

1 64. Prior to the IPO, the Registration Statement and Prospectus contained untrue
2 and/or misleading statements of material facts, material omissions of fact, and omitted to state
3 other facts necessary to make the statements made not misleading. The Registration Statement
4 and Prospectus were not prepared in accordance with the rules and regulations governing their
5 preparation and were otherwise deficient pursuant to the Securities Act of 1933. Specifically
6 FACEBOOK failed to state and omitted: the fact that FACEBOOK was experiencing severe
7 earnings growth reductions, as more FACEBOOK members were accessing Facebook through
8 mobile devices rather than personal computers; that during the IPO road show FACEBOOK
9 selectively provided reduced earnings guidance to certain underwriters while hiding the same
10 information from others; that the underwriters who were provided this information, such as
11 Goldman Sachs & Co. and Morgan Stanley, responded by reducing their earnings forecast for
12 FACEBOOK; and that those informed underwriters selectively passed the information they
13 received from FACEBOOK only to certain large investors and not to the public.

14 65. Pursuant to the SEC, the Securities Act of 1933, and related case law which has
15 interpreted the relevant rules with respect to registration statements and prospectuses filed for
16 initial public offerings of corporations, the Registration Statement and Prospectus at issue in this
17 complaint were required to disclose forecasts, events, known trends and other information that
18 have, or reasonably likely to have, an impact on FACEBOOK's continuing operations and
19 earnings.

20 66. In violation of the laws as set forth above, the Registration Statement failed,
21 among other things to disclose: FACEBOOK was experiencing an earnings growth reduction as a
22 result of more Facebook members accessing Facebook through an application on mobile devices
23 rather than personal computers; that during the FACEBOOK IPO road show FACEBOOK
24 selectively provided reduced earnings guidance to certain underwriters, such as Goldman Sachs
25 & Co. and Morgan Stanley, based on its earnings growth reduction; and that those informed
26 underwriters, such as Goldman Sachs & Co. and Morgan Stanley, responded by reducing their
27 own earnings forecast for FACEBOOK.

28 67. For example, the Registration Statement and Prospectus stated:

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

Based upon our experience in the second quarter of 2012 to date, the trend we saw in the first quarter of [daily active users] increasing more rapidly than the increase in number of ads delivered has continued. We believe this trend is driven in part by increased usage of Facebook on mobile devices where we have only recently begun showing an immaterial number of sponsored stories in News Feed, and in part due to certain pages having fewer ads per page as a result of product decisions.

68. Nowhere in this statement, or elsewhere in the Registration Statement or Prospectus, however, did FACEBOOK adequately reveal that it had experienced reduced earnings growth, or the severity of that reduced earnings growth. Moreover, nowhere in the Registration Statement or Prospectus did FACEBOOK reveal that it had reduced its earnings guidance given to underwriters, or that those informed lead underwriters had reduced their earnings forecasts for FACEBOOK based on the new information given by FACEBOOK.

69. Reduced earnings growth, earning guidance information provided by the IPO corporation to underwriters, and earnings forecast changes by lead underwriters are all material information that any reasonable investor would want to know before deciding to buy, and how much to pay, for stock.

70. Accordingly, FACEBOOK's Registration Statement and Prospectus contained untrue, misleading and false information and material omissions of fact, and/or omitted to state other facts necessary to make the statements made not misleading. Moreover, FACEBOOK's Registration Statement and Prospectus was not prepared in accordance with the Securities Act of 1933.

71. Days following the FACEBOOK IPO, press releases disclosed the fact that FACEBOOK had selectively disclosed to certain underwriters that it was experiencing reduced earnings growth and that FACEBOOK had provided reduced earnings guidance to those same underwriters.

72. For example, *Reuters* reported in an article titled "Morgan Stanley Was A Control-Freak On FACEBOOK IPO – And It May Have Royally Screwed Itself: "Facebook...altered its guidance for research earnings last week, during the road show, a rare

1 and disruptive move.”³

2 73. Another article by *Business Insider* titled “BOMBSHELL: Facebook Bankers
3 Secretly Cut Forecasts For Company In Middle Of IPO Roadshow” stated:⁴

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

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

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

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

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

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

25 Any investor considering an investment in Facebook would
26 consider an estimate cut from the underwriters' analysts “material
27 information.”

28 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.)

³ See <http://www.businessinsider.com/morgan-stanley-facebook-ipo-2012-5>, last visited May 24, 2012.

⁴ See <http://www.businessinsider.com/facebook-bankers-earnings-forecasts-2012-5>, last visited May 24, 2012.

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

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.

74. Another article by *Business Insider* titled "The inside story of Facebook's IPO" stated:⁵

And now for some more bombshell news about the Facebook IPO...

Earlier, we reported that the analysts at Facebook's IPO underwriters had cut their estimates for the company in the middle of the IPO roadshow, a highly unusual and negative event.

What we didn't know was why.

Now we know.

The analysts cut their estimates because a Facebook executive told them to, a source tells us.

The information about the estimate cut was then verbally conveyed to sophisticated institutional investors who were considering buying Facebook stock, but not to smaller investors.

The estimate cut appears to have influenced the investment decisions of at least some institutional investors, dampening their appetite for Facebook stock, and crucially affecting the price at which they were willing to buy Facebook stock.

⁵ See http://www.msnbc.msn.com/id/47538876/ns/business-us_business/#.T77n97Bbd2B, last visited May 24, 2012.

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

As I described earlier, at best, this "selective disclosure" is grossly unfair to individual investors who bought Facebook stock on the IPO (or at any time since).

At worst, it's a violation of securities laws.

75. Further, *Business Insider* author Henry Blodget, in "The inside story of Facebook's IPO," continued:⁶

This latest chapter in the Facebook IPO story began this morning, when Reuters' Alistair Barr reported that the research analysts at the company's lead underwriters—Morgan Stanley, Goldman Sachs, and JP Morgan—had cut their earnings estimates for Facebook during the company's IPO roadshow. This was highly unusual, if not unprecedented (I've been in and around the tech IPO business for almost 20 years, and I've never heard of it happening.)

Analysts cutting estimates is generally regarded as significant negative news for stocks. This is especially the case when the analysts who cut their estimates are thought to be very close to a company—and, therefore, to have particularly good information.

(In the old days, before the implementation of Regulation Fair Disclosure, companies used to manage the market's expectations by telling trusted analysts to change their estimates. Reg FD banned that practice.)

The fact that some potential Facebook investors were told of the analysts' estimate cuts and others were not would seem to be a major "selective dissemination" issue.

It is inconceivable that a reasonable investor would consider the sudden reduction of analysts' estimates to be immaterial to an investment decision—especially if they analysts had privileged access to the company.

76. *Business Insider* author Henry Blodget also stated:⁷

Soon after Facebook amended its prospectus, all three analysts at the company's lead underwriters—Morgan Stanley, JP Morgan, and Goldman Sachs—cut their estimates for Facebook's Q2 and the full year.

⁶ *Id.*

⁷ *Id.*

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

These estimate cuts were conveyed verbally to sophisticated institutional investors.

And, not surprisingly, these investors viewed the estimate cuts as a startling and negative development.

One important question, of course, is why all three underwriter analysts cut their estimates.

It seemed inconceivable that all three analysts could have read the language above and concluded independently that Facebook's Q2 was weak and therefore decided to take the highly unusual step of cutting estimates in the middle of a company's IPO roadshow.

More likely, it seemed, someone had directed the analysts to cut their estimates—most likely someone with inside knowledge of how Facebook's Q2 was progressing.

And we have now heard from one source that that is exactly what happened.

One of the underwriter's analysts has said he was told by a Facebook financial executive to cut his estimates.

According to another source with insight into the Facebook IPO process, until the underwriters' analysts cut their estimates, demand for Facebook's stock among sophisticated institutional investors was high. Once these investors heard about the estimate cut, however, they became more cautious about the IPO.

77. *Business Insider* author Henry Blodget continued:⁸

According to one source (unconfirmed), based on the book of orders submitted by both institutional and retail investors, Morgan Stanley found that there were two distinct price levels at which investors were interested in buying stock.

Institutional investors, having digested the news of the underwriter estimate cut, were comfortable buying Facebook stock at \$32 a share.

Retail investors, meanwhile, who were presumably unaware of the estimate cut, were comfortable buying Facebook at \$40 a share.

⁸ *Id.*

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

Knowing that a big percentage of the IPO stock could be sold to retail investors instead of institutional investors, Facebook and Morgan Stanley decided to price the IPO at \$38.

78. Sallie Krawcheck, former head of wealth management at Bank of America, wrote in a Twitter message and was quoted in *TIME Business*, "The FB IPO selective disclosure stories just keep getting worse If true, an absolute outrage. Come on, Wall St.!!"⁹

79. *The New York Times' Dealbook* article "The Facebook I.P.O.'s Potential Legal Exposure" stated:¹⁰

A company is required to disclose all "material" information to investors, and questions about monetizing one of its fastest growing areas certainly seems to be something investors would consider important. In other words, would investors have found the information important in the decision to purchase shares?

Facebook is likely to push back and say that its growth prospects are so uncertain that this information could not have been material. Besides, Facebook will no doubt claim that it sufficiently warned about this in the revised language in the prospectus. It all comes down to how certain the uncertainty was and whether the analysts' conversations were simply more speculative talk about a speculative company.

But if it is proven that Facebook felt the need to talk down its stock, this will weigh heavily towards a finding of materiality. And the revised earnings estimate apparently scared off some institutional investors, which strengthens the materiality determination.

80. *TIME Business* article "Facebook IPO Furor: Feds Probing Deal Over Insider Bank Warnings" also stated:¹¹

⁹ See "Facebook IPO Furor: Feds Probing Deal Over Insider Bank Warnings," <http://business.time.com/2012/05/23/facebook-ipo-furor-feds-probing-deal-over-insider-bank-warnings/>, last visited May 24, 2012.

¹⁰ See <http://dealbook.nytimes.com/2012/05/23/the-facebook-i-p-o-s-potential-legal-exposure/>, last visited May 24, 2012.

¹¹ See "Facebook IPO Furor: Feds Probing Deal Over Insider Bank Warnings," <http://business.time.com/2012/05/23/facebook-ipo-furor-feds-probing-deal-over-insider-bank-warnings/>, last visited May 24, 2012.

1 The new allegations prompted concern from federal and state
2 officials on Tuesday

- 3 • William Galvin, Massachusetts' secretary of state, issued a
4 subpoena to Morgan Stanley seeking information about
5 discussions the bank's analysts may have had with favored
6 investors about Facebook's revenue prospects.
- 7 • Financial Industry Regulatory Authority chairman Richard
8 Ketchum told Reuters: "That's a matter of regulatory
9 concern to us and I'm sure to the SEC."
- 10 • Securities and Exchange Commission Chairman Mary
11 Schapiro told reporters: "I think there is a lot of reason to
12 have confidence in our markets and in the integrity of how
13 they operate, but there are issues that we need to look at
14 specifically with respect to Facebook."

15 81. Subsequent to these press releases shares of FACEBOOK common stock
16 declined to trade as low as \$30.94 (over \$7 per share lower than the IPO price). At the close of
17 trading as of May 24, 2012, FACEBOOK common stock traded at \$31.80¹² (approximately \$6
18 lower per share than the IPO price). As a result, Plaintiff and class members have been
19 damaged.

20 PLAINTIFF'S FACTS

21 82. On or about May 18, 2012, Plaintiff Michael Lieber purchased thousands of
22 shares of the FACEBOOK IPO stock at issue in this complaint and later sold that same stock at
23 a substantial loss.

24 83. As a result of Defendants' violations set forth in this complaint, Plaintiff suffered
25 thousands of dollars in damages.

26 CLASS ACTION ALLEGATIONS

27 84. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
28 other persons similarly situated, and thus, seeks class certification under California Code of
Civil Procedure section 382.

85. All claims alleged herein arise under California law for which Plaintiff seeks

¹² Quote obtained from <http://finance.yahoo.com/q?s=fb&q|=1> at 11:02 a.m., May 25,
2012.

1 relief authorized by California law.

2 86. Plaintiff's proposed class consists of and is defined as:

3 All persons residing in the United States of America who
4 purchased common stock of Facebook, Inc. that can be traced to
5 the Initial Public Offering which occurred on May 18, 2012
6 ("Class"), excluding Defendants named in this action.

