EFiled: Aug 06 2021 03:33PM EDT
Transaction ID 66828179
Case No. Multi-Case

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, and CITY OF WARWICK RETIREMENT SYSTEM,	:	
Plaintiffs,	:	
v.	:	C.A. No. 2021-0617-JRS (Consolidated into C.A. No. 2018-0307-JRS)
MARK ZUCKERBERG, SHERYL SANDBERG, MARC ANDREESSEN, PETER THIEL, and PALANTIR TECHNOLOGIES INC.,	:	**ORIGINAL FILED**: July 16, 2021
Defendants,	:	**PUBLIC VERSION FILED**: August 6, 2021
and	:	
FACEBOOK, INC.,	:	
Nominal Defendant.	:	

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Table of Contents

Table of Exhibits to the Complaint

Exhibit	Description
A	Complaint filed by the FTC in connection with the First FTC Agreement
B	Decision and Order in connection with the First FTC Agreement
C	Gibson Dunn white paper sent to the FTC in February 2019
D	Special Committee Report
E	Complaint filed by the FTC in connection with the 2019 FTC Agreement
F	Draft complaint sent to Facebook by the FTC in February 2019
G	Complaint filed by the SEC in connection with 2019 settlement
H	Stipulated Order entered into by Facebook and the FTC in connection with the 2019 FTC Agreement

I. INTRODUCTION

> [T]he government essentially traded getting more money, so that an individual did not have to submit to sworn testimony and I just think that's fundamentally wrong.
>
> - Rohit Chopra
> Commissioner, Federal Trade Commission

1. "For many years, [Mark] Zuckerberg ended Facebook meetings with the half-joking exhortation 'Domination!'"[1] He has achieved that goal. Facebook is, by any measure, the world's dominant social media platform. And the Company's extraordinary power and influence rest almost entirely in the hands of Zuckerberg, its founder, Chairman, CEO, and controlling stockholder.

2. Zuckerberg founded Facebook in 2004. This was auspicious timing. The Silicon Valley ecosystem was fast recovering from the puncturing of the 1990s dot-com bubble. And it was rapidly evolving in a way that would enable Zuckerberg and other tech-savvy prodigies to build fantastic wealth at a young age without sacrificing power or control over the companies that they built.

3. The dot-com era had created extravagant wealth for many founders but cost them control of their creations through dilution or acquisitions. Now, the founders of the twentieth century were the venture capitalists of the twenty-first.

[1] Evan Osnos, *Can Mark Zuckerberg Fix Facebook Before It Breaks Democracy?*, THE NEW YORKER (Sept. 10, 2018).

Determined to right the perceived wrongs of their past, these new founder-friendly-VCs—including key Facebook investors Defendants Peter Thiel and Marc Andreessen—built their brands around their widely marketed belief that founders should be able to obtain billions of dollars in outside money while maintaining autocratic control over their creations. Google's 2004 IPO showed that technology companies could successfully go public with a dual-class share structure—allowing founders to achieve liquidity without sacrificing control. A wave of companies, including Facebook, would soon follow.

4. Thiel, Andreessen, and other adherents to the so-called "cult of the founder" were rewarded for their faith for many years. Over the last seventeen years, a herd of "unicorns"[2] led by young, strong-willed CEOs have achieved remarkable success with the backing of founder-friendly venture funds. Beginning with Zuckerberg, a line of "boy kings"[3] have made billions of dollars for themselves and their venture backers while maintaining ironclad control over companies that have wrought sweeping changes across our society.

5. But Lord Acton was right about the perils of absolute power. In recent years, a number of unicorns have stumbled when brilliant young creators proved

[2] A "unicorn" in Silicon Valley parlance is a venture-backed company valued at a billion dollars or more.

[3] *See* Kate Losse, THE BOY KINGS: A JOURNEY INTO THE HEART OF THE SOCIAL NETWORK (2012).

unequal to the task of managing mature, public companies. In several instances—most prominently, WeWork and Uber—outside directors had to remove out-of-control founders and install professional managers at the head of the company. In others, supine directors have acted as enablers and failed to impose adult supervision.[4]

6. Facebook and its Board have followed the latter course. Since the Company was founded, Facebook's "platform [has been] built upon a fundamental, possibly irreconcilable dichotomy: its purported mission to advance society by connecting people while also profiting off them. It is Facebook's dilemma and its ugly truth."[5] The central problem of managing Facebook is balancing its users' privacy interests with the Company's need to monetize user data to generate revenue. This mission-critical task requires Facebook's leaders to ensure that the Company complies strictly with an array of complex data-privacy laws, regulations, and agreements.

---

[4] Renee Jones, the incoming head of the Securities and Exchange Commission's Corporate Finance Division, has observed that these "[u]nicorn problems stem from a governance structure in which founders, not investors, maintain control over the board. Investors . . . must take steps to address the problem [by] . . . insisting on board representation and diligently attending to their duties as directors to provide discipline and accountability[.]" Renee M. Jones, *The Unicorn Governance Trap*, 166 U. PA. L. REV. ONLINE 165, 186-87 (2017), http://www.pennlawreview.com/online/166-U-Pa-L-Rev-Online-165.pdf.

[5] Cecilia Kang and Sheera Frenkel, AN UGLY TRUTH: INSIDE FACEBOOK'S BATTLE FOR DOMINATION (2021).

7. But under Zuckerberg's move-fast-and-break-things[6] leadership, Facebook has repeatedly failed to comply with its data privacy obligations. The Company has been sued by its users, fined billions of dollars by its regulators, and suffered immense reputational harm that has erased tens of billions of dollars from its market capitalization. Meanwhile, Zuckerberg has methodically stacked the Board with friends, cronies, and employees. When directors have summoned the courage to stand up or speak out, Zuckerberg has pushed them out. Unsurprisingly, the Board has never provided a serious check on Zuckerberg's unfettered authority. Instead, it has enabled him, defended him, and paid billions of dollars from Facebook's corporate coffers to make his problems go away.

8. In 2012, Facebook settled allegations by the Federal Trade Commission that its poorly disclosed practice of sharing data from "friends"[7] of the users of third-party apps with the developers of those third-party apps was deceptive (the "First FTC Agreement"). As part of the First FTC Agreement, Facebook agreed not to misrepresent the extent to which users could control the privacy of their information, the steps that users were required to take to implement such controls, and the extent

[6] Henry Blodget, *Mark Zuckerberg on Innovation*, BUSINESS INSIDER (Oct. 1, 2009) (quoting Zuckerberg: "Move fast and break things. Unless you are breaking stuff, you are not moving fast enough.").

[7] Facebook users each create a Facebook profile showing personal information. They can then "friend" other users who also have Facebook accounts and profiles.

to which Facebook made user information accessible to third parties.

9. Two years later, at Facebook's F8 developer conference in April 2014, Zuckerberg told the world that Facebook was going to enhance its protection of its users' privacy by preventing users' friends from sharing data with third-party applications ("Affected Friend data"):

> [W]e've also heard that sometimes you can be surprised when one of your friends shares some of your data with an app. . . . So now we're going to change this, and we're going to make it so that now, everyone has to choose to share their own data with an app themselves . . . . [W]e think this is a really important step for giving people power and control over how they share their data with apps.

10. In fact, as Zuckerberg and his powerful Chief Operating Officer, Defendant Sheryl Sandberg knew—but concealed from Facebook users—Facebook planned to continue to allow third-party developers with a pre-existing, approved app to have at least one year of ongoing access to Affected Friend data. And even after the one-year transition period, Facebook's management maintained a secret "whitelisting" program that gave dozens of favored apps—including popular apps with millions of users such as Spotify, Hinge, and Snapchat—uninterrupted, undisclosed access to Affected Friend data through as late as June 2018. This decision continued a long pattern in which Zuckerberg and Sandberg used the promise of privileged access to Facebook's Graph Application Programming

Interface or "API"[8] as a carrot—and the threat of losing access as a stick—in negotiations with other Silicon Valley leaders.

11. The First FTC Agreement also required Facebook to maintain a reasonable privacy program that safeguarded the privacy, confidentiality, and integrity of user information. As Facebook's most senior officers, Zuckerberg and Sandberg had a fiduciary duty to ensure that that the Company honored this pledge. But Zuckerberg and Sandberg failed to implement an appropriate program. Instead, they allowed Facebook to grant access to consumer data to third-party developers without vetting; developers simply had to check a box agreeing to comply with Facebook's policies and terms and conditions.

12. Worse still, when Zuckerberg and Sandberg learned of serious breaches by a third-party app developer, they failed to properly investigate and instead

[8] Facebook's API allows third parties to integrate functionality from Facebook into their own applications.

Version 1 of Facebook's Graph API collected vast quantities of profile information from users who directly installed or interacted with a particular app and allowed third-party developers to use that functionality in their own applications. Significantly, Version 1 of the Graph API allowed the harvesting of data from an application users' Facebook friends—even if those friends had not interacted with the app.

As part of the change that Zuckerberg announced in 2014, Facebook introduced Version 2 of the Graph API, which did not allow developers to collect profile data from app users' friends. But, as noted above, Facebook's management secretly grandfathered existing apps to allow them to continue surreptitious data collection from users' friends.

participated in a coverup. Specifically, in 2014 and 2015, the now-defunct advertising and data analytics company, Cambridge Analytica, paid an academic researcher, Aleksandr Kogan, to collect and transfer data from Facebook to create personality scores for approximately 30 million American Facebook users. In violation of Facebook's policies, Kogan transferred underlying Facebook user data to Cambridge Analytica, which then used this information in connection with its political advertising activities, including on behalf of the backers of Brexit and in support of Donald Trump's 2016 presidential campaign.

13. Facebook's senior management—including Zuckerberg—learned of the Cambridge Analytica breach in late 2015 but failed to take the necessary steps to ensure that Cambridge Analytica deleted its ill-gotten user data. Zuckerberg and Sandberg also allowed Facebook's media relations staff to mislead journalists by claiming, falsely, that Facebook was investigating Cambridge Analytica's use of Facebook user data and had discovered no evidence of wrongdoing. Finally, Zuckerberg and Sandberg both signed false and misleading SEC filings in which Facebook falsely told investors that "our users' data **may** be improperly accessed, used or disclosed" without disclosing that this risk was not hypothetical but, in fact, had already materialized.

14. In March 2018, the Guardian and the New York Times issued bombshell reports, revealing that Cambridge Analytica had harvested private

information from the Facebook profiles of tens of millions of users without their permission. As the New York Times wrote, the breach allowed Cambridge Analytica "to exploit the private social media activity of a huge swath of the American electorate, developing techniques that underpinned its work on President Trump's campaign in 2016." Whistleblower testimony would later show that Cambridge Analytica was directed and aided in this work by Defendant Palantir Technologies Inc., a software company co-founded by Thiel, who remains a large investor in Palantir and Chairman of its Board.

15. In response to news of the Cambridge Analytica leak, multiple regulators, including the FTC and the Securities and Exchange Commission began investigating Facebook. And in early 2019, the FTC sent Facebook a draft complaint naming both Facebook and Zuckerberg as defendants. Management and the Board sprang into action. But their focus was protecting Zuckerberg, not the Company.

16. Board minutes show that Facebook's Board was advised that [redacted] Yet Zuckerberg, Sandberg, and other Facebook directors agreed to authorize a multi-billion settlement with the FTC as an express *quid pro quo* to protect Zuckerberg from being named in the FTC's complaint, made subject to personal liability, or even required to sit for a deposition.

17. On July 24, 2019, the SEC and Facebook announced a settlement in

which Facebook would pay $100 million to resolve an investigation into its misleading statements about the Cambridge Analytica breach. That same day, the FTC announced that Facebook had agreed to pay a record-setting $5 billion as part of a settlement that included sweeping releases for Zuckerberg and Sandberg (who were not named as defendants). This dwarfed the FTC's previous record fine ($168 million) and was approximately $4.9 billion more than Facebook's maximum exposure under the applicable statute.

18. As FTC Commissioner Rohit Chopra would later put it, "[t]he government essentially traded getting more money, so that an individual did not have to submit to sworn testimony and I just think that's fundamentally wrong." This action seeks to make things right.

II. PARTIES

19. Plaintiff Employees' Retirement System of Rhode Island ("Rhode Island") was established in 1936 and is the largest public employee retirement system in the State of Rhode Island. The $10 billion retirement system provides retirement, disability, and survivor benefits to state employees, public school teachers, judges, state police, municipal police and fire employees, and general municipal employees. Rhode Island has approximately 32,000 beneficiaries. Rhode Island is the beneficial owner of over 150,000 shares of Facebook common stock and has continuously been a stockholder of the Company since at least March 31,

2017. Rhode Island has been an active and vocal stockholder of Facebook for some time, including its October 2018 action to join a stockholder initiative seeking to separate the roles of Chief Executive Officer and Board Chairman.

20. Plaintiff City of Warwick Retirement System ("Warwick" and with Rhode Island, the "Rhode Island Plaintiffs" or "Plaintiffs") is a municipal pension plan that provides retirement benefits to employees of the City of Warwick, Rhode Island. Warwick is the beneficial owner of over 10,000 shares of Facebook common stock and has continuously been a stockholder of the Company since at least February 19, 2014.

21. Defendant Mark Zuckerberg founded Facebook. At all relevant times, he was Facebook's Chairman, Chief Executive Officer, and controlling stockholder.

22. Defendant Sheryl Sandberg has served as Facebook's Chief Operating Officer since 2008. She has served on Facebook's Board of Directors since 2012.

23. Defendant Marc Andreessen has served on Facebook's Board of Directors since 2008.

24. Defendant Peter Thiel has served on Facebook's Board of Directors since 2005.

25. Defendant Palantir Technologies, Inc. is a software company co-founded by Thiel in 2003. Palantir is incorporated in Delaware and headquartered in Denver, Colorado.

26. Nominal Defendant Facebook, Inc. ("Facebook" or the "Company") is a Delaware corporation headquartered in Menlo Park, California. Facebook is the world's most prominent social media platform. Its products include:

- ***Facebook*** (known internally as the "big blue app" to distinguish it from Facebook, the corporate entity). Facebook's big blue app is a social networking site that allows users to connect, share, discover, and communicate with each other on mobile devices and personal computers. Its features include the Facebook News Feed, Stories, Groups, Shops, Marketplace, News, and Watch.
- ***Instagram.*** Instagram is a photo and video sharing application—acquired by Facebook in 2012—that allows users to post photos and videos, send private messages, and connect with and shop from their favorite businesses and creators. Its features include Instagram Feed, Stories, Reels, IGTV, Live, Shops, and messaging.
- ***WhatsApp.*** WhatsApp is a secure messaging application—acquired by Facebook in February 2014—that is used by people and businesses around the world to communicate and transact in a private way.
- ***Facebook Reality Labs.*** Facebook Reality Labs focuses on

augmented and virtual reality products, including (i) Oculus Quest, which provides virtual reality (VR) hardware, software, and content, and (ii) Portal, a video communication device.

III. RELEVANT NON-PARTIES

27. Cambridge Analytica Ltd. is a now-defunct UK-based political data analysis firm that was founded in 2013.

28. The Federal Trade Commission is a federal agency charged with enforcing federal antitrust and consumer protection statutes.

29. Facebook currently has a nine-member Board. In addition to Zuckerberg, Sandberg, Thiel, and Andreessen, the Board includes: Peggy Alford who has served on Facebook's Board of Directors since May 2019; Andrew Houston who has served on Facebook's Board of Directors since February 2020; Robert Kimmitt who has served on Facebook's Board of Directors since March 2020; Nancy Killefer who has served on Facebook's Board of Directors since March 2020; and Tracey Travis who has served on Facebook's Board of Directors since March 2020. The table below shows Facebook's Board membership from the time of its 2012 initial public offering through today:

Time Period	Directors	Change
May 18, 2012 – June 23, 2012	Mark Zuckerberg, Marc Andreessen, Peter Thiel, Erskine Bowles, Reed Hastings, Donald Graham, and James Breyer	IPO Board
June 24, 2012 – Mar. 4, 2013	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Graham, and Breyer	Sheryl Sandberg joined on June 24, 2012
Mar. 5, 2013 – June 10, 2013	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Graham, Breyer, and Desmond-Hellmann	Susan Desmond-Hellmann joined on Mar. 5, 2013
June 11, 2013 – Oct. 5, 2014	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Graham, and Desmond-Hellmann	Breyer left on June 11, 2013
Oct. 6, 2014 – June 10, 2015	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Graham, Desmond-Hellmann, and Koum	Jan Koum joined on Oct. 6, 2014
June 11, 2015 – Feb. 4, 2018	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Desmond-Hellmann, and Koum	Graham left on June 11, 2015
Feb. 5, 2018 – May 30, 2018	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Desmond-Hellmann, Koum, and Chenault	Kenneth Chenault joined on Feb. 5, 2018
May 31, 2018 – May 29, 2019	Zuckerberg, Sandberg, Andreessen, Thiel, Bowles, Hastings, Desmond-Hellmann, Chenault, and Zients	Koum left and Jeffrey Zients joined May 31, 2018

Time Period	Directors	Change
May 30, 2019 – Oct. 29, 2019	Zuckerberg, Sandberg, Andreessen, Thiel, Desmond-Hellmann, Chenault, Zients, and Alford	Bowles and Hastings left and Peggy Alford joined on May 30, 2019
Oct. 30, 2019 – Feb. 2, 2020	Zuckerberg, Sandberg, Andreessen, Thiel, Chenault, Zients, and Alford	Desmond-Hellman left on Oct. 30, 2019
Feb. 3, 2020 – Mar. 8, 2020	Zuckerberg, Sandberg, Andreessen, Thiel, Chenault, Zients, Alford, and Houston	Andrew Houston joined on Feb. 3, 2020
Mar. 9, 2020 – Mar. 25, 2020	Zuckerberg, Sandberg, Andreessen, Thiel, Chenault, Zients, Alford, Houston, Killefer, and Travis	Nancy Killefer and Tracey Travis joined on Mar. 9, 2020
Mar. 26, 2020 – May 26, 2020	Zuckerberg, Sandberg, Andreessen, Thiel, Chenault, Zients, Alford, Houston, Killefer, Travis, and Kimmitt	Robert Kimmitt joined on Mar. 26, 2020
May 27, 2020 – Present	Zuckerberg, Sandberg, Andreessen, Thiel, Alford, Houston, Killefer, Travis, and Kimmitt	Chenault and Zients left on May 27, 2020

IV. SUBSTANTIVE ALLEGATIONS

A. Zuckerberg Founded And Controls Facebook

30. According to Facebook's Investor Relations page, Zuckerberg is the "chairman and CEO of Facebook, which he founded in 2004. [He] is responsible for setting the overall direction and product strategy for the company. He leads the design of Facebook's service and development of its core technology and

infrastructure." In 2018, Zuckerberg testified before Congress: "I started Facebook, I run it, and I'm responsible for what happens here."

31. Zuckerberg is—and, at all relevant times, was—Facebook's controlling stockholder, holding a majority of the Company's voting power. Zuckerberg's control of Facebook is facilitated through the Company's dual-class common stock structure, in which Class A common stock has one vote per share and Class B common stock has ten votes per share. As of Facebook's most recent proxy statement, Zuckerberg held 57.7% of the Company's total voting power, including 89.1% of the voting power of the Class B shares. At the time of Facebook's 2019 settlement with the FTC (and still today), Zuckerberg owned a 13% economic interest in Facebook.

B. Privacy Is Facebook's Core Compliance Issue

32. At all relevant times, Zuckerberg and Sandberg knew that ensuring Facebook's compliance with privacy norms and laws was a mission-critical task. As Facebook recently wrote in briefing submitted to the First Circuit by its lawyers at Gibson Dunn in connection with a Freedom Of Information Act ("FOIA") action brought by Plaintiffs' counsel against the FTC: "Facebook's Privacy Program is the company's approach to 'data privacy and security practices,' and it is a crucial part

of Facebook's business mission."[9] Facebook stated, further, that its "commercial fortunes . . . could be materially affected by the disclosure of . . . alleged problems experienced during the operation of Facebook's Privacy Program."[10] Information about Facebook's privacy program is, according to Facebook, "at the core of Facebook's business."[11]

i. Privacy Has Always Been Facebook's "Top Priority" And Greatest Compliance Problem

33. Zuckerberg has always known that Facebook must protect user data in order to grow its user base and protect the Company from regulatory fines and penalties. Yet from Facebook's earliest days, Zuckerberg has allowed Facebook to play fast and loose with applicable privacy laws. Time and again, the Company has incurred regulatory blowback and blistering publicity for placing advertisers' desire for user data ahead of users' privacy interests without proper disclosures.

34. Recalling the Company's early days in a 2019 interview with Jonathan Zittrain, Zuckerberg described Facebook as an "innovator in privacy," because "the very first thing that [Facebook] did [] [was to] mak[e] it so Harvard students could communicate in a way that they had some confidence that their content

[9] *See Block & Leviton LLP v. Federal Trade Commission*, C.A. Nos. 21-1172, -1195 (1st Cir. Apr. 8, 2021), Appellant Facebook, Inc.'s Opening Brief at 7-8.

[10] *Id.* at 28.

[11] *Block & Leviton LLP v. Federal Trade Commission*, Nos. 21-1172, -1195 (1st Cir. May 7, 2021), Appellant Facebook, Inc.'s Reply Brief at 8 n.2.

and information would be shared with only people within that community."

35. That's one way of describing it.

36. Another, more accurate way would be to note that in 2003, The Crimson (Harvard's student newspaper) reported that Zuckerberg had been brought before the university's Administrative Board "accused of breaching security, violating copyrights and violating individual privacy by creating the website, www.facemash.com,"—a predecessor to Facebook—which "used photos compiled from the online facebooks of nine Houses, placing two next to each other at a time and asking users to choose the 'hotter' person." According to The Crimson, "Zuckerberg hacked into House websites to gather the photos, and then wrote the codes to compute rankings after every vote."

37. In February 2009, Zuckerberg gave a live press conference, in which he announced that any future, "controversial" changes to Facebook's Privacy Policy would be put to a vote of all registered Facebook users. He explained that Facebook would make the change because "[p]eople feel a visceral connection to the[ir] rights . . ." and the voting mechanism "gives us a good way to involve them." But by December 2012, Zuckerberg scrapped the voting procedures, despite 88% of voters voting against the change. As explained by Dina Srinivasan in the Berkeley Business Law Journal: "[t]oday, Facebook surveillance is a mandatory tie-in with a third-party's (e.g., the New York Times) use and license of other Facebook products

(Like buttons, Logins, etc.)."

38. In 2010, Facebook and Zuckerberg suffered a storm of criticism when The New Yorker reported on instant messages sent by Zuckerberg in 2004, in which "Zuckerberg explained to a friend that his control of Facebook gave him access to any information he wanted on any Harvard student:"

Zuck: yea so if you ever need info about anyone at harvard

Zuck: just ask

Zuck: i have over 4000 emails, pictures, addresses, sns

Friend: what!? how'd you manage that one?

Zuck: people just submitted it

Zuck: i don't know why

Zuck: they 'trust me'

Zuck: dumb fucks

39. Behind these (literally) sophomoric statements lay a recognition that if users lost trust in Facebook, it would reduce their engagement and willingness to share personal information. As Zuckerberg put it at the Thompson Reuters Global Technology Summit in May 2009:

> "[T]rust is this incredibly important part of what we do. People aren't going to share information on the site if they think it is going to go to—I'm just using kind of a different example here—but privacy is a really important part of what we do too. And making it so that people have control over who they share their information with is one of the things that makes people use the service and be comfortable sharing

> information. If you didn't trust that when you said you only wanted it to go to a certain set of people or that when you put information on Facebook that it would actually go to the people that you wanted, and that you would be safe, then that would definitely cut down on your usage. . . ."

40. For over a decade, Zuckerberg, Sandberg, and other top executives have emphasized that user control of data is critical to Facebook's business. In a lengthy November 29, 2011 post on the Company's website titled "Our Commitment to the Facebook Community," Zuckerberg emphasized this theme:

> I founded Facebook on the idea that people want to share and connect with people in their lives, but to do this everyone needs complete control over who they share with at all times.
>
> This idea has been the core of Facebook since day one. When I built the first version of Facebook, almost nobody I knew wanted a public page on the internet. That seemed scary. But as long as they could make their page private, they felt safe sharing with their friends online. Control was key. With Facebook, for the first time, people had the tools they needed to do this. That's how Facebook became the world's biggest community online. We made it easy for people to feel comfortable sharing things about their real lives. [. . .]
>
> Facebook has always been committed to being transparent about the information you have stored with us – and we have led the internet in building tools to give people the ability to see and control what they share. [. . .]
>
> As a matter of fact, privacy is so deeply embedded in all of the development we do . . . . We do privacy access checks literally tens of billions of times each day to ensure we're enforcing that only the people you want see your content. These privacy principles are written very deeply into our code.

41. Echoing Zuckerberg's message, in an interview that took place in 2011

and was aired on PBS' *Frontline* in 2018, Sandberg asserted, "We are focused on privacy. We care most about privacy. Our business model is by far the most privacy friendly to consumers." In the same interview, Zuckerberg added, "That's our mission. We have to do that—because if people feel like they don't have control over how they're sharing things, then we're failing them."

42. The next year, when Facebook went public and faced additional scrutiny from investors and regulators, Zuckerberg and Sandberg again affirmed the importance of data privacy to the Company. In connection with the IPO, Zuckerberg signed Facebook's Form S-1, which described the Company's efforts to "protect[] user privacy" as "fundamental to [its] business," and Sandberg attested to the same language in Facebook's Form 10-K for the year ended December 31, 2012.

43. Facebook's IPO was, famously, a flop. The Company went public at $38 per share but traded below (and, at times, far below) that level for more than a year as investors struggled to understand how the Company could convert its substantial user base into substantial earnings. In Facebook's first months as a public company, analysts made clear that monetizing user data—while complying with privacy regulations—would be the key to boosting its stock price. On May 8, 2012, Morningstar analyst Rick Summer wrote, "[w]e expect the company to translate its immense user base and competitive advantages into massive growth in revenue and cash flows over the long run, but the ability to further monetize current users

represents a significant hurdle that must be overcome." On October 31, 2013, Morningstar issued an updated report titled *Facebook's future can only improve once it opens up its advertising platform*, noting that "Facebook is capturing data and online/user activity in a comprehensive way that competitors can only dream about" and that "[b]y sharing its user data and technology with partners, Facebook is potentially cementing its status as owning many people's identities within Facebook and across the Internet." That same report cautioned that "[l]aws and regulations surrounding privacy may hinder product development" at Facebook.

44. While analysts made it clear that Facebook needed to monetize user data to win back investors, Zuckerberg, Sandberg, and other managers continued to emphasize the importance of privacy to its 1.2 billion users.

a. In an August 29, 2013 blog post, the Company announced changes to its Data Use Policy, which stated, "Your trust is important to us, which is why we don't share information we receive about you with others unless we have received your permission."

b. In a May 7, 2015 interview on the future of social media in Latin America, Vice President of Growth Javier Olivan told Americas Quarterly, "Privacy is our number one priority. Giving people control over what they share is at the core of everything we do.

We think about privacy from the time we start building a product until it goes out the door. We know that people will only trust Facebook if we do a good job of protecting their information."

c. At a conference hosted by Goldman Sachs on February 9, 2016, Sandberg declared, "Privacy is core to what Facebook does in their ability to share because people's willingness to share depends upon the privacy we provide."

d. Sandberg reiterated this point on the Company's earnings call for the first quarter of 2017 on May 3, 2017: "We're very focused on the privacy of what people do, wherever they do it and using the information we have in a very responsible way. We believe that because people are sharing interests, because people are themselves their real identity on the Facebook platform, we have a significant advantage."

45. As late as the end of 2017—just a few months before the news about Cambridge Analytica broke—Zuckerberg continued to insist that protecting user data remained Facebook's highest priority. On the Company's third quarter earnings call on November 1, 2017, he stressed:

> I'm dead serious about this, and the reason I'm talking about this on our earnings call is that I've directed our teams to invest so much in security—on top of the other investments we're making—that it will significantly impact our profitability going forward, and I wanted our

> investors to hear that directly from me. I believe this will make our society stronger and in doing so will be good for all of us over the long term. But I want to be clear about what our priority is: protecting our community is more important than maximizing our profits.

46. After the New York Times and the Guardian revealed Facebook's massive privacy failings related to Cambridge Analytica in March 2018, Zuckerberg, Sandberg, and the teams they managed continued to assure the public of the importance of privacy to the Company. To this day, "Keep people safe and protect privacy" remains one of only five guiding principles listed on Facebook's website, as of July 13, 2021.[12]

ii. Facebook Consistently Warns That The Loss Of User Trust Is A Key Risk Factor

47. In the second half of 2009 and through 2010, a majority of Facebook users reported having changed their privacy settings—reflecting a notable increase over prior years.[13] In a 2011 survey, 65% of Facebook users reported being "very concerned" or "somewhat concerned" about an "invasion of privacy" on Facebook. According to a 2012 study, only 25% of users trusted Facebook with their information.[14] But only 42% were aware that Facebook shared user data with third

[12] https://about.fb.com/company-info/ (last accessed July 14, 2021).

[13] Deirdre O'Brien & Ann M. Torres, *Social Networking and Online Privacy: Facebook Users' Perceptions*, 31(2) IRISH J. OF MGMT. 63, 89 (2012).

[14] *Id.* at 86.

parties.[15] And in 2013, according to a complaint filed by the FTC in 2019, Facebook conducted a survey that revealed users were concerned about "sharing their data with apps, believed apps asked for unnecessary information or permissions, and were concerned about the information apps used for marketing."

48. From the time of the First FTC Agreement on July 27, 2012 through the March 2018 revelations about Cambridge Analytica, Facebook's public filings with the SEC consistently recognized not only the importance of data privacy, but also that severe harm could befall the Company if users' data—and consequently their trust—was compromised.

