

**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	

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

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Lead Plaintiffs, Arkansas Teacher Retirement System and Fresno County Employees' Retirement Association (collectively "Lead Plaintiffs"), by and through their undersigned counsel ("Lead Counsel"), respectfully submit this Reply Memorandum in Further Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, which seeks entry of the proposed Order Approving Distribution Plan ("Class Distribution Order"). As ordered by the Court, all Claimants with Disputed Claims ("Disputing Claimants") were advised of Lead Plaintiffs' motion and given until April 30, 2021, to submit additional information. Two Disputing Claimants have responded. One other Disputing Claimant re-submitted information previously provided to the Claims Administrator, and two other Disputing Claimants have withdrawn their requests for Court review.

I. BACKGROUND

On March 18, 2021, Lead Plaintiffs filed their Motion for Approval of Distribution Plan (ECF No. 611) ("Distribution Motion") requesting that the Court enter the proposed Class Distribution Order which will, among other things: (i) approve the administrative determinations of the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), accepting and rejecting Claims submitted in the Action; and (ii) direct the 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"), while maintaining a Reserve for contingencies that may arise.

As set forth in the Walter Declaration (ECF No. 613) filed in support of the Distribution Motion, while A.B. Data received and processed 486,257 Claims through January 2, 2021, there were only fifty-eight (58) Disputed Claims with an outstanding request for Court review of the rejection of their Claims. *See* Walter Decl. ¶¶ 7, 27-30, and Exhibit D to the Walter Decl. (ECF No. 613-4) ("Disputed Claims Chart"). Pursuant to the Court's Order Directing Notice to Disputing Claimants (ECF No. 616), Lead Counsel provided each of the 58 Disputing Claimants with a copy of the notice of motion, the memorandum of law in support, the Walter Declaration

(without the voluminous exhibits), the Disputed Claims Chart, and the proposed order. Disputing Claimants were advised that they could submit information in support of their dispute to the Court and Lead Counsel on or before April 30, 2021. *See* Declaration of Nicole M. Zeiss in Further Support of Distribution Motion (“Zeiss Decl.”) ¶ 2.

In response, two Disputing Claimants—James P. DeFranco Jr. (Disputed Claim No. 1) and Thomas Kapusta (Disputed Claim No. 45)—have now withdrawn their requests for Court review. *See id.* Exhibits 1 and 2, filed herewith. Two other Disputing Claimants—Maritza Fischle-Epstein (Disputed Claim No. 7) and Jordan A. Blit (Disputed Claim No. 34)—responded to Lead Plaintiffs’ Distribution Motion via email, but they did not submit any new information that would revise A.B. Data’s evaluation and rejection of their Claims. *See id.* Exhibits 3 and 4. Disputing Claimant Shashadhar M. Mohapatra (Disputed Claim No. 23) submitted a response, including a letter that she had previously submitted to the Claims Administrator, and said she had nothing more to add. *See id.* Exhibit 5. When the procedures and basis for the rejection were discussed with this Claimant, she said she understood the rejection and had submitted the response because she thought it was required but would not be submitting anything to the Court. *See id.* ¶ 7.

As discussed below and as set forth in the previously filed Disputed Claims Chart, Disputing Claimants Fischle-Epstein and Blit do not have a Recognized Claim and the rejection of their Claims was appropriate.

II. ARGUMENT

THE COURT SHOULD APPROVE THE CLAIMS ADMINISTRATOR’S DETERMINATION TO REJECT THE CLAIMS SUBMITTED BY THE DISPUTING CLAIMANTS

A. Background Regarding Disputing Claimant Fischle-Epstein

Disputing Claimant Fischle-Epstein (Disputed Claim No. 7 (Claim No. 49255128)) submitted a Claim reflecting the following transactions in Facebook Class A common stock:

<u>Date of Transaction</u>	<u>Transaction Type</u>	<u>Number of Shares</u>	<u>Price per Share</u>	<u>Total</u> (excluding commission)	<u>Notice Reference</u>
5/18/2012	Purchase	100	\$42.00	\$4,200.00	¶ 67(E)
2/23/2018	Unsold Holdings	100	\$183.29		¶ 67(E)

See Disputed Claims Chart at 7.

