

12 CV 4291

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLVIA GREGORCZYK, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

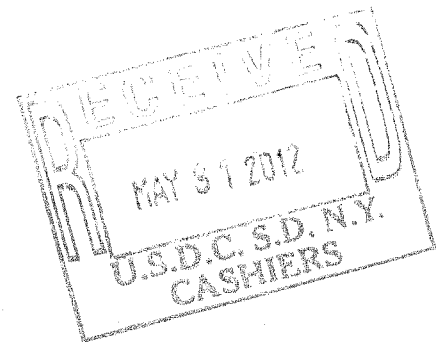
FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B.
BOWLES, JAMES W. BREYER, DONALD E.
GRAHAM, REED HASTINGS, PETER A.
THIEL, MORGAN STANLEY & CO. LLC, J.P
MORGAN SECURITIES LLC, GOLDMAN,
SACHS & CO., MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED,
BARCLAYS CAPITAL INC., ALLEN &
COMPANY LLC, CITIGROUP GLOBAL
MARKETS INC., CREDIT SUISSE
SECURITIES (USA) LLC, DEUTSCHE BANK
SECURITIES INC., RBC CAPITAL MARKETS
LLC, and WELLS FARGO SECURITIES LLC,

Defendants.

Case No. _____

**CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED



Sylvia Gregorczyk (“Plaintiff”), by her attorneys, on behalf of herself and all others similarly situated, alleges the following based upon the investigation of Plaintiff’s counsel, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge. The investigation of counsel included, among other things, a review of Facebook, Inc.’s (“Facebook” or the “Company”) public filings with the United States Securities and Exchange Commission (“SEC”), media and news reports about the Company, and other publicly available data, including, but not limited to, publicly available trading data relating to the price and trading volume of Facebook Class A common stock.

I. NATURE OF THE ACTION

1. This is a federal securities class action alleging violations under Sections 11, 12 and 15 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. §§77k, 77l and 77o) brought on behalf of all persons or entities who purchased the shares of Facebook's Class A common stock pursuant to and/or traceable to the Company's registration statement filed with the SEC on Form S-1/A on May 16, 2012 ("Registration Statement") and prospectus dated May 17, 2012 filed with the SEC on May 18, 2012 ("Prospectus") (collectively, the "Registration Statement") issued in connection with Facebook's May 18, 2012 initial public offering ("IPO") through May 21, 2012.

II. PARTIES

2. Plaintiff acquired Class A common stock of Facebook pursuant or traceable to the IPO and Registration Statement, as set forth in the accompanying certification, and has been damaged thereby.

3. Defendant Facebook is headquartered at 1601 Willow Road, Menlo Park, California 94025. Facebook's Class A common stock trades on the NASDAQ under the symbol "FB".

4. Defendant Mark Zuckerberg ("Zuckerberg") is the Chairman and Chief Executive Officer of the Company. Zuckerberg signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

5. Defendant David A. Ebersman ("Ebersman") is the Chief Financial Officer of the Company. Ebersman signed or authorized the signing of the Registration Statement that

contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

6. Defendant David M. Spillane (“Spillane”) is the Chief Accounting Officer. Spillane signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

7. Defendant Marc L. Andreessen (“Andreessen”) is a Director of the Company. Andreessen signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

8. Defendant Erskine B. Bowles (“Bowles”) is a Director of the Company. Bowles signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

9. James W. Breyer (“Breyer”) is a Director of the Company. Breyer signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

10. Defendant Donald E. Graham (“Graham”) is a Director of the Company. Graham signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

11. Defendant Reed Hastings (“Hastings”) is a Director of the Company. Hastings

signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

12. Defendant Peter A. Thiel (“Thiel”) is a Director of the Company. Thiel signed or authorized the signing of the Registration Statement that contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

13. The defendants referenced in ¶¶4-12 are referred to herein as the “Individual Defendants.”

14. Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”) was an underwriter of the Company’s IPO. Morgan Stanley’s worldwide headquarters is located at 1585 Broadway, New York, New York 10036.

15. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) was an underwriter of the Company’s IPO. JP Morgan has an office at 383 Madison Avenue, New York, New York 10179.

