



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERNESTO ESPINOZA, derivatively)
on behalf of FACEBOOK, INC.,)

Plaintiff,)

v.)

C.A. No. 9745-CB

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.)

STIPULATION OF COMPROMISE AND SETTLEMENT

This Stipulation of Compromise and Settlement (“Stipulation”), dated January 22, 2016, is entered into, by and through their undersigned attorneys, among and between: Plaintiff Ernesto Espinoza, individually and derivatively on behalf of Facebook, Inc. (“Facebook” or the “Company”); individual defendants Mark Zuckerberg, Sheryl K. Sandberg, Donald E. Graham, Peter A. Thiel, Marc L. Andreessen, Reed Hastings, Erskine B. Bowles, and Susan D. Desmond-Hellmann; and nominal defendant Facebook.

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This Stipulation is intended by the Settling Parties to fully, finally, and forever compromise, resolve, discharge, and settle all Released Claims against the Released Persons and dismiss the Action with prejudice, upon the terms set forth below and subject to the approval of the Court of Chancery of the State of Delaware pursuant to Court of Chancery Rule 23.1.¹

I. BACKGROUND OF THE ACTION AND SETTLEMENT NEGOTIATIONS

Facebook is a global company whose products permit users 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.

In connection with its initial public offering (“IPO”), Facebook’s Board of Directors and stockholders adopted the 2012 Equity Incentive Plan to “provide incentives to attract, retain and motivate” “[e]mployees, [c]onsultants, [d]irectors and [n]on-[e]mployee [d]irectors” of Facebook or any of its corporate parents or subsidiaries “by offering them an opportunity to participate in the Company’s future performance through the grant of Awards.” The 2012 Equity Incentive Plan was effective as of May 17, 2012—the effective date of Facebook’s IPO prospectus.

¹ All capitalized terms not otherwise defined are defined in Section IV.1, *infra*.

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The 2012 Equity Incentive Plan permits the Board to award recipients, including its Non-Employee Directors, options or restricted stock units (“RSUs”) in amounts not to exceed 2.5 million shares each in a given year.

In August 2013, Facebook reevaluated the compensation of its Non-Employee Directors. Following consideration by the Compensation Committee, the Board approved (subject to a formal plan for implementation) an Annual Compensation Program for Non-Employee Directors that would: “(i) increase the total annual cash retainers paid to the members of the Audit Committee from \$50,000 to \$70,000 per year, (ii) increase the total annual cash retainer paid to the Chair of the Audit Committee from \$70,000 to \$100,000 per year, and (iii) implement new annual equity grants of restricted stock units having a value of \$300,000 per year.” In September 2013, the Board approved the formal plan for implementation of the Annual Compensation Program by unanimous written consent.

Under the Annual Compensation Program, which has applied to director compensation since 2014, Non-Employee Directors receive an annual RSU grant equal to \$300,000 and a set annual cash retainer for their service. This program was in place by September 13, 2013, and disclosed in Facebook’s March 31, 2014 proxy statement.

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On June 6, 2014, Plaintiff filed the Action in the Court derivatively on behalf of Facebook and against the Individual Defendants. In the Action, Plaintiff alleges that the Individual Defendants breached their fiduciary duties of loyalty by awarding and/or receiving excessive and improper compensation in 2013 at the expense of the Company. Plaintiff further alleges that the Individual Defendants were unjustly enriched as a result of their purportedly excessive compensation and that the Individual Defendants were liable to the Company for waste by receiving purportedly excessive compensation.

On August 18, 2014, Defendants moved to dismiss and for summary judgment. Defendants contended, among other things, that Mr. Zuckerberg, Facebook's controlling stockholder, expressly ratified the 2013 compensation and that as a result of his approval, the Board's compensation decisions were subject to review under the business judgment rule. Following document discovery and a deposition of Mr. Zuckerberg, Plaintiff filed his Answering Brief in Opposition to Defendants' Motion to Dismiss and for Summary Judgment on April 17, 2015. Defendants filed their Reply Brief in Support of Defendants' Motion to Dismiss and for Summary Judgment on June 5, 2015, and the Court held oral argument on the motion on July 28, 2015. The Court granted the motion to dismiss in part and denied the motion for summary judgment on October 28, 2015.

