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Case No. 2018-0651-JRS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHARLES F. DOLAN, HELEN A. DOLAN, JAMES L. DOLAN, PATRICK F. DOLAN, COLLEEN McVEY, and DANIELLE CAMPBELL, Plaintiffs, v. ALTICE USA, INC., and ALTICE EUROPE, N.V., Defendants, and CABLEVISION SYSTEMS CORPORATION, Nominal Defendant.	C.A. No. 2018-0651-JRS

DEFENDANTS' OPENING BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS

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Defendants Altice USA, Inc. ("Altice USA") and Altice Europe N.V. ("Altice Europe," and together with Altice USA, "Altice") respectfully submit this brief in support of their Motion to Dismiss Plaintiffs' Amended Complaint with prejudice (D.I. 30).

PRELIMINARY STATEMENT

Plaintiffs, including four members of the Dolan family that controlled Cablevision before its sale to Altice (the "Dolan Plaintiffs"), purport to bring this case pursuant to the Merger Agreement (the "Agreement") between Cablevision and Altice (the "Parties") to enforce Section 6.4(f), a covenant related to the News 12 local television operations of Cablevision.[1] Plaintiffs' claims fail as a matter of law and the Amended Complaint should be dismissed.

Each of Plaintiffs' contractual claims is doomed by the unambiguous language of the Agreement. As this Court recently observed, Delaware is "more contractarian than many other states." *US HF Cellular Commc'ns, LLC* v. *Stiegler*, 2017 WL 4548461, at *5 (Del. Ch. Oct. 12, 2017) (Slights, V.C.) (internal quotations & citation omitted). As a result, the Court looks "first and foremost" to the "four corners of the contract," with a presumption that "the parties are bound by the language of the agreement they negotiated," particularly when the parties are sophisticated, as they are here. *Id.* (internal quotations & citations omitted).

[1] The Agreement is attached to the Amended Complaint (D.I. 17) at Exhibit A.

First, under well established and unremarkable Delaware law, only parties and permitted third-party beneficiaries to a contract can sue to enforce its provisions. Plaintiffs are neither. Cablevision and Altice are the only parties to the Agreement (along with an Altice subsidiary formed for the merger), and the Agreement limits third-party claims to a circumscribed set of provisions that have nothing to do with News 12 or enforcement of Section 6.4(f).

Thus, the plain language of the Agreement leads inexorably to the conclusion that Plaintiffs lack standing to bring any claim to enforce Section 6.4(f). Section 9.8 provides that, other than certain listed exceptions not relevant here,

> [the Parties'] respective representations, warranties and covenants set forth in this Agreement are solely for the benefit of the other party hereto … and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

Plaintiffs attempt to dismiss this limitation as "boilerplate" (*see, e.g.*, Am. Compl. ¶¶ 52, 56), but that label is meaningless. Delaware courts enforce unambiguous contractual provisions such as Section 9.8 pursuant to their terms; the characterization of such provisions as "boilerplate" does not create rights that the contract does not confer. *Novipax Holdings LLC* v. *Sealed Air Corp.*, 2017 WL 5713307, at *16 (Del. Super. Ct. Nov. 28, 2017).

Second, even if Plaintiffs could overcome their lack of standing to sue under the Agreement, the plain language of the contract makes clear the covenant they seek to enforce did not survive the closing of the merger, and therefore is unenforceable as a matter of Delaware law. The Parties expressly agreed that all covenants, representations, warranties, and agreements not set out in Section 9.1 "shall not survive the consummation of the Merger and the Transactions or the termination of this Agreement." Section 6.4 is not among the surviving provisions enumerated in Section 9.1. As Chief Justice Strine has written for a unanimous Delaware Supreme Court, covenants that do not survive closing "can provide no basis for a post-closing suit" to enforce them. *Chi. Bridge & Iron Co. N.V.* v. *Westinghouse Elec. Co. LLC*, 166 A.3d 912, 932-33 (Del. 2017) (quoting *GRT, Inc.* v. *Marathon GTF Tech., Ltd.*, 2011 WL 2682898, at *13 (Del. Ch. July 11, 2011)).

Confronted with express contractual language that bars their claims, Plaintiffs argue that it is somehow "unfair" that they be denied a remedy that they purportedly deemed to be an important part of their decision to support the Altice/Cablevision transaction. (Pls.' TRO Reply Br. at 1 (D.I. 18) (referring to Altice's contractual arguments as a "Gotcha").)[2] But there is nothing unfair about

[2] The parties previously briefed the merits of the Amended Complaint in the context of arguing the likelihood of success on the merits in connection with

holding sophisticated parties represented by sophisticated counsel to the four corners of a carefully constructed contract in a multibillion dollar deal. Indeed, that is precisely what Delaware law requires.

Plaintiffs also plead a grab bag of extra-contractual claims. But each of those claims is insufficient as a matter of settled Delaware law:

Breach of the implied covenant of good faith and fair dealing: This claim should be dismissed because it is duplicative of Plaintiffs' breach of contract claim. Plaintiffs have not identified any "gap" in the Agreement that the Parties failed to anticipate and address. The implied covenant is a "limited and extraordinary" legal remedy. *Oxbow Carbon & Minerals Holdings, Inc.* v. *Crestview-Oxbow Acq., LLC*, __ A.3d __, 2019 WL 237360, at *19 (Del. Jan. 17, 2019). Claims are "rarely invoked successfully" and are routinely dismissed in these circumstances. *See, e.g.*, *MHS Capital LLC* v. *Goggin*, 2018 WL 2149718, at *11 (Del. Ch. May 10, 2018) (internal quotations & citation omitted); *Fortis Advisors LLC* v. *Dialog Semiconductor PLC*, 2015 WL 401371, at *3 (Del. Ch. Jan. 30, 2015) (Slights, V.C.).

Negligent misrepresentation and equitable fraud: Plaintiffs have impermissibly taken their breach of contract claim and "bootstrapped" the

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Plaintiffs' TRO Motion (*see* D.I. 1, 13, 18) and we refer to that briefing as appropriate.

allegation that Altice never intended to perform its alleged contractual obligation. This recasting of their breach of contract claim is a non-starter under Delaware law. *See, e.g.*, *BAE Sys. N. Am. Inc.* v. *Lockheed Martin Corp.*, 2004 WL 1739522, at *8 (Del. Ch. Aug. 3, 2004). These claims also fail because these causes of action cannot be brought in the context of a commercial arm's-length transaction; what is required under Delaware law is a "special relationship" that does not exist here.

