

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BRIAN ROFFE PROFIT SHARING PLAN, JACOB
SALZMANN and DENNIS PALKON, Individually
and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED and BARCLAYS CAPITAL
INC.,

Defendants.

(Additional captions on following pages)

Case No. 1:12-cv-4081

Hon. Robert W. Sweet

ECF Case

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
THE MOTION OF THE INSTITUTIONAL INVESTOR GROUP FOR
APPOINTMENT AS LEAD PLAINTIFF, APPROVAL OF ITS SELECTION OF
CO-LEAD COUNSEL, AND CONSOLIDATION OF ALL RELATED ACTIONS**

MAREN TWINING, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC.; MARK ZUCKERBERG;
SHERYL K. SANDBERG; DAVID A.
EBERSMAN; MARC L. ANDREESSEN;
ERSKINE B. BOWLES; JAMES W. BREYER;
DONALD E. GRAHAM; REED HASTINGS;
PETER A. THIEL; MORGAN STANLEY & CO.
INC.; J.P. MORGAN SECURITIES LLC;
GOLDMAN, SACHS & CO.; MERRILL LYNCH,
PIERCE, FENNER & SMITH, INC.; BARCLAYS
CAPITAL INC.; ALLEN & COMPANY LLC;
CITIGROUP GLOBAL MARKETS INC.; CREDIT
SUISSE SECURITIES (USA) LLC; DEUTSCHE
BANK SECURITIES INC.; RBC CAPITAL
MARKETS, LLC; WELLS FARGO SECURITIES,
LLC; BLAYLOCK ROBERT VAN LLC; BMO
CAPITAL MARKETS CORP.; C.L. KING &
ASSOCIATES, INC.; CABRERA CAPITAL
MARKETS, LLC; CASTLEOAK SECURITIES,
L.P.; COWEN AND COMPANY, LLC; E*TRADE
SECURITIES LLC; ITAU BBA USA SECURITIES,
INC.; LAZARD CAPITAL MARKETS LLC;
LEBENTHAL & CO., LLC; LOOP CAPITAL
MARKETS LLC; M.R. BEAL & COMPANY; MAC
QUARIE CAPITAL (USA) INC.; MURIEL
SIEBERT & CO., INC.; OPPENHEIMER & CO.
INC.; PACIFIC CREST SECURITIES LLC; PIPER
JAFFRAY & CO.; RAYMOND JAMES &
ASSOCIATES, INC.; SAMUEL A. RAMIREZ &
COMPANY, INC.; STIFEL, NICOLAUS &
COMPANY, INC.; THE WILLIAMS CAPITAL
GROUP, L.P.; and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants.

Case No. 1:12-cv-4099

Hon. Robert W. Sweet

ECF Case

GOLDRICH COUSINS P.C. 401(k) Profit Sharing
Plan & Trust, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER THIEL, MORGAN
STANLEY & CO. LLC; J.P. MORGAN
SECURITIES LLC; and GOLDMAN SACHS &
CO.,

Defendants.

IRVING S. BRAUN, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No. 1:12-cv-4131

Hon. Robert W. Sweet

ECF Case

Case No. 1:12-cv-4150

Hon. Robert W. Sweet

ECF Case

ALEXIS ALEXANDER, As Custodian for CHLOE SOPHIE ALEXANDER and ROBERT HERPST, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG, DAVID A. EBERSMAN, DAVID M. SPILLANE, MARC L. ANDREESSEN, ERSKINE B. BOWLES, JAMES W. BREYER, DONALD E. GRAHAM, REED HASTINGS, PETER A. THIEL, MORGAN STANLEY & CO. LLC, J.P. MORGAN SECURITIES LLC, GOLDMAN, SACHS & CO., MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BARCLAYS CAPITAL INC.,

Defendants.

