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Case No. 2018-0671-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

UNITED FOOD AND COMMERCIAL WORKERS UNION AND PARTICIPATING EMPLOYERS TRI-STATE PENSION FUND, PLAINTIFF, v. MARK ZUCKERBERG, MARC ANDREESSEN, PETER THIEL, REED HASTINGS, ERSKINE B. BOWLES, SUSAN D. DESMOND-HELLMANN, and JAN KOUM, DEFENDANTS, - and - FACEBOOK, INC. NOMINAL DEFENDANT.	C.A. No.

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiff United Food and Commercial Workers Union and Participating Employers Tri-State Pension Fund ("UFCW Tri-State" or "Plaintiff"), by and through its undersigned counsel, brings this action derivatively on behalf of nominal defendant Facebook, Inc. ("Facebook" or the "Company") against certain of its current and former directors and officers. The allegations below are made upon personal knowledge as to Plaintiff and its own acts, and upon information and

belief as to all other matters, based upon review of: (a) information publicly disseminated by Facebook, including its public filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, and postings on its website; (b) news reports and other publicly available sources; and (c) court dockets, filings, and opinion orders related to litigation against Facebook pending in federal and state courts.

NATURE OF THE ACTION

2. This shareholder derivative action on behalf of nominal defendant Facebook arises out of Mark Zuckerberg's costly—yet failed—attempt to improperly maintain outsized voting control over Facebook while selling the vast majority of his Facebook stock to pursue his personal philanthropic agenda, all without Facebook receiving any significant value in return. As set forth herein, the Company's late 2015 and early 2016 process for evaluating and negotiating this later-abandoned stock reclassification plan was a charade, designed to appease its founder and Chief Executive Officer's whims. From the outset, Zuckerberg orchestrated a flawed process, which was effectuated by Facebook's Special Committee, whose members either deliberately sabotaged the negotiations, were hopelessly biased, or otherwise woefully disregarded their Facebook fiduciary duties. The Special Committee's corrupted process and disloyal members guaranteed approval of a stock reclassification plan lacking in any legitimate

business purpose and which was manifestly unfair to Facebook's Class A stockholders and the Company. They further acted in bad faith by attempting to gift Zuckerberg perpetual Facebook voting control without extracting meaningful consideration from him in exchange. Though the stock reclassification plan was later scrapped, the defendants named herein nevertheless improperly caused Facebook to unjustly expend massive amounts of money on financial advisors and attorneys in a futile attempt to close the deal, exposed the Company to expensive shareholder litigation, and significantly damaged Facebook's reputation and goodwill in pursuit of a meritless reclassification plan.

3. When Facebook went public in May 2012, its dual-class stock structure gave outsized voting control to Zuckerberg through high-voting Class B shares that carry ten votes per share, as compared to Class A shares worth only one vote each. Consequently, by June 2015, Zuckerberg held 60.1% of Facebook's voting power primarily through his massive Class B holdings while controlling fewer than 17% of Facebook's total outstanding shares. As Zuckerberg significantly ramped up his philanthropic pursuits in 2015, it became clear that achieving his personal liquidity goals would inevitably result in the loss of his Facebook founder control. Indeed, monetizing anything more than 14% of his economic interest in Facebook would cause his voting control to dip below 50.1%, effectively passing control of the

Company to Facebook's Class A stockholders—an unacceptable result for Zuckerberg.

4. Thereupon, Zuckerberg concocted a plan to liquidate massive portions of his Facebook stock without relinquishing Company control (the "Reclassification Plan"). This Reclassification Plan called for the creation of a new class of publicly-listed, non-voting Class C capital stock. Two Class C shares would be issued as a one-time dividend to each outstanding Class A and Class B share, thereby tripling the number of Facebook total outstanding shares. The effect would skew control further in Zuckerberg's favor, re-inflating the voting weight of his Class B share holdings and allowing Zuckerberg to liquidate stock for his personal goals without surrendering his hold on Facebook voting power.

5. Facebook's Board of Directors ("Board")—as well as the Special Committee it formed to evaluate and negotiate the potential reclassification—was complicit in Zuckerberg's self-interested power play, breaching their fiduciary duties by approving a proposal lacking in any legitimate business purpose or meaningful benefit to the Company. On the Special Committee's April 2016 recommendation to approve the Reclassification Plan, Facebook's full Board rubber-stamped the Special Committee's decision without meaningful deliberation or analysis. In exchange for solidifying his voting control under the Reclassification Plan, the Board and Special Committee failed to obtain any monetary payment from

Zuckerberg. Furthermore, the non-economic corporate governance concessions obtained for Facebook were of little to no value.

6. In late April 2016, shareholders in this Court began filing a series of class action lawsuits seeking to enjoin the dubious Reclassification Plan (or recover damages if the plan was enacted). These cases were subsequently consolidated as *In re Facebook, Inc. Class C Reclassification Litigation* (Del. Ch. C.A. No. 12286-VCL) (the "Reclassification Class Action").

7. Although the Reclassification Plan was nominally subject to the approval of Facebook stockholders at the Company's June 20, 2016 annual meeting, the vote was *a fait accompli* because Zuckerberg alone controlled over 60% of the shareholders' voting power. On June 21, 2016, Facebook announced that the Reclassification Plan was approved by an approximate vote count of 5.1 billion shares in favor to 1.5 billion shares against. Not counting Zuckerberg's votes, however, the vote tally was approximately 453 million (for) to 1.5 billion (against). Thus, over 75% of the non-Zuckerberg votes resoundingly rejected the Reclassification Plan.

8. Facebook later agreed to suspend the Reclassification Plan pending the outcome of an expedited trial in the Reclassification Class Action. Facing a certain defeat in the Reclassification Class Action, Facebook abruptly called off the Reclassification Plan in September 2017 on the eve of trial, thereby conceding that

the Reclassification Plan was fundamentally unfair to the Class A stockholders and lacking in any legitimate business purpose.

