



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DREAMWORKS ANIMATION
SKG, INC.

C.A. No. 12619-CB

**VERIFIED AMENDED
CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs Ann Arbor City Employees Retirement System, Kenneth Bumba, and Teamsters Local 677 Health Services & Insurance Plan (“Plaintiffs”), on behalf of themselves and all other similarly situated public stockholders of DreamWorks Animation SKG, Inc. (“DreamWorks” or the “Company”), bring the following Verified Amended Consolidated Class Action Complaint (the “Complaint”) against Jeffrey Katzenberg (“Katzenberg”), the Company’s former Chief Executive Officer and controlling shareholder, for breaches of fiduciary duty, breach of contract, and breach of the implied covenant of good faith and fair dealing in connection with the acquisition of DreamWorks by Comcast Corporation (“Comcast”). In addition to breaching his fiduciary duties to the Company’s minority stockholders by pursuing and then pushing through an unfair transaction that provided him with disparate and far greater consideration, Katzenberg breached the requirement in the Company’s Restated Certificate of

Incorporation (the “Charter”) that all stockholders receive equivalent consideration in any sale of the Company. Katzenberg additionally breached the implied covenant of good faith and fair dealing inherent in the Charter. The allegations of the Complaint are based on the knowledge of Plaintiffs as to themselves, and on information and belief, including the investigation of counsel and review of publicly available information as to all other matters.

NATURE OF THE ACTION

1. This action involves the sale of a controlled company through an unfair process that was orchestrated by the Company’s controlling stockholder for his personal benefit, and that resulted in a violation of DreamWorks’ Certificate of Incorporation (the “Charter”) and an unfair diversion of valuable consideration from the Company’s public stockholders.

2. DreamWorks, a Delaware corporation headquartered in Glendale California, had three classes of common stock: Class A, Class B and Class C.¹ The Company’s Charter, however, provided that in the event of a merger, “each share of Common Stock shall be entitled to receive Equivalent Consideration (as defined herein) on a per share basis” which was defined to mean “consideration in the same form, in the same amount and with the same voting rights on a per share

¹ DreamWorks Class A common stock (“Class A”) was entitled to one vote per share, and its Class B common stock (“Class B”) was entitled to 15 votes per share. Pursuant to the Information Statement, there were no shares of Class C common stock issued and outstanding at the close of business on April 26, 2016.

basis.” The Charter further provided that “for the avoidance of doubt, consideration to be paid or received by a holder of Class A Stock, Class B Stock or Class C Stock in connection with any merger ... pursuant to any employment, consulting, severance or other arrangement shall not be deemed to be ‘consideration’ that is included in the determination of ‘Equivalent Consideration.’”

3. Katzenberg controlled approximately 60% of DreamWorks’ total stockholder voting power through his ownership of Class A holdings and his ownership of 100% of the Company’s outstanding super-voting Class B shares. Using his control, Katzenberg orchestrated the sale of DreamWorks to Comcast pursuant to the terms of the April 28, 2016 merger agreement (the “Merger Agreement”) for \$41 per share in cash while securing a lucrative side-deal for himself in the form of an equity rollover into continuing profit interests of two of DreamWorks’ business ventures (the “Side Deal”). Specifically, under the terms of the Side Deal – which have never been fully disclosed – following the consummation of the Merger, Katzenberg received a profit interest of 7% (the “Profits Interests”) of the profits *in perpetuity* of two DreamWorks subsidiaries, AwesomenessTV Holdings, LLC (“AwesomenessTV”) and DWA Nova, LLC (“DWA Nova” and collectively with AwesomenessTV, the “JV Entities”), that Comcast acquired as part of the Merger.

4. The JV Entities – and, correspondingly, the Profits Interest – have incredible potential. At the time of the Merger, AwesomenessTV was already one of DreamWorks’ fastest growing units, having seen its value increase nearly six-fold in just three years. In May 2016, Brian Robbins, the CEO and co-founder of AwesomenessTV, stated that its annual revenues were approaching *\$1 billion*. Thus, the Side Deal, which vests completely in only two years, is extremely lucrative for Katzenberg.

5. The Merger Agreement did not include a majority of the minority provision and, as alleged herein, the special committee of the DreamWorks board of directors (the “Transaction Committee”) was conflicted and did not fulfill its duty of care. Immediately following the execution of the Merger Agreement, Katzenberg, as DreamWorks’ controlling stockholder, executed a written stockholders consent (the “Written Consent”) approving the Merger. Thus, the Company’s public stockholders had no prior notice or vote on the Merger, which was then consummated on August 22, 2016.

6. Katzenberg brazenly attempted to avoid the Charter’s explicit Equivalent Consideration requirement and deprive DreamWorks’ public stockholders of the benefits that he negotiated for himself in the Side Deal by labeling his lucrative equity rollover arrangement with Comcast as a “consulting agreement.” No matter the label, Katzenberg’s Profits Interests were additional

consideration for Katzenberg's voting control over the Company and his agreement to push through the Merger via the Written Consent. The Profits Interests did not correlate to Katzenberg's actual or anticipated performance as a "consultant." Indeed, their value did not appear to depend on Katzenberg's actual performance of any consulting activities.