16. Defendant Goldman, Sachs & Co. (“Goldman Sachs”) was an underwriter of the Company’s IPO. Goldman Sachs has an office at 200 West Street, New York, New York 10282.

17. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) was an underwriter of the Company’s IPO. Merrill Lynch has an offices at 2 World Financial Center, 225 Liberty Street, New York, New York, NY 10281.

18. Defendant Barclays Capital Inc. (“Barclays”) was an underwriter of the Company’s IPO. Barclays has an office at 200 Park Avenue, New York, New York 10166.

19. Defendant Allen & Company LLC (“Allen”) was an underwriter of the Company’s IPO. Allen has an office at 711 5th Avenue, New York, New York 10022.

20. Defendant Citigroup Global Markets Inc. (“Citigroup”) was an underwriter of the Company’s IPO. Citigroup has an office at 388 Greenwich Street, New York, New York 10013.

21. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) was an underwriter of the Company’s IPO. Credit Suisse has an office at 11 Madison Avenue, New York, New York 10010.

22. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank”) was an underwriter of the Company’s IPO. Deutsche Bank has an office at 60 Wall Street, New York, New York 10005.

23. Defendant RBC Capital Markets LLC (“RBC”) was an underwriter of the Company’s IPO. RBC has offices in New York at One Liberty Plaza, 165 Broadway, New York, NY 10006 and 3 World Financial Center, 200 Vessey Street, New York, New York 10281.

24. Defendant Wells Fargo Securities LLC (“Wells Fargo”) was an underwriter of the Company’s IPO. Wells Fargo has an office at 375 Park Avenue, New York, New York.

25. Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, Merrill Lynch, Barclays, Allen, Citigroup, Credit Suisse, Deutsche Bank, RBC and Wells Fargo referenced in ¶¶ 14-24 are referred to herein as the “Underwriter Defendants”.

26. Facebook, the Individual Defendants and the Underwriter Defendants are referred to herein as the “Defendants.”

III. JURISDICTION AND VENUE

27. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 22 of the Securities Act.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because certain of the defendants maintain an office in this District and many of the acts and practices complained of herein occurred in substantial part in this District.

29. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

IV. THE REGISTRATION STATEMENT'S UNTRUE STATEMENTS OF MATERIAL FACTS AND MATERIAL OMISSIONS

30. According to the Registration Statement, Facebook's mission is to make the world more open and connected and the Company's top priority is purportedly to build useful and engaging products that enable individuals to connect with friends, discover and learn, express themselves, control what they share and with whom they share it, experience Facebook across the web, and stay connected with friends on mobile devices.

31. On May 18, 2012, Facebook completed its IPO of 421,233,615 shares of Class A common stock at \$38.00 per share pursuant to the Registration Statement for estimated proceeds of approximately \$16 billion, not including the underwriter's over-allotment.

32. The Registration Statement represented, among other things, the following about Facebook's business and operations:

Growth in use of Facebook through our mobile products, where our ability to monetize is unproven, as a substitute for use on personal computers *may* negatively affect our revenue and financial results.

* * *

We believe this increased usage of Facebook on mobile devices has contributed to the recent trend of our daily active users (DAUs) increasing more rapidly than the increase in the number of ads delivered. *If users increasingly access Facebook mobile products as a substitute for access through personal computers, and if we are unable to successfully implement monetization strategies for our mobile users, or if we incur excessive expenses in this effort, our financial performance and ability to grow revenue would be negatively affected.*

* * *

Based upon our experience in the second quarter of 2012 to date, the trend we saw in the first quarter of DAUs increasing more rapidly than the increase in number of ads delivered has continued. We believe this trend is driven in part by increased usage of Facebook on mobile devices where we have only recently begun showing an immaterial number of sponsored stories in News Feed, and in part due to certain pages having fewer ads per page as a result of product decisions . . . Growth in use of Facebook through our mobile products, where our ability to monetize is unproven, as a substitute for use on personal computers *may negatively affect our revenue and financial results*"

(emphasis added).

33. The statements in ¶32 that use of Facebook through the Company's mobile products as a substitute for use on personal computers may negatively affect the Company's revenue and financial results were untrue statements of material fact and/or omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading because, at the time of the IPO, users access of Facebook through mobile products had already materially negatively affected Facebook's revenue and earnings and caused Facebook to materially reduce its revenue and earnings estimates for the quarter ending June 30, 2012 and for full years 2012 and 2013.

