



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY  
individually, and on behalf of all those  
similarly situated,

Plaintiff,

v.

MARK ZUCKERBERG, SHERYL  
SANDBERG, MARC ANDREESSEN,  
ERSKINE B. BOWLES, SUSAN  
DESMOND-HELLMANN, REED  
HASTINGS, JAN KOUM, PETER A.  
THIEL and FACEBOOK, INC.,

Defendants.

C.A. No. \_\_\_\_\_

**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff, Southeastern Pennsylvania Transportation Authority (“SEPTA” or “Plaintiff”), by and through its undersigned counsel, alleges upon knowledge as to itself and its own actions, and on information and belief, including the investigation of counsel and review and analysis of publicly available information as to all other matters:

**SUMMARY OF THE ACTION**

1. SEPTA brings this action on behalf of itself and as a class action on behalf of the stockholders of Facebook, Inc. (“Facebook” or the “Company”),

other than the named defendants, for breaches of fiduciary duty arising from an effort to reclassify the Company's shares as announced on April 27, 2016 ("Reclassification"). As detailed herein, Facebook and its Board of Directors ("Board") openly acknowledge that the Reclassification effort is an attempt to entrench the Company's founder, Chairman and Chief Executive Officer ("CEO"), Mark Zuckerberg ("Zuckerberg"), as controlling stockholder of Facebook by creating a non-voting class of Facebook stock ("Class C") in order to preserve his voting power into perpetuity. Facebook currently has two classes of stock: Class A common stock and Class B common stock. Class A shares entitle stockholders to one vote per share and Class B shares carry ten (10) votes each. Zuckerberg owns nearly 4 million Class A shares and 468 million Class B shares, giving him overall voting power of 60.1%.

2. Under the terms of the Reclassification, the Board will declare and pay a dividend of two shares of non-voting Class C stock for each outstanding share of Class A common stock and Class B common stock. The Company stated that it expects the market price for the shares of Class A common stock to reflect the effect of a three-for-one stock split. The Class C shares will trade separately on the NASDAQ, which analysts believe will likely trade at a discount to the Class A stock due to the lack of voting rights. This distribution of non-voting stock will allow Zuckerberg to fulfill his purported mission of donating 99% of his Facebook

stock to charitable causes over the course of his lifetime and will also allow Facebook to purchase other companies or issue stock to employees without diluting Zuckerberg's voting power or diminishing his iron-clad grip over Company management and operations (which includes the ability to appoint the entire Board of Directors).

3. Pursuant to a Preliminary Proxy Statement ("PPS"), filed with the Securities and Exchange Commission on April 27, 2016, the Reclassification is being submitted for a stockholder vote and is technically subject to stockholder approval of a majority of Facebook's outstanding shares. However, with Zuckerberg's 60.1% voting stake and without the benefit of a majority-of-the-minority condition, the Reclassification is a *fait accompli*.

4. Zuckerberg and the Company have openly admitted that the Reclassification is intended to and will allow Zuckerberg to keep control of the Company. In December 2015, Zuckerberg announced that he and his wife created a limited liability corporation to which they would donate 99% of their Facebook stock over the course of their lifetimes for charitable purposes. In addition, the Company has said it will use stock to acquire new companies, employees or technologies and to compensate its employees. While these actions would, under the Company's current capital structure, dilute Zuckerberg's voting power and threaten his majority control of the business, the Reclassification would allow him

to perpetuate his control over the Company while diluting the voting power of the public stockholders.

5. A “Special Committee” of Facebook directors approved the deal, but did not meaningfully bargain with Zuckerberg to obtain value in exchange for the extraordinary benefit that is being bestowed upon him. The Special Committee:

- (a) agreed to allow Zuckerberg to present the Reclassification to a stockholder vote at the upcoming annual meeting, without any provision for approval by a majority of the public stockholders, making the Reclassification a *fait accompli*, and providing the public stockholders with no say;
- (b) never sought to have Zuckerberg pay the costs for the Special Committee’s financial and legal advisors nor for the Special Committee fees in connection with the Reclassification;
- (c) never sought or received an opinion from its financial advisor that the Reclassification was fair to the public Class A stockholders;
- (d) obtained “concessions” from Zuckerberg that are essentially meaningless, thus negating any possible claim that there was arm’s-length bargaining;
- (e) allowed director Marc Andreessen (“Andreessen”) to serve on the Special Committee as a “disinterested” member despite the close business ties between Facebook and Andreessen’s venture capital firm, Andreessen Horowitz;
- (f) never had its financial advisor place a value or range of values on the Reclassification, from Zuckerberg’s perspective;
- (g) did not prearrange compensation for the Special Committee, leaving its eventual compensation to be decided by the

Compensation & Governance Committee, of which Andreessen is a member;

- (h) did not adopt any independent oversight mechanism to ensure that future issuances of Class C shares do not unduly benefit Zuckerberg;
- (i) failed to bargain for the right of public Class A stockholders to elect even one independent director, so that such stockholders might have a voice; and
- (j) failed to provide for any compensation for the Class A stockholders whose investments will be adversely affected by having their holdings cleaved into voting and non-voting shares, with their meaningful consent or approval.

6. The action challenges the approval process of the Reclassification and the terms of the Reclassification. The Reclassification is not fair to Facebook's public stockholders and is the product of self-dealing by Zuckerberg. Zuckerberg is opportunistically putting himself in an advantageous position to obtain the non-ratable benefit of perpetual control over the Company, at the expense of Facebook's public stockholders and without providing Facebook's stockholders with a meaningful opportunity to have their voices heard. Given that Zuckerberg is the founder, Chairman, CEO and controlling stockholder of Facebook, Facebook's management and Board face divided loyalties and have not acted in the best interests of the public stockholders. The entire fairness standard also applies to the Reclassification, as Zuckerberg is Facebook's controlling stockholder and is extracting the non-ratable benefit of perpetual control of the Company.

