

**EXHIBIT A**

ENDORSED FILED  
SAN MATEO COUNTY

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Clerk of the Superior Court  
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DEPUTY CLERK

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN MATEO

11 ROCK SOUTHWARD, Derivatively on  
12 Behalf of Himself and All Others  
13 Similarly Situated,

14 Plaintiff,

15 v.

16 MARK E. ZUCKERBERG, DAVID A.  
17 EBERSMAN, SHERYL K.  
18 SANDBERG, DAVID M. SPILLANE,  
19 JAMES W. BREYER, PETER A.  
20 THIEL, MARC L. ANDREESSEN,  
21 ERSKINE B. BOWLES, DONALD E.  
22 GRAHAM, REED HASTINGS and  
23 DOES 1-25, inclusive,

24 Defendants,

25 -and-

26 FACEBOOK, INC.,

27 Nominal Defendant.

Case No.: CIV 515170

SHAREHOLDER DERIVATIVE  
COMPLAINT FOR:

1. BREACH OF FIDUCIARY DUTY;
2. UNJUST ENRICHMENT; AND
3. GROSS MISMANAGEMENT AND  
WASTE OF CORPORATE ASSETS

DEMAND FOR JURY TRIAL

28 Plaintiff, Rock Southward, by and through his attorneys, brings this action  
derivatively on behalf of nominal defendant Facebook, Inc. ("Facebook" or the "Company") and

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PURSUANT TO LOCAL RULES

1 alleges upon personal knowledge as to himself and his own acts, and as to all other matters based  
2 upon the investigation conducted by his attorneys which included, among other things, a review of  
3 Securities and Exchange Commission (“SEC”) filings, documents, analyst reports, news reports,  
4 press releases, and other publicly available information regarding the Company, as follows:

5 **SUMMARY OF THE ACTION**

6 1. This is a shareholder derivative action brought by plaintiff on behalf of nominal  
7 defendant Facebook, Inc. (“Facebook” or the “Company”) against certain members of its Board of  
8 Directors (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches  
9 of fiduciary duties, unjust enrichment and waste of corporate assets and resources.

10 2. Facebook operates a worldwide social networking company.<sup>1</sup> The Company purports  
11 to have more than 900 million monthly active users (“MAUs”). In recent years, Facebook’s MAU  
12 count has grown exponentially. As of March 31, 2012, Facebook claimed its MAU count increased  
13 33% compared to March 31, 2011, and since March 31, 2009, Facebook claims MAUs increased  
14 from 197 million to more than 900 million. Because Facebook users are inclined to “share” such  
15 personal data as age, location, gender and interests, the Company touts this as a competitive  
16 advantage that allows Facebook to “offer advertisers a unique combination of reach, relevance, social  
17 context, and engagement to enhance the value of their ads.”

18 3. On May 16, 2012, Facebook filed a Form S-1 Registration Statement (“Registration  
19 Statement”) with the U.S. Securities and Exchange Commission (“SEC”) in connection with the  
20 Company’s highly anticipated Initial Public Offering (“IPO”). On May 18, 2012, the Prospectus  
21 (“Prospectus”) with respect to the IPO, which forms part of the Registration Statement, became  
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23 <sup>1</sup> A social networking service is an on-line service, platform, or site that focuses on facilitating the building  
24 of social relations among people, companies or institutions who, for example, share interests, activities, backgrounds,  
25 or real-life connections. It consists of a representation of each user (often a profile), his/her social links, and a  
26 variety of additional services, such as the placement of photographs and other iconic representations of the user’s  
27 various interests. Most social network services are web-based and provide means for users to interact over the  
28 Internet, such as e-mail and instant messaging. It is fast replacing the traditional dialogic relationships in Western  
societies and has recently been used to great effect in political movements, such as the populist revolts in the Middle  
East known as the Arab Spring. A 2011 survey found that 47% of American adults use a social network. Defendant  
Facebook controls approximately 60% of the global market in social networking services.  
(See, [http://en.wikipedia.org/wiki/Social\\_networking\\_service](http://en.wikipedia.org/wiki/Social_networking_service); visited on July 5, 2012).

1 effective and 421 million shares of Facebook common stock were sold to the public at \$38 per share.  
2 This price per share valued the Company as a whole at more than \$104 billion.

3 4. At the \$38 per-share IPO price, the Company's market value surpassed McDonalds,  
4 Boeing, Caterpillar, or Amazon.com. Defendants attained this high valuation by touting, in the  
5 Registration Statement, Facebook's extraordinary growth. Prior to and during the IPO, however,  
6 Facebook was experiencing a significant reduction in revenue growth as a result of its users  
7 increasingly accessing Facebook's website through mobile devices rather than personal computers  
8 ("PC"). This trend had a negative effect on the Company's current and future business prospects --  
9 advertising was not as effective on mobile devices as it was on traditional PCs, therefore alienating  
10 Facebook's existing customer base.

11 5. Indeed, this negative trend was so serious that, during a road show preceding  
12 Facebook's IPO, the lead underwriters -- Morgan Stanley & Co. LLC, ("Morgan Stanley"),  
13 JPMorgan Securities LLC ("JPMorgan") and Goldman Sachs & Co. ("Goldman Sachs") -- all  
14 reduced their revenue forecasts for the Company. (A "road show" is a series of presentations, held  
15 in various locations and typically targeted toward large institutional investors, for the purpose of  
16 generating interest in the subject stock, and to determine potential demand for the stock at different  
17 prices.) This was not fully disclosed to the market; rather, it was only selectively disclosed to certain  
18 of the underwriters' large investor clients. The investing public was not made aware of this material  
19 information.

20 6. Moreover, defendants Mark Zuckerberg, James W. Breyer and Peter A. Thiel took  
21 advantage of material, non-public information to sell in the IPO more than \$3.9 billion worth of  
22 Facebook stock. All three of these defendants signed the improper Registration Statement which  
23 helped to artificially inflate Facebook's stock price, allowing these defendants to handsomely profit  
24 at the expense of hundreds of thousands of unsuspecting shareholders.

25 7. Each defendant who signed the Registration Statement had an obligation to ensure  
26 that the Registration Statement did not contain an untrue statement of a material fact, or omitted a  
27 material fact required to be stated or necessary to make the statements therein not misleading. By  
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1 signing and approving the improper Registration Statement and Prospectus, the members of  
2 Facebook's Board breached their fiduciary duties to the Company and its shareholders. Facebook  
3 is strictly liable for the improper Registration Statement. As a result of the defendants' breaches,  
4 Facebook has suffered and will continue to suffer harm.

5 8. Defendants' improprieties devastated Facebook's credibility, as reflected by the  
6 Company's nearly 20% loss of market capitalization less than one week after its IPO. In addition,  
7 as a direct result of the defendants' unlawful course of conduct, the Company is now the subject of  
8 multiple securities class action lawsuits filed on behalf of investors who purchased Facebook shares.  
9 The securities fraud lawsuits have exposed the Company to potentially billions of dollars in  
10 damages.

#### 11 JURISDICTION AND VENUE

12 9. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
13 California Constitution, Article VI, section 10, because this case is a cause not given by statute to  
14 other trial courts, as this derivative action is brought pursuant to section 800 of the California  
15 Corporations Code to remedy defendants' violations of law.

16 10. This Court retains general jurisdiction over each named defendant who is a resident  
17 of California. Additionally, this Court has specific jurisdiction over each named non-resident  
18 defendant because these defendants maintain sufficient minimum contacts with California to render  
19 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.  
20 In addition, because the allegations contained herein are brought derivatively on behalf of Facebook,  
21 a company that maintains its principal executive offices in California, defendants' conduct was  
22 purposefully-directed at California. Therefore, exercising jurisdiction over any non-resident  
23 defendants is reasonable under these circumstances.

24 11. Venue is proper in this Court because one or more of the defendants either resides  
25 in or maintains executive offices in this County, a substantial portion of the transactions and wrongs  
26 complained of herein, including the defendants' primary participation in the wrongful acts detailed  
27 herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Facebook  
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1 occurred in this County, and defendants have received substantial compensation in this County by  
2 doing business here and engaging in numerous activities that had an effect in this County.  
3

4 **PARTIES**

5 12. Plaintiff, Rock Southward, is and was, at times relevant hereto, an owner and holder  
6 of Facebook stock.

7 13. Nominal Defendant Facebook is a Delaware corporation headquartered at 1601  
8 Willow Road, Menlo Park, California. It is registered to do business in California as CSC - Lawyers  
9 Incorporating Service, and issued with California corporate Entity Number C2711108.

10 14. Defendant Mark Zuckerberg ("Zuckerberg") is and has been Facebook's Chief  
11 Executive Officer ("CEO") and a director since July 2004, and Chairman of the Company's Board  
12 of Directors since January 2012. Zuckerberg is also Facebook's founder. Zuckerberg signed  
13 Facebook's Registration Statement filed with the SEC on May 16, 2012 in connection with the IPO.  
14 Zuckerberg also is named as a defendant in numerous securities class action complaints that allege  
15 violations of the Securities Act of 1933 (the "Securities Act") for making improper statements in the  
16 Registration Statement. While in possession of material, non-public information concerning  
17 Facebook's business and financial prospects, Zuckerberg sold 30,200,000 shares of his stock for  
18 \$1,134,916,000 in proceeds. By virtue of his participation in, and acquiescence to, the misconduct  
19 alleged herein, his control over Facebook and culpable complicity in the misconduct, Zuckerberg  
20 would be conflicted from independently investigating or prosecuting the claims alleged herein.

21 15. Defendant David A. Ebersman ("Ebersman") is and has been Facebook's Chief  
22 Financial Officer ("CFO") since September 2009. Ebersman also signed Facebook's Registration  
23 Statement in connection with the IPO. Ebersman is named as a defendant in securities class action  
24 complaints alleging violations of the Securities Act for making improper statements in the  
25 Registration Statement.

26 16. Defendant Sheryl K. Sandberg ("Sandberg") is and has been Facebook's Chief  
27 Operating Officer since March 2008. Sandberg also is named as a defendant in a securities class  
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1 action complaint that alleges she violated sections 11 and 15 of the Securities Act.

2 17. Defendant David M. Spillane ("Spillane") is and has been Facebook's  
3 Chief Accounting Officer since January 2009. Spillane also signed Facebook's Registration  
4 Statement in connection with the IPO. Spillane also is named as a defendant in securities class action  
5 complaints that allege violation of the Securities Act for making improper statements in the  
6 Registration Statement.

7 18. Defendant Peter A. Thiel ("Thiel") is and has been a Facebook director since April  
8 2005. Thiel is also a member of Facebook's Audit Committee and has been since at least February  
9 2012. Thiel signed Facebook's Registration Statement in connection with the IPO. Thiel is also  
10 named as a defendant in securities class action complaints that allege violations of the Securities Act  
11 for making improper statements in the Registration Statement. Thiel is partners of Founders Fund,  
12 a San Francisco-based venture capital firm, owner of Rivendell One LLC ("Rivendell") and the  
13 managing member of Lembas, LLC, all three of which held pre-IPO investments in Facebook and  
14 on whose behalf Thiel sold 16,844,315 shares of Facebook stock for \$633,009,357 in proceeds. By  
15 virtue of his participation in, and acquiescence to, the misconduct alleged herein, his control over  
16 Facebook and culpable complicity in the misconduct, Thiel would be conflicted from independently  
17 investigating or prosecuting the claims alleged herein.

18 19. Defendant James W. Breyer ("Breyer") is and has been a Facebook director since  
19 April 2005. Breyer signed Facebook's Registration Statement in connection with the IPO. Breyer  
20 also is named as a defendant in securities class action complaints alleging violations of the Securities  
21 Act for making improper statements in the Registration Statement. In May 2005, Breyer has been  
22 a partner of Accel Partners, a Palo Alto-based venture capital firm which held a pre-IPO investment  
23 in Facebook. On behalf of Accel Partners, Breyer sold 57,726,901 shares of its Facebook stock for  
24 \$2,169,376,939 in proceeds. By virtue of his participation in, and acquiescence to, the misconduct  
25 alleged herein, his control over Facebook and culpable complicity in the misconduct, Breyer would  
26 be conflicted from independently investigating or prosecuting the claims alleged herein

27 20. Defendant Marc L. Andreessen ("Andreessen") is and has been a Facebook director  
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1 since June 2008. Andreessen is also a member of Facebook's Audit Committee and has been since  
2 at least February 2012. Andreessen signed Facebook's Registration Statement in connection with  
3 the IPO. Andreessen also is named as a defendant in securities class action complaints alleging  
4 violations of the Securities Act for making improper statements in the Registration Statement. By  
5 virtue of his participation in, and acquiescence to, the misconduct alleged herein, his control over  
6 Facebook and culpable complicity in the misconduct, Andreessen would be conflicted from  
7 independently investigating or prosecuting the claims alleged herein

8 21. Defendant Donald E. Graham ("Graham") is and has been a Facebook's director since  
9 March 2009. Graham signed Facebook's Registration Statement in connection with the IPO. Graham  
10 also is named as a defendant in securities class action complaints alleging violations of the Securities  
11 Act for making improper statements in the Registration Statement. By virtue of his participation in,  
12 and acquiescence to, the misconduct alleged herein, his control over Facebook and culpable  
13 complicity in the misconduct, Graham would be conflicted from independently investigating or  
14 prosecuting the claims alleged herein.