Promissory estoppel: This claim fails because it is only available in the absence of a valid, binding contract. *SIGA Techs., Inc.* v. *PharmAthene, Inc.*, 67 A.3d 330, 348 (Del. 2013). It is undisputed that Altice and Cablevision entered into a valid, binding Agreement, which precludes a claim for promissory estoppel.

For all of these reasons, and the ones set out below, the Amended Complaint should be dismissed with prejudice.

STATEMENT OF FACTS

A. Background

On September 16, 2015, Cablevision Systems Corp. ("Cablevision"), Altice N.V. and Neptune Merger Sub Corp. entered into an Agreement and Plan of Merger. (Am. Compl. ¶ 27.) Altice agreed to pay $34.90 per share of Cablevision stock, resulting in total merger consideration of $17.7 billion. (*Id.* ¶ 23; *Id.* Ex. C at 2.)[3] The transaction closed on June 21, 2016. (*Id.* ¶ 36.)

The Parties to the merger are sophisticated and were represented by experienced counsel. Cablevision was publicly traded and was one of the largest cable operators in the United States. Cablevision was represented by Sullivan & Cromwell. (*Id.* Ex. C at 17.)

Plaintiff Charles Dolan is the founder and former CEO of Cablevision. Prior to the merger, he held a 14.1% interest in Cablevision. (*Id.* ¶ 11.) His wife, Plaintiff Helen Dolan, also held a 14.1% interest. (*Id.* ¶ 12.) One of their sons, Plaintiff James Dolan, is also a former CEO of Cablevision, and he

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[3] Plaintiffs attached to their Amended Complaint (at Exhibit C) Cablevision's Definitive Information Statement issued in connection with the merger. The Court therefore may consider that document on a motion to dismiss. *See Prokupek* v. *Consumer Capital Partners LLC*, 2014 WL 7452205, at *3 (Del. Ch. Dec. 30, 2014) ("While the Court's analysis is generally confined to the pleadings, it may consider documents that are integral to the plaintiff's claim and incorporated into the complaint. If the complaint refers to part of an extrinsic document, the Court may consider the document in its entirety." (citations omitted)).

held a 3.3% interest. (*Id.* ¶ 13.) Another son, Plaintiff Patrick Dolan, held a 1.8% interest, and was President of News 12, both before and after the merger. (*Id.* ¶¶ 14, 53.) The Dolan Plaintiffs, all of whom were members of Cablevision's "controlling stockholder group," were not parties to the Agreement, but were represented by Debevoise & Plimpton in connection with the transaction. (*Id.* Ex. C at 19.) The Dolan Family (including the Dolan Plaintiffs) received more than $2.2 billion, or approximately 20% of the cash component of the merger consideration. (*See id.* Ex. C at 77.)

Plaintiffs Colleen McVey and Danielle Campbell are current employees of News 12. (Am. Compl. ¶¶ 15-16.)

Altice USA and Altice Europe are cable, fiber, telecommunications, content, and media companies. Altice USA operates in the United States and Altice Europe is the parent of communications companies operating in Europe, Israel, and the Dominican Republic. Altice offers cable services, mobile telephone services (other than in the US), and media services to business-to-consumer and business-to-business customers. It also invests in specific content in order to complement its cable and mobile services with exclusive or high-quality content offerings.

News 12 is a local television network that provides "hyper-local" news focusing on discrete geographic areas including Long Island, Brooklyn, and

Connecticut. (Am. Compl. ¶¶ 22, 34.) Altice acquired News 12 through its acquisition of Cablevision. (*Id.* ¶ 23.)

B. Key Provisions of the Agreement

Four provisions of the Agreement, each set out in full in Appendix A to this brief, are at issue:

Section 6.4(f) – News 12: The Parties agreed that Altice committed to operate News 12 "substantially in accordance with the existing News12 business plan," which was incorporated into the Agreement in Schedule 6.4 of Cablevision's Disclosure Letter, "through at least the end of plan year 2020[.]"[4]

Section 9.8 – No Third Party Beneficiaries: Other than certain listed exceptions (director and officer liability, financing sources, and receipt of merger consideration pursuant to Article IV), the Parties agreed that "their respective representations, warranties and covenants set forth in this Agreement are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein."

[4] Although not at issue on this motion, Altice has operated News 12 substantially in accordance with the News 12 business plan and denies that it has breached the Agreement.

Section 9.1 – Survival: The Parties agreed that only certain covenants, representations, warranties and agreements would survive the consummation or termination of the merger. Section 6.4(f) is not one of them. The Parties expressly agreed that all covenants, representations, warranties and agreements not set out in Section 9.1 "shall not survive the consummation of the Merger and the Transactions or the termination of this Agreement."

Section 6.8(e) – Employee Benefits: The Parties stipulated that "[n]othing contained in this Agreement is intended to … (3) prevent [Altice], the Surviving Corporation or any of their Affiliates, after the Effective Time, from terminating the employment of any Continuing Employee … ." In subpart (e)(4), the Parties agreed that the Agreement does not "create any third-party beneficiary rights in any employee of the Company or any of its subsidiaries … ."

C. Plaintiffs' Allegations

Under Section 6.4(f) of the Agreement, Altice allegedly "agreed to operate News 12 substantially in accordance with the News 12 Business Plan through at least the end of 2020." (Am. Compl. ¶ 31.) The News 12 Business Plan is a five-year projection of revenues and expenses that sets forth, among numerous other line items, a headcount of 462 full-time equivalent employees for plan years 2016 through 2020. (*Id.* at Ex. B.) Plaintiffs allege that Section 6.4(f) therefore

required Altice to "employ a full-time equivalent headcount of exactly 462 employees in each of years 2016, 2017, 2018, 2019, and 2020." (*Id.* ¶ 32.)

Plaintiffs allege that in the spring of 2017, after the merger closed, Altice terminated approximately 70 employees "in direct violation of Section 6.4(f)." (*Id.* ¶ 40.) Plaintiff Patrick Dolan was President of News 12 at that time. (*Id.* ¶¶ 14, 53.) Plaintiffs further allege that Altice planned to conduct additional layoffs beginning in September 2018, including the termination of Plaintiffs McVey and Campbell. (*Id.* ¶¶ 41, 43, 44.) Although Plaintiffs do not allege the number of employees that Altice planned to terminate, Plaintiffs allege that "each of these terminations will be in further disregard and violation of Section 6.4(f)." (*Id.* ¶ 42.)