7. Importantly, with the Transaction Committee's consent, Katzenberg negotiated the Side Deal and secured the Profits Interests for himself *before* securing a per-share price for DreamWorks' public stockholders. Accordingly, the benefits provided to Katzenberg by the Side Deal came at the expense of the total consideration paid in the transaction. On its face, by granting Katzenberg a right to a share in the *perpetual profits* of the JV Entities which vested completely in just two years, the Side Deal bore no direct connection to any "consulting" services that Katzenberg may or may not provide to Comcast. Instead, the Side Deal was a way for Katzenberg to funnel additional consideration to himself in exchange for his approval of the Merger.

8. By negotiating the Side Deal concurrently with the Merger Agreement, and securing the benefits of the Side Deal for himself before negotiating a final price for DreamWorks' public stockholders, Katzenberg breached his fiduciary duties and struck an unfair deal that deprived the

Company's public stockholders the Equivalent Consideration guaranteed to them under the express and implied terms the Charter.

PARTIES

9. Plaintiffs were, prior to the consummation of the Merger, holders of DreamWorks Class A common stock.

10. Non-Party DreamWorks was a global family entertainment company with business interests that spanned feature film and television production, licensing and consumer products, location-based entertainment, and new media properties. The Company's franchise properties included *Shrek*, *Madagascar*, *Kung Fu Panda*, and *How to Train Your Dragon*. Until the closing of the Merger (the "Closing"), DreamWorks was incorporated in Delaware and its Class A common stock traded on NASDAQ (ticker: "DWA").

11. Defendant Katzenberg served as the CEO and as a director of DreamWorks from October 2004 through the Closing. Through his ownership of 100% of the Company's then-outstanding super-voting Class B shares, Katzenberg was the controlling stockholder of DreamWorks. As a controlling stockholder, Katzenberg owed the Company and its minority shareholders fiduciary duties of good faith and loyalty.

SUBSTANTIVE ALLEGATIONS

A. Katzenberg Controlled DreamWorks

12. The Company began as a subsidiary of DreamWorks LLC, a company formed in 1994 by Steven Spielberg, David Geffen, and Katzenberg. In 2004, the Company was spun out of DreamWorks LLC and became a publicly traded company. Until the Closing, DreamWorks had two classes of common stock: Class A and Class B. Each Class A share entitled the holder to one vote on all matters presented to stockholders, while each Class B share entitled the holder to fifteen votes on all matters presented to stockholders.

13. In addition to his Class A holdings, Katzenberg beneficially owned all of the Company's outstanding Class B shares. As of June 30, 2016, he controlled 60.6% of the Company's stockholder voting power. The Merger was approved with no notice to or vote by the minority stockholders. Thus, Katzenberg, in his sole discretion, and in his own self-interest, determined the outcome of the stockholder vote on the Merger.

14. DreamWorks acknowledged Katzenberg's control of the Company in its public filings with the U.S. Securities and Exchange Commission (the "SEC"). For example, the Company stated in its annual report on Form 10-K for 2015 that:

Jeffrey Katzenberg and entities controlled by him own 100% of our Class B common stock, representing approximately 9% of our common equity and approximately 60% of the total voting power of our common stock. *Accordingly, Jeffrey Katzenberg or entities*

controlled by him generally have the collective ability to control (without the consent of our other stockholders) all matters requiring stockholder approval, including the nomination and election of directors, the determination of our corporate and management policies and the determination of the outcome of any corporate transaction or other matter submitted to our stockholders for approval, including potential mergers or acquisitions, asset sales and other significant corporate transactions.

15. DreamWorks' Charter was designed to protect DreamWorks' public stockholders in the sale and merger context by prohibiting supervoting Class B stockholders from receiving disparate consideration from Class A stockholders. Specifically, Article IV, Section 2(g) of the Charter stated:

In the event of any merger, consolidation, share exchange, tender offer, reclassification of the outstanding shares of Class A Stock, Class B Stock or Class C Stock or other reorganization to which the Corporation is a party, in which the shares of Class A Stock, Class B Stock or Class C Stock will be exchanged for or converted into, or will receive a distribution of, cash or other property or securities of the Corporation or any other Person, each share of Common Stock shall be entitled to receive Equivalent Consideration (as defined herein) on a per share basis. As used herein, the term "Equivalent Consideration" shall mean consideration in the same form, in the same amount and with the same voting rights on a per share basis . . . and provided further, however, that for the avoidance of doubt, consideration to be paid or received by a holder of Class A Stock, Class B Stock or Class C Stock in connection with any merger, consolidation, share exchange, tender offer, reclassification or other reorganization pursuant to any employment, consulting, severance or other arrangement shall not be deemed to be "consideration" that is included in the determination of "Equivalent Consideration." (Emphasis added).

16. Thus, the Charter mandated that, in any sale of the Company, the Class A stockholders were entitled to receive the same per share consideration as

the Class B stockholders (*i.e.* Katzenberg, the Company's controller). Legitimate additional payments pursuant to employment, consulting or severance agreements with the Company were excluded.

B. A PE Firm Expresses Interest in DreamWorks

17. According to the Definitive Information Statement DreamWorks filed with the SEC on July 11, 2016 (the "Information Statement"), the Merger can be traced back to meetings between DreamWorks' management, including Katzenberg, and an unidentified private equity firm (the "PE Firm") on February 9 and 10, 2016. On February 9, 2016, DreamWorks and the PE Firm entered into a confidentiality agreement, and the PE Firm began to conduct due diligence in anticipation of making an offer to acquire the Company.

