

1 James F. Basile (SBN 228965)  
james.basile@kirkland.com  
2 Elizabeth L. Deeley (SBN 230798)  
elizabeth.deeley@kirkland.com  
3 KIRKLAND & ELLIS LLP  
555 California Street  
4 San Francisco, California 94104  
Telephone: (415) 439-1400  
5 Facsimile: (415) 439-1500

6 Attorneys for Defendants  
FACEBOOK, INC., MARK ZUCKERBERG, DAVID A.  
7 EBERSMAN, DAVID M. SPILLANE, MARC L.  
ANDREESSEN, ERSKINE B. BOWLES, JAMES W.  
8 BREYER, DONALD E. GRAHAM, REED HASTINGS  
and PETER A. THIEL  
9

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 HARVEY LAPIN, Individually and On Behalf of  
13 All Others Similarly Situated,

14 Plaintiff,

15 v.

16 FACEBOOK, INC., MARK ZUCKERBERG,  
DAVID A. EBERSMAN, DAVID M. SPILLANE,  
17 MARC L. ANDREESSEN, ERSKINE B.  
BOWLES, JAMES W. BREYER, DONALD E.  
18 GRAHAM, REED HASTINGS, PETER A. THIEL,  
MORGAN STANLEY & CO. LLC, J.P. MORGAN  
19 SECURITIES LLC, GOLDMAN, SACHS & CO.,  
MERRILL LYNCH, PIERCE, FENNER & SMITH  
20 INCORPORATED, BARCLAYS CAPITAL INC.,  
ALLEN & COMPANY LLC, CITIGROUP  
21 GLOBAL MARKETS INC., CREDIT SUISSE  
SECURITIES (USA) LLC, DEUTSCHE BANK  
22 SECURITIES INC., RBC CAPITAL MARKETS,  
LLC, BLAYLOCK ROBERT VAN LLC, BMO  
23 CAPITAL MARKETS CORP., C.L. KING &  
ASSOCIATES, INC., CABRERA CAPITAL  
24 MARKETS, LLC, CASTLEOAK SECURITIES,  
L.P., COWEN AND COMPANY, LLC., E\*TRADE  
25 SECURITIES LLC, ITAU BBA USA  
SECURITIES, INC., LAZARD CAPITAL  
26 MARKETS LLC, LEBENTHAL & CO., LLC,  
LOOP CAPITAL MARKETS LLC, M.R. BEAL &  
27 COMPANY, MACQUARIE CAPITAL (USA)  
INC., MURIEL SIEBERT & CO., INC.,  
28 OPPENHEIMER & CO. INC., PACIFIC CREST  
SECURITIES LLC, PIPER JAFFRAY & CO.,

NOTICE OF REMOVAL OF STATE  
COURT CIVIL ACTION

ORIGINAL  
FILED  
2017 JUN 20 P 12:24  
RICHARD W. WILKINS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

CV 12 3195

San Mateo County Superior Court  
Case No. CIV-514240

CLASS ACTION

**SBA**

**NOTICE OF REMOVAL OF STATE  
COURT CIVIL ACTION**

1 RAYMOND JAMES & ASSOCIATES, INC.,  
2 SAMUEL A. RAMIREZ & COMPANY, INC.,  
3 STIFEL, NICOLAUS & COMPANY,  
4 INCORPORATED, THE WILLIAMS CAPITAL  
5 GROUP, L.P., and WILLIAM BLAIR &  
6 COMPANY, L.L.C.,

Defendants.

7 Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and 15 U.S.C. § 77v(a), defendants  
8 Facebook, Inc., Mark Zuckerberg, David A. Ebersman, David M. Spillane, Marc L. Andreessen,  
9 Erskine B. Bowles, James W. Breyer, Donald E. Graham, Reed Hastings, and Peter A. Thiel,  
10 (collectively, "Defendants") hereby remove this case, and all claims and causes of action therein,  
11 from the Superior Court of the State of California for the County of San Mateo to the United States  
12 District Court for the Northern District of California. In support of this Notice of Removal,  
13 Defendants set forth the following grounds for removal:

14 1. On or about May 23, 2012, Plaintiff Harvey Lapin commenced a civil action in the  
15 Superior Court of the State of California for the County of San Mateo, captioned *Lapin v. Facebook,*  
16 *Inc., et al.*, Case No. CIV-514240 (the "State Court Action"). True and accurate copies of the  
17 Summons and Complaint are attached as Exhibit A.

18 2. Defendants have not pled, answered, or otherwise appeared in the State Court Action.

19 3. This Notice of Removal is being filed before the expiration of 30 days after service of  
20 the Summons and Complaint, and is thus timely filed under 28 U.S.C. § 1446(b).

21 4. This action is within the original jurisdiction of this Court under 28 U.S.C. § 1331  
22 and 15 U.S.C. § 77v(a). The State Court Action is a putative nationwide class action brought against  
23 Facebook, certain officers and directors of Facebook, and certain underwriters of Facebook's May  
24 18, 2012 initial public offering ("IPO") on the NASDAQ stock exchange. The State Court Action  
25 alleges violations of the Securities Act of 1933 (the "Securities Act").

26 5. There are at least 20 cases already pending in the federal district courts that allege  
27 claims under the Securities Act. Four are pending in the District Court for the Northern District of  
28 California; 16 are pending in the District Court for the Southern District of New York. The four

1 cases in the Northern District of California have been marked as related and are pending before the  
2 Honorable Maxine M. Chesney.

3 6. On June 18, 2012, Facebook, certain of its officers and directors, and certain of the  
4 underwriter defendants filed with the Judicial Panel on Multidistrict Litigation a Motion to Transfer  
5 Actions to the Southern District of New York Pursuant to 28 U.S.C. § 1407 for Coordinated and/or  
6 Consolidated Pretrial Proceedings (the “MDL Motion”).

7 7. This Court has jurisdiction over this case under two federal statutes: 28 U.S.C.  
8 § 1331 and Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a). This case is therefore removable  
9 under 28 U.S.C. § 1441. Under 28 U.S.C. § 1441(a), “[e]xcept as otherwise expressly provided by  
10 Act of Congress, any civil action brought in a State court of which the district courts of the United  
11 States have original jurisdiction, may be removed ... to the district court of the United States ...  
12 embracing the place where such action is pending.”

13 **Section 22(a) Provides Exclusive Federal Jurisdiction Over Securities Act**  
14 **Claims Involving “Covered Class Actions.”**

15 8. Section 22(a) is the jurisdictional provision of the Securities Act. As originally  
16 written, Section 22(a) provided for concurrent jurisdiction between state and federal courts over  
17 Securities Act claims. 15 U.S.C. § 77v(a) (1933). The Securities Litigation Uniform Standards Act  
18 of 1998 (“SLUSA”), 15 U.S.C. § 77p(c), amended Section 22(a) to provide that there will be some  
19 claims or cases brought under the Securities Act over which a state court will no longer have  
20 concurrent jurisdiction:

21 The district courts of the United States ... shall have jurisdiction of offenses and  
22 violations under this subchapter and under the rules and regulations promulgated by  
23 the Commission in respect thereto, and, concurrent with State and Territorial courts,  
24 *except as provided in [Section 16] of this title with respect to covered class actions,*  
of all suits in equity and actions at law brought to enforce any liability or duty created  
by this subchapter.