On the basis of these alleged breaches and anticipated breaches of Section 6.4(f), Plaintiffs brought suit for injunctive relief on September 4, 2018, asking the court to enjoin Altice from terminating any News 12 employee other than "for obvious cause" and to otherwise operate News 12 in substantial compliance with the News 12 Business Plan through 2020. (*Id.* at 32 (Prayer for Relief).) Plaintiffs also seek unspecified monetary damages. (*Id.*) Plaintiffs assert six causes of action: breach of contract (*id.* ¶¶ 46-63); breach of the implied covenant of good faith and fair dealing (*id.* ¶¶ 64-67); equitable fraud (*id.* ¶¶ 68-

75); promissory estoppel (*id.* ¶¶ 68-75); negligent misrepresentation (*id.* ¶¶ 76-80); and declaratory relief (*id.* ¶¶ 81-82).[5]

The parties completed briefing on Plaintiffs' TRO Motion on October 9, 2018. Several hearings on the TRO Motion were adjourned at the parties' request pending confidential settlement discussions. Ultimately, those discussions broke down, and on January 24, 2019, the Court granted Defendants' Motion to Adjourn the TRO hearing. (D.I. 35.) The Court further directed the parties to submit a proposed form of status quo order (*id.*), which the parties submitted on January 28. (D.I. 38.)

[5] The claims for equitable fraud, promissory estoppel, and negligent misrepresentation are brought by only the Dolan Plaintiffs.

ARGUMENT

Under Court of Chancery Rule 12(b)(6), dismissal for failure to state a claim is warranted if a plaintiff "would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof." *Prokupek*, 2014 WL 7452205, at *3 (internal quotations & citation omitted); *see also Fortis Advisors*, 2017 WL 3420751, at *5 (Slights, V.C.). Although this Court "takes well-plead factual allegations in the complaint as true and draws all reasonable inferences in favor of the nonmoving party," it "need not accept every interpretation of the allegations proposed by the plaintiff" or "[c]onclusory allegations unsupported by specific factual allegations." *Prokupek*, 2014 WL 7452205, at *3 (internal quotations & citations omitted). Moreover, "[t]he failure to plead an element of a claim warrants dismissal under Rule 12(b)(6)." *Veloric* v. *J.G. Wentworth, Inc.*, 2014 WL 4639217, at *8 (Del. Ch. Sept. 18, 2014) (citation omitted).

Under Delaware law, "a motion to dismiss is a proper framework for determining the meaning of contract language" because "the proper interpretation of language in a contract is a question of law." *Allied Capital Corp.* v. *GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006) (citation omitted); *accord, e.g.*, *Fortis Advisors*, 2017 WL 3420751, at *5; *Prokupek*, 2014 WL 7452205, at *3.

When contractual language is "plain and unambiguous, binding effect should be given to its evident meaning," and "only the language of the contract itself is considered in determining the intentions of the parties." *Allied Capital*, 910 A.2d at 1030 (citations omitted). To determine whether a contract is ambiguous this Court "must recognize accepted principles of contract interpretation." *Prokupek*, 2014 WL 7452205, at *6. If there is no ambiguity, "Delaware courts will not distort or twist contract language under the guise of construing it" because "creating an ambiguity where none exists could, in effect, create new contract rights, liabilities and duties to which the parties had not assented" and "such judicial action [would undermine] the reliability of written contracts … thus diminishing the wealth-creating potential of voluntary agreements." *Allied Capital*, 910 A.2d at 1030 (citations omitted).

Here, the plain, unambiguous language of the Agreement makes clear that Plaintiffs' claims should be dismissed with prejudice.

I. PLAINTIFFS DO NOT HAVE STANDING TO ASSERT CLAIMS FOR BREACH OF SECTION 6.4(f)

It is axiomatic that only the parties to a contract and intended third-party beneficiaries have the right to sue for breach of that contract. *See, e.g.*, *Brown* v. *Falcone*, 976 A.2d 170 (TABLE), 2009 WL 1680855, at *2 (Del. June 17, 2009); *NAMA Holdings, LLC* v. *Related World Mkt. Ctr., LLC*, 922 A.2d 417, 434 (Del. Ch. 2007). Plaintiffs are neither.

A. Plaintiffs Are Not Parties to the Agreement

Plaintiffs' own pleading confirms that they are not parties to the Agreement. The Amended Complaint alleges: "On September 16, 2015, Cablevision, Altice N.V., and Neptune Merger Sub Corp. entered into the Merger Agreement," which "constitutes a valid, binding, and enforceable contract between Cablevision (both for itself and as the successor-in-interest to Neptune Merger Sub Corp.) and Altice." (Am. Compl. ¶¶ 27, 47.) Rightfully so: none of the Plaintiffs signed the Agreement in their individual capacities, none are bound by any obligations under the Agreement, and none are identified as parties anywhere in the Agreement.

Plaintiffs may argue, as they did in support of their TRO Motion, that the Dolan Plaintiffs *are* parties to the Agreement, by virtue of their status as "former stockholders." (Pls.' TRO Reply Br. at 7-9.) Specifically, Plaintiffs claimed that "[t]he Merger Agreement does not define the parties thereto as signatories only, and for good reason: Cablevision did not negotiate the Merger Agreement for itself; it negotiated it for the primary benefit of its stockholders, because Cablevision itself would not actually receive any of the consideration it was negotiating. … [A] publicly traded corporation must negotiate for its many thousands or even millions of individual stockholders, rather than having them each individually negotiate and sign[.]" (*Id.* at 7.)

Plaintiffs' position is entirely without merit for at least three reasons.

