



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

<p>ERIC LEVY, for the COVERDELL EDUCATION SAVINGS PLAN FBO DASH REDDING LEVY, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MARK ZUCKERBERG, SHERYL K. SANDBERG, MARC L. ANDREESSEN, ERSKINE B. BOWLES, SUSAN D. DESMOND-HELLMANN, REED HASTINGS, JAN KOUM, PETER THIEL, and FACEBOOK, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>C.A. No.</p>
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**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff Eric Levy, for the Coverdell Education Savings Plan FBO Dash Redding Levy (“Plaintiff” or the “Plan”), by and through its undersigned counsel, alleges upon knowledge as to itself and its own actions, and upon information and belief as to all other matters, based upon the investigation conducted by and through its attorneys, which included, *inter alia*, a review of documents filed by Defendants with the United States Securities and Exchange Commission (the “SEC”), news reports, press releases and other publically available documents, as follows:

## SUMMARY OF THE ACTION

1. Plaintiff brings this action on behalf of itself and a class consisting of shareholders of Facebook, Inc. (“Facebook” or the “Company”), other than the named defendants, who will be damaged by the Company’s recently announced reclassification of its shares (the “Reclassification”), for breaches of fiduciary duty. The Reclassification, which involves the issuance of non-voting Class C shares, is an admitted effort to entrench Defendant Mark Zuckerberg (“Zuckerberg”) as Facebook’s controlling shareholder until his death or resignation in order to take office or a government position, by creating a non-voting class of Facebook stock, while simultaneously providing him with a substantial liquidity benefit for personal purposes.

2. The Reclassification will enable Zuckerberg to keep his over 60% voting power and thus his control over the Company while enabling him to either give away or sell vast amounts of Class C shares without his losing control or even decreasing his voting power. Presently, Facebook has Class A shares, which have one vote per share and which are publicly traded on NASDAQ, and Class B shares, which have ten votes per share. Zuckerberg owns the majority of the Class B shares, which provides him (counting all shares he controls) with slightly more than 60% of the voting power, although he only holds slightly more than 15% of all outstanding equity and few Class A shares.

3. By way of the Reclassification, the Company will issue two non-voting Class C shares for each Class A and Class B shares presently outstanding, as a dividend, in proportions such that voting power will remain unchanged. The Class C shares, because they have no voting rights, will likely trade at a discount to Facebook's current stock price, such that putative Class members subject to the 2:1 stock split, ultimately will have shares trading at prices significantly less than the price of their current share of Class A stock, thereby damaging them.

4. The Reclassification, particularly because it lacks a "stapling" provision requiring a decrease in Zuckerberg's Class B shares in the same proportion as his sale of the Class C shares, will both entrench Zuckerberg in control of the Company until his death or resignation (at which time the shares will convert to Class A shares), and provide Zuckerberg with the ability to cash in his shares without losing any voting power—a liquidity benefit for which he has not paid. It will also further separate voting control from an equity stake in the Company, a circumstance which tends not only to reduce accountability of executives to a company, but to depress the stock price of a company.

5. The Reclassification was presumably negotiated by a special committee (the "Special Committee") of independent directors, consisting of Susan D. Desmond-Hellmann ("Desmond-Hellmann"), Marc L. Andreessen ("Andreessen") and Erskine B. Bowles ("Bowles"). However, Facebook is admittedly a "controlled

company” under the corporate governance rules of NASDAQ because of Zuckerberg’s voting power, such that all directors remain beholden to him and thus effectively are not independent of him. As admitted in the Preliminary Proxy (defined below), “Mr. Zuckerberg currently has the ability to elect all of our directors and to determine the outcome of most matters submitted for a vote of our stockholders.” Proxy at 63.

6. In any event, as set forth in the Schedule 14A Information Proxy Statement (the “Preliminary Proxy”), which was filed with the SEC on April 27, 2016, the Special Committee did little to negotiate the terms of the Reclassification with Zuckerberg other than tinker with the terms of the “sunset provisions” providing that such provisions would be triggered if Zuckerberg resigned in connection with government service or office, or took a voluntary leave of absence. Proxy at 60.

7. The Preliminary Proxy indicates that the shareholder vote for approval of amendments to the Company’s certificate of incorporate necessary to effect the Reclassification will be held on June 20, 2016. Approval of the Reclassification and attendant changes to the amendments are a foregone conclusion given Zuckerberg’s voting control.

