

12 CIV 4312

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER BRINCKERHOFF, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

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, BLAYLOCK
ROBERT VAN LLC, BMO CAPITAL MARKETS
CORP., C.L. KING & ASSOCIATES, INC.,
CABRERA CAPITAL MARKETS, LLC,
CASTLEOAK SECURITIES, L.P., COWEN AND
COMPANY, LLC, E*TRADE SECURITIES LLC,
ITAU BBA USA SECURITIES, INC., LAZARD
CAPITAL MARKETS LLC, LEBENTHAL & CO.,
LLC, LOOP CAPITAL MARKETS LLC, M.R.
BEAL & COMPANY, MACQUARIE CAPITAL
(USA) INC., MURIEL SIEBERT & CO., INC.,
OPPENHEIMER & CO., INC., PACIFIC CREST
SECURITIES LLC, PIPER JAFFRAY & CO.,
RAYMOND JAMES & ASSOCIATES, INC.,
SAMUEL A RAMIREZ & COMPANY, INC.,
STIFEL, NICOLAUS & COMPANY,
INCORPORATED, THE WILLIAMS CAPITAL
GROUP, L.P., and WILLIAM BLAIR & COMPANY,
L.L.C.,

Defendants.

Civil Action No.

CLASS ACTION

COMPLAINT FOR
VIOLATION OF THE
FEDERAL SECURITIES
LAWS

JURY TRIAL DEMANDED



Plaintiff Peter Brinckerhoff (“Plaintiff”), by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Facebook, Inc. (“Facebook” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Facebook; and (c) review of other information concerning Facebook.

NATURE AND SUMMARY OF THE ACTION

1. This is a class action on behalf of persons and/or entities who purchased or otherwise acquired the common stock of Facebook pursuant or traceable to the Company’s initial public offering (the “IPO” or the “Offering”).

2. Facebook operates as a social networking company worldwide.

3. The claims in this action arise from the materially false and/or misleading Registration Statement issued in connection with the Offering. In the IPO, the Company offered for sale 421,233,615 shares of common stock at the price of \$38.00 per share, of which 180,000,000 shares of Class A common stock were offered by the Company and 241,233,615 shares of Class A common stock were offered by existing stockholders. According to the Company, Facebook expected to receive net proceeds of approximately \$6,764,760,000 and selling stockholders expected to receive \$9,066,041,719 from the Offering, after deducting underwriting discounts, commissions and offering related transaction costs.

4. As detailed below, the Registration Statement contained materially false and misleading statements and omitted material information in violation of Sections 11 and 15 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §§ 77k and 77o.

JURISDICTION AND VENUE

5. The claims asserted herein arise under and pursuant to sections 11 and 15 of the Securities Act.

6. This Court has jurisdiction of this action pursuant to section 22 of the Securities Act [15 U.S.C. § 77v] and 28 U.S.C. § 1331.

7. Venue is proper in this District pursuant to section 22 of the Securities Act and 28 U.S.C. § 1391(b) and (c). The acts and conduct complained of herein occurred in substantial part in this District and the Underwriter Defendants (defined below) maintain their principal places of business in this District.

8. In connection with the acts and conduct alleged in this Complaint, defendants directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and telephonic communications and the facilities of the NASDAQ National Securities Market (“NASDAQ”).

PARTIES

9. Plaintiff Peter Brinckerhoff purchased Facebook securities pursuant and/or traceable to the Registration Statement issued in connection with the Company’s IPO and has been damaged thereby.

10. Defendant Facebook is a Delaware corporation with its principal executive offices located at 1601 Willow Road, Menlo Park, California 94025.

11. Defendant Mark Zuckerberg (“Zuckerberg”) was, at all relevant times, Chairman of the Board of Directors and Chief Executive Officer (“CEO”) of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

12. Defendant David A. Ebersman (“Ebersman”) was, at all relevant times Chief Financial Officer (“CFO”) of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

13. Defendant David M. Spillane (“Spillane”) was, at all relevant times, Director of Accounting for Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

14. Defendant Marc. L. Andreessen (“Andreessen”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

15. Defendant Erskine B. Bowles (“Bowles”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

16. Defendant James W. Breyer (“Breyer”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

17. Defendant Donald E. Graham (“Graham”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

18. Defendant Reed Hastings (“Hastings”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

19. Defendant Peter A. Thiel (“Thiel”) was, at all relevant times, a director of Facebook and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

20. Defendants Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer, Graham, Hastings, and Thiel, are collectively referred to hereinafter as the “Individual Defendants.”

21. Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”), a Delaware limited liability company, served as an underwriter to Facebook in connection with the Offering.

22. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) served as an underwriter to Facebook in connection with the Offering.

23. Defendant Goldman, Sachs & Co. (“Goldman Sachs”) served as an underwriter to Facebook in connection with the Offering.

24. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) served as an underwriter to Facebook in connection with the Offering.

25. Defendant Barclays Capital Inc. (“Barclays”) served as an underwriter to Facebook in connection with the Offering.

26. Defendant Allen & Company LLC (“Allen”) served as an underwriter to Facebook in connection with the Offering.

27. Defendant Citigroup Global Markets Inc. (“Citi”) served as an underwriter to Facebook in connection with the Offering.

28. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) served as an underwriter to Facebook in connection with the Offering.
29. Defendant Deutsche Bank Securities Inc. (“Deutsche”) served as an underwriter to Facebook in connection with the Offering.
30. Defendant RBC Capital Markets, LLC (“RBC”) served as an underwriter to Facebook in connection with the Offering.
31. Defendant Blaylock Robert Van LLC (“Blaylock”) served as an underwriter to Facebook in connection with the Offering.
32. Defendant BMO Capital Markets Corp. (“BMO”) served as an underwriter to Facebook in connection with the Offering.
33. Defendant C.L. King & Associates, Inc. (“C.L. King”) served as an underwriter to Facebook in connection with the Offering.
34. Defendant Cabrera Capital Markets, LLC (“Cabrera”) served as an underwriter to Facebook in connection with the Offering.
35. Defendant CastleOak Securities, L.P. (“CastleOak”) served as an underwriter to Facebook in connection with the Offering.
36. Defendant Cowen and Company, LLC. (“Cowen”) served as an underwriter to Facebook in connection with the Offering.
37. Defendant E*TRADE Securities LLC (“E*TRADE”) served as an underwriter to Facebook in connection with the Offering.
38. Defendant Itaú BBA USA Securities, Inc. (“Itaú”) served as an underwriter to Facebook in connection with the Offering.

39. Defendant Lazard Capital Markets LLC (“Lazard”) served as an underwriter to Facebook in connection with the Offering.

40. Defendant Lebenthal & Co., LLC (“Lebenthal”) served as an underwriter to Facebook in connection with the Offering.

41. Defendant Loop Capital Markets LLC (“Loop”) served as an underwriter to Facebook in connection with the Offering.

42. Defendant M.R. Beal & Company (“M.R. Beal”) served as an underwriter to Facebook in connection with the Offering.

43. Defendant Macquarie Capital (USA) Inc. (“Macquarie”) served as an underwriter to Facebook in connection with the Offering.

44. Defendant Muriel Siebert & Co., Inc. (“Muriel”) served as an underwriter to Facebook in connection with the Offering.

45. Defendant Oppenheimer & Co. Inc. (“Oppenheimer”) served as an underwriter to Facebook in connection with the Offering.

46. Defendant Pacific Crest Securities LLC (“Pacific Crest”) served as an underwriter to Facebook in connection with the Offering.

47. Defendant Piper Jaffray & Co. (“Piper Jaffray”) served as an underwriter to Facebook in connection with the Offering.

48. Defendant Raymond James & Associates, Inc. (“Raymond James”) served as an underwriter to Facebook in connection with the Offering.

49. Defendant Samuel A. Ramirez & Company, Inc. (“Ramirez”) served as an underwriter to Facebook in connection with the Offering.

50. Defendant Stifel, Nicolaus & Company, Incorporated (“Stifel”) served as an underwriter to Facebook in connection with the Offering.

51. Defendant The Williams Capital Group, L.P. (“Williams”) served as an underwriter to Facebook in connection with the Offering.

52. Defendant William Blair & Company, L.L.C. (“William Blair”) served as an underwriter to Facebook in connection with the Offering.

53. Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, Merrill Lynch, Barclays, Allen, Citigroup, Credit Suisse, Deutsche, RBC, Blaylock, BMO, C.L. King, Cabrera, CastleOak, Cowen, E*Trade, Itaú, Lazard, Lebenthal, Loop, M.R. Beal, Macquarie, Muriel, Oppenheimer, Pacific Crest, Piper Jaffray, Raymond James, Ramirez, Stifel, Williams, and William Blair, are collectively referred to herinafter as the “Underwriter Defendants.”

