 

12 CIV 4648

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD SAVITT, on behalf of himself and all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC.; MARK ZUCKERBERG; DAVID A. EBERSMAN; SHERYL K. SANDBERG; DAVID M. SPILLANE; MARC L. ANDREESEN; ERSKINE B. BOWLES; DONALD E. GRAHAM; REED HASTINGS; PETER A. THIEL; MORGAN STANLEY & CO. LLC; JP MORGAN SECURITIES LLC; GOLDMAN, SACHS & CO.; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; BARCLAYS CAPITAL INC.; ALLEN & COMPANY LLC, CITIGROUP GLOBAL MARKETS INC.; CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK SECURITIES INC.; RBC CAPITAL MARKETS, LLC; WELLS FARGO SECURITIES, 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 Howard Savitt ("Plaintiff"), by his undersigned attorneys, on behalf of himself 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 upon 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.

## SUMMARY OF THE ACTION

1. This is a federal securities class action on behalf of all those who purchased the common stock of Facebook pursuant and/or traceable to the Company's May 18, 2012 initial public offering (the "IPO" or the "Offering") seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act").

2. Facebook is a global social networking company that emphasizes its users connecting, sharing, and communicating with other users through the sharing of personal information, photographs, website links, videos, and messages. Facebook also enables developers to build applications, games, and websites that interact with Facebook and generates the bulk of its revenue by offering space to advertisers to engage with Facebook's users. Facebook currently claims more than 900 million monthly active users and nearly 500 million daily active users.

3. On February 1, 2012, Facebook filed a Form S-1 Registration Statement with the SEC, attempting to register shares of Class A common stock for its IPO. Before the IPO

commenced on May 18, 2012, Facebook filed eight amendments to the Registration Statement, the last one being filed May 16, 2012 (the "Registration Statement").

4. On May 18, 2012, Facebook filed is prospectus with the SEC pursuant to Rule 424(B)(4) (the "Prospectus" and with the Registration Statement, the "Offering Documents"). The same day, the Company launched its IPO, which sold 421 million shares of Class A common stock at $38 per share, raising more than $16 billion.

5. Throughout the Offering Documents, Defendants made untrue statements of material fact and omitted other facts necessary to make the statements not materially untrue. As discussed herein, these statements relate to Facebook's potential for financial growth, short-term earnings potential, and the demand associated with the shares in the IPO.

## THE PARTIES

### A. The Plaintiff

6. Plaintiff Howard Savitt purchased shares of Class A common stock of Facebook pursuant or traceable to the IPO as set forth in the accompanying certification attached as Exhibit A, and has been damaged thereby.

### B. The Defendants

7. Defendant Facebook is a Delaware corporation with its headquarters located at 1601 Willow Road, Menlo Park, California 94025. Facebook's Class A common stock trades on the NASDAQ under the symbol "FB".

8. Defendant Mark Zuckerberg is the Founder, Chief Executive Officer ("CEO"), and Chairman of the Board of Directors of Facebook (the "Board"). Mr. Zuckerberg signed Facebook's Registration Statement. According to the Form 4 Zuckerberg filed with the SEC on May 22, 2012, in connection with the IPO, Mr. Zuckerberg sold 30,200,000 shares of Facebook stock at an average price of $37.58 per share, for total proceeds of $1,134,916,000.

9. Defendant David A. Ebersman is Facebook's Chief Financial Officer ("CFO"). Mr. Ebersman signed Facebook's Registration Statement.

10. Defendant Sheryl K. Sandberg is Facebook's Chief Operating Officer ("COO"). Ms. Sandberg signed Facebook's Registration Statement.

11. Defendant David M. Spillane is Facebook's Chief Accounting Officer. Mr. Spillane signed Facebook's Registration Statement.

12. Defendant Marc L. Andreessen is a member of Facebook's Board. Mr. Andreessen signed Facebook's Registration Statement.

13. Defendant Erskine B. Bowles is a member of Facebook's Board. Mr. Bowles signed Facebook's Registration Statement.

14. Defendant James W. Breyer is a member of Facebook's Board. Mr. Breyer signed Facebook's Registration Statement.

15. Defendant Donald E. Graham is a member of Facebook's Board. Mr. Graham signed Facebook's Registration Statement.

16. Defendant Reed Hastings is a member of Facebook's Board. Mr. Hastings signed Facebook's Registration Statement.

17. Defendant Peter A. Thiel is a member of Facebook's Board. Mr. Thiel signed Facebook's Registration Statement.

18. The Defendants identified in ¶¶ 8-17 are collectively referred to herein as the "Individual Defendants."

19. By reason of their management positions, the Individual Defendants had access to material non-public information about Facebook, its financial outlook, and its day-to-day

operations. The Individual Defendants were and are controlling persons, possessing the influence to cause (and did cause) Facebook to engage in the conduct complained of herein.