34. Indeed, prior to the IPO, certain of the Underwriter Defendants materially lowered their revenue and earning estimates, for Facebook's quarter ending June 30, 2012, and

full years 2012 and 2013, but the material information about Facebook's revenue and earnings was not disclosed in the Registration Statement.

35. Reportedly, prior to the IPO, the second quarter 2012 revenue estimates were lowered by Morgan Stanley from \$1.175 billion to \$1.111 billion, by JP Morgan from \$1.182 billion to \$1.096 billion and by Goldman Sachs from \$1.207 billion to \$1.125 billion. Further, full year 2012 revenue estimates were lowered by Morgan Stanley from \$5.036 billion to \$4.854 billion, by JP Morgan from \$5.044 billion to \$4.839 billion and by Goldman Sachs from \$5.169 billion to \$4.852 billion.

36. On May 22, 2012, reports began to circulate that the increased usage of Facebook on mobile devices that contributed to the trend of DAUs increasing more rapidly than the increase in the number of ads delivered had already materially negatively affected Facebook's financial performance and caused Facebook to materially reduce its revenue and earnings estimates for the quarter ending June 30, 2012 and for full years 2012 and 2013.

37. On May 22, 2012, the price of Facebook's Class A common stock declined from a closing price on May 21, 2012 of \$34.03 per share to close at \$31 per share, a decline of \$3.03 per share or approximately 9%, down more than 18% from the \$38 per share IPO price on May 18, 2012.

38. As of May 30, 2012, Facebook's Class A common stock closed at \$28.19 per share.

V. CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all persons or entities who purchased the shares of Facebook's Class A common stock pursuant to and/or traceable to the Registration Statement

issued in connection with Facebook's May 18, 2012 IPO through May 21, 2012. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

40. The members of the Class are so numerous that joinder of all members is impracticable. Facebook sold more than 421 million shares of Class A common stock in the IPO. Shares of Facebook Class A common stock trade on the NASDAQ. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Company or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

41. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

42. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the Securities Act was violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public in the Registration Statement misrepresented material facts about the business, operations and management of Facebook; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

43. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VI. NO SAFE HARBOR

44. The statutory safe harbor provided for forward-looking statements does not apply to any of the allegedly false statements pleaded in this Complaint because these statements were made in connection with an initial public offering and, pursuant to the Private Securities Litigation Reform Act of 1995, such statements are excluded from safe harbor protection. 15 U.S.C. §77z-2(b)(2)(D).

COUNT I Violations of Section 11 of the 1933 Act Against All Defendants

45. Plaintiff repeats and realleges each and every allegation contained above.

46. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants for strict liability and negligence.

47. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required or necessary to be stated therein to make the statements therein not misleading.

48. Facebook is the registrant for the IPO. As issuer of the Class A common stock Facebook is strictly liable to Plaintiff and to the members of the Class who purchased Class A common stock pursuant and/or traceable to the Registration Statement for the materially untrue statements and omissions alleged herein.

49. The Individual Defendants signed the Registration Statement or authorized it to be signed on their behalf and were responsible for the contents and dissemination of the Registration Statement.

50. The Underwriter Defendants were underwriters of the IPO and owed to the purchasers of the Class A common stock acquired through the Registration Statement the duty to make a reasonable and diligent investigation of the statements contained therein at the time the Registration Statement became effective in order to ensure that the statements were correct and that there were no omissions of material facts which would make the Registration Statement misleading.

51. Facebook had a duty to “[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” Item 303 of SEC Regulation S-K, 17 C.F.R. § 229.303(a)3(ii). Facebook had a disclosure duty where a trend or uncertainty is known to management and would cause reported financial information not to be necessarily

indicative of future operating results or future financial condition. Instruction 3 to 17 C.F.R. § 229.303(a).

52. By reason of the conduct herein alleged, each defendant violated Section 11 of the Securities Act.

53. Plaintiff acquired shares of Facebook Class A common stock pursuant or traceable to the Registration Statement for the IPO as set forth in the attached certification.

