Malone" believed "that the Transaction was expected to be highly beneficial to the Company and its stockholders, including the non-A/N stockholders."[65] Moreover, the Committee "discussed the potential downside risks associated with failure to complete a Transaction, including challenges with retention of the Company's management team, concerns with the Company's standalone prospects and the possibility of AT&T pursing a transaction with a competitor of the Company."[66]

143. Put another way, each of AT&T, Malone, the Board, PWP, and the Transaction Committee were fully cognizant that A/N was extorting them all based on its special knowledge of how valuable the Merger was to Discovery and its

[64] DISCOV000999 at 001001.

[65] DISCOV001635 at 001645.

[66] *Id*. at 001645-46.

stockholders. The question was no longer whether A/N would succeed in using its fiduciary access to the Board's Merger process to its benefit. The only remaining question was how much A/N could extort.

144. Ultimately, the Transaction Committee determined:

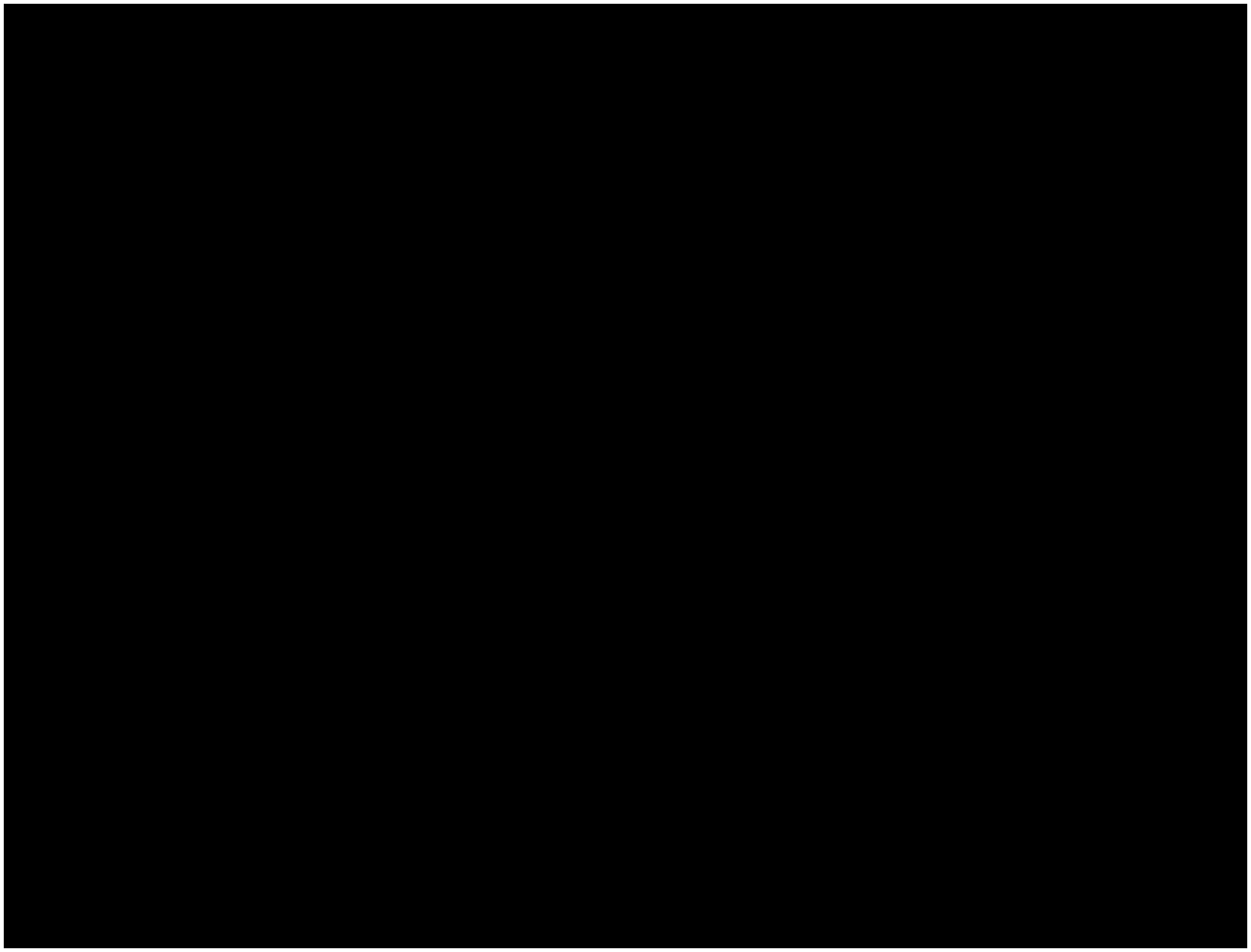
> [I]n light of the unanimous view of the Board that the Transaction would be in the best interest of the Company's stockholders, it would be harmful to the Company and all its stockholders (including A/N as a stockholder of the Company) if the Company were to fail to enter into the Transaction due to A/N's insistence on the off-market terms contained in its proposal.[67]