CLASS ACTION ALLEGATIONS

54. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of a Class, consisting of all persons and/or entities who purchased or otherwise acquired the common stock of Facebook pursuant and/or traceable to the Company’s false and/or misleading Registration Statement issued in connection with the Company’s IPO, and who were damaged thereby (the “Class”). 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 assign and any entity in which Defendants have or had a controlling interest.

55. The members of the Class are so numerous that joinder of all members is impracticable. Following the offering, Facebook’s securities were actively traded on the NASDAQ Stock Exchange (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 thousands of members in the proposed Class. The Company offered more than 420 million shares of common stock in the IPO. Moreover, record owners and other members of the Class may be identified from records maintained by Facebook 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.

56. 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.

57. 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.

58. 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 connection with the Company's IPO omitted and/or misrepresented material facts about the business, operations, and prospects of Facebook; and

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

59. 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.

BACKGROUND

60. On or about February 1, 2012, Facebook filed a registration statement with the SEC on Form S-1. Thereafter, the Company repeatedly amended the Form S-1, including on or about May 16, 2012, when Facebook filed with the SEC the final Form S-1/A (collectively, the “Registration Statement”) for the IPO.

61. On or around May 18, 2012, the Company filed with the SEC its IPO Prospectus (the “Prospectus”), which forms part of the “Registration Statement” that was declared effective on May 18, 2018.

62. In the IPO, the Company offered for sale 421,233,615 shares of common stock at a price of \$38.00 per share, of which 180,000,000 shares of Class A common were offered by the Company and 241,233,615 shares of Class A common stock were offered by existing stockholders. According to the Company, it expected to receive net proceeds of approximately \$6.8 billion from its IPO after deducting underwriting discounts and commissions, and offering expenses.

FACEBOOK’S FALSE AND/OR MISLEADING REGISTRATION STATEMENT

63. Under applicable SEC rules and regulations, the Registration Statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, and impact on the Company’s continuing operations.

64. Although the Registration Statement included certain warnings and risk factors concerning the possibility of reductions in future revenue in the event that users of Facebook’s

services began to access Facebook through mobile applications rather than through a traditional personal computers, the Registration Statement failed to disclose that at the time of IPO Facebook was then in fact experiencing a severe and pronounced reduction in revenue growth due to an increase of users of its Facebook mobile application or its website through mobile devices. However, the reduction in revenues Facebook was experiencing was material, and Facebook concluded that it was important to tell that news to the Underwriter Defendants. Further, Defendants failed to inform public investors that the Company told the Underwriter Defendants, and only the Underwriter Defendants, to materially lower their revenue forecasts for 2012.

65. Further, the Registration Statement failed to disclose that during the IPO roadshow, the lead underwriters, including, Defendants Morgan Stanley, J.P. Morgan, and Goldman Sachs, had all cut their earning forecasts and that news of the lowered estimate was selectively disclosed only to a handful of large investor clients, but was not included in the Registration Statement and/or Prospectus or otherwise disclosed to the public. Therefore, the Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing their preparation.

66. On May 19, 2012, Henry Blodget published an article entitled, “If This Really Happened During The Facebook IPO, Buyer Should Be Mad As Hell...” Therein, the article, in relevant part, stated:

Part way through the Facebook IPO roadshow, scattered reports appeared that Facebook had reduced the earnings guidance it was giving research analysts. This seemed bizarre on a number of levels.

First, I was unaware that Facebook had ever *issued* any earnings guidance—to research analysts or anyone else.

Earnings guidance is *highly material information* (meaning that any investor considering an investment decision would want to know it). It represents a future forecast made by the company. Any time any company gives any sort of forecast, stocks move—because the forecast offers a very well informed view of the future by those who have the most up-to-date information about a company’s business.

So if Facebook had issued any sort of guidance, even quietly, this should have been made very public by the company and its bankers—especially because millions of individual investors were thinking of buying the stock.

Second, if Facebook really had “reduced guidance” mid-way through a series of meetings designed for the sole purpose of selling the stock this would have been *even more highly material information*.

Why?

Because such a late change in guidance would mean that Facebook’s business was deteriorating rapidly—between the start of the roadshow and the middle of the roadshow.

Any time a business outlook deteriorates that rapidly, alarm bells start going off on Wall Street, and stocks plunge.