15 22. Defendant Reed Hastings ("Hastings") is and has been a Facebook director since June  
16 2011. Hastings also signed Facebook's Registration Statement in connection with the IPO. Hastings  
17 also is named as a defendant in securities class action complaints alleging violations of the Securities  
18 Act for making improper statements in the Registration Statement. By virtue of his participation in,  
19 and acquiescence to, the misconduct alleged herein, his control over Facebook and culpable  
20 complicity in the misconduct, Ebersman would be conflicted from independently investigating or  
21 prosecuting the claims alleged herein.

22 23. Defendant Erskine B. Bowles ("Bowles") is and has been a Facebook director since  
23 September 2011. Bowles is Chairman of Facebook's Audit Committee and has been since at least  
24 February 2012. Bowles signed Facebook's Registration Statement in connection with the IPO.  
25 Bowles also is named as a defendant in securities class action complaints alleging violations of the  
26 Securities Act for making improper statements in the Registration Statement. By virtue of his  
27 participation in, and acquiescence to, the misconduct alleged herein, his control over Facebook and  
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1 culpable complicity in the misconduct, Ebersman would be conflicted from independently  
2 investigating or prosecuting the claims alleged herein.

3 24. Defendants Zuckerberg, Ebersman, Sandberg and Spillane are collectively referred  
4 to herein as the "Officer Defendants." Defendants identified as Zuckerberg, Thiel, Breyer,  
5 Andreessen, Graham, Hastings and Bowles are collectively referred to herein as the "Director  
6 Defendants." Defendants Zuckerberg, Andreessen, and Bowles are collectively referred to herein  
7 as the "Audit Committee Defendants." Defendants Zuckerberg, Thiel, Breyer and Andreessen are  
8 collectively referred to herein as the "Insider Selling Defendants." Defendants Zuckerberg,  
9 Ebersman, Sandberg, Spillane, Thiel, Breyer, Andreessen, Graham, Hastings and Bowles are  
10 collectively referred to herein as the "Individual Defendants."

11 25. The true names and capacities of the defendants sued herein under California Code  
12 of Civil Procedure section 474 as Does 1 through 25, inclusive, are presently not known to plaintiff,  
13 who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this  
14 complaint and include these Doe defendants' true names and capacities when they are ascertained.  
15 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged  
16 herein and for the injuries suffered by the Company as a result of the defendants' illegal conduct.

#### 17 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

18 26. By reason of their positions as officers, directors, and/or fiduciaries of Facebook and  
19 because of their ability to control the business and corporate affairs of Facebook, the Individual  
20 Defendants owed Facebook and its shareholders fiduciary obligations of trust, loyalty, good faith and  
21 due care, and were and are required to use their utmost ability to control and manage Facebook in  
22 a fair, just, honest and equitable manner. The Individual Defendants were and are required to act in  
23 furtherance of the best interests of Facebook and its shareholders so as to benefit all shareholders  
24 equally and not in furtherance of their personal interest or benefit.

25 27. Each officer and director of the Company owes to Facebook and its shareholders the  
26 fiduciary duty to exercise good faith and diligence in the administration of the affairs of the  
27 Company and in the use and preservation of its property and assets, and the highest obligations of  
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1 fair dealing. In addition, the Individual Defendants had a duty to promptly disseminate accurate and  
2 truthful information with regard to the Company's revenue, margins, operations, performance,  
3 management, projections and forecasts so that the market valuation of the Company's stock would  
4 be based on truthful and accurate information.

5 28. The Individual Defendants, because of their positions of control and authority as  
6 officers and/or directors of Facebook, were able to and did, directly and/or indirectly, exercise  
7 control over the wrongful acts complained of herein, as well as the contents of the various public  
8 statements issued by the Company. Because of their advisory, executive, managerial and directorial  
9 positions with Facebook, each of the Individual Defendants had access to adverse, non-public  
10 information about the Company's financial condition, operations and future financial prospects.

11 29. At all times relevant hereto, each of the Individual Defendants was the agent of each  
12 of the other Individual Defendants and of Facebook, and was at all times acting within the course  
13 and scope of such agency.

14 30. To discharge their duties, the officers and directors of Facebook were required to  
15 exercise reasonable and prudent supervision over the management, policies, practices and controls  
16 of the financial affairs of the Company. By virtue of such duties, the officers and directors of  
17 Facebook were required to, among other things:

- 18 a) refrain from acting upon material, inside corporate information to benefit themselves;  
19 b) ensure that the Company complied with its legal obligations and requirements,  
20 including acting only within the scope of its legal authority and disseminating truthful and accurate  
21 statements to the investing public;  
22 c) conduct the affairs of the Company in an efficient, business-like manner so as to make  
23 it possible to provide the highest quality performance of its business, to avoid wasting the  
24 Company's assets and to maximize the value of the Company's stock;  
25 d) properly and accurately guide investors and analysts as to the true financial condition  
26 of the Company at any given time, including making accurate statements about the Company's  
27 business prospects and financial results and ensuring that the Company maintained an adequate  
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1 system of financial controls such that the Company's financial reporting would be complete and  
2 accurate at all times;

3 e) remain informed as to how Facebook conducted its operations, and, upon receipt of  
4 notice or information of imprudent or unsound conditions or practices, make a reasonable inquiry  
5 in connection therewith, and take steps to correct such conditions or practices and make such  
6 disclosures as necessary to comply with securities laws; and

7 f) ensure that the Company was operated in a diligent, honest and prudent  
8 manner in compliance with all applicable laws, rules and regulations.

9 31. Each Individual Defendant, by virtue of his or her position as an officer and/or  
10 director, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and  
11 the exercise of due care and diligence in the management and administration of the affairs of the  
12 Company, as well as in the use and preservation of its property and assets. The conduct of the  
13 Individual Defendants complained of herein involves knowing and culpable violations of their  
14 obligations as officers and directors of Facebook, the absence of good faith on their part, and a  
15 reckless disregard for their duties to the Company and its shareholders that the Individual Defendants  
16 were aware or should have been aware posed a risk of serious injury to the Company.

17 32. The Individual Defendants breached their duties of loyalty and good faith by allowing  
18 defendants to cause, or by themselves causing, the Company to misrepresent its business prospects,  
19 as detailed herein, and by failing to prevent the Individual Defendants from taking such illegal  
20 actions. Moreover, as a result of defendants' illegal actions and course of conduct, the Company is  
21 now the subject of numerous class action lawsuits alleging violations of the Securities Act.  
22 Consequently, Facebook has expended, and will continue to expend, significant sums of money.

23 **CONSPIRACY, AIDING AND ABETTING AND CONCERTED ACTION**

24 33. The Individual Defendants have pursued, or joined in the pursuit of, a common course  
25 of wrongful conduct, and have acted in concert with and conspired with one another in furtherance  
26 of their common plan or design. In addition to their primary liability for the wrongful conduct  
27 alleged herein, the Individual Defendants further aided and abetted and/or assisted each other in  
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1 breaching their respective duties.

2 34. During all times relevant hereto, the Individual Defendants, collectively and  
3 individually, initiated a course of conduct that was designed to and did: (I) conceal harmful  
4 information relating to Facebook's financial condition that rendered statements in the Registration  
5 Statement improper; (ii) enhance the Individual Defendants' executive and directorial positions at  
6 Facebook and the profits, power, and prestige that the Individual Defendants enjoyed as a result of  
7 holding these positions; (iii) allow certain defendants and their affiliates to sell billions of dollars of  
8 their personally held shares through the IPO; and (iv) deceive the investing public regarding the  
9 Individual Defendants' management of Facebook's operations, the Company's financial health and  
10 stability, and its future business prospects. In furtherance of this plan, conspiracy, and course of  
11 conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

12 35. The Individual Defendants engaged in a conspiracy, common enterprise and/or  
13 common course of conduct that caused the Company to conceal or misrepresent the true facts  
14 concerning Facebook's business and financial prospects.

15 36. The purpose and effect of the Individual Defendants' conspiracy, common enterprise  
16 and/or common course of conduct was, among other things, to disguise the Individual Defendants'  
17 violations of law, breaches of fiduciary duty, waste of corporate assets and unjust enrichment, and  
18 to conceal adverse information concerning the Company's operations, financial condition, and future  
19 business prospects.

20 37. The Individual Defendants accomplished their conspiracy, common enterprise, and/or  
21 common course of conduct by causing the Company to purposefully, recklessly or negligently release  
22 improper statements. Because the actions described herein occurred under the authority of the Board,  
23 each of the Individual Defendants was a direct, necessary and substantial participant in the  
24 conspiracy, common enterprise, and/or common course of conduct complained of herein.

25 38. Each of the Individual Defendants aided and abetted and rendered substantial  
26 assistance in the wrongs complained of herein. In taking such actions to substantially assist the  
27 commission of the wrongdoing complained of herein, each Individual Defendant acted with  
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1 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that  
2 wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

### 3 SUBSTANTIVE ALLEGATIONS

#### 4 Facebook's Improper Registration Statement and Prospectus

5 39. On February 1, 2012, Facebook filed a Registration Statement with the SEC.  
6 Throughout the next several months, Facebook repeatedly amended this Registration Statement. In  
7 addition, during the same time period, Facebook employees and underwriters involved in the IPO  
8 participated in road-show meetings with potential investors. During these road shows, no Facebook  
9 employee ever publicly issued any earnings guidance.

10 40. Then, on May 16, 2012, Facebook filed its final Registration Statement in connection  
11 with its IPO. Two days later, on May 18, 2012, the Prospectus, which forms part of the Registration  
12 Statement, became effective and 421 million shares of Facebook common stock were sold to the  
13 public at \$38 per share. This price per share valued the Company at more than \$104 billion.  
14 Facebook fiduciaries, many of whom are Individual Defendants in this action, garnered billions of  
15 dollars through the sale of their shares, while hundreds of thousands of unsuspecting investors were  
16 left with artificially inflated shares.

17 41. The shares sold in the IPO were artificially inflated because the Registration  
18 Statement and Prospectus contained improper statements and were not prepared in accordance with  
19 the rules and regulations governing their preparation.

20 42. Facebook's unsuspecting investors relied on the Registration Statement's assurances  
21 that Facebook will "reflect in the prospectus any facts or events arising after the effective date of the  
22 Registration Statement (or the most recent post-effective amendment thereof) which, individually  
23 or in the aggregate, represent a fundamental change in the information set forth in the Registration  
24 Statement."

25 43. The Registration Statement, which was signed by defendants Zuckerberg, Ebersman,  
26 Spillane, Andreessen, Bowles, Breyer, Graham, Hastings and Thiel, improperly represented that  
27 Facebook's critical metrics, including the Company's MAUs, are trending upwards. For example,  
28

1 the Registration Statement stated:  
2

3 Monthly Active Users (MAUs) We define a monthly active user as a registered  
4 Facebook user who logged in and visited Facebook through our website or a mobile  
5 device, or took an action to share content or activity with his or her Facebook friends  
6 or connections via a third-party website that is integrated with Facebook, in the last  
7 30 days as of the date of measurement. MAUs are a measure of the size of our global  
active user community, which has grown substantially in the past several years.

8 \* \* \*

9 As of March 31, 2012, we had 901 million MAUs, an increase of 33% from March  
10 1, 2011. We experienced growth across different geographies, with users in Brazil,  
11 India, and the United States representing key sources of growth. We had 45 million  
12 MAUs in Brazil as of March 31, 2012, an increase of 180% from the same period in  
13 the prior year, and we had 51 million MAUs in India as of March 31, 2012, an  
14 increase of 107% from the same period in the prior year. Additionally, we had 169  
million MAUs in the United States as of March 31, 2012, an increase of 15% from  
the same period in the prior year.

