

1 Derek G. Howard (Bar. No. 118082)
derek@derekhowardlaw.com
2 **DEREK G. HOWARD LAW FIRM, INC.**
42 Miller Avenue
3 Mill Valley, CA 94941
Tel. (415) 432-7192
4 Fax (415) 524-2419

5 Daniel J. Mulligan (Bar No. 103129)
dan@jmglawoffices.com
6 Larry W. Gabriel (Bar No. 68329)
lgabriel@bg.law
7 **Jenkins Mulligan & Gabriel LLP**
10085 Carroll Canyon Rd., Ste 210
8 San Diego, CA 92131-1100
Tel. (858) 527-1792
9 Fax (858) 527-1793

10 *Attorneys for Plaintiff James Karon*
Derivatively on behalf of Facebook, Inc.

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14
15 Plaintiff, JAMES KARON, derivatively on
16 behalf of
17 FACEBOOK, INC., a Delaware Corporation,
18
19 Nominal Defendant

20 v.

21 MARK ZUCKERBERG, SHERYL K.
22 SANDBERG, MARC L. ANDREESSEN,
23 PETER A. THIEL, REED HASTINGS,
24 ERSKINE B. BOWLES, SUSAN D.
DESMOND-HELLMAN, and JAN KOUM,
25
26 Defendants.

Case No.

**SHAREHOLDER DERIVATIVE
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiff James Karon (“Plaintiff”), a shareholder of Facebook, Inc.
2 (“Facebook” or the “Company”), brings this action on Facebook’s behalf seeking
3 relief under federal and state laws for the misconduct perpetrated against the Company
4 by its current and former officers and directors identified below (collectively, the
5 “Defendants”) arising from the misappropriation and unauthorized use of personal
6 information for 50 million Facebook users. Plaintiff, through counsel, has conducted
7 an investigation into the facts supporting the allegations in this Complaint and
8 believes discovery will elicit further evidentiary support for the allegations herein.

9 I. INTRODUCTION

10 1. This lawsuit stems from multiple public reports of Defendants
11 mishandling of Facebook. On March 17, 2018, both the *New York Times* and the
12 *Guardian’s Observer* reported that Cambridge Analytica, a data firm retained to assist
13 the Trump election campaign, had accessed and retained information of 50 million
14 Facebook users without their permission and informed consent. A whistleblower had
15 revealed that Cambridge Analytica used the users’ personal information in early 2014
16 to build a system that could profile U.S. voters and then target those individuals with
17 personalized political advertisements. Christopher Wylie (“Wylie”), a Canadian data
18 analytics expert who worked with Cambridge Analytica and Cambridge research
19 professor Dr. Aleksandr Kogan (“Kogan”) to devise and implement the scheme, told
20 the *Observer*: “We exploited Facebook to harvest millions of people’s profiles. And
21 built models to exploit what we knew about them and target their inner demons. That
22 was the basis the entire company was built on.”

23 2. This was not a hack as that term is now commonly used. Rather, the
24 misappropriated user data was collected through an application or “app” called
25 thisisyourdigitallife” designed by Kogan and his company, Global Science Research
26 (“GSR”). GSR, in collaboration with Cambridge Analytica, convinced Facebook
27 users to open their app to take a personality test with the collected data supposedly to
28 be used for academic purposes. Approximately 270,000 people downloaded the app

1 using their Facebook login credentials, which, under Facebook’s developer platform,
2 allowed Kogan to access not only the app users’ personal data, but also every one of
3 their Facebook friends. Kogan ultimately collected data on 50 million Facebook
4 users, which he then shared with Cambridge Analytica for use on the Trump election
5 campaign. At all times, Defendants knew that this use of an app was possible given
6 the operating system used by Facebook.

7 3. Facebook learned about this specific misuse in 2015. Inexplicably, while
8 this massive data breach was known to Facebook and its management for several
9 years, it was never disclosed to Facebook’s users or the public markets.

10 4. As reported by the *Observer* and confirmed by Facebook in recent
11 statements, Company officials learned that Kogan had violated Facebook’s platform
12 policies, including those relating to its developer application programming interface
13 (“API”), as early as 2015, but did not inform the millions of affected users or make
14 reasonable and meaningful efforts to recover and secure the private information of
15 the individual users. The *New York Times* reported that copies of the data harvested
16 for Cambridge Analytica could still be found online in 2017, and its reporting team
17 had viewed some of the raw data.

18 5. The recent revelations regarding Facebook’s actual practices with respect
19 to user privacy and data security have severely damaged the Company’s reputation
20 and imposed significant costs on it, including regulatory investigations, lost business,
21 exposure to litigation, and other damages. In the first two days following public
22 revelation of the data breach, Facebook lost \$50 billion in market value. Federal
23 regulators and state prosecutors reportedly opened investigations into Facebook, and
24 politicians in the United States and Europe are calling for Facebook’s Chief Executive
25 Officer (“CEO”), defendant Mark Zuckerberg (“Zuckerberg”), to testify before them.

26 6. The *New York Times* also reported on March 19, 2018, that Facebook’s
27 Chief Security Officer, Alex Stamos (“Stamos”), would be stepping down after
28 internal disagreement with the way the Company handled concerns about

1 misinformation in the 2016 U.S. presidential election.

2 7. Facebook and its Board of Directors should have been extra vigilant with
3 respect to such practices. Long before the Cambridge Analytica breach occurred,
4 Facebook's Board was informed by current and former Facebook employees, among
5 numerous other sources, about the risks associated with Facebook's platform policies
6 and practices with respect to user privacy and data security. In addition, Facebook
7 had been subject to government investigations and civil lawsuits alleging that
8 Facebook's user privacy practices violated the law. In 2009, Canada's Privacy
9 Commissioner found that Facebook's data handling violated Canadian law, noting that
10 "[a]pplication developers have virtually unrestricted access to Facebook users'
11 personal information."

12 8. Despite these prior red flags, and their heightened duty to ensure
13 Facebook's compliance with pertinent privacy rules and regulations, Defendants failed
14 to ensure that Facebook implemented a reasonable system of internal controls and
15 systems that would enable the Company to detect and prevent similar issues. Worse,
16 even after learning of the Cambridge Analytica information leak by at least 2015,
17 neither Zuckerberg nor Facebook's Chief Operating Officer ("COO"), Sheryl K.
18 Sandberg ("Sandberg"), nor any of the other Defendants, disclosed the leak or notified
19 Facebook users that their personal information had been compromised. Nor did
20 Defendants fix the Facebook system so as to avoid such breaches in the future.

21 9. To the contrary, with knowledge of the breach, Defendants continued to
22 downplay concerns about access to user information when addressing Facebook's role
23 in the 2016 U.S. election. Defendants falsely denied that Facebook had experienced
24 any data leaks or security breaches and continued to assure investors that Facebook
25 maintained "effective" internal controls and systems that automatically detected
26 "suspicious activity." Defendants also publicly affirmed the Company's commitment
27 to continually monitor and improve its data security systems. "[M]isleading people or
28 misusing their information is a direct violation of our policies and we will take swift

1 action against companies that do, including banning those companies from Facebook
2 and requiring them to destroy all improperly collected data,” a Facebook spokesman
3 said in a statement to the *Guardian* in 2015.

4 10. Despite these publicly professed policies, it was not until the *Observer*
5 sought comment from Facebook just a few days prior to breaking the news of the
6 Cambridge Analytica leak – but more than two years after the incident was first
7 reported to Facebook officials – that Facebook announced that it was (finally)
8 suspending Cambridge Analytica and Kogan from the platform pending further
9 information over misuse of data. Facebook also said that it was suspending Wylie
10 from accessing the platform while it carried out its own internal investigation, despite
11 his role as a whistleblower.

12 11. Just one month earlier, in February 2018, both Facebook and the CEO of
13 Cambridge Analytica, Alexander Nix (“Nix”), had told a U.K. parliamentary inquiry
14 on fake news that Cambridge Analytica did not have or use private Facebook data.
15 Simon Milner, Facebook’s U.K. policy director, when asked if Cambridge Analytica
16 had Facebook user data, told U.K. officials: “They may have lots of data but it will not
17 be Facebook user data. It may be data about people who are on Facebook that they
18 have gathered themselves, but it is not data that we have provided.” Cambridge
19 Analytica’s Nix told officials: “We do not work with Facebook data and we do not
20 have Facebook data.”

21 12. However, Wylie, a Canadian data analytics expert who worked with
22 Cambridge Analytica and Kogan to devise and implement the scheme, showed a
23 dossier of evidence about the data misuse to the *Observer* which appears to raise
24 questions about the truthfulness of their testimony. Wylie also provided the evidence
25 to the U.K.’s National Crime Agency’s cybercrime unit and the Information
26 Commissioner’s Office, including emails, invoices, contracts and bank transfers that
27 reveal more than 50 million profiles – mostly belonging to registered U.S. voters –
28 were harvested from the site in one of the largest-ever breaches of Facebook data.

1 Wylie said Facebook was in fact fully aware of the volume of data being pulled by
2 Kogan's app. "Their security protocols were triggered because Kogan's apps were
3 pulling this enormous amount of data, but apparently Kogan told them it was for
4 academic uses," Wylie said. "So they were like: Fine."

5 13. The evidence Wylie supplied to U.K. and U.S. authorities includes a
6 letter from Facebook's own lawyers sent to him in August 2016, asking him to destroy
7 any data he held that had been collected by GSR, the company set up by Kogan to
8 harvest the profiles. "Because this data was obtained and used without permission,
9 and because GSR was not authorized to share or sell it to you, it cannot be used
10 legitimately in the future and must be deleted immediately," the letter said. According
11 to Wylie, Facebook did not pursue a response when the letter initially went
12 unanswered for weeks because Wylie was travelling, nor did it follow up with forensic
13 checks on his computers or storage. "That to me was the most astonishing thing. They
14 waited two years and did absolutely nothing to check that the data was deleted. All
15 they asked me to do was tick a box on a form and post it back."

16 14. Even recently, after Facebook finally admitted that user information was
17 misappropriated, it denied that the harvesting of tens of millions of profiles by GSR
18 and Cambridge Analytica was a data "breach" or that it was due to any defect in the
19 Company's systems. In a statement posted in Facebook's newsroom on March 16,
20 2016, Facebook's attorneys said that Kogan "gained access to this information in a
21 legitimate way and through the proper channels" but "did not subsequently abide by
22 our rules" because he passed the information on to third parties. Facebook said it had
23 removed the app in 2015 and required certification from everyone with copies that the
24 data had been destroyed, although the letter to Wylie did not arrive until the second
25 half of 2016.

26 15. According to Facebook, SCL Elections, an affiliate, had worked with
27 Facebook over the period to ensure it was satisfied no terms had been "knowingly
28 breached" and provided a signed statement that all data and derivatives had been

1 deleted. Facebook did not verify this in any meaningful way. "Several days ago," a
2 Facebook attorney wrote, "we received reports that, contrary to the certifications we
3 were given, not all data was deleted." Facebook also said the Company is now
4 "moving aggressively to determine the accuracy of these claims." In other words, the
5 investigation was initiated only in response to regulators and amidst litigation and
6 public outcry, not as a decision in the ordinary course of business to address the illicit
7 information-sharing that Defendants knew was occurring and permitted by its policies.
8 Facebook's lawyers also threatened to sue the *Observer* for supposedly "false and
9 defamatory" allegations, insisting that no "breach" had occurred.

10 16. In an update to the statement posted on March 18, 2016, Facebook again
11 denied that any "breach" or misappropriation of user data had occurred, stating, "The
12 claim that this is a data breach is completely false. Aleksandr Kogan requested and
13 gained access to information from users who chose to sign up to his app, and everyone
14 involved gave their consent. People knowingly provided their information, no systems
15 were infiltrated, and no passwords or sensitive pieces of information were stolen or
16 hacked."

