IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHAMROCK HOLDINGS OF CALIFORNIA, INC., ROY E. DISNEY and STANLEY P. GOLD	)	
Plaintiffs,	)	
v.	)	
ROBERT A. IGER, MICHAEL D. EISNER, JUDITH L. ESTRIN, JOHN S. CHEN, AYLWIN B. LEWIS, MONICA C. LOZANO, GEORGE J. MITCHELL, LEO J. O'DONOVAN, S.J., and THE WALT DISNEY COMPANY	)	C.A. No. _______________
Defendants.	)	

COMPLAINT

Plaintiffs Shamrock Holdings of California, Inc. ("Shamrock"), Roy E. Disney ("Disney") and Stanley P. Gold ("Gold"), by and through their undersigned counsel, allege for their complaint, with knowledge of their own actions and the public statements alleged and information and belief as to all other matters, as follows:

The Parties

1. Disney, Gold and Shamrock, the private investment vehicle of Disney and his family, collectively are a significant holder of common stock in The Walt Disney Company (the "Company"). Together with his family, Disney holds Company shares with a current market value exceeding $750 million. Disney believes he is, if not the largest, one of the Company's largest individual stockholders. Gold is Shamrock's President and a Disney stockholder. As discussed below, Disney and Gold were directors of the Company.

2. The Company is a Delaware corporation with its principal place of business at 500 South Buena Vista Street, Burbank, California 91521.

3. Robert A. Iger ("Iger"), Michael D. Eisner ("Eisner"), Judith L. Estrin ("Estrin"), John S. Chen, Alwin B. Lewis, Monica C. Lozano, George J. Mitchell ("Mitchell"), and Leo J. O'Donovan, S.J. ("O'Donovan"), are current directors of the Company (collectively, the "Director Defendants"), each of whom served as a director at the times complained of herein. The Director Defendants at the times complained of herein constituted a clear majority of the Board. Eisner is the CEO of the Company and has for many years dominated and controlled the Board. Iger is the President and COO of the Company and Eisner's designated successor as CEO. The decline of the Company's performance under the Eisner/Iger stewardship is set forth in the Company's 2005 proxy statement, which discloses that a $148 investment in the Company in fiscal year 2000, when Mr. Iger was appointed President and COO, would have been worth only $91 by the end of the 2004 fiscal year.

Background

The Crusade for Better Governance at the Company And the No Confidence Vote for the Company's Board

4. In light of the Company's poor performance under the management of Eisner and Iger, Disney and Gold, as directors, began in 2002 urging their fellow directors to hold Iger and Eisner accountable for the poor performance of the Company. In response to Disney's and Gold's criticism of their management of the Company, Eisner together with Iger, Estrin, Mitchell, O'Donovan and other Directors, sought to muzzle Disney and Gold first by having Gold declared no longer "independent" and removed as Chairman of the Nominating and Governance Committee and ultimately as a member of the Committee and then by choreographing the removal of Andrea Van De Kamp (a director who had expressed concerns

similar to those of Disney and Gold with respect to management's performance), and finally engineering the forced retirement of Disney from the Board. On November 30, 2003, in protest, Disney resigned from the Board (a copy of his resignation letter is attached hereto as Exh. A, and incorporated herein). Gold resigned the next day (a copy of his resignation letter is attached hereto as Exh. B, and incorporated herein). Since their resignations, Disney and Gold together with Shamrock have publicly challenged the corporate governance and business practices of the management and directors of the Company. Their efforts include maintaining the "Save Disney" website, www.savedisney.com, and organizing and encouraging stockholders to exercise their voice and vote to pressure the Company to improve its corporate governance and business practices.

5. In early 2004, Shamrock, Disney and Gold began a well publicized campaign to encourage investors to "Vote No" on the election of Defendants Eisner, Mitchell, and Estrin as directors of the Company at the March 3, 2004 Annual Stockholders Meeting (the "2004 Stockholders Meeting").