49. From its very first filing with the SEC, in anticipation of becoming a public company, Facebook identified privacy and regulatory compliance as one of its most significant risk factors. In a preliminary prospectus filed on February 1, 2012, Facebook warned that "[i]mproper access to or disclosure of our users' information could harm our reputation and adversely affect our business." The Company explained: "[i]f . . . third parties or Platform developers fail to adopt or adhere to adequate data security practices or fail to comply with our terms and policies . . . our users' data may be improperly accessed or disclosed." And it went on to caution that "the affected users or government authorities could initiate legal

[15] *Id.* at 85.

or regulatory action against us in connection with such incidents, which could cause us to incur significant expense and liability . . . .” The preliminary prospectus also advised, “[w]e [at Facebook] have in the past experienced, and we expect that in the future we will continue to experience, media, legislative, or regulatory scrutiny of our decisions regarding user privacy or other issues, which may adversely affect our reputation and brand.” Expanding on these legislative and regulatory risks, the prospectus cautioned that:

> We have been subject to regulatory investigations and settlements and we expect to continue to be subject to such proceedings in the future, which could cause us to incur substantial costs or require us to change our business practices in a manner materially adverse to our business. . . . . **[V]iolation of existing or future regulatory orders or consent decrees could subject us to substantial monetary fines and other penalties**.

50. The prospectus also explained that Facebook faced business risks from its lack of data privacy. It listed “concerns related to privacy and sharing, safety, security or other factors” and the adoption of “policies or procedures related to areas such as sharing or user data that are perceived negatively by our users or the general public” as potential causes of decreased user retention, growth, and engagement. It stated that any such “decrease in user retention, growth, or engagement could render Facebook less attractive to developers and marketers, which may have a material and adverse impact on our revenue, business, financial condition, and results of operations.”

51. Facebook substantially reiterated the privacy and regulatory-related risks quoted above in every quarterly and annual report filed with the SEC since its IPO, with minor modifications along the way.

52. Facebook's Form 10-K for the year ended December 31, 2012 included the following statement about the First FTC Agreement: "In August 2012, the FTC approved a settlement agreement with us to resolve an investigation into various practices, that, among other things, requires us to establish and refine certain practices with respect to treatment of user data and privacy settings and also requires we complete bi-annual independent privacy assessments. Violation of existing or future regulatory orders or consent decrees could subject us to substantial monetary fines and other penalties that could negatively affect our financial condition and results of operations."

53. In its Form 10-K for the year ended December 31, 2013, Facebook amended the risk factor about improper access to data to clarify that "some of our developers or other partners . . . may receive or store information provided by us or by our users through mobile or web applications integrated with Facebook." Notably, prior iterations highlighted risks associated with data provided by users to third-party developers but neglected to mention user data provided by the Company itself.

54. These risk-factor disclosures—warning of substantial consequences if

Facebook failed to protect users' privacy, maintain user trust, or comply with consent orders—remained in the Company's annual reports through the 2017 Form 10-K, filed February 1, 2018—just a month before the Guardian and the New York Times exposés.

55. In the Company's first annual filing after the Cambridge Analytica scandal broke (the 2018 10-K), Facebook amended some of its privacy-related risk factors, but none of the changes addressed new, post-2018 risks or risks that the previous years' risk factors did not already contemplate. While Facebook made some superficial changes to its privacy risk factors in response to fallout from Cambridge Analytica, the underlying message remained the same: user trust, privacy, and related regulatory compliance were and continued to be the Company's central risks.

56. Zuckerberg and Sandberg reviewed and signed all of the annual reports discussed above. Zuckerberg also signed the Form S-1.

iii. Facebook Internally Recognizes Privacy As Its Core Compliance Issue

57. Internally, Facebook's management consistently recognized privacy as its core compliance issue. [redacted] prepared slides for a February 12, 2014 Audit Committee meeting that listed "[redacted] The same slides state that Facebook [redacted]" [redacted] team presented similar slides to the Audit Committee again

in February 2015.

58. Since at least 2015, Facebook's Code of Conduct has cautioned employees that "Facebook's brand and the trust users put in us . . . depend on your exercise of good judgment and discretion when using tools that allow you to see user information that would otherwise not be visible to you on the site."

59. Similarly, the materials prepared by management for the January 11, 2016 Audit Committee meeting listed "[redacted] A management presentation to the full Board on February 16, 2017 listed the same [redacted]

60. In the February 16, 2017 presentation, the full Board received the results of the [redacted] conducted by the Internal Audit team. The [redacted]"

61. The Internal Audit team updated the [redacted] for the Audit Committee on December 6, 2017. The [redacted]

[redacted]” Furthermore, “[redacted]

C. Zuckerberg and Sandberg are Hands-On Managers Involved in Every Key Decision at Facebook

62. Throughout their respective tenures at Facebook, Zuckerberg and Sandberg have repeatedly, personally intervened to institute policy exceptions and cover up deceptive practices at Facebook.

63. In a September 2019 story, the Observer posed the question: “[B]ehind the scenes at the company which employs over 35,000 people globally, how much are the CEO and COO actually involved in the day-to-day decision making of things . . . ?” Their answer: “[A] lot more involved than you’d probably think.” The story quoted Monika Bickert (Facebook’s head of global policy management) and John DeVine (Facebook’s VP of global operations) as saying that Zuckerberg and Sandberg were intimately involved with granular decisions:

> “With anything that is very big that a lot of people are talking about, we will absolutely loop them in,” Bickert, who orders whether certain

> content is allowed or not on Facebook, told Yahoo Finance's editor-in-chief Andrew Serwer . . .
>
> "Any time that we're dealing with something that is close to the line or it's something where it's not really clear how the policies apply or it's something that's particularly important, we will, at the very least, send an email up to Mark and Sheryl so that they know what's going on," Bickert added. "Very often, we will end up having a back-and-forth with them about why we're making the decision we're making, and make sure they're OK with it."
>
> Head of global operations John DeVine said Zuckerberg, Sandberg and himself meet at least once a week to go over important topics and "see [if] we are getting it right."
>
> "Mark is incredibly involved in some of the deepest, hardest, especially product issues . . . . I guess I won't go into details, but the involvement is very deep."

64. Examples of Zuckerberg and Sandberg's "very deep" personal involvement with day-to-day decision include, but are not limited to, the following instances.

65. Sandy Parakilas was the Platform Operations Manager responsible for policing data breaches by third-party software developers at Facebook from 2011-2012. In a March 2018 interview, Parakilas explained to the Guardian that during this time, Zuckerberg was personally responsible for banning third-party apps that did not comply with Facebook's policies from the platform. But, as Parakilas later testified before the U.K. House of Commons on March 21, 2018, Facebook had "very few ways" of discovering abuse or enforcing its anti-abuse policies, there were only a "handful" of bans, and Facebook had "relatively low detection of policy

violations" because it relied primarily on media reports or complaints from competitors:

> Facebook had very few ways of either discovering abuse once data had been passed or enforcing on abuse once it was discovered . . . . I can tell you that in my experience, during my 16 months in that role at Facebook, I do not remember a single physical audit of a developer's storage. I do not remember that happening once. There were only a handful of lawsuits and bans. Those were both quite rare. Mostly what I did was call developers and threaten to do other things, basically saying that they needed to follow the policies. That was effectively the main enforcing mechanism during my time.
>
> The other thing to note is that Facebook had relatively low detection of policy violations and most of the reports that it got about policy violations were either from the press or from other developers who were competitors of a particular company and they would call up or talk to someone at Facebook and say, "I think this person is doing X, Y and Z," and they were doing that largely for competitive reasons.

66. As described in detail below, in a November 19, 2012 email, Zuckerberg declared that Facebook would from then on require "full reciprocity" with developers, which, he explained, meant that "apps [were] required to give any user who connect[ed] to FB a prominent option to share all of their social content within that service back." Sandberg agreed, responding to the email chain: "I think the observation that we are trying to maximize sharing on [F]acebook, not just sharing in the world, is a critical one. **I like full reciprocity and this is the heart of why**."

67. Zuckerberg and Sandberg actively participated in decisions about permissions for individual apps, based on their perceived value or threat to

Facebook. Over the course of several years, Zuckerberg and Sandberg personally oversaw decisions about the degree of API access given to third parties. For example:

a. Top Facebook executives, including Mike Vernal—who was responsible for Facebook's platform team—deferred to Zuckerberg on questions of individual access to the API. In April 2011, Vernal told his team that "[p]retty much everyone is always asking us to turn off APIs (Zuck & Photo Tagging) or whitelist APIs (Add Friend) or worse." In November 2012, Vernal emailed Zuckerberg presenting him with three options for implementing API restrictions and advised "I think the ball is in your court on this one, but let me know if you need any more data from us."

b. In a May 23, 2012 email exchange, Zuckerberg made clear that he monitored and managed relationships with apps he considered the "most important partner[s]" for data reciprocity, including Twitter, Instagram, Pinterest, Foursquare, YouTube, Blogger, and WordPress. Zuckerberg wrote, "[i]f any developer doesn't want to work with us on this but still wants to be able to pull friends and other data from us, we should be clear that this

reciprocity is important to us. Pinterest, Foursquare and others should understand this." He offered to tell the companies about reciprocity directly, "since I know the founders."

c. In a long-running email exchange between August 2012 and January 2013, a group of executives including Zuckerberg, Sandberg, and Vernal emailed about certain "competitive mobile app[s]" and their ability to run ads on Facebook's mobile app. Sandberg wrote "I would block Google. Mark?" Zuckerberg responded, "I wouldn't allow G+ [Google+], but the rest are probably fine." Later, on the same thread, Zuckerberg wrote "I think we should block WeChat, Kakao and Line ads." Facebook Vice President Justin Osofksy complied, confirming: "We will block Wechat, Kakao and Line . . . ."

d. On January 24, 2013, Zuckerberg personally approved the decision to cut off access to the API for Vine, a video feature on Twitter, on the day it launched on Apple's mobile operating system. That day, Osofsky wrote to Zuckerberg that "[u]nless anyone raises objections, we will shut down [Vine's] friends API access." Zuckerberg responded, "Yup, go for it."

e. According to a heavily redacted antitrust lawsuit filed against

Facebook by 46 states (plus the District of Columbia and the territory of Guam) in December 2020,[16] Zuckerberg personally "gave the order . . . to cut off [a photo-sharing app's] API access to the Facebook Platform." On information and belief, that photo-sharing app was Snapchat,[17] and Zuckerberg would have

[16] The plaintiff states are Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, the territory of Guam, Hawaii, Idaho, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[17] In September 2019, the Wall Street Journal reported that Snap (the company that created Snapchat) was "talking about [Facebook's] hardball tactics to investigators from the Federal Trade Commission" and "for years kept a dossier of ways that [Snap] felt Facebook was trying to thwart competition . . . The title of the documents: Project Voldemort."

The unredacted portions of the states' antitrust complaint state that the app, in question, "was a photo-sharing app, but unlike Instagram's broad sharing model [redacted]," and that it "quickly became extremely popular, especially with younger users." Snapchat is a photo-sharing app that was wildly popular with younger users in 2013 and was unlike Instagram's broad sharing model, in that users shared photos only with "friends" as opposed to all users.

The complaint also states that "when Zuckerberg met with [redacted], he informed [redacted] that Facebook was on the verge of releasing an app with virtually the same functionality as [redacted], implying that Facebook intended to crush [redacted] if it refused to sell" and that "[t]he new Facebook app that Zuckerberg had threatened [redacted] failed to gain traction in the marketplace." This is consistent with public reporting that, in the summer or fall of 2013, Zuckerberg met with Snap founder Evan Spiegel in an effort to acquire Snap and threatened Spiegel that Facebook was about to launch a Snapchat clone, called Poke. Spiegel rejected Zuckerberg's offer

given that order sometime in the summer or fall of 2013.

f. According to internal Facebook emails, in February 2015, the growth team, which reported to Zuckerberg, was "planning on shipping a permissions update on Android . . . . They [would] include the "read call log" permission, which [would] trigger the Android permissions dialog on update, requiring users to accept the update." The change would allow Facebook to access Android users' call logs, to determine their closest friends. The growth team acknowledged it was a "pretty high-risk thing to do from a PR perspective," but after meeting with Zuckerberg, Facebook proceeded with the change.

68. Zuckerberg and Sandberg are also intimately involved in Facebook's public communications. In August 2017, after various investigations into Russian disinformation on Facebook had devolved into what the New York Times called a "five-alarm fire," Zuckerberg and Sandberg approved a plan to publicize some of Facebook's internal findings on the topic. According to the Times story—which was published on November 14, 2018—Sandberg personally reviewed the draft publication and "insisted it be less specific." So, the Company published an

---

and Zuckerberg followed through on the threat. But Poke failed to gain traction in the marketplace and was discontinued in May 2014.

"abbreviated blog post" that, according to the Times, "said little about fake accounts or the organic posts created by Russian trolls that had gone viral on Facebook."

69. From late 2017 to early 2018, Sandberg was intimately involved in Facebook's decision not to revise overstated metrics about Facebook's advertising reach. According to a summary of witness and documentary testimony provided by plaintiffs in litigation pending against Facebook:[18]

> Sandberg evaluated multiple options for fixing (or deciding not to fix) problems with the Potential Reach metric in fall 2017. . . . According to VP of Ads & Business Platform Mark Rabkin, "The main issue" for Sandberg was "that the numbers, the size of the discrepancies, just don't smell right to her—and thus won't smell right to either reporters or our clients."
> [. . .]
> Sandberg also oversaw what Facebook would disclose to advertisers about Potential Reach in light of public reports exposing Facebook's Potential Reach inflation . . . . For instance, Corporate Communications Director Elisabeth Diana wrote that after the public statement on reach estimates are reviewed by "legal, IR [investor relations], and [the] growth [team]" she still has to get approval from Sandberg.
> [. . .]
> [T]hroughout late 2017 and early 2018, senior executives, as well as sales and ads team members, met with Sandberg on a biweekly basis to discuss public statements to customers.

70. In January 2018, according to ProPublica, the Turkish government demanded that Facebook "block Facebook posts from the People's Protection Units,

[18] *Singer, et al. v. Facebook, Inc.*, No. 3:18-cv-04978 (N.D. Cal. Feb. 17, 2021), ECF No. 260 at 2 (quoting internal Facebook documents and deposition testimony of Rob Goldman).

a mostly Kurdish militia group the Turkish government had targeted." Top executives consulted with Zuckerberg and Sandberg, and Sandberg personally signed off on blocking the posts.

71. In November 2018, the Wall Street Journal published a detailed look into Zuckerberg's war-like tactics following the Cambridge Analytica scandal. The Journal reported that in 2018, "Zuckerberg gathered about 50 of his top lieutenants . . . and told them that Facebook [] was at war and he planned to lead the company accordingly." "[A]s he tired of playing defense, Mr. Zuckerberg in 2018 took on the role of a wartime leader who needed to act quickly and, sometimes, unilaterally."

72. In a July 2018 interview with Vox, Zuckerberg discussed Holocaust denial on Facebook and stated "I don't believe that our platform should take that down[.]" In late 2020, he reversed course, writing in a public Facebook post that his "thinking had evolved" and that, going forward, he would "prohibit any content that denies or distorts the Holocaust."

73. According to a 2021 Buzzfeed exposé titled *Mark Changed the Rules*, "[i]n April 2019, Facebook was preparing to ban one of the internet's most notorious spreaders of misinformation and hate, Infowars founder Alex Jones. Then CEO Mark Zuckerberg personally intervened . . . and opened a gaping loophole" in Facebook's policies for Jones. Zuckerberg decided that "Facebook would

permanently ban Jones and his company—but would not touch posts of praise and support from other Facebook users. This meant that Jones' legions of followers could continue to share his lies across the world's largest social network."

74. In May 2020, then-President Trump infamously posted on Facebook and Twitter that "when the looting starts, the shooting starts." Twitter hid the post. According to a June 28, 2020 story by the Washington Post, a few hours later, President Trump called Zuckerberg to lobby him about the same post. As Zuckerberg later explained in a post of his own, he then personally decided, "as the leader of an institution committed to free expression," to keep Trump's post on Facebook.[19]

D. Zuckerberg and Sandberg Knew That It Was Critical For Facebook To Avoid Violating Users' Privacy Rights In Their Quest To Monetize User Data

75. At its core, Facebook is a company that sells advertising. In its Form 10-K for the year ended December 31, 2014, Facebook explained "[w]e generate substantially all of our revenue from selling advertising placements to marketers. Our ads enable marketers to reach people based on a variety of factors including age, gender, location, interests, and behaviors." The same is true today. And the central tension at the heart of Facebook's business model is—and always has been—monetizing users' data without violating users' privacy rights or misleading them

[19] https://www.facebook.com/zuck/posts/10111961824369871 (May 29, 2020).

about the Company's privacy practices. Zuckerberg and Sandberg have been deeply involved in the Company's efforts to walk that line and personally responsible for the times that the Company has crossed it.

76. Zuckerberg knew that Facebook's future success depended on its ability to monetize its data. According to a Frontline documentary that aired in 2018, "Zuckerberg's challenge" in the pre-IPO stage, "was to show investors and advertisers the profit that could be made from Facebook's most valuable asset—the personal data it had on its users." At the time, "[f]or all its success with users, Facebook had not yet created an advertising product that provided the targeting necessary to provide appropriate results for advertisers."

77. In 2008, Zuckerberg had hired Sandberg to be Facebook's Chief Operating Officer. From 2001 to 2008, Sandberg had worked at Google, where she served as Vice President for Global Online Sales and "helped to develop its immensely lucrative online advertising programs." Zuckerberg hired Sandberg to do the same for Facebook.

78. A book published by two New York Times reporters (Cecilia Kang and Sheera Frenkel) in July 2021, *An Ugly Truth: Inside Facebook's Battle for Domination*, quotes Dan Rose, a former vice president at Facebook, as stating that Zuckerberg hired Sandberg because he "understood that some of the biggest challenges Facebook was going to face in the future were going to revolve around

issues of privacy and regulatory concerns . . . . [Sandberg] obviously had deep experience there and this was very important to [Zuckerberg].” Kang and Frenkel state that a month after joining the Company, Sandberg held a meeting to “plot out the reinvention of the revenue-generating part of the company. ‘What business are we in?’ she asked . . . [a] subscription business or an advertising business? Did [Facebook] want to make money by selling data through payments or through commerce? There wasn’t much deliberation.”

79. Roger McNamee, an early Facebook investor who helped introduce Sandberg to Zuckerberg, explained in his book *Zucked: Waking Up to the Facebook Catastrophe* that he made the introduction, in part, because Sandberg had “focused on building the team that would sell and make AdWords [Google’s advertising platform] successful. And [he] thought, well that’s going to be a huge part of what they do at Facebook, creating a repeatable process.”

80. As Facebook’s 2012 IPO approached, the Company came under enormous pressure to live up to its $15 billion valuation. As Mike Hoefflinger, the Director of Global Business from 2009-2015 explained in an interview with *Frontline*, “[t]he pressure heading into the IPO, of course, was to prove that Facebook was a great business. Otherwise, we’d have no shareholders.” That pressure would lead Facebook to fundamentally shift its approach to data-sharing.

81. According to statements made by former Facebook product manager

Antonio Garcia Martinez in a *Frontline* interview: in March 2012, just two months before the IPO, Sandberg gathered a team of twelve to fifteen people in the advertising department and "basically recited the reality which [was], people [weren't] going to buy Likes anymore." At that time, "revenue was flattening. It wasn't slow, wasn't declining. But it wasn't growing nearly as fast as investors would have guessed. Facebook's revenue was doubling almost every year for a while, and that was not going to be the case the year of the IPO on the current trajectory." According to Garcia Martinez, who was at the meeting, Sandberg told the team: "We have to do something. You people have to do something." She encouraged them to "[c]ome up with the crazy ideas" and "start experimenting way more aggressively." But Sandberg knew that these "experiments" could jeopardize user privacy. The First FTC Agreement was still pending, and Facebook had recently undergone two audits by the Irish Data Protection Commissioner ("DPC"), which is the main data privacy regulator in the European Union.

82. Facebook held its IPO on May 12, 2012. The Wall Street Journal called it a "fiasco." Facebook's underwriters had set a range for the IPO of $35 to $38 per share. The stock promptly fell below that level as soon as public trading began. Facebook officials scrambled to overhaul the business model.

83. On May 22, 2012, just days after the IPO, Mike Vernal, who managed the Facebook Platform team from 2009 to 2013, wrote to Facebook's Vice President

of Infrastructure Vladimir Fedorov: "[W]e don't have any business model on mobile yet, and that's a big issue. We think it has to be advertising-based, but we haven't figured it out yet."

84. For the next few months, top Facebook executives, including Chief Product Officer Chris Daniels, Vice Presidents Sam Lessin and Chad Heaton, and Director of Corporate Development Gary Johnson, continued to debate how to best collect data to boost revenue. In an August 2012 email exchange, the executives discussed a presentation to the Board of Directors about selling user "data for $" to developers:

> If this is going to the BOD, I feel like we're missing the fundamental story of why the incentives are misaligned today. Today the fundamental trade is 'data for distribution' whereas we want to change it to either 'data for $' and/or '$ for distribution.' Essentially, we're looking to put a $ amount on data and a $ amount on distribution so that there is a way for those who value their data > than distribution or < distribution to get a fair deal.

85. Zuckerberg was personally involved in these discussions. In October 2012, Zuckerberg wrote to Lessin to suggest raising revenue by limiting developers' access to user data unless they paid for it. "There is a big question on where we get revenue from. It's not all clear to me here that we have a model that will actually make us the revenue we want at scale," Zuckerberg wrote. He continued: "I'm getting more on board with locking down some parts of the platform, including friends data and potentially email addresses for mobile apps." In another email to

Lessin, Zuckerberg wrote that "[w]ithout limiting distribution or access to friends who use this app, I don't think we have any way to get developers to pay us at all, besides offering payments and ad networks[.]"

86. That same month, Lessin warned Zuckerberg in an internal email published by the U.K. Information Commissioners Office ("ICO") that allowing third parties to access Affected Friend data could be a privacy or hacking risk. Zuckerberg was unfazed, responding: "I'm generally s[k]eptical that there is as much data leak strategic risk as you think. I agree there is clear risk on the advertiser side, but I haven't figured out how the connects to the rest of the platform. I think we leak info to developers, but I just can't think of any instances where that data has leaked from developer to developer and caused a real issue for us."

87. Lessin also pointed out to Zuckerberg and other executives via email that, by late 2012, "the best developers / the best games [had] left" the platform, increasing the risk that a rogue developer would misuse user data. Lessin lamented that the third-party apps willing to pay to use Facebook's platform were "a set of games made by people who see a financial opportunity to hack our system for free attention . . . . I am not proud of the fact that we are currently extolling 'game' companies that make online slot machines as positive examples of those willing to

pay our fees (I am fine with it, just not proud of it)."[20]

88. The internal debates over how to increase Facebook's revenue finally resolved in November 2012 when, as NBC News reported, Zuckerberg decided to "leverage[] Facebook user data to fight rivals and help friends."

89. On November 27, 2012, Zuckerberg emailed a number of senior executives, including Sandberg, that Facebook would from then on require "full reciprocity" with developers, which, he explained, meant that "apps [were] required to give any user who connect[ed] to FB a prominent option to share all of their social content within that service back." In justifying his decision on reciprocity, Zuckerberg explained in the same email chain that "[s]ometimes the best way to enable people to share something is to have a developer build a special purpose app or network for that type of content and to make that app social by having Facebook plug into it. However, that may be good for the world but it's not good for us unless people also share back to Facebook and that content increases the value of our network."

[20] As it turns out, as a December 2018 story by VICE put it, "many of the quizzes, games, personality tests, and third party apps Facebook allowed on its platform [from 2011 to 2015] were not really games at all, they were fronts for data mining." The app that would later kick off the Cambridge Analytica scandal was a personality quiz called "thisisyourdigitallife." Zuckerberg described the app as "sketchy" in a 2018 public apology post.

90. Zuckerberg further posited, "The last question is whether we should include app friends (ie the user's friends who are also using this app)" in the full reciprocity. He concluded: "Ultimately, it seems like this data is what developers want most and if we pulled this out of the package then most of the value proposition falls apart. This is especially true if we require full reciprocity without offering our most valuable data." Sandberg responded to Zuckerberg's email: "I think the observation that we are trying to maximize sharing on [F]acebook, not just sharing in the world, is a critical one. **I like full reciprocity and this is the heart of why**."

91. Zuckerberg and Sandberg continued to personally participate in decisions about permissions for individual apps, based on their perceived value or threat to Facebook. An undated internal plan for Platform 3.0, which implemented data reciprocity, revealed that Facebook "maintain[ed] a small list of strategic competitors that Mark [Zuckerberg] personally reviewed. Apps produced by the companies on this list [were] subject to a number of restrictions . . . . Any usage beyond that specified [was] not permitted without Mark level sign-off." According to an internal Facebook presentation dated January 27, 2014, apps categorized as "Mark's friends" or "Sheryl's friends" also received special treatment.

92. According to internal emails between Facebook Vice Presidents Konstantinos Papamiltiadis and Ime Archibong in September 2013, Facebook management permitted certain apps that they "[didn't] want to share data with" to

maintain access to the API only if they spent at least $250,000 yearly on Facebook's advertising platform. Otherwise, their access was revoked.

93. Around the time that Zuckerberg and Sandberg were finalizing the "reciprocity" policy, Facebook was undergoing the first of what would become a long list of high-profile data breaches. From 2012-2013, the Company exposed the private contact information of 6 million users through a bug in the Download Your Information ("DYI") tool. The bug operated such that when a user downloaded their own Facebook history, they could also download email addresses and phone numbers of their friends that other people had in their address books—without the friends knowing Facebook had stored, gathered, and leaked that information.

94. Facebook discovered the DYI bug in June 2013 but waited a week to disclose it to the public. Facebook then emailed each affected user about the breach but told users about fewer pieces of data than had actually been compromised. It also failed to alert non-Facebook users that their personal information had been compromised. Users were, understandably, furious, and their response should have put Zuckerberg and Sandberg on notice of the tremendous risk of data leaks at the Company. Two months later, a Palestinian web developer tried to alert Facebook's security team about a major security flaw. But the security team did not take him seriously. As a result, the developer exploited the flaw to post directly to Zuckerberg's Facebook page, writing that he had "no choice other than [to] report

this to [M]ark himself." Although the episode was embarrassing for Zuckerberg, the Company got lucky. According to a story published by CNN in August 2013, the flaw "would [have been] a virtual gold mine for spammers, scam artists and others seeking to take advantage of the site's roughly 1 billion users."

E. Facebook Entered Into The First FTC Agreement

95. Zuckerberg and Sandberg's plan to monetize user data would be complicated by Facebook's regulatory obligations, including the First FTC Agreement.

96. In 2007, Facebook first opened its platform to third party developers. That same year, Facebook found itself mired in a privacy controversy over a feature called "Beacon" that tracked users' online spending habits outside of Facebook and notified users' Facebook friends of what had been bought—often without users' knowledge or consent. In an April 2018 post on the Harvard Law Review blog, David Vladeck, the former Director of the FTC's Bureau of Consumer Protection, refers to the Beacon debacle as Facebook's "first controversy" in the course of the Company becoming a "serial offender."

97. In response to fierce public criticism over Beacon, Facebook was ultimately forced to change the terms of the program and to pay $9.5 million into a fund for privacy and security to settle a class action lawsuit against the Company. Zuckerberg took personal responsibility, admitting in a December 2007 post:

"We've made a lot of mistakes building this feature, but we've made even more with how we've handled them. We simply did a bad job with this release, and I apologize for it."

98. Then, in 2009, Facebook changed its platform, without warning its users, so that certain information that users had designated as private became public. Various consumer protection groups responded by filing a complaint with the FTC, alleging that Facebook had engaged in unfair and deceptive trade practices. The FTC launched a two-year investigation into Facebook's privacy violations.

99. After conducting a two-year investigation of Facebook, the FTC concluded Facebook had violated the Federal Trade Commission Act by "deceiv[ing] consumers by telling them they could keep their information on Facebook private, and then repeatedly allowing it to be shared and made public."[21]

100. The FTC and Facebook reached an agreement to resolve the charges in 2011. The Agreement contained a Complaint (attached as **Exhibit A**) and a Decision and Order (attached as **Exhibit B**). The FTC commissioners approved the First FTC Agreement in August 2012.

101. According to the Complaint, Facebook violated the Federal Trade

[21] Federal Trade Commission, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises* (Nov. 29, 2011), https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep.

Commission Act in numerous ways, including but not limited to the following:

- In 2009, Facebook changed its privacy settings so that users' prior choices to make certain information private were negated. Facebook did not warn users about the change or obtain their consent.
- Facebook did not inform users that even if they designated certain profile information as available to "Only Friends" or "Friends of Friends," Facebook nonetheless shared that information with third party applications. Examples of information Facebook shared with third parties included, "among other things, a user's birthday, hometown, activities, interests, status updates, marital status, education (*e.g.*, schools attended) place of employment, photos, and videos."
- Facebook told users that third party applications would only be allowed to access "content that it require[d] to work," when in fact the third party applications could access almost all users' personal data—including data they didn't need to operate.
- Facebook claimed it did not share their personal information with advertisers, but it did.
- From May to December 2009, Facebook designated certain third party applications as "Facebook Verified Apps," claiming that Facebook conducted a "detailed review process" of these applications to ensure they complied with Facebook's policies. In fact, Facebook took "no steps" to verify their security or privacy measures.
- Facebook claimed that users could restrict access to their information by deactivating or deleting their accounts. Nevertheless, Facebook continued to display users' information even after they had deactivated or deleted their accounts.
- Facebook represented that it complied with the U.S. – E.U. Safe Harbor Framework governing data transfers. It didn't.

102. The Complaint stated that Sandberg had personally issued the following false and misleading statement about user privacy in a July 6, 2010 blog post:

> We never share your personal information with advertisers. We never sell your personal information to anyone. These protections are yours no matter what privacy settings you use; they apply equally to people who share openly with everyone and to people who share with only select friends.
>
> The only information we provide to advertisers is aggregate and anonymous data, so they can know how many people viewed their ad and general categories of information about them. Ultimately, this helps advertisers better understand how well their ads work so they can show better ads.

103. As a result of the conduct described in the Complaint, the FTC imposed binding orders on Facebook related to its handling of privacy for the next twenty years.

104. In Part I of the Decision and Order, the FTC ordered Facebook to "not misrepresent in any manner, expressly or by implication, the extent to which it maintains the privacy or security" of users' information, including information shared with third parties.

105. In Part II, the FTC ordered that Facebook obtain users' affirmative consent to share their nonpublic information with third parties and to "clearly and prominently" disclose to the user what type of information Facebook would share.

106. In Part IV, the FTC ordered Facebook to "establish and implement, and

thereafter maintain, a comprehensive privacy program that [was] reasonably designed to (1) address privacy risks related to the development and management of new and existing product for consumers, and (2) protect the privacy and confidentiality of covered information."

107. In Part V, the FTC ordered Facebook to obtain initial and biennial assessments of its privacy and data protection practices and submit them to the FTC.