6 87. Excluded from the Class, along with Defendants named in this action, are
7 officers and directors of FACEBOOK and their immediate family members and their legal
8 representatives, heirs, successors or assigns, the Court, and any entity in which Defendants have
9 or had a controlling interest.

10 88. Members of the Class will be referred to as "class members." Plaintiff reserves
11 the right to redefine the above Class and add additional subclasses as appropriate based on
12 investigation, discovery, and the specific theories of liability.

13 89. There is a well-defined community of interest in the litigation and the class is
14 readily ascertainable:

15 (a) Numerosity: Upon information and belief, the members of the
16 class (and each subclass, if any) are so numerous that joinder of all
17 members would be unfeasible and impractical. The membership of the
18 entire class is unknown to Plaintiff at this time; however, because
19 thousands of persons purchased FACEBOOK IPO stock, the class is
20 estimated to be greater than one hundred (100) individuals and the
21 identity of such membership is readily ascertainable by inspection of
22 Defendants' records.

23 (b) Typicality: Plaintiff is qualified to, and will, fairly and
24 adequately protect the interests of each class member with whom he has
25 a well-defined community of interest, and Plaintiff's claims (or
26 defenses, if any) are typical of all class members' as demonstrated
27 herein and because Plaintiff purchased FACEBOOK IPO stock.

28 (c) Adequacy: Plaintiff is qualified to, and will, fairly and

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

adequately, protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: The majority of the proposed class members would not know the information that Defendants withheld and only disclosed to certain underwriters. In addition, even if the proposed class members discovered that information was not disclosed to them, they have little incentive to pursue an action for injunctive relief or damages because of the relatively low individual amounts at stake and the complex nature of securities litigation. Obtaining representation would be difficult for the same reason. A class action, however, provides the necessary incentives and allows all class members to obtain relief at once.

90. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members, including but not limited to:

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

- (a) Whether Defendants violated the Securities Act of 1933 by making false and misleading statements and/or material omissions in the Registration Statement and/or Prospectus;
- (b) Whether Defendants failed to disclose to Plaintiff and class members that FACEBOOK was experiencing an earnings growth reduction prior to the IPO as a result of more members accessing Facebook through an application on mobile devices;
- (c) Whether Defendants failed to disclose to Plaintiff and class members that FACEBOOK reduced its earnings guidance given to underwriters related to FACEBOOK;
- (d) Whether Defendants failed to disclose to Plaintiff and class members that lead underwriters such as Morgan Stanley and Goldman Sachs & Co. had reduced their earnings estimates related to FACEBOOK when they were informed by FACEBOOK that it was experiencing reduced earnings growth;
- (e) Whether statements made by FACEBOOK and its officers and directors in the Registration Statement and Prospectus were false and misleading given that they later failed to disclose that it was experiencing earnings growth reductions, and given that internal and external earnings forecasts and estimations for FACEBOOK had been reduced just prior to the initial public offering of FACEBOOK common stock on May 18, 2012;
- (f) Whether FACEBOOK's earnings growth reduction, earnings forecasts and estimations, and reductions thereto, were material information;
- (g) Whether Plaintiff and class members were damaged by Defendants' false and misleading statements and/or material omissions; and
- (h) The appropriate amount of damages, attorneys' fees and costs resulting from Defendants' violations of the Securities Act of 1933 as set forth

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

herein.

Violation of Section 11 of the Securities Act of 1933

(15 U.S.C. § 77k)

(Against All Defendants)

91. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 90.

92. This cause of action for violation of Section 11 of the Securities Act of 1933 (15 U.S.C. § 77k) is alleged against all Defendants.

93. Section 11(a) of the Securities Act, states in pertinent part:
In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue— (1) every person who signed the registration statement; (2) every person who was a director of (or person performing similar functions) or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted; (3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions or partner; (4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him; (5) every underwriter with respect to such security.

94. As set forth above, Defendants violated the Securities Act of 1933 because FACEBOOK's Registration Statement and Prospectus 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 herein. The Registration Statement and Prospectus, and amendments thereto were issued in connection with

1 the FACEBOOK IPO. In violation of sections 11, 12, and 15 of the Securities Act of 1933,
2 defendants omitted material information and misled investors in regards to FACEBOOK's IPO
3 including, but not limited to: the fact that FACEBOOK was experiencing severe earnings
4 growth reductions, as more FACEBOOK members were accessing Facebook through mobile
5 devices rather than personal computers; that during the IPO road show FACEBOOK selectively
6 provided reduced earnings guidance to certain underwriters while hiding the same information
7 from others; that the underwriters who were provided this information, such as Goldman Sachs
8 & Co. and Morgan Stanley, responded by reducing their earnings forecast for FACEBOOK; and
9 that those informed underwriters selectively passed the information they received from
10 FACEBOOK only to certain large investors and not to the public. This information was not
11 disclosed and was withheld by FACEBOOK. Earning trends, earnings guidance from the
12 offering corporation and earnings forecasts by underwriters are all highly material information
13 that any reasonable investor would want to know before deciding to buy, and how much to pay,
14 for IPO stock. While Defendants' Registration Statement and Prospectus purported to warn
15 investors that FACEBOOK's revenues could be negatively affected by the rate of growth in
16 mobile users of its site or application, those supposed disclosures were inadequate and false. In
17 fact, at the time of the IPO FACEBOOK was then experiencing such a severe reduction in
18 growth due to an increase of users on its Facebook application through mobile devices, that the
19 FACEBOOK told its underwriters to materially lower revenue forecast for 2012. Defendants
20 violated the Securities Act of 1933 by providing material, non-public information to select
21 analysts that was then shared with select investors in the form of lower earnings projections.
22 The fact that FACEBOOK's own underwriters revised their earnings estimates downwards and
23 did not publicly disclose that information is material information that all investors were entitled
24 to know. Defendants further failed to disclose that, during the road show for the IPO, certain
25 underwriters had reduced their second quarter and 2012 year-end estimates for FACEBOOK.
26 This material information also was omitted from the Registration Statement and Prospectus.

27 95. FACEBOOK is the registrant for the IPO. Defendants were responsible for the
28 contents and dissemination of the Registration Statement and Prospectus.

1 96. As issuer of the common stock, FACEBOOK is strictly liable to Plaintiff and the
2 class for the misstatements and material omissions.

3 97. Defendants owed to Plaintiff and class members a duty to make a reasonable and
4 diligent investigation of the statements contained in the Registration Statement and Prospectus
5 in order to ensure that such statements were accurate, true and did not contain misstatements or
6 omissions of material fact.

7 98. Defendants knew or should have known, through reasonable diligence, the
8 Registration Statement and Prospectus contained misstatements and material omissions of fact
9 as set forth in this complaint.

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

13 100. Plaintiff and class members acquired common stock of Facebook pursuant and/or
14 traceable to the FACEBOOK IPO. Plaintiff and class members did not know, nor could they
15 have known with reasonable diligence, the inaccuracies, misstatements, and material omissions
16 that were contained in the Registration Statement and Prospectus prior to acquiring
17 FACEBOOK common stock.

18 101. As set forth above, the value of FACEBOOK common stock has declined
19 substantially from its IPO at \$38 per share. As a direct and proximate result thereof, Plaintiff
20 and class members have sustained damages as a result of Defendants' violations.

21 102. Pursuant the Securities Act of 1933, Plaintiff on behalf of himself and all other
22 similarly situated persons, seek damages, equitable relief, attorneys' fees and costs and all other
23 available relief for Plaintiff and class members.

24 **Violation of Section 12(a)(2) of the Securities Act of 1933**

25 **(15 U.S.C. § 771 (a)(2))**

26 **(Against all Defendants)**

27 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
28 material allegations set out in paragraphs 1 through 102.

1 104. This cause of action for violation of section 12(a)(2) of the Securities Act of
2 1933 (15 U.S.C. § 77I) is brought against all Defendants.

3 105. Section 12(a) of the Securities Act, states in pertinent part:

4 Any person who— (1) offers or sells a security in violation of
5 section 5, or (2) offers or sells a security (whether or not
6 exempted by the provisions of section 3, other than paragraphs
7 (2) and (14) of subsection (a) thereof), by the use of any means
8 or instruments of transportation or communication in interstate
9 commerce or of the mails, by means of a prospectus or oral
10 communication, which includes an untrue statement of a material
11 fact or omits to state a material fact necessary in order to make
12 the statements, in the light of the circumstances under which
13 they were made, not misleading (the purchaser not knowing of
14 such untruth or omission), and who shall not sustain the burden
15 of proof that he did not know, and in the exercise of reasonable
16 care could not have known, of such untruth or omission, shall be
17 liable, subject to subsection (b), to the person purchasing such
18 security from him, who may sue either at law or in equity in any
19 court of competent jurisdiction, to recover the consideration paid
20 for such security with interest thereon, less the amount of any
21 income received thereon, upon the tender of such security, or for
22 damages if he no longer owns the security.

23 106. Defendants were sellers, offerors, and/or solicitors of purchasers of the
24 FACEBOOK IPO common stock offered pursuant to the Registration Statement and Prospectus.

25 107. As set forth above, Defendants violated the Securities Act of 1933 because
26 FACEBOOK's Registration Statement and Prospectus was inaccurate and misleading, contained
27 untrue statements of material facts, omitted to state other facts necessary to make the statements
28 made not misleading, and omitted to state material facts required to be stated herein. The
Registration Statement and Prospectus, and amendments thereto were issued in connection with
the FACEBOOK IPO. In violation of sections 11, 12, and 15 of the Securities Act of 1933,
defendants omitted material information and misled investors in regards to FACEBOOK's IPO
including, but not limited to: the fact that FACEBOOK was experiencing severe earnings
growth reductions, as more FACEBOOK members were accessing Facebook through mobile
devices rather than personal computers; that during the IPO road show FACEBOOK selectively
provided reduced earnings guidance to certain underwriters while hiding the same information
from others; that the underwriters who were provided this information, such as Goldman Sachs

1 & Co. and Morgan Stanley, responded by reducing their earnings forecast for FACEBOOK; and
2 that those informed underwriters selectively passed the information they received from
3 FACEBOOK only to certain large investors and not to the public. This information was not
4 disclosed and was withheld by FACEBOOK. Earning trends, earnings guidance from the
5 offering corporation and earnings forecasts by underwriters are all highly material information
6 that any reasonable investor would want to know before deciding to buy, and how much to pay,
7 for IPO stock. While Defendants' Registration Statement and Prospectus purported to warn
8 investors that FACEBOOK's revenues could be negatively affected by the rate of growth in
9 mobile users of its site or application, those supposed disclosures were inadequate and false. In
10 fact, at the time of the IPO FACEBOOK was then experiencing such a severe reduction in
11 growth due to an increase of users on its Facebook application through mobile devices, that the
12 FACEBOOK told its underwriters to materially lower revenue forecast for 2102. Defendants
13 violated the Securities Act of 1933 by providing material, non-public information to select
14 analysts that was then shared with select investors in the form of lower earnings projections.
15 The fact that FACEBOOK's own underwriters revised their earnings estimates downwards and
16 did not publicly disclose that information is material information that all investors were entitled
17 to know. Defendants further failed to disclose that, during the road show for the IPO, certain
18 underwriters had reduced their second quarter and 2012 year-end estimates for FACEBOOK.
19 This material information also was omitted from the Registration Statement and Prospectus.

20 108. Defendants owed to Plaintiff and class members a duty to make a reasonable and
21 diligent investigation of the statements contained in the Registration Statement and Prospectus
22 in order to ensure that such statements were accurate, true and did not contain misstatements or
23 omissions of material fact.

24 109. Defendants knew or should have known, through reasonable diligence, the
25 Registration Statement and Prospectus contained misstatements and material omissions of fact
26 as set forth in this complaint.
27
28

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

4 111. Plaintiff and class members acquired common stock of Facebook pursuant and/or
5 traceable to the FACEBOOK IPO. Plaintiff and class members did not know, nor could they
6 have known with reasonable diligence, the inaccuracies, misstatements, and material omissions
7 that were contained in the Registration Statement and Prospectus prior to acquiring
8 FACEBOOK common stock.

9 112. As set forth above, the value of FACEBOOK common stock has declined
10 substantially from its IPO at \$38 per share. As a direct and proximate result thereof, Plaintiff
11 and class members have sustained damages as a result of Defendants' violations.