7. For these reasons and as set forth more fully herein, Plaintiff seeks to prevent the Reclassification, recover damages or to obtain such other relief as is appropriate. The action asserts claims: (1) for breaches of fiduciary duty of loyalty and care against the directors of Facebook; (2) for breaches of fiduciary duty of loyalty and care against Defendant Sandberg as an officer and director of Facebook; and (3) for breaches of fiduciary duty of loyalty and care against Defendant Zuckerberg as an officer and director and as controlling stockholder of Facebook.

### **PARTIES**

8. Plaintiff SEPTA owns and has owned shares of Facebook, Inc. common stock throughout the entire relevant period.

9. Defendant Facebook, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1601 Willow Road, Menlo Park, California 94025. Facebook is an online social networking service.

10. Defendant Mark Zuckerberg is the founder of the Company and has served as the Company's CEO and as a member of the Board since July 2004 and as Chairman of the Board since January 2012. Zuckerberg owns 3,999,241 shares of Class A common stock, 418,981,071 shares of Class B common stock and has a voting proxy with respect to an additional 48,892,913 shares of Class B common

stock. Zuckerberg's combined beneficial ownership provides him with a voting stake of 60.1% of Facebook stock. Zuckerberg is Facebook's largest and controlling shareholder.

11. Defendant Sheryl Sandberg ("Sandberg") has been the Company's Chief Operating Officer since March 2008 and a member of the Board since June 2012. Sandberg served in various positions at Google, Inc. (now known as Alphabet, Inc.), from November 2001 to March 2008, most recently as Vice President, Global Online Sales & Operations. Sandberg has been a director of online survey development cloud-based software company SurveyMonkey since July 2015.

12. Defendant Marc Andreessen has been a member of the Board since June 2008. Andreessen is a co-founder and is a general partner of Andreessen Horowitz, a venture capital firm, since July 2009. Andreessen co-founded and served as Chairman of Opware, Inc. (formerly known as Loudcloud Inc.), a software company. He also served Chief Technology Officer of America Online, Inc., an Internet services company. Andreessen was co-founder of Netscape Communications Corporation, a software company, serving in various positions, including Chief Technology Officer and Executive Vice President of Products. Andreessen also serves on the board of Hewlett-Packard Enterprise Company and several private companies. Andreessen previously served as a member of the

board of eBay Inc. and Hewlett-Packard Company. Andreessen is a member of the Compensation & Nominating Committee and was a member of the Special Committee that reviewed and approved the Reclassification.

13. Defendant Erskine B. Bowles (“Bowles”) has been a member of the Board since September 2011. Bowles was a member of the Special Committee that reviewed and approved the Reclassification.

14. Defendant Susan Desmond-Hellmann (“Desmond-Hellman”) has been a member of the Board since March 2013. Desmond-Hellmann is currently the CEO of the Bill & Melinda Gates Foundation, the largest private foundation in the world, with purported aims to enhance healthcare and reduce extreme poverty, and in America, to expand educational opportunities and access to information technology. Desmond-Hellman was a member of the Special Committee that reviewed and approved the Reclassification.

15. Defendant Reed Hastings (“Hastings”) has been a member of the Board since June 2011. Hastings has served as CEO and Chairman of Netflix, Inc., a provider of Internet subscription service for movies and television shows, since 1999. Hastings previously served on the board of Microsoft Corporation.

16. Defendant Jan Koum (“Koum”) has been a member of the Board since October 2014. Since February 2009, Koum is co-founder and CEO of



WhatsApp Inc. (“WhatsApp”), a cross-platform mobile messaging application company and Facebook’s wholly-owned subsidiary.

17. Defendant Peter A. Thiel (“Thiel”) has been a member of the Board since April 2005. Thiel is currently President of Thiel Capital, an investment firm, since 2011, a partner of Founders Fund, a venture capital firm, since 2005, and President of Clarium Capital Management, a global macro investment manager, since 2002. Thiel was one of Facebook’s, and Zuckerberg’s, early venture capital backers. In 1998, Thiel co-founded PayPal, Inc., an online payment company, where he served as CEO, President and Chairman from 2000 until its acquisition by eBay in 2002.

18. As directors and/or officers of the Company, the Defendants Zuckerberg, Sandberg, Andreessen, Bowles, Desmond-Hellmann, Hastings, Koum and Thiel (collectively, the “Individual Defendants”), are in a fiduciary relationship with the Company, Plaintiff and the public stockholders of Facebook, and owe the highest obligations of due care, loyalty, full and candid disclosure and good faith and fair dealing.

### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this case on its own behalf and as a class action pursuant to Chancery Court Rule 23, on behalf of all holders of Class A common stock of the Company, except defendants herein and their affiliates, who are

threatened with injury arising from the Individual Defendants' actions as are described more fully below (the "Class").

20. This action is properly maintainable as a class action.

21. The Class is so numerous that joinder of all members is impracticable. As of March 31, 2016, Facebook had 2,311,052,873 shares of Class A common stock outstanding owned by thousands of shareholders who are scattered throughout the United States.

22. There are question of law and fact common to the Class including, *inter alia*, whether:

- a. the Individual Defendants have breached their fiduciary duties of loyalty and care to Plaintiff and the Class in connection with the Reclassification;
- b. Defendant Zuckerberg, in his capacity as director and officer and controlling stockholder of Facebook, has breached his duty of loyalty by opportunistically asserting his control to achieve the Reclassification in order to perpetuate his control over the Company;
- c. Defendant Sandberg, in her capacity as director and officer of Facebook, has breached her duty of loyalty in connection with the Reclassification;

- d. Plaintiff and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of damages; and
- e. Plaintiff and the other members of the Class will be damaged irreparably by Defendants' conduct.

23. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

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

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

## **SUBSTANTIVE ALLEGATIONS**

### **A. BACKGROUND**

26. Facebook, founded in 2004 by Zuckerberg, constructs programs that enable people to connect and share through mobile devices and personal computers, by accessing its products, including:

- ***Facebook.*** A mobile application and website that enables people to connect, share, discover, and communicate with each other on mobile devices and personal computers.
- ***Instagram.*** A mobile application that enables people to take photos or videos, customize them with filter effects, and share them with friends and followers in a photo feed or send them directly to friends.
- ***Messenger.*** A messaging application available for mobile and web on a variety of platforms and devices, which enables people to reach others instantly and simply, and also enables businesses to engage with customers seamlessly and securely.
- ***WhatsApp.*** A fast, simple and reliable mobile messaging application that is used by people around the world and is available on a variety of mobile platforms.
- ***Oculus.*** A virtual reality technology and content platform power product that allows people to enter a completely immersive and interactive environment to play games, consume content, and connect with others.

Facebook generates its revenue from selling advertising placements on Facebook, Instagram and third-party applications and websites to marketers, which let marketers reach people based on a variety of factors.

27. In 2009, Facebook paved the road for Zuckerberg's continued control. Facebook announced that it was creating a dual-class stock structure for itself and converting all of its current shares into Class B shares, which would have ten (10) votes each on matters of corporate governance and that Class A shares, which would be sold in an initial public offering, would carry one vote.

28. The Company went public in May 2012, with its initial public offering raising over \$6.76 billion. Zuckerberg and other Facebook insiders sold shares in the offering but retained all Class B common stock.

29. The dual class stock structure had its intended effect and solidified Zuckerberg's domination of Facebook, allowing him a certain level of insulation from dissenting views. As was contemplated, Zuckerberg, who owns nearly 4 million shares of Class A stock and 468 million shares of Class B stock, currently controls 60.1% of the Company's voting power, providing him with control over the Company. In Facebook's 10-K for the year ended December 31, 2015, the Company stated:

***Our CEO has control over key decision making as a result of his control of a majority of our voting stock.***

Mark Zuckerberg, our founder, Chairman, and CEO, is able to exercise voting rights with respect to a majority of the voting power of our outstanding capital stock and therefore has the ability to control the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation, or sale of all or substantially all of our assets. This concentrated control could delay, defer, or prevent a change of control, merger, consolidation, or sale of all or substantially all of our assets that our other stockholders support, or conversely this concentrated control could result in the consummation of such a transaction that our other stockholders do not support. This concentrated control could also discourage a potential investor from acquiring our Class A common stock due to the limited voting power of such stock relative to the Class B common stock and might harm the trading price of our Class A common stock. In addition, Mr. Zuckerberg has the ability to control the management and major strategic investments of our company as a result of his position as our CEO and his ability to control the election or replacement of our directors.

...

As a stockholder, even a controlling stockholder, Mr. Zuckerberg is entitled to vote his shares, and shares over which he has voting control as governed by a voting agreement, in his own interests, which may not always be in the interests of our stockholders generally.

30. Facebook's recent acquisitions evidence Zuckerberg's unfettered control over Facebook. For example, in Facebook's \$1 billion acquisition of Instagram, Zuckerberg conducted negotiations, mostly on his own, in three days and waited until the deal was all but done before presenting the acquisition to the Board and less than 24 hours before it approved it. According to an April 18, 2012 *Wall Street Journal* article, entitled "In Facebook Deal, Board Was All But Out of the Picture," the Board "[w]as told, not consulted" and "Facebook's board did vote

on the deal, according to people familiar with the matter, though it was largely symbolic.”

31. A similar pattern has since been repeated, with Zuckerberg driving the \$2 billion acquisition of WhatsApp and the \$2 billion acquisition of Oculus and deciding how much Facebook would pay for these companies with apparently little or no input from the Board. According to a February 20, 2014 *Bloomberg Technology* article, entitled “Zuckerberg Bonded With WhatsApp CEO Over Coffee and Dinners,” talks between Zuckerberg and Koum regarding a WhatsApp acquisition became serious at a dinner at Zuckerberg’s house when Zuckerberg proposed their companies join together and Koum join the Board. Koum took a few days to think it over, and five days later, Koum showed up at Zuckerberg’s house and they negotiated the \$2 billion price. Similarly, according to a March 25, 2014 *Wall Street Journal* article, entitled “Facebook to Buy Virtual Reality Firm Oculus for \$2 Billion,” Zuckerberg signaled to Oculus CEO, Brendan Iribe, that he was interested in acquiring Oculus and the deal was done at Facebook’s headquarters in a matter of days.

32. Zuckerberg also controls the Board. Facebook does not maintain a separate committee charged with director nominations. According to Facebook’s PPS, the Board “shall also consider advice and recommendations” from Zuckerberg for potential candidates for nomination to the Board. Moreover,

Facebook's Board is unclassified, and will remain so unless and until Zuckerberg no longer has control. This means Zuckerberg controls who gets elected to the Board each year. On February 18, 2015, in a deposition taken in *Espinoza v. Zuckerberg*, C.A. No. 9745-CB (Del. Ch.), Zuckerberg said of Facebook's Board, "[t]hese are the people who I want and – and who I think will serve the company best." According to a February 2014 article in *Bloomberg Technology*, entitled "Zuckerberg Bonded With WhatsApp CEO Over Coffee and Dinners," over two years before Facebook's 2014 acquisition of WhatsApp, in the Spring of 2012, Zuckerberg invited WhatsApp CEO, Defendant Koum, to coffee, and soon the two became friends, meeting frequently for dinners and hiking together. When Facebook ultimately acquired WhatsApp, Koum, Zuckerberg's friend, joined the Board.

33. Zuckerberg's control over the Board is unsurprising. A July 5, 2012, *New York Times* article, entitled "In Silicon Valley, Chieftains Hold Sway With Few Checks and Balances," stated:

In the [Silicon] Valley, however, the idea of the visionary chief executive dominates, and there may be little room for input from directors.