15 44. Similarly, in the Registration Statement defendants Zuckerberg, Ebersman, Spillane,  
16 Andreessen, Bowles, Breyer, Graham, Hastings and Thiel touted growing daily active users  
17 (“DAUs”), crediting “increased mobile usage” as a “key contributor to this growth.” However,  
18 Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer, Graham, Hastings, and Thiel failed  
19 to disclose that increased mobile usage caused negative trends in the Company’s advertising business  
20 and would not “positively affect [the Company’s] revenue.” The Registration Statement stated, in  
21 part:

22 Daily Active Users (DAUs). We define a daily active user as a registered Facebook  
23 user who logged in and visited Facebook through our website or a mobile device, or  
24 took an action to share content or activity with his or her Facebook friends or  
25 connections via a third-party website that is integrated with Facebook, on a given  
26 day. We view DAUs, and DAUs as a percentage of MAUs, as measures of user  
engagement.

27 \* \* \*

28 Worldwide DAUs increased 41% to 526 million on average during March 2012 from

1 372 million during March 2011. We experienced growth in DAUs across major  
2 markets including the United States, Brazil, and India. Increased mobile usage was  
3 a key contributor to this growth. DAUs as a percentage of MAUs increased from  
4 55% in March 2011 to 58% in March 2012, which we believe was driven entirely by  
5 increased mobile usage of Facebook. We believe that increases in DAUs and in  
6 DAUs as a percentage of MAUs generally positively affect our revenue because  
7 increases in user engagement may enable us to deliver more relevant commercial  
8 content to our users and may provide us with more opportunities for monetization.

9 45. Describing the risks related to Facebook's business and industry, defendants  
10 Zuckerberg, Ebersman, Spillane, Andreessen, Bowles, Breyer, Graham, Hastings and Thiel  
11 purported to warn that the Company's revenues could be negatively affected by the rate of growth  
12 in mobile users of its site or application (or "app"); however, they failed to disclose that Facebook  
13 was already experiencing a severe and pronounced reduction in revenue growth due to an increase  
14 of users of its Facebook application or website through mobile devices rather than a traditional PC.  
15 Thus, these defendants' "pretend" warning failed to provide a complete and accurate picture of the  
16 Company's then-existing financial health. The Registration Statement stated in pertinent part:

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

20 We had 488 million MAUs who used Facebook mobile products in March 2012.  
21 While most of our mobile users also access Facebook through personal computers,  
22 we anticipate that the rate of growth in mobile usage will exceed the growth in usage  
23 through personal computers for the foreseeable future, in part due to our focus on  
24 developing mobile products to encourage mobile usage of Facebook. We have  
25 historically not shown ads to users accessing Facebook through mobile Apps or our  
26 mobile website. In March 2012, we began to include sponsored stories in users'  
27 mobile News Feeds. However, we do not currently directly generate any meaningful  
28 revenue from the use of Facebook mobile products, and our ability to do so  
successfully is unproven. We believe this increased usage of Facebook on mobile  
devices has contributed to the recent trend of our daily active users (DAUs)  
increasing more rapidly than the increase in the number of ads delivered. If users

1 increasingly access Facebook mobile products as a substitute for access through  
2 personal computers, and if we are unable to successfully implement monetization  
3 strategies for our mobile users, or if we incur excessive expenses in this effort, our  
4 financial performance and ability to grow revenue would be negatively affected.

5 46. In the Registration Statement defendants Zuckerberg, Ebersman, Spillane,  
6 Andreessen, Bowles, Breyer, Graham, Hastings and Thiel also pretended to warn investors that the  
7 Company's revenues from advertising could be adversely affected by "increased user access to and  
8 engagement with Facebook" through mobile devices, among other things. This "pretend" warning  
9 was misleading, in that, Facebook was already suffering from a noticeable reduction in revenue  
10 growth due to an increase in users of its Facebook application or website through mobile devices  
11 rather than a traditional PC. Instead of providing full disclosure, and being candid about the effect  
12 of mobile device users on the Company's revenue, defendants Zuckerberg, Ebersman, Spillane,  
13 Andreessen, Bowles, Breyer, Graham, Hastings and Thiel stated:

14  
15 We generate a substantial majority of our revenue from advertising. The loss of  
16 advertisers, or reduction in spending by advertisers with Facebook, could seriously  
17 harm our business.

18 The substantial majority of our revenue is currently generated from third parties  
19 advertising on Facebook. In 2009, 2010, and 2011 and the first quarter of 2011 and  
20 2012, advertising accounted for 98%, 95%, 85%, 87%, and 82%, respectively, of our  
21 revenue. As is common in the industry, our advertisers typically do not have  
22 long-term advertising commitments with us. Many of our advertisers spend only a  
23 relatively small portion of their overall advertising budget with us. In addition,  
24 advertisers may view some of our products, such as sponsored stories and ads with  
25 social context,[sic] as experimental and unproven. Advertisers will not continue to  
26 do business with us, or they will reduce the prices they are willing to pay to advertise  
27 with us, if we do not deliver ads and other commercial content in an effective  
28 manner, or if they do not believe that their investment in advertising with us will  
generate a competitive return relative to other alternatives. Our advertising revenue  
could be adversely affected by a number of other factors, including:

- decreases in user engagement, including time spent on Facebook;



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

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

6 47. Despite these negative trends, defendants Zuckerberg, Ebersman, Spillane,  
7 Andreessen, Bowles, Breyer, Graham, Hastings and Thiel announced that Facebook, "in consultation  
8 with the underwriters," increased the IPO price range from \$28 and \$35 per share to \$34 and \$38 per  
9 share. The Registration Statement stated that the assumptions supporting the increased offering price  
10 "represented management's best estimates."

11 48. With respect to the offering price, the Registration Statement stated:

12  
13 In early May 2012, in consultation with the underwriters, we determined the  
14 anticipated initial public offering price range to be \$28.00 to \$35.00 per share.  
15 Subsequently, in mid-May 2012 we increased the anticipated initial public offering  
16 price range to \$34.00 to \$38.00 per share. The assumptions supporting the revised  
17 anticipated initial public offering price range represented management's best  
18 estimates and discussions between us and the underwriters about indications of  
19 interest from potential investors after approximately one week of marketing of the  
20 offering, and involved complex and subjective judgments.

21 49. The statements referenced above were misrepresentations of material fact. The true  
22 facts at the time of the IPO were that Facebook was experiencing a severe and pronounced reduction  
23 in revenue growth due to an increase of users of its Facebook application or website through mobile  
24 devices rather than a traditional PC, such that the Company told its underwriters to materially lower  
25 their revenue forecasts for 2012. The Registration Statement failed to disclose that during the IPO  
26 road show, the lead underwriters, including Morgan Stanley, JP Morgan and Goldman Sachs, all cut  
27 their earnings forecasts and that news of the estimate cut was disclosed only to a handful of large  
28 investor clients.

50. The reduced expectations were disseminated to select clients shortly before the IPO

1 was priced at \$38 a share, the high end of an already upwardly revised projected range of \$34 to \$38,  
2 and before defendants increased the number of shares being sold by 25%.

3 51. After the IPO, Morgan Stanley's consumer Internet analyst Scott Devitt reportedly  
4 lowered his second quarter revenue estimate from \$1.175 billion to \$1.111 billion, and cut his  
5 FY2012 revenue forecast from more than \$5 billion to \$4.85 billion. Other analysts interpreted this  
6 cut to suggest that the Company's year-over-year revenue growth might also slow from the first  
7 quarter of 2012.

8 52. On May 19, 2012, Henry Blodget ("Blodget") published an article titled "If This  
9 Really Happened During The Facebook IPO, Buyers Should Be Mad As Hell." Blodget's article  
10 highlighted the unfair and illegal actions taken by Facebook in anticipation for its IPO, and analyzed  
11 the materiality of the improper statements in the Registration Statement, stating, in relevant part:  
12

13 Part way through the Facebook IPO road show, scattered reports appeared that  
14 Facebook had reduced the earnings guidance it was giving research analysts. This  
15 seemed bizarre on a number of levels. First, I was unaware that Facebook had ever  
16 issued any earnings guidance -- to research analysts or anyone else. Earnings  
17 guidance is highly material information (meaning that any investor considering an  
18 investment decision would want to know it). It represents a future forecast made by  
19 the company. Any time any company gives any sort of forecast, stocks move --  
20 because the forecast offers a very well informed view of the future by those who have  
21 the most up-to-date information about a company's business.

22 Thus, any guidance issued by Facebook should have been publicly disseminated by  
23 the Company and its bankers -- especially because millions of individual investors  
24 were thinking of buying the stock. If Facebook actually "reduced guidance" midway  
25 through a series of meetings designed solely to sell the Company's stock this reduced  
26 guidance would have been highly material information.

27 Why?

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

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

So the report that Facebook had “reduced earnings guidance” during the road show just seemed like a typical misunderstanding between Wall Street and the public -- something lost in translation between what a reporter was hearing from sources and what actually made it into print.

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

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

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

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

53. On this news, Facebook’s market capitalization plunged nearly 11%, erasing more than \$8.9 billion in market capitalization since its IPO only three days earlier.

54. On May 22, 2012, Blodget published another article titled “Facebook: Bankers Secretly Cut Facebook’s Revenue Estimates in Middle of IPO Roadshow.” This second article confirmed many of the fears and theories mentioned in his earlier May 19 article, and stated, in relevant part:

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

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

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

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

This is a huge problem, for one big reason:

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

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

What's more, it's likely that news of these estimate cuts dampened interest in the IPO among those who heard about them. (Reuters reported exactly this -- that some institutions were "freaked out" by the estimate cuts, as anyone would have been.) In other words, during the marketing of the Facebook IPO, investors who did not hear about these underwriter estimate cuts were placed at a meaningful and unfair information disadvantage. They did not know what a lot of other investors knew, and they suffered for it.

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

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

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

3  
4 There are a couple of possibilities for what happened.

5 The first one is bad news for Morgan Stanley and the other lead underwriters on the  
6 deal. 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, that  
9 recent trends in which users were growing faster than revenue had continued into the  
10 second quarter.

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

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

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

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

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

28 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.

1 Speaking as a former analyst, it seems highly unlikely to me that the vague language  
2 in the final IPO amendment would prompt all three underwriter analysts to  
3 immediately cut estimates without some sort of nod and wink from someone who  
4 knew how Facebook's second quarter was progressing. (To get this message from the  
5 language, you really have to read between the lines). But even if this is what  
6 happened, it is still unfair that news of the estimate cut wasn't disseminated quickly  
and clearly to everyone considering buying Facebook's IPO.

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

9 The SEC needs to look into this.

10  
11 55. As a result of this news, Facebook's market capitalization plummeted another 9%,  
12 erasing more than \$6.4 billion in market capitalization in a single day.

#### 13 INSIDER SELLING

14 56. The Individual Defendants' knowledge of the Company's operations and financial  
15 health, stability, and future business prospects, specifically related to the negative impact of the  
16 increase in users of its Facebook application or website through mobile devices rather than a  
17 traditional PC, is also shown in certain Facebook officers' and directors' sales of Facebook stock.  
18 The Insider Selling Defendants -- Zuckerberg, Breyer and Thiel -- were privy to adverse, non-public  
19 information which they exploited for their own benefit, to the exclusion of other shareholders. While  
20 continuously making or causing the Company to make improper statements touting Facebook's  
21 purported positive growth, and effectively concealing negative trends in its advertising business,  
22 certain officers and directors sold massive amounts of Company stock in order to capitalize on the  
23 Company's inflated stock price that they had helped improperly create.

24 57. As the Company's founder, CEO and Chairman, defendant Zuckerberg was a member  
25 of Company management and the Board. He was privy to material, non-public information about  
26 negative trends affecting the Company's advertising business and lowered guidance expectations.  
27 Zuckerberg was responsible for his statements in the Registration Statement, which included  
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1 disclosures concerning Facebook's purported positive growth but omitted material, negative  
2 information concerning the Company's current and future business prospects. Zuckerberg engaged  
3 in insider trading activity at a time when he knew adverse material, non public information.

4 58. While in possession of this knowledge defendant Zuckerberg sold 30,000,200 shares  
5 of his personally held Facebook stock for proceeds of \$1,134,916,000. Zuckerberg's sales were  
6 timed to maximize profit from Facebook's then artificially inflated stock price.

7 59. As a director since April 2005, defendant Breyer was privy to material, non-public  
8 information about negative trends affecting the Company's advertising business and lowered  
9 guidance expectations. Breyer was responsible for his statements in the Registration Statement,  
10 which included disclosures concerning Facebook's purported positive growth but omitted material,  
11 negative information affecting the Company's current and future business prospects. Breyer engaged  
12 in insider trading activity at a time when he knew adverse material, non-public information.