12 113. Plaintiff, individually, and on behalf of all class members, offers to tender to
13 Defendants those shares of FACEBOOK common stock they continue to own in return for the
14 monies paid for those shares plus interest, attorneys' fees, and costs. Those class members who
15 have sold their shares are entitled to recessionary damages.

16 114. Pursuant the Securities Act of 1933, Plaintiff on behalf of himself and all other
17 similarly situated persons, seek damages, equitable relief, attorneys' fees and costs and all other
18 available relief for Plaintiff and class members.

19 **Violation of Section 15 of the Securities Act of 1933**

20 **(15 U.S.C. § 77o)**

21 **(Against MARK ZUCKERBURG, DONALD E. GRAHAM, DAVID A. EBERSMAN,**
22 **JAMES W. BREYER, DAVID M. SPILLANE, PETER A. THIEL, MARC L.**
23 **ANDREESSEN, REED HASTINGS, and ERSKINE B. BOWLES)**

24 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
25 material allegations set out in paragraphs 1 through 114.

26 116. This cause of action for violation of Section 15 of the Securities Act of 1933 (15
27 U.S.C. § 77o) is brought against MARK ZUCKERBURG, DONALD E. GRAHAM, DAVID A.
28

1 EBERSMAN, JAMES W. BREYER, DAVID M. SPILLANE, PETER A. THIEL, MARC L.
2 ANDREESSEN, REED HASTINGS, and ERSKINE B. BOWLES.

3 117. Section 15(a) of the Securities Act of 1933 states in pertinent part:
4 Every person who, by or through stock ownership, agency, or
5 otherwise, or who, pursuant to or in connection with an agreement
6 or understanding with one or more other persons by or through
7 stock ownership, agency, or otherwise, controls any person liable
8 under section 11 or 12, shall also be liable jointly and severally
9 with and to the same extent as such controlled person to any
10 person to whom such controlled person is liable, unless the
11 controlling person had no knowledge of or reasonable ground to
12 believe in the existence of the facts by reason of which the
13 liability of the controlled person is alleged to exist.

14 118. Each of the defendants against whom this cause of action is brought was a
15 control person of FACEBOOK by virtue of his or her position as a director or officer of
16 FACEBOOK. Each individual defendant had a series of direct and/or indirect business and/or
17 personal relationships with other directors or officers and/or major shareholders of
18 FACEBOOK. Each individual defendant had the power and influence and exercised that power
19 and influence to cause FACEBOOK to engage in the unlawful acts described in this complaint.

20 119. Each individual defendant was a culpable participant in violation of the
21 Securities Act of 1933 based on their having signed the Registration Statement and having
22 otherwise participated in the FACEBOOK IPO.

23 120. Each individual defendant's position gave them access to information and
24 material facts that were omitted from the Registration Statement and Prospectus and concealed
25 from Plaintiff and class members.

26 121. As set forth above, Defendants violated the Securities Act of 1933 because
27 FACEBOOK's Registration Statement and Prospectus was inaccurate and misleading, contained
28 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 herein. The
Registration Statement and Prospectus, and amendments thereto were issued in connection with
the FACEBOOK IPO. In violation of sections 11, 12, and 15 of the Securities Act of 1933,
defendants omitted material information and misled investors in regards to FACEBOOK's IPO

1 including, but not limited to: the fact that FACEBOOK was experiencing severe earnings
2 growth reductions, as more FACEBOOK members were accessing Facebook through mobile
3 devices rather than personal computers; that during the IPO road show FACEBOOK selectively
4 provided reduced earnings guidance to certain underwriters while hiding the same information
5 from others; that the underwriters who were provided this information, such as Goldman Sachs
6 & Co. and Morgan Stanley, responded by reducing their earnings forecast for FACEBOOK; and
7 that those informed underwriters selectively passed the information they received from
8 FACEBOOK only to certain large investors and not to the public. This information was not
9 disclosed and was withheld by FACEBOOK. Earning trends, earnings guidance from the
10 offering corporation and earnings forecasts by underwriters are all highly material information
11 that any reasonable investor would want to know before deciding to buy, and how much to pay,
12 for IPO stock. While Defendants' Registration Statement and Prospectus purported to warn
13 investors that FACEBOOK's revenues could be negatively affected by the rate of growth in
14 mobile users of its site or application, those supposed disclosures were inadequate and false. In
15 fact, at the time of the IPO FACEBOOK was then experiencing such a severe reduction in
16 growth due to an increase of users on its Facebook application through mobile devices, that the
17 FACEBOOK told its underwriters to materially lower revenue forecast for 2102. Defendants
18 violated the Securities Act of 1933 by providing material, non-public information to select
19 analysts that was then shared with select investors in the form of lower earnings projections.
20 The fact that FACEBOOK's own underwriters revised their earnings estimates downwards and
21 did not publicly disclose that information is material information that all investors were entitled
22 to know. Defendants further failed to disclose that, during the road show for the IPO, certain
23 underwriters had reduced their second quarter and 2012 year-end estimates for FACEBOOK.
24 This material information also was omitted from the Registration Statement and Prospectus.

25 122. Plaintiff and class members acquired common stock of Facebook pursuant and/or
26 traceable to the FACEBOOK IPO. Plaintiff and class members did not know, nor could they
27 have known with reasonable diligence, the inaccuracies, misstatements, and material omissions
28

1 that were contained in the Registration Statement and Prospectus prior to acquiring
2 FACEBOOK common stock.

3 123. As set forth above, the value of FACEBOOK common stock has declined
4 substantially from its IPO at \$38 per. As a direct and proximate result thereof, Plaintiff and
5 class members have sustained damages as a result of Defendants' violations.

6 124. Pursuant the Securities Act of 1933, Plaintiff on behalf of himself and all other
7 similarly situated persons, seek damages, equitable relief, attorneys' fees and costs and all other
8 available relief for Plaintiff and class members.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, and on behalf of himself and all others similarly situated, prays for relief and
13 judgment against Defendants, jointly and severally, as follows:

- 14 1. That this case be certified as a class action;
- 15 2. That Plaintiff be appointed as the representative of the Class; and
- 16 3. That counsel for Plaintiff be appointed as Class Counsel;
- 17 4. For damages, and interest, to Plaintiff and each class member against all
18 Defendants jointly and severally in an amount to be proven at trial;
- 19 5. For, attorneys' fees and costs and other equitable and statutory relief;
- 20 6. For recessionary and restitutionary relief as applicable; and
- 21 7. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 ///

24 ///

25 ///

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

Dated: May 25, 2012

Respectfully submitted,

Initiative Legal Group APC

By: 

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

Jack Zwick
Jack@zwickfirm.com
100 Church Street, Suite 850
New York, N.Y. 10007
Telephone: (212) 385-1900
Facsimile: (212) 385-1911

Attorneys for Michael Lieber

1 BARRACK, RODOS & BACINE
STEPHEN R. BASSER (121590)
2 SAMUEL M. WARD (216562)
3 One America Plaza
600 West Broadway, Suite 900
4 San Diego, CA 92101
(619) 230-0800 – Telephone
5 (619) 230-1874 – Facsimile
Email: sbasser@barrack.com
6 sward@barrack.com

7 BARRACK, RODOS & BACINE
8 DANIEL E. BACINE
MARK R. ROSEN (139506)
9 BETH T. SELTZER
2001 Market Street, Suite 3300
10 Philadelphia, PA 19103
(215) 963-0600 – Telephone
11 (215) 963-0838 – Facsimile
12 Email: dbacine@barrack.com
mrosen@barrack.com
13 bseltzer@barrack.com

14 *Attorneys for Plaintiffs*
15 *Karen Cuker and Brian Gralnick*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF SAN MATEO

18 KAREN CUKER and BRIAN GRALNICK,
19 Individually and On Behalf of All Others
Similarly Situated,
20 Plaintiffs,
21 v.
22 FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M.
23 SPILLANE, MARC L. ANDREESSEN,
ERSKINE B. BOWLES, JAMES W.
24 BREYER, DONALD E. GRAHAM, REED
HASTINGS, PETER A. THIEL, MORGAN
25 STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS &
26 CO., MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, BARCLAYS
27 CAPITAL INC.,
28 *[Caption continued]*

) Case No.:

) **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. §77l); and

) 3) Violation of Section 15 of the Securities Act
) of 1933 (15 U.S.C. §77o)

) **DEMAND FOR JURY TRIAL**

Complaint

1 ALLEN & COMPANY LLC, CITIGROUP)
GLOBAL MARKETS INC., CREDIT)
2 SUISSE SECURITIES (USA) LLC,)
DEUTSCHE BANK SECURITIES INC.,)
3 RBC CAPITAL MARKETS, LLC, WELLS)
FARGO SECURITIES, LLC, BLAYLOCK)
4 ROBERT VAN LLC, BMO CAPITAL)
MARKETS CORP., C.L. KING &)
5 ASSOCIATES, INC., CABRERA CAPITAL)
MARKETS, LLC, CASTLEOAK)
6 SECURITIES, L.P., COWEN AND)
COMPANY, LLC., E*TRADE SECURITIES)
7 LLC, ITAÚ BBA USA SECURITIES, INC.,)
LAZARD CAPITAL MARKETS LLC,)
8 LEBENTHAL & CO., LLC, LOOP CAPITAL)
MARKETS LLC, M.R. BEAL &)
9 COMPANY, MACQUARIE CAPITAL)
(USA) INC., MURIEL SIEBERT & CO.,)
10 INC., OPPENHEIMER & CO. INC.,)
PACIFIC CREST SECURITIES LLC, PIPER)
11 JAFFRAY & CO., RAYMOND JAMES &)
ASSOCIATES, INC., SAMUEL A.)
12 RAMIREZ & COMPANY, INC., STIFEL,)
NICOLAUS & COMPANY,)
13 INCORPORATED, THE WILLIAMS)
CAPITAL GROUP, L.P., and WILLIAM)
14 BLAIR & COMPANY, L.L.C.,)

15 Defendants.

16
17
18
19
20
21
22
23
24
25
26
27
28

Complaint

1 Plaintiffs, Karen Cuker and Brian Gralnick (collectively "Plaintiffs"), by and through their
2 undersigned counsel, bring this securities law class action on behalf of all purchasers of common
3 stock of Facebook, Inc. ("Facebook" or the "Company") pursuant or traceable to the
4 Registration Statement and Prospectus filed with the United States Securities and Exchange
5 Commission ("SEC") and issued in connection with the Company's Initial Public Offering (the
6 "IPO" or the "Offering") on May 18, 2012 (the "Class"). The allegations herein are based upon
7 the investigation of Plaintiffs' counsel, which included, among other things, a review of SEC
8 filings, securities analysts' reports, public statements and media reports.

10 NATURE AND SUMMARY OF THE ACTION

11 1. Plaintiffs bring this securities class action individually and on behalf of all
12 members of the Class seeking redress under Sections 11, 12(a)(2), and 15 of the Securities Act of
13 1933 (the "Securities Act"), 15 U.S.C. §§ 77k, 77l, and 77o, which impose strict liability for
14 material misstatements or omissions in a registration statement or prospectus.

16 2. Facebook operates as a social networking company worldwide. The Company
17 builds tools that enable users to connect, share, discover, and communicate with each other and
18 tools that enable developers to build social applications on Facebook or to integrate their
19 websites with Facebook; and offers products that allow advertisers and marketers to engage with
20 its users. As of May 2012, Facebook had 900 million monthly users and an average of 526
21 million daily users in March 2012. The Company was founded in 2004 and is headquartered in
22 Menlo Park, California. Facebook currently trades on the NASDAQ under the symbol "FB."

24 3. On or about February 1, 2012, Facebook filed a registration statement on a Form
25 S-1 with the SEC. Thereafter, the Company repeatedly amended the Form S-1, including on May
26 16, 2012, when Facebook filed with the SEC the final Form S-1/A (collectively, the
27 "Registration Statement") for the IPO.

