



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF BIRMINGHAM RELIEF)	
AND RETIREMENT SYSTEM,)	C.A. No. 2018- 0532
)	
Plaintiff,)	CONFIDENTIAL FILING
)	
v.)	PUBLIC VERSION
)	Filed July 26, 2018
FACEBOOK, INC.,)	
)	
Defendant.)	

VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. §220

Plaintiff City of Birmingham Relief and Retirement System (“Plaintiff” or “Birmingham”), by and through its undersigned counsel, for its complaint against Facebook, Inc. (“Facebook” or the “Company”), alleges, upon personal knowledge, as to itself, and upon information and belief, as otherwise, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to §220 of the Delaware General Corporation Law (“DGCL”) to enforce its right to inspect certain of Facebook’s books and records that the Company has wrongfully refused to produce. Plaintiff has articulated a proper purpose for its demand: (a) investigating potential wrongdoing, mismanagement, and breaches of fiduciary duties by management and the Board of Directors (the “Board”) or otherwise in connection with the events, circumstances, and transactions described herein; (b) assessing the ability of

Facebook's Board to impartially consider a demand for action (including a request for permission to file a derivative lawsuit on the Company's behalf) related to the items described herein; and (c) taking appropriate action in the event that management and the Board did not properly discharge their fiduciary duties, including the preparation and filing of a stockholder derivative lawsuit, if appropriate. The documents sought through this complaint are necessary and essential to Plaintiff's proper purpose.

PARTIES

2. Plaintiff Birmingham is the beneficial owner of Facebook common stock, having first purchased and continuously held the Company's common stock since at least June 22, 2012.

3. Defendant Facebook is incorporated under the laws of the State of Delaware with its principal executive offices located at 1601 Willow Road, Menlo Park, California 94025. Facebook operates a social networking website. The Facebook website allows people to communicate with family, friends, and coworkers. Facebook also develops technologies that facilitate the sharing of information, photographs, website links, and videos.

BACKGROUND FACTS

4. On March 17, 2018, a *New York Times* article disclosed that Cambridge Analytica, a British political consulting firm, had improperly accessed the private

information from the Facebook profiles of more than 50 million users in 2015, and that Facebook had not acknowledged nor disclosed the leak (the “Data Breach”).

5. Facebook’s deputy general counsel stated that Facebook had asked Cambridge Analytica whether it had destroyed the data in question, to which Cambridge Analytica responded positively. Facebook apparently took no further steps to confirm the destruction of its users’ data. The *New York Times* revealed that it had later obtained and viewed a set of the raw data from profiles collected by Cambridge Analytica.

6. Two days later, on March 19, 2018, *Bloomberg* reported that the U.S. Federal Trade Commission (“FTC”) was probing whether Facebook had violated the terms of a 2011 consent decree it had entered into with the FTC (the “2011 Consent Decree”) by improperly handling personal user data that was transferred to Cambridge Analytica without users’ knowledge. Under the 2011 Consent Decree, Facebook was required to give users clear and conspicuous notice and obtain affirmative express user consent before sharing data with third parties. The 2011 Consent Decree imposed these requirements on Facebook as part of a resolution of earlier federal charges that Facebook deceived consumers by allowing them to choose only to share data with limited audiences, when, in fact, Facebook allowed that data to be shared with third-party applications and forced the sharing of additional personal information, disregarding the consumer’s choice.

7. On March 26, 2018, the FTC issued a press release confirming that it was currently pursuing an open, non-public investigation into Facebook's privacy practices and compliance with the 2011 Consent Decree. The acting director of the FTC, Tom Pahl, noted in the press release that the FTC's foremost tool for protecting consumer privacy was to bring an enforcement action against companies that fail to honor prior privacy promises and noted Facebook's obligation to comply with FTC order provisions imposing privacy and data security requirements on the Company.