Case No. 1:12-cv-4157

Hon. Robert W. Sweet

ECF Case

DOUGLAS M. LIGHTMAN, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC., J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, BARCLAYS CAPITAL INC.,
ALLEN & COMPANY LLC, CITIGROUP
GLOBAL MARKETS INC., CREDIT SUISSE
SECURITIES (USA) LLC, DEUTSCHE BANK
SECURITIES, INC., RBC CAPITAL MARKETS,
LLC, BLAYLOCK ROBERT VAN LLC, BMO
CAPITAL MARKETS CORP., C.L. KING &
ASSOCIATES, INC., CABRERA CAPITAL
MARKETS, LLC, CASTLEOAK SECURITIES,
L.P., COWEN AND COMPANY, LLC., E*TRADE
SECURITIES LLC, ITAU BBA USA SECURITIES,
INC., LAZARD CAPITAL MARKETS LLC,
LEBENTHAL & CO., LLC, LOOP CAPITAL
MARKETS LLC, M.R. BEAL & COMPANY,
MACQUARIE CAPITAL (USA) INC., MURIEL
SIEBERT & CO., INC., OPPENHEIMER & CO.
INC., PACIFIC CREST SECURITIES LLC, PIPER
JAFFRAY & CO., RAYMOND JAMES &
ASSOCIATES, INC., SAMUEL A. RAMIREZ &
COMPANY, INC., STIFEL, NICOLAUS &
COMPANY, INCORPORATED, THE WILLIAMS
CAPITAL GROUP, L.P., and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants.

Case No. 1:12-cv-4184

Hon. Robert W. Sweet

ECF Case

KATHY REICHENBAUM, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MORGAN STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, AND GOLDMAN SACHS &
CO.,

Defendants.

LAWRENCE CORNECK, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

MORGAN STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, and GOLDMAN SACHS &
CO.,

Defendants.

Case No. 1:12-cv-4194

Hon. Robert W. Sweet

ECF Case

Case No. 1:12-cv-4215

Hon. Robert W. Sweet

ECF Case

JUSTIN F. LAZARD, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, BARCLAYS CAPITAL INC.,
ALLEN & COMPANY LLC, CITIGROUP
GLOBAL MARKETS, INC., CREDIT SUISSE
SECURITIES (USA) LLC, DEUTSCHE BANK
SECURITIES INC., RBC CAPITAL MARKETS,
LLC, WELLS FARGO SECURITIES, LLC,
BLAYLOCK ROBERT VAN LLC, BMO CAPITAL
MARKETS CORP., C.L. KING & ASSOCIATES,
INC., CABRERA CAPITAL MARKETS, LLC,
CASTLEOAK SECURITIES, L.P., COWEN AND
COMPANY, LLC, E*TRADE SECURITIES LLC,
ITAÚ BBA USA SECURITIES, INC., LAZARD
CAPITAL MARKETS LLC, LEBENTHAL & CO.,
LLC, LOOP CAPITAL MARKETS LLC, M.R.
BEAL & COMPANY, MACQUARIE CAPITAL
(USA) INC., MURIEL SIEBERT & CO., INC.,
OPPENHEIMER & CO., INC., PACIFIC CREST
SECURITIES LLC, PIPER JAFFRAY & CO.,
RAYMOND JAMES & ASSOCIATES, INC.,
SAMUEL A RAMIREZ & COMPANY, INC.,
STIFEL, NICOLAUS & COMPANY,
INCORPORATED, THE WILLIAMS CAPITAL
GROUP, L.P., and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants.

Case No. 1:12-cv-4252

Hon. Robert W. Sweet

ECF Case

SYLVIA GREGORCZYK, On Behalf of Herself and
All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No. 1:12-cv-4291

Hon. Robert W. Sweet

ECF Case

PETER BRINCKERHOFF, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, BARCLAYS CAPITAL INC.,
ALLEN & COMPANY LLC, CITIGROUP
GLOBAL MARKETS, INC., CREDIT SUISSE
SECURITIES (USA) LLC, DEUTSCHE BANK
SECURITIES INC., RBC CAPITAL MARKETS,
LLC, BLAYLOCK ROBERT VAN LLC, BMO
CAPITAL MARKETS CORP., C.L. KING &
ASSOCIATES, INC., CABRERA CAPITAL
MARKETS, LLC, CASTLEOAK SECURITIES,
L.P., COWEN AND COMPANY, LLC, E*TRADE
SECURITIES LLC, ITAÚ BBA USA SECURITIES,
INC., LAZARD CAPITAL MARKETS LLC,
LEBENTHAL & CO., LLC, LOOP CAPITAL
MARKETS LLC, M.R. BEAL & COMPANY,
MACQUARIE CAPITAL (USA) INC., MURIEL
SIEBERT & CO., INC., OPPENHEIMER & CO.,
INC., PACIFIC CREST SECURITIES LLC, PIPER
JAFFRAY & CO., RAYMOND JAMES &
ASSOCIATES, INC., SAMUEL A RAMIREZ &
COMPANY, INC., STIFEL, NICOLAUS &
COMPANY, INCORPORATED, THE WILLIAMS
CAPITAL GROUP, L.P., and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants.