This sentiment was voiced recently by Reed Hastings, the chief of Netflix and a director for Facebook and Microsoft. Speaking at the Stanford Directors' College, a yearly retreat where public company directors learn the art of being a director, he reportedly cast skepticism on the traditional board model.



According to Kevin M. LaCroix of the D&O Diary, “Hastings said several times that for the board of a large publicly traded company ‘the fundamental job is to replace and compensate the C.E.O.’ Where the company has the resources to hire outside consultants as needed, it is not the board’s role to offer counsel or advice.”

...

Even if these boards did feel free to challenge these founders, they are tight and interlocking. Two of the directors of Netflix sit on the board of LinkedIn. Reid Hoffman, the chairman and co-founder of LinkedIn, sits on the board of Zynga, which has a director who is a partner of Kleiner Perkins Caufield & Byers and sits on the board of Klout and Amazon.com. Mr. Hastings is joined on the board of Facebook by Marc Andreessen, one of the biggest deal makers in Silicon Valley who sits on the board of eBay. And so on.

These directors all work in the same environment, often invest in one another’s companies and have little incentive to challenge the chief executive because it will affect their own ability to serve as directors or participate in the next big things in Silicon Valley.

## **B. THE RECLASSIFICATION – ZUCKERBERG’S DEMAND TO RETAIN CONTROL**

### ***Zuckerberg Approaches the Board to Perpetuate His Control of Facebook***

34. In August 2015, Zuckerberg approached the Board to discuss the idea that he might want to sell or gift his shares to further his philanthropic endeavors and that if the Company continued to make acquisitions with Facebook stock and to compensate employees with stock, he might lose control of the Company.

35. On August 20, 2015, the Board established a Special Committee to review, analyze, evaluate and negotiate a potential reclassification of Facebook

capital stock or voting structure in order to maintain Zuckerberg's control over the Company. The Board appointed Andreessen, Bowles and Desmond-Hellmann as Special Committee members, and the Special Committee retained Wachtell, Lipton, Rosen & Katz ("Wachtell") to act as its legal counsel and Evercore Group L.L.C. ("Evercore") to act as its financial advisor. The Special Committee's work was at the sole expense of the Company.

36. On December 1, 2015, Zuckerberg publicly announced that, during his lifetime, he will gift or otherwise direct substantially all of his shares of Facebook stock "to further the mission of advancing human potential and promoting equality by means of philanthropic, public advocacy, and other activities for the public good." For this purpose, Zuckerberg established a new entity, the Chan Zuckerberg Initiative, LLC ("LLC"), with the mission to "advance human potential and promote equality in areas such as health, education, scientific research and energy." Zuckerberg will control the voting and disposition of any shares held by such entity. Zuckerberg represented that he planned to sell or gift no more than \$1 billion of Facebook stock each year for the next three years and that he intended to retain his majority voting position in Company stock for the foreseeable future.

### *The Special Committee Is Conflicted*

37. While the Special Committee was composed of non-executive directors, the Board ignored Defendant Andreessen's significant ties to Facebook and Zuckerberg. Defendant Andreessen's venture capital firm, Andreessen Horowitz, which invests in start-up technology companies, was one of the earliest and biggest investors in Facebook and an early investor in startups Oculus VR and Instagram, which were ultimately acquired by Facebook for billions of dollars. Andreessen Horowitz made \$78 million off its \$250,000 seed investment in Instagram. Certain funds affiliated with Andreessen hold shares of the Company's Class B common stock in escrow, or that may be received pursuant to the contingent payment earn-out, in connection with Facebook's acquisition of Oculus VR, Inc. According to a July 5, 2012, *New York Times* article, entitled "In Silicon Valley, Chieftains Hold Sway With Few Checks and Balances," Andreessen stated on the "Charlie Rose" show that Zuckerberg is one of the "best C.E.O.s in the world."

38. Additionally, Defendant Desmond-Hellmann, as CEO of the largest philanthropic foundation in the world, is sympathetic to Zuckerberg's wishes to donate his stock to LLC, which has aims that purportedly coincide with and may benefit the Bill & Melinda Gates Foundation. And, Defendant Bowles, when he joined the Board, lionized Zuckerberg, stating "Facebook has clearly emerged as a

transformative force in the world. . . . It's no wonder given the talent Mark [Zuckerberg] has put in place and the company's focus and dedication to its mission. I'm really looking forward to getting to work and helping Facebook however I can." Moreover, the PPS says that any compensation to the Special Committee for advising on the Reclassification would be determined at a later time by the Compensation & Governance Committee, of which Andreessen is a member. Given the known desire of Zuckerberg to reclassify Facebook's stock, this effectively incentivized the Special Committee to approve the Reclassification and created a beneficial *de facto* contingency fee arrangement with the Special Committee by implicitly tying future compensation to plan approval and allowing a committee on which Andreessen sat to determine the fees to be paid.

***The Special Committee Process Does Not Reflect Arms-Length Negotiations***

39. Since its formation in August, the Special Committee met "numerous" times and also had "frequent" conversations about the Reclassification. While the Special Committee received advice "in evaluating the benefits and disadvantages of the company implementing a reclassification versus maintaining the status quo," at no time did it raise any concerns about a reclassification.

40. Instead, with a "belief that a significant portion of the success realized by [Facebook] has been attributable to Mr. Zuckerberg's leadership, creative vision, and management abilities, and that Mr. Zuckerberg's continued leadership

role in the Company is likely to provide substantial benefits to [the Company] and to our stockholder,” the Special Committee’s discussions focused only on the terms of a potential reclassification. There is no indication that Defendant Zuckerberg ever expressed an intention to disassociate from the Company. Rather, he simply demanded largesse.