1 4. On May 9, 2012, the Company filed an amended Form S-1 with the SEC, where
2 the Company, incompletely and misleadingly, made a statement concerning the potential impact
3 upon revenue growth arising from a shift by users of Facebook to mobile devices, as mobile
4 advertising had, to date, been less lucrative for the Company than advertising on desktop
5 computers. The Defendants' statements, however, were materially misleading because they
6 already knew that this growing trend was reflected in the results for the second quarter of 2012
7 and that this trend would significantly, and adversely, impact the Company's revenue.
8

9 5. Following this announcement and just three days into the roadshow, the lead
10 underwriter, Morgan Stanley, as well as other underwriters, revised their revenue estimates for
11 the Company. As the Complaint will explain in detail below, the problem with these reductions
12 are two-fold. First, there is a strong likelihood that the revisions of revenue estimates for the
13 Company were not the product of sudden and independent shifts in analysis by each of the
14 analysts. Instead, these revisions were guided by the Company, which had confidentially, and
15 preferentially, shared with Morgan Stanley and other favored institutions whose analysts were
16 covering the Company, and the Company specifically advised these analysts to cut their
17 forecasts. Second, Morgan Stanley and the other favored institutions, in turn, only disclosed
18 these newly reduced revenue figures privately to select major clients who were potential
19 investors in the IPO, while failing to disclose to the general investing public their suddenly
20 lowered estimates, which were based upon guidance privately provided to them by the Company.
21 Together, these actions virtually guaranteed that other investors would be making their decisions
22 to invest in Facebook's IPO without the benefit of material information given to favored
23 investors.
24

25
26 6. Moreover, the information provided to the non-favored investors stressed facts
27 creating the impression that the value of the Company's shares was poised to increase and that
28

1 retail investors should get in now before the Company's stock price rose above the offering price
2 level. Around the same time that Facebook privately shared slowing revenue projections with its
3 favored institutional customers, it was announcing that the IPO would be priced at \$38.00 a
4 share, which was above the high end of an already upwardly revised projected range of \$28.00
5 and \$35.00, and at the time of the final pre-offering range of \$34.00 to \$38.00.
6

7 7. Then, on or about May 18, 2012, the Company filed with the SEC its IPO
8 Prospectus ("Prospectus").

9 8. On the same day, Facebook launched the biggest IPO in financial history, valued
10 at more than *\$16 billion*. The Company offered for sale 421,233,615 shares of common stock at
11 a price of \$38.00 per share, of which 180,000,000 shares of Class A common were offered by the
12 Company and 241,233,615 shares of Class A common stock were offered by existing
13 stockholders. According to the Company, Facebook expected to receive net proceeds of
14 approximately \$6,764,760,000 and selling stockholders expect to receive net proceeds of
15 \$9,066,041,719 from the IPO, after deducting underwriting discounts, commissions and offering
16 related transaction costs.
17

18 9. In the days that followed the Company's IPO, it proved to be worst performing
19 IPO of the decade, according to *Bloomberg BusinessWeek*. In the first three days of trading after
20 the IPO, shares of Facebook tumbled over *18%*.
21

22 10. The claims alleged herein arise from the materially false and/or misleading
23 Registration Statement and Prospectus filed with the SEC and issued in connection with the IPO.
24 As described in detailed below, the Registration Statement and Prospectus contained materially
25 false and misleading statements and omitted material information in violation of Section 11,
26 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l and 77o.
27
28

1 **JURISDICTION AND VENUE**

2 11. The claims asserted herein arise under Sections 11, 12(a)(2), and 15 of the
3 Securities Act, 15 U.S.C. §§ 77k, 77l, and 77o. This court has jurisdiction over the subject
4 matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which
5 explicitly states that “[e]xcept as provided in section 16(c), no case arising under this title and
6 brought *in any State court* of competent jurisdiction shall be removed to any court in the
7 United States.” (Emphasis added.) Section 16(c) of the Securities Act, in turn, refers to
8 “covered class actions,” which are defined lawsuits brought as class actions or brought on behalf
9 of more than 50 persons asserting claims *under state or common law*. Because this is an action
10 asserting federal law claims it does not fall within the definition of a “covered class action” under
11 §16(c) and, therefore, is not removable to federal court under the Securities Litigation Uniform
12 Standards Act of 1998, 15 U.S.C. § 78bb(f).
13

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

19 13. The amount in controversy exceeds the jurisdictional minimum of this Court, and
20 the total amount of damages sought exceeds \$25,000.
21

22 14. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15
23 U.S.C. § 77v. Defendant Facebook’s principal executive offices are located within this County, the
24 individual Defendants conduct business in this County, and many of the acts and transaction alleged
25 herein, including the preparation and dissemination of materially false and/or misleading
26 information, occurred in substantial part in this County.
27

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

PARTIES

15. Plaintiff Karen Cuker purchased 100 shares of Facebook securities at \$40 per share pursuant and/or traceable to the Registration Statement issued in connection with the Company's IPO and has been damaged thereby.

16. Plaintiff Brian Gralnick purchased 60 shares of Facebook securities at \$39.09 per share pursuant and/or traceable to the Registration Statement issued in connection with the Company's IPO and has been damaged thereby.

17. Defendant Facebook is a Delaware corporation with its principal executive office located at 1601 Willow Road, Menlo Park, California 94025. The Company was founded in 2004. Facebook is a social utility and website that connects people with friends and others who work, study and live around them. Facebook's mission "is to make the world more open and connected." As described on the Company's website, "[p]eople use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them." As of May 2012, Facebook has over 900 million active users, more than half of whom access the site on a mobile device.

18. Defendant Mark Zuckerberg ("Zuckerberg") was at all relevant times Chairman and Chief Executive Officer ("CEO") of Facebook and signed or authorized the signing of the Company's Registration Statement filed with the SEC. Defendant Zuckerberg is the founder of Facebook and has served as the Company's CEO and as a member of its board of directors since July 2004. Since January 2012, Defendant Zuckerberg has served as the Chairman of the Company's board.

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

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

4 21. Defendant Marc L. Andreessen ("Andreessen") was, at all relevant times, director
5 of Facebook and signed or authorized the signing of the Company's Registration Statement filed
6 with the SEC. Defendant Andreessen is also a member of the Audit and the Governance
7 Committees. He has served as a member of Facebook's board since 2008.

8 22. Defendant Erskine B. Bowles ("Bowles") was, at all relevant times, a director of
9 Facebook and signed or authorized the signing of the Company's Registration Statement filed
10 with the SEC. Defendant Bowles is the Chair of the Audit Committee. Defendant Bowles has
11 served as a member of the Company's board since 2011. He also serves as a member of the
12 board of directors of Morgan Stanley, the lead underwriters for the IPO.

13 23. Defendant James W. Breyer ("Breyer") was, at all relevant times, a director of
14 Facebook and signed or authorized the signing of the Company's Registration Statement filed
15 with the SEC. Defendant Breyer is the Chair of the Compensation Committee. He has served as a
16 member of the Company's board since 2005.

17 24. Defendant Donald E. Graham ("Graham") was, at all relevant times, a director of
18 Facebook and signed or authorized the signing of the Company's Registration Statement filed
19 with the SEC. Defendant Graham is the Lead Independent Director, the Chair of the Governance
20 Committee and a member of the Compensation Committee. He has served as a member of the
21 Company's board since 2009.

22 25. Defendant Reed Hastings ("Hastings") was, at all relevant times, a director of
23 Facebook and signed or authorized the signing of the Company's Registration Statement
24

1 filed with the SEC. Defendant Hastings is also a member of the Company's Governance
2 Committee. He has served as a member of the Company's board since 2011.

3 26. Defendant Peter A. Thiel ("Thiel") 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. Defendant Thiel is also a member of the Company's Audit Committee. He has served
6 as a member of the Company's board since 2005.

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

11 28. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") served as the lead
12 underwriter to Facebook in connection with the Offering.

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

16 30. Defendant Goldman, Sachs & Co. ("Goldman Sachs") served as an underwriter to
17 Facebook in connection with the Offering.

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

20 32. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter to
21 Facebook in connection with the Offering.

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

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

1 35. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") served as an
2 underwriter to Facebook in connection with the Offering.

3 36. Defendant Deutsche Bank Securities Inc. ("Deutsche") served as an underwriter to
4 Facebook in connection with the Offering.

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

7 38. Defendant Blaylock Robert Van LLC ("Blaylock") served as an underwriter to
8 Facebook in connection with the Offering.

9 39. Defendant BMO Capital Markets Corp. ("BMO") served as an underwriter to
10 Facebook in connection with the Offering.

11 40. Defendant C.L. King & Associates, Inc. ("C.L. King") served as an underwriter to
12 Facebook in connection with the Offering.

13 41. Defendant Cabrera Capital Markets, LLC ("Cabrera") served as an underwriter to
14 Facebook in connection with the Offering.

15 42. Defendant CastleOak Securities, L.P. ("CastleOak") served as an underwriter to
16 Facebook in connection with the Offering.

17 43. Defendant Cowen and Company, LLC. ("Cowen") served as an underwriter to
18 Facebook in connection with the Offering.

19 44. Defendant E*TRADE Securities LLC ("E*TRADE") served as an underwriter to
20 Facebook in connection with the Offering.

21 45. Defendant Itaú BBA USA Securities, Inc. ("Itaú") served as an underwriter to
22 Facebook in connection with the Offering.

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

1 47. Defendant Lebenthal & Co., LLC ("Lebenthal") served as an underwriter to
2 Facebook in connection with the Offering.

3 48. Defendant Loop Capital Markets LLC ("Loop") served as an underwriter to
4 Facebook in connection with the Offering.

5 49. Defendant M.R. Beal & Company ("M.R. Beal") served as an underwriter to
6 Facebook in connection with the Offering.

7 50. Defendant Macquarie Capital (USA) Inc. ("Macquarie") served as an underwriter to
8 Facebook in connection with the Offering.

9 51. Defendant Muriel Siebert & Co., Inc. ("Muriel") served as an underwriter to
10 Facebook in connection with the Offering.

11 52. Defendant Oppenheimer & Co. Inc. ("Oppenheimer") served as an underwriter to
12 Facebook in connection with the Offering.

13 53. Defendant Pacific Crest Securities LLC ("Pacific Crest") served as an underwriter to
14 Facebook in connection with the Offering.

15 54. Defendant Piper Jaffray & Co. ("Piper Jaffray") served as an underwriter to
16 Facebook in connection with the Offering.

17 55. Defendant Raymond James & Associates, Inc. ("Raymond James") served as an
18 underwriter to Facebook in connection with the Offering.

19 56. Defendant Samuel A. Ramirez & Company, Inc. ("Ramirez") served as an
20 underwriter to Facebook in connection with the Offering.

21 57. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") served as an
22 underwriter to Facebook in connection with the Offering.

23 58. Defendant Wells Fargo Securities, LLC ("Wells Fargo") served as an underwriter
24 to Facebook in connection with the Offering.

1 59. Defendant The Williams Capital Group, L.P. ("Williams") served as underwriter to
2 Facebook in connection with the Offering.

3 60. Defendant William Blair & Company, L.L.C. ("William Blair") served as an
4 underwriter to Facebook in connection with the Offering.

5 61. Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, Merrill Lynch,
6 Barclays, Allen, Citigroup, Credit Suisse, Deutsche, RBC, Blaylock, BMO, C.L. King, Cabrera
7 CastleOak, Cowen, E*Trade, Itaú, Lazard, Lebenthal, Loop, M.R. Beal, Macquarie, Muriel
8 Oppenheimer, Pacific Crest, Piper Jaffray, Raymond James, Ramirez, Stifel, Wells Fargo,
9 Williams, and William Blair, are collectively referred to hereinafter as the "Underwriter
10 Defendants." As underwriters of the Offering, the Underwriter Defendants were responsible for
11 ensuring the truthfulness and accuracy of the various statements contained in or incorporated by
12 reference into the Registration Statement and Prospectus.

13
14
15 62. The Company, the Individual Defendants and the Underwriter Defendants are
16 collectively referred to herein as Defendants.

17 **CLASS ACTION ALLEGATIONS**

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

1 64. The members of the Class are so numerous that joinder of all members is
2 impracticable. After the IPO, Facebook's shares were actively traded on the NASDAQ Stock
3 Exchange (the "NASDAQ"). While the exact number of Class members is unknown to Plaintiffs
4 at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that
5 there are at least thousands of members of the proposed Class. Record owners and other
6 members of the Class may be identified from records maintained by Facebook or its transfer
7 agent and may be notified of the pendency of this action by mail, using the form of notice similar
8 customarily used in securities class actions.
9

10 65. Plaintiffs' claims are typical of the claims of the members of the Class as all
11 members of the Class are similarly affected by Defendants' violations of the securities laws
12 complained of herein.
13

14 66. Plaintiffs will fairly and adequately protect the interests of the members of the
15 Class and have retained counsel competent and experienced in class and securities litigation.
16

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

- 21 a. whether the Defendants violated the Securities Act as alleged herein;
- 22 b. whether the Registration Statement and Prospectus contained untrue
23 statements of material facts about Facebook and/or misrepresented material facts about the
24 business, operations, and prospects of Facebook; and
- 25 c. to what extent the members of the Class have sustained damages and the
26 proper measure of damages.

