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Case No. 9745-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERNESTO ESPINOZA, derivatively on behalf of FACEBOOK, INC., Plaintiff, v. MARK ZUCKERBERG, SHERYL K. SANDBERG, DONALD E. GRAHAM, PETER A. THIEL, MARC L. ANDREESSEN, REED HASTINGS, ERSKINE B. BOWLES, and SUSAN D. DESMOND-HELLMANN, Defendants, -and- FACEBOOK, INC., a Delaware corporation, Nominal Defendant.	C.A. No. __________

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTY, WASTE OF CORPORATE ASSETS, AND UNJUST ENRICHMENT

Plaintiff, by his attorneys, submits this Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment against the defendants named herein.

NATURE AND SUMMARY OF THE ACTION

1. This is a shareholder derivative action brought by plaintiff on behalf of nominal defendant Facebook, Inc. ("Facebook" or the "Company"). Plaintiff

brings this action to halt defendants' illegal self-dealing. In particular, Facebook's Board of Directors (the "Board") has unfettered ability to grant its members an unlimited amount of stock as part of their annual "compensation." The defendants have abused this power by giving themselves excessive stock awards that when combined with their other forms of compensation gives the non-executive members of the Board a yearly take beyond what could be considered reasonable.

2. In fact, Facebook pays its non-executives directors 43% more than its peers, despite its net income and revenues being 66% and 49% lower than its peers, respectively.[1] Moreover, the members of the Board are free to continue to award themselves virtually any amount of compensation they choose into perpetuity. The only limit on the amount of equity the directors can grant themselves is a 2.5 million share limit per director in a single year. At the Company's current stock price, 2.5 million Facebook shares are worth approximately $145 million, and accordingly, is not a true limit.

3. Plaintiff now brings this action to recoup the unfair excessive compensation the Director Defendants (as defined herein) awarded themselves and

[1] Facebook's "Peer Group" is Adobe Systems Inc., Amazon.com, Inc., Cisco Systems, Inc. ("Cisco"), eBay Inc., EMC Corp., LinkedIn Corp. ("LinkedIn"), Netflix, Inc. ("Netflix"), QUALCOMM Inc., SAP AG, The Walt Disney Co. ("Walt Disney"), VMware, Inc., and Yahoo! Inc. These are all companies that Facebook describes as its peers in its public filings. Plaintiff did not include Apple Inc., Google Inc., Microsoft Corp., and salesforce.com, inc. in the Peer Group because these companies' market capitalization, net income, and revenues are significantly different than the rest of the Peer Group.

impose meaningful restrictions on the Board's ability to award itself compensation going forward.

THE PARTIES

Plaintiff

4. Plaintiff Ernesto Espinoza was a shareholder of Facebook at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Facebook shareholder.

Nominal Defendant

5. Nominal Defendant Facebook is a Delaware corporation with principal executive offices located at 1601 Willow Road, Menlo Park, California. Facebook is a social networking website that builds technology to enable faster, easier, and richer communication. Hundreds of millions of people use Facebook's websites and mobile applications every day to stay connected with their friends and family, to discover and learn what is going on in the world around them, and to share and express what matters to them to the people they care about. Facebook's business focuses on creating value for users, marketers, and developers.

Defendants

6. Defendant Mark Zuckerberg ("Zuckerberg") is Facebook's Chief Executive Officer and a director and has been since July 2004 and Chairman of the

Board and has been since January 2012. Defendant Zuckerberg is also Facebook's founder.

7. Defendant Sheryl K. Sandberg ("Sandberg") is Facebook's Chief Operating Officer and has been since March 2008 and a director and has been since June 2012. Facebook paid defendant Sandberg the following compensation as an executive:

Fiscal Year	Salary	Bonus	Stock Awards	Total
2013	$384,423	$603,967	$15,158,758	$16,147,148

8. Defendant Donald E. Graham ("Graham") is Facebook's Lead Independent Director and has been since at least January 2012 and a director has been since March 2009. Defendant Graham is also Chairman of Facebook's Compensation Committee and has been since June 2013 and a member of that committee and has been since at least May 2012. Since 2013, defendant Graham has received an aggregate of 7,742 restricted stock units with a grant date fair value of $387,874. Facebook paid defendant Graham the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	7,742	$387,874