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On November 9, 2015, Defendants filed an Application for Certification of Interlocutory Appeal in the Court of Chancery. Plaintiff filed his Response in Opposition to Defendants' Application for Certification of Interlocutory Appeal on November 19, 2015, and the Court granted certification on November 20, 2015. On November 30, 2015, the Supreme Court of the State of Delaware accepted the interlocutory appeal.

While the Parties were litigating, Plaintiff sought to commence discussions regarding an appropriate derivative settlement framework. On February 11, 2015, Plaintiff's Counsel sent a settlement demand letter to counsel for Defendants that proposed a framework and included a set of corporate governance reforms. On March 19, 2015, Plaintiff sent a letter proposing a revised settlement demand.

In November and December 2015, the Parties negotiated the terms of a potential settlement. Ultimately, the Parties reached a settlement in principle, subject to the negotiation of details related to the execution of the settlement.

After agreeing to the terms of the Settlement, the Parties separately negotiated the amount of attorneys' fees and expenses to be paid to Plaintiff's Counsel. The Parties did not discuss the appropriateness or amount of attorneys' fees and expenses to be paid to Plaintiff's Counsel until after the settlement terms had been agreed upon. As a result of these negotiations, the Settling Parties

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reached an agreement to settle the Action upon the terms and subject to the conditions set forth in this Stipulation (the “Settlement”).

II. PLAINTIFF’S CLAIMS AND THE BENEFITS OF SETTLEMENT

Plaintiff believes the Action has substantial merit, and Plaintiff’s entry into this Stipulation and Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Action. However, Plaintiff and Plaintiff’s Counsel also recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Plaintiff’s Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiff’s Counsel also are mindful of the inherent problems of proof and possible defenses to the claims alleged in such actions.

Plaintiff’s Counsel have conducted a thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, and believe that the Settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Facebook and its stockholders. Plaintiff’s Counsel have conducted a thorough investigation, including, *inter alia*: (i) reviewing Facebook’s press releases, public statements, U.S. Securities and

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Exchange Commission (“SEC”) filings, and securities analysts’ reports and advisories about the Company; (ii) reviewing the press releases, public statements, and SEC filings of other companies within its peer group; (iii) reviewing media reports about the Company; (iv) researching the applicable law with respect to the claims alleged in the Action and the potential defenses thereto; (v) preparing and filing a derivative complaint; (vi) conducting damages analyses; (vii) participating in informal conferences with Defendants’ counsel regarding the specific facts of the cases, the perceived strengths and weaknesses of the cases, and other issues in an effort to facilitate negotiations and fact gathering; (viii) engaging in discovery, including the deposition of Defendant Zuckerberg; and (ix) negotiating this Settlement with Defendants. Based upon Plaintiff’s Counsel’s evaluation, Plaintiff has determined that the Settlement is fair, reasonable, adequate, and in the best interests of Facebook and Facebook’s stockholders and has agreed to settle the Action upon the terms and subject to the conditions set forth herein.

III. DEFENDANTS’ DENIAL OF WRONGDOING AND LIABILITY

The Defendants have denied and continue to deny they have committed, threatened, or attempted to commit any violations of law or breached any duty owed to Plaintiff, Facebook, or Facebook’s stockholders and maintain that their conduct was at all times proper and in compliance with applicable law and that they acted in good faith. Nonetheless, Defendants have concluded that further

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litigation of the Action would be protracted and expensive, and that it is desirable and beneficial for the Action to be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. The Board has approved the Settlement as being in the best interests of Facebook and its stockholders. Further, Facebook, through its Board, acknowledges and agrees that the Settlement is fair, reasonable, and adequate and in the best interests of Facebook and its stockholders.

Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred to in or attached to this Stipulation, nor any action taken to carry out this Stipulation, is, may be construed as, or may be used as, evidence of the validity of any of the Released Claims or an admission by or against Defendants of any fault, wrongdoing, or concession of liability whatsoever by any Person in the Action, or any other actions or proceedings, whether civil, criminal, or administrative.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff (on behalf of himself and derivatively on behalf of Facebook) and Defendants, each by and through their respective counsel, subject to the approval of the Court pursuant to Court of Chancery Rule 23.1, that the Released Claims shall be and hereby are compromised, settled, discontinued, and dismissed

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with prejudice, as to all Parties, upon the terms and subject to the conditions set forth herein as follows:

1. Definitions

As used in this Stipulation, the following terms have the meanings specified below:

1.1. “Action” means *Espinoza v. Zuckerberg, et al.*, Civil Action No. 9745-CB.

1.2. “Board of Directors” means the Board of Directors of Facebook, Inc.

1.3. “Compensation & Governance Committee” means the Compensation & Governance Committee of the Board of Facebook, or any successor committee of the Board responsible for compensation.

1.4. “Corporate Governance Reforms” means the corporate governance reforms specified in Section IV.2, *infra*.

1.5. “Court” means the Court of Chancery of the State of Delaware.

1.6. “Current Facebook Stockholder(s)” means any Person or Persons (as defined herein) who are record or beneficial owners of Facebook common stock as of the date of this Stipulation, excluding the Individual Defendants, the officers and directors of Facebook, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which the Individual Defendants have or had a controlling interest.

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1.7. “Defendants” means collectively, nominal defendant Facebook and the Individual Defendants.

1.8. “Effective Date” means the date by which all of the events and conditions specified in paragraph 6.1 herein have been met and have occurred.

1.9. “Final” means the expiration of all time to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review by writ of certiorari or otherwise.

1.10. “Incentive Plan” means the Facebook, Inc. 2012 Equity Incentive Plan.

1.11. “Individual Defendants” means Mark Zuckerberg, Sheryl K. Sandberg, Donald E. Graham, Peter A. Thiel, Marc L. Andreessen, Reed Hastings, Erskine B. Bowles, and Susan D. Desmond-Hellmann.

1.12. “Judgment” means the Order and Final Judgment entered by the Court dismissing this Action with prejudice, substantially in the form annexed hereto as Exhibit C.

1.13. “Non-Employee Directors” means members of the Board of Facebook who are or were not employees of the Company or its subsidiaries and affiliates.

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1.14. “Notice” means the Notice of Pendency of Settlement of Action, substantially in the form annexed hereto as Exhibit B.

1.15. “Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

1.16. “Plaintiff” means Ernesto Espinoza, individually and derivatively on behalf of Facebook.

1.17. “Plaintiff’s Counsel” means Young Conaway Stargatt & Taylor, LLP and Robbins Arroyo LLP.

1.18. “Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, or known and unknown claims, that have been or could have been or in the future might be asserted by Plaintiff as a stockholder, or any other Facebook stockholder, or any other Person acting or purporting to act on behalf of Facebook, in the Action against the

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Released Persons, arising out of or relating to the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions that were alleged in the Action against Defendants; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (a) any claims to enforce the Settlement; and (b) any claims by the Defendants or any other insured to enforce their rights under any contract or policy of insurance.

1.19. “Released Persons” means the Individual Defendants and their predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, and each of their past or present officers, directors, and employees. “Released Persons” also includes Facebook and all of its current and former officers, directors, and employees.

1.20. “Releasing Persons” means Plaintiff (both individually and derivatively on behalf of Facebook), any other current or former Facebook stockholder acting or purporting to act on behalf of Facebook, and Facebook. “Releasing Person” means, individually, any of the Releasing Persons.

1.21. “Scheduling Order” means an order scheduling a hearing on this Stipulation and approving the form of Notice and method of giving notice, substantially in the form annexed hereto as Exhibit A.

1.22. “Settlement Hearing” means the hearing set by the Court to consider final approval of the Settlement.

