

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

11 NATURE AND SUMMARY OF THE ACTION

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

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

17
18 3. The claims in this action arise from the materially false and/or misleading
19 Registration Statement and Prospectus issued in connection with the Offering. In the IPO,
20 the Company offered for sale 421,233,615 shares of common stock at a price of \$38.00 per
21 share, of which 180,000,000 shares of Class A common were offered by the Company and
22 241,233,615 shares of Class A common stock were offered by existing stockholders.
23 According to the Company, Facebook expects to receive net proceeds of approximately
24 \$6,764,760,000 and selling stockholders expect to receive \$9,066,041,719 from the Offering,
25 after deducting underwriting discounts, commissions and offering related transaction costs.
26

27
28 4. As detailed below, the Registration Statement and Prospectus contained

1 materially false and misleading statements and omitted material information in violation of
2 Sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k
3 and 77o. , 15 USC
4

5 JURISDICTION AND VENUE

6 5. The claims asserted herein arise under and pursuant to Sections 11 and 15 of
7 the Securities Act (15 U.S.C. §§ 77k and 77o). This Court has jurisdiction over the subject
8 matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which
9 explicitly states that "[e]xcept as provided in section 16(c), no case arising under this title
10 and brought *in any State court* of competent jurisdiction shall be removed to any court in the
11 United States." Section 16(c) of the Securities Act refers to "covered class actions," which
12 are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons
13 asserting claims *under state or common law*. This is an action asserting federal law claims.
14 Thus, it does not fall within the definition of a "covered class action" under §16c) and
15 therefore is not removable to federal court under the Securities Litigation Uniform Standards
16 Act of 1998.
17
18
19

20 6. Each Defendant has sufficient contacts with California, or otherwise
21 purposefully avails itself of benefits from California or has property in California so as to
22 render the exercise of jurisdiction over each by the California courts consistent with
23 traditional notions of fair play and substantial justice.
24

25 7. The amount in controversy exceeds the jurisdictional minimum of this Court,
26 and the total amount of damages sought exceeds \$25,000.
27

28 8. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15

1 U.S.C. § 77v. Defendant Facebook's principal executive offices are located within this
2 County, the individual defendants conduct business in this County, and many of the acts and
3 transactions alleged herein, including the preparation and dissemination of materially false
4 and/or misleading information, occurred in substantial part in this County.
5

6 **PARTIES**

7 9. Plaintiff JENNIFER STOKES purchased Facebook securities pursuant and/or
8 traceable to the Registration Statement issued in connection with the Company's IPO and
9 has been damaged thereby.
10

11 10. Defendant Facebook is a Delaware corporation with its principal executive
12 offices located at 1601 Willow Road, Menlo Park, California 94025.
13

14 11. Defendant Mark Zuckerberg ("Zuckerberg") was, at all relevant times,
15 Chairman and Chief Executive Officer ("CEO") of Facebook and signed or authorized the
16 signing of the Company's Registration Statement filed with the SEC.
17

18 12. Defendant David A. Ebersman ("Ebersman") was, at all relevant times Chief
19 Financial Officer ("CFO") of Facebook and signed or authorized the signing of the
20 Company's Registration Statement filed with the SEC.
21

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

25 14. Defendant Marc L. Andreessen ("Andreessen") was, at all relevant times, a
26 director of Facebook and signed or authorized the signing of the Company's Registration
27 Statement filed with the SEC.
28

1 15. Defendant Erskine B. Bowles ("Bowles") was, at all relevant times, a director
2 of Facebook and signed or authorized the signing of the Company's Registration Statement
3 filed with the SEC.
4

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

9 17. Defendant Donald E. Graham ("Graham") was, at all relevant times, a director
10 of Facebook and signed or authorized the signing of the Company's Registration Statement
11 filed with the SEC.
12

13 18. Defendant Reed Hastings ("Hastings") was, at all relevant times, a director of
14 Facebook and signed or authorized the signing of the Company's Registration Statement
15 filed with the SEC.
16

17 19. Defendant Peter A. Thiel ("Thiel") was, at all relevant times, a director of
18 Facebook and signed or authorized the signing of the Company's Registration Statement
19 filed with the SEC.
20

21 20. Defendants Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer,
22 Graham, Hastings and Thiel, are collectively referred to hereinafter as the "Individual
23 Defendants."
24

25 21. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") served as an
26 underwriter to Facebook in connection with the Offering.
27

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

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

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

5 25. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter to
6 Facebook in connection with the Offering.

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

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

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

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

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

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

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

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

- 1 **34. Defendant Cabrera Capital Markets, LLC ("Cabrera") served as an underwriter**
2 **to Facebook in connection with the Offering.**
3
- 4 **35. Defendant CastleOak Securities, L.P. ("CastleOak") served as an underwriter**
5 **to Facebook in connection with the Offering.**
6
- 7 **36. Defendant Cowen and Company, LLC. ("Cowen") served as an underwriter to**
8 **Facebook in connection with the Offering.**
9
- 10 **37. Defendant E*TRADE Securities LLC ("E*TRADE") served as an underwriter**
11 **to Facebook in connection with the Offering.**
12
- 13 **38. Defendant Itau BBA USA Securities, Inc. ("Itau") served as an underwriter to**
14 **Facebook in connection with the Offering.**
15
- 16 **39. Defendant Lazard Capital Markets LLC ("Lazard") served as an underwriter to**
17 **Facebook in connection with the Offering.**
18
- 19 **40. Defendant Lebenthal & Co., LLC ("Lebenthal") served as an underwriter to**
20 **Facebook in connection with the Offering.**
21
- 22 **41. Defendant Loop Capital Markets LLC ("Loop") served as an underwriter to**
23 **Facebook in connection with the Offering.**
24
- 25 **42. Defendant M.R. Beal & Company ("M.R. Beal") served as an underwriter to**
26 **Facebook in connection with the Offering.**
27
- 28 **43. Defendant Macquarie Capital (USA) Inc. ("Macquarie") served as an**
underwriter to Facebook in connection with the Offering.
29
- 30 **44. Defendant Muriel Siebert & Co., Inc. ("Muriel") served as an underwriter to**
Facebook in connection with the Offering.

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

3
4 46. Defendant Pacific Crest Securities LLC ("Pacific Crest") served as an
5 underwriter to Facebook in connection with the Offering.

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

8
9 48. Defendant Raymond James & Associates, Inc. ("Raymond James") served as
10 an underwriter to Facebook in connection with the Offering.

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

13
14 50. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") served as an
15 underwriter to Facebook in connection with the Offering.

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

18
19 52. Defendant William Blair & Company, L.L.C. ("William Blair") served as an
20 underwriter to Facebook in connection with the Offering.

21 53. Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, Merrill Lynch,
22 Barclays, Allen, Citigroup, Credit Suisse, Deutsche, RBC, Blaylock, BMO, C.L. King,
23 Cabrera, CastleOak, Cowen, E*Trade, Itau, Lazard, Lebenthal, Loop, M.R. Beal, Macquarie,
24 Muriel, Oppenheimer, Pacific Crest, Piper Jaffray, Raymond James, Ramirez, Stifel,
25 Williams, and William Blair, are collectively referred to hereinafter as the "Underwriter
26 Defendants."
27
28

CLASS ACTION ALLEGATIONS

1
2 **54. Plaintiff brings this action as a class action pursuant to California Code of Civil**
3
4 **Procedure Section 382 on behalf of a Class, consisting of all persons and/or entities who**
5 **purchased or otherwise acquired the common stock of Facebook pursuant and/or traceable to**
6 **the Company's false and/or misleading Registration Statement and Prospectus issued in**
7 **connection with the Company's IPO, and who were damaged thereby (the "Class").**
8 **Excluded from the Class are Defendants, the officers and directors of the Company, at all**
9 **relevant times, members of their immediate families and their legal representatives, heirs,**
10 **successors or assigns and any entity in which Defendants have or had a controlling interest.**

11
12 **55. The members of the Class are so numerous that joinder of all members is**
13 **impracticable. During the relevant period, Facebook's securities were actively traded on the**
14 **NASDAQ Stock Exchange (the "NASDAQ"). While the exact number of Class members is**
15 **unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,**
16 **Plaintiff believes that there are hundreds or thousands of members in the proposed Class.**
17 **The Company offered more than 420 million shares of common stock in the IPO. Moreover,**
18 **record owners and other members of the Class may be identified from records maintained by**
19 **Facebook or its transfer agent and may be notified of the pendency of this action by mail,**
20 **using the form of notice similar to that customarily used in securities class actions.**

21
22 **56. Plaintiff's claims are typical of the claims of the members of the Class as all**
23 **members of the Class are similarly affected by Defendants' wrongful conduct in violation of**
24 **federal law that is complained of herein.**

25
26 **57. Plaintiff will fairly and adequately protect the interests of the members of the**
27
28

1 Class and have retained counsel competent and experienced in class and securities litigation.

2 58. Common questions of law and fact exist as to all members of the Class and
3 predominate over any questions solely affecting individual members of the Class. Among
4 the questions of law and fact common to the Class are:
5

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

8 (b) whether statements made by Defendants to the investing public in
9 connection with the Company's IPO omitted and/or misrepresented material facts about the
10 business, operations, and prospects of Facebook; and
11

12 (c) to what extent the members of the Class have sustained damages and the
13 proper measure of damages.
14

15 59. A class action is superior to all other available methods for the fair and
16 efficient adjudication of this controversy since joinder of all members is impracticable.
17 Furthermore, as the damages suffered by individual Class members may be relatively small,
18 the expense and burden of individual litigation make it impossible for members of the Class
19 to individually redress the wrongs done to them. There will be no difficulty in the
20 management of this action as a class action.
21
22

23 BACKGROUND

24 60. Facebook operates as a social networking company worldwide.

25 61. On or about February 1, 2012, Facebook filed a registration statement with the
26 SEC on Form S-1. Thereafter, the Company repeatedly amended the Form S-1, including on
27 or about May 16, 2012, when Facebook filed with the SEC the final Form S-1/A
28

1 (collectively, the "Registration Statement") for the IPO.

2 62. On or around May 18, 2012, the Company filed with the SEC its IPO
3 Prospectus (the "Prospectus"), which forms part of the "Registration Statement" that was
4 declared effective on May 17, 2018.
5

6 63. In the IPO, the Company offered for sale 421,233,615 shares of common stock
7 at a price of \$38.00 per share, of which 180,000,000 shares of Class A common were offered
8 by the Company and 241,233,615 shares of Class A common stock were offered by existing
9 stockholders. According to the Company, it expected to receive net proceeds of
10 approximately \$6.8 billion from its IPO after deducting underwriting discounts and
11 commissions, and offering expenses.
12
13

14 **FACEBOOK'S FALSE AND/OR MISLEADING REGISTRATION**
15 **STATEMENT AND PROSPECTUS**

16 64. Under applicable SEC rules and regulations, the Registration Statement was
17 required to disclose known trends, events or uncertainties that were having, and were
18 reasonably likely to have, an impact on the Company's continuing operations.
19

20 65. However, the Registration Statement failed to disclose that during the IPO
21 roadshow, the lead underwriters, including, Defendants Morgan Stanley, J.P. Morgan, and
22 Goldman Sachs, all cut their earnings forecasts and that news of the estimate cut was passed
23 on only to a handful of large investor clients, not to the public. Therefore, the Registration
24 Statement was negligently prepared and, as a result, contained untrue statements of material
25 facts or omitted to state other facts necessary to make the statements made not misleading,
26 and was not prepared in accordance with the rules and regulations governing their
27
28

1 preparation.