First, as a matter of law, stockholders are not parties to merger agreements or corporate contracts entered into by the corporation in which they own equity. *E.g.*, *McKesson HBOC, Inc.* v. *N.Y. State Common Ret. Fund, Inc.*, 339 F.3d 1087, 1091 (9th Cir. 2003) ("Although the Merger Agreement necessarily referred to the stockholders … it is clear from the text and the signatories to the agreement that the only parties to the Merger Agreement were the corporations themselves.") (applying Delaware law); *Orban* v. *Field*, 1993 WL 547187, at *9 (Del. Ch. Dec. 30, 1993) (concluding that "[o]bviously the shareholders are not parties to [the merger agreement]," even though the agreement was conditioned on the approval of 90% of shares).[6]

By Plaintiffs' logic, the "thousands or even millions of individual stockholders" of the target company in every public-company acquisition would be considered parties to any merger agreement. This is, of course, not the case. Indeed, if Plaintiffs were correct that stockholders are parties to all merger agreements, there would be no need for the wealth of case law addressing the

[6] The case law on which the Dolan Plaintiffs rely for their stockholders-as-parties theory is stale and off-point. Plaintiffs cite two cases—*Willard F. Deputy & Co.* v. *Hastings*, 123 A. 33, 34 (Del. Super. Ct. 1923) and *Schutzman* v. *Gill*, 154 A.2d 226, 229-30 (Del. Ch. 1959)—both of which focus on whether the absence of a signature from one party (out of many) prevented a valid contract from being formed in the first place. Here, there is no dispute that the Agreement was properly formed.

circumstances in which stockholders can be third-party beneficiaries. *See, e.g.*, *Brown*, 2009 WL 1680855; *Orban*, 1993 WL 547187, at *9.

Second, although the term "party" is not defined in the Agreement, the term is used throughout to refer to the Agreement's signatories. For example:

- Section 9.6, detailing the procedure for "[a]ny notice … or other document to be given hereunder by any party to the others," provides notice only for Altice, Cablevision, and Merger Sub.

- Above the signature block, which includes signatures only from Altice, Cablevision, and Merger Sub, the Agreement states: "IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above."

- Section 6.3, detailing the "Requisite Stockholder Approval," states the Company's obligations "within the twelve (12) hours following the execution and delivery of this Agreement by the parties hereto." Again, only Altice, Cablevision, and Merger Sub actually executed the Agreement by signing it.

Third, the text of the Agreement makes clear that the Dolan Plaintiffs are ***not*** parties to it. Section 9.8 directly states that stockholders are not parties: "Except … for the right of holders of Shares [to receive cash consideration for their shares] … this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies." Therefore, "holders of

shares" are expressly identified as "Person[s] *other than* the parties hereto." (Emphasis added.) In other words, by defining the stockholders' right to receive cash for their shares as an exception to the rule that only parties have rights or remedies under the Agreement, Section 9.8 confirms that stockholders—including the Dolan Plaintiffs—are not parties. If Plaintiffs were correct that Cablevision stockholders *were* parties, there would have been no need to explicitly grant them a separate and limited right to sue for cash consideration as third-party beneficiaries.[7]

B. Plaintiffs Do Not Have Standing As Third-Party Beneficiaries

Plaintiffs also allege that they are "third-party beneficiaries of Section 6.4(f)." (Am. Compl. ¶¶ 52-56.) But the Agreement unequivocally states the opposite—the Parties affirmatively agreed to exclude claimants such as Plaintiffs, either as stockholders or as employees, from third-party beneficiary status.

Whether a non-party to a contract is a third-party beneficiary "turns on the language expressed in the contract." *Am. Fin. Corp.* v. *Comput. Scis. Corp.*, 558 F. Supp. 1182, 1186 (D. Del. 1983) (collecting cases). "Mere incidental beneficiaries have no legally enforceable rights under a contract" and "[a] third-party beneficiary is an incidental beneficiary unless the parties to the contract

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[7] Plaintiffs may also contend again that the reference to "holders of the Shares" in Section 9.8 somehow makes the Dolan Plaintiffs parties to the Agreement. (Pls.' TRO Reply Br. at 8.) To the contrary, this reference to stockholders in a provision conferring limited third-party beneficiary rights further confirms that they are ***not*** parties to the Agreement.

intended to confer a benefit upon it." *NAMA Holdings*, 922 A.2d at 434 (citations omitted); *see also James Cable, LLC* v. *Millennium Dig. Media Sys., L.L.C.*, 2009 WL 1638634, at *7 (Del. Ch. June 11, 2009) (third-party beneficiary status requires a contractual intent to benefit material to the purpose of the contract, and noting that the "terms of the contract" govern).

The relevant language in the Agreement could not be clearer. The Parties expressly did not provide for any third-party beneficiary status for anyone through the covenant in Section 6.4(f). Section 9.8 (titled "No Third Party Beneficiaries") provides that, aside from three exceptions inapplicable to Section 6.4(f), the

> respective representations, warranties and covenants set forth in this Agreement are solely for the benefit of the other party hereto, … and this Agreement is not intended to, and does not, confer upon **any Person other than the parties hereto** any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

(Emphasis added.) Further underscoring the point with respect to Plaintiffs McVey and Campbell, Section 6.8—dealing with certain employee rights Plaintiffs do not purport to enforce—expressly provides that "[n]othing contained in this Agreement is intended to … (4) create any third-party beneficiary rights in any employee of [Cablevision]."

Courts routinely give effect to identical provisions in rejecting claims brought by alleged third-party beneficiaries. *See, e.g.*, *Brown*, 2009 WL 1680855, at *2; *Capano* v. *Capano*, 2014 WL 2964071, at *13 (Del. Ch. June 30, 2014) ("[A third party] cannot challenge the agreement[] between [the two parties]" where the agreement "plainly articulates its drafter's intent to exclude third-party beneficiaries" because "the Court will look to the text of the … agreement and respect its plain language."); *United Rentals, Inc.* v. *RAM Holdings, Inc.*, 937 A.2d 810, 828, 828 n.84 (Del. Ch. 2007) ("Where a provision exists in an agreement expressly negating an intent to permit enforcement by third parties, as exists in the agreement at bar, that provision is decisive." (quoting *Nepco Forged Prods., Inc.* v. *Consol. Edison Co. of N.Y., Inc.*, 470 N.Y.S.2d 680, 681 (N.Y. App. Div. 1984))).[8]

These basic principles of contract interpretation demonstrate that Plaintiffs have no standing to enforce Section 6.4(f). Delaware courts "first and foremost look 'to the four corners of the contract to conclude whether the intent of the parties can be determined from its express language.'" *US HF Cellular Commc'ns*, 2017 WL 4548461, at *5 (quoting *Paul* v. *Deloitte & Touche, LLP*, 974 A.2d 140, 145 (Del. 2009)). Because the parties were sophisticated entities

[8] *See also* 4 CORBIN ON CONTRACTS, § 776 at 7 (Supp. 1971) (where the "parties expressly provide that some third party who will be benefitted by performance shall have no legally enforceable right, the courts should effectuate the express intent by denying the third party any direct remedy")

engaging in arm's-length negotiations, there is a strong presumption that they intended to be bound by the language of the Agreement. *Id.*

Section 9.8, in addition to making clear what provisions and rights were *not* intended to give rise to third-party beneficiaries, makes clear which ones *were* so intended:

> Except (i) as provided in Section 6.10 (*Director and Officer Liability*) or Section 9.15 (*Financing Sources*) and (ii) for the right of holders of Shares as of the Effective Time, after the Effective Time, to receive the aggregate consideration payable pursuant to Article IV of this Agreement, which rights set forth in clauses (i) and (ii) of this Section 9.8 are hereby expressly acknowledged and agreed by Parent and Merger Sub, … [the terms of] this Agreement are solely for the benefit of [the Parties] … and this Agreement not intended to, and does not, confer upon any [non-party] any rights or remedies hereunder, including the right to rely upon the representations and warranties … .

