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Filed

JUN 29 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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Attorneys for Plaintiff Thomas E Nelson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS E NELSON, Individually and Behalf of
All Others Similarly Situated,

No.

Plaintiff,

C V ~~CLASS ACTION~~ 12-03418

YGR

v.

COMPLAINT FOR
VIOLATIONS OF FEDERAL
SECURITIES LAWS

JURY TRIAL DEMAND

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERS MAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, RSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, BARCLAYS CAPITAL INC.,
ALLEN & COMPANY LLC, CITIGROUP
GLOBAL MARKETS INC., CREDIT SUISSE
SECURITIES USA) LLC, DEUTSCHE BANK
SECURITIES INC., RBC CAPITAL MARKETS,
LLC, and WELLS FARGO SECURITIES, LLC.,

Defendants.

FILED BY FAX
PURSUANT TO LOCAL RULES

COMPLAINT

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

10 NATURE AND SUMMARY OF THE ACTION

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

15 2. On May 18, 2012, Facebook floated its initial public offering ("IPO") of
16 421,233,615 shares of its common stock to the public at \$38 per share on the NASDAQ Global
17 Select Market under the symbol "FB." Under the terms of the offering, Facebook sold
18 180,000,000 shares of Class A common stock and selling stockholders sold 241,233,615 shares
19 of Class A common stock.
20

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

1 4. The offering was expected to raise more than \$16 billion, and was predicted to be
2 the most important market event in recent history, generating tremendous enthusiasm. However,
3 it now appears that Facebook's botched public offering was not the function of an efficient
4 market settling on an appropriate valuation for the stock.

5 5. Instead, Facebook's steady decline from its offering price was a function of large,
6 favored investors having been tipped off during the "road show" that analysts employed by the
7 lead underwriters had slashed internal revenue forecasts for the Company. This form of selective
8 dissemination of material information, which was in turn omitted from the effective and
9 operative Registration Statement and Prospectus, is a violation of federal securities law.

10 6. This action arises from the issuance, underwriting and sale by Defendants of
11 Facebook shares through a registration statement, various amendments thereto and prospectus
12 (collectively, the "Offering Documents") that contained material misstatements and omitted
13 material information concerning the investment risks of buying Facebook shares.

14 7. Defendants, individually and collectively, had a duty to Plaintiff and the Class to
15 provide information regarding Facebook that did not contain material misstatements or fail to
16 disclose all information about Facebook that would be material to Plaintiff and the Class in their
17 decisions to purchase shares of Facebook.

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21 **JURISDICTION AND VENUE**

22 8. This Court has jurisdiction over the subject matter of this action pursuant to §22
23 of the Securities Act of 1933 and 28 U.S.C. § 1331 and § 1337.

24 9. Plaintiff brings this action pursuant to 15 U.S.C. §§ 77(k), 77(1) and 77(0) of the
25 Securities Act.
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10. Venue is proper in this District because Defendants conduct business in this District and many of the wrongful acts alleged herein took place or originated in this District.

11. Most of the Defendants are either headquartered in this District or maintain a significant business presence in this District.

12. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

13. Shares of Facebook are a security within the meaning of federal law.

14. Shares of Facebook were sold to class members who reside within this Judicial District.

PARTIES

15. Plaintiff Thomas E Nelson purchased shares of Facebook pursuant to the Offering Documents on the IPO and was damaged thereby, as evidenced by his Certification attached hereto.

16. Defendant Facebook, Inc. ("Facebook" or the "Company") is a Delaware corporation, headquartered in Menlo Park, California, within this Judicial District. Facebook operates a social networking website that allows people to communicate and share information with friends and family. The Company also develops technologies that facilitate information sharing.

The Individual Defendants

17. Defendant Mark Zuckerberg ("Zuckerberg") is the Chairman and Chief Executive Officer of the Company and signed the Final Registration Statement dated May 21, 2012

1 [Facebook, Inc., Registration Statement (Form S-8) (May 21, 2012) (the "Final Registration
2 Statement")].

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

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

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

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

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

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

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

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

19 26. The foregoing nine Defendants are collectively referred to as the "Individual
20 Defendants."

21 **The Underwriter Defendants**

22 27. The following Defendants were the underwriters "on the cover" of the Facebook
23 Prospectus.
24
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1 28. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley"), the lead underwriter,
2 is situated at 1585 Broadway, New York, NY 10036.

3 29. Defendant J.P. Morgan Securities LLC ("J.P. Morgan") is located at 270 Park
4 Ave., New York, NY 10017.