2 66. On May 19, 2012, Henry Blodget published an article entitled, "If This Really
3 Happened During The Facebook IPO, Buyers Should Be Mad As Hell..." Therein, the
4 article, in relevant part, stated:
5

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

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

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

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

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

23 Why?

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

27 Any time a business outlook deteriorates that rapidly, alarm bells start going
28 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Hmmm.

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

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

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

67. On 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 article, in relevant part, stated:

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1 mentioned, vaguely, that recent trends in which users were growing faster than
2 revenue had continued into the second quarter.

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

8 To those who aren't experienced at reading filings, however, the real meaning
9 of this language could easily have been missed. Facebook's users have been
10 growing faster than revenue for a while, so why would it be news that this was
11 continuing?

12 In response to the amendment, meanwhile, all three lead underwriter analysts
13 suddenly cut their estimates.

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

18 That's the first problem.

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

23 If there was any communication at all between Facebook and its underwriters
24 regarding the analysts' estimates, Facebook will likely be on the hook for this,
25 too.

26 Speaking as a former analyst, it seems highly unlikely to me that the vague
27 language in the final IPO amendment would prompt all three underwriter
28 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.

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

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

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

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

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

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

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

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

27
28 83. By virtue of the conduct alleged herein, the Individual Defendants are liable

1 for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages
2 suffered.

3
4 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

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

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

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

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

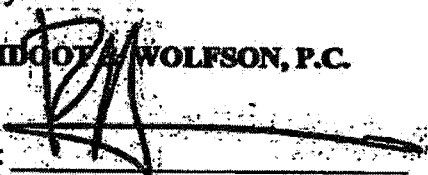
13 (e) Such other and further relief as the Court may deem just and proper.

14
15
16 **JURY TRIAL DEMANDED**

17 Plaintiff hereby demands a trial by jury.

18
19 Dated: May 23, 2012

AHDOOT & WOLFSON, P.C.

20
21 By: 
22 Robert Ahdoot
23 Tina Wolfson
24 Theodore Maya
25 Bradley King
26 10850 Wilshire Boulevard, Suite 370
27 Los Angeles, California 90024
28 Telephone: (310) 474-9111
Facsimile: (310) 474-8585

Attorneys for Plaintiff,
JENNIFER STOKES

**ENDORSED FILED
SAN MATEO COUNTY**

MAY 25 2012

Clerk of the Superior Court
By G. MARQUEZ
DEPUTY CLERK

1 LIONEL Z. GLANCY (#134180)
2 MICHAEL GOLDBERG (#188669)
3 ROBERT V. PRONGAY (#270796)
4 CASEY E. SADLER (#274241)
5 GLANCY BINKOW & GOLDBERG LLP
6 1925 Century Park East, Suite 2100
7 Los Angeles, California 90067
8 Telephone: (310) 201-9150
9 Facsimile: (310) 201-9160
10 Email: info@glancylaw.com

11 *Attorneys for Plaintiff Vernon R. DeMois, Jr.*

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

14 VERNON R. DeMOIS, JR., Individually
15 and On Behalf of All Others Similarly
16 Situated,

17 Plaintiff,

18 v.

19 FACEBOOK, INC., MARK
20 ZUCKERBERG, DAVID A. EBERSMAN,
21 DAVID M. SPILLANE, MARC L.
22 ANDREESSEN, ERSKINE B. BOWLES,
23 JAMES W. BREYER, DONALD E.
24 GRAHAM, REED HASTINGS, PETER A.
25 THIEL, AND MORGAN STANLEY &
26 CO. LLC.

27 Defendants.

Case No.

GIV 514163

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

FILED BY FAX
PURSUANT TO LOCAL RULES

28
COMPLAINT

1 Plaintiff Vernon R. DeMois, Jr. ("Plaintiff"), by and through his attorneys, alleges the
2 following upon information and belief, except as to those allegations concerning Plaintiff,
3 which are alleged upon personal knowledge. Plaintiff's information and belief is based upon,
4 among other things, his counsel's investigation, which includes without limitation: (a) review
5 and analysis of regulatory filings made by Facebook, Inc. ("Facebook" or the "Company")
6 with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis
7 of press releases and media reports issued by and disseminated by Facebook; and (c) review of
8 other 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 3. The claims in this action arise from the materially false and/or misleading
17 Registration Statement and Prospectus issued in connection with the Offering. In the IPO, the
18 Company offered for sale 421,233,615 shares of common stock at a price of \$38.00 per share, of
19 which 180,000,000 shares of Class A common were offered by the Company and 241,233,615
20 shares of Class A common stock were offered by existing stockholders. According to the
21 Company, Facebook expects to receive net proceeds of approximately \$6,764,760,000 and
22 selling stockholders expect to receive \$9,066,041,719 from the Offering, after deducting
23 underwriting discounts, commissions and offering related transaction costs.
24

25 4. As detailed below, the Registration Statement and Prospectus contained
26 materially false and misleading statements and omitted material information in violation of
27
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
15

16 6. Each Defendant has sufficient contacts with California, or otherwise purposefully
17 avails itself of benefits from California or has property in California so as to render the exercise
18 of jurisdiction over each by the California courts consistent with traditional notions of fair play
19 and substantial justice.
20

21 7. The amount in controversy exceeds the jurisdictional minimum of this Court, and
22 the total amount of damages sought exceeds \$25,000.
23

24 8. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15
25 U.S.C. § 77v. Defendant Facebook's principal executive offices are located within this County,
26 the individual defendants conduct business in this County, and many of the acts and transactions
27 alleged herein, including the preparation and dissemination of materially false and/or misleading
28

COMPLAINT

1 information, occurred in substantial part in this County.

2 **PARTIES**

3 9. Plaintiff Demois purchased Facebook securities pursuant and/or traceable to the
4 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
17 13. Defendant David M. Spillane ("Spillane") was, at all relevant times, Director of
18 Accounting for Facebook and signed or authorized the signing of the Company's Registration
19 Statement filed with the SEC.

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

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

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

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

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

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

17
18 21. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") served as an
19 underwriter to Facebook in connection with the Offering.

20 **CLASS ACTION ALLEGATIONS**

21 22. Plaintiff brings this action as a class action pursuant to California Code of Civil
22 Procedure Section 382 on behalf of a Class, consisting of all persons and/or entities who
23 purchased or otherwise acquired the common stock of Facebook pursuant and/or traceable to the
24 Company's false and/or misleading Registration Statement and Prospectus issued in connection
25 with the Company's IPO, and who were damaged thereby (the "Class"). Excluded from the
26 Class are Defendants, the officers and directors of the Company, at all relevant times, members
27
28

1 of their immediate families and their legal representatives, heirs, successors or assigns and any
2 entity in which Defendants have or had a controlling interest.

3 23. The members of the Class are so numerous that joinder of all members is
4 impracticable. During the relevant period, Facebook's securities were actively traded on the
5 NASDAQ Stock Exchange (the "NASDAQ"). While the exact number of Class members is
6 unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
7 Plaintiff believes that there are hundreds or thousands of members in the proposed Class. The
8 Company offered more than 420 million shares of common stock in the IPO. Moreover, record
9 owners and other members of the Class may be identified from records maintained by Facebook
10 or its transfer agent and may be notified of the pendency of this action by mail, using the form of
11 notice similar to that customarily used in securities class actions.
12

13
14 24. Plaintiff's claims are typical of the claims of the members of the Class as all
15 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
16 federal law that is complained of herein.
17

18 25. Plaintiff will fairly and adequately protect the interests of the members of the
19 Class and have retained counsel competent and experienced in class and securities litigation.
20

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

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

26 (b) whether statements made by Defendants to the investing public in
27 connection with the Company's IPO omitted and/or misrepresented material facts about the
28

1 business, operations, and prospects of Facebook; and

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

4 27. A class action is superior to all other available methods for the fair and efficient
5 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
6 the damages suffered by individual Class members may be relatively small, the expense and
7 burden of individual litigation make it impossible for members of the Class to individually
8 redress the wrongs done to them. There will be no difficulty in the management of this action as
9 a class action.
10

11 **BACKGROUND**

12 28. Facebook operates as a social networking company worldwide.

13 29. 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 30. 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

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

COMPLAINT

1 expenses.

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

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

7 33. However, the Registration Statement failed to disclose that during the IPO
8 roadshow, the lead underwriter, Defendant Morgan Stanley, cut their earnings forecasts and that
9 news of the estimate cut was passed on only to a handful of large investor clients, not to the
10 public. Therefore, the Registration Statement was negligently prepared and, as a result,
11 contained untrue statements of material facts or omitted to state other facts necessary to make the
12 statements made not misleading, and was not prepared in accordance with the rules and
13 regulations governing their preparation.
14

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

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

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

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

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

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

6 Why?

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

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

11 So the report that Facebook had "reduced earnings guidance" during the roadshow
12 just seemed like a typical misunderstanding between Wall Street and the public--
13 something lost in translation between what a reporter was hearing from sources
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)
reduced that guidance during the roadshow, has every right to be furious.

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

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

26 35. On this news, shares of the Company's stock declined \$4.20 per share, or 10.99%,
27 to close on May 21, 2012, at \$34.03 per share, on unusually heavy trading volume.
28

COMPLAINT

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

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

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

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

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

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

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

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

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

27 In other words, during the marketing of the Facebook IPO, investors who did not
28 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.

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

6 There are a couple of possibilities for what happened.

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

9 The second is also bad news for Facebook.

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

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

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

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

28 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

1 to immediately cut estimates without some sort of nod and wink from someone
2 who knew how Facebook's second quarter was progressing. (To get this message
3 from the language, you really have to read between the lines). But even if this is
4 what happened, it is still unfair that news of the estimate cut wasn't disseminated
5 quickly and clearly to everyone considering buying Facebook's IPO.

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

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

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

18 38. Thereafter, on May 23, 2012, as part of Market Day on MSNBC, in an article
19 titled, "Facebook's Dream IPO is Starting to Look Like a Nightmare." It was reported in that
20 article:

21 Capitol Hill is also focused on the company. The Senate Banking Committee
22 said Wednesday it is investigating issues related to Facebook's IPO. The
23 development comes one day after the top financial regulator, the Securities and
24 Exchange Commission, said it would be looking into the company's IPO.

25 39. On May 23, 2012, Reuters also published an article in which additional claims
26 were made related to Facebook failing to disclose pertinent information to investors. The article,
27 entitled, "Regulators, Investors Turn Up Heat over Facebook IPO." The article reported, in
28 pertinent part:

(Reuters) - Two top U.S. financial regulators said on Tuesday the issues around
the initial public offering of Facebook should be reviewed, putting fresh pressure
on the company, its lead underwriter, Morgan Stanley, and the Nasdaq stock
exchange.

1 Facebook shares closed 8.9 percent lower at \$31, following an 11 percent plunge
2 on Monday. At that price the company has shed more than \$19 billion in market
3 capitalization from its \$38-per-share offering price last week.

4 Reuters reported late Monday that the consumer Internet analyst at lead
5 underwriter Morgan Stanley cut his revenue forecasts for Facebook in the days
6 before the offering, information that was not disclosed to the market before the
7 stock was listed.

8 Facebook itself had urged analysts working for some of the 33 underwriters to
9 lower their estimates ahead of the IPO, according to four sources with direct
10 knowledge of the conversations that were held during the week prior to the IPO.

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

14 The company had issued a revised prospectus on May 9 in which it cautioned
15 about the possible negative impact of Facebook users shifting to mobile
16 platforms, but the vague language fell well short of an explicit warning of lower
17 revenues or earnings. Facebook has yet to make much revenue from mobile
18 advertising.

19 The disclosure of lower forecasts to certain big institutional investors left both
20 Facebook and Morgan Stanley open to accusations of selective disclosure. Many
21 smaller investors who bought Facebook shares in the IPO were left in the dark.