108. In Part VIII, the FTC ordered Facebook to deliver copies of the Order to all of its current and future principals, officers, directors, and managers. Facebook did in fact deliver a copy to each member of the Board of Directors.

109. The Agreement provided that Facebook would be liable for a penalty of $16,000 per day for violating each count.

110. In 2012, around the time Facebook settled with the FTC, Facebook added a disclaimer on the top of its Privacy Settings page stating: "You can manage the privacy of your status updates, photos, and information using the inline audience selector—when you share or afterwards. Remember: the people you share with can always share your information with others, including apps." Approximately four months later, Facebook removed the disclaimer.

F. Zuckerberg and Sandberg Affirmatively Misled Users About Facebook's Data Sharing

111. As noted above, the First FTC Agreement required Facebook to "not misrepresent in any manner, expressly or by implication, the extent to which it

maintains the privacy or security" of users' information, including information shared with third parties. But in 2014, Zuckerberg did just that.

112. In 2010, Facebook had launched its Graph API. Through the API, "[m]arketers, businesses, researchers, and law enforcement were provided with industrial-level personal information access and advanced search functionality into Facebook users' activities, connections, and emotional states far beyond what they simply 'posted' and talked about on the platform and apps."[22]

113. Critically, Version 1 of the Graph API allowed third-party apps to access enormous amounts of data from users' friends (*i.e.*, Affected Friend data) without their consent, including Affected Friends' "about me, actions, activities, b-day, check-ins, education, events, games, groups, hometown, interests, likes, location, notes, online status, tags, photos, questions, relationships, religion/politics, status, subscriptions, website, [and] work history."[23]

114. In 2010, approximately 11% of third-party developers gained access to Affected Friend data, translating to tens of thousands of apps with access to private and personally identifiable data belonging to hundreds of millions of users.

---

[22] Jonathan Albright, *The Graph API: Key Points in the Facebook and Cambridge Analytica Debacle*, MEDIUM (Mar. 20, 2018), https://medium.com/tow-center/the-graph-api-key-points-in-the-facebook-and-cambridge-analytica-debacle-b69fe692d747.

[23] *Id.*

115. When Zuckerberg announced the launch of the "Like" button at a conference in April 2010, he did not mention that the button would enable Facebook to track users across the internet. According to Parakilas' testimony, as of 2011, Zuckerberg was personally responsible for banning third-party apps that did not comply with Facebook's policies from the platform. But, as noted below, there were only a "handful" of bans. By October 2011, Facebook's Open Graph team realized that even if users set their privacy settings for a third-party app to "only me," the app would override that setting and nonetheless share the users' information. In an October 5, 2011 email chain, members of the team acknowledged that the privacy drop down menu accordingly "mean[t] nothing." Rather than make a change, Carl Sjogreen, the Director of Product Management, Platform, & Mobile, lamented to the group: "There is no way apps can keep up with our privacy model and we are asking for trouble if we ask them to try."

116. According to the FTC's 2019 complaint against Facebook,[24] in 2013, "senior Facebook management employees observed that third-party developers were making more than *800 billion* calls to the API per month and noted that permissions for Affected Friends' data were being widely misused." As the FTC further alleged, an August 2013 internal Facebook memo stated: "[w]e are removing the ability for

[24] Attached as **Exhibit E**.

users to share data that belongs to their friends who have not installed the app. Users should not be able to act as a proxy to access personal information about friends that have not expressed any intent in using the app."

117. The FTC's complaint also alleged that in 2014, "when discussing changes that would be made to the Platform, Facebook senior management employees considered reports showing that, every day, more than 13,000 apps were requesting Affected Friends' data." According to a May 2014 story by the New York Times, this was around the time when Zuckerberg and other top managers "concluded that [Facebook's] growth depended on customers feeling more confident that they were sharing intimate details of their lives with only the right people." Zuckerberg told the Times: "Anything that we can do that makes people feel more comfortable is really good."

118. During this period, management began publishing biannual Transparency Reports to—according to a Company press release—"be open and proactive in the way [Facebook] safeguard[s] users' privacy, security, and access to information online." The Transparency Reports included precise numbers of government requests for user data by country. Notably, however, the Transparency Reports did not contain a single mention of third-parties' access to user data, much less provide data on how many requests developers made for Affected Friend Data or how many developers Facebook audited.

119. During this time, Facebook's privacy policies were—as the New York Times would later put it in a May 2014 story—"famously complicated." Among other complications, Facebook offered users a suite of privacy menus, including those on the Privacy Settings Page, inline settings, Privacy Shortcuts, and profile settings, that purportedly allowed users control their privacy settings. These settings, however, had no effect on third party developers' access to the data.

120. In an ongoing consumer class action against the Company,[25] pending in the United States District Court for the Northern District of California, Facebook produced an internal Facebook "[redacted]" (likely prepared in early 2014)[26] to the consumer plaintiffs who subsequently filed a copy of that document with the district court under seal. After Plaintiffs' counsel (in this action) sought leave to intervene and unseal it, Facebook produced a copy of the document to Plaintiffs in this action, pursuant to a confidentiality agreement.

121. The document reveals that Facebook was [redacted]

[25] *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, 18-md-02843-VC-JSC (N.D. Cal.).

[26] While undated, the document refers to [redacted]" so it was likely drafted sometime in early 2014.

[redacted]

122. At Facebook's F8 global development conference in April 2014, Zuckerberg announced that the Company would implement Version 2 of the Graph API and would limit the amount of information flowing to third-party apps. As the FTC alleged in a draft complaint sent to Facebook in February 2019,[27] Zuckerberg [redacted]

[redacted]

[redacted]

[redacted]

[27] Attached as **Exhibit F**. The file name for the complaint was "[redacted]"

123. On April 30, 2014, Facebook issued a related press release that read:

"**Putting people first:** We've heard from people that they are worried about sharing information with apps, and they want more control over their data. We are giving people more control over these experiences so they can be confident pressing the blue button." As the FTC alleged in its 2019 complaint, however, "[d]espite these clear statements, Facebook gave third-party developers with a pre-existing, approved app at least one year of continued access to Affected Friends' data. . . . Facebook did not disclose this fact to its users."

124. In fact, Facebook management concealed several secret exemptions to its new privacy policy.

125. *First*, as the FTC's complaint alleged, Facebook management did not disclose that the new policy preventing developer access to Affected Friend data would not go into effect for another year. Management also failed to disclose that third-party applications were not required to delete the data they had obtained before the 2015 platform upgrade. In a February 15, 2019 white paper submitted to FTC staff, Facebook's lawyers at Gibson Dunn acknowledged that—[redacted]

126. *Second*, Facebook management did not disclose that—as revealed in a June 2018 story by the New York Times—it had "exempted the makers of

cellphones, tablets and other hardware," including Apple, Amazon, Blackberry and Huawei, from the new restrictions, despite these devices requesting and receiving data in the same way other third parties did. In that story, Askan Soltani, the FTC's former chief technologist, likened the exemption for devices to "having door locks installed, only to find out that the locksmith also gave keys to all of his friends so they can come in and rifle through your stuff without having to ask you for permission."

127. *Third*, even after 2015, when the deprecation of Graph API V1 began, Facebook management, at the direction of Zuckerberg and Sandberg, surreptitiously allowed sixty-one companies to continue accessing Affected Friends data. In the Gibson Dunn white paper, referenced above, the Company's lawyers acknowledged that, [redacted]

128. These were not small or obscure apps. According to disclosures that Facebook submitted to Congress in June 2018, the apps that were secretly exempted from the policy that Zuckerberg announced at the April 2014 F8 Conference included:

- **Spotify**, a popular music streaming service that had 60 million active users at the end of 2014;
- **Hinge**, a popular online dating service that—according to a 2015

story by Business Insider—had made 1 million matches by March 2014, 3 million matches by August 2014, and over 8 million matches by October 2014;

- **Snap**, a popular photo-sharing application, that had 57 million users in 2014.

129. When the media first reported on these exceptions in June 2018, Facebook management told reporters that the practice had lasted for only six additional months beyond April 30, 2015. But as Facebook later admitted in written testimony to the Energy and Commerce Committee, there were fourteen active exceptions as of June 2018, including for prominent companies such as Apple, Amazon, Nokia, Samsung, and Yahoo.

130. In December 2018, the New York Times reported that "For years, Facebook gave some of the world's largest technology companies more intrusive access to users' personal data than it has disclosed . . . . In all, the deals described in the documents benefited more than 150 companies—most of them tech businesses, including online retailers and entertainment sites, but also automakers and media organizations. Their applications sought the data of hundreds of millions of people a month, the records show."

131. According to the same story:

- "In 2014, Facebook ended instant personalization and walled off access to friends' information. But in a previously unreported agreement, the social network's engineers continued allowing Bing; Pandora, the music streaming service; and Rotten Tomatoes, the movie and television review site, access to much of the data they had gotten for the discontinued feature. Bing had

access to the information through last year, the records show, and the two other companies did as of late summer";

- Facebook also "allowed Microsoft's Bing search engine to see the names of virtually all Facebook users' friends without consent";
- Facebook "gave Netflix and Spotify the ability to read Facebook users' private messages";
- "The social network permitted Amazon to obtain users' names and contact information through their friends, and it let Yahoo view streams of friends' posts as recently as this summer [*i.e.*, the summer of 2018], despite public statements that it had stopped that type of sharing years earlier";
- "As of 2017, Sony, Microsoft, Amazon and others could obtain users' email addresses through their friends"; and
- "Facebook also allowed Spotify, Netflix and the Royal Bank of Canada to read, write and delete users' private messages, and to see all participants on a thread."

132. The New York Times story quoted David Vladeck, who formerly ran the FTC's consumer protection bureau, as stating "[t]his is just giving third parties permission to harvest data without you being informed of it or giving consent to it," and "I don't understand how this unconsented-to data harvesting can at all be justified under the consent decree."

133. Zuckerberg and Sandberg were personally involved in negotiating data-sharing partnerships. In testimony given to the U.K. House of Commons in November 2018, Facebook spokesperson Richard Allan was asked "did Mark Zuckerberg know that Facebook continued to allow developers access to that

information—after the agreement of the decree [in 2011]?" Allan replied, "Yes. He knew . . . ." The New York Times story referenced above stated that, according to unnamed "Facebook officials," "[t]he partnerships were so important that decisions about forming them were vetted at high levels, sometimes by Mr. Zuckerberg and Sheryl Sandberg, the chief operating officer[.]" This report is consistent with contemporaneous public statements from Zuckerberg and contemporaneous reporting. For example:

a. Zuckerberg personally announced Facebook's partnership with Pandora at the 2010 F8 Conference.

b. At a 2010 event at Microsoft's campus, Zuckerberg discussed Facebook's partnership with Bing, stating "They really are the underdog here. They're incentivized to go out and innovate. When you're an incumbent in an area . . . there's tension between innovating and trying new things versus what you already have."

c. At the 2011 F8 Conference, Zuckerberg described Facebook's partnership with Spotify as one of "the most exciting things we've ever done."

d. In 2011, the Hollywood Reporter reported that Zuckerberg had mentioned participating in negotiations with Netflix and its CEO Reed Hastings.

134. At the time of his announcement at the 2014 F8 conference, Zuckerberg knew that his claims were false and that the Company would continue to whitelist apps, because, as noted above, he was intimately involved with the decisions about which apps would receive special benefits.

135. Sandberg was also active in perpetuating the false narrative. Talking points that she circulated in an April 2, 2018 email claimed that "[redacted]" In fact, as Sandberg knew or should have known, Facebook [redacted] Zuckerberg and Sandberg did not correct their misrepresentations about user privacy.

G. Zuckerberg and Sandberg Knew That Facebook's Privacy Program Was Inadequate And Failed To Keep The Board Informed

136. Zuckerberg's false promises at the 2014 F8 conference were not the only instance in which Zuckerberg and Sandberg caused the Company to breach the First FTC Agreement. Under the terms of the First FTC Agreement, Facebook was also required to create and maintain a "comprehensive privacy program" to protect user information.

137. Facebook's Board was responsible for ensuring oversight and compliance. But it depended on buy-in from management to do so. Both before and after learning of the Cambridge Analytica breach, however, Zuckerberg and

Sandberg undermined the Board's efforts by failing to implement policies to protect privacy and obstructing the flow of privacy-related information from management to the Board, in violation of their fiduciary duties.

138. From the time of the First FTC Agreement onward, the Board bore the ultimate responsibility for oversight and compliance at Facebook. According to Facebook's annual proxy filings during this time:

> **[Facebook's] board of directors as a whole has responsibility for overseeing our risk management** . . . . The full board of directors has primary responsibility for evaluating strategic and operational risk management, and succession planning. Our audit committee has the responsibility for overseeing our major financial and accounting risk exposures and the steps our management has taken to monitor and control these exposures, including policies and procedures for assessing and managing risk. Our audit committee also reviews programs for promoting and monitoring compliance with legal and regulatory requirements and oversees our internal audit function.

139. The Board was dependent on reports from management to perform its oversight function. As described in each of Facebook's annual proxies from 2012 to 2018:

> The oversight responsibility of the board of directors and its committees is informed by reports from our management team and from our internal audit department that are designed to provide visibility to the board of directors about the identification and assessment of key risks and our risk mitigation strategies.

140. Among the Board Committees, the Audit Committee was specifically responsible for compliance. According to the Audit Committee charter, "the Committee shall at least annually review the Company's major legal compliance and

enterprise risk exposures and the steps that management has taken to monitor and mitigate such risks."

141. Like the full Board, the Audit Committee was dependent on management to provide it with the information that it needed to carry out this role. Audit Committee materials from February 2016 delineated the [redacted]" as seen below:

142. This list of [redacted] also appeared in future presentations to the Audit Committee. Consistent with [redacted] as [redacted] and his team explained in a February 12, 2014 presentation to the Audit Committee, at Facebook, "[redacted]"

143. As both officers and directors, Zuckerberg and Sandberg knew exactly what the Board knew—and didn't know. They attended Board meetings and were uniquely positioned to convey information from management to the Board. Zuckerberg, as Chairman, set the Board's agendas and presided over Board meetings.

144. The First FTC Agreement required Facebook to deliver a copy of the 2012 consent order to all "officers, directors, and managers." Accordingly, Zuckerberg and Sandberg were personally responsible for ensuring compliance with the Order, both in their capacities as fiduciary executives and Board members. But Zuckerberg and Sandberg actively undermined the Board's ability to oversee the Company's compliance with the First FTC Agreement.

145. Zuckerberg and Sandberg placed the Board in an impossible position. Not only did they conceal information from the Board, but they also created structural barriers that kept relevant information from reaching them. According to Audit Committee minutes from February 2014, management [redacted] and thus obscured potential red flags. The "[redacted]" was a scatter-shot approach that became a further source of liability for Facebook. As the FTC alleged in its 2019 complaint, Facebook management failed to create an "organized system" or recordkeeping procedure to "track[] all the massive troves of

user data it released to third-party developers." Therefore, "the full scale of unauthorized collection, use, and disclosure of consumer information resulting from Facebook's conduct is unknown."

146. For years after the First FTC Agreement was finalized, Zuckerberg and Sandberg concealed critical information from the Board and Audit Committee. Hamstrung by a lack of information, the Board failed to identify and address the massive privacy breaches and compliance violations caused by management's reckless approach to monetizing user data.

147. David Vladek, former Director of the FTC Bureau of Consumer Protection, confirmed, in an interview with PBS's *Frontline*, that the expectation following the First FTC Agreement was that Facebook would boost its staff dedicated to privacy issues. Instead, Facebook appointed Sandy Parakilas, who was nine months into his first-ever job in the tech sector, as the Platform Operations Manager responsible for policing data breaches by third-party software developers. Parakilas served in this role from 2011 to 2012. In an interview with *Frontline*, Parakilas stated that he was "horrified" when Facebook put him in charge of privacy, because he was "not very qualified" for the job. In that same interview in 2018, Parakalis described the Platform during that time as "a hornet's nest of problems because they were giving access to all this Facebook data to developers with very few controls." Shortly before Facebook held its IPO, Parakilas was in a meeting of

senior executives discussing privacy at Facebook. According to Parakilas, "they sort of went around the room and they basically said, 'Well, you know, who's in charge of fixing this huge [privacy] problem which has been called out in the press as one of the two biggest problems for the company going into the biggest tech IPO in history?' . . . And the answer was [Parakilas] because no one else really knew anything about it."

148. According to a March 2018 story by the Guardian, Parakilas repeatedly warned senior executives at the Company, including via PowerPoint presentation in mid-2012, about "vulnerabilities for user data on Facebook's platform." His presentation listed "foreign state actors and data brokers" as people who "might do malicious things with the data." Pursuant to its platform policies, Facebook could demand an audit of any developer using the platform. Nevertheless, according to the Guardian story, in the time Parakilas worked at Facebook, he "didn't see [the Company] conduct a single audit of a developer's systems." When asked how much control Facebook maintained over the data it shared with developers, Parakilas replied: "Zero. Absolutely none. Once the data left Facebook servers there was not any control, and there was no insight into what was going on." Parakilas continued to raise red flags and sound the alarm about privacy issues within Facebook, but ultimately left the Company in late 2012 when senior executives did not heed his concerns.

149. Prior to his departure from Facebook in 2012, Parakilas proposed more extensive audits of developers' use of Facebook data. In response, according to a November 2017 op-ed by Parakilas in the New York Times, one executive asked him, "Do you really want to see what you'll find?" As reported by the Guardian in 2018, Parakilas took the comment to mean that "Facebook was in a stronger legal position if it didn't know about the abuse that was happening." The comment was consistent with Zuckerberg and Sandberg's behavior in the years to come.

150. Under the First FTC Agreement, Facebook was obligated to undergo biennial privacy audits, for which it hired PricewaterhouseCoopers ("PwC"). PwC delivered its first audit on April 16, 2013. Neither Zuckerberg nor Sandberg are listed among those interviewed as part of PwC's initial audit or subsequent audits. But members of their management team provided the factual assertions about the Company's privacy practices that informed PwC's conclusions.

151. Management controlled the PwC audit process, rather than Facebook's Audit Committee or Board. Yet Management's assertions to PwC contained untrue statements about the Company's privacy practices. For example, for the audit covering 2013-2015, management claimed to PwC that "Facebook discloses personal information to third-party developers only for the purposes identified in the notice [to users] and with the implicit or explicit consent of the individual." Management provided a nearly identical assertion for the 2015-2017 audit. As

explained above, however, at the time, Facebook's policies in fact allowed third-party developers like Kogan to siphon private information from friends of users' friends without their permission. Zuckerberg and Sandberg had also whitelisted specific companies, which were exempt from Facebook's privacy policies and were not disclosed to users.

152. Had Zuckerberg or Sandberg reviewed PwC's final product, they would have identified management's assertion as false, given their first-hand knowledge of the user data Facebook collected and shared. But they either chose not to review the PwC reports or saw the error and let it go unchallenged.

153. PwC did not interview any Board members, who were responsible for oversight, as part of its audit. And based on the documents produced by Facebook in response to Plaintiffs' books-and-records demand, it appears that management did not share PwC's 2013 audit with the Board.[28] In fact none of the Board or Audit

[28] Facebook claims to have produced to Plaintiffs, among other things, all documents that the Court ordered it to produce in the *In re Facebook, Inc. Section 220 Litigation*, No. 2018-0661-JRS. In that action, the Court ordered Facebook to produce, among other things, "Audit Documents," defined to include "Facebook's Atlas (SOC1 & SOC 2/3), Custom Audience (SOC 2/3) and Workplace (SOC 2/3) audits performed on behalf of the Company, and any other formal internal audits performed regarding compliance with Facebook formal data privacy policies and procedures or with the Consent Decree." *In re Facebook, Inc. Section 220 Litig.*, No. CV 2018-0661-JRS, 2019 WL 2320842, at *18 (Del. Ch. May 30, 2019).

The PwC audits were Audit Documents. Therefore, any copies of the PwC audits that were given to Board members should have been produced. Yet, Facebook did not produce any Audit Documents that appear to have been shared with the Board.

Committee materials mention the biennial audits until [redacted][29]—[redacted] after the Cambridge Analytica data breach was exposed.

154. Had the Audit Committee or other outside Board members reviewed PwC's 2013 audit, they would have undoubtedly noted PwC's disturbing conclusion that "[redacted]"

155. On April 26, 2018, Mike Schroepfer, Facebook's Chief Technology Officer, testified before the Digital, Culture, Media and Sport Select Committee of the British House of Commons that the PwC audits mandated by the FTC did not pick up Aleksandr Kogan's work with Global Science Research because "we didn't know at the time; no one caught the issue at the time." If management, under the stewardship of Zuckerberg and Sandberg, had approached the audit process with the requisite care, the Board may have been able catch such glaring gaps in user privacy controls.

[29] The [redacted] minutes of the Audit and Risk Oversight Committee state that [redacted] informed the Committee that [redacted]" The fact that the PwC audit appears in the [redacted] minutes suggests it would have appeared in earlier Board minutes if it had been discussed by the Audit Committee or Board in earlier meetings.

156. Because Zuckerberg, Sandberg, and their deputies failed to keep Facebook's directors informed about the Company's privacy practices and audits, the Board conducted its business with an incomplete and distorted view of the Company's non-compliance with the First FTC Agreement.

157. For example, materials for the January 28, 2014 Audit Committee meeting reflect [redacted] The changes [redacted] Had the Audit Committee known that this "[redacted] it might have been able to take action to prevent a disaster like Cambridge Analytica.

158. Management did not update the Audit Committee on the regulatory and compliance risks related to privacy and data use in 2014 or 2015. [redacted] and his team's presentations to the Audit Committee on February 12, 2014 and February 11, 2015 say only that the Committee reviewed [redacted] But there is no evidence that the review included ongoing compliance with or assessment of potential violations of the First FTC Agreement.

159. Facebook's books-and-records production shows that, rather than

ensuring Facebook's compliance with its legal obligations, Zuckerberg, Sandberg, and other members of senior management focused on [redacted] For example, a slide in [redacted] presentation to the Audit Committee titled "[redacted]" highlights "[redacted] and goes on to say that [redacted] did not mention the First FTC Agreement or propose any changes to the Company's business or oversight to ensure compliance.

160. Materials for the February 13, 2014 meeting of the full Board mentioned that "[redacted]" But the materials failed to flag that Facebook's existing practices—*i.e.*, secretly whitelisting developers and misleading users about the extent to which Facebook was divulging their information in violation of the First FTC Agreement—were a significant problem. Zuckerberg and Sandberg knew about the whitelisting and knew about the risks posed by third-party developers, including Kogan specifically, by no later than 2015, but failed to inform the Board of either.

161. The Board regularly discussed the Company's [redacted] but not once did Zuckerberg or Sandberg raise Facebook's business with third-party developers that they knew, or should have known, violated the First FTC Agreement.

162. For example, on August 21 and December 4, 2014, the full Board, including Zuckerberg and Sandberg, received lengthy slide decks entitled "[redacted]" Discussions of these materials would have been prime opportunities to discuss the risks to users' privacy. Under the heading "[redacted]" the slides detailed the "[redacted] which revealed that [redacted] The slides also cautioned the Board that [redacted] And they revealed that Facebook had discussed [redacted] But the slides—which were highly relevant to the issue of users' privacy—did not inform the Board of the risks posed by whitelisting or by third-party developers like Kogan—omissions that Zuckerberg and Sandberg knowingly failed to correct.

163. On February 11, 2015 a presentation by [redacted] team at the Audit Committee meeting again alerted the Committee to [redacted]

[redacted] As with the prior years' slides, [redacted] also included a slide on "[redacted]" which made no mention of third-party developers.

164. Updated materials provided to the full Board the following day likewise discussed [redacted] including that [redacted]" Still, no one from management, including Zuckerberg or Sandberg, informed the Board of the Company's ongoing non-compliance with the First FTC Agreement as part of a discussion of more stringent regulation and enforcement.

165. On April 13, 2015, PwC delivered its second biennial privacy audit, covering the two-year period ending February 11, 2015. As with the 2013 audit, management controlled the Company's participation in the process, and Associate General Counsel Edward Palmieri provided assertions describing Facebook's privacy practices on which the audit was based. Once again, the assertions contained untrue statements, including that "Facebook discloses personal information to third-party developers only for the purposes identified in the notice and with the implicit or explicit consent of the individual." The auditors took comfort in the fact that developers were required to comply with Facebook's policies but never checked

whether the Company had verified their compliance. Neither Zuckerberg nor Sandberg, nor any other Board member tasked with oversight, is listed among those who sat for an interview with PwC.

166. Board and Audit Committee minutes and materials from 2015 do not mention the 2015 PwC audit. There is no evidence that the 2015 PwC audit was shared with the Board. Instead, the Board continued to consider [redacted] unaware that management had embarked upon a path of deliberately sharing more user data with third parties than was consistent with its public claims. For example, on October 20, 2015, the Audit Committee considered [redacted]"

167. On December 11, 2015, the Guardian reported that Cambridge Analytica harvested data on millions of Facebook users, but Zuckerberg did not add this serious issue to the Board's agenda; nor did Sandberg raise it independently. Facebook did not produce emails from this period, but it is reasonable to infer that Zuckerberg and Sandberg would have been aware of the story on the day that it was published, given that (as discussed below) they regularly receive digests of news coverage regarding the Company.

168. The next relevant Audit Committee discussion did not occur until

January 11, 2016. In that meeting, directors received [redacted] Of the at least nineteen audits, Facebook identified only three as responsive to the 220 demand, all of which focused on [redacted] rather than user privacy. Despite the Guardian's Cambridge Analytica report the month before, Zuckerberg and Sandberg apparently did not disclose anything to auditors regarding data leakage to third-party developers or known violations of the First FTC Order.

169. The materials for the following month's Audit Committee meeting on February 10, 2016 reviewed [redacted] again; still with no mention of user data. The same slide deck included a chart of "[redacted], another highly relevant place for management to discuss compliance with the First FTC Agreement. Again, this slide failed to inform the Committee of known or even potential FTC violations.

170. Zuckerberg and Sandberg's failures to disclose non-compliant practices to the Board undermined the remaining pillars and effectiveness of the entire compliance program.

171. On March 3, 2016, Ernst and Young delivered two of its audits of Facebook's Custom Audiences system (SOC 2/3).[30] Consistent with the Company's

[30] SOC (System and Organization Controls) reports assess management's description of its control systems and the suitability of those systems to meet specified control objectives. Some more comprehensive reports also assess the

policies, the audits highlight [redacted] Ernst & Young found that "[redacted]" Further, the audits state that [redacted]"

172. Although the Custom Audiences audits focused on advertiser data, not user data, [redacted] but nowhere did it describe the Company's whitelisting practices or lax enforcement of policies; nor did management disclose the critical failure of these same controls with respect to Cambridge Analytica, which Zuckerberg and Sandberg had known about for months.

173. According to draft Board minutes from September 8, 2016 and November 15, 2016, [redacted] updated the Board on [redacted]

operating effectiveness of controls. SOC reports fall into three categories: SOC 1 reports assess an entity's internal controls over financial reporting, SOC 2 reports assess an entity's controls related to security, availability, and processing integrity of systems used to process data and the confidentiality and privacy of the information processed by such systems, and SOC 3 reports cover the same topics as SOC 2 reports, but in a summarized format intended for a more generalized audience.

[redacted] This [redacted] received only passing mention in the Board materials, but it set off a series of moves to gut privacy at WhatsApp that were so troubling that they caused WhatsApp founder Jan Koum to leave Facebook and the Board a year and half later.

174. In the February 15, 2017 Audit Committee meeting materials, [redacted] devoted three full slides to "[redacted]" with no mention of platform developers or the First FTC Agreement. A few slides later, [redacted] updated the Audit Committee on [redacted] including a [redacted]. . . ." But, once again, the update related to [redacted] and did not address compliance. More than a year after Facebook management learned of the Cambridge Analytica breach, management had yet to raise whitelisting or FTC compliance with the Board—not even in a presentation about [redacted]

175. The following day, February 16, 2017, the full Board, including Zuckerberg and Sandberg, discussed [redacted]

[redacted]

[redacted]

[redacted]” Strangely, [redacted]

[redacted]”[31]

Multiple audit cycles after it discovered wrongdoing at Cambridge Analytica, management had still not alerted the Audit Committee about its whitelisting practices or urged it to audit user data compliance.

176. On March 10, 2017, Ernst & Young delivered its findings for the Workforce and Atlas system reviews [redacted]

[redacted]” Neither audit examined the Company’s practices related to data from ordinary users. Instead, showing Facebook’s priorities, they only focused on [redacted] As with the Custom Audiences audits the prior year, management provided assertions for both audits that mischaracterized the data control environment by failing to disclose whitelisting or known data breaches. The reports also repeated the fact that [redacted]

[redacted]

[31] Notably, the corresponding Board minutes were fully redacted for non-responsiveness suggesting the Directors did not discuss privacy or data use as they considered the [redacted] Similarly, the Audit Committee did not discuss privacy or data use when reviewing the approved [redacted] at the February 15, 2017 meeting.

[redacted] the audit's failure to address whitelisting or the lack of ongoing monitoring of developers resulted in a skewed view of Facebook's data controls.[32] The Board and Audit Committee materials around this time show no attempt by Zuckerberg or Sandberg[33] to question or correct the assertions.

177. PwC delivered its third biennial privacy audit required by the First FTC Agreement on April 12, 2017. As before, the audit relied on assertions by Edward Palmieri who stated, incorrectly, that "Facebook discloses covered information to third-party developers only for the purposes identified in the notices and with the implicit or explicit consent of the individual." Again, PwC relied on management's assertion that third-party developers were required to comply with Facebook's publicly stated policies and appeared to be unaware that this was not, in fact, true. Because it relied on Facebook management, PwC's audit failed to detect severe privacy breaches about which Zuckerberg and Sandberg knew or were grossly negligent in not knowing. Neither Zuckerberg nor Sandberg raised these issues with

[32] In the [redacted] Facebook management warranted that [redacted]"

[33] In both audits, Ernst and Young stated that the "[redacted] . . . ."

the Board. In fact, as before, Zuckerberg did not even include the audit on the Board's agenda.

