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Case No. 2022-1032-



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KAREN SBROGLIO,)	
)	
Plaintiff,)	C.A. No. 2022-____-____
)	
v.)	
)	
SNAP INC.,)	
)	
Defendant.)	
_____)	

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Karen Sbroglio (“Plaintiff”), on behalf of herself and similarly situated holders of Class A Common Stock of Snap Inc. (“Snap” or the “Company”), brings this Verified Class Action Complaint (the “Complaint”) to remedy the Company’s violation of 8 *Del. C.* § 242(b)(2) (“Section 242(b)(2)”). The allegations herein are based on Plaintiff’s knowledge as to herself and, as to all other matters, on information and belief, including counsel’s investigation and review of publicly available information.

I. NATURE OF THE ACTION

1. This case shows that, while the Delaware General Corporation Law (“DGCL”) is broadly enabling, when the legislature wants a stockholder power to be mandatory it knows just how to achieve that objective. Section 242(b)(2) guarantees the holders of any class or series of stock a separate class or series vote on any amendment that adversely affects any of the powers or rights appurtenant to

that stock, “*whether or not entitled to vote thereon by the certificate of incorporation.*”

2. Because voting rights are presumed if not otherwise limited in a charter, the only reasonable reading of the above statutory language is that even if a class of stock is typically not entitled to vote on other matters, a charter amendment adversely affecting the “powers, preferences or special rights” appurtenant to that class of stock still requires an approving vote.

3. As explained below, on August 24, 2022, Snap’s controllers (thanks to their power over a class of super-voting shares) adopted an amendment to Article VI of Snap’s Amended and Restated Certificate of Incorporation (the “Charter”), which purports to provide exculpation from personal liability for reckless or grossly negligent conduct to the Company’s officers, including the controllers themselves (the “Charter Amendment”).

4. When public market investors acquired Snap’s Class A non-voting shares, they knew they would not get voting rights for most transactions, but that they would in the specific instances when the DGCL assures such a vote. Snap failed to provide the statutorily required separate class vote on the Charter Amendment, even though it eliminated one of the core “powers, preferences or special rights” belonging to its Class A stockholders.

5. Since 1986, Section 102(b)(7) of the DGCL has permitted corporate charters to exculpate directors from personal liability for breaches of the duty of care. Since the allocation of managerial responsibility within the basic Delaware corporate structure contemplates directors playing an oversight role but generally relying on the diligence and care of senior officers and other members of management, stockholders have generally supported such charter amendments.

6. Since Delaware first recognized the fiduciary duty of care, corporate officers accepted the risk that if they performed in a reckless or grossly negligent manner, they could be sued for damages for breach of their duty of care (and have been handsomely compensated while bearing such risk).

7. As of August 1, 2022, however, the Delaware legislature amended the DGCL to permit corporations to offer broad exculpation for corporate officers, even though officers are generally paid many multiples of the amounts paid to outside directors and are expected to perform their jobs in a non-reckless manner.

8. The fact that the law permits a company to adopt charter provisions that eliminate the power of stockholders to seek relief for reckless or grossly negligent conduct by enumerated officers does not, however, mean that investors in Delaware companies are required to (or would) approve it. More pertinently, when investors acquire stock pursuant to a statute guaranteeing them a vote on future charter amendments that adversely affect the powers and rights of that class of stock

“whether or not” such vote is provided by the relevant articles of incorporation, the company issuing such stock cannot deny those investors such a vote.

9. Snap is a camera company, best known for its flagship product, Snapchat. Snapchat is a mobile application that allows users to communicate with family and friends through short videos and images that are deleted by default after a fixed period of time. Like other social media platforms, Snap profits from partnering with advertisers who promote products and content to its users.

10. Snap’s two co-founders, primarily through their ownership of all of the Company’s super-voting Class C Common Stock, “control over 99% of the voting power of [Snap’s] outstanding capital stock.” These two co-founders also serve as Snap’s Chief Executive Officer and Chief Technology Officer, *i.e.*, both are Company officers in addition to their roles as members of Snap’s board of directors (the “Board”).

11. The Company’s only publicly traded shares are Class A Common Stock, which are not given a vote except as required by law. Accordingly, the power to bring suit to hold fiduciaries accountable for breaching their fiduciary duties is particularly valuable to Class A Common Stockholders.

12. Snap’s directors and officers have become the subject of various types of lawsuits, and surely anticipated that claims for breach of duty, including potentially claims for breach of the duty of care, would continue. Moreover, a core

entitlement and expectation for Snap’s Class A Common Stockholders is that their officers will conduct their jobs in a manner that is neither reckless nor grossly negligent. And a core power of Class A Common stockholders has been, until the Charter Amendment, the power to enforce such expectation by suing officers who conduct their jobs in a grossly-negligent or reckless manner.