6. At the 2004 Stockholders Meeting, the Company's stockholders demonstrated their dissatisfaction with the incumbent directors and management and their support for improved corporate governance. A total of 45.37% of the Company's stockholders withheld their votes for Eisner, 25.69% withheld their votes for Mitchell, and 24.37% withheld their votes for Estrin (the "No Confidence Vote").

7. If the broker non-votes (votes automatically cast in favor of management when the stockholders who actually own the shares do not respond to requests for direction from their brokers) are removed from the totals, the percentage of withhold votes actually would be:

Eisner 54.4%

Mitchell 30.8%

8. The No Confidence Vote from the Company's 401K Plan Participants, a barometer of employee opinion, was even higher – with 72.5% of employee stockholders withholding their votes for Eisner and 63.7% withholding their votes for Mitchell.

9. After the 2004 Stockholders Meeting, and notwithstanding the significant No Confidence Vote, the Company's board appointed Mitchell to be the chairman of the Board.

10. In light of the Board's reluctance to implement meaningful reforms, on May 3, 2004, Disney, Gold and Shamrock announced that they would evaluate nominating an alternate slate of directors for the 2005 Annual Meeting.

11. On September 9, 2004, six months after his 45.37% (54.4%) No Confidence Vote, Eisner announced that he would retire from his role as the Company's CEO on September 30, 2006. Press accounts suggested that Eisner would seek to be installed as chairman of the board and that he endorsed Iger as the Company's next CEO.

12. On September 13, 2004, Disney and Gold sent an Open Letter to the Non-Employee Members of the Board denouncing the hollow change of appointing Iger CEO and installing Eisner as chairman, and encouraging the Board to engage in an independent worldwide search for a new CEO and complete it before the 2005 Annual Stockholders Meeting. Their letter is attached as Exh. C, and incorporated herein. The letter also indicated that Disney and Gold intended to propose an alternate slate of directors if the Board did not "immediately engage an independent executive recruiting firm to conduct a worldwide search for a talented CEO and concurrently announc[e] that Michael Eisner will leave the Company at the conclusion of that search."

Facing the Prospect of a Contested Election, the Company and the Board Represent that there will be a *Bona Fide* CEO Selection Process

13. On September 21, 2004, the Company announced:

> The Board will engage in a thorough, careful, and reasoned process to select as the next CEO the best person for the company, its shareholders, employees, customers, and for the many millions of others who care so much about The Walt Disney Company. To achieve its objective, the Board will: (1) Engage an executive search firm to assist it in selecting a CEO who possesses the qualities and experience the Board believes are necessary for this important position [and] (2) Consider both internal and external candidates. Bob Iger is the one internal candidate. He is an outstanding executive and the Board regards him as highly qualified for the position. However, the Board believes that the process should include full consideration of external candidates as well. . . . The Board regards its responsibility on succession as so significant that all members should participate actively and fully in the entire process; and each has committed to do so.

The Company also announced that Mitchell would not stand for reelection at the 2006 Annual Stockholders Meeting.

14. The Company thereafter further announced that Eisner would step down as CEO and as a member of the Board as soon as his replacement was installed.

15. On September 28, 2004, Disney and Gold issued a statement commending the Board's public announcement that it would engage in a *bona fide* process, including "full consideration of external candidates" for selecting a new CEO.

16. On December 3, 2004, in light of Eisner's announced resignation and in reliance on the veracity of the Company's and the directors' public statements that the Board would engage in a *bona fide* CEO selection process, including full consideration of external candidates, Disney and Gold stated that they "are taking this Board at its word" and thus ultimately determined not to propose an alternate slate of directors for the 2005 Annual Stockholders Meeting.

17. In February 2005, the Company submitted additional materials to its Proxy Statement, reiterating that the Company and its Board would engage in a *bona fide* CEO selection process by stating that all of the directors "approach this decision in good faith, with open minds" and representing to the Company's stockholders that "[t]here's been no prior determination; there are no preconditions."

