



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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ERIC MCGINTY, Individually and on  
Behalf of all Others 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.

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**VERIFIED CLASS ACTION COMPLAINT**

Plaintiff Eric McGinty (“Plaintiff”), by and through his undersigned counsel, alleges upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which include, *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 himself and as a class action on behalf of the shareholders 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 and deprive Facebook shareholders of their ability to vote. As detailed herein, the Reclassification effort (as defined below) is a patent attempt to entrench Defendant Mark Zuckerberg (“Zuckerberg”) as Facebook’s controlling stockholder by creating a non-voting class of Facebook stock in order to preserve his voting power into perpetuity. Presently, Facebook has Class A shares, which have one vote per share, and Class B shares, which have ten votes per share. Zuckerberg owns and/or has control of the majority of the Class B shares, which currently provides him with 60.1% of the voting power.

2. On April 27, 2016, Facebook filed a FORM PRE 14A Schedule 14A Preliminary Proxy Statement (the “Proxy Statement”) with the SEC in connection with Facebook’s 2016 annual meeting of stockholders, which is currently scheduled for June 20, 2016 (the “2016 Annual Meeting”). In the Proxy Statement, the Facebook Board has recommended, among other things, that Facebook shareholders vote to approve the adoption of Facebook’s Amended and Restated Certificate of Incorporation, which includes provisions relating to the

establishment of the new Class C capital stock for Facebook (the “Reclassification”).

3. Under the Reclassification, the Board will “potentially” declare and pay a dividend of two shares of the Class C capital stock for each outstanding share of Class A common stock and Class B common stock. According to the Proxy Statement, if the Dividend is declared and paid, Facebook intends to file the appropriate applications so that the Class C capital stock will be listed on the NASDAQ stock exchange. The Proxy Statement states further, “if the Dividend is distributed, we expect that the market price for the shares of our Class A common stock will generally reflect the effect of a three-for-one stock split.”

4. Holders of the proposed shares of Class C capital stock will have no voting rights. This distribution of non-voting stock will 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).

5. Zuckerberg has openly admitted that the Class C issuance will (and is intended to) entrench him in power, and insulate him from having to pay attention to the views of the stockholders who own the vast majority of the shareholder equity. He wishes to retain this power, while selling off large amounts of his

stockholdings, and reaping billions of dollars in proceeds. The issuance of the Class C stock will, in effect, have the same effect as a grant to Zuckerberg of billions of dollars in equity, for which he will pay nothing.

6. A “Special Committee” of Facebook directors approved this deal, but did not bargain hard with the Founder to obtain anything of meaningful value in exchange for the extraordinarily valuable benefit that is being bestowed upon them. The Special Committee: (a) agreed to allow Zuckerberg to approve this deal by fiat at the upcoming annual meeting, without any provision for approval by a majority of the public shareholders, who therefore are given no say; (b) never sought or received an opinion from its financial advisor that the Reclassification is fair to the public Class A shareholders; (c) obtained “concessions” from Zuckerberg that are essentially meaningless, thus negating any possible claim that there was arm's-length bargaining; (d) allowed director Desmond-Hellmann, who is the Chief Executive Officer of the Bill & Melinda Gates Foundations, to serve on the Special Committee as a “disinterested” member despite the relationship between Zuckerberg, Bill Gates, and the Bill & Melinda Gates Foundation; (e) allowed director Marc Andreessen to serve on the Special Committee as a “disinterested” member despite the fact he sold his company, Oculus, to Facebook in 2014 and thus is indebted to Facebook; (f) never had its financial advisor place a value or range of values on the Reclassification, from the Founders' perspective;

(g) never extracted an agreement that Zuckerberg would continue working for Facebook, allowing him to quit at any time as he has no employment agreements but he would continue to have voting control over Facebook; (h) did not prearrange for compensation for the Special Committee, leaving its eventual compensation to be decided by Zuckerberg (an arrangement this Court has previously found to taint claims to independence); (i) adopted no independent oversight mechanism to ensure that future issuances of Class C shares do not unduly benefit Zuckerberg; (j) 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; and (k) failed to provide for any compensation for the Class A shareholders whose investments will be adversely affected by having their holdings cleaved into voting and non-voting shares, without their consent or approval.