20. As control persons with access to this material non-public information, the Individual Defendants had a duty to disclose accurate and truthful information regarding Facebook's financial condition, business prospects over both the short and long-term, current performance, growth, earnings. The Individual Defendants also had a duty to correct and statements that were materially false or misleading or offer statements that would negate any material omissions, so that the market price of Facebook's stock would be based on accurate and truthful information. The Individual Defendants failed to do so and, as a result, the Offering Documents contained materially untrue statements and material omissions.

21. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") served as a lead underwriter of Facebook's IPO. Morgan Stanley was allotted approximately 38.5% of the shares to be sold in the IPO and was to receive approximately $68 million in underwriting fees.

22. Defendant J.P. Morgan Securities LLC ("JP Morgan") served as an underwriter for Facebook's IPO. JP Morgan was allotted approximately 20% of the shares to be sold in the IPO and was to receive approximately $35 million in underwriting fees.

23. Defendant Goldman, Sachs & Co. ("Goldman") served as an underwriter of Facebook's IPO. Goldman was allotted approximately 15% of the shares to be sold in the IPO and was to receive approximately $26.4 million in underwriting fees.

24. Defendant Merrill Lynch, Smith, Fenner, & Pierce Inc. ("Merrill Lynch") served as an underwriter of Facebook's IPO. Merrill Lynch was allotted approximately 6.5% of the shares to be sold in the IPO and was to receive approximately $11.4 million in underwriting fees.

25. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter of Facebook's IPO. Barclays was allotted approximately 6.5% of the shares to be sold in the IPO and was to receive approximately $11.4 million in underwriting fees.

26. Defendant Allen & Company LLC ("Allen") served as an underwriter of Facebook's IPO. Allen was allotted approximately 2% of the shares to be sold in the IPO and was to receive approximately $3.5 million in underwriting fees.

27. Defendant Citigroup Global Markets Inc. ("Citi") served as an underwriter of Facebook's IPO. Citi was allotted approximately 2.25% of the shares to be sold in the IPO and was to receive approximately $4 million in underwriting fees.

28. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") served as an underwriter of Facebook's IPO. Credit Suisse was allotted approximately 2.25% of the shares to be sold in the IPO and was to receive approximately $4 million in underwriting fees.

29. Defendant Deutsche Bank Securities Inc. ("Deutsche") served as an underwriter of Facebook's IPO. Deutsche was allotted approximately 2.25% of the shares to be sold in the IPO and was to receive approximately $4 million in underwriting fees.

30. Defendant RBC Capital Markets, LLC ("RBC") served as an underwriter of Facebook's IPO. RBC was allotted approximately 1% of the shares to be sold in the IPO and was to receive approximately $1.75 million in underwriting fees.

31. Defendant Wells Fargo Securities, LLC ("Wells Fargo") served as an underwriter of Facebook's IPO. Wells Fargo was allotted approximately 1% of the shares to be sold in the IPO and was to receive approximately $1.75 million in underwriting fees.