Case No. 1:12-cv-4291

Hon. Robert W. Sweet

ECF Case

DAVID GOLDBERG, KEVIN HYMS, and
GARRETT GARRISON, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

RICHARD P. EANNARINO, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC., J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH,
INC., and BARCLAYS CAPITAL INC.,

Defendants.

Case No. 1:12-cv-4332

Hon. Robert W. Sweet

ECF Case

Case No. 1:12-cv-4360

Hon. Robert W. Sweet

ECF Case

PETER MAMULA, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL, MORGAN
STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, GOLDMAN, SACHS & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED, and BARCLAYS CAPITAL
INC.,

Defendants.

ELLIOT LEITNER, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,
DAVID A. EBERSMAN, DAVID M. SPILLANE,
MARC L. ANDREESSEN, ERSKINE B. BOWLES,
JAMES W. BREYER, DONALD E. GRAHAM,
REED HASTINGS, PETER A. THIEL,

Defendants.

Case No. 1:12-cv-4362

Hon. Robert W. Sweet

ECF Case

Case No. 1:12-cv-4551

Hon. Robert W. Sweet

ECF Case

HOWARD SAVITT, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC.; MARK ZUCKERBERG;
DAVID A. EBERSMAN; SHERYL K.
SANDBERG; DAVID M. SPILLANE; MARC L.
ANDREESEN; ERSKINE B. BOWLES; DONALD
E. GRAHAM; REED HASTINGS; PETER A.
THIEL; MORGAN STANLEY & CO. LLC; JP
MORGAN SECURITIES LLC; GOLDMAN,
SACHS & CO.; MERRILL LYNCH, PIERCE,
FENNER & SMITH INC.; BARCLAYS CAPITAL
INC.; ALLEN & COMPANY LLC, CITIGROUP
GLOBAL MARKETS INC.; CREDIT SUISSE
SECURITIES (USA) LLC, DEUTSCHE BANK
SECURITIES INC.; RBC CAPITAL MARKETS,
LLC; WELLS FARGO SECURITIES, LLC;
BLAYLOCK ROBERT VAN LLC; BMO CAPITAL
MARKETS CORP.; C.L. KING & ASSOCIATES,
INC.; CABRERA CAPITAL MARKETS, LLC;
CASTLEOAK SECURITIES, L.P.; COWEN AND
COMPANY, LLC.; E*TRADE SECURITIES LLC,
ITAÚ BBA USA SECURITIES, INC.; LAZARD
CAPITAL MARKETS LLC; LEBENTHAL & CO.,
LLC; LOOP CAPITAL MARKETS LLC; M.R.
BEAL & COMPANY; MACQUARIE CAPITAL
(USA) INC.; MURIEL SIEBERT & CO., INC.;
OPPENHEIMER & CO. INC.; PACIFIC CREST
SECURITIES LLC; PIPER JAFFRAY & CO.;
RAYMOND JAMES & ASSOCIATES, INC.;
SAMUEL A. RAMIREZ & COMPANY, INC.;
STIFEL, NICOLAUS & COMPANY,
INCORPORATED; THE WILLIAMS CAPITAL
GROUP, L.P.; and WILLIAM BLAIR &
COMPANY, L.L.C.,

Defendants.

Case No. 1:12-cv-4648

Hon. Robert W. Sweet

ECF Case

EUGENE STRICKER, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

MORGAN STANLEY & CO. LLC, J.P. MORGAN
SECURITIES LLC, and GOLDMAN SACHS &
CO.,

Defendants.

Case No. 1:12-cv-4763

Hon. Robert W. Sweet

ECF Case

STEVE SEXTON and KEITH WISE, Individually
and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No. 1:12-cv-4777

Hon. Robert W. Sweet

ECF Case

ROBERT L. LOOMIS and MARJORIE A. LOOMIS
and STUART E. LARSEN, On Behalf of
Themselves and All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No. 1:12-cv-5511

Hon. Robert W. Sweet

ECF Case

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STATUTES, RULES & REGULATIONS

15 U.S.C. § 78(t)-13

Federal Rules of Civil Procedure
Rule 23 *passim*

The Institutional Investor Group respectfully submits this reply memorandum of law in further support of its motion to: (1) appoint the Institutional Investor Group as Lead Plaintiff; (2) approve the Group's selection of Labaton Sucharow and Bernstein Litowitz as Co-Lead Counsel for the Class; and (3) consolidate all related actions.¹

PRELIMINARY STATEMENT

The Institutional Investor Group, with a loss of almost \$7.2 million, has by far the largest financial interest in this action. No movant contests this fact.² Rather, one movant, the Eiffel Tower Funds, recognizing the inferiority of its financial interest, resorts to hypotheticals and innuendo to manufacture a purported conflict that it claims precludes North Carolina Treasurer Janet Cowell ("Treasurer Cowell") and the North Carolina Department of State Treasurer ("North Carolina DST") from serving as Lead Plaintiff.