22 A Facebook spokesman declined to comment. . . .

23 40. On this news, shares of the Company's stock again declined and on May 23,
24 2012, closed at nearly 15% below its IPO price.

25 **FIRST CLAIM**
26 **Violation of Section 11 of The Securities Act**
27 **(Against All Defendants)**

28 41. Plaintiff repeats and realleges each and every allegation contained above, except
any allegation of fraud, recklessness or intentional misconduct.

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

COMPLAINT

1 were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of
2 Facebook within the meaning of Section 15 of the Securities Act. The Individual Defendants
3 had the power and influence and exercised the same to cause Facebook to engage in the acts
4 described herein.

5
6 53. Individual Defendants' positions made them privy to and provided them with
7 actual knowledge of the material facts concealed from Plaintiff and the Class.

8 54. By virtue of the conduct alleged herein, the Individual Defendants are liable for
9 the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

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

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

13 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
14 members against all Defendants, jointly and severally, for all damages sustained as a result of
15 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
16

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

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

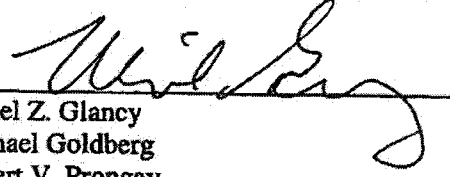
20 (e) Such other and further relief as the Court may deem just and proper.
21

22 **JURY TRIAL DEMANDED**

23 Plaintiff hereby demands a trial by jury.
24
25
26
27
28

1 Dated: May 25, 2012

GLANCY BINKOW & GOLDBERG LLP

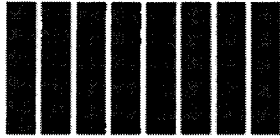
2
3 By: 

4 Lionel Z. Glancy
5 Michael Goldberg
6 Robert V. Prongay
7 Casey E. Sadler
8 1925 Century Park East, Suite 2100
9 Los Angeles, California 90067
10 Telephone: (310) 201-9150
11 Facsimile: (310) 201-9160

Attorneys for Plaintiff Vernon R. DeMois, Jr.

12 OF COUNSEL:

13 Richard S. Wayne
14 Joseph J. Braun
15 STRAUSS TROY CO., LPA
16 The Federal Reserve Building
17 150 East Fourth Street
18 Cincinnati, Ohio 45202-4018
19 Telephone: (513) 621-2120
20 Facsimile: (513) 629-9426



EXHIBIT

E



EXHIBIT

FILED
SAN MATEO COUNTY

MAY 25 2012

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

FILE BY FAX

1 FRANCIS M. GREGOREK (144785)
2 BETSY C. MANIFOLD (182450)
3 RACHELE R. RICKERT (190634)
4 PATRICK H. MORAN (270881)
5 WOLF HALDENSTEIN ADLER
6 FREEMAN & HERZ LLP
7 750 B Street, Suite 2770
8 San Diego, CA 92101
9 Telephone: 619/239-4599
10 Facsimile: 619/234-4599

11 GREGORY M. NESPOLE
12 ROBERT B. WEINTRAUB
13 WOLF HALDENSTEIN ADLER
14 FREEMAN & HERZ LLP
15 270 Madison Avenue
16 New York, New York 10016
17 Telephone: 212/545-4600
18 Facsimile: 212/545-4653

ADAM J. LEVITT
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC
55 West Monroe Street, Suite 1111
Chicago, Illinois 60603
Telephone: 312/984-0000
Facsimile: 312/984-0001

Attorneys for Plaintiff

[Additional Counsel Appear On Signature Page]

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

CIV 514171

ELBITA ALFONSO, on behalf of herself and 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, and WELLS FARGO SECURITIES, LLC,

Defendants.

Case No.

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1 Plaintiff below, individually and on behalf of the class described below, alleges this class
2 action complaint based upon her own personal knowledge, as to her own acts and the acts and
3 statements of Defendants in which Plaintiff participated directly (the communications with,
4 representations made, and documentation and information provided to her by Defendants in the
5 ordinary course of business), and upon the investigation of her counsel (and counsel's information
6 and belief only to the extent expressly stated herein). Counsel's investigation conducted on
7 Plaintiff's behalf, included, among other things: (i) an analysis of publicly-available news articles
8 and reports; (ii) a review and analysis of public filings, including but not limited to Securities and
9 Exchange Commission ("SEC") filings by Defendants; (iii) press releases issued by Defendants;
10 (iv) research of facts and the applicable law with respect to the claims asserted herein including
11 the use of sophisticated investigatory tools such as *Bloomberg* subscription services, *Lexis Nexis*
12 and other subscription services; and (v) other matters of public record.

13 SUMMARY OF THE ACTION

14 1. This is a securities class action brought by Plaintiff alleging claims under sections
15 11, 12, and 15 of the Securities Act of 1933, 15 U.S.C. § 77 *et seq.* ("Securities Act") against
16 Defendants, seeking to recover damages caused to the Class by Defendants' violations of the
17 Securities Act.

18 2. On May 18, 2012, Facebook, Inc. ("Facebook" or the "Company") floated its initial
19 public offering ("IPO") of 421,233,615 shares of its common stock at a price to the public of \$38
20 per share on the NASDAQ Global Select Market under the symbol "FB." Under the terms of the
21 offering, Facebook sold 180,000,000 shares of Class A common stock and selling stockholders
22 sold 241,233,615 shares of Class A common stock.

23 3. In addition, Facebook and the selling stockholders granted the underwriters a
24 30-day option to purchase up to 63,185,042 additional shares of Class A common stock to cover
25 over-allotments, if any. As discussed below, Morgan Stanley, J.P. Morgan, Goldman, Sachs,
26 BofA Merrill Lynch, Barclays, Allen & Co. LLC, Citigroup, Credit Suisse and Deutsche Bank (all
27 defined *infra*) served as book runners for the offering, and RBC Capital Markets and Wells Fargo
28 Securities (defined *infra*) are serving as active co-managers.

1 9. Moreover, subject matter jurisdiction is vested in this Court by section 22(a) of the
2 Securities Act, 15 U.S.C. § 77v(a). As section 22(a) states:

3 The district courts of the United States and the United States courts of any Territory
4 shall have jurisdiction of offenses and violations under this title and under the rules
5 and regulations promulgated by the Commission in respect thereto, and,
6 **concurrent with State and Territorial courts**, except as provided in section 16
7 with respect to covered class actions, of all suits in equity and actions at law
8 brought to enforce any liability or duty created by this title. Any such suit or action
9 may be brought in the district wherein the defendant is found or is an inhabitant or
10 transacts business, or in the district where the offer or sale took place, if the
11 defendant participated therein, and process in such cases may be served in any
12 other district of which the defendant is an inhabitant or wherever the defendant may
13 be found. Judgments and decrees so rendered shall be subject to review as provided
14 in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. **Except as**
15 **provided in section 16(c)**, no case arising under this title and brought in any
16 State court of competent jurisdiction shall be removed to any court of the
17 United States. No costs shall be assessed for or against the Commission in any
18 proceeding under this title brought by or against it in the Supreme Court or
19 such other courts.

20 15 U.S.C. § 77v(a) (emphasis added). Section 16 of the Securities Act, 15 U.S.C. § 77p(b),
21 provides that actions involving certain categories of claims shall not be brought in state court:

22 No covered class action based upon the statutory or common law of any State or
23 subdivision thereof may be maintained in any State or Federal court by any private
24 party alleging--

- 25 (1) an untrue statement or omission of a material fact in connection with
26 the purchase or sale of a covered security; or
27 (2) that the defendant used or employed any manipulative or deceptive
28 device or contrivance in connection with the purchase or sale of a
covered security.

29 15 U.S.C. § 77p(b). Because none of the claims herein are based on the "statutory or common law
30 of any state," this action is not removable pursuant to section 22(a) and is properly filed in this
31 Court.

32 10. This Court has personal jurisdiction over each defendant named herein because
33 each defendant is either a corporation that does sufficient business in California, or an individual
34 who has sufficient minimum contacts with California to render the exercise of jurisdiction by the
35 California courts permissible under traditional notions of fair play and substantial justice. All of

1 the defendants conduct business and/or maintain offices in California, and Facebook's
2 headquarters are located at 1601 Willow Road, Menlo Park, California 94025.

3 11. Venue is proper in this Court because a substantial portion of the wrongs
4 complained of herein, including the defendants' primary participation in the wrongful acts detailed
5 herein (violation of the Securities Act), occurred in this County, and the Defendants have received
6 substantial compensation in this County by doing business here and engaging in numerous
7 activities which had an effect in this County. Venue is also proper in this Court because many of
8 those affected by Defendants' conduct reside in this County, and many of the potential witnesses
9 reside or work in this County.

10 PARTIES

11 12. Plaintiff Elbita Alfonso purchased shares of Facebook pursuant to the Offering
12 Documents on the IPO and was damaged thereby.

13 13. Defendant Facebook, Inc. ("Facebook" or the "Company") is located in Menlo
14 Park, California, within this judicial district, and is incorporated under the laws of the State of
15 Delaware. Facebook operates a social networking website that allows people to communicate and
16 share information with friends and family. It also develops technologies that facilitate the sharing
17 of information.

18 Individual Defendants

19 14. Defendant Mark Zuckerberg ("Zuckerberg") is the Chairman and Chief Executive
20 Officer of the Company and signed the Final Registration Statement dated May 21, 2012.
21 Facebook, Inc., Registration Statement (Form S-8) (May 21, 2012) ("Final Registration
22 Statement").

23 15. Defendant David A. Ebersman ("Ebersman") is the Chief Financial Officer of the
24 Company and signed the Final Registration Statement dated May 21, 2012.

25 16. Defendant David M. Spillane ("Spillane") is the Chief Accounting Officer of the
26 Company and signed the Final Registration Statement dated May 21, 2012.

27 17. Defendant Marc L. Andreessen ("Andreessen") is a director of the Company and
28 signed the Final Registration Statement dated May 21, 2012.

1 18. Defendant Erskine B. Bowles ("Bowles") is a director of the Company and signed
2 the Final Registration Statement dated May 21, 2012.

3 19. Defendant James W. Breyer ("Breyer") is a director of the Company and signed
4 the Final Registration Statement dated May 21, 2012.

5 20. Defendant Donald E. Graham ("Graham") is a director of the Company and
6 signed the Final Registration Statement dated May 21, 2012.

7 21. Defendant Reed Hastings ("Hastings") is a director of the Company and signed the
8 Final Registration Statement dated May 21, 2012.

9 22. Defendant Peter A. Thiel ("Thiel") is a director of the Company and signed the
10 Final Registration Statement dated May 21, 2012.

11 23. These nine individual Defendants are collectively referred to as the "Individual
12 Defendants."

13 **Underwriter Defendants**

14 24. The following underwriter Defendants were the underwriters "on the cover" of the
15 Facebook prospectus.

16 25. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley"), the lead underwriter,
17 is located at 1585 Broadway, New York, NY 10036.

18 26. Defendant J.P. Morgan Securities LLC ("J.P. Morgan") is located at 270 Park
19 Ave., New York, NY 10017.

20 27. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is located at 200 West
21 Street, 29th Floor, New York, NY 10282.

22 28. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA Merrill
23 Lynch") is located at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, North
24 Carolina 28255.

25 29. Defendant Barclays Capital Inc. ("Barclays Capital") is located at 200 Park Ave.,
26 New York, NY 10166.

27 30. Defendant Allen & Company LLC ("Allen & Co.") is located at 711 Fifth Ave.,
28 New York, NY 10022.