32. Defendant Blaylock Robert Van LLC ("Blaylock") served as an underwriter of Facebook's IPO.

33. Defendant BMO Capital Markets Corp. ("BMO") served as an underwriter of Facebook's IPO.

34. Defendant C.L. King & Associates, Inc. ("C.L. King") served as an underwriter of Facebook's IPO.

35. Defendant Cabrera Capital Markets, LLC ("Cabrera") served as an underwriter of Facebook's IPO.

36. Defendant CastleOak Securities, L.P. ("CastleOak") served as an underwriter of Facebook's IPO.

37. Defendant Cowen and Company, LLC. ("Cowen") served as an underwriter of Facebook's IPO.

38. Defendant E*TRADE Securities LLC ("E*TRADE") served as an underwriter of Facebook's IPO.

39. Defendant Itau BBA USA Securities, Inc. ("Itau") served as an underwriter of Facebook's IPO.

40. Defendant Lazard Capital Markets LLC ("Lazard") served as an underwriter of Facebook's IPO.

41. Defendant Lebenthal & Co., LLC ("Lebenthal") served as an underwriter of Facebook's IPO.

42. Defendant Loop Capital Markets LLC ("Loop") served as an underwriter of Facebook's IPO.

43. Defendant M.R. Beal & Company ("M.R. Beal") served as an underwriter of Facebook's IPO.

44. Defendant Macquarie Capital (USA) Inc. ("Macquarie") served as an underwriter of Facebook's IPO.

45. Defendant Muriel Siebert & Co., Inc. ("Muriel") served as an underwriter of Facebook's IPO.

46. Defendant Oppenheimer & Co. Inc. ("Oppenheimer") served as an underwriter of Facebook's IPO.

47. Defendant Pacific Crest Securities LLC ("Pacific Crest") served as an underwriter of Facebook's IPO.

48. Defendant Piper Jaffray & Co. ("Piper Jaffray") served as an underwriter of Facebook's IPO.

49. Defendant Raymond James & Associates, Inc. ("Raymond James") served as an underwriter of Facebook's IPO.

50. Defendant Samuel A. Ramirez & Company, Inc. ("Ramirez") served as an underwriter of Facebook's IPO.

51. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") served as an underwriter of Facebook's IPO.

52. Defendant The Williams Capital Group, L.P. ("Williams") served as an underwriter of Facebook's IPO.

53. Defendant William Blair & Company, L.L.C. ("William Blair") served as an underwriter of Facebook's IPO.

54. The Defendants identified in ¶¶ 21-53 are collectively referred to herein as the "Underwriter Defendants".

55. The Underwriter Defendants assisted in the preparation and dissemination of Facebook's Offering Documents. As underwriters of Facebook's IPO, the Underwriter Defendants bore responsibility for ensuring that the statements in the Offering Documents were truthful, accurate, and complete. The Underwriter Defendants also were responsible for ensuring that those statements incorporated by reference in the Offering Documents were truthful, accurate, and complete.

56. Defendants Facebook, the Individual Defendants, and the Underwriter Defendants are collectively referred to herein as "Defendants."

## JURISDICTION AND VENUE

57. The claims asserted herein arise under and pursuant to §§ 11, 12(a)(2) and 15 of the Securities Act [15 U.S.C. §§ 77k, 77l(a)(2), and 77o].

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

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

60. 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, telephonic communications, and the facilities of the NASDAQ National Securities Market ("NASDAQ"), a national securities market.

## CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all those who purchased shares of Facebook's Class A common stock pursuant and/or traceable to Facebook's IPO (the "Class"). Excluded from the Class are Defendants, members of each of the Individual Defendants' immediate families, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

62. The members of the Class are so numerous that joinder of all class members is impracticable. Facebook sold more than 421 million shares of common stock in the IPO. The precise number of Class members is unknown to Plaintiff without appropriate discovery, but Plaintiff believes there are thousands of Class members who traded the Company's common stock during the Class Period.

63. Plaintiff will fairly and adequately represent the interests of all Class members. Plaintiff has retained competent counsel experienced in class action litigation under the federal securities laws to further ensure such protection and intends to prosecute this action vigorously. Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.

64. Plaintiff's claims are typical of the claims of other Class members because Plaintiff and all Class members are similarly affected by the same false and misleading representations and material omissions contained in the Offering Documents.

65. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

a) Whether Defendants violated federal securities laws based upon the facts alleged herein;

b) Whether the Prospectus and Registration Statement issued by Defendants in connection with the IPO omitted or misrepresented material facts about Facebook, its business, or its business prospects; and

c) Whether the Class members have sustained damages, and, if so, the proper measure of damages.

## FACTUAL ALLEGATIONS

### A. The Timeline

66. On February 1, 2012, Facebook announced its intention to commence an IPO by filing an initial registration statement with the SEC.

67. Between February 1 and May 16, 2012, Facebook amended its registration statement eight times.

68. Beginning in or around April 2012, Facebook briefed a number of bank analysts on its revenue guidance for the second quarter of 2012 and the full year 2012. This guidance was not included in the Offering Documents, nor was it disclosed publicly to prospective investors.

69. On May 7, 2012, Facebook and the Underwriter Defendants began an IPO "road show", offering a series of presentations that discussed Facebook and its prospects with prospective investors.

70. On May 16, 2012, Facebook filed its final amendment to the Registration Statement, increasing the IPO size by nearly 83 million shares just two days before the IPO commenced.