41. Moreover, the Special Committee’s “negotiations” with Zuckerberg, centered on terms governing Zuckerberg’s actions in circumstances where he would lose control of his own volition or in the case of death, disability or termination for cause. Specifically, the Special Committee negotiated and caused Zuckerberg to enter into a so-called Founder Agreement, pursuant to which Zuckerberg agreed:

- (a) not to dispose of any Class B common stock, if he would own less than a majority of the Class B common stock, unless he first caused all shares to automatically convert to Class A common stock;
- (b) that his ownership would be subject to four new automatic “sunset” triggers (Zuckerberg’s death, Zuckerberg’s disability, the termination of Zuckerberg for cause and the voluntary resignation of Zuckerberg), to reduce the length of the “sunset” transition period proposed originally by Zuckerberg for voluntary leaves of absence or a resignation, as a result of which he can only avoid triggering an automatic “sunset” if such action is in connection with government office;
- (c) to meet with the Board to discuss succession planning with respect to the transfer, voting and conversion of Zuckerberg’s shares during any “sunset” transition period;

- (d) that during any “sunset” transition period, a vice president or more senior officer of the company (selected by Zuckerberg following discussion with “independent” board members) will hold the sole proxy over the transfer, voting and conversion of his shares; and
- (e) to equal treatment of shares in the event of any merger, tender offer or similar business combination.

42. The Special Committee’s “negotiations” were tepid, and did not approximate arm’s length bargaining. The Founder Agreement is not meaningfully different from the status quo. The Reclassification itself makes clear that Zuckerberg intends to be and foresees himself at the helm of the Company for a long time. Instead of being a benefit of the Reclassification or any sort of concession by Zuckerberg, the provisions merely govern the instances in which Zuckerberg no longer wants control over the Company or in which he has become incapacitated such that he is unable to exert control over the Company.

43. In addition, the equal treatment provisions, whereby in any takeover or merger Class B shares would receive the same consideration of Class A shares, is speculative and meaningless, as a practical matter. Facebook currently has a market cap of nearly \$336 billion and is not a realistic takeover candidate. Nor, given Delaware precedent, would a plan involving disparate treatment likely succeed.

44. It does not appear that the Special Committee ever threatened to reject Defendant Zuckerberg’s demands. Rather, it approached the Reclassification as

something it must approve even if it obtained anemic and meaningless “concessions.”

45. The Special Committee’s efforts did not approximate arm’s length hard bargaining. The Special Committee:

- (a) agreed to allow Zuckerberg to present the Reclassification to a stockholder vote at the upcoming annual meeting, without any provision for approval by a majority of the public stockholders, making the Reclassification a *fait accompli*, and providing the public stockholders with no say;
- (b) never sought to have Zuckerberg pay the costs for the Special Committee’s financial and legal advisors nor for the Special Committee fees in connection with the Reclassification;
- (c) never sought or received an opinion from its financial advisor that the Reclassification was fair to the public Class A stockholders;
- (d) obtained “concessions” from Zuckerberg that are essentially meaningless, negating any possible claim that there was arm’s-length bargaining;
- (e) allowed director Andreessen to serve on the Special Committee as a “disinterested” member despite the close business ties between Facebook and Andreessen’s venture capital firm, Andreessen Horowitz;
- (f) never had its financial advisor place a value or range of values on the Reclassification, from Zuckerberg’s perspective;
- (g) did not prearrange compensation for the Special Committee, leaving its eventual compensation to be decided by the Compensation & Governance Committee, of which Andreessen is a member;

- (h) did not adopt any independent oversight mechanism to ensure that future issuances of Class C shares do not unduly benefit Zuckerberg;
- (i) failed to bargain for the right of public Class A stockholders to elect even one independent director, so that such stockholders might have a voice; and
- (j) failed to provide for any compensation for the Class A stockholders whose investments will be adversely affected by having their holdings cleaved into voting and non-voting shares, with their meaningful consent or approval.

46. On April 13, 2016, the Special Committee met and agreed to recommend the Reclassification to the Board. On April 15, 2016, the Board unanimously declared that the Reclassification was advisable and in the best interest of Facebook and its stockholders. On April 22, 2016, the Special Committee reiterated its recommendation to proceed with the Reclassification and the Board approved, declared advisable and recommended the Reclassification for approve by Facebook's stockholders.

47. On April 27, 2016, Facebook unveiled its plan to issue new shares without diluting Zuckerberg's voting power or threatening his domination of Facebook. The Reclassification, which would be effected pursuant to an Amendment to the Company's Certificate of Incorporation, would allow the Company to create a new class of non-voting stock that could be distributed to existing Class A and Class B stockholders in what is effectively a 3-for-1 stock



split. As a result of the Reclassification, Zuckerberg will be able to sell or gift his shares to LLC, and Facebook will be able to issue stock to compensate workers or make acquisitions using the new Class C stock, without loosening Zuckerberg's iron-clad grip over the Company. The Class C shares will trade separately on the NASDAQ, which analysts believe will likely trade at a discount to the Class A stock due to the lack of voting rights. While the Reclassification is being submitted for a stockholder vote and is technically subject to stockholder approval of a majority of Facebook's outstanding shares, Zuckerberg's 60.1% voting stake and the lack of a majority-of-the minority condition renders the Reclassification vote meaningless.

48. The Reclassification is interested and self-dealing and, as alleged above, not entirely fair to the Company or its public stockholders. Because the Reclassification will be effected pursuant to an amendment to the Company's Certificate of Incorporation, 8 *Del. C.* § 242 gives the Board an affirmative duty to make a determination regarding and to recommend the advisability of the charter amendment effecting the Reclassification. As discussed herein, the Special Committee and the full Board cow-towed to Zuckerberg's desire to obtain and provided Zuckerberg with the non-ratable benefit of perpetual control.