13. On August 24, 2022, Snap approved the Charter Amendment and adopted it by written consent of the Class C Common Stockholders, purporting to eliminate one of the “powers, preferences or special rights” appurtenant to ownership of Class A Common Stock — the power to seek relief for reckless or grossly negligent conduct among the Company’s officers. Snap disclosed that the Charter Amendment was adopted following Board approval and submission of written consents of 231,626,943 shares of Class C Common Stock, and the Company said that the Charter Amendment “has been duly adopted in accordance with Section 242 of the Delaware General Corporation Law.”

14. Since Snap’s co-founders hold all of the Company’s Class C Common Stock, it follows that they voted to exculpate Company officers to the “fullest extent permitted” by Delaware law.

15. No vote was solicited or obtained from the Class A Common Stockholders, even though Section 242(b)(2) plainly required such a vote.

16. Plaintiff seeks judicial relief to invalidate the Charter Amendment because it was not validly approved by the Class A Common Stockholders.

II. PARTIES

17. **Plaintiff Karen Sbroglio** (as defined above, “Plaintiff”) owns shares of Snap Class A Common Stock and has owned Snap Class A Common Stock at all relevant times.

18. **Defendant Snap** (as defined above, “Snap” or the “Company”) is a camera company best known for its flagship product, Snapchat, a mobile camera application which allows users to communicate using photos and short videos. Snap is incorporated in Delaware with its principal executive offices in California.

III. FACTUAL BACKGROUND

A. SNAP’S UNUSUAL (AND CONTROVERSIAL) TRI-CLASS STOCK STRUCTURE

19. Snap was originally formed as a California LLC, Future Freshman, LLC, in 2010, and incorporated in Delaware as Snapchat, Inc. in 2012. The Company subsequently changed its name to Snap Inc. in 2016.

20. When Snap completed its initial public offering (“IPO”) in March 2017, it took a controversial approach: Snap was the first company to conduct an IPO that issued *only* non-voting shares to the public.

21. Since the IPO, Snap’s stock structure contains three classes:

- a. **Class A:** Snap issued approximately 1.3 billion shares of Class A Common Stock, which currently do not have voting rights except as required by law, including under Section 242. These shares are publicly traded and a substantial majority of them are owned by public stockholders.
- b. **Class B:** Snap issued approximately 22 million shares of Class B Common Stock, which are entitled to one vote per share, and which are not publicly traded.
- c. **Class C:** Snap issued approximately 230 million shares of Class C Common Stock, 100% of which are owned by Snap's co-founders. These shares are entitled to ten votes per share and are not publicly traded.

22. In addition to holding nearly all of Snap's voting power through their ownership of the Class C Common Stock, the co-founders are both Board members and officers of the Company, currently serving as its Chief Executive Officer and Chief Technology Officer. In its annual report, Snap classifies each of these roles as "Executive Officer" positions, and discloses that the Chief Executive Officer role is one of the Company's mostly highly compensated executive officers.

B. SNAP AMENDS ITS CHARTER IN VIOLATION OF SECTION 242(B)(2)

23. On August 1, 2022, an amendment to 8 *Del. C.* § 102(b)(7) (“Section 102(b)(7)”) became effective that permits exculpation of officers of Delaware corporations. In particular, Section 102(b)(7) now permits a company’s certificate of incorporation to contain a provision eliminating or limiting the personal liability of an officer for monetary damages for breach of fiduciary duty, except in certain enumerated circumstances.

24. The permissive exculpation may apply to a company’s president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer, or chief accounting officer. Such exculpation may also apply to anyone who “[i]s or was identified in the corporation’s public filings with the United States Securities and Exchange Commission because such person is or was 1 of the most highly compensated executive officers of the corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful.” *See* 10 *Del. C.* § 3114.

25. On August 24, 2022, Snap’s Board approved the Charter Amendment by written consent, followed by written consents from all of Snap’s Class C Common Stock. The Charter Amendment, presented in its entirety below and purportedly “adopted in accordance with Section 242 of the Delaware General Corporation Law,” took effect on August 26, 2022:

SNAP INC.
CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

Snap Inc., a corporation organized and existing under the laws of the State of Delaware (the **Company**), hereby certifies that:

1. Article VI of the Amended and Restated Certificate of Incorporation of the Company is amended and restated in its entirety to read as follows:

ARTICLE VI
DIRECTOR AND OFFICER LIABILITY

1. The liability of the directors and officers of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.
2. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of such directors or officers to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.
3. Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director or officer under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

2. The foregoing Certificate of Amendment has been duly approved by the required vote of the stockholders in accordance with Section 228 of the Delaware General Corporation Law and has been duly adopted in accordance with Section 242 of the Delaware General Corporation Law.