71. On May 18, 2012, Facebook's Registration Statement became effective. Pursuant to the Offering Documents, Facebook's IPO sold more than 421 million shares of Facebook common stock at a value of more than $16 billion.

**B. The False and Misleading Disclosures**

72. Facebook employs a number of critical metrics to measure the size of Facebook's global active user community, including Monthly Active Users ("MAUs"), Daily Active Users ("DAUs") and Mobile MAUs.

73. MAUs are defined as registered Facebook members who logged into Facebook, either through the Facebook website or a mobile device, or took an action to post content or activity to the member's Facebook profile via a third party website that is integrated with Facebook, within the last thirty days as of the date of measurement. DAUs, which are a measure of user engagement, track the same information as the MAU, but on a daily basis. The third metric, the Mobile MAU, is defined as a user who accessed Facebook via a mobile app or via mobile-optimized versions of the Company's website (such as via an iPad or iPhone), during the previous thirty day period.

74. Facebook explains the importance of these metrics in its Registration Statement as follows:

> <u>Growth in MAUs, DAUs, and Mobile MAUs</u>. Growth trends in MAUs, DAUs, and mobile MAUs are critical variables that affect our revenue and financial results by influencing the number of ads we are able to show, the value of those ads, the volume of Payments transactions, as well as our expenses and capital expenditures.

75. In the Prospectus, Facebook represented to investors that these critical metrics were trending upward:

> As of March 31, 2012, we had 901 million MAUs, an increase of 33% from March 31, 2011. We experienced growth across different geographies, with users in Brazil, India, and the United States representing key sources of growth. We had 45 million MAUs in Brazil as of March 31, 2012, an increase of 180% from the same period in the prior year, and we had 51 million MAUs in India as of March 31, 2012, an increase of 107% from the same period in the prior year. Additionally, we had 169 million MAUs in the United States as of March 31, 2012, an increase of 15% from the same period in the prior year.
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> Worldwide DAUs increased 41% to 526 million on average during March 2012 from 372 million during March 2011. We experienced growth in DAUs across major markets including the United States, Brazil, and India. Increased mobile usage was a key contributor to this growth. DAUs as a percentage of MAUs increased from 55% in March 2011 to 58% in March 2012, which we believe was driven entirely by increased mobile usage of Facebook. We believe that increases in DAUs and in DAUs as a percentage of MAUs generally positively affect our revenue because increases in user engagement may enable us to deliver more relevant commercial content to our users and may provide us with more opportunities for monetization.
>
> We believe that we have the opportunity to continue to grow our DAUs around the world. [1]

76. The Prospectus similarly touted the Company's revenue growth:

> 2011 Compared to 2010: Revenue in 2011 increased $1,737 million, or 88% compared to 2010. The increase was due primarily to a 69% increase in advertising revenue to $3,154 million. Advertising revenue grew due to a 42% increase in the number of ads delivered and an 18% increase in the average price per ad delivered. The increase in ads delivered was driven primarily by user growth; MAUs grew 39% from December 31, 2010 to December 31, 2011 and average DAUs grew 48% from December 2010 to December 2011. The number of ads delivered was also affected by many other factors including product changes that significantly increased the number of ads on many Facebook pages beginning in the fourth quarter of 2010, partially offset by an increase in usage of our mobile products, where we did not show ads, and by various product changes

[1] Prospectus at 48-50.

> implemented in 2011 that in aggregate modestly reduced the number of ads on certain pages. The increase in average price per ad delivered was affected by factors including improvements in our ability to deliver more relevant ads to users and product changes that contributed to higher user interaction with the ads by increasing their relative prominence.[2]

77. With respect to the Company's expectations for the second quarter of 2012 and the risks related to Facebook's business and industry, the Registration Statement stated, in pertinent part, as follows:

> Based upon our experience in the second quarter of 2012 to date, the trend we saw in the first quarter of [daily active users] 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.
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> 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.
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> 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.**
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> Our advertising revenue ***could be*** adversely affected by a number of other factors, including: . . . increased user access to and engagement with facebook through our mobile products, where we do not currently directly generate meaningful revenue, particularly to the extent that mobile engagement is substituted for engagement with Facebook on personal computers where we monetize usage by displaying ads and other commercial content[.]

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[2] *Id.* at 60-61.