So the report that Facebook had “reduced earnings guidance” during the roadshow just seemed like a typical misunderstanding between Wall Street and the public—something lost in translation between what a reporter was hearing from sources and what actually made it to print.

But now Reuters has just reported the same thing again. Here’s a sentence from a story Reuters just published on the IPO:

Facebook also altered its guidance for research earnings last week, during the road show, a rare and disruptive move.

Hmmm.

If this really happened, anyone who placed an order for Facebook who was unaware that 1) Facebook had issued any sort of earnings guidance, and 2) reduced that guidance during the roadshow, has every right to be furious.

Because this would have been highly material information that some investors had and others didn’t—the exact sort of unfair asymmetry that securities laws are designed to prevent.

This seems so obvious that I'm still very skeptical of the report. I'll now look into it. In the meantime, if anyone knows what Facebook did and didn't tell analysts, I'd be grateful for your help.

67. On the disclosure of the omitted facts, shares of the Company's stock declined \$4.20 per share, or 10.99%, to close on May 21, 2012, at \$34.03 per share, on unusually heavy trading volume.

68. On May 22, 2012, Henry Blodget published an article entitled, "Facebook Bankers Secretly Cut Facebook's Revenue Estimates in Middle of IPO Roadshow." Therein, the article, in relevant part, stated:

And now comes some news about the Facebook (FB) IPO that buyers deserve to be outraged about.

Reuters' Alistair Barr is reporting that Facebook's lead underwriters, Morgan Stanley (MS), JP Morgan (JPM), and Goldman Sachs (GS) all cut their earnings forecasts for the company in the middle of the IPO roadshow.

This by itself is highly unusual (I've never seen it during 20 years in and around the tech IPO business).

But, just as important, news of the estimate cut was passed on only to a handful of big investor clients, not everyone else who was considering an investment in Facebook.

This is a huge problem, for one big reason:

- Selective dissemination. Earnings forecasts are material information, especially when they are prepared by analysts who have had privileged access to company management. As lead underwriters on the IPO, these analysts would have had much better information about the company than anyone else. So the fact that these analysts suddenly all cut their earnings forecasts at the same time, during the roadshow, and then this information was not passed on to the broader public, is a huge problem.

Any investor considering an investment in Facebook would consider an estimate cut from the underwriters' analysts "material information."

What's more, it's likely that news of these estimate cuts dampened interest in the IPO among those who heard about them. (Reuters reported exactly this—that some institutions were “freaked out” by the estimate cuts, as anyone would have been.)

In other words, during the marketing of the Facebook IPO, investors who did not hear about these underwriter estimate cuts were placed at a meaningful and unfair information disadvantage. They did not know what a lot of other investors knew, and they suffered for it.

Selective dissemination of this sort could be a direct violation of securities laws. Irrespective of its legality, it is also grossly unfair. The SEC should investigate this immediately.

We first heard rumblings about this last week, and we were so startled that we assumed the reports were wrong. Then, over the weekend, when Reuters reported the basic story again, we said that if it was true, Facebook IPO buyers deserved to be “mad as hell” about it. And now Reuters has the details, and they sound as bad as we had feared.

There are a couple of possibilities for what happened.

The first one is bad news for Morgan Stanley and the other lead underwriters on the deal.

The second is also bad news for Facebook.

According to Reuters, the underwriter analysts cut their estimate after Facebook issued an amended IPO prospectus in which the company mentioned, vaguely, that recent trends in which users were growing faster than revenue had continued into the second quarter.

To those experienced in reading financial statements, this language was unnerving, because its mere existence could have been taken to mean that Facebook's revenue in the second quarter wasn't coming in as strong as Facebook had hoped (why else would the language have suddenly been added at the 11th hour?)

To those who aren't experienced at reading filings, however, the real meaning of this language could easily have been missed. Facebook's users have been growing faster than revenue for a while, so why would it be news that this was continuing? In response to the amendment, meanwhile, all three lead underwriter analysts suddenly cut their estimates.

Now, regardless of why the analysts cut their estimate (and this will be important), estimate cuts of any sort are material information, so if this news was

given to some institutional clients, it also obviously should have been given to everyone.

That's the first problem.

The second potential question and problem is whether Facebook told the underwriters to cut their estimate—either by directly telling them to, or, more likely, by “suggesting” that the analysts might want to revisit their estimates in light of the new disclosures in the prospectus.