18. Other large stockholders and their advisers also took the Defendants at their "word" when they stated that this would be a "*bona fide*" process including full consideration of outside candidates, the Defendants had "open minds" and there was no "prior determination" that Iger would get the CEO position.

> "It certainly takes a ton of pressure off this board and will make a proxy fight a very difficult battle to win," said Greg Taxin, CEO of Glass Lewis, one of the proxy advisory firms that had advised its clients to withhold votes for Eisner's reelection to the board." *Los Angeles Times, September 29, 2004.*
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> "Given the events of last week and [the Company's] improved performance, a lot of the swing votes that went to Roy and Stanley last time are leaning toward the board," said Patrick McGurn, senior vice president of Institutional Shareholder Services. "But that could change if the performance falters and the board meanders in its search for a new CEO." *Los Angeles Times, September 29, 2004.*
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> "Pat McGurn, special counsel to proxy advisory firm Institutional Shareholder Services (ISS), which helped lead the shareholder revolt against Eisner this year, said the board's decision to date the CEO search should give it 'breathing room' in the continuing battle with dissident former directors Roy Disney and Stanley Gold. 'Putting in the date is a good start. It shows they're anticipating a transition period.'" *USA Today, September 22, 2004.*
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> "We think the board took some positive action," Sean Harrigan told Reuters. Harrigan heads the California Public Employees Retirement System, commonly referred to as CalPERS. *The HollywoodReporter.com, September 24, 2004.*

19. On February 10 the Company held its 2005 Annual Stockholders Meeting. At the meeting chairman Mitchell made the following statements about the CEO selection process:

a. "We are carefully considering an internal as well as external candidates, including interviews with each candidate. The board will make its decision when the process is completed, not before or during it."

b. "We take this seriously, regard it as our most important task and will continue to devote our full effort and focus on the succession process."

Eisner's Presence at External CEO Interviews and The Failure to Investigate Eisner and Iger's Role in The Fox Family Channel Acquisition

20. Shortly after the annual meeting, Shamrock, Gold and Disney heard from a credible source that external CEO candidates would be interviewed in the presence of Eisner. In addition, disturbing facts concerning Eisner and Iger's performance and management style were catalogued in Pulitzer Prize winning author Jim Stewart's book *DisneyWar*. In particular Mr. Stewart cited numerous sources for his discussion of Eisner's decision, with input from Iger, to purchase the Fox Family Channel and related assets for $5.3 Billion, including a money losing major league baseball contract. Eisner and Iger told the Board, including Disney and Gold, that the purchase price could be "justified" because the Company could "repurpose" programming from the ABC Network (i.e., do a "second run" of ABC Network programs on the Fox Family Cable Channel with very minimal additional costs). The Stewart Book discloses that these representations were made to the Board without checking with the producers of these programs, Disney executives with operational responsibilities in this area or the Company's legal department. When it became clear to Disney and Gold that the Fox Family Channel (now named Disney Family Channel) was not coming even close to meeting the projections given to the Board to justify the purchase price, Disney and Gold, then directors, began asking questions of

management. What they did not know then but has now been disclosed in *DisneyWar* is that: 1) a plan authored by the Company's CFO to write down the Fox Family Channel assets by some $2 Billion and save the Company and its shareholders $400 Million in taxes, was kept from the Board; and 2) Iger separately instructed Company personnel to increase the projected performance of the ABC Family Channel to appease the Board even though the managers charged with the operations of the channel believed these newly revised projections were unrealistic.