78. In describing the risks to Facebook's business, the Offering Documents contained statements that the Company's revenues could potentially be negatively affected by an increase in the number of users using its mobile site or application, rather than logging onto Facebook from personal computers. The Registration Statement and Prospectus stated:

> ***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.***
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> We had 488 million MAUs who used Facebook mobile products in March 2012. While most of our mobile users also access Facebook through personal computers, we anticipate that the rate of growth in mobile usage will exceed the growth in usage through personal computers for the foreseeable future, in part due to our focus on developing mobile products to encourage mobile usage of Facebook. We have historically not shown ads to users accessing Facebook through mobile apps or our mobile website. In March 2012, we began to include sponsored stories in users' mobile News Feeds. However, we do not currently directly generate any meaningful revenue from the use of Facebook mobile products, and our ability to do so successfully is unproven. 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.

79. The Offering Documents purported to warn investors that the Company's advertising revenues could be adversely affected by "increased user access to and engagement with facebook" through mobile devices, stating:

> ***We generate a substantial majority of our revenue from advertising. The loss of advertisers, or reduction in spending by advertisers with Facebook, could seriously harm our business.***
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> The substantial majority of our revenue is currently generated from third parties advertising on Facebook. In 2009, 2010, and 2011 and the first quarter of 2011 and 2012, advertising accounted for 98%, 95%, 85%, 87%, and 82%, respectively, of our revenue. As is common in the industry, our advertisers typically do not have long-term advertising commitments with us. Many of our advertisers spend only a relatively small portion of their overall advertising budget with us. In addition, advertisers may view some of our products, such as

sponsored stories and ads with social context, as experimental and unproven. Advertisers will not continue to do business with us, or they will reduce the prices they are willing to pay to advertise with us, if we do not deliver ads and other commercial content in an effective manner, or if they do not believe that their investment in advertising with us will generate a competitive return relative to other alternatives. Our advertising revenue could be adversely affected by a number of other factors, including:

- decreases in user engagement, including time spent on Facebook;
- increased user access to and engagement with Facebook through our mobile products, where we do not currently directly generate meaningful revenue, particularly to the extent that mobile engagement is substituted for engagement with Facebook on personal computers where we monetize usage by displaying ads and other commercial content;
- product changes or inventory management decisions we may make that reduce the size, frequency, or relative prominence of ads and other commercial content displayed on Facebook;
- our inability to improve our analytics and measurement solutions that demonstrate the value of our ads and other commercial content;
- decisions by advertisers to use our free products, such as Facebook Pages, instead of advertising on Facebook;
- loss of advertising market share to our competitors;
- adverse legal developments relating to advertising, including legislative and regulatory developments and developments in litigation;
- adverse media reports or other negative publicity involving us, our Platform developers, or other companies in our industry;
- our inability to create new products that sustain or increase the value of our ads and other commercial content;
- the degree to which users opt out of social ads or otherwise limit the potential audience of commercial content;
- changes in the way online advertising is priced;
- the impact of new technologies that could block or obscure the display of our ads and other commercial content; and
- the impact of macroeconomic conditions and conditions in the advertising industry in general.

The occurrence of any of these or other factors could result in a reduction in demand for our ads and other commercial content, which may reduce the prices we receive for our ads and other commercial content, or cause advertisers to stop advertising with us altogether, either of which would negatively affect our revenue and financial results.

80. The statements referenced above were untrue statements of material fact and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not materially untrue. The true facts at the time of the IPO were that Facebook was then experiencing a severe and pronounced reduction in revenue growth that stemmed from an increase in users accessing Facebook through mobile applications and the mobile website rather than using traditional computers.

81. Defendants also did not disclose that during the road show conducted in connection with the IPO, several of the Underwriter Defendants were informed of the true and complete facts and reduced their second quarter and full year 2012 performance estimates for Facebook. These revisions were material information that was omitted from the Offering Documents, but was selectively disclosed by Defendants to preferred investors.

82. Details regarding Defendants' misconduct began to be revealed on May 19, 2012, when Henry Blodget ("Blodget") published an article entitled, "If This Really Happened During The Facebook IPO, Buyers Should Be Mad As Hell." The article stated, in pertinent part:

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 into 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.