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1.23. “Settling Parties” or “Parties” means, collectively, the derivative Plaintiff (on behalf of himself and derivatively on behalf of Facebook) and Defendants. “Settling Party” or “Party” means, individually, any of the Settling Parties.

1.24. “Unknown Claims” means any Released Claim(s) that Plaintiff or Defendants do not know of or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, including without limitation those that, if known, might have affected the decision to enter into the Settlement. With respect to any and all Released Claims, the Parties agree that upon the Effective Date, the Parties expressly waive, and all Releasing Persons shall be deemed to have waived, the provisions, rights, and benefits conferred by or under California Civil Code section 1542, or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them, with respect to the subject matter of the Released Claims, but it is the intention of the Parties to

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completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of this Stipulation of which this release is a part, and was relied upon by each and all of the Defendants in entering into the Settlement.

2. Terms of the Settlement

2.1. As a direct result of the filing, prosecution, and settlement of the Action, Facebook has agreed to implement and maintain in substance the corporate governance reforms, additions, amendments, or formalizations set forth below (the “Corporate Governance Reforms”) for a period of five (5) years from the Effective Date. In connection with the Settlement and in consideration of the Released Claims set forth herein:

2.1.1. Compensation & Governance Committee Charter.

As soon as practicable after the Effective Date, the Board shall amend the charter of the Compensation & Governance Committee to provide that the Compensation & Governance Committee shall be responsible for: (A) conducting annually a review and assessment of all compensation, including cash and equity-based compensation, paid by Facebook to the Non-Employee Directors; (B) engaging an independent compensation consultant to advise the Compensation & Governance Committee in connection with such annual review and

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assessment, including with respect to (x) the amount and type of Non-Employee Director compensation to be paid for the following year, and (y) comparative data deemed appropriate by such consultant; and (C) recommending to the Board, on the basis of such review and assessment, whether to make, on a prospective basis, any change in the compensation payable to the Non-Employee Directors.

2.1.2. Board Review.

The Board shall review annually the compensation payable to the Non-Employee Directors, including any recommendation by the Compensation & Governance Committee as to any change in the compensation payable to the Non-Employee Directors.

2.1.3. Stockholder Vote.

At the 2016 annual meeting of stockholders of Facebook, Facebook shall include separate proposals for stockholder approval on compensation for Non-Employee Directors as follows: (i) Facebook shall propose to the stockholders that they approve the 2013 grants to the Non-Employee Directors; and (ii) Facebook shall propose to the stockholders that they approve the Annual Compensation Program, which includes a specific amount for annual equity grants and delineates the annual retainer fees for Non-Employee Directors, for use by the Board going forward. The Non-Employee Directors shall abstain from voting in their capacity as stockholders on each of these proposals.

3. Scheduling Order, Notice, and Approval

3.1. The Parties shall submit promptly this Stipulation together with its exhibits to the Court, and shall apply for entry of the proposed Scheduling Order with Respect to Notice and Settlement Hearing (the “Scheduling Order”), substantially in the form of Exhibit A attached hereto, requesting: (i) the approval of the manner of notice to Facebook stockholders substantially in the form attached

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hereto as Exhibit B; (ii) the Court's consideration of the proposed Settlement and Plaintiff's application for attorneys' fees and expenses; and (iii) a date for the Settlement Hearing.

3.2. Notice to Facebook stockholders shall consist of the Notice of Pendency of Settlement of Action (the "Notice"), substantially in the form attached hereto as Exhibit B, and shall be provided to Facebook stockholders as follows:

3.2.1. Within ten (10) business days after the entry of the Scheduling Order, Facebook shall commence mailing of the Notice to all Facebook stockholders as of the record date. All record holders of Facebook's common stock will receive the Notice in hardcopy form. In addition, the Company shall use reasonable efforts to give notice to beneficial owners by: (i) distributing electronic copies of the Notice to beneficial owners who, according to information provided by Broadridge, the Company's mailing agent, have consented to electronic delivery of proxy statements or other securities communications from Facebook; and (ii) mailing additional hardcopies of the Notice to beneficial owners who do not consent to electronic delivery; and

3.2.2. Within ten (10) business days after the entry of the Scheduling Order, Robbins Arroyo LLP shall post copies of the Notice and this Stipulation on its website.