25 15 U.S.C. § 77v(a) (emphasis added to SLUSA amendments). As amended, Section 22(a) deprives  
26 state courts of concurrent jurisdiction over “covered class actions” that raise Securities Act claims.  
27 *See Knox v. Agria Corp.*, 613 F. Supp. 2d 419, 425 (S.D.N.Y. 2009); *see also In re Fannie Mae*  
28 *2008 Sec. Litig.*, No. 08 Civ. 7831, 2009 WL 4067266, at \*2 (S.D.N.Y. Nov. 24, 2009); *Rovner v.*

1 *Vonage Holdings Corp.*, No. 07-178, 2007 WL 446658, at \*3-4 (D.N.J. Feb. 7, 2007).

2 9. Section 16(f) defines “covered class actions” as including

3 any single lawsuit in which ... one or more named parties seek to recover damages on  
4 a representative basis on behalf of themselves and other unnamed parties similarly  
5 situated, and questions of law or fact common to those persons or members of the  
6 prospective class predominate over any questions affecting only individual persons or  
7 members.

8 15 U.S.C. § 77p(f)(2)(A)(i)(II). Plaintiff is a named party seeking to recover damages on a  
9 representative basis on behalf of himself and other unnamed parties similarly situated, and common  
10 questions of law or fact allegedly predominate over individual questions. (*See* Exhibit A.) Plaintiff  
11 also is bringing claims under the Securities Act. This action therefore is a “covered class action”  
12 within the meaning of Section 16. Accordingly, state courts do not have jurisdiction over Plaintiff’s  
13 putative class action. Federal courts alone have jurisdiction to hear Plaintiff’s putative class action  
14 claims under the Securities Act. *See Knox*, 613 F. Supp. 2d at 423.

15 **Section 22(a)’s Removal Ban Does Not Apply.**

16 10. Section 22(a) of the Securities Act also includes an anti-removal provision, which  
17 originally prohibited the removal of any Securities Act cases that were brought in state court. As  
18 amended by SLUSA, however, Section 22(a) now provides as follows: “[e]xcept as provided in  
19 section [16(c)] of [the Securities Act], no case arising under [the Securities Act] and brought in any  
20 State court of competent jurisdiction shall be removed to any court of the United States.” 15 U.S.C.  
21 § 77v(a) (italics added to SLUSA amendments; underscoring added). This anti-removal provision  
22 does not apply here for two independent reasons.

23 11. The first is that Section 22(a)’s anti-removal provision only prohibits the removal of  
24 cases brought in a “State court of competent jurisdiction.” 15 U.S.C. § 77v(a). As discussed above,  
25 state courts no longer have jurisdiction to adjudicate a “covered class action” raising Securities Act  
26 claims and are therefore no longer courts of competent jurisdiction with respect to such claims. *See*  
27 *Knox*, 613 F. Supp. 2d at 423. Accordingly, Section 22(a)’s anti-removal provision does not apply  
28 to this action. *See id.* at 425.

12. The Court need not reach the second reason why Section 22(a)’s anti-removal  
provision does not apply, which is supplied by Section 16(c). Section 16(c) allows the removal of

1 “[a]ny covered class action brought in any State court involving a covered security, as set forth in  
2 subsection (b),” 15 U.S.C. § 77p(c), which subsection “makes some state-law claims nonactionable  
3 through the class-action device in federal as well as state court.” *Kircher v. Putnam Funds Trust*,  
4 547 U.S. 633, 637, n.1 (2006) (discussing Section 16(b), 15 U.S.C. § 77p(b)). District courts are  
5 divided on the question whether Section 16(c) provides a basis for removing covered class actions  
6 that raise only *federal* claims under the Securities Act. Some courts have interpreted Section 16(c)  
7 to allow the removal of “covered class actions” raising either state law claims or Securities Act  
8 claims. *See, e.g., Rubin v. Pixelplus Co.*, No. 06 Civ. 2964, 2007 WL 778485, at \*3-4 (E.D.N.Y.  
9 Mar. 13, 2007); *Brody v. Homestore, Inc.*, 240 F. Supp. 2d 1122, 1123-24 (C.D. Cal. 2003). Other  
10 courts, however, have interpreted Section 16(c) as permitting removal of “only those ‘covered class  
11 actions’ described in § 77p(b) alleging omission or deception based upon state law ....” *Young v.*  
12 *Pacific Biosciences of Cal., Inc.*, No. 11-cv-5668, 2012 WL 851509, at \*3-4 (N.D. Cal. Mar. 13,  
13 2012); *see also West Virginia Laborers Trust Fund v. STEC Inc.*, No. SACV 11-01171, 2011 WL  
14 6156945, at \*4 (C.D. Cal. Oct. 7, 2011) (discussing the different interpretations and holding that  
15 “subsection (c) only allows for removal of actions based on state law”).<sup>1</sup>

16 13. In any event, the Court need not address this division of authority over the scope of  
17 Section 16(c)’s exception to Section 22(a)’s anti-removal provision. That is because the logically  
18 prior question — which *Young* did not address — is whether Section 22(a)’s anti-removal provision  
19 applies to this case in the first instance. It does not. As discussed *supra*, Section 22(a) prohibits  
20 removal only of cases over which the state courts have “competent jurisdiction.” Because the state  
21 court had no jurisdiction over Plaintiff’s “covered class action,” as the result of SLUSA, Section

22  
23 <sup>1</sup> *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1032 (9th Cir. 2008), is  
24 inapposite. In *Luther*, the Ninth Circuit held that “the Class Action Fairness Act of 2005, which  
25 permits in general the removal to federal court of high-dollar class actions involving diverse parties,  
26 does not supersede § 22(a)’s *specific* bar against removal of cases arising under the [Securities] Act.”  
27 The court did not address whether the SLUSA amendments to Section 22(a) strip state courts of  
28 jurisdiction over class actions raising claims under the Securities Act. Nor did the court have  
occasion to address whether the SLUSA amendments to Section 22(a) create an exception to Section  
22(a)’s anti-removal provision because the parties agreed that the mortgage pass-through certificates  
at issue were not “covered securities.” *Id.* at 1033 n.1; *cf. Madden v. Cowen & Co.*, 576 F.3d 957,  
965 (9th Cir. 2009) (observing in the context of a removed state-law action that “any suit removable  
under SLUSA’s removal provision, § 77p(c), is precluded under SLUSA’s preclusion provision,  
§ 77p(b), and any suit not precluded is not removable”).

22(a)'s anti-removal provision does not apply and does not prohibit removal of this case. Removal is thus proper under 28 U.S.C. § 1441.

14. Defendants will promptly serve a copy of this Notice on counsel for Plaintiff and will file a copy of this Notice with the Clerk of the Superior Court of the State of California for the County of San Mateo, pursuant to 28 U.S.C. § 1446(d).

15. Undersigned counsel certify that all of the defendants in this action consent to removal.

### CONCLUSION

16. WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and 15 U.S.C. § 77v(a), Defendants remove this action in its entirety from the Superior Court of the State of California, County of San Mateo, to the United States District Court for the Northern District of California, San Francisco Division.