145. In other words, the Transaction Committee had no choice but to agree to some deal with A/N so long as they could determine the Merger still would be economically beneficial to other stockholders.

146. Therefore, in analyzing potential counters to A/N's demand, PWP's analysis [redacted][68]

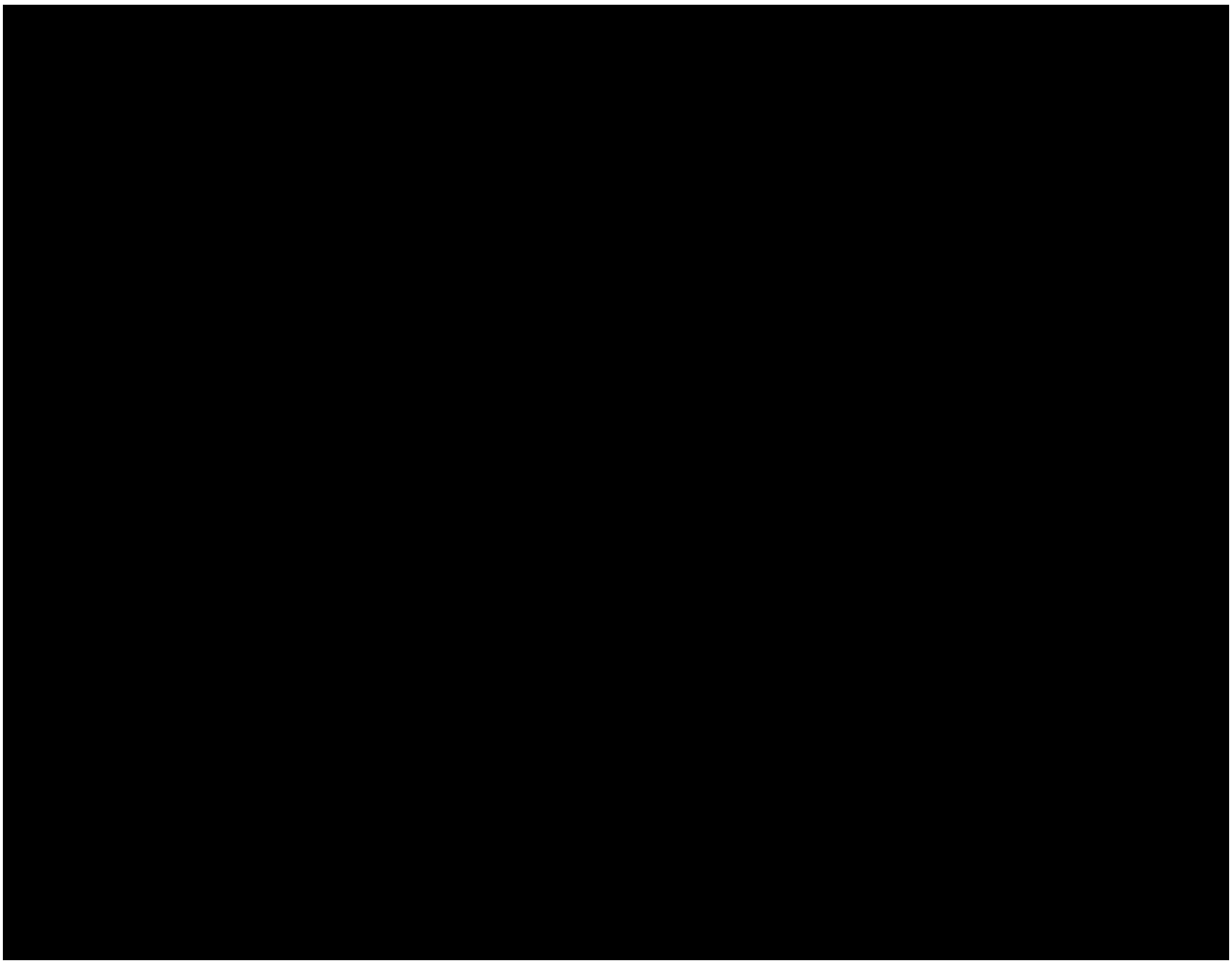
[67] *Id.* at 001647.