178. A May 22, 2017 email from Sandberg to the management team revealed her view that [redacted] She wrote that [redacted] Seeming to have expected this outcome, she expresses [redacted]" Rather than [redacted] Sandberg wrote that she was "[redacted]"

179. Throughout 2017, regulators and legislators across the United States and Europe continued to challenge Facebook's data privacy practices. At the same time, under a heading of "[redacted]" the June 1, 2017 Board meeting materials [redacted] but neither the meeting agenda nor Report of the Audit Committee indicate that the Board discussed [redacted] or data compliance. Because of Zuckerberg and Sandberg's failure to make or insist on thorough disclosures by management, the Audit Committee still had an incomplete view of Facebook's privacy practices, despite its oversight responsibilities.

180. Not only did management under Zuckerberg and Sandberg keep the

Board in the dark about privacy and compliance risks, they also prevented others from reporting to the Board directly. Audit Committee minutes from May 31, 2017 show that [redacted] presented [redacted] The minutes do not suggest Stamos said anything alarming or controversial; simply that "[redacted]" But according to the New York Times, in November 2016, Stamos and his team had uncovered evidence of Russian election interference on Facebook and, "by the spring of 2017, deciding how much Russian interference to disclose publicly became a major source of contention within the company." "Mr. Stamos, who reports to Facebook's general counsel, proposed that he report directly to higher-ups. Facebook executives rejected that proposal and instead reassigned Mr. Stamos's team . . . ."

181. On December 6, 2017, [redacted] updated the [redacted] presented to the Audit Committee, again [redacted] Specifically, the presentation highlighted [redacted] Consistent with prior statements discussed above, this [redacted] explained that:

[redacted]

[redacted]

182. Once again, the Board was informed of data privacy risks only in hypothetical terms, suggesting management still had not informed outside directors of the severity of the Cambridge Analytica breach or the ongoing "exceptions" to the policies that Zuckerberg had announced at the 2014 F8 Conference.

183. Zuckerberg and Sandberg did not hire a Chief Compliance Officer until February 2021.

H. Under Zuckerberg and Sandberg's Watch, Cambridge Analytica Stole Data From Tens of Millions Of Facebook Users

184. Despite being subject to the First FTC Agreement—which required Facebook to maintain a reasonable privacy program that safeguarded the privacy, confidentiality, and integrity of user information—Zuckerberg and Sandberg failed to establish sufficient privacy policies or ensure compliance with those policies.[34] In a March 2018 story, the Atlantic likened Facebook management's approach to that of a "local public library lending out massive hard drives of music," but asking people not to copy the files at home.

185. According to a May 14, 2018 letter sent by Facebook to Damian

[34] As discussed elsewhere, they also actively concealed relevant information from the Board so that the Board could not exercise its oversight and compliance duties effectively.

Collins, the Chair of the U.K. House of Commons' Digital, Culture, Media, and Sport Committee, Facebook did not even have records to track the number of apps that were terminated for developer violations before 2014. And according to the FTC's 2019 complaint, management allowed the Company to forego vetting third-party developers before sharing user data. Rather, Facebook had developers simply check a box saying they would comply with Facebook's terms and conditions. David Vladeck, the former Director of the FTC's Bureau of Consumer Protection, explained in an April 2018 blog post on the Harvard Law Review blog, that Facebook's announcement in March 2018 that it would "start auditing the collection and sharing practices of pre-2014 app developers [was] powerful evidence that, until [2018], Facebook didn't bother to do so."

186. Management's failures to enact privacy protections enabled the events that would result in Facebook's largest-ever data breach, as well as investigations, fines, and harm to the Company's reputation.

187. As Zuckerberg acknowledged years later in a public post, in 2013, "a Cambridge University researcher named Aleksandr Kogan created a personality quiz app. It was installed by around 300,000 people who shared their data as well as some of their friends' data. Given the way [the Facebook] platform worked at the time this

meant Kogan was able to access tens of millions of their friends' data."[35] In June 2014, Kogan began vacuuming up Facebook user data through his personality quiz app and transferring it to Strategic Communication Laboratories ("SCL"), the parent company of Cambridge Analytica, a now-defunct political data-analysis firm owned by billionaire Robert Mercer and headed, at the time, by Steve Bannon who would later manage Donald Trump's 2016 presidential campaign.

188. According to a March 2018 story by the New York Times, Cambridge Analytica "wooed" Mercer and Bannon "with the promise of tools that could identify the personalities of American voters and influence their behavior." According to that same story, which cited internal emails and financial records from Cambridge Analytica, the firm covered more than $800,000 in costs for Kogan's harvest and allowed Kogan to keep copies of user and Affected Friend data for his own research.

189. The terms of service for Kogan's app, which Kogan provided to Facebook, asked users for the right to sell, transfer, store and license their data forever and for any purpose. This provision did not comply with Facebook's terms of service. In his April 2018 appearance before Congress, Zuckerberg testified that he and others at Facebook "should have been aware this app developer [Kogan] submitted a term that was in conflict with the rules of the platform." Yet Zuckerberg

[35] https://www.facebook.com/zuck/posts/10104712037900071 (Mar. 21, 2018).

and Sandberg had failed to put any systems in place to catch such a violation.

190. Christopher Wylie, a founder at Cambridge Analytica—and, later, a whistleblower—explained in a March 2018 story by the Guardian: "We exploited Facebook to harvest millions of people's profiles. And built models to exploit what we knew about them and target their inner demons. That was the basis the entire company was built on." According to a post by Facebook, Kogan ultimately provided between 50 and 87 million[36] raw profiles to Cambridge Analytica, which enabled the firm to build psychographic profiles of some 30 million of those users. At least 99% of those users had not consented to sharing their information. As Vladeck asked in his post: "Does Facebook, or anyone else, really believe that these 50 million users 'consented' to the harvesting of their data by Kogan? I don't. For this reason, the non-consensual harvesting of massive amounts of data by a third party app – the very violation of law that led to the first FTC case against Facebook – lies at the center of the Cambridge Analytica investigation."

191. Cambridge Analytica's widespread misuse of Facebook user data was entirely predictable. By 2015, Zuckerberg and Sandberg knew or should have already known that third-party developers were circulating Affected Friend data widely:

[36] https://about.fb.com/news/2018/04/restricting-data-access/ (Apr. 4, 2018).

a. Since the Company's IPO, Facebook had warned investors that one of its material risks was the fact that third-party developers might misuse users' data.

b. In Count 1 of the First FTC complaint, the FTC had alleged that Facebook had misled users by claiming they could restrict their access to their data, when in fact "such information could be accessed by Platform Applications that their Friends used."

c. In Count 4, the FTC alleged that, contrary to Facebook's representations about privacy, "a Platform Application could access profile information that was unrelated to the Application's purpose or unnecessary to its operation."

d. Zuckerberg announced the need to change the Affected Friend policy at the 2014 F8 conference, yet Facebook delayed implementing the change for a year. And it would continue whitelisting certain apps through at least November 2018—meaning certain companies who were big spenders at Facebook or "friends" of Zuckerberg or Sandberg, would continue to access Affected Friend data *with Facebook's permission* for years to come.

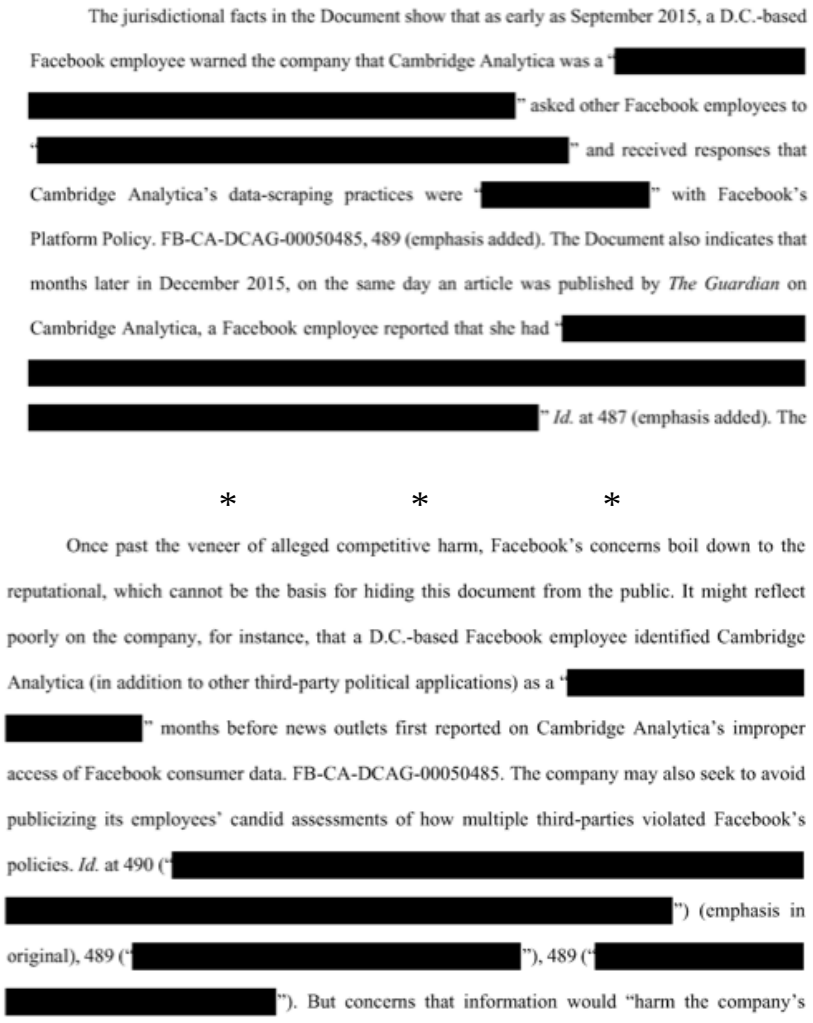
e. Throughout 2015, Facebook was increasingly focused on

> elections as a way to generate revenue, showing its awareness of the value of user data for political targeting.[37]

192. In June 2018, Kogan testified before a Senate Commerce subcommittee that he and his partner, Joseph Chancellor, a postdoctoral researcher at Cambridge, met with Facebook staff and told them about the project in December 2015. Kogan described the project as a "collaboration with Facebook." He testified: "I don't believe there [were] any objections that were raised then." He also had "no recollection" of any conversation about whether his app's terms of service comported with Facebook's privacy policies.

193. A redacted filing made by the Attorney General for the District of Columbia on March 18, 2019, in an action against Facebook, discloses that DC-based Facebook employees were raising internal concerns about Cambridge Analytica as early as September 2015:

[37] As an April 2018 story by TechCrunch noted, "[t]hrough 2015 Facebook had actually been ramping up its internal focus on elections as a revenue generating opportunity — growing the headcount of staff working directly with politicians to encourage them to use its platform and tools for campaigning. So [Facebook management] can hardly claim it wasn't aware of the value of user data for political targeting."



The jurisdictional facts in the Document show that as early as September 2015, a D.C.-based Facebook employee warned the company that Cambridge Analytica was a "[redacted]" asked other Facebook employees to "[redacted]" and received responses that Cambridge Analytica's data-scraping practices were "[redacted]" with Facebook's Platform Policy. FB-CA-DCAG-00050485, 489 (emphasis added). The Document also indicates that months later in December 2015, on the same day an article was published by *The Guardian* on Cambridge Analytica, a Facebook employee reported that she had "[redacted]" *Id.* at 487 (emphasis added). The

* * *

Once past the veneer of alleged competitive harm, Facebook's concerns boil down to the reputational, which cannot be the basis for hiding this document from the public. It might reflect poorly on the company, for instance, that a D.C.-based Facebook employee identified Cambridge Analytica (in addition to other third-party political applications) as a "[redacted]" months before news outlets first reported on Cambridge Analytica's improper access of Facebook consumer data. FB-CA-DCAG-00050485. The company may also seek to avoid publicizing its employees' candid assessments of how multiple third-parties violated Facebook's policies. *Id.* at 490 ("[redacted]") (emphasis in original), 489 ("[redacted]"), 489 ("[redacted]"). But concerns that information would "harm the company's

194. Other documents filed in that action provide additional information. According to an August 29, 2019 filing, on September 22, 2015, a Facebook employee with the initials "D.E." opened a group thread with the subject "Clarify policies around platform scraping for politics." D.E. flagged Cambridge Analytica as a "sketchy (to say the least) data modeling company that has penetrated our market deeply" and was suspected of scraping Facebook user data to create custom audiences. D.E. asked the group: "Can you help us investigate what Cambridge specifically is actually doing?" After a week of silence, D.E. renewed the request to

the group and forwarded it to the Development Operations team for a review. A user with the initials "A.B.C." responded the next day, requesting the App ID number for Cambridge Analytica and commenting: "I imagine it would be *very* difficult to engage in data-scraping activity as you describe while still being compliant with FPPs [Facebook Platform Policies]." Although employees posted regularly on the thread, no one responded to A.B.C. or D.E. with further information about Cambridge Analytica for months.

195. In November 2015, Facebook hired Kogan's partner, Joseph Chancellor. Chancellor worked for Facebook until September 2018.

196. On December 11, 2015, the Guardian published its story explaining that Cambridge Analytica "paid researchers at Cambridge University to gather detailed psychological profiles about the US electorate using a massive pool of mainly unwitting US Facebook users built with an online survey." That same day, a frantic employee wrote to D.E.'s group thread: "Can you expedite the review of Cambridge Analytica or let us know what the next steps are? Unfortunately, this firm is now a PR issue as this story is on the front page of The Guardian's website."

197. But Facebook management still failed to take meaningful action. According to the complaint filed by the SEC against Facebook in 2019,[38] following

[38] Attached hereto as **Exhibit G**.

the Guardian's 2015 story, "[a]ll told, more than 30 Facebook employees in different corporate groups including senior managers in Facebook's communications, legal, operations, policy, and privacy groups, learned that [Kogan] had transferred information to Cambridge in violation of Facebook's Platform Policy. However . . . Facebook had no specific policies or procedures in place to assess or analyze this information for the purposes of making accurate disclosures in Facebook's periodic filings."

198. Zuckerberg later testified to the United States Senate that the App Review Team was responsible for reviewing the terms of Kogan's app and ensuring that they complied with Facebook's policies. Yet Facebook's senior management did not terminate any member of the App Review Team for failure to oversee or correct Kogan's non-compliant policy. Rather, Zuckerberg and Sandberg assumed personal responsibility for Facebook's failure to act. When asked, in his Senate testimony, whether anyone had been fired over the Cambridge Analytica scandal, Zuckerberg responded, "I started this place, I run it, I'm responsible for what happens here. I'm going to do the best job I can going forward. I'm not looking to throw anyone under the bus for mistakes I've made." In an interview in July 2018, Zuckerberg repeated the message in an interview, telling journalist Kara Swisher, "I designed the platform, so if someone's going to get fired for this, it should be me." Sandberg concurred, explaining to Swisher that "no one was fired because the blame

ultimately falls on chief exec Mark Zuckerberg, as well as [me].” She elaborated: “Mark [Zuckerberg] has said very clearly on Cambridge Analytica that he designed the platform and he designed policies and he holds himself responsible.”

199. According to a March 2018 post by Zuckerberg, in the wake of the Guardian’s 2015 report, Facebook management purportedly “demanded that Kogan and Cambridge Analytica formally certify that they had deleted all improperly acquired data.” [39] But Facebook management did not confirm whether the data had actually been deleted. Instead, Facebook management relied on an email representation from Cambridge Analytica that it had deleted the data. Facebook management did eventually obtain a signed certification with the same (false) assurance from Cambridge Analytica but waited sixteen months to do so. Management did not order or conduct a forensic audit of Cambridge Analytica. Management did not order or conduct a forensic audit of Kogan’s app.

200. In a March 21, 2018 interview with Wired, Zuckerberg acknowledged that Facebook’s failure to confirm whether Kogan and Cambridge Analytica had deleted the user data was “one of the biggest mistakes that we made.” In internal talking points that [redacted] circulated on April 2, 2018, [redacted]

[39] https://www.facebook.com/zuck/posts/10104712037900071 (Mar. 21, 2018).

[redacted]”

201. In addition to its failure to confirm that user data had been deleted, Facebook management also did not ban Cambridge Analytica—which began advertising on Facebook directly in 2015—from the API. As Zuckerberg later testified before Congress in April 2018, “We made a mistake by not doing so.”

202. Moreover, no one from Facebook alerted the FTC about Cambridge Analytica, despite being subject to the First FTC Agreement. In his April 2018 Congressional testimony, Zuckerberg testified that “yes,” he would do that differently if it happened again today.

203. Finally, Zuckerberg and Sandberg failed to make meaningful changes at Facebook, despite knowing about the massive data harvest. They made no changes to Facebook’s oversight structure or audit procedures for third-party developers and did not alert Facebook users about what had happened to their data.

I. Palantir Played A Significant Role In The Cambridge Analytica Breach

204. There is significant evidence that Palantir—a shadowy software firm with significant ties to the intelligence community—was implicated in the Cambridge Analytica breach. As Bloomberg reported in April 2018, Defendant Peter “Thiel and Palantir [are] linked to both sides of the equation.”

205. Thiel is a co-founder of Palantir and has chaired its Board of Directors since 2013. As of Palantir’s most recent annual proxy statement, Thiel held 13% of

the company's voting power—more than any other individual stockholder. Thiel and Palantir's Chief Executive Officer Alex Karp were roommates at Stanford Law School in the early 1990s. While at Stanford, Thiel and Karp worked closely together on The Stanford Review, a controversial student newspaper that criticized what its founders perceived as a stifling campus climate of left-wing political correctness and feminism. According to a November 2017 story by Stanford Politics Magazine, "24 current and former Review affiliates, spanning the paper's entire history . . . have held positions at Palantir, including a board member (Adam Ross '95) and the company's first employee (Alex Moore '05)." That same story explained that "across the Bay Area, many of The Review's alumni, spearheaded by Thiel, have built a relatively small but tight-knit network that extends across three decades and has a net worth that extends into the billions."

206. After graduation, Thiel founded PayPal while Karp moved to Germany to pursue a PhD in philosophy. After Thiel sold PayPal in 2002, he reconnected with Karp and proposed creating Palantir in 2003. As Karp recounted in a 2016 interview with the Wall Street Journal, "[Thiel] called me one day and said, 'Hey, Alex, there's this methodology we had at PayPal. Think it would make a great company for stopping terrorism.'"

207. According to testimony before the U.K. Parliament by whistleblower Christopher Wylie, Palantir met with Cambridge Analytica as early as 2013 and later

worked with Cambridge Analytica on using its ill-gotten Facebook profile data. In fact, according to a March 27, 2018 story by the New York Times, it was a Palantir employee, Alfredas Chmieliauskas, who first suggested that Cambridge Analytica create its own app—specifically, a mobile-based personality quiz—to gain access to Facebook users' friend networks.

208. Chmieliauskas was not the only Palantir employee who encouraged Cambridge Analytica to obtain user data without consent. As Wylie detailed in his book *Mindf*ck: Cambridge Analytica and the Plot to Break America*, in August 2014, a Palantir staff member emailed the data science team at Cambridge Analytica "with a link to an article about Russians stealing millions of Internet browsing records. 'Talk about acquiring data!' they joked. Two minutes later, one of [CA]'s engineers responded, 'We can exploit similar methods.'"

209. According to Wylie's book, Palantir employees, including at least one of Palantir's lead data scientists, regularly worked in person, during normal business hours, at the offices of Cambridge Analytica in London. Wylie explained that "[a]s soon as [Cambridge Analytica] started collecting Facebook data, executives from Palantir started making inquiries. Their interest was apparently piqued when they found out how much data the team was gathering—and that Facebook was just letting [Cambridge Analytica] do it."

210. The two companies were so intertwined that, as the Stanford Daily

reported in April 2018, Palantir earned itself the moniker "Stanford Analytica," while, according to Wylie's book, the head of Cambridge Analytica frequently professed his dream of Cambridge Analytica becoming the "Palantir of Propaganda."

211. In October 2016, approximately one year after Facebook learned that Cambridge Analytica had misused its users' data, Thiel donated $1 million to a political action committee called Super PAC Make America Number 1, making him the PAC's second-largest donor. Thiel made his donation approximately two weeks after it was publicly reported that Make America Number 1 had paid $323,908 to Cambridge Analytica—$20,000 of which was for "DATA ACQUISITION SERVICES." As a practiced investor who has repeatedly touted the importance of due diligence, it is likely that Thiel thoroughly vetted the PAC and was well-aware of its Cambridge Analytica connections before making his donation. As a reporter from Mashable observed, in a March 2018 story, Thiel "[was]n't "naïve about what a company like Cambridge Analytica could do with data profiles on 50 million Facebook users."

212. Thiel and other Palantir executives, however, took proactive steps to hide their relationship with Cambridge Analytica from the public. In April 2018, Wylie participated in a transcribed interview with House Minority Leader Nancy Pelosi and Representative Adam Schiff and stated that Palantir employees who

worked at Cambridge Analytica were instructed to use pseudonyms with Cambridge Analytica staff and were sometimes paid in cash at the Cambridge Analytica offices. Wylie explained that when Palantir employees sent emails to staff at Cambridge Analytica, some came from personal accounts, and some came from pseudonyms, but "some of the emails they signed off on their actual name and forgot that they were using a pseudonym."

213. It is reasonable to infer that Thiel also caused Palantir to lie to reporters about Cambridge Analytica. In 2017, Palantir gave a statement to the Guardian denying that it any relationship whatsoever with Cambridge Analytica. Given Thiel's significant roles at Facebook and Palantir it is almost inconceivable that he would not have participated in preparing this statement. One year later, however, according to the Guardian, in "an embarrassing volte-face for the secretive firm," just hours after repeating the same denial, Palantir admitted that one of its employees had "engaged in a personal capacity" with Cambridge Analytica.

214. Thiel and Palantir's roles in the Cambridge Analytica scandal have also been and continue to be the subject of inquiry from various federal legislators.

215. When Zuckerberg testified before the United States Senate in April 2018, Senator Cantwell began her inquiry by asking specifically about Palantir and Thiel and their involvement with Cambridge Analytica:

> Cantwell: Welcome, Mr. Zuckerberg. Do you know who Palantir is?

Zuckerberg: I do.

Cantwell: Some people have referred to them as a "Stanford Analytica." Do you agree?

Zuckerberg: Senator, I have not heard that.

Cantwell: Ok, do you think Palantir taught Cambridge Analytica, as press reports are saying, how to do these tactics?

Zuckerberg: Senator, I don't know.

Cantwell: Do you think Palantir has ever scraped data from Facebook?

Zuckerberg: Senator, I'm not aware of that.

[. . .]

Cantwell: Have you heard of total information awareness? Do you know what I'm talking about?

Zuckerberg: No, I do not.

Cantwell: Total information awareness was in 2003, John Ashcroft and others trying to do similar things to what I think is behind all of this – geopolitical forces trying to get data and info to influence a process, so when I look at Palantir and what they're doing, and I look at WhatsApp, which is another acquisition, and I look at where you are from the 2011 consent decree and where you are today, I think, is this guy out-foxing the foxes? Or is he going along with what is a major trend in an information age, to try to harvest data for political forces. And so my question to you is, do you see that those applications – that those companies, Palantir, and even WhatsApp, are going to fall into the same situation that you've just fallen into over the last several years?

Zuckerberg: Um, Senator, I'm not — I'm not sure specifically. Overall, I do think that these issues around information access are challenging. To the specifics about those apps — I'm not really that familiar with what Palantir does. . . .

216. Cantwell was skeptical of Zuckerberg's evasions. According to a Slate article summarizing the hearing, Cantwell "seemed to be hinting that given Thiel's presence on the board, she found it hard to believe Facebook wasn't aware its data was being misused by political operatives."

217. Zuckerberg's professed unfamiliarity with "what Palantir does" was almost certainly untrue. Palantir was, at the time, a prominent company founded by one of Zuckerberg's closest Board allies and had been described by Forbes as "among Silicon Valley's most valuable private technology companies" as early as 2014. In May 2018, Zuckerberg met with executives from Palantir at the Elysee Palace in Paris, according to reporting by Bloomberg.

218. Moreover, in April 2018, Schroepfer, Facebook's Chief Technology Officer testified before the Digital, Culture, Media, and Sport Committee of the U.K. House of Commons and confirmed that Facebook was "looking into" Palantir potentially having gained improper access to Facebook user data:

> Chair: You will know that Mark Zuckerberg was asked about a company called Palantir, which some people have called an American version of Cambridge Analytica. Have concerns ever been raised about that company's activities and whether that company has gained improper access to Facebook user data?
>
> Mike Schroepfer: We are looking at lots of different things now. Many people have raised that concern and, since that is in the public discourse, it is obviously something else we are looking into.

Chair: But that is part of the review work that Facebook is doing?

Mike Schroepfer: Correct.[40]

219. The following year, when Zuckerberg testified before the House Financial Services Committee, Congresswoman Alexandria Ocasio-Cortez further questioned him about Thiel and Cambridge Analytica:

Ocasio-Cortez: When was the [Cambridge Analytica] issue discussed with your board member, Peter Thiel?

Zuckerberg: Congresswoman, I don't know that off the top of my head.

Ocasio-Cortez: You don't know? This was the largest data scandal with respect to your Company that had catastrophic impacts on the 2016 election — you don't know?

---

[40] Schroepfer also testified that Zuckerberg bore ultimate responsibility for the Cambridge Analytica scandal:

Ian C. Lucas: Who knows about what the position was with Cambridge Analytica in February this year? Who was in charge?

Mike Schroepfer: I do not know all the names of the people who knew that specific information at that time.

Ian C. Lucas: We are a parliamentary committee. We went to Washington for evidence and we raised the issue of Cambridge Analytica. Facebook, as an organisation, concealed evidence from us on that day. Is that not the truth?

Mike Schroepfer: I completely understand the root of what you are getting at. You have a right to get all the data you need at every point in time. Again, I don't know what happened here. I am doing my best to give you all the data you need today.

Ian C. Lucas: You are doing your best, but the buck does not stop with you, does it? Where does the buck stop?

Mike Schroepfer: It stops with Mark.

Zuckerberg: Well, Congresswoman I'm — I'm sure we discussed it after it, uh, after we were aware of what happened.

220. In December 2019, the Wall Street Journal reported that, in fact, Facebook had undertaken an internal review "to look not just at Palantir's potential role in the [Cambridge Analytica] scandal but also Mr. Thiel's." According to contemporaneous notes taken by a person briefed on the internal review at Facebook, "Mark Z. and Sheryl have specifically asked for [the] investigations team to look into Palantir." Those same notes reflect that one of Facebook's options was to "potentially leverage [the] relationship with Thiel to force Palantir to have [a] conversation with FB regarding data abuse."

J. Zuckerberg and Sandberg Downplayed The Cambridge Analytica Problem After Initial Reports in 2015

221. After the Guardian's December 2015 story about Cambridge Analytica broke, Zuckerberg and Sandberg spent the next two years actively covering up the severity of the Cambridge Analytica scandal.

222. Zuckerberg has been extraordinarily evasive about when, exactly, he first learned that user data had been inappropriately leaked to Cambridge Analytica. In a May 1, 2018 letter, Damian Collins—a U.K. Member of Parliament—asked Facebook: "When did Mark Zuckerberg know about Cambridge Analytica?" Facebook gave a carefully hedged response, stating that Zuckerberg purportedly first learned in March 2018 that Cambridge Analytica may have lied about *deleting* the

data that it acquired without users' consent:

26. When did Mark Zuckerberg know about Cambridge Analytica?

Mr. Zuckerberg did not become aware of allegations that Cambridge Analytica may not have deleted data about Facebook users obtained through Dr. Kogan's app until March of 2018, when these issues were raised in the media.

223. What the letter did not disclose is that Zuckerberg was, in fact, aware of Cambridge Analytica even before the Guardian's first report in December 2015. In October 2019, Representative Ocasio-Cortez asked Zuckerberg: "Did anyone on your leadership team know about Cambridge Analytica prior to the initial report by The Guardian on December 11, 2015?" Zuckerberg replied, "Congresswoman, I believe so, in that some folks were tracking it internally. . . . I'm actually,—as you're asking this, I do think I was aware of Cambridge Analytica as an entity earlier. I just—I don't know if I was tracking how they were using Facebook specifically."

224. At the very latest, by early 2016, Zuckerberg and Sandberg personally knew or were grossly negligent in not knowing about the specific risk of third-parties misusing user data for election advertising.

a. On an earnings call just weeks after the 2015 exposé from the Guardian, Sandberg likened the 2016 election to the World Cup, the Super Bowl, and the Olympics in terms of advertising revenue opportunities for Facebook. She also touted Facebook's "precision" in targeting voters and boasted: "we're seeing politicians at all levels really take advantage of that targeting."

b. Consistent with Sandberg's assessment, according to the SEC's complaint filed in 2019, "some employees on Facebook's political advertising team knew from August 2016 through November 2016 that Cambridge [Analytica] named Facebook and Instagram advertising audiences by personality trait for certain clients that included advocacy groups, a commercial enterprise, and a political action committee." The SEC further alleged that "[e]mployees responsible for coordinating Facebook's response to the Guardian article also circulated a link to a video of a marketing presentation by Cambridge [Analytica]'s chief executive officer about the firm's ability to target voters based on personality." Moreover, the SEC alleged that Facebook employees "became aware of media reports on Cambridge [Analytica]'s use of personality profiles to target advertising." Specifically, "Facebook lawyers and employees in the Company's political advertising group saw and discussed an October 27, 2016, article in *The Washington Post* reporting that Cambridge [Analytica] combined psychological tests with 'likes' on 'social media sites.'"

c. Ten days before the November 2016 election, McNamee

> formally reached out to Zuckerberg and Sandberg to convey his "fear that bad actors were exploiting Facebook's architecture and business model to inflict harm on innocent people." According to McNamee's book, *Zucked*, he "cited a number of instances of harm, none actually committed by Facebook employees but all enabled by the company's algorithms, advertising model, automation, culture, and value system." But according to McNamee, Zuckerberg and Sandberg each dismissed the problems as "anomalies that the company had already addressed," and routed all further communications through Dan Rose, a member of their inner circle at Facebook. As he lamented in *Zucked*, McNamee "continued to call and email Dan, hoping to persuade Facebook to launch an internal investigation," but his pleas were to no avail.[41]

225. In June 2016, Kogan signed a certification with Facebook, declaring not only that he had transferred user profiles to Cambridge Analytica, but that he had

[41] According to an April 2018 story by the New York Times, Zuckerberg and Sandberg also dismissed the concerns of Jan Koum, the co-founder of WhatsApp and a member of Facebook's Board of Directors. Koum "felt the company's board simply paid lip service to privacy and security concerns he raised." And, by 2017, Koum "had also shared his unease over Facebook's data and privacy policies with others," according to the New York Times. (By April 2018, Koum had left the Company over clashes on user privacy, as per the Times' reporting).

also transferred the underlying raw data from which he had derived those profiles. In April 2017, Cambridge Analytica signed a certification, confirming that it had received Facebook user data and Affected Friend data from Kogan. But Zuckerberg and Sandberg would later sign public filings in which Facebook presented the risk of a developer misusing users' data as merely a hypothetical possibility rather than something that had already affected millions of users.