PARTIES

Plaintiff

9. UFCW Tri-State is a current Facebook stockholder and has continuously owned Facebook stock since September 20, 2013.

Nominal Defendant

10. Nominal defendant Facebook is a Delaware corporation with its principal place of business located at 1601 Willow Road, Menlo Park, California 94025. Facebook is a social networking platform that allows users to create profiles, upload photos and videos, send messages, and communicate with friends, family, and colleagues. It is the largest social media and networking service based on global reach and total active users. As of June 30, 2018, Facebook had 2.23 billion monthly active users. Facebook's Class A stock trades on the Nasdaq under the symbol "FB" and it is one of the ten largest companies in the world by market capitalization.

Individual Defendants

11. Defendant Mark Zuckerberg is Facebook's founder and has served as a Facebook director and Chief Executive Officer since July 2004. Zuckerberg has served as Chairman of Facebook's Board since January 2012. Zuckerberg is responsible for Facebook's day-to-day operations, as well as the overall direction

and product strategy for the Company. Zuckerberg controls a majority of Facebook's outstanding voting power, making Facebook a "controlled company" under applicable Nasdaq rules. Zuckerberg agreed to the Reclassification Plan. Although he formally abstained from the Board's approval of the Reclassification Plan, Zuckerberg voted all of his outstanding Facebook shares for this proposal in connection with the Company's June 20, 2016 annual stockholder meeting.

12. Defendant Marc Andreessen has served as a Facebook director since June 2008. Andreessen is also a member of Facebook's Audit Committee and was a member of its Compensation & Governance Committee until May 2018. Andreessen was a member of the Special Committee charged with negotiating the Reclassification Plan. Andreessen approved the Reclassification Plan, and recommended that the Board approve the plan.

13. Defendant Peter Thiel has served as a Facebook director since April 2005. Thiel is also a member of Facebook's Compensation & Governance Committee. Thiel approved the Reclassification Plan.

14. Defendant Reed Hastings has served as a Facebook director since June 2011. Hastings is also the Chair of Facebook's Compensation & Governance Committee. Hastings approved the Reclassification Plan.

15. Defendant Erskine B. Bowles has served as a Facebook director since September 2011. Bowles is also the Chair of Facebook's Audit Committee. Bowles

was a member of the Special Committee charged with negotiating the Reclassification Plan. Bowles approved the Reclassification Plan, and recommended that the Board approve the plan.

16. Defendant Susan D. Desmond-Hellmann has served as a Facebook director since March 2013 and is Facebook's Lead Independent Director. Desmond-Hellmann is also a member of Facebook's Compensation & Governance Committee and was a member of its Audit Committee until May 2018. Desmond-Hellmann was Chair of the Special Committee charged with negotiating the Reclassification Plan. Desmond-Hellmann approved the Reclassification Plan, and recommended that the Board approve the plan.

17. Defendant Jan Koum was a Facebook director from October 2014 until April 2018. Koum is a cofounder of WhatsApp and served as its CEO until April 2018. Facebook acquired WhatsApp in 2014, and it remains Facebook's wholly-owned subsidiary. Koum approved the Reclassification Plan.

18. Defendants Zuckerberg, Andreessen, Thiel, Hastings, Bowles, Desmond-Hellmann, and Koum are sometimes together referred to herein as the "Defendants."

SUBSTANTIVE ALLEGATIONS

A. Relevant Background.

19. Facebook's success since its 2004 creation has made Zuckerberg a multibillionaire, with his current Facebook stock holdings valued at approximately $70 billion. Since before its 2012 initial public offering, Facebook has maintained a dual-class capital structure that enabled Zuckerberg to preserve outsized Facebook voting control compared to his economic interest in the Company. In fact, Zuckerberg has held a majority voting interest in Facebook throughout its existence, allowing him to control the Facebook stockholder vote on virtually all matters, including the election of all directors.

20. In Facebook's IPO, its capital stock was structured to give Zuckerberg majority voting control, while also allowing him to monetize a substantial portion of his Facebook equity interest. Facebook's IPO Prospectus, filed with the SEC on May 18, 2012, stated that Zuckerberg "will have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of our directors, as well as the overall management and direction of our company." The IPO created two classes of common stock: (1) publicly-traded Class A stock with one vote per share; and (2) Class B stock which was primarily allocated to Zuckerberg and a select few Facebook directors and members of its management, with ten votes per share. Except for these differences on voting rights and

conversion issues, the rights of Class A and Class B stockholders are identical. Upon their transfer to a third party, Class B Facebook shares automatically convert to Class A shares. These Class B shares lose their high-vote status unless they are transferred to family members of the Class B holder, or to entities exclusively owned by the Class B holder or by family members of this holder.

21. After the IPO, Zuckerberg held 57.6% voting control through Facebook stock he personally held or that he otherwise controlled through proxies, while owning 22.9% of the Company's outstanding stock. Though his Facebook voting control has fluctuated in the years following the IPO, Zuckerberg's voting power has never dipped below the 50.1% threshold.

B. Zuckerberg Announces Philanthropy Goals.

22. In December 2010, Zuckerberg joined an elite group of billionaires to take the Giving Pledge—a movement championed by Bill Gates and Warren Buffett—who challenged other wealthy business leaders to pledge to donate a majority of their wealth to philanthropic causes during their lifetime or upon their death. Since the announcement, Zuckerberg widely communicated his intention to begin his philanthropy early in his life rather than at later stages of his career.

23. In March 2015, Zuckerberg began developing his own accelerated version of the Giving Pledge pursuant to which he would donate 99% of his wealth to philanthropic causes. He looked into whether he could transfer all of his Facebook

stock to a charitable organization without ceding voting control of the Company, and raised this potential idea with Facebook's then-General Counsel, Colin Stretch. Zuckerberg did not engage his own lawyers at this time. He was eager to seize on his reputational advantages in pursuing endeavors to further his personal agenda. Facebook's in-house legal team cautioned Zuckerberg that he could only sell a small portion of his stock—approximately $3 to $4 billion—without losing voting control. At the annual donation rate Zuckerberg was considering ($2-$3 billion annually), he would very quickly lose control of Facebook. Instead, Stretch advised Zuckerberg that Facebook could follow the "Google playbook" by issuing a new class of non-voting stock which Zuckerberg could sell without significantly diminishing his voting power. Facebook's legal team further noted that such a Google-style reclassification would likely require review by a special committee of independent directors and Board approval, and that litigation involving Google's reclassification resulted in a $522 million settlement. Zuckerberg instructed Facebook's legal team to "start figuring out how to make this happen."