83. On this news, 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 heavy trading volume.

84. The bad news continued for Facebook investors. On May 22, 2012, Reuters reported in an article entitled "Insight: Morgan Stanley cut Facebook estimates just before IPO,"

that Morgan Stanley, JP Morgan, and Goldman Sachs had all cut their earnings forecasts for the Company during the IPO road show but had disclosed this material information to preferred investor clients. The article stated, in part:

> In the run-up to Facebook's $16 billion IPO, Morgan Stanley, the lead underwriter on the deal, unexpectedly delivered some negative news to major clients: The bank's consumer Internet analyst, Scott Devitt, was reducing his revenue forecasts for the company.
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> The sudden caution very close to Facebook's initial public offering - while an investor road show was under way - was a big shock to some, said two investors who were advised of the revised forecast.
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> They said it might have contributed to the weak performance of Facebook shares, which sank on Monday and Tuesday - their second and third days of trading - to end more than 18 percent below the IPO price. The $38-per-share IPO price valued Facebook at $104 billion.
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> It is unclear whether Morgan Stanley only told its top clients about the revised view or spread the word more broadly. The company declined to comment when asked who was told about the research.
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> The change in Morgan Stanley's estimates came on the heels of a May 9 Facebook filing of an amended prospectus with the U.S. Securities and Exchange Commission, in which the company expressed caution about revenue growth due to a rapid shift by users to mobile devices. Mobile advertising to date has been less lucrative than advertising on desktops.
>
> "This was done during the road show - I've never seen that before in 10 years," said a source at a mutual fund firm who was among those called by Morgan Stanley.
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> JPMorgan Chase and Goldman Sachs, which were also major underwriters on the IPO but had lesser roles than Morgan Stanley, also revised their estimates in response to Facebook's SEC filing, according to sources familiar with the situation.
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> Morgan Stanley said in a statement that a "significant number" of analysts in the IPO syndicate reduced estimates after Facebook's May 9 disclosure. The investment bank said its procedures complied with all "applicable regulations."
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> Typically, the underwriter of an IPO wants to paint as positive a picture as possible for prospective investors. Investment bank analysts, on the other hand, are required to operate independently of the bankers and salesmen who are

marketing stocks. That was stipulated in a settlement by major banks with regulators following a scandal over tainted stock research during the dot-com boom.

The people familiar with the revised Morgan Stanley projections said Devitt lowered his revenue estimate for the second quarter and also cut his full-year 2012 revenue forecast.

The new revenue forecast was $4.85 billion for 2012, versus more than $5 billion earlier, one of the people said.

For the second quarter of 2012, the new revenue estimate was $1.111 billion, down from about $1.175 billion previously, the person added.

The second-quarter revenue forecast suggested that Facebook's year-over-year revenue growth might slow from the first quarter of 2012, one of the investors said.

"That deceleration freaked a lot of people out," the investor added.

Scott Sweet, senior managing partner at the research firm IPO Boutique, said he was also aware of the reduced estimates.

"They definitely lowered their numbers and there was some concern about that," he said. "My biggest hedge fund client told me they lowered their numbers right around mid-road show."

That client, he said, still bought the issue but "flipped his IPO allocation and went short on the first day."

* * * * *

Sweet said analysts at firms that are not underwriting IPOs often change forecasts at such times. However, he said it is unusual for analysts at lead underwriters to make such changes so close to an IPO.

"That would be very, very unusual for a book runner to do that," he said.

The lower revenue estimate came shortly before the IPO was priced at $38 a share, the high end of an already upwardly revised projected range of $34 to $38, and before Facebook increased the number of shares being sold by 25 percent.

"It's very rare to cut forecasts in the middle of the IPO process," said an official with a hedge fund firm who received a call from Morgan Stanley about the revision.

85. The same day, Blodget published another article entitled, "Facebook Bankers Secretly Cut Facebook's Revenue Estimates in Middle of IPO Roadshow." Therein, the article, in 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 estimates 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 estimates (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 estimates--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.

86. On this news, shares of Facebook common stock again declined markedly, trading as low as $30.98 a share.

87. Reuters journalists Olivia Oran and Nadia Damouni published a follow-up article on May 23, 2012, entitled "Facebook Advised Analysts to Cut Forecasts Before Float", further explaining:

> As Facebook officials traveled the country to talk up the company's $16 billion initial public offering this month, the social networking giant advised analysts for underwriters to reduce revenue and earnings forecasts, said people with direct knowledge.
>
> Facebook decided to tell analysts to cut estimates due to feedback during the investor roadshow which revealed users were opting for mobile devices which generate less advertising revenue and after consulting with its adviser Morgan Stanley.
>
> **"Facebook backed off and said, 'Hey get your models down'" said a person at one of the underwriters with knowledge of the situation.**
>
> Facebook's advisory came around May 9, the day it published an amended prospectus that included a cautionary note about lower advertising revenue.

