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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FACEBOOK, INC.

Defendant.

Case No. 3:19-cv-04241-JD

**Hearing Date: April 14,
2022**

Time: 10:00 am PST

Courtroom: 11

Judge: James Donato

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S
NOTICE OF MOTION, MOTION, AND MEMORANDUM OF
LAW IN SUPPORT THEREOF FOR AN ORDER APPROVING
A DISTRIBUTION PLAN FOR THE FAIR FUND**

NOTICE OF MOTION:

PLEASE TAKE NOTICE that, on April 14, 2022, at 10:00 am PST or as soon thereafter as possible in Courtroom 11, of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, 19th Floor, San Francisco, California Plaintiff, the United States Securities and Exchange Commission (“Commission” or the “SEC”) will upon the accompanying Motion, Memorandum, and Proposed Order, move this Court for the following

1 relief: an Order Approving the Distribution Plan.

2 **MOTION**

3 Plaintiff, the Commission, moves the Court for an order approving a plan to distribute \$100
4 million to compensate injured Facebook, Inc. (“Facebook” or “Defendant”) investors who
5 purchased or acquired Facebook common stock from January 28, 2016 and March 19, 2018 for
6 harm resulting from Facebook’s alleged misleading statements regarding the misuse of its users’
7 data (the “Distribution Plan”). The Distribution Plan is included as Exhibit 1. A Memorandum of
8 Law in support of this Motion is set forth below.

9 **MEMORANDUM OF LAW**

10 **A. Background**

11 On July 24, 2019, the SEC filed a complaint (the “Complaint”) (ECF No. 1) against
12 Facebook in which the SEC alleged, among other things, that Facebook made misleading
13 statements in its public filings from 2016 until mid-March 2018 about the misuse of its users’ data.
14 As a result of Defendant’s conduct, including the misleading statements made in Facebook’s
15 periodic filings with the SEC, the SEC asserted violations of Sections 17(a)(2) and (3) of the
16 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§77q(a)(2) and 77q(a)(3)], violations of
17 Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78m(a)] and
18 Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-
19 13], and violations of Rule 13a-15(a) of the Exchange Act [17 C.F.R. §240.13a-15(a)]. On August
20 22, 2019, the Court entered an agreed-upon final judgment (“Final Judgment”) (ECF No. 11),
21 ordering Facebook to pay a \$100 million civil penalty, pursuant to Section 20(d) of the Securities
22 Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].
23 Defendant has since paid the entire amount of the Final Judgment, which resides in an interest-
24 bearing account at the U.S. Treasury’s Bureau of Fiscal Service (“BFS”). On August 17, 2020,
25 the Court entered an order establishing a Fair Fund, appointing a tax administrator and distribution
26 agent to administer the Fair Fund, and authorizing the Commission to approve and arrange
27 payment of tax obligations and the fees and expenses of the tax administrator without further order

1 of the Court. (ECF No. 14). The distribution agent, in consultation with Commission staff, has
2 prepared a Distribution Plan for the Fair Fund, which the Commission now submits to this Court
3 for its approval.

4 **B. The Court Should Approve the Distribution Plan**

5 Nearly every plan to distribute funds obtained in a Commission enforcement action
6 requires choices to be made regarding the allocation of funds between and among potential
7 claimants within the parameters of the amounts recovered. In recognition of the difficulty of this
8 task, Courts historically have given the Commission significant discretion to design and set the
9 parameters of a distribution plan. *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991); *see SEC v.*
10 *Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir.
11 1989). In evaluating a proposed distribution plan, a court should “decide whether, in the aggregate,
12 the plan is equitable and reasonable.” *Id.* “Unless the consent decree specifically provides
13 otherwise, once the District Court satisfies itself that the distribution of proceeds in a proposed
14 SEC distribution plan is fair and reasonable, its review is at an end.” *Official Committee of*
15 *Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006), citing *Wang*, 944
16 F.2d at 85.

17 For the reasons articulated below, the Commission submits that the proposed Distribution
18 Plan for the Fair Fund constitutes a fair and reasonable allocation of the funds available for
19 distribution and should be approved.

20 **C. The Commission’s Proposed Distribution Plan Provides a Fair and Reasonable**
21 **Allocation of the Fair Fund**

22 This Distribution Plan is designed to compensate eligible claimants for recognized losses
23 suffered from purchases or acquisitions of Facebook common stock during the relevant period,
24 which is January 28, 2016 through March 19, 2018, inclusive, due to the alleged misconduct of
25 the Defendant. Claimants who did not purchase shares of the security during the relevant period
26 did not purchase shares at prices inflated by the Defendant’s violative conduct and are ineligible
27 to recover under this plan.

1 A first-in, first-out method will be used to determine losses, aggregating the
2 gains and losses for all transactions that occurred during the relevant period, based on the dates
3 of each transaction. Facebook common stock is the only security eligible for recovery under this
4 Distribution Plan. Option contracts to purchase or sell Facebook common stock are not
5 securities eligible for recovery under the Distribution Plan.

6 If the net available fair fund equals or exceeds the sum of the recognized losses of all
7 eligible claimants, each eligible claimant will receive a distribution payment equal to the amount
8 of his, her, or its recognized loss. If the net available fair fund is less than the sum of the
9 recognized losses of all eligible claimants, each eligible claimant will receive a distribution
10 payment equal to their *Pro Rata* Share.

11 If an eligible claimant's calculated distribution payment is less than \$10.00, that eligible
12 claimant will not receive a payment and the funds will be distributed to other eligible claimants
13 whose distribution payments are equal to or greater than \$10.00.

14 If, after the distribution is complete, all administrative costs of the Fair Fund have been
15 satisfied, and funds remain in the Fair Fund, the Commission staff, in consultation with the
16 Distribution Agent, will return to the Court with a recommended approach regarding the
17 proposed disposition of the remaining funds.

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1 WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this
2 Court enter the proposed Order approving a Distribution Plan and grant such other relief as the
3 Court deems just and proper.
4

5 Dated: March 14, 2022

6 Respectfully submitted,

7 /s/ Michael S. Lim

8 Michael S. Lim

9 Attorney for Plaintiff

10 SECURITIES AND EXCHANGE

11 COMMISSION

12 Division of Enforcement, Office of Distributions

13 100 F. Street, N.E.

14 Washington, D.C. 20549-5876

15 Tel: (202) 551-4659

16 Email: limm@sec.gov

1 **Certificate of Service**

2 I, Michael S. Lim, am a citizen of the United States, over 18 years of age and am a party
3 to this action.

4 On March 14, 2022, the following:

5 **Notice of Motion and Motion to Approve Distribution Plan**

6 and

7 **Proposed Order to Approve Distribution Plan**

8 were filed with the Clerk of the Court via CM/ECF in SEC v. Facebook, Inc., Case No. 3:19-cv-
9 04241-JD.

10 Notice of this filing will be sent electronically to all registered parties by operation of the
11 Court's electronic filing system.

12
13 I served the foregoing in the SEC v. Facebook, Inc. matter via U.S. Mail to the following:

14 Facebook, Inc. c/o Benjamin Neaderland, Esq.

15 Wilmer Cutler Pickering Hale and Dorr LLP

16 1875 Pennsylvania Avenue, N.W.

17 Washington, DC 20006

18 I declare under penalty of perjury that the statements made above are true and correct.

19 Executed in Washington, DC on March 14, 2022.

20
21 _____
22 Michael S. Lim