27 68. A class action is superior to all other available methods for the fair and efficient
28 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as

1 the damages suffered by individual Class members may be relatively small, the expense and
2 burden of individual litigation make it impossible for members of the Class to individually
3 redress the wrongs done to them. There will be no difficulty in the management of this action as
4 a class action.

5
6 **THE MATERIALLY FALSE AND/OR MISLEADING STATEMENTS**
7 **CONTAINED IN THE REGISTRATION STATEMENT AND**
8 **PROSPECTUS**

9 **The Two Track System of Disclosures in Connection with the IPO**

10 69. The Registration Statement and Prospectus contained untrue statements of
11 material fact and omitted to state other material facts necessary to make the statements made not
12 misleading. This was reflected in the disparity between the information Defendants shared with
13 favored investors compared to the information given to other prospective investors, especially as
14 it related to Facebook's performance and the impact of shifting consumer preferences on the
15 Company's revenues.

16 70. Defendants' public statements in the SEC filings contained material
17 misstatements, omitted to state a material fact required to be stated, or failed to disclose certain
18 material facts necessary to make the statements not misleading, because each failed to materially
19 disclose what Facebook had effectively shared with its favored institutions, namely, that
20 Facebook's revenue and growth rate would be lower than originally disclosed.

21
22 71. The Registration Statement and Prospectus acknowledged the materiality of
23 Facebook's performance in generating revenue from users of mobile devices, when it stated on
24 May 9, 2012 in an amendment to the Registration Statement:

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

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

11 72. Prior to the IPO, Defendants were aware that the Company's revenues for the
12 second quarter and full year 2012 were already trending lower than projected due to increased
13 use of Facebook by mobile device users. However, while expressly warning favored institutions
14 that revenues would be disappointing, the Registration Statement provided an incomplete and
15 misleading statement because the Company failed to disclose to investors that Facebook was
16 *currently experiencing* a severe reduction in revenue growth due to an increase of users of its
17 Facebook application or website through mobile devices rather than a traditional PC. The
18 language in the Registration Statement and Prospectus was also materially misleading because it
19 did not make clear that Facebook's second quarter 2012 revenue was weaker than expected
20 because of this usage trend. As a result, Plaintiffs and other members of the Class paid an
21 inflated price for Facebook shares.
22

24 73. Defendants similarly failed to disclose that during the road show conducted in
25 connection with the IPO, certain of the Underwriter Defendants reduced their second quarter and
26 full year 2012 performance estimates for Facebook.
27

1 74. Circumstances surrounding the underwriters' development of performance
2 estimates, and their decision to change those estimates, strongly suggest that these
3 determinations were not made solely based upon information generally available to the public.
4 Subsequent to the IPO, it was reported on May 23, 2012 in the *New York Times* in an article
5 entitled "Questions of Fair Play Arise in Facebook's I.P.O. Process" that "in April, Facebook
6 briefed about 20 bank analysts on its revenue guidance for the second quarter and the full year,"
7 and that "[o]n May 9, the day the company submitted a revised public prospectus disclosing its
8 challenges in mobile advertising, Facebook spoke to the analysts again, telling them that revenue
9 would come in at the lower end of its forecast." Henry Blodget, a former equity analyst who was
10 banned for life from the securities industry based upon his actions during the dot.com boom and
11 bust and who now frequently writes and speaks about the abuses inflicted upon small investors,
12 connected the dots in an article published in *Business Insider* the day before entitled "Exclusive:
13 Here's the Inside Story Of What Happened On The Facebook IPO." In that article he explained:
14

15 And now for some more bombshell news about the Facebook IPO ...
16

17 Earlier, we reported that the analysts at Facebook's IPO had cut their estimates for
18 the company in the middle of the IPO roadshow, a highly unusual and negative
19 event.

20 What we didn't know was why.

21 Now we know.

22 *The analysts cut their estimates because a Facebook executive who knew the
23 business was weak told them to.*

24 Put differently, the company basically pre-announced that its second quarter
25 would fall short of analysts' estimates. But it only told the underwriter analysts
26 about this.

27 The information about the estimate cut was then verbally conveyed to
28 sophisticated institutional investors who were considering buying Facebook
Stock, *but not to smaller investors.*

1 (Emphasis in original). An update to Blodget's article also reported that Reuters reporters
2 "uncovered the before-and-after Facebook estimates that were verbally conveyed to big
3 investors" and showed how close the original and revised estimates made by four major
4 underwriters – Morgan Stanley, Bank of America, J.P. Morgan and Goldman Sachs – were to
5 each other's respective original and revised estimates.
6

7 75. Such revisions were material information that was not shared with all Facebook
8 investors, but was instead selectively disclosed by Defendants to certain preferred investors and
9 at the same time omitted from the Registration Statement and Prospectus. These facts, which
10 were known and expressed by the some of the Underwriter Defendants, were not contained in the
11 Registration Statement and Prospectus.
12

13 76. Just days later, on May 16, 2012, the Company disclosed in an amended Form S-1
14 filed with the SEC, that it would increase the number of shares being offered by 25 percent.
15

16 77. Not surprisingly, armed with negative information about the financial future of
17 Facebook, Goldman Sachs, one of the Underwriter Defendants, decided to sell more stock on the
18 deal. Entities associated with Goldman Sachs ultimately offered *nearly double* the amount of
19 shares than originally reported in the Company's earlier filings.
20

21 78. While the Underwriter Defendants were privately lowering their estimates of the
22 Company's revenues and revenue growth rate based upon information shared by the Company,
23 and then sharing this information, in turn, with only select investors, the Company and the
24 Underwriter Defendants were publicly *upwardly revising* the projected IPO price to the effective
25 price of \$38 per share, thereby conveying a message that the investment in Facebook securities
26 was even more desirable and valuable than previously represented. In fact, on May 3, 2012, in
27 an amended Form S-1 filed with the SEC the Company stated that it was anticipating that the
28 initial public offering price would be between \$28.00 and \$35.00 per share. The Company

1 confirmed that range again on May 9, 2012. Even more egregious is that on May 15, 2012, at
2 the same time that the Underwriter Defendants were *lowering* their estimates, the Company
3 *raised* its anticipated offering range to between \$34.00 and \$38.00.

4
5 79. On May 22, 2012, *Reuters* reported, in an article entitled "Insight: Morgan
6 Stanley cut Facebook estimates just before IPO," that underwriters Morgan Stanley, J.P. Morgan
7 and Goldman Sachs had all cut their earnings forecasts for the Company in the middle of the
8 roadshow and that only certain investors were privy to this information.

9
10 80. According to a May 24, 2012 *Wall Street Journal* article entitled "Some Big Firms
11 Got Facebook Warnings" ("May 24, 2012 WSJ article"), just three days into the roadshow, after
12 the filing of the May 9, 2012 amended Form S-1, a Facebook executive individually called 21
13 sell-side analysts to discuss the contents of the filing. "Morgan Stanley and the other
14 underwriters sprang into action. In the middle of the roadshow, the banks informed key clients
15 — including large hedge funds, mutual funds and wealthy individuals — of the declining
16 revenue prospects at Facebook. This was a significant red flag."

17
18 81. A revision in earnings forecast, however, is material information that investors
19 would rely upon when determining whether to purchase in the IPO. And the fact that only
20 selective clients received this information is problematic, at best. In this regard, in a May 22,
21 2012 article entitled "Facebook Bankers Secretly Cut Facebook's Revenue Estimate in Middle of
22 IPO Roadshow," Henry Blodget stated:

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

1 82. This type of selective dissemination clearly contradicts the goals of SEC
2 Regulation FD (Fair Disclosure), which reflects the policy “that when an issuer, or person acting
3 on its behalf, discloses material nonpublic information to certain enumerated persons (in general,
4 securities market professionals and holders of the issuer’s securities who may well trade on the
5 basis of the information), it must make public disclosure of that information.” By selectively
6 choosing to whom they would disseminate this material information, Defendants’ actions
7 contradicted the purpose of this Regulation.
8

9 83. Furthermore, according to the May 24, 2012 WSJ article, “[t]he Wall Street firms
10 prepared talking points for their salespeople outlining downward revisions on Facebook revenue
11 for the second quarter and full year The Salespeople scrambled to make as many calls as
12 possible to key clients, reading out new numbers.”
13

14 **Investigations into Defendants’ Conduct in the IPO**

15 84. As further indication that that the practices leading up to the Facebook IPO were
16 highly irregular or suspicious, a number of government and regulatory bodies have recently
17 commenced investigations. In a May 22, 2012 *Reuters* article entitled “Regulators may review
18 Morgan Stanley-Facebook allegations,” it was confirmed that the Financial Industry Regulatory
19 Authority’s (“FINRA”) chairman said that regulators plan to review allegations that Morgan
20 Stanley shared negative news before Facebook’s IPO with institutional investors. Richard
21 Ketchum, FINRA’s chairman and chief executive stated that “[t]he allegations, if true, are a
22 matter of regulatory concern” to FINRA and the SEC. Similarly, the U.S. Senate Banking
23 Committee, the House Financial Services Committee and the Commonwealth of Massachusetts
24 each announced plans to investigate issues involving the Facebook IPO.
25
26
27
28

1 **Tallying the Gains and Losses Arising from Defendants' Actions**

2 85. In addition, the Underwriter Defendants reaped large financial benefits from the
3 IPO. First, according to a May 23, 2012, *Wall Street Journal* Blog Deal Journal, "Morgan
4 Stanley and other underwriters have made a profit of about \$100 million stabilizing Facebook
5 Inc. stock since trading began on Friday." Moreover, it has been reported that collectively, the
6 Underwriter Defendants made approximately \$176 million in underwriting fees from sales of
7 Facebook shares in the IPO. These fees would not have been made if the Registration Statement
8 and Offering had not contained material misstatements and material omissions.
9

10 86. As a result of Defendants materially false and misleading statements, Facebook
11 closed just \$0.23 above the offering price on May 18, 2012, and in the days after declined to
12 close at \$34.03 and \$31.00 on May 21, 2012 and May 22, 2012, respectively. On Tuesday, May
13 29, 2012, the last trading day before the filing of this complaint, Facebook stock closed at
14 \$28.84, well below the \$38 price at which the Company went public with its IPO.
15

16 **COUNT I**
17 **Violations of Section 11 of the Securities Act**
18 **Against All Defendants**

19 87. The averments of paragraphs 1 through 86 are incorporated as if fully set forth
20 herein.
21

22 88. Defendant Facebook, as issuer of its shares in the IPO, is strictly liable to the
23 purchasers and holders of the shares obtained in the IPO for the material misstatements and
24 omissions in the Registration Statement and Prospectus. The Individual Defendants as
25 signatories of the Registration Statement, directors and/or officers of Facebook, and controlling
26 persons of the issuer, owed to the purchasers and holders of the shares obtained through the
27 Registration Statement and Prospectus the duty to make a reasonable and diligent investigation of
28 the statements contained therein to ensure that such statements were true and correct, and that

1 there were no omissions of material facts required to be stated in order to make the statements
2 contained therein not misleading.

3 89. The Underwriter Defendants acted as underwriters for the IPO. As such, the
4 Underwriter Defendants were responsible for the contents of the Registration Statement and
5 Prospectus and owed to the purchasers and holders of the shares obtained through the
6 Registration Statement and Prospectus the duty to make a reasonable and diligent investigation
7 of the statements contained therein to ensure that such statements were true and correct, and that
8 there were no omissions of material facts required to be stated in order to make the statements
9 contained therein not misleading. Had the Individual Defendants and Underwriter Defendants
10 exercised reasonable care, they would have known of the material misstatements and omissions
11 contained in or omitted from the Registration Statement and Prospectus as set forth herein. As
12 such, the Individual Defendants and Underwriter Defendants are liable to the Class. Further,
13 based on the material misstatements and omissions contained in or omitted from the Registration
14 Statement and Prospectus as set forth herein, Defendant Facebook is strictly liable to the Class.
15
16

17 90. Defendants issued and disseminated, caused to be issued and disseminated, and
18 participated in the issuance and dissemination of material misstatements to the investing public
19 which were contained in the Registration Statement and Prospectus, which misrepresented or
20 failed to disclose, *inter alia*, the facts set forth above. By reason of the conduct herein alleged,
21 each Defendant violated Section 11 of the Securities Act.
22

23 91. As a direct and proximate result of Defendants' acts and omissions in violation of
24 Section 11 of the Securities Act, Plaintiffs and the Class suffered substantial damage in
25 connection with their ownership of Facebook's shares purchased pursuant to and/or traceable to
26 the Registration Statement and Prospectus.
27
28

1 92. At the times they obtained their shares of Facebook, Plaintiffs and members of the
2 Class did so without knowledge of the facts concerning the misstatements or omissions alleged
3 herein.