17 17. Facebook Chief Security Officer Alex Stamos ("Stamos") also initially
18 posted a series of tweets defending claims of a data breach, but later deleted those
19 tweets and said: "I should have done a better job weighing in. There are a lot of big
20 problems that the big tech companies need to be better at fixing. We have collectively
21 been too optimistic about what we build and our impact on the world. Believe it or not,
22 a lot of the people at these companies, from the interns to the CEOs agree."

23 18. Since the revelations, Facebook has been under fire from customers,
24 analysts, and government officials alike. Facebook is now facing government
25 inquiries in the United States and Europe regarding its user privacy and data sharing
26 practices.

27 19. Facebook is also reportedly the target of an inquiry by the Federal Trade
28 Commission ("FTC"), which obtained a consent decree against Facebook in 2011 that

1 required the Company to get express permission from and notify users before sharing
2 their data with third parties. Facebook could face massive fines if the FTC determines
3 that it violated the terms of the agreement.

4 20. Facebook's management and Board were well aware of the FTC consent
5 order and the potential repercussions it had on the Company if violated, and thus had
6 this additional affirmative obligation to ensure the Company's compliance with its
7 terms. In 2011, Facebook entered into the consent order to settle charges that the
8 Company deceived consumers by telling them they could keep their information on
9 Facebook private, and then repeatedly allowing it to be shared and made public. The
10 consent order required Facebook to take several steps to make sure complied with the
11 privacy of its users, including giving consumers clear and prominent notice and
12 obtaining consumers' express consent before their information is shared beyond the
13 privacy settings they have established. The consent order also barred Facebook from
14 making any further deceptive privacy claims and required Facebook to get consumers'
15 approval before it changes the way it shares their data. In addition, Facebook was
16 (and is) required to obtain periodic assessments of its privacy practices by
17 independent, third-party auditors for the next 20 years.

18 21. However, rather than addressing these underlying problem, Defendants
19 continued to fail to implement and maintain adequate internal controls and procedures
20 to detect and prevent similar misconduct from occurring at Facebook. Worse,
21 Defendants failed to ensure that Facebook complied with the terms of the FTC
22 consent order.

23 22. In an interview with the *Washington Post*, David Vladeck, former
24 director of the FTC's Bureau of Consumer Protection, said the Cambridge Analytica
25 incident may have violated Facebook's 2011 consent decree. "I will not be surprised if
26 at some point the FTC looks at this. I would expect them to," he said. Jessica Rich,
27 who also served as director of the bureau and was deputy director under Vladeck, said,
28 "Depending on how all the facts shake out, Facebook's actions could violate any of all

1 of these provision, to the tune of many millions of dollars in penalties. They could
2 also constitute violations of both U.S. and EU laws," adding, "Facebook can look
3 forward to multiple investigations and potentially a whole lot of liability here."

4 23. Despite this backdrop, until the past few days, Defendants continually
5 claimed that Facebook did nothing wrong and placed the blame for the Cambridge
6 Analytica leak on Kogan. On March 20, 2018, Facebook issued a statement saying
7 that "[t]he entire company is outraged we were deceived."

8 24. However, on March 21, 2018, defendant Zuckerberg finally addressed
9 the Cambridge Analytica scandal for the first time and admitted that Facebook was at
10 fault. "This was a breach of trust between Kogan, Cambridge Analytica, and
11 Facebook. But it was also a breach of trust between Facebook and the people who
12 share their date with us and expect us to protect it. We need to fix that." In a
13 Facebook newsroom post entitled "Hard Questions: Update on Cambridge Analytica,"
14 Zuckerberg wrote: "We have a responsibility to protect your data, and if we can't then
15 we don't deserve to serve you." Notably, Zuckerberg did not explain how Facebook
16 came to have such a close relationship with Kogan.

17 25. On March 22, 2018, the *Guardian* revealed that "Facebook provided the
18 dataset of 'every friendship formed in 2011 in every country in the world at the
19 national aggregate level' to Kogan" for a study on international friendships that was
20 co-authored by two Facebook employees in 2015. A University of Cambridge press
21 release on the study's publication noted that the paper was "the first output of ongoing
22 research collaborations between [Kogan's] lab in Cambridge and Facebook."
23 Facebook spokeswoman Christine Chen reportedly told the *Guardian* that the
24 Company "ended the relationship [with Kogan] soon after [the Company's
25 investigation], in 2016." However, a Facebook spokesperson told *The Intercept* in
26 2017 that "[o]ur investigation to date has not uncovered anything that suggests
27 wrongdoing," and Facebook would not respond to inquiries about whether any other
28 collaborations had occurred. Moreover, Facebook did not act to ban Kogan and

1 Cambridge Analytica from the website until news of the leak was reported in March
2 2018.

3 26. In short, Defendants failed—repeatedly, and brazenly and in
4 contradiction to their public statements—to serve the best interests of Facebook and
5 its shareholders, and the public at large. As a result of their misconduct, Defendants
6 are liable to the Company under Section 14(a) of the Securities Exchange Act of 1934
7 (“Exchange Act”) as well as for breaches of their fiduciary duties and other violations
8 of state law.

9 **II. JURISDICTION AND VENUE**

10 27. This Court has subject matter jurisdiction over this action under Article
11 III of the United States Constitution (diversity) and 28 U.S.C. § 1331 because of
12 claims arising under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and SEC
13 regulation 14a-9 promulgated thereunder, and has jurisdiction over the state-law
14 claims in accordance with 28 U.S.C. § 1367. The Court has exclusive jurisdiction
15 under Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

16 28. This Court has jurisdiction over each of the Defendants because each
17 defendant has sufficient contacts with California in order to render the exercise of
18 jurisdiction by this Court over them permissible under California Code of Civil
19 Procedure § 410.10 as well as the United States and California Constitutions and
20 traditional notions of fair play and substantial justice. Facebook is headquartered in
21 California, and through their misconduct, Defendants caused substantial harm and
22 injury in California, and to California citizens.

23 29. Venue is proper in this District in accordance with Section 27 of the
24 Exchange Act. Venue is also proper under 28 U.S.C. § 1391(b) because: (i) Facebook
25 maintains its principal place of business in this District, and has its most significant
26 contacts with the Northern District of California; (ii) one or more of the Defendants
27 resides in this District; (iii) a substantial portion of the transactions and wrongs
28 complained of in this Complaint occurred in this District; and (iv) Defendants

1 received substantial compensation in this District by doing business here and engaging
2 in numerous activities that had effects in this District.

3 30. This action is not a collusive one to confer jurisdiction that the court
4 would otherwise lack.

5 **III. PARTIES**

6 **Plaintiff**

7 31. Plaintiff, James Karon, a citizen of Georgia, is a current shareholder of
8 Facebook stock and has continuously held his Facebook stock during the entire period
9 of wrongdoing alleged herein.

10 **Nominal Defendant**

11 32. Nominal defendant Facebook is a Delaware corporation headquartered at
12 1601 Willow Road, Menlo Park, CA 94025. Accordingly, Facebook is a citizen of
13 Delaware and California. Facebook operates a social networking website that allows
14 people to communicate with their family, friends, and coworkers. Facebook develops
15 technologies that facilitate the sharing of information, photographs, website links, and
16 videos. By the end of 2017, Facebook had more than 2.2 billion active users. The
17 company's mission is "to give people the power to build community and bring the
18 world closer together. People use Facebook to stay connected with friends and family,
19 to discover what's going on in the world, and to share and express what matters to
20 them." Facebook's securities trade on the NASDAQ under the ticker symbol "FB."

21 **Individual Defendants**

22 33. Defendant Zuckerberg is the Founder, Chairman and Chief Executive
23 Officer ("CEO") of Facebook. Zuckerberg is responsible for Facebook's day-today
24 operations, as well as the overall direction and product strategy of the Company, and
25 is the Company's controlling stockholder with ownership of stock and proxies for
26 stock representing more than 60% of Facebook's voting power, though he owns 16%
27 of Facebook's total equity value.

28 34. Defendant Sandberg is the Chief Operating Officer ("COO") of

1 Facebook since 2008 and a director since 2012.

2 35. Defendant Marc Andreessen (“Andreessen”) is a member of the Board
3 and has been a director of the Company since June 2008. Andreessen is also a member
4 of Facebook’s Audit Committee and Compensation & Governance Committee.

5 36. Defendant Peter A. Thiel (“Thiel”) is a member of the Board and has
6 been a director of the Company since April 2005. Thiel is also a member of the
7 Company’s Compensation & Governance Committee.

8 37. Defendant Reed Hastings (“Hastings”) is a member of the Board and has
9 been a director of the Company since June 2011. Hastings also serves as Chair of the
10 Company’s Compensation & Governance Committee.

11 38. Defendant Erskine B. Bowles (“Bowles”) is a member of the Board and
12 has been a director of the Company since September 2011. Bowles also serves as the
13 Chair of the Company’s Audit Committee.

14 39. Defendant Dr. Susan Desmond-Hellmann (“Desmond-Hellmann”) is a
15 member of the Board and has been a director of the Company since March 2013.
16 Desmond-Hellmann is also a member of Facebook’s Audit Committee and the
17 Company’s Lead Independent Director.

18 40. Jan Koum (“Koum”) is a Facebook director and has been since October
19 2014.

20 41. The individuals identified in Paragraphs 33-40 above are referenced
21 collectively in this Complaint as the “Defendants.”

22 **Other Relevant Persons**

23 42. Kogan, a.k.a. Dr. Spectre, is a psychology professor and data scientist at
24 the University of Cambridge and currently resides in the United Kingdom. Kogan
25 created an app called thisisyourdigitallife which was used to collect the data on
26 millions of Facebook users.

27 43. Global Science Research (“GSR”) is a privately held company
28 headquartered in Cambridge, United Kingdom. The company was founded in 2014 by

1 Kogan and optimizes marketing strategies using big data and psychological sciences.

2 44. Cambridge Analytica is a privately held company that offers services to
3 businesses and political parties who want to “change audience behavior.” Cambridge
4 Analytica, which claims to be able to analyze large amounts of consumer data and
5 combine that behavioral science to identify people who organizations can then target
6 with marketing material, was created in 2013 by its British parent company, SCL
7 Group, and Nix. Cambridge Analytica is partly owned by Robert Mercer. In 2014,
8 Cambridge Analytica was involved in 44 U.S. political races. In 2015, Cambridge
9 Analytica became known as the data analysis company that was working with Ted
10 Cruz’s presidential campaign. In 2016, Cambridge Analytica began working with
11 Donald Trump’s presidential campaign and the Leave EU campaign for the United
12 Kingdom’s withdrawal from the European Union.

13 45. Strategic Communication Laboratories (“SCL”) is Cambridge
14 Analytica’s parent company and is headquartered in the U.K.

15 46. Nix is the former CEO of Cambridge Analytica and a director of the
16 Strategic Communication Laboratories (“SCL”) Group. Nix set up Cambridge
17 Analytica in 2013 and has been its CEO until he was suspended on March 20, 2018
18 after video revealed Nix talking about how his company used “honey traps, bribery
19 stings, and prostitutes for opposition research.” Nix currently resides in the United
20 Kingdom. According to Nix, Cambridge Analytica was set up “to address the vacuum
21 in the US Republican political market” after Mitt Romney lost in 2012. Nix said,
22 “The Democrats had ostensibly been leading the tech revolution, and data analytics
23 and digital engagement were areas where Republicans had failed to catch up. We saw
24 this as an opportunity.”

25 **IV. DEFENDANTS WERE OBLIGATED TO SAFEGUARD THE** 26 **COMPANY’S INTERESTS**

27 47. By reason of their positions as officers or directors of Facebook, and
28 because of their ability to control the business, corporate, and financial affairs of the

1 Company, Defendants owed Facebook and its shareholders the duty to exercise due
2 care and diligence in the management and administration of the affairs of the
3 Company, including ensuring that Facebook operated in compliance with all
4 applicable federal and state laws, rules and regulations, including any consent decrees.
5 Defendants were and are generally required to act in furtherance of the best interests
6 of Facebook and its shareholders so as to benefit all shareholders equally and not in
7 furtherance of the Defendants' personal interest or benefit. Each director and officer
8 owes to Facebook and its shareholders the fiduciary duty to exercise good faith and
9 diligence in the administration of the affairs of the Company and in the use and
10 preservation of its property and assets, and the highest obligations of fair dealing.