7. Moreover, the process by which the Board considered the Recapitalization was deeply flawed and rife with conflicts. For example, the Proxy Statement says that any compensation to the Special Committee for advising on the Recapitalization would be determined at a later time. As stated in the Proxy Statement, “the members of the Special Committee have not been compensated for their service[,] [h]owever, our board of directors has delegated to the compensation & governance committee the authority to approve compensation for the members of the Special Committee.” This effectively incentivized the Special Committee to

approve the recapitalization and created a *de facto* contingency fee arrangement with the Special Committee by implicitly tying future compensation to plan approval.

8. In addition to the foregoing, Defendants have failed to disclose all material information regarding the Reclassification. Specifically, the Proxy Statement fails to provide the Company's shareholders with all material information concerning the Reclassification, as detailed herein. While the Class A shareholders cannot block approval of the Reclassification, the proxy solicitation is essential to the lawful adoption of Zuckerberg's Plan. A truthful and complete Proxy Statement is mandated by law.

9. The Director Defendants have a fiduciary duty to act in the best interests of Facebook's shareholders, and to treat them with loyalty, care and candor. Unfortunately, the Director Defendants failed to live up to their fiduciary obligations, agreeing to a Reclassification of the Company which benefits the Founders to the detriment to Plaintiff and the Class of Facebook shareholders.

10. 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 Director Defendants for their breaches of fiduciary duty.

## **PARTIES**

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

12. Defendant Facebook is a Delaware corporation that maintains its corporate headquarters in Menlo Park, California. Shares of Facebook's Class A shares are traded on The NASDAQ Stock Market under the ticker symbol "FB". Facebook's Class B shares are not traded on a public exchange. As of January 25, 2016, Facebook had approximately 2.29 billion shares of Class A common stock and 551 million shares of Class B common stock outstanding. The outstanding shares of Facebook's Class B common stock represent a majority of the combined voting power of common stock. Holders of Class B common stock are entitled to 10 votes per share while holders of Class A common stock are entitled to one vote per share.

13. Defendant Zuckerberg is the Founder, Chairman, and Chief Executive Officer of Facebook. Zuckerberg is responsible for Facebook's day-to-day operations as well as the overall direction and product strategy for the Company. As Chairman, Zuckerberg presides over meetings of the Board of Directors. Zuckerberg founded Facebook in 2004 while studying computer science at Harvard University. Zuckerberg is Facebook's largest and controlling stockholder. As of March 31, 2016, Zuckerberg beneficially owns 76.4% of Facebook's Class B

common stock, which provides him with 53.8% of Facebook's total voting power. (Zuckerberg controls an additional 6.3% of Facebook's total voting power, for a total of 60.1%, through a voting proxy agreement.)

14. Defendant Sheryl Sandberg ("Sandberg") is Facebook's Chief Operating Officer. Sandberg is responsible for overseeing Facebook's business operations. Sandberg has served as Facebook's Chief Operating Officer since March 2008 and a member of Facebook's Board of Directors since June 2012.

15. Defendant Marc Andreessen ("Andreessen") has served as a member of Facebook's Board of Directors since June 2008. Andreessen is a member of Facebook's Audit Committee and a member of Facebook's Compensation & Governance Committee.

16. Defendant Erskine B. Bowles ("Bowles") has served as a member of Facebook's Board of Directors since September 2011. Bowles is the chair of Facebook's Audit Committee.

17. Defendant Susan Desmond-Hellmann ("Desmond-Hellmann") has served as a member of Facebook's Board of Directors since March 2013. Desmond-Hellmann is a member of Facebook's Audit Committee. Desmond-Hellmann serves as Facebook's Lead Independent Director and, as such, serves as a liaison between Zuckerberg (as Chairman) and the Board of Directors' other independent directors.