5 30. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is situated at 200 West
6 Street, 29th Floor, New York, NY 10282.

7 31. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA Merrill
8 Lynch") is situated at Bank of America Corporate Center, 100 N. Tryon Street, Charlotte, NC
9 28255.

10 32. Defendant Barclays Capital Inc. ("Barclays Capital") is situated at 200 Park Ave.,
11 New York, NY 10166.

12 33. Defendant Allen & Company LLC ("Allen & Co.") is situated at 711 Fifth Ave.,
13 New York, NY 10022.

14 34. Defendant Citigroup Global Markets Inc. ("Citigroup") is situated at 388
15 Greenwich Street, New York, NY 10013.

16 35. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is situated at
17 11 Madison Ave., New York, NY 10010.

18 36. Defendant Deutsche Bank Securities Inc. ("Deutsche Bank") is situated at 31 West
19 52 St., New York, NY 10019.

20 37. Defendant RBC Capital Markets, LLC ("RBC Capital Markets") is situated at 3
21 World Financial Center, 200 Vesey St., New York, NY 10281.

22 38. Defendant Wells Fargo Securities, LLC ("Wells Fargo") is situated at 420
23 Montgomery Street, San Francisco, CA 94104.

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1 39. The foregoing eleven Defendant underwriters are collectively referred to as the
2 “Underwriter Defendants.”

3 40. All Defendants are collectively referred to herein as “Defendants.”
4

5 **CLASS ACTION ALLEGATIONS**

6 41. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of
7 the Federal Rules of Civil Procedure on behalf of all investors that purchased Facebook common
8 stock on the IPO pursuant or traceable to the Offering Documents (the “Class”).
9

10 42. Members of the Class are so numerous that joinder of all members is
11 impracticable. While the exact number of Class members is unknown to Plaintiff at this time and
12 can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands
13 of members of the Class located throughout the United States.

14 43. According to the Offering Documents, over 450 million shares of common stock
15 were sold to the public pursuant to the IPO.
16

17 44. Facebook shares were sold to Class members during the Class Period pursuant to
18 the Offering Documents.

19 45. All members of the Class may readily be identified from records maintained by
20 Facebook and/or its transfer agent and may be notified of the pendency of this action by mail,
21 using forms of notice similar to those customarily used in securities class actions.
22

23 46. Plaintiff’s claims are typical of the claims of the other members of the Class.

24 47. Plaintiff and the other members of the Class, by virtue of their purchases of shares
25 of Facebook on or pursuant to the IPO, have sustained damages as a result of Defendants’
26 unlawful activities as alleged herein. Plaintiff has retained counsel competent and experienced in
27 class and securities litigation and intends to prosecute this action vigorously. The interests of the
28

1 Class will be fairly and adequately protected by Plaintiff. Plaintiff has no interests which are
2 contrary to or in conflict with those of the Class which Plaintiff seeks to represent.

3 48. A class action is superior to all other available methods for the fair and efficient
4 adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the
5 management of this action that would preclude its maintenance as a class action.
6

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

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

18 **Material Misstatements And Omissions In The Prospectus**

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

23 51. The IPO was marketed through the issuance of the Offering Documents and the
24 presentation of numerous "road shows" to various investment banks and potential investors that
25 senior Facebook executives attended along with underwriters.
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52. The Prospectus contained material misstatements and statements made materially inaccurate through the omission of material facts. These include the following statements contained in the Prospectus:

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

* * *

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

* * *

Based upon our experience in the second quarter of 2012 to date, the trend we saw in the first quarter of DAUs 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. For additional information on factors that may affect these matters, see "Risk Factors - growth in use of Facebook through our mobile products, where our ability to monetize is unproven, as a substitute for use on personal computers may negatively affect our revenue and financial results" and "Risk Factors - Our

1 culture emphasizes rapid innovation and prioritizes user engagement over short-
2 term financial results.”

3 [Facebook, Inc., Prospectus (Form 424B4), at 14, 17, 57 (May 18, 2012) (the “Prospectus”)].
4

5 53. Each of these statements in the Prospectus contained material misstatements,
6 omitted a material fact required to be stated therein, or failed to disclose certain material facts
7 necessary to make the statements therein not misleading, because each failed to materially
8 disclose that Facebook’s revenue and revenue growth rate would be substantially lower than
9 originally disclosed and forecast.