18. For the remainder of February 2016, Katzenberg and the Company provided due diligence materials to the PE Firm and discussed the valuation of DreamWorks in a merger. On February 28, 2016, the PE Firm offered to acquire the Company for \$33 per share in cash. Following negotiations, the PE Firm increased its offer to \$35 per share in cash on March 8, 2016. The PE Firm's offer was conditioned on, among other things, the continued employment of management, as well as the rollover of DreamWorks shares held by Katzenberg and other members of management.

19. After considering the PE Firm's offer, the Company's purportedly independent directors determined to seek a transaction in which all of the Company's shares would be treated equally in accordance with the Charter, *i.e.* a transaction in which Katzenberg would not roll over his equity interests. However, on March 16, 2016, the PE Firm reaffirmed that its offer was conditioned on such a rollover.

C. The Board Forms A Conflicted Transaction Committee

20. On March 25, 2015, the Company's board of directors (the "Board"), the majority of which have deep business and personal relationships with Katzenberg, determined not to solicit interest from additional parties, despite the PE Firm's insistence on an equity rollover being part of any transaction in violation of the Company's Charter. At the same time, the Board formed the Transaction Committee, consisting of Mellody Hobson ("Hobson"), Harry "Skip" Brittenham ("Brittenham"), and Jason Kilar ("Kilar"), to negotiate, or oversee the negotiations, with the PE Firm.

21. The purportedly independent Transaction Committee was rife with conflict. Two of the Transaction Committee's three members had particularly close relationships with Katzenberg. Hobson, the Chair of the Board and DreamWorks' lead negotiator in the Merger, has a close, familial-like personal friendship with Katzenberg. For example, Katzenberg reportedly attended

Hobson's June 22, 2013 wedding to another of his close friends, George Lucas ("Lucas") in front of close family and friends at Lucas' Skywalker Ranch. Katzenberg has also publicly praised Hobson in terms reserved for the closest of non-familial relationships: "She has a grace and graciousness about her that is singular...She is remarkably unique. She's a stunning person. I get a little nervous talking about her because the words are so flowery. But it's truly how I feel about her." Katzenberg routinely waxes poetic about Hobson's personal qualities in interviews: "She has this amazing combination of incredible intellect, emotional authenticity and as big a heart as anybody I know."

22. Hobson was one of the select few people that Katzenberg consulted in deciding to sell DreamWorks. The others were his wife Marilyn, DreamWorks SKG co-founder Stephen Spielberg, and DreamWorks COO Ann Daly, who joined Comcast upon the closing of the Merger, and who has since joined Katzenberg at his new venture WndrCo.²

23. Katzenberg and Hobson frequently socialize together. Sitting in the audience alongside Lucas, Katzenberg cheered Hobson on when she gave the 2015 commencement address at the University of Southern California. Hobson and Lucas have also attended intimate political fundraisers at Katzenberg's home. Just

² Todd Spangler, *Jeffrey Katzenberg's Investment Venture WndrCo Raises \$591.5 Million*, Variety, January 26, 2017, available at <http://variety.com/2017/digital/news/jeffrey-katzenberg-wndrco-raises-funding-1201970664/>

weeks ago, Katzenberg, Hobson, and Lucas jointly hosted a special screening of the feature film “Hidden Figures.” Hobson and Katzenberg also routinely support one another’s charitable causes, including by making donations to each other’s charities.³

24. Despite her deep personal and professional ties with Katzenberg and her role as a personal adviser regarding whether to sell DreamWorks, Hobson was the chair of the Transaction Committee and purportedly the Company’s lead negotiator in the discussions leading up to the Merger, including with respect to Katzenberg’s Side Deal.

25. Another member of the Transaction Committee, Brittenham, also suffered from debilitating conflicts that tainted the Committee. Brittenham, an entertainment lawyer, has been described by an industry insider as Katzenberg’s “best friend.” For at least 25 years, Katzenberg has been recommending Brittenham’s services to prospective clients. Moreover, Katzenberg has steered

³ In March 2015, Hobson and Lucas were honored at a benefit gala for the Geffen Playhouse, a non-profit of which Katzenberg is a Founding Trustee. In 2014, the Jeffrey and Marilyn Katzenberg foundation donated between \$5,000 and \$9,999 to After School Matters, a charity that Hobson chairs. In turn, After School Matters donated \$25,000 to the Marilyn and Jeffrey Katzenberg Foundation in 2014 and \$5,000 to the Marilyn and Jeffrey Katzenberg Foundation in 2013. Moreover, the Ariel Foundation Initiative, the philanthropic arm of Ariel Investments, LLC, of which Hobson is president, donated \$5,000 to the Marilyn and Jeffrey Katzenberg Foundation in 2013.

significant business directly to Brittenham, including the assignment to oversee the legal aspects of DreamWorks' IPO and the incubation of AwesomenessTV.

26. Like Hobson, Brittenham has attended an intimate fundraiser at Katzenberg's home. Brittenham and Katzenberg also support each other's charitable activities. For example, Brittenham introduced Katzenberg to Conservation International, a nonprofit environmental organization on whose board Brittenham sits. Katzenberg personally supported the organization for some time, and in 2008, Conservation International received a \$1 million contribution from DreamWorks. In 2012, Conservation International donated to the Marilyn and Jeffrey Katzenberg Foundation. On April 14, 2016, just two weeks before the Transaction Committee approved the Merger, Brittenham recused himself from the Transaction Committee, due to his legal representation of a senior creative executive of NBCUniversal, a subsidiary of Comcast. However, Brittenham's involvement from the outset tainted the Transaction Committee because of his substantial conflicts and longstanding relationship with Katzenberg.