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26. The Charter Amendment, however, is invalid. The Charter Amendment runs afoul of Section 242(b)(2) because the vote of Snap’s Class A Common Stockholders was not solicited, much less obtained.

27. Section 242(b)(2) provides that holders of a class of stock are “entitled to vote as a class upon a proposed amendment, *whether or not entitled to vote thereon by the certificate of incorporation*, if the amendment would . . . alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.”

28. The Charter Amendment “alter[ed] or change[ed] the powers, preferences, or special rights of the shares of such class so as to affect them

adversely.” The Charter Amendment stripped the holders of Class A Common Stock of the power to hold Snap’s officers personally liable for certain breaches of fiduciary duty (namely, reckless or grossly negligent conduct in breach of the duty of care).

29. The Company did not seek or obtain an affirmative vote of a majority of Snap Class A Common Stock, voting as a single class, prior to adopting the Charter Amendment.

30. While Class A Common Stockholders knew that they were not acquiring voting rights in general in connection with their shares, at least initially, they still retained the power to sue for breaches of fiduciary duty, including if Snap’s executive officers acted in a reckless or grossly negligent manner. That power to hold officers accountable is valuable. Moreover, Plaintiff and other class members acquired their Class A Common Stock with knowledge that the DGCL assured them a separate class vote on future charter amendments that affected the “powers, preferences or special rights” appurtenant to stock ownership adversely.

31. As the largest holders of voting shares of Snap stock, and as Company officers, the co-founders of the Company benefit from the Charter Amendment at the expense of the Class A Common Stockholders. Indeed, the interests of the co-founders are directly in conflict with the interests of Class A Common Stockholders with respect to whether Class A Common Stockholders have the legal power to bring

suit to hold officers of the Company personally liable for reckless or grossly negligent performance of their duties.

32. The Charter Amendment was adopted in violation of Section 242(b)(2) and is therefore invalid and unenforceable.

IV. CLASS ACTION ALLEGATIONS

33. Plaintiff, a holder of Snap Class A Common Stock, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of herself and all record and beneficial holders of Snap Class A Common Stock (the “Class”) who were injured by the Company’s violation of Section 242(b)(2).

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

35. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

36. The Class is so numerous that joinder of all members is impracticable. According to the Company’s October 21, 2022 Form 10-Q, the Company had 1,358,835,657 shares of Class A Common Stock outstanding. The number of Class members is believed to be in the thousands, if not millions, and they are likely scattered across the United States.

37. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

- a. whether the Company violated Section 242(b)(2) with respect to the adoption of the Charter Amendment; and
- b. the appropriateness of relief, including any equitable, injunctive, and/or declaratory remedies.

38. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

39. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

40. Defendant has acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

41. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant; or adjudications with respect to individual members of the Class would,

as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I
Violation of Section 242(b)(2)

42. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

43. Section 242(b)(2) requires the separate approval of a specific class of shares to amend a certificate of incorporation “if the amendment would . . . alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.”

44. As detailed herein, the Charter Amendment alters or changes the powers, preferences, or special rights of Snap’s Class A Common Stock so as to affect the Class A Common Stock adversely. The Charter Amendment adversely affects the powers, preferences, or special rights of the Company’s Class A Common Stock by stripping their power to hold Snap officers accountable for certain breaches of fiduciary duty.

45. As officers and the holders of Snap Class C Common Stock, the co-founders had conflicting interests from the Class A Common Stockholders with respect to the adoption and effectiveness of the Charter Amendment.

46. Holders of Snap Class A Common Stock were entitled to a separate class vote on the Charter Amendment pursuant to Section 242(b)(2), but Snap failed

to provide holders of the Company's Class A Common Stock with such a vote. Instead, the Company purported to adopt the Charter Amendment pursuant to Section 242(b)(2) through a vote of only Snap Class C Common Stock, and such approval was invalid.

47. As a result, Plaintiff and the Class have been and will continue to be harmed.

48. Plaintiff and the Class are entitled to appropriate equitable, injunctive, and/or declaratory relief invalidating the Charter Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in her favor and in favor of the Class, and against Defendant, as follows:

- A. Declaring that the purported Charter Amendment violated Section 242(b)(2);
- B. Declaring the Charter Amendment void;
- C. Certifying the proposed Class;
- D. Awarding Plaintiff and the members of the Class their reasonable attorneys' and experts' witness fees and other costs; and
- E. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

OF COUNSEL:

Mark Lebovitch
Sara D. Swartzwelder
**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

/s/ Daniel E. Meyer
Gregory V. Varallo (Bar No. 2242)
Daniel E. Meyer (Bar No. 6876)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3600

Counsel for Plaintiff

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