It isn't known which analysts from the 33 IPO underwriters were contacted by Facebook with the revised guidance. It also isn't clear exactly who from Facebook gave the guidance.

As previously reported by Reuters, the analysts for lead underwriter Morgan Stanley and at least three other underwriters in the following days reduced their forecasts for Facebook's second-quarter and full year revenue, and communicated this to at least some of their institutional clients.

Two U.S. financial regulators will review Facebook's initial public offering (IPO) after it closed flat on float and plunged 11 percent on Monday. Facebook shares closed 8.9 percent lower on Tuesday at $31, shedding more than $19 billion in market capitalization from its $38-per-share offering price last week.

Morgan Stanley says it did nothing wrong in the Facebook IPO. Two sources said Morgan Stanley advised Facebook to urge analysts to lower forecasts.

"Morgan Stanley bankers were telling the company how to handle the research analysts," said a source from one of the underwriting firms with knowledge of the situation.

**"Facebook changed the numbers--they didn't forecast their business right and they changed their numbers and told analysts," said another source at one of the underwriters with knowledge of the situation.**

**"The analyst's underwriters then all changed their numbers based on what management was telling them."**

Officials at Facebook declined to comment. Morgan Stanley released a statement saying it followed the same procedures with Facebook that it does for all IPOs. "These procedures are in compliance with all applicable regulations," spokesman Pen Pendleton said in the statement.

The bank declined to speak to the question of whether it advised Facebook to give detailed guidance to analysts based on the revised prospectus. Morgan Stanley said it provided the revised prospectus, though not the new earnings forecasts, to all retail and institutional investors.

"In response to the information about business trends, a significant number of research analysts in the syndicate who were participating in investor education reduced their earnings views to reflect their estimate of the impact of the new information. These revised views were taken into account in the pricing of the IPO," the Morgan Stanley statement said.

**Federal and state regulators said Tuesday that they were looking into various issues surrounding the Facebook IPO, including whether big investors got key information that was not available to all investors.**

For Facebook and Morgan Stanley, news about the revised projections has further undermined confidence in the social media company's shares.

88. As of June 8, 2012, the share price of Facebook has dropped to $27.10, a reduction of more than 28% since the IPO.

89. Plaintiff and the Class have sustained losses of more than $4.5 billion since the IPO.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION
### VIOLATIONS OF SECTION 11 OF THE SECURITIES ACT [15 U.S.C. § 77k]
### (against all Defendants)

90. Plaintiff repeats and re-alleges all of the foregoing paragraphs as if fully set forth herein.

91. Plaintiff acquired Class A common stock of Facebook pursuant and/or traceable to the Registration Statement and the IPO.

92. The Registration Statement 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 materially untrue.

93. Facebook is the registrant for the IPO, while the Individual Defendants and Underwriter Defendants were responsible for the contents and dissemination of the Registration Statement. Facebook issued, caused to be issued, and participated in the issuance of materially false and misleading written statements of fact and/or omissions of material facts to the general investing public that were contained in the Registration Statement. Defendants, as signatories to the Registration Statement issued, caused to be issued, and participated in the Registration Statement's issuance and are subject to liability for violations of Section 11 of the Securities Act.

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

95. None of the Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Documents were true and without omissions of any material facts and were not untrue.

96. Plaintiff and the other Class members who acquired securities pursuant to and/or traceable to the IPO did not know of the untrue statements alleged herein or of the facts with respect to the untrue statements of material fact and omissions alleged herein, and could not have reasonably discovered such facts or conduct.

97. Each of the Underwriter Defendants is liable as an underwriter in connection with the IPO.

98. After the false untrue statements and omissions became known, the value of Facebook class A common stock declined substantially and Plaintiff and the Class sustained damages as a result.

99. By reason of the foregoing, all Defendants are liable for violations of Section 11 of the Securities Act to Plaintiff and the Class.

100. This claim for relief is being brought within one year after Plaintiff discovered the untrue statements and material omissions in the Registration Statement, or after such discovery should have been made by exercise of reasonable diligence, and within three years after Facebook's IPO.

## SECOND CAUSE OF ACTION
## VIOLATIONS OF SECTION 12(a)(2) OF THE SECURITIES ACT [15 U.S.C. § 77l(a)(2)]
## (against Facebook and the Underwriter Defendants)

101. Plaintiff repeats and re-alleges all of the foregoing paragraphs as if fully set forth herein.

102. Facebook and the Underwriter Defendants were sellers, offerors, and/or solicitors of sales of Facebook common stock offered pursuant to the Offering Documents.