226. For example, Zuckerberg and Sandberg signed the Company's Form 10-K filed on January, 28, 2016—just weeks after The Guardian published its first article on Facebook and Cambridge Analytica—which stated that "[a]ny failure to prevent or mitigate security breaches and improper access to or disclosure of our data or user data **could** result in the loss or misuse of such data, which could harm our business reputation and diminish our competitive position." (emphasis added). The Company further warned that if "developers fail to adopt or adhere to adequate data security practices . . . our data or our users' data **may** be improperly accessed, used, or disclosed." (emphasis added). As the SEC's subsequent complaint alleged, these disclosures "misleadingly suggested that the company faced merely the **risk** of such misuse and any harm to its business that might flow from such an incident. This hypothetical phrasing, repeated in each of its periodic filings during the relevant period, created the false impression that Facebook had not suffered a significant episode of misuse of user data by a developer." (emphasis added).

227. According to the SEC's complaint, Facebook employees—who reported to Sandberg—also misled journalists about Cambridge Analytica by pointing reporters to the Company's public statements that it "does not use data from Facebook" and "does not obtain data from Facebook profiles or Facebook likes":

> Beginning in November 2016, reporters asked Facebook about the investigation that the company said it was conducting in the December 2015 Guardian article. These inquiries were referred to Facebook's communications group, which was aware that the company had confirmed that the researcher had improperly transferred personality profiles based on U.S. user data to Cambridge in violation of Facebook's policy, and had told both parties to delete the data.
>
> The communications group initially responded to the press inquiries indirectly. For example, beginning in February 2017, the communications group pointed reporters to Cambridge's public statement that it "does not use data from Facebook" and "does not obtain data from Facebook profiles or Facebook likes." This was misleading because it suggested that Facebook was unaware that Cambridge had improperly obtained Facebook user data.
>
> On at least two subsequent occasions in March 2017, Facebook's communications group provided the following quote to reporters: "Our investigation to date has not uncovered anything that suggests wrongdoing." This was misleading because Facebook had, in fact, determined that the researcher's transfer of user data to Cambridge violated the company's Platform Policy. The quote served to reinforce the misleading impression in Facebook's periodic filings that the company was not aware of any material developer misuse of user data.

228. Zuckerberg and Sandberg were undoubtedly aware that their employees were making misleading statements, because they each received regular email digests—sometimes multiple times per day—of news about them and the

Company.[42]

229. Sandberg manages Facebook's communications team and reads Facebook's press coverage very carefully. The Company's books-and-records production includes multiple examples of Sandberg [redacted] In one email from July 2018, for example, Sandberg wrote to an employee to ask him to "[redacted]

230. Based on internal emails produced by Facebook, Sandberg also [redacted] For example:

a. In November 2018, Sandberg wrote to [redacted]

[42] *See, e.g.*, FB220-00008810 (Zuckerberg receives "[redacted]; FB220-00022260 (Zuckerberg receives "[redacted]; FB220-00023692 (Zuckerberg receives [redacted]; FB220-00011239 (Sandberg receives [redacted]; FB220-00022159 (Zuckerberg and Sandberg get [redacted].

b. Also in November 2018, Sandberg wrote to a Facebook spokeswoman asking her to "[redacted]";

c. In December 2018, a Facebook executive wrote to Sandberg [redacted]";

d. A Facebook spokeswoman wrote to Sandberg in March 2019 about [redacted] . . . .";

e. Also in March 2019, Sandberg participated in an email chain in which [redacted]

231. But Sandberg and her team made no effort to correct the falsehoods related to Cambridge Analytica.

232. For example, at a congressional hearing in October 2017 on Russian interference in the election, General Counsel Colin Stretch—who reported directly

Sandberg (who in turn reported to Zuckerberg)—testified that Facebook employees could "absolutely not" access profiles of individual users. Senator John Kennedy challenged Stretch's claim, asking Stretch to confirm that was his testimony under oath. Stretch replied, "Yes, it is." Despite his repeated, sworn assurances, however, Stretch's testimony turned out to be false. In May 2018, the Wall Street Journal broke the news that "a small group of Facebook employees have permission to access users' profiles without the users finding out." Zuckerberg and Sandberg did nothing to correct Stretch's false testimony.

233. Zuckerberg and Sandberg did not publicly acknowledge the truth about Cambridge Analytica and Facebook until the Guardian's bombshell report in March 2018 forced them to come clean.

K. Zuckerberg and Sandberg Continued Their Coverup In The Wake of New Reporting About Cambridge Analytica

234. On March 16, 2018, Facebook management posted an announcement on the Company's website. Under the heading "Breaking the Rules Leads to Suspension," Facebook announced that it would suspend Cambridge Analytica from Facebook. But that decision came two-and-a-half years too late.

235. The next day, the Guardian and the New York Times published their bombshell reports, revealing that Cambridge Analytica "not only relied on the private Facebook data but still possess[ed] most or all of the trove."

236. The Guardian revealed that:

> The data analytics firm that worked with Donald Trump's election team and the winning Brexit campaign harvested millions of Facebook profiles of US voters, in one of the tech giant's biggest ever data breaches, and used them to build a powerful software program to predict and influence choices at the ballot box.
>
> A whistleblower has revealed to the *Observer* how Cambridge Analytica – a company owned by the hedge fund billionaire Robert Mercer, and headed at the time by Trump's key adviser Steve Bannon – used personal information taken without authorisation in early 2014 to build a system that could profile individual US voters, in order to target them with personalised political advertisements.

237. As McNamee wrote in *Zucked*, these new revelations about Cambridge Analytica "confirmed many people's worst fears about Facebook. The relentless pursuit of growth had led Facebook to disregard moral obligations to users, with potentially decisive consequences in a presidential election and as yet unknown other consequences to the millions of users whose data had been shared without prior consent."

238. Zuckerberg and Sandberg managed the Company's public response and delegated Facebook's internal investigation into Cambridge Analytica to Stretch. But rather than focus on needed internal reforms, Zuckerberg and Sandberg sought to avoid and deflect responsibility.

i. At the Direction of Zuckerberg and Sandberg, Facebook Misled Journalists

239. According to a March 23, 2018 story by the Guardian, when Facebook management learned about The Guardian's plans to publish the Cambridge

Analytica report, the Company threatened to sue. When the threat failed to halt publication, management turned instead to a public disinformation campaign.

240. As the SEC later alleged, Facebook employees, under the supervision of Zuckerberg and Sandberg, repeatedly lied to journalists about the severity of the Cambridge Analytica scandal. Michael Nuñez, a technology journalist who has broken several big Facebook stories, told the Columbia Journalism Review that in his experience, Facebook representatives are "pretty comfortable obfuscating the truth" and have been "willing to lie on the record." According to the SEC, the misleading statements to the press supported Facebook's misleading public filings.

241. Management first propagated a false narrative that Cambridge Analytica obtained its data through proper channels. In responding to the New York Times' framing of the scandal as a "breach," Paul Grewal, Facebook's Deputy General Counsel, posted a false statement on the Company website, asserting that "[t]he claim that this is a data breach is completely false. Aleksandr Kogan requested and gained access to information from users who chose to sign up to his app, and everyone involved gave their consent." Alex Stamos, Facebook's Chief Security Officer, tweeted a similar message. He "emphasized that Kogan had authorization to harvest friends lists for research purposes and that the guilty party was Cambridge Analytica." According to a March 2018 story by CNET, however, that message "inadvertently made [Facebook's] public relations problem worse, so much so that

Stamos deleted the tweets." In his book, *Zucked*, McNamee reflected: "When [Facebook] described Kogan as a legitimate researcher, Facebook effectively acknowledged that the harvesting of user profiles by third parties was routine."

242. This media campaign was overseen by Zuckerberg and Sandberg. In *An Ugly Truth*, Kang and Frenkel report that in the immediate aftermath of the Guardian and New York Times reports, Zuckerberg and Sandberg took charge of communications: Zuckerberg "ordered staff to shut down external communications until he had a grasp of the situation [and] . . . directed Sandberg and the legal and security teams to scour emails, memos, and messages among Facebook employees, Kogan, and Cambridge Analytica . . . ."

ii. Zuckerberg Lied To Congress

243. Zuckerberg testified before the Senate's Commerce and Judiciary Committees on April 10, 2018.

244. Zuckerberg testified that Facebook first learned "that [Aleksandr] Kogan had shared data from his app with Cambridge Analytica" when journalists at The Guardian published an exposé in December 2015. In response to a question from Representative Mike Doyle about whether Facebook had first learned about Cambridge Analytica's use of Facebook data as a result of the December 2015 article, Zuckerberg responded "Yes."

245. But Zuckerberg's testimony was false, or at the very least, misleading.

Months later, Zuckerberg would admit, in response to a question from Representative Ocasio-Cortez, that he was aware of Cambridge Analytica earlier than December 2015. Moreover, as Zuckerberg would later admit, Facebook employees had flagged Cambridge Analytica as a "sketchy" company as early as September 2015.

246. Zuckerberg also repeated his false statement from the April 2014 F8 conference, testifying that, "now, when people sign into an app, you do not bring some of your friends' information with you. You're only bringing your own information and you're able to connect with friends who have authorized that app directly." He failed to mention Facebook's whitelisting practices, even though at least eighteen companies still enjoyed access to whitelisting at the time of his testimony and could, in fact, continue to access Affected Friend data from users' friends who had not authorized those apps directly.

247. Multiple knowledgeable observers concluded that Zuckerberg lied to Congress.

a. Parakilas, who had long since departed Facebook, paid close attention to Zuckerberg's testimony. Referencing the quote above, Parakilas explained in a June 4, 2018 Twitter thread: "This statement to Congress was not correct. Some apps (these device makers) still have access to friend data. Even users who

had turned [their] platform off to avoid this kind of abusive data collection could have their data accessed . . . . This wasn't a small misstatement—the crux of Facebook's argument was that they fixed the friend permission problem in 2014."[43]

b. When the New York Times released its report on the whitelisting practices for developers and device-makers in June 2018, Rhode Island Congressman David Cicilline demanded answers. In a June 3, 2018 tweet, Cicilline stated, "Sure looks like Zuckerberg lied to Congress about whether users have 'complete control' over who sees our data on Facebook. This needs to be investigated and the people responsible need to be held accountable."

c. Zuckerberg also testified: "You're talking about this conspiracy theory that gets passed around that we listen to what's going on on your microphone and use that for ads. We don't do that." According to an August 2019 statement by United States Senator

[43] A June 2018 story by the New York Times quoted Elisabeth Winkelmeier-Becker (a German lawmaker who investigated how Facebook exposed Affected Friend data) who said she "would never have imagined that this might even be happening secretly via deals with device makers. BlackBerry users seem to have been turned into data dealers, unknowingly and unwillingly."

Gary Peters, however, that testimony was "at best, incomplete." In August 2019, Bloomberg reported that, in fact, Facebook had been paying hundreds of outside contractors to transcribe audio clips sent between Facebook users. Facebook management "ha[d]n't disclosed to users that third parties [could] review their audio," and its newly revised data-use policy included "no mention of audio."[44]

d. Zuckerberg also testified: "We do not sell data to anyone. We do not sell it to advertisers. We do not sell it to developers." As a U.K. Parliamentary Committee later concluded in a February 2019 report, "data transfer for value is Facebook's business model and . . . Mark Zuckerberg's statement that 'we've never sold anyone's data' is simply untrue."[45]

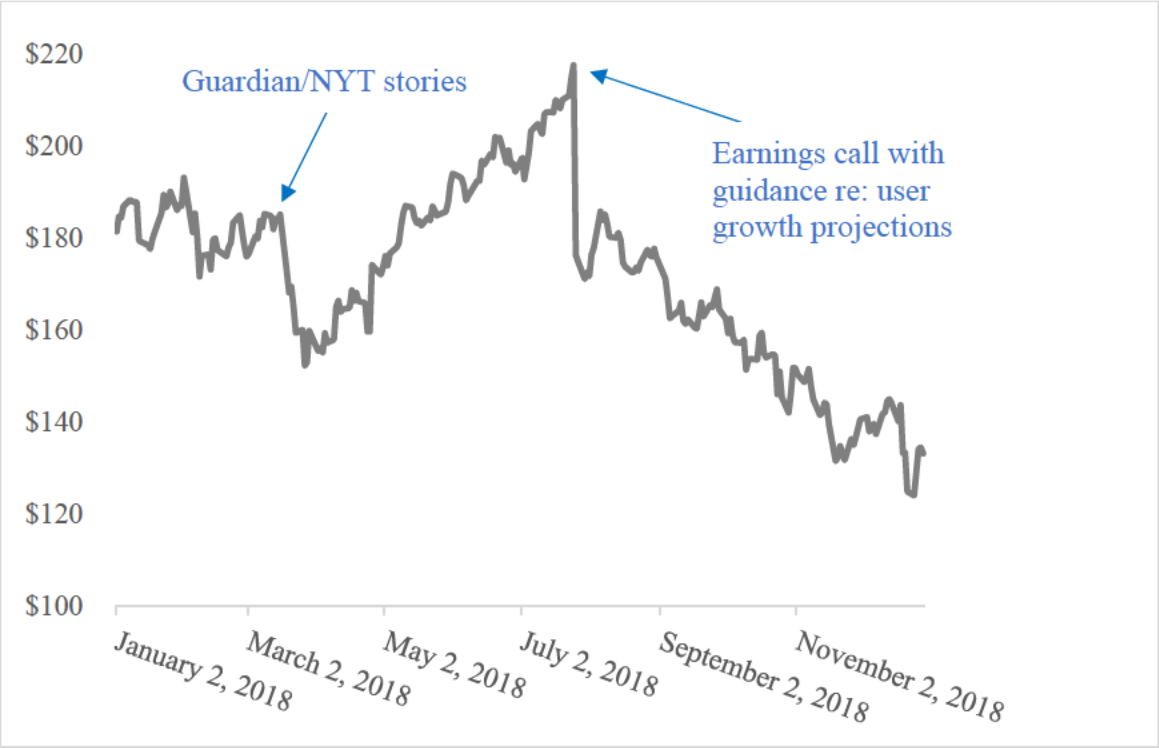
[44] As a result, the Irish Data Protection Commission ("DPC") and the German data protection authority launched investigations into Facebook's conduct, and the Company's stock fell 1.3% over the course of one day.

[45] In that same report, the committee accused Facebook of behaving like a "digital gangster" and concluded that "[b]y choosing not to appear before the Committee and by choosing not to respond personally to any of our invitations, Mark Zuckerberg has shown contempt towards both the UK Parliament and the 'International Grand Committee', involving members from nine legislatures from around the world." The committee also concluded that "[t]he Cambridge Analytica scandal was facilitated by Facebook's policies. If [Facebook] had fully complied with the [2011] FTC Settlement, it would not have happened."

248. According to USA Today, a survey taken after Zuckerberg's congressional testimony "showed a sharp decline in public confidence" in the Company. Whereas 79% of respondents in 2017 had agreed with the statement "Facebook is committed to protecting the privacy of my personal information," following Zuckerberg's testimony, only 27% of respondents agreed.

L. The Company's Stock Price Collapsed And Users Filed Suit

249. The Cambridge Analytica scandal and Facebook's failure to protect user data had devastating effects on the Company's value, as seen in the stock price chart below:



250. The Guardian and The New York Times stories came out on March 18, 2018. The next day of trading, the Company's share price fell nearly 7 percent, a

decline in market capitalization of over $36 billion.

251. On March 27, after Zuckerberg agreed to testify and before Congress and the FTC announced it would investigate Facebook's privacy practices, Facebook's shares fell almost five percent, erasing another almost $23 billion in market capitalization.

252. In the month following the release of the Cambridge Analytica reports, a study by the Ponemon Institute found a 66% decline in users' trust in Facebook. Forty percent of users also said they had already stopped using Facebook or were likely to stop. And this loss of trust is likely permanent. According to a survey published by Consumer Reports in September 2020, 85% of Americans reported being either very concerned or somewhat concerned about the amount of data platforms like Facebook hold and store about them.

253. But the bad news didn't stop there. Facebook's deepest-ever stock drop occurred on July 26, 2018, following the Company's release of horrific guidance for user growth in the wake of the Cambridge Analytica reporting. A MarketWatch story on the guidance quoted GBH Insights head of technology research Daniel Ives as stating, "[t]he guidance, it's nightmare guidance . . . . If you look at their forecast for the second half of the year in terms of user growth, and the expense profile, it refuels the fundamental worries about Facebook post-Cambridge Analytica." Facebook's market capitalization dropped by approximately $120 billion—slightly less than the

total market capitalization of Nike at the time.

254. As noted above, the Company is currently defending a consolidated, multidistrict putative class action brought by Facebook users who filed consumer protection claims after the Cambridge Analytica scandal was revealed.[46] In September 2019, the district court largely denied Facebook's motion to dismiss.[47] In May 2021, the parties filed a notice with the court disclosing that "[t]he parties are willing to mediate and counsel is in the process of conferring with their clients about private mediation and a potential mediator."[48] Any settlement in that action would likely involve a substantial cash payment by the Company.

M. Repeat Offenders: Management's Bad Behavior Continued

255. Despite the ongoing firestorm of negative publicity, Zuckerberg and Sandberg did not learn their lesson.

256. For example, in April 2018—the same month that Zuckerberg testified to Congress and promised to clean up shop—Facebook management authorized a change to opt some 60 million users into facial recognition, again without their consent. The facial recognition program was a further source of liability for Facebook in the 2019 FTC Agreement and led to a $650 million settlement with

---

[46] *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, 18-md-02843 (N.D. Cal.)

[47] *Id.*, ECF No. 298.

[48] *Id.*, ECF No. 676 ¶3.

Illinois users for alleged violations of the state's facial recognition law.

257. Moreover, in response to the revelations about Cambridge Analytica, investors—including Rhode Island—called for systematic overhauls to Facebook's oversight. Facebook stockholders proposed a wide array of changes, including splitting the roles of CEO and chair of the Board of Directors. Zuckerberg and Sandberg advocated against and successfully rebuffed them all. Of particular relevance, Facebook investors submitted a shareholder proposal to establish a Risk Oversight Committee charged with overseeing data privacy issues. In a letter explaining the proposal, the authors explained that "[t]he sheer volume, magnitude, and frequency of Facebook's problems strongly suggests that the company's whack-a-mole approach is insufficient." They pointed out that Institutional Shareholder Services ("ISS") "flags data privacy as the most commonly occurring controversy in the tech sector," and that ISS accordingly recommends investors look for "board level-accountability of data privacy issues."

258. In a Proxy statement filed with the SEC on April 13, 2018, Facebook's Board of Directors—including Zuckerberg and Sandberg—issued an opposing statement, calling the proposal "inefficient" and urging stockholders to reject it. Because Zuckerberg has majority voting power, the proposal failed. One month later, the Board quietly changed the Audit Committee to the "Audit & Risk Oversight Committee" and nestled "privacy and data use" into its charter. It was

only as part of the 2019 FTC Agreement that the Company agreed to form a dedicated Privacy Committee. True to form, however, while Zuckerberg began touting the virtues of the Privacy Committee to investors as early as Facebook's July 24, 2019 earnings call, the Board did not actually launch the Committee until May 12, 2020.

259. Under Zuckerberg and Sandberg's leadership, Facebook's privacy standards have continued to erode. For example:

a. In mid-2019, the House Antitrust Subcommittee launched a year-long, bipartisan investigation into digital markets, with a particular focus on Facebook. As part of the investigation, the Subcommittee requested and reviewed "all communications" from Zuckerberg and Sandberg relating to Facebook's key acquisitions, including Instagram and WhatsApp. Zuckerberg also testified before the Subcommittee on July 29, 2020.

b. In its final report, the Antitrust Subcommittee concluded that Facebook "used its data advantage to create superior market to identify nascent competitive threats and then acquire, copy, or kill these firms . . . . In the absence of competition, Facebook's quality has deteriorated over time, resulting in worse privacy protections for its users . . . ." Similarly, the Subcommittee

reported that Facebook and other large firms "with weak privacy protections ha[ve] created a kill zone around the market for products that enhance privacy online."

c. In September 2020, the Irish DPC launched two new investigations into revelations that Instagram (a Facebook subsidiary) had made the email addresses and phone numbers of millions of children public. David Stier, a San Francisco-based data scientist, first reported the problem to Facebook's white hat program in February 2019, but management did not take action for months. Facebook faces potential fines totaling $5.7 billion as a result of this failure to protect the private information of its users.

d. On October 28, 2020, Zuckerberg testified before the Senate Commerce, Science, and Transportation Committee. He announced that Facebook had halted suggesting political groups to users, and the Company reiterated that it had taken that step in two separate blog posts in January 2021. Senator Markey has now called for yet another investigation into Facebook, given widespread findings that the Company in fact continued to recommend political groups throughout December 2020 and

January 2021. On January 26, 2021, Senator Markey wrote a letter directly to Zuckerberg, explaining that "[t]hese findings cast serious doubt on Facebook's compliance with the promises you have publicly made to me and your users."

e. Also on January 26, 2021, other serious doubts arose about the veracity of Zuckerberg's prior Senate testimony. In April 2018, Zuckerberg had testified in response to questioning by Senator Tester that Facebook would complete an audit concerning Cambridge Analytica once the British Information Commissioner's Office ("ICO") had gathered Cambridge Analytica's documents and completed its own investigation.[49] The ICO completed its investigation in October 2020. But according to a February 17, 2021 letter from the ICO, Facebook has yet to contact the ICO "in respect of any such audit."

N. In The Wake Of The Cambridge Analytica Bombshell, FTC Staff Trained Their Sights On Zuckerberg

260. Immediately following the March 2018 reports by the New York Times

[49] Tester: You talked about a full audit of the Cambridge Analytica systems. Can you do a full audit if that information is stored somewhere – in some other country? Zuckerberg: Senator, if – right now we're waiting on the audit because the UK government is doing a government investigation of them, and I do believe the government will be able to get into the systems even if we can't."

and the Guardian, the FTC began to investigate potential claims against Facebook and Zuckerberg, including for breaching the First FTC Agreement.

261. On February 6, 2019, the FTC sent Facebook's outside counsel at Gibson Dunn[50] a copy of a draft complaint naming both Facebook and Zuckerberg personally. With respect to Zuckerberg, personally, the draft complaint alleged that,

[redacted]

[50] The partner leading the Gibson Dunn team was Orin Snyder. Snyder's profile on the Gibson Dunn website states that he "has represented Facebook in some of its most significant matters dating back to 2007." The profile also states that "Mr. Snyder has represented well-known individuals in significant matters, including . . . Mark Zuckerberg."

[redacted]”

262. Along with the draft complaint, FTC also provided Facebook with [redacted]”

263. The next day, [redacted]

[redacted]

[redacted]

264. If Zuckerberg had been personally named in an FTC complaint, he could have faced substantial fines for future violations and been immediately subject to "fencing in" injunctive prohibitions.[51]

265. Indeed, the fact that Zuckerberg had ultimately not been named in the 2012 consent decree—[redacted]

[redacted]

[redacted]

[51] "The Federal Trade Commission Act (FTCA) authorizes imposition of comprehensive prophylactic injunctive relief. As the Supreme Court admonishes, those caught violating the [FTCA] must expect some fencing in. . . . Accordingly, courts have routinely imposed some form of fencing in, barring violators from participating in certain lines of business or forms of marketing." *Fed. Trade Comm'n v. John Beck Amazing Profits LLC*, 888 F. Supp. 2d 1006, 1011 (C.D. Cal. 2012) (internal citations omitted), *aff'd sub nom. F.T.C. v. John Beck Amazing Profits, LLC*, 644 Fed. App'x 709 (9th Cir. 2016).

[redacted]

266. Zuckerberg would also have suffered extensive reputational harm if he had been personally sued by the federal government. This risk would have been highly material to Zuckerberg, who is extraordinarily sensitive about his public image and has been reported to have political ambitions.

a. In a 2017 profile, a VANITY FAIR reporter wrote that "a number of influential people in Silicon Valley seem to think that Mark Zuckerberg will likely run for president of the United States one day. . . . 'He wants to be emperor' is a phrase that has become common among people who have known him over the years." In 2017, CNBC reported on "increasing speculation that Mark Zuckerberg, the self-made billionaire chairman, co-founder and chief executive officer of Facebook, may one day run for office," noting that "Zuckerberg and his wife Priscilla Chan have hired Joel Benenson, a Democratic pollster, adviser to former President Barack Obama and chief strategist of Hillary Clinton's

2016 presidential campaign, as a consultant for their joint philanthropic project, the Chan Zuckerberg Initiative. The pair also hired David Plouffe, campaign manager for Obama's 2008 presidential run; Amy Dudley, former communications adviser for Sen. Tim Kaine, D-Va.; and Ken Mehlman, who directed President George W. Bush's 2004 re-election campaign. Zuckerberg is on a yearlong 'listening tour,' where he is traveling to all 50 states and meeting with leaders and constituents in each — and, to document the trip, he has hired Charles Ommanney, a photographer for both the Bush and Obama presidential campaigns."

b. Documents produced by the Company show that Facebook [redacted] This polling has also been the subject of public reporting. In a February 2018 story, the technology news website THE VERGE reported that Facebook had hired Tavis McGinn as a full-time pollster to monitor Zuckerberg's favorability ratings amongst the public.[52]

[52] As the Verge story noted, "it is unusual for a company to have a staff person charged exclusively with monitoring perceptions of its CEO full time. Facebook began monitoring Zuckerberg's perception about two years ago [*i.e.*, in 2016][.] The

> In 2019, Bloomberg reported that "[i]n one presentation summarizing data on Zuckerberg from June 2017, the CEO was rated on personality attributes, including terms like 'mature,' 'honest' and 'passionate.' He scored highest on 'innovative,' and lowest on 'shares my values.' Zuckerberg was also charted against rival CEOs."

267. On February 8, 2019, [redacted]

268. On February 14, 2019, the Washington Post reported that "[t]he Federal Trade Commission and Facebook [were] negotiating over a multi-billion dollar fine that would settle the agency's investigation into the social media giant's privacy practices[.]" The story noted that "a collection of consumer advocates urged the FTC last month to penalize Facebook aggressively with 'substantial fines,' perhaps exceeding $2 billion[.]"

---

story quoted McGinn as agreeing that "[i]t was a very unusual role, . . . It was my job to do surveys and focus groups globally to understand why people like Mark Zuckerberg, whether they think they can trust him, and whether they've even heard of him." According to the story, "McGinn tracked a wide range of questions related to Zuckerberg's public perception. 'Not just him in the abstract, but do people like Mark's speeches? Do they like his interviews with the press? Do people like his posts on Facebook? It's a bit like a political campaign, in the sense that you're constantly measuring how every piece of communication lands. If Mark's doing a barbecue in his backyard and he hops on Facebook Live, how do people respond to that?'"

269. Shortly after the Washington Post story was posted on its website, [redacted] Later that day, in the same email thread [redacted]"

270. That same day and over the days that followed, [redacted]

271. On February 15, 2019, [redacted]

272. [redacted] But it is fair to infer that, as part of its

work, Gibson Dunn reviewed Zuckerberg's emails and knew that if they were produced to the FTC, they would reveal that Zuckerberg too was personally and intimately involved with decisions about which apps were secretly given continued access to Affected Friend data.

273. On February 18, 2019, the committee of the U.K. House of Commons released a report, accusing Facebook of behaving like a "digital gangster[]," declaring that Zuckerberg's actions showed "contempt" for Parliament and repeatedly accusing him of making false or misleading statements about Facebook's privacy policies.

274. On February 28, 2019, Facebook's outside counsel at Gibson Dunn sent the FTC [redacted] white paper analyzing the penalty sought by the FTC in the draft complaint (attached as **Exhibit C**). The FTC's draft complaint sought monetary penalties pursuant to 15 U.S.C. § 45(l), which is subject to a cap of "$42,530 for each violation."[53] The FTC took the position that each page view was a violation, justifying billions of dollars in damages. [redacted] Section 45(l) makes clear that each *day* of a continuing offense constitutes a separate violation. [redacted]

[53] 16 C.F.R. § 1.98(c).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

275. Calculated on a per-day basis, Facebook's maximum exposure was in the low nine figures. The draft FTC complaint alleged that the relevant misconduct began in December 2012 and was ongoing. There were 2,463 days between December 1, 2012 and August 30, 2019. Multiplying 2,463 days by a maximum statutory penalty of $42,530 means that Facebook's maximum monetary exposure was $104,751,390—about $4.9 billion less than it agreed to pay.[54]

276. On March 4, 2019, [redacted]

[54] At 6:22 a.m. on March 26, 2019, [redacted] the February 28, 2019 Gibson Dunn white paper analyzing the penalty sought by the FTC.

It is, therefore, reasonable to infer that this white paper was shared with the full Board by the March 26, 2019 meeting at the very latest.

[redacted]

277. The primary focus of Gibson Dunn's attack, however, was on [redacted]

278. On March 11, 2019, [redacted]

[redacted] no explanation, however, for the fact that several apps were allowed to maintain access to Affected Friend data beyond the one-year cutoff.

O. The Board Told Management To Offer The FTC An Express Quid Pro Quo: Facebook Will Overpay If Zuckerberg Gets Off The Hook

279. On March 15, 2019, [redacted] attorneys exchanged emails with the subject line "[redacted]" Facebook withheld those emails as privileged.

280. On March 17, 2019, [redacted]

[redacted]

281. On March 19, 2019, Facebook's full Board met and was informed by [redacted] that "[redacted]" In response, the Board directed [redacted]"

282. On March 20, 2019, [redacted]

[redacted] Facebook withheld those emails as privileged.