DATED: June 20, 2012

Andrew B. Clubok (*pro hac vice* forthcoming)  
Brant W. Bishop, P.C. (*pro hac vice* forthcoming)  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

James F. Basile  
Elizabeth L. Deeley  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, CA 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

Richard D. Bernstein  
Tariq Mundiya  
Todd G. Cosenza  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, N.Y. 10019-6099, U.S.A.  
Telephone: (212) 728-8000  
Facsimile: (212) 728-8111

*Counsel for Facebook, Inc., Mark Zuckerberg, David A. Ebersman, David M. Spillane, Marc L. Andreessen, Erskine B. Bowles, James W. Breyer, Donald E. Graham, Reed Hastings and Peter A. Thiel*

1 **CERTIFICATE OF SERVICE**

2 I, Patrick Postolka, am employed in the County of San Francisco, State of California. I am  
3 over the age of 18 and not a party to the within action; my business address is 555 California Street,  
San Francisco, California 94104.

4 On June 20, 2012, I served a copy of the following document(s) described as:

5 **NOTICE OF REMOVAL OF STATE COURT CIVIL ACTION**

6 on the interested parties in this action as follows:

7 ☐ **By Facsimile**

8 By transmitting via facsimile, the document(s) listed above to the fax number set forth below  
9 on this date before 5:00 p.m. I am aware that service is presumed invalid unless the  
transmission machine properly issues a transmission report stating the transmission is  
10 complete and without error.

11 ☐ **By U.S. Mail**

12 By placing the document(s) listed above in a sealed envelope with postage thereon fully  
13 prepaid, in the United States mail at San Francisco, California, to the addressee(s) set forth  
below.

14 I am "readily familiar" with the firm's practice of collection and processing correspondence  
for mailing. Under that practice, it would be deposited with the U.S. postal service on that  
15 same day with postage thereon fully prepaid at San Francisco, California in the ordinary  
course of business. I am aware that on motion of the party served, service is presumed  
16 invalid if postal cancellation date or postage meter date is more than one day after date of  
deposit for mailing.

17 ☒ **By Overnight Mail**

18 By causing the document(s) listed above to be delivered to the addressee(s) set forth below  
19 on the following business morning by Federal Express Corporation or Express Mail.

20 ☐ **By Personal or Messenger Service**

21 By causing the document(s) listed above to be personally served in such envelope by hand to  
the person at the address(s) set forth below:

22 **See Attached Service List**

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

24 Executed on June 20, 2012, at San Francisco, California.

25 

26  
27 Patrick Postolka

**SERVICE LIST**

Lionel Z. Glancy  
Michael Goldberg  
Robert V. Prongay  
Casey E. Sadler  
GLANCY BINKOW & GOLDBERG LLP  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Telephone: 310-201-9150  
Facsimile: 310-201-9160

*Attorneys for Plaintiff and Co-Lead Class Counsel*

Frank J. Johnson  
David Elliot  
JOHNSON & WEAVER, LLP  
110 West "A" Street, Suite 750  
San Diego, California 92101  
Telephone: 619-230-0063  
Facsimile: 619-255-1856

*Co-Lead Class Counsel*

Stephen R. Bassier  
Samuel M. Ward  
BARRACK, RODOS & BACINE  
One America Plaza  
600 West Broadway, Suite 900  
San Diego, California 92101  
Telephone: 619-230-0800  
Facsimile: 619-230-1874

*Co-Lead Class Counsel*

Neal A. Potischman  
Samantha H. Knox  
DAVIS POLK & WARDWELL LLP  
1600 El Camino Real  
Menlo Park, CA 94025  
Telephone: (650) 752-2000  
Facsimile: (650) 752-2111

*Attorneys for Defendants 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, Itaú 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.*



# **EXHIBIT A**

**SUM-100**

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

FACEBOOK, INC. [See Additional Parties Attachment]

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

HARVEY LAPIN

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SAN MATEO COUNTY

MAY 30 2012

Clerk of the Superior Court

By [Signature]  
DEPUTY CLERK

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida el secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Mateo Superior Court

Southern Branch - Hall of Justice - 400 County Center, Redwood City, California, 94063

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Robert V. Prongay, 1925 Century Park East, Suite 2100, Los Angeles, CA 90067, Telephone: (310) 201-9150

DATE:

(Fecha)

MAY 30 2012

JOHN C. FITTON

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):



|  |                     |
|--|---------------------|
| <b>SHORT TITLE:</b><br>Lapin v. Facebook, Inc., et al. | <b>CASE NUMBER:</b> |
|--|---------------------|

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.  
 → If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

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., BARCLAYS CAPITAL INC., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, 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, ITAÚ 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.

Page \_\_\_\_\_ of \_\_\_\_\_

Page 1 of 1

LIONEL Z. GLANCY (#134180)  
MICHAEL GOLDBERG (#188669)  
ROBERT V. PRONGAY (#270796)  
CASEY E. SADLER (#274241)  
GLANCY BINKOW & GOLDBERG LLP  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160  
Email: [info@glancylaw.com](mailto:info@glancylaw.com)

*Attorneys for Plaintiff Harvey Lapin*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO

HARVEY LAPIN, 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.,

**FILED**  
SAN MATEO COUNTY

MAY 30 2012

Clerk of the Superior Court  
By [Signature]  
DEPUTY CLERK

Case No.

**CIV 514840**

**CLASS ACTION**

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

COMPLAINT

1 E\*TRADE SECURITIES LLC, ITAÚ  
2 BBA USA SECURITIES, INC., LAZARD  
3 CAPITAL MARKETS LLC,  
4 LEBENTHAL & CO., LLC, LOOP  
5 CAPITAL MARKETS LLC, M.R. BEAL  
6 & COMPANY, MACQUARIE CAPITAL  
7 (USA) INC., MURIEL SIEBERT & CO.,  
8 INC., OPPENHEIMER & CO. INC.,  
9 PACIFIC CREST SECURITIES LLC,  
10 PIPER JAFFRAY & CO., RAYMOND  
11 JAMES & ASSOCIATES, INC.,  
12 SAMUEL A. RAMIREZ & COMPANY,  
13 INC., STIFEL, NICOLAUS &  
14 COMPANY, INCORPORATED, THE  
15 WILLIAMS CAPITAL GROUP, L.P., and  
16 WILLIAM BLAIR & COMPANY, L.L.C.,

17 Defendants.

1 Plaintiff Harvey Lapin ("Plaintiff"), by and through his attorneys, alleges the following  
2 upon information and belief, except as to those allegations concerning Plaintiff, which are  
3 alleged upon personal knowledge. Plaintiff's information and belief is based upon, among  
4 other things, his counsel's investigation, which includes without limitation: (a) review and  
5 analysis of regulatory filings made by Facebook, Inc. ("Facebook" or the "Company") with the  
6 United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press  
7 releases and media reports issued by and disseminated by Facebook; and (c) review of other  
8 publicly available information concerning Facebook.  
9

#### 10 NATURE AND SUMMARY OF THE ACTION

11 1. This is a class action on behalf of persons and/or entities who purchased or  
12 otherwise acquired the common stock of Facebook pursuant and/or traceable to the Company's  
13 initial public offering (the "IPO" or the "Offering").  
14

