

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE FACEBOOK, INC. IPO SECURITIES
AND DERIVATIVE LITIGATION

MDL No. 1:12-md-02389-CM-GWG

This document relates to the
Consolidated Securities Action:

No. 12-cv-4081	No. 12-cv-4763
No. 12-cv-4099	No. 12-cv-4777
No. 12-cv-4131	No. 12-cv-5511
No. 12-cv-4150	No. 12-cv-7542
No. 12-cv-4157	No. 12-cv-7543
No. 12-cv-4184	No. 12-cv-7544
No. 12-cv-4194	No. 12-cv-7545
No. 12-cv-4215	No. 12-cv-7546
No. 12-cv-4252	No. 12-cv-7547
No. 12-cv-4291	No. 12-cv-7548
No. 12-cv-4312	No. 12-cv-7550
No. 12-cv-4332	No. 12-cv-7551
No. 12-cv-4360	No. 12-cv-7552
No. 12-cv-4362	No. 12-cv-7586
No. 12-cv-4551	No. 12-cv-7587
No. 12-cv-4648	

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFFS'
MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

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Dated: March 18, 2021

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Lead Plaintiffs, Arkansas Teacher Retirement System and Fresno County Employees' Retirement Association (collectively, "Lead Plaintiffs"), respectfully move for entry of the proposed Order Approving Distribution Plan (the "Class Distribution Order") for the proceeds of the Settlement in the above-captioned securities class action (the "Action"). The Distribution Plan is included in the accompanying Declaration of Adam D. Walter in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Walter Declaration" or "Walter Decl."), submitted on behalf of the Court-approved Claims Administrator, A.B. Data, Ltd. ("A.B. Data").¹ Under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 18, 23. Further, Defendants have reviewed this motion and informed us that they do not oppose it.

If entered by the Court, the Class Distribution Order would permit A.B. Data to make an Initial Distribution of Settlement proceeds to eligible Claimants. Among other things, the Class Distribution Order would: (i) approve A.B. Data's administrative recommendations accepting and rejecting Claims submitted in the Action; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims are accepted by A.B. Data as valid and approved by the Court ("Authorized Claimants") upon the Effective Date of the Settlement, while maintaining a Reserve for any contingencies that may arise; and (iii) approve A.B. Data's fees and expenses incurred and estimated to be incurred in the administration of the Settlement.

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated February 26, 2018 (the "Stipulation") (ECF No. 571-1), or in the

I. BACKGROUND

Judge Robert W. Sweet presided over this matter before his death in 2019. Prior to Judge Sweet's death, the Court approved the Stipulation setting forth the terms of the settlement (the "Settlement"), which represents a complete resolution of this Action in return for \$35,000,000 in cash for the benefit of Class Members. This case was reassigned to Your Honor on March 16, 2021.

In accordance with the Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 573) (the "Preliminary Approval Order") entered by the Court, A.B. Data has mailed the Settlement Notice and the Proof of Claim and Release Form (the "Proof of Claim Form" or "Claim Form" and, together with the Settlement Notice, the "Settlement Notice Packet") to potential Class Members, brokers, and other nominees. Walter Decl. ¶ 2. As stated in the Walter Declaration, A.B. Data has disseminated over 1.3 million Settlement Notice Packets to potential Class Members and nominees. *Id.* ¶ 4. The Settlement Notice informed Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit a properly executed Claim so that it would be received or postmarked no later than July 24, 2018. *Id.* ¶ 7.

As referenced above, on November 26, 2018, the Court entered the Judgment Approving Class Action Settlement ("Judgment") (ECF No. 603) along with the Opinion and Order (ECF No. 601) and Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 602). A single objector appealed. On September 23, 2020, the United States Court of Appeals for the Second Circuit issued a Summary Order affirming the Court's judgment approving the Settlement (ECF No. 607), thereby disposing of the objector's appeal.²

Walter Declaration, filed herewith.