49. Additionally, the fees paid to the advisors were expended by the Company solely because Zuckerberg demanded the ability to perpetuate his control

over the Company while still pursuing his own philanthropic endeavors and causing the Company to make acquisitions with Company stock. The Board cowed to this desire. In connection with the Reclassification, the Company retained Evercore and paid an initial fee of \$1,000,000 and agreed to an additional monthly fee of \$125,000 during the pendency of their engagement, subject to a minimum engagement period of 12 months, for a total fee of at least \$2.25 million. The Company also retained Wachtel in connection therewith, and they will receive an unknown fee. Additionally, the Company has stated that the Special Committee will receive a fee to be determined by the Compensation & Nominating Committee, of which Defendant Andreessen is a member. Thus, Zuckerberg and the Individual Defendants caused the Company to pay millions of dollars in fees in order to perpetuate Zuckerberg's control over Facebook *ad infinitum*.

### **C. THE RECLASSIFICATION IS UNFAIR**

50. Several facts indicate that the Reclassification is opportunistic and unfair to the Facebook stockholders.

#### ***Facebook's Public Stockholders' Voting Power Will Be Diluted***

51. The Company touts the Reclassification as every stockholder, including Zuckerberg, receiving the same, "dividend" in the form of Class C shares, leaving the Facebook public stockholder's economic and voting power essentially unchanged. That is plainly untrue if one considers a vote fundamentally

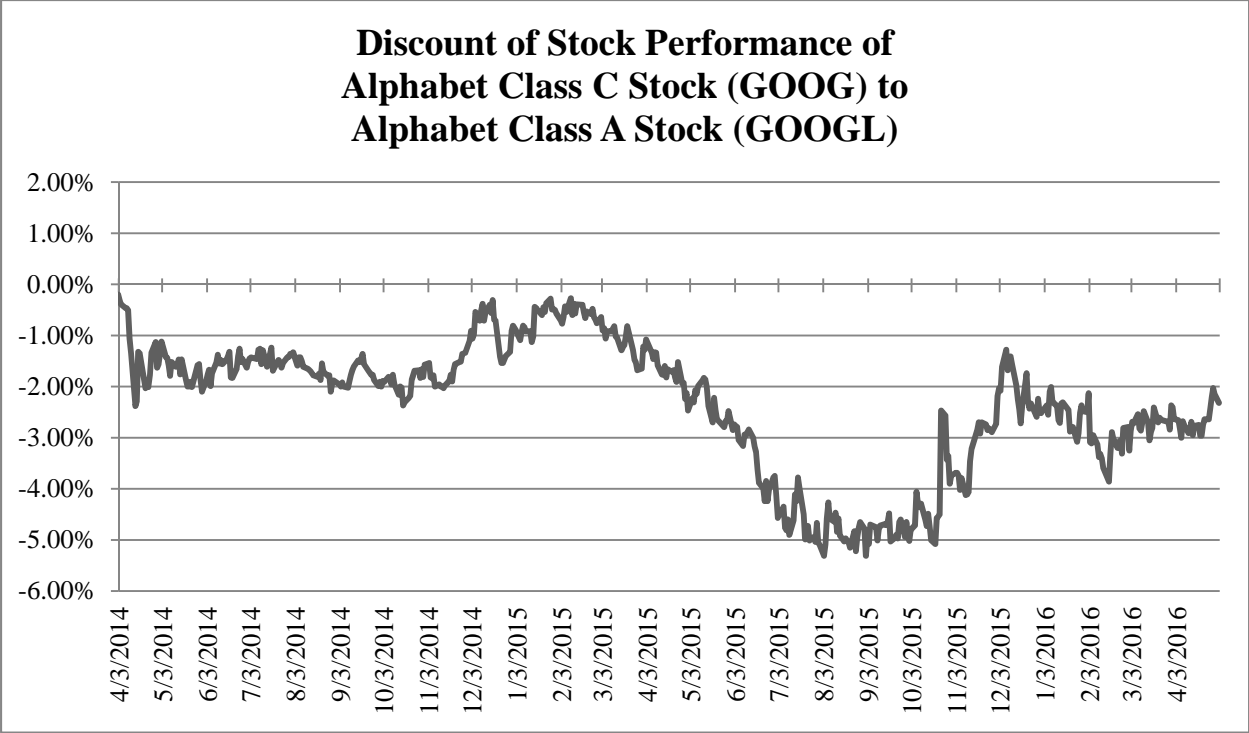
an economic right. The Facebook Board has simply redefined the value of a shareholder vote out of existence. The Reclassification will instead rob existing stockholders of two-thirds of their voting rights. Additionally, Zuckerberg is getting something different than he already has in that he is receiving a perpetuated ability to retain voting control in the future.

52. The Reclassification was proposed by Zuckerberg in order to lengthen the period of time over which he could exercise voting control of the Company, while providing even more asymmetry between his economic stake in Facebook and his voting control. While Zuckerberg controls 60.1% of the voting power, he has an approximate 16.5% economic stake in the Company. The Reclassification will allow him to control the voting power over Facebook, which will represent approximately one-third of his current economic stake, while allowing him to deplete his remaining economic stake (in the form of Class C shares). Moreover, this ploy will harm Plaintiff and the Class by losing the value in two-thirds of their current investment, because their Class C stock will inevitably trade at a discount to Facebook's Class A stock and will further distance the Class from Facebook's corporate governance, and leaving them without a meaningful voice on important issues that the Company will face in coming years.

***The Class C Stock Will Likely Trade at a Discount to Facebook's Class A Stock***

53. The Company touts the Reclassification as not “initially” affecting the relative voting power or economic interest of any Facebook stockholder. However, this entrenchment device is novel and largely untested in American corporate culture, and it injects an element of uncertainty into what should be a blue-chip investment made by Facebook’s stockholders.