27. Kilar was also conflicted. Kilar was CEO and founder of Vessel, a start-up streaming video service company recently acquired by Verizon. Vessel was a party to content and referral agreements with clients of AwesomenessTV, one of the two JV entities in whose profits Katzenberg will share through the Side

Deal. As a result, at the time that Kilar served on the Transaction Committee, his company had an ongoing business relationship with DreamWorks.

28. The Transaction Committee was unable to protect the interests of DreamWorks' minority stockholders because of its members' close personal and professional ties to Katzenberg.

D. Katzenberg Controlled A Majority Of The Board

29. Katzenberg was able to control the DreamWorks sale process that resulted in the sale of the Company and the Side Deal through his control over the majority of the members of the DreamWorks Board. In addition to the plainly conflicted members of the Transaction Committee, additional purportedly independent Board members also had deep-seated ties with Katzenberg. Of the six Board members who voted for the Merger,⁴ at least four were not independent of Katzenberg due to their personal, professional and/or financial conflicts.

30. DreamWorks director Thomas Freston ("Freston"), who voted for the Merger, serves on the board of directors of Imagine Entertainment, which has an active distribution and production partnership with Comcast subsidiary NBC Universal. As with other Board members including Hobson and Brittenham, Katzenberg has donated to a charity in which Freston is involved. In January

⁴ Pursuant to the Information Statement, Brittenham recused himself and Katzenberg did not participate in the vote.

2015, the Marilyn and Jeffrey Katzenberg Foundation donated at least \$25,000 to the ONE Campaign, which Freston chairs.

31. Similarly, DreamWorks director Lucian Grainge (“Grainge”), who also voted for the Merger, is the CEO of Universal Music Group. Universal Music Group purchased DreamWorks Records from DreamWorks in 2003 and served as music publisher for DreamWorks thereafter. Grainge has been involved in multiple ventures between Universal and Awesomeness, including Awesomeness Music Partners. Grainge also serves on the board of directors of Lions Gate Entertainment Corp. (“Lionsgate”), a potential acquisition target in the entertainment industry whose market value was perceived as potentially reflected in any DreamWorks acquisition. Indeed, Lionsgate stock rose by 7% upon announcement of the Merger.

E. The Controlled Board Approves the Merger, Including The Side Deal

32. On April 6, 2016, DreamWorks and the PE Firm finalized a term sheet that contemplated an acquisition of DreamWorks for \$35 per share, a rollover of equity by the Company’s management, including Katzenberg, and a separate vote of the Company’s Class A stockholders.

33. On April 13, 2016, after DreamWorks had finalized the term sheet with the PE Firm, Comcast’s Chairman and CEO Brian Roberts (“Roberts”) contacted Katzenberg to express interest in a potential acquisition of the Company.

Comcast informed Katzenberg from the outset that it would not continue to employ him if it purchased DreamWorks, and his immediate reaction was to say no to any deal. After consulting with Hobson and three others, Katzenberg changed his mind. Then, at the very first meeting between Katzenberg and Roberts held on April 16, 2016, Roberts began to elicit Katzenberg's support for the Merger by informing Katzenberg that Comcast wanted him to oversee the operations of the JV Entities post-closing. This role eventually served as the purported justification for the Side Deal, which, as explained below, was actually an equity rollover that came at the expense of DreamWorks' public stockholders and was not truly connected to any service at Comcast.

34. After Roberts floated the idea of Katzenberg's post-closing equity stake, talks between Comcast and the Company quickly intensified at Katzenberg's behest. Despite the fact that Comcast had not submitted a formal bid, on the same day Roberts and Katzenberg first met, DreamWorks' attorneys sent Comcast a non-binding term sheet reflecting terms generally consistent with those in the term sheet agreed to with the PE Firm. The price per share was left blank. Then, on April 18, 2016, DreamWorks' attorneys sent Comcast a draft merger agreement. At this point, the Transaction Committee had nothing to do with the negotiations between the two companies, or between Roberts and Katzenberg.

35. On April 19, 2016, Comcast submitted an offer to acquire DreamWorks for \$35 per share in cash, or a mix of cash and Comcast stock. Hobson informed Comcast that in order to get the support of DreamWorks' outside directors, Comcast would have to offer a price in the \$40s per share. Comcast responded that in order for Comcast to make such an offer, Katzenberg, as the Company's controlling stockholder, would have to agree to execute a written consent approving the Merger immediately following the signing of the Merger Agreement. On April 21, 2016, Comcast increased its offer to \$38.50 per share. At that time, Comcast also stated that, as part of the Merger, it would have to reach an agreement with Katzenberg regarding his post-closing role in the businesses making up DreamWorks.