10
11 54. The Prospectus contained materially inaccurate and incomplete disclosures
12 concerning the fact that Facebook’s revenue and revenue growth rate would be lower. These
13 facts were not being fully and accurately disclosed in the Prospectus, based upon the following
14 facts.

15
16 55. The actionable statements from the Prospectus quoted above were originally
17 added by prospectus dated May 9, 2012. [Facebook, Inc., Amendment No.6 to Form S-1
18 Registration Statement (Form S-21 A) (May 9, 2012) (“Amendment No.6”)].

19
20 56. Thereafter, during the time period between May 9, 2012 and May 17, 2012, which
21 included the Company’s roadshow, the Underwriter Defendants materially lowered their
22 estimates of Facebook’s future revenue and revenue growth rate.

23
24 57. Prior to the May 18, 2012 effective date of the Company’s IPO, however, the
25 Underwriter Defendants disclosed their materially lowered estimates of Facebook’s revenue and
26 revenue growth rate only privately to select major clients who were potential investors in the
27 IPO, and failed to disclose their lowered estimates to the investing public at large.
28

1 58. The fact that the Underwriter Defendants lowered their revenue and revenue
2 growth rate estimates demonstrates that the statements added to the Prospectus by prospectus
3 Amendment No. 6, which were subsequently contained in the effective Prospectus of May 18,
4 2012, were material. The fact that the revised revenue and revenue growth rate estimates were
5 only privately disseminated by the Underwriter Defendants demonstrates that these additional
6 Amendment No. 6 disclosures were materially deficient as they contained material
7 misstatements, omitted material facts required to be stated therein, or failed to disclose certain
8 material facts necessary to make the statements therein not misleading. Otherwise, there would
9 have been no reason for the Underwriter Defendants to limit disclosure of their revised and
10 lowered estimates only to select potential investors in the IPO, without full and complete
11 disclosure in the Prospectus.
12

13
14 59. Defendant Morgan Stanley was the lead investment bank for the Facebook IPO.

15 60. Morgan Stanley's consumer Internet analyst, Scott Devitt, materially "cut his
16 revenue estimate for the current second quarter significantly, and also cut his full-year 2012
17 revenue forecast." But, prior to the Company's IPO, Morgan Stanley disclosed its materially
18 lowered estimates only privately to select major clients who were potential investors in the IPO,
19 and failed to disclose its lowered estimates to the general investing public, according to a May
20 22, 2012 Reuters article titled, "Morgan Stanley Shocked Investors By Cutting Facebook
21 Estimates Just Before IPO." [Barr, Alistar, Morgan Stanley Shocked Investors By Cutting
22 Facebook Estimates Just Before IPO, Reuters (May 22, 2012) (the "Reuters Article")].
23
24

25 61. Scott Sweet, senior managing partner at the research firm IPO Boutique, said he
26 was aware of the reduced estimates, according to the Reuters Article. He further stated that he
27
28

1 learned of the lowered estimates from “[m]y biggest hedge fund client [who] told me they
2 [Morgan Stanley] lowered their numbers right around mid-roadshow,” according to Reuters.

3 62. Upon information and belief, another of the three top-line investment banks on
4 the cover of the Prospectus, J.P. Morgan, prior to the Company’s IPO also materially lowered its
5 estimates of the Company’s revenue and revenue growth rate. Similarly, prior to the IPO J.P.
6 Morgan disclosed its materially lowered estimates only to select major clients who were
7 potential investors in the IPO, and did not disclose its lowered estimates to the general public.
8 *See Reuters Article.*
9

10 63. Upon information and belief, another of the three top-line investment banks on
11 the cover of the Prospectus, Goldman, Sachs & Co., prior to the Company’s IPO also materially
12 lowered its estimates of the Company’s revenue and revenue growth rate. Similarly, prior to the
13 IPO, Goldman, Sachs & Co. disclosed its materially lowered estimates privately to only select
14 major clients who were potential investors in the IPO, and did not disclose its lowered estimates
15 to the public at large. *See Reuters Article.*
16
17

18 64. At the same time the Underwriter Defendants privately were lowering their
19 estimates of the Company’s revenues and revenue growth rate, the Company and the
20 Underwriter Defendants publicly were upwardly revising the projected IPO price to the effective
21 price of \$38 per share.
22

23 65. This type of selective dissemination of material information has damaged the
24 Class.

