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Transaction ID 29937840
Case No. 5320-

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

ARTHUR I. MURPHY, JR., Plaintiff,	
v.	Civil Action No.
CHARLES E. LEVINE, PETER D. AQUINO, JOSÉ A. CECIN, JR., BENJAMIN C. DUSTER, IV, LEE S. HILLMAN, DANIEL TSEUNG, CASIMIR SKRZYPCZAK, KURT CELLAR, RCN CORPORATION, ABRY PARTNERS, LLC, YANKEE CABLE ACQUISITION, LLC, YANKEE METRO PARENT, INC. and YANKEE METRO MERGER SUB, INC., Defendants.	

VERIFIED CLASS ACTION COMPLAINT

Plaintiff, by his attorneys, alleges upon information and belief, except for those allegations that pertain to him, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this shareholder class action on behalf of himself and all other public shareholders of RCN Corporation ("RCN" or the "Company"), against RCN, its Board of Directors (the "Board" or the "Individual Defendants") and ABRY Partners, LLC and certain affiliates identified herein (referred to herein collectively as "ABRY" and, with the Individual Defendants, as the "Defendants"), arising out of the proposed sale of RCN to ABRY for $15 per share in cash in a transaction valued at approximately $1.2 billion, including the assumption of debt (the "Proposed Transaction"). The Board has unanimously approved the Company's entry into the Proposed Transaction, which is expected to close during the second half of 2010.

2. However, the cash consideration offered in the Proposed Transaction undervalues the Company's true worth, and merely serves as a vehicle with which to permit ABRY to capitalize on RCN's prospects. Accordingly, by agreeing to the Proposed Transaction, the Individual Defendants breached their fiduciary duty to maximize shareholder value for Plaintiff and the other public shareholders of RCN in connection with a sale of the Company. Because ABRY is a party to the Proposed Transaction, the agreement to which constituted a breach of the Individual Defendants' fiduciary duties, ABRY aided and abetted those breaches.

3. Absent judicial intervention, the Proposed Transaction will be consummated, resulting in irreparable injury to Plaintiff and the Class (defined below). This action seeks to enjoin the unreasonable steps taken by the Board, in entering into the Proposed Transaction without attempting to secure the highest price available for the Company's shares.

PARTIES

4. Plaintiff Arthur I. Murphy, Jr. is, and at all times relevant has been, an RCN shareholder.

5. RCN is a Delaware corporation whose principal place of business is located at 196 Van Buren Street, Herndon, Virginia 20170. RCN describes itself as a competitive broadband services provider, delivering all-digital and high-definition video, high-speed internet and premium voice services primarily to Residential and Small and Medium Business ("SMB") customers under the brand names of RCN and RCN Business Services, respectively. In addition, through its RCN Metro Optical Networks business unit, it delivers fiber-based high-capacity data transport services to large commercial customers, primarily large enterprises and carriers, targeting the metropolitan central business districts in its geographic markets. RCN operates its own networks and its primary service areas include, among others: Washington, D.C., Philadelphia, Lehigh Valley (Pennsylvania), New York City, Boston and Chicago. Its RCN and RCN Business Services network passes

approximately 1.4 million addressable homes and businesses, and it currently has licenses to provide video, data, and voice services to over 5 million licensed homes and businesses in its footprint. RCN serves approximately 428,000 residential and SMB customers, and RCN Metro has numerous points of presence in other key cities from Richmond, Virginia to Portland, Maine, as its fiber network continues to expand. RCN's common stock publicly trades on the NASDAQ Stock Market under the symbol "RCNI."

6. Defendant ABRY, a Delaware limited liability company, is a private equity investment firm focused on media, communications, business and information services investments. Since its founding in 1989, ABRY has completed over $21.0 billion of leveraged transactions and other private equity, mezzanine or preferred equity placements. ABRY partners with management to capitalize on its investments, and has a series of investment funds including: the ABRY Private Equity Funds, in connection with which it takes controlling positions in portfolio companies and assists management throughout the life of an investment; the ABRY Senior Equity Fund, which invests from $15 million to $50 million in companies that are either owned by others, or sponsored by ABRY's private equity fund; and the ABRY Senior Debt Fund, which typically investments in the senior debt offerings of ABRY's portfolio companies. ABRY is referred to herein collectively with its affiliates, Defendants Yankee Cable Acquisition, LLC, Yankee Metro Parent, Inc. and Yankee Metro Merger Sub, Inc., all three of which are Delaware entities and parties to the merger agreement with RCN, as "ABRY."