18. Defendant Reed Hastings (“Hastings”) has served as a member of Facebook’s Board of Directors since June 2011. Hastings is the chair of Facebook’s Compensation & Governance Committee.

19. Defendant Jan Koum (“Koum”) has served as a member of Facebook’s Board of Directors since October 2014.

20. Defendant Peter A. Thiel (“Thiel”) has served as a member of Facebook’s Board of Directors since April 2005. Thiel is a member of Facebook’s Compensation & Governance Committee.

21. Defendants Zuckerberg, Sandberg, Andreessen, Bowles, Desmond-Hellmann, Hastings, Koum, and Thiel are referred to herein as the “Director Defendants”. The Director Defendants together with Facebook are referred to as “Defendants”.

## **ADDITIONAL SUBSTANTIVE ALLEGATIONS**

### **A. Background**

22. Facebook owns and operates several online, social-media platforms. These platforms include Facebook.com, Instagram, Messenger, and WhatsApp. In addition, Facebook owns Oculus, a virtual reality technology and content platform. Facebook generates the majority of its revenue from selling advertising placements to marketers across these platforms.

23. Facebook went public in May 2012 with its initial public offering raising over \$6.76 billion. Through an underwriting group led by Morgan Stanley, J.P. Morgan, and Goldman Sachs & Co., Facebook sold 180 million shares of Class A common stock at \$38.00 per share. A number of Facebook insiders (including Zuckerberg) also sold shares in the offering. These selling stockholders sold over 241 million shares for total proceeds of \$9 billion.

24. Neither Facebook nor its insiders sold any of the Company's Class B common stock during the initial public offering. Facebook's Class B common stock was identical to the Class A common stock, except that the former entitled its owner to 10 votes per share while the latter was for only one vote per share. Shares of Class B common stock were also convertible into shares of Class A common stock on a one-for-one basis. Following the initial public offering, the total number of shares of Facebook's Class A and Class B common stock equaled approximately 2.14 billion.

25. Facebook's prospectus and registration statement, filed with the SEC in connection with the initial public offering, described the Company's dual class structure of common stock as allowing Facebook's management (including Zuckerberg) to retain control over Facebook's day-to-day operations. In pertinent part, Facebook stated that:

Our Class B common stock has ten votes per share, and our Class A common stock, which is the stock we are offering in our initial public offering, has one vote per share. Stockholders who hold shares of Class B common stock, including our executive officers, employees, and directors and their affiliates, will together hold approximately 96.0% of the voting power of our outstanding capital stock following our initial public offering. Because of the ten-to-one voting ratio between our Class B and Class A common stock, the holders of our Class B common stock collectively will continue to control a majority of the combined voting power of our common stock and therefore be able to control all matters submitted to our stockholders for approval so long as the shares of Class B common stock represent at least 9.1% of all outstanding shares of our Class A and Class B common stock. This concentrated control will limit or preclude your ability to influence corporate matters for the foreseeable future.

(Prospectus, May 18, 2012, p. 33.)

26. Facebook stated further that, “[f]uture transfers by holders of Class B common stock will generally result in those shares converting to Class A common stock, subject to limited exceptions, such as certain transfers effected for estate planning or charitable purposes. The conversion of Class B common stock to Class A common stock will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long term.” (*Id.*)

27. Facebook provided the following example for illustration: “If, for example, Mr. Zuckerberg retains a significant portion of his holdings of Class B common stock for an extended period of time, he could, in the future, continue to control a majority of the combined voting power of our Class A common stock and

Class B common stock.” (*Id.*)

28. Facebook portrayed the dual class stock structure as a benefit in terms of anti-takeover efforts—“So long as the outstanding shares of our Class B common stock represent a majority of the combined voting power of common stock, Mark Zuckerberg will effectively control all matters submitted to our stockholders for a vote, as well as the overall management and direction of our company, which will have the effect of delaying, deferring or discouraging another person from acquiring control of our company.” (*Id.* at 152.)