54. First, Class C stock will likely trade at a discount to Class A shares. A similar reclassification effort at Google, Inc. (which is now known as Alphabet Inc.) (“Alphabet”) in order to solidify its founders’ control while they sold down their shares, is instructive. As demonstrated in the following chart, immediately following the issuance of Class C shares on April 2, 2014, Alphabet’s Class C shares traded at a discount to its Class A shares and has continued to do so in the following two years, with a disparity of more than 5.0% in August and September 2015. And it was not until an October 2015 stock buyback of up to \$5 billion of Alphabet’s Class C shares that the disparity, while still significant, lessened.



55. Given Alphabet’s trading price, these discounts are significant. For example, on September 1, 2015, Alphabet’s Class C shares traded at \$597.79 per share, a 5.31% discount to Alphabet’s Class A share price of \$629.56, which is nearly a \$32.00 per share difference. Based on the 345,504,021 shares of Class C stock outstanding as of September 30, 2015, the 5.31% discount represents an \$11 billion aggregate disparity. Even on April 3, 2014, Alphabet’s Class C shares traded at \$569.75 per share, a 0.31% discount to Alphabet’s Class A share price of \$571.50, which is a \$1.75 per share difference. Based on the 337,246,657 shares of Class C stock outstanding as of April 16, 2014, the 0.31% discount represents a \$590 million aggregate disparity.

56. Second, in addition to the likely trading discount the Class C stockholders will face, the market for Class C stock may not fully develop, creating liquidity issues for Facebook's stockholders.

57. Third, while the Company has said it will use Class C non-voting stock for employee compensation and acquisitions, it cannot be said with certainty how employees and companies will value non-voting shares and it is possible that acquisition targets will discount Class C shares, forcing Facebook to pay for such companies at a premium, causing downward pressure on the Class C stock trading price.

58. Finally, future acquisitions, which, based on Facebook's track record, are likely to be for billions of dollars would require even more Class C shares, also causing downward pressure on the Class C stock trading price.

### ***Founder Control Considerations***

59. Zuckerberg's, and therefore Facebook's, mission is purportedly to connect the world, contradicting his fiduciary obligations. According to an April 27, 2016 *TechCrunch* article, entitled "Facebook is adding a new class of stock that will help keep Zuckerberg in control," Zuckerberg stated: "Everything we do at Facebook is focused on our mission to make the world more open and connected. . . . [H]elping to connect the world will always be the most important thing I do." Zuckerberg recently stated that being a "founder-led company" had helped

Facebook focus on this mission. According to an August 11, 2012, *Wall Street Journal* article, entitled “Netflix CEO Buys Stock in Facebook,” Zuckerberg has also stated that he works hard to build a culture of continuous and rapid innovation, as evidenced by Facebook’s rapid-fire acquisitions of Instagram, WhatsApp and Oculus, worth billions of dollars all negotiated by Zuckerberg within days and all presented to the Board as a done deal but for the technical requirement of its approval. On Facebook’s April 27, 2016 earnings call, Zuckerberg stated “This structure has helped us resist the short-term pressures that often hurt companies.”

60. Zuckerberg chose the best time to announce his plans to usurp from minority stockholders the majority of their voting rights. Recent press has been favorable to Zuckerberg. However, in a April 28, 2016 *LA Times* article, entitled “How creating new Facebook stock will keep Mark Zuckerberg in control,” analyst Richard Windsor of Edison Investment Research was quoted as saying “[w]hen this type of structure persists, no one minds until things start to go wrong. . . . When problems arise, founders tend to be more emotionally attached to losing strategies than professional managers” and because no one can force them out, companies tend to “stick with these losers far longer than they should.” Additionally, an April 28, 2016 *LA Times* article, entitled “At Facebook, Mark Zuckerberg moves to tighten the gag on shareholders – and no one can stop him,” stated:

Yet the effort to chisel Zuckerberg's control into stone has the flavor of an idea that looks great right up to the moment that it doesn't look at all good. The shareholders' marriage to Zuckerberg's visions and – let's face it – whims is hard to argue with as long as Facebook turn in results like this. But if the engine sputters, what then? As I advised shareholders in May 2012, just after the IPO, “[y]ou better hope he does everything right, because if he doesn't he'll be harder to get rid of than tuberculosis.

Andrew Ross Sorkin observed in his April 16, 2012 *New York Times* article, “Stock Split for Google That Cements Control at the Top,”

While leaving control with [ ] founders might be fine right now, there will very likely come a day when its shareholders will regret not blinking at what could be called ‘anti-good corporate governance.’ Just think about other once highflying technology companies that turned sour. Yahoo. Or Research in Motion. Its founders were once lionized as visionaries – until they weren't.

Indeed, with a smaller financial stake in Facebook once he has given most of his stock to charity, Zuckerberg might be incentivized to make decisions for reasons (such as enhancing his reputation) that hurt stockholders rather than help them.

61. Founder-led tech companies, Twitter and Alphabet (f/k/a Google, Inc.), have faltered recently. Twitter's latest quarter results reported a 36% in year-over-year growth, at the bottom end of analyst expectations, it remains unprofitable and its advertising business has showed signs of stumbling. Alphabet has also recently missed analysts' estimates for revenue. Additionally, among the youthful tech companies with near-impregnable insider control are Zynga, Groupon, and LinkedIn. Over the last two years, these companies have all



underperformed the overall stock market. But such companies are not open to outside advice that might improve their prospects.

62. Facebook's big bets like WhatsApp, the messaging service, and Oculus, its virtual reality play, have yet to pay off with immense new revenue streams. Zuckerberg has said that he thinks it will take a decade for virtual reality to go mainstream, but there are doubts that virtual reality will take over the way some expect. According to an April 29, 2016 *Motley Fool* article, entitled "Why Virtual Reality Might Not Be the Next Big Thing," an Oculus executive told the *Atlantic*, "It's really hard to get headsets on the heads of hundreds of millions of people."