7. Defendant Peter D. Aquino ("Aquino") is President and Chief Executive Officer ("CEO") of RCN and has been a Board member since 2004.

8. Defendant José A. Cecin, Jr, has been a Board member since 2009. He also serves as Executive Vice President and Chief Operating Officer and leads RCN's Residential/Small Business segment.

9. Defendant Benjamin C. Duster, IV has been a Board member since 2004.

10. Defendant Lee S. Hillman is Chairman of the Board and has been a Board member since 2004. He served as Vice Chairman from January to June 2009 and was named Chairman in June 2009.

11. Defendant Charles E. Levine has been a Board member since 2008.

12. Defendant Daniel Tseung has been a Board member since 2004.

13. Defendant Casimir Skrzypczak has been a Board member since 2009.

14. Defendant Kurt Cellar has been a Board member since 2009.

15. By reason of their positions as officers and/or directors of the Company, the Individual Defendants named above are in a fiduciary relationship with Plaintiff and the other public shareholders of RCN and owe them the highest duties of good faith, loyalty and due care.

SUBSTANTIVE ALLEGATIONS

16. On March 5, 2010, RCN and ABRY jointly announced their entry into an Agreement and Plan of Merger (the "Merger Agreement") in connection with the Proposed Transaction, pursuant to which ABRY will acquire each share of RCN for $15 in cash in a transaction valued at approximately $1.2 billion, including the assumption of debt (or $531 million, exclusive of debt). According to the press release, the Proposed Transaction is expected to close during the second half of 2010.

17. The Proposed Transaction represents an opportunistic attempt by ABRY and the Company's management to capitalize on RCN's prospects without paying fair value for them, to the detriment of Plaintiff and the other public shareholders. In fact, RCN emerged from bankruptcy relatively recently, in December 2004, and thus has only had several years to implement its plan of reorganization and create value for shareholders.

18. Moreover, on November 3, 2009, the Company announced favorable financial results for its third quarter of 2009. For example, RCN announced that it generated free cash flow of $11 million during the quarter and $29 million year-to-date; revenue of $192 million; EBITDA of $56 million, an increase of 3% for the quarter and 12% year-over-year; expansion of its EBITDA margin by nearly 250 basis points year-over-year to over 29%.

19. More specifically, RCN announced the following highlights with respect to its consolidated results:

> **Revenue**. Total revenue of $192 million increased 3% from $187 million in the third quarter of 2008 and was flat compared to $192 million in the second quarter of 2009.
>
> **EBITDA**. EBITDA of $56.4 million increased 12% from $50 million in the third quarter of 2008 and increased 2% from $55.5 million in the second quarter of 2009. EBITDA margin of 29% expanded by nearly 250 basis points from the third quarter of 2008 and 50 basis points from the second quarter of 2009.
>
> **Capital Expenditures**. Capital expenditures were $34 million compared to $34 million in the third quarter of 2008 and $25 million in the second quarter of 2009.
>
> **Free Cash Flow**. Free cash flow was $11 million compared to negative $2 million in the third quarter of 2008 and $10 million in the second quarter of 2009. Free cash flow is a non-GAAP financial measure.
>
> **Share Repurchases**. RCN repurchased nearly 85,000 shares of common stock during the third quarter at an average price of $6.94, or an aggregate value of $0.6 million. To date, RCN has repurchased over 2.4 million shares under its $25 million repurchase authorization, for an aggregate value of approximately $17 million, leaving approximately $8 million remaining under the program.