15 2. Facebook operates as a social networking company worldwide.  
16

17 3. The claims in this action arise from the materially false and/or misleading  
18 Registration Statement and Prospectus issued in connection with the Offering. In the IPO, the  
19 Company offered for sale 421,233,615 shares of common stock at a price of \$38.00 per share, of  
20 which 180,000,000 shares of Class A common were offered by the Company and 241,233,615  
21 shares of Class A common stock were offered by existing stockholders. According to the  
22 Company, Facebook expects to receive net proceeds of approximately \$6,764,760,000 and  
23 selling stockholders expect to receive \$9,066,041,719 from the Offering, after deducting  
24 underwriting discounts, commissions and offering related transaction costs.  
25

26 4. As detailed below, the Registration Statement and Prospectus contained  
27 materially false and misleading statements and omitted material information in violation of  
28

1 Sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k and  
2 77o.

### 3 JURISDICTION AND VENUE

4 5. The claims asserted herein arise under and pursuant to Sections 11 and 15 of the  
5 Securities Act (15 U.S.C. §§ 77k and 77o). This Court has jurisdiction over the subject matter of  
6 this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which explicitly states  
7 that "[e]xcept as provided in section 16(c), no case arising under this title and brought *in any*  
8 *State court* of competent jurisdiction shall be removed to any court in the United States."  
9 Section 16(c) of the Securities Act refers to "covered class actions," which are defined as  
10 lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims  
11 *under state or common law*. This is an action asserting federal law claims. Thus, it does not fall  
12 within the definition of a "covered class action" under §16(c) and therefore is not removable to  
13 federal court under the Securities Litigation Uniform Standards Act of 1998.

14 6. Each Defendant has sufficient contacts with California, or otherwise purposefully  
15 avails itself of benefits from California or has property in California so as to render the exercise  
16 of jurisdiction over each by the California courts consistent with traditional notions of fair play  
17 and substantial justice.

18 7. The amount in controversy exceeds the jurisdictional minimum of this Court, and  
19 the total amount of damages sought exceeds \$25,000.

20 8. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15  
21 U.S.C. § 77v. Defendant Facebook's principal executive offices are located within this County,  
22 the individual defendants conduct business in this County, and many of the acts and transactions  
23 alleged herein, including the preparation and dissemination of materially false and/or misleading  
24

1 information, occurred in substantial part in this County.

2 **PARTIES**

3 9. Plaintiff Harvey Lapin purchased Facebook securities pursuant and/or traceable to  
4 the Registration Statement issued in connection with the Company's IPO and has been damaged  
5 thereby.

6  
7 10. Defendant Facebook is a Delaware corporation with its principal executive offices  
8 located at 1601 Willow Road, Menlo Park, California 94025.

9 11. Defendant Mark Zuckerberg ("Zuckerberg") was, at all relevant times, Chairman  
10 and Chief Executive Officer ("CEO") of Facebook and signed or authorized the signing of the  
11 Company's Registration Statement filed with the SEC.

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

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

19  
20 14. Defendant Marc L. Andreessen ("Andreessen") was, at all relevant times, a  
21 director of Facebook and signed or authorized the signing of the Company's Registration  
22 Statement filed with the SEC.

23  
24 15. Defendant Erskine B. Bowles ("Bowles") was, at all relevant times, a director of  
25 Facebook and signed or authorized the signing of the Company's Registration Statement filed  
26 with the SEC.

27 16. Defendant James W. Breyer ("Breyer") was, at all relevant times, a director of  
28

**COMPLAINT**



1 Facebook and signed or authorized the signing of the Company's Registration Statement filed  
2 with the SEC.

3 17. Defendant Donald E. Graham ("Graham") was, at all relevant times, a director of  
4 Facebook and signed or authorized the signing of the Company's Registration Statement filed  
5 with the SEC.

6 18. Defendant Reed Hastings ("Hastings") was, at all relevant times, a director of  
7 Facebook and signed or authorized the signing of the Company's Registration Statement filed  
8 with the SEC.

9 19. Defendant Peter A. Thiel ("Thiel") was, at all relevant times, a director of  
10 Facebook and signed or authorized the signing of the Company's Registration Statement filed  
11 with the SEC.

12 20. Defendants Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer,  
13 Graham, Hastings and Thiel, are collectively referred to hereinafter as the "Individual  
14 Defendants."

15 21. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") served as an  
16 underwriter to Facebook in connection with the Offering.

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

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

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

23 25. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter to  
24

1 Facebook in connection with the Offering.

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

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

6 28. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") served as an  
7 underwriter to Facebook in connection with the Offering.

9 29. Defendant Deutsche Bank Securities Inc. ("Deutsche") served as an underwriter  
10 to Facebook in connection with the Offering.

11 30. Defendant RBC Capital Markets, LLC ("RBC") served as an underwriter to  
12 Facebook in connection with the Offering.

13 31. Defendant Blaylock Robert Van LLC ("Blaylock") served as an underwriter to  
14 Facebook in connection with the Offering.

15 32. Defendant BMO Capital Markets Corp. ("BMO") served as an underwriter to  
16 Facebook in connection with the Offering.

17 33. Defendant C.L. King & Associates, Inc. ("C.L. King") served as an underwriter to  
18 Facebook in connection with the Offering.

19 34. Defendant Cabrera Capital Markets, LLC ("Cabrera") served as an underwriter to  
20 Facebook in connection with the Offering.

21 35. Defendant CastleOak Securities, L.P. ("CastleOak") served as an underwriter to  
22 Facebook in connection with the Offering.

23 36. Defendant Cowen and Company, LLC. ("Cowen") served as an underwriter to  
24 Facebook in connection with the Offering.

1           37. Defendant E\*TRADE Securities LLC ("E\*TRADE") served as an underwriter to  
2 Facebook in connection with the Offering.

3           38. Defendant Itaú BBA USA Securities, Inc. ("Itaú") served as an underwriter to  
4 Facebook in connection with the Offering.

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

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

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

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

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

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

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

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

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

23           48. Defendant Raymond James & Associates, Inc. ("Raymond James") served as an  
24  
25  
26  
27  
28

1 underwriter to Facebook in connection with the Offering.

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

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

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

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

10 53. Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, Merrill Lynch,  
11 Barclays, Allen, Citigroup, Credit Suisse, Deutsche, RBC, Blaylock, BMO, C.L. King, Cabrera,  
12 CastleOak, Cowen, E\*Trade, Itaú, Lazard, Lebenthal, Loop, M.R. Beal, Macquarie, Muriel,  
13 Oppenheimer, Pacific Crest, Piper Jaffray, Raymond James, Ramirez, Stifel, Williams, and  
14 William Blair, are collectively referred to hereinafter as the "Underwriter Defendants."  
15  
16

#### 17 CLASS ACTION ALLEGATIONS

18  
19 54. Plaintiff brings this action as a class action pursuant to California Code of Civil  
20 Procedure Section 382 on behalf of a Class, consisting of all persons and/or entities who  
21 purchased or otherwise acquired the common stock of Facebook pursuant and/or traceable to the  
22 Company's false and/or misleading Registration Statement and Prospectus issued in connection  
23 with the Company's IPO, and who were damaged thereby (the "Class"). Excluded from the  
24 Class are Defendants, the officers and directors of the Company, at all relevant times, members  
25 of their immediate families and their legal representatives, heirs, successors or assigns and any  
26 entity in which Defendants have or had a controlling interest.  
27  
28