21. On March 10, 2005, Disney and Gold wrote an open letter to the Board expressing their concerns that Eisner's attendance at external CEO candidate interviews, the Board's failure to investigate Eisner's and Iger's roles in the Fox Family Channel acquisition and apparent attempts to keep material information from the Board would not be consistent with a "*bona fide*" CEO selection process as had been promised. Their letter is attached as Exh. D and incorporated herein. Disney and Gold received no written response to their letter. However, in response to the letter and the criticisms contained therein, Mitchell and Eisner moved quickly to schedule (on 24 hours notice) a Special Board meeting at which without further review of external candidates or any investigation into Iger's role in the Fox Family issues raised by Stewart's *DisneyWar*, Iger was elected as Disney's next CEO.

Merely One Month After the 2005 Annual Meeting, the Board Announces its Selection of Eisner's Handpicked Successor, Iger

22. On March 13, 2005, merely one month after the Company's Annual Stockholder Meeting, the Company announced that it had selected Iger to succeed Eisner as CEO and that Eisner would step down on September 30, 2005. During the press conference following the Board's announcement, the Company's chairman reiterated the Board's claim that

it had conducted a fair selection process and had carefully considered several external candidates.

23. Since the Company's announcement that Iger has been selected as the next CEO, troubling facts about the CEO selection process have come to Plaintiffs' attention that belie the public statements of the Defendants before, during and after the 2005 Annual Meeting. For instance:

a. Chairman Mitchell refuses to disclose how many external candidates were interviewed by the Board, and it is widely reported that the Board interviewed only one external candidate, Meg Whitman, during the CEO selection process;

b. Eisner, who had previously publicly endorsed Iger, was present at or expected to be present at interviews of external candidates;

c. Certain external candidates declined to participate in the interview process with Eisner present;

d. The Company refused to respect Ms. Whitman's request for a prompt decision and she ultimately withdrew her candidacy;

e. When Ms. Whitman informed chairman Mitchell of her intent to withdraw from consideration, he did little to dissuade her, confirming that she was not a serious candidate;

f. Eisner and Iger used substantial Company resources during the search process to mount an aggressive public relations campaign to promote Iger for the job; and

g. The Board failed to investigate Iger's role in the Fox Family Channel acquisition, the presentation of overly optimistic projections to the Board and withholding the CFO's plan to save $400 Million by writing down Fox Family assets by $2 Billion.

24. On April 7, 2005, Shamrock demanded books and records, pursuant to 8 *Del. C.* § 220, relating to the selection of Eisner's successor. The Company summarily rejected Shamrock's demand, claiming in a conclusory fashion that Shamrock's demand "does not demonstrate a proper purpose" and that it fails to set forth a "credible basis to support any

allegation of a cognizable breach of fiduciary duty." The fact that the Defendants refuse to permit any scrutiny regarding their decision to appoint Iger as CEO, together with the above public disclosures concerning the process and Disney's and Gold's knowledge of Eisner's dominance and manipulation of the Director Defendants, demonstrates that Shamrock, Disney, Gold and other stockholders were misled by the Defendants' statements about a "*bona fide*" process, including full consideration of external candidates, and "open minds" with no "predetermination" or "preconditions."

25. Shamrock also demanded books and records, pursuant to *8 Del. C.* § 220, relating to the purchase of the Fox Family Channel and related assets. The Company refused to provide any information regarding the study referred to in paragraph 20 above, which was withheld from the Board, or Iger's role in the inflated projections given to the Board and referred to in paragraph 20 above. The failure to permit inspection of such records further demonstrates that the Company and the Board feared that a review of the records and facts regarding the selection of Iger as CEO would show that the Defendants did not intend to and in fact did not engage in a *bona fide* selection process, including full consideration of external candidates with open minds, as they had promised Shamrock, Disney and Gold, and the other Company stockholders prior to the 2005 Annual Meeting.