20. In addition, RCN announced the following highlights with respect to the results of its SMB operations:

> **Revenue**. Residential/Small-Medium Business revenue of $144 million was flat compared to $144 million in the third quarter of 2008 and decreased 1% from $145 million in the second quarter of 2009. Year-over-year revenue comparisons reflect the addition of 2,000 customers and flat average revenue per customer ("ARPC") of $111.
>
> **EBITDA**. Residential/Small-Medium Business EBITDA of $40 million increased 9% from $37 million in the third quarter of 2008, and was flat compared to the second quarter of 2009. EBITDA margin of 28% expanded by over 200 basis points

from the third quarter of 2008 and approximately 25 basis points from the second quarter of 2009. Third quarter 2009 EBITDA includes $1.8 million in direct cost benefits related to the settlement of ordinary course network cost disputes.

> **Capital Expenditures**. Residential/Small-Medium Business capital expenditures were $25 million, down from $27 million in the third quarter of 2008 and up from $16 million in the second quarter of 2009.

> **Customers**, RGUs and Digital Penetration. Residential/Small-Medium Business customers of approximately 430,000 increased 2,000 compared to the third quarter of 2008 and were flat compared to the second quarter of 2009. Total revenue generating units of approximately 903,000 decreased by 12,000 compared to the third quarter of 2008 and decreased by 8,000 compared to the second quarter of 2009, as continued growth in video and data RGU's was offset by a reduction in voice RGU's, consistent with trends for highly- penetrated landline voice providers. Third quarter 2009 bundle rate and digital video penetration rate remained stable at 67% and 91%, respectively.

21. Furthermore, RCN announced the following highlights with respect to the results of its RCN Metro Optical Networks Segment:

> **Revenue**. RCN Metro revenue of $48 million increased 11% from $43 million in the third quarter of 2008, and 2% from $47 million in the second quarter of 2009, driven primarily by continued strength in transport services as well as growth in data and Internet services.

> **EBITDA**. RCN Metro EBITDA of $17 million increased 21% from $14 million in the third quarter of 2008 and 6% from $16 million in the second quarter of 2009. EBITDA margin of 34% grew by nearly 300 basis points from the third quarter of 2008 and over 130 basis points from the second quarter of 2009. EBITDA and EBITDA margin increased primarily as a result of revenue growth and continued realization of synergies.

> **Capital Expenditures**. RCN Metro capital expenditures were $9 million compared to $6 million in the third quarter of 2008 and $9 million in the second quarter of 2009.

22. Commenting on these results, Aquino, RCN's President and CEO, noted that the Company had weathered the challenging economic times and is poised for future growth, stating, in pertinent part, as follows:

> "***We are executing very well against our 2009 objectives, building free cash flow to $29 million year-to-date while still fueling our business for future growth . . . We have successfully managed through nearly a full year of economic uncertainty, and stayed on pace to expand margins, invest in product development, and make***

process improvements. In our residential business, Project Analog Crush(SM) is now complete in all of our metro markets and we are midway through our Lehigh Valley Crush. By year end, RCN will be the largest MSO in the country to be 100% digital, providing over 100 HD channels, an expansive VOD library, and a robust International tier, with channel capacity for future growth. In addition, the RCN/TiVo HD DVR remains on track for a first quarter 2010 launch, and we are accelerating our DOCSIS 3.0 deployment to address the huge SMB opportunity in RCN's metro markets. In the RCN Metro segment, we continue to capture demand for high capacity bandwidth from large carrier and enterprise customers, leveraging our position as a premier regional service provider with best-in-class Metro Ethernet and on-net fiber connectivity in 5 of the top 10 metro markets in the country." [Emphasis added.]

23. Michael T. Sicoli, Chief Financial Officer of RCN, also spoke favorably about the Company's financial performance and prospects, stating, in pertinent part, as follows:

> "***Our strategy of investing to drive consistent revenue growth and margin expansion while maintaining a stable level of capital expenditures is delivering significant growth in free cash flow***. Year to date, we have generated $29 million in free cash flow, a $38 million improvement compared to the same period in 2008. We will continue to focus on optimizing our balanced geographic and customer portfolio for growth and further strengthening our operational and financial flexibility. ***We remain on track to achieve our 2009 objectives of revenue and EBITDA growth and solid free cash flow generation***." [Emphasis added.]