283. On March 26, 2019, Facebook's full Board met and was informed by [redacted] that "[redacted]"

284. Also on March 26, 2019, as noted above, [redacted]

285. Also on March 26, 2019, [redacted]" Facebook withheld those emails as privileged.

286. On March 30, 2019, the full Board met and, according to the minutes

from that meeting, was informed that "[redacted]"[55]

P. The Board Belatedly Established A Special Committee With A Weak Mandate, Conflicted Member, and Conflicted Counsel

287. Not until the end of the March 30, 2019 meeting—when the Company had already made clear to the FTC that it would pay billions of dollars more than its

[55] By April 19, 2019 at the very latest, the FTC had agreed that Zuckerberg need not be personally named. On that day, James Kohm, an attorney with the FTC, [redacted]"

maximum statutory exposure to ensure that Mr. Zuckerberg escaped consequences—did certain outside directors propose the formation of a special committee. The minutes state that "[redacted]"

288. The Special Committee was given limited authority. [redacted] And while the Special Committee did retain its own counsel [redacted]

289. Most significantly, it does not appear that anyone actually conceived of the Special Committee's role as addressing the conflict between Zuckerberg's interests and the Company's interests. On April 1, 2019, [redacted] Orin

Snyder (the Gibson Dunn partner leading the team representing Facebook) [redacted] In other words, the Board was just delegating oversight function to a smaller group for efficiency's sake, not trying to seriously address Zuckerberg's conflict of interest.

290. The Special Committee's choice of [redacted] as its legal advisor was surprising and inappropriate due to several significant personal relationships. In that same April 1, 2019 email exchange, [redacted]" The [redacted] team was also led by [redacted] Alison Schumer, has been a product manager at Facebook since 2017.

291. The Special Committee's membership was also problematic. The Special Committee had three members: Kenneth Chenault, Jeffrey Zients, and Marc Andreessen. In 2016, the Facebook Board had appointed Andreessen to a special committee that was supposed to negotiate with Zuckerberg on behalf of public stockholders in connection with a reclassification proposal that would have allowed Zuckerberg to liquidate substantial portions of his economic interest in Facebook without losing voting control. While serving on that committee, Andreessen sent

secret text messages to Zuckerberg during negotiations to advise him on how best to outwit the other members: "This line of argument is not helping. . . . They are both genuinely trying to get to the right answer. THIS is the key topic. Agree[.] NOW WE'RE COOKING WITH GAS[.] I'll push them on having a longer period at least for Sheryl and Chris. Don't know if that's helpful but."

292. On the day that the prior special committee recommended approval of the reclassification, Andreessen and Zuckerberg had the following exchange:

Andreessen: The cat's in the bag and the bag's in the river.

Zuckerberg: Does that mean the cat's dead?

Andreessen: Mission accomplished. ☺

Q. Negotiations Continued

293. On April 1, 2019 and carrying over to April 2, 2019, a group of in-house lawyers at Facebook, [redacted] exchanged emails with the subject line "[redacted]" Facebook withheld the emails as privileged.

294. The Special Committee met on April 5, 2019 and listened to a presentation from [redacted] who provided the committee with an update regarding [redacted] The only substantive matters referenced in the unredacted portions of the minutes of that meeting are "[redacted]

[redacted]

[redacted]”

295. Two days later, the Special Committee met again. Once again, the discussion [redacted] and the unredacted portions of the minutes reflect that the discussion focused on [redacted]

[redacted]”

296. The next business day (April 8, 2019), the Special Committee met again with both Zuckerberg and Stretch in attendance. Facebook heavily redacted the minutes of that meeting. The unredacted portion of the minutes reflect that [redacted]

[redacted]”

297. That same day, [redacted]

[redacted]

[redacted]

298. [redacted]

[redacted]

[redacted]

299. This was the key moment in the negotiations where FTC staff accepted the quid pro quo that Facebook offered: it would allow Zuckerberg to escape but only if Facebook paid billions of dollars more than its maximum statutory exposure.

300. The next day (April 9, 2019), [redacted]

[redacted]

[redacted]”

301. The Special Committee met that same day in a meeting attended by, among others, Zuckerberg, Sandberg, Stretch, and Zuckerberg’s counsel from Munger Tolles. The unredacted portions of the minutes reflect that the discussion focused on [redacted]

302. The Special Committee met again the next day (April 10, 2019). Again, Zuckerberg, Sandberg, Stretch, and Munger Tolles participated in the meeting. And again, the minutes reflect that the discussion focused [redacted]

[redacted]”

303. The Special Committee met again the day after that (April 11, 2019). Again, Zuckerberg, Sandberg, Stretch, and Munger Tolles were among the attendees. Again, the discussion focused [redacted]

[redacted]"

304. On April 15, 2019, [redacted]

[redacted]

305. That same day, the Special Committee met and [redacted]

[redacted]

306. Also that same day, the full Facebook Board met and, according to the minutes, [redacted] provided an update on [redacted] The details of those updates are hidden behind privilege redactions.

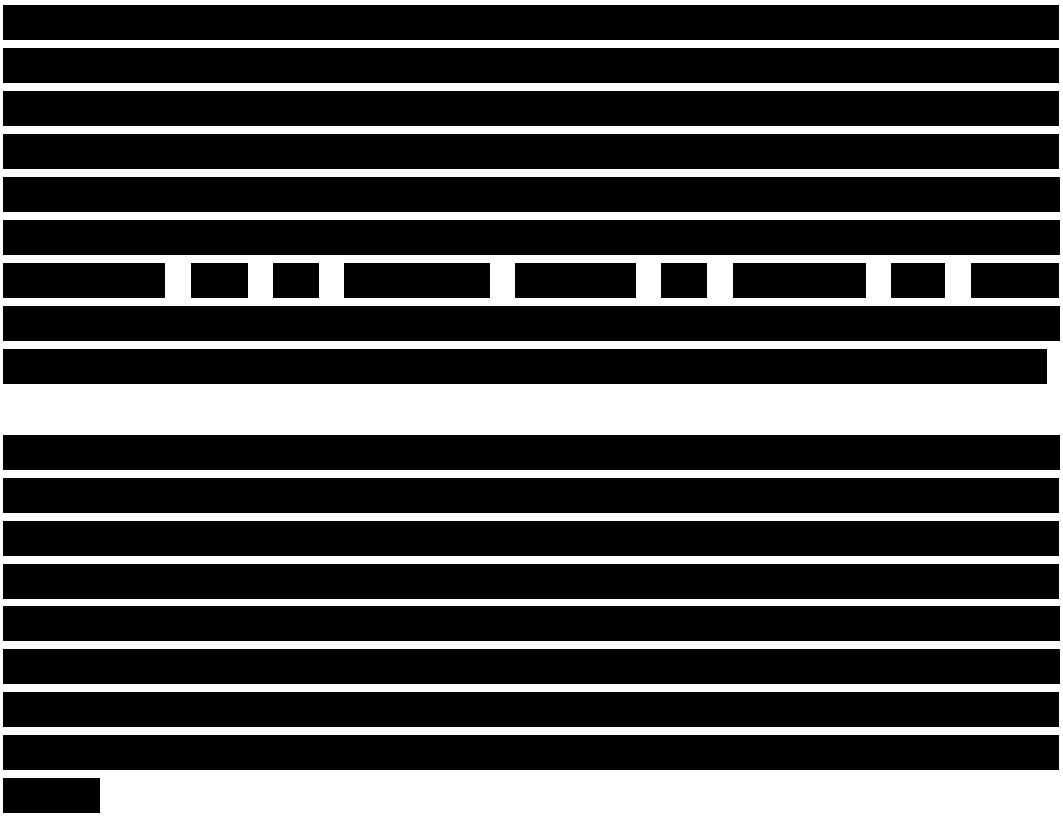
307. On April 19, 2019, The Washington Post reported that "[f]ederal regulators investigating Facebook for mishandling its users' personal information have set their sights on the company's chief executive, Mark Zuckerberg," explaining that "discussions about how to hold Zuckerberg accountable for Facebook's data lapses have come in the context of wide-ranging talks between the Federal Trade Commission and Facebook that could settle the government's probe of more than a year[.]"

308. That same day, James Kohm (a senior enforcement attorney at the FTC) [redacted]

309. On April 25, 2019, Facebook filed its Form 10-Q for the first quarter of 2019 and disclosed that its discussions with the FTC had "progressed to a point that,

in the first quarter of 2019, we reasonably estimated a probable loss and recorded an accrual of $3.0 billion which is included in accrued expenses and other current liabilities on our condensed consolidated balance sheet. We estimate that the range of loss in such matter is $3.0 billion to $5.0 billion."

310. That same day, the Special Committee met with Zuckerberg, Sandberg, and Stretch among the attendees. The minutes describe the agenda as follows:



311. On May 4, 2019, The New York Times reported that FTC commissioners were "split on the size and scope of [Facebook's] punishment," and that "one of the most contentious undercurrents throughout the negotiations has been the degree to which Mark Zuckerberg, Facebook's chief executive, should be held

personally liable for any violation of a 2011 agreement[.]" The Times reported that "Facebook has put up a fierce fight, saying Mr. Zuckerberg should not be held legally responsible for the actions of all 35,000 of his employees." The story went on to note that "[i]n an early version of the complaint and proposed settlement, Mr. Zuckerberg was named as a responsible party," but "Facebook pushed back on the inclusion of Mr. Zuckerberg, saying it would not agree to that in a settlement."

312. The next day, [redacted]

313. On May 22, 2019, [redacted]

[redacted]"

314. The Special Committee held its last meeting on June 5, 2019. As usual, Zuckerberg, Sandberg, and Stretch were among the attendees. The minutes state that "[redacted]" In turn, "[redacted]"

315. On June 12, 2019, the full Board met and received updates from [redacted] regarding [redacted] The minutes of this meeting contain extensive privilege redactions. The minutes also state that Chenault, Chairman of the Special Committee, [redacted]

316. The Special Committee Report (attached as **Exhibit D**) was less than [redacted] pages long and consisted mostly of [redacted] There was no mention, let alone analysis, of any conflict between Zuckerberg's interests and Facebook's interests. Indeed, the word "Zuckerberg" did not appear in the Report. The Report did conclude that [redacted] But the Report failed to:

- Identify, let alone analyze, the key questions driving the liability inquiry;
- Refer to, let alone analyze, the [redacted] and statutory obstacles to a multi-billion-dollar fine discussed in the Gibson Dunn white paper;
- Estimate the likely amount of any fine if Facebook was found liable; or
- Identify, let alone analyze, the key questions relevant to determining the amount of any fine.

R. Facebook Agreed To A Record-Setting Fine

317. On July 22, 2019, the Washington Post reported that Facebook had agreed to pay a record-setting $5 billion fine, which was "more than it believed was required[,] in a bid to assuage regulators and win other concessions from the feds."

318. The most critical concession: a lack of personal consequences for Zuckerberg. According to the Post, the FTC's "primary concern" was "Zuckerberg and other top-tier Facebook executives. The commission's Democratic members—Rohit Chopra and Rebecca Kelly Slaughter—for months had hinted publicly their belief that corporate leaders should be held personally accountable for their

companies' repeated privacy mishaps." This could have "resulted in Zuckerberg, personally, being put under an FTC order, opening the door for fines and other penalties against him if Facebook erred again in the future. The FTC had considered placing Zuckerberg under order during its last investigation in 2011" before ultimately abandoning the issue. But, according to the Post, Facebook "steadfastly opposed placing Zuckerberg under order, including during meetings with commission negotiators starting last year. The tech giant's internal briefing materials reflected its willingness to cease settlement talks and send the matter to court, if necessary, to protect their executive from one of the most severe penalties the FTC could levy on him directly." Two days later, the Post reported that the agreement had been reached before the FTC deposed Zuckerberg.

319. On July 24, 2019, the FTC announced the 2019 FTC Agreement.[56] Notably, the Agreement contained a broad release of all claims that the FTC might otherwise be able to bring against Facebook's officers and directors for conduct prior to June 12, 2019. The three FTC Commissioners who supported the Second FTC Agreement issued a statement in support of the settlement. In that statement they noted that "[t]he $5 billion penalty assessed against Facebook . . . is orders of magnitude greater than in any other privacy case, and also represents almost double

[56] The final decision and order is attached as **Exhibit H**.

the greatest percentage of profits a court has ever awarded as a penalty in an FTC case. **If the FTC had litigated this case, it is highly unlikely that any judge would have imposed a civil penalty even remotely close to this one**" (emphasis added).

320. Commissioners Rohit Chopra and Rebecca Kelly Slaughter dissented from the settlement.

321. Commissioner Slaughter wrote that:

- "[T]here was extremely compelling evidence of a series of significant, substantial order violations and law violations," including "sufficient evidence to name Mr. Zuckerberg in a lawsuit."
- "I would have preferred to name Mr. Zuckerberg in the complaint and in the order. I disagree with the decision to omit him now, and I strenuously object to the choice to release him and all other executives from any potential liability for their roles to date. I am concerned that a release of this scope is unjustified by our investigation and unsupported by either precedent or sound public policy."

322. Commissioner Chopra criticized the "unusual legal shield" that the Second FTC Agreement gave to Zuckerberg, Sandberg, and others, describing the "blanket release" as "deeply problematic." "When individuals make a calculated decision to break or ignore the law," Commissioner Chopra wrote, "they—and not just their firm or shareholders—should be held accountable. To instead expressly shield individuals from accountability is dubious as a matter of policy and precedent." He went on to explain that the "grant of broad immunity is highly unusual. It is a departure from FTC precedent and established guidelines. Americans should ask why Mark Zuckerberg, Sheryl Sandberg, and other executives are being

given this treatment, while leaders of small firms routinely face investigations, hearings, and charges."

323. Elsewhere Commissioner Chopra wrote that:

- Facebook "was resistant to providing documents from Zuckerberg's files."
- "Because the law imposes affirmative obligations on officers and directors whose firms are under order, uncovering their role in potential violations is critical to any investigation. It is especially critical in this investigation, which involved a firm that is tightly controlled by its founder, CEO, and Chairman, Mark Zuckerberg. Given the structure of his ownership and his special voting rights, it is hard to imagine that any of the core decisions at issue were made without his input."
- "[T]here is already sufficient evidence, including through public statements, to support a charge against Mark Zuckerberg for violating the 2012 order."
- "[T]he Commission had enough evidence to take . . . Zuckerberg to trial."

324. At a July 24, 2019 press conference, James Kohm—the FTC staff attorney who led the Facebook investigation—suggested that Facebook gave the FTC relief it could not have obtained in court in exchange for letting Zuckerberg off the hook without even sitting for a deposition. Kohm stated: "[p]art of getting this tremendous result . . . is we didn't need to depose [Zuckerberg] but we could use that. . . . If there was something, we could get for something . . . This case—we got a lot of relief that we couldn't otherwise have obtained and that is in some small part due to not going further. . . . [Zuckerberg,] if he's deposed, exposes himself to a huge amount of litigation outside of the Federal Trade Commission."

325. In a July 30, 2020 interview at "RightsCon Online 2020," Commissioner Chopra was even more explicit. Commissioner Chopra stated that he was "deeply troubled that the agency did not subject Mr. Zuckerberg or Ms. Sandberg to sworn testimony" and that, in his view, "the government essentially traded getting more money so that an individual [*i.e.*, Zuckerberg] did not have to submit to sworn testimony."

326. On the same day the FTC filed the 2019 FTC Agreement (July 24, 2019), the SEC filed a complaint and stipulated judgment against Facebook for making "misleading statements in its required public filings about the misuse of its users' data" from 2016 until mid-March 2018.[57] As part of the settlement with the SEC, Facebook agreed to pay $100 million for "present[ing] the risk of misuse of its users data as merely hypothetical" when, "[i]n fact, Facebook had already become aware by December 2015 that a researcher had improperly sold information related to tens of millions of Facebook users to data analytics firm Cambridge Analytica." The district court approved the settlement on August 22, 2019.

327. In January 2020, both Facebook and the FTC filed briefs in the United States District Court for the District of Columbia in support of approval of the 2019 FTC Agreement. Facebook's brief laid out a number of compelling arguments

[57] The SEC Complaint is attached as **Exhibit G**.

explaining that the $5 billion penalty was "orders of magnitude greater than what the FTC could reasonably have achieved at trial." In a brief authored by Gibson Dunn, Facebook explained that the "maximum possible civil penalty" was $43,280 per day (*i.e.*, about $106.6 million if each of the 2,463 days between December 1, 2012 and August 30, 2019 counted as a violation):

- "The FTC's statutory civil penalty authority is limited to $43,280 per violation. 15 U.S.C. § 45(l). The FTC takes the position that each 'page view' on Facebook constitutes a separate violation, but at trial, Facebook would have had compelling arguments that the maximum penalty must be calculated on a 'per day' basis. *See United States v. Daniel Chapter One*, No. 10-cv-01362, ECF No. 68 at 11 (D.D.C. Apr. 14, 2014) ("each day that Defendants failed to comply with the FTC Order should be deemed a separate violation"); *United States v. Cornerstone Wealth Corp.*, 549 F. Supp. 2d 811, 822 (N.D. Tex. 2008) (rejecting the FTC's penalty calculation). Under that methodology, the maximum possible civil penalty would be a small fraction of the $5 billion that Facebook has agreed to pay."

- "In addition, it is notable that the FTC's Complaint does not allege that consumer harm resulted from any of the alleged Consent Order violations. . . . This is important because consumer harm is a statutory factor that courts must consider when deciding the monetary penalty to impose. . . . And the FTC's largest civil penalty for a consent violation with no consumer redress to date was $22.5 million, levied against Google in 2012."

- "At bottom, the FTC has never before obtained a civil penalty even remotely approaching $5 billion. The two largest fines imposed by the FTC in an order enforcement action during the past 25 years were a $100 million civil penalty levied against LifeLock and a $40 million civil penalty paid by National Urological Group, Inc., both of which included significant

> restitution for consumer redress. . . . Viewed against this backdrop, a $5 billion penalty is more than appropriate."

328. In its own brief, the FTC echoed Facebook's analysis, noting that "the $5 billion civil penalty is the largest civil penalty ever obtained by the United States on behalf of the FTC—dwarfing the previous record of $168 million."

329. On April 23, 2020, the United States District Court for the District of Columbia approved the 2019 FTC Agreement, but not before noting that "the unscrupulous way in which the United States alleges Facebook violated both the law and the administrative order is stunning."[58] "[T]he allegations the United States levels against Facebook for duplicitous privacy-related representations to its users are shocking," the court went on to say. "Most of these allegations represent violations of the 2012 Order; several are new violations of law. But all of them suggest that the privacy-related decision-making of Facebook's executives was subject to grossly insufficient transparency and accountability."[59]

330. Nonetheless, the court approved the settlement. In doing so, it relied heavily on the remarkable size of the $5 billion penalty relative to Facebook's likely statutory exposure. The court found "no reason to doubt" the contentions of both Facebook and the FTC that the amount of the penalty significantly exceeded what

[58] *United States v. Facebook, Inc.*, 456 F. Supp. 3d. 115, 117 (D.D.C. 2020).

[59] *Id.* at 122.

the FTC could have achieved at trial ("by orders of magnitude"):[60]

> The United States contends it is 'the largest civil penalty ever obtained . . . on behalf of the FTC—dwarfing the previous record of $168 million.' . . . Facebook also claims that the fine looms even larger when compared to the largest civil penalty ever assessed by the FTC where—as here—no consumer harm is alleged to have been caused: $22.5 million. . . . The fine is also significant when compared to Facebook's bottom line; the parties agree it represents nearly a quarter of Facebook's after-tax profit in 2018. . . . Facebook also argues that the fine 'is orders of magnitude greater than what the FTC could reasonably have achieved at trial' given the statutory penalties and the arguments available to it concerning how to calculate its alleged violations. . . . And **the United States . . . appears to acknowledge that it would have been unlikely to obtain more after a trial. . . . The Court has no reason to doubt that judgment.**[61]

331. Facebook's Form 10-Q filed on April 30, 2020 stated that "our settlement with the FTC requires us to pay a penalty of $5.0 billion . . . We paid the penalty in April 2020 upon the effectiveness of the modified consent order."

S. The FTC Settlement Was Unfair

332. The process by which the 2019 FTC Settlement was negotiated and agreed to was unfair. Despite the conflict between Facebook's interests and Zuckerberg's interests, the Board failed to create a Special Committee to manage the negotiations or impose any other procedural protections, until long after

[60] *Id.* at 123.

[61] *Id.* at 122-23 (emphasis added).

substantive economic negotiations were underway. Indeed, before the Special Committee was formed, Facebook's management—with the full Board's acquiescence and approval—[redacted]

333. Even when the Special Committee was belatedly formed, it was given a limited mandate and was not focused on the conflict between Facebook's and Zuckerberg's interests. The Special Committee's lawyers from [redacted] the Gibson Dunn partner who led the team representing the Company. The Special Committee included Andreessen who—while serving on a prior special committee that was supposed to negotiate with Zuckerberg on behalf of public stockholders in connection with Facebook's proposed issuance of low-voting stock—secretly coached Zuckerberg and leaked sensitive details about the Committee's deliberations to Zuckerberg without informing the other members of the Committee. And the Special Committee's ultimate report to the Board, which [redacted] was less than [redacted] pages long and did not grapple with the conflict of interest between Zuckerberg's interests and those of the Company.

334. The price was even more unfair. As Commissioner Chopra put it,

Facebook "essentially traded [paying] more money, so that [Zuckerberg] did not have to submit to sworn testimony[.]" As detailed above, in order to protect Zuckerberg, Facebook agreed to pay a record-setting fine of $5 billion that was, as Gibson Dunn put it, "orders of magnitude" larger than the FTC could reasonably have hoped to achieve at trial.

335. Two comparisons help to demonstrate the degree to which Facebook overpaid. In September 2019—shortly after announcing its settlement with Facebook—the FTC announced that Google and YouTube would pay a $136 million fine for "illegally collect[ing] personal information from children without their parents' consent." And in August 2020, Twitter filed a Form 10-Q disclosing that the FTC had sent it a draft complaint alleging that between 2013 and 2019, Twitter had violated a 2011 consent decree by using phone numbers and email addresses provided "for safety and security purposes" to help target advertisements. Twitter reserved $150 million for a potential fine and estimated that the total amount of the fine could be as much as $250 million.

336. Although it is not common for founders, CEOs, or controlling stockholders to be directly implicated in this type of wrongdoing, it is not unheard of. In similar scenarios, other companies have agreed to resolutions where the founder, CEO, or controller took personal responsibility or otherwise forced them to do so. For example:

a. In 2010, the SEC announced that former Countrywide Financial CEO Angelo Mozilo would pay $67.5 million and agree to a lifetime ban on ever serving as a director or officer of a public company to settle charges arising from misstatements made by Countrywide in the lead-up to the subprime mortgage crisis.

b. Parker Conrad founded Zenefits (a cloud-based human resources software company) in 2013. By 2016, Zenefits was valued in excess of $4 billion and had raised $581 million, including a substantial investment from Andreessen's firm, Andreessen Horowitz. Then in November 2015, Buzzfeed reported that the company was allowing unlicensed brokers to sell health insurance in seven different states. On February 6, 2016, Buzzfeed reported that over 80% of policies that Zenefits sold or serviced in the State of Washington were sold by employees who lacked the necessary insurance licenses. Two days later, Conrad resigned as CEO and stepped off the company's board.

c. Like Zuckerberg, Uber's founder and former CEO, Travis Kalanick, built a multi-billion dollar business through a growth-obsessed mindset that led to frequent regulatory issues. And under Kalanick's management, the company's core values expressly included an emphasis on "toe-stepping." Unsurprisingly, as a subsequent internal

investigation report would conclude, this language was often "used to justify poor behavior." In 2017, Uber fired over 20 employees following an internal investigation into sexual harassment issues. The company also faced an investigation by the Department of Justice over a software program called "Greyball" that it used to deceive regulators who were trying to shut down its ride-hailing service. And it was forced to fire a high-profile new hire, Anthony Levandowski, following allegations that Levandowski had stolen trade secrets after leaving his former employer, Google. In response, Uber's directors forced out Kalanick as CEO and installed a professional manager, Dara Khosrowshahi, as CEO.

d. Mike Cagney founded Social Finance ("SoFi") in 2011 to provide an alternative model of student loan financing. By 2017, the Company had raised almost $1.9 billion and had a valuation of more than $4 billion. But there was a darker side. In 2012, SoFi's board was informed that Cagney had sent unwanted flirtatious (and, in some instances, sexually explicit) text messages to his executive assistant. Around the same time, the board received complaints from investors that Cagney had made misstatements to them regarding the company's student loan products. The board initially stood by Cagney. But by 2017, the problems had

grown. According to the New York Times, "Cagney, a married father of two, continued to raise questions among employees with his behavior. He was seen holding hands and having intimate conversations with another young female employee, according to six employees who saw the two together. At late-night, wine-soaked gatherings with colleagues, he bragged about his sexual conquests[.]" And "Cagney's actions were echoed in other parts of SoFi. The company's chief financial officer talked openly about women's breasts and once offered female employees bonuses for losing weight. . . . Some employees said on a few instances, they caught colleagues having sex with supervisors at SoFi's main satellite office in Healdsburg, Calif., which was the subject of a sexual harassment lawsuit filed last month." Ultimately, SoFi's board decided that enough was enough. In September 2017, the company announced that Cagney was immediately stepping down as chairman and would leave as CEO by the end of the year.

e. In September 2018, the SEC announced a settlement of securities fraud charges brought against Tesla Inc. and its CEO Elon Musk that arose from allegedly misleading statements made by Musk on Twitter regarding a potential take-private transaction. As part of the agreement, Tesla would pay $20 million and Musk would pay $20 million. Musk

also agreed to step down as Tesla's Chairman and to submit to additional controls and procedures limiting his ability to tweet material information about the company.

f. Adam Neumann was a highly charismatic founder who, like Zuckerberg, was synonymous in the public's mind with the company that he created—WeWork. As the New York Times would later write, Neumann "turned WeWork into one of the most valuable start-ups in the world largely through the force of his outsize personality. He persuaded investors to give him billions of dollars and employees to believe that the shared-office company was changing the world." But when WeWork sought to go public in the summer of 2019, it was revealed that Neumann had engaged in a number of unsavory related-party transactions with the company, including—most famously—causing the company to pay him millions of dollars for use of his trademark over the word "We" and spending tens of millions of dollars on a private jet that he mostly used for parties. Even though Neumann held majority voting power in the company, Board members banded together to force Neumann out of his role as CEO and to strip him of majority voting power.

g. In January 2020, the Office of the Comptroller of the Currency announced that, as part of an enforcement action arising from Wells Fargo's "fake accounts" scandal, Wells Fargo's former CEO, John Stumpf, would pay a $17.5 million fine and agree to a lifetime ban from ever acting as an officer or director of an OCC-regulated bank.

V. DEMAND FUTILITY

A. Zuckerberg Has A History Of Pushing Out Directors And Senior Officers Who Demonstrate Independence

337. When Facebook was first created in 2004, the bottom of every webpage contained the same tag line: "A Mark Zuckerberg Production." Nothing has changed. Facebook is still a Mark Zuckerberg production.

338. Zuckerberg demands fealty from his executives and directors, and, as described in an April 2020 story by the Wall Street Journal, he has a history of "pushing aside dissenters," particularly those who challenge him on privacy. These high-profile exits have included a number of directors and senior executives:

a. Board member Jan Koum left in April 2018 after repeatedly "clashing over data privacy" with Zuckerberg and other top executives, according to an April 2018 story by the Washington Post. The Post explained that Koum and his other "WhatsApp co-founders were also big believers in privacy. They took pains to collect as little data as possible from their users, requiring only phone numbers and putting them at odds with

data-hungry Facebook." But Facebook forced WhatsApp to change its terms of service and share more user data with Facebook, a move that ultimately "wor[e] down" Koum.

b. Board member Kenneth Chenault announced in March 2020 that he would leave the Board. According to a March 2020 story by the Wall Street Journal, Chenault made this decision "following disagreements with Mark Zuckerberg over the company's governance and political policies." Chenault had previously clashed with both Zuckerberg and Thiel when he unsuccessfully pushed the Company to "do more regarding its role in elections." That same story noted that three other, long time, outside directors, Reed Hastings, Erskine Bowles, and Susan Desmond-Hellmann had left the Board in 2019 and stated that "Chenault and other independent board members have in recent months clashed with management over both political advertising and Facebook's policies related to discourse on its platform."

c. That same month, Board member Jeffrey Zients announced that he was stepping down as well. In a March 2020 story on Zients' departure, the Wall Street Journal wrote that "Zients was generally aligned with Kenneth Chenault, another Facebook board member that recently gave up his seat, according to people familiar with the matter . . . Chenault

resigned from the company's board following disagreements with founder and Chief Executive Mark Zuckerberg and other Facebook officials. They differed over governance at the company and its policies around political discourse."

d. In an April 2020 story, titled "Mark Zuckerberg Asserts Control of Facebook, Pushing Aside Dissenters," the Wall Street Journal wrote that:

i. "Chenault had grown disillusioned. Soon after joining [the Board in February 2018], he tried to create an outside advisory group that would study Facebook's problems and deliver reports to the board directly, circumventing Mr. Zuckerberg, according to people familiar with the matter. Others on the board were opposed";

ii. "Chenault and . . . Zients . . . had spearheaded a group of independent directors who last year started holding separate meetings, worried their perspectives were being dismissed as Facebook faced regulatory woes," and "Chenault and Zients were both unhappy for months with executive management and how the company handled misinformation";

iii. "After his departure, Mr. Bowles privately criticized

Facebook leadership for failing to take his advice";

iv. "Ms. Desmond-Hellmann conveyed to some people that she left Facebook in part because she didn't think the board was operating properly, and that Facebook management wasn't considering board feedback."

e. A July 2020 story by the New York Times confirmed the Wall Street Journal's reporting. The New York Times reported that "The board isn't exactly a check on [Zuckerberg's] power. Last year, Kenneth Chenault, the former chief executive of American Express, suggested creating an independent committee to scrutinize the company's challenges and pose the sort of probing questions the board wasn't used to being asked. The idea . . .was swiftly voted down by Mr. Zuckerberg and others. Other board disagreements, specifically around political advertising and the spread of misinformation, always ended with Mr. Zuckerberg's point of view winning out. In March, Mr. Chenault announced he would not stand for re-election; soon, so did another director, Jeffrey Zients, who had also challenged some of Mr. Zuckerberg's positions";

f. Facebook's Chief Security Officer Alex Stamos left the Company in August 2018, after Sandberg treated his admission that Facebook had

yet to contain "the Russian infestation" as a "betrayal," according to a November 2018 story by the New York Times. According to the Times, Sandberg yelled at Stamos in front of Zuckerberg and other top executives, "You threw us under the bus!" Stamos had long disagreed with Zuckerberg and Sandberg's approach to the Russian disinformation campaign, "prefer[ing] more and better disclosures rather than the slow drip-feed of half-apologies, walkbacks and admissions we've gotten from the company," according to an August 2018 story by Tech Crunch;

g. According to a September 2018 story by the Wall Street Journal, Instagram Co-founders Mike Krieger and Kevin Systrom departed the Company in late 2018 after "Facebook officials, including Mr. Zuckerberg, clashed with the co-founders over growth tactics and how to more rapidly expand the photo-sharing app's user base";

h. According to a March 2019 story by The Verge, Chris Cox, Facebook's Chief Product Officer, and Chris Daniels, the head of WhatsApp, left in March 2019 "just a week after . . . Zuckerberg announced plans to reshape the company around private messaging apps and after a year of wide-scale privacy scandals." Rather than appoint a successor for Cox, Zuckerberg announced that "all of the company's app leaders [would]

report directly to him."