² The objector filed a motion for a "declaratory judgment against plaintiffs' counsel" in the Court of Appeals on February 17, 2021, after the mandate dismissing the appeal was entered. *See* USCA Case No. 18-3845 (ECF No. 217). The Clerk of the Court for the Second Circuit found the objector's

In accordance with paragraph 26 of the Stipulation, Lead Plaintiffs now respectfully ask the Court to enter the Class Distribution Order approving the Distribution Plan. A.B. Data will distribute the Net Settlement Fund to Authorized Claimants when (i) the Class Distribution Order has been entered by the Court and (ii) the Effective Date of the Settlement has occurred. *See* Stipulation ¶¶ 26, 31. The Effective Date of the Settlement will occur once all rights of appeal have been exhausted. *See id.* ¶¶ 1(aa), 31.

II. CLAIMS ADMINISTRATION

As set forth in the Walter Declaration, of the 486,257 Claims that are the subject of this motion, A.B. Data has determined that 28,794 are acceptable in whole or in part, and that 457,463 (including the 58 Disputed Claims discussed below) should be wholly rejected because they are ineligible for payment from the Net Settlement Fund. Walter Decl. ¶¶ 35-38. Additionally, A.B. Data will continue to process responses to Deficiency Letters and Status Emails up until thirty (30) days prior to the Initial Distribution of the Net Settlement Fund. *See id.* ¶¶ 36-37. If a Claimant has not cured the deficiency or condition of ineligibility by the 30-day period, A.B. Data recommends that the Claim be rejected to the extent that the deficiency or condition of ineligibility was not cured. *See id.* Lead Plaintiffs respectfully request that the Court approve A.B. Data's administrative determinations accepting and rejecting Claims as stated in the Walter Declaration.

A. Deficiency Process

Through January 2, 2021, A.B. Data has received 486,257 Claims. Walter Decl. ¶ 7. A.B. Data has fully processed all Claims received through January 2, 2021 in accordance with the

filing to be defective and the document was stricken, with leave to refile. *See id.* (ECF No. 218). On March 12, 2021, the objector filed a motion to recall the mandate and refiled his motion for declaratory judgment in the Court of Appeals. *See id.* (ECF Nos. 219-20). Lead Plaintiffs will oppose these motions.

Stipulation and the Court-approved Plan of Allocation included in the Settlement Notice (*id.*), and A.B. Data has worked with Claimants to help them perfect their Claims (*see id.* ¶¶ 19-26). Many of the Claims were initially deficient or ineligible for one or more reasons, including for being incomplete, not signed, not properly documented, or otherwise deficient, which required substantial follow-up work by A.B. Data. *Id.* ¶¶ 19, 22.

If A.B. Data determined a Claim to be defective or ineligible, A.B. Data sent a Deficiency Letter (if the Claimant filed a paper Claim) or a Status Email (if the Claimant filed an Electronic Claim) to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of ineligibility in the Claim and what was necessary to cure any curable defect(s). *Id.* ¶¶ 20, 22. The Deficiency Letter and/or Status Email advised the Claimant or filer that it needed to send the appropriate information or documentary evidence to complete the Claim within twenty (20) days from the date of the Deficiency Letter and/or Status Email, or A.B. Data would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 20, 23. A sample Deficiency Letter and Status Email are attached as Exhibits A and B to the Walter Declaration, respectively.

After the responses to Deficiency Letters and Status Emails were processed, a total of 457,463 Claims (including the Disputed Claims discussed below) remained recommended for rejection by the Court for the following reasons:

- 378,103 Claims had no purchase(s) of Facebook common stock during the Class Period of May 17, 2012, through May 21, 2012;
- 68,098 Claims did not result in a Recognized Claim;
- 2 Claims were identified as questionable;
- 489 Claims were submitted on behalf of a party excluded from the Class;

- 90 Claims were withdrawn by the filer;
- 10,667 Claims were duplicates or replaced; and
- 14 Claims had uncured conditions of ineligibility.

Walter Decl. ¶ 38.