4 93. This action was brought within one year after discovery of the untrue statements
5 and omissions in and from the Registration Statement, which should have been made through the
6 exercise of reasonable diligence, and within three years of the effective date of the Registration
7 Statement.
8

9 94. By virtue of the foregoing, Plaintiffs and the Class are entitled to damages under
10 Section 11 as measured by the provisions of Section 11(e), from all Defendants, and each of
11 them, jointly and severally.
12

COUNT II

**Violations of Section 12(a)(2) of the Securities Act Against
the Company, Individual Defendants Zuckerberg, Breyer and Thiel,
and the Underwriter Defendants**

13 95. The averments of paragraphs 1 through 86 are incorporated as if fully set forth
14 herein.
15

16 96. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf
17 of Plaintiffs and the Class, against the Company, Individual Defendants Zuckerberg, Breyer and
18 Thiel, and the Underwriter Defendants (collectively the "12(a)(2) Defendants").
19

20 97. The 12(a)(2) Defendants, either directly or through trusts or other entities that they
21 control or have a beneficial interest in, were sellers, offerors and/or solicitors of purchasers of the
22 shares offered pursuant to the Registration Statement and Prospectus.
23

24 98. The Registration Statement and Prospectus contained untrue statements of material
25 facts, omitted to state other material facts necessary to make the statements made not misleading,
26 and concealed and failed to disclose material facts. The 12(a)(2) Defendants' actions of
27

1 solicitation included offering, soliciting and selling shares, and participating in the preparation of
2 the untruthful and/or materially misleading Registration Statement and Prospectus.

3 99. The 12(a)(2) Defendants owed to the purchasers of Facebook's shares, including
4 Plaintiffs and other members of the Class, the duty to conduct a reasonable and diligent
5 investigation of the statements contained in the IPO materials, including the Registration
6 Statement and Prospectus, to ensure that such statements were true and that there was no
7 omission to state a material fact required to be stated in order to make the statements contained
8 therein not misleading. Had the 12(a)(2) Defendants conducted a reasonable and diligent
9 investigation, they would have known of the misstatements and omissions contained in the IPO
10 materials as set forth above.
11

12 100. Plaintiffs and other members of the Class purchased or otherwise acquired
13 Facebook's shares pursuant to and/or traceable to the defective Registration Statement and
14 Prospectus. Plaintiffs did not know, or in the exercise of reasonable diligence could not have
15 known, of the untruths and material omissions contained in the Registration Statement and
16 Prospectus.
17

18 101. Plaintiffs, individually and representatively, each hereby offer to tender to
19 Defendants those shares which Plaintiffs and other Class members continue to own, on behalf of
20 all members of the Class who continue to own such shares, in return for the consideration paid
21 for those shares together with interest thereon. Class members who have sold their Facebook
22 shares are entitled to rescissory damages.
23

24 102. By reason of the conduct alleged herein, the 12(a)(2) Defendants have violated
25 Section 12(a)(2) of the Securities Act. Accordingly, Plaintiffs and members of the Class who
26 hold Facebook's shares purchased in the IPO have the right to rescind and recover the
27 consideration paid for their Facebook shares, and hereby elect to rescind and tender their
28

1 Facebook shares to Defendants sued herein. Plaintiffs and Class members who may have sold
2 their Facebook shares are entitled to rescissory damages.

3 103. This action was brought within three years from the time that the shares upon
4 which this Count is brought were sold to the public, and within one year from the time when
5 Plaintiffs discovered or reasonably could have discovered the facts upon which this Count is
6 based.
7

8 **COUNT III**
9 **Violations of Section 15 of the Securities Act**
10 **Against the Individual Defendants Arising from**
11 **Violations of Section 11 of the Securities Act**

12 104. The averments of paragraphs 1 through 94 are incorporated as if fully set forth
13 herein.

14 105. This count is asserted against the Individual Defendants and is based upon their
15 liability under Section 15 of the Securities Act for the Company's primary violations of Section
16 11 of the Securities Act.

17 106. Individual Defendants, by virtue of their offices, directorships and specific acts
18 were each, at the time of the IPO as set forth herein, controlling persons of Facebook within the
19 meaning of Section 15 of the Securities Act.

20 107. By virtue of the conduct alleged herein, the Individual Defendants are each liable
21 for the aforesaid wrongful conduct and are liable to Plaintiffs and the Class for damages suffered.

22 **COUNT IV**
23 **Violation of Section 15 of The Securities Act**
24 **Against the Individual Defendants Arising From**
25 **Violations of Section 12(a)(2) of the Securities Act**

26 108. The averments of paragraphs 1 through 86 and 95 through 103 are incorporated as
27 if fully set forth herein.

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

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated May 30, 2012

BARRACK, RODOS & BACINE



STEPHEN R. BASSER
SAMUEL M. WARD
One America Plaza
600 West Broadway, Suite 900
San Diego, CA 92101
Phone: (619) 230-0800
Fax: (619) 230-1874
Email: sbasser@barrack.com
sward@barrack.com

and

BARRACK RODOS & BACINE

DANIEL E. BACINE
MARK R. ROSEN
BETH T. SELTZER
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Phone: (215) 963-0600
Fax: (215) 963-0838
Email: dbacine@barrack.com
mrosen@barrack.com
bseltzer@barrack.com

*Attorneys for Plaintiffs
Karen Cuker and Brian Gralnick*

**ENDORSED FILED
SAN MATEO COUNTY**

MAY 30 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 Harvey Lapin*

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

14 HARVEY LAPIN, Individually and On
15 Behalf of All Others Similarly Situated,

16 Plaintiff,

17 v.

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

Case No. **01V 514840**

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

FILED BY FAX
PURSUANT TO LOCAL RULES

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

17
18
19
20
21
22
23
24
25
26
27
28
Defendants.

COMPLAINT

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

10 NATURE AND SUMMARY OF THE ACTION

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

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

16 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 §16c) 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

1 information, occurred in substantial part in this County.

2 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

23 25. Defendant Barclays Capital Inc. ("Barclays") served as an underwriter to
24
25
26
27
28

1 Facebook in connection with the Offering.

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

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

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

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

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

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

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

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

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

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

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

24
25
26
27
28

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

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

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

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

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

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

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

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

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

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

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

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

1 underwriter to Facebook in connection with the Offering.

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

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

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

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

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

17 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

10 BACKGROUND

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

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

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

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

COMPLAINT

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

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

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

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

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

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

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

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

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

4 Why?

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

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

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

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

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

18 Hmm.

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

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

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

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

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

1 article, in relevant part, stated:

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

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

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

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

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

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

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

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

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

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

We first heard rumblings about this last week, and we were so startled that we
assumed the reports were wrong. Then, over the weekend, when Reuters reported
the basic story again, we said that if it was true, Facebook IPO buyers deserved to

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

3 There are a couple of possibilities for what happened.

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

6 The second is also bad news for Facebook.

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

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

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

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

25 That's the first problem.

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

If there was any communication at all between Facebook and its underwriters
regarding the analysts' estimates, Facebook will likely be on the hook for this, too.
Speaking as a former analyst, it seems highly unlikely to me that the vague
language in the final IPO amendment would prompt all three underwriter analysts
to immediately cut estimates without some sort of nod and wink from someone
who knew how Facebook's second quarter was progressing. (To get this message
from the language, you really have to read between the lines). But even if this is

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

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

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

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

15 **FIRST CLAIM**
16 **Violation of Section 11 of The Securities Act**
17 **(Against All Defendants)**

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

20 71. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C.
21 §77k, on behalf of the Class, against all Defendants.

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

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

27 74. As issuer of the shares, Facebook is strictly liable to Plaintiff and the Class for the
28 misstatements and omissions.

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

COMPLAINT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

13 **JURY TRIAL DEMANDED**

14 Plaintiff hereby demands a trial by jury.

15 Dated: May 30, 2012

GLANCY BINKOW & GOLDBERG LLP

16
17 By: 
18 Lionel Z. Glancy
19 Michael Goldberg
20 Robert V. Prongay
21 Casey E. Sadler
22 1925 Century Park East, Suite 2100
23 Los Angeles, California 90067
24 Telephone: (310) 201-9150
25 Facsimile: (310) 201-9160

Attorneys for Plaintiff Harvey Lapin

26
27
28
COMPLAINT

GLANCY BINKOW & GOLDBERG LLP
ATTORNEYS AT LAW

New York Office

30 BROAD STREET
SUITE 1401
NEW YORK, NY 10004
TELEPHONE (212) 382-2221
FACSIMILE (212) 382-3944

1925 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CALIFORNIA 90067

TELEPHONE (310) 201-9150
FACSIMILE (310) 201-9160
info@glancylaw.com

SAN FRANCISCO OFFICE

ONE EMBARCADERO CENTER
SUITE 760
SAN FRANCISCO, CA 94105
TELEPHONE (415) 972-8160
FACSIMILE (415) 972-8166

FIRM RESUME

Glancy Binkow & Goldberg LLP has represented investors, consumers and employees in federal and state courts throughout the United States for sixteen years. Based in Los Angeles, California and with offices in New York, New York and San Francisco, California, Glancy Binkow & Goldberg has developed expertise prosecuting securities fraud, antitrust and complex commercial litigation. As Lead Counsel or as a member of Plaintiffs' Counsel Executive Committees, Glancy Binkow & Goldberg has recovered in excess of \$1 billion for parties wronged by corporate fraud and malfeasance. The firm's efforts on behalf of individual investors have been the subject of articles in such publications as *The Wall Street Journal*, *The New York Times* and *The Los Angeles Times*.

Appointed as Lead or Co-Lead Counsel by federal judges throughout the United States, Glancy Binkow & Goldberg has achieved significant recoveries for class members, including:

In re Mercury Interactive Corporation Securities Litigation, USDC Northern District of California, Case No. 05-3395, in which Glancy Binkow & Goldberg served as Co-Lead Counsel and achieved a settlement valued at over \$117 million.

In re Real Estate Associates Limited Partnership Litigation, USDC Central District of California, Case No. 98-7035 DDP, in which the firm served as local counsel and plaintiffs achieved a \$184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for \$83 million.

In re Lumenis, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 02-CV-1989, in which Glancy Binkow & Goldberg served as Co-Lead Counsel and achieved a settlement valued at over \$20 million.

In re Heritage Bond Litigation, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, Glancy Binkow & Goldberg recovered in excess of \$28 million for defrauded investors and continues to pursue additional defendants.

In re ECI Telecom Ltd. Securities Litigation, USDC Eastern District of Virginia, Case No. 01-913-A, in which Glancy Binkow & Goldberg served as sole Lead Counsel and recovered almost \$22 million for defrauded ECI investors.

Jenson v. First Trust Corporation, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the firm was appointed sole lead counsel and achieved an \$8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

Yaldo v. Airtouch Communications, State of Michigan, Wayne County, Case No. 99-909694-CP, in which Glancy Binkow & Goldberg served as Co-Lead Counsel and achieved a settlement valued at over \$32 million for defrauded consumers.

In re Infonet Services Corporation Securities Litigation, USDC Central District of California, Case No. CV 01-10456 NM, in which as Co-Lead Counsel, Glancy Binkow & Goldberg achieved a settlement of \$18 million.

In re Musicmaker.com Securities Litigation, USDC Central District of California, Case No. 00-02018, a securities fraud class action in which Glancy Binkow & Goldberg was sole Lead Counsel for the Class and recovered in excess of \$13 million.

In re ESC Medical Systems, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 98 Civ. 7530, a securities fraud class action in which Glancy Binkow & Goldberg served as sole Lead Counsel for the Class and achieved a settlement valued in excess of \$17 million.

In re Lason, Inc. Securities Litigation, USDC Eastern District of Michigan, Case No. 99 76079, in which Glancy Binkow & Goldberg was Co-Lead Counsel and recovered almost \$13 million for defrauded Lason stockholders.