11 48. Because of their positions of control and authority as directors and
12 officers of Facebook, the Defendants were able to and did, directly or indirectly,
13 exercise control over the wrongful acts detailed in this Complaint. Due to their
14 positions with Facebook, the Defendants had knowledge of material non-public
15 information regarding the Company including the activity described herein.

16 49. To discharge their duties, the Defendants were required to exercise
17 reasonable and prudent supervision over the management, policies, practices, controls,
18 and financial and corporate affairs of the Company. By virtue of such duties, the
19 officers and directors of Facebook were required to, among other things:

- 20 • Manage, conduct, supervise, and direct the employees, businesses,
21 and affairs of Facebook in accordance with laws, rules, and
22 regulations, as well as the charter and by-laws of Facebook;
- 23 • Ensure that Facebook did not engage in imprudent or unlawful
24 practices and that the Company complied with all applicable laws
25 and regulations;
- 26 • Remain informed as to how Facebook was, in fact, operating, and,
27 upon receiving notice or information of imprudent or unsound
28 practices, to take reasonable corrective and preventative actions,

1 including maintaining and implementing adequate financial and
2 operational controls;

- 3 • Supervise the preparation, filing, or dissemination of any SEC
4 filings, press releases, audits, reports, or other information
5 disseminated by Facebook, and to examine and evaluate any reports
6 of examinations or investigations concerning the practices, products,
7 or conduct of officers of the Company;
- 8 • Preserve and enhance Facebook's reputation as befits a public
9 corporation;
- 10 • Exercise good faith to ensure that the affairs of the Company were
11 conducted in an efficient, business-like manner so as to make it
12 possible to provide the highest quality performance of its business;
13 and
- 14 • Refrain from unduly benefiting themselves and other Facebook
15 insiders at the expense of the Company.

16
17 **V. DEFENDANTS KNEW THAT FACEBOOK'S USER PRIVACY**
18 **POLICIES AND INADEQUATE INTERNAL CONTROLS POSED A**
19 **SUBSTANTIAL RISK**

20 50. Throughout the relevant period, Defendants publicly emphasized the
21 extreme importance of user privacy to Facebook's revenues and business, while
22 concealing the fact that the Company's internal controls and policies allowed third
23 party developers to obtain mass amounts of Facebook user information without
24 verification as to the nature of its use or even the ultimate end-user.

25 51. Defendants repeatedly emphasized the importance of data security and
26 user privacy to the Company in Facebook's public statements and acknowledged their
27 specific responsibility for overseeing the substantial risks that a breach, like the
28 Cambridge Analytica incident, posed to the Company. According to Facebook's
preliminary proxy statement, filed with the SEC on or about April 14, 2017 (the "2017

1 Proxy Statement”):

2 Our board of directors as a whole has responsibility for overseeing our risk
3 management. The board of directors exercises this oversight responsibility
4 directly and through its committees. *The oversight responsibility of the board
5 of directors and its committees is informed by reports from our management
6 team and from our internal audit department that are designed to provide
7 visibility to the board of directors about the identification and assessment of
8 key risks and our risk mitigation strategies.*

8 52. Notwithstanding their significant obligations as members of the Board or
9 corporate officers, and (for some of the Defendants) as members of committees
10 charged with overseeing Facebook’s risk exposure, corporate governance, and other
11 critical aspects of the Company’s business and operations, the Defendants maintained
12 policies that allowed Kogan and other third party app developers to obtain mass
13 amounts of Facebook user information without verification as to the nature of its use,
14 and upon learning that 50 million users’ personal information had been
15 misappropriated and used by Cambridge Analytica, failed to notify users or disclose
16 anything about the incident, or its significant impact on the Company, publicly and to
17 investors. Worse, Defendants affirmatively misrepresented and concealed these facts
18 from the Company’s regulators and in public statements and filings with the SEC.

19 **A. DEFENDANTS REGARDED PRIVACY AND DATA SECURITY AS CRITICAL**
20 **AND REPEATEDLY EMPHASIZED THAT IN PUBLIC STATEMENTS**

21 53. Defendants have assured users and investors for years that the Company
22 monitors user accounts for precisely the type of leaks that allowed Cambridge
23 Analytica to obtain millions of users’ personal information without their knowledge,
24 and to retain such information for years after Facebook claimed to have confirmed
25 that neither Cambridge Analytica nor any unauthorized person or entity associated
26 with it was in the possession of any misappropriated user data. This despite the fact
27 that maintaining user privacy and data security has long been considered central to
28 Facebook’s business and growth prospects.

1 developers can receive data that helps them provide better experiences to people, but
2 we don't make money from that directly and have set this up in a way so that no one's
3 personal information is sold to businesses," Bosworth wrote. "If people aren't having a
4 positive experience connecting with businesses and apps then it all breaks down. This
5 is specifically what I mean when we say our interests are aligned with users when it
6 comes to protecting data."

7 **B. DEFENDANTS MAINTAINED POLICIES THAT PERMITTED THIRD PARTY**
8 **DEVELOPERS TO OBTAIN USER INFORMATION**

9 58. Since 2007, Facebook has allowed outside developers to build and offer
10 their own applications within its space. Facebook's Data Use Policy, last revised in
11 2013, states, in relevant part:

12
13 Granting us permission to use your information not only allows us to provide
14 Facebook as it exists today, but it also allows us to provide you with innovative
15 features and services we develop in the future that use the information we
16 receive about you in new ways. While you are allowing us to use the
17 information we receive about you, you always own all of your information.
Your trust is important to us, which is why we don't share information we
receive about you with others unless we have:

- 18 received your permission
19 given you notice, such as by telling you about it in this policy; or
20 removed your name and any other personally identifying information
from it.

21 (https://www.facebook.com/full_data_use_policy).

22 59. Despite this policy, Ben Thompson, creator of Stratechery, which
23 "provides analysis of the strategy and business side of technology and media, and the
24 impact of technology on society," noted that a Facebook developer page from 2013
25 that showed that Facebook's API would allow developers to access user and a user's
26 friends account information.

27 60. Thus, Kogan had all the information he wanted at his fingertips and did
28 not have to hack into Facebook's system to obtain the information.

1 61. Because this was part of the information available to all developers,
2 Facebook recently argued that this was not a “breach” of Facebook’s network. A post
3 by Facebook attorneys published on March 16, 2018, and updated on March 17, 2018,
4 stated, in relevant part:

5 *Update on March 17, 2018, 9:50 AM: **The claim that this is a data***
6 ***breach is completely false.*** Aleksandr Kogan requested and gained
7 access to information from users who chose to sign up to his app,
8 and everyone involved gave their consent. People knowingly
9 provided their information, no systems were infiltrated, and no
10 passwords or sensitive pieces of information were stolen or
11 hacked.

12 *Originally published on March 16, 2018: We are suspending*
13 Strategic Communication Laboratories (SCL), including their
14 political data analytics firm, Cambridge Analytica, from Facebook.
15 Given the public prominence of this organization, we want to take
16 a moment to explain how we came to this decision and why.

17 **We Maintain Strict Standards and Policies**

18 Protecting people’s information is at the heart of everything we do,
19 and we require the same from people who operate apps on
20 Facebook. In 2015, we learned that a psychology professor at the
21 University of Cambridge named Dr. Aleksandr Kogan lied to us
22 and violated our Platform Policies by passing data from an app that
23 was using Facebook Login to SCL/Cambridge Analytica, a firm
24 that does political, government and military work around the
25 globe. He also passed that data to Christopher Wylie of Eunoia
26 Technologies, Inc.

27 Like all app developers, Kogan requested and gained access to
28 information from people after they chose to download his app. His
app, “thisisyourdigitallife,” offered a personality prediction, and
billed itself on Facebook as “a research app used by
psychologists.” Approximately 270,000 people downloaded the
app. In so doing, they gave their consent for Kogan to access
information such as the city they set on their profile, or content
they had liked, as well as more limited information about friends
who had their privacy settings set to allow it. Although Kogan
gained access to this information in a legitimate way and through

1 the proper channels that governed all developers on Facebook at
2 that time, he did not subsequently abide by our rules. By passing
3 information on to a third party, including SCL/Cambridge
4 Analytica and Christopher Wylie of Eunoia Technologies, he
violated our platform policies.

5 When we learned of this violation in 2015, we removed his app
6 from Facebook and demanded certifications from Kogan and all
7 parties he had given data to that the information had been
8 destroyed. Cambridge Analytica, Kogan and Wylie all certified to
us that they destroyed the data.

9 **Breaking the Rules Leads to Suspension**

10 Several days ago, we received reports that, contrary to the
11 certifications we were given, not all data was deleted. We are
12 moving aggressively to determine the accuracy of these claims. If
13 true, this is another unacceptable violation of trust and the
14 commitments they made. We are suspending SCL/Cambridge
15 Analytica, Wylie and Kogan from Facebook, pending further
16 information. We are committed to vigorously enforcing our
17 policies to protect people's information. We will take whatever
steps are required to see that this happens. We will take legal
action if necessary to hold them responsible and accountable for
any unlawful behavior.

18 62. Earlier statements posted by Facebook personnel suggest that Facebook
19 had changed its policies to address the same issues at least a year before Facebook
20 claimed that the Company became aware of such violations.

21 63. By way of example, in mid-2014, Facebook announced a new review
22 process, where the Company would make sure that new apps asked only for data they
23 would actually use. "People want more control," the Company said at that time. "It's
24 going to make a huge difference with building trust with your app's audience."
25 Existing apps were given a full year to switch over to have Facebook review how they
26 handled user data.

27 64. Although Facebook claims it did not receive notice of the Cambridge
28 Analytica incident until 2015, the Company's response to an inquiry from WIRED

1 regarding the leak confirms that Facebook personnel were aware of similar user
2 privacy issues by at least 2014, and knew that updates to Facebook’s policies and data
3 security practices were necessary to alleviate concerns that had already expressed by
4 Facebook users. "In 2014, after hearing feedback from the Facebook community, we
5 made an update to ensure that each person decides what information they want to
6 share about themselves, including their friend list," Facebook stated. "Before you
7 decide to use an app, you can review the permissions the developer is requesting and
8 choose which information to share. You can manage or revoke those permissions at
9 any time." Defendant Zuckerberg later confirmed in his March 21, 2018 post that the
10 Company took steps "in 2014 to prevent bad actors from accessing people’s
11 information in this way" – i.e., as Kogan had done with his app. Whatever steps
12 Facebook had actually taken, if any, were clearly insufficient.

13 65. When Kogan created his app in 2013, Facebook allowed developers to
14 collect information on friends of those who chose to use their apps if their privacy
15 settings allowed it. In an email to university colleagues, Kogan said that in 2014, after
16 he founded GSR, he transferred the app to the company and used an official Facebook
17 Inc. platform for developers to change the terms and conditions of his app from
18 "research" to "commercial use," and that at no point then did the social media
19 company object. Kogan’s email further stated: Through the app, we collected public
20 demographic details about each user (name, location, age, gender), and their page
21 likes (e.g., the Lady Gaga page). We collected the same data about their friends whose
22 security settings allowed for their friends to share their data through apps. Each user
23 who authorized the app was presented with both a list of the exact data we would be
24 collecting, and also a Terms of Service detailing the commercial nature of the project
25 and the rights they gave us as far as the data. Facebook themselves have been on the
26 record saying that the collection was through legitimate means.”

