

# In re Facebook, Inc., IPO Securities and Derivative Litigation

**COURT:** U.S. District Court, Southern District of New York  
**CASE NUMBER:** 1:12-md-02389-RWS  
**JUDGE:** Hon. Robert W. Sweet  
**CLASS PERIOD:** 05/17/2012 - 05/21/2012  
**CASE CONTACTS:** Salvatore J. Graziano, John Rizio-Hamilton, Adam H. Wierzbowski, Jai K. Chandrasekhar

This Action is a securities class action filed on behalf of investors who purchased or otherwise acquired Facebook, Inc. ("Facebook" or the "Company") Class A common stock in or traceable to Facebook's initial public offering ("IPO") during the period from May 17, 2012 through May 21, 2012, inclusive, and were damaged thereby.

The case alleges claims pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 against Facebook, the underwriters of the IPO, and certain of Facebook's executive officers and directors.

## **Lead Plaintiffs Have Settled the Action for \$35 Million**

Lead Plaintiffs, Arkansas Teacher Retirement System ("Arkansas Teacher") and Fresno County Employees' Retirement Association ("Fresno") (collectively, "Lead Plaintiffs"), have reached a settlement of this action for \$35,000,000 in cash that resolves all claims in the action.

If you are a member of the Class and you did not previously request exclusion from the Class in connection with the Class Notice that was previously mailed in 2016, your rights will be affected by the Settlement and you may be eligible for a payment if the Settlement is approved. The Class consists of the following two "Subclasses":

- (i) All institutional investors that purchased or otherwise acquired Facebook Class A common stock in or traceable to the Company's IPO between May 17 and 21, 2012, inclusive, and were damaged thereby (the "Institutional Investor Subclass"); and
- (ii) All retail investors who purchased or otherwise acquired Facebook Class A common stock in or traceable to the Company's IPO between May 17 and 21, 2012, inclusive, and were damaged thereby (the "Retail Investor Subclass").

For the full definition of the Class, including persons and entities excluded from the Class, please read the [Settlement Notice](#).

Please read the [Settlement Notice](#) to fully understand your rights. Copies of the [Settlement Notice](#) and [Claim Form](#) can be found on the [Case Documents](#) page. You may also visit the Settlement website, [www.FacebookSecuritiesLitigation.com](http://www.FacebookSecuritiesLitigation.com), for more information about the Settlement.

The Court held a hearing on September 5, 2018 to consider whether the Settlement should be approved and related matters. On November 26, 2018, the Court entered an opinion granting Plaintiffs' motion for final approval of the Settlement and approval of the proposed Plan of Allocation and Lead Counsel's motion for attorneys' fees and expenses. The Court also entered a Judgment Approving Class Action Settlement, an Order Approving the Plan of Allocation of Net Settlement Fund and Order Awarding Attorneys' Fees and Expenses. On December 21, 2018, an individual Class Member who had objected to the approval of the Settlement filed an appeal from the Court's order approving the Settlement. That appeal has been fully briefed but is still pending in the U.S. Court of Appeals for the Second Circuit. Under the terms of the Settlement, the settlement funds cannot be distributed to Class Members until the appeal is fully resolved and the time for taking any further appeal has expired.

Payments to eligible claimants will be made only after any appeals are resolved, and after the completion of all claims processing. Please be patient, as this process will take some time to complete. As noted, above there is an appeal pending related to approval of the Settlement.

## **IMPORTANT DATES AND DEADLINES**

July 24, 2018                      The Court-ordered deadline for submission of Claim Forms was July 24, 2018.

## **Background**

Facebook operates the most popular social network in the world, with approximately one billion users worldwide. The number of users that access the Company's website each day is a critical metric for Facebook because it derives the vast majority of its revenue from businesses that use the Company's social network to advertise to its users. Significantly, Facebook earns less from advertisements shown to users accessing the Company's network on a mobile device than on a personal computer.

Until recently, Facebook operated as a private company and was exempt from the stringent disclosure requirements of the federal securities laws. In its quest to become a publicly-traded company and firmly establish a liquid market for its shares, Facebook hired Morgan Stanley, JPMorgan, Goldman Sachs and others to serve as Underwriters for the Company's IPO. On February 1, 2012, Facebook filed with the SEC a Form S-1 registration statement for the IPO that did not include any revenue or earnings guidance. The final offering documents for the IPO vaguely warned that the growth in use of Facebook through mobile devices may negatively affect the Company's financial results. On May 18, 2012, Facebook conducted its IPO and the underwriters sold to investors 421 million shares of Facebook stock at \$38 per share, for total proceeds of over \$16 billion—the largest IPO for a technology company in history.