29. The dual class stock structure had its intended effect and solidified Zuckerberg’s control over the Company.

**B. The Reclassification – Zuckerberg’s Attempt to Retain Control**

30. On April 27, 2016, Facebook unveiled a controversial plan – the Reclassification – designed to issue new shares for the purpose of allowing Zuckerberg to monetize his Facebook stock while at the same time avoiding any dilution of his voting power. The creation of Class C capital stock can only be accomplished by amending Facebook’s Certificate of Incorporation. Accordingly, at the 2016 Annual Meeting, Facebook is seeking the approval and adoption of the Amended and Restated Certificate of Incorporation from the Company’s shareholders, which includes provisions relating to the creation of the new Class C capital stock.

31. Holders of the proposed shares of Class C capital stock will have no voting rights. As the Proxy Statement explains, the Class C capital stock, of which there will be 15 billion authorized shares, will provide Facebook with an additional form of stock-based currency for use in connection with future acquisitions and equity-based employee compensation. The Board's primary purpose in creating the additional form of stock-based currency is so that Zuckerberg can sell shares without losing any of his voting power or threatening his domination of Facebook.

As stated in the Proxy Statement:

**The Reclassification will provide our board of directors with the ability to prolong the period of time during which Mr. Zuckerberg maintains majority voting control over us**, which, as noted above, the Special Committee and the board of directors believe is in the best interest of us and our stockholders (other than Mr. Zuckerberg and his affiliated entities, as to whom no determination is made). **The Reclassification will allow Mr. Zuckerberg to sell or transfer shares of Class C capital stock without affecting Mr. Zuckerberg's majority voting control over us**, and will also allow us to make one or more large stock-based acquisitions and to continue to grant equity awards to our service providers, without affecting Mr. Zuckerberg's majority voting control over us. Being able to issue shares of Class C capital stock in the future, instead of shares of Class A common stock or Class B common stock, will enable our board of directors to issue shares of capital stock without affecting our existing voting and governance structure. (emphasis added)

In other words, as a result of the Reclassification, Zuckerberg will be able to sell stock, 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.

32. The Proxy Statement further states that, upon stockholder approval of the Reclassification, the Board will “potentially” declare and pay a dividend of two shares of the Class C capital stock for each outstanding share of Class A common stock and Class B common stock (the “Dividend”). According to the Proxy Statement, if the Dividend is declared and paid, Facebook intends to file the appropriate applications so that the Class C capital stock will be listed on the NASDAQ stock exchange. The Proxy Statement states further, “if the Dividend is distributed, we expect that the market price for the shares of our Class A common stock will generally reflect the effect of a three-for-one stock split.”

33. The Proxy Statement provides investors with a summary description of how the Reclassification was developed. According to the Proxy Statement, a “Special Committee was established in August 2015 as a committee of our board of directors to (i) review, analyze, evaluate, and negotiate a potential reclassification of our capital or voting structure in order to maintain [the Company’s] founder-controlled structure, (ii) make a recommendation to [the] board of directors regarding such a reclassification, and (iii) to the extent delegable by [the] board of directors to the Special Committee under applicable law, approve or disapprove such a reclassification on behalf of the board of directors.” The Special Committee consisted of Hellmann, Andreessen, and Bowles.

34. The most significant points of the negotiations between Zuckerberg and the Special Committee were the change in corporate governance, four new automatic “sunset” triggers, and the agreement of Zuckerberg to enter into a separate agreement referred to as the “Founder Agreement.” On April 22, 2016, the Special Committee met and unanimously declared that the Reclassification and Dividend were “advisable and in the best interests of us and our stockholders” other than Zuckerberg and his affiliates, as to whom no determination was made.