Section 6.4(f) is not within these listed exceptions. As a result, the doctrine of *expressio unius est exclusio alterius* provides further support for the conclusion that no third party has the right to sue to enforce the provisions of Section 6.4(f). *See, e.g.*, *Shire*, 2017 WL 3420751, at *8; *Seidensticker* v. *Gasparilla Inn, Inc.*, 2007 WL 4054473, at *3 (Del. Ch. Nov. 8, 2007) (where contract specified one of three people contemplated by a provision, drafters' exclusion of the other two is regarded as deliberate).

Section 9.8 also shows that the Parties *did* contemplate whether or not to allow third-party claims by stockholders (and Section 6.8(e)(4) shows the Parties' specific contemplation and rejection of third-party claims by employees). The result was the Agreement's express provision for specific, limited claims by third-party stockholders: the Parties "expressly acknowledged and agreed" in Section 9.8 that the stockholders would have the enforceable right "to receive the aggregate consideration payable pursuant to Article IV," *i.e.*, the cash for their shares. Under the Agreement, stockholders were not entitled to any form of consideration prior to or after closing, other than cash. No other third-party beneficiary rights for stockholders, including under Section 6.4(f), were included.

The provisions of the Agreement corresponding to the specific exceptions listed in Section 9.8 further confirm the conscious drafting and deliberate intention of the Agreement with regard to third-party beneficiaries. Clause (i) of Section 9.8 exempts from Section 9.8 the portions of Sections 6.10 and 9.15 "as provided in" those Sections. Section 6.10, dealing with Director and Officer Liability (which benefits the Dolan Plaintiffs), provides in subsection (e) that "[t]he rights of each Indemnified Person under this Section 6.10 … shall survive consummation of the Merger and are intended to benefit, and shall be enforceable by, each Indemnified Person." Similarly, Section 9.15, dealing with

Financing Sources, states that "[t]he Financing Sources are intended third party beneficiaries of this Section 9.15 and Sections 9.5(a) and 9.5(b)."

In stark contrast with Sections 6.10 and 9.15, Section 6.4(f) makes no reference to rights of third-party beneficiaries (or to survivorship or the Section's priority over other provisions within the Agreement). This further confirms that the Parties intended ***not*** to grant anyone else—including Plaintiffs—rights as third-party beneficiaries under Section 6.4(f). *See, e.g.*, *2009 Caiola Family Tr.* v. *PWA, LLC*, 2014 WL 1813174, at *9 (Del. Ch. Apr. 30, 2014) (finding that the "explicit[] provi[sion]" of rights elsewhere in the agreement at issue, coupled with "the lack of parallel language" in the section at issue, "weakens Plaintiffs' argument that [the section] was intended to confer [such] right[s]"); *Shiftan* v. *Morgan Joseph Holdings, Inc.*, 57 A.3d 928, 934-38 (Del. Ch. 2012) (where language in one provision of a contract is not "symmetrical" with how a particular condition is applied elsewhere, to ask the court to nevertheless apply the condition to the asymmetrical provision would be "straining to create an ambiguity when in fact there is none").

In short, Section 9.8 "indicates that the [parties] knew" how to confer third-party beneficiary status "when they so intended," and did not do so for Section 6.4(f). *Norton* v. *K-Sea Transp. Partners L.P.*, 67 A.3d 354, 364 (Del. 2013).

Plaintiffs cannot and do not contest these contractual provisions. Instead, they attempt to overcome the limitations imposed by the Agreement by arguing that the right to enforce Section 6.4(f) was a critical element of the transaction and urge the Court to disregard "boilerplate" provisions such as Section 9.8. (*See, e.g.*, Am. Compl. ¶¶ 52, 56.) The argument fails under Delaware law. The subjective importance that Plaintiffs purportedly placed on the provision is of no significance given the explicit and unambiguous limitation on third-party claims set forth in Section 9.8. *Shah* v. *Shah*, 1988 WL 81159, at *2 (Del. Ch. Aug. 3, 1988) ("It is hornbook law that in interpreting a contract, the Court must look to the objectively manifested—and not the subjective—intent of the parties." (collecting authorities)). The Agreement is "a highly negotiated document that stretches over almost seventy, single-spaced pages," excluding the Exhibits and Schedule. *All. Data Sys. Corp.* v. *Blackstone Capital Partners V L.P.*, 963 A.2d 746, 769 (Del. Ch. 2009) (dismissing claim for breach of merger agreement), *aff'd*, 976 A.2d 170 (Del. 2009) (TABLE). The provisions, therefore, "even ones characterized as 'boilerplate,' have to be enforced as intended by the parties when they negotiated" the Agreement. *Novipax*, 2017 WL 5713307, at *16.

Plaintiffs have nonetheless argued that Section 9.8 should not bar their third-party beneficiary claims because third-party beneficiary "disclaimer[s] [are] ineffective where the merger agreement obviously grants benefits to ostensible

nonparties." (Pls.' TRO Reply Br. at 10, 13.) The argument is premised on this Court's decision in *Amirsaleh* v. *Board of Trade of City of New York, Inc.*, 2008 WL 4182998, at *5 (Del. Ch. Sept. 11, 2008).) But *Amirsaleh* is readily distinguishable. *Amirsaleh* dealt with the target stockholders' right to receive particularized merger consideration: the merger agreement was an exchange of their membership interests for the right to choose cash or shares in the new entity. *Id.* at *1. It was a clear and direct grant of rights to particular individuals for a particular purpose. Section 6.4(f), in contrast, does not contain any grant of any rights to anybody.