13 60. While in possession of this knowledge, defendant Breyer directed Accel Partners to  
14 sell 57,726,901 shares of its Facebook stock for proceeds of \$2,169,376,940. These sales were timed  
15 to maximize profit from Facebook's then artificially inflated stock price.

16 61. As a director since April 2005, defendant Thiel was privy to material, non-public  
17 information about negative trends affecting the Company's advertising business and lowered  
18 guidance expectations. Thiel was responsible for his statements in the Registration Statement, which  
19 included disclosures concerning Facebook's purported positive growth but omitted material negative  
20 information affecting the Company's current and future business prospects. Thiel engaged in insider  
21 trading activity at a time when he knew adverse material, non-public information.

22 62. While in possession of this knowledge, defendant Thiel directed Founders Fund and  
23 Rivendell, two funds with which he was affiliated in which he had a personal stake, to sell  
24 16,844,315 shares of Facebook stock for proceeds of \$633,009,358. These sales were timed to  
25 maximize profit from Facebook's then artificially inflated stock price.

26 63. In the aggregate, defendants Zuckerberg, Breyer and Thiel sold and/or directed their  
27 affiliated funds to sell more than \$3.9 billion of Facebook stock in the IPO. All three of these Insider  
28



1 Selling Defendants signed the improper Registration Statement which helped artificially inflate  
2 Facebook's stock.

### 3 SUBSTANTIAL DAMAGES TO FACEBOOK

4 64. As a result of the Individual Defendants' improprieties, Facebook disseminated  
5 improper public statements concerning the Company's business prospects. These improper  
6 statements have devastated Facebook's credibility as reflected by the Company's \$15.3 billion, or  
7 nearly 20%, market capitalization loss.

8 65. Further, as a direct and proximate result of the Individual Defendants' actions,  
9 Facebook has expended, and will continue to expend, significant sums of money. Such expenditures  
10 include, but are not limited to (a) costs incurred in investigating and defending Facebook and certain  
11 officers and directors in the class actions for violations of federal securities laws, and (b) costs  
12 incurred from paying any potential settlement or adverse judgments in the pending securities class  
13 action lawsuits.

14 66. Moreover, these actions have irreparably damaged Facebook's corporate image and  
15 goodwill. For at least the foreseeable future, Facebook will suffer from what is known as the "liar's  
16 discount," a term applied to the stocks of companies that have been implicated in improper behavior  
17 and have misled the investing public, such that Facebook's ability to raise equity capital or debt on  
18 favorable terms in the future is now impaired.

### 19 DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

20 67. Plaintiff brings this action derivatively in the right and for the benefit of Facebook  
21 to redress injuries suffered, and to be suffered, by Facebook as a direct result of breaches of fiduciary  
22 duty, waste of corporate assets, and gross mismanagement, as well as the aiding and abetting thereof,  
23 by the defendants. Facebook is named as a nominal defendant solely in a derivative capacity. This  
24 is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

25 68. Plaintiff will adequately and fairly represent the interests of Facebook in enforcing  
26 and prosecuting its rights.

27 69. Plaintiff is and was, at times relevant hereto, an owner and holder of Facebook stock,  
28

1 and remains a shareholder of the Company.

2 70. The current Board of Facebook consists of the following seven individuals:  
3 defendants Zuckerberg, Andreessen, Bowles, Breyer, Graham, Hastings, and Thiel. Plaintiff has not  
4 made any demand on the present Board to institute this action because such a demand would be a  
5 futile, wasteful, and useless act, as set forth below.

6 **Demand Is Excused Because All the Members of the Current Board Face a Substantial**  
7 **Likelihood of Liability for Their Misconduct**

8 71. Defendants Zuckerberg, Breyer, and Thiel sold and/or directed their affiliates to sell  
9 Facebook stock under highly suspicious circumstances. As explained above, these defendants  
10 possessed material, non-public Company information and used that information to benefit  
11 themselves and their affiliates. They sold and/or directed their affiliates to sell stock based on this  
12 knowledge of material, non-public Company information regarding negative trends affecting the  
13 Company's current and future business prospects and the resulting decrease in the value of their  
14 holdings of Facebook stock. Accordingly, Zuckerberg, Breyer, and Thiel face a substantial  
15 likelihood of liability for breach of their fiduciary duty of loyalty. Any demand upon Zuckerberg,  
16 Breyer, and Thiel is futile.

17 72. Defendants Zuckerberg, Andreessen, Bowles, Breyer, Graham, Hastings, and Thiel  
18 comprising the entire current Board, face a substantial likelihood of liability for their misconduct.  
19 As more fully detailed herein, Zuckerberg, Andreessen, Bowles, Breyer, Graham, Hastings, and  
20 Thiel participated in and approved the improper Registration Statement in their capacity as Facebook  
21 directors. As a result of their access to and review of internal corporate documents, conversations  
22 and connections with other corporate officers, employees, and directors, and attendance at  
23 management and Board meetings, each of the Director Defendants knew the adverse, non-public  
24 information regarding Facebook's business prospects and financial results before the issuance of the  
25 Registration Statement, yet each failed to prevent its release or correct the misleading and incomplete  
26 information contained therein. Moreover, as directors of Facebook, Zuckerberg, Andreessen,  
27 Bowles, Breyer, Graham, Hastings, and Thiel each had the duty and opportunity to discuss material  
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1 information with management and fellow directors at any of the Board meetings that occurred before  
2 the IPO, as well as at meetings of committees of the Board. Despite these duties, these defendants  
3 caused or allowed, by their actions or inactions, the improper statements to be disseminated by  
4 Facebook to the investing public and the Company's shareholders in connection with the IPO.

5 73. Defendants Andreessen, Bowles, and Thiel, as members of the Audit Committee, face  
6 a substantial likelihood of personal liability for the issuance of Facebook's Registration Statement.  
7 Andreessen, Bowles, and Thiel were responsible for monitoring and directly participating in the  
8 dissemination of Facebook's improper Registration Statement. Indeed, Andreessen, Bowles, and  
9 Thiel each signed the Registration Statement in their capacity as directors of Facebook. Accordingly,  
10 Andreessen, Bowles, and Thiel breached their fiduciary duties of due care, loyalty, and good faith  
11 because they participated in the preparation of improper offering documents that contained improper  
12 information.

13 74. Moreover, defendants Andreessen, Bowles, and Thiel failed to correct Facebook's  
14 improper statements described above in violation of the Audit Committee Charter effective as of  
15 May 17, 2012, even after the Registration Statement was finalized and the IPO was completed.  
16 According to the Audit Committee Charter:

17 The Committee will discuss generally with the Company's management and the  
18 independent auditor, as appropriate, the type of information to be disclosed and type  
19 of presentation to be made regarding the Company's press releases and other  
20 financial information released to analysts and rating agencies.

21 \* \* \*

22 Review of Processes, Systems, Controls and Procedures. The Committee will review  
23 and discuss with the independent auditor and the Company's management their  
24 periodic reviews of the Company's accounting and financial reporting processes,  
25 systems of internal control (including any significant deficiencies and material  
26 weaknesses identified in their design or operation), and disclosure controls and  
27 procedures (and management's reports thereon).

28 \* \* \*

Other Risk Assessment and Risk Management. The Committee will discuss with the  
Company's management the Company's major financial risk and enterprise  
exposures and the steps management has taken to monitor and control such

1 exposures, including the Company's procedures and any related policies with respect  
2 to risk assessment and risk management. Andreessen, Bowles, and Thiel failed to  
3 meet each of these heightened duties as members of Facebook's Audit Committee  
4 and, thus, face a sufficiently substantial likelihood of liability for their breach of  
fiduciary duties. As a result, any demand upon them is futile.

5 **Demand Is Excused Because a Majority of the Board Lacks Independence**

6 75. All seven members of the current Board lack the adequate independence necessary  
7 to vigorously prosecute the wrongdoing alleged herein. As eloquently stated by Columbia Law  
8 School Professor John Coffee, "[p]retending that Facebook will have an independent board ... is like  
9 putting rouge on a corpse." Like others, following Facebook's developments, Mr. Coffee did not  
10 agree with Facebook's "brazen insistence that they are not going to let Wall Street impose their  
11 rules" concerning the seating of a truly independent board.

12 76. Defendant Zuckerberg is not an independent director because he is currently serving  
13 as the Company's Chairman and CEO, and before the IPO, was a 25% owner of Facebook.  
14 Immediately after the IPO, Zuckerberg sold 30.2 million shares for \$1.1 billion and, thus, had an  
15 interest in keeping the IPO price artificially inflated. Accordingly, Zuckerberg is not disinterested  
16 and cannot fairly evaluate a demand.

17 77. The Board is beholden to defendant Zuckerberg as he maintains majority voting  
18 control over Facebook. As such, the Board would be unable and unwilling to pursue any claims  
19 against Zuckerberg arising from unlawful conduct in connection with the IPO. Following the IPO,  
20 Zuckerberg controls approximately 55.9% of the voting power of Facebook's outstanding capital  
21 stock. Facebook acknowledges that Zuckerberg "will have the ability to control the outcome of  
22 matters submitted to our stockholders for approval, including the election of our directors, as well  
23 as the overall management and direction of [the] company."

24 78. Facebook expressly acknowledges this lack of independence in its Prospectus, stating:

25  
26 Because Mr. Zuckerberg controls a majority of our outstanding voting power, we are  
27 a "controlled company" under the corporate governance rules for NASDAQ-listed  
28 companies. Therefore, we are not required to have a majority of our board of

1 directors be independent, nor are we required to have a compensation committee or  
2 an independent nominating function. In light of our status as a controlled company,  
3 our board of directors has determined not to have an independent nominating  
4 function and to have the full board of directors be directly responsible for nominating  
5 members of our board.

6 79. Moreover, defendant Zuckerberg retained his majority voting control over  
7 Facebook even though he sold more than \$1 billion worth of Company shares through its IPO. He  
8 was able to maintain this control by utilizing shareholder voting agreements, and because he owns  
9 Class B stock. Facebook's Class B stock is identical to its other form of stock (Class A) except that  
10 holders of Class B stock are entitled to ten votes per share, instead of one vote per share as the Class  
11 A stockholders receive. At the time of the IPO, 96% of the voting power of Facebook's stock was  
12 held by Class B shareholders, including:

- 13
- 14 • 2 million shares held by Glate LLC, an entity owned by Zuckerberg's father;
- 15 • 2,393,999, shares held by defendant Ebersman;
- 16 • 6,607,131 shares held by defendant Andreessen;
- 17 • 201,378,349 shares held by defendant Breyer; and
- 18 • 44,724,100 shares held by defendant Thiel.

19 80. In addition, defendant Zuckerberg controls all of Facebook's operations, and has a  
20 history of independently running the Company without any effective monitoring from the Board. For  
21 example, in April 2012 Zuckerberg caused Facebook to purchase Instagram, Inc. ("Instagram") --  
22 a photo-sharing company -- for \$1 billion, without providing the Board with advance notice or  
23 opportunity for examination, due diligence, or rebuttal. According to a report published by The Wall  
24 Street Journal, the negotiation period for the deal comprised a single weekend at Zuckerberg's house,  
25 where he and Instagram's co-founder and CEO, Kevin Systrom, arrived at a mutually agreeable  
26 valuation for the photo-sharing service. The Wall Street Journal article further reported that  
27 Zuckerberg informed the Board about the \$1 billion Instagram deal approximately twenty-four hours  
28 before the takeover became official. The Board reportedly did vote on whether to approve the

1 decision, but sources close to these proceedings described them as “largely symbolic.”

2 81. Zuckerberg, as a member of the Board’s nominating committee, which committee that  
3 determines the composition of the Board, has significant control of the Board’s composition, and can  
4 either entrench the current members that act in accordance with his wishes, or appoint new members  
5 to do his bidding. For this reason, the entire Board is not disinterested and cannot fairly evaluate a  
6 demand. Because the Board members are dependent upon the goodwill of Zuckerberg to retain their  
7 positions on the Board, and have entangling financial alliances, interests, and dependencies, they are  
8 unable to exercise independent judgment and vigorously prosecute any derivative action on behalf  
9 of Facebook. Moreover, the Registration Statement discloses that defendants Andreessen, Graham  
10 and Hastings were elected as “designees” of Zuckerberg. Consequently, any demand on the Board  
11 to bring this derivative action would be a futile act because the Board, cannot and will not prosecute  
12 this action against itself or Zuckerberg

13 82. The other members of the Board also lack independence for reasons outside of the  
14 Board’s allegiance to defendant Zuckerberg. For example, in May 2005 defendant Breyer invested  
15 \$12.7 million in Facebook as a partner at Accel Partners for a 10.7% ownership stake. In addition,  
16 Breyer individually invested an additional \$1 million. Accel Partners and Breyer then sold 49 million  
17 shares in connection with the offering and, thus, had an interest in keeping the IPO price artificially  
18 inflated. Accordingly, Breyer is not disinterested and cannot fairly evaluate a demand.

