IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JUDITH JACOBS, derivatively on behalf of YAHOO! INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 206-N
JERRY YANG, DAVID FILO, GARY VALENZUELA, TIMOTHY KOOGLE, ERIC HIPPEAU, ARTHUR H. KERN, MICHAEL MORITZ, JEFFREY MALLETT, EDWARD R. KOZEL,	)	
Defendants,	)	
and	)	
YAHOO! INC.,	)	
Nominal Defendant.	)	

MEMORANDUM OPINION AND ORDER

Submitted: May 26, 2004
Decided: August 2, 2004

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LAMB, Vice Chancellor.

I.

The plaintiff, a shareholder of Yahoo!, Inc., brings this derivative action against all the current directors and certain former directors and officers of Yahoo!, and against Yahoo! as a nominal defendant. The defendants have filed two separate motions seeking (1) to dismiss the entire complaint under Court of Chancery Rule 23.1 for failure to adequately plead demand excusal; and (2) to dismiss Count II under Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief can be granted. For the following reasons, the motion to dismiss the entire complaint for failure to make demand on the Yahoo! board of directors is granted. In light of that dismissal, the court declines to resolve the separate motion to dismiss Count II.

II.[1]

The plaintiff, Judith Jacobs, is a shareholder of Yahoo!. Defendant Yahoo! is a Delaware corporation. Yahoo! provides Internet products and services to consumers around the world. Defendants Timothy Koogle, Michael Moritz and Jeffrey Mallet are former Yahoo! directors. Defendants Eric Hippeau, Arthur H. Kern and Edward R. Kozel are current Yahoo! directors (collectively, with Koogle, Moritz and Mallet, the "Director Defendants").

[1] All facts in this opinion, unless otherwise noted, are taken from the well-pleaded allegations in the complaint.

Defendants Jerry Yang and David Filo founded Yahoo! in 1994. Yang is a current Yahoo! director and officer. Filo is a current Yahoo! officer but not a director. Both Yang and Filo are designated within the company as "Chief Yahoo." The complaint states that Filo "serves as a key technologist, directing the technical operations behind the company's global network of web properties."[2] The complaint does not describe Yang's duties as "Chief Yahoo." Yang owns approximately 6.7% of Yahoo! common stock. Filo owns approximately 7.9% of Yahoo! common stock.

Defendant Gary Valenzuela (collectively with Yang and Filo, the "Insider Defendants") served as Yahoo!'s Senior Vice President of Finance and Administration and CFO from 1996 to 2000. Valenzuela never served on Yahoo!'s board.

In 1996, Yahoo! retained The Goldman Sachs Group, Inc. to act as the managing underwriter in its initial public offering. Yahoo! raised $32.5 million through the IPO and paid Goldman approximately $1 million in fees.

Goldman's relationship with Yahoo! continued after the IPO. Yahoo! retained Goldman's services in connection with its October 1997 acquisition of the Four11 Corporation (a common stock exchange valued at $92 million), its July 1999 acquisition of broadcast.com (a common stock exchange valued at

[2] Compl. ¶ 6.

$5.7 billion), and its January 2002 acquisition of HotJobs.com (valued at $436 million). Goldman received over $10 million in underwriting, investment banking and advisory fees from Yahoo! over the course of the relationship.

During this time period, Goldman allegedly "rewarded" the Insider Defendants with allocations of thousands of shares in dozens of Goldman-managed IPOs at initial offering prices. Yang and Valenzuela were allocated shares in over 100 Goldman-managed IPOs. Filo was allocated shares in over 40 Goldman-managed IPO. The Insider Defendants allegedly reaped enormous, nearly risk-free profits as a result because the demand for IPO shares often caused the shares to double or triple in value in the first days of trading. The complaint alleges that Goldman allocated these shares to the Insider Defendants as incentive for Yahoo! to continue doing business with Goldman.

The plaintiff brings this derivative action on behalf of nominal defendant Yahoo! pursuant to Court of Chancery Rule 23.1. Count I alleges that the Insider Defendants breached their fiduciary duty of loyalty by misappropriating a financial benefit that rightfully belonged to Yahoo!, the receipt of IPO allocations, by virtue of their relationship with Goldman. Count II alleges that the Director Defendants acted disloyally and in bad faith when they "acquiesced in" or "approved of" the IPO allocations that the Insider Defendants received.

At the time the complaint was filed, Yahoo!'s board of directors had nine members: five non-party directors, Terry S. Semel, Roy J. Bostock, Ronald W. Burkle, Robert A. Kotick, Gary L. Wilson, and four defendants, Hippeau, Kern, Kozel, and Yang (collectively the "current board"). The plaintiff has not made a demand upon the current board to pursue legal action against the Director Defendants or the Insider Defendants.

The Director Defendants move to dismiss under Court of Chancery Rule 23.1 for failure to make a demand on Yahoo!'s board and for failure to adequately plead why demand should be excused, and move to dismiss under Court of Chancery Rule 12(b)(6) for failure to state a claim for which relief can be granted. The Insider Defendants move to dismiss under Court of Chancery Rule 23.1 for failure to make a demand on Yahoo!'s board and for failure to adequately plead why demand should be excused. Nominal defendant Yahoo! moves to dismiss under Court of Chancery Rule 23.1 for failure to make a demand on Yahoo!'s board and for failure to adequately plead why demand should be excused.

For the reasons discussed *infra*, the complaint will be dismissed for failure to comply with the demand requirement of Rule 23.1. The court does not reach the motion to dismiss Count II.

III.

A. Demand Futility

Court of Chancery Rule 23.1 requires that a plaintiff shareholder make a demand upon the corporation's current board to pursue derivative claims owned by the corporation before a shareholder is permitted to pursue legal action on the corporation's behalf. The demand requirement of Rule 23.1 allows for demand to be excused in two instances. First, demand is excused if a shareholder pleads *with particularity* facts that establish that demand would be futile because the directors are not independent or disinterested.[3] Second, demand is excused if a shareholder establishes a "reasonable doubt as to . . . whether the directors exercised proper business judgment in approving the challenged transactions."[4] "Demand futility analysis is conducted on a claim-by-claim basis."[5]

[3] In considering whether demand is rightfully excused, the court will accept the well-pleaded allegations in the plaintiff's complaint as true, drawing reasonable inferences in favor of the plaintiff. *In re Nat'l Auto Credit, Inc. S'holders Litig.*, 2003 WL 139768, at *8 (Del. Ch. Jan. 10, 2003); *see also Kaufman v. Belmont*, 479 A.2d 282, 285 (Del. Ch. 1984) ("All well-plead facts must be assumed to be true. Allegations, however, will not be assumed to be true unless there exists specific facts which are sufficient to support the conclusions.") (citations omitted). The court, however, will not accept conclusory allegations of law or fact. *Grobow v. Perot*, 539 A.2d 180, 188 n.6 (Del. 1988).

[4] *Steiner v. Meyerson*, 1995 WL 441999, at *9 (Del. Ch. July 19, 1995). Referring to the second basis for excusing demand, former Chancellor Allen states that "the same directors [must] continue at the time of suit to constitute a majority of the board." *Id.* It follows that demand will be excused under the second prong of the demand futility analysis if a majority of the current board (those who should consider a demand) were the directors who failed to exercise proper business judgment in approving the challenged transaction.

[5] *Beam v. Stewart*, 833 A.2d 961, 977 (Del. Ch. 2003), *aff'd*, 845 A.2d 1040 (Del. 2003).

A director is deemed interested "whenever divided loyalties are present, or a director has received, or is entitled to receive, a personal benefit from the challenged transaction which is not equally shared by the stockholders."[6] A director is deemed independent if his or her "decision is based on the corporate merits of the subject before the board rather than extraneous considerations or influences."[7]

The plaintiff's demand futility claims are based on four theories. First, the plaintiff contends that the current board is disqualified from considering a demand because of the current board's desire to avoid taking "an adversarial position to defendants Yang and Filo," two individuals that the plaintiff asserts are of paramount importance to Yahoo!.[8] Second, the plaintiff argues that the directors' compensation, coupled with their desire to retain their positions as Yahoo! directors, taints their ability to consider a demand independently and free from extraneous influences. Third, the plaintiff contends that as a result of certain business ties between Yahoo! and its directors, these directors are unable to consider a demand to pursue litigation against the defendants. Fourth, the plaintiff

[6] *Rales v. Blasband*, 634 A.2d 927, 933 (Del. 1993).
[7] *Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984).
[8] Compl. ¶ 35.

asserts that certain directors "acquiesced in" or "approved of" the IPO allocations at issue and, for that reason, they are deemed interested for purposes of a demand.[9]

Since Yahoo!'s current board is composed of nine directors, the plaintiff has the burden of establishing that at least five directors are either interested or not independent. Yang is interested for purposes of demand because he is involved in the transactions at issue. For the reasons set forth below, the plaintiff has not met her burden with respect to the remaining directors, as the court concludes that Semel, Bostock, Burkel, Kotick, and Wilson are independent and disinterested for purposes of Rule 23.1.

1. Adversarial Position

The plaintiff asserts that Yahoo!'s current board is disqualified from considering a demand because of the current board's desire to avoid taking "an adversarial position to defendants Yang and Filo."[10] The plaintiff's argument boils down to an assertion that if the current board were to pursue litigation against the Insider Defendants, Filo and Yang would leave the company. In support of this argument, the plaintiff points to Yahoo!'s filings with the SEC that state that Yahoo! is "substantially dependent on [the] two founders."[11] This, according to

[9] The plaintiff asserts that directors Hippeau, Kern, and Kozel are interested for purposes of considering a demand to pursue Count II because they allegedly acquiesced in the receipt of the IPO allocations.

[10] Compl. ¶ 35.

[11] *Id.*

the plaintiff, illustrates that Yahoo!'s current board would avoid taking an adversarial position to the Insider Defendants.

This argument must be rejected. Simply because Yahoo! is alleged to be "substantially dependent" on Filo and Yang it does not follow that directors investigating allegations of misconduct by Filo and Yang would fail to fulfill their fiduciary duties to the corporation.[12] On the contrary, managing the relations of the corporation and its founders is an important aspect of the duties owed by the directors to Yahoo! and its stockholders. As this court has recognized in the past, "[p]otential negative side-effects from bringing a lawsuit . . . do not constitute a personally disqualifying interest that might prevent the directors from freely assessing the benefits and detriments of bringing the suit in the first place."[13] Negative effects to the corporation might make the directors' discussion more difficult, but, without more, it hardly gives rise to a disqualifying interest.

2. Directors' Compensation And Continued Employment

Yahoo!'s directors are compensated through the Directors Stock Option Plan (the "DSOP").[14] To retain the benefits under the DSOP, a director must remain on

[12] *See Apple Computer, Inc. v. Exponential Tech., Inc*., 1999 WL 39547 (Del. Ch. Jan. 21, 1999) (one co-founder capable of considering a demand to sue another).

[13] *In re Delta & Pine Land Co. S'holders Litig.*, 2000 WL 875421, at *7 (Del. Ch. June 21, 2000).

[14] Upon the commencement of their directorships, each nonemployee director receives nonqualified stock options to purchase 100,000 shares of Yahoo! common stock. These options vest ratably over a period of 48 months. At each annual meeting, the nonemployee directors receive an additional 50,000 options to purchase Yahoo! common stock. 25% of these options

Yahoo!'s board, as the options vest only while a director serves on Yahoo!'s board. The plaintiff argues that the directors' compensation, coupled with their desire to retain their positions as Yahoo! directors, taints their ability to consider a demand to pursue litigation independently and free from extraneous influences.

As this court has stated, "[a]llegations as to one's position as a director and the receipt of director's fees, without more . . . are not enough for purposes of pleading demand futility."[15] The weakness in the plaintiff's argument is that she offers no relevant facts to support her claim of demand futility aside from the fact that the directors receive substantial remuneration in return for their service on Yahoo!'s board. The plaintiff relies on *In re eBay Shareholders Litigation,*[16] but that decision is inapposite. She argues the directors' ability to enjoy the lucrative compensation they have received (and will continue to receive) is dependant upon their continued service as directors and that, as in *eBay*, the targets of an inquiry into the merits of a derivative action have the power to deprive them of that compensation by terminating their board service. While it is true that, if it were to happen, the Director Defendants would face a significant loss, the non-party directors constitute a majority of the current board, and the facts properly before

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vest after the first anniversary of the date of grant, while the remaining options become exercisable monthly over a period of 36 months after the anniversary of the date of grant. The exercise price of all stock options granted to nonemployee directors is the closing price of a share of Yahoo!'s common stock on the date of grant of the option.

[15] *In re Ltd., Inc., S'holders Litig.*, 2002 WL 537692, at *4 (Del. Ch. Mar. 27, 2002).

[16] 2004 WL 253521 (Del. Ch. Jan. 23, 2004).

the court show that Yang and Filo do not control the nomination process. On the contrary, a nominating committee of independent directors, Kern and Burkle, controls that process.[17] Kern is named as a Director Defendant while Burkle is not. Simply being named as a defendant does not destroy Kern's independence.

The record illustrates clearly that the Insider Defendants are not in a position to control the other directors' tenure on the board, as was the case in *eBay*.[18] For example, the company conceded in its filings with the SEC that the *defendants controlled* eBay.[19] In the present case, the Insider Defendants own approximately 14.7% of Yahoo!'s common stock, which is obviously insufficient to control an election of Yahoo!'s directors.[20] Moreover, Yahoo!'s public filings do not state, as was true in *eBay*, that the Insider Defendants control the company. In addition, the

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[17] Gibbs Decl. Ex. E, May 15, 2003 (Yahoo! Definitive Form 14A) ("[t]he Nominating Committee consists of the Company's nonemployee directors: Messrs. Kern (Chair) and Burkle . . . The Nominating Committee has authority (i) to review the size and composition of the board of directors and to recommend changes thereto; and (ii) to evaluate and recommend candidates for election of directors."). *See In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) ("On a motion to dismiss the Court is free to take judicial notice of certain facts that are of public record if they are provided to the Court by the party seeking to have them considered.") (quotations and internal citations omitted).

[18] 2004 WL 253521, at * 3.

[19] *Id.* ("eBay's form 10-K . . . notes that eBay's executive officers and directors Whitman, Omidyar, Kagle and Skoll (and their affiliates) own about one-half of eBay's outstanding common stock. As a result, these eBay officers and directors effectively have the ability to control eBay and direct its affairs and business, including the election of directors and the approval of significant corporate transactions.").

[20] *Cf. Zimmerman v. Braddock*, 2002 WL 31926608, at *11 (Del. Ch. Dec. 20, 2002) ("[A]n interest of less than 12% in [a] company, without more, fails to create a record from which one may conclude that he dominates the business affairs of [a company] or the employment of that company's employees."); *In re W. Nat'l Corp. S'holders Litig.*, 2000 WL 710192, at * 6 (Del. Ch. May 22, 2000) ("Substantial non-majority stock ownership, without more, does not indicate control.").

board has a nominating committee comprised of nonemployee directors who recommend board candidates. The nominating committee ensures that the Insider Defendants (particularly Yang) are incapable of controlling a director's nomination, election and continued tenure on Yahoo!'s board.

The court notes that Semel, Yahoo!'s chairman and CEO, is not compensated through the DSOP.[21] Rather, Semel's compensation is based on his status as Yahoo!'s CEO and is a combination of cash and stock options with a vesting scheme similar to that of the DSOP. The plaintiff alleges that Semel is beholden to Yang because Yang was responsible for Semel's employment (and continued employment); and, therefore, because of this "powerful economic incentive," Semel is incapable of making an independent decision as to whether Yahoo! should pursue legal action against Yang and the other Insider Defendants. Specifically, the plaintiff points to the fact that Semel would lose at least $17,342,500 in options if his employment was terminated.[22] The plaintiff further asserts that Yang personally negotiated Semel's compensation package and, for that reason, Semel is beholden to Yang. Finally, as evidence of Yang's importance and power, the plaintiff points to the fact that he was the sole signatory on Semel's employment contract. For these reasons, the plaintiff argues that Semel is

[21] As part of Semel's compensation as CEO, he has received millions of dollars of unvested options that only vest while Semel remains an employee of Yahoo!.

[22] Compl. ¶ 55.

incapable of making an independent decision as to whether Yahoo! should pursue legal action against Yang, and, as a consequence, cannot consider a demand against the remaining Insider Defendants.

The facts alleged in the complaint fail to raise a reasonable doubt as to Semel's independence. Although Semel stands to lose a significant amount of money in the form of unvested options if his employment is terminated, the complaint fails to allege facts from which the court could infer that any of the Insider Defendants, in particular Yang, control Semel's continued employment as CEO. Semel is Yahoo!'s highest-ranking officer and reports to the entire board, not Yang.[23] Moreover, Yang and the other Insider Defendants are not in a position to control Semel's reelection to the board, as was the case in *eBay*.[24] Likewise, the fact that Yang personally negotiated Semel's compensation package and is the sole signatory on Semel's employment contract does not establish that Semel is dominated or controlled by Yang.

The plaintiff also contends that under *Steiner v. Meyerson*, stock ownership is not the only way the Insider Defendants could "exert considerable influence"

[23] Gibbs Decl. Ex. K, Semel Letter Agreement at ¶ 2 ("You [Semel] shall report directly and solely to the Board of Directors."). *See In re Wheelabrator*, 1992 WL 212595, at *12 ("On a motion to dismiss the Court is free to take judicial notice of certain facts that are of public record if they are provided to the Court by the party seeking to have them considered.") (quotations and internal citations omitted).

[24] 2004 WL 253521, at *3.

over a director to raise a reasonable doubt as to a director's independence.[25] In *Steiner*, however, the employee/director was the president and chief operating officer and was asked to consider a demand to sue his superior, the company's board Chairman and CEO. Here, Semel (or any of the five directors who could consider a demand) does not report to the Insider Defendants. Instead, Semel reports to Yahoo!'s entire board.

For these reasons, the court finds that the assertion that Yahoo!'s current board members are not independent for purposes of considering a demand free from "extraneous considerations or influences" resulting from their compensation arrangements is not adequate grounds to excuse demand.

3. Business Relationships

The plaintiff next argues that, as a result of certain business relationships between Yahoo! and companies affiliated with directors Bostock, Burkle and Kotick, there exists a reasonable doubt as to the ability of Bostock, Burkle and Kotick to consider a demand independently and free from extraneous influences. The court disagrees.

Bostock was elected to Yahoo!'s board in May 2003. He also serves on the board of Unicast, Inc., a small technology company that entered into an advertising agreement with Yahoo! in 2002 whereby Yahoo! paid Unicast $206,000. The

[25] 1995 WL 441999, at *9.

plaintiff argues that "[a]s a result of Bostock's position with Unicast and Unicast's dependence on Yahoo!, Bostock cannot exercise business judgment with respect to any determination to proceed or not to proceed with this action against Yang"[26] and the other Insider Defendants.

Burkle has served on Yahoo!'s board since November 2001. Burkle is the managing partner of The Yucaipa Companies, an investment firm that holds a majority stake in Alliance Entertainment Corp. Burkle serves as Alliance's chairman of the board. Alliance owns All Media Group ("AMG"), which entered into an undisclosed licensing agreement with Yahoo!. The plaintiff contends that the AMG-Yahoo! licensing agreement is "crucial to AMG's continued viability" and, as a result, Burkle cannot act independently to determine whether Yahoo! should proceed in litigation against the Insider Defendants.[27]

Kotick has served as a director of Yahoo! since March 2003. Kotick is the chairman and CEO of Activision, Inc., an entertainment software publisher and controls 6.4% of Activision's common stock. In July 2002, Yahoo! and Activision executed a licensing and distribution agreement whereby Yahoo! paid Activision $100,000. Kotick also owns 21,668 shares of Macromedia, Inc. and serves as a director. In September 2002, Yahoo! and Macromedia entered into an advertising services agreement valued at $75,000. Additionally, Yahoo! and Macromedia

[26] Compl. ¶ 39.
[27] Compl. ¶ 40.

entered into an agreement to integrate Macromedia's streaming video services to Yahoo!.

Taken together, these factual allegations do not raise a reasonable doubt that the business ties between Yahoo! and companies that Burkle, Bostock, and Kotick are affiliated with would prevent them from considering a demand independently and "free from extraneous influences." This is so because the complaint fails to establish that Filo and Yang (the only two Insider Defendants still employed at Yahoo!) exercise control over Yahoo! or Yahoo!'s relationship with Unicast, AMG, Activision or Macromedia. Thus, the complaint does not allege sufficient facts to support the inference that Yang or Filo have the authority or ability to cause Yahoo! to terminate its relationships with the companies with which Burkle, Bostock, and Kotick are affiliated. Simply labeling Filo and Yang each "Chief Yahoo" is not enough. Similarly, merely asserting that the agreements were entered into at Filo and Yang's behest without factual support is insufficient to meet the particularity requirements of Rule 23.1.[28] Moreover, the existence of contractual relationships with companies that directors are affiliated with

[28] *Brehm v. Eisner*, 746 A.2d 244, 254 (Del. 2000) ("Rule 23.1 is not satisfied by conclusory statements or mere *notice pleading* . . . . What the pleader must set forth are *particularized* factual *statements* that are essential to the claim. . . . A prolix complaint larded with conclusory language . . . does not comply with these fundamental pleading mandates.") (emphasis added).

potentially makes the board's decision more difficult, "but it does not sterilize the board's ability to decide."[29]

The plaintiff also does not assert particularized facts establishing that the business relationships are material to Unicast, AMG, Activision or Macromedia. Merely stating that the agreements between Yahoo! and AMG are "crucial to AMG's continued viability" is not enough. There is no description of the terms of the AMG-Yahoo! agreement. Similarly, the facts alleged do not give rise to the inference that the value of these contracts was material to Activision or Macromedia. Moreover, simply asserting that the contracts increased the value of Kotick's holdings in these companies is insufficient to conclude that Kotick is incapable of considering a demand to pursue litigation against the Insider Defendants or Director Defendants.