Plaintiffs have also argued previously that the purportedly "specific" language of Section 6.4(f) should govern over the "general" language of Section 9.8. (*See* Pls.' TRO Reply Br. at 10.) But Section 6.4(f) is *not*, in fact, more specific than Sections 9.8 and 6.8. Whereas Section 6.4(f) is *silent* on third-party beneficiary status, Section 9.8 *denies* third-party beneficiary status to everyone except for limited circumstances not relevant here. And whereas Section 6.4(f) is *silent* as to its effect on any individual employee, Section 6.8(e) specifically *addresses* employee termination and employee rights under the Agreement by making clear that the Agreement does not preclude employee terminations or grant any third-party beneficiary rights to News 12 employees: "Nothing contained in this Agreement is intended to … (3) prevent … after the Effective Time … [the]

terminat[ion] [of] the employment of any Continuing Employee, or (4) create any third-party beneficiary rights in any employee[.]"

As Chief Justice Strine wrote while sitting as Chancellor: "Under Delaware law, which is more contractarian than that of many other states, parties' contractual choices are respected." *GRT*, 2011 WL 2682898, at *12 (citations omitted). Had Plaintiffs intended a different result, they and their experienced counsel would have bargained and contracted for the right to enforce Section 6.4(f). They did not.

II. SECTION 6.4(f) DID NOT SURVIVE THE CLOSING OF THE MERGER

Even if Plaintiffs could overcome the hurdle of Section 9.8, Plaintiffs' claim for Defendants' alleged breach of Section 6.4(f) should be dismissed with prejudice because that covenant did not survive the closing of the merger.

The plain language of Section 9.1, titled "Survival," bars Plaintiffs' suit because Section 6.4(f) is not among the specifically enumerated provisions that fall outside of the general extinguishment of claims contained in the Agreement. Section 9.1 provides, in relevant part:

> All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger and the Transactions or the termination of this Agreement.

Plaintiffs' Amended Complaint omits any reference to this critical provision of the Agreement, but Delaware law clearly recognizes the importance and enforceability of such limitations on the right to enforce provisions of merger agreements.

Chancellor Strine's opinion in *GRT*, dismissing a claim for breach of a contractual provision that did not survive closing, is highly instructive and contains a detailed recitation of the various types of survival clauses and their implications. 2011 WL 2682898, at *12-16. *GRT* explains that "all the major commentaries agree that by expressly terminating" the survivability of certain provisions "at closing, the parties have made clear their intent that they can provide no basis for a post-closing suit seeking a remedy for an alleged [breach of those provisions.]" *Id.* at *13. Thus:

> Where a given contract expressly terminates the representations and warranties at closing, it is understood that there can be no post-closing lawsuit for their breach. Thus, a party to a contract with an express termination clause ordinarily has no post-closing recourse against the representing and warranting party because the grounds for such a remedy were expressly terminated in the contract.

Id. at *15 (citations omitted).

The *GRT* opinion is consistent with well-established Delaware law requiring enforcement of contractual provisions such as Section 9.1, which may require the dismissal of post-closing suits for breach. "When the language of a contract is clear and unequivocal, a party will be bound by its plain meaning

because creating an ambiguity where none exists could, in effect, create new contract rights, liabilities and duties to which the parties had not assented." *Allied Capital*, 910 A.2d at 1030-31 (citation omitted) (granting motion to dismiss breach of contract claim). Courts must "not rewrite the contract to appease a party who later wishes to rewrite a contract he now believes to have been a bad deal. Parties have a right to enter into good and bad contracts, the law enforces both." *Nemec* v. *Shrader*, 991 A.2d 1120, 1126 (Del. 2010) (affirming dismissal of breach of contract claim). Survival provisions are no exception to this black-letter law. *See ENI Holdings, LLC* v. *KBR Grp. Holdings, LLC*, 2013 WL 6186326, at *9 (Del. Ch. Nov. 27, 2013) (holding that a survival clause limited the period during which parties could file suit for breach and dismissing claims); *GRT*, 2011 WL 2682898, at *1-3 (dismissing claims because survival clause limited liability to one-year survival period).

Under these controlling legal standards, the plain language of the Agreement is unambiguous and dispositive. Section 9.1 provides that certain other covenants would survive termination:

> Article IX and … Article IV and Sections 6.8 (*Employee Benefits*), 6.9 (*Expenses*) and 6.10 (*Director and Officer Liability*) shall survive the consummation of the Merger and the Transactions [and] Article IX … Section 6.9 (*Expenses*), Section 6.11 (*Financing*), Section 6.12 (*Indemnification Relating to Financing*) and Section 8.5 (*Effect of Termination and Abandonment*) and the

> Confidentiality Agreement shall survive the termination of this Agreement.

But, significantly, the Parties expressly agreed that "***[a]ll other*** representations, warranties, ***covenants and agreements*** in this Agreement ***shall not survive*** the consummation of the Merger and the Transactions or the termination of this Agreement." (Emphasis added.) That includes Section 6.4(f).

The effect of the survival provision on Section 6.4(f) is clear: When the representations, warranties, covenants and agreements do not survive "the consummation of the [Merger]," neither does "any right to sue on them." *GRT*, 2011 WL 2682898, at *13, *13 n.68; *see also* Lou R. Kling & Eileen T. Nugent, *Negotiated Acquisitions of Companies Subsidiaries and Divisions* § 15.02[2] (2018) ("[I]f it is the intention of the parties that [one] may recover from the [other] post closing for a breach of the … representations and warranties, they should specifically provide that the … [] representations and warranties survive the closing."); Valerie C. Mann, *Purchase and Sale Agreements* (Mar. 21, 2009) ("[T]here are additional covenants … that are intended to survive closing. To ensure that they survive closing, the agreement needs to say so."). Because Section 6.4(f) was not preserved after closing by the survival clause, Plaintiffs' claim for breach of Section 6.4(f) should be dismissed with prejudice.