35. The Special Committee’s “negotiations” with Zuckerberg did not amount to arm’s length bargaining. The “sunset” triggers were proposed by Zuckerberg to ensure that Zuckerberg does not leave the Company and “use his talents to compete against [the Company].” This provisions is meaningless as Zuckerberg clearly has no intention of leaving the Company that has made him billions and that he founded. Further, the so-called “amendments” to Corporate Governance did nothing to change the status quo because the Company already has an independent compensation and governance committee. The Proxy states,

In connection with the proposed reclassification described in Proposal Seven, we are amending our corporate governance guidelines to provide that we will not avail ourselves of the "controlled company" exemption with respect to the independence of the members of our compensation & governance committee. Therefore, **we intend to continue to have a compensation & governance committee that is composed entirely of independent directors.** (emphasis added)

36. In addition, the Founders Agreement, whereby in any takeover or

merger Class B shares would receive the same consideration of Class A and Class C shares, is speculative and meaningless, as a practical matter. Facebook has a market capitalization of \$332 billion which dwarfs its competitors and almost any other company on the planet--it is not a realistic takeover candidate. Nor, given Delaware precedent, would a plan involving disparate treatment likely succeed. The Founders Agreement is thus nothing more than a fig-leaf protection.

37. The Special Committee's efforts did not amount to arm's length bargaining. The Special Committee: (a) agreed to allow Zuckerberg to approve this deal by fiat at the upcoming annual meeting, as there is no provision allowing Class A stockholders to vote as a separate class with regards to the Reclassification, thus allowing Zuckerberg to control the vote through his ownership of a majority of the Class B shares; (b) never sought or received an opinion from its financial advisor that the Reclassification is fair to the public Class A shareholders; (c) obtained "concessions" from Zuckerberg that are essentially meaningless, thus negating any possible claim that there was arm's-length bargaining; (d) allowed director Desmond-Hellmann, who is the Chief Executive Officer of the Bill & Melinda Gates Foundations, to serve on the Special Committee as a "disinterested" member despite the relationship between Zuckerberg, Bill Gates, and the Bill & Melinda Gates Foundation; (e) allowed director Marc Andreessen to serve on the Special Committee as a "disinterested"

member despite the fact he sold his company, Oculus, to Facebook in 2014 and thus is indebted to Facebook; (f) never had its financial advisor place a value or range of values on the benefit of the Reclassification to Zuckerberg; (g) did not prearrange for compensation for the Special Committee, leaving its eventual compensation to be decided by Zuckerberg; (h) adopted no independent oversight mechanism to ensure that future issuances of Class C shares do not unduly benefit Zuckerberg; and (i) failed to bargain for the right of Class A shareholders to elect even one independent director, so that such shareholders might have a voice; and (j) failed to provide for any compensation for the Class A shareholders whose investments will be adversely affected by having their holdings cleaved into voting and non-voting shares, without their consent or approval. It also does not appear that the Special Committee ever threatened to simply walk away from the deal. Rather, they seemed to approach the proposal as something they had to approve even if all they obtained were anemic and meaningless “concessions.”

38. The Reclassification is part of an effort to further entrench Zuckerberg’s voting power and control over the Company without any legitimate business purpose. Moreover, this ploy will harm Plaintiff and the class by further distancing them from Facebook’s corporate governance and leaving them without meaningful voice on important issues that the Company will face in coming years, even as the controlling stockholder plans on reducing his stake in the Company.

39. Moreover, the Reclassification and potential Dividend will inject an element of uncertainty into what should be a blue-chip investment made by Facebook's stockholders. For example, Class C shares will likely trade at a discount to Class A shares, or the market for these shares may not fully develop, creating liquidity issues for the Company's stockholders. As stated in the Proxy Statement:

We believe that a robust and sufficiently liquid market for the Class C capital stock will develop following the Dividend, if it is declared and paid, particularly due to the fact that the Dividend would be structured to provide the Class C capital stock with greater liquidity than the Class A common stock. However, it is possible that such a liquid market will not develop. Even if such a market does develop, there can be no assurance that the Class C capital stock will not trade at a discount to the Class A common stock. If a liquid market does not develop or the Class C capital stock trades at a discount to the Class A common stock, it is possible that we will not be able to achieve all of the benefits that we anticipate from the issuance of the Class C capital stock.

40. It is elsewhere iterated in the Proxy Statement that the disparity in voting rights may result in disparate trading prices for Class A and Class C stock:

The trading prices for shares of Class A common stock and Class C capital stock may be affected by the relative voting rights between these two classes of stock. Because the Class A common stock carries voting rights, it is possible that it could trade at a premium compared to the Class C capital stock. This is particularly true if investors were to place a premium on owning our shares that have voting rights, as opposed to shares without voting rights.