1 43. Plaintiff's claims are typical of the claims of the other members of the Class.
2 Plaintiff and the other members of the Class, by virtue of their purchases of shares of Facebook on
3 or pursuant to the IPO, have sustained damages as a result of Defendants' unlawful activities as
4 alleged herein. Plaintiff has retained counsel competent and experienced in class and securities
5 litigation and intends to prosecute this action vigorously. The interests of the Class will be fairly
6 and adequately protected by Plaintiff. Plaintiff has no interests which are contrary to or in conflict
7 with those of the Class which Plaintiff seeks to represent.

8 44. A class action is superior to all other available methods for the fair and efficient
9 adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the
10 management of this action that would preclude its maintenance as a class action.

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

- 14 a. Whether the Securities Act was violated by Defendants' acts;
15 b. Whether each Defendant participated in the course of conduct complained of
16 herein; and
17 c. Whether members of the Class have sustained damages as a result of Defendants'
18 conduct, and the proper measure of such damages including but not limited to recessionary
19 damages.

20 **THE PROSPECTUS CONTAINED MATERIAL MISSTATEMENTS
21 AND OMITTED MATERIAL INFORMATION**

22 46. Facebook, through its underwriters, sold over 421 million shares of common stock
23 on May 18, 2012. The IPO was priced at \$38 per share and resulted in the Company raising \$16
24 billion for itself and the selling stockholders, including Defendant Zuckerberg.

25 47. The IPO was marketed through the issuance of the Offering Documents and the
26 presentation of numerous "road shows" to various investment banks and potential investors that
27 senior Facebook executives attended along with underwriters.

28 48. The Prospectus contained material misstatements and statements made materially
inaccurate through the omission of material facts. These include the following statements

1 contained in the Prospectus:

2 We believe this increased usage of Facebook on mobile devices has contributed to
3 the recent trend of our daily active users (DAUs) increasing more rapidly than the
4 increase in the number of ads delivered.

5 As an example, we believe that the recent trend of our DAUs increasing more
6 rapidly than the increase in the number of ads delivered has been due in part to
7 certain pages having fewer ads per page as a result of these kinds of product
8 decisions.

9 Based upon our experience in the second quarter of 2012 to date, the trend we saw
10 in the first quarter of DAUs increasing more rapidly than the increase in number of
11 ads delivered has continued. We believe this trend is driven in part by increased
12 usage of Facebook on mobile devices where we have only recently begun showing
13 an immaterial number of sponsored stories in News Feed, and in part due to certain
14 pages having fewer ads per page as a result of product decisions. For additional
15 information on factors that may affect these matters, see "Risk Factors – Growth in
16 use of Facebook through our mobile products, where our ability to monetize is
17 unproven, as a substitute for use on personal computers may negatively affect our
18 revenue and financial results" and "Risk Factors – Our culture emphasizes rapid
19 innovation and prioritizes user engagement over short-term financial results."

20 Facebook, Inc., Prospectus (Form 424B4), at 14, 17, 57 (May 18, 2012) ("Prospectus").

21 49. Each of these statements in the Prospectus contained material misstatements,
22 omitted to state a material fact required to be stated therein, or failed to disclose certain material
23 facts necessary to make the statements therein not misleading, because each failed to materially
24 disclose that Facebook's revenue and revenue growth rate would be substantially lower than that
25 originally disclosed and forecast.

26 50. It is absolutely clear that the statements in the Prospectus were materially
27 inaccurate and materially incomplete disclosures concerning the fact that Facebook's revenue and
28 revenue growth rate would be lower, and that these facts were not being completely and accurately
disclosed in the Prospectus. This is so based upon the following facts.

51. The actionable statements from the Prospectus quoted above were originally added
by prospectus dated May 9, 2012. Facebook, Inc., Amendment No. 6 to Form S-1 Registration
Statement (Form S-1/A), at 14, 17, 57 (May 9, 2012) ("Amendment No. 6").

52. Thereafter, during the time period between May 9, 2012 and May 17, 2012, which
included the Company's roadshow, the Underwriter Defendants materially lowered their estimates

1 of Facebook's future revenue and revenue growth rate.

2 53. Prior to the May 18, 2012 effective date of the Company's IPO, however, the
3 Underwriter Defendants only disclosed their materially lowered estimates of Facebook's revenue
4 and revenue growth rate privately to *select major clients* who were potential investors in the IPO
5 and did not disclose their lowered estimates to the investing public at large.

6 54. The fact that the Underwriter Defendants lowered their revenue and revenue
7 growth rate estimates demonstrates that the statements added to the prospectus by prospectus
8 Amendment No. 6, which were subsequently contained in the effective Prospectus of May 18,
9 2012, were material. The fact that the revised revenue and revenue growth rate estimates were
10 only privately disseminated by the Underwriter Defendants demonstrates that these additional
11 Amendment No. 6 disclosures were materially deficient – they contained material misstatements,
12 omitted to state material facts required to be stated therein, or failed to disclose certain material
13 facts necessary to make the statements therein not misleading. This is so because otherwise there
14 would have been no reason for the Underwriter Defendants to limit disclosure of their revised and
15 lowered estimates to private disclosure to select potential investors in the IPO, without full and
16 complete disclosure in the Prospectus.

17 55. Defendant Morgan Stanley was the lead investment bank for the Facebook IPO.

18 56. Morgan Stanley's consumer Internet analyst, Scott Devitt, materially "cut his
19 revenue estimate for the current second quarter significantly, and also cut his full-year 2012
20 revenue forecast." But, prior to the Company's IPO, Morgan Stanley only disclosed its materially
21 lowered estimates privately to select major clients who were potential investors in the IPO and did
22 not disclose its lowered estimates to the general investing public, according to a May 22, 2012
23 Reuters article entitled, "*Morgan Stanley Shocked Investors By Cutting Facebook Estimates Just
24 Before IPO.*" Barr, Alistair, *Morgan Stanley Shocked Investors By Cutting Facebook Estimates
25 Just Before IPO*, REUTERS, May 22, 2012 ("*Reuters Article*")

26 57. Scott Sweet, senior managing partner at the research firm IPO Boutique, said he
27 was aware of the reduced estimates, according to the *Reuters* article. He went on to say, however,
28 that he learned of the lowered estimates from "[m]y biggest hedge fund client [who] told me they

1 [Morgan Stanley] lowered their numbers right around mid-roadshow," according to the *Reuters*
2 Article.

3 58. Upon information and belief, another of the three top-line investment banks on the
4 cover of the prospectus, J.P. Morgan, prior to the Company's IPO also materially lowered its
5 estimates of the Company's revenue and revenue growth rate. Similarly, prior to the IPO, J.P.
6 Morgan only disclosed its materially lowered estimates privately to select major clients who were
7 potential investors in the IPO and did not disclose its lowered estimates to the general public at
8 large. *See Reuters Article.*

9 59. Upon information and belief, another of the three top-line investment banks on the
10 cover of the prospectus, Goldman Sachs, prior to the Company's IPO also materially lowered its
11 estimates of the Company's revenue and revenue growth rate. Similarly, prior to the IPO,
12 Goldman Sachs only disclosed its materially lowered estimates privately to select major clients
13 who were potential investors in the IPO and did not disclose its lowered estimates to the public at
14 large. *See Reuters Article.*

15 60. At the same time that the Underwriter Defendants were privately *lowering* their
16 estimates of the Company's revenues and revenue growth rate, the Company and the Underwriter
17 Defendants were publicly *upwardly revising* the projected IPO price to the effective price of \$38
18 per share.

19 61. This type of selective dissemination of material information has damaged the Class
20 by artificially inflating the initial price of Facebook stock.

21 62. First, in the days leading up to the IPO, Facebook and the Underwriter Defendants
22 elected to issue millions of additional shares in an exceeding 60 million shares. Many large hedge
23 funds were unwilling to accept additional allocations because they were aware that analysts at the
24 lead underwriters had privately lowered their revenue and revenue growth rate estimates. Those
25 additional shares, instead, found their way to the accounts of thousands of small, retail customers
26 who had requested small allocations but given prior experience in other "hot" IPOs like Google,
27 were surprised to receive their requested allocations or allocations larger than those requested.
28

1 These investors did not know however that they were buying shares in an IPO that the lead
2 underwriters' analysts thought was overvalued.

3 63. Second, many hedge funds which were told that analysts had slashed projections
4 were able to quickly sell their allocated position and short the stock, thereby causing downward
5 pressure on the IPO.

6 64. Third, the fact that the Underwriter Defendants' research analysts only privately
7 disclosed their lowered revenue and revenue growth rate estimates for Facebook demonstrates that
8 the separation of those investment banks' research and investment function did not exist and had
9 been breached for this IPO because the private only dissemination of the lowered estimates helped
10 the Underwriter Defendants' investment bankers sell the public offering.

11 65. The Facebook IPO went public on May 18, 2012 at a price of \$38 per share. It
12 reached its high of \$45 per share just a few minutes later.

13 66. On May 22, 2012, the price of Facebook shares further declined to close at \$31.00.

14 67. Had Plaintiff and the members of the Class known of the facts not disclosed in the
15 Offering Documents, they would not have purchased their Facebook shares or would have
16 purchased them only at substantially reduced prices.

17 68. The Company raised billions of dollars which it would not have been able to raise
18 if the Offering Documents had not contained material misstatements and material omissions.

19 69. Similarly, the Underwriter Defendants made over \$150 million in underwriting fees
20 from sales of Facebook shares in the IPO, fees that they would not have made if the Offering
21 Documents had not contained material misstatements and material omissions.

22 **NO SAFE HARBOR**

23 70. The statutory safe harbor provided for forward-looking statements under certain
24 circumstances does not apply to any of the allegedly false statements pled in this complaint.
25 Virtually all of the specific statements pled herein were not forward-looking or were not identified
26 as "forward-looking statements" when made. To the extent there were any forward-looking
27 statements upon which Plaintiff bases her claims, there were no meaningful cautionary statements
28 identifying important factors that could cause actual results to differ materially from those in the

1 purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor
2 does apply to any forward-looking statements pled herein, Defendants are liable for those false
3 forward-looking statements because at the time each of those forward-looking statements was
4 made, the particular speaker knew that the particular forward-looking statement was false, and/or
5 the forward-looking statement was authorized and/or approved by an executive officer of
6 Defendants who knew that those statements were false when made.

7 71. The safe harbor does not apply to statements made, as here, in connection with an
8 initial public offering.

9 **FIRST CAUSE OF ACTION**
10 **Class Claim For Violations Of Section 11 Of The Securities Act**
11 **(Against All Defendants)**

12 72. Plaintiff repeats and realleges each and every allegation above as if fully set forth
13 herein.

14 73. Plaintiff does not allege that the material omissions and material misstatements set
15 forth herein were made intentionally, knowingly or recklessly by Defendants.

16 74. Plaintiff brought this action within one year after the discovery of the materially
17 incorrect statements and omissions, and within three years after the shares were offered to the
18 public through the Offering Documents.

19 75. This claim is brought by Plaintiff against all Defendants.

20 76. The Company was the issuer of the Offering Documents and sold the shares
21 pursuant to the Offering Documents.

22 77. Each of the Individual Defendants signed the Prospectus.

23 78. Each of the Underwriter Defendants served as a co-managing underwriter of the
24 Offering, and is identified as such by, among other things, their listing "on the cover" of the
25 Prospectus. Each of the Underwriter Defendants is also liable for the material misstatements and
26 material omissions in the Offering Documents and is therefore also liable to Plaintiff and the
27 members of the Class under section 11.

28 79. Each of the Individual Defendants participated in the preparation of, caused to be
issued and/or participated in the issuance of the Offering Documents, and signed the Registration

1 Statement, each of which was inaccurate and contained material misstatements; omitted to state a
2 material fact required to be stated therein; or failed to disclose certain material facts necessary to
3 make the statements therein not misleading, as set forth herein.