1        55. The members of the Class are so numerous that joinder of all members is  
2 impracticable. During the relevant period, Facebook's securities were actively traded on the  
3 NASDAQ Stock Exchange (the "NASDAQ"). While the exact number of Class members is  
4 unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,  
5 Plaintiff believes that there are hundreds or thousands of members in the proposed Class. The  
6 Company offered more than 420 million shares of common stock in the IPO. Moreover, record  
7 owners and other members of the Class may be identified from records maintained by Facebook  
8 or its transfer agent and may be notified of the pendency of this action by mail, using the form of  
9 notice similar to that customarily used in securities class actions.  
10

11        56. Plaintiff's claims are typical of the claims of the members of the Class as all  
12 members of the Class are similarly affected by Defendants' wrongful conduct in violation of  
13 federal law that is complained of herein.  
14

15        57. Plaintiff will fairly and adequately protect the interests of the members of the  
16 Class and have retained counsel competent and experienced in class and securities litigation.  
17

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

21            (a) whether the Securities Act was violated by Defendants' acts as alleged  
22 herein;  
23

24            (b) whether statements made by Defendants to the investing public in  
25 connection with the Company's IPO omitted and/or misrepresented material facts about the  
26 business, operations, and prospects of Facebook; and  
27  
28

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

3 59. A class action is superior to all other available methods for the fair and efficient  
4 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
5 the damages suffered by individual Class members may be relatively small, the expense and  
6 burden of individual litigation make it impossible for members of the Class to individually  
7 redress the wrongs done to them. There will be no difficulty in the management of this action as  
8 a class action.  
9

### 10 BACKGROUND

11 60. Facebook operates as a social networking company worldwide.  
12

13 61. On or about February 1, 2012, Facebook filed a registration statement with the  
14 SEC on Form S-1. Thereafter, the Company repeatedly amended the Form S-1, including on or  
15 about May 16, 2012, when Facebook filed with the SEC the final Form S-1/A (collectively, the  
16 "Registration Statement") for the IPO.  
17

18 62. On or around May 18, 2012, the Company filed with the SEC its IPO Prospectus  
19 (the "Prospectus"), which forms part of the "Registration Statement" that was declared effective  
20 on May 17, 2012.

21 63. In the IPO, the Company offered for sale 421,233,615 shares of common stock at  
22 a price of \$38.00 per share, of which 180,000,000 shares of Class A common were offered by the  
23 Company and 241,233,615 shares of Class A common stock were offered by existing  
24 stockholders. According to the Company, it expected to receive net proceeds of approximately  
25 \$6.8 billion from its IPO after deducting underwriting discounts and commissions, and offering  
26 expenses.  
27  
28

### COMPLAINT

1                   **FACEBOOK'S FALSE AND/OR MISLEADING REGISTRATION**  
2                   **STATEMENT AND PROSPECTUS**

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

6           65.     However, the Registration Statement failed to disclose that during the IPO  
7 roadshow, the lead underwriters, including, Defendants Morgan Stanley, J.P. Morgan, and  
8 Goldman Sachs, all cut their earnings forecasts and that news of the estimate cut was passed on  
9 only to a handful of large investor clients, not to the public. Therefore, the Registration  
10 Statement was negligently prepared and, as a result, contained untrue statements of material facts  
11 or omitted to state other facts necessary to make the statements made not misleading, and was  
12 not prepared in accordance with the rules and regulations governing their preparation.  
13

14           66.     On May 19, 2012, Henry Blodget published an article entitled, "If This Really  
15 Happened During The Facebook IPO, Buyers Should Be Mad As Hell..." Therein, the article, in  
16 relevant part, stated:  
17

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

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

23                   Earnings guidance is *highly material information* (meaning that any investor  
24 considering an investment decision would want to know it). It represents a future  
25 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.

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

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

4 Why?

5 Because such a late change in guidance would mean that Facebook's business was  
6 deteriorating rapidly--between the start of the roadshow and the middle of the  
7 roadshow.

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

10 So the report that Facebook had "reduced earnings guidance" during the roadshow  
11 just seemed like a typical misunderstanding between Wall Street and the public--  
12 something lost in translation between what a reporter was hearing from sources  
13 and what actually made it into print.

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

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

18 Hmmm.

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

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

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

28 67. 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 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



1 article, in relevant part, stated:

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

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

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

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

12 This is a huge problem, for one big reason:

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

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

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

26 In other words, during the marketing of the Facebook IPO, investors who did not  
27 hear about these underwriter estimate cuts were placed at a meaningful and unfair  
28 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

1 be "mad as hell" about it. And now Reuters has the details, and they sound as bad  
2 as we had feared.

3 There are a couple of possibilities for what happened.

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

6 The second is also bad news for Facebook.

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

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

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

21 Now, regardless of why the analysts cut their estimates (and this will be  
22 important), estimate cuts of any sort are material information, so if this news was  
23 given to some institutional clients, it also obviously should have been given to  
24 everyone.

25 That's the first problem.

26 The second potential question and problem is whether Facebook told the  
27 underwriters to cut their estimates--either by directly telling them to, or, more  
28 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

1 what happened, it is still unfair that news of the estimate cut wasn't disseminated  
2 quickly and clearly to everyone considering buying Facebook's IPO.

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

5 And as it does, the SEC should also revisit the practice that allows underwriter  
6 analysts to develop estimates that are used to market IPOs to institutional clients  
7 but are not shared with the public. In Europe, research analysts publish full  
8 reports on companies BEFORE they go public. This is a much better system, and  
9 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.

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

12 **FIRST CLAIM**  
13 **Violation of Section 11 of The Securities Act**  
14 **(Against All Defendants)**

15 70. Plaintiff repeats and realleges each and every allegation contained above, except  
16 any allegation of fraud, recklessness or intentional misconduct.

17 71. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C.  
18 §77k, on behalf of the Class, against all Defendants.

19 72. The Registration Statement for the IPO was inaccurate and misleading, contained  
20 untrue statements of material facts, omitted to state other facts necessary to make the statements  
21 made not misleading, and omitted to state material facts required to be stated therein.

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

24 74. As issuer of the shares, Facebook is strictly liable to Plaintiff and the Class for the  
25 misstatements and omissions.  
26

27 75. None of the Defendants named herein made a reasonable investigation or  
28

**COMPLAINT**

1 possessed reasonable grounds for the belief that the statements contained in the Registration  
2 Statement were true and without omissions of any material facts and were not misleading.

3 76. By reasons of the conduct herein alleged, each Defendant violated, and/or  
4 controlled a person who violated Section 11 of the Securities Act.

5 77. Plaintiff acquired Facebook shares pursuant and/or traceable to the Registration  
6 Statement for the IPO.

7 78. Plaintiff and the Class have sustained damages. The value of Facebook common  
8 stock has declined substantially subsequent to and due to Defendants' violations.  
9

10 **SECOND CLAIM**  
11 **Violation of Section 15 of The Securities Act**  
12 **(Against the Individual Defendants)**

13 79. Plaintiff repeats and realleges each and every allegation contained above, except  
14 any allegation of fraud, recklessness or intentional misconduct.

15 80. This count is asserted against the Individual Defendants and is based upon Section  
16 15 of the Securities Act.