There were numerous ways the Parties could have drafted Section 9.1 to permit lawsuits such as this one. As explained in *GRT*, "there are at least four

distinct possible ways to draft a contract addressing the life span of the contract's [provisions], with each possibility having the potential to affect the extent and nature of the … part[ies'] post-closing liability … ." 2011 WL 2682898, at *13. They are: (1) an express provision that covenants terminate upon closing; (2) silence as to whether covenants survive or expire upon closing; (3) a discrete survival period during which the covenants will continue to be binding; and (4) a provision for indefinite survival. *Id.* at *13-15. Some of those options would have preserved the right to sue to enforce Section 6.4(f) after closing of the transaction. Alternatively, the Parties could have incorporated other language exempting from extinguishment covenants "that by their terms apply or are to be performed in whole or in part after" closing. *See, e.g.*, Samuel C. Thompson, Jr., Practising Law Institute, *Mergers, Acquisitions and Tender Offers* § 2:14.1 at 2-394 (discussing a sample merger agreement that provided "[n]one of the representations, warranties, covenants and agreements … shall survive the Effective Time, except for those covenants and agreements that by their terms apply or are to be performed in whole or in part after the Effective Time"). But the Agreement, as written, contains no such savings provision for a suit to enforce Section 6.4(f) and therefore neither Plaintiffs, nor even the Parties, may pursue such a claim. *See Allied Capital*, 910 A.2d at 1030.

Plaintiffs have argued that the purportedly "specific" language of Section 6.4(f) should trump the "general" survival provision in Section 9.1. (*See* Pls.' TRO Reply Br. at 14.) The argument makes no sense. The survival clause is very specific: it lists exactly which provisions will survive and Section 6.4(f) is not identified as one of them. On the other hand, Section 6.4(f) itself is silent on whether it survives past closing.

Finally, Plaintiffs appear to contend that Altice's reading of Sections 6.4(f) and 9.1 somehow renders Section 6.4(f) superfluous, and that the consideration provided by Section 6.4(f) only arises post-closing. (*See id.* at 15.) That is not, however, sufficient to enforce a covenant that the parties expressly agreed in the contract would not survive closing. Indeed, it is not unusual for merger agreements to contain covenants that terminate at closing or otherwise and therefore cannot form the basis for post-merger enforcement. *See, e.g.*, Mergers & Acquisitions Comm., ABA, *Model Merger Agreement for the Acquisition of a Public Company* § 4.16 at 215 (2011) ("Many buyers recognize that some assurance about employment and employees is inevitable … [yet] [t]he … employees are not parties to the agreement, and … the buyer may also expressly reserve the right to terminate employment.").

III. PLAINTIFFS' OTHER CLAIMS ALSO SHOULD BE DISMISSED

Plaintiffs' four extra-contractual claims—breach of the implied covenant of good faith and fair dealing, equitable fraud, promissory estoppel, and negligent misrepresentation—also should be dismissed because they are legally barred and not adequately pleaded.

A. Plaintiffs' Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing (Count II) Should Be Dismissed Because There is No Contractual Gap and Plaintiffs' Claim Duplicates Their Breach of Contract Claim

Plaintiffs allege that Altice breached the Agreement's implied covenant of good faith and fair dealing by "promising pre-Closing to perform obligations to Cablevision and its stockholders" while taking advantage of its post-closing control of Cablevision to frustrate the "essential purpose of Section 6.4(f)." (Am. Compl. ¶¶ 64-67.)

Plaintiffs thus ask the Court to engage in the "cautious enterprise" of implying additional, unwritten obligations into the Agreement. *Oxbow Carbon*, 2019 WL 237360, at *19; *see also Nemec*, 991 A.2d at 1125; *MHS Capital*, 2018 WL 2149718, at *11. Implied covenant claims are "rarely invoked successfully," *MHS Capital*, 2018 WL 2149718, at *11, and the implied covenant is a "limited and extraordinary" legal remedy properly invoked "only where the contract is truly silent" as to the issue in dispute. *Oxbow Carbon*, 2019 WL 237360, at *19 (internal quotations & citations omitted). Indeed, the Delaware Supreme Court

recently cautioned that "*[e]ven where* the contract is silent … [a court] 'should be most chary about implying a contractual protection when the contract *could* easily have been drafted to expressly provide for it.'" *Id.* (emphasis added) (citation omitted).

Thus, the implied covenant "only applies where a contract lacks specific language governing an issue and the obligation the court is asked to imply advances, and does not contradict, the purposes reflected in the express language of the contract." *Fortis Advisors*, 2015 WL 401371, at *3 (dismissing breach of implied covenant claim). The claim is not available when "the subject at issue is expressly covered by the contract." *Narrowstep, Inc.* v. *Onstream Media Corp.*, 2010 WL 5422405, at *10 (Del. Ch. Dec. 22, 2010) (internal quotations & citation omitted). Or, put differently, "[w]here the contract speaks directly regarding the issue in dispute, existing contract terms control … such that implied good faith cannot be used to circumvent the parties' bargain[.]" *Fortis Advisors*, 2015 WL 401371 at *3 (internal quotations & citation omitted).

Here, the subject at issue—Altice's management of News 12, including whether it must maintain certain staffing levels—is explicitly addressed by the Agreement. Plaintiffs do not allege that the Agreement contains any gap. (*See* Am. Compl. ¶¶ 64-67.) Nor could they. The Agreement clearly states who has the right to sue, which provisions survive closing, and also states that nothing

in the Agreement limits Altice's right to terminate individual employees. This is fatal to Plaintiffs' implied covenant claim, *see, e.g.*, *Fortis Advisors*, 2015 WL 401371, at *4-5 (dismissing implied covenant claim where plaintiffs failed to identify a gap in the merger agreement), which is also subject to dismissal because it is merely duplicative of their claim for breach of contract, *see Edinburgh Holdings, Inc.* v. *Educ. Affiliates, Inc.*, 2018 WL 2727542, at *9 (Del. Ch. June 6, 2018) (dismissing implied covenant claim because it was "improperly duplicative of [plaintiff's] contract claims"); *Feldman* v. *Soon-Shiong*, 2018 WL 2124063, at *3 (Del. Ch. May 8, 2018) (dismissing implied covenant claim where claim was premised on alleged violation of express contractual term); *Narrowstep*, 2010 WL 5422405, at *12 (dismissing implied covenant claim "duplicative of … allegations regarding breaches of express provisions of [merger documents]").