103. As set forth, the Offering Documents 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 materially untrue.

104. Defendants engaged in solicitation by preparing the Offering Documents, which contained untrue statements of material fact, omitted other facts necessary to make the statements not materially untrue. Defendants also engaged in solicitation by participating in efforts to market the IPO to investors.

105. The Underwriter Defendants did not make a reasonable investigation or possess reasonable grounds to believe that the statements contained in the Offering Documents were true and without omissions of material fact. By virtue of the conduct herein, the Underwriter Defendants violated Section 12(a)(2) of the Securities Act.

106. Plaintiff and other Class members who purchased or otherwise acquired securities in the IPO pursuant to the materially untrue Prospectus did not know or, in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectus.

107. As a direct and proximate result of such violations, Plaintiff and the other members of the Class who purchased the securities pursuant to the Prospectus sustained

substantial damages in connection with their purchases of the securities. Accordingly, Plaintiff and the other members of the Class who hold such shares have the right to rescind and recover the consideration paid for their shares, and hereby tender their shares to the Defendants sued herein. Plaintiff, individually and on behalf of the Class, hereby offers to tender to Defendants those shares of common stock that Plaintiff and 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.

**THIRD CAUSE OF ACTION**
**VIOLATIONS OF SECTION 15 OF THE SECURITIES ACT [15 U.S.C. § 77o]**
**(against the Individual Defendants)**

108. Plaintiff repeats and re-alleges all of the foregoing paragraphs as if fully set forth herein.

109. At all relevant times, each of the Individual Defendants was a controlling person of Facebook within the meaning of Section 15 of the Securities Act. Each of the Individual Defendants served, and currently serves, as a director and/or executive officer of Facebook.

110. At all relevant times, the Individual Defendants participated in Facebook's management and day-to-day operations. As officers and directors of a publicly-owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Facebook's financial condition and operation.

111. By virtue of their positions and authority within Facebook, the Individual Defendants had the authority to control, and did control, the contents of the Registration Statement, which contained materially false and misleading financial information.

112. Each of the Individual Defendants was a culpable participant in the violation of § 11 of the Securities Act alleged in Plaintiff's First Cause of Action, based on their signing the

Registration Statement and having otherwise participated in the process and conduct of Facebook's IPO.

## PRAYER FOR RELIEF

**WHEREFORE,** Plaintiff respectfully demands that judgment be rendered in favor of Plaintiff against Defendants as follows:

1. Finding that this action is appropriate as a class action and certifying Plaintiff as a class representative pursuant to Rule 23 of the Federal Rules of Civil Procedure;

2. awarding Plaintiff and other Class members damages together with interest thereon;

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

4. awarding Plaintiff and other Class members rescission of all transactions made in shares of Facebook common stock;

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

## JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial on all matters so triable.

Dated: June 12, 2012

Respectfully submitted,

By: ______________________________

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# EXHIBIT A

## PLAINTIFF'S CERTIFICATION OF SECURITIES CLASS ACTION COMPLAINT

I, Howard Savitt, hereby certify that the following is true and correct to the best of my knowledge, information and belief:

2 I have reviewed the facts and allegations in the complaint against Facebook Inc. et al.

3. I am willing to serve as a representative party on behalf of the class in this action, including providing testimony at deposition and trial, if necessary.

4. My transactions in Facebook Inc. securities are as follows:

| DATE | TRANSACTION (buy or sell) | NO. OF SHARES | PRICE PER SHARE |
|---|---|---|---|
| May 18, 2012 | Buy | 600 | $42.00 |
| May 18, 2012 | Buy | 400 | $38.20 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

5. I did not purchase these securities at the direction of counsel, or in order to participate in any private action arising under the federal securities laws.

6. During the three-year period preceding the date of my signing this Certification, I have never sought to be appointed nor have I ever been appointed as lead plaintiff or class representative in any class action arising under the securities laws of the United States.

7. I will not accept any payment for serving as a representative party on behalf of the Class beyond my *pro rata* share of any possible recovery, except for an award, as ordered or approved by the court, for reasonable costs and expenses (including lost wages) directly relating to my representation of the Class.

Signed under the penalties of perjury this 20 day of May 2012.