B. Disputed Claims

A.B. Data carefully reviewed Claimants' and filers' responses to the Deficiency Letters and/or Status Emails and worked with them to resolve deficiencies where possible. Walter Decl. ¶¶ 21, 26. Consistent with paragraph 24(e) of the Stipulation, the Deficiency Letters and/or Status Emails specifically advised the Claimant or filer of the right, within twenty (20) days from the date of the Deficiency Letter or Status Email, to contest the rejection of the Claim and request Court review. Walter Decl. ¶¶ 20, 23 and Exhibits A and B.

A.B. Data received 389 requests for Court review of its administrative determinations. *Id.* ¶ 28. To resolve the disputes without necessitating the Court's intervention, A.B. Data contacted all persons requesting Court review. With respect to those Claimants who A.B. Data reached, A.B. Data answered all their questions, fully explained A.B. Data's determination of the Claim's status and facilitated the submission of missing information or documentation where applicable. *Id.* As a result of these efforts, 331 Claims for which Court review had been requested have either been cured or the Claimant withdrew the request for Court review. *Id.*

Currently 58 Claims remain disputed and are being submitted to the Court for Resolution (the "Disputed Claims"). *Id.* ¶ 29. Exhibit D of the Walter Declaration (the "Disputed Claims Chart") lists Disputed Claims 1-58 along with the reason for rejection, a detailed explanation, and the trading

history of each Disputed Claim.³ *Id.* A.B. Data recommends the rejection of Disputed Claims Nos. 1-58 because none of the Disputed Claims calculate to a Net Recognized Loss pursuant to the Plan of Allocation and, therefore, none of the Disputing Claimants are eligible to receive a distribution from the Net Settlement Fund. *Id.* ¶ 30.

C. Late Claims – and Final Cut-Off Date

The 486,257 Claims received through January 2, 2021 include 62,838 Claims that were postmarked or received after the Court-approved Claim-submission deadline of July 24, 2018.. Walter Decl. ¶¶ 31, 37. A.B. Data has processed these late Claims, and 5,028 of them are, but for the late submission, otherwise eligible. *Id.* Although these 5,028 Claims were late, A.B. Data received them while its processing of timely Claims was ongoing. Due to the amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the Claims administration process or the distribution of the Net Settlement Fund. The Court has discretion to accept Claims received after the Claim-submission deadline. *See* Settlement Notice ¶ 58; Preliminary Approval Order ¶ 7. Lead Plaintiffs respectfully submit that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the distribution of the Net Settlement Fund solely because it was received after the Court-approved Claim-submission deadline if it was submitted while timely Claims were still being processed.

To facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiffs respectfully request that this Court order that (i) any new Claims received after January 2, 2021, and (ii) any adjustments to previously filed Claims made within thirty (30) days before the Initial

³ Disputing Claimants' supporting documentation (i.e., Claim Form, documentation of transactions in Facebook common stock, Notice of Rejection, correspondence with the Claims Administrator) is not included in Exhibit D given the volume of the materials but is available upon request.

Distribution or after the Initial Distribution, which would result in an increased Recognized Claim amount, be barred, subject to the provisions of paragraph 41(f) of the Walter Declaration.⁴

Paragraph 41(f) provides that at the time when Lead Counsel, in consultation with A.B. Data, determine that a further distribution of the amounts remaining in the Net Settlement Fund would not be cost-effective, the untimely Claimants, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks.

III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

A.B. Data is responsible for, among other things, disseminating notice of the pendency of the Action and the Settlement to the Class, creating and maintaining the Case Website and a toll-free telephone helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. Walter Decl. ¶ 2. Because the appeal of the Court's Order approving the Settlement prevented the Settlement from becoming effective, A.B. Data has not received any payment for its fees and expenses incurred over the past three (3) years in connection with the Settlement. In fact, A.B. Data is still owed some fees and expenses related to notice of the pendency of the Action. As stated in the accompanying Walter Declaration, A.B. Data's outstanding fees and expenses for its work performed through February 24, 2021, total \$3,527,228.73, and its estimated fees and expenses for work to be performed on behalf of the Class in connection with the Initial Distribution are \$113,997.46.⁵ Walter Decl. ¶ 40. Lead Counsel reviewed A.B. Data's invoices and

⁴ Should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made, and the Recognized Claim amount will be reduced accordingly before a distribution to that Claimant. Walter Decl. ¶ 32.