9. Defendant Peter A. Thiel ("Thiel") is a Facebook director and has been since April 2005. Defendant Thiel is also a member of Facebook's Compensation Committee and has been since May 2013. Since 2013, defendant

Thiel has received an aggregate of 7,742 restricted stock units with a grant date fair value of $387,874. Facebook paid defendant Thiel the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	7,742	$387,874

10. Defendant Marc L. Andreessen ("Andreessen") is a Facebook director and has been since June 2008. Since 2013, defendant Andreessen has received an aggregate of 7,742 restricted stock units with a grant date fair value of $387,874. Facebook paid defendant Andreessen the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	7,742	$387,874

11. Defendant Reed Hastings ("Hastings") is a Facebook director and has been since June 2011. Defendant Hastings is also a member of Facebook's Compensation Committee and has been since at least March 2014. Since 2013, defendant Hastings has received an aggregate of 7,742 restricted stock units with a grant date fair value of $387,874. Facebook paid defendant Hastings the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	7,742	$387,874

12. Defendant Erskine B. Bowles ("Bowles") is a Facebook director and has been since September 2011. Since 2013, defendant Bowles has received an

aggregate of 7,742 restricted stock units with a grant date fair value of $387,874. Facebook paid defendant Bowles the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	7,742	$387,874

13. Defendant Susan D. Desmond-Hellmann ("Desmond-Hellmann") is a Facebook director and has been since March 2013. Since 2013, defendant Desmond-Hellmann has received an aggregate of 27,742 restricted stock units with a grant date fair value of $935,874. Facebook paid defendant Desmond-Hellmann the following compensation as a director:

Fiscal Year	Stock Awards (#)	Stock Awards ($)
2013	27,742	$935,874

14. The defendants identified in ¶¶ 6-13 are referred to herein as the "Director Defendants" or "Individual Defendants."

FACEBOOK'S EQUITY INCENTIVE PLAN GIVES THE DIRECTOR DEFENDANTS CARTE BLACHE TO SET THEIR OWN COMPENSATION

15. In 2012, Facebook adopted its 2012 Equity Incentive Plan (the "2012 EIP"). The 2012 EIP was allegedly adopted to attract, retain, and motivate individuals to help the Company succeed through the grant of awards based on the Company's stock (i.e., options or restricted stock units, among other devices). The 2012 EIP applies to employees, officers, directors, and consultants of Facebook.

16. The 2012 EIP grants complete authority to the Board to "establish the terms for the grant of an Award to Non-Employee Directors." The only restraint

on the Board's ability to grant itself whatever compensation it chooses is the 2012 EIP's total and yearly share limitations. In particular, the 2012 EIP sets the total limit on the amount of stock issuable under it to twenty-five million shares and the yearly limit to any one individual is 2.5 million shares. The share limitations, however, are restrictions in name only. At current trading price, 2.5 million Facebook shares are worth approximately $145 million. Accordingly, the Board is essentially free to grant itself whatever amount of compensation it chooses.

THE BOARD AWARDS ITSELF EXCESSIVE COMPENSATION

17. In breach of their fiduciary duties, the Director Defendants took advantage of their ability to set their own compensation to grant themselves excessive compensation. In 2013, the Board paid its non-employee members an average $461,000 per director. This compensation is 43%, or $140,000, per director, higher than the average per director compensation of the companies in Facebook's Peer Group. The non-employee Director Defendants' excessive compensation is unwarranted. In 2013, the Company's revenues were a third of its peers and its income approximately half peers, on average. The following table shows the Company's revenues, net income, and non-employee director compensation compared to its Peer Group.