24. In view of these prospects and the Company's otherwise favorable financial outlook, industry analysts have recognized that the Proposed Transaction represents a discount to the Company's true value. For example, in a March 5, 2010 post entitled "RCN Pulls the Rug Out From Under Its Shareholders' Feet," Brendan Wagner, writing for Seeking Alpha, wrote, in pertinent part, as follows:

> Wow, what an insult to shareholders.
>
> Instead of releasing 2009 earnings results this coming Tuesday, broadband services provider RCN (RCNI) decided to sell the company instead. For a insultingly low price.
>
> . . . . RCN Corporation and ABRY Partners today announced their entry into a definitive agreement for an investment fund managed by ABRY to acquire RCN for total consideration of approximately $1.2 billion, including the assumption of debt. As part of this agreement, each share of RCN common stock issued and outstanding immediately prior to the effective time of the merger will be entitled to receive $15 in cash, representing a 43% premium over RCN's average closing share price during

the past 30 trading days and a 22% premium over the closing share price on March 4, 2010. The transaction has fully committed financing, consisting of a combination of equity to be invested by ABRY and debt financing to be provided by SunTrustRobinson Humphrey, Inc., GE Capital, Societe Generale, and certain of their affiliates.

The nonsense about "Total consideration of approximately $1.2 billion" ignores the fact that they're buying the STOCK, for $15 per share, or about $540 million. They are (appropriately) assuming the debt, not retiring it, seeing as the company covers their interest expense nearly five times over.

There is no "management commentary" accompanying the release, for good reason. What are they gonna say? "We've sold the company for an absurdly low price, and in exchange management will have extremely lucrative contracts with the new owners. Good Bye."

The company is selling right as cash flow will start to kick up hugely, thanks to moderating capital expenditures. I included a "potential Free Cash Flow" analysis below, to show the cost-cutting that will happen as RCN goes private, none of which benefits existing shareholders . . . .

RCN

	2006	2007	2008	2009	2010	2011
Revenues	585,476	636,097	739,243	765,350	782,400	800,000
Direct Costs	201,370	224,770	264,219	274,968	280,099	286,400
SG&A	276,471	288,426	294,100	279,520	273,840	272,000
Depreciation & Amortization	192,964	195,239	198,734	198,209	198,000	198,000
Interest Expense						
EBITDA	107,635	122,901	180,924	210,862	228,461	241,600
"Potential EBITDA"	162,929	180,586	239,744	266,766	283,229	296,000
Cash Flow From Operations	95,015	109,164	139,971	153,749	165,000	185,000
Capital Expenditures	(86,195)	(115,510)	(143,252)	(116,732)	(115,000)	(110,000)
Free Cash Flow	8,820	(6,346)	(3,281)	37,017	50,000	75,000
"Potential" Free Cash Flow	64,114	51,339	55,539	92,921	104,768	129,400
Market Value	539,000	539,000	539,000	539,000	539,000	539,000
Free Cash Flow Yield	2%	-1%	-1%	7%	9%	14%
"Potential" Free Cash Flow Yield	12%	10%	10%	17%	19%	24%
Market Value / Ebitda	5.0	4.4	3.0	2.6	2.4	2.2
As a % of revenue						
Direct Costs	34.4%	35.3%	35.7%	35.9%	35.8%	35.8%
SG&A	47.2%	45.3%	39.8%	36.5%	35.0%	34.0%
Depreciation & Amortization	33.0%	30.7%	26.9%	25.9%	25.3%	24.8%
EBITDA	18.4%	19.3%	24.5%	27.6%	29.2%	30.2%
"Potential EBITDA"	27.8%	28.4%	32.4%	34.9%	36.2%	37.0%
Cash Flow From Operations	16.2%	17.2%	18.9%	20.1%	21.1%	23.1%
Capital Expenditures	-14.7%	-18.2%	-19.4%	-15.3%	-14.7%	-13.8%
Free Cash Flow	1.5%	-1.0%	-0.4%	4.8%	6.4%	9.4%
"Potential" Free Cash Flow	11.0%	8.1%	7.5%	12.1%	13.4%	16.2%