4 80. Each of the Underwriter Defendants participated in the preparation of, caused to be
5 issued and/or participated in the issuance of the Offering Documents, each of which was
6 inaccurate and contained material misstatements; omitted to state a material fact required to be
7 stated therein, or failed to disclose certain material facts necessary to make the statements therein
8 not misleading, as set forth herein.

9 81. The Individual Defendants did not make a reasonable investigation, failed to
10 exercise reasonable due diligence, and/or had no reasonable grounds to believe, that the Offering
11 Documents issued by the Company were free of material misstatements and material omissions at
12 the time those documents were filed, and they are therefore also liable to Plaintiff and the
13 members of the Class under section 11.

14 82. Plaintiff alleges that all statutory affirmative defenses available to only Underwriter
15 Defendants under sections 11 and 12 are affirmative defenses which those Defendants must plead
16 and prove and which Plaintiff need not allege. Nevertheless, Plaintiff addresses the underwriter
17 affirmative defenses below.

18 83. While the following concerns an affirmative defense which can be raised by the
19 Underwriter Defendants only, and concerning which each of them bears the burden of proof,
20 nevertheless, Plaintiff alleges that each Underwriter Defendant did not make a reasonable
21 investigation, did not possess reasonable grounds to believe, and did not believe, that the
22 statements contained in the Offering Documents were true, were without omissions of any
23 material facts and were not misleading. Each Underwriter Defendant participated in the
24 preparation of the Offering Documents, and was required to investigate with due diligence the
25 statements contained therein to confirm that they did not contain material misstatements or
26 omitted to state material facts, but each of the Underwriter Defendants did not perform this
27 investigation with due diligence. (Indeed, the underwriter Defendant had a substantial direct
28 interest in the success of the offering, as detailed above).

1 84. Each Underwriter Defendant, as the result of engaging in the routine conduct of its
2 business or through common sense, was negligent (without limitation) as follows:

3 (a) in not knowing that its misstatements and omissions were material;

4 (b) in not knowing that the statements concerning the Company's future revenue
5 and revenue growth rates were materially inaccurate.

6 85. The Offering Documents, at the time they became effective, were inaccurate and
7 contained material misstatements of fact, omitted to state material facts required to be stated
8 therein, or failed to disclose certain material facts necessary to make the statements therein not
9 misleading, as set forth herein.

10 86. The facts misstated and omitted would have been material to a reasonable person
11 reviewing the Offering Documents.

12 87. Plaintiff and the other Class members did not know and, in the exercise of
13 reasonable diligence, could not have known of the material misstatements and material omissions
14 contained in the Offering Documents at the time of their purchases during the Class Period.

15 88. During the Class Period, Plaintiff and the other members of the Class purchased in
16 the IPO over five hundred million shares of Facebook common stock.

17 89. Although not required to be alleged with respect to this claim because it is an
18 affirmative defense to be alleged and proven by Defendants, nevertheless, Plaintiff alleges that
19 Plaintiff and the other members of the Class purchased their Facebook shares as a direct and
20 proximate result of, and/or without knowledge of, the material misstatements and omissions in the
21 Offering Documents. Plaintiff and/or other members of the class would not have purchased their
22 Facebook shares from Defendants if the material misstatements and material omissions in the
23 Offering Documents had not been made by Defendants.

24 90. By virtue of the foregoing, each of the Defendants on this section 11 claim violated
25 section 11 of the Securities Act, and is liable to Plaintiff and the other members of the Class.

26 91. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
27 Plaintiff and the other members of the Class sustained damages in connection with their purchase
28 of Facebook shares during the Class Period pursuant to or traceable to the Offering Documents in

1 an amount in excess of \$500 million and possibly in excess of \$1 billion, the exact amount to be
2 proven at trial.

3 92. Plaintiff and the members of the Class acquired their shares pursuant or traceable to
4 the Company's Offering Documents which were rendered materially inaccurate as a result of
5 Defendants' misstatements and omissions.

6 **SECOND CAUSE OF ACTION**
7 **Class Claim For Control Person Liability Under Section 15 For Violation Of Section 11**
8 **(Against The Individual Defendants)**

9 93. Plaintiff repeats and realleges each and every allegation above as if fully set forth
10 herein.

11 94. Plaintiff does not allege that the material omissions and material misstatements set
12 forth herein were made intentionally, knowingly or recklessly by Defendants.

13 95. The Defendants in this claim for control person liability under section 15 of the
14 Securities Act, for violation of section 11 of the Securities Act, are all of the Individual
15 Defendants.

16 96. The Individual Defendants, individually and jointly, were control persons under
17 section 15 by virtue of their senior executive officer and/or directorial positions at the Company.

18 97. As senior officers and/or directors of the Company, the Individual Defendants had
19 a duty to have the controlled persons issue materially accurate information in the Offering
20 Documents.

21 98. The Individual Defendants at all relevant times were able to and did control the
22 Company's day-to-day operations, financial statements, and public filings.

23 99. The Individual Defendants at all relevant times were able to and did control the
24 contents of the Offering Documents, which contained material misstatements and material
25 omissions. The Individual Defendants had (and did exercise) the power and influence to cause the
26 Company to engage in the unlawful conduct complained of herein, and correspondingly were able
27 to cause some or all of the other Defendants to refrain from the conduct complained of herein.

28 100. The Individual Defendants were a control person of at least one primary violator of
section 11, the Company. By virtue of their positions as controlling persons of a primary violator,

1 each of the Individual Defendants is also liable pursuant to section 15 of the Securities Act.

2 101. While the following concerns an affirmative defense that can be raised by only
3 these control person Defendants, and concerning which they bear the burden of proof,
4 nevertheless, Plaintiff alleges that each of these Defendants, as a controlling person, cannot prove
5 that he: (a) had no knowledge of the existence of the facts by reason of which the liability of the
6 controlled person is alleged to exist; or (b) had no reasonable grounds to believe in the existence
7 of the facts by reason of which the liability of the controlled person is alleged to exist.

8 102. As set forth above, each of the Defendants named in this Complaint violated
9 section 11 of the Securities Act.

10 103. The Individual Defendants, individually and jointly, are each liable under section
11 15 as a control person of the other Defendants who are primarily liable under section 11, and each
12 Defendant on this claim is liable to Plaintiff and the other members of the Class, in an amount to
13 be proved at trial.

14 **THIRD CAUSE OF ACTION**
15 **Class Claim For Violations Of Section 12(a)(2) Of The Securities Act**
16 **(Against All Defendants)**

17 104. Plaintiff repeats and realleges each and every allegation above as if fully set forth
18 herein.

19 105. Plaintiff does not allege that the material omissions and material misstatements set
20 forth herein were made intentionally, knowingly or recklessly by Defendants.

21 106. Plaintiff brought this action within one year after the discovery of the materially
22 incorrect statements and omissions, and within three years after the shares were offered to the
23 public through the Offering Documents.

24 107. This claim is brought by Plaintiff against all Defendants.

25 108. The Company, as the issuer of the shares, reaped over \$6.8 billion from the IPO.

26 109. The Individual Defendants were sellers and offerors and/or solicitors of purchasers
27 of the Facebook shares offered pursuant to the Offering Documents.

28 110. Defendant Zuckerberg was not only Chairman and CEO of the Company, but was
the public face of the Company. Defendant Zuckerberg became a billionaire many times over as a

1 result of the IPO.

2 111. The Underwriter Defendants made over \$150 million in underwriting fees from
3 sales of Facebook shares in the IPO, fees that they would not have made if the Offering
4 Documents had not contained material misstatements and material omissions.

5 112. Each of the Defendants was a seller, offerer and/or solicitor of purchases of the
6 Company's shares, pursuant to the Offering Documents, for their own financial benefit.

7 113. Each of the Defendants' acts of selling, offering and/or soliciting included but were
8 not limited to the preparation of the Offering Documents which contained the material
9 misstatements and material omissions, and their issuance and dissemination to public investors.

10 114. Each of the Defendants' acts of selling, offering and/or soliciting was a substantial
11 factor with respect to the purchase of the Company's shares by Plaintiff and the members of the
12 Class.

13 115. But for the Defendants' selling and/or solicitation activities by means of the
14 materially incorrect Offering Documents, Plaintiff and the members of the Class would not have
15 purchased their Facebook shares or would have acquired their shares at a price less than they
16 actually paid.

17 116. While the following concerns an affirmative defense which can be raised by only
18 the section 12 Defendants, and concerning which they bear the burden of proof, nevertheless,
19 Plaintiff alleges that each of these Defendants cannot prove that it: (a) did not know of such
20 material misstatement or omission; and (b) in the exercise of reasonable care could not have
21 known of such material misstatement or omission.

22 117. Plaintiff and the other members of the Class purchased their shares in the IPO
23 which makes all shares purchased in and of themselves directly traceable to the offering.

24 118. Plaintiff and the other members of the Class purchased their Facebook shares
25 pursuant to the written Offering Documents herein, and without knowledge of the material
26 misstatements and omissions in those Offering Documents.

27 119. The Facebook shares sold to Plaintiff and the other members of the Class during
28 the Class Period lost at least hundreds of millions of dollars, and possible billions of dollars, in

1 value.

2 120. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
3 Plaintiff and the other members of the Class suffered damages in connection with their purchases
4 of Facebook shares during the Class Period.

5 121. By virtue of the foregoing, each of the Defendants on this section 12 claim is
6 primarily liable under section 12(a)(2) of the Securities Act, and each is primarily liable to
7 Plaintiff and other members of the class.

8 122. Plaintiff, individually and representatively, hereby elects to rescind and tender
9 those securities that Plaintiff and the other members of the Class continue to own, in return for the
10 consideration paid for those securities together with interest thereon. Plaintiff and members of the
11 Class who have sold their Facebook shares are entitled to rescissory damages, in an amount to be
12 proved at trial.

13 **FOURTH CAUSE OF ACTION**
14 **Class Claim For Control Person Liability Under Section 15 For Violation Of Section 12**
(Against The Individual Defendants)

15 123. Plaintiff repeats and realleges each and every allegation above as if fully set forth
16 herein.

17 124. Plaintiff does not allege that the material omissions and material misstatements set
18 forth herein were made intentionally, knowingly or recklessly by Defendants.

19 125. The Defendants in this claim for control person liability under section 15 of the
20 Securities Act, for violation of section 12 of the Securities Act, are all of the Individual
21 Defendants.

22 126. For the reasons stated in the Second Claim above, each of the Individual
23 Defendants is a control person pursuant to section 15 of the Securities Act.

24 127. While the following concerns an affirmative defense that can be raised by only
25 these control person Defendants, and concerning which they bear the burden of proof,
26 nevertheless, Plaintiff alleges that each of these Defendants, as a controlling person, cannot prove
27 that he: (a) had no knowledge of the existence of the facts by reason of which the liability of the
28 controlled person is alleged to exist; or (b) had no reasonable grounds to believe in the existence

1 of the facts by reason of which the liability of the controlled person is alleged to exist.

2 128. As set forth above, each of the Defendants on the section 12 claim violated section
3 12 of the Securities Act.

4 129. The Individual Defendants, individually and jointly, are each liable under section
5 15 as a control person of the other Defendants who are primarily liable under section 12, and each
6 Defendant on this claim is liable to Plaintiff and the other members of the Class, in an amount to
7 be proved at trial.