24. Then, in June 2015, Zuckerberg emailed the Board to relay his intention to significantly ramp up his philanthropy, selling Facebook's shares in the process and thereby reducing his voting percentage over time. His email expressed a desire to begin a Board discussion about what these stock sales would mean for Facebook and how to best position the Company moving forward.

25. Zuckerberg later retained Bill Hinman of Simpson Thacher & Bartlett LLP ("Simpson Thacher") as his personal counsel in the reclassification process. Hinman then contacted Morgan Stanley & Co. LLC ("Morgan Stanley") to serve as Zuckerberg's personal financial advisor, though Hinman ultimately hired Goldman, Sachs & Co. ("Goldman Sachs"). However, Morgan Stanley's brief work for Zuckerberg gave it access to Simpson Thacher's work product which detailed Zuckerberg's personal expectations for the Reclassification Plan. Morgan Stanley was ultimately retained by Facebook to advise the Company on the reclassification and utilized the Simpson Thacher work product in its own reclassification analyses. Pursuant to Morgan Stanley's engagement letter, Facebook paid Morgan Stanley $2 million in connection with its work on the reclassification. As Zuckerberg's financial advisor, Goldman Sachs was primarily tasked with calculating how long Zuckerberg could control Facebook depending on the pace of his giving, Facebook's share price, and the dividend ratio for a potential Class C Facebook stock.

26. At an August 20, 2015 Board meeting, Zuckerberg—through Hinman—formally proposed that Facebook issue a new non-voting share class. Prior thereto, Zuckerberg already previewed that he had "asked outside counsel to look into what creating a new class of stock might look like." The purpose was clear: reclassification through issuance of a new class of non-voting Facebook stock was intended to preserve Zuckerberg's majority control when the only true threat to

such control was his own public promise to liquate stock to fund his personal interests.

C. The Special Committee's Flawed Process and Performance.

27. On August 22, 2015, Facebook established the Special Committee consisting of Defendants Andreessen, Bowles, and Desmond-Hellmann to review, analyze, and negotiate a proposal with Zuckerberg to change Facebook's capital or voting structure to permit him to sell nearly his entire Facebook stock holdings without relinquishing voting control. The Special Committee was also charged with evaluating potential alternatives and making a formal recommendation to Facebook's Board. Of course, the Special Committee could also (at least theoretically) just say no to Zuckerberg's entire request. The Board authorized the Special Committee to retain—at Facebook's expense—legal and financial advisors, consultants, and other experts to assist it in carrying out these responsibilities. But, the Special Committee passively allowed Facebook management to select its legal advisor, picking Wachtell, Lipton, Rosen & Katz ("Wachtell")—with which it did not meet prior to its hiring. Though it was directed to prepare a charter delineating its processes and the scope of its duties, the Special Committee never did so.

28. The Board's limited discussion of the Special Committee members' purported independence from Zuckerberg was woefully inadequate. For instance, the Board did not discuss Andreessen's close friendship with Zuckerberg, nor

Andreessen's well-known support of founder-controlled companies. The Board also failed to evaluate Desmond-Hellmann's suitability to serve on a committee affecting Zuckerberg's philanthropy goals given her role as Chief Executive Officer of the Bill and Melinda Gates Foundation (the "Gates Foundation"). The Gates Foundation is considered among the largest U.S. private foundations with an endowment of over $40 billion. Nor did the Board fairly consider that Desmond-Hellmann cultivated Zuckerberg as a major donor to the University of California at San Francisco (UCSF)—Desmond-Hellmann's former employer—where Desmond-Hellmann had served as Chancellor and Zuckerberg's wife trained.

29. At the time of the Special Committee's formation, Zuckerberg beneficially owned approximately 14.8% of Facebook's outstanding economic interests (3,999,241 Class A common stock shares; 418,981,071 Class B common stock shares), yet controlled a 53.8% Facebook voting control stake. His preceding stock sales and earlier signing of the Giving Pledge presaged Zuckerberg's eventual loss of control of Facebook.

30. Before ever meeting the Special Committee, Wachtell called Zuckerberg's counsel, Simpson Thacher, to discuss potential reclassification models similar those enacted by Google Inc. and Zillow Group, Inc. Simpson Thacher rejected at the time certain non-starters from the "Google playbook," such as "stapling" provisions that would have required Zuckerberg to sell a share of Class B

stock each time he sold a share of Class C stock, or a "true-up" financial payment to the Facebook Class A stockholders. When Wachtell first met the Special Committee at a September 23, 2015 telephonic meeting, key contours of the potential reclassification were already taking shape. By then, the Special Committee was already signaling that it perceived its role as merely advisory—to suggest structures for the reclassification rather than to consider whether to accept or reject the plan, or even to evaluate potential alternatives.

31. In lieu of the Special Committee vetting a financial advisor, Bowles recommended Evercore Group L.L.C., the firm founded by Roger Altman—Bowles's friend and political ally—provided that Altman led the project. The Special Committee hired Evercore at its October 12, 2015 meeting before meeting any of its representatives. At that point, the reclassification was well underway, with Evercore's team leader observing that Evercore had been hired "in the second inning." Pursuant to Evercore's engagement letter, Facebook paid Evercore $1 million upfront and an additional $125,000 monthly for twelve months during its work for the Special Committee.

32. Thereafter, on October 23, 2015, the Special Committee's attorney (David Shapiro of Wachtell) spoke to Simpson Thacher. On the call, Wachtell went through a list of "Possible Concessions" from Zuckerberg it had prepared to guide the conversation. Of the eight items, Zuckerberg would consider five, and rejected

three. The five possible concessions were: (i) "sunset" provisions; (ii) "equal treatment" provisions; (iii) "non-compete" provisions; (iv) "acquisition" protections; and (v) an independent nominating committee. The three rejected ideas were: (i) conditioning the reclassification on the approval of Facebook's Class A stockholders; (ii) inclusion of any stapling or transfer restrictions; and (iii) a "true up" financial payment like the one that had been made in the Google stock reclassification.