17 81. Individual Defendants, by virtue of their offices, directorship and specific acts  
18 were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of  
19 Facebook within the meaning of Section 15 of the Securities Act. The Individual Defendants  
20 had the power and influence and exercised the same to cause Facebook to engage in the acts  
21 described herein.  
22

23 82. Individual Defendants' positions made them privy to and provided them with  
24 actual knowledge of the material facts concealed from Plaintiff and the Class.  
25

26 83. By virtue of the conduct alleged herein, the Individual Defendants are liable for  
27 the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.  
28

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

2 (a) Determining that this action is a proper class action under California Code of  
3 Civil Procedure Section 382;

4 (b) Awarding compensatory damages in favor of Plaintiff and the other Class  
5 members against all Defendants, jointly and severally, for all damages sustained as a result of  
6 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;  
7

8 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in  
9 this action, including counsel fees and expert fees;

10 (d) Awarding rescission or a rescissory measure of damages; and

11 (e) Such other and further relief as the Court may deem just and proper.  
12

13 **JURY TRIAL DEMANDED**

14 Plaintiff hereby demands a trial by jury.

15 Dated: May 30, 2012

**GLANCY BINKOW & GOLDBERG LLP**

16  
17 By: 

Lionel Z. Glancy

18 Michael Goldberg

19 Robert V. Prongay

Casey E. Sadler

20 1925 Century Park East, Suite 2100

21 Los Angeles, California 90067

22 Telephone: (310) 201-9150

23 Facsimile: (310) 201-9160

*Attorneys for Plaintiff Harvey Lapin*

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28  
**COMPLAINT**

|   |  |  |   |
|---|--|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Robert V. Prongay (SBN 270796)<br>Glancy Binkow & Goldberg LLP<br>1925 Century Park East, Suite 2100<br>Los Angeles, CA 90067<br>TELEPHONE NO.: (310) 201-9150 FAX NO.: (310) 201-9160 |  | FOR COURT USE ONLY<br><br><h1 style="margin: 0;">RECEIVED</h1><br><br>MAY 30 2012<br><br>CLERK OF THE SUPERIOR COURT<br>SAN MATEO COUNTY   |   |
| ATTORNEY FOR (Name): Plaintiff Harvey Lapin   |  |  |   |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo<br>STREET ADDRESS: 400 County Center<br>MAILING ADDRESS: 400 County Center<br>CITY AND ZIP CODE: Redwood City, 94063<br>BRANCH NAME: Southern Branch  |  |  |   |
| CASE NAME:<br>Lapin v. Facebook, Inc., et al.   |  |  |   |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)  |  | <b>Complex Case Designation</b><br><input type="checkbox"/> Counter <input type="checkbox"/> Joinder<br>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | CASE NUMBER: <b>CIV 514840</b><br><br>JUDGE:<br><br>DEPT: |

Items 1-6 below must be completed (see instructions on page 2).

|  |  |  |
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| <b>1. Check one box below for the case type that best describes this case:</b>   |  |  |
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other P/DPDWD (23)<br><b>Non-P/DPDWD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-P/DPDWD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (08)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input checked="" type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a. ☒ monetary     b. ☒ nonmonetary; declaratory or injunctive relief     c. ☐ punitive
4. Number of causes of action (specify): 2 - Violations of Section 11 and 15 of the Securities Act;
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 30, 2012

Robert V. Prongay

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.



**Superior Court of California  
County of San Mateo  
Civil Department  
400 County Center  
Redwood City, CA 94063-1655  
(650)363-4599  
[www.sanmateocourt.org](http://www.sanmateocourt.org)**

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|---|--|
| <b>HARVEY LAPIN</b><br>Plaintiff(s)<br>vs.<br><b>FACEBOOK, INC.</b><br>Defendant(s) | <b>Notice of Complex Case Status Conference</b><br><br>Case No.: CIV 514240      Date: <b>07/26/12</b><br>Time: <b>9:00 AM</b><br>Dept. <b>3</b> |
| Title: <b>HARVEY LAPIN VS FACEBOOK, INC., ET AL</b>                                 |  |

You are hereby given notice of your Complex Case Status Conference. The date, time and department have been written above. At this conference, the Presiding Judge will decide whether this action is a complex case within the meaning of California Rules of Court ("CRC"), Rule 3.400, subdivision (a) and whether it should be assigned to a single judge for all purposes.

1. In accordance with applicable **San Mateo County Local Rule 2.30**, you are hereby ordered to:
  - a. Serve copies of this notice, your Civil Case Cover Sheet, and your Certificate Re: Complex Case Designation on all named parties in this action no later than service of your first appearance pleadings.
  - b. Give reasonable notice of the Complex Case Status Conference to all named parties in this action, even if they have not yet made a first appearance or been formally served with the documents listed in subdivision (a). Such notice shall be given in the same manner as required for an ex parte application pursuant to CRC 3.1203.

**2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Complex Case Status Conference. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.**

3. An action is provisionally a complex case if it involves one or more of the following types of claims: (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving massive torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6). The Court shall treat a provisionally complex action as a complex case until the Presiding Judge has the opportunity to decide whether the action meets the definition in CRC 3.400(a).

4. Any party who files either a Civil Case Cover Sheet (pursuant to CRC 3.401) or a counter or joinder Civil Case Cover Sheet (pursuant to CRC 3.402, subdivision (b) or (c)), designating an action as a complex case in Items 1, 2 and/or 5, must also file an accompanying Certificate Re: Complex Case Designation in the form prescribed by the Court. The certificate must include supporting information showing a reasonable basis for the complex case designation being sought. Such supporting information may include, without limitation, a brief description of the following factors as they pertain to the particular action: (1) management of a large number of

separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision.

For further information regarding case management policies and procedures, see the court website at [www.sanimatocourt.org](http://www.sanimatocourt.org)

\* Telephonic appearances at Complex Case Status Conference are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference.

### **CLERK'S CERTIFICATE OF MAILING**

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by placing a copy thereof in separate sealed envelopes addressed to the address shown by the records of this Court, and by then sealing said envelopes and depositing same, with postage fully pre-paid thereon, in the United States Mail at Redwood City, California.

Date: 05/31/12

John C. Fitton,  
Court Executive Officer/Clerk

By: GRACIELA MARQUEZ  
Deputy Clerk

Copies mailed to:

ROBERT V PRONGAY  
1925 CENTURY PARK EAST  
SUITE 2100  
LOS ANGELES CA 90067



# NOTICE OF CASE MANAGEMENT CONFERENCE

**FILED**  
SAN MATEO COUNTY

**CIV 514240**

Harvey Lapin

Case No. \_\_\_\_\_

MAY 30 2012

Date: 10/11/12

VS:

Clerk of the Superior Court

Time: 9:00 a.m.

by [Signature]  
DEPUTY CLERK

Facebook, Inc., et al

Dept. 21 on Tuesday & Thursday  
Dept. 21 on Wednesday & Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1 In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:

- Serve all named defendants and file proofs of service on those defendants with the court within 60 days of filing the complaint (CRC 201 7).
- Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
- File and serve a completed Case Management Statement at least 15 days before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
- Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30 days before the date set for the Case Management Conference.

2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.

3. Continuances of case management conferences are highly disfavored unless good cause is shown.

4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10 days prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.

5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.