8. Although the Reclassification is a self-dealing transaction, which Zuckerberg can and will approve, there was no attempt by the Special Committee to

negotiate for a vote by a majority of the minority as would have been fair in this self-dealing transaction. Moreover, there is no indication that the measures governing a related party transaction under Facebook's corporate governance principles were followed, or that the terms of the Reclassification were determined to be fair to Class members and the Company's public shareholders by an independent investment advisor retained for that purpose.

9. The Special Committee additionally: (a) failed to negotiate for the adoption of an independent oversight mechanism to ensure that future issuances of Class C shares do not unduly benefit Zuckerberg; (b) failed to bargain for the right of public Class a shareholders to elect even one independent director, so that such shareholders might have a voice; (c) failed to provide a stapling provision; and (c) failed to provide for any compensation for the Class A shareholders whose investments will be adversely affected by having their holdings split into voting and non-voting shares, without their consent or approval.

10. Nonetheless, according to the Preliminary Proxy, the Special Committee recommended to the Board that the Reclassification be approved as being in the best interests of the Company's stockholders, which recommendation was then adopted by the full Board.

11. The Preliminary Proxy, moreover, is materially false and misleading in that, at a minimum, it fails to contain an investment advisor opinion indicating that the Reclassification is fair to Class members.

12. For these reasons and as set forth more fully herein, Plaintiff seeks to enjoin Defendants from proceeding with the Reclassification. In the event that the Reclassification is consummated, Plaintiff seeks to recover damages from the individual defendants (defined below) for their breaches of fiduciary duty.

### **PARTIES**

13. Plaintiff is, and at all relevant times has been, a holder of Facebook stock.

14. Defendant Facebook is a Delaware corporation that maintains its corporate headquarters in Menlo Park, California. It is being named herein so that complete relief can be granted.

15. Defendant Zuckerberg is the founder of the Company and has served as the Company's Chief Executive Officer ("CEO") and as a member of the Company's Board since July 2004. Zuckerberg has served as Chairman since January 2012. He is the Company's largest and controlling stockholder.

16. Defendant Sheryl K. Sandberg ("Sandberg") has served as the Company's Chief Operating Officer ("COO") since March 2008 and as a member of the Company's Board since June 2012.

17. Defendant Andreessen has served as a member of the Company's Board since June 2008. Andreessen is a co-founder and has been a general partner of Andreessen Horowitz, a venture capital firm, since July 2009.

18. Defendant Bowles has served as a member of the Company's Board since September 2011. Bowles is President Emeritus of the University of North Carolina and served as President from January 2006 through December 2010.

19. Defendant Desmond-Hellmann has served as a member of the Company's Board since March 2013.

20. Defendant Reed Hastings ("Hastings") has served as a member of the Company's Board since June 2011. Hastings has served as the Chief Executive Officer and Chairman of the board of directors of Netflix, Inc., a provider of an Internet subscription service for movies and television shows, since 1999.

21. Defendant Jan Koum ("Koum") has served as a member of the Company's Board since October 2014. Since February 2009, Koum has served and continues to serve as co-founder and Chief Executive Officer of WhatsApp Inc.

22. Defendant Peter A. Thiel ("Thiel") has served as a member of the Company's Board since April 2005. Thiel has served as 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.

23. Defendants Zuckerberg, Sandberg, Andreessen, Bowles, Desmond-Hellman, Hastings, Koum and Theil together are referred to as the “Individual Defendants”.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

24. In what has now become technology lore, Zuckerberg, along with certain classmates, founded the Company from his Harvard University dormitory room in 2003.

25. Prior to the Company going public in May 2012, it specifically created a dual class structure, so that investors would not interfere with Zuckerberg’s running of the Company and so that he remained in control.

26. Although institutional investors, including Northstar Asset Management (“Northstar”), with the approval of Institutional Shareholder Services (“ISS”), have attempted to advance proposals providing Class A shareholders with equal voting rights and the Company with better corporate governance, given Zuckerberg’s majority control, no proposals have been successful and his control has been perpetuated.

### **The Controlled Special Committee Does not Consider Any Alternatives**

27. In August 2015, Zuckerberg discussed with the Board the implications for his voting control of the Company if he were to dispose of a significant number

of shares to further his philanthropic aims, and if the Company were to make one or more large stock based acquisitions or use stock as a means for executive compensation.