25 66. First, in the days leading up to the IPO, Facebook and the Underwriter Defendants
26 elected to issue millions of additional shares. Many large hedge funds were unwilling to accept
27 additional allocations because they were aware that analysts at the lead underwriters had
28

1 privately lowered their revenue and revenue growth rate estimates. Those additional shares,
2 instead, found their way to the accounts of thousands of small, retail customers who had
3 requested small allocations but given prior experience in other "hot" IPOs like Google, were
4 surprised to receive their requested allocations or allocations larger than those requested. These
5 investors did not know however that they were buying shares in an IPO that the lead
6 underwriters' analysts thought was overvalued.
7

8 67. Second, many hedge funds which were told that analysts had slashed projections
9 were able to quickly sell their allocated position and short the stock, thereby causing downward
10 pressure on the IPO.
11

12 68. Third, the fact that the Underwriter Defendants' research analysts only privately
13 disclosed their lowered revenue and revenue growth rate estimates for Facebook demonstrates
14 that the separation of those investment banks research and investment function did not exist and
15 had been breached for this IPO because the private only dissemination of the lowered estimates
16 helped the Underwriter Defendants' investment bankers sell the public offering.
17

18 69. The Facebook IPO went public on May 18, 2012 at a price of \$38 per share. It
19 reached its high of \$45 per share only a few minutes later.
20

21 70. One day later, on May 19, 2012, an article by Henry Blodget, titled "If This
22 Really Happened During the Facebook IPO, Buyers Should Be Mad As Hell..." was published
23 on BusinessInsider.com. The article disclosed rumors that Facebook not only selectively
24 disseminated non-publicly disclosed earnings guidance to its underwriters but also subsequently
25 lowered that guidance:

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

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

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

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

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

Why?

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

4
5 Any time a business outlook deteriorates that rapidly, alarm bells start going off
6 on Wall Street, and stocks plunge.
7

8
9 So the report that Facebook had "reduced earnings guidance" during the
10 roadshow just seemed like a typical misunderstanding between Wall Street and
11 the public--something lost in translation between what a reporter was hearing
12 from sources and what actually made it into print.
13

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

17 Facebook also altered its guidance for research earnings last
18 week, during the road show, a rare and disruptive move.
19

20
21 Hmm.

22
23
24 If this really happened, anyone who placed an order for Facebook who was
25 unaware that 1) Facebook had issued any sort of earnings guidance, and 2)
26 reduced that guidance during the roadshow, has every right to be furious.
27
28

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

4 74. Then, on May 22, 2012, an article published by Reuters, titled "Insight: Morgan
5 Stanley cut Facebook estimates just before IPO," noted how, prior to the IPO, three underwriter
6 banks (Morgan Stanley, JPMorgan Chase, and Goldman Sachs) cut their estimates upon the
7 issuance of a revised prospectus on May 9, 2012:
8

9 In the run-up to Facebook's \$16 billion IPO, Morgan Stanley, the lead
10 underwriter on the deal, unexpectedly delivered some negative news to major
11 clients: The bank's consumer Internet analyst, Scott Devitt, was reducing his
12 revenue forecasts for the company.
13

14
15 The sudden caution very close to Facebook's initial public offering -- while an
16 investor road show was under way -- was a big shock to some, said two investors
17 who were advised of the revised forecast.
18

19
20 They said it might have contributed to the weak performance of Facebook shares,
21 which sank on Monday and Tuesday -- their second and third days of trading -- to
22 end more than 18 percent below the IPO price. The \$38-per-share IPO price
23 valued Facebook at \$104 billion.
24

25
26 Institutions and major clients generally enjoy quick access to investment bank
27 research, while retail clients in many cases only get it later. It is unclear whether
28

1 Morgan Stanley only told its top clients about the revised view or spread the word
2 more broadly. The company declined to comment when asked who was told
3 about the research.
4

5 The change in Morgan Stanley's estimates came on the heels of a May 9
6 Facebook filing of an amended prospectus with the U.S. Securities and
7 Exchange Commission, in which the company expressed caution about revenue
8 growth due to a rapid shift by users to mobile devices. Mobile advertising to
9 date has been less lucrative than advertising on desktops.
10

11
12
13 "This was done during the road show -- I've never seen that before in 10 years,"
14 said a source at a mutual fund firm who was among those called by Morgan
15 Stanley.
16

17
18 JPMorgan Chase and Goldman Sachs, which were also major underwriters on
19 the IPO but had lesser roles than Morgan Stanley, also revised their estimates in
20 response to Facebook's SEC filing, according to sources familiar with the
21 situation.
22