In re Inso Corp. Securities Litigation, USDC District of Massachusetts, Case No. 99 10193, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$12 million.

In re National TechTeam Securities Litigation, USDC Eastern District of Michigan, Case No. 97-74587, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$11 million.

In re Ramp Networks, Inc. Securities Litigation, USDC Northern District of California, Case No. C-00-3645 JCS, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of nearly \$7 million.

In re Gilat Satellite Networks, Ltd. Securities Litigation, USDC Eastern District of New York, Case No. 02-1510 CPS, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

Taft v. Ackermans (KPNQwest Securities Litigation), USDC Southern District of New York, Case No. 02-CV-07951, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement worth \$11 million.

Ree v. Procom Technologies, Inc., USDC Southern District of New York, Case No. 02CV7613, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of \$2.7 million.

Capri v. Comerica, Inc., USDC Eastern District of Michigan, Case No. 02CV60211 MOB, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of \$6.0 million.

Tatz v. Nanophase Technologies Corp., USDC Northern District of Illinois, Case No. 01C8440, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of \$2.5 million.

In re Livent, Inc. Noteholders Litigation, USDC Southern District of New York, Case No. 99 Civ 9425, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of over \$27 million.

Plumbing Solutions Inc. v. Plug Power, Inc., USDC Eastern District of New York, Case No. CV 00 5553 (ERK) (RML), a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of over \$5 million.

Schleicher v. Wendt, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332 SEB, a securities fraud class action in which Glancy Binkow & Goldberg served as Lead Counsel for the Class and achieved a settlement of over \$41 million.

Lapin v. Goldman Sachs, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which Glancy Binkow & Goldberg served as Co-Lead Counsel for the Class and achieved a settlement of \$29 million.

Glancy Binkow & Goldberg filed the initial landmark antitrust lawsuit against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in In re Nasdaq Market-Makers Antitrust Litigation, USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL Docket No. 1023, which recovered \$900 million for investors in numerous heavily traded Nasdaq issues.

The firm currently serves as Lead or Co-Lead Counsel in numerous securities fraud and consumer fraud actions throughout the United States, including, among others:

Senn v. Sealed Air Corporation, USDC New Jersey, Case No. 03-cv4372, in which the firm acts as co-lead counsel (the case has tentatively settled).

Shah v. Morgan Stanley Co.,
USDC Southern District of New York, Case No. 03 Civ. 8761 (RJH)

Payne v. IT Group, Inc.,
USDC Western District of Pennsylvania, Case No. 02-1927

In re ADC Telecommunications Inc. Securities Litigation,
USDC District of Minnesota, Case No. 03-1194 (JNE/JGL)

The firm has also previously acted as Class Counsel in obtaining substantial benefits for shareholders in a number of actions, including:

In re F & M Distributors Securities Litigation,
Eastern District of Michigan, Case No. 95 CV 71778 DT (Executive Committee Member) (\$20.25 million settlement)

James F. Schofield v. McNeil Partners, L.P. Securities Litigation,
California Superior Court, County of Los Angeles, Case No. BC 133799

Resources High Equity Securities Litigation,
California Superior Court, County of Los Angeles, Case No. BC 080254

The firm has served and currently serves as Class Counsel in a number of antitrust class actions, including:

In re Nasdaq Market-Makers Antitrust Litigation,
USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL Docket No. 1023

In re Brand Name Prescription Drug Antitrust Litigation,
USDC Northern District of Illinois, Eastern Division, Case No. 94 C 897

The firm has served and currently serves as Class Counsel in a number of wage and hour class actions, including:

Smith v. L'Oreal, Los Angeles Superior Court, Case No. BC 284690, in which firm partner Kevin Ruf successfully argued before the California Supreme Court and achieved the reversal of lower court holdings which could have curtailed employee rights to prompt payment of wages.

Mathews v. American Laser Centers, USDC Eastern District of Michigan, Case No. 2:08-cv-10638, in which the firm represents employees of ALC who contend they are entitled to unpaid overtime and other benefits.

Baldwin v. Johnny Rockets, Los Angeles Superior Court, Case No. BC 385539, in which the firm represents a class of restaurant managers who contend they are entitled to overtime and other benefits because they were improperly classified by their employer as "exempt" from such benefits.

Jenkin v. Sunglass Hut, USDC Central District of California, Case No. CV08-5394, in which the firm represents Sunglass Hut employees who contend they were denied meal and rest breaks and other compensation.

Bousquet v. Cerritos Ford, Los Angeles Superior Court, Case No. BC 354026, in which the firm represents mechanics claiming unpaid overtime.

Paredes v. Pacific Ford, Los Angeles Superior Court, Case No. BC 372598, in which the firm represents mechanics claiming unpaid overtime.

The firm currently also serves as Interim Co-Lead Counsel in In re Nokia, Inc. ERISA Litigation, USDC Southern District of New York, Case No. 10-CV-03306-PKC. This consolidated action is brought pursuant to the Employee Retirement Income Security Act of 1974 on behalf of participants and beneficiaries of the Nokia Retirement Savings and Investment Plan from January 1, 2008 through the present seeking to recover losses to the Plan as a result of its investments in Nokia stock.

The firm has represented, or currently represents, numerous plaintiffs in shareholder derivative actions, including, among others:

In re Acura Pharmaceuticals, Inc.

In the Circuit Court of Cook County, Illinois, County Department - Chancery Division,
Case No. 10CH46380;

Diep v. Chen, et al.

USDC Southern District of New York, Case No. 11-CV-3210;

Dulberg v. Plastina, et al.

USDC Central District of California, Case No. 8:11-cv-00351 JVS (RNBx);

Garay v. Gamache, et al.

USDC Northern District of Illinois, Case No. 11-cv-04412;

Markowitz v. Duprey, et al.

In the Circuit Court of Cook County, Illinois, County Department - Chancery Division,
Case No. 11-CH-11048;

Oh v. Bartz, et al.

USDC Northern District of California, Case No. 11-cv-03286; and

Surloff v. Georgiopoulos, et al.

USDC Southern District of New York, Case No. 11-CV-1855-RJH.

Glancy Binkow & Goldberg LLP has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. Glancy Binkow & Goldberg successfully argued the appeals in a number of cases.

In Smith v. L'Oreal, 39 Cal.4th 77 (2006), firm partner Kevin Ruf established groundbreaking law when the California Supreme Court agreed with the firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

Other notable firm cases are: Silber v. Mabon I, 957 F.2d 697 (9th Cir. 1992) and Silber v. Mabon II, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000), Glancy Binkow & Goldberg won a seminal victory for investors before the Second Circuit Court of Appeals, which adopted a more favorable pleading standard for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, Glancy Binkow & Goldberg then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The firm also argued Falkowski v. Imation Corp., 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003) and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked. The revived action is currently proceeding in the California state court system.

The firm is also involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange.

Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Binkow & Goldberg LLP currently consists of the following attorneys:

THE FIRM'S PARTNERS

LIONEL Z. GLANCY, a graduate of the University of Michigan Law School, is the founding partner of the firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at Patterson Belknap Webb & Tyler LLP, concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last fifteen years, appearing as lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and argued before dozens of district courts and several appellate courts, and has recovered billions of dollars in settlement proceeds for large classes of shareholders. Well known in securities law, he has lectured on its developments and practice at CLE seminars and law schools.

PETER A. BINKOW, a partner in Glancy Binkow & Goldberg, was born in Detroit, Michigan on August 16, 1965. Mr. Binkow earned his degree in English Literature from the University of Michigan in 1988 and attended law school at the University of Southern California (J.D., 1994). Mr. Binkow joined the Law Offices of Lionel Z. Glancy upon graduation and became a partner in 2002.

Mr. Binkow has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He has served as Lead or Co-Lead Counsel in many class action cases, including In re Mercury Interactive Corp Securities Litigation (\$117.5 million recovery), In re Lumenis Ltd Securities Litigation (\$20.1 million recovery), In re Heritage Bond Litigation (\$28 million recovery), In re National Techteam Securities Litigation (\$11 million recovery), In re Credit Acceptance Corporation Securities Litigation (\$2.5 million recovery), In re Lason Inc. Securities Litigation (\$12.68 million recovery), In re ESC Medical Systems, Ltd. Securities Litigation (\$17 million recovery) In re GT Interactive Securities Litigation (\$3 million recovery) and many others. Mr. Binkow has prepared and/or argued appeals before the Ninth Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow is admitted to practice before the state of California, the United States District Courts for the Central, Northern and Southern Districts of California, the United States District Court for the Eastern District of Michigan and the Ninth Circuit Court of Appeals. He is a member of the Los Angeles County Bar Association and the American Bar Association.

MICHAEL GOLDBERG, a partner in Glancy Binkow & Goldberg, specializes in federal securities, federal and state antitrust, and consumer fraud class action lawsuits. He has successfully litigated numerous cases which resulted in multi-million dollar recoveries for investors, consumers and businesses.

Mr. Goldberg was born in New York on April 27, 1966. He earned his B.A. degree in 1989 from Pitzer College - The Claremont Colleges, and his J.D. degree in 1996 from Thomas M. Cooley Law School. After graduation from law school, Mr. Goldberg joined the Law Offices of Lionel Z. Glancy and became a partner of Glancy Binkow & Goldberg in 2003. He was admitted to both the California and Florida bars in 1997 and is admitted to practice in numerous courts.

SUSAN G. KUPFER, a partner of Glancy Binkow & Goldberg LLP, joined the firm in 2003, where she established its antitrust practice. She is a native of New York City and received her A.B. degree from Mount Holyoke College in 1969 and her J.D. from Boston University School of Law in 1973. She did graduate work at Harvard Law School. In 1977, she was named Assistant Dean and Director of Clinical Programs at Harvard, where she supervised that program of legal practice and taught its related academic components: Introduction to Advocacy (a NITA-style workshop), Lawyering Process and Professional Responsibility.

For much of her legal career, Ms. Kupfer has been a professor of law. She subsequently taught at Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law and Northeastern University School of Law. From 1991 to 2002, she was a lecturer on law at University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional Law, Legal Ethics and Jurisprudence. Her publications include articles on federal civil rights litigation, legal ethics and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco and was the executive director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio Pease Tabacco Burt & Pucillo before joining the Glancy Firm. Her practice is concentrated in antitrust, securities and consumer complex litigation. She has been a member of the lead counsel team which achieved significant settlements in the following cases: In re Sorbates Antitrust Litigation (\$96.5 million settlement), In re Pillar Point Partners Antitrust Litigation (\$50 million settlement), In re Critical Path Securities Litigation (\$17.5 million settlement).

Ms. Kupfer is a member of the Massachusetts and California State Bars and the United States District Courts for the Northern, Central and Southern districts of California, the District of Massachusetts, the First and Ninth Circuits Courts of Appeal and the U.S. Supreme Court. She was named one of Northern California's Super Lawyers of the Year in 2004, 2005, and 2006 in antitrust litigation.

Ms. Kupfer is currently serving in leadership positions in the following cases:

In re Korean Air Lines Co., Ltd. Antitrust Litigation, U.S.D.C., Central District of California, MDL 1891, No. 07-5107, Interim Co-Lead Counsel

In re: Urethane Antitrust Litigation, U.S.D.C., District of Kansas, No. 2:04-md-01616, Co-Lead Counsel.

In re: Western States Wholesale Natural Gas Antitrust Litigation, U.S.D.C., District of Nevada, No. 2:03-cv-01431, Co-Lead Counsel.

Sullivan et al v. DB Investments, Inc., et al., U.S.D.C, District of New Jersey, No. 3:04-cv-02819, Counsel for Reseller Subclass.

KEVIN F. RUF, a partner in Glancy Binkow & Goldberg LLP, was born in Wilmington, Delaware on December 7, 1961. Mr. Ruf graduated from the University of California at Berkeley in 1984 with a B.A. in Economics and earned his J.D. from the University of Michigan in 1987. Mr. Ruf was admitted to the State Bar of California in 1988. Mr. Ruf was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation and was a leading trial lawyer among the associates there. In 1993 he joined the firm Corbin & Fitzgerald in order to gain experience in criminal law. There he specialized in white collar criminal defense work, including matters related to National Medical Enterprises, Cynergy Film Productions and the Estate of Doris Duke. Mr. Ruf joined Glancy Binkow & Goldberg in 2001 and has taken a lead trial lawyer role in many of the firm's cases. In 2006, Mr. Ruf argued before the California Supreme Court in the case *Smith v. L'Oreal* and achieved a unanimous reversal of the lower court rulings; the case established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of employment. In 2007, Mr. Ruf took an important case before the Ninth Circuit Court of Appeals, convincing the Court to affirm the lower court's certification of a class action in a fraud case (fraud cases have traditionally faced difficulty as class actions because of the requirement of individual reliance). Mr. Ruf has extensive trial experience, including jury trials, and considers his courtroom and oral advocacy skills to be his strongest asset as a litigator. Mr. Ruf currently acts as the Head of the Firm's Labor and Consumer Practice, and has extensive experience in Securities cases as well. Mr. Ruf also has experience in real estate law and has been a Licensed California Real Estate Broker since 1999.