33. When these eight possible concessions were next reported to the Special Committee on November 9, 2015, its members abdicated their duties. Before the substantive negotiations with Zuckerberg even began in earnest, the committee never inquired how, when, or why Zuckerberg had already rejected any type of payment to the Class A stockholders, stapling, or conditioning the reclassification on Class A stockholder approval. Instead, these proposals were already off the table. The Special Committee never demanded that Zuckerberg reconsider his rejected terms, and throughout the reclassification negotiations, the Special Committee did not stray from Zuckerberg's five preapproved items.

34. Although Evercore told the Special Committee at the November 9 meeting that an affirmative Class A vote on the share reclassification was "unlikely to be obtained," the Special Committee never asked for (nor did it receive) any analysis explaining why the Class A stockholders disfavored this proposal. As for

the potential stapling restrictions, the Special Committee felt they violated the spirit of Zuckerberg's professed desire to keep control while monetizing his Class C shares for charity. Yet, the Special Committee ignored other sensible transfer restrictions, failing to demand any cap on how many shares Zuckerberg could dispose of annually. Further, the Special Committee never sought to require that Zuckerberg's stock sales actually be tied to philanthropic projects—his stated reason for the Reclassification Plan. Though Evercore's presentation materials noted that "leakage" (i.e., a loss of overall firm value) was a possible effect of the Reclassification Plan, the Special Committee did not adequately evaluate this risk nor demand that it be reasonably estimated.

35. On November 11, Wachtell (Shapiro) called Simpson Thacher (Hinman) to relay the Special Committee's demands, which were substantially similar to those already agreed to on October 23. The Special Committee's proposal did not demand money from Zuckerberg or a differential distribution ratio for the Class A stockholders. It did not demand that the Class A stockholders separately vote on the Reclassification Plan. Lastly, the Special Committee did not ask for any form of restriction on Zuckerberg's ability to sell as much stock as he wanted, for whatever purpose, on whatever timetable he desired.

36. Although the Special Committee had just begun its task, behind the scenes, Zuckerberg was already confidently operating as though full Board approval

was academic. At the time, Zuckerberg told Facebook Chief Operating Officer ("COO") Sheryl Sandberg that there were still "lots of details to work through, but at this point we're much more in the mode of making decisions and locking things down rather than broad consideration." Although he could not both fully fund his philanthropy and maintain Facebook majority control without the Reclassification Plan, by September 2015, Zuckerberg was working diligently to get his new entity, the Chan-Zuckerberg Initiative, LLC ("CZI") established. Zuckerberg was determined to reveal his intention to donate "98-99%" of his wealth to CZI simultaneously with the birth of his first child, which was due in November. This would ensure plenty of publicity for the CZI announcement.

37. On November 9, 2015, Zuckerberg publicly reaffirmed his Giving Pledge with his wife Priscilla Chan, noting that their "giving is just starting," which they planned to "expand." The next day, Zuckerberg circulated a draft announcement within Facebook for the impending birth of his child. It would proclaim his "new model of philanthropy," vastly upping his earlier pledge. Now, he planned to give away 99% of his wealth during his lifetime. Zuckerberg solicited edits to the draft statement from various Facebook personnel, including from Desmond-Hellmann. He also told Bowles and Andreessen about his plan before going public. None of these Special Committee members suggested that Zuckerberg's announcement await the committee's deliberative and negotiation

processes. Instead, Andreessen and Bowles privately told Zuckerberg how proud they were of him. Zuckerberg also gave Warren Buffett and Bill and Melinda Gates a heads up about his plan. Melinda Gates forwarded her email correspondence with Zuckerberg to Desmond-Hellmann, simply adding a "☺."

38. A day after Zuckerberg's daughter was born on November 30, 2015, he posted on Facebook about her birth and his 99% charity pledge. The announcement—styled as a letter to his daughter—stated Zuckerberg's intention to give away 99% of his wealth, while "remain[ing] Facebook's CEO for many, many years to come." Completely absent from this announcement was any mention that Zuckerberg's ability to achieve these goals was entirely dependent on the unfinished Reclassification Plan, or that the plan was subject to approval of the Special Committee and Board.

39. This December 1, 2015 public announcement gave the Special Committee new and extraordinary negotiating leverage. Yet, the Special Committee members squandered the opportunity to extract anything meaningful. Again, they failed to ask for a monetary payment from Zuckerberg in connection with the contemplated reclassification, nor did they insist on Zuckerberg revisiting the previously-rejected terms. Rather, the Special Committee continued to deliver exactly what Zuckerberg wanted.

40. By January 27, 2016, the substantive terms of the Reclassification Plan were already in place and Wachtell had already circulated a draft Special Committee report. For the next three months, all that remained were negotiations between the Special Committee and Zuckerberg over meaningless, preapproved corporate governance details.

41. Between its first meeting in November 2015 and its finalization of the self-interested Reclassification Plan in April 2016, the Special Committee primarily focused on negotiating the terms of the "sunset" provisions. Rather than demand meaningful terms that forced Zuckerberg to remain engaged as Facebook's leader, the Special Committee acquiesced to provisions that permitted Zuckerberg to take multi-year absences. The Special Committee members failed in their objective to tie Zuckerberg's majority voting control to his continued day-to-day Facebook leadership. The final slate of governance terms vested lifetime voting control in Zuckerberg even if he took years off to work for the government, or if his long-term attention drifted towards CZI (where the bulk of his wealth would reside).

42. Furthermore, throughout the Special Committee's work, it was critically uniformed. It was not proactive, but rather failed to ask key questions, or receive information on, relevant topics, such as: (i) how the Reclassification Plan would impact Facebook's stock price in the short term; (ii) if consummated, how the Facebook Class C shares would trade relative to the Class A shares; (iii) how

Reclassification Plan differed from Google's reclassification; (iv) the value Zuckerberg would receive by extending his control (and the related value the public stockholders would lose through the Reclassification Plan); (v) whether Zuckerberg's "gives" carried any value for the Company or the public stockholders; and (vi) the likely economic effects on Facebook of Zuckerberg's philanthropy.