23
24 Morgan Stanley said in a statement that a "significant number" of analysts in the
25 IPO syndicate reduced estimates after Facebook's May 9 disclosure. The
26 investment bank said its procedures complied with all "applicable regulations."
27
28

1 Devitt did not return phone messages seeking comment. JPMorgan and
2 Goldman declined to comment.

3
4 Typically, the underwriter of an IPO wants to paint as positive a picture as
5 possible for prospective investors. Investment bank analysts, on the other hand,
6 are required to operate independently of the bankers and salesmen who are
7 marketing stocks. That was stipulated in a settlement by major banks with
8 regulators following a scandal over tainted stock research during the dot-com
9 boom.
10

11
12
13 The people familiar with the revised Morgan Stanley projections said Devitt
14 lowered his revenue estimate for the second quarter and also cut his full-year
15 2012 revenue forecast.

16 * * *

17
18 “That deceleration freaked a lot of people out,” the investor added.

19
20 Scott Sweet, senior managing partner at the research firm IPO Boutique, said he
21 was also aware of the reduced estimates.

22
23
24 “They definitely lowered their numbers and there was some concern about that,”
25 he said. “My biggest hedge fund client told me they lowered their numbers
26 right around mid-road show.”
27
28

1 That client, he said, still bought the issue but “flipped his IPO allocation and
2 went short on the first day.”
3

4 [Scott] Sweet said analysts at firms that are not underwriting IPOs often change
5 forecasts at such times. However, he said it is unusual for analysts at lead
6 underwriters to make such changes so close to an IPO.
7

8
9 “That would be very, very unusual for a book runner to do that,” he said.
10

11 The lower revenue estimate came shortly before the IPO was priced at \$38 a
12 share, the high end of an already upwardly revised projected range of \$34 to
13 \$38, and before Facebook increased the number of shares being sold by 25
14 percent.
15

16
17 “It’s very rare to cut forecasts in the middle of the IPO process,” said an official
18 with a hedge fund firm who received a call from Morgan Stanley about the
19 revision.
20

21 75. That same day, May 22, 2012, the price of Facebook shares declined to a closing
22 price of \$31 per share.
23

24 76. Had Plaintiff and the members of the Class known of the facts not disclosed in the
25 Offering Documents, they would not have purchased their Facebook shares or would have
26 purchased them only at substantially reduced prices.
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FIRST CLAIM FOR RELIEF

**(Against All Defendants
For Violations Of Section 11 Of The Securities Act)**

81. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

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

83. Plaintiff brings this action within one year after the discovery of the materially incorrect statements and omissions, and within three years after the shares were offered to the public through the Offering Documents.

84. This claim is brought by Plaintiff against all Defendants. The Company was the issuer of the Offering Documents and sold the shares pursuant to the Offering Documents.

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

86. Each of the Individual Defendants participated in the preparation of, caused to be issued and/or participated in the issuance of the Offering Documents, and signed the Registration Statement, each of which was inaccurate and contained material misstatements; omitted to state a material fact required to be stated therein, or failed to disclose certain material facts necessary to make the statements therein not misleading, as set forth herein.

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

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

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

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

1 investigation with due diligence. (Indeed, the Underwriter Defendants had a substantial direct
2 interest in the success of the offering, as detailed above.)

3 91. Each Underwriter Defendant, as the result of engaging in the routine conduct of
4 their business or through common sense, was negligent (without limitation): (a) in not knowing
5 that their misstatements and omissions were material; and (b) not knowing that the statements
6 concerning the Company's future revenue and revenue growth rates were materially inaccurate.
7

8 92. The Offering Documents, at the time they became effective, were inaccurate and
9 contained material misstatements of fact; omitted to state material facts required to be stated
10 therein, or failed to disclose certain material facts necessary to make the statements therein not
11 misleading, as set forth herein.
12

13 93. The facts misstated and omitted would have been material to a reasonable person
14 reviewing the Offering Documents.

15 94. Plaintiff and the other Class members did not know and, in the exercise of
16 reasonable diligence, could not have known of the material misstatements and material
17 omissions contained in the Offering Documents at the time of their purchases during the Class
18 Period.
19

20 95. During the Class Period, Plaintiff and the other members of the Class purchased
21 in the initial public offering over five hundred million shares of Facebook common stock.