MARCL. GODINO has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Marc has played a primary role in cases resulting in settlements of more than \$100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both State and Federal court as well as represented defrauded investors at FINRA arbitrations. Marc supervises the firm's consumer class action department.

While an associate with Stull Stull & Brody, Marc was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003) in which the California Supreme Court created new law in the state of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including The National Law Journal, Los Angeles Times, New York Times, and the New York Law Journal, among others and was heralded as a significant victory for shareholders.

Recent successes with the firm include: *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D.Cal.) (\$13,500,000.00 cash settlement for shareholders); (*In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) (\$4,000,000.00 cash settlement for shareholders); *In re Skilled Healthcare Group, Inc. Securities Litigation*, Case No. 09-5416 (C.D.Cal.) (\$3,000,000.00 cash settlement for shareholders); *In re Youbet.com, Inc. Shareholder Litigation*, Case No. BC426144 (L. A. Sup. Ct.) (settlement provided supplemental disclosures to shareholders in this merger action); *Burth v. MSC Software Corp., et al.*, Case No. 30-2009-00282743 (Orange Cty. Sup. Ct.) (settlement provided supplemental disclosures to shareholders in this merger action); *Shin et al., v. BMW of North America*, 2009 WL 2163509 (C.D.Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (\$3,936,812 cash settlement for class members); *Villefranche v. HSBC Bank Nevada, N.A.*, Case No. 09-3693 (C.D.Cal.) (after defeating a motion to dismiss, the case resulted in 100% recovery to class members).

Other published decisions include: *In re 2TheMart.com Securities Litigation*, 114 F.Supp 2d 955 (C.D.Ca 2002); *In re Irvine Sensors Securities Litigation*, 2003 U.S. Dist. LEXIS 18397 (C.D.Ca 2003).

The following represent just a few of the cases that Marc is currently litigating in a leadership position:

In re Toyota Motor Corp. Hybrid Brake Marketing, Sales Practices and Products Liability Litigation, MDL 02172 (C.D. Ca.), Co-Lead Counsel
In re Stec, Inc. Derivative Litigation, Case No. 10-00667 (C.D. Ca.), Co-Lead Counsel
Sabbag v. Akeena Solar, Inc., et al., Case No. 10-002735 (N.D. Ca.), Co-Lead Counsel
Conroy v. Citibank, N.A., et al., Case No. 10-4930 (C. D. Cal.), Co-Lead Counsel

Marc received his undergraduate degree from Susquehanna University with a bachelor of science degree in Business Management. He received his J.D from Whittier Law School in 1995.

Marc is admitted to practice before the state of California, the United States District Courts for the

Central, Northern and Southern Districts of California, the District of Colorado, and the Ninth Circuit Court of Appeals.

OF COUNSEL

ROBIN BRONZAFI HOWALD, a native of Brooklyn, New York, returned home in 2001 to open the firm's New York City office. Ms. Howald graduated *magna cum laude* from Barnard College in 1980, with a B.A. in psychology. In 1983, she received her J.D. from Stanford Law School, where she served as an Articles Editor for the Stanford Law Review. In addition to her current focus on securities fraud and consumer class action matters, during her 20-year career Ms. Howald has handled cases in many different practice areas, including commercial disputes, professional malpractice, wrongful termination, bankruptcy, patent and construction matters. As outside counsel for the City of Torrance, California, she also handled a number of civil rights and land use matters, as well as a ground-breaking environmental action concerning Mobil Oil's Torrance refinery. Ms. Howald has experience in pre-trial and trial procedure and has successfully prosecuted post-trial motions and appeals.

Mrs. Howald is a member of the bar of both California (1983) and New York (1995), and is admitted to practice in all federal judicial districts in California, the Southern and Eastern Districts of New York, and the United States Supreme Court. She co-authored "Potential Tort Liability in Business Takeovers" (*California Lawyer*, September 1986), was a speaker and contributing author at the Eighth Annual Current Environmental and Natural Resources Issues Seminar at the University of Kentucky College of Law (April 1991), and served as a Judge Pro Tem for the Los Angeles County Small Claims Court (1996-1997). Married in 1985, Mrs. Howald and her husband have two sons. An avid runner, Mrs. Howald has completed six marathons.

EX KANO S. SAMS II earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles in 1993. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law in 1996, where he served as a member of the UCLA Law Review. Since graduating from UCLA Law School, he has dedicated his entire career exclusively to representing plaintiffs in large-scale class action and complex civil litigation matters.

After law school, Mr. Sams practiced class action civil rights litigation on behalf of plaintiffs in cases involving employment discrimination, housing discrimination, and sexual harassment. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP), where his practice focused on securities and consumer class actions. While at Coughlin Stoia and its predecessor, he worked in the firm's San Diego, San Francisco, and Los Angeles offices.

Mr. Sams has served as lead counsel in dozens of securities class actions throughout the country. In one securities fraud class action that he actively litigated, Mr. Sams assisted in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O'Connor sitting by designation, in which the court vacated the lower court's denial of class

certification, reversed the lower court's grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case eventually settled for \$55 million. Mr. Sams also worked on a securities fraud class action where lead counsel obtained a settlement that represented approximately 78% of the likely recoverable damages in the case. He has also led large litigation teams in securities class actions and has prepared massive summary judgment oppositions, drafted and argued numerous motions, worked closely with expert witnesses, and has taken and defended dozens of depositions.

Mr. Sams has also successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies and in statewide tobacco litigation that resulted in a \$12.5 billion recovery for California cities and counties in a landmark settlement. He also was a principal attorney in a consumer class action against one of the largest banks in the country that resulted in a recovery of over 80% of the compensatory damages and a change in the company's business practices. Additionally, Mr. Sams has also handled several complex environmental matters. Mr. Sams participated in settlement negotiations on behalf of national environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring the company to conduct wide-ranging remediation measures to ameliorate the effects of air and water pollution and to pay civil penalties. He also participated in discovery and trial preparation in an unfair business practices action that led to a favorable settlement near the eve of trial providing for monetary relief for a public water provider against the threat of groundwater contamination.

Mr. Sams is admitted to practice law in the State of California. He is also admitted to practice before the United States Courts of Appeals for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits and before the district courts for the Northern, Southern, Eastern, and Central Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the District of Colorado. Mr. Sams is a member of the Los Angeles County Bar Association, the John M. Langston Bar Association, and the Consumer Attorneys of California.

ASSOCIATES

DALE MacDIARMID is a native of Los Angeles, California. He holds a B.A. in Journalism (with Distinction) from the University of Hawaii, and a J.D. from Southwestern University School of Law, where he was a member of the Board of Governors of the Trial Advocacy Honors Program. He is admitted to practice in California, before the United States District Courts for the Southern, Central and Northern Districts of California and the District of Colorado. Dale is a member of Kappa Tau Alpha, the national journalism honor society, and before joining Glancy Binkow & Goldberg he was a writer and editor for newspapers and magazines in Honolulu and Los Angeles.

ANDY SOHRN joined Glancy Binkow & Goldberg LLP in 2006. He was admitted to the California Bar in January 2006 after receiving his J.D. from the University of California Los Angeles School of Law in May 2005. While attending law school, Andy was the Managing Editor of the Pacific Basin Law Journal, participated in Moot Court and was a Teaching Assistant for the Lawyering Skills program. He also holds a B.A. in Economics and Mathematics from Yale University (class of 2002).

COBY MARIE TURNER joined Glancy Binkow and Goldberg LLP in 2010. Coby was a Regent's Scholar at the University of California, Santa Barbara, and holds a B.A. in Business Economics and Political Science. She received her J.D. from the University of Southern California, Gould School of Law. During law school, Coby was an editor of the Hale Moot Court Honors Program, the President of the International Law and Relations Organization, and an extern for Mental Health Advocacy Services in Los Angeles, California. Coby was admitted to the California State Bar in 2009.

ROBERT V. PRONGAY is an associate in the Firm's Los Angeles office, where he focuses on the investigation, initiation, and litigation, of complex securities cases brought on behalf of institutional and individual investors.

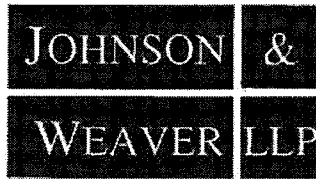
Mr. Prongay earned his Bachelor of Arts degree in Economics from the University of Southern California in 2005 and earned his Juris Doctor degree from Seton Hall University School of Law in 2008. While attending law school, Mr. Prongay worked as a summer associate at the Firm, and interned for a federal magistrate judge for the United States District Court for the District of New Jersey. Mr. Prongay is admitted to the State Bar of California, as well as the United States District Courts for the Central, Northern and Southern Districts of California, and the District of Colorado.

LOUIS BOYARSKY joined Glancy Binkow & Goldberg LLP in 2010. Louis received his JD/MBA from Loyola Law School, Los Angeles and Loyola Marymount University's Graduate School of Business. While in law school, Louis served as a staff writer for the *Loyola of Los Angeles Entertainment Law Review*. The *Law Review* published his article: *Stealth Celebrity Testimonials of Prescription Drugs: Placing the Consumer in Harm's Way and How the FDA has Dropped the Ball*. Additionally, while in law school, Louis externed for the Honorable Suzanne H. Segal, magistrate judge for the Central District of California.

Louis is a member of the St. Thomas More Legal Honor Society, the Alpha Sigma Nu National Jesuit Honor Society and the Beta Gamma Sigma Business Honor Society. Louis is admitted to practice before the state of California and the United States District Court for the Central District of California.

CASEY E. SADLER is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined Glancy Binkow & Goldberg LLP in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co, one of the leading appellate law firms in New Delhi, India, and was a member of USC's Hale Moot Court Honors Program. Mr. Sadler holds a B.A. in Political Science from Emory University and was admitted to the State Bar of California in December 2010.

ELIZABETH M. GONSIOROWSKI graduated with honors from Vassar College, where she received a BA in Cognitive Science. As a student at Brooklyn Law School, she interned with the Honorable Ramon Reyes in the Eastern District of New York. After graduating from Brooklyn Law in 2008, she was awarded a fellowship to work with the World Intellectual Property Organization at the United Nations. She is admitted to practice in California, New York and New Jersey.



ATTORNEYS AT LAW

FIRM RESUME

Johnson & Weaver, LLP is committed to delivering comprehensive, creative, and cost-effective solutions to complex legal problems. The trial lawyers at Johnson & Weaver, LLP have experience and training from some of the biggest firms in the country. We pride ourselves on providing the same level of service with the efficiency and personal touch that only a small firm can offer. Whether we're representing defrauded individuals or publicly-traded corporations, Johnson & Weaver, LLP has a track record of success.

OUR ATTORNEYS

FRANK J. JOHNSON

Mr. Johnson is one of the founding partners of Johnson & Weaver, LLP. Prior to starting his own law firm, Mr. Johnson was a partner in the law firm Sheppard, Mullin, Richter & Hampton LLP, a full-service Am Law 100 law firm with more than 400 attorneys in nine offices located throughout the country. Mr. Johnson has represented some of the largest well-known companies in the country in complex business disputes. He has conducted both jury and non-jury trials in state and federal court.

Areas of Practice: Mr. Johnson's practice focuses on complex litigation. Mr. Johnson has extensive experience in all aspects of trial practice, mediation, trial preparation, and non-jury and jury trials in state and federal court. In addition to his general trial practice, Mr. Johnson has both prosecuted and defended a number of cases involving securities fraud in class actions and derivative cases.

Professional Qualifications and Activities: Mr. Johnson was admitted to the State Bar of California in 1994. He has an AV rating with Martindale-Hubbe which indicates very high to preeminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar. He is currently admitted in good standing with the following courts: