

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>JAMES KACOURIS, Individually and On Behalf of All Others Similarly Situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>FACEBOOK, INC., MARK E. ZUCKERBERG and DAVID M. WEHNER,</p> <p style="text-align: right;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.</p> <p><u>CLASS ACTION COMPLAINT</u></p> <p><u>JURY TRIAL DEMANDED</u></p>
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Plaintiff James Kacouris (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Facebook, Inc. (“Facebook” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased or otherwise acquired common shares of Facebook between April 25, 2018 and July 25, 2018, both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under

Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

2. Facebook operates a social networking website that allows people to communicate with their family, friends, and coworkers. Facebook develops technologies that facilitate the sharing of information, photographs, website links, and videos. Facebook users have the ability to share and restrict information based on their own specific criteria. By the end of 2017, Facebook had more than 2.2 billion active users.

3. Founded in 2004, the Company is headquartered in Menlo Park, California. The Company’s common stock trades on the NASDAQ Global Select Market (“NASDAQ”) under the ticker symbol “FB.”

4. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the number of daily and monthly active Facebook users was declining; (ii) due to unfavorable currency conditions and plans to promote and grow features of Facebook’s social media platform with historically lower levels of monetization, such as Stories, Facebook anticipated its revenue growth to slow and its operating margins to fall; and (iii) as a result, Facebook’s public statements were materially false and misleading at all relevant times.

5. On July 25, 2018, post-market, Facebook announced its financial and operating results for the second quarter of 2018. The Company reported revenues and numbers of daily and monthly active users that fell short of market expectations. On a conference call discussing Facebook’s financial outlook, the Company’s chief financial officer (“CFO”), Defendant David M. Wehner (“Wehner”), stated that Facebook expected its revenue growth to slow and its operating margins to fall, stating that Facebook “expect[s] currency to be a slight headwind in the second half versus the tailwinds we have experienced

over the last several quarters” and that the Company “plan[s] to grow and promote certain engaging experiences like Stories that currently have lower levels of monetization.”

6. On this news, Facebook’s share price fell \$41.24, or 18.96%, to close at \$176.26 on July 26, 2018.

7. Facebook’s announcements shocked the marketplace. An article published in *Variety* on July 26, 2018, entitled “Facebook’s Stock Shock Foreshadows a Less Profitable Future for the Social Network”, reported that “investors reacted with shock” and were “alarmed” by the Company’s revelations. Likewise, the *New York Post*, in an article entitled “Facebook has worst day in Wall Street history”, reported that “[t]he social media titan lost nearly \$119.4 billion in value in one day as investors, spooked by a ‘startling’ slowdown in the company’s growth, ran for the exits.”

8. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s common shares, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

9. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

10. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

11. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b). Facebook securities trade on the NASDAQ, located in this Judicial District.

12. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including

but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

13. Plaintiff, as set forth in the accompanying Certification, purchased common shares of Facebook at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

14. Defendant Facebook, Inc. is incorporated in Delaware, and the Company's principal executive offices are located at 1601 Willow Road, Menlo Park, California 94025. Facebook's securities trade on the NASDAQ under the ticker symbol "FB."

15. Defendant Mark E. Zuckerberg ("Zuckerberg") has served at all relevant times as the Company's Chief Executive Officer ("CEO") and Chairman.

16. Defendant Wehner has served at all relevant times as the Company's CFO.

17. The Defendants referenced above in ¶¶ 15-16 are sometimes referred to herein collectively as the "Individual Defendants."

18. The Individual Defendants possessed the power and authority to control the contents of Facebook's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of the Company's SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with the Company, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background

19. Facebook operates a social networking website that allows people to communicate with their family, friends, and coworkers. Facebook develops technologies that facilitate the sharing of information, photographs, website links, and videos. Facebook users have the ability to share and restrict information based on their own specific criteria. By the end of 2017, Facebook had more than 2.2 billion active users.

Materially False and Misleading Statements Issued During the Class Period

20. The Class Period begins on April 25, 2018, when Facebook issued a press release and filed a current report on Form 8-K with the SEC, announcing the Company's financial and operating results for the first quarter of 2018 (the "Q1 2018 8-K"). For the quarter, Facebook reported net income of \$4.99 billion, or \$1.69 per diluted share, on revenue of \$11.80 billion, compared to net income of \$3.06 billion, or \$1.04 per diluted share, on revenue of \$7.86 billion for the same period in the prior year.

21. The Q1 2018 8-K stated, in relevant part:

"Despite facing important challenges, our community and business are off to a strong start in 2018," said Mark Zuckerberg, Facebook founder and CEO. "We are taking a broader view of our responsibility and investing to make sure our services are used for good. But we also need to keep building new tools to help people connect, strengthen our communities, and bring the world closer together."

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First Quarter 2018 Operational and Other Financial Highlights

- **Daily active users (DAUs)** – DAUs were 1.45 billion on average for March 2018, an increase of 13% year-over-year.
- **Monthly active users (MAUs)** – MAUs were 2.20 billion as of March 31, 2018, an increase of 13% year-over-year.
- **Mobile advertising revenue** – Mobile advertising revenue represented approximately 91% of advertising revenue for the first quarter of 2018, up from approximately 85% of advertising revenue in the first quarter of 2017.
- **Capital expenditures** – Capital expenditures for the first quarter of 2018 were \$2.81 billion.

- **Cash and cash equivalents and marketable securities** – Cash and cash equivalents and marketable securities were \$43.96 billion at the end of the first quarter of 2018.
- **Headcount** – Headcount was 27,742 as of March 31, 2018, an increase of 48% year-over-year.

22. Later that day, Facebook hosted a conference call to discuss its financial and operating results for the quarter. During the call, Defendant Zuckerberg stated, in part:

One of the interesting opportunities and challenges over the coming years will be *making sure that ads are as good in Stories as they are in feeds*. If we don't do this well, then as more sharing shifts to Stories, that could hurt our business. But *there's real upside here, too, if we do a good job*. And we're leading the way here with Instagram, and the results so far are promising both on product quality and business performance.

(Emphases added.)

23. Shortly thereafter, Defendant Wehner made the following statements:

Our community and business both showed solid growth in the first quarter. Let's start with our community metrics. Daily active users on Facebook reached 1.45 billion, up 13% compared to last year, led by user growth in India, Indonesia and Vietnam. This number represents approximately 66% of our 2.2 billion monthly active users in Q1. MAUs were up 260 million or 13% compared to last year.

Turning now to the financials. All comparisons are on a year-over-year basis unless otherwise noted. Q1 total revenue was \$12 billion, up 49% or 42% on a constant currency basis. Foreign exchange tailwinds contributed \$536 million of revenue in Q1.

24. On April 26, 2018, Facebook filed a quarterly report with the Form 10-Q, reiterating the information announced in the Q1 2018 8-K and reporting in full Facebook's financial and operating results for the first quarter of 2018 (the "Q1 2018 10-Q"). The Q1 2018 10-Q contained certifications pursuant to the Sarbanes-Oxley Act of 2002 by the Individual Defendants, stating that "the information contained in the [Q1 2018 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein."

25. The statements referenced in ¶¶ 20-24 above were materially false and/or misleading because they misrepresented and/or failed to disclose the following adverse facts pertaining to the Company's business, operational and financial results, which were known to Defendants or recklessly

disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the number of daily and monthly active Facebook users was declining; (ii) due to unfavorable currency conditions and plans to promote and grow features of Facebook's social media platform with historically lower levels of monetization, such as Stories, Facebook anticipated its revenue growth to slow and its operating margins to fall; and (iii) as a result, Facebook's public statements were materially false and misleading at all relevant times.

The Truth Begins To Emerge

26. On July 25, 2018, post-market, Facebook announced its financial and operating results for the second quarter of 2018. The Company reported revenues and numbers of daily and monthly active users that fell short of market expectations. On a conference call discussing Facebook's financial outlook, Facebook's CFO, Defendant Wehner, stated that Facebook expected its revenue growth to slow and its operating margins to fall. Wehner provided the following explanation during an exchange with an analyst:

Ross Sandler – Barclays Capital, Inc.

Dave, I think you said that the quarter-on-quarter growth rates are going to be high-single digits lower than the prior-year quarter-on-quarter growth rates versus 3Q and 4Q. That would imply around a 20% year-on-year growth rate exiting fourth quarter. So just want to clarify, is that what you actually said? And if so, what's driving this fairly dramatic deceleration in revenue growth?

David M. Wehner – Facebook, Inc.

Ross, so, yes, so we grew at 42% in the current quarter and we would expect decel in the high-single digits for the next couple quarters. In terms of what is driving the deceleration, it's a combination of factors, and I think I outlined those in my commentary. ***First of all, there's the currency, which is going from being a tailwind to being a modest headwind,*** we expect.

Secondly, we're going to be focusing on growing engaging new experiences like Stories and promoting those. And that's going to have a negative impact on revenue growth.

27. On this news, Facebook's stock price fell \$41.24 per share, or 18.96%, to close at \$176.26 per share on July 26, 2018.