8. Following the *New York Times* and *Bloomberg* articles in March 2018, Facebook's founder, Chairman, and Chief Executive Officer, Mark Zuckerberg ("Zuckerberg"), was called by members of the Parliament of the United Kingdom to give evidence regarding the Cambridge Analytica scandal. Similar requests for information were subsequently made by Massachusetts Attorney General Maura Healey and Senators Ron Wyden (D-OR), Amy Klobuchar (D-MN), John Kennedy (R-LA), Charles Grassley (R-IA), John Thune (R-SD), and Mark Warner (D-VA), including requests for Zuckerberg to testify before Congress.

9. On March 20, 2018, Facebook's Chief Security Officer, Alex Stamos ("Stamos"), announced that he was leaving the Company in August 2018, purportedly due to a dispute about how the Company had been used to spread disinformation.

10. On March 21, 2018, a *Bloomberg* article disclosed that a former Facebook employee, Sandy Parakilas (“Parakilas”), had advised British lawmakers that his concerns about lax data-protection policies at Facebook went ignored by senior executives. Parakilas, a platform operations manager at Facebook from 2011-2012, appeared before a U.K. Parliamentary Committee and testified that he had raised serious concerns about Facebook’s data vulnerabilities, including bringing lists of bad actors, and potential bad actors, to Facebook executives, the risks the Company faced due to these data vulnerabilities, and making recommendations for actions Facebook could be taking to improve its data vulnerabilities.

11. Parakilas also testified that he was concerned that Facebook’s policies regarding the handling of its users’ data had left it unable to effectively monitor and safeguard this data. Parakilas further testified that his concerns went unheard at the Company, and that in his opinion, Facebook could have acted on his concerns to prevent the Data Breach.

12. On April 4, 2018, it was widely reported that Cambridge Analytica improperly gathered detailed information from 87 million users – up from the 50 million users originally reported. Reports also disclosed that a vulnerability in Facebook’s search and account recovery functions potentially exposed most of Facebook’s two billion users to having their profile information harvested by outside parties.

13. Facebook's Chief Operating Officer, Sheryl Sandberg ("Sandberg"), appeared on NBC's "Today Show" on April 6, 2018, acknowledging that Facebook had known that Cambridge Analytica had improperly obtained and mishandled users' data and committed a "breach of trust" with users by failing to protect user data and failing to notify users of the data breach. Sandberg stated that the Company "could have done these [audits regarding data breaches] two and a half years ago," after the Company first learned about Cambridge Analytica's improper access to user data in December 2015. Sandberg gave no explanation as to why the Company chose to forego such an audit, but stated that Facebook executives thought the data had been deleted and failed to "check" after the Data Breach, instead relying on assurances from Cambridge Analytica that the data had been deleted.

14. On April 10, 2018, Zuckerberg appeared before the Senate Judiciary and Commerce Committees of Congress, where he testified alone before 44 members of Congress. *See* Exhibit A.

15. At the April 10, 2018 Senate hearing, Zuckerberg stated that Facebook learned of the Cambridge Analytica data breach in 2015 and failed to conduct an audit regarding the data Cambridge Analytica had obtained from Facebook. Instead, Facebook took no further action than demanding that Cambridge Analytica delete and stop using the data it had collected and simply took Cambridge Analytica for its word when it represented that it had deleted the valuable user data.

16. Zuckerberg also stated that Facebook had failed to notify the FTC (and, indeed, apparently had not notified any outside party) regarding the Cambridge Analytica data leak in 2015, despite learning of the breach in 2015, because Facebook “considered it a closed case” once the Company had told Cambridge Analytica to delete the user data.

17. During the April 10, 2018 Senate hearing, Senator Richard Blumenthal (“Blumenthal”) noted that Facebook was on notice that it was violating the FTC’s 2011 Consent Decree. Blumenthal noted that the terms of service Facebook agreed to enter into with Aleksandr Kogan (“Kogan”), the researcher who sold the user data of 87 million Facebook users to Cambridge Analytica for \$800,000, explicitly allowed Kogan to sell user information. Blumenthal further noted that these terms of service, which allowed third parties to sell user data, conflicted with the FTC’s 2011 Consent Decree specifically requiring Facebook to protect user privacy and amounted to “willful blindness.” Zuckerberg responded that “[Facebook] should have been aware that this app developer submitted a term that was in conflict with the rules of the platform.”