4. "Acquiescence In" Or "Approval Of" The IPO Allocations

Finally, relying on the second prong of *Aronson*, the plaintiff argues that because the Director Defendants selected Goldman as Yahoo!'s investment banker, certain current board members "knew of and either specifically approved [or

[29] *In re Delta & Pine Land Co. S'holders Litig.*, 2000 WL 875421, at *7 (Del. Ch. June 21, 2000). *See also Beam v. Stewart*, 845 A.2d 1040, 1051 (Del. 2003) ("Mere allegations that they [the directors and Insider Defendants] move in the same business and social circles, or a characterization that they are close friends, is not enough to negate independence for demand excusal purposes.").

acquiesced in] the share allotments of IPOs."[30] This, according to the plaintiff, creates a reasonable doubt that the challenged transactions (the retention of Goldman and receipt of IPOs) are the product of a valid exercise of business judgment.[31]

Assuming *arguendo* that Kern, Hippeau and Kozel, the three Director Defendants who remain on Yahoo!'s current board, are interested and incapable of considering a demand, the remaining five directors (who together constitute a majority) are capable of considering a demand. Directors Semel, Bostock, Burkle, Kotick and Wilson, for example, all joined Yahoo!'s board *after* the Director Defendants allegedly "acquiesced in" or "approved of" the IPO allocations at issue.[32] As discussed in greater detail *supra*, directors Semel, Bostock, Burkle, Kotick and Wilson are deemed independent and disinterested for purposes of a

[30] Compl. ¶ 27. The plaintiff asserts that because of this, Hippeau, Kern, and Kozel (the only Director Defendants who are still on Yahoo!'s board) are interested for purposes of considering a demand to pursue Count II.

[31] The court pauses here to address an issue raised in the plaintiff's complaint that was not addressed in their reply brief. The plaintiff asserts that the allegations of spinning were documented throughout the press since December 2002. *Id.* ¶ 30. The plaintiff asserts that because the current board had knowledge of the IPO allocations and failed to "recover on behalf of Yahoo! for any wrongdoing," the board "has breached its fiduciary duty by acquiescing to the wrongful conduct of the" Insider Defendants. *Id.* In the complaint, the plaintiff asserts that this is a basis to excuse demand as futile. The court disagrees. Demand is not *per se* futile merely because directors would be suing themselves. *Richardson v. Graves*, 1983 WL 21109, at *3 (Del. Ch. Mar. 7, 1983) ("Merely naming all the members of the board is not in and of itself sufficient to excuse demand."). To hold so would eviscerate the demand requirement of Rule 23.1.

[32] Directors Burkle and Wilson joined Yahoo!'s board in November 2001. The complaint does not allege that Burkle or Wilson approved Goldman's retention. Because of this, it is reasonable to infer that the board approved of Goldman's retention for the January 2002 acquisition of HotJobs.com before Burkle and Wilson joined Yahoo!'s board. The remaining three directors all joined Yahoo!'s board in 2003.

demand. The fact that these directors would be asked to consider a demand to pursue litigation against fellow directors does not, standing alone, give rise to a lack of independence, as it is well settled that social and business ties alone do not give rise to a lack of independence.[33]

For these reasons, defendants' motion to dismiss pursuant to Rule 23.1 must be granted.

B. Motion To Dismiss Count II

Because the entire complaint is dismissed under Rule 23.1 for failure to comply with the demand pleading requirements, the court does not reach the merits of the separate motion to dismiss Count II of the complaint.

IV.

For the foregoing reasons, the court finds that the plaintiff does not have standing to pursue this derivative action, as she has not pleaded particularized facts that raise a reasonable doubt as to a majority of the current board's independence and disinterestedness. Therefore, the complaint is DISMISSED. IT IS SO ORDERED.

[33] *Orman v. Cullman*, 794 A.2d 5, 27 (Del. Ch. 2002) ("The naked assertion of previous business relationships is not enough to overcome the presumption of a director's independence."); *Cal. Pub. Employees Ret. Sys. v. Coulter*, 2002 WL 31888343, at *9 (Del. Ch. Dec. 18, 2002) ("Our cases have determined that personal friendships, without more; outside business relationships, without more; *and approving of or acquiescing in the challenged transactions, without more*, are each insufficient to raise a reasonable doubt of a director's ability to exercise independent business judgment.") (emphasis added).