36. When the Board met on April 21, 2016 to consider Comcast's increased offer, it decided: (i) not to solicit interest from additional parties; (ii) to counter Comcast's \$38.50 offer with a demand for \$42 per share; and (iii) to permit Katzenberg immediately to engage in direct negotiations with Comcast. The Board should have directed Katzenberg not to hold any discussions about his post-closing role until after an agreement was reached with Comcast on the price paid to all of DreamWorks' stockholders. Allowing Katzenberg to negotiate directly with Comcast for his own post-closing role and benefits gave Katzenberg the opportunity and the leverage to extract additional consideration in return for his

support, in violation of the Charter and his fiduciary duties. The Board ignored the conflict of interest inherent in permitting Katzenberg to negotiate personal benefits with Comcast before a Merger price was reached, enabling him to extract material financial benefits from Comcast at the expense of the Company's Class A public stockholders.

37. Opportunistically and almost immediately, Katzenberg began negotiating the terms of what would become the Side Deal. Over the following week, the terms of the Side Deal, originally proposed to be comprised of both cash and Profits Interests, were negotiated concurrently with the terms of the Merger. Adding to the clear conflict of interest, Cravath, Swaine & Moore LLP ("Cravath") led the negotiations on both the Merger Agreement and the Side Deal, simultaneously representing both DreamWorks and Katzenberg despite their diverging interests. In fact, Cravath first proposed that the Side Deal include some form of the Profits Interests that were ultimately included as part of the Merger.

38. On April 24, 2016, Katzenberg and Comcast reached an agreement in principal as to key terms of the Side Deal as well as Katzenberg's post-closing involvement. Only after that occurred, on April 25, 2016, did Comcast agree to raise its offer to \$40 per share.

39. Although Comcast already had secured Katzenberg's agreement to the Side Deal by agreeing to provide him with a perpetual interest in the profits from

the JV Entities, Comcast's \$40 offer was still contingent on Katzenberg providing a written stockholder consent approving the deal immediately after the Merger Agreement was signed. Thus, Comcast had purchased Katzenberg's support and his end of the bargain required exercise of his unilateral ability to approve a sale of the Company.

40. On April 27, 2016, Comcast provided its "best and final" offer of \$41 per share, again conditioned on receiving Katzenberg's written stockholder consent, to DreamWorks. The Board then instructed its attorneys to negotiate the final terms of the Merger Agreement. Both the Merger Agreement and the Side Deal were finalized that evening.

41. On April 28, 2016, DreamWorks and Comcast executed the Merger Agreement, under which Comcast agreed to pay \$41 per share in cash to acquire each outstanding share of DreamWorks. Immediately following the execution of the Merger Agreement, Katzenberg, as DreamWorks' controlling stockholder, executed the Written Consent approving the Merger. DreamWorks' public stockholders never had the ability to vote on the Merger, including Katzenberg's lucrative Side Deal.

F. Katzenberg's Unfair and Improper Side Deal

42. Katzenberg negotiated the Side Deal for himself simultaneously with the negotiation of the Merger, diverting consideration properly belonging to the

public stockholders into his own pocket. Through the Side Deal, Katzenberg ensured that he would receive enormous additional consideration that would not be shared with the Company's Class A stockholders in return for his agreement to push through the Merger as the Company's controlling shareholder.

43. Under the terms of the Side Deal, Katzenberg received \$1 per year, plus a one-time grant of the right to receive 7% of the profits of each of the JV Entities *potentially in perpetuity* (i.e., the Profits Interests). Fifty percent of the Profits Interests would vest on each of the first two anniversaries of the consummation of the Merger, subject to acceleration in the event of a termination without cause, for good reason, or due to Katzenberg's incapacity or death or a sale of Comcast's majority interest in the relevant JV.

44. Katzenberg's payout was not tied to the duration of his purported service at Comcast. Once vested, the Profits Interests would become subject to put and call rights held by Katzenberg and Comcast, respectively. Katzenberg's put right was exercisable upon or during the 90 days following either a termination of the Side Deal without cause, for good reason, or due to his incapacity or death or the expiration of the Side Deal on the second anniversary of the Merger. If the put right was not exercised during such period, Comcast would have the right to call the 7% profits interests during the 90-day period following the third anniversary of the Merger. In addition, Comcast had the right to call the vested profits interests

during the one-year period following a termination of the Side Deal for cause or Katzenberg's resignation without good reason. If Comcast did not exercise its call right during such period, Katzenberg would have the right to put the vested profits interests to Comcast during the one-year period beginning on the first anniversary of such a termination. In other words, the payout for Katzenberg was not tied to his duration of service at Comcast. For example, if Katzenberg were terminated before two years of service, he would be able to wait until the second anniversary of the Merger (August 22, 2018) to put the Profits Interests to Comcast. The Profits Interests would be valued at their fair market value at the time of exercise, not at the time during which Katzenberg provided any services to Comcast or the Joint Ventures or the time of termination. If neither party chose to exercise their rights during the specified time periods, Katzenberg would hold his 7% profits interests indefinitely. Thus, Katzenberg will receive an amount equal to a 7% profit interest in perpetuity regardless of whether the put and call rights were exercised or he continued to hold his 7% profit interests.

45. The Profits Interests were incredibly valuable. Indeed, the JV Entities, AwesomenessTV and DWA Nova, were and are two of DreamWorks' fastest-growing and most promising ventures.

AwesomenessTV

46. AwesomenessTV is a multi-media platform company that generates revenues primarily from online advertising sales, the production and distribution of content, and the exploitation of ancillary products and services. DreamWorks acquired AwesomenessTV in May 2013 for \$113.5 million, consisting of an upfront payment of \$33.5 million plus an additional later payment of \$80 million. Since then, AwesomenessTV's value has skyrocketed.