18. *The Guardian* reported shortly thereafter, on April 17, 2018, that a U.K. Parliamentary Committee had interviewed employees of Cambridge Analytica and discovered that far more than 87 million Facebook users’ data had been compromised. Brittany Kaiser, former Cambridge Analytica employee, said “I

believe it is almost certain that the number of Facebook users whose data was compromised through routes similar to that used by Kogan is much greater than 87 million; and that both Cambridge Analytica and other unconnected companies and campaigns were involved in these activities.”

19. On April 26, 2018, *CNBC* reported that Facebook was also investigating whether Palantir Technologies (“Palantir”), a secretive intelligence firm that may have worked with Cambridge Analytica, had also been granted access to Facebook user data. Facebook Chief Technology Officer, Mike Schroepfer, confirmed that Facebook was “looking into” the Company’s sharing of user data with Palantir. Facebook also claimed that it had added restrictions in 2014 that would prevent companies, like Cambridge Analytica and Palantir, from collecting information from users’ friends.

20. A June 3, 2018 article published by *The New York Times* revealed that Facebook had struck deals for sharing its user data with over 60 electronic device manufacturers. Facebook reportedly allowed the device companies access to the data of users’ friends without their explicit consent, even after declaring that it would no longer share such information with outsiders. Some device makers could also apparently retrieve personal information even from users’ friends who had set Facebook’s privacy settings to explicitly deny the permission to share information with any third parties, according to *The New York Times*. It was also disclosed that

the Company's partnerships remained in effect, and that Facebook exempted some companies from the supposedly more restrictive practices it said it had implemented in 2014.

21. A follow-up article published by *The New York Times* on June 5, 2018 further reported that Facebook has data-sharing partnerships with at least four Chinese electronic companies, which date back to at least 2010. The companies included the manufacturing firm Huawei Technologies Co., Ltd. ("Huawei"), a telecommunications equipment company that has been cited in congressional reports as having a "close relationship" with the Chinese Communist Party, and that has been flagged by American intelligence officials as a national security threat, in addition to Lenovo Group Ltd. ("Lenovo"), Oppo Electronics Corporation ("Oppo"), and TCL Corporation ("TCL"). Facebook officials reportedly stated that the agreements with the Chinese companies allowed them to access detailed information on both the users of the device and all of their friends – including religious and political leanings, work and education history, and relationship status. Facebook's Vice President of Mobile Partnerships, Francisco Varela, was quoted as saying, "[a]ll Facebook's integrations with Huawei, Lenovo, Oppo, and TCL were controlled from the get-go – and Facebook approved everything that was built."

22. On June 8, 2018, *The Wall Street Journal* further reported that Facebook struck customized data-sharing deals with companies including Royal

Bank of Canada and Nissan Motor Co. The deals were notable for showing that Facebook shared user data to a broader universe of companies than it had previously disclosed, and that Facebook had not disclosed the full range of companies with whom it was sharing its user data. The news was also significant because it showed that Facebook was sharing user data past 2015, when Facebook had previously stated that it had “walled off” other companies from using user data.

23. On July 1, 2018, Facebook sent 747 pages of new information to Congress, revealing that it had given dozens of companies special clearance to access its user data, including app developers, even six months after it said it had stopped such practices, sometime in 2015. The new information contradicted Facebook’s prior statements that it had restricted personal information to outsiders in 2015 and came only after news organizations, including *The New York Times* and *The Wall Street Journal*, had already revealed that Facebook continued to share user data with third parties. *The Wall Street Journal* further reported, on July 1, 2018, that Facebook continued to share user data, including the data of friends of users who had not consented to third-party sharing, with 61 app developers, including the dating app Hinge and shipping giant United Parcel Service Inc.

24. *NBC News* further reported, on July 11, 2018, that Russian internet company Mail.ru, one of the top five largest internet companies in the world, with reported ties to the Kremlin, had been granted the ability to access and collect

Facebook user data, including those who had explicitly denied permission for data-sharing with third parties. That day, Senator Mark Warner (D-Va.) stated in an email:

In the last six months we've learned that Facebook had few controls in place to control the collection and use of user data by third parties.