8 **REQUEST FOR RELIEF**

9 130. WHEREFORE, Plaintiff demands judgment individually and on behalf of the
10 Class against Defendants, jointly and severally, as follows:

11 a. An order declaring this action to be a class action properly maintained pursuant to
12 section 382 of the California Code of Civil Procedure, certifying the Class, and certifying her
13 counsel as Class Counsel;

14 b. Against Defendants, jointly and severally, for damages suffered as a result of
15 Defendants' violations of the Securities Act, and/or awarding rescission under section 12 of the
16 Securities Act, in an amount to be proven at trial;

17 c. Awarding Plaintiff and the other members of the Class pre-judgment and post-
18 judgment interest, as well as her reasonable attorneys' fees, accountants' fees and experts' fees
19 and other costs and disbursements; and

20 d. Awarding Plaintiff and the Class such other and further relief as may be just and
21 proper under the circumstances.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues so triable.

DATED: May 25, 2012

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK
BETSY C. MANIFOLD
RACHELE R. RICKERT
PATRICK H. MORAN



PATRICK H. MORAN

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
GREGORY M. NESPOLE
ROBERT B. WEINTRAUB
270 Madison Avenue
New York, New York 10016
Telephone: 212/545-4600
Facsimile: 212/545-4653

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC
ADAM J. LEVITT
55 West Monroe Street, Suite 1111
Chicago, Illinois 60603
Telephone: 312/984-0000
Facsimile: 312/984-0001

GAINES & McKENNA
THOMAS J. McKENNA
440 Park Avenue South, 5th Floor
New York, NY 10016
Telephone: 212-983-1300
Facsimile: 212-983-0380

Attorneys for Plaintiff

FACEBOOK:12910.CPT

1- JOHNSON & WEAVER, LLP
Frank J. Johnson (174882)
2 David Elliot (270831)
110 West "A" Street, Suite 750
3 San Diego, CA 92101
Telephone: (619) 230-0063
4 Facsimile: (619) 255-1856

5 Attorneys for Plaintiff

ENDORSED FILED
SAN MATEO COUNTY

MAY 25 2012

Clerk of the Superior Court
By G. MARQUEZ
DEPUTY CLERK

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10 EDWARD J. SHIERRY, Individually and
On Behalf of All Others Similarly Situated,
11 Plaintiff,

12 v.

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

Case No.: **CIV 514172**
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

FILED BY FAX

1 JAMES & ASSOCIATES, INC., SAMUEL
2 A. RAMIREZ & COMPANY, INC.,
3 STIFEL, NICOLAUS & COMPANY,
4 INCORPORATED, THE WILLIAMS
5 CAPITAL GROUP, L.P., and WILLIAM
6 BLAIR & COMPANY, L.L.C.,
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants.

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

9 NATURE AND SUMMARY OF THE ACTION

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

13 2. Facebook operates as a social networking company worldwide.

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

22 4. As detailed below, the Registration Statement and Prospectus contained
23 materially false and misleading statements and omitted material information in violation of
24 Sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§77k and
25 77o.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION AND VENUE

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

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

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

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

PARTIES

9. Plaintiff Edward J. Shierry purchased Facebook securities pursuant to and/or traceable to the Registration Statement issued in connection with the Company's IPO and has been damaged thereby.

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

3 11. Defendant Mark Zuckerberg ("Zuckerberg") was, at all relevant times,
4 Chairman and Chief Executive Officer ("CEO") of Facebook and signed or authorized the
5 signing of the Company's Registration Statement filed with the SEC.
6

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

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

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

17 15. Defendant Erskine B. Bowles ("Bowles") was, at all relevant times, a director
18 of Facebook and signed or authorized the signing of the Company's Registration Statement
19 filed with the SEC.
20

21 16. Defendant James W. Breyer ("Breyer") was, at all relevant times, a director of
22 Facebook and signed or authorized the signing of the Company's Registration Statement filed
23 with the SEC.

24 17. Defendant Donald E. Graham ("Graham") was, at all relevant times, a director
25 of Facebook and signed or authorized the signing of the Company's Registration Statement
26 filed with the SEC.
27
28

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

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

7 20. Defendants Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer,
8 Graham, Hastings and Thiel, are collectively referred to hereinafter as the "Individual
9 Defendants."

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

12 22. Defendant Goldman, Sachs & Co. ("Goldman Sachs") served as an underwriter
13 to Facebook in connection with the Offering.

14 23. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter to
15 Facebook in connection with the Offering.

16 24. Defendant Allen & Company LLC ("Allen") served as an underwriter to
17 Facebook in connection with the Offering.

18 25. Defendant Citigroup Global Markets Inc. ("Citi") served as an underwriter to
19 Facebook in connection with the Offering.

20 26. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") served as an
21 underwriter to Facebook in connection with the Offering.

22 27. Defendant Deutsche Bank Securities Inc. ("Deutsche") served as an underwriter
23 to Facebook in connection with the Offering.

1 28. Defendant RBC Capital Markets, LLC ("RBC") served as an underwriter to
2 Facebook in connection with the Offering.

3 29. Defendant Blaylock Robert Van LLC ("Blaylock") served as an underwriter to
4 Facebook in connection with the Offering.

5 30. Defendant BMO Capital Markets Corp. ("BMO") served as an underwriter to
6 Facebook in connection with the Offering.

7 31. Defendant C.L. King & Associates, Inc. ("C.L. King") served as an underwriter
8 to Facebook in connection with the Offering.

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

11 33. Defendant CastleOak Securities, L.P. ("CastleOak") served as an underwriter to
12 Facebook in connection with the Offering.

13 34. Defendant Cowen and Company, LLC ("Cowen") served as an underwriter to
14 Facebook in connection with the Offering.

15 35. Defendant E*TRADE Securities LLC ("E*TRADE") served as an underwriter
16 to Facebook in connection with the Offering.

17 36. Defendant Itau BBA USA Securities, Inc. ("Itau") served as an underwriter to
18 Facebook in connection with the Offering.

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

21 38. Defendant Lebenthal & Co., LLC ("Lebenthal") served as an underwriter to
22 Facebook in connection with the Offering.

23 39. Defendant Loop Capital Markets LLC ("Loop") served as an underwriter to
24 Facebook in connection with the Offering.

1 40. Defendant M.R. Beal & Company ("M.R. Beal") served as an underwriter to
2 Facebook in connection with the Offering.

3 41. Defendant Macquarie Capital (USA) Inc. ("Macquarie") served as an
4 underwriter to Facebook in connection with the Offering.

5 42. Defendant Muriel Siebert & Co., Inc. ("Muriel") served as an underwriter to
6 Facebook in connection with the Offering.

7 43. Defendant Oppenheimer & Co. Inc. ("Oppenheimer") served as an underwriter
8 to Facebook in connection with the Offering.

9 44. Defendant Pacific Crest Securities LLC ("Pacific Crest") served as an
10 underwriter to Facebook in connection with the Offering.

11 45. Defendant Piper Jaffray & Co. ("Piper Jaffray") served as an underwriter to
12 Facebook in connection with the Offering.

13 46. Defendant Raymond James & Associates, Inc. ("Raymond James") served as
14 an underwriter to Facebook in connection with the Offering.

15 47. Defendant Samuel A. Ramirez & Company, Inc. ("Ramirez") served as an
16 underwriter to Facebook in connection with the Offering.

17 48. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") served as an
18 underwriter to Facebook in connection with the Offering.

19 49. Defendant The Williams Capital Group, L.P. ("Williams") served as an
20 underwriter to Facebook in connection with the Offering.

21 50. Defendants William Blair & Company, L.L.C. ("William Blair") served as an
22 underwriter to Facebook in connection with the Offering.

23 51. Defendants Morgan Stanley, Goldman Sachs, Barclays, Allen, Citigroup, Credit
24 Suisse, Deutsche, RBC, Blaylock, BMO, C.L. King, Cabrera, CastleOak, Cowen, E*TRADE,
25
26
27
28

1 Itau, Lazard, Lebenthal, Loop, M.R. Beal, Macquarie, Muriel, Oppenheimer, Pacific Crest,
2 Piper Jaffray, Raymond James, Ramirez, Stifel, Williams, and William Blair, are collectively
3 referred to herein as the "Underwriter Defendants."

4 CLASS ACTION ALLEGATIONS

5 52. Plaintiff brings this action as a class action pursuant to California Code of Civil
6 Procedure Section 382 on behalf of a Class, consisting of all persons and/or entities who
7 purchased or otherwise acquired the common stock of Facebook pursuant to and/or traceable
8 to the Company's false and/or misleading Registration Statement and Prospectus issued in
9 connection with the Company's IPO, and who were damaged thereby (the "Class"). Excluded
10 from the Class are defendants herein, members of the immediate family of each of the
11 defendants, any person, firm, trust, corporation, officer, director or other individual or entity in
12 which any defendant has a controlling interest or which is related to or affiliated with any of
13 the defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or
14 assigns of any such excluded party.
15

16 53. The members of the Class are so numerous that joinder of all members is
17 impracticable. Facebook sold more than 421 million shares of common stock in the IPO. The
18 precise number of Class members is unknown to plaintiff at this time but is believed to be in
19 the thousands. In addition, the names and addresses of the Class members can be ascertained
20 from the books and records of Facebook or its transfer agent or the underwriters to the IPO.
21 Notice can be provided to such record owners by a combination of published notice and first-
22 class mail, using techniques and a form of notice similar to those customarily used in class
23 actions arising under the federal securities laws.
24

25 54. Plaintiff will fairly and adequately represent and protect the interests of the
26 members of the Class. Plaintiff has retained competent counsel experienced in class action
27
28

1 litigation under the securities laws to further ensure such protection and intends to prosecute
2 this action vigorously.

3 55. Plaintiff's claims are typical of the claims of the other members of the Class
4 because plaintiff and all the Class members' damages arise from and were caused by the same
5 false and misleading representations and omissions made by or chargeable to defendants.
6 Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.
7

8 56. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy. Since the damages suffered by individual Class members
10 may be relatively small, the expense and burden of individual litigation make it virtually
11 impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiff
12 knows of no difficulty that will be encountered in the management of this litigation that would
13 preclude its maintenance as a class action.
14

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

18 (a) whether the federal securities laws were violated by defendants' acts as
19 alleged herein;

20 (b) whether the Prospectus and Registration Statement issued by defendants to
21 the investing public in connection with the IPO negligently omitted and/or misrepresented
22 material facts about Facebook and its business; and

23 (c) the extent of injuries sustained by members of the Class and the
24 appropriate measure of damages.
25
26
27
28

1 63. In describing the risks related to Facebook's business and industry, the
2 Registration Statement purported to warn that the Company's revenues could be negatively
3 affected by the rate of growth in mobile users of its site or app. The Registration Statement
4 and Prospectus stated in pertinent part as follows:

5
6 *Growth in use of Facebook through our mobile products, where our ability to*
7 *monetize is unproven, as a substitute for use on personal computers may*
8 *negatively affect our revenue and financial results.*

9 We had 488 million [monthly active users] who used facebook mobile
10 products in March 2012. While most of our mobile users also access Facebook
11 through personal computers, we anticipate that the rate of growth in mobile
12 usage will exceed the growth in usage through personal computers for the
13 foreseeable future, in part due to our focus on developing mobile products to
14 encourage mobile usage of Facebook. We have historically not shown ads to
15 users accessing Facebook through mobile apps or our mobile website. In March
16 2012, we began to include sponsored stories in users' mobile News Feeds.
17 However, we do not currently directly generate any meaningful revenue from
18 the use of Facebook mobile products, and our ability to do so successfully is
19 unproven. We believe this increased usage of Facebook on mobile devices has
20 contributed to the recent trend of our daily active users (DAUs) increasing more
21 rapidly than the increase in the number of ads delivered. If users increasingly
22 access Facebook mobile products as a substitute for access through personal
23 computers, and if we are unable to successfully implement monetization
24 strategies for our mobile users, or if we incur excessive expenses in this effort,
25 our financial performance and ability to grow revenue would be negatively
26 affected.