19 83. Defendant Thiel was an early Facebook investor through his Founders Fund venture  
20 capital firm, and before the IPO had a 3% stake in Facebook. Immediately after the IPO, Thiel sold  
21 16.8 million shares for \$633 million and, thus, had an interest in keeping the IPO price artificially  
22 inflated. Accordingly, Thiel is not disinterested and cannot fairly evaluate a demand.

23 84. Defendant Bowles sits on the Board of Morgan Stanley, the lead underwriter that  
24 selectively disseminated non-public information it received from a Facebook executive. As a result,  
25 Morgan Stanley is currently subject to regulatory and governmental investigations. Because he  
26 cannot be expected to take any action on behalf of Facebook that would harm Morgan Stanley,  
27 Bowles is not disinterested and cannot fairly evaluate a demand.  
28

1. 85. Defendant Andreessen is conflicted because he is the co-founder of the venture capital  
2 firm Andreessen Horowitz, which had a significant private investment in Facebook before it went  
3 public. Andreessen Horowitz also made \$78 million from a \$250,000 seed investment in Instagram,  
4 the photo-sharing service recently acquired by Facebook for \$1 billion. The Federal Trade  
5 Commission is reportedly investigating this acquisition. Accordingly, Andreessen is not disinterested  
6 and cannot fairly evaluate a demand.

7 86. The acts complained of constitute violations of the fiduciary duties owed by  
8 Facebook's officers and directors and these acts are incapable of ratification.

9 87. Each of the Director Defendants of Facebook authorized and/or permitted the  
10 dissemination of improper statements in the IPO and are principal beneficiaries of the wrongdoing  
11 alleged herein and, thus, could not fairly and fully prosecute such a suit even if such suit was  
12 instituted by them.

13 88. Facebook has been and will continue to be exposed to significant losses due to the  
14 wrongdoing complained of herein, yet the Individual Defendants and current Board have not filed  
15 any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt  
16 to recover for Facebook any part of the damages Facebook suffered and will suffer thereby.

17 89. If Facebook's current and past officers and directors are protected against personal  
18 liability for their acts of mismanagement and breach of fiduciary duty alleged in this complaint by  
19 directors' and officers' liability insurance, they caused the Company to purchase that insurance for  
20 their protection with corporate funds, i.e., monies belonging to the stockholders of Facebook.  
21 However, the directors' and officers' liability insurance policies covering the defendants in this case  
22 contain provisions that eliminate coverage for any action brought directly by Facebook against these  
23 defendants, known as the "insured versus insured exclusion." As a result, if these directors were to  
24 cause Facebook to sue themselves or certain of the officers of Facebook, there would be no directors'  
25 and officers' insurance protection and, thus, this is a further reason why they will not bring such a  
26 suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance  
27 coverage exists and will provide a basis for the Company to effectuate recovery. If there is no  
28

1 directors' and officers' liability insurance, then the current directors will not cause Facebook to sue  
2 the defendants named herein, since they will face a large uninsured liability and lose the ability to  
3 recover for the Company from the insurance.

4 90. Moreover, despite the Individual Defendants having knowledge of the claims and  
5 causes of action raised by plaintiff, the current Board has failed and refused to seek to recover for  
6 Facebook for any of the wrongdoing alleged by plaintiff herein.

#### 7 **COUNT I**

#### 8 **(Against the Individual Defendants and Does 1 -25 for Breach of Fiduciary Duty)**

9 91. Plaintiff incorporates by reference and realleges each and every allegation contained  
10 above, as though fully set forth herein.

11 92. By reason of their fiduciary relationships, the Individual Defendants and Does 1-25  
12 owed and owe Facebook the highest obligation of good faith, fair dealing, loyalty, and due care.

13 93. The Individual Defendants and Does 1-25, and each of them, violated and breached  
14 their fiduciary duties of candor, good faith and loyalty by consciously failing to prevent the Company  
15 from engaging in the unlawful acts complained of herein.

16 94. As alleged herein, the Individual Defendants and Does 1-25 breached their fiduciary  
17 duties of good faith and due care, consciously and purposely abdicating their responsibilities as  
18 directors and/or officers, by allowing, producing, approving, or disseminating to Facebook  
19 shareholders and the public improper statements through the Company's Registration Statement.

20 95. Additionally, defendants Zuckerberg, Breyer, and Thiel breached their duty of loyalty  
21 by selling and/or directing affiliates to sell Facebook stock on the basis of the knowledge of the  
22 improper information described above before that information was revealed to the Company's  
23 shareholders. The information described above was proprietary, non-public information concerning  
24 the Company's current and future business prospects. It was a proprietary asset belonging to the  
25 Company, which Zuckerberg, Breyer, and Thiel used for their own benefit when they sold and/or  
26 directed their affiliate funds to sell Facebook common stock.

27 96. The Individual Defendants and Does 1 -25 further breached their fiduciary duties to  
28



1 the Company because their actions exposed the Company to lawsuits by investors alleging violations  
2 of federal securities laws. As a direct and proximate result of the Individual Defendants' and Does  
3 1-25's breaches of their fiduciary obligations, Facebook has sustained significant damages, as alleged  
4 herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

5 97. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

6 **COUNT II**

7 **(Against the Individual Defendants and Does 1 -25 for Waste of Corporate Assets)**

8 98. Plaintiff incorporates by reference and realleges each and every allegation contained  
9 above, as though fully set forth herein.

10 99. As a result of the Individual Defendants' failure to implement adequate internal  
11 controls to ensure that the Company's Registration Statement was accurate, Facebook is now subject  
12 to at least eight securities fraud class action lawsuits. The Individual Defendants have caused  
13 Facebook to waste its assets by forcing it to defend itself in the ongoing litigation, in addition to any  
14 ensuing costs from a potential settlement or adverse judgment.

15 100. In addition, the Individual Defendants have caused Facebook to waste its assets by  
16 paying improper compensation and bonuses to certain of its executive officers and directors that  
17 breached their fiduciary duty.

18 101. As a result of the waste of corporate assets, the Individual Defendants and Does 1-25  
19 are liable to the Company.

20 102. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

21 **COUNT III**

22 **(Against the Individual Defendants and Does 1-25 for Unjust Enrichment)**

23 103. Plaintiff incorporates by reference and realleges each and every allegation contained  
24 above, as though fully set forth herein.

25 104. By their wrongful acts and omissions, the Individual Defendants were unjustly  
26 enriched at the expense of and to the detriment of Facebook. The Individual Defendants were  
27 unjustly enriched as a result of the compensation and director remuneration they received while  
28

1 breaching fiduciary duties owed to Facebook.

2 105. Defendants Zuckerberg, Breyer and Thiel sold and/or directed affiliates to sell  
3 Facebook stock while in possession of material, adverse, non-public information that artificially  
4 inflated the price of Facebook stock. As a result, Zuckerberg, Breyer, and Thiel, and their affiliates,  
5 profited from their misconduct and were unjustly enriched through their exploitation of material,  
6 adverse inside information.

7 106. Plaintiff, as a shareholder and representative of Facebook, seeks restitution from these  
8 defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and  
9 other compensation obtained by these defendants, and each of them, from their wrongful conduct  
10 and fiduciary breaches.

11 107. Plaintiff, on behalf of Facebook, has no adequate remedy at law.

12 **PRAYER FOR RELIEF**

13 108. **WHEREFORE**, plaintiff, on behalf of Facebook, demands judgment as follows:

14 A. Against all of the defendants and in favor of the Company for the amount of damages  
15 sustained by the Company as a result of the defendants' breaches of fiduciary duties, waste of  
16 corporate assets, and unjust enrichment;

17 B. Directing Facebook to take all necessary actions to reform and improve its corporate  
18 governance and internal procedures to comply with applicable laws and to protect Facebook and its  
19 shareholders from a repeat of the damaging events described herein, including, but not limited to,  
20 putting forward for shareholder vote, resolutions for amendments to the Company's By Laws or  
21 Articles of Incorporation and taking such other action as may be necessary to place before  
22 shareholders for a vote of the following Corporate Governance Policies:

23 (1) a provision to effectively control insider selling;

24 (2) a proposal to strengthen Facebook's oversight of its disclosure procedures, including  
25 specific reforms policing improper selective disclosures;

26 (3) a proposal to strengthen the internal controls within the Company in order to maintain  
27 adequate checks and balances to ensure that the Board can effectively monitor defendant  
28

1 Zuckerberg's actions, and prevent Zuckerberg from continuing to independently run Facebook as  
2 a private company;

3 (4) a proposal to strengthen the Board's supervision of operations and develop and  
4 implement procedures for greater shareholder input into the policies and guidelines of the Board; and

5 (5) a provision to permit the shareholders of Facebook to nominate at least three  
6 candidates for election to the Board;

7 C. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state  
8 statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust  
9 on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as  
10 to assure that plaintiff on behalf of Facebook has an effective remedy;

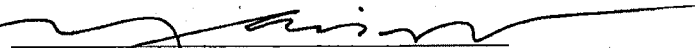
11 D. Awarding to Facebook restitution from defendants, and each of them, and ordering  
12 disgorgement of all profits, benefits, and other compensation obtained by defendants, including all  
13 ill gotten gains from the Insider Selling Defendants;

14 E. Awarding to plaintiff the costs and disbursements of the action, including reasonable  
15 attorneys' fees, accountants' and experts' fees, costs, and expenses; and

16 F. Granting such other and further relief as the Court deems just and proper.  
17

18 **JURY TRIAL DEMAND**

19 Plaintiff hereby requests a trial by jury.  
20  
21  
22

23   
24 **SCHWARTZ & ASIEDU, Lawyers**  
25 Kwasi A. Asiedu, Esq.  
26 Attorneys for Plaintiff, Rock Southward

27 Dated: July 6, 2012  
28

**SUMMONS  
(CITACION JUDICIAL)**

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

MARK E. ZUCKERBERG [See Additional Parties Attachment]

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

ROCK SOUTHWARD

FOR COURT USE ONLY  
**ENDORSED FILED**  
SAN MATEO COUNTY  
JUL 09 2012  
Clerk of the Superior Court  
By G. MARQUEZ  
DEPUTY CLERK

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.  
You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.  
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.  
**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.  
**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.  
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

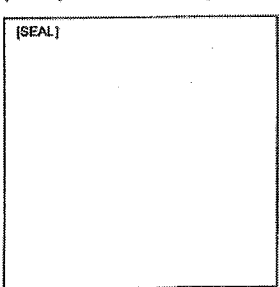
The name and address of the court is:  
(El nombre y dirección de la corte es): San Mateo Superior Court  
Southern Branch - Hall of Justice - 400 County Center, Redwood City,  
California, 94063

CASE NUMBER  
(Número del Caso) CIV 515176

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Kwasi A. Asiedu, P.O. Box 2006, Artesia, CA 90702-2006, Telephone: (310) 792-3948

DATE: JUL 09 2012 JOHN C. FITTON Clerk, by G. MARQUEZ Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):  
  
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
  - by personal delivery on (date):

SHORT TITLE:	CASE NUMBER:
Southward v. Zuckerberg, et al.	

**INSTRUCTIONS FOR USE**

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

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

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

DAVID A. EBERSMAN, SHERYL K. SANDBERG, DAVID M. SPILLANE, JAMES W. BREYER, PETER A. THIEL, MARC L. ANDREESSEN, ERSKINE B. BOWLES, DONALD E. GRAHAM, REED HASTINGS and DOES 1-25, inclusive, and FACEBOOK, INC. as Nominal Defendant.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Kwasi A. Asiedu (SBN 133698)  
Schwartz & Kwasi  
Post Office Box 2006  
Artesia, CA 90702-2006  
TELEPHONE NO.: (310) 792-3948 FAX NO.: (561) 423-5969  
ATTORNEY FOR (Name): Plaintiff Rock Southward

FOR COURT USE ONLY  
**RECEIVED**  
JUL 09 2012  
CLERK OF THE SUPERIOR COURT  
SAN MATEO COUNTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo  
STREET ADDRESS: 400 County Center  
MAILING ADDRESS: 400 County Center  
CITY AND ZIP CODE: Redwood City, 94063  
BRANCH NAME: Southern Branch

CASE NAME:  
Southward v. Zuckerberg, et al.