If there was any communication at all between Facebook and its underwriters regarding the analysts' estimates, Facebook will likely be on the hook for this, too. Speaking as a former analyst, it seems highly unlikely to me that the vague language in the final IPO amendment would prompt all three underwriter analysts to immediately cut estimates without some sort of nod and wink from someone who knew how Facebook's second quarter was progressing. (To get this message from the language, you really have to read between the lines). But even if this is what happened, it is still unfair that news of the estimate cut wasn't disseminated quickly and clearly to everyone considering buying Facebook's IPO.

The bottom line is that, even if dissemination laws were followed to the letter (which frankly seems unlikely), the selective disclosure here was grossly unfair. The SEC needs to look into this.

And as it does, the SEC should also revisit the practice that allows underwriter analysts to develop estimates that are used to market IPOs to institutional clients but are not shared with the public. In Europe, research analysts publish full reports on companies BEFORE they go public. This is a much better system, and the U.S. should switch to it. But at the very least, the SEC should mandate that any information given to some clients (e.g., earnings estimates and changes in earnings estimates) be given to all clients.

69. On this news, shares of the Company's stock again declined precipitously, trading as low as \$30.98 per share.

COUNT I
Violation of Section 11 of The Securities Act
Against All Defendants

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

71. 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.

72. The Registration Statement for the IPO was materially 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 to be stated therein.

73. Facebook is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement and Prospectus.

74. As issuer of the common stock, Facebook is strictly liable to Plaintiff and the Class for the misstatements and omissions.

75. None of the Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and the Prospectus were true and without omissions of any material facts and were not misleading.

76. Plaintiff acquired common stock of Facebook pursuant to and/or traceable to the Registration Statement.

77. The value of Facebook common stock has declined substantially and Plaintiff and the Class have sustained damages as a result of defendants' violations.

78. Less than one week 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. Likewise, less than one week has elapsed between the time that the securities upon which this Count is brought were offered to the public and the time Plaintiffs filed this Complaint.

COUNT II
Violations of Section 12(a)(2) of the Securities Act
Against All Defendants

79. Plaintiff repeats and realleges each and every allegation set forth above.

80. 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.

81. Defendants were sellers and offerors and/or solicitors of purchasers of the common stock offered pursuant to the Prospectus and Registration Statement.

82. As set forth above, the Prospectus and 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. Defendants' actions of solicitation included preparing the inaccurate and misleading Prospectus and participating in efforts to market the IPO to investors.

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

84. Plaintiff and the other members of the Class purchased or otherwise acquired Facebook common stock pursuant to the Prospectus and 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 Prospectus and Registration Statement.

85. Plaintiff, individually and on behalf of the Class, hereby offers to tender to Defendants those shares of 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 Securities Act
Against the Individual Defendants

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

87. This Count is brought pursuant to section 15 of the Securities Act against the Individual Defendants. 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.

88. Each of the Individual Defendants was a culpable participant in the violation of Section 11 of the Securities Act alleged in Count I above, based on their having signed the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. declaring this action to be a plaintiff class action properly maintained pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

B. awarding Plaintiff and other members of the Class damages together with interest thereon;

C. awarding Plaintiff and other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements;

D. awarding Plaintiff and other members of the Class rescission on their § 12(a)(2) claims; and

E. awarding Plaintiff and other members of the Class such other and further relief as may be just and proper under the circumstances.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

BRAGAR WEXLER EAGEL & SQUIRE
PC
JEFFREY H. SQUIRE
LAWRENCE P. EAGEL
DAVID J. STONE

JEFFREY H. SQUIRE (JS8910)

885 Third Avenue, Suite 3040
New York, NY 10022
(212) 308-5858

CERTIFICATION OF PETER BRINCKERHOOF IN SUPPORT OF CLASS
ACTION COMPLAINT

Peter Brinckerhoff declares, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel in this above-captioned case and has authorized its filing.

2. Plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.

3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff purchased 2,250 shares of Facebook, Inc. stock pursuant to its Initial Public Offering at \$38 per share.

5. Plaintiff subsequently sold 500 shares of Facebook, Inc. stock, and Plaintiff still holds 1,750 shares of Facebook, Inc. stock.

6. In the past three years, plaintiff has not served, nor sought to serve, as a representative party on behalf of a class in an action filed under the federal securities laws.

7. Plaintiff will not accept payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class, or other payments approved by the Court to be paid to me.

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

Executed this 31st day of May, 2012.


Peter Brinckerhoff