The Eiffel Tower Funds' unsubstantiated contentions do not meet the exacting "proof" standard required under the PSLRA to rebut the presumption that the Institutional Investor Group is the "most adequate plaintiff." Further, such speculation is fully refuted by Treasurer Cowell's Declaration, submitted with this brief. By bringing this motion to lead this case—a motion that was the product of significant due diligence and collaboration among the members of the Institutional Investor Group as detailed in the Joint Declaration, submitted with the Group's opening brief—North Carolina DST and the other members of the Institutional Investor Group have made clear that they are trusted fiduciaries who will vigorously prosecute this Action against all defendants. Treasurer Cowell's Declaration further demonstrates that North Carolina

¹ Capitalized terms are defined in the Institutional Investor Group's opening memorandum (ECF No. 41) and opposition memorandum ("Institutional Investor Group Opp.") (ECF No. 66). References to "Treasurer Cowell's Declaration" are to the Declaration of Janet Cowell In Further Support of the Motion of the Institutional Investor Group for Appointment as Lead Plaintiff, Approval of its Selection of Co-Lead Counsel, and Consolidation of all Related Actions, filed as Exhibit A to the Reply Declaration of Gerald H. Silk (the "Reply Declaration"). References to "ETF Opposition" are to the Eiffel Tower Funds' opposition memorandum (ECF No. 67).

² On August 15, 2012, Spatz & Israni filed a Notice of Withdrawal, "recogniz[ing] that other movants have much larger combined losses" for purposes of being evaluated as candidates for Lead Plaintiff. (ECF No. 72).

DST will pursue all available remedies against all culpable parties and that there exist no personal or political ties or conflicts that would stand in the way of that singular goal.

Recognizing that such unsubstantiated and generic conflict arguments like those raised by the Eiffel Tower Funds here would serve no other purpose than to undermine the ultimate goal of the PSLRA, numerous District Courts and several Circuit Courts have rejected such challenges out of hand. This Court should do likewise. *See Point A, infra.*

The Eiffel Tower Funds' separate attack on Banyan is also flawed and irrelevant. Banyan is a fully adequate and typical class representative that, like all members of the Class, was injured through its purchases of Facebook stock traceable to the Facebook IPO. The Eiffel Tower Funds' contention that the timing of Banyan's purchases suggests it could not have "relied" on Facebook's false statements is wrong on the law and the facts: reliance is not an element of the Securities Act claims at issue in this Action, and there is nothing suspect in the timing of Banyan's purchases. *See Point B, infra.*

The speculation concerning the Institutional Investor Group's ability to represent all members of the Class raised by Anhood & Galvan (a group that recently disbanded)³ and Pond, all of whom are individuals with relatively small losses, is similarly meritless. All investors who purchased stock pursuant to the Facebook IPO are identically situated, and there is no need to appoint individual investors together with the Group to ensure that the claims of individual investors are prosecuted. Such a forced marriage would be contrary to the PSLRA, and would diffuse the Class and only create artificial distinctions among Class members that would undoubtedly be exploited by defendants. *See Point C, infra.*

³ On August 20, 2012, counsel for the Institutional Investor Group wrote a letter to counsel for Anhood & Galvan stating that, according to public records, a William H. Anhood had pleaded guilty in 1990 to eight counts of mail fraud. *See* Letter from Michael W. Stocker to Marc I. Gross and Joy A. Kruse (Aug. 20, 2012) (Reply Decl. Ex. B). In a response the same day, counsel for Anhood reported that they "do not have a definite answer regarding the identification" of Anhood. *See* E-mail from Patrick V. Dahlstrom to Michael W. Stocker (Aug. 20, 2012) (Reply Decl. Ex. C). Anhood also withdrew his motion that day. *See* ECF No. 73. As further set forth below, these circumstances highlight grave concerns regarding the diligence exercised by the Galvans, who continue to seek appointment as lead plaintiff despite Anhood's withdrawal.