Furthermore, the trading price of shares of Class A common stock and Class C capital stock will continue to depend on many factors, including our future performance, the relative trading liquidity of the

Class A common stock and the Class C common stock, general market conditions, and conditions relating to companies in businesses and industries similar to us. Accordingly, we cannot predict the prices at which shares of Class A common stock and Class C capital stock will trade following the Reclassification, just as we could not predict the price at which shares of Class A common stock would trade absent the Reclassification and the potential Dividend.

41. In addition, while the Company has said that 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 Series C shares, forcing Facebook to pay for such companies at a premium. As stated in the Proxy Statement:

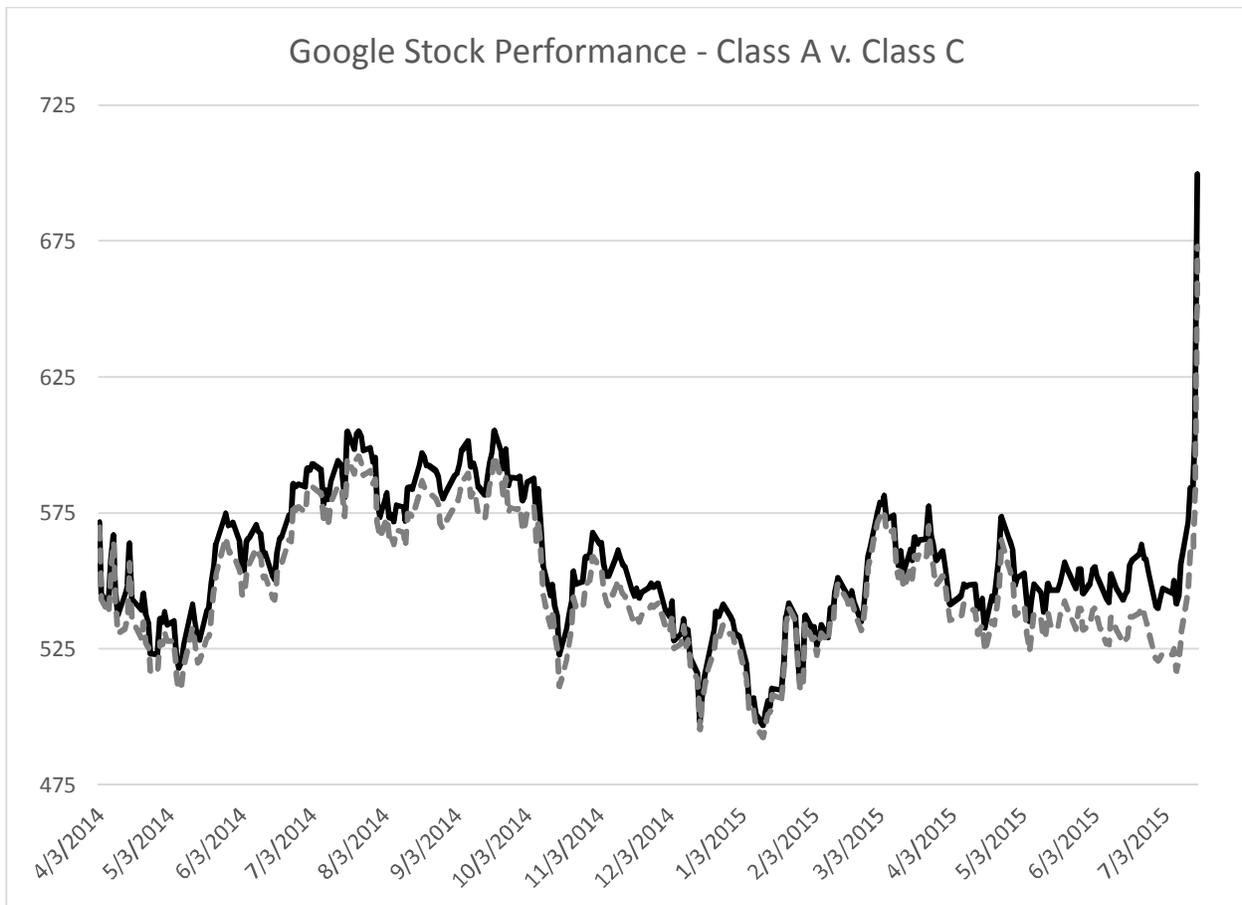
We may use shares of Class C capital stock from time to time as consideration in connection with the acquisition of other companies. It is possible that companies that we are interested in acquiring will not agree to accept shares of Class C capital stock because such shares of capital stock carry no voting rights, or we may decide to issue Class A common stock or Class B common stock in connection with an acquisition for other reasons. In these instances, if we still wanted to pay for the acquisition with stock consideration, we would have to issue shares of Class A common stock or Class B common stock, which would result in both economic and voting dilution to all stockholders. Companies that we are interested in acquiring may also refuse to accept shares of Class C capital stock if such stock trades at a significant discount to the shares of Class A common stock or if the trading market for the shares of Class C capital stock is not well developed or suffers from limited liquidity.