28. Apparently immediately thereafter, the Board created the Special Committee to consider the reclassification in order to perpetuate Zuckerberg's control while enabling him to give away or sell vast amounts of shares, without any consideration of any alternatives less burdensome and damaging to Class A shareholders. It further reserved the amount of consideration to be paid to the Special Committee to the compensation and governance committee (which are also controlled by Zuckerberg), which has not yet made that decision.

29. The Special Committee presumably met "numerous times" and had "frequent conversations" and sought advice from counsel and investment advisor, Evercore Group LLC ("Evercore"), but did never obtained an opinion opining upon the fairness of the Reclassification to Class A shareholders.

30. With the Reclassification well under way and his control over Facebook assured regardless of his equity holdings, on December 1, 2015, Zuckerberg announced that during his lifetime, he and his wife would gift or otherwise direct substantially all of his shares to philanthropy.

## **The Special Committee Fails to Protect Class A Shareholders**

31. Although the Reclassification was purportedly negotiated by an independent Special Committee, which was formed in August 2015, it merely tinkered with the terms of the sunset provisions but neglected to obtain meaningful provisions that would protect Class members, including: (1) a distribution to be made if the Class C shares trade at a discount; (2) a clause which provides the Class A shareholders with an independent director and some say in the running of the Company; (c) a stapling provision which provides that Zuckerberg cannot sell his Class C shares without an equal drawn down of his Class B (and thus voting) shares, so that his voting power and his equity holdings are not completely divergent; (d) a payment by Zuckerberg for the liquidity benefit that the Reclassification provides, and (e) a vote by a majority of the minority, among other things.

32. Moreover, although the Special Committee was advised by Evercore there is no indication that the Special Committee asked for or obtained a fairness opinion opining that the Reclassification is fair from a financial point of view to the Class A shareholders.

33. In short, the Special Committee failed to protect the Class A shareholders or to obtain any meaningful concessions by Zuckerberg.

## **The Reclassification Is Panned by the Press**

34. On April 27, 2016, the Company announced the Reclassification and filed the Preliminary Proxy.

35. As stated above, the Reclassification provides that the Company will issue two shares of non-voting Class C stock for each share of Class A and Class B shares as a dividend, essentially resulting in a 2:1 stock split, while maintaining existing voting percentages.

36. This provides Zuckerberg with a liquidity benefit, enabling him to sell or give away Class C shares, while maintaining his iron clad grip on the Company, and could well result in discounted stock prices for Class members holding Class A shares.

37. Given Zuckerberg's existing grip on the Company, the Reclassification has been panned by the business press. As characterized in the press, on April 27, 2016, Facebook "announced a little present for Mark Zuckerberg, the co-founder and chief executive officer", <http://www.bloombergview.com/articles/2016-04-28/mark-zuckerberg-gets-to-control-facebook-a-while-longer>, a reclassification of its stock to "ensure that Zuckerberg can control Facebook as long as he want to." *Id.*

38. As one commentator stated in response to the announcement in an article entitled "*At Facebook, Mark Zuckerberg move to tighten the gag on shareholders—and no one can stop him*",

[n]o one would ever mistake Facebook for a shareholder-friendly company. From the moment of its initial public offering in May 2012, it's been entirely under the control of its co-founder, chairman and CEO, Mark Zuckerberg. Thanks to a two-class stock structure in which Zuckerberg held impregnable control over shares with super-voting rights, he owned 28% of all outstanding shares but 57% of all shareholder votes. Now he owns or controls even less of the company—about 16%--and fully 60.1% of the votes; he own or controls barely any Class A shares, which get a measly one vote each, but 85.3% of the Class B shares which get 10 votes each. But that's not enough. Facebook announced Wednesday that it plans to issue a third class of shares, Class C, that will have zero votes.

<http://www.latimes.com/business/hiltzik/la-fi-hiltzik-facebook-zuckerberg-20160428-snap-htmlstory.html>.

