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11	UNITED STATES DISTRICT COURT		
12	NORTHERN DISTRICT OF CALIFORNIA		
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14	IN RE FACEBOOK, INC. SHAREHOLDER DERIVATIVE PRIVACY LITIGATION	LEAD CASE NO. 4:18-CV-01792-HSG	
15	DERIVATIVE PRIVACY LITIGATION	ASSOCIATED CASES: NOS. 4:18-CV- 01834-HSG, 4:18-CV-01893-HSG, 4:18-CV-	
16		01929-HSG, 4:18-CV-02011-HSG	
17	This Document Relates To:	FACEBOOK, INC.'S REPLY	
18	ALL ACTIONS	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF	
19	ALL ROTIONS	MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED CONSOLIDATED	
20		SHAREHOLDER DERIVATIVE COMPLAINT PURSUANT TO FED. R.	
21		CIV. P. 23.1 OR, IN THE ALTERNATIVE,	
22		TO STAY	
23		Hearing: Date: June 25, 2020	
24		Time: 2:00 P.M. Location: Courtroom 2, 4th Floor	
25		Judge: Hon. Haywood S. Gilliam, Jr.	
26		Data First Action Filed: March 22, 2019	
27		Date First Action Filed: March 22, 2018	
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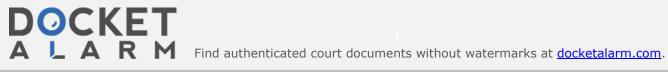
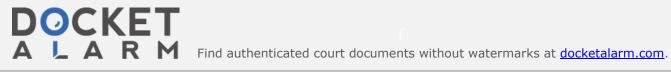


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I. PRELIMINARY STATEMENT

Plaintiffs' Opposition confirms that they have utterly failed to meet the strict requirement for pleading that they were excused from making a demand on Facebook's Board of Directors before filing this lawsuit. Plaintiffs argue first that demand is futile because Facebook's Chairman and CEO, Mr. Zuckerberg, is an "interested" director, and the other directors are so beholden to him that they cannot impartially consider a demand to assert claims against him. But this Court already held that the identical allegations in Plaintiffs' previous complaint failed to establish that *any* of the directors are incapable of considering a demand to bring claims against Mr. Zuckerberg. ECF No. 113 (the "Order") at 20-21.

Plaintiffs fare no better on their only other theory: that a majority of the Facebook directors at the time Plaintiffs filed their amended complaint (the "Demand Board") faced a substantial likelihood of liability for defrauding Facebook under the federal securities laws. Plaintiffs ask this Court to credit the head-scratching argument that Facebook, acting through its directors, was deceived by allegedly false statements the directors supposedly caused Facebook to make. This theory not only defies common sense; it lacks any supporting facts, let alone the particularized facts required under Rule 23.1 and the PSLRA to plead that Facebook's directors are substantially likely to be held liable under the securities laws. Plaintiffs have no response to the fact that the vast majority of the allegedly false statements are not even claimed to have been made or approved by a majority of Facebook's Directors. And Plaintiffs do not contest that their pleading fails to satisfy the heightened standard for pleading scienter under the PSLRA for each director, let alone a majority of the Demand Board.

Recognizing that they cannot plead, as they must, that a majority of the Demand Board faces a substantial likelihood of liability for their perplexing "derivative securities" claims, Plaintiffs devote most of their Opposition to arguing that the Demand Board faces liability for a breach of fiduciary duty claim not even at issue in this case. Plaintiffs' attempt to distract the Court from their own pleading should be rejected. The relevant question is whether it would have been futile for Plaintiffs to make a demand on the Facebook Board because a majority of the Board faces a substantial likelihood of liability for the claims asserted in Plaintiffs' complaint. Whether the Board



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