54. Plaintiff and the Class have sustained damages. The value of Facebook's Class A common stock has declined substantially subsequent to and due to Defendants' violations.

55. At the time of their purchases of shares of Facebook's Class A common stock, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to May 22, 2012. Less than one year has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based to the time that plaintiff filed this complaint. Less than three years elapsed between the time that the securities upon which this Count is brought were offered to the public and the time Plaintiff filed this complaint.

COUNT II
Violations of Section 12 of the 1933
Act Against Goldman Sachs

56. Plaintiff repeats and realleges each and every allegation contained above.

57. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. §77(a)(2), on behalf of the Class, against Goldman Sachs.

58. Goldman Sachs was a seller and offeror and/or solicitor of purchasers of the Class A common stock offered pursuant to the Registration Statement.

59. Plaintiff purchased her shares from Defendant Goldman Sachs.

60. As set forth above, the Registration Statement contained untrue statements of material fact, omitted to state other facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein. Goldman Sachs' actions of solicitation included preparing the inaccurate and misleading Registration Statement and participating in efforts to market the IPO to investors.

61. Goldman Sachs owed to the purchasers of Facebook Class A common stock, the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement to ensure that such statements were accurate and that they did not contain any misstatement or omission of material fact. Goldman Sachs, in the exercise of reasonable care, should have known that the Registration Statement contained misstatements and omissions of material fact.

62. Plaintiff and the other members of the Class purchased or otherwise acquired Facebook Class A common stock pursuant to the Registration Statement, and neither plaintiff nor the other Class members knew, or in the exercise of reasonable diligence could have known, of the untruths, inaccuracies and omissions contained in the Registration Statement.

63. Plaintiff, individually and on behalf of the Class, hereby offers to tender to Goldman Sachs those shares of Class A common stock that plaintiff and the other Class members continue to own, in return for the consideration paid for those shares together with interest thereon. Class members who have sold their shares are entitled to rescissory damages.

COUNT III
Violations of Section 15 of the 1933 Act
Against the Individual Defendants

64. Plaintiff repeats and realleges each and every allegation contained above.

65. This Count is brought pursuant to Section 15 of the Securities Act against the Individual Defendants.

66. Each of the Individual Defendants was a control person of Facebook by virtue of his position as a director and/or senior officer of Facebook. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of Facebook.

67. As a control person of Facebook, each of the Individual Defendants is liable jointly and severally with and to the same extent as Facebook for its violation of Section 11 of the Securities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding damages; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: May 31, 2012

KAPLAN FOX & KILSHEIMER LLP

By:  _____

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Attorneys for Plaintiff Sylvia Gregorczyk



**CERTIFICATION OF NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS**

I, Sylvia Gregorczyk, hereby certify and swear as follows:

1. I have reviewed a Complaint against Facebook, Inc. and certain of its executives, directors and investment banks alleging violations of the securities laws and authorize its filing;
2. I am willing to serve as a representative party on behalf of a class, or to be a member of a group representing a class, including providing testimony at deposition and trial, if necessary;
3. I have not within the 3-year period preceding the date hereof sought to serve, or served, as a representative party on behalf of a class in an action brought under the federal securities laws, unless noted hereafter.

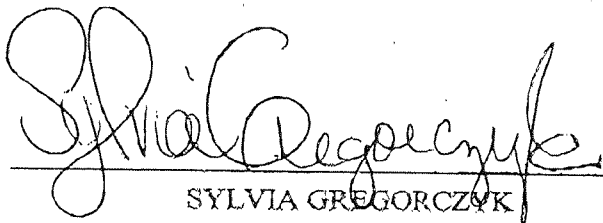
The following is a description of my transactions during the class period specified in the Complaint in the common stock of Facebook, Inc.:

<u>Transaction Type</u>	<u>Trade Date</u>	<u>Number of Shares</u>	<u>Price Per Share</u>
Purchase	5/18/2012	100	\$38.00

4. I did not purchase common stock of Facebook, Inc. at the direction of my counsel or in order to participate in any private action under the federal securities laws;
5. I will not accept any payment for serving as a representative party on behalf of a class beyond my pro rata share of any recovery, except as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 24 May, 2012


SYLVIA GREGORCZYK