43. Additionally, during the relevant November 2015 to April 2016 period, Andreessen sabotaged the Special Committee's work by providing Zuckerberg confidential access to the committee's deliberative processes. Their text messages reveal the key information Andreessen back-channeled to Zuckerberg and also reference at least twelve private phone conversations about the Special Committee's confidential positions. Andreessen disloyally leaked to Zuckerberg pivotal details about what the Special Committee was focused on, what questions they would ask Zuckerberg, and how each committee member felt about various issues. Andreesen also reassured Zuckerberg that the Special Committee would ultimately agree to the Reclassification Plan and that Andreessen would convince the other committee members to deliver precisely the terms that Zuckerberg wanted. One such occurrence transpired on February 11, 2016 in connection with a Board meeting to discuss the Special Committee's progress. An hour before the meeting began, Andreessen texted Zuckerberg that, "Between us – re special board session. 1 new share class will happen. 2 everyone loves CZI." Andreessen conceded that the

remaining work was only "around the edges" and that the Special Committee would acquiesce to the "big things" Zuckerberg desired. Thus, the Special Committee's negotiations were far from arm's-length.

44. Perhaps even worse, Andreessen coached Zuckerberg before, after, and even during calls with the Special Committee. For instance, on March 5, 2016, Zuckerberg was pushing for an eight-year leave on a teleconference with the Special Committee. During the meeting, Andreessen texted Zuckerberg to explain which arguments were working and which were falling flat. Andreessen gave Zuckerberg live updates, both negative ("This line of argument is not helping ☺"; "The committee wants to do this. You don't need to question that") and positive ("NOW WE'RE COOKING WITH GAS"). Desmond-Hellmann agreed that it appeared Andreessen was "coaching" Zuckerberg through these negotiations. Teamed up, Zuckerberg and Andreessen's shenanigans won over Bowles. Andreessen texted Zuckerberg, "The cat's in the bag and the bag's in the river." Zuckerberg replied, dumbfounded, "Does that mean the cat's dead?" Andreessen answered, "Mission accomplished ☺."

45. Despite the Special Committee's broad mandate, it never seriously considered alternatives to Zuckerberg's preferred proposal of issuing a new non-voting Facebook class of stock. Rather, the Special Committee merely responded to Zuckerberg's specific request to create Class C shares, wrongly believing that it

lacked the ability to meaningfully reject Zuckerberg's demands because he would have "figured out [another] way to be philanthropic while retaining control of the company," according to Desmond-Hellmann. The Special Committee's fundamentally unfair dealing resulted in grossly unfair consideration that would have given Zuckerberg billions of dollars of value at the expense of Facebook's Class A stockholders, with those stockholders receiving zero monetary compensation in return. Evercore estimated that "Value of Control" of Facebook was equal to "3-4%" of Facebook's market capitalization (between $6.5-$8.7 billion when Facebook's stock traded at roughly $100 per share; and $14.3-$19 billion in September 2017 when the reclassification was dropped). The governance concessions obtained by the Special Committee, on the other hand, were of virtually no value.

46. On April 13, 2016, the Special Committee voted to recommend the Reclassification Plan. The following day, on April 14, the full Board followed suit and approved the Reclassification Plan.

D. The Flawed Reclassification Plan and Its Fallout.

47. Under its terms, the Reclassification Plan distributed two Class C Facebook shares for each outstanding share of Facebook Class A and Class B stock. The Reclassification Plan also included several proposed corporate governance changes reflected in a proposed amended charter and proposed Founder Agreement

which Zuckerberg and others would have executed upon the Reclassification Plan being effectuated.

48. The most meaningful of the governance terms concerned the Reclassification Plan's sunset provisions which were aimed at reducing the likelihood that Zuckerberg would leave Facebook. Yet, there was never any demonstrable reason to believe that Zuckerberg intended to step away from his existing Facebook duties anytime soon. Indeed, his December 1, 2015 open letter following his daughter's birth claimed he planned on "remain[ing] Facebook's CEO for many, many years to come."

49. Another illusory sunset provision concerned Zuckerberg's voluntary resignation. Yet, he could defeat sunsetting if he simply remained a loosely-defined "Approved Executive Officer." Zuckerberg could satisfy this title designation merely by serving as any vice president in charge of a principal business unit, division, or function—and could even fulfill this requirement by taking on a part-time Facebook position with the independent directors' approval. Further, as long as he maintained a small portion of his Facebook shares, he had nearly unfettered ability to take an unlimited government service leave. Lastly, under the unsigned Founder Agreement, Zuckerberg agreed to retire Facebook's multi-class structure provided he owned less than 50.1% of the outstanding Class B shares. This provides no additional value to Facebook's Class A stockholders.

50. Facebook waited until April 27, 2016 to publicly reveal the Reclassification Plan so that the news would coincide with the Company's best-ever quarterly earnings announcement. At the time, Evercore project leader Altman emailed Desmond-Hellmann, saying, "Anytime FB announces earnings like that, no one will care about an equity recapitalization."

51. On June 20, 2016, Facebook held its annual stockholders meeting. The next day, the Company announced that the Reclassification Plan was approved by an approximate vote count of over 5.1 billion shares in favor to approximately 1.5 billion shares against (with over 1.2 billion shares abstaining). Zuckerberg voted all of his 3,999,241 Class A shares and 467,873,984 Class B shares for the Reclassification Plan. Together, these shares carried nearly 4,683,000,000 votes given the heavily-weighted Class B shares. Not counting Zuckerberg's votes, thus, the vote tally was approximately 453 million (for) to 1.5 billion (against), reflecting that over 75% of the non-Zuckerberg votes resoundingly rejected the Reclassification Plan.

52. The first class action in this Court challenging the Reclassification Plan was filed on April 29, 2016. Thirteen such cases were consolidated as the Reclassification Class Action in May 2016. On June 24, 2016, the parties thereto agreed that Facebook would not effect the Reclassification Plan during the pendency of the Reclassification Class Action, and on April 17, 2017 the Court certified the

class of Facebook stockholders. With the specter of trial looming on September 26, 2017 challenging the reclassification, Facebook's Board abandoned the plan on September 21st and filed a Form 8-K with the SEC the following day reflecting that the claims alleged in the Reclassification Class Action were mooted. By doing so, Facebook tacitly admitted that the Reclassification Plan was fundamentally unfair to the Class A stockholders and lacked any legitimate business purpose. Indeed, in the Reclassification Class Action, Facebook does not dispute that the plaintiffs caused the withdrawal of the Reclassification Plan.

53. In defending the Reclassification Class Action, Facebook spent approximately $21.8 million (to date), including $17.1 million on attorneys' fees. Plaintiffs' counsel in the Reclassification Class Action seek an attorneys' fee award of $129 million for securing Facebook's full abandonment of the reclassification. Although Facebook opposes the magnitude of plaintiffs' request, it concedes that this Court should award approximately $20 million. A decision from this Court on the amount to be awarded is forthcoming.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

54. Plaintiff brings this action derivatively in the right and for the benefit of Facebook pursuant to Rule 23.1 of the Delaware Court of Chancery, to redress injuries suffered and to be suffered by the Company as a direct result of Defendants'

violations of their fiduciary obligations. Facebook is named solely as a nominal defendant in a derivative capacity.

55. Plaintiff will adequately and fairly represent the interests of Facebook in enforcing and prosecuting its rights, and Plaintiff has retained counsel experienced in shareholder litigation. Plaintiff was a stockholder of Facebook during the period of wrongdoing complained of and has continuously been a shareholder since that time, and is a current Facebook shareholder.

The Board Cannot Disinterestedly and Independently Consider a Demand

56. Facebook is controlled by its Board and by Zuckerberg. Demand on the Board to bring this action has not been made and is not necessary because such demand would be futile. At the time of the filing of this complaint, Facebook's Board consisted of nine members, six of whom are Defendants in this action—Zuckerberg, Andreessen, Bowles, Desmond-Hellmann, Hastings, and Thiel. Non-defendant Sandberg has been Facebook's COO since March 2008 and she has served as a Facebook director since January 2012. Sandberg is not independent. The remaining two directors—Kenneth I. Chenault and Jeffrey Zients—joined Facebook's board in February and May 2018, respectively, after the wrongdoing alleged herein.

57. A shareholder demand to investigate or initiate the claims asserted herein is futile and useless, and thereby excused for at least two independent reasons:

(a) the Reclassification Plan was not the product of a valid exercise of business judgment; and (b) a majority of the Board faces a substantial likelihood of liability, and/or lacks independence.

The Reclassification Plan Was Not the Product of a Valid Exercise of Business Judgment, Thereby Excusing Demand

58. Each of the six Defendants currently serving on the Board approved the Reclassification Plan (although Zuckerberg abstained from the Board vote, he voted all of his shares in favor of the Reclassification Plan at the Facebook 2018 annual shareholder meeting). Their approval was not fully informed, not duly considered, and was not made in good faith for the best interests of Facebook. The Reclassification Plan was so one-sided as to render its approval beyond the bounds of the Board's reasonable judgment. The Board's decision to approve the Reclassification Plan was not (and could not have been) the product of a good faith exercise of business judgment and is not protected by the business judgment rule.

59. In connection with their approval of the Reclassification Plan—which was immensely valuable to Zuckerberg—the Board failed to extract or even demand anything meaningful from Zuckerberg and instead settled for illusory consideration. It did not insist on any type of direct compensation to the Class A stockholders, stapling, or other substantive transfer restrictions. It did not require that Zuckerberg would actually utilize his monetized Facebook shares for charitable purposes, nor condition the reclassification on Class A stockholder approval.

60. The Company's abrupt September 21, 2017 abandonment of the Reclassification Plan on the eve of trial in the Reclassification Class Action further confirms that it served no legitimate business purpose. The Defendants' approval of the Reclassification Plan was in bad faith and not a proper exercise of their business judgment, thus excusing demand as futile.

Demand is Futile as to Zuckerberg, Andreessen, Desmond-Hellmann, Bowles, Thiel, and Hastings Because They Face a Substantial Likelihood of Liability

61. Due to his or her direct participation in the wrongful acts alleged and potential individual exposure, each of the six current Board-level Defendants is not disinterested and cannot exercise independent business judgment on the issue of whether Facebook should vigorously prosecute this action. They each face a substantial likelihood of liability for their individual misconduct.

62. Zuckerberg, Andreessen, Desmond-Hellmann, Bowles, Thiel, and Hastings—as Facebook directors—owed the Company fiduciary duties of good faith, due diligence, and reasonable inquiry. These Defendants—who constitute a majority of the Board—knew of their own unlawful acts, participated in the actions of their colleagues, and failed to prevent these breaches of loyalty and due care. If Zuckerberg, Andreessen, Desmond-Hellmann, Bowles, Thiel, and Hastings were to bring suit on behalf of Facebook to recover damages as a result of their misconduct in connection with the Reclassification Plan, they would expose themselves to significant liability. Thus, these Defendants would never sue themselves or their

colleagues to recover damages and other relief for the benefit of Facebook. As a result, demand on Facebook and its Board is futile and therefore excused.

Demand is Futile as to Zuckerberg

63. Zuckerberg is disqualified from considering a demand. As an initial matter, by virtue of his share ownership, Zuckerberg alone has the power to elect (and remove) any director from Facebook's Board, or to approve or strike down any stockholder proposal. According to the Company's 2018 Proxy Statement filed with the SEC, Facebook is a "controlled" company under Nasdaq rules and therefore is "not required to have a majority of [its] board of directors be independent." As of April 13, 2018, Zuckerberg controlled 59.9% of Facebook's voting power. In any event, as both an officer and director of the Company, he cannot be considered an independent Board member.

64. Zuckerberg negotiated the Reclassification Plan and was the direct beneficiary of its value, and is thus indisputably interested in the transaction. Further, Zuckerberg manipulated, unduly pressured, interfered with, or otherwise improperly influenced the Special Committee's negotiating and deliberative processes that culminated in the Special Committee's recommendation to enact the Reclassification Plan (as well as the Board's related approval). For the same reasons that Zuckerberg recused himself from the Board's formal consideration of the Reclassification Plan, Zuckerberg is also incapable of considering a demand to

pursue the Company's claims arising out of its directors' disloyal approval of thereof. Demand on Zuckerberg is therefore excused as futile.

Demand is Futile as to the Special Committee Members Andreessen, Desmond-Hellmann, and Bowles Based on Their Work in Recommending the Reclassification Plan

65. The Special Committee—consisting of Andreessen, Bowles, and Desmond-Hellmann—lacked independence, was not fully informed, did not negotiate at arm's-length, and never demanded anything meaningful from Zuckerberg. It did not insist on any type of direct compensation to the Class A stockholders, stapling or other substantive transfer restrictions, or that Zuckerberg actually utilize his monetized Facebook shares for charitable purposes, nor was the reclassification conditioned on Class A stockholder approval. Further, the Special Committee squandered the significant negotiating leverage Zuckerberg gave it when he penned his December 1, 2015 open letter to his daughter—failing to use the opportunity to revisit Zuckerberg's spuriously-rejected terms, such as a monetary payment.

66. Due to his or her direct participation in the wrongful acts alleged and potential individual exposure, each such Special Committee member is not disinterested, cannot exercise independent business judgment on the issue of whether Facebook should prosecute this action, and face a substantial likelihood of liability for their conduct. These Defendants knew of their own unlawful acts,

participated in the actions of their colleagues, and failed to prevent these breaches of loyalty and due care.

Demand is Further Excused as to Defendant Andreessen

67. Andreessen is a cofounder and general partner of Andreessen Horowitz, a venture capital firm. Andreessen convinced Zuckerberg not to sell Facebook to Yahoo! for $1 billion in 2006. Speaking of the intense pressure within Facebook to sell to Yahoo!, Andreessen is quoted in a 2015 article as saying, "Mark and I really bonded in that period, because I told him 'Don't sell, don't sell, don't sell.'" Since then, Andreessen has been Zuckerberg's trusted friend and mentor. The Zuckerbergs and Andreessens have regular movie nights together, and Andreessen's wife, Laura Arrillaga-Andreessen, has advised Zuckerberg and Chan in previous philanthropy planning.

68. Andreessen is also a well-known believer in maintenance of founder control. His 2009 blog post expounding on founder control was circulated among the Special Committee's counsel in connection with their engagement. Andreessen's bias is deep-seated, stemming from his experience at Loudcloud, Inc.—a company Andreessen and business partner Ben Horowitz founded—wherein a venture capitalist advised Horowitz to exclude Andreessen from the company altogether. When Horowitz and Andreessen founded their own venture capital firm (Andreessen Horowitz), they "set out to design a venture capital firm that would

enable founders to run their own companies" without interference from financial backers.

69. Additionally, Facebook purchased two companies in Andreessen Horowitz's portfolio—Instagram and Oculus VR, Inc. It was Zuckerberg who facilitated Andreessen's investment in Oculus VR, as Zuckerberg called Oculus's CEO to tout Andreessen's value. Zuckerberg succeeded, and Andreessen was allowed to invest in Oculus VR and became one of its four board members. Not long thereafter, Zuckerberg and Facebook offered $2 billion to acquire Oculus VR. Andreessen Horowitz's "deal flow" continues to rely heavily on Andreessen's relationship with Zuckerberg and Facebook. And according to Andreessen's quote in a May 18, 2015 *New Yorker* article, "Deal flow is everything."

70. The Board did not consider Andreessen's relationship with Zuckerberg or his biased personal views on founder control before perfunctorily determining his independence at the August 20, 2015 Board meeting.

71. Andreessen leveraged this close relationship with Zuckerberg to assist him in consummating a deal serving Zuckerberg's interests—not for the benefit of Facebook's Class A stockholders. Andreessen's actions during the Special Committee's evaluative and deliberative processes demonstrate his true allegiances are to Zuckerberg, not the Company. Andreessen undermined the Special Committee's negotiations by: (i) siphoning critical information to Zuckerberg about

the committee's positions and internal discussions; (ii) manipulating the process and directing negotiations in a pro-Zuckerberg direction; and (iii) coaching Zuckerberg on how to ensure the Reclassification Plan secured approval from the Special Committee and Board.

72. Andreessen sold more than 75% of his total stake in Facebook over the first two weeks in November 2015—right in the middle of negotiations with Zuckerberg over the Reclassification Plan and before any trading discount or leakage resulting from the Reclassification Plan occurred. Andreessen realized approximately $160 million in proceeds for those shares.

73. Andreessen will not institute or vigorously pursue any litigation against Zuckerberg because he is beholden to him. Demand on Andreessen is therefore excused as futile.

Demand is Further Excused as to Defendant Desmond-Hellmann

74. Desmond-Hellmann is the Chief Executive Officer of the Gates Foundation, which is the philanthropic vehicle of Bill and Melinda Gates (with substantial contributions from Warren Buffett). Zuckerberg's philanthropy was inspired by challenges from Bill Gates and Warren Buffett to other wealthy business executives to follow their lead by donating a significant portion of their wealth to charity. Desmond-Hellmann would not stand in the way of Zuckerberg's future generosity. Zuckerberg's relationship with Desmond-Hellmann dates back to her

role as Chancellor at UCSF, where Zuckerberg was a major donor. Additionally, in November 2017, Facebook partnered with the Gates Foundation as part of Facebook's Giving Tuesday campaign. As reflected in Facebook's 2018 Proxy Statement, "the Gates Foundation may collaborate with the Chan Zuckerberg Initiative from time to time on various philanthropic initiatives."