27 64. The Registration Statement and Prospectus also purported to warn investors
28 that the Company's revenues from advertising could be adversely affected by, among other
things, the "increased user access to and engagement with facebook" through mobile devices.

In that regard, the Registration Statement and Prospectus stated, in pertinent part, as follows:

29 *We generate a substantial majority of our revenue from advertising. The loss*
30 *of advertisers, or reduction in spending by advertisers with Facebook, could*
31 *seriously harm our business.*

32 The substantial majority of our revenue is currently generated from third
33 parties advertising on facebook. In 2009, 2010, and 2011 and the first quarter of
34 2011 and 2012, advertising accounted for 98%, 95%, 85%, 87%, and 82%,
35 respectively, of our revenue. As is common in the industry, our advertisers
36 typically do not have long-term advertising commitments with us. Many of our

1 advertisers spend only a relatively small portion of their overall advertising
2 budget with us. In addition, advertisers may view some of our products, such as
3 sponsored stories and ads with social context, as experimental and unproven.
4 Advertisers will not continue to do business with us, or they will reduce the
5 prices they are willing to pay to advertise with us, if we do not deliver ads and
6 other commercial content in an effective manner, or if they do not believe that
7 their investment in advertising with us will generate a competitive return
8 relative to other alternatives. Our advertising revenue could be adversely
9 affected by a number of other factors, including:

- 10 • decreases in user engagement, including time spent on facebook;
- 11 • increased user access to and engagement with facebook through our
12 mobile products, where we do not currently directly generate
13 meaningful revenue, particularly to the extent that mobile engagement is
14 substituted for engagement with Facebook on personal computers where
15 we monetize usage by displaying ads and other commercial content;
- 16 • product changes or inventory management decisions we may make that
17 reduce the size, frequency, or relative prominence of ads and other
18 commercial content displayed on facebook;
- 19 • our inability to improve our analytics and measurement solutions that
20 demonstrate the value of our ads and other commercial content;
- 21 • decisions by advertisers to use our free products, such as facebook
22 Pages, instead of advertising on Facebook;
- 23 • loss of advertising market share to our competitors;
- 24 • adverse legal developments relating to advertising, including legislative
25 and regulatory developments and developments in litigation;
- 26 • adverse media reports or other negative publicity involving us, our
27 Platform developers, or other companies in our industry;
- 28 • 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.

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

6 65. The statements referenced above in ¶¶64-66 were untrue statements of material
7 fact. The true facts at the time of the IPO were that Facebook was then experiencing a severe
8 and pronounced reduction in revenue growth due to an increase of users of its Facebook app or
9 website through mobile devices rather than a traditional PC such that the Company told the
10 Underwriter Defendants to materially lower their revenue forecasts for 2012. And, defendants
11 failed to disclose that during the roadshow conducted in connection with the IPO, certain of
12 the Underwriter Defendants reduced their second quarter and full year 2012 performance
13 estimates for Facebook, which revisions were material information which was not shared with
14 all Facebook investors, but rather, was selectively disclosed by defendants to certain preferred
15 investors and omitted from the Registration Statement and/or Prospectus.

16 66. On May 19, 2012, in an article entitled "Morgan Stanley Was A Control-Freak
17 On Facebook IPO - And It May Have Royally Screwed Itself," *Reuters* reported that
18 "*Facebook . . . altered its guidance for research earnings last week, during the road show, a*
19 *rare and disruptive move.*"

20 67. On May 22, 2012, in an article entitled "Insight: Morgan Stanley cut Facebook
21 estimates just before IPO," *Reuters* reported that that Facebook's lead underwriters, Morgan
22 Stanley, JP Morgan and Goldman Sachs, all cut their earnings forecasts for the Company in
23 the middle of the IPO roadshow and that only a handful of preferred investor clients were told
24 the news of the reduction. In that regard, the article stated, in pertinent part, as follows:

25 In the run-up to Facebook's \$16 billion IPO, Morgan Stanley, the lead
26 underwriter on the deal, unexpectedly delivered some negative news to major
27 clients: The bank's consumer Internet analyst, Scott Devitt, was reducing his
28 revenue forecasts for the company.

1 The sudden caution very close to the huge initial public offering, and
2 while an investor roadshow was underway, was a big shock to some, said two
investors who were advised of the revised forecast.

3 They say it may have contributed to the weak performance of Facebook
4 shares, which sank on Monday - their second day of trading - to end 10 percent
5 below the IPO price. The \$38 per share IPO price valued Facebook at \$104
billion.

6 The change in Morgan Stanley's estimates came on the heels of
7 Facebook's filing of an amended prospectus with the U.S. Securities and
8 Exchange Commission (SEC), in which the company expressed caution about
revenue growth due to a rapid shift by users to mobile devices. Mobile
advertising to date is less lucrative than advertising on a desktop.

9 "This was done during the roadshow - I've never seen that before in 10
10 years," said a source at a mutual fund firm who was among those called by
Morgan Stanley.

11 JPMorgan Chase and Goldman Sachs, which were also major
12 underwriters on the IPO but had lesser roles than Morgan Stanley, also revised
13 their estimates in response to Facebook's May 9 SEC filing, according to
sources familiar with the situation.

14 Morgan Stanley declined to comment and Devitt did not return a phone
15 message seeking comment. JPMorgan and Goldman both declined to comment.

16 Typically, the underwriter of an IPO wants to paint as positive a picture
17 as possible for prospective investors. Investment bank analysts, on the other
18 hand, are required to operate independently of the bankers and salesmen who
19 are marketing stocks - that was stipulated in a settlement by major banks with
regulators following a scandal over tainted stock research during the dotcom
boom.

20 The people familiar with the revised Morgan Stanley projections said
21 Devitt cut his revenue estimate for the current second quarter significantly, and
22 also cut his full-year 2012 revenue forecast. Devitt's precise estimates could not
be immediately verified.

23 "That deceleration freaked a lot of people out," said one of the investors.

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

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

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

3 “VERY UNUSUAL”

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

6 “That would be very, very unusual for a book runner to do that,” he
7 said.

8 The lower revenue projection came shortly before the IPO was priced at
9 \$38 a share, the high end of an already upwardly revised projected range of
\$34-\$38, and before Facebook increased the number of shares being sold by 25
percent.

10 The much-anticipated IPO has performed far below expectations, with
11 the shares barely staying above the \$38 offer price on their Friday debut and
12 then plunging on Monday.

13 Companies do not make their own financial forecasts prior to an IPO,
14 and underwriters are generally barred from issuing recommendations on the
15 stock until 40 days after it begins trading. Analysts often rely on guidance from
the company in building their forecasts, but companies doing IPOs are not
permitted to give out material information that is not available to all investors.

16 Institutions and major clients generally enjoy quick access to investment
17 bank research, while retail clients in many cases only get it later. It is unclear
18 whether Morgan Stanley only told its top clients about the revised view or
spread the word more broadly. The firm declined to comment when asked who
was told about the research.

19 “It’s very rare to cut forecasts in the middle of the IPO process,” said an
20 official with a hedge fund firm who received a call from Morgan Stanley about
21 the revision.

22 68. As of the date of the filing of this complaint, the 421 million shares of
23 Facebook common stock sold in the IPO are trading at approximately \$31 per share, or \$7 per
24 share below the price where plaintiff and the Class purchased \$16 billion worth of Facebook
25 stock while defendants pocketed billions of dollars. Plaintiff and the Class have suffered
26 losses of more than \$2.5 billion since the IPO.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CLAIM
Violation of Section 11 of The Securities Act
(Against All Defendants)

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

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

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

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

73. As issuer of the shares, Facebook is strictly liable to plaintiff and the Class for the misstatements and omissions.

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.

Dated: May 23, 2012

Respectfully Submitted,

JOHNSON & WEAVER, LLP

By: 
FRANK J. JOHNSON

Attorneys for Plaintiff

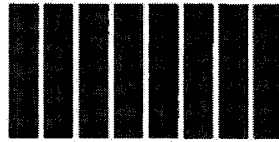


EXHIBIT G

G



EXHIBIT G

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1 Jordan L. Lurie (SBN 130013)
JLurie@initiativelegal.com
2 Raul Perez (SBN 174687)
RPerez@initiativelegal.com
3 Andrew Sokolowski (SBN 226685)
ASokolowski@initiativelegal.com
4 Sue Kim (SBN 256392)
SKim@initiativelegal.com
5 Initiative Legal Group APC
1800 Century Park East, 2nd Floor
6 Los Angeles, California 90067
Telephone: (310) 556-5637
7 Facsimile: (310) 861-9051

8 [Additional counsel on signature page]

9 Attorneys for Plaintiff Michael Lieber

10

11

12

SUPERIOR COURT OF THE STATE OF CALIFORNIA

13

FOR THE COUNTY OF SAN MATEO

14

MICHAEL LIEBER, individually, and on
15 behalf of other members of the general
public similarly situated,

16

Plaintiff,

17

vs.

18

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

28

FILED
SAN MATEO COUNTY

MAY 29 2012

Clerk of the Superior Court
By 
DEPUTY CLERK

FILE BY FAX

Case No.:

CIV 514193

CLASS ACTION COMPLAINT FOR

- 1) Violation of Section 11 of the Securities Act of 1933 (15 U.S.C. § 77k);
- 2) Violation of Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77f); and
- 3) Violation of Section 15 of the Securities Act of 1933 (15 U.S.C. § 77o).

Jury Trial Demanded

1 CO., INC.; CABRERA CAPITAL
2 MARKETS, LLC; BMO CAPITAL
3 MARKETS CORP.; CASTLEOAK
4 SECURITIES, L.P.; LAZARD CAPITAL
5 MARKETS LLC; PACIFIC CREST
6 SECURITIES LLC; LOOP CAPITAL
7 MARKETS LLC; ITAU BBA USA
8 SECURITIES, INC.; WILLIAM BLAIR &
9 FACEBOOK, L.L.C.; BLAYLOCK
10 ROBERT VAN LLC; LEBENTHAL & CO.
11 LLC; M.R. BEAL & FACEBOOK;
12 MACQUARIE CAPITAL (USA) INC.;
13 PIPER JAFFRAY & CO.; COWEN AND
14 FACEBOOK, LLC; RAYMOND JAMES
15 & ASSOCIATES, INC.; STIFEL,
16 NICOLAUS & FACEBOOK;
17 INCORPORATED; C.L. KING &
18 ASSOCIATES, INC.; SAMUEL A.
19 RAMIREZ & FACEBOOK, INC.; COWEN
20 & FACEBOOK, LLC; THE WILLIAMS
21 CAPITAL GROUP, L.P.; and Does 1
22 through 100, inclusive,

23
24
25
26
27
28
Defendants.

1 Plaintiff Michael Lieber (herein "Plaintiff"), individually and on behalf of all other
2 members of the public similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
5 action individually and on behalf of all other similarly situated persons who purchased common
6 stock of defendant FACEBOOK, INC. ("FACEBOOK") that can be traced to FACEBOOK's
7 initial public offering ("IPO") which took place on May 18, 2012.