Employees or other service providers may not wish to receive shares of Class C capital stock as part of our equity-based compensation programs. This is particularly true if the shares of Class C capital stock trade at a significant discount to the shares of Class A common stock or if the trading market for the shares of Class C capital stock is not well-developed or suffers from limited liquidity. If employees are

not adequately incentivized by receiving shares of Class C capital stock, then we might have to issue shares of Class A common stock in order to provide sufficient equity incentives, which would result in both economic and voting dilution to all stockholders. Alternatively, we might have to find other ways to incentivize our employees.

If the Class C capital stock trades at a discount to the Class A common stock, companies that we are interested in acquiring may demand more shares of Class C capital stock in exchange for accepting such stock as consideration. The same is true for employees in connection with equity-based compensation. If this occurs, then issuances of Class C capital stock may ultimately be more economically dilutive to all of our stockholders than issuances of Class A common stock.

42. The example of Google is instructive. As depicted in the following chart, immediately after Google's stock split in April 2014, Class C shares (dotted line) immediately began trading at a discount to Class A shares (solid line), and never looked back:



**C. The Proxy Statement Is Incomplete and Misleading**

43. The Proxy Statement fails to provide the Company’s stockholders with material information, and provides them with materially misleading information, in breach of Defendants’ fiduciary duties of good faith and candor that they owe to Facebook’s investors. For example:

- a) The Proxy Statement does not disclose the compensation being paid to the Special Committee, including whether it was made contingent on the Reclassification being approved and the Dividend declared;
- b) The Proxy Statement does not disclose the terms of Wachtell, Lipton, Rosen & Katz’s or Evercore Group L.L.C.’s engagements,

including whether their fees were contingent on the Reclassification (in the case of Wachtell) or the Dividend (in the case of both Wachtell or Evercore) being approved;

- c) The Proxy Statement does not disclose any analyses, opinions on fairness or other report prepared by Wachtell or Evercore, or a fair summary of same, with respect to the Reclassification and Dividend;
- d) The Proxy Statement fails to disclose the criteria used by the Board in selecting Desmond-Hellmann, Andreessen, and Bowles to serve on the Special Committee;
- e) The Proxy Statement fails to disclose what, if any, efforts were taken by the Special Committee to condition approval of the Reclassification on a majority-of-the-minority vote, to negotiate for directors to be elected by solely Class A stockholders, or to take any other efforts to protect the substantive and procedural interests of the Company's non-controlling stockholders;
- f) The Proxy Statement states that "[i]f the Dividend is declared and paid, [Facebook] believe that the market price for the shares of Class A common stock will generally reflect the effect of a three-for-one stock split once the Dividend is paid and, accordingly, the market price of the Class A common stock will decrease by approximately two-thirds. Assuming that the Dividend is declared and paid, [Facebook] expect[s] the market price of shares of Class C capital stock to be approximately equal to the market price of shares of Class A common stock (as such price is adjusted as a result of the Dividend)." The Proxy Statement must disclose the reasons Facebook believes that Class C stock will not trade at a discount to Class A stock, as well as the analyses, if any conducted by the Board and/or its advisors in determining whether the Capital C capital stock will trade at a discount to the Class A common stock.