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CIV 515176  
JUDGE:  
DEPT:

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

FILED BY FAX  
PURSUANT TO LOCAL RULES

1. Check one box below for the case type that best describes this case:

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

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

Date: July 6, 2012  
Kwasi A. Asiedu  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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

FILED BY FAX  
PURSUANT TO LOCAL RULES

Attorney or Party without Attorney (Name/Address) Kwasi A. Asiedu (SBN 133698) Schwartz & Asiedu Post Office Box 2006, Artesia, CA 90702 Telephone: (310) 792-3948 State Bar No.: 133698 Attorney for: Plaintiff	FOR COURT USE ONLY  <b>ENDORSED FILED</b> <b>SAN MATEO COUNTY</b>  JUL 09 2012  Clerk of the Superior Court By <u>G. MARQUEZ</u> DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO 400 COUNTY CENTER REDWOOD CITY, CA 94063	
Plaintiff Rock Southward	
Defendant Zuckerberg, et al.	
Certificate Re Complex Case Designation	Case Number CIV 518146

**This certificate must be completed and filed with your Civil Case Cover Sheet if you have checked a Complex Case designation or Counter-Designation**

1. In the attached Civil Case Cover Sheet, this case is being designated or counter-designated as a complex case [or as not a complex case] because at least one or more of the following boxes has been checked:

- Box 1 – Case type that is best described as being [or not being] provisionally complex civil litigation (i.e., antitrust or trade regulation claims, construction defect claims involving many parties or structures, securities claims or investment losses involving many parties, environmental or toxic tort claims involving many parties, claims involving mass torts, or insurance coverage claims arising out of any of the foregoing claims).
- Box 2 – Complex [or not complex] due to factors requiring exceptional judicial management
- Box 5 – Is [or is not] a class action suit.

2. This case is being so designated based upon the following supporting information [including, without limitation, a brief description of the following factors as they pertain to this particular case: (1) management of a large number of separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions

pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision]:

This is a shareholder derivative action brought by plaintiff of nominal defendant Facebook, Inc. against certain members of its Board of Directors and certain of its executive officers seeking to remedy defendants breaches of fiduciary duties, unjust enrichment and waste of corporate assets and resources.

*(attach additional pages if necessary)*

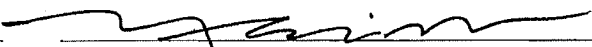
3. Based on the above-stated supporting information, there is a reasonable basis for the complex case designation or counter-designation [or noncomplex case counter-designation] being made in the attached Civil Case Cover Sheet.

\*\*\*\*\*

I, the undersigned counsel or self-represented party, hereby certify that the above is true and correct and that I make this certification subject to the applicable provisions of California Code of Civil Procedure, Section 128.7 and/or California Rules of Professional Conduct, Rule 5-200 (B) and San Mateo County Superior Court Local Rules, Local Rule 2.30.

Dated: July 6, 2012

Kwasi A. Asiedu  
[Type or Print Name]

  
[Signature of Party or Attorney For Party]



NOTICE OF CASE MANAGEMENT CONFERENCE

ENDORSED FILED  
SAN MATEO COUNTY

Rock SouthWard, et al  
JUL 09 2012

Case No. CIV 515176

Date: 11/28/12

vs.

Clerk of the Superior Court  
By ~~G. MARQUEZ~~  
DEPUTY CLERK

Time: 9:00 a.m.

Mark E. Zuckerberg, et al

Dept. 7 - on Tuesday & Thursday  
Dept. - on Wednesday & Friday

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

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

- a. **Serve** all named defendants and file proofs of service on those defendants with the court within **60 days** of filing the complaint (CRC 201.7).
- b. **Serve** a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
- c. **File and serve** a completed Case Management Statement at least **15 days** before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
- d. **Meet and confer**, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than **30 days** before the date set for the Case Management Conference.

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

3. Continuances of case management conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a **completed** stipulation to another ADR process (e.g., mediation) **10 days** prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person\* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
  - a. Referring parties to voluntary ADR and setting an ADR completion date;
  - b. Dismissing or severing claims or parties;
  - c. Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

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

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO:	FAX NO (Optional):	
E-MAIL ADDRESS (Optional):	ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO		
STREET ADDRESS: 400 County Center		CASE NUMBER:
MAILING ADDRESS: 400 County Center		
CITY AND ZIP CODE: Redwood City, CA 94063-1655		
BRANCH NAME: Southern Branch		
PLAINTIFF/PETITIONER:		CASE NUMBER:
DEFENDANT/RESPONDENT:		
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER:
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
  - a.  This statement is submitted by party (name):
  - b.  This statement is submitted jointly by parties (names):
  
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date):
  - b.  The cross-complaint, if any, was filed on (date):
  
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a.  All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties ...

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial  
 The party or parties request  a jury trial  a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date  
 a.  The trial has been set for (date):  
 b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):  
 c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial  
 The party or parties estimate that the trial will take (check one):  
 a.  days (specify number):  
 b.  hours (short causes) (specify):

8. Trial representation (to be answered for each party)  
 The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:  
 a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. E-mail address:  
 f. Fax number:  
 g. Party represented:  
 Additional representation is described in Attachment 8.

9. Preference  
 This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)  
 a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
 (1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
 - If represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete mediation by <i>(date)</i> : <input type="checkbox"/> Mediation completed on <i>(date)</i> :
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete settlement conference by <i>(date)</i> : <input type="checkbox"/> Settlement conference completed on <i>(date)</i> :
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete neutral evaluation by <i>(date)</i> : <input type="checkbox"/> Neutral evaluation completed on <i>(date)</i> :
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete judicial arbitration by <i>(date)</i> : <input type="checkbox"/> Judicial arbitration completed on <i>(date)</i> :
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete private arbitration by <i>(date)</i> : <input type="checkbox"/> Private arbitration completed on <i>(date)</i> :
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for <i>(date)</i> : <input type="checkbox"/> Agreed to complete ADR session by <i>(date)</i> : <input type="checkbox"/> ADR completed on <i>(date)</i> :

PLAINTIFF/PETITIONER:	CASE NUMBER
DEFENDANT/RESPONDENT:	

11. Insurance

- a.  Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy  Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a.  There are companion, underlying, or related cases.

- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:

Additional cases are described in Attachment 13a.

- b.  A motion to  consolidate  coordinate will be filed by (name party):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

16. Discovery

- a.  The party or parties have completed all discovery.

- b.  The following discovery will be completed by the date specified (describe all anticipated discovery):

<u>Party</u>	<u>Description</u>	<u>Date</u>
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- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

PLAINTIFF/PETITIONER: _____	CASE NUMBER: _____
DEFENDANT/RESPONDENT: _____	

17. Economic litigation

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

**CHAPTER 2. CIVIL TRIAL COURT MANAGEMENT RULES  
PART 1. MANAGEMENT DUTIES**

**Rule 2.2 Trial Court Management**

Reference CRC, rules 3.700, 3.710-3.713, 10.900, 10.901

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2007)

**PART 2. CASEFLOW MANAGEMENT**

**Rule 2.3 New Case Management**

This rule applies to all civil cases with the exception of the following: (1) juvenile court matters; (2) probate matters; (3) family law matters; and (4) civil cases which, based on subject matter, have been assigned to a judge, or to more than one judge, for all purposes. For rules applicable to these exceptions, see CRC 2.20, 2.30, 2.570-2.573, 2.585, 2.810-2.819, 2.830-2.834, 3.650, 3.700-3.735, 3.920-3.927, 3.1370, 3.1380-3.1385, 3.1590-3.1591, 3.1806, 5.590, 10.900-10.901, 10.910, 10.950-10.953.

**(a) Purposes and Goals**

The purposes and goals of the San Mateo Superior Court Civil Case Management System effective January 1, 1992 are:

- (1) To manage fairly and efficiently, from commencement to disposition, the processing of civil litigation.
- (2) To prepare the bench and bar for full implementation of the Trial Court Delay Reduction Act (A.B. 3820) on July 1, 1992; and
- (3) To encourage parties to agree to informal discovery early in the life of the case, to use standard form interrogatories and to promote alternative dispute resolution. Nothing in these rules is intended to prevent the parties from stipulating to an earlier intervention by the court by way of a case management conference, settlement conference or any other intervention that seems appropriate.
- (4) In accordance with Sections 3.710-3.715, 10.900, 10.901 of the California Rules of Court, Local Rule 2.3 is adopted to advance the goals of Section 68603 of the Government Code and Section 2.1 of the Standards of Judicial Administration recommended by the Judicial Council.

**(b) Team concept**

Beginning January 1, 1994 civil litigation will be managed primarily by a team of two program judges.

The clerk will assign the case to a program judge at the time the complaint is filed. The case shall be managed by the assigned program judge until disposition or until the case is assigned to a trial department.

(c) Cases filed after July 1, 1992

Upon the filing of a complaint after July 1, 1992, the case shall be subject to all of the civil case management system rules set forth below. Cases filed before July 1, 1992 shall also be subject to these rules except for subsection (d) (Filing and service of pleadings; exceptions).

(d) Filing and service of pleadings; exceptions.

(1) Complaint: Except as provided in paragraph 5 below, plaintiff shall within 60 days after filing of the complaint serve the complaint on each defendant along with:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

If a matter has been submitted to arbitration pursuant to uninsured motorist insurance, the plaintiff shall file a notice to that effect with the court at the time of filing the complaint, or at the time the matter is submitted. The notice shall include the name, address and telephone number of the insurance company, along with the claim number or other designation under which the matter is being processed.

(2) Cross-complaint: Except as provided in paragraph (5) below, each defendant shall within 30 days after answering the complaint file any cross-complaint (within 50 days if compliance with a governmental claims statute is a prerequisite to the cross-complaint) not already served with the answer under Code of Civil Procedure section 428.50 and serve with that cross-complaint:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

(3) Responsive pleadings: Except as provided in paragraph 5 below, each party served with a complaint or cross-complaint shall file and serve a response within 30 days after service. The parties may by written agreement stipulate to one 15-day extension to respond to a complaint or cross-complaint.

If the responsive pleading is a demurrer, motion to strike, motion to quash service of process, motion for a change of venue or a motion to stay or dismiss the case on forum non conveniens grounds, and the demurrer is overruled or the motion denied, a further responsive pleading shall be filed within 10 days following notice of the ruling unless otherwise ordered. If a demurrer is sustained or a motion to strike is granted with leave to amend, an amended complaint shall be filed within 10 days following notice of the ruling unless otherwise ordered. The court may fix a time for filing pleadings responsive to such amended complaint.

(4) Proofs of service: Proofs of service must be filed at least 10 calendar days before the case management conference.

(5) Exceptions for longer periods of time to serve or respond:



(A) Time to serve may be extended for good cause: Upon ex parte application to the court, *in compliance with California Rules of Court 3.1200 – 3.1206*, within 60 days of the date the complaint was filed, plaintiff may obtain an extension of time to serve to a date on or before the case management conference, if good cause is shown by declaration of counsel (or plaintiff filing in propria persona). An additional extension of the time to serve (an initial extension if the application is by a cross-complainant) may be obtained upon written application to the court upon good cause shown before the prior extension has expired. The filing of a timely application for an extension will automatically extend the time to serve by five days, whether or not the application is granted.

Good cause will be found if the declaration shows that the action is filed against a defendant who is an uninsured motorist, and the plaintiff's claim is subject to an arbitration provision in plaintiff's contract of insurance. In determining good cause in other cases, the court will give due consideration to any standards, procedures and policies which have been developed in consultation with the bar of the county through the bench-bar trial court delay committee.

(B) Additional extension of time if uninsured motorist arbitration is pending. In addition to any extension of time obtained pursuant to subsection (5)(A) above, if an uninsured motorist arbitration is still pending between plaintiff and plaintiff's insurance carrier 30 days prior to the expiration of the extension, plaintiff may obtain an additional extension of time by an ex parte application supported by a declaration showing the scheduled or anticipated date of the arbitration hearing and the diligence of plaintiff in pursuing arbitration.

(C) Time to respond may be extended for good cause: Before the time to respond has expired, any party served with a complaint or cross-complaint may, with notice to all other parties in the action, make ex parte application to the court upon good cause shown for an extension of time to respond. The filing of a timely application for an extension will automatically extend the time to respond by five days, whether or not the application is granted.