Now we learn the largest technology company in Russia, whose executives boast close ties to Vladimir Putin, had potentially hundreds of apps integrated with Facebook, collecting user data. We need to determine what user information was shared with Mail.ru and what may have been done with the captured data.

25. That same day, on July 11, 2018, the U.K.'s Information Commissioner's Office ("UK ICO") charged Facebook with the maximum possible fine it could impose, £500,000, stating that the Company had committed two breaches of the U.K.'s Data Protection Act. UK ICO stated that Facebook had failed to safeguard its users' information and was not transparent about the way in which user data was harvested by third parties. Erin Egan, Facebook's Chief Privacy Officer, stated that Facebook "should have done more to investigate claims about Cambridge Analytica and take action in 2015," failing to address the hundreds of companies that reportedly also had access to user data through Facebook.

26. On July 12, 2018, *The Wall Street Journal* reported that the U.S. Securities and Exchange Commission ("SEC") had requested information from Facebook on how much the company knew about Cambridge Analytica's use of user data. The report stated that the SEC is also investigating how Facebook analyzed

the risk it faced from developers who shared data with third parties in violation of Facebook's policies. It was also widely reported that representatives from the Federal Bureau of Investigation and FTC had joined the U.S. Department of Justice in its inquiries into Facebook's sharing of the personal information of 71 million Americans, suggesting that the probes had a wide-ranging nature, and centered on what Facebook knew over three years ago and why the Company failed to reveal its knowledge at the time to its users and investors.

27. The foregoing background facts form a credible basis to suspect specific instances of wrongdoing at the Company, including that the Board and management may have breached their fiduciary duties by failing to act in good faith by: potentially allowing the Company to violate the 2011 Consent Decree the Company entered into with the FTC; failing to monitor the security of its users' private data, Facebook's core business; failing to take reasonable steps to address Facebook's data vulnerabilities and/or perform audits to determine the extent of its data breaches, as revealed by statements from top executives; failing to take any specific action with the Cambridge Analytica data breach for almost three years until the Company's hand was forced by public disclosure through investigative journalism; and failing to disclose the existence of the Data Breach, or the governance risk the Company's poor controls exhibited surrounding its data protection, during that same period.

COMMUNICATIONS BETWEEN THE PARTIES

28. By letter dated April 13, 2018, Plaintiff made its initial demand upon the Company pursuant to DGCL §220 (“Section 220”) for the inspection of books and records seeking to investigate the above potential breaches of fiduciary duty (the “220 Demand”). *See* Exhibit B.

29. The Company responded by letter on May 1, 2018 by conclusorily stating that Birmingham failed to meet the procedural requirements of Section 220, challenging at length Birmingham’s proper purpose and credible basis, and challenging the breadth of the inspection (the “Response”). *See* Exhibit C. The Response indicated that, despite its objections, the Company was willing to make certain non-privileged documents available for inspection. *See id.* at 5.

30. Counsel for Birmingham and counsel for Facebook held a telephonic meet-and-confer on the 220 Demand on May 3, 2018. During the meet and confer, counsel for Facebook indicated that the Company was willing to produce Board and subcommittee meeting minutes and any other Board presentations and materials relating to the subject matter of the 220 Demand – namely, the unauthorized access of Facebook’s private user data by third parties, including Cambridge Analytica, from January 1, 2014 to March 18, 2018. The parties then entered into a confidentiality agreement covering the production on May 25, 2018.

31. On June 12, 2018, the Company produced to Plaintiff 1,694 pages of inspection materials, contained within 22 documents. Unfortunately, the production was heavily redacted as “non-responsive,” with only about 65 pages, or less than 4% of the total production, containing any unredacted content further than the document’s title. Board-level minutes, presentation materials, reports from Board committees, and other typical Section 220 inspection documents were all produced as entirely “non-responsive,” giving no insight whatsoever into the Board’s knowledge, discussion, or action regarding the topics outlined in Birmingham’s 220 Demand.