B. A Majority Of The Board Could Not Give Disinterested And Independent Consideration To A Demand

339. A majority of directors on Facebook's nine-member Board are incapable of giving disinterested and independent consideration to a demand.

i. Zuckerberg

340. As the founder, CEO, chairman, and controller of Facebook, Zuckerberg faces a substantial risk of liability for breaching his duties of care and loyalty by failing to oversee privacy at Facebook. Zuckerberg has repeatedly claimed responsibility for the Cambridge Analytica data breach, including before the Senate, when he testified in April 2018: "It was my mistake, and I'm sorry. I started Facebook, I run it, and I'm responsible for what happens here." As described above, Zuckerberg also personally approved Facebook policies that affected users' privacy, including reciprocity and whitelisting for Affected Friend Data—and actively concealed them from the public.

341. Zuckerberg also obtained a material, non-ratable benefit from the FTC settlement. As this Court has previously noted, "it was a matter of public record that Zuckerberg's personal liability was a central focus of the negotiations between Facebook and the FTC."[62] As noted above, early drafts of the 2019 FTC Agreement

[62] *Emps.' Ret. Sys. of R.I. v. Facebook, Inc.*, 2021 WL 529439, at *8 (Del. Ch.).

name Zuckerberg as a defendant. And, as discussed, Board minutes from March 19, March 26, and March 30, 2019 [redacted]" Dissenting FTC Commissioners Chopra and Slaughter also sharply criticized the 2019 FTC Agreement for giving Zuckerberg and Sandberg a broad release.

ii. Sandberg

342. As Facebook's Chief Operating Officer since 2008, Sandberg is deeply entwined in the Cambridge Analytica scandal and faces a substantial risk of liability for breaching her duties of care and loyalty. According to a December 2019 profile of Sandberg by CNBC, she is considered "one of the two faces of the company that has come to represent the exploitation of people's privacy and the hubris of the technology industry." As discussed above, Sandberg personally approved Facebook policies that affected users' privacy and concealed them from the Board and the public. After the Cambridge Analytica scandal blew up, the New York Times reported, in November 2018, that Sandberg and Zuckerberg both "ignored signs and sought to conceal them from public view."

343. Sandberg obtained a substantial non-ratable benefit from the Settlement. The 2019 FTC Agreement cites bad acts in which Sandberg personally participated, including failing to maintain a privacy program as required by the First FTC Agreement, whitelisting certain developers after April 2015, withholding

information about whitelisting from the FTC, and misleading users and journalists about the steps Facebook was taking to protect privacy. In Commissioner Chopra's dissenting opinion, he criticized the "unusual legal shield" that the Second FTC Agreement gave to Sandberg specifically. He explained that the "grant of broad immunity is highly unusual. It is a departure from FTC precedent and established guidelines. Americans should ask why Mark Zuckerberg, Sheryl Sandberg, and other executives are being given this treatment, while leaders of small firms routinely face investigations, hearings, and charges."

344. Sandberg is also a highly compensated officer of the Company who reports to Zuckerberg and derives her principal income from her employment with the Company, which is controlled by Zuckerberg. During her time working for Facebook, Sandberg has earned over $150 million in compensation. The table below shows Sandberg's total compensation from Facebook since Facebook's IPO (all figures in '000s):

Year	Salary	Bonus	Stock Awards	All Other Compensation	Total
2020	$918.1	$946.8	$14,370.2	$8,519.0	$24,754.0
2019	$875.4	$902.7	$19,678.9	$5,687.1	$27,144.1
2018	$843.1	$638.3	$18,423.5	$3,823.5	$23,728.4
2017	$795.8	$640.4	$21,072.4	$2,687.6	$25,196.2
2015	$715.4	$1,265.2	$15,465.7	$1,252.7	$18,699.0
2014	$592.9	$624.2	$14,332.3	-	$15,549.4
2013	$384.4	$604.0	$15,158.8	-	$16,147.1
2012	$321.1	$276.7	$25,618.3	-	$26,216.2

345. Sandberg has also leveraged her role at Facebook to build her personal

brand.[63] In 2013, Sandberg published a best-selling book titled *Lean In: Women, Work, and the Will to Lead*, which was marketed heavily based on her role at the high-profile company.[64]

346. Sandberg has become particularly deferential to Zuckerberg in recent years. According to a November 2018 article by the Wall Street Journal, in the spring of 2018, Zuckerberg told Sandberg that he "blamed her and her teams for the public fallout over Cambridge Analytica," and Sandberg "later confided in

---

[63] According to the well-known technology journalist, Steven Levy, Facebook insiders consider Sandberg to be "obsessed with her public image." Steven Levy, FACEBOOK: THE INSIDE STORY (2020). As Facebook came under increasing public scrutiny in the wake of the 2016 election, Sandberg engaged in "screaming matches" with Elliot Schrage, Facebook's head of policy and communications. *Id.*

[64] As CNBC wrote in a December 2019 profile, "As Facebook grew — the company reached its 1 billionth user in October 2012 — so too did Sandberg's national profile. Sandberg seized the moment, and in March 2013, she published 'Lean In: Women, Work, and the Will to Lead.'"

The word "Facebook" appears 88 times in the Amazon Kindle version of *Lean In*.

The publisher's marketing materials announcing the book launch mentioned Sandberg's role at Facebook in the first sentence: "Sheryl Sandberg, Facebook's Chief Operating Officer, has written Lean In: Women, Work, and the Will to Lead, to encourage women to aspire to and pursue leadership roles," and prominently featured a quote from Zuckerberg: "'For the past five years, I've sat at a desk next to Sheryl and I've learned something from her almost every day. She has a remarkable intelligence that can cut through complex processes and find solutions to the hardest problems. Lean In combines Sheryl's ability to synthesize information with her understanding of how to get the best out of people. The book is smart and honest and funny. Her words will help all readers—especially men—to become better and more effective leaders.' —Mark Zuckerberg, founder and CEO, Facebook."

friends . . . [that] she wondered if she should be worried about her job." She has responded by becoming passive and unresisting. In *An Ugly Truth*, Kang and Frenkel report that Sandberg has become unwilling to offer even verbal pushback when she disagrees with Zuckerberg on significant issues: "'Only one opinion matters,' she often told aides." According to the book, Sandberg's "inaction infuriated colleagues . . . [but] Sandberg justified her inaction by pointing to [Zuckerberg's] powerful grip as Facebook's leader."

347. Sandberg cannot be expected to give disinterested consideration to a demand to sue Zuckerberg, the Company's controller and her direct superior.

iii. Alford

348. Alford served as the Chief Financial Officer of the Chan Zuckerberg Initiative (CZI) from September 2017 to February 2019, a charitable LLC run by Zuckerberg and his wife, Priscilla Chan. Alford was nominated for Facebook's Board of Directors on April 12, 2019—approximately three months after leaving CZI. Because CZI is an LLC and not a non-profit, Alford's salary is not publicly available. But salary information posted anonymously on Glassdoor.com suggests that lower-level employees at CZI earn salaries in excess of $200,000. Therefore, Alford's salary as CZI's CFO almost certainly exceeded $200,000 per year and was

likely in the high six or low seven figures.[65] Through her role at CZI, Alford was also appointed to the board of the Summit Learning Program, a non-profit entity that manages digital learning software supported by a substantial gift from CZI, in 2018. Ms. Chan was one of the other members of that four-member board.

349. Alford is currently employed as the Executive Vice President of Global Sales for PayPal Holdings, Inc. PayPal and Facebook have a close commercial relationship. In a 2017 interview, with Fortune, PayPal CEO Daniel Schulman stated "People who everyone thought would compete with us are now very close partners. Like Facebook—many of their payment initiatives are done through our platform[.]" In a February 2021 earnings call, Jim Magats (PayPal's Head of Payments) explained the critical importance of Facebook to PayPal's core business strategy:

> So when we were thinking about what we wanted to be 5 years ago, we operated with some very fundamental principles. One is we want to give choice. We want to make sure that we operate an open platform, and we want to make sure that we're operating interoperably so we can work with others. We firmly believe that digitization is a team sport, and we need to get everyone involved to bring that to fruition for us.
>
> And so we embarked on a strategy that many questioned at the time, but we embarked on a strategy where we wanted group participation, to give our customers better access to their funding sources, better

[65] Rule 303A.02 of the New York Stock Exchange Listed Company Manual provides that a director cannot be considered independent if the director has been an employee of the listed company within the last three years or has received more than $120,000 in compensation during any twelve-month period within the last three years. NASDAQ Stock Market Rule 5605(a)(2)(A) establishes the same standard.

> access to different platforms and really creating an interoperable set of solutions for those customers wherever they're at. And so we embarked basically on a strategy to work with tech platforms like Google and Facebook as well as banks as well as other channel partners for us.
>
> And you start to see the stitching come together. And in many cases, what we've talked about over the course of the last couple of years is really on the backbone of those partners that, in many ways, will be very below the surface in certain cases. In certain cases, it'll be very explicit in terms of what we're doing. So examples, we now are in a position where if you're a small business, you have a very easy integration into Google for selling, very similar on Facebook.

350. This "stitching together" with Facebook and similar partners has been a consistent theme in PayPal's recent analyst calls in which management repeatedly emphasizes the importance of the Facebook relationship:

a. In December 2020, Magats explained: "we were a bit of a persona non grata with the issuing in the payment network ecosystem about 5 years ago, and we made the conscious decision to partner with the ecosystem. And I think we made, I think, a very wise decision in really operating as an open platform. And I think that cascades not only to financial institutions, but also cascades into our partnerships with organizations like Google and Facebook and in other tech platforms that we see as our capabilities being compatible with their interests."

b. In September 2020, Schulman stated "we have a lot of close partnerships, whether it be with Walmart, Facebook, a number of others, we're—a lot of underlying payments capabilities for

leading tech platforms."

c. In May 2020, Schulman stated "over the past couple of years, we've partnered closely with companies like Google and Facebook to offer seamless payment experiences for our mutual customers. Given the current environment, we expect a rapid acceleration towards e-commerce."

iv. Houston

351. Houston is the founder, CEO, and controlling stockholder of Dropbox, Inc. and is one of Zuckerberg's best friends. The two have been friends since approximately 2009. In October 2011, Forbes published a story describing Zuckerberg and Houston sharing a meal at Zuckerberg's home and "plotting ways to collaborate over generous portions of bison meat."

352. In 2013, Houston joined Zuckerberg as a co-founder of FWD.us, a high-profile lobbying group that mobilized the technology industry for immigration policy reform. Zuckerberg published an op-ed in the Washington Post on April 10, 2013 announcing the group's formation. Houston was the fourth name that Zuckerberg identified in a list of fifteen key supporters.

353. As early as June 2015, a Business Insider story described Zuckerberg and Houston's friendship as "well-documented." In 2017, Zuckerberg was photographed attending Houston's "Babes and Balls" ping-pong-themed birthday

party. In 2018, the New York Times described Houston as "close to Mark Zuckerberg of Facebook." A July 2020 story by the New York Times described Houston as a "longtime friend" of Zuckerberg's.

354. According to a February 3, 2020 story by Business Insider, "Houston and Zuckerberg have a long-running and well-documented friendship: A 2015 Fast Company profile of Houston described him as a 'close friend' of the Facebook CEO, and the pair have been photographed together over the years. Houston has also turned to Zuckerberg for business advice. Houston said in an interview in 2015: '[Zuckerberg's] given me a lot of advice just on company scaling, how do you organize people, how do you set up these systems.'"

355. According to a June 2, 2021 story by the Wall Street Journal, Houston has become "the latest target for the activist hedge fund [Elliott Management Corporation]," which has reportedly "told Dropbox it is the company's largest shareholder after . . . Houston," which "suggests the hedge fund owns a stake of more than 10%." This activist threat will undoubtedly cause Houston to be even more resistant to attacks on his friend's founder prerogatives at Facebook.

v. Kimmitt

356. Kimmitt is a senior attorney who co-chairs the Crisis Management and Strategic Response Group of Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale"), operating out of the firm's Washington, D.C. office. In the three

years prior to joining Facebook's board, Kimmitt personally provided legal advice to the Company.

357. Ted Ullyot, Facebook's first general counsel from 2008-2013, previously worked with Kimmitt's former partner at WilmerHale's D.C. office, Reginald Brown.[66] Brown explained to the National Law Journal in 2019 that "Ullyot was an old friend, and he wanted some connectivity in Washington," so WilmerHale "agreed to be [Facebook's] eyes and ears in D.C." In the same interview, Brown boasted that WilmerHale had helped Zuckerberg make his "Washington debut." Brown has been recognized as a "trailblazer" in technology law, in large part due to his work for Facebook at WilmerHale.

358. WilmerHale regularly acts as outside counsel to Facebook, including in connection with the matters that are the subject of this action. Specifically, WilmerHale and Brown ran the "murder board" sessions that were used to prepare Zuckerberg for his testimony before Congress in April 2018 and again in October 2019.[67] WilmerHale's website currently boasts that it was selected as "Technology Practice Group of the Year" for 2019 by Law360 based, in part, on its representation of Zuckerberg: "For the third consecutive year, Law360 has recognized WilmerHale

[66] Brown left WilmerHale in November 2020 to join Kirkland & Ellis.

[67] According to a July 2020 story by the New York Times, WilmerHale attorneys also prepared Zuckerberg for his 2020 congressional testimony regarding anti-competitive business practices.

as a distinguished leader among competitor firms with its Technology Practice Group of the Year award. In a February 21, 2019 article featuring the firm, Law360 discusses WilmerHale's cross-practice successes, including counseling a Facebook executive [*i.e.*, Zuckerberg] in a series of high-profile hearings before the US Congress[.]"

359. WilmerHale represented Facebook in a Cambridge-Analytica-related action brought by the attorney general for California (*People v. Facebook, Inc.*, CPF-19-516916 (Cal. Sup. Ct.)), and continues to represent Facebook in an ongoing, Cambridge-Analytica-related action brought by the Attorney General of Massachusetts (*Healey v. Facebook Inc.*, No. 1984CV02597 (Mass. Sup. Ct.)). WilmerHale also represented Facebook in connection with the SEC Settlement arising from misstatements related to the Cambridge Analytica breach.

360. As part of its Court-ordered books-and-records production to Rhode Island—*i.e.*, communications concerning Facebook's negotiations with the FTC over the 2019 settlement—Facebook produced a privilege log that reflects a variety of communications with two WilmerHale partners, Ben Neaderland and Carl Nichols (who has since been appointed to the federal bench). Neaderland and now-Judge Nichols were, at the time, both partners in WilmerHale's DC office: Neaderland focusing on securities litigation and enforcement matters and now-Judge Nichols practicing in WilmerHale's Government and Regulatory Litigation Practice.

361. WilmerHale was also counsel to Facebook in *Six4three, LLC v. Facebook, Inc.*, (N.D. Cal. 2017), the case that led to internal Facebook documents being subpoenaed by the U.K. Parliament and publicly released. Damian Collins, the Chair of the parliamentary committee that led the investigation, published a 250-page trove of "Six4Three files" online and summarized six topics relevant to Cambridge Analytica covered by those documents: 1) whitelisting, 2) value of friends data, 3) reciprocity, 4) Android, 5) Onavo,[68] and 6) targeting competitor apps.

362. WilmerHale also regularly represents the Company in unrelated litigation. Since 2020 alone, Facebook has engaged WilmerHale to represent the Company in ten new federal court cases, ranging in subject matter from antitrust to civil rights.[69] Notably, WilmerHale is the sole law firm representing Facebook in

[68] As Collins explained, "Facebook used Onavo to conduct global surveys of the usage of mobile phone apps by customers, and apparently without their knowledge. They used this data to assess not just how many people had downloaded apps, but how often they used them. This knowledge helped them decide which companies to acquire, and which to treat as a threat."

[69] *Rosenman v. Facebook, Inc.*, 5:21-cv-02108 (N.D. Cal.); *Informed Consent Action Network v. Facebook, Inc. et al.,* 4:20-cv-09456 (N.D. Cal.); *Affilious, Inc. v. Facebook, Inc.*, 5:20-cv-09217 (N.D. Cal.); *Steinberg v. Facebook, Inc.*, 5:20-cv-09130 (N.D. Cal.); *Dames v. Facebook, Inc.*, 5:20-cv-08817 (N.D. Cal.); *Kupcho v. Facebook, Inc.*, 5:20-cv-08815 (N.D. Cal.); *Sherman v. Facebook, Inc.*, 5:20-cv-08721 (N.D. Cal.); *Klein v. Facebook, Inc.*, 5:20-cv-08570 (N.D. Cal.); *Facebook, Inc. v. BrandTotal Ltd.*, 3:20-cv-07182 (N.D. Cal.); *Children's Health Def. v. Facebook, Inc.*, 3:20-cv-05787 (N.D. Cal.); *Reveal Chat Holdco LLC v. Facebook, Inc.*, 5:20-cv-00363 (N.D. Cal.).

significant, ongoing antitrust litigation in *Reveal Chat Holdco LLC v. Facebook, Inc.*, 20-cv-00363 (N.D. Cal.) and *Klein v. Facebook, Inc.*, 5:20-cv-08570 (N.D. Cal.), a putative class action on behalf of millions of Facebook users and advertisers.

363. Facebook undoubtedly has paid and will continue to pay WilmerHale tens of millions of dollars per year for this work. The Company's legal expenses skyrocketed after the Cambridge Analytica news broke and have remained high due to various antitrust lawsuits. Because WilmerHale worked directly with Facebook on both matters, it is likely among the largest beneficiaries of that spending.[70] This high-profile work also helps WilmerHale attract business from other clients.

364. As a WilmerHale attorney, Kimmitt would be highly constrained by both professional ethics rules (and more prosaic commercial considerations) in considering whether to sue the CEO and controlling stockholder of a prominent and current WilmerHale client in connection with matters on which WilmerHale provided advice to the Company and Zuckerberg. He could not give disinterested and independent consideration to such a demand.

vi. Andreessen

365. Andreessen faces a substantial risk of liability for approving the FTC

[70] In the *Sciabacucchi v. Salzberg* litigation in this Court, it was revealed that WilmerHale's 2018 billing rates ranged from $440 to $535 per hour for paralegals, from $870 to $1,030 per hour for associates and counsel, and from $980 to $1,315 per hour for partners. *See Sciabacucchi v. Salzberg*, No. 2017-0931-JTL (Del. Ch.), Affidavit of Timothy Perla (Mar. 15, 2019) (Trans. ID 63070356).

Settlement. He was a conflicted director who served on a Special Committee that agreed to a deal with the FTC that saw Facebook overpay to protect Zuckerberg.

366. Andreessen also has a track record of loyalty to Zuckerberg at the expense of public stockholders. In 2016, the Facebook Board appointed Andreessen to a special committee that was supposed to negotiate with Zuckerberg on behalf of public stockholders in connection with a reclassification proposal that would have allowed Zuckerberg to liquidate substantial portions of his economic interest in Facebook without losing voting control. While serving on that committee, Andreessen sent secret text messages to Zuckerberg during negotiations to advise him on how best to outwit the other members. Among other messages, Andreessen wrote:

- "Between us – re special board session. 1 new share class will happen. 2 everyone loves [your plan]."
- "This line of argument is not helping. . . . They are both genuinely trying to get to the right answer. THIS is the key topic. Agree[.] NOW WE'RE COOKING WITH GAS[.] I'll push them on having a longer period at least for Sheryl and Chris. Don't know if that's helpful but."

367. In another example, Zuckerberg was scheduled to talk to Desmond-Hellmann about the reclassification. Before the call, Zuckerberg asked Andreessen, "Do you have any context before I talk to Sue tomorrow." Andreessen provided a

detailed preview of the call. At another juncture, Andreessen told Zuckerberg that Bowles was worried about a provision that authorized Zuckerberg to take a leave of absence for government service.

368. On the day that the prior special committee recommended approval of the reclassification, Andreessen and Zuckerberg had the following exchange:

Andreessen: The cat's in the bag and the bag's in the river.

Zuckerberg: Does that mean the cat's dead?

Andreessen: Mission accomplished. ☺

369. As a young man, Andreessen was the co-founder of Netscape—one of the hottest IPOs of the 1990s tech bubble. Later in life—and after selling Netscape to AOL for $4.3 billion in 1999—Andreessen co-founded the well-known venture capital firm Andreessen Horowitz (also known as a16z), which remains his primary occupation today. The returns on venture capital investments follow a power law distribution, which means that venture capital firms profit by hitting home runs—not singles or doubles. A May 2015 profile by The New Yorker explained that:

> Andreessen and Horowitz launched the firm in 2009, when venture investment was frozen by the recession. Their strategy was shaped by their friend Andy Rachleff, a former V.C. He told them that he'd run the numbers and that fifteen technology companies a year reach a hundred million dollars in annual revenue—and they account for ninety-eight per cent of the market capitalization of companies that go public. So a16z had to get those fifteen companies to pitch them.

370. As a consequence, in Andreessen's words "Deal flow is everything . . .

If you're in a second-tier firm, you never get a chance at that great company."[71]

371. Andreessen's brand—*i.e.*, his strategy for maximizing deal flow—is based on his widely marketed view that stockholders and boards should defer to founders like Zuckerberg. When Andreessen co-founded Andresseen Horowitz in 2009, he emphasized the fund's "founder friendly" focus, writing that "[a]bove all else, we are looking for the brilliant and motivated entrepreneur . . . We are hugely in favor of the technical founder. . . . We are hugely in favor of the founder who intends to be CEO. Not all founders can become great CEOs, but most of the great companies in our industry were run by a founder for a long period of time, often decades, and we believe that pattern will continue. We cannot guarantee that a founder can be a great CEO, but we can help that founder develop the skills necessary to reach his or her full CEO potential."

372. Andreessen's business partner, Ben Horowitz echoed this point in a January 2012 post, writing "Marc and I share a simple belief that became the basis for our new venture capital firm: *in general, founding CEOs perform better than professional CEOs over the long term, and a venture capital firm that enables*

[71] *See also* Connie Gugliemo, *Andreessen, Horowitz: Venture Capital's New Bad Boys*, FORBES (May 2, 2012), http://goo.gl/Kwyksr ("By Andreessen's measure, 15 deals account for 96% of the returns for venture capital in any given year. If you don't see everything and win people over constantly, you don't have a prayer of getting into one of those 15.").

founding CEOs to succeed would help build the best companies and yield superior investment returns. . . . [W]e set out to design a venture capital firm that would enable founders to run their own companies[.]" (emphasis original).[72]

373. In a long-form profile of Andreessen Horowitz in 2012, Techonomy wrote:

> Venture capitalists have to provide a lot more than simply capital these days. They need to provide access to customers, talent, and know-how to help build businesses. Andreessen Horowitz is tapping into these needs by positioning itself as extremely founder-friendly. Every partner is himself a founder and an operator. 'They tried to start a venture firm they wanted as founders,' noted Jeff Jordan, the former OpenTable CEO who is now a partner at Andreessen Horowitz, at the most recent TechCrunch Disrupt conference last May.

374. Andreessen Horowitz's approach to getting deal flow also relies heavily on its association with prestige technology companies, including Facebook. In the New Yorker's words, Andreessen Horowitz and other venture capital firms "logo shop, buying into late rounds of hot companies at high prices so they can list them on their portfolio page." This is precisely what Andreessen Horowitz did with Facebook:

> Andreessen believed that everyone had underestimated the size of the Internet market, so in 2010, after raising a much bigger second fund, the firm spent a hundred and thirty million dollars to acquire shares of Facebook and Twitter at unprecedented valuations. Other V.C.s sniped that a16z was trying to buy its way in: Skype was an established company, not a startup, and the Facebook and Twitter deals were mere

[72] Available at: https://a16z.com/2012/01/30/why-has-andreessen-horowitz-raised-2-7b-in-3-years/

> logo shopping. But, as Ron Conway, Silicon Valley's leading angel investor, noted, 'In twenty-four months, Andreessen Horowitz was the talk of the town.'

375. Zuckerberg and Facebook have also proven useful to Andreessen as free-spending purchasers of other Andreessen Horowitz portfolio companies—giving Andreessen Horowitz a lucrative, much-coveted "exit." In 2012, Zuckerberg (without first informing his Board) agreed that Facebook would purchase Instagram—an Andreessen Horowitz portfolio company that provides a photo-sharing app—in a cash-and-stock transaction valued at $1 billion.

376. According to an April 18, 2012 report on the transaction by the Wall Street Journal, at the time of Zuckerberg's approach, Instagram's CEO, Kevin Systrom, was "just hours from signing a deal for a $50 million venture-capital investment that would put a $500 million value on his company, which had just 13 employees and no revenue." As a result of the sale of Instagram, Andreessen Horowitz made $78 million from a $250,000 seed investment.

377. History repeated itself in 2014, when Zuckerberg announced that Facebook would be purchasing another Andreessen Horowitz portfolio company—Oculus Rift ("Oculus"), a maker of virtual reality headsets—for cash-and-stock valued at approximately $2 billion. At the time of the purchase Oculus had essentially no revenue, nor even a commercial product. Three months before the Facebook announcement, Andreessen Horowitz had led a $75 million investment

round that valued Oculus at approximately $250 million. As the news website Quartz wrote at the time, "In buying Oculus, Facebook has become Andreessen Horowitz's billion-dollar candy machine."

378. Oculus is also a useful example of how Andreessen converts the prestige of his role at Facebook into deal flow. An October 2015 Vanity Fair story on Facebook's acquisition of Oculus described how Andreessen leveraged his Facebook connections into the Oculus investment:

> Andreessen, who is also a Facebook board member, had previously been skeptical of funding a virtual-reality company; now he was so hot for the deal that he suggested [Oculus founder Brendan] Iribe talk to Mark Zuckerberg, as a reference.
>
> The first call between Zuckerberg and Iribe lasted 10 minutes. Zuckerberg sang the praises of Andreessen, and then he turned the discussion to Oculus.

379. Andreessen has protected his prestigious, deal-flow-producing role at Facebook by being deferential to Zuckerberg. A 2012 article in Reuters described Andreessen's "main job [on Facebook's Board as being] to ensure that Mark [Zuckerberg] can do whatever he wants, to provide a layer of insulation between Zuckerberg and shareholders." Andreessen has been Zuckerberg's friend and mentor since he earned Zuckerberg's trust by encouraging Zuckerberg to reject Yahoo!'s $1 billion offer to buy Facebook in 2006. In the New Yorker profile, referenced above, Andreessen boasted of his close ties with Zuckerberg:

> In 2006, Yahoo! offered to buy Facebook for a billion dollars, and

> Accel Partners, Facebook's lead investor, urged Mark Zuckerberg to accept. Andreessen said, 'Every single person involved in Facebook wanted Mark to take the Yahoo! offer. The psychological pressure they put on this twenty-two-year-old was intense. Mark and I really bonded in that period, because I told him, "Don't sell, don't sell, don't sell!"'[73]

380. Andreessen's wife, Laura Arrillaga-Andreessen, is one of the most prominent philanthropists in Silicon Valley. For years, she has taught a course on strategic philanthropy at Stanford and has written a book entitled *Giving 2.0: Transform Your Giving and Our World*. She founded a non-profit foundation focused on educating and advising wealthy Silicon Valley residents about how to direct their charitable dollars. Zuckerberg and Chan are Arrillaga-Andreessen's most famous pupils. She advised Zuckerberg and Chan on a high-profile $100 million donation to the Newark, New Jersey school system in 2010. Similarly, the decision to form the Chan Zuckerberg Initiative as an LLC instead of a traditional 501(c)(3) nonprofit also appears to reflect Arrillaga-Andreessen's advice. In 2013, the New York Times quoted her as explaining "The beauty of having an LLC in today's world

---

[73] It is odd that Andreessen—who was not, at the time, a Facebook investor or board member—participated in these discussions with Zuckerberg.

Thiel—who *was* on the Board at the time—remembers the story differently, writing in his book *Zero to One: Notes on Startups or How to Build the Future* that: "When Yahoo! offered to buy Facebook for $1 billion on July 2006, I thought we should at least consider it. But Mark Zuckerberg walked into the board meeting and announced: 'Okay, guys, this is just a formality, it shouldn't take more than 10 minutes. We're obviously not going to sell here.'"

Regardless of who's right, the bottom line is the same: Andreessen is either genuinely close to Zuckerberg or desperately wants to be seen as such.

is No. 1, you have the ability to act and react as nimbly as need be to create change, and you have the ability to invest politically, in the for-profit sector and the nonprofit sector simultaneously[.]"

381. According to a May 2014 profile of Arrillaga-Andreessen in Vogue, the Andreessens have "become close friends with the Zuckerbergs, who come over for regular movie nights—usually pizza and a thriller chosen by [Andreessen]."

vii. Thiel

382. Thiel faces a substantial risk of liability for approving the FTC Settlement. He was a conflicted director who voted to approve a deal with the FTC that saw Facebook overpay to protect Zuckerberg.

383. Thiel is also conflicted in a variety of other ways. Thiel was an early Facebook investor who sold the vast majority of his Facebook shares after the IPO yet has remained on Facebook's board. A February 2016 story by Business Insider described Thiel as a "mentor and longtime friend" of Zuckerberg's.

384. Like Andreessen, Thiel is an entrepreneur. Most famously, he co-founded PayPal, which was sold to eBay for $1.5 billion in 2002. Thiel has embraced the image of his first team as a "PayPal Mafia"—so called because, as Thiel wrote in his book, *Zero to One*, "so many of my former colleagues have gone on to help each other start and invest in successful tech companies." After leaving PayPal, Thiel became a venture capitalist. He was Facebook's first outside investor, acquiring a

10.2% stake in the Company for $500,000 in August 2004, and one of its first outside board members. Since then, Thiel has worked to cultivate a familial bond with Zuckerberg.