⁵ Should the estimate of fees and expenses to conduct the Distribution exceed the actual cost, the excess will be returned to the Settlement Fund and will be available for subsequent distributions to Authorized Claimants. Walter Decl. ¶ 40 n.9.

respectfully request that the Court approve all of A.B. Data's fees and expenses. Lead Counsel also request that the Court award interest on the \$3,527,228.73 in fees and expenses at the same rate as earned by the Settlement Fund given the unusual length of time that these fees and expenses have been outstanding given the appeal.

IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

As part of this motion, Lead Plaintiffs respectfully request that the Court approve the proposed plan for the distribution of the Net Settlement Fund as stated in the Walter Declaration (the "Distribution Plan"). The Distribution Plan is described further below.

A. Initial Distribution of the Net Settlement Fund

Under the proposed Distribution Plan, A.B. Data will initially distribute approximately 95% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by the Court through this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (the "Initial Distribution"). A.B. Data will maintain approximately a 5% Reserve to address any tax liability and claims administration-related contingencies that may arise. Walter Decl. ¶ 41(a). To the extent the Reserve is not depleted, the remainder will be distributed in the Second Distribution described below. *See also id.* ¶¶ 41(a) n.11, 41(d).

In the Initial Distribution, A.B. Data will distribute the Net Settlement Fund to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claim in accordance with the Court-approved Plan of Allocation. *Id.* If an Authorized Claimant's Recognized Claim is less than \$10, no distribution will be made to that Authorized Claimant. *Id.* ¶ 41(a)(1). A *pro rata* "Distribution Amount" will be calculated for all other Authorized Claimants, which shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* ¶ 41(a)(2). If an

Authorized Claimant's Distribution Amount calculates to less than \$100, the Distribution Amount for that Authorized Claimant shall be set at the lesser of (i) the Authorized Claimant's full Recognized Claim, or (ii) \$100. *Id.* ¶ 41(a)(3). These Authorized Claimants shall be referred to as "Paid-in-Full Claimants" and will not be eligible for payment in any subsequent distributions. *Id.* After deducting the payments to Paid-in-Full Claimants, the Distribution Amounts for all remaining Authorized Claimants will be recalculated based on their *pro rata* share of 95% of the remaining balance of the Net Settlement Fund. *Id.* ¶ 41(a)(4).

To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiffs propose that all distribution checks bear the notation, "CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE]." *Id.* ¶ 41(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 41(b) footnote 12 of the Walter Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all of these stale-dated checks will be available to be redistributed to other Authorized Claimants in any subsequent distribution, as described below. *Id.* ¶ 41(c).

B. Additional Distribution(s) of the Net Settlement Fund

After A.B. Data has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, but not earlier than six (6) months after the Initial Distribution, A.B. Data will, after consulting with Lead Counsel, conduct a second distribution of the Net Settlement Fund (the "Second Distribution"). Walter Decl. ¶ 41(d).

In the Second Distribution, any amount remaining in the Net Settlement Fund after the Initial Distribution, after the deduction of appropriate administration fees, taxes, costs, and expenses, will be distributed to all Authorized Claimants (other than Paid-in-Full Claimants) who cashed their Initial Distribution check, and who would receive at least \$10.00 from such distribution. *Id.*