32. Plaintiff wrote further to the Company, on June 26, 2018, in order to make clear that Plaintiff considered the Company’s initial response deficient under Section 220. *See* Exhibit D. Plaintiff’s June 26, 2018 letter addressed possible misunderstandings regarding Birmingham’s proper purpose, asked for clarification regarding the Company’s response to Birmingham’s 220 Demand, and asked the Company to clearly outline its stance on whether it would produce materials responsive to Plaintiff’s requested demand categories.

33. The Company responded to Birmingham by letter dated July 13, 2018. *See* Exhibit E. The Company’s July 13, 2018 letter stated that Facebook had “agreed to make available to [Birmingham] non-privileged board materials and minutes that are relevant to the underlying issue in the Demand – namely, the access of Facebook

user data by third-parties, including Cambridge Analytica, from the period January 1, 2014 through March 18, 2018.” Facebook further stated that it had redacted some materials that were not relevant to the underlying issues in the 220 Demand as non-responsive. Facebook also stated that it had withheld some documents, and redacted others, on the basis of the attorney-client privilege. Finally, the July 13, 2018 letter claimed that Birmingham had not articulated a credible basis to support its proper purpose, but offered to provide additional documents related to the issues raised in Birmingham’s 220 Demand.

34. The parties met via teleconference shortly thereafter, on July 16, 2018, to clarify the Company’s position. On that call, Facebook confirmed that it had withheld a number of unspecified documents that are relevant to Birmingham’s 220 Demand because Facebook believes the documents to be protected from disclosure by the attorney-client privilege. Birmingham requested that the Company explain its withholding of the documents, or describe the nature of the documents withheld. The Company stated that it would consider Birmingham’s request, but refused to make any representation about the documents withheld and stated that it was the Company’s position that Birmingham’s prior agreement to forego a formal privilege log prevented the Company from being required to make any representation regarding the materials being withheld.

35. On the call, Birmingham also requested that the Company produce documents dated after March 18, 2018, the date of the 220 Demand, given that recent news indicated that Facebook had widely shared user data with hundreds of companies in contravention of its users' permission, and in light of the fact that additional government agencies, including the SEC, had begun investigating the Company for its handling of user data in connection with Facebook's sharing of user information with third parties and knowledge of the Cambridge Analytica scandal in 2015. Facebook flatly rejected Birmingham's request to produce any documents dated later than March 18, 2018.

36. Finally, Birmingham challenged Facebook's redactions for responsiveness as overly restrictive. Birmingham noted that many pages of the materials produced by the Company were wholly redacted as not relevant, including document titles. Birmingham also noted that it was not clear from the Company's representations whether the Company was claiming redactions for privilege or responsiveness, in some instances. Facebook represented in its July 13, 2018 letter that it had produced all non-privileged materials relevant to the "underlying issue" raised in the 220 Demand, but on the July 16, 2018 call, represented that it was willing to produce more responsive documents to Birmingham. The Company refused to explain when new documents would be forthcoming, what those documents would entail, how many new documents had been withheld and would

now be produced, and what the nature of the Company's rationale for previously withholding these documents was.

37. Birmingham memorialized the contents of the July 16, 2018 teleconference by letter dated July 17, 2018. *See* Exhibit F.

THE SECTION 220 DEMAND

38. Plaintiff's 220 Demand states proper purposes for the inspection of the Company's books and records, including:

- (a) investigating potential wrongdoing, mismanagement, and breaches of fiduciary duties by management and the Board or otherwise in connection with the events, circumstances, and transactions described [t]herein;
- (b) assessing the ability of Facebook's Board to impartially consider a demand for action (including a request for permission to file a derivative lawsuit on the Company's behalf) related to the items described [t]herein; and
- (c) taking appropriate action in the event that management and the Board did not properly discharge their fiduciary duties, including the preparation and filing of a stockholder derivative lawsuit, if appropriate.