A.B. Data evaluated Disputed Claim No. 7 in accordance with the Court-approved Plan of Allocation, and A.B. Data's rejection of this Disputed Claim is proper and correct. This Claimant's transactions reflected a significant gain. Ms. Fischle-Epstein purchased 100 shares of Facebook common stock on May 18, 2012, at \$42.00 per share and held all 100 shares of Facebook common stock at the close of trading on February 23, 2018. Pursuant to paragraph 67(E) of the Plan of Allocation, for each share of Facebook common stock "[s]till held as of the close of trading on February 23, 2018, a Recognized Gain Amount shall be calculated which shall be \$183.29, the closing price of Facebook Common Stock on February 23, 2018, *minus* the purchase/acquisition price." Notice ¶ 67(E). Ms. Fischle-Epstein's Recognized Gain Amount for Disputed Claim No. 7 is \$14,129.00. A Claimant's "Net Recognized Loss Amount," pursuant to paragraph 69 of the Plan of Allocation, is the sum of her Recognized Loss Amounts for all purchases or acquisitions of Facebook common stock during the Class Period *less* the sum of her Recognized Gain Amounts for all purchases or acquisitions of Facebook common stock during the Class Period. "If this amount is zero or negative, the Claimant's Net Recognized Loss Amount shall be zero and he, she, or it shall not be eligible for any recovery in the Settlement." Notice ¶ 69. Because the Net Recognized Loss Amount for Disputed Claim No. 7 ($\$0 - \$14,129.00 = -\$14,129.00$) is a negative

number, Ms. Fischle-Epstein's Net Recognized Loss is set at zero and she "shall not be eligible for any recovery in the Settlement." *Id.*

During the claims administration process, Ms. Fischle-Epstein received a rejection letter explaining several defects in her Claim and advising her of the right to request Court review of A.B. Data's determination. *See* Distribution Motion at 4-5, Walter Decl. ¶¶ 20, 23, and Disputed Claims Chart at 7. Ms. Fischle-Epstein responded that she had "purchased shares on opening day..." Disputed Claims Chart at 7. In response to the Distribution Motion, Ms. Fischle-Epstein submitted a letter and account statement to Lead Counsel reiterating that she purchased Facebook common stock on May 18, 2012. *See* Zeiss Decl. Ex. 3. However, her purchase is not in dispute and the Disputing Claimant has not provided any additional information that would change the calculation of her Claim and A.B. Data's determination to reject Disputed Claim No. 7.

B. Background Regarding Disputing Claimant Blit

Disputing Claimant Blit (Disputed Claim No. 34 (Claim No. 50111888)) submitted a Claim reflecting the following transactions in Facebook Class A common stock:

<u>Date of Transaction</u>	<u>Transaction Type</u>	<u>Number of Shares</u>	<u>Price per Share</u>	<u>Total</u> (excluding commission)	<u>Notice Reference</u>
5/18/2012	Purchase	100	\$40.00	\$4,000.00	¶ 67(E)
2/23/2018	Unsold Holdings	100	\$183.29		¶ 67(E)

See Disputed Claims Chart at 34.

A.B. Data evaluated Disputed Claim No. 34 in accordance with the Court-approved Plan of Allocation, and A.B. Data's rejection of this Disputed Claim is proper and correct. This Claimant's transactions reflected a significant gain. Mr. Blit purchased 100 shares of Facebook