[68] DISCOV001910 at 001912.



147. After receiving that analysis, the Transaction Committee asked PWP to prepare an updated analysis that measured the value of the Merger to A/N and other stockholders in 5% increments:[69]

[69] DISCOV001905 at 001906.



148. The Transaction Committee also decided to allow Malone, along with Bennett, to speak directly to A/N to express their views and attempt to get A/N to reach some agreement. According to the Transaction Committee's minutes, the theme of their conversation was that the Merger was expected to be "very beneficial" and "there were substantial downsides associated with failure to complete a Transaction, including challenges with retention of the Company's management team and the possibility of [AT&T] pursuing a transaction with a competitor of the

Company."[70] Accordingly, while it was clear to A/N that the Board very much wanted the Merger to close and that it could still support the Merger even if A/N expropriated hundreds of millions of dollars of value, A/N now recognized that the Transaction Committee itself knew it had little negotiating leverage.

149. The Transaction Committee did not have time to engage in protracted negotiations. It countered A/N's initial proposal on May 14 with an offer that PWP valued as representing a total premium worth [redacted], however this "valuation" was based on an assumed dilution to Discovery's stock price based on the very issuance of additional shares to A/N in the egregious Side Deal. Although the Transaction Committee considered starting with a lower offer, it decided to move right to a final offer due to the time constraints.

150. In conveying the offer, the Transaction Committee made clear "that there was very little, if any, potential for additional movement on the premium to be paid[.]"[71] Moreover, the "Talking Points" prepared for Bennett to convey to offer to A/N stressed, among other things:[72]

- We believe that the proposed transaction offers the potential to create significant value for <u>all</u> [Discovery] shareholders based on the current terms.

[70] DISCOV001635 at 001651.

[71] *Id.* at 001652.

[72] DISCOV001869.

- As you are also aware, there are challenges to the Company's current standalone plan, and some concerns regarding recent results.

- In short, this transaction is value-creating for everyone, in particular for [A/N] as the Company's largest shareholder[.]

151. After A/N initially balked at the Transaction Committee's proposal, on the morning of May 15, 2021, Bennett told the Committee that he would reach out directly to S. Newhouse to emphasize that the Transaction Committee believed the deal would "increase the Company's value by multi-billions of dollars, which would benefit all stockholders and, urge that A/N agree to the terms that the Committee had proposed."[73]

152. On the afternoon of May 15, 2021, A/N accepted the Transaction Committee's economic proposal, but insisted it have Board representation in the combined company.

153. In the end, the Transaction Committee recommended, and the Board approved, the Side Deal where A/N would receive an additional 32,301,310 common shares. Specifically, instead of each Series A-1 preferred share converting into nine shares of common stock as A/N originally negotiated when it acquired the preferred shares, in connection with the Merger and Reclassification, each Series A-1

[73] DISCOV001635 at 001638.

preferred share was converted into 13.11346315 common shares of the combined company. Discovery also agreed that two of its initial director designees would be S. Miron and S. Newhouse, with terms expiring at the third annual meeting following the effective time.

154. PWP calculated that the Side Deal was worth [redacted] However, that description was misleading. A/N received 45.7% more shares in exchange for its Series A-1 preferred shares than it was entitled to receive based on its original negotiations of the terms of the preferred shares. Based on the market price of the Series A shares on the prior trading day, the extra shares received by A/N were worth $1,151,541,730. The discrepancy between the two numbers is attributable to PWP's calculation [redacted]

155. PWP recognized that [redacted] Yet, PWP [redacted][74]

156. To justify the premium paid to A/N, PWP focused on [redacted]

[74] DISCOV001920 at 001930.

[redacted] Put another way, thanks to A/N's knowledge of the Board's thinking about how valuable the Merger would be on a gross basis, it knew it could leave Discovery's other stockholders with some additional value, net of A/N's improper self-interested demands.

157. As part of the Side Deal, A/N signed a Consent Agreement where, among other things, A/N consented to, approved, and adopted the Merger Agreement and any actions required thereby. Those actions included the Reclassification and the filing of the Company's Second Restated Certificate of Incorporation in Delaware through which A/N received the additional shares from the Side Deal. That Second Restated Certificate of Incorporation includes an exclusive forum selection clause that requires all actions asserting claims for breach of fiduciary duty to be litigated in the Court of Chancery.