26. Contrary to the representations of the Defendants in connection with the 2005 Annual Meeting, the process undertaken by the board in the CEO selection process precluded serious and effective consideration of external candidates. The presence of Eisner -- notwithstanding his publicly announced support of Iger -- at interviews was intended to chill and did chill full consideration of qualified external candidates for the position of CEO. That fact, combined with the Defendants' willingness to permit Iger and Eisner to use Company resources

to promote the Iger candidacy, the Board's failure to investigate Iger's role in the Fox Family Channel acquisition, the presentation to the Board of the overly optimistic projections, and the withholding from the Board of the CFO's plan to save $400 Million, demonstrates that a majority of the directors had effectively determined well before the 2005 Annual Meeting that Iger would succeed Eisner. In short, the Defendants did not have "open minds," and Iger was their choice. However, in light of Disney's and Gold's successful "Just Say No" campaign at the 2004 Annual Meeting and threat to run an alternate slate of directors at the 2005 Annual Meeting, Defendants delayed their selection of Iger until shortly after the 2005 Annual Meeting, used Company resources to promote Iger's candidacy and did not in good faith seriously consider any other candidate.

27. Had Shamrock, Disney and Gold known that the Company and a majority of the Board did not intend to stand by their public statements about engaging in a *bona fide* CEO selection process, Shamrock, Disney and Gold would have run an alternate slate of directors at the 2005 Annual Stockholders Meeting.

Count I – Breach of the Fiduciary Duty of Disclosure

(Against the Director Defendants)

28. Plaintiffs reallege and incorporate by reference herein each of the allegations set forth in paragraphs 1-27 above.

29. When directors of a Delaware corporation communicate publicly or directly with stockholders about corporate matters, the *sine qua non* of directors' fiduciary duties is honesty, and they are obligated to disclose all material information to stockholders.

30. The Defendants' public statements that the Board would engage in a *bona fide* CEO selection process, including serious consideration of external candidates with "open

minds" and no "predetermination," were material to the stockholders' voting decision at the 2005 Annual Stockholders Meeting.

31. The representations made by the Defendants that they would engage in an open and objective selection process, that no predeterminations had been made, and that external candidates would be seriously considered were false and/or misleading because they failed to fully and fairly disclose all material facts about the CEO selection process.

32. The Director Defendants breached their fiduciary duty of disclosure.

Count II – Equitable Fraud

(Against All Defendants)

33. Plaintiffs reallege and incorporate by reference herein each of the allegations set forth in paragraphs 1-32 above.

34. By and through the course of conduct described in detail above, Defendants made or permitted the Company to make various representations to Shamrock, Gold, Disney and the Company's stockholders.

35. The representations made by Defendants were false.

36. The representations made by Defendants were intended to induce Shamrock, Disney, Gold and other stockholders to vote their shares in favor of the incumbent directors and/or induce Shamrock, Disney and Gold not to run an alternate slate of directors.

37. Shamrock, Disney and Gold, at the time these representations were made by Defendants, were ignorant of the falsity of Defendants' representations and reasonably believed them to be true and made in good faith.

38. As a direct and proximate result of Defendants' misrepresentations and omissions, Shamrock, Disney, and Gold were deceived into foregoing the running of an alternate slate of directors at the 2005 Annual Stockholders Meeting.

39. Had Shamrock, Disney, and Gold known the actual facts, they would have run an alternate slate of directors at the 2005 Annual Stockholders Meeting.

40. As a direct and proximate result of Defendants' fraudulent conduct, Shamrock, Disney, and Gold, along with other stockholders of the Company, have suffered injury.

WHEREFORE, Shamrock, Disney and Gold respectfully request that this Court enter an Order:

(i) Voiding the 2005 election of directors;

(ii) Compelling the Company to hold another election for directors after full and fair disclosure of all material facts about the CEO selection process;

(iii) Enjoining Defendants from changing either Eisner's or Iger's compensation or employment contracts;

(iv) Awarding costs and expenses incurred by Plaintiffs in connection with this action; and

(v) Granting such further and other relief as this Court shall deem appropriate.

MORRIS, NICHOLS, ARSHT & TUNNELL

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May 9, 2005