8 2. As set forth in greater detail below, the claims arise from the false and
9 misleading statements and material omissions in FACEBOOK's Registration Statement and
10 Prospectus, and amendments thereto. The Registration Statement and Prospectus, and
11 amendments thereto were issued in connection with the FACEBOOK IPO. In violation of the
12 Securities Act of 1933, defendants omitted material information and misled investors in regards
13 to FACEBOOK's IPO including, but not limited to: the fact that FACEBOOK was experiencing
14 severe earnings growth reductions, as more FACEBOOK members were accessing Facebook
15 through mobile devices rather than personal computers; that during the IPO road show,
16 FACEBOOK selectively provided reduced earnings guidance to certain underwriters while
17 hiding the same information from others; that the underwriters who were provided this
18 information, such as Goldman Sachs & Co. and Morgan Stanley, responded by reducing their
19 earnings forecast for FACEBOOK; and that those informed underwriters selectively passed the
20 information they received from FACEBOOK only to certain large investors and not to the
21 public. This information was not disclosed and was withheld by FACEBOOK. Earning trends,
22 earnings guidance from the offering corporation and earnings forecasts by underwriters are all
23 highly material information that any reasonable investor would want to know before deciding to
24 buy, and how much to pay, for IPO stock. While Defendants' Registration Statement and
25 Prospectus purported to warn investors that FACEBOOK's revenues could be negatively
26 affected by the rate of growth in mobile users of its site or application, those supposed
27 disclosures were inadequate and false. In fact, at the time of the IPO FACEBOOK was then
28 experiencing such a severe reduction in growth due to an increase of users on its Facebook

1 application through mobile devices, that the FACEBOOK told its underwriters to materially
2 lower the revenue forecasts for 2102. Defendants violated the Securities Act of 1933 by
3 providing material, non-public information to select analysts that was then shared with select
4 investors in the form of lower earnings projections. The fact that FACEBOOK's own
5 underwriters revised their earnings estimates downwards and did not publicly disclose that
6 information is material information that all investors were entitled to know. Defendants further
7 failed to disclose that, during the road show for the IPO, certain underwriters had reduced their
8 second quarter and 2012 year-end estimates for FACEBOOK. This material information also
9 was omitted from the Registration Statement and Prospectus.

10 3. FACEBOOK's conduct in violation of securities laws has caused Plaintiff and
11 other IPO investors to lose millions or billions of dollars by paying an inflated price for
12 FACEBOOK IPO stock.

13 4. Plaintiff, on behalf of himself and all other similarly situated persons, seeks
14 damages, equitable relief, attorneys' fees and costs, and all other available relief for Plaintiff and
15 all other members of the class described below.

16 JURISDICTION AND VENUE

17 5. This class action is brought pursuant to California Code of Civil Procedure
18 section 382. The damages and restitution sought by Plaintiff exceed \$25,000, the minimal
19 jurisdiction limits of the Superior Court, and will be established according to proof at trial.

20 6. The claims in this action arise under sections 11, 12, and 15 of the Securities Act
21 of 1933 (15 U.S.C. §§ 77 et seq.).

22 7. This Court has jurisdiction over this action pursuant to section 22 of the
23 Securities Act of 1933 (15 U.S.C. § 77v) which provides State Courts with concurrent
24 jurisdiction of cases brought under the Securities Act of 1933, sections 11, 12, and 15, stating
25 "[e]xcept as provided in section 16(c), no case arising under this title and brought in any State
26 court of competent jurisdiction shall be removed to any court of the United States."

27 8. Venue is proper in this Court pursuant to section 22 of the Securities Act
28 because, upon information and belief, some Defendants reside and transact business in this

1 county and the acts and omissions alleged herein took place in this county or otherwise
2 intentionally avail themselves of the California market so as to render the exercise of
3 jurisdiction over them by the California courts consistent with traditional notions of fair play
4 and substantial justice.

5 **THE PARTIES**

6 9. Plaintiff Michael Lieber is a resident of the state of New York and, as set forth
7 more fully below, purchased FACEBOOK IPO common stock.

8 10. Defendant FACEBOOK is a Delaware corporation with its principal executive
9 offices located at 1601 Willow Road, Menlo Park, California 94025 in San Mateo County.

10 11. Facebook common stock is currently listed on the NASDAQ stock exchange
11 under the symbol "FB."

12 12. Defendant Mark Zuckerberg was, at all relevant times, Chairman and Chief
13 Executive Officer of FACEBOOK and signed or authorized the signing of the FACEBOOK's
14 Registration Statement filed with the SEC.

15 13. Defendant David A. Ebersman was, at all relevant times, Chief Financial Officer
16 of FACEBOOK and signed or authorized the signing of the FACEBOOK's Registration
17 Statement filed with the SEC.

18 14. Defendant David M. Spillane was, at all relevant times, Director of Accounting
19 for FACEBOOK and signed or authorized the signing of the FACEBOOK's Registration
20 Statement filed with the SEC.

21 15. Defendant Marc L. Andreessen was, at all relevant times, a director of
22 FACEBOOK and signed or authorized the signing of the FACEBOOK's Registration Statement
23 filed with the SEC.

24 16. Defendant Erskine B. Bowles was, at all relevant times, a director of
25 FACEBOOK and signed or authorized the signing of the FACEBOOK's Registration Statement
26 filed with the SEC.

27 17. Defendant James W. Breyer was, at all relevant times, a director of FACEBOOK
28 and signed or authorized the signing of the FACEBOOK's Registration Statement filed with the

1 SEC.

2 18. Defendant Donald E. Graham was, at all relevant times, a director of
3 FACEBOOK and signed or authorized the signing of the FACEBOOK's Registration Statement
4 filed with the SEC.

5 19. Defendant Reed Hastings was, at all relevant times, a director of FACEBOOK
6 and signed or authorized the signing of the FACEBOOK's Registration Statement filed with the
7 SEC.

8 20. Defendant Peter A. Thiel was, at all relevant times, a director of FACEBOOK
9 and signed or authorized the signing of the FACEBOOK's Registration Statement filed with the
10 SEC.

11 21. Defendant Morgan Stanley & Co. LLC served as the lead underwriter to the
12 FACEBOOK IPO.

13 22. Defendant J.P. Morgan Securities LLC served as an underwriter to the
14 FACEBOOK IPO.

15 23. Defendant Goldman, Sachs & Co. served as an underwriter to the FACEBOOK
16 IPO.

17 24. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated served as an
18 underwriter to the FACEBOOK IPO.

19 25. Defendant Barclays Capital Inc. served as an underwriter to the FACEBOOK
20 IPO.

21 26. Defendant Allen & Company LLC served as an underwriter to the FACEBOOK
22 IPO.

23 27. Defendant Citigroup Global Markets Inc. served as an underwriter to the
24 FACEBOOK IPO.

25 28. Defendant Credit Suisse Securities (USA) LLC served as an underwriter to the
26 FACEBOOK IPO.

27 29. Defendant Deutsche Bank Securities Inc. served as an underwriter to the
28 FACEBOOK IPO.

- 1 30. Defendant RBC Capital Markets, LLC served as an underwriter to the
2 FACEBOOK IPO.
- 3 31. Defendant Blaylock Robert Van LLC served as an underwriter to the
4 FACEBOOK IPO.
- 5 32. Defendant BMO Capital Markets Corp. served as an underwriter to the
6 FACEBOOK IPO.
- 7 33. Defendant C.L. King & Associates, Inc. served as an underwriter to the
8 FACEBOOK IPO.
- 9 34. Defendant Cabrera Capital Markets, LLC served as an underwriter to the
10 FACEBOOK IPO.
- 11 35. Defendant CastleOak Securities, L.P. served as an underwriter to the
12 FACEBOOK IPO.
- 13 36. Defendant Cowen and Company, LLC served as an underwriter to the
14 FACEBOOK IPO.
- 15 37. Defendant E*TRADE Securities LLC served as an underwriter to the
16 FACEBOOK IPO.
- 17 38. Defendant Itau BBA USA Securities, Inc. served as an underwriter to the
18 FACEBOOK IPO.
- 19 39. Defendant Lazard Capital Markets LLC served as an underwriter to the
20 FACEBOOK IPO.
- 21 40. Defendant Lebenthal & Co., LLC served as an underwriter to the FACEBOOK
22 IPO.
- 23 41. Defendant Loop Capital Markets LLC served as an underwriter to the
24 FACEBOOK IPO.
- 25 42. Defendant M.R. Beal & Company served as an underwriter to the FACEBOOK
26 IPO.
- 27 43. Defendant Macquarie Capital (USA) Inc. served as an underwriter to the
28 FACEBOOK IPO.

1 44. Defendant Muriel Siebert & Co., Inc. served as an underwriter to the
2 FACEBOOK IPO.

3 45. Defendant Oppenheimer & Co. Inc. served as an underwriter to the FACEBOOK
4 IPO.

5 46. Defendant Pacific Crest Securities LLC served as an underwriter to the
6 FACEBOOK IPO.

7 47. Defendant Piper Jaffray & Co. served as an underwriter to the FACEBOOK IPO.

8 48. Defendant Raymond James & Associates, Inc. served as an underwriter to the
9 FACEBOOK IPO.

10 49. Defendant Samuel A. Ramirez & Company, Inc. served as an underwriter to the
11 FACEBOOK IPO.

12 50. Defendant Stifel, Nicolaus & Company, Incorporated served as an underwriter to
13 the FACEBOOK IPO.

14 51. Defendant The Williams Capital Group, L.P. served as an underwriter to the
15 FACEBOOK IPO.

16 52. Defendant William Blair & Company, L.L.C. served as an underwriter to the
17 FACEBOOK IPO.

18 53. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
19 under the fictitious names DOES 1 through 100, but prays for leave to amend and serve such
20 fictitiously named defendants once their names and capacities become known.

21 54. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100
22 are the partners, agents, owners, shareholders, managers, or employees of defendants.

23 55. At all relevant times, Defendants, and each of them, ratified each and every act or
24 omission complained of herein.

25 **FACEBOOK AND ITS INITIAL PUBLIC OFFERING**

26 56. Founded in February of 2004, defendant FACEBOOK operates an online social
27 network website entitled "Facebook" whose purpose is allow members "to stay connected with
28 friends and family, to discover what's going on in the world, and to share and express what

1 matters to them.”¹

2 57. Facebook members can create their own Facebook profile pages and interact with
3 other members in a host of different methods including sharing photos, sharing videos, chatting,
4 and posting messages, etc. According to FACEBOOK’s Prospectus, Facebook has over 900
5 million active members.² In addition to personal Facebook pages, Facebook permits
6 corporations and advertisers to market their products and services.

7 58. Prior to May of 2012, FACEBOOK was a privately held company.

8 59. On February 1, 2012, FACEBOOK filed a registration statement with the
9 Securities and Exchange Commission (“SEC”) on Form S-1. Amendments were made thereto
10 several times.

11 60. On or about early May of 2012, FACEBOOK began a “road show” to inform
12 potential investors that it would go public, *i.e.* it would offer shares of FACEBOOK stock to the
13 general public. Upon information and belief, part of the road show was also to market its IPO
14 stock for sale.

15 61. On May 16, 2012, FACEBOOK filed the final Form S-1/A (“Registration
16 Statement”) for the IPO with the SEC.

17 62. On May 18, 2012, Facebook’s Prospectus (a part of the Registration Statement)
18 became effective (“Prospectus”).

19 63. Also on May 18, 2012, FACEBOOK’s IPO took effect. In the IPO, the
20 FACEBOOK offered for sale 421,233,615 shares of common stock at \$38.00 per share, of
21 which 180,000,000 shares of Class A common were offered by FACEBOOK and 241,233,615
22 shares of Class A common stock were offered by existing stockholders. FACEBOOK had
23 projected to receive over \$6 billion in investment money from the IPO. In total, 421 million
24 shares of Facebook common stock were sold to the public by FACEBOOK at \$38 per share.
25 The result of which was to value FACEBOOK at more than \$16 billion.

26 ¹ See <http://investor.fb.com/faq.cfm>, last visited May 24, 2012.

27 ² See [http://files.shareholder.com/downloads/AMDA-
28 NJ5DZ/1889281791x0xS1193125-12-240111/1326801/filing.pdf](http://files.shareholder.com/downloads/AMDA-NJ5DZ/1889281791x0xS1193125-12-240111/1326801/filing.pdf), last visited May 24, 2012.