385. Like Zuckerberg, Thiel has a well-known disregard for following the rules. In a September 2014 debate with the late Harvard anthropologist David Graeber, Thiel stated that ""When I started PayPal, I said we weren't going to hire any lawyers for the first year because I knew they were just going to tell us we weren't allowed to do this. We just broke all the rules, the system got built, and then sort of a year later you ask for forgiveness, you don't ask for permission. And I think something like that is sort of the template that is working in many of these cases."

386. Indeed, Thiel's first move upon becoming involved with Facebook was teaching Zuckerberg how to break the rules and exploit a minority investor—Zuckerberg's co-founder (and former friend) Eduardo Saverin. Zuckerberg and Saverin were undergraduates at Harvard College when they created the website then known as TheFacebook.com in late 2003. Zuckerberg provided the coding expertise and Saverin provided the initial funds for server hosting costs. In April 2004, Zuckerberg, Saverin, and a third Harvard student, Dustin Moskowitz, formed a Florida limited liability company called "TheFacebook LLC." In the summer of 2004, Zuckerberg, Moskowitz, and others moved from Cambridge, Massachusetts to Palo Alto, California. There, they met Sean Parker—the founder of the music-

sharing startup, Napster—who started working for Facebook and introduced Zuckerberg to Thiel.

387. Around that same time, Zuckerberg became dissatisfied with Saverin's efforts on behalf of Facebook and began scheming about how to cut Saverin out of the Company. As described in a May 2012 story by Business Insider, "[i]n an IM [instant message] exchange with Parker after a meeting with . . . Thiel, who would soon become Facebook's first outside investor, Mark and Sean discussed the Saverin problem. Zuckerberg hinted at a hardball solution . . . based on some 'dirty tricks' used by Peter Thiel":

Parker:	Peter [Thiel] tried some dirty tricks. All that shit he does is like classic Moritz[74] shit.
Zuckerberg:	Haha really?
Parker:	Only Moritz does it way better.
Zuckerberg:	That's weak.
Parker:	I bet he learned that from Mike.
Zuckerberg:	Well, now I learned it from him and I'll do it to Eduardo.

388. Shortly thereafter, Zuckerberg executed the "dirty tricks" playbook that he had learned from Thiel. On July 29, 2004 Zuckerberg, Moskowitz, Parker, and

[74] Michael Moritz, a well-known venture capitalist and a partner at Sequoia Capital. Parker famously hated Moritz because Parker was convinced that Moritz had been behind Parker getting fired from his role as the Chief Executive Officer of Plaxo, an online address book company founded by Parker in which Sequoia Capital was a major investor.

Thiel created a new Delaware corporation—Facebook, Inc.—which promptly acquired the Florida LLC (TheFacebook LLC). On September 27, 2004, Thiel formally acquired 9% of Facebook, Inc. with a convertible note worth $500,000.

389. According to Business Insider, "before the transaction, Facebook ownership was divided between Zuckerberg, with 65%, Saverin, with 30%, and Moskovitz, with 5%. After the transaction, the new company was divided between Zuckerberg, with 40%, Saverin, with 24%, Moskovitz, with 16%, and Thiel with 9%. The rest, about 20%, went to an options pool for future employees. From there, a good chunk of equity went to . . . Parker." Then, in October 2004, "Saverin signed a shareholder agreement that . . . handed over all relevant intellectual property and turned over his voting rights to . . . Zuckerberg [who] became Facebook's sole director." In January 2005, "Zuckerberg caused Facebook to issue 9 million shares of common stock in the new company. He took 3.3. million shares for himself and gave 2 million to Sean Parker and 2 million to Dustin Moskovitz. This share issuance instantly diluted Saverin's stake in the company from ~24% to below 10%."

390. Zuckerberg knew that Thiel's plan would require him to breach the fiduciary duties that he owed to Saverin. In one email, Zuckerberg wrote to one of his attorneys "Is there a way to do this without making it painfully apparent to him that he's being diluted to 10%?" Zuckerberg's lawyer replied "As Eduardo is the only shareholder being diluted by the grants issuances there is substantial risk that

he may claim the issuances, especially the ones to Dustin and Mark, but also to Sean, are a breach of fiduciary duty later on if not now." In another email Zuckerberg wrote, "We basically now need to sign over our intellectual property to a new company and just take the lawsuit. . .I'm just going to cut him out and then settle with him. And he'll get something I'm sure, but he deserves something[.]"

391. Thiel recognizes that the returns on venture capital investments follow a power law distribution and that deal flow is, therefore, critically important. As Thiel wrote in *Zero to One:* "The biggest secret in venture capital is that the best investment in a successful fund equals or outperforms the entire rest of the fund combined." A September 2012 story by Business Insider stated that "for Thiel, the appeal of being on Facebook's board is obvious. As one source who has discussed Facebook with him put it, 'Is it that bad to be on the board of a $40 billion company?' No, it is not that bad. Especially for a startup investor like Thiel, who gets good deal flow thanks to his high profile."

392. Like Andreessen, Thiel's brand as an investor emphasizes giving control to company founders. In *Zero to One*, Thiel writes approvingly of a system of autocratic control for founders:

> [C]ompanies that create new technology often resemble feudal monarchies rather than organizations that are supposedly more 'modern.' A unique founder can make authoritative decisions, inspire strong personal loyalty, and plan ahead for decades. Paradoxically, impersonal bureaucracies staffed by trained professionals can last longer than any lifetime, but they usually act with short time horizons.

> The lesson for business is that we need founders. If anything, we should be more tolerant of founders who seem strange or extreme; we need unusual individuals to lead companies beyond mere incrementalism.

393. In its May 2021 profile of Thiel, the New Yorker wrote that *Zero to One* offers "a vision of the founder that is patterned after Ayn Rand's 'Atlas Shrugged,' in which imaginative individuals are forced to fight through a society that is bureaucratized and stultifying in all its institutional forms. . . . The deepest quality of [the] book is its outsized vision of what a heroic individual—a founder—can do. In a late chapter, [Thiel and co-author Blake Masters] argue that successful founders tend to have the opposite qualities of those seen in the general population—that they are, in some basic ways, different—and compare them to kings and figures of ancient mythology."

394. Since its inception in 2005, Thiel's fund, The Founders Fund, has marketed itself as uniquely deferential to founders. The firm's manifesto—"What Happened To The Future"—boasts of the Founders Fund's efforts to cement founders' control over outside investors and specifically touts Thiel's connections to Zuckerberg:

> A curious point: companies can be mismanaged, not just by their founders, but by VCs who kick out or overly control founders in an attempt to impose 'adult supervision.' VCs boot roughly half of company founders from the CEO position within three years of investment. FOUNDERS FUND has never removed a single founder—we invest in teams we believe in, rather than in companies we'd like to run—and our data suggest that finding good founding teams and leaving them in place tends to produce higher returns overall.

> **Indeed, we have often tried to ensure that founders can continue to run their businesses through voting control mechanisms, as Peter Thiel did with Mark Zuckerberg and Facebook**. This approach, we believe, accords with common sense. No entrepreneur, however good, knows precisely how their company's business model will evolve over time. When investing in a start-up, you invest in people who have the vision and the flexibility to create a success. It therefore makes no sense to destroy the asset you've just bought.

395. Thiel has stated publicly that Facebook's decision to reject Yahoo's takeover offer in 2006 made Thiel a "little worried," but he went along with Zuckerberg because the framework at the Founders Fund is to "always back the founder."

396. Like Andreesseen, Thiel has benefitted from Zuckerberg and Facebook's funding of several of his ventures. Facebook's 2014 acquisition of Oculus benefitted Thiel as well as Andreesseen, because Thiel's Founders Fund was one of the first investors in Oculus. Then, in 2015, Zuckerberg (through his foundation) and Thiel (through the Founders Fund) both made multi-million dollar investments in Altschool, an educational start-up.

397. In 2019, Facebook announced plans to create its own digital currency, Libra, paving the way for Thiel to realize his self-described, decades-old "obsess[ion] with creating a digital currency that would be controlled by individuals instead of governments."[75] Zuckerberg was Thiel's ticket to the table. Zuckerberg

[75] *Zero to One* at 122.

rewarded Thiel's loyalty by drawing in two of Thiel's large investments—Stripe and Spotify—to become Association Members of Libra (now known as "Diem"). From there, Thiel was able to expand his cryptocurrency holdings by leading the $18 million Series A and $30 million Series B funding for the Bitcoin lender, BlockFi. Thiel and the Founders Fund also participated in the Series C and D funding rounds. BlockFi's CEO told Bloomberg in December 2020 that it would "absolutely be a supporter of the Diem project."

398. Thiel was also able to leverage his connection to Zuckerberg and his founder-friendly reputation to land a seat on the board of Asana, a work-management company founded by Facebook co-founder Dustin Moskovitz and former Facebook employee Justin Rosenstein. When Thiel joined the Asana board in 2012, Moskovitz told the L.A. Times that Thiel's experience at Facebook was what made him an attractive pick, explaining: "Peter [Thiel] has a lot of experience in building strong organizations in very deliberate and steady ways. That was a lot of what we valued about his influence at Facebook. He helped shape Facebook to be a great organization. We hope he will bring a similar value to Asana." In a 2018 interview with Startups.com, Moskovitz further explained that one of the benefits of having Thiel on Asana's board was that he was "enormously founder friendly . . . . [Sean Parker, Facebook's first President and Partner at Founders Fund] just cared a lot about making sure Facebook stayed in control, especially Mark's control, but

company controlled. Peter was more than happy to feel the same way. That's how they basically do every deal with Founders Fund now."

399. Thiel also reaps the benefits of his close ties with Zuckerberg through his infamous fellowship program, which he runs as part of the Thiel Foundation. Thiel's fellowship pays teenagers $100,000 to drop out of college to work on startups and other businesses. The Thiel fellowship is expressly marketed as a way to follow in the footsteps of Zuckerberg, who famously did just that. Jack Abraham, the executive director of the Thiel Foundation, explained to Fast Company in 2015 that a "goal [of the fellowship] is to encourage even seniors in college to dropout if they have a good idea," because "if Mark Zuckerberg hadn't left Harvard and waited to launch Facebook, he might not be where he is today." When Thiel launched the fellowship, the New York Times ran a profile about the fellows entitled "Finding the Next Mark Zuckerberg."

400. Thiel's fellowship is successful in large due to the halo effects of his close ties to Zuckerberg. The fellowship attracts applicants who, in their own words, "idolise"[76] and "hop[e] to become the next Mark Zuckerberg."[77] Thiel also backs a

[76] *Two Indian teenagers awarded Thiel fellowship*, THE ECON. TIMES (May 11, 2013), https://economictimes.indiatimes.com/two-indian-teenagers-awarded-thiel-fellowship/articleshow/20001255.cms

[77] Nathan McAlone, *Billionaire Peter Thiel is giving these 20 kids $100,000 to drop out of college and start companies*, BUS. INSIDER (June 5, 2015), https://www.businessinsider.com/meet-the-2015-thiel-fellows-2015-6.

fund called 1517, run by the former co-managers of the fellowship, that connects the fellows to investors. According to a 2016 story by Bloomberg, in their pitch to Thiel, the managers explained that the investors would benefit by "improv[ing] their odds of winning favor with the next Mark Zuckerberg." Thiel's credibility is based, in large part, on having been Zuckerberg's first outside investor at Facebook.

401. In that 2016 story, Bloomberg described the fellowship as Thiel's "most public hobbyhorse." And for good reason. This particular hobbyhorse provides an important source of deal flow and credibility for Thiel. In exchange for sponsoring young founders, Thiel reaps the benefits of their successes—the stronger the track record of the Thiel fellows, the more likely investors and the media are to embrace Thiel's vision of the business world. And of course, Thiel gets first shot at "meeting the next Mark Zuckerberg."

402. When Thiel's fellows succeed, he draws them closer into his orbit. For example, Thiel fellow Eden Full Goh's global enterprise now provides electricity to over 10,000 people in 18 countries. Thiel hired her to work at Palantir. Meanwhile, James Proud, who Forbes magazine called "Peter Thiel's chosen one," raised over $2 million on Kickstarter for his sleep-tracking device. Then Proud's funding nearly doubled, with, as Forbes put it, a $2 million investment "from the godfather himself, Thiel." Thiel began investing personally in his fellows starting with the very first cohort.

403. Zuckerberg has repaid Thiel's loyalty by repeatedly standing up for him in response to criticism. In the summer of 2016, Thiel spoke at the Republican National Convention in support of the nomination of Donald Trump and in October 2016, the New York Times reported that Thiel was donating $1.25 million dollars in support of the Trump campaign (through Super PAC donations and direct donations to the campaign). During this period, it was also revealed that Thiel had secretly funded a lawsuit by professional wrestler Hulk Hogan that ultimately bankrupted the prominent media website, Gawker. These revelations sparked significant internal criticism at Facebook amongst progressive employees who were upset by Thiel's support for litigation against a well-known media organization.

404. In October 2016, Zuckerberg issued a written internal memorandum rejecting calls to remove Thiel as a Facebook board member, stating "[w]e care deeply about diversity. That's easy to say when it means standing up for ideas you agree with. It's a lot harder when it means standing up for the rights of people with different viewpoints to say what they care about. That's even more important." In the same memo, he chided employees for their criticisms of Thiel, reminding them that "[t]here are many reasons a person might support Trump that do not involve racism, sexism, xenophobia or accepting sexual assault."

405. In March 2017, in a question and answer session with students at North Carolina AT&T State University, Zuckerberg reiterated his defense of Thiel, stating

"We have a board member who is an adviser to the Trump administration, Peter Thiel. . . . And I personally believe that if you want to have a company that is committed to diversity, you need to be committed to all kinds of diversity, including ideological diversity. . . . I think the folks who are saying we shouldn't have someone on our board because they're a Republican, I think that's crazy . . . I think you need to have all kinds of diversity if you want to make progress together as a society."

406. Thiel would naturally feel beholden and loyal to Zuckerberg as a result of Zuckerberg's steadfast support through these tumultuous circumstances. According to a December 2019 story by the Wall Street Journal, "[s]ome people close to both men describe[] their current relationship as an alliance, based in part on their long history together."

407. Like Zuckerberg, Thiel seeks political power. In a May 2021 profile, the New Yorker wrote that "the most interesting and destabilizing parts of the Republican Party are operating downstream from Thiel, whose net worth Bloomberg recently estimated at more than six billion dollars. . . . This year, Thiel has given ten million dollars to an outside group funding the Ohio Senate campaign of J. D. Vance, the venture capitalist who became famous as the author of the 2016 memoir 'Hillbilly Elegy,' and a voice on behalf of the parts of America that globalization had left behind. (He is now a regular on Tucker Carlson's Fox News show.) Thiel

[also] donated ten million dollars to the Arizona U.S. Senate campaign of his own aide, Blake Masters, who co-authored one of his books and has mostly worked for Thiel since he graduated from Stanford Law, a decade ago; he gave roughly two million dollars to the failed 2020 Senate campaign of the hard-right anti-immigrationist Senate candidate Kris Kobach."

408. These political ties bound Thiel closer to Zuckerberg during the Trump administration. For example, Thiel was also the only Facebook Board member to join Zuckerberg for a private dinner with then-President Trump and First Lady Melania Trump at the White House in October 2019. And according to a 2019 story by the Wall Street Journal, Thiel used his Facebook Board seat and his access to Zuckerberg to push for Facebook to maintain a "hands-off" policy with respect to misleading political advertisements:

> Facebook Inc.'s senior leadership is increasingly divided over how to address criticism of the company's effect on U.S. politics, with board member and billionaire investor Peter Thiel serving as an influential voice advising CEO Mark Zuckerberg not to bow to public pressure, according to people familiar with the matter.
>
> One flashpoint of late: political advertisements. Mr. Thiel has argued that Facebook should stick to its controversial decision, announced in September, to continue accepting them and to not fact-check those from politicians, the people said.
>
> [. . .]
> The reaction to Facebook's decision on political ads, presented in October by Mr. Zuckerberg as a commitment to free speech, largely broke along party lines. Most Republicans, including

> members of the Trump reelection campaign, praised the decision, while many Democrats argued the company should do more to potentially limit the spread of misinformation. In the 2016 election, political actors used tech platforms to spread misleading or false information to specific groups of people.
>
> [. . .]
> "Mark is friends with Peter Thiel and a lot of Republicans," said a former Facebook employee who worked in its political group. "It's a reality people aren't willing to accept."
>
> Last year, after it was disclosed that the data of 87 million users improperly wound up with Cambridge Analytica, Facebook directors scrambled to address the political fallout from the revelation, partly because the British political consulting firm had worked for the Trump campaign. Some Facebook directors wanted to create an outside advisory group that would analyze a range of problems confronting Facebook and offer potential solutions to the board, people familiar with the matter said. The group would have been small and included at least one conservative, the people said.
>
> Mr. Thiel was strongly against the idea, the people said. The board never convened the group.

409. Thiel leveraged his ability to influence Facebook's policies in a manner favorable to the Trump administration to help curry favor with that administration. The benefits of this arrangement ran both ways. As noted in a November 2019 story by NBC, Palantir became "one of the largest recipients of government defense contracts with the United States government since Trump took office."

410. Thiel is also subject to other disabling conflicts arising from his role at Palantir. As described above, Palantir conspired with Cambridge Analytica in connection with the Facebook data breach. And Palantir remains dependent on

access to Facebook data. Palantir's software "enable[s] [] institutions to transform massive amounts of information into an integrated data asset that reflects their operations."[78] To compile these troves of information, Palantir relies heavily on social media posts, especially on Facebook.[79]

411. Facebook adopting stricter privacy rules could harm Palantir's business.[80] As Palantir undergoes controversies of its own—namely by facilitating massive surveillance systems—the company faces greater risks of pushback from social media companies. Thiel is thus incentivized to stay in Zuckerberg's good graces to maintain Palantir's access to data.

412. Similarly, Thiel is reportedly an investor in a company called "Clearview AI," which is a facial recognition company that relies heavily on scraping photographs from Facebook and Instagram. According to a March 2021 story by the New York Times, Clearview's founder, Hoan Thon-That reportedly has "ties to the far right and to a notorious conservative provocateur named Charles

[78] Palantir Form S-1/A, Sept. 21, 2020 at 2.

[79] In fact, according to an April 2018 story by Buzzfeed, requests for social media data have become so integral to Palantir's services that in 2015 it had to create internal policies on how to handle social media data. (Of course, prior to 2015 it relied on social media data, such as that obtained from Facebook by Cambridge Analytica, but it had only an "ad hoc" approach to handling it.)

[80] *See* Palantir Form S-1/A, Sept. 21, 2020 at 35 (listing "Changes in political or social attitudes with respect to security or data privacy issues" as a risk factor for the company).

Johnson who ran a few short-lived investigative news sites that seemed designed to troll liberals. . . . Johnson met Ton-That in 2016. They attended the Republican National Committee Convention in Cleveland together that summer, where Johnson introduced Ton-That to . . . Thiel, who later provided seed money for the company that became Clearview." The company is now valued at over $109 million.

413. In January 2020, the New York Times reported that Clearview claims to have "a database of more than three billion images that Clearview claims to have scraped from Facebook, YouTube, Venmo and millions of other websites." Following the January 2020 report by the New York Times, Facebook apparently sent a cease-and-desist letter to Clearview. But it does not appear that Facebook has taken any other steps to protect its users from Clearview's scraping efforts.

VI. COUNTS

COUNT I
Derivative Claim for Breach of Fiduciary Duty
Against Zuckerberg and Sandberg In Their Capacity As Officers

414. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

415. As officers of Facebook, Zuckerberg and Sandberg were and are fiduciaries of the Company and its stockholders. As such, they owed and owe the Company and its stockholders the highest duties of good faith, due care, and loyalty.

416. Consistent with their fiduciary duties as officers, Zuckerberg and

Sandberg were required to ensure Facebook's compliance with privacy laws, regulations, and agreements with the FTC and other regulators. Zuckerberg and Sandberg were also required to ensure that Facebook made complete and accurate disclosures to investors and otherwise complied with the federal securities laws. And they were required to ensure that if any settlement or other transaction provided a non-ratable benefit to Zuckerberg, it was entirely fair to the Company as to both process and price.

417. Zuckerberg and Sandberg breached their fiduciary duties as officers by, among other things, (i) causing and/or allowing Facebook to violate the First FTC Agreement and other privacy laws and regulations; (ii) causing and/or allowing Facebook to make false statements in its SEC filings; (iii) failing to adequately inform Facebook's directors of these compliance failures; and (iv) causing and/or allowing the Company to enter into the 2019 FTC Settlement on unfair terms through an unfair process.

418. As a result of Zuckerberg's and Sandberg's fiduciary breaches, Facebook has sustained, and will continue to sustain, significant damages—both financially and to its corporate image and goodwill, including, without limitation, the substantial penalties and fines paid to the FTC and the SEC, future settlements with consumer plaintiffs, increased legal expenses, increased regulatory scrutiny, and other liabilities described herein.

419. As a result of the misconduct alleged herein, Zuckerberg and Sandberg are liable to the Company.

COUNT II
Derivative Claim for Breach of Fiduciary Duty
Against Zuckerberg and Sandberg In Their Capacity As Directors

420. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

421. Count II is pled in the alternative to Count I to the extent that the Court determines any of Zuckerberg's or Sandberg's actions or inactions were taken in their capacity as directors.

422. As directors of Facebook, Zuckerberg and Sandberg were and are fiduciaries of the Company and its stockholders. As such, they owed and owe the Company and its stockholders the highest duties of good faith and loyalty.

423. Consistent with their fiduciary duties as directors, Zuckerberg and Sandberg were required to ensure Facebook's compliance with privacy laws, regulations, and agreements with the FTC and other regulators. Zuckerberg and Sandberg were also required to ensure that Facebook made complete and accurate disclosures to investors and otherwise complied with the federal securities laws. And they were required to ensure that if any settlement or other transaction provided a non-ratable benefit to Zuckerberg, it was entirely fair to the Company as to both process and price.

424. Zuckerberg and Sandberg breached their fiduciary duties as directors by, among other things, (i) causing and/or allowing Facebook to violate the First FTC Agreement and other privacy laws and regulations; (ii) causing and/or allowing Facebook to make false statements in its SEC filings; (iii) failing to adequately inform Facebook's other directors of these compliance failures; and (iv) causing and/or allowing the Company to enter into the 2019 FTC Settlement on unfair terms through an unfair process.

425. As a result of Zuckerberg's and Sandberg's fiduciary breaches, Facebook has sustained, and will continue to sustain, significant damages—both financially and to its corporate image and goodwill, including, without limitation, the substantial penalties and fines paid to the FTC and the SEC, future settlements with consumer plaintiffs, increased legal expenses, increased regulatory scrutiny, and other liabilities described herein.

426. As a result of the misconduct alleged herein, Zuckerberg and Sandberg are liable to the Company.

COUNT III
Derivative Claim for Breach of Fiduciary Duty
Against Zuckerberg In His Capacity As Controlling Stockholder

427. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

428. As Facebook's controlling stockholder, Zuckerberg was and is a

fiduciary of the Company and its stockholders. As such, he owed and owes the Company and its stockholders the highest duties of good faith, due care, and loyalty.

429. Consistent with his fiduciary duties as a controlling stockholder, Zuckerberg was required to ensure Facebook's compliance with privacy laws, regulations, and agreements with the FTC and other regulators. Zuckerberg was also required to ensure that Facebook made complete and accurate disclosures to investors and otherwise complied with the federal securities laws. And he was required to ensure that if any settlement or other transaction provided him with a non-ratable benefit that it was entirely fair to the Company as to both process and price.

430. Zuckerberg breached his fiduciary duties as a controlling stockholder by, among other things, (i) causing and/or allowing Facebook to violate the First FTC Agreement and other privacy laws and regulations; (ii) causing and/or allowing Facebook to make false statements in its SEC filings; (iii) failing to adequately inform Facebook's directors of these compliance failures; and (iv) causing and/or allowing the Company to enter into the 2019 FTC Settlement on unfair terms through an unfair process.

431. As a result of Zuckerberg's fiduciary breaches, Facebook has sustained, and will continue to sustain, significant damages—both financially and to its corporate image and goodwill, including, without limitation, the substantial

penalties and fines paid to the FTC and the SEC, future settlements with consumer plaintiffs, increased legal expenses, increased regulatory scrutiny, and other liabilities described herein.

432. As a result of the misconduct alleged herein, Zuckerberg is liable to the Company.

COUNT IV
Derivative Claim for Breach of Fiduciary Duty
Against Thiel and Andreessen

433. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

434. As Facebook directors, Thiel and Andreessen were and are fiduciaries of the Company and its stockholders. As such, they owed and owe the Company and its stockholders the highest duties of good faith and loyalty.

435. Consistent with their fiduciary duties as directors, Thiel and Andreessen were required to ensure that if any settlement or other transaction provided Zuckerberg with a non-ratable benefit that it was entirely fair to the Company as to both process and price.

436. Thiel and Andreessen breached their fiduciary duties as directors by, among other things, causing and/or allowing the Company to enter into the 2019 FTC Settlement on unfair terms through an unfair process.

437. As a result of Thiel and Andreessen's fiduciary breaches, Facebook has

sustained, and will continue to sustain, significant damages including, without limitation, the substantial penalties and fines paid to the FTC and the SEC.

438. As a result of the misconduct alleged herein, Thiel and Andreessen are liable to the Company.

COUNT V
Derivative Claim For Violation Of California's Unfair Competition Law Against Palantir

439. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

440. Palantir's actions described above constitute unlawful, unfair, or fraudulent acts or practices in the conduct of a business, in violation of California's Business and Professions Code Section 17200, *et seq.*, including actions that are forbidden by other laws, including, without limitation, California Penal Code § 502, *et seq.*

441. Palantir's business practices are unfair because Palantir acted in a manner that was immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Facebook. In partnership with now-defunct Cambridge Analytica, Palantir acted to deceptively and unlawfully obtain and retain data from Facebook users without their knowledge and consent.

442. Palantir's illicit obtaining of data and information from Facebook and its users was substantially injurious because of the significant harm that could result

to users if information associated with those users was handled irresponsibly by third parties, including Cambridge Analytica or Palantir. Further, the impact of the practice against Facebook far outweighs any possible justification or motive on the part of Palantir. Facebook, and the public at large, have a strong interest in the integrity of Facebook's platforms, Facebook's policing of those platforms for abuses, and Facebook's protection of its users' privacy.

443. Palantir's business practices were fraudulent for the same reason. Palantir and Cambridge Analytica deceived Facebook users in order to obtain and retain their data without their knowledge or consent. Ultimately, Palantir's misconduct was a substantial contributor to Facebook having to pay a $5 billion fine to the FTRC.

444. Palantir's business practices also were unlawful. As stated above, Palantir's conduct violated, among other laws, California Penal Code § 502.

445. As a result of Palantir's various acts and omissions, Facebook was injured and in fact and lost money and property in the form of, among other things, costs to investigate, remediate, and prevent Palantir's wrongdoings.

PRAYERS FOR RELIEF

WHEREFORE**,** Plaintiffs demand judgment and preliminary and permanent relief, including injunctive relief, in their favor, and in favor of the Company and against all Defendants as follows:

A. Declaring this action to be a proper derivative action and Plaintiffs to be proper and adequate representatives of the Company;

B. Declaring that the Defendants breached their fiduciary duties and/or violated California's Unfair Competition Law, as applicable;

C. Awarding equitable and injunctive relief to the Company;

D. Awarding monetary damages to the Company, including pre- and post-judgment interest;

E. Awarding Plaintiffs the costs and disbursements of this action, including attorneys' and experts' fees; and

F. Granting the Company such further relief as the Court deems just and proper.

Dated: July 16, 2021

BLOCK & LEVITON LLP

/s/ Nathan A. Cook
Nathan A. Cook (#4841)
Mae Oberste (#6690)
3801 Kennett Pike, Suite C-305
Wilmington, DE 19807
(302) 499-3600

Counsel for Plaintiffs Employees' Retirement System of Rhode Island and City of Warwick Retirement System

OF COUNSEL:

BLOCK & LEVITON LLP
Jason M. Leviton
Joel Fleming
Lauren G. Milgroom
260 Franklin Street, Suite 1860
Boston, Massachusetts 02110
(617) 398-5600

HEYMAN ENERIO GATTUSO & HIRZEL LLP
Kurt M. Heyman (#3054)
Melissa N. Donimirski (#4701)
Aaron M. Nelson (#5941)
300 Delaware Avenue, Suite 200
Wilmington, DE 19801
(302) 472-7300

Additional Counsel for Plaintiffs Employees' Retirement System of Rhode Island and City of Warwick Retirement System

CERTIFICATE OF SERVICE

I hereby certify that, on August 6, 2021, I caused a true and correct copy of the foregoing *Verified Stockholder Derivative Complaint (Public Version)* to be served electronically upon the following counsel:

Kurt M. Heyman, Esq.
Aaron M. Nelson, Esq.
Melissa N. Donimirski, Esq.
HEYMAN ENERIO GATTUSO & HIRZEL LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19801

Thaddeus J. Weaver, Esq.
DILWORTH PAXSON LLP
704 King Street, Suite 500
P.O. Box 1031
Wilmington, DE 19899

Kevin H. Davenport, Esq.
Samuel L. Closic, Esq.
John G. Day, Esq.
Elizabeth Wang, Esq.
PRICKETT, JONES & ELLIOTT, P.A.
1310 King Street
Wilmington, DE 19801

Ryan M. Ernst, Esq.
O'KELLY & ERNST, LLC
824 N. Market Street, Suite 1001A
Wilmington, Delaware 19801

Peter B. Andrews, Esq.
Craig J. Springer, Esq.
Jessica Zeldin, Esq.
David M. Sborz, Esq.
ANDREWS & SPRINGER, LLC
4001 Kennett Pike, Suite 250
Wilmington, DE 19807

Daniel K. Astin, Esq.
CIARDI CIARDI & ASTIN
1204 N. King Street
Wilmington, DE 19801

David E. Ross, Esq.
R. Garrett Rice, Esq.
ROSS ARONSTAM & MORITZ LLP
100 S. West Street, Suite 400
Wilmington, DE 19801

Jon E. Abramczyk, Esq.
Alexandra Cumings, Esq.
MORRIS, NICHOLS, ARSHT & TUNNEL LLP
1201 North Market Street, 16th Floor
Wilmington, DE 19801

/s/ Nathan A. Cook
Nathan A. Cook (#4841)