63. Additionally, Snapchat remains a thorn in Facebook's side. Facebook tried to buy Snapchat, a messenger service, which has 100 million daily active users, for \$3 billion in 2013, but Snapchat turned it down. Facebook's response was to build a clone called Slingshot, which failed. Facebook has since experimented with incorporating many of Snapchat's popular features, such as ephemeral messages and photo-editing tools, but it remains to be seen if its efforts will be successful.

64. Further, according to a September 3, 2013, a *New York Times* article, entitled "Thorny Side Effects in Silicon Valley Tactic to Keep Control," in Silicon Valley, founders' control has not always translated into the long-term success.

And the grab for control may exacerbate the bad effects from the culture of worship that surrounds these founders, leaving no one with the capacity to take over when they leave. Microsoft has struggled to find a path without Bill Gates at the helm. Similarly, Apple has faced significant headwinds with respect to sustainability issues without Steve Jobs. Hewlett-Packard also struggled to adjust its business model years after its founders' departure.

**D. ENTIRE FAIRNESS APPLIES TO THE RECLASSIFICATION**

65. The members of the Company's Board owed and continue to owe Facebook and its public stockholders fiduciary duties to act in the best interests of Facebook and its stockholders. Entire fairness applies, because Zuckerberg is Facebook's controlling stockholder and is extracting the non-ratable benefit of perpetual control of the Company.

66. Even if the "independent" directors of Facebook were able to act independently from Zuckerberg (and they did not), no committee of directors would have been able to function effectively in these circumstances which would require Company outsiders to negotiate with Zuckerberg, who has the best knowledge and expertise regarding the Company and its business.

67. Under the Reclassification's coercive and unfair structure, the Facebook Board will be unable, under any scenario, to exercise its independent fully informed business judgment regarding approval and recommendation of the

Reclassification because the Facebook Board cannot make an informed judgment in the face of Zuckerberg's self-interest. Moreover, without a majority-of-the-minority condition, Facebook has structured the Reclassification in such a way that an approval of a majority of the public Facebook stockholders is not required.

68. Unless the Court prevents the Reclassification, Defendants will engage in further breaches of their fiduciary duties to the Company and its stockholders. These actions will result in irreparable harm to Facebook and its public stockholders.

**COUNT I**  
**BREACH OF FIDUCIARY DUTY AGAINST**  
**DEFENDANT ZUCKERBERG**

69. Plaintiff repeats and realleges each of the foregoing allegations.

70. As a controlling stockholder, Defendant Zuckerberg owed and owes Facebook and its stockholders the highest obligation of loyalty, entire fairness, candor and due care.

71. Defendant Zuckerberg violated his fiduciary duties by using his influence as Facebook's founder, Chairman, CEO and controlling shareholder to demand the self-dealing Reclassification used to obtain the non-ratable benefit of Zuckerberg controlling the Company *ad infinitum*, to the detriment of the public stockholders.

72. As a direct and proximate result of Defendant Zuckerberg's failure to perform his fiduciary obligations, Facebook's stockholders have sustained significant damages.

73. Plaintiff has no adequate remedy at law.

**COUNT II**  
**BREACH OF FIDUCIARY DUTY AGAINST**  
**ALL INDIVIDUAL DEFENDANTS**

74. Plaintiff repeats and realleges each of the foregoing allegations.

75. By virtue of their positions as directors of Facebook, the Individual Defendants owe fiduciary duties of care and loyalty to Facebook and its stockholders. This requires the Individual Defendants to place the interest of Facebook and its stockholders above their own interests and/or the interests of the Company's directors and officers, including Zuckerberg.

76. The Individual Defendants breached their fiduciary duties of loyalty and care in approving the Reclassification, which created a new class of non-voting stockholders for the sole purpose of entrenching the domination of Zuckerberg over Facebook's operations. The Individual Defendants did not exercise independence or due care in approving the Reclassification, which unfairly perpetuates Zuckerberg's control over the Company, to the detriment of the public stockholders.

77. By virtue of Defendant Zuckerberg's position as officer, director and controlling stockholder of Facebook and by virtue of Defendant Sandberg's position as officer and director of Facebook, Defendants Zuckerberg and Sandberg owe fiduciary duties of care and loyalty to Facebook and its stockholders. In connection with the Reclassification, Defendants Zuckerberg and Sandberg used their positions in the Company to further secure Zuckerberg's control over the Company, to the detriment of the public stockholders. The conduct of Defendants Zuckerberg and Sandberg, as officers of Facebook, is not shielded by 8 *Del. C.* § 102(b)(7).

78. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties and violate Delaware law to the detriment of Facebook and its stockholders.

79. Plaintiff and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the irreparable injury which Individual Defendants' actions threaten to inflict.

**WHEREFORE**, Plaintiff prays for judgment, as follow:

A. determining that this action is a proper class action, and the Plaintiff is a proper class representative and appointing Plaintiff's Counsel as Class Counsel;

B. enjoining Defendants, temporarily and permanently, from taking any steps necessary to accomplish or implement the Reclassification on terms that are not fair and equitable and under the terms presently proposed until after a trial on the merits of the above claims;

C. declaring that the Reclassification is in breach of the fiduciary duties of the Individual Defendants and, therefore, any action to effect the Reclassification is unlawful and unenforceable;

D. to the extent, if any, the Reclassification is effected prior to the entry of final judgment, rescinding the Reclassification or awarding damages to Plaintiff the Class, including pre- and post-judgment interest at the statutory rate;

E. directing that Defendants account to Plaintiff and the Class for all damages caused to them and account for all profits and any special benefits obtained by Defendants as a result of their unlawful conduct;

F. awarding to Plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and

G. granting such other and further relief as the Court deems appropriate.

Dated: May 6, 2016

**CHIMICLES & TIKELLIS LLP**

*/s/ Pamela S. Tikellis*

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