(e) Case management conference

(1) Date of conference: Unless the parties stipulate in writing and the court orders that the case be earlier referred to arbitration, a case management conference will be set by the clerk at the time the complaint is filed. (Government Code 68616)

(2) Attendance at the case management conference is mandatory for all parties or their attorneys of record.

(3) Plaintiff must serve the Notice of Case Management on all parties no later than 30 calendar days before the conference, unless otherwise ordered by the Court.

(4) The Court will deem the case to be at-issue at the time of the conference (Reference: CRC 3.714(a)) absent a showing of extraordinary circumstances.

(5) The conference may be set at an earlier date by order of the Court or by written stipulation of the parties.

(6) Designation of trial counsel: Trial counsel and, except for good cause shown, back-up trial counsel, must be specified at the case management conference. If such counsel is not

specified, relief from the scheduled trial date may not be obtained based upon the ground that counsel is engaged elsewhere.

(7) Conference orders: At the initial conference, the program judge will make appropriate pre-trial orders that may include the following:

- (A) An order referring the case to arbitration, mediation or other dispute resolution process;
- (B) An order transferring the case to the limited jurisdiction of the superior court;
- (C) An order assigning a trial date;
- (D) An order identifying the case as one which may be protracted and determining what special administrative and judicial attention may be appropriate, including special assignment;
- (E) An order identifying the case as one which may be amenable to early settlement or other alternative disposition technique;
- (F) An order of discovery; including but not limited to establishing a discovery schedule, assignment to a discovery referee, and/or establishing a discovery cut-off date;
- (G) An order scheduling the exchange of expert witness information;
- (H) An order assigning a mandatory settlement conference date pursuant to Local Rule 2.3(k) and 2.4; and
- (I) Other orders to achieve the interests of justice and the timely disposition of the case.

(8) CourtCall Telephonic Appearances

- (A) Reference CRC, Rule 3.670
- (B) Procedure. Telephonic appearances through the use of CourtCall, an independent vendor, are permitted at case management conference hearings. A party wishing to make a telephone appearance must serve and file a Request for Telephone Appearance Form with CourtCall not less than five court days prior to the case management conference hearing. Copies of the Request for CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.
- (C) On the day of the case management conference hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(D) At a case management conference, parties may be referred to an appropriate dispute resolution ("ADR") process (e.g., mediation, binding arbitration or neutral evaluation). If parties are referred ADR, they must redial the dedicated toll-free teleconference number immediately following their case management conference appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with ADR staff. If a case has been referred to ADR, a party's case management conference appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. If parties are referred to judicial arbitration, they do not have to appear at the ADR referral.

(f) Case Management Statement

At least 15 calendar days before the scheduled case management conference, each party shall file with the court and serve on all other parties a completed Judicial Council Case Management Statement. If the case is set for further case management conference hearing(s), all parties must file updated Case Management Statements 15 (fifteen) calendar days prior to the scheduled hearings(s).

(g) Appropriate Dispute Resolution, ADR, Policy Statement

The Court finds it is in the best interests of parties to litigation to participate in appropriate dispute resolution procedures, including but not limited to mediation, neutral evaluation, private or judicial arbitration, voluntary settlement conferences, and the use of special masters and referees. Therefore, all parties shall stipulate to, or be referred to, an appropriate form of dispute resolution before being set for trial, unless there is good cause to dispense with this requirement. Parties are encouraged to stipulate to judicial arbitration or ADR prior to the case management conference.

(h) Stipulations to Arbitration

(1) If the case is at issue, and all counsel and each party appearing in propria persona stipulate in writing to judicial arbitration prior to the case management conference, discovery will remain open following judicial arbitration. A written stipulation to judicial arbitration must be filed with the clerk and a copy immediately sent to the Master Calendar Coordinator at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference. A written stipulation to arbitrate will be deemed to be without a limit as to the amount of the award unless it expressly states otherwise.

(2) It is the policy of this court to make every effort to process cases in a timely manner. Parties who elect or are ordered by the court to judicial arbitration must complete the arbitration hearing within the time frame specified by the court.

Parties who wish to continue the arbitration hearing after the jurisdictional time frame must submit a court provided form entitled "*Ex Parte Motion and Stipulation for continuance of Judicial arbitration Hearing.*" Parties can obtain a copy of the form by contacting the court's judicial arbitration administrator [See Local Rule 10.1(d)(1)]. Continuances without adequate grounds will not be considered. A case management judge will either grant or deny the request for continuance. If the request is denied, the case may be assigned a trial date. If the request is granted, the judge will impose a new deadline by which the arbitration must be completed.

(3) Parties who wish to change their election from judicial arbitration to another form of ADR must file a "Stipulation and [Proposed] Order to [Mediation, Neutral Evaluation, etc.] in Lieu of [Court-Ordered] Judicial Arbitration" with the Clerk of the Court. The Stipulation must

state that parties have: (i) notified both the judicial arbitration and ADR coordinators; (ii) cancelled the judicial arbitration hearing; (iii) scheduled the ADR session within five months of the previously scheduled judicial arbitration hearing; and (iv) stipulated to a trial date, which is not more than six months from the previously scheduled judicial arbitration hearing.

(i) Stipulations to Private ADR

(1) If a case is at issue and all counsel and each party appearing in propria persona stipulate in writing to ADR and file a completed Stipulation and Order to ADR with the clerk of the court at least ten (10) calendar days before the first scheduled case management conference, that conference shall be continued 90 days. The court shall notify all parties of the continued case management conference.

(2) If counsel and each party appearing in propria persona are unable to agree upon an appropriate ADR process, they shall appear at the case management conference.

(3) Following an appearance at a case management conference hearing, parties shall, within 21 calendar days, file a completed Stipulation to ADR and Proposed Order identifying the name of the ADR provider, date of ADR session and the names of those who will be in attendance at the ADR session. The completed Stipulation to ADR and Proposed Order shall be filed with the court by plaintiff's counsel. The parties, through counsel, if represented, shall confer with the court's Multi-Option ADR Project (M.A.P.) staff if they cannot agree on a provider. Plaintiff's counsel, shall additionally, send a copy of the completed Stipulation to the court's M.A.P. offices within the same 21-day period.

(4) All parties and counsel shall participate in the ADR process in good faith.

(5) To maintain the quality of ADR services the court requires cooperation from all parties, counsel and ADR providers in completing ADR evaluation forms, and returning these forms to the M.A.P. offices within 10 calendar days of the completion of the ADR process.

(6) ADR Program Complaint Policy If mediation session participants have a concern about the mediation process or the conduct of a mediator affiliated with the court's program, the court encourages them to speak directly with the mediator first. In accordance with California Rules of Court §3.865 et seq., parties may also address written complaints, referencing the specific Rule of Court allegedly violated, to the Court's Civil ADR Program Coordinator. (For complete complaint procedure guidelines, see court web site: [www.sanmateocourt.org/adr/civil](http://www.sanmateocourt.org/adr/civil))

(7) In accordance with the Code of Civil Procedure, section 1033.5(c)(4), the court, in its discretion, may allow the prevailing party at trial the fees and expenses of the ADR provider, unless there is a contrary agreement by the parties.

(j) Setting Short Cause Matters

If the parties agree that the time estimated for trial is 5 hours or less prior to the conference, a written stipulation shall be filed at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference and a copy immediately sent to the Master Calendar Coordinator. In the absence of a stipulation, either party may file a motion to have the matter designated a "short cause" and set the case accordingly. All such matters shall be presumed short cause unless the contrary is established at the hearing on the motion.

(k) Law and Motion

All law and motion matters shall be heard by the regularly assigned Law and Motion judge.

(l) Settlement Conferences

All cases not assigned to arbitration or some other dispute resolution mechanism will be assigned two settlement conference dates, the first of which will be at the earliest practicable date under the circumstances presented by the case, and the second within approximately two weeks prior to the assigned trial date.

Cases assigned to arbitration or other form of ADR may be subjected to a settlement conference prior to the arbitration or ADR process, but will be assigned to a pre-trial settlement conference only if the arbitration/ADR procedure fails to resolve the case.

All cases which fail to resolve by the trial date will be subject to an additional settlement conference on the trial date.

All settlement conferences shall be subject to the requirements specified in Local Rule 2.4.

(m) Sanctions

Sanctions pursuant to CRC 2.30 shall be imposed for any violation of the civil case management system rules. The minimum sanction imposed shall be \$150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes, including any appropriate change in calendar status of the action.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996)(Amended, effective January 1,2000) (Amended, effective January 1, 2003)  
(Amended effective July 1, 2003) (Amended, effective January 1, 2005)(Amended, effective January 1, 2006)  
(Amended, effective January 1, 2007) (Amended, effective January 1, 2010)

Rule 2.3.1 Orders to Show Cause re: Dismissals

(a) A hearing on an order to show cause why the case should not be dismissed for failure to prosecute the matter shall be set at the two year anniversary of the filing of the complaint and/or cross-complaint.

(b) An order to show cause hearing shall be set 45 days after court's receipt of notice of settlement.

(c) An order to show cause hearing regarding dismissals may be set by the court to achieve the interests of justice and the timely disposition of the case.

(d) An order to show cause hearing re: failure to complete judicial arbitration within the court-ordered time frame may be heard during the case management calendar. Sanctions may be imposed and a trial date may be assigned.

(Adopted, effective January 1,2000)(Amended, effective January 1, 2003)(Amended, effective January 1, 2006)

Rule 2.4 Settlement Conference

Reference: California Rule of Court, rule 3.138.

## Civil Appropriate Dispute Resolution (ADR) Information Sheet Superior Court of California, San Mateo County

Appropriate Dispute Resolution (ADR) is a way of solving legal problems without going to trial. All types of disputes can be resolved through ADR. The Court encourages you to use some form of ADR before you proceed to trial. The most popular form of ADR is mediation. The Multi-Option ADR Project can help you choose the option that is best for your case and refer you to an experienced ADR provider.

### What are the Advantages of Using ADR?

- ☞ **Faster** – Traditional litigation can take years to complete but ADR usually takes weeks or months.
- ☞ **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- ☞ **More control & flexibility** – Parties choose the ADR process most appropriate for their case.
- ☞ **Cooperative & less stressful** – In mediation, parties cooperate to find a mutually agreeable solution to their dispute.

### What are the Disadvantages of Using ADR?

- ☞ **You may go to Court anyway** – If you can't resolve your case using ADR, you may still have to spend time and money on your lawsuit.
- ☞ **Not free** – The neutrals charge fees (except in judicial arbitration), but you may qualify for financial aid.

### Are There Different Kinds of ADR?

- ☞ **Mediation** - A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options and agree on a solution that is acceptable to all sides.
- ☞ **Judicial Arbitration** – Is an informal hearing where a neutral person (arbitrator) reviews the evidence, hears arguments and makes a decision on your case. In non-binding judicial arbitration, parties have the right to reject the arbitrator's decision and proceed to trial. For more information regarding judicial arbitration, please see the attached sheet or call (650) 363-4896.
- ☞ **Binding Arbitration** - The parties agree ahead of time to accept the arbitrator's decision as final. Parties who choose binding arbitration give up their right to go to Court and their right to appeal the arbitrator's decision.
- ☞ **Neutral Evaluation** - A neutral person (evaluator) listens to the parties, asks them questions about their case, reviews evidence and may hear witness testimony. The evaluator helps the parties identify the most important legal issues in their case and gives them an analysis of the strengths and weaknesses of each side's case. Special neutral evaluation guidelines are available on the Court's website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr).
- ☞ **Settlement Conference** – Although similar to mediation, the neutral (a judge) may take more control in encouraging parties to settle. Settlement conferences take place at the courthouse. All cases have a mandatory settlement conference approximately 2-3 weeks before the trial date.

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### How Does Voluntary Mediation/Neutral Evaluation Work in San Mateo County?

- ☞ The person who files the lawsuit (the plaintiff) must include this ADR Information Sheet with the complaint when serving the defendants in the case.
- ☞ All the parties in your case will meet with a judge at your first Case Management Conference (CMC), which is scheduled within 120 days of the filing of the complaint. The judge will speak to you about your voluntary ADR options, encourage you to participate in ADR and ask you to meet with Court ADR staff.
- ☞ If you and the parties decide to use ADR, Local Rule 2.3(i)(3) states that you must file a *Stipulation and Order to ADR* with the Court Clerk's Office. This form lets the Court know both whom you have selected as your ADR neutral and the date of the ADR session.
- ☞ You and the other parties can find your own ADR neutral for the case or use a neutral who is on the Court's ADR Panel.
  - For a list of Court ADR neutrals and their resumes, visit the Court's website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr). (Go to "Civil ADR Program," "Civil ADR Program Panelist List" and click on any provider's name.)
- ☞ If you decide to do ADR and file a *Stipulation and Order to ADR* at least 10 days before your first CMC, the Court will postpone (continue) your first CMC for 90 days to allow the parties time to resolve the case using ADR. The Clerk's Office will send you a notice with your new CMC date.
- ☞ Within 10 days of completing ADR, you and your lawyer (if you have one) must fill out either an Evaluation By Attorneys or Client Evaluation and mail or fax it to the ADR offices at: 400 County Center, Courtroom 2F, Redwood City, CA 94063; (650) 599-1754 (fax).