158. A/N also signed a Voting Agreement where it agreed to vote its shares in favor of the Merger, including the Reclassification, and against alternative proposals. Both the Consent Agreement and Voting Agreement are governed by Delaware law, stipulate that the parties consent to the jurisdiction of Delaware courts, and require the parties to litigate any action arising out of or relating to the agreements in Delaware.

159. The Side Deal was unfair to and directly harmed Discovery's other stockholders. As part of the Merger, Discovery underwent a Reclassification. Each Series A, Series B, and Series C common share was exchanged for one share of a newly created class of common stock. The Merger was negotiated on the premise that AT&T's stockholders would own 71% of the combined company and Discovery's stockholders would own 29% of the combined company.

160. The shares constituting the Side Deal came entirely out of the shares reserved for all of Discovery's stockholders. As a result, when Discovery's other stockholders exchanged their old shares for new shares, those new shares represented a smaller portion of the Company and were worth less than they otherwise would have been had A/N not demanded disparate treatment. As PWP explained to the Transaction Committee, the [redacted][75]

161. In essence, with intelligence about how beneficial the Merger would be, A/N chose to appropriate for itself as much of the marginal benefit as it could

[75] *Id.* at 001925.

get away with while still ensuring the Board would endorse the deal and there would be a chance for stockholder approval.

162. The consideration A/N diverted does not correlate to its contractual rights. It simply reflects the amount of money A/N—which had multiple designees on the Board who consented to the terms of the Merger before holding the deal hostage to appropriate extra value for A/N—realized it could extract based on the benefits of the Merger itself.

163. PWP's final analysis emphasizes that [redacted][76]

[76] *Id.* at 001922.

164. For its part, while PWP acknowledged [redacted]

[redacted]" PWP informed the Transaction Committee that [redacted].[77]

E. The Stockholder Vote Had No Ratification Effect

165. On March 11, 2022, Discovery stockholders voted to approve the Merger and its related transactions. Yet, this approval did not ratify or cleanse

[77] DISCOV001635 at 001664.

Defendants' breaches of fiduciary duty, through which they co-opted 1% of post-Merger Discovery's equity for A/N at the direct expense of Discovery's stockholders.

166. As discussed above, A/N had negative control over the Merger, given its ability to block a (value-enhancing) transaction. Yet, the Merger was not conditioned, *ab initio* or at any time, on approval by a majority of stockholders unaffiliated with A/N. In fact, had A/N come clean from the outset and indicated it may choose to seek a differential premium, the Board may have sought to implement a majority of vote of Discovery stockholders unaffiliated with A/N as close to the beginning of the process as possible. But with A/N not recusing from the outset, the Board had no reason to consider doing so.

167. Moreover, as also discussed above, the Discovery Board and management, as well as Malone, believed "that the Transaction was expected to be highly beneficial to the Company and its stockholders, including the non-A/N stockholders."[78] These Discovery fiduciaries were concerned about "the potential downside risks associated with failure to complete a Transaction, including challenges with retention of the Company's management team, concerns with the

[78] *Id.* at 001645.

Company's standalone prospects and the possibility of AT&T pursuing a transaction with a competitor of the Company."[79]

168. Thus, despite the unfair diversion of at least $780 million in value to A/N through the Side Deal (crediting PWP's dilution analysis rather than measuring the value of the shares at the time the Side Deal was approved), Discovery fiduciaries believed the Merger was in the best interests of Company stockholders unaffiliated with A/N. Accordingly, the Prospectus touted a number of the Board's reasons for the Merger, including:[80]

- "***Creates A Stronger Competitor in Streaming and Digital Entertainment***";
- "***Premier, Worldwide Portfolio***";
- "***Enhances Discovery's Traditional Pay-TV Offering***";
- "***Significant Expected Synergies***";
- "***Global DTC [i.e., direct-to-consumer] Opportunities***";
- "***New Opportunities for Advertisers***";
- "***Increased Cash Flow***"; and
- "***Tax Efficient Structure***."

[79] *Id.* at 001645-46.

[80] Discovery Prospectus at 169–70.