The sources for these speculative and unsubstantiated challenges against the Institutional Investor Group further undermine their credibility. The Eiffel Tower Funds and the Galvans have failed to provide even the most basic information about themselves that would satisfy the preliminary showing required under Rule 23 to be appointed Lead Plaintiff, let alone to justify the attack made by one of them on a public official such as the North Carolina Treasurer. The Eiffel Tower Funds, in particular, remains a complete mystery—the Court has no information about the nature or operations of these three corporate entities, or about the individuals who are responsible for these entities and seek to make litigation decisions affecting thousands of Facebook investors. The few individuals associated with these entities whose names are known raise significant concerns and include, with regard to Eiffel Tower Ventures, LLC, an individual with a criminal conviction and attorney disciplinary record stemming from tax fraud, and an “attorney” who appears to be unlicensed to practice law. *See* Point D, *infra*. Indeed, when confronted with Anhood’s apparent criminal record, Anhood withdrew, yet the Galvans persist in their motion without explaining why they moved as a group in the first place.

In stark contrast, the Institutional Investor Group—comprised of highly sophisticated institutions represented by public officials with a clear understanding of their fiduciary duty—have documented their discussions that led to the formation of the Group and their shared objectives for prosecuting the Action. Accordingly, the Court should appoint the Institutional Investor Group as Lead Plaintiff, approve its selection of counsel, consolidate all related actions, and reject all competing motions.⁴

I. ARGUMENT

Because the Institutional Investor Group has the largest financial interest in this litigation, the opposing movants bear the burden of *proving* that the Group is unable to meet Rule 23’s

⁴ Corneck & Stricker incorrectly claims that its motion is “unopposed” because opposition memoranda were not filed on the dockets for their suits. Corneck & Stricker lacks the largest financial interest, and cannot use its improperly pleaded Exchange Act claims (which lack predicate claims under Section 10(b)) as an expedient to avoid consolidation with the other related actions. *See* Institutional Inv. Group Opp. at 12-13; *see also* 15 USC § 78(t)-1.

prerequisites. *See Sofran v. LaBranche & Co., Inc.*, 220 F.R.D. 398, 403-04 (S.D.N.Y. 2004) (emphasizing that the PSLRA requires proof, and not mere speculation, to rebut the presumption that the movant with the largest losses should be appointed lead plaintiff). The opposing movants cannot meet this burden. Moreover, the real and serious concerns about their own adequacy require that their motions be denied.

A. North Carolina DST Suffers No Conflict

To demonstrate that North Carolina DST suffers from conflicts that make it an inadequate lead plaintiff, the opposing movants must offer *proof*, not mere speculation. *See Foley v. Transocean Ltd.*, 272 F.R.D. 126, 133 (S.D.N.Y. 2011) (“[T]he conflict of interest must be shown, not merely speculated, in order to rebut the presumption of the most adequate lead plaintiff.”). Here, the Eiffel Tower Funds contends that purportedly “extensive entanglements” exist between DST officials, Facebook director Erskine Bowles (“Bowles”), his wife, an investment advisor founded by Bowles in 1996, and entities connected to three of Facebook’s underwriters. ETF Opp. at 2-4, 7-9. The purported relationships between these entities do not give rise to any conflict of interest, let alone constitute the “proof” needed to rebut the PSLRA presumption.

Indeed, the mere fact that North Carolina DST seeks appointment as lead plaintiff in the Action—which names Bowles as well as the underwriters of the IPO as defendants—demonstrates that there is no conflict of interest springing from any relationship with Bowles or any of the underwriter defendants. *See Teran v. Subaye, Inc.*, No. 11 Civ. 2614(NRB), 2011 WL 4357362, at *8 (S.D.N.Y. Sept. 16, 2011) (finding presumptive lead plaintiff’s motion for appointment and declared intent to vigorously prosecute action sufficient to dispense with “baseless conjecture” about conflicts of interest based on business relationships); *Foley*, 272 F.R.D. at 133 (finding opposition to lead plaintiff appointment “belied by [presumptive lead

plaintiff's] role in this lawsuit, its motion to be named lead plaintiff, and its sworn certification that it will adequately and aggressively lead the class"). As reflected in Treasurer Cowell's Declaration, Treasurer Cowell knew that Bowles sat on the Board of Facebook and *still* authorized North Carolina DST to proceed as part of the Institutional Investor Group.⁵ See Treasurer Cowell's Decl. ¶ 6.