B. Plaintiffs Have Not Adequately Alleged Equitable Fraud or Negligent Misrepresentation (Counts III and V)

The Dolan Plaintiffs' claims for equitable fraud and negligent misrepresentation also fail as a matter of law. A claim for "negligent misrepresentation is often referred to interchangeably as equitable fraud." *Fortis Advisors*, 2015 WL 401371, at *9 (collecting cases); *accord LVI Grp. Invs., LLC* v. *NCM Grp. Holdings, LLC*, 2018 WL 1559936, at *18 (Del. Ch. Mar. 28, 2018). Moreover, Plaintiffs themselves have characterized these counts as

interchangeable, referring to them as a single "equitable fraud and negligent misrepresentation claim." (Pls.' TRO Reply Br. at 27.)

A claim for negligent misrepresentation or equitable fraud cannot lie where, as here, it rests on the conclusory assertion that Altice *never intended to* perform. (*E.g.*, Pls.' TRO Reply Br. at 13.) Delaware courts do not countenance such "bootstrapping" of non-contractual claims. *See BAE Sys.*, 2004 WL 1739522, at *8 ("One cannot 'bootstrap' a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations." (internal quotations & citation omitted)); *accord, e.g.*, *Feldman*, 2018 WL 2124063, at *7; *Zutrau* v. *Jansing*, 2014 WL 3772859, at *14-15 (Del. Ch. July 31, 2014), *aff'd*, 123 A.3d 938 (Del. 2015) (TABLE); *Iotex Commc'ns, Inc.* v. *Defries*, 1998 WL 914265, at *5-6 (Del. Ch. Dec. 21, 1998).

Plaintiffs appear to believe that they have not impermissibly bootstrapped these claims to the breach of contract claim because "[p]leading such claims in the alternative is not bootstrapping." (Pls.' TRO Reply Br. at 27.) Although alternative pleading is permissible, the alternative claim still must stand on its own. *See Fortis Advisors*, 2015 WL 401371, at *5 (citation omitted). Plaintiffs plead no basis for these "alternative" claims apart from the conclusory allegation that Altice committed fraud by not disclosing its intent not to perform its obligations. (*E.g.*, Am. Compl. ¶ 78.) This is bootstrapping, plain and simple,

which cannot survive a motion to dismiss. *See BAE Sys.*, 2004 WL 1739522, at *8 (characterizing as bootstrapping "[c]ouching an alleged failure to comply with the … Agreement as a failure to disclose an intention to take certain actions arguably inconsistent with that agreement"). "This Court has expressly rejected that type of argument." *Id.*

The Dolan Plaintiffs' claims also fail as a matter of law because they cannot establish the requisite special relationship between themselves and Altice that is required to allege equitable fraud or negligent misrepresentation. "[A] plaintiff claiming equitable fraud must sufficiently plead a special relationship between the parties or other special equities, such as some form of fiduciary relationship or other similar circumstances." *LVI Grp. Invs.*, 2018 WL 1559936, at *18 (internal quotation marks and citation omitted). Sophisticated entities represented by sophisticated counsel engaged in arm's-length negotiations "generally do not qualify for the kind of equitable protection that the negligent misrepresentation [or equitable fraud] doctrine envisions." *Id.* (alteration in original) (dismissing equitable fraud and negligent misrepresentation claims where agreement was "negotiated at arms' length" and was "carefully drafted" by "two of the largest demolition companies in the United States" who were "represented by competent counsel") (internal quotations & citation omitted). That is undoubtedly the case here, because Cablevision was represented by Sullivan & Cromwell (Am.

Compl. Ex. C at 17) and the Dolan family, although not party to the transaction, was represented in negotiations by Debevoise & Plimpton (*id.* at 19.)

Finally, the Dolan Plaintiffs fail to allege facts supporting an inference of fraud with the degree of particularity required under Court of Chancery Rule 9(b), which applies to claims for equitable fraud and negligent misrepresentation under Delaware law. *E.g.*, *PR Acquisitions, LLC* v. *Midland Funding LLC*, 2018 WL 2041521, at *13 (Del. Ch. Apr. 30, 2018) ("A negligent misrepresentation claim must be stated with the same particularly [sic] required for fraud.") To satisfy Rule 9(b), a plaintiff must allege: "(1) the time, place, and contents of the false representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by making the representation[]." *Fortis Advisors*, 2015 WL 401371, at *6 (citation omitted). Plaintiffs do not meet that burden because they allege little more than that "Altice supplied false information to the Dolan Family … in the form of express promises that it would continue to operate News 12 in accordance with the News 12 Business Plan through 2020." (Am. Compl. ¶ 78.) This is plainly insufficient to satisfy Rule 9(b). Indeed, in *Fortis Advisors*, this Court dismissed similar claims for lack of particularity under Rule 9(b) where the complaint alleged only that the misrepresentations occurred during negotiations of the merger agreement (which this Court described as "the functional equivalent to providing no time parameter at all"), alleged that

unspecified officers of the defendant and plaintiff made and received the misrepresentations, and only generally referred to "discussions" or "conversations" without describing where or how they took place. 2015 WL 401371, at *7-8. The allegations in Plaintiffs' Amended Complaint are similarly deficient.

C. Plaintiffs' Claim for Promissory Estoppel (Count IV) Should Be Dismissed Because Altice's Promises Are Recited in the Agreement

The Dolan Plaintiffs claim that Altice intentionally misrepresented that it would operate News 12 in accordance with the Business Plan, thereby inducing Cablevision "grudgingly" to include News 12 in the merger. (Am. Compl. ¶¶ 70-73.) Putting to one side the incredulity of that claim in the context of this $17 billion deal, the promissory estoppel claim is barred because "[p]romissory estoppel does not apply … where a fully integrated, enforceable contract governs the promise at issue"; rather, the Court "must look to the contract as the source of a remedy[.]" *SIGA*, 67 A.3d at 348 (reversing denial of summary judgment and dismissing promissory estoppel claim); *see also TrueBlue, Inc.* v. *Leeds Equity Partners IV, LP*, 2015 WL 5968726, at *5, *10 (Del. Super. Ct. Sept. 25, 2015) (dismissing promissory estoppel claim and noting that "the Court is not the forum to rewrite the contract or to add provisions that, in hindsight, a party wishes it had included"). In this case, the Agreement was a fully integrated contract, and Plaintiffs do not claim that it is unenforceable or allege any facts to

support the conclusion that it suffers from "some contract formation problem" that would make promissory estoppel appropriate. *TrueBlue*, 2015 WL 5968726, at *5.

CONCLUSION

Defendants respectfully request that the Court grant their motion to dismiss Plaintiffs' Amended Complaint with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2019, the foregoing was caused to be served upon the following counsel of record via File & Serve*Xpress*:

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