27 66. Kogan’s position contradicts Facebook’s stance that Kogan violated the
28 company’s terms and services and then lied about it. "We clearly stated that the users

1 were granting us the right to use the data in broad scope, including selling and
2 licensing the data," Kogan wrote in a March 18, 2018 email obtained by Bloomberg.
3 "These changes were all made on the Facebook app platform and thus they had full
4 ability to review the nature of the app and raise issues." Facebook's position is
5 suspect given revelations regarding its relationship with Cambridge Analytica and the
6 fact that Facebook researchers co-authored a study with Kogan in 2015 that also used
7 data harvested by a Facebook app, including the anonymous, aggregate dataset of 57
8 billion Facebook friendships that Facebook had provided to Kogan in 2011. Jonathan
9 Albright ("Albright"), research director at the Tow Center for Digital Journalism, told
10 the *Guardian*, "It's not common for Facebook to share that kind of data. It suggests a
11 trusted partnership between [Kogan] and Facebook." Albright also pointed out that it
12 was Facebook which created a system for third parties to access so much personal
13 information in the first place, and noted that system "was designed to share their
14 users' data in meaningful ways in exchange for stock value."

15 67. Defendants not only had the ability (and responsibility) to change
16 Facebook's policies and practices with respect to third party developer access to user
17 information, they were also well aware of similar information leaks and the risk that
18 Facebook's lax data security practices and user privacy policies could cause
19 substantial damage to the Company's business and reputation, yet failed to act to
20 prevent such harm.

21 68. By 2013, Facebook had experienced at least one major attack to its
22 security systems and represented that it was "working continuously" to prevent similar
23 security threats in the future. A February 15, 2013 post entitled "Protecting People
24 On Facebook" states:

25 Facebook, like every significant internet service, is frequently
26 targeted by those who want to disrupt or access our data and

27 infrastructure. As such, *we invest heavily in preventing, detecting,*
28 *and responding to threats that target our infrastructure, and we*
 never stop working to protect the people who use our service.

1 The vast majority of the time, we are successful in preventing harm
2 before it happens, and our security team works to quickly and
3 effectively investigate and stop abuse.

4 Last month, Facebook Security discovered that our systems had
5 been targeted in a sophisticated attack. As soon as we discovered
6 the presence of the malware, we remediated all infected machines,
7 informed law enforcement, and began a significant investigation
8 that continues to this day. We have found no evidence that
9 Facebook user data was compromised.

10 As part of our ongoing investigation, we are working continuously
11 and closely with our own internal engineering teams, with security
12 teams at other companies, and with law enforcement authorities to
13 learn everything we can about the attack, and how to prevent
14 similar incidents in the future. ...

15 We will continue to work with law enforcement and the other
16 organizations and entities affected by this attack. It is in everyone's
17 interests for our industry to work together to prevent attacks such
18 as these in the future.

19 69. Even after Facebook changed its policy in 2014 supposedly to protect
20 user information from being exploited by "bad actors," Facebook gave developers a
21 *full year* before it ended their access to friends' newsfeeds and photos. Worse, the
22 Company failed to follow up on suspicious activity when security protocols were
23 triggered, as noted by Wylie.

24 C. **DEFENDANTS RECEIVED NUMEROUS "RED FLAG" WARNINGS OF THE**
25 **SAME USER PRIVACY AND DATA SECURITY ISSUES THAT LED TO THE**
26 **BREACH, YET FAILED TO ACT**

27 70. The Board was required to ensure Facebook's compliance with the FTC
28 consent order and other applicable laws, and to implement and monitor a reasonable
system of internal controls and policies relating to user privacy and data security at
Facebook.

71. Yet, during the relevant period, Defendants failed to act in the face of
numerous "red flag" warnings indicating that the Company's internal controls and

1 policies were not only insufficient, but actually encouraging of the same privacy and
2 data security issues that ultimately enabled Cambridge Analytica to obtain the
3 personal information of 50 million Facebook users without their knowledge and
4 informed consent.

5 **1. Early Litigation Involving User Privacy Claims**

6 72. Facebook has weathered many complaints about violating user privacy
7 since its earliest days without radically altering its practices. In 2006, users protested
8 that the service's news feed was making public information that the users had
9 intended to keep private. The news feed is now the company's core service.

10 73. In 2009, Facebook began making users' posts, which had previously been
11 private, public by default. That incident triggered anger, confusion, an investigation
12 by the U.S. Federal Trade Commission, and, ultimately, a consent decree.

13 74. In March 2010, Facebook settled a class action for \$9.5 million to resolve
14 claims regarding its Beacon feature, which tracked what users buy online and shared
15 the information with their friends. Reflecting on Beacon, defendant Zuckerberg
16 attributed part of Facebook's success to giving "people control over what and how
17 they share information." He said that he regretted making Beacon an "optout system
18 instead of opt-in ... if someone forgot to decline to share something, Beacon went
19 ahead and still shared it with their friends."

20 75. In December 2012, Facebook settled a class action for \$20 million over
21 claims it used subscribers' names without their permission to advertise products in its
22 "Sponsored Stories" is approved.

23 76. Max Schrems, an Austrian lawyer and privacy activist, reportedly told
24 Ireland's data protection authority of loopholes in Facebook's policy that allowed apps
25 to "harvest" data about their friends without consent some time ago. "We flagged it in
26 2011," Schrems said. "Now it emerges that in 2014 Cambridge Analytica started
27 doing precisely what we warned about three years earlier."

28 77. On September 11, 2017, the Spanish Agency for Data Protection

1 (“AEPD”) announced that it had fined Facebook €1.2 million euros for violating data
2 protection regulations following its investigation to determine whether the data
3 processing carried out by the Company complied with the data protection regulations.
4 The AEPD stated that its investigation made it possible to verify that Facebook does
5 not inform the users in a comprehensive and clear way about the data that it will
6 collect and the treatments that it will carry out with them, but that it is limited to
7 giving some examples. In particular, the AEPD found that Facebook collects other
8 data derived from the interaction carried out by users on the platform and on third-
9 party sites without them being able to clearly perceive the information that Facebook
10 collects about them or with what purpose they are going to use it. The AEPD also
11 found that the privacy policy of Facebook contains generic and unclear expressions,
12 and requires access to a multitude of different links to know it. Further, the AEPD
13 concluded that the Company makes an inaccurate reference to the use it will make of
14 the data it collects, so that a Facebook user with an average knowledge of the new
15 technologies does not become aware of the data collection or storage and subsequent
16 treatment, or what they will be used for.

17 78. In May 2017, the French data protection authority fined Facebook its
18 maximum allowable fine of €150,000 for similar violations claimed by the Spanish
19 authorities. "Facebook proceeded to a massive compilation of personal data of internet
20 users in order to display targeted advertising," complained the Commission Nationale
21 de l'Informatique et des Libertés. "It collected data on the browsing activity of internet
22 users on third-party websites, via the 'datr' cookie, without their knowledge."

23 2. The FTC Action and Consent Order

24 79. In 2011, following an investigation by the FTC, Facebook entered into a
25 consent order to resolve the FTC's complaint alleging that Facebook's privacy
26 practices were unfair and deceptive, and violated federal law.

27 80. The FTC complaint listed a number of instances in which Facebook
28 allegedly made promises that it did not keep:

- 1 a. In December 2009, Facebook changed its website so certain information
2 that users may have designated as private – such as their Friends List –
3 was made public. They didn't warn users that this change was coming or
4 get their approval in advance.
- 5 b. Facebook represented that third-party apps that users installed would
6 have access only to user information that they needed to operate. In fact,
7 the apps could access nearly all of users' personal data – data the apps
8 didn't need.
- 9 c. Facebook told users they could restrict sharing of data to limited
10 audiences – for example with "Friends Only." In fact, selecting "Friends
11 Only" did not prevent their information from being shared with third-
12 party applications their friends used.
- 13 d. Facebook had a "Verified Apps" program & claimed it certified the
14 security of participating apps. It didn't.
- 15 e. Facebook promised users that it would not share their personal
16 information with advertisers. It did.
- 17 f. Facebook claimed that when users deactivated or deleted their accounts,
18 their photos and videos would be inaccessible. But Facebook allowed
19 access to the content, even after users had deactivated or deleted their
20 accounts.
- 21 g. Facebook claimed that it complied with the U.S.- EU Safe Harbor
22 Framework that governs data transfer between the U.S. and the European
23 Union. It didn't.

24 81. The consent order barred Facebook from making any further deceptive
25 privacy claims, required Facebook to obtain consumers' approval before it changed
26 the way it shared their data, and required Facebook to obtain periodic assessments of
27 its privacy practices by independent, third-party auditors for 20 years following its
28 entry. Specifically, under the consent order, Facebook is:

- 1 h. barred from making misrepresentations about the privacy or security of
- 2 consumers' personal information;
- 3 i. required to obtain consumers' affirmative express consent before enacting
- 4 changes that override their privacy preferences;
- 5 j. required to prevent anyone from accessing a user's material more than 30
- 6 days after the user has deleted his or her account;
- 7 k. required to establish and maintain a comprehensive privacy program
- 8 designed to address privacy risks associated with the development and
- 9 management of new and existing products and services, and to protect the
- 10 privacy and confidentiality of consumers' information; and
- 11 l. required, every two years for the next 20 years after entry of the consent
- 12 order, to obtain independent, third-party audits certifying that it has a
- 13 privacy program in place that meets or exceeds the requirements of the
- 14 FTC order, and to ensure that the privacy of consumers' information is
- 15 protected.

16 82. In the FTC's press release announcing the settlement and terms of the
17 consent order, issued November 29, 2011, FTC Chairman Jon Leibowitz stated,
18 "Facebook is obligated to keep the promises about privacy that it makes to its
19 hundreds of millions of users... Facebook's innovation does not have to come at the
20 expense of consumer privacy. The FTC action will ensure it will not." The Board
21 was well aware of the FTC order and the obligations placed on Facebook.

22 83. The FTC announced on March 26, 2018 that it was investigating the
23 breach of the consent decree in connection with the Cambridge Analytica affair.

24 **3. Reports from Facebook's CISO and Other Sources at the**
25 **Company**

26 84. In June 2015, Stamos joined Facebook as its Chief Information Security
27 Officer. According to the *New York Times*, current and former employees reported
28 that Stamos got off on the wrong foot with some executives, including defendant

1 Sandberg, over how best to police the platform. Internally, Stamos repeatedly argued
2 that Facebook needed to act more like a defense contractor in dealing with security,
3 given that the social network was becoming a similar target for nation states.

4 85. In audio leaked in October 2017 to ZDNet, a tech news site, Stamos told
5 his security team that he explained to Facebook management “that we have the threat
6 profile of a Northrop Grumman or a Raytheon or another defense contractor, but we
7 run our corporate network, for example, like a college campus, almost.” The tape
8 infuriated Mr. Stamos’s bosses, according to the current and former employees, and a
9 leak investigation is continuing. The employees said that some executives believed
10 Mr. Stamos had leaked the audio himself to get Facebook to take his entreaties more
11 seriously.

12 86. While the plethora of earlier “red flag” warnings should have caused the
13 Facebook Board to seriously address what was a systemic problem with the
14 Company’s privacy and data security practices, the so-called “White Paper” that
15 Stamos co-authored, entitled “Information Operations and Facebook,” unquestionably
16 alerted Defendants that those activities were pervasive and supported by management.
17 The “White Paper” also confirmed that Defendants’ public statements about security
18 were false and misleading.

19 87. Stamos said that he had initially provided a written report to Facebook
20 executives concerning the circumstances which led to the Cambridge Analytica leak,
21 but instead of taking appropriate action and disclosing the leak, the report was
22 rewritten and presented as a hypothetical scenario, which appeared in the whitewashed
23 “White Paper” that Facebook published which further suppressed and concealed the
24 wrongdoing at the Company that led to the leak.

25 88. On September 6, 2017, Stamos published “An Update on Information
26 Operations On Facebook” in the Facebook newsroom.