169. Even more—and somewhat paradoxically—the Board touted "the support of Discovery's largest stockholders, Advance/Newhouse and Dr. Malone, and their willingness to each enter into a voting agreement to vote in favor" of the Merger, as a reason for its recommendation that Discovery stockholders approve the deal.[81]

170. The Prospectus also warned of dire consequences if stockholders did not approve the Merger, including that the "[f]ailure to complete the Transaction in a timely manner or at all could adversely affect Discovery's stock price as well as its future business and its financial condition and result of operations."[82]

171. Moreover, the Merger vote was coercive as Discovery stockholders were not given an opportunity to vote on the Merger and Side Deal as separate transactions. Instead, the Merger was conditioned on Discovery stockholders approving the Reclassification of Discovery's various classes of common stock into a single class through which A/N received its premium Side Deal. In order to receive the benefits Discovery's Board obtained through the negotiation of the Merger, Discovery's stockholders also had to agree to transfer a portion of that wealth to A/N.

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[81] Discovery Prospectus at 171.

[82] Discovery Prospectus at 42.

172. Accordingly, as a practical matter, Discovery stockholders did not have the ability to say "no" to the Side Deal, *i.e.*, their vote was coerced. Company stockholders were confronted with the choice between accepting a transaction widely believed to be significantly value-enhancing (even with the side-payment to A/N), and rejecting the Merger, which could leave Discovery in a ***worse*** position as compared to the *status quo* prior to negotiations with AT&T. If stockholders rejected the Merger, Discovery would be left as an increasingly smaller player on a relative basis in an industry that was rapidly consolidating to achieve massive scale.

173. Simply put, Discovery stockholders' hands were forced (like the Transaction Committee and Board were forced to accede to A/N's demands, lest A/N crater the overall deal), and their vote in favor of the Merger could not constitute ratification of Defendants' self-interested greed.

CLASS ACTION ALLEGATIONS

174. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Discovery common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors-in-interest) who were injured by Defendants' wrongful actions, as more fully described herein (the "Class").

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

176. The Class is so numerous that joinder of all members is impracticable. According to the Discovery Prospectus, as of January 18, 2022, there were 169,543,489 shares of Discovery Series A common stock issued and outstanding, 6,512,378 shares of Discovery Series B common stock issued and outstanding, and 330,146,263 shares of Discovery Series C common stock issued and outstanding. Thus, upon information and belief, there were thousands of Discovery stockholders scattered throughout the United States.

177. There are questions of law and fact common to the Class, including, *inter alia*, whether:

a. The Side Deal was entirely fair;

b. R. Miron, S. Miron, and Swain breached their fiduciary duties as members of Discovery's Board; and

c. A/N aided and abetted the breaches of fiduciary duty by R. Miron, S. Miron, and Swain or, in the alternative, A/N breached its fiduciary duties as Discovery's *de facto* controlling stockholder.

178. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

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

COUNT I

(BREACH OF FIDUCIARY DUTY AGAINST S. MIRON, R. MIRON, AND SWAIN)

180. Plaintiffs repeat and reallege each and every allegation as if set forth in full herein.

181. S. Miron, R. Miron, and Swain, as directors of Discovery, owed Plaintiffs and the Class the fiduciary duties of due care, loyalty and good faith.

182. As detailed above, S. Miron, R. Miron, and Swain were aware of the benefits of the Merger to all of Discovery's stockholders. S. Miron, R. Miron, and Swain obtained knowledge of the benefits of the Merger through, among other things, their (a) attendance at Discovery Board and committee meetings; (b) communications with their fellow directors, members of Discovery management, and/or Discovery's and/or the Board's legal and financial advisors; and (c) their

receipt of presentations and other materials. S. Miron, R. Miron, and Swain then expropriated that information for their and A/N's personal benefit.

183. Armed with knowledge of the benefits of the Merger and after affirmatively deciding with the rest of the Board that the Merger was in the best interests of Discovery and its stockholders, S. Miron, R. Miron, and Swain wielded that knowledge against the Company's other stockholders by holding the Merger hostage via A/N's consent rights, and only agreeing to consent to the Merger if A/N were provided with a non-ratable benefit to which it was never entitled, namely, the Side Deal.

184. As a result of S. Miron, R. Miron, and Swain's breaches of fiduciary duty, the Class has been harmed.

185. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

186. Plaintiffs and the Class do not have an adequate remedy at law.

COUNT II

(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST A/N)

187. Plaintiffs repeat and reallege each and every allegation as if set forth in full herein.

188. A/N is liable for aiding and abetting S. Miron, R. Miron, and Swain's breaches of fiduciary duties.

189. A/N, by and through S. Miron, R. Miron, Swain, S. Newhouse, and other A/N employees, knew that the members of the Discovery Board and senior management owed Plaintiffs and the Class the fiduciary duties of due care, loyalty, and good faith.