28. Facebook's announcements shocked the marketplace. An article published in *Variety* on July 26, 2018, entitled "Facebook's Stock Shock Foreshadows a Less Profitable Future for the Social Network", reported that "investors reacted with shock" and were "alarmed" by the Company's revelations. Likewise, the *New York Post*, in an article entitled "Facebook has worst day in Wall Street history", reported that "[t]he social media titan lost nearly \$119.4 billion in value in one day as investors, spooked by a 'startling' slowdown in the company's growth, ran for the exits."

29. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Facebook common shares traded on the NASDAQ during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

31. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Facebook common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Facebook or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

32. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

33. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

34. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of Facebook;
- whether Defendants caused Facebook to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Facebook securities during the Class Period were artificially inflated because of Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

36. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Facebook common shares are traded in efficient markets;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ, and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's common shares; and
- Plaintiff and members of the Class purchased and/or sold Facebook common shares between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

37. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

38. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants

39. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

40. This Count is asserted against Facebook and the Individual Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

41. During the Class Period, Facebook and the Individual Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

42. Facebook and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Facebook common shares during the Class Period.

43. Facebook and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Facebook were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These Defendants by virtue of their receipt of information reflecting the true facts of Facebook, their control over, and/or receipt and/or modification of Facebook allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Facebook, participated in the fraudulent scheme alleged herein.

44. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Facebook personnel to members of the investing public, including Plaintiff and the Class.

45. As a result of the foregoing, the market price of Facebook common shares was artificially inflated during the Class Period. In ignorance of the falsity of Facebook's and the Individual Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Facebook common shares during the Class Period in purchasing Facebook common shares at prices that were artificially inflated as a result of Facebook's and the Individual Defendants' false and misleading statements.

46. Had Plaintiff and the other members of the Class been aware that the market price of Facebook common shares had been artificially and falsely inflated by Facebook's and the Individual Defendants' misleading statements and by the material adverse information which Facebook's and the Individual Defendants did not disclose, they would not have purchased Facebook's common shares at the artificially inflated prices that they did, or at all.

47. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

48. By reason of the foregoing, Facebook and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Facebook common shares during the Class Period.

COUNT II

Violation of Section 20(a) of The Exchange Act Against The Individual Defendants

49. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

50. During the Class Period, the Individual Defendants participated in the operation and management of Facebook, and conducted and participated, directly and indirectly, in the conduct of Facebook's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's inadequate internal safeguards in data security protocols.

51. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Facebook's financial condition and results of operations, and to correct promptly any public statements issued by Facebook which had become materially false or misleading.

52. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Facebook disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Facebook to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Facebook within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Facebook common shares.

53. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Facebook.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: July 27, 2018

Respectfully submitted,
POMERANTZ LLP

By: /s/ Jeremy A. Lieberman
Jeremy A. Lieberman
J. Alexander Hood II
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
E-mail: jalieberman@pomlaw.com
E-mail: ahood@pomlaw.com

POMERANTZ LLP
Patrick V. Dahlstrom
Ten South La Salle Street, Suite 3505
Chicago, Illinois 60603
Telephone: (312) 377-1181
Facsimile: (312) 377-1184
E-mail: pdahlstrom@pomlaw.com

**BRONSTEIN, GEWIRTZ
& GROSSMAN, LLC**
Peretz Bronstein
60 East 42nd Street, Suite 4600
New York, NY 10165
Telephone: (212) 697-6484
Email: peretz@bgandg.com

Attorneys for Plaintiff

Submission Date

2018-07-27 12:08:55

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAWS

1. I make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.
2. I have reviewed a Complaint against Facebook, Inc. ("Facebook" or the "Company") and authorize the filing of a comparable complaint on my behalf.
3. I did not purchase or acquire Facebook securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.
4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Facebook securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.
5. To the best of my current knowledge, the attached sheet lists all of my transactions in Facebook securities during the Class Period as specified in the Complaint.
6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.
7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.
8. I declare under penalty of perjury that the foregoing is true and correct.

Name

Print Name

James Kacouris

Acquisitions

Configurable list (if none enter none)

Date Acquired	Number of Shares Acquired	Price per Share Acquired
July 25 2018	140	198.85

Sales

Configurable list (if none enter none)

Date Sold	Number of Shares Sold	Price per Share Sold
NONE		

Documents & Message

Upload your brokerage statements showing your individual purchase and sale orders.

(redacted)

Signature



Full Name

James Kacouris

(redacted)

Facebook, Inc. (FB)

Kacouris, James

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHARES/UNITS	PRICE PER SHARES/UNITS
7/25/2018	Purchase	140	\$198.8500