27 89. On October 22, 2017, the *Guardian* reported that Facebook had handed
28 to the special counsel and congressional investigators looking into the Kremlin’s

1 interference the content of 3,000 political ads paid for by a shadowy Russian entity
2 called the Internet Research Agency (IRA). In response, defendant Sandberg said
3 Facebook owed the nation “not just an apology but determination” to defeat attempts
4 to subvert US democracy. In an interview with the Axios media site, Sandberg did
5 not address whether Russian trolls were targeting the same users as the Trump
6 campaign, which would point towards collusion, but promised: “When the ads get
7 released we will also be releasing the targeting for those ads. We’re going to be fully
8 transparent.” However, Sandberg was purposely vague on the question of when
9 Facebook’s management became aware of large-scale Russian manipulation, saying
10 only: “*We started to hear the rumours around the election itself of a different kind*
11 *of attack.*”

12 90. The *New York Times* reported that, by October 2017, the relationship
13 between Stamos and Sandberg had deteriorated over how to handle Russian
14 interference on Facebook and how best to reorganize Facebook’s security team before
15 the midterm elections, according to more than half a dozen people who work or
16 formerly worked at the company. Stamos proposed that instead of reporting to
17 Facebook’s general counsel, he report directly to Facebook’s higher-ups. Instead,
18 executives reportedly reduced Stamos’ day-to-day responsibilities.

19 91. Sandy Parakilas, a former Facebook platforms operations manager for
20 policing data breaches by third party software developers between 2011 and 2012,
21 stated that hundreds of millions of Facebook users are likely to have had their private
22 information harvested by companies that exploited the same terms as the firm that
23 collected data and passed it on to Cambridge Analytica. Parakilas said he warned
24 senior executives at the company that its lax approach to data protection risked a
25 major breach: “[Parakila’s] concerns were that all of the data that left Facebook
26 servers to developers could not be monitored by Facebook, so [Facebook] had no idea
27 what developers were doing with the data” and that the company did not use
28 enforcement mechanisms, including audits of external developers, to ensure data was

1 not being misused. Parakilas confirmed that Facebook’s “trust model” was rife with
2 security vulnerabilities and a near total abnegation of its responsibility to audit its own
3 rules limiting use of Facebook data by third parties. Or, in Parakilas’ own words,
4 “[Facebook] felt that it was better not to know.”

5 92. Roger McNamee (“McNamee”), a longtime Silicon Valley investor and
6 reported Facebook insider also warned Facebook executives about data security issues
7 by at least 2016, which also went unheeded. McNamee was Zuckerberg’s mentor
8 before Facebook went public, and an early investor in the Company. McNamee and
9 Zuckerberg first met in 2006 when Facebook’s then Chief Privacy Officer, Chris
10 Kelly, called McNamee to give some advice to Zuckerberg on whether or not to sell
11 the company to Yahoo!. As McNamee describes his first encounter with Zuckerberg:
12 “I began by letting Mark know the perspective I was coming from. Soon I predicted,
13 he would get a billion-dollar offer to buy Facebook from either Microsoft or Yahoo,
14 and everyone, from the company’s board to the executive staff to Mark’s parents,
15 would advise him to take it. I told Mark that he should turn down any acquisition
16 offer. He had an opportunity to create a uniquely great company if he remained true
17 to his vision... I told Mark the market was much bigger than just young people; the
18 real value would come when busy adults, parents and grandparents, joined the
19 network and used it to keep in touch with people they didn’t get to see often.”

20 McNamee advised against selling the company. After this meeting, McNamee and
21 Zuckerberg developed a close mentoring relationship, and McNamee reportedly acted
22 as a father figure to Zuckerberg. McNamee suggested to Zuckerberg that he hire
23 Sheryl Sandberg as Facebook’s Chief Operating Officer. By the time Facebook went
24 public, McNamee was no longer a mentor to Zuckerberg. That role was taken over by
25 Facebook directors Andreessen and Thiel.

26 93. In or about February 2016, McNamee began noticing “viciously
27 misogynistic anti-Clinton memes originating from facebook groups supporting Bernie
28 Sanders.” McNamee never suspected the Sanders campaign was pushing out the

1 memes which made him worry that Facebook was being used in a way Zuckerberg
2 had not intended. However, McNamee saw a similar thing happening before the
3 Brexit vote when anti-European Union messages were all over Facebook.

4 94. Following the Brexit vote, McNamee wrote an op-ed piece for Recode,
5 warning that Facebook was being manipulated by “bad actors.” In the article,
6 McNamee concluded that the problem seemed to be “*systemic* – the algorithms
7 themselves made the site vulnerable because they were coded to prioritize attention,
8 and attention is best gained by messages that elicit fear, outrage, and hate-sharing.”

9 95. On October 30, 2016, McNamee sent a draft of the op-ed piece to
10 Zuckerberg and Sandberg. According to McNamee, “They each responded the next
11 day. The gist of their messages was the same: We appreciate you reaching out; we
12 think you’re misinterpreting the news; we’re doing great things that you can’t see.
13 Then they connected me to Dan Rose, a longtime Facebook executive with whom I
14 had an excellent relationship. Dan is a great listener and a patient man, but *he was*
15 *unwilling to accept that there might be a systemic issue*. Instead, he asserted that
16 Facebook was not a media company, and therefore was not responsible for the actions
17 of third parties.” McNamee ultimately decided to not publish the op-ed piece,
18 explaining, “Mark and Sheryl were my friends, and my goal was to make them aware
19 of the problems so they could fix them. I certainly wasn’t trying to take down a
20 company in which I still hold equity.”

21 96. Defendants ignored the warnings from McNamee. McNamee told
22 *Quartz* that he didn’t expect Zuckerberg to “just accept” the warning message that he
23 sent him, “We hadn’t spoken in a number of years at that point, but we had traded
24 emails and it was always positive. But when I saw what was going on in 2016, I was
25 genuinely concerned. I just assumed that he would have trouble accepting it, because
26 they hadn’t had anything negative in three or four years. It must have been really hard
27 for him to appreciate that everything wasn’t perfect. But I kind of hoped that if I
28 talked to Dan Rose over a period of weeks or months, they would have eventually

1 follow through. The shock would pass and they would think ‘Roger is actually really
2 serious about this, maybe we should just check it out.’ But after three months, I
3 realized they were never going to check it out.”

4 **4. Government Investigations and Lawsuits**

5 97. Both before and since the nature and scope of the Cambridge Analytica
6 breach has come to light, Facebook’s user privacy and data security practices have
7 become the subject of multiple government inquiries.

8 98. In the days after the breach was publicly revealed, the Attorney General
9 of Massachusetts announced an investigation into Facebook and Cambridge Analytica.
10 Senator Ron Wyden Monday followed up with a detailed series of questions for
11 Facebook to answer.

12 99. Senators Amy Klobuchar, Democrat of Minnesota, and John Kennedy,
13 Republican of Louisiana, have asked the chairman of the Judiciary Committee,
14 Charles E. Grassley, Republican of Iowa, to hold a hearing. Republican leaders of the
15 Senate Commerce Committee, organized by John Thune of South Dakota, wrote a
16 letter on Monday to Mr. Zuckerberg demanding answers to questions about how the
17 data had been collected and if users were able to control the misuse of data by third
18 parties. “It’s time for Mr. Zuckerberg and the other C.E.O.s to testify before
19 Congress,” Senator Mark Warner, Democrat of Virginia, said on Tuesday. “The
20 American people deserve answers about social media manipulation in the 2016
21 election.”

22 100. On March 20, 2018, a committee in the British Parliament sent a letter to
23 defendant Zuckerberg and asked him to appear before the panel to answer questions
24 on the company’s connection to Cambridge Analytica. The president of the European
25 Parliament also requested an appearance by Mr. Zuckerberg. “The committee has
26 repeatedly asked Facebook about how companies acquire and hold on to user data
27 from their site, and in particular about whether data had been taken without their
28 consent,” wrote Damian Collins, chairman of the British committee. “*Your officials’*

1 *answers have consistently understated this risk, and have been misleading to the*
2 *committee.”*

3 101. On March 21, 2018, a former Facebook employee told British lawmakers
4 that his concerns about lax data protection policies at the Company went ignored by
5 “senior executives.” Parakilas, who worked as a platform operations manager from
6 2011 to 2012, appeared before the U.K. parliament committee investigating the impact
7 of social media on recent elections. “I made a map of the various data vulnerabilities
8 of the Facebook platform,” Parakilas told the committee. “I included lists of bad actors
9 and potential bad actors,” he said, “and said here’s some of the things these people
10 could be doing and here’s what’s at risk.” When asked by the committee if any of
11 those executives were still at the company, Parakilas said they were, but declined to
12 name them in public. Parakilas previously told the *Guardian* on March 20, 2018 that
13 he had warned senior executives at Facebook about how the Company’s data
14 protection policies posed a risk of breach. Parakilas explained, “My concerns were
15 that all of the data that left Facebook servers to developers could not be monitored by
16 Facebook.” He also said that Facebook could have prevented the Cambridge
17 Analytica leak.

18 **5. The FTC Investigation Into Possible Consent Order Violations**

19 102. Facebook is also facing an investigation by the FTC relating to its
20 compliance with a FTC consent order issued in 2011 after the FTC found that the
21 company had told users that third-party apps on the social media site, like games,
22 would not be allowed to access their data. The FTC found that the apps, by contrast,
23 were able to obtain almost all personal information about a user.

24 103. The current FTC investigation involves similar concerns about
25 Facebook’s user privacy practices. In an interview with the *Washington Post*, David
26 Vladeck, former director of the FTC’s Bureau of Consumer Protection, said the
27 Cambridge Analytica incident may have violated Facebook's 2011 consent decree.
28 “There are all sorts of obligations under the consent decree that may not have been

1 honored here,” he said. “I will not be surprised if at some point the FTC looks at this.
2 I would expect them to[.]” Jessica Rich, who also served as director of the bureau and
3 was deputy director under Vladeck, said, “Depending on how all the facts shake out,
4 Facebook's actions could violate any of all of these provision, to the tune of many
5 millions of dollars in penalties. They could also constitute violations of both U.S. and
6 EU laws,” adding, “Facebook can look forward to multiple investigations and
7 potentially a whole lot of liability here.”

8 104. “We are aware of the issues that have been raised but cannot comment on
9 whether we are investigating,” an FTC spokeswoman said in a statement on March 20,
10 2018. “We take any allegations of violations of our consent decrees very seriously.”

11 105. Facebook also said it expected to receive questions from the FTC related
12 to potential violations of the 2011 consent decree. “We remain strongly committed to
13 protecting people’s information,” Facebook’s deputy chief privacy officer, Rob
14 Sherman, said in a statement. “We appreciate the opportunity to answer questions the
15 FTC may have.” Facebook could face fines of \$40,000 a day per violation if the FTC
16 finds that Facebook broke the agreement. The FTC formally announced its
17 investigation on March 26, 2018.

18 **VI. DEFENDANTS VIOLATED SECTION 14(A) OF THE EXCHANGE**
19 **ACT AND SEC RULE 14A-9, AND BREACHED THEIR FIDUCIARY DUTIES,**
20 **BY CAUSING FACEBOOK TO FILE A MATERIALLY MISLEADING**
21 **PROXY STATEMENT IN 2017**

22 106. Defendants violated Section 14(a) of the Exchange Act and SEC Rule
23 14a-9 by causing Facebook to issue proxy statements that failed to disclose the
24 Cambridge Analytica incident or the seriously deficient internal controls and policies
25 that allowed the breach to occur and helped perpetuate the damages to Facebook.
26 Defendants’ failure to disclose those material facts likewise constitutes a breach of
27 their fiduciary duties.

28 107. The Exchange Act requires publicly traded companies to disclose to
shareholders “material information,” the kind of information that an investor would

1 want to know to protect their investment. The SEC issued guidance on public
2 reporting of cybersecurity incidents, noting that the commission “encourages
3 companies to continue to use Form 8-K or Form 6-K to disclose material information
4 promptly, including disclosure pertaining to cybersecurity matters.” In 2017,
5 Facebook did not mention the Cambridge Analytica incident in any of its Form 8-K or
6 Form 6-K filings. Instead, Facebook made general statements in their most recent
7 proxy statement and annual report on Form 10-K about potential, not actual, user
8 privacy and data security risks, and certified that the Company’s internal controls
9 were adequate and complied with applicable laws (which necessarily include the FTC
10 consent order).