Treasurer Cowell's Declaration eliminates any argument about North Carolina DST's commitment to vigorously pursue every party that is culpable for the losses suffered by the Class. That Declaration makes clear North Carolina DST's "intent [to] zealously prosecut[e] this action against all viable defendants—[Bowles], [Facebook], Morgan Stanley, Credit Suisse, and JPMorgan Chase & Co., as well as the subsidiaries of those investment banks that underwrote Facebook stock."⁶ Treasurer Cowell's Decl. ¶ 5; see also *In re Elec. Data Sys. Corp. Sec. Litig.*, 226 F.R.D. 559, 570 (E.D. Tex. 2005) (finding at class certification stage that relationship between state pension fund and auditor defendant did not give rise to conflict in part because fund affirmed that "it [wa]s willing to sue all viable defendants, even [the auditor defendant], if the facts le[d] there"), *aff'd sub nom. Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125 (5th Cir. 2005) (holding that business relationship with potential defendant is no threat to adequacy when plaintiff exhibits willingness to pursue all viable defendants).

Similarly, the relationship between North Carolina DST and Carousel Capital does not give rise to a conflict of interest. Carousel Capital is one of the more than 200 investment advisors that managed investments for the North Carolina Retirement Systems as of June 30,

⁵ Even if Treasurer Cowell had a close relationship with Bowles, that would not warrant disqualification of North Carolina DST. See *AI Credit Co. v. RAIT Fin. Trust*, No. 2:07 cv-03148-LDD, slip op. at 7 (E.D. Pa. Oct. 25, 2007) (rejecting argument that "close affiliation" of movant with individual defendant, and interests of movant in an entity with ties to those defendants, raised a conflict of interest sufficient to rebut the lead plaintiff presumption, finding the interests not substantial enough to support disqualification), Reply Decl. Ex. D.

⁶ The North Carolina Attorney General fully supports the motion of North Carolina DST; moreover, the Office of the Attorney General has assisted in the briefing of this motion. Thus, the circumstances present here are wholly distinguishable from those that led the court to deny North Carolina DST's motion for lead plaintiff in *Kuriakose v. Federal Home Loan Mortgage Co.*, No. 1:08-cv-7281 (JFK), 2008 WL 4974839, at *5 (S.D.N.Y. Nov. 24, 2008).

2011. Treasurer Cowell has affirmed that Carousel Capital did not purchase the North Carolina Retirement Systems' positions in Facebook stock or have any role in the decision of the North Carolina Retirement Systems to purchase Facebook stock. *See* Treasurer Cowell's Decl. ¶ 7. The North Carolina Retirement Systems purchased Facebook stock through investment advisors' discretionary accounts. *See id.*⁷

B. Banyan Meets the Standards of Rule 23

The Eiffel Tower Funds speculates that Banyan's trading subjects it to defenses relating to its reliance on the Offering Documents. This argument misconstrues the law and the facts.

Reliance is not an element "of § 11 or § 12(a)(2) claims." *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 120 (2d Cir. 2012). The Eiffel Tower Funds' argument requires the Court to import the jurisprudence of the Exchange Act—which requires allegations of reliance to state a fraud claim under Section 10(b)—to challenge Banyan's adequacy to bring Securities Act claims. There is no basis to do so. *See Panther Partners*, 681 F.3d at 120.⁸

The argument is also wrong on the facts: Banyan purchased 620,388 shares of Facebook (43.8% of its total purchases) on May 21, 2012—*before* any complaint was filed against Facebook and *before* the May 22, 2012 *Reuters* report that the Lead Underwriters had cut their

⁷ The cases cited by the Eiffel Tower Funds for the proposition that conflicts of interest bar lead plaintiff appointment are inapposite. *See, e.g., Epifano v. Boardroom Bus. Prods., Inc.*, 130 F.R.D. 295, 300 (S.D.N.Y. 1990) (denying class certification motion of representative against whom class might have claims because she was: (1) married to the sole owner of broker-dealer that was a member of the selling group of broker-dealers in the subject company's public offering, (2) employed by that broker-dealer; and (3) advised by her husband to purchase the stock at issue); *In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427, 455-56 (S.D. Tex. 2002) (denying lead plaintiff appointment to a fund that purchased stock on advice of investment advisor that was being investigated by the fund's State for its role in using the fund's assets while in possession of non-public information because such insider knowledge could be imputed to the fund, eliminating its ability to claim damage attributable to fraud).