39. As that commentator noted, the ostensible purpose “is to allow Zuckerberg and his wife, Priscila Chan, to pursue the dream of giving 99% of their shares to charity, without losing an iota of his voting control. Shareholders will have to vote on the arrangement, but because non-Zuckerberg voting power already is a joke, we can assume it will pass.” *Id.*

### **The Proxy Statement is Incomplete and Misleading**

40. The Preliminary Proxy, an precursor to the proxy which will be used to solicit shareholder approval of amendments to the certificate of incorporation necessary to effect the Reclassification, is materially false and misleading the following respects:

- a) It does not adequately detail the qualifications of Evercore to advise the Special Committee on the terms of the engagement, and whether its fee is contingent on the Reclassification being approved;
- b) It states that compensation for the Special Committee will be determined at a later time by the compensation and governance committee, but gives no guidance on the mechanism for determining whether to compensate the Special Committee and/or the range of possible compensation;
- c) It fails to disclose that other technology companies who have adopted similar reclassifications have had stapling provisions preventing the complete divergence of the founder's voting control and his equity stake, or to provide any comparison of the terms of the Reclassification with that of other companies that have adopted similar reclassifications and the subsequent discount at which their stock then traded;
- d) It fails to disclose any analysis of the potential discount at which the Class C shares may trade as a consequence of their lack of voting rights due to the Reclassification and thus the basis upon which the Special Committee made its decision to recommend the Reclassification to the Board;

- e) It fails to detail the number and content of the Special Committee meetings and is intentionally vague and misleading with regard to the negotiations between Zuckerberg and the Special Committee, and even if Zuckerberg negotiated on his own behalf or was represented by counsel and his own banker; and
- f) It fails to consider or disclose alternatives to the Reclassification or why the use of cash in order to make acquisitions and awards of executive compensation is not a proper alternative to the entrenching Reclassification.

### **Irreparable Harm**

41. Plaintiff has no adequate remedy at law. Only through the exercise of the Court's equitable power will Class members be protected from irreparable injury that would arise from the Reclassification.

### **CLASS ACTION ALLEGATIONS**

42. Plaintiff, a shareholder in the Company, brings this action as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of the Class defined above.

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

44. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

45. The Class is so numerous that joinder of all members is impracticable. Consequently, the number of Class members is believed to be in the hundreds of thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

46. There are questions of law and fact that are common to all Class members and that predominate over any questions affecting only individuals, including, but not limited to:

- a) whether the Individual Defendants have breached and continue to breach their fiduciary duties by entrenching themselves and Zuckerberg at the expense of the Company's shareholders;
- b) whether the Reclassification is self-dealing such that the entire fairness standard applies;
- c) whether the Preliminary Proxy and any subsequent version is materially false and misleading; and
- d) whether the Class is entitled to injunctive relief and/or damages.

47. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests that are antagonistic or adverse to the interest of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

48. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

49. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

50. The prosecution of separate actions by individual members of the Class would create a 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 individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

## **CAUSE OF ACTION**

### **COUNT I**

#### **Breach of Fiduciary Duty Against the Individual Defendants**

51. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

52. As directors of Facebook, the Individual Directors owe to Facebook's shareholders fiduciary duties of loyalty, good faith and candor. These fiduciary duties required them to place the interests of Facebook and its shareholders above their own interests and/or the interests of Zuckerberg.

53. The Individual Defendants breached their fiduciary duty when approved the creation of a new class of non-voting shareholders for the sole purpose of entrenching Zuckerberg, and then filed a materially false and misleading Proxy Statement in defense of this entrenchment.

54. As a result of the foregoing, Plaintiff and the Class have been harmed and will continue to be harmed as their influence over the Company operations and strategy will be diminished and Class members will be asked to vote pursuant to a materially false and misleading proxy.

55. The Plaintiff and the Class and have no adequate remedy at law.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in its favor and in favor of the Class and against the Defendants as follows:

A. Certifying this case as a class action, certifying the proposed Class and designating Plaintiff and the undersigned as representatives of the Class;

B. Enjoining Defendants and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing, during the pendency of this action, from taking any action to consummate the Reclassification until such time as Defendants have fully complied with their fiduciary duties, including issuing a legally compliant proxy;

C. Awarding Plaintiff and the Class appropriate compensatory damages, together with pre- and post-judgment interest;

D. Awarding Plaintiff the costs, expenses and disbursements of this action, including attorneys' and experts' fees and, if applicable, pre-judgment and post-judgment interest; and

E. Awarding Plaintiff and the Class such other relief as this Court deems just, equitable and proper.

**COOCH AND TAYLOR, P.A.**

*/s/ Blake A. Bennett*

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DATED: May 2, 2016

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