22 96. Although not required to be alleged with respect to this claim because it is an
23 affirmative defense to be alleged and proven by Defendants, nevertheless, Plaintiff alleges that
24 Plaintiff and the other members of the Class purchased their Facebook shares as a direct and
25 proximate result of, and/or without knowledge of, the material misstatements and omissions in
26 the Offering Documents. Plaintiff and/or other members of the class would not have purchased
27
28

1 their Facebook shares from Defendants if the material misstatements and material omissions in
2 the Offering Documents had not been made by Defendants.

3 97. By virtue of the foregoing, each of the Defendants on this §11 claim violated §11
4 of the Securities Act, and each is liable to Plaintiff and the other members of the Class.

5 98. As a direct and proximate result of Defendants' unlawful conduct as alleged
6 herein, Plaintiff and the other members of the Class sustained damages in connection with their
7 purchase of Facebook shares during the Class Period pursuant to or traceable to the Offering
8 Documents in an amount in excess of \$500 million and possibly in excess of \$1 billion, the exact
9 amount to be proven at trial.
10

11 99. Plaintiff and the members of the Class acquired their shares pursuant or traceable
12 to the Company's Offering Documents which were rendered materially inaccurate as a result of
13 Defendants' misstatements and omissions.
14

15 **SECOND CLAIM FOR RELIEF**

16
17 **(Against The Individual Defendants**
18 **For Control Person Liability Under Section 15)**

19 100. Plaintiff repeats and realleges each and every allegation above as if fully set forth
20 herein.

21 101. Plaintiff does not allege that the material omissions and material misstatements
22 set forth herein were made intentionally, knowingly or recklessly by Defendants.

23 102. This claim is brought against the Individual Defendants for control person
24 liability under §15 of the Securities Act.
25

26 103. The Individual Defendants, individually and jointly, were control persons under
27 §15 by virtue of their senior executive officer and/or directorial positions at the Company.
28

1 104. As senior officers and/or directors of the Company, the Individual Defendants had
2 a duty to have the controlled persons issue materially accurate information in the Offering
3 Documents.

4 105. The Individual Defendants at all relevant times were able to and did control the
5 Company's day-to-day operations, financial statements, and public filings.
6

7 106. The Individual Defendants at all relevant times were able to and did control the
8 contents of the Offering Documents, which contained material misstatements and material
9 omissions; the issuance of the Offering Documents; had and exercised the power and influence
10 to cause the Company to engage in the unlawful conduct complained of herein, and had the
11 power to cause some or all of the other Defendants to refrain from the conduct complained of
12 herein.
13

14 107. The Individual Defendants were a control person of at least one primary violator
15 of §11, the Company. By virtue of their positions as controlling persons of a primary violator,
16 each of the Individual Defendants is also liable pursuant to §15 of the Securities Act.
17

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

25 109. As set forth above, each of the Defendants on the §11 claim violated §11 of the
26 Securities Act.
27
28

1 119. Each of the Defendants on this claim was a seller, offeror and/or solicitor of
2 purchases of the Company's shares, pursuant to the Offering Documents, for their own financial
3 benefit.

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

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

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

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

22 124. Plaintiff and the other members of the Class purchased their shares in the initial
23 public offering which makes all shares purchased in and of themselves traceable to the offering.
24

25 125. Plaintiff and the other members of the Class purchased their Facebook shares
26 pursuant to the written Offering Documents herein, and without knowledge of the material
27 misstatements and omissions in those Offering Documents.
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- b. Against Defendants, jointly and severally, for damages suffered as a result of Defendants' violations of the Securities Act, and/or awarding rescission under §12 of the Securities Act, in an amount to be proven at trial;
- c. Awarding Plaintiff and the other members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and
- d. Awarding Plaintiff and the Class such other and further relief as may be just and proper under the circumstances.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: June 29, 2012

Law Offices of Jon C. Furgison

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Attorneys for Plaintiff

**Certification of Plaintiff
Facebook, Inc. Securities Litigation**

I, Thomas E. Nelson, certify that:

1. I have reviewed the Complaint and authorized its filing.
2. I did not purchase Facebook, Inc., the security that is the subject of this action, at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions in Facebook, Inc. during the Class Period set forth in the Complaint are as follows:

 Bought 100 shares on 2012-05-18 for the price of \$38 per share.
 Bought 200 shares on 2012-05-18 for the price of \$40.0799 per share.
 Bought 100 shares on 2012-05-18 for the price of \$38.5 per share.
5. I have not served as a representative party on behalf of a class under this title during the last three years, except for the following: None
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court, including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

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

Dated: 6/27/2012

Thomas E. Nelson
 (Please Sign Your Name Above)

THOMAS E. NELSON

Tracy J Nelson