⁸ In any case, purchasing after a partial disclosure would not render a movant atypical even under the Exchange Act. *See In re K-V Pharms. Co. Sec. Litig.*, No. 11CV01816 AGF, 2012 WL 1570118, at *6 (E.D. Mo. May 3, 2012) ("[C]ourts have consistently rejected the argument that post-disclosure purchases preclude a proposed class representative from meeting Rule 23(a) requirements"); *see also In re Pfizer Inc. Sec. Litig.*, No. 04 Civ. 9866(LTS)(HBP), 2012 WL 1059671, at *7 (S.D.N.Y. Mar. 29, 2012) (finding that post-disclosure purchases did not preclude class certification); *In re Connetics Corp. Sec. Litig.*, 257 F.R.D. 572, 577 (N.D. Cal. 2009) (noting that "weight of authority" rejects barring representative purchasing after a partial disclosure); *Goldstein v. Puda Coal, Inc.*, 827 F. Supp. 2d 348, 352 (S.D.N.Y. 2011) (appointing plaintiff purchasing shares after publication of a report describing defendant as an "empty shell"); *Dietrich v. Bauer*, 192 F.R.D. 119, 125 & n.1 (S.D.N.Y. 2000) (Sweet, J.) (finding typically met despite purchases after "wide dissemination of negative publicity").

forecasts of Facebook’s earnings in the middle of the IPO roadshow, cited in the complaints filed by counsel for the Eiffel Tower Funds. *See Brian Roffe Profit Sharing Plan v. Facebook, Inc.*, No. 12-cv-4081, ECF No. 1, ¶ 26 (S.D.N.Y. filed May 23, 2012); *Mamula v. Facebook, Inc.*, No. 12-cv-4362, ECF No. 1, ¶ 26 (S.D.N.Y. filed June 4, 2012). This purchase also took place before any complaint was filed against Facebook. Accordingly, even if the Court were to consider accepting the Eiffel Tower Funds’ argument that shares purchased following publication of the May 22 *Reuters* story do not give rise to Securities Act claims, Banyan’s claim survives. In any event, there is no reason for the Court to reach any conclusion about the impact of the May 22 report at this early stage.⁹ *See Dietrich*, 192 F.R.D. at 125 (holding typicality met where lead plaintiff’s “claims of fraud arise out of the same . . . schemes as the rest of the putative class, and are premised upon the same legal basis”); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG)(RER), 2008 WL 820015, at *3 (E.D.N.Y. Mar. 25, 2008) (noting that “many members of the class” purchased after purported partial corrective disclosure).¹⁰

C. There Is No Need for a Co-Lead Plaintiff or Retail Investor Sub-Class

The Galvans (now, without Anhood) and Pond present no valid basis or evidence justifying the appointment of a co-lead plaintiff with the Institutional Investor Group. *See In re Surebeam Corp. Sec. Litig.*, No. 03 CV 1721JM (POR), 2004 WL 5159061, at *10 (S.D. Cal. Jan. 5, 2004) (rejecting arguments in favor of niche lead plaintiffs due to lack of proof of conflict of interest, and noting that “the court may not rely on speculation[] about possible future

⁹ It would be premature at this stage of the litigation to rule on which disclosures revealed the alleged misrepresentations. As the Institutional Investor Group noted in its Opening Memorandum, it may be possible to assert greater losses and damages to shareholders based on the performance of Facebook stock and/or adverse revelations that occurred subsequent to the date of the first-filed complaint. *See* Opening Mem. at 8, n.8.

¹⁰ The Eiffel Tower Funds’ argument that Banyan is atypical because of its purported trading strategy is simply wrong. The Eiffel Tower Funds cites the trading strategy of Banyan Capital Partners, LLC, which is not the movant here and had no relationship whatsoever to Banyan’s investment in Facebook. In any case, the strategies cited by the Eiffel Tower Funds would not render a movant atypical. *See Rosen v. Textron, Inc.*, 369 F. Supp. 2d 204, 212 (D.R.I. 2005) (investing based on belief that a “stock was undervalued” does not subject movant to a unique defense); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. LaBranche & Co., Inc.*, 229 F.R.D. 395, 415 (S.D.N.Y. 2004) (Sweet, J.) (rejecting arguments against day-trader). The decisions cited by the Eiffel Tower Funds are distinguishable because the movants in those cases engaged in day-trading or short-selling—which Banyan did not engage in.

conflicts.”) (citation omitted).¹¹ In fact, the Galvans’ former co-movant’s counsel filed a complaint on behalf of all persons who purchased Facebook stock pursuant or traceable to the IPO without distinguishing between retail and institutional investors, and acknowledged that “[c]ommon questions of law and fact exist as to all members of the Class.” *Lightman v. Facebook Inc.*, No. 12-cv-4184, ECF No. 1, ¶¶ 75, 79 (S.D.N.Y. filed May 25, 2012).