190. By the acts alleged herein, A/N knowingly participated in, and provided substantial assistance to, S. Miron, R. Miron, and Swain's breaches of fiduciary duty.

191. A/N knowingly and substantially assisted and participated in S. Miron, R. Miron, and Swain's breaches of fiduciary duty by actively engaging in the campaign to wield A/N's consent rights to hold the beneficial Merger hostage and secure the massive Side Deal for A/N.

192. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

193. Plaintiffs and the Class do not have an adequate remedy at law.

COUNT III

(ALTERNATIVELY, BREACH OF FIDUCIARY DUTY AGAINST A/N IN ITS CAPACITY AS CONTROLLING STOCKHOLDER)

194. Plaintiffs repeat and re-allege all the preceding allegations as if set forth in full herein.

195. Plaintiffs bring this count in the alternative to Count II set forth above against A/N for aiding and abetting breaches of fiduciary duty.

196. As detailed above, A/N had the ability to and did in fact exercise *de facto* negative control over Discovery, including specifically with respect to the Merger and Side Deal. A/N controlled approximately 23% of the voting power at Discovery and had the right to directly elect three of its directors along with a Board observer. A/N also had the right to veto fifteen different categories of transactions, including any significant acquisition or disposition (like the Merger), the incurrence of significant debt, any fundamental change in the business of the Company, the selection or termination of the CEO, and the adoption of the Company's annual business plan.

197. A/N could have, but chose not to, recuse itself and its designees from all of the Board's deliberations, discussions and decisions regarding the Merger.

198. As a *de facto* controlling stockholder with respect to the Merger, A/N owed Plaintiffs and the Class the fiduciary duties of loyalty, good faith, and candor.

199. A/N could have simply exercised its consent right and vetoed the Merger. Instead, A/N breached its fiduciary duties by expropriating the Company's material, non-public information about the benefits of the Merger and then wielding its consent rights in bad faith to hold the Merger hostage and extract the massive

Side Deal. The entire Discovery Board, including A/N's own designees, affirmatively determined that the Merger was in the best interests of all of Discovery's stockholders, including A/N. Then, A/N turned around and threatened to veto the Merger unless it received a massive premium for itself.

200. Specifically, instead of converting each Series A-1 preferred share into nine Series A common shares, A/N received 13.11346315 Series A common shares in exchange for each Series A-1 preferred share. Based on Discovery's trading price at the time of the approval of the Merger, the Side Deal diverted more than an additional $1 billion to A/N.

201. The Side Deal was unfair to and directly harmed Discovery's other stockholders. The Merger was negotiated on the premise that AT&T's stockholders would own 71% of the combined company and Discovery's stockholders would own 29% of the combined company. The shares constituting the Side Deal came entirely out of the shares reserved for *all* of Discovery's stockholders, and the upside from the Merger that should have been shared equally by all of those stockholders. As a result, when Discovery's other stockholders exchanged their old shares for new shares, those new shares represented a smaller portion of the Company (and thus a smaller portion of the Company's upside) and were worth less

than they otherwise would have been had A/N not demanded—and received—disparate treatment.

202. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

203. Plaintiffs and the Class do not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief in favor of themselves and the Class, and against Defendants as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Declaring that S. Miron, R. Miron, and Swain breached their fiduciary duties owed to Plaintiffs and the Class;

C. Declaring that A/N aided and abetted S. Miron, R. Miron, and Swain's breaches of fiduciary duties to Plaintiffs and the Class;

D. In the alternative, declaring that A/N breached its fiduciary duties to Plaintiffs and the Class;

E. Awarding damages to Plaintiffs and the Class, together with pre- and post-judgment interest;

F. Awarding Plaintiffs the costs, expenses, and disbursements of this action, including all reasonable attorneys', accountants' and experts' fees; and

G. Awarding Plaintiffs and the Class such other relief as this Court deems just and equitable.

Dated: December 2, 2022

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CERTIFICATE OF SERVICE

I, Daniel E. Meyer, hereby certify that, on December 7, 2022, the foregoing *Public [Redacted] Version of the Verified Class Action Complaint* was filed and served electronically via File & Serve*Xpress* upon the following counsel:

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