The day after the IPO, on Saturday, May 19, 2012, *Reuters* revealed that Facebook committed a “rare and disruptive move” when it “altered its guidance for research earnings last week [before the IPO], during the road show.” According to reports, the revisions were prompted by concerns over Facebook's weaker profits for mobile applications, the fastest growing component of the Company's business. As a result, on May 21, 2012, Facebook plummeted \$4.20 per share, or 11, to close at \$34.03 per share. Then, on May 22, 2012, *Reuters* reported that analysts from three Facebook underwriters—Morgan Stanley, Goldman Sachs and JPMorgan Chase—had cut their estimates for Facebook in the midst of the Company's roadshow, but disclosed that fact only to a few select clients. In response, Facebook shares fell another \$3.03 per share, or 10%, to close at May 22, 2012 at \$31 per share—or \$7 below the IPO price.

On December 6, 2012, Judge Sweet appointed Arkansas Teacher and Fresno as Lead Plaintiffs, and approved their selection of BLB&G as Co-Lead Counsel for the Class.

At that time, the Court also appointed two additional entities -- North Carolina Department of State Treasurer on behalf of the North Carolina Retirement Systems (“North Carolina DST”) and Banyan Capital Master Fund Ltd – as Lead Plaintiffs, but those entities have since withdrawn as Lead Plaintiffs for the Action.

On February 28, 2013, Lead Plaintiffs, as well as named plaintiffs Jose G. Galvan and Mary Jane Lule Galvan (the “Galvans”), filed the Consolidated Class Action Complaint (the “Complaint”).

On April 30, 2013, Defendants moved to dismiss the Complaint. On December 12, 2013, the Court issued an Opinion and Order denying Defendants' motion to dismiss.

On January 10, 2014, Defendants moved to amend and certify the December 12, 2013 Order for interlocutory appeal, which the Court denied on March 13, 2014.

On May 9, 2014, Defendants answered the Complaint.

On December 23, 2014, North Carolina DST, Arkansas Teacher, Fresno, the Galvans, Eric Rand (“Rand”), Paul and Lynn Melton (the “Meltons”), and Sharon Morley (“Morley”) filed a motion for class certification. Following briefing and oral argument on the motion, the Court issued an Opinion in December 2015 certifying the Action to proceed as a class action, appointing North Carolina DST, Arkansas Teacher, Fresno, the Galvans, Rand, the Meltons, and Morley as Class Representatives, and appointing BLB&G and Labaton Sucharow as Class Counsel.

Notice concerning the pendency of the Action as a class action was mailed to potential members of the Class beginning in August 2016.

The Parties completed extensive fact and expert discovery in the Action, including conducting over 50 depositions and producing more than 1.5 million pages of documents in document discovery. Defendants’ motions for summary judgment, both Plaintiffs’ and Defendants’ motions to exclude the other side’s expert testimony, and Plaintiffs’ motion to bifurcate the trial were full briefed and pending before the Court at the time the Parties reached their agreement to Settlement. In addition, the Parties had engaged in substantial preparations for trial before the Settlement was reached.

On February 26, 2018, the Parties entered into the Stipulation and Agreement of Settlement. If approved by the Court, the Settlement will settle and release all claims asserted in the Action in return for a \$35 million cash payment.

On September 5, 2018, the Court held a hearing to consider whether the Settlement should be approved and related matters. On November 26, 2018, the Court approved the Settlement and Plan of Allocation and approved Lead Counsel’s motion for attorneys’ fees and expenses.

An individual Class member who frequently files non-meritorious objections to class-action settlements has appealed the Court’s order approving the settlement and filed his brief in June 2019. Plaintiffs’ and Defendants’ briefs on appeal in support of the settlement were filed in September 2019, and the objector’s reply brief was filed in October 2019. Oral argument on the appeal was heard on September 16, 2020, and one week later, the Second Circuit affirmed Judge Sweet’s approval of the settlement. The objector did not file a petition for rehearing by the Second Circuit or for review by the Supreme Court by the deadline for doing so. Accordingly, we expect the Second Circuit to issue its mandate in the coming days, after which we will move for approval of distribution of the settlement proceeds to Class members who filed valid claims.

If you wish to discuss this Action or have any questions concerning your rights or interests, please contact John Rizio-Hamilton (212-554-1505) at (800) 380-8496 or by email at [blbg@blbglaw.com](mailto:blbg@blbglaw.com).