47. In December 2014, DreamWorks sold a 25% stake in AwesomenessTV to Hearst Corporation for \$81.25 million, implying an overall value of \$325 million for the venture. Then, in April 2016, the Company sold a 24.5% interest in AwesomenessTV to Verizon Communications Inc. ("Verizon") for \$159 million, implying an overall value for the venture of approximately \$650 million.

48. In addition to its equity investment, Verizon also entered into an agreement with AwesomenessTV to create a new, first of its kind, premium short-form mobile video service. Katzenberg's public commentary accompanying Verizon's investment illustrates how valuable AwesomenessTV is and how it will continue to grow and increase in fair market value regardless of any consulting services Katzenberg might provide:

The creation of this new branded service represents a transformational step, not just for [AwesomenessTV], but also for the entire mobile

video landscape. This agreement is clearly impactful for [AwesomenessTV] – *with annual revenues expected to more than double in the first 12 months of content delivery* – and even more exciting is the expansion of our relationship with Verizon, one of the world’s most powerful marketers and content distributors, and their commitment to explore with us this incredible opportunity.”

(Emphasis added) These comments were made in April 2016 at the time Katzenberg was negotiating his Side Deal and the 7% Profits Interests.

49. Manatt Digital Media CEO Peter Csathy was similarly bullish on AwesomenessTV’s prospects and described it as “the poster child of a digital-first company that’s been highly successful.” Indeed, AwesomenessTV’s continued success was confirmed by its CEO Brian Robbins, who, in May 2016, stated that AwesomenessTV’s annual revenues were approaching *\$1 billion*.

DWA Nova

50. DWA Nova uses 3-D animation technology to assist companies with product development and marketing campaigns. At the time of the Merger, DWA Nova was poised for success.

51. In October 2015, Nike, Inc. (“Nike”) announced a partnership with DreamWorks that would use DWA Nova’s visualization platform to “transform” its product creation process through “cutting-edge capabilities, such as nearly instantaneous digital print applications, photo-real 3D visualizations and ultra-rapid prototyping.” This partnership was so important to Nike that it was a highlight of Nike’s 2015 investor day.

52. Moreover, in December 2015, Burberry Group plc partnered with DWA Nova to create the first interactive luxury marketing campaign using new 3D technology.

* * *

53. The Profits Interests were the functional equivalent of an equity rollover with no downside risk. Katzenberg's use of the term "consulting agreement" for the Side Deal was an improper attempt to divert part of the Merger consideration to himself and avoid complying with the Charter provision requiring Equivalent Consideration for all stockholders of DreamWorks.

54. A key characteristic of equity ownership is the right to income. Typically, only equity holders participate in and benefit from growth in the value of a company. Thus, because it is an equity interest, the Side Deal allowed Katzenberg to continue to enjoy profits from the continued success of DreamWorks assets acquired by Comcast. The Company's public stockholders, however, were not compensated for the loss of those future profits.

55. Whereas DreamWorks held equity interests in the JV Entities prior to consummation of the Merger, after the Closing, Comcast and Katzenberg split those interests, cutting out the Company's minority stockholders. This was particularly egregious and unfair because Katzenberg was privy to sensitive, non-public information concerning the joint ventures' performance. This asymmetry of

information played decidedly in Katzenberg's favor, allowing him to reach the most lucrative possible arrangement for himself, functionally a hidden rollover of equity in the Side Deal.

56. The value of Katzenberg's continuing equity interests in the JV Entities was completely divorced from the value of the services he agreed to provide to Comcast post-Closing. Rather than serving as compensation for Katzenberg's services, the Profits Interests constitute payment for Katzenberg's control stake in DreamWorks, which is expressly prohibited by the Company's Charter. By pursuing the Side Deal, Katzenberg successfully competed for consideration with the DreamWorks' public stockholders in violation of the Charter and his fiduciary duties.⁵

⁵ According to media reports citing anonymous sources, Katzenberg has now relinquished the Profits Interests to Comcast. See Ryan Faughnder, *Former DreamWorks Chief Jeffrey Katzenberg Raises Nearly \$600 Million for His Next Act*, L.A. Times, Jan. 26, 2017 (available at <http://www.latimes.com/business/hollywood/la-fi-ct-katzenberg-investment-20170126-story.html>) ("After the DreamWorks sale was completed in August, Katzenberg stepped down as CEO to become chairman of the newly formed DreamWorks New Media, made up of the firm's stakes in AwesomenessTV and technology company Nova, and a consultant to NBCUniversal. He has now relinquished those roles, said a person close to the company not authorized to comment."). Other reports, however, indicate that Katzenberg has designs to take over AwesomenessTV from Comcast. Claire Atkinson, *Jeffrey Katzenberg Has Some Deals in the Works*, Feb. 24, 2017 (available at <http://nypost.com/2017/02/24/jeffry-katzenberg-has-some-deals-in-the-works/>) ("Now, his new company, WndrCo, may be entertaining ideas of acquiring a business he just sold. Katzenberg is eyeing AwesomenessTV, the digital bite-sized children's programming venture that he created, sources

57. Through the Side Deal, Katzenberg received additional consideration for his shares in DreamWorks to the detriment and exclusion of the Company's public stockholders. The price of granting Katzenberg the Profits Interests was built into the total Merger consideration offered by Comcast, and accordingly, they caused direct harm to DreamWorks' minority stockholders. The Profits Interests were simply disguised as part of a "consulting agreement" in an improper attempt to avoid the Charter's prohibition on disparate consideration in mergers.