75. Demand on Desmond-Hellmann is therefore excused as futile.

Demand is Further Excused as to Defendant Bowles

76. Bowles is beholden to the entire Board for granting a waiver of the mandatory retirement age for directors set forth in Facebook's Corporate Governance Guidelines, so that Bowles could stand for reelection despite having reached 70 years old before the Company's May 31, 2018 annual stockholder meeting. According to these guidelines, the Board may only permit waivers in "exceptional circumstances." Demand on Bowles is therefore excused as futile.

Demand is Further Excused as to Defendant Thiel

77. Thiel was one of the early investors in Facebook and is its longest-tenured Board member besides Zuckerberg. Thiel cofounded PayPal, Inc., and since 2005 has been a Partner of the Founders Fund, a venture capital firm that—like Andreessen Horowitz—strives to keep founders in long-term control of the companies they have created. Founders Fund's website touts Facebook as a primary example of that maxim, stating that "we have often tried to ensure that founders can

continue to run their businesses through voting control mechanisms, as Peter Thiel did with Mark Zuckerberg and Facebook." Thiel has also been instrumental to Facebook's business strategy and direction over the years.

78. Thiel will not institute any litigation against Zuckerberg because he is beholden to him. Much like Andreessen, Thiel has greatly benefited from his relationship with Zuckerberg and his seat on Facebook's Board. Thiel's Founders Fund gets "good deal flow" from this high-profile association, and further demonstrates that Thiel has a personal bias in favor of keeping founders in control of the companies they created and would not act to remove Zuckerberg from his position (let alone seriously question Zuckerberg's power play to keep his Facebook voting control without offering significant consideration to Facebook in exchange).

79. Thiel further lacks independence because of his current personal and financial interest in remaining on Facebook's Board. According to Facebook's 2018 Proxy Statement, the Facebook shares owned by the Founder Fund (i.e., by Thiel and Andreessen) will be released from escrow in connection with the Oculus VR acquisition. Thiel stands to gain substantially from the vesting of stock in connection therewith.

80. The foregoing facts demonstrate that Thiel is interested in the subject matter of this litigation and lacks independence due to his close relationship with Zuckerberg. Thiel will not take any action against Zuckerberg that will threaten his

prestigious and lucrative Facebook director position. Demand on Thiel is therefore futile.

Demand is Further Excused as to Defendant Hastings

81. Hastings is a cofounder of Netflix and currently serves as its Chief Executive Officer and Chairman of its board of directors. Netflix purchased advertisements from Facebook at relevant times. Like Andreessen and Thiel, Hastings (as a Netflix founder) is biased in favor of founders maintaining control of their companies. Hastings is also incentivized to cater to Zuckerberg's desires due to Facebook's ongoing and potential future business relationships with Netflix. Through the "Friends and Community" initiative launched in March 2013, Netflix enjoys valuable marketing advantages because the program allows Facebook users to share data about their Netflix viewing habits with their Facebook friends. Hastings would not jeopardize this valuable relationship by investigating or initiating the claims alleged herein, which could prompt termination of the "Friends and Community" data sharing or other future ventures.

Demand is Excused as to Non-Defendant Sandberg

82. Non-defendant Sandberg has been Facebook's COO since March 2008 and she has served as a Facebook director since January 2012. According to the Company's SEC filings, Sandberg received total Facebook compensation of approximately $19 million in 2015 and $25 million in both 2016 and 2017. Such

amounts are material to Sandberg. As both an officer and director of the Company, she cannot be considered an independent Board member.

83. Sandberg cannot disinterestedly and independently consider a demand because she is beholden to Zuckerberg. Sandberg's loyalties are divided between Zuckerberg and the Company. For the same reasons that Sandberg recused herself from the Board's formal consideration of the Reclassification Plan, Sandberg is also incapable of considering a demand to pursue the Company's claims arising out of its directors' disloyal approval of the reclassification.

84. Sandberg has well-established connections with Zuckerberg, and she has a significant influence on his decisions. When Zuckerberg considered hiring Sandberg, the two spent months speaking for several hours a week to determine whether she would be a good fit for the Facebook position. Over the past decade, Sandberg and Zuckerberg have met twice-weekly to give each other feedback and to work through disagreements. Sandberg is often considered Facebook's second-in-command, giving her significant control in the direction that Facebook takes. Sandberg would not jeopardize this valuable relationship by investigating, initiating, or vigorously pursuing the claims alleged herein, which could prompt her termination or diminish her Facebook role.

COUNT I

BREACH OF FIDUCIARY DUTY

85. Plaintiff incorporates by reference the allegations set forth above.

86. The Defendants, as current or former Facebook directors, owe (or owed) the Company the fiduciary duties of due care and loyalty. By virtue of their positions as Facebook directors and/or officers, Defendants at all relevant times had the power to (and did) control, influence, and cause the Company to engage in the practices complained of herein. Each Defendant was required to: (a) use his or her ability to control and manage Facebook in a fair, just, and equitable manner; and (b) act in furtherance of the best interests of Facebook rather than his or her own interests.

87. The Defendants, as current or former Facebook directors, violated their fiduciary duties of care and loyalty owed to the Company's Class A stockholders by favoring Zuckerberg's interests at the expense of the public Class A stockholders' economic and voting rights. As a result of the foregoing wrongful conduct, the Defendants knowingly caused Facebook to approve the Reclassification Plan, rewarding Zuckerberg with immensely valuable continued voting control without obtaining meaningful or adequate consideration in exchange. The Defendants' conduct and actions were in conscious disregard of their fiduciary responsibilities.

88. Facebook has been injured by reason of the Defendants' conduct in the form of massive expenditures on financial advisors, experts, and attorneys retained by the Company in connection with the Reclassification Plan, exposure to the Reclassification Class Action and the related litigation costs, and damage to Facebook's reputation and goodwill.

89. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring that Defendants breached their fiduciary duties to Facebook;

B. Entering judgment against Defendants and directing Defendants to account to Facebook for all damages sustained by Facebook by reason of the wrongs alleged herein;

C. Awarding Plaintiff the costs and disbursements of this action, together with reasonable attorneys' fees and the reimbursement of expenses; and

D. Granting such other and further relief as the Court may deem just and proper.

ROSENTHAL, MONHAIT & GODDESS, P.A.

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