If, after the Second Distribution, any funds remain in the Net Settlement Fund because of uncashed checks or otherwise, then A.B. Data will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. If cost-effective, subsequent distributions of any funds remaining in the Net Settlement Fund, after deduction of costs and expenses as described above and subject to the same conditions, will take place at six-month intervals thereafter. *Id.* When Lead Counsel, in consultation with A.B. Data, determine that a further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after January 2, 2021, A.B. Data will process those Claims. *Id.* ¶ 41(e). Any of these Claims that are otherwise valid, as well as any earlier received Claims for which a late adjustment was made within thirty (30) days prior to the Initial Distribution or after the Initial Distribution and which resulted in an increased Recognized Claim, may be paid in accordance with paragraph 41(f) of the Walter Declaration. *Id.*

If any funds then remain in the Net Settlement Fund after payment of any fees and expenses and estimated taxes, they will be contributed to the National Consumer Law Center (“NCLC”). *Id.* NCLC is a private, non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *See* nclc.org/about-us/about-us.html. NCLC was founded in 1969 through a federal grant to provide legal services addressed to two main goals: improving the access of low-income people to the legal system and enabling advocates to seek remedies where needed. *See* nclc.org/about-us/our-story.html. Today, NCLC continues to advocate for low-income consumers and provides many resources to civil legal aid and private attorneys representing low-income consumers. *See Id.* NCLC’s lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See Id.* “NCLC works to ensure a fair marketplace and access to justice for all consumers, including low-income people, older Americans, students, military service members and veterans,” and its “work covers a

broad range of consumer issues, including consumer protection, fair credit, debt collection, student loans, mortgages and foreclosures, financial services, bankruptcy, [and] unfair and deceptive acts and practices. . . .” nclc.org/about-us/cy-pres-awards.html. Federal courts have approved NCLC as a *cy pres* recipient of residual balances of net settlement funds in other settlements. *See, e.g., In re Nu Skin Enters., Inc., Sec. Litig.*, Master File No. 2:14-cv-00033-JNP-BCW, ECF Nos. 152-154 (D. Utah Aug. 30, 2018); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1261 (C.D. Cal. 2016), *appeal dismissed*, 2016 WL 9778633 (9th Cir. Nov. 7, 2016); *Perkins v. Am. Nat’l Ins. Co.*, 2012 WL 2839788, at *5 (M.D. Ga. July 10, 2012) (“The Court is also satisfied that The National Consumer Law Center’s mission, reputation and established track record will ensure that it will be a good steward of the grant award made to it.”).

V. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and to provide that all persons involved in any aspect of Claims processing or in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from all claims arising out of that involvement.

Accordingly, Lead Plaintiffs respectfully request that the Court: (i) release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising out of that involvement, and (ii) bar all Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent or any

other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

Courts have repeatedly approved similar provisions in connection with the distribution of settlement proceeds. *See, e.g., Wilson v. LSB Indus., Inc.*, 2020 WL 5628039, at *2 (S.D.N.Y. Sept. 21, 2020) (“All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, are barred from making any further claim against the Net Settlement Fund or the released persons beyond the amount allocated to them pursuant to this Order.”); *In re Eletrobras Sec. Litig.*, 467 F. Supp. 3d 149, 151 (S.D.N.Y. 2020) (approving substantially similar language in order authorizing distribution of settlement proceeds); *In re Cobalt Int’l Energy, Inc. Sec. Litig.*, Lead Case No. 4:14-cv-3428 (NFA), ECF No. 384, at *7 (S.D. Tex. Nov. 17, 2020) (same); *Thorpe v. Walter Inv. Mgmt., Corp.*, 2018 WL 3672266, at *2 (S.D. Fla. May 24, 2018) & 2018 WL 3672239 (S.D. Fla. June 8, 2018) (same); *Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, 2015 WL 12839121, at *1-2 (E.D. Pa. Jan. 21, 2015) (same); *Romero v. US Unwired, Inc.*, 2012 WL 12995289, at *2 (E.D. La. Mar. 8, 2012) (same).

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully submit that Lead Plaintiffs’ Motion for Approval of Distribution Plan should be granted, and the [Proposed] Order Approving Distribution Plan should be entered.

Dated: March 18, 2021

Respectfully submitted,

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