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3.3. Ten (10) business days prior to the Settlement Hearing, Defendants' counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice, and Plaintiff's Counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the posting of the Notice and Stipulation.

3.4. Facebook, on behalf of the Individual Defendants, shall be responsible for all costs associated with the mailing of the Notice. If additional notice is required by the Court, then the cost and administration of such additional notice will be borne by Facebook on behalf of the Individual Defendants.

3.5. The Parties believe the content and manner of notice constitutes adequate and reasonable notice to Facebook stockholders pursuant to applicable law and due process.

3.6. Pending the Court's determination as to final approval of the Settlement, Plaintiff agrees to stay this proceeding and not to initiate any other proceedings other than those incident to the Settlement itself.

3.7. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, Plaintiff in the Action and all Facebook stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the

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commencement or prosecution of any action asserting any Released Claims against Defendants or any of the Released Persons.

3.8. The Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of this Stipulation. The Parties and their attorneys further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, this Stipulation provided for hereunder and the dismissal of the Action. Nothing herein shall be construed as requiring Facebook to agree to any substantive modification to this Stipulation.

4. Attorneys' Fees and Expenses

4.1. Defendants acknowledge and agree that Plaintiff's Counsel is entitled to a fee award. Subject to the terms and conditions of this Stipulation and any Order of the Court, Facebook has agreed to pay an award of attorneys' fees and expenses to Plaintiff's Counsel not to exceed \$525,000.00 (the "Fee and Expense Amount"). Plaintiff's Counsel may apply for attorneys' fees and expenses only in this Court and shall make no application for attorneys' fees or expenses in any other jurisdiction. The Fee and Expense Amount shall be paid to Robbins Arroyo LLP, as receiving agent for Plaintiff's Counsel, within ten (10) business days after

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the Court enters the Judgment, subject to Plaintiff's Counsel's obligation to refund that amount within ten (10) business days if the Settlement is reversed or modified on appeal and the timely provision of the requisite payment information, including wire instructions and a completed Form W-9. Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

4.2. Any failure of the Court to approve a request for attorneys' fees and expenses in whole or in part shall not affect the remainder of the Settlement.

4.3. No fees or expenses shall be paid to Plaintiff's Counsel pursuant to the Settlement in the absence of approval by the Court of a complete release of all Released Persons, substantially in the form of paragraph 5.1 herein. This paragraph shall be immediately binding on the Parties.

4.4. Except as provided in paragraph 4.1 of this Stipulation, Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiff, by Facebook stockholders, or by their attorneys, experts, advisors, or representatives with respect to the Released Claims.

5. Releases

5.1. Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the

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Released Claims against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

5.2. Upon the Effective Date, the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

6.1. The Settlement shall be conditioned on the occurrence of all of the following events:

6.1.1. Court approval of the Settlement following notice to Facebook stockholders and the Settlement Hearing;

6.1.2. Entry of the Judgment in the Action approving the proposed Settlement and providing for the dismissal with prejudice of the Action and approving the grant of the release of the Released Claims;

6.1.3. The inclusion in the Judgment of a provision enjoining Plaintiff and Facebook stockholders from asserting any of the Released Claims;

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6.1.4. The dismissal with prejudice of the Action without the award of any damages, costs, fees, or the grant of any further relief, except as provided in paragraph 4.1 of this Stipulation; and

6.1.5. The passing of the date upon which the Judgment becomes Final.

6.2. If any of the conditions listed in paragraph 6.1 are not met, this Stipulation and any Settlement documentation shall be null and void and of no force and effect. In the event that any of the conditions listed in paragraph 6.1 are not met, the Settling Parties shall be restored to their positions on the date immediately prior to the execution date of this Stipulation, this Stipulation shall not be deemed to constitute an admission of fact by any Settling Party, and neither the existence of this Stipulation, nor its contents shall be admissible in evidence or be referred to for any purposes in the Action or in any litigation or judicial proceeding. Also, this Stipulation shall not be deemed to entitle any Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement. Further, all releases delivered in connection with this Stipulation shall be null and void.