11 108. Defendants violated Section 14(a) of the Exchange Act and SEC Rule
12 14a-9 by causing Facebook to issue the 2017 Proxy Statement that failed to disclose
13 the Cambridge Analytica leak or the seriously deficient internal and disclosure
14 controls that allowed the scheme to begin and helped perpetuate it. Defendants’
15 failure to disclose those material facts likewise constitutes a breach of their fiduciary
16 duties.

17 109. On April 14, 2017, Defendants caused Facebook to file the 2017 Proxy
18 Statement in connection with the 2017 annual stockholders meeting to be held on June
19 1, 2017.

20 110. The 2017 Proxy Statement omitted any disclosures regarding (i) the
21 Cambridge Analytica leak; (ii) Defendants’ knowledge that Facebook’s internal
22 controls and systems were inadequate and ineffective to protect user information; (iii)
23 Defendants’ knowledge of data security failures that had actually materialized and had
24 not been disclosed; (iv) the fact that Facebook’s internal controls and systems were
25 inadequate to ensure that the Company complied with applicable notification and
26 disclosure requirements concerning the Cambridge Analytica leak; (v) the fact that
27 Defendants failed to maintain appropriate policies and procedures to detect and
28 prevent data security leaks and to protect user information; and (vi) the fact that

1 Defendants failed to appropriately address Facebook’s privacy practices and
2 misleading claims regarding same as required by the FTC consent order; and (vii) as a
3 result, Facebook may be in violation of the consent order.

4 111. The 2017 Proxy Statement harmed Facebook by interfering with the
5 proper governance on its behalf that follows stockholders’ informed voting of
6 directors. As a result of the false or misleading statements in the 2017 Proxy
7 Statement, Facebook stockholders voted to re-elect all of the Defendants to the Board.

8 112. The statements in the 2017 Proxy Statement conveyed that the
9 Company’s corporate governance structure was “effective” and provided “oversight of
10 management and Board accountability.” In reality, Facebook’s corporate government
11 structure allowed senior executives and the Board to sidestep real accountability and
12 instead continue perpetuating the data security practices that led to the Cambridge
13 Analytica leak, and fail to disclose or notify users of the leak.

14 113. The 2017 Proxy Statement, which contained materially misleading
15 statements and thus deprived shareholders of adequate information necessary to make
16 a reasonably informed decision, caused the Company’s stockholders to re-elect all of
17 the Defendants to the Board while they were breaching their fiduciary duties to
18 Facebook and deliberately concealing material information concerning the Cambridge
19 Analytica leak and its effects on the Company’s business and reputation.

20 **VI. CERTAIN DEFENDANTS SOLD THEIR FACEBOOK STOCK WHILE**
21 **IN POSSESSION OF MATERIAL, NONPUBLIC INFORMATION**

22 114. During the relevant period, certain of the Defendants took advantage of
23 the artificial inflation of Facebook’s shares caused by the Defendants’ false or
24 misleading statements and omissions that failed to disclose the Cambridge Analytica
25 incident or the nature and extent to which the Company’s internal controls and
26 policies had permitted the breach to occur. Specifically, Defendants Zuckerberg,
27 Sandberg, and Koum (the “Insider Selling Defendants”) collectively sold or otherwise
28 disposed of nearly \$1.5 billion worth of their personally-held shares of Facebook

1 stock during that time, all while in the possession of material, non-public information.
2 At the time of these stock transactions in 2018, all of the Insider Selling Defendants
3 knew about or recklessly disregarded material, non-public information regarding the
4 Cambridge Analytica incident and compromises to user information posed by
5 Facebook's inadequate internal controls described above, but nonetheless sold or
6 otherwise disposed of Facebook common stock on the basis of that information.

7 115. Defendant Zuckerberg sold 5,423,200 of his Facebook shares for
8 proceeds of over \$978 million. Defendant Sandberg sold 196,684 of her Facebook
9 shares for proceeds of over \$35 million. Defendant Koum sold 2,485,347 of her
10 Facebook shares for proceeds of over \$442 million.

11 116. Defendants also violated Section 14(a) of the Exchange Act and SEC
12 Rule 14a-9 by causing Facebook to issue proxy statements that failed to disclose the
13 Cambridge Analytica incident or the seriously deficient internal controls and policies
14 that allowed the breach to occur and helped perpetuate the damages to Facebook.
15 Defendants' failure to disclose those material facts likewise constitutes a breach of
16 their fiduciary duties.

17 117. The Exchange Act requires publicly traded companies to disclose to
18 shareholders "material information," the kind of information that an investor would
19 want to know to protect their investment. The SEC issued guidance on public
20 reporting of cybersecurity incidents, noting that the commission "encourages
21 companies to continue to use Form 8-K or Form 6-K to disclose material information
22 promptly, including disclosure pertaining to cybersecurity matters." In 2017 and until
23 at least March 15, 2018, Facebook did not mention the Cambridge Analytica incident
24 in any of its Form 8-K or Form 6-K filings. Instead, Facebook made general
25 statements in their most recent proxy statement and annual report on Form 10-K about
26 potential, not actual, user privacy and data security risks, and certified that the
27 Company's internal controls were adequate and complied with applicable laws (which
28 necessarily include the FTC consent order). By trading while in possession of this

1 material, non-public information, the Insider Selling Defendants breached their
2 fiduciary duties.

3 **VIII. DAMAGES TO FACEBOOK**

4 118. Defendants' misconduct has wrought extreme reputational damage upon
5 the Company. This is especially harmful to Facebook because the Company is built
6 on customer trust.

7 119. Defendants breached this trust by acting in direct contravention of the
8 Company's publicly-touted credo. This reputational harm undoubtedly translates into
9 long-term damage to the Company.

10 120. The illegal practices and Defendants' gross failures to timely address,
11 remedy, or disclose them also severely damaged Facebook's reputation within the
12 business community and in the capital markets, as evidenced by, for example, the
13 more than \$50 billion loss in market capitalization after the Cambridge Analytica
14 incident, and Defendants' knowledge of or conscious disregard of it, were revealed.
15 Further, Facebook's customers and current and potential investors consider the
16 Company's ability to protect its users' personal information, and implement adequate
17 controls to ensure practices that may be violative of user privacy are timely discovered
18 and properly addressed. This has harmed Facebook, as customers are less likely to
19 use websites that knowingly permit or encourage unscrupulous behavior, and
20 investors are less likely to invest in companies that lack internal controls and fail to
21 timely disclose material information. Thus, Facebook's ability to attract customers
22 and investors is now impaired.

23 121. Further, as a direct and proximate result of Defendants' actions,
24 Facebook has expended and will continue to expend significant additional money,
25 including: costs incurred in defending against, and the potential settlement of, civil
26 and criminal legal proceedings brought against the Company related to the
27 unauthorized sharing and use of users' personal information; and costs incurred from
28 the substantial compensation and benefits paid to Defendants, who are responsible for

1 the scheme.

2 **IX. DEMAND ON FACEBOOK'S BOARD WAS FUTILE AND EXCUSED**

3 122. Plaintiff has not made a demand on the Board to institute this action
4 against Defendants because, for the reasons detailed above and as further set forth
5 below, any such demand would be a futile and useless act.

6 123. The facts detailed in this Complaint demonstrate that the Defendants (i)
7 affirmatively adopted, implemented, and condoned a business strategy based on
8 deliberate and widespread violations of applicable law, which is not a legally
9 protected business decision and can in no way be considered a valid exercise of
10 business judgment; and/or (ii) consciously disregarded numerous red flags of
11 misconduct throughout the relevant period, subjecting them to a substantial likelihood
12 of liability as to Plaintiff's claims against them in this action. Each of the Members of
13 the Board were made aware of the potential security breaches allowed by Facebook's
14 systems as applied to third party apps and made aware of the problems with
15 Cambridge Analytics. None of the Board Members were willing to disclose the fact
16 that the theft of information occurred nor were they willing to implement policies to
17 prevent such in the future. Accordingly, demand on the Board is excused.

18 124. At the time this action was filed, Facebook's Board consisted of nine
19 members, defendants Zuckerberg, Sandberg, Andreessen, Thiel, Hastings, Bowles,
20 Koum, Desmond-Hellman, and Kenneth Chenault.

21 A. **DEMAND IS EXCUSED BECAUSE THE BOARD'S CONDUCT DID NOT**
22 **CONSTITUTE A VALID EXERCISE OF BUSINESS JUDGMENT**

23 125. Plaintiffs did not make a demand on the Facebook Board prior to
24 instituting this action because the wrongful acts complained of in this Complaint
25 evidence a pattern of conduct showing a wholesale abandonment of Defendants'
26 fiduciary duties. Those acts, which are detailed above, include, among other things:
27 allowing Facebook to maintain policies that allowed the Company to facilitate and
28 engage in the pervasive user information sharing scheme that involved marketing its
targeted political advertisements to advertisers and maintaining policies that allowed

1 app developers to access user information without their knowledge and consent, in
2 violation of the Company's representations to users; allowing Facebook insiders to
3 engage in insider selling while in possession of material, non-public information
4 relating to the breach; maintaining woefully inadequate internal controls over the
5 Company's disclosures and notification procedures, corporate governance, and risk
6 monitoring, which allowed the unauthorized information sharing to persist for years,
7 and allowed the Defendants to sell millions of dollars' worth of their Facebook stock
8 at prices that were artificially inflated due to Defendants' misconduct; and causing
9 Facebook to file materially false and misleading SEC filings.

10 126. These acts, and the other improper acts set forth in this Complaint, which
11 demonstrate a pattern of misconduct, were not the product of a valid or good faith
12 exercise of business judgment, nor could they have been.

13 127. Defendants' misconduct at the heart of this case constitutes the direct
14 facilitation of violations of federal, state, and international laws, including knowingly
15 and consciously presiding over the Company's systematic deficiencies and unsound
16 user privacy practices, as well as concealing Facebook's involvement in the illicit
17 scheme. Among other things, the Defendants made, or caused Facebook to make,
18 materially false or misleading statements (such as in Facebook's 2017 Proxy
19 Statement filed with the SEC during the relevant period).

20 128. Defendants' blatant and repeated disregard of their responsibility to
21 safeguard the Company against wrongdoing indicate they knowingly adopted,
22 endorsed, or condoned a business strategy premised on illegal activity which cannot
23 be considered a legitimate exercise of business judgment. Demand is therefore
24 excused.

25 **B. DEMAND IS EXCUSED BECAUSE DEFENDANTS FACE A SUBSTANTIAL**
26 **LIKELIHOOD OF LIABILITY**

27 129. Demand is also excused because the Defendants face a substantial
28 likelihood of liability for the claims alleged against them in this Complaint, given

1 their awareness or conscious disregard of significant red flags and failure to fulfill
2 their duty of oversight by maintaining an adequate system of internal controls
3 reasonably designed to detect and prevent wrongdoing.

4 130. Defendants were aware of the weaknesses of Facebook’s user privacy
5 controls and failed to address and repair them. Defendants also were aware of yet
6 disregarded their affirmative obligations to oversee Facebook’s compliance with the
7 2011 consent order entered into with the FTC.

8 131. Section VII of the consent order provides, in relevant part, that
9 “[Facebook] shall deliver a copy of this order to all current and future principals,
10 officers, directors, and managers; (2) all current and future employees, agents, and
11 representatives having supervisory responsibilities relating to the subject matter of this
12 order, and (3) any business entity resulting from any change in structure....
13 [Facebook] shall deliver this order to such current personnel within thirty (30) days
14 after service of this order, and to such future personnel within thirty (30) days after the
15 person assumes such position or responsibilities.”

16 132. Thus, each of the Defendants received the consent order, pursuant to
17 Section VII, and therefore had knowledge of the issues addressed therein and the
18 Company’s affirmative obligations under the agreement. Yet, Defendants failed to act
19 to ensure the Company complied with the consent order.