6. You are further ordered to appear in person\* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.

7 The Case Management judge will issue orders at the conclusion of the conference that may include:

- Referring parties to voluntary ADR and setting an ADR completion date;
- Dismissing or severing claims or parties;
- Setting a trial date.

8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at [www.sanmateocourt.org](http://www.sanmateocourt.org).

Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent for, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

**FILED**  
SAN MATEO COUNTY

JUN 18 2012

Clerk of the Superior Court  
By *[Signature]*  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO

DARRYL LAZAR, 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, ITAÚ 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.,

Lead Case No. CIV514065

CIV514240

1825  
[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION TO  
CONSOLIDATE ALL RELATED  
ACTIONS

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO CONSOLIDATE ALL RELATED ACTIONS

1 OPPENHEIMER & CO. INC., PACIFIC  
2 CREST SECURITIES LLC, PIPER JAFFRAY  
3 & CO., RAYMOND JAMES & ASSOCIATES,  
4 INC., SAMUEL A. RAMIREZ & COMPANY,  
5 INC., STIFEL, NICOLAUS & COMPANY,  
6 INCORPORATED, THE WILLIAMS  
7 CAPITAL GROUP, L.P., and WILLIAM  
8 BLAIR & COMPANY, L.L.C.,

9 Defendants.

10 JENNIFER STOKES, Individually and On  
11 Behalf of All Others Similarly Situated,

12 Plaintiff,

13 v.

14 FACEBOOK, INC., MARK ZUCKERBERG,  
15 DAVID A. EBERSMAN, DAVID M.  
16 SPILLANE, MARC L. ANDREESSEN,  
17 ERSKINE B. BOWLES, JAMES W. BREYER,  
18 DONALD E. GRAHAM, REED HASTINGS,  
19 PETER A. THIEL, MORGAN STANLEY & CO.  
20 LLC, J.P. MORGAN SECURITIES LLC,  
21 GOLDMAN, SACHS & CO., MERRILL  
22 LYNCH, PIERCE, FENNER & SMITH  
23 INCORPORATED, BARCLAYS CAPITAL  
24 INC., ALLEN & COMPANY LLC, CITIGROUP  
25 GLOBAL MARKETS INC., CREDIT SUISSE  
26 SECURITIES (USA) LLC, DEUTSCHE BANK  
27 SECURITIES INC., RBC CAPITAL MARKETS,  
28 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, ITAÚ 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 &

Case No. CIV514107

Date Filed: May 23, 2012

1 COMPANY, L.L.C.,

2 Defendants.

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4 MATTHEW PILGRAM, Individually and On  
5 Behalf of All Others Similarly Situated,

6 Plaintiff,

7 v.

8 FACEBOOK, INC., MARK ZUCKERBERG,  
9 DAVID A. EBERSMAN, DAVID M.  
10 SPILLANE, MARC L. ANDREESSEN,  
11 ERSKINE B. BOWLES, JAMES W. BREYER,  
12 DONALD E. GRAHAM, REED HASTINGS,  
13 PETER A. THIEL, MORGAN STANLEY & CO.  
14 LLC, BARCLAYS CAPITAL INC., ALLEN &  
15 COMPANY LLC, CITIGROUP GLOBAL  
16 MARKETS INC., CREDIT SUISSE  
17 SECURITIES (USA) LLC, DEUTSCHE BANK  
18 SECURITIES INC., RBC CAPITAL MARKETS,  
19 LLC, BLAYLOCK ROBERT VAN LLC, BMO  
20 CAPITAL MARKETS CORP., C.L. KING &  
21 ASSOCIATES, INC., CABRERA CAPITAL  
22 MARKETS, LLC, CASTLEOAK SECURITIES,  
23 L.P., COWEN AND COMPANY, LLC.,  
24 E\*TRADE SECURITIES LLC, ITAÚ BBA USA  
25 SECURITIES, INC., LAZARD CAPITAL  
26 MARKETS LLC, LEBENTHAL & CO., LLC,  
27 LOOP CAPITAL MARKETS LLC, M.R. BEAL  
28 & 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.

Case No. CIV514111

Date Filed: May 23, 2012

1 VERNON R. DeMOIS JR., Individually and on  
2 Behalf of All Others Similarly Situated,  
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Plaintiff

Case No. CIV514163  
Date Filed: May 25, 2012

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, AND MORGAN STANLEY & CO. LLC.

Defendants.

ELBITA ALFONSO, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff

Case No. CIV514171  
Date Filed: May 25, 2012

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.C, REDIT SUISSE  
SECURITIES (USA) LLC, DEUTSCHE BANK  
SECURITIES INC., RBC CAPITAL MARKETS,  
LLC, and WELLS FARGO SECURITIES, LLC,

Defendants.

1 EDWARD J. SHIERRY, Individually and On  
2 Behalf of All Others Similarly Situated,

Case No. CIV514172  
Date Filed: May 25, 2012

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Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,  
DAVID E. 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, GOLDMAN, SACHS & CO.,  
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 JAFFRA Y & 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.

26 MICHAEL LIEBER, Individually and On Behalf  
27 of All Others Similarly Situated,

Case No. CIV514193  
Date Filed: May 29, 2012

Plaintiff,

v.

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO CONSOLIDATE ALL RELATED ACTIONS

1 FACEBOOK INC.; MARK  
2 ZUCKERBURG; DONALD E. GRAHAM;  
3 DAVID A. EBERSMAN; JAMES W.  
4 BREYER; DAVID M. SPILLANE; PETER  
5 A. THIEL; MARC L. ANDREESSEN;  
6 REED HASTINGS; ERSKINE B. BOWLES;  
7 MORGAN STANLEY & CO.  
8 LLC; J.P. MORGAN SECURITIES LLC;  
9 GOLDMAN, SACHS & CO.; MERRILL  
10 LYNCH; E \*TRADE SECURITIES LLC;  
11 OPPENHEIMER & CO., INC.;  
12 BARCLAYS CAPITAL INC.;  
13 CITIGROUP GLOBAL MARKETS INC.;  
14 CREDIT SUISSE SECURITIES (USA)  
15 LLC; PIERCE, FENNER & SMITH  
16 INCORPORATED; ALLEN &  
17 FACEBOOK LLC; DEUTSCHE BANK  
18 SECURITIES INC.; RBC CAPITAL  
19 MARKETS, LLC; MURIEL SIEBERT & CO.,  
20 INC.; CABRERA CAPITAL  
21 MARKETS, LLC; BMO CAPITAL  
22 MARKETS CORP.; CASTLEOAK  
23 SECURITIES, LP.; LAZARD CAPITAL  
24 MARKETS LLC; PACIFIC CREST  
25 SECURITIES LLC; LOOP CAPITAL  
26 MARKETS LLC; ITAU BBA USA  
27 SECURITIES, INC.; WILLIAM BLAIR &  
28 FACEBOOK, L.L.C.; BLAYLOCK  
ROBERT VAN LLC; LEBENTHAL & CO.  
LLC; M.R. BEAL & FACEBOOK;  
MACQUARIE CAPITAL (USA) INC.;  
PIPER JAFFRAY & CO.; COWEN AND  
FACEBOOK, LLC; RAYMOND JAMES  
ASSOCIATES, INC.; STIFEL,  
NICOLAUS & FACEBOOK,  
INCORPORATED; C.L. KING &  
ASSOCIATES, INC.; SAMUEL A.  
RAMIREZ & FACEBOOK, INC.; COWEN  
AND FACEBOOK, LLC; THE WILLIAMS  
CAPITAL GROUP, LP; and Does 1  
through 100, inclusive,

Defendants.