6.3. Each of the Defendants shall have the right to withdraw from the Settlement in the event that any claims related to the subject matter of the Action are commenced or prosecuted against any of the Released Persons in any court

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prior to final approval of the Settlement and (following a motion by the Defendants) such claims are not dismissed with prejudice or stayed in contemplation of dismissal. In the event such claims are commenced, the Parties agree to cooperate and use their reasonable best efforts to secure the dismissal (or a stay in contemplation of dismissal following final approval of the Settlement) thereof.

7. Dismissal of the Action

7.1. If the Court approves this Stipulation, the Parties shall promptly request the Court to enter the proposed Judgment, substantially in the form annexed hereto as Exhibit C.

8. This Stipulation Is Not an Admission

8.1. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Stipulation nor the releases given herein, nor any consideration, nor any actions taken to carry out this Stipulation are intended to be, nor may they be deemed or construed to be, an admission or concession of liability (or lack thereof), or the validity of any claim, or defense, or of any point of fact or law on the part of any Party hereto regarding those facts that have been or might have been alleged in the Action or in any other proceeding. The Defendants and the Released Persons may file this Stipulation and/or Judgment in any action that has been or may be brought against

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them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9. Miscellaneous Provisions

9.1. The Settling Parties agree that the terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis.

9.2. This Stipulation shall be deemed to have been mutually prepared by the Settling Parties hereto and shall not be construed against any of them by reason of authorship.

9.3. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to this Stipulation by means of facsimile or electronically scanned and sent via email shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof.

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9.4. All Persons executing this Stipulation thereby represent that they have been authorized and empowered to do so.

9.5. Plaintiff and Plaintiff's Counsel represent and warrant that none of Plaintiff's claims referred to in this Stipulation or that could have been alleged in the Action have been assigned, pledged, encumbered, or in any manner transferred in whole or in part.

9.6. This Stipulation embodies and represents the full agreement of the Parties and supersedes any and all prior agreements and understandings relating to the subject matter hereof between or among any of the Parties hereto. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Parties. The waiver by any Party of any provision or the breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

9.7. If any provision of this Stipulation other than paragraphs 1.18, 1.19, 1.20, 1.24, 4.2, 4.3, 4.4, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 8.1, 9.4, 9.5 and 9.6 is held to be unlawful, invalid, or unenforceable: (i) such provision will be fully severable; (ii) this Stipulation will be construed and enforced as if such unlawful, invalid, or unenforceable provision had never comprised a part of this Stipulation; and (iii) the remaining provisions of this Stipulation will remain in full force and effect and will

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not be affected by the unlawful, invalid, or unenforceable provision or by its severance from this Stipulation.

9.8. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

9.9. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of this Stipulation, and all Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting this Stipulation.

9.10. The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto.

9.11. Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out any of the provisions in Section IV.4, *supra*, of this Stipulation.

9.12. The following exhibits are annexed hereto and incorporated herein by reference:

(a) Exhibit A: [Proposed] Scheduling Order with Respect to Notice and Settlement Hearing;

(b) Exhibit B: Notice of Pendency of Settlement of Action; and

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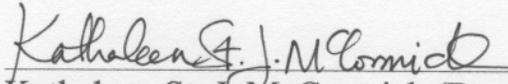
(c) Exhibit C: [Proposed] Order and Final Judgment.

IN WITNESS WHEREOF, IT IS HEREBY AGREED by the undersigned as of the date noted above.

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**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**



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Attorneys for Defendants and Nominal Defendant

Dated: January 25, 2016

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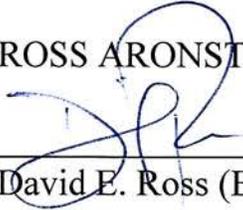
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