20 133. The members of the Audit Committee failed to meet their obligations as
21 provided in the Audit Committee Charter, in addition to their duties imposed by law,
22 because despite the numerous regulatory fines, investigations, and reports finding
23 fundamental failings in the Company’s internal controls, they did not cause Facebook
24 to remediate those control deficiencies. The Audit Committee’s deliberate failure of
25 oversight constituted breaches of their fiduciary duties to Facebook and has resulted in
26 significant harm to the Company.

27 134. Further, the Audit Committee members were charged with assisting the
28 Board in overseeing the integrity of the Company’s financial statements and the

1 adequacy and reliability of disclosures to its stockholders, including the Company's
2 internal controls.

3 135. But Facebook's internal and disclosure controls were deficient, causing
4 Facebook to issue materially false and misleading information regarding the
5 Company's practices. The Audit Committee was directly responsible for approving
6 the Company's materially false and misleading 2017 Proxy Statement.

7 136. Accordingly, there is significant doubt that the Defendants are
8 disinterested because they face a substantial likelihood of liability for their breaches of
9 fiduciary duties, including their duties of good faith, fair dealing, and loyalty, as well
10 as other violations of law.

11 137. Given their membership on the Audit and/or Compensation &
12 Governance Committees, their respective responsibilities under the respective charters
13 in effect during the relevant period, and their failures to meet them, Defendants face a
14 substantial likelihood of liability for the misconduct alleged in this Complaint, and
15 making a demand on the Board would therefore be futile.

16 138. The entire Board had the duty to ensure Facebook's systems were
17 sufficiently well-designed to protect user information and detect suspicious activity at
18 the developer level with respect to same. The Board's duty was heightened by the fact
19 that the FTC imposed affirmative obligations with respect to the Company's user
20 privacy practices in the 2011 Consent Order.

21 139. The Board failed to fulfill that duty, and its failure is even more
22 egregious in light of the many blatant warnings both before and during the relevant
23 period that Facebook's systems were not sufficient to address the misconduct at issue
24 in this Complaint. Given the Board's awareness and deliberate concealment of the
25 breach from the public, and Facebook's failure to notify affected users in accordance
26 with applicable statutes—wrongful actions that resulted in the retention and
27 unauthorized use of millions of users' personal information for over several years—it
28 is clear the Board either deliberately or recklessly failed to take remedial action to stop

1 the practices that allowed the illicit scheme to continue.

2 140. For these reasons, the Board is incapable or unwilling to take the actions
3 required to seek the relief requested in this Complaint. Because a majority of the
4 Board faces a substantial risk of liability, demand is futile.

5 141. Defendants' failure to meet their fiduciary obligations also allowed
6 certain Facebook insiders to reap unlawful profits from selling or disposing of
7 Facebook shares at artificially inflated prices.

8 142. All of the Defendants failed to exercise any oversight over the insider
9 sales transactions and failed to implement reasonable internal controls with respect to
10 same. Accordingly, a clear majority of the Board is unable to consider a demand to
11 investigate Plaintiffs' allegations that the Insider Selling Defendants engaged in illegal
12 insider selling of Company stock, committed other wrongdoing in violation of their
13 fiduciary duties, and artificially inflated the Company's stock price for their own
14 personal gain. Defendants cannot investigate allegations of the other Defendants'
15 wrongdoing in a disinterested and independent manner.

16 143. In light of the foregoing facts, Defendants face a substantial likelihood of
17 liability in this case, thus rendering demand on them futile.

18 C. **DEMAND IS EXCUSED BECAUSE FACEBOOK IS "CONTROLLED" BY**
19 **ZUCKERBERG AND THE BOARD ADMITTEDLY LACKS INDEPENDENCE**

20 144. According to Facebook's 2017 Proxy Statement:

21
22 Because Mr. Zuckerberg controls a majority of our outstanding voting power,
23 *we are a "controlled company"* under the corporate governance rules of the
24 NASDAQ Stock Market LLC (NASDAQ). Therefore, *we are not required to*
25 *have a majority of our board of directors be independent*, nor are we required
26 to have a compensation committee or an independent nominating function. In
27 light of our status as a controlled company, our board of directors has
28 determined not to have an independent nominating function and to have the full
board of directors be directly responsible for nominating members of our board.

145. Defendants Andreessen and Thiel lack independence from Zuckerberg and
have demonstrated personal bias in favor of keeping founders in control of the

1 companies they created.

2 146. For Andreessen, this bias is deep-rooted. When he and his partner, Ben
3 Horowitz (“Horowitz”), were trying to get Loudcloud, a company that they co-
4 founded, on its feet, the venture capitalist providing their funding advised Horowitz to
5 cut Andreessen out of the project altogether. Based on this experience, when
6 Andreessen and Horowitz founded their own venture capital firm, Andreessen
7 Horowitz, they “set out to design a venture capital firm that would enable founders to
8 run their own companies” without interference from the financial backers.

9 147. Andreessen also lacks independence from Zuckerberg based on the
10 highly lucrative deals that Andreessen and his firm have made with Zuckerberg in the
11 past few years.

12 148. Andreessen Horowitz has seen two of its portfolio companies purchased
13 by Facebook – Instagram and Oculus VR. Andreessen turned his firm’s \$250,000
14 investment in Instagram into \$78 million when the \$1 billion acquisition by
15 Facebook closed. Andreessen would not have even been able to invest in Oculus VR
16 without Zuckerberg. Andreessen had declined to invest in the company previously,
17 but desperately wanted to invest by the fall of 2013, according to an October 2015
18 Vanity Fair article. When Oculus VR’s CEO seemed reluctant to allow the
19 investment, Andreessen reportedly had Zuckerberg talk to the CEO about Andreessen.
20 Andreessen Horowitz got the deal and Andreessen became one of four board members
21 for the fledgling company. Not very long after, Zuckerberg offered \$2 billion for
22 Facebook to acquire Oculus VR.

23 149. Andreessen knows that his firm’s access to the best investments – its
24 “deal flow” – relies heavily on his relationship with Zuckerberg and Facebook. In a
25 May 18, 2015 New Yorker article titled “Tomorrow’s Advance Man,” Andreessen
26 reportedly said that “Deal flow is everything. If you’re in a second-tier firm, you never
27 get a chance at that great company.” Andreessen Horowitz saw its biggest successes
28 after “logo shopping” to add Facebook to the firm’s portfolio in 2010. Within two

1 years of that investment, “Andreessen Horowitz was the talk of the town.”

2 150. Defendant Thiel was one of the early investors in Facebook. He co-
3 founded PayPal, Inc., and has been a Partner of the Founders Fund, a venture capital
4 firm that strives to keep founders in control of the companies they have created, since
5 2005. Thiel’s venture capital fund, The Founders Fund, is marketed on the principle
6 that company founders should have long-term control of the companies they create.
7 In fact, the Fund’s website touts Facebook as a primary example of that maxim,
8 stating that “we have often tried to ensure that founders can continue to run their
9 businesses through voting control mechanisms, as Peter Thiel did with Mark
10 Zuckerberg and Facebook.”

11 151. Thiel, like Andreessen, has greatly benefited by his relationship with
12 Zuckerberg and his seat on the Facebook Board. The Founders Fund gets “good deal
13 flow” from this high profile association.

14 152. Defendant Hastings also lacks independence from Zuckerberg.
15 Defendant Hastings is a co-founder of Netflix, and currently serves as its CEO and
16 Chairman of its board of directors. In addition to being sympathetic to Zuckerberg’s
17 desire to maintain founder’s control due to his own founder role at Netflix, Hastings
18 has every incentive to cater to Zuckerberg’s desires at Facebook due to Facebook’s
19 business relationship with Netflix. Through the “Friends and Community” initiative
20 launched in March 2013, Netflix enjoyed very valuable word-of-mouth type
21 marketing because the initiative allows Facebook users to share data about their
22 Netflix viewing habits with their Facebook friends. Hastings would not want to risk
23 losing this relationship, as the initiative’s launch caused Netflix’s share price to climb
24 6%, and displeasing Zuckerberg could mean an end to such valuable data sharing.

25 153. Defendant Desmond-Hellmann lacks independence from defendant
26 Zuckerberg due to their close business and personal relationships. As Lead
27 Independent Director, Desmond-Hellmann serves as a liaison between Zuckerberg and
28 the Board’s independent directors.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Breach of Fiduciary Duty (Against All Defendants)**

4 154. Plaintiff incorporates by reference each of the preceding paragraphs as if
5 fully set forth herein.

6 155. Each of the Defendants owed and owe fiduciary duties to Facebook and
7 its stockholders. By reason of their fiduciary relationships, the Defendants specifically
8 owed and owe Facebook the highest obligation of good faith, fair dealing, loyalty, and
9 due care in the administration and management of the affairs of the Company,
10 including the Company's financial reporting, internal controls, and compensation
11 practices. Each of the Defendants consciously and deliberately breached their
12 fiduciary duties of candor, good faith, loyalty, and reasonable inquiry to Facebook and
13 its stockholders by failing to act to ensure Facebook maintained adequate internal
14 controls to comply with the consent order and other applicable laws.

15 156. Defendants, individually and in concert, engaged in the above referenced
16 conduct in intentional, reckless, or grossly negligent breaches of the fiduciary duties
17 they owed to Facebook to protect its rights and interests. In breach of their fiduciary
18 duties owed to Facebook, the Defendants willfully participated in misrepresentations
19 related to the Company's internal and disclosure controls, failed to correct the
20 Company's public statements, and failed to fully inform themselves prior to making
21 decisions as directors and officers, rendering them personally liable to the Company
22 for breaching their fiduciary duties.

23 157. Defendants had actual or constructive knowledge that they had caused
24 the Company to improperly misrepresent its financial condition and they failed to
25 correct the Company's public statements. Defendants had actual knowledge of the
26 misstatements and omissions of material facts set forth in this Complaint, or acted
27 with reckless disregard for the truth, in that they failed to ascertain and to disclose
28 such facts, even though such facts were available to them. Such material

1 misrepresentations and omissions were committed knowingly or recklessly and for the
2 purpose and effect of artificially inflating the price of Facebook's securities.

3 158. These actions were not a good-faith exercise of prudent business
4 judgment to protect and promote the Company's corporate interests.

5 159. Additionally, the Defendants have affirmative obligations under the FTC
6 Consent Order, as well as specific fiduciary duties as defined by the charters of
7 various Board committees that, had they been discharged in accordance with the
8 Defendants' obligations, would have necessarily prevented the misconduct and the
9 consequent harm to the Company alleged in this Complaint.

10 160. Defendants' actions detailed in this Complaint were not a good-faith
11 exercise of prudent business judgment to protect and promote the Company's
12 corporate interests.

13 161. As a direct and proximate result of the Defendants' breaches of their
14 fiduciary obligations, Facebook has sustained and continues to sustain significant
15 damages. As a result of the misconduct alleged in this Complaint, the Defendants are
16 liable to the Company.

17 **SECOND CAUSE OF ACTION**

18 **Breach of Fiduciary Duty for Insider Selling and Misappropriation of** 19 **Information** (Against the Insider Selling Defendants)

20 162. Plaintiff incorporates by reference each of the preceding paragraphs as if
21 fully set forth herein.

22 163. At the time of the stock sales set forth above, the Insider Selling
23 Defendants knew or recklessly disregarded the information described in this
24 Complaint regarding the breach and illicit data sharing and sold Facebook common
25 stock on the basis of that information.

26 164. The information described above was non-public information concerning
27 the Company's unlawful conduct associated with its business strategy to generate
28 revenues through targeted advertising. The information was a proprietary asset

1 belonging to the Company, which the Defendants used for their own benefit when
2 they sold Facebook common stock.

3 165. Defendants' sales of Facebook common stock while in possession and
4 control of this material adverse non-public information was a breach of their fiduciary
5 duties of loyalty and good faith.

6 166. Because the use of the Company's proprietary information for their own
7 gain constitutes a breach of the Defendants' fiduciary duties, the Company is entitled
8 to the imposition of a constructive trust on any profits the Insider Selling Defendants
9 obtained thereby.