39. The 220 Demand is narrowly tailored to seek only books and records necessary and essential to Plaintiff's proper purposes. The 220 Demand seeks the following books and records:

- (1) All meeting minutes, books, reports, handouts, emails, presentations, PowerPoints, and any other materials provided to the members of Facebook's Board, or any subcommittees thereof, including any specially created subcommittees, and

minutes prepared by the Board or its subcommittees (hereinafter “Board Minutes and Presentations”) concerning Cambridge Analytica;

- (2) All Board Minutes and Presentations from management concerning warnings about actual, known, or suspected data breaches related to Cambridge Analytica or related application that violated Facebook’s privacy terms;
- (3) All Board Minutes and Presentations from management concerning mitigation plans and/or actions related to the Data Breach, including, but not limited to, any results of audits conducted;
- (4) All Board Minutes and Presentations from management concerning the decision to disclose information about the Data Breach;
- (5) All Board Minutes and Presentations concerning foreign, federal and state laws, rules, and regulations, including, but not limited to, steps Facebook took to comply with those laws, rules, and regulations, records of any failures to comply with those laws, rules, and regulations, and/or any corrective actions taken by the Company related to the Data Breach;
- (6) All Board Minutes and Presentations concerning communications brought by stockholders against Facebook regarding actual or alleged violations of federal securities laws related to the Data Breach;
- (7) All Board Minutes and Presentations concerning any notice of investigation or subpoena received by Facebook from either state or federal agencies concerning the Data Breach;
- (8) All Board Minutes and Presentations concerning internal controls and/or policies over users’ data;
- (9) All Board Minutes and Presentations concerning previews or post-production discussions of Facebook’s public filings and press releases and/or drafts of these releases, as well as the

statements and/or draft statements of any of its officers, directors, or other representatives on any of the above topics;

- (10) All emails, internal memos, or other communications to Zuckerberg and/or Sandberg concerning the Data Breach;
- (11) All Board Minutes and Presentations, including, but not limited to, emails, internal memos, or other communications from or to Stamos related to the Data Breach;
- (12) Documents sufficient to identify all Facebook employees or agents who made direct reports (“Direct Board Reporters”) to Facebook’s Board or any of its subcommittees regarding the foregoing Demand Nos. 1-11; and
- (13) For the Facebook Direct Board Reporters identified in Demand No. 12, all high-level reports, draft reports, emails, communications, or other documents received or sent by the Direct Board Reporters pertaining to the subject matter on which they reported to the Board, or one of its subcommittees, regardless of whether such reports were passed on to the Board or subcommittees.

40. Plaintiff has complied with all procedural requirements under Section 220, including making a sworn, written 220 Demand addressed to the Company’s principal executive offices and providing documentary evidence of Birmingham’s beneficial ownership of Facebook stock. Plaintiff has made its 220 Demand in good faith and with proper purposes and described, with rifled precision, the books and records Plaintiff desires to inspect, which are directly connected with its proper purposes. By satisfying the aforementioned criteria, Plaintiff has fulfilled the requirements of Section 220 to inspect and copy books and records of the Company.

41. Birmingham has diligently pursued its 220 Demand and has taken all reasonable steps to try to come to an agreement with the Company regarding its production. However, to date, Birmingham has not received [REDACTED]
[REDACTED]
[REDACTED] despite executives Zuckerberg's and Sandberg's admissions that the Company knew about the Cambridge Analytica data breach at least as early as 2016, and media reports that Facebook had struck agreements with third parties to share user data and friends' user data in 2015. Instead, the Company represented that it has produced documents relevant to the "underlying issue in the Demand" rather than responding to the Demand itself, resulting in less than 4% of the documents produced to Birmingham containing any unredacted content further than the document's title. Apparent [REDACTED]
[REDACTED] and other typical Section 220 inspection documents necessary and essential to reviewing [REDACTED]
[REDACTED] were all produced to Birmingham as entirely "non-responsive," which the Company now appears to be attributing to attorney-client privilege.