CLASS ALLEGATIONS

58. 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 DreamWorks Class A Stock (except Defendant and the directors of DreamWorks at the time of the Merger and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendant's wrongful actions, as more fully described herein (the "Class").

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

said."). So Katzenberg could be posturing for a takeover offer. Regardless of the veracity of any of these reports, however, the possibility that Katzenberg may have decided to forfeit the Profits Interest does not change the fact that the Profits Interests should have been shared pro rata with the public stockholders in the first instance. Any decision by Katzenberg to unilaterally give them back to Comcast (and for whatever reason) does not cure Katzenberg's underlying breach.

60. The Class is so numerous that joinder of all members is impracticable. As of April 26, 2016, there were 78,698,244 shares of DreamWorks Class A Stock issued and outstanding, held by hundreds, if not thousands, of individuals and entities worldwide.

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

- a. Katzenberg breached his fiduciary duties as DreamWorks' controlling stockholder in connection with the Merger;
- b. Katzenberg is liable for breach of contract;
- c. Katzenberg is liable for violating the implied covenant of good faith and fair dealing;
- d. The Merger violated DreamWorks' Charter;
- e. Plaintiffs and the Class have been harmed by Katzenberg's conduct; and
- f. Plaintiffs and the Class are entitled to damages or other relief as a result of Katzenberg's wrongful conduct.

62. 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 the other members of the Class, and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are

adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

63. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

ENTIRE FAIRNESS IS THE APPLICABLE STANDARD OF REVIEW

64. Entire fairness is the applicable standard of review in this action because DreamWorks' controlling stockholder, Katzenberg, negotiated part of the Merger consideration for himself in direct competition with the interests of DreamWorks' public stockholders. Katzenberg succeeded in extracting the Side Deal for himself at the expense of the DreamWorks' public stockholders who were entitled to pro rata sharing in the consideration provided in the Merger by Comcast.

65. The Merger was not negotiated by an independent committee or subject to a "majority of the minority" requirement. Indeed, the public stockholders were not even allowed to vote on the Merger. Furthermore, the Transaction Committee was conflicted and, moreover, breached its duty of care to

protect the interests of DreamWorks' public stockholders by allowing Katzenberg to negotiate part of the Merger consideration for himself at the expense of the public stockholders.

66. Accordingly, Katzenberg bears the burden of proving the entire fairness of the process that led to the Merger and the Side Deal as well as the entire fairness of the consideration of the Merger and the Side Deal.

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST KATZENBERG IN HIS CAPACITY AS DREAMWORKS' CONTROLLING STOCKHOLDER

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

68. As explained herein, Katzenberg was DreamWorks' controlling stockholder. As a controlling stockholder, Katzenberg owed the Company and its stockholders the utmost fiduciary duties of loyalty and good faith.

69. For his own personal benefit, Katzenberg, through the use of his control over the Company and the outcome of any stockholder vote, negotiated the Merger in an unfair process and on terms that were unfair to the Class.

70. Katzenberg disloyally negotiated and arranged for the Side Deal to provide himself disparate, more valuable merger consideration than that provided to the Company's public stockholders in connection with the Merger. In addition, Katzenberg disloyally sought to deprive the Class of the benefit of the Equivalent

Consideration provision in the Charter by labeling his Side Deal a “consulting agreement,” knowing that in reality he received a continuing equity interest in two DreamWorks enterprises in perpetuity regardless of the length of his purported service for Comcast. As part of his disloyal scheme, Katzenberg executed the Written Consent to ensure consummation of the Merger and deprive the Class of any say on the Merger or the adequacy of the consideration they received.

71. The Class has been harmed as a consequence of Katzenberg’s breaches of fiduciary duty. If Katzenberg had complied with his fiduciary duties and the Charter’s prohibition on disparate merger consideration, the Class would have shared ratably in the benefits of Katzenberg’s Side Deal. If Katzenberg had not negotiated the extraordinarily valuable Side Deal for himself, Comcast would have been required to increase its offered price per share in order to secure Katzenberg’s support, and the Class would have shared pro rata in any increased consideration. In either event, the Class would have received consideration for their Class A shares in excess of the \$41 per share paid in the Merger.

COUNT II

BREACH OF CONTRACT AGAINST KATZENBERG

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

73. Under Delaware law, a corporate charter is a contract among the company, the directors and officers, and the stockholders.

74. Article IV, Section 2(g) of the Charter states that:

In the event of any merger, consolidation, share exchange, tender offer, reclassification of the outstanding shares of Class A Stock, Class B Stock or Class C Stock or other reorganization to which the Corporation is a party, in which the shares of Class A Stock, Class B Stock or Class C Stock will be exchanged for or converted into, or will receive a distribution of, cash or other property or securities of the Corporation or any other Person, ***each share of Common Stock shall be entitled to receive Equivalent Consideration (as defined herein) on a per share basis. As used herein, the term “Equivalent Consideration” shall mean consideration in the same form, in the same amount and with the same voting rights on a per share basis . . .*** and provided further, however, that for the avoidance of doubt, consideration to be paid or received by a holder of Class A Stock, Class B Stock or Class C Stock in connection with any merger, consolidation, share exchange, tender offer, reclassification or other reorganization pursuant to any employment, consulting, severance or other arrangement shall not be deemed to be “consideration” that is included in the determination of “Equivalent Consideration.” (Emphasis added).