Peer Compensation Analysis			
Company	Revenues[2]	Net Income[2]	Fiscal 2013 Per-Director Compensation
Facebook	$7,872.0	$1,500.0	$461,265.00
Peer Average	**$22,996.73**	**$2,914.60**	**$322,432.88**
Adobe	$4,055.2	$290.0	$281,381.00
Amazon	$74,452.0	$274.0	$432,540.00
Cisco	$47,873.0	$8,173.0	$433,603.64
eBay	$16,047.0	$2,856.0	$242,949.91
EMC	$23,222.0	$2,889.0	$327,698.00
LinkedIn	$1,528.5	$26.8	$350,315.00
Netflix	$4,374.6	$112.4	$352,986.67
Qualcomm	$25,470.0	$6,822.0	$324,208.54
SAP	$23,042.1	$4,557.7	$255,258.88
Walt Disney	$46,009.0	$6,594.0	$287,305.56
VMWare	$5,207.0	$1,014.0	$313,256.17
Yahoo	$4,680.4	$1,366.3	$267,691.20

Source: Capital IQ

(1) In millions. Based on the closing stock price on December 31, 2013 and shares of common stock outstanding publicly-reported on or around December 31, 2013.
(2) In millions. Based on the calendar year ended December 31, 2013.

18. Further, the non-executive Director Defendants' excessive compensation is unwarranted in comparison to the Company's stock price movement versus its Peer Group. The vast majority of the non-executive Director Defendants' compensation came as stock awards approved on September 13, 2013. From January 1, 2013 to that date, Facebook's stock price increased 58%. However, the Peer Group's stock price increased on average 40% during that same time, only slightly worse than Facebook. Further, Facebook's self-identified Peer Group includes established companies in mature industries, such as Walt Disney

and Cisco. Historically, older companies in mature industries do not see as large changes in stock price as young companies in new fields, thus depressing the Peer Group's stock performance. For instance, during this same time period Netflix's stock price increased 232% and LinkedIn's stock increased over 121%, both relatively young companies in emerging technology spaces, as is Facebook.

19. Absent court intervention, the Director Defendants will continue paying themselves this excessive amount of compensation.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

20. Plaintiff brings this action derivatively in the right and for the benefit of Facebook to redress injuries suffered, and to be suffered, by Facebook as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Facebook is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

21. Plaintiff will adequately and fairly represent the interests of Facebook in enforcing and prosecuting its rights.

22. Plaintiff was a shareholder of Facebook at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current Facebook shareholder.

23. The current Board of Facebook consists of the following eight individuals: defendants Zuckerberg, Sandberg, Graham, Thiel, Andreessen, Hastings, Bowles, and Desmond-Hellmann. Plaintiff has not made any demand on the present Board to institute this action because such a demand is excused.

24. Because all of the Director Defendants approved the compensation at issue here and all the non-employee Director Defendants (six out of eight Board members) received the challenged compensation pursuant to an incentive plan that contains no limits on their compensation, let alone meaningful ones, the Director Defendants stand on both sides of the compensation awards. Additionally, six out of eight members of the Board received the challenged compensation, and thus derived a personal financial benefit from and had a direct interest in the transactions at issue in this case. Because they stand on both sides of the challenged compensation awards and received personal financial benefits from those awards, the Director Defendants lack disinterest, will have the burden of proving the entire fairness of their compensation, and there is more than a reasonable doubt that the directors could impartially consider a demand. Accordingly, demand is excused.

25. Further, each of the Director Defendants has wasted the Company's assets by agreeing to and awarding the improper compensation detailed herein as no disinterested, un-conflicted director would take advantage of the unfettered

compensation plan to award compensation well beyond a company's peers. Thus, because the Director Defendants are guilty of waste, demand is excused.

FIRST CAUSE OF ACTION

Against the Individual Defendants for Breach of Fiduciary Duty

26. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

27. The Individual Defendants and each of them, violated their fiduciary duty of loyalty by awarding and/or receiving excessive and improper compensation at the expense of the Company.

28. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Facebook has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

29. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

SECOND CAUSE OF ACTION

Against the Individual Defendants for Waste of Corporate Assets

30. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

31. As a result of the Individual Defendants' self-dealing, the Company has wasted its valuable assets by paying the Director Defendants excessive compensation.

32. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

33. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

THIRD CAUSE OF ACTION

Against the Individual Defendants for Unjust Enrichment

34. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

35. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Facebook. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to Facebook.

36. Plaintiff, as a shareholder and representative of Facebook, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

37. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Facebook, demands judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing Facebook to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Facebook and its shareholders from a repeat of the damaging events described herein. In particular, the Board must reform the 2012 EIP so that it contains meaningful limits on the amount of stock that it is able to pay itself and then present such a change to the shareholders for a vote;

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of Facebook has an effective remedy;

D. Awarding to Facebook restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

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