common stock on May 18, 2012, at \$40.00 per share and held all 100 shares of Facebook common stock at the close of trading on February 23, 2018. Pursuant to paragraph 67(E) of the Plan of Allocation, for each share of Facebook common stock “[s]till held as of the close of trading on February 23, 2018, a Recognized Gain Amount shall be calculated which shall be \$183.29, the closing price of Facebook Common Stock on February 23, 2018, *minus* the purchase/acquisition price.” Notice ¶ 67(E). Mr. Blit’s Recognized Gain Amount for Disputed Claim No. 34 is \$14,329.00. A Claimant’s “Net Recognized Loss Amount,” pursuant to paragraph 69 of the Plan of Allocation, is the sum of his Recognized Loss Amounts for all purchases or acquisitions of Facebook common stock during the Class Period *less* the sum of his Recognized Gain Amounts for all purchases or acquisitions of Facebook common stock during the Class Period. “If this amount is zero or negative, the Claimant’s Net Recognized Loss Amount shall be zero and he, she, or it shall not be eligible for any recovery in the Settlement.” Notice ¶ 69. Because the Net Recognized Loss Amount for Disputed Claim No. 34 ($\$0 - \$14,329.00 = -\$14,329.00$) is a negative number, Mr. Blit’s Net Recognized Loss is set at zero and he “shall not be eligible for any recovery in the Settlement.” *Id.*

During the claims administration process, Mr. Blit received a rejection letter explaining why A.B. Data rejected the Claim and advising him of the right to request Court review of A.B. Data’s determination. *See* Distribution Motion at 4-5, Walter Decl. ¶¶ 20, 23, and Disputed Claims Chart at 34. Mr. Blit responded that he “purchased 100 shares on 5/18/12....” Disputed Claims Chart at 34. In response to the Distribution Motion, Mr. Blit submitted a letter to Lead Counsel acknowledging that he “was still holding the stock at” the close of trading on February 23, 2018. *See* Zeiss Decl. Ex. 4. Nonetheless, he appears to believe that because he did not sell his shares and realize the gain, he cannot have a Recognized Gain Amount and therefore his Claim should

be allowed. Mr. Blit's interpretation of the Court-approved Plan of Allocation is incorrect and he has not provided any additional information that would change the calculation of his Claim and A.B. Data's determination to reject Disputed Claim No. 34.

C. A.B. Data's Rejections of the Disputed Claims Are Proper and Correct Under the Plan of Allocation

A.B. Data's rejections of the Claims submitted by Disputing Claimants Fischle-Epstein and Blit as outlined above are proper and correct. A.B. Data's calculations show that each of these Disputing Claimants held all their eligible shares of Facebook common stock through at least February 23, 2018, at which time the price of the Facebook common stock they held far exceeded the price at which they purchased it. This resulted in a Recognized Gain Amount under the Plan of Allocation, which, in turn, resulted in a Net Recognized Loss Amount of zero and a Recognized Claim of zero. Notice ¶¶ 69, 70. Because the Disputing Claimants do not have a Recognized Claim, their Disputed Claims are ineligible to recover from the Net Settlement Fund. Accordingly, A.B. Data's recommendations to reject Disputed Claim Numbers 7 and 34 should be approved.

III. CONCLUSION

For the foregoing reasons, as well as for all of the reasons set forth in the opening papers filed in support of the Distribution Motion, Lead Plaintiffs respectfully request that the Court enter the proposed Class Distribution Order adopting A.B. Data's administrative determinations accepting and rejecting Claims submitted in the Action (including A.B. Data's determinations to reject the Disputed Claims submitted by Disputing Claimants Fischle-Epstein and Blit and the other Disputed Claims discussed in the Disputed Claims Chart) and approving the proposed plan for distribution of the Net Settlement Fund.

Dated: May 21, 2021

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2021, I caused the foregoing Reply Memorandum in Further Support of Lead Plaintiffs' Motion for Approval of Distribution Plan and the accompanying Declaration of Nicole M. Zeiss in Further Support of Distribution Motion to be served electronically on all ECF participants. In addition, I caused these documents to be served on Disputing Claimants Maritza Fischle-Epstein and Jordan A. Blit by email and USPS First-Class Mail at the addresses previously provided by these Disputing Claimants in connection with their claims.

/s/ John Rizio-Hamilton
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