44. While the Class A stockholders cannot prevent the Reclassification given the current unfair procedure of the upcoming vote, Facebook nonetheless is

requiring a stockholder vote. A truthful and complete Proxy Statement in advance of this vote is mandated by law.

45. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent irreparable harm to the Company's stockholders.

46. Plaintiff has no adequate remedy at law. Only through the exercise of the Court's equitable power will Facebook's stockholders be protected from irreparable injury that would arise from the creation of a non-voting class of stockholders and the entrenchment of Zuckerberg.

### **IRREPARABLE HARM**

47. Plaintiff has no adequate remedy at law. Only through the exercise of the Court's equitable power will Facebook's shareholders be protected from irreparable injury that would arise from Facebook creation of a non-voting class of stockholders and the entrenchment of Zuckerberg.

### **CLASS ACTION ALLEGATIONS**

48. 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 itself and all stockholders of Facebook (except Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of Defendants) who are or will be harmed as a result of the

breaches of fiduciary duty and other misconduct complained of herein (the “Class”).

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

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

51. The Class is so numerous that joinder of all members is impracticable. Consequently, the number of Class members is believed to be in the 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.

52. 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 Director Defendants have breached and continue to breach their fiduciary duties by entrenching themselves at the expense of the Company’s shareholders; and
- (b) whether the Class is entitled to injunctive relief and/or damages.

53. 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.

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

55. 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.

56. 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.

## **CAUSES OF ACTION**

### **COUNT I**

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

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

58. As Directors of Facebook, the Director Defendants owe to Facebook's stockholders fiduciary duties of loyalty, good faith and candor. These fiduciary duties required them to place the interest of Facebook and its shareholders above their own interests and/or the interests of the Company's insiders.

59. The Director Defendants breached their fiduciary duty when they acted to create a new class of non-voting shareholders for the sole purpose of entrenching the domination of Zuckerberg over Facebook's operations and filed an incomplete and misleading Proxy Statement in defense of their illegal and improper conduct.

60. As Facebook's controlling stockholder, Zuckerberg owes to Facebook's stockholders fiduciary duties of loyalty, good faith and candor. These fiduciary duties required him to place the interest of Facebook and its shareholders above his own interests and/or the interests of the Company's insiders.

61. Zuckerberg breached his fiduciary duty when he acted to create a new class of non-voting shareholders for the sole purpose of entrenching the domination of Zuckerberg over Facebook's operations and filed an incomplete and misleading Proxy Statement in defense of his illegal and improper conduct.

62. As a result of the foregoing, Plaintiff and the Class have been harmed, as their influence over Company operations and strategy will be diminished and they stand to be frozen out of management decisions on an ongoing, long-term basis, and the value of their investment is at immediate risk.

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

**COUNT II**  
**Breach of Fiduciary Duty Against Defendants**

64. Plaintiff realleges the preceding paragraphs as set forth above and incorporates them herein by reference.

65. Plaintiff brings this claim individually and not on behalf of the class.

66. Defendants disseminated the Proxy Statement which contained false and misleading statements and omitted material facts, including material information concerning the Reclassification.

67. The acts of Defendants in distributing the materially false and misleading Proxy Statement have injured the Company by interfering with proper governance on its behalf that follows the free and informed exercise of the stockholders' right to vote.

68. The misrepresentations and omissions in the Proxy Statement are material to Plaintiff, and Plaintiff will be deprived of his entitlement to make a fully informed decision if such misrepresentations and omissions are not corrected prior to the Special Meeting.

**PRAYER FOR RELIEF**

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;
- 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 any 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.

Dated: April 29, 2016

MCCARTER & ENGLISH, LLP

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