10 **THIRD CAUSE OF ACTION**

11 **Unjust Enrichment**

12 **(Against All Defendants)**

13 167. Plaintiff incorporates by reference each of the preceding paragraphs as if
14 fully set forth herein.

15 168. During the relevant period, Defendants received bonuses, stock options,
16 stock, or similar compensation from Facebook that was tied to the Company's
17 financial performance, or otherwise received compensation that was unjust in light of
18 the Defendants' bad faith conduct, violation of the Company's code of ethics, and
19 self-dealing.

20 169. Plaintiff, as a shareholder and representative of Facebook, seeks
21 restitution from Defendants and seek an order of this Court disgorging all profits,
22 benefits, and other compensation—including any salary, options, performance-based
23 compensation, and stock— obtained by Defendants due to their wrongful conduct
24 alleged in this Complaint.

25 **FOURTH CAUSE OF ACTION**

26 **Violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9**

27 **(Against All Defendants)**

28 170. Plaintiff incorporates by reference and realleges each and every

1 allegation contained above, as though fully set forth in this paragraph, except to the
2 extent those allegations plead knowing or reckless conduct by the Defendants. This
3 claim is based solely on negligence, not on any allegation of reckless or knowing
4 conduct by or on behalf of the Defendants. Plaintiff specifically disclaims any
5 allegations of, reliance upon any allegation of, or reference to any allegation of fraud,
6 scienter, or recklessness with regard to this claim.

7 171. SEC Rule 14a-9 (17 C.F.R. § 240.14a-9), promulgated under Section
8 14(a) of the Exchange Act, provides:

9
10 No solicitation subject to this regulation shall be made by means of any
11 proxy statement form of proxy, notice of meeting or other
12 communication, written or oral, containing any statement which, at the
13 time and in the light of the circumstances under which it is made, is false
14 or misleading with respect to any material fact, or which omits to state
15 any material fact necessary in order to make the statements therein not
16 false or misleading or necessary to correct any statement in any earlier
17 communication with respect to the solicitation of a proxy for the same
18 meeting or subject matter which has become false or misleading.

19 172. Defendants negligently issued, caused to be issued, and participated in
20 the issuance of materially misleading written statements to stockholders that were
21 contained in the 2017 Proxy Statement. The 2017 Proxy Statement contained
22 proposals to Facebook's stockholders urging them to re-elect the members of the
23 Board and vote against stockholder proposals for the Company to adopt a policy to
24 require the Company to disclose information about its political dealings and
25 Facebook's connections to the "disinformation campaign" that occurred during the
26 2016 election. The 2017 Proxy Statement, however, misstated or failed to disclose
27 deficiencies in Facebook's internal and disclosure controls that were known to the
28 Board when the Proxy Statement was filed and that Facebook and Defendants learned
of the Cambridge Analytica leak, and knew that Facebook faced significant
reputational harm when the truth would inevitably unfold. Thus, the 2017 Proxy
Statement soliciting materials were materially false and misleading. By reasons of the

1 conduct alleged in this Complaint, the Defendants violated Section 14(a) of the
2 Exchange Act and SEC Rule 14a-9. As a direct and proximate result of the
3 Defendants' wrongful conduct, Facebook misled or deceived its stockholders by
4 making misleading statements that were an essential link in stockholders heeding
5 Facebook's recommendation to re-elect the directors who are members of the current
6 Board, and to vote against stockholder proposals for the Company to disclose
7 information about its political dealings and Facebook's connections to the
8 "disinformation campaign" that occurred during the 2016 presidential election.

9 173. The 2017 Proxy Statement soliciting materials were materially false and
10 misleading because they falsely stated that the Company's Board of Directors
11 maintained effective internal controls and exercised adequate risk oversight over
12 management and failed to disclose to the Company's shareholders material
13 deficiencies in the Company's internal controls relating to user privacy and data
14 security, and with respect to the Board's oversight of risk management.

15 174. The Board also knowingly agreed to include the false statements in the
16 2017 Proxy Statement since it believed that, had it admitted its own ineffectiveness in
17 oversight of risk management, such admission would have led to the Defendants' own
18 personal liability for breaching their fiduciary duties as Board members. Thus, the
19 Board acted in bad faith and in a disloyal manner.

20 175. By reason of the conduct alleged herein, Defendants, who caused the
21 issuance of the 2017 Proxy Statement, violated Section 14(a) of the Exchange Act. As
22 a direct and proximate result of these Defendants' wrongful conduct, Defendants
23 misled and/or deceived Facebook shareholders by falsely portraying material facts
24 concerning the Board's risk oversight and the Company's internal controls. As a result
25 of the false statements and material omissions, Facebook shareholders were deceived.
26 The false statements and material omissions were material because there is a
27 substantial likelihood that a reasonable shareholder would consider the information
28 important in deciding how to vote with respect to the matters contained in the proxy,

1 which were submitted for shareholder approval at the 2017 annual meeting.

2 176. The misleading information contained in the 2017 Proxy Statement was
3 material to Facebook's stockholders in determining whether or not to elect the
4 Defendants to the Board and was material to the integrity of the directors that were
5 proposed for election to the Board. The proxy-solicitation process in connection with
6 the Proxy Statements was an essential link in (i) the re-election of nominees to the
7 Board and (ii) the decision not to approve the proposal requiring the Company to
8 disclose information about its political dealings and Facebook's connections to the
9 "disinformation campaign" that occurred during the 2016 election.

10 177. Plaintiff, on behalf of Facebook, thereby seeks injunctive and equitable
11 relief because the conduct of the Defendants named herein interfered with Plaintiff's
12 voting rights and choices at the 2017 annual meeting. Plaintiff does not seek any
13 monetary damages for the proxy law violations.

14 178. This action was timely commenced within three years of the date of the
15 2017 Proxy Statement and within one year from the time Plaintiff discovered or
16 reasonably could have discovered the facts on which this claim is based.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of Section 25402 of the California Corporations Code**

19 **(Against the Insider Selling Defendants)**

20 179. Plaintiffs incorporate by reference and reallege each of the foregoing
21 allegations as though fully set forth in this paragraph.

22 180. At the time that the Insider Selling Defendants—Zuckerberg, Sandberg,
23 and Koum—sold their Facebook common stock as set forth in this Complaint, by
24 reason of their high executive or directorship positions with Facebook, these
25 Defendants had access to highly material information regarding the Company,
26 including the information set forth in this Complaint. Further, the Insider Selling
27 Defendants received millions of dollars of proceeds from trading on material, non-
28 public information, which information was an asset of, and belonged exclusively to,

1 Facebook.

2 181. At the time of the Insider Selling Defendants' sales, that information was
3 not generally available to the public or the securities markets. Had such information
4 been generally available, it would have significantly reduced the market price of
5 Facebook shares at that time.

6 182. Each of the Insider Selling Defendants had actual knowledge of material,
7 adverse, non-public information and thus sold their Facebook common stock in
8 California in violation of California Corporations Code § 25402.

9 183. Pursuant to California Corporations Code § 25502.5, each of the Insider
10 Selling Defendants is liable to Facebook for damages in an amount up to three times
11 the difference between the price at which Facebook common stock was sold by the
12 Defendant and the market value that stock would have had at the time of the sale if the
13 information known to the Defendant had been publicly disseminated prior to that time
14 and a reasonable time had elapsed for the market to absorb the information.

15 **SIXTH CAUSE OF ACTION**

16 **Violation of Section 25403 of the California Corporations Code**

17 **(Against All Defendants)**

18 184. Plaintiffs incorporate by reference and reallege each of the foregoing
19 allegations as though fully set forth in this paragraph.

20 185. Defendants, through their positions, possessed control and influence over
21 the Insider Selling Defendants' sale of Facebook common stock in violation of the
22 California Corporations Code. Defendants are statutorily liable to the same extent as
23 the Insider Selling Defendants under California Corporations Code § 25403.

24 186. Defendants were aware of the Insider Selling Defendants' knowledge of
25 the material adverse non-public information, and the Defendants were aware of the
26 Insider Selling Defendants' intent to sell Facebook common stock while in possession
27 of material adverse non-public information.

28 187. Defendants are culpable for the Insider Selling Defendants' underlying

1 violations of California Corporations Code § 25402 because of their knowledge and
2 ability to control and influence the Insider Selling Defendants and due to their
3 involvement in preparing, approving, and signing the Company's false or misleading
4 Form 10-Ks, and Proxy Statements during the relevant period.

5 188. Under California Corporations Code § 25403, each of the Defendants is
6 liable to Facebook for damages in an amount up to three times the difference between
7 the price at which Facebook common stock was sold by the Defendant and the market
8 value that stock would have had at the time of the sale if the information known to the
9 Defendants had been publicly disseminated prior to that time and a reasonable time
10 had elapsed for the market to absorb the information.

11 **SEVENTH CAUSE OF ACTION**

12 **Contribution and Indemnification**

13 **(Against All Defendants)**

14 189. Plaintiff incorporates by reference and realleges each of the foregoing
15 allegations as though fully set forth in this paragraph.

16 190. This claim is brought derivatively on behalf of the Company against
17 Defendants for contribution and indemnification.

18 191. Facebook is named as a defendant in a putative shareholder class action
19 filed in this District on March 20, 2018, asserting claims under the federal securities
20 laws for, inter alia, false and misleading statements related to the Company's user
21 privacy practices. In the event the Company is found liable for violating the federal
22 securities laws, the Company's liability will arise, in whole or in part, from the
23 intentional, knowing, or reckless acts or omissions of some or all of the Defendants as
24 alleged herein. The Company is entitled to receive contribution from those Defendants
25 in connection with the securities fraud class action against the Company currently
26 pending in this District.

27 192. Accordingly, Facebook is entitled to all appropriate contribution or
28 indemnification from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand for a judgment as follows:

- A. Determination that this action is a proper derivative action maintainable under the law and that demand was excused as futile;
- B. Declaring that Defendants have breached their fiduciary duties to Facebook;
- C. Determining and awarding to Facebook the damages sustained by it as a result of the violations set forth above from each Defendant, jointly and severally, together with prejudgment and post-judgment interest thereon;
- D. Directing Facebook to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its stockholders from a repeat of the damaging events described in this Complaint, including putting forward for a stockholder vote resolutions for amendments to the Company's by-laws or articles of incorporation, and taking such other actions as may be necessary to place before stockholders for a vote the following corporate governance policies:
 - i. a proposal to strengthen Board oversight and supervision of Facebook's data security practices;
 - ii. a proposal to strengthen the Company's disclosure controls to ensure material information is adequately and timely disclosed to the SEC and the public; and
 - iii. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into the policies and guidelines of the Board;
- E. Extraordinary equitable or injunctive relief as permitted by law or equity, including attaching, impounding, imposing a constructive trust on, or otherwise restricting Defendants' assets so as to assure that Plaintiff, on behalf of Facebook, has an effective remedy;

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- F. Awarding to Facebook restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by Defendants, including the proceeds of insider transactions made in violation of state securities laws;
- G. Declaring that the 2017 Proxy Statement contained materially false and misleading statements;
- H. Canceling the votes to re-elect the Defendants to the Board in connection with the annual shareholder meeting in 2017, and ordering Defendants to disgorge to the Company all compensation they received for service on the Board following the invalid election;
- I. Awarding to Plaintiff costs and disbursements related to this action, including reasonable attorneys' fees, consultant and expert fees, costs, and expenses; and
- J. Granting such other and further relief as the Court deems just and proper.

**DEREK G. HOWARD LAW FIRM, INC.
JENKINS MULLIGAN & GABRIEL LLP**

**BY: /S/ DEREK G. HOWARD
ATTORNEYS FOR PLAINTIFF**

JURY DEMAND

Plaintiff respectfully demands trial by jury on all issues so triable.

**DEREK G. HOWARD LAW FIRM, INC.
JENKINS MULLIGAN & GABRIEL LLP**

**BY: /S/ DEREK G. HOWARD
ATTORNEYS FOR PLAINTIFF**