75. The Charter prohibited Katzenberg, the then-beneficial owner of all of the Company’s Class B common stock, from exchanging those shares for disparate and non-equivalent consideration in connection with a DreamWorks merger, such as the Merger.

76. The Side Deal was non-equivalent consideration from Comcast to Katzenberg in exchange for his Class B shares and his support of the Merger.

77. The Side Deal, which provided Katzenberg with the right to receive 7% of the JV Entities' profits *in perpetuity*, is so valuable that it cannot credibly be characterized as compensation for a two-year consulting arrangement. Rather, it was effectively separate consideration for Katzenberg's Class B shares in violation of the Charter.

78. The Company's Class A stockholders properly relied upon the protections they were provided in the Charter against abuses of power by the Company's controlling stockholder.

79. The Class has been harmed by the above-described violation of the Charter. But for the Charter violation, the Class would have received consideration for their shares in excess of the \$41 per share offered in the Merger.

COUNT III

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST KATZENBERG

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

81. Under Delaware law, the implied covenant of good faith and fair dealing attaches to every contract, including a corporate charter. Pursuant to the implied covenant of good faith and fair dealing, Katzenberg was required to refrain from arbitrary and unreasonable conduct which would have the effect of

preventing DreamWorks' Class A stockholders from receiving the benefits and protections of the Charter.

82. The Charter mandated that, in the event of a merger, each class of the Company's shares receive Equivalent Consideration subject to a limited exception for consideration received by "a holder of Class A, Stock, Class B Stock or Class C Stock ... pursuant to any employment, consulting, severance or other arrangement." By including each Class of stockholders, this provision made clear that Katzenberg (or any other holder of all Class B stock) could not seek disparate consideration for his Class B stock by labeling the side arrangement an employment, consulting, or severance agreement.

83. Furthermore, this exception contemplates payments made pursuant to employment, consulting or severance agreements with DreamWorks such as the change-in-control payment of \$17.5 million paid to Katzenberg as a result of his restricted and performance based stock units and the \$14.9 million paid for his vested stock appreciation rights. However, no reasonable stockholder reading this provision would have understood or agreed that this provision to permitted Katzenberg to evade the requirements of the Equivalent Consideration requirement in the Charter by labeling a personal side deal without the hallmarks of a typical consulting agreement as a "consulting agreement."

84. Here, as alleged above, the terms of the Side Deal provided Katzenberg with 7% of the profits of the JV Entities potentially in perpetuity in exchange for two years or less of consulting, and bear no resemblance to a legitimate consulting or employment agreement. At a minimum, the Charter did not define what constitutes a consulting arrangement and was therefore ambiguous. Accordingly, the implied covenant of good faith and fair dealing, which functions to protect the contracting parties' reasonable expectations, was triggered to fill the gap in the Charter's express provisions.

85. The Class has been harmed by Katzenberg's breach of the Charter's implied covenant of good faith and fair dealing. But for the breach of the implied covenant, the Class would have received consideration in excess of the \$41 per share offered by the Merger.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor as follows:

- a. Declaring that this action is properly maintainable as a class action;
- b. Finding Katzenberg liable for breaching his fiduciary duties;
- c. Finding Katzenberg liable for breach of contract;
- d. Finding Katzenberg liable for breach of the implied covenant of good faith and fair dealing;

- e. Awarding damages to the Class;
- f. Awarding Plaintiffs the costs and disbursements of this action, including attorneys' and experts' fees; and
- g. Awarding such other and further relief as the Court may deem proper.

Dated: March 7, 2017

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry

Stuart M. Grant (#2526)

Michael J. Barry (#4368)

Joseph Christensen (#5146)

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Co-Lead Counsel for Plaintiffs

OF COUNSEL:

**KESSLER TOPAZ MELTZER &
CHECK, LLP**

Lee D. Rudy

Michael C. Wagner

J. Daniel Albert

Leah Heifetz

280 King of Prussia Road

Radnor, Pennsylvania 19087

(610) 667-7706

Co-Lead Counsel for Plaintiffs

**BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP**

Mark Lebovitch

Jeroen van Kwawegen

John Vielandi

1251 Avenue of the Americas

New York, NY 10020

(212) 554-1400

Co-Lead Counsel for Plaintiffs

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

Michael Hanrahan (#941)

Elizabeth M. McGeever (#2057)

Paul A. Fioravanti, Jr. (#3808)

1310 N. King Street

Wilmington, DE 19801

(302) 888-6500

Additional Counsel for Plaintiffs

**FRIEDMAN OSTER & TEJTEL,
PLLC**

Jeremy Friedman

Spencer Oster

David Tejtel

240 East 79th Street, Suite A

New York, New York 10075

(888) 529-1108

Co-Lead Counsel for Plaintiffs

**HACH ROSE SCHIRRIPA &
CHEVERIE, LLP**

Frank R. Schirripa

Daniel B. Rehns

John Blythe

185 Madison Avenue, 14th Floor

New York, NY 10016

(212) 213-8311

Additional Counsel for Plaintiffs