42. Plaintiff seeks documents to the fullest extent permissible under Delaware law, no more and no less. Plaintiff's 220 Demand is narrowly tailored,

made for a proper purpose, and is reasonably related to Plaintiff's interest as a Facebook stockholder. Finally, Plaintiff has submitted documentation sufficient to establish its beneficial ownership of Facebook stock pursuant to Section 220. Accordingly, Plaintiff is entitled to inspect and make copies and extracts of the books and records, as set forth in its 200 Demand.

ATTORNEY-CLIENT PRIVILEGED DOCUMENTS

43. After the parties' July 16, 2018 meet-and-confer, the Company stated that it had already produced to Birmingham "non-privileged board materials and minutes that are relevant to the underlying issue in the Demand – namely, the access of Facebook user data by third-parties, including Cambridge Analytica, from the period January 1, 2014 through March 18, 2018," but that it was now relying on attorney-client privilege grounds to withhold materials. However, the Company would not, or could not, describe to Birmingham the extent to which it believed the attorney-client privilege reached or the universe of documents that would be affected.

44. Materials, [REDACTED] [REDACTED] were all produced to Birmingham in a highly redacted form, without mention of the Company's [REDACTED] [REDACTED] that would regularly be discussed by Facebook's Board and which

are necessary and essential to the 220 Demand. Birmingham was unable to determine from the heavily redacted documents produced as “non-responsive” and from the Company’s subsequent representations whether the Company is relying on the attorney-client privilege, or instead took an incredibly narrow view of the “underlying issue in the Demand” to justify its redactions. *See, e.g.*, Exhibit C at FB220-00000580-624.

45. During the July 16, 2018 teleconference between the parties, the Company represented that it was relying on the attorney-client privilege to withhold documents, such as the one referenced in the above paragraph. However, (i) Facebook has failed to carry its burden to establish that such documents are protected under the attorney-client privilege by refusing to properly establish its application; and (ii) even were the attorney-client privilege properly established, under the *Garner* doctrine, Birmingham is nevertheless entitled to inspect such documents.

46. First, Facebook has failed to establish its burden that the documents are covered by the attorney-client privilege. To date, Facebook has told Birmingham nothing about the documents it has withheld, other than to state in its July 13, 2018 letter that “[the documents] contain privileged communications between Facebook Counsel and the Facebook Board of Directors or its Committees.” Such a conclusory statement does not justify protection from disclosure under Delaware law.

47. Second, Facebook cannot establish its burden with regard to the wide range of documents it has produced in redacted form. The Section 220 documents in question [REDACTED]
[REDACTED]
[REDACTED] which are not privileged attorney-client communications, as they do not relate to litigation, but are instead related to Birmingham's proper purpose in investigating the underlying possible wrongdoing at the Company.

48. Third, even if the attorney-client privilege does apply to some portions of the materials in question, the documents in question are the core materials the Board would have reviewed concerning possible violations of Facebook's legal and/or privacy policies, data breach issues, Cambridge Analytica, and/or Board action taken in response to such issues during a key period, rendering them central to the internal control issues and oversight issues raised by Birmingham's proper purpose. These documents have therefore been wrongly withheld under *Garner* because the Company is acting in the interest of its stockholders, entitling Plaintiff to inspect these key documents. *See Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264, 1275-80 (Del. 2014) (applying fiduciary exception articulated in *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970)).

49. Further, the relevant documents, which are not subject to the purported attorney-client privilege and have been already produced, are a small set of documents, roughly 65 pages, that [REDACTED]

[REDACTED] Plaintiff therefore does not have access to the critical information to perform its Section 220 inspection from any non-privileged source and these documents are as specifically identified as Facebook's deficient production, and subsequent refusal to make any representation regarding the nature of these documents, allows them to be.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order pursuant to DGCL §220:

(A) Compelling Facebook, its officers, directors, employees, and/or agents immediately to permit Plaintiff, through its attorneys and/or agents, to inspect and make copies and extracts of the books and records of Facebook identified in the 220 Demand, including documents relevant to the 220 Demand regarding the ongoing investigations into Facebook that extend into the present;

(B) Awarding the costs and expenses, including reasonable attorneys' fees, incurred in the prosecution of this action; and

(C) Granting such other and further relief as the Court deems just and proper.

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