### Do I Have to Pay to Use ADR?

- ☞ Yes. You and the other parties will pay the ADR neutral directly. However, you do not have to pay the Court for either judicial arbitration or for the mandatory settlement conference that is scheduled before your trial.
- ☞ If you expect to have difficulty paying the ADR provider's fee, ask the ADR Coordinator for a financial aid application. You will need to fill out this application to determine whether or not you qualify for financial assistance.

In San Mateo County, parties also can take their case to the community mediation organization, the Peninsula Conflict Resolution Center ("PCRC"); and have their case mediated by PCRC's panel of trained and experienced volunteer mediators. To learn more about programs and fees, contact PCRC's Manager of Mediation Programs at (650) 513-0330.

For more information, visit the court website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr) or contact the Multi-Option ADR Project: 400 County Center, Courtroom 2F, Redwood City, CA 94063. (650) 599-1070, (650) 363-4148 / fax: (650) 599-1754

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Appropriate Dispute Resolution Information Sheet

Form adopted for Mandatory Use [CA Rule of Court 5.3.22(1) Local Court Form ADR-CV-6 (New September, 2010)] [www.sanmateocourt.org](http://www.sanmateocourt.org)

Judicial Arbitration, one of the available Appropriate Dispute Resolution (ADR) options, differs from other options in that it is usually court-ordered, unless the parties agree to it.

#### What are the Advantages of Using Judicial Arbitration?

- ☞ **Free** -Parties do not have to pay for the arbitrator's fee.
- ☞ **Fast** -Parties are usually given 120 days from the date of the Case Management Conference (CMC) to have their case heard by the appointed arbitrator.
- ☞ **Informal** -The hearing is conducted by an arbitrator who issues an award. (Arbitrators are usually attorneys who practice or have practiced in San Mateo County.)

#### What are the Disadvantages of Using Judicial Arbitration?

- ☞ The award issued by the arbitrator is not always binding (unless the parties stipulated otherwise). If any party requests a trial within 30 days of the award, the award becomes void and the case continues on to trial.

#### How Does Judicial Arbitration Work in San Mateo County?

- ☞ During your first CMC hearing, the judge may decide to order you to judicial arbitration. You will then receive instructions and a proposed list of arbitrators in the mail.
- ☞ Parties also may agree to judicial arbitration by filing a *Stipulation and Order to ADR* form at least 10 days before the first CMC. The CMC clerk will then vacate your CMC hearing and send the case to arbitration. The parties will receive instructions and a proposed list of arbitrators in the mail.
- ☞ Parties can stipulate (agree) to an arbitrator on the Court's Judicial Arbitration Panel list. Otherwise, proposed names of arbitrators will be sent to the parties.
  - For a list of arbitrators, their resumes, and other information, visit the Court's website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr). (Go to "Judicial Arbitration Program," "Judicial Arbitration Panelist List" and click on the arbitrator's name. To view the arbitrators by subject matter, click on "Judicial Arbitration Panelists by Subject Matter.")
- ☞ After the arbitration hearing is held and the arbitrator issues an award, the parties have 30 days to turn down/reject the award by filing a Trial de Novo (unless they have stipulated that the award would be binding).
- ☞ If the parties reject the award and request a Trial de Novo, the Court will send out notices to the parties of the Mandatory Settlement Conference date and the trial date.
- ☞ Following your arbitration hearing, you will also receive an evaluation form to be filled out and returned to the Arbitration Administrator.

For more information, visit the court website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr) or contact  
Judicial Arbitration: 400 County Center, First Floor, Redwood City, CA 94063. Phone:  
(650) 363-4896 and Fax: (650) 365-4897

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## ADR Stipulation and Evaluation Instructions

In accordance with *Local Rule 2.3(i)(3)*, all parties going to ADR must complete a Stipulation and Order to ADR and file it with the Clerk of the Superior Court. The Office of the Clerk is located at:

Clerk of the Superior Court, Civil Division  
Superior Court of California, County of San Mateo  
400 County Center  
Redwood City, CA 94063-1655

There is no filing fee for filing the stipulation. An incomplete stipulation will be returned to the parties by the Clerk's Office. All stipulations must include the following:

- Original signatures for all attorneys (and/or parties in pro per);
- The name of the neutral;
- Date of the ADR session; and
- Service List (Counsel need not serve the stipulation on parties).

Parties mutually agree on a neutral and schedule ADR sessions directly with the neutral. If parties would like a copy of the court's Civil ADR Program Panelist List and information sheets on individual panelists, they may visit the court's website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr).

### If Filing the Stipulation Prior to an Initial Case Management Conference

To stipulate to ADR prior to the initial case management conference, parties must file a completed stipulation at least 10 days before the scheduled case management conference. The clerk will send notice of a new case management conference date approximately 90 days from the current date to allow time for the ADR process to be completed.

### If Filing Stipulation Following a Case Management Conference

When parties come to an agreement at a case management conference to utilize ADR, they have 21 days from the date of the case management conference to file a Stipulation and Order to ADR with the court [*Local Rule 2.3(i)(3)*].

### Post-ADR Session Evaluations

*Local Rule 2.3(i)(5)* requires submission of post-ADR session evaluations within 10 days of completion of the ADR process. Evaluations are to be filled out by both attorneys and clients. A copy of the Evaluation By Attorneys and Client Evaluation are attached to the Civil ADR Program Panelist List or can be downloaded from the court's web site.

### Non-Binding Judicial Arbitration

Names and dates are not needed for stipulations to judicial arbitration. The Judicial Arbitration Administrator will send a list of names to parties once a stipulation has been submitted. The Judicial Arbitration Administrator can be contacted at (650) 363-4896.

For further information regarding San Mateo Superior Court's Civil ADR and Judicial Arbitration Programs, visit the Court's website at [www.sanmateocourt.org/adr](http://www.sanmateocourt.org/adr) or contact the ADR offices at (650) 599-1070.

Attorney or Party without Attorney (Name, Address, Telephone, Fax, State Bar membership number):	Court Use Only
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO Hall of Justice and Records 400 County Center Redwood City, CA 94063-1655 (650) 363-4711	
Plaintiff(s):	Case number:
Defendant(s):	Current CMC Date:

### STIPULATION AND ORDER TO APPROPRIATE DISPUTE RESOLUTION

Plaintiff will file this stipulation with the Clerk's Office 10 days prior to or 3 weeks following the first Case Management Conference unless directed otherwise by the Court and ADR Director [*Local Rule 2.3(i)(3)*]. Please attach a Service List.

The parties hereby stipulate that all claims in this action shall be submitted to (select one):

- |   |   |
|---|---|
| <input type="checkbox"/> Voluntary Mediation                        | <input type="checkbox"/> Binding Arbitration (private)                            |
| <input type="checkbox"/> Neutral Evaluation                         | <input type="checkbox"/> Settlement Conference (private)                          |
| <input type="checkbox"/> Non-Binding Judicial Arbitration CRC 3.810 | <input type="checkbox"/> Summary Jury Trial <input type="checkbox"/> Other: _____ |

Case Type: \_\_\_\_\_ Date of session: \_\_\_\_\_

Neutral's name and telephone number: \_\_\_\_\_

(Required for continuance of CMC except for non-binding judicial arbitration)

Identify by name the parties to attend ADR session: \_\_\_\_\_

#### Original Signatures

\_\_\_\_\_  
Type or print name of  Party without attorney  Attorney for  
 Plaintiff/Petitioner  Defendant/Respondent/Contestant

\_\_\_\_\_  
(Signature)  
Attorney or Party without attorney

\_\_\_\_\_  
Type or print name of  Party without attorney  Attorney for  
 Plaintiff/Petitioner  Defendant/Respondent/Contestant

\_\_\_\_\_  
(Signature)  
Attorney or Party without attorney

\_\_\_\_\_  
Type or print name of  Party without attorney  Attorney for  
 Plaintiff/Petitioner  Defendant/Respondent/Contestant

\_\_\_\_\_  
(Signature)  
Attorney or Party without attorney

\_\_\_\_\_  
Type or print name of  Party without attorney  Attorney for  
 Plaintiff/Petitioner  Defendant/Respondent/Contestant

\_\_\_\_\_  
(Signature)  
Attorney or Party without attorney

**IT IS SO ORDERED:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court of San Mateo County



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

ROCK SOUTHWARD Plaintiff(s) vs. MARK E. ZUCKERBERG Defendant(s)	<b>Notice of Complex Case Status Conference</b>  Case No.: CIV 515176      Date: 09/11/12 Time: 9:00 AM Dept. 3
Title: ROCK SOUTHWARD VS MARK E. ZUCKERBERG, ETAL	

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

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

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

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

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

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

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

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

### CLERK'S CERTIFICATE OF MAILING

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

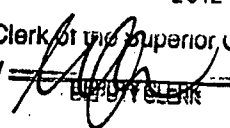
Date: 07/11/12

John C. Fitton,  
Court Executive Officer/Clerk

By: GRACIELA MARQUEZ  
Deputy Clerk

Copies mailed to:

KWASI A ASIEDU  
P.O. BOX 2006  
ARTESIA CA 90702

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Kwasi A. Asiedu, Esq. (SBN 133698)</b>  <b>Schwartz &amp; Asiedu, Lawyers</b>  <b>P. O. Box 2006, Artesia, CA 90702-2006</b></p> <p>TELEPHONE NO.: 310-792-3948 FAX NO. (Optional): 561-423-5969          E-MAIL ADDRESS (Optional): LASKIDO@HOTMAIL.COM          ATTORNEY FOR (Name): Rock Southward, Plaintiff.</p>	<p>FOR COURT USE ONLY</p> <p><b>FILED</b></p> <p><b>SAN MATEO COUNTY</b></p> <p>JUL 23 2012</p> <p>Clerk of the Superior Court          By           DEPUTY CLERK</p> <p>CASE NUMBER:          CIV 515176</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b>          STREET ADDRESS: 400 COUNTY CENTER          MAILING ADDRESS: 400 COUNTY CENTER          CITY AND ZIP CODE: REDWOOD CITY, CA 94063          BRANCH NAME: SOUTHERN BRANCH -- HALL OF JUSTICE</p>	
<p>PLAINTIFF/PETITIONER: ROCK SOUTHWARD          DEFENDANT/RESPONDENT: ZUCKERBERG, et al.</p>	
<p><b>NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL</b></p>	

PSCM  
9-11

TO (insert name of party being served): JAMES BASILE, ESQ. KIRKLAND & ELLIS, LLP

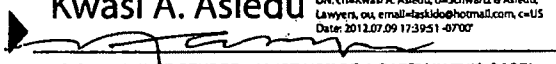
**NOTICE**

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 7-9-2012 (BY EMAIL)

KWASI A. ASIEDU, ESQ.  
 (TYPE OR PRINT NAME)

**Kwasi A. Asiedu**  
  
Digitally signed by Kwasi A. Asiedu  
 DN: cn=Kwasi A. Asiedu, o=Schwartz & Asiedu, Lawyers, ou, email=laskido@hotmail.com, c=US  
 Date: 2012.07.09 17:39:51 -0700  
 (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

**ACKNOWLEDGMENT OF RECEIPT**

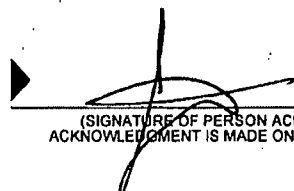
This acknowledges receipt of (to be completed by sender before mailing):

1.  A copy of the summons and of the complaint.
2.  Other (specify):
  3. Certificate Re Complex Case Designation;
  4. Civil Case Cover Sheet;
  5. Filed Case Package, (ADR, CMC, Notice of Case Management Conference; Civil Trial Mgmt Rules

(To be completed by recipient):

Date this form is signed: 7/12/12

JAMES FRANCIS BASILE, ESQ.  
 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
 ON WHOSE BEHALF THIS FORM IS SIGNED)

  
 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
 ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

RECEIVED  
JUL 23 2012  
CLERK OF THE SUPERIOR COURT  
SAN MATEO COUNTY