(Source - SEC filings, AlphaNinja)

25. Moreover, ABRY's proposed plans for RCN suggest that the Board could take reasonable measures without great effort to further increase the Company's potential. In connection with the Proposed Transaction, for example, ABRY intends to split RCN's cable and Metro Optical Networks business units, with each business unit becoming a wholly-owned subsidiary of ABRY. The intent of the split is to allow each business unit to focus solely on serving its respective customers and maximizing its potential. The Board could very easily effectuate this structural reorganization with minimal effort.

26. Accordingly, the Proposed Transaction undervalues the Company, as reflected by, *inter alia*, the value associated with its future prospects, its recent financial performance, and the other aspects of its business.

27. Notwithstanding the fact that shareholders will be cashed-out, RCN's highest-level executive officers will receive substantial benefits if their employment is terminated following a change in control, which the Proposed Transaction represents. These benefits include various forms of compensation payable under the terms of the Company's severance plan (from which defendant Aquino is excluded), pursuant to which outstanding equity awards would automatically vest and become exercisable.

28. Moreover, pursuant to the terms of his employment agreement, defendant Aquino is entitled to accelerate vesting of all unvested, outstanding equity compensation if his employment is terminated following the occurrence of a change of control. As disclosed in the Company's April 30, 2009 Annual Proxy Statement, the following chart sets forth the severance and change of control benefits payable to the Company's highest-level executive officers, assuming that a change of control had occurred on December 31, 2008 at a transaction price of $5.90 per share of common stock and if their employment had ceased on that date (footnotes are omitted):

Executive	Severance ($)	Accelerated Equity Compensation Value(1)($)	Total Equity Compensation Value(1)(2)($)	Tax-Related Gross Up(3)	Continued Medical Benefits ($)
Peter D. Aquino(4)	2,400,000	1,623,552	2,321,640	0	4,551
Michael T. Sicoli	520,000	289,190	636,871	0	4,407
John D. Filipowicz	375,000	352,100	385,223	0	3,621
PK Ramani	331,338	352,100	383,235	0	3,621
Felipe Alvarez	375,000	250,547	268,512	0	3,621
Benjamin R. Preston(5)	0	159,672	191,579	0	4,551

29. Of course, these executives could have engineered a more lucrative exit via the Proposed Transaction, which would allow them to accelerate their equity compensation – at $15 per share – if they are terminated following its consummation. Nevertheless, the public shareholders are left with a deal that the Board negotiated which may not maximize the value of RCN's shares.

30. Moreover, the Merger Agreement concerning the Proposed Transaction contains various deal protections that could preclude the emergence of a competing acquisition offer. Indeed, although the Merger Agreement contains a "go shop" provision that generally allows RCN to solicit other buyers from March 5, 2010 until April 14, 2010, RCN must pay to ABRY and its affiliates a termination fee of $10 million – reduced from the $17.5 million fee payable under most other circumstances – if the Board accepts an alternate yet superior offer prior to the end of the go shop period.

31. The Merger Agreement also requires RCN to provide five days written notice to ABRY before the Board changes its recommendation of the Proposed Transaction or terminates the Merger Agreement to accept a superior proposal. In connection with this provision, the Board must negotiate with ABRY in an effort to render the Proposed Transaction superior to the proposal then under consideration, or so that the Board can continue to support the Proposed Transaction.

32. Accordingly, in the absence of injunctive relief, shareholders will suffer, and continue to suffer, irreparable harm, because they will be forced to consider a transaction that does not maximize value.

THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

33. In any situation where the directors of a publicly traded corporation undertake a transaction that will result in a change in corporate control, the directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, the shareholders are entitled to receive a significant premium. To diligently comply with these duties, the directors may not take any action that:

(a) adversely affects the value provided to the corporation's shareholders;

(b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;

(c) contractually prohibits them from complying with their fiduciary duties; and/or

(d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders.

34. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction, violated, and are violating, the fiduciary duties they owe to Plaintiff and the other public shareholders of RCN, including their fiduciary duty to maximize shareholder value in connection with a sale of the Company.

35. As a result of these breaches of fiduciary duty, the Company's public shareholders will not receive adequate or fair value for their RCN common stock in the Proposed Transaction.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action as a class action pursuant to Delaware Court of Chancery Rule 23, individually and on behalf of all holders of RCN common stock who are being and will be harmed by the Individual Defendants' actions, described herein (the "Class"). Excluded from the

Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

37. This action is properly maintainable as a class action because, *inter alia*:

(a) The Class is so numerous that joinder of all members is impracticable;

(b) There are questions of law and fact which are common to the Class including, *inter alia*, whether (i) the Individual Defendants have breached their fiduciary duty to secure and obtain the best price reasonable under the circumstances for the benefit of Plaintiff and the other members of the Class, in connection with the Proposed Transaction; (ii) the Individual Defendants have breached any of their other fiduciary duties to Plaintiff and the other members of the Class in connection with the Proposed Transaction, including the duties of loyalty, good faith, care and fair dealing; (iii) Defendant ABRY has aided and abetted the Individual Defendants' breaches of fiduciary duty; and (iv) Plaintiff and the other Class members would be irreparably damaged if the Defendants are not enjoined;

(c) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

(d) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(e) Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

FIRST COUNT

Breach of Fiduciary Duty Against the Individual Defendants

38. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

39. In agreeing to the Proposed Transaction, the Individual Defendants have initiated a process to sell RCN that imposes heightened fiduciary responsibilities on them and requires enhanced scrutiny by the Court. The Individual Defendants owe fundamental fiduciary obligations to the Company's shareholders to take all necessary and appropriate steps to maximize the value of their shares in implementing such a transaction, including the responsibility to conduct fair and active bidding procedures.

40. As demonstrated by the foregoing, the Individual Defendants breached their fiduciary obligation to maximize shareholder value by failing to obtain the highest price possible for the Company. As a result of this breach, Plaintiffs and the Class will suffer irreparable injury in that they have not and will not receive their fair share of the value of RCN's assets and businesses and will be prevented from benefiting from a *bona fide* value-maximizing transaction.

41. As such, unless the Individual Defendants' conduct is enjoined by the Court, they will continue to breach their fiduciary duties to Plaintiffs and the other members of the Class, and will further a process that inhibits the maximization of shareholder value.

42. Plaintiff and the members of the Class have no adequate remedy at law.

SECOND COUNT

Aiding and Abetting the Board's Breaches of Fiduciary Duty Against Defendant ABRY

43. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

44. Defendant ABRY knowingly assisted the Individual Defendants' breaches of fiduciary duty in connection with the Proposed Transaction, which, without such aid, would not have occurred. As a result of this conduct, Plaintiff and the other members of the Class have been and will be damaged in that they have been and will be prevented from obtaining a fair price for their shares.

45. Plaintiff and the members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff demands injunctive relief, in his favor and in favor of the Class, and against the Defendants, as follows:

A. Ordering that this action may be maintained as a class action and certifying Plaintiff as Class representative and its counsel as Class counsel;

B. Preliminarily and permanently enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Transaction;

C. To the extent that the Proposed Transaction is consummated, rescinding and invalidating the Merger Agreement and any other agreements that the Defendants entered into in connection with, or in furtherance of, the Proposed Transaction or granting rescissory damages to the Plaintiff and the Class;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of RCN's shareholders;

E. Imposing a constructive trust, in favor of Plaintiff and the Class, upon any benefits improperly received by Defendants as a result of their wrongful conduct;

F. Directing Defendants to account to the class for all damages the Class may sustain as a result of the wrongs complained of herein;

G. Awarding Plaintiff the costs of this action, including a reasonable allowance for attorneys' and experts' fees and costs; and

H. Granting such other and further relief as this Court deems just and proper.

ROSENTHAL, MONHAIT & GODDESS, P.A.

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