1 KAREN CUKER and BRIAN GRALNICK,  
2 Individually and On Behalf of All Others Similarly  
3 Situated,

4  
5 Plaintiffs,

6 v.

7 FACEBOOK, INC., MARK ZUCKERBERG,  
8 DAVID A. EBERSMAN, DAVID M. SPILLANE,  
9 MARC L. ANDREESSEN, ERSKINE B.  
10 BOWLES, JAMES W. BREYER, DONALD E.  
11 GRAHAM, REED HASTINGS, PETER A.  
12 THIEL, MORGAN STANLEY & CO. LLC, J.P.  
13 MORGAN SECURITIES LLC, GOLDMAN,  
14 SACHS & CO., MERRILL LYNCH, PIERCE,  
15 FENNER & SMITH INCORPORATED,  
16 BARCLAYS CAPITAL INC., ALLEN &  
17 COMPANY LLC, CITIGROUP GLOBAL  
18 MARKETS INC., CREDIT SUISSE  
19 SECURITIES (USA) LLC, DEUTSCHE BANK  
20 SECURITIES INC., RBC CAPITAL MARKETS,  
21 LLC, WELLS FARGO SECURITIES, LLC,  
22 BLAYLOCK ROBERT VAN LLC, BMO  
23 CAPITAL MARKETS CORP., C.L. KING &  
24 ASSOCIATES, INC., CABRERA CAPITAL  
25 MARKETS, LLC, CASTLEOAK SECURITIES,  
26 L.P., COWEN AND COMPANY, LLC.,  
27 E\*TRADE SECURITIES LLC, ITAÚ BBA USA  
28 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.

Case No. CIV514238

Date Filed: May 30, 2012



1 HARVEY LAPIN, Individually and On Behalf of  
2 All Others Similarly Situated,

Case No. CIV514240  
Date Filed: May 30, 2012

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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, ITAÚ 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.

1 Upon Plaintiffs Darryl Lazar, Jennifer Stokes, Matthew Pilgram, Vernon R. Demois Jr.,  
2 Elbita Alfonso, Edward J. Shierry, Michael Lieber, Karen Cuker, Brian Gralnick and Harvey  
3 Lapin (collectively "Movants") *Ex Parte* Application for Approval of Consolidation of Related  
4 Cases and Appointment of Co-Lead Class Counsel, or Alternatively, for an Order Shortening  
5 Time for Hearing Such Motion, and following consideration of the relevant papers and  
6 arguments of counsel, and good cause appearing:

7 **IT IS HEREBY ORDERED** that:

8 The following actions are hereby consolidated for all purposes, including pretrial  
9 proceedings and trial, pursuant to Section 1048 of the *California Code of Civil Procedure*:

| <u>Abbreviated Case Name</u>                                    | <u>Case Number</u> | <u>Date Filed</u> |
|---|--------------------|-------------------|
| <i>Darryl Lazar v. Facebook, Inc. et al.</i> ,                  | CIV514065          | May 22, 2012      |
| <i>Jennifer Stokes v. Facebook, Inc. et al</i>                  | CIV514107          | May 23, 2012      |
| <i>Matthew Pilgram v. Facebook, Inc. et al</i>                  | CIV514111          | May 23, 2012      |
| <i>Vernon R. DeMois, Jr., v. Facebook, Inc., et al.</i>         | CIV514163          | May 25, 2012      |
| <i>Elbita Alfonso, v. Facebook, Inc., et al.</i>                | CIV514171          | May 25, 2012      |
| <i>Edward J. Shierry, v. Facebook, Inc., et al.</i>             | CIV514172          | May 25, 2012      |
| <i>Michael Lieber v. Facebook, Inc., et al.</i>                 | CIV514193          | May 29, 2012      |
| <i>Karen Cuker and Brian Gralnick v. Facebook, Inc., et al.</i> | CIV514238          | May 30, 2012      |
| <i>Harvey Lapin v. Facebook, Inc., et al.</i>                   | CIV514240          | May 30, 2012      |

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22 Counsel shall promptly notify the Court of any new related cases filed before this Court  
23 and if counsel wish to consolidate such cases, they shall file and serve an appropriate motion or  
24 application.

25 Every pleading filed in these consolidated actions, or in any separate action included  
26 herein, shall bear the following caption:

1 DARRYL LAZAR, Individually and On Behalf  
2 of All Others Similarly Situated,

3 Plaintiff,

4 v.

5 FACEBOOK, INC., MARK ZUCKERBERG,  
6 DAVID A. EBERSMAN, DAVID M.  
7 SPILLANE, MARC L. ANDREESSEN,  
8 ERSKINE B. BOWLES, JAMES W. BREYER,  
9 DONALD E. GRAHAM, REED HASTINGS,  
10 PETER A. THIEL, MORGAN STANLEY &  
11 CO. LLC, J.P. MORGAN SECURITIES LLC,  
12 GOLDMAN, SACHS & CO., MERRILL  
13 LYNCH, PIERCE, FENNER & SMITH  
14 INCORPORATED, BARCLAYS CAPITAL  
15 INC., ALLEN & COMPANY LLC,  
16 CITIGROUP GLOBAL MARKETS INC.,  
17 CREDIT SUISSE SECURITIES (USA) LLC,  
18 DEUTSCHE BANK SECURITIES INC., RBC  
19 CAPITAL MARKETS, LLC, BLAYLOCK  
20 ROBERT VAN LLC, BMO CAPITAL  
21 MARKETS CORP., C.L. KING &  
22 ASSOCIATES, INC., CABRERA CAPITAL  
23 MARKETS, LLC, CASTLEOAK  
24 SECURITIES, L.P., COWEN AND  
25 COMPANY, LLC., E\*TRADE SECURITIES  
26 LLC, ITAÚ BBA USA SECURITIES, INC.,  
27 LAZARD CAPITAL MARKETS LLC,  
28 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.

Lead Case No. CIV514065

(Consolidated with Case Nos:  
CIV514107, CIV514111,  
CIV514163, CIV514171,  
CIV514172, CIV514193,  
CIV514238, CIV514240)

CLASS ACTION

1 The files of these consolidated actions shall be maintained in one file under Lead Case  
2 No. CIV514065.

3 ~~This Order shall apply to each case, arising out of the same or substantially the same~~  
4 ~~transactions or events as these cases, which is subsequently filed in, removed to or transferred to~~  
5 ~~this Court, including cases transferred to this Court.~~

6 When a case which properly belongs as part of *Darryl Lazar v. Facebook, Inc. et al.*,  
7 Lead Case No. CIV514065, is hereafter filed in the Court or transferred here from another court,  
8 this Court requests the assistance of counsel in calling to the attention of the Clerk of the Court  
9 the filing or transfer of any case which might properly be consolidated as part of the lead case,  
10 and counsel are to assist in assuring that counsel in subsequent actions receive notice of this  
11 Order.

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DATED: JUN 14 2012

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HON. BETH L. FREEMAN