Joining two unrelated movants, as the Galvans and Pond request, would serve to “end-run . . . the PSLRA’s ‘largest financial interest standard.’” *Glauser v. EVCI Ctr. Colls. Holding Corp.*, 236 F.R.D. 184, 190 (S.D.N.Y. 2006). There is also no need to fracture the leadership of this case in this way. The Institutional Investor Group seeks to represent a class of purchasers of Facebook stock who have aligned and non-competing claims. Like all Class members, the Institutional Investor Group was harmed by the same false statements in the Offering Documents as the rest of the Class. The typicality requirement is satisfied because the Institutional Investor Group’s claims arise from the same event or course of conduct, and it has the same incentive to litigate the claims of the Class as the competing movants.¹² *See Feyko v. Yuhe Int’l Inc.*, No. CV 11-05511 DDP (PJWx), 2012 WL 682882, at *3 n. 4 (C.D. Cal. Mar. 2, 2012) (rejecting challenge to presumptive lead plaintiff because opposing movant failed to submit “concrete evidence” that the presumptive lead plaintiff was “exposed to non-public information rendering [it] vulnerable to unique defenses not applicable to the class in general”).

Moreover, at this context and stage of the litigation, designation of a sub-class or appointment of a co-lead plaintiff would unnecessarily complicate the litigation to the disadvantage of the Class. *See Weinberg*, 216 F.R.D. at 254 (“[A]t this stage only one Lead

¹¹ Even if the Court were inclined to consider these individuals’ arguments in favor of a sub-class, the Court need not do so until a more advanced stage of the litigation. *See Weinberg v. Atlas Air Worldwide Holdings, Inc.*, 216 F.R.D. 248, 254 (S.D.N.Y. 2003) (“[S]ubclasses or separate representatives may be appointed, if necessary, as the litigation proceeds.”).

¹² *See Koenig v. Benson*, 117 F.R.D. 330, 335 (E.D.N.Y. 1987) (“The proper inquiry [for typicality] is whether other members of the class have the same or similar injury, whether the action is based on conduct not special or unique to the named plaintiffs, and whether all members have been injured by the same course of conduct.”).

Plaintiff is necessary. Designating multiple Lead Plaintiffs . . . would fracture the litigation and ‘obstruct any efficient and controlled progress.’”) (citing *In re Enron*, 206 F.R.D. at 451). The Galvans’ reliance on the Court’s appointment of individual investors as co-lead plaintiffs in prior cases is unfounded. In *Freudenberg v. E*Trade Financial Corp.*, No. 07 Civ. 8538, 2008 WL 2876373, at *7-8 (S.D.N.Y. July 16, 2008), the Court appointed as co-lead plaintiff an individual, who purchased a distinct type of security from the presumptive lead plaintiff. In *Janbay v. Canadian Solar, Inc.*, 272 F.R.D. 112, 120-21 (S.D.N.Y. 2010), the Court appointed as co-lead plaintiff the individual movant who incurred the largest individual loss where that movant had raised Article III standing concerns about members of the presumptive lead plaintiff group. In neither of these cases did any of the groups with which an individual co-lead plaintiff was appointed consist of a public pension fund like the experienced fiduciaries that comprise the Institutional Investor Group.¹³

D. The Competing Motions Are Fatally Flawed

The Eiffel Tower Funds, though eager to attack respected public officials like Treasurer Cowell, refuses to disclose any information about its members or the individuals who make decisions on their behalf. As set forth in the Institutional Investor Group’s opposition brief, there is virtually no public information about these entities or the individuals associated with them. Their counsel has refused to provide that information. *See* Letter from Gerald H. Silk to Samuel H. Rudman (Aug. 13, 2012) (Reply Decl. Ex. E); Letter from Samuel H. Rudman to Gerald H. Silk (Aug. 16, 2012) (Reply Decl. Ex. F). What little is publicly known raises serious concerns. For example, Andrew Tobin Mathis (“Mathis”), the sole manager of Eiffel Tower Ventures, LLC, pleaded guilty in May 2007 to a criminal misdemeanor for willful failure to file a tax return and was placed on probation for three years. *See United States v. Coons*, No. EDCR06-00092-

¹³ The other opinions cited by the Galvans and Pond counsel no different conclusion. *See, e.g., In re BP, PLC Sec. Litig.*, 758 F. Supp. 2d 428, 441 (S.D. Tex. 2010) (citing “stark difference between the two groups’ class periods and their two distinct theories of the case”); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 46 (S.D.N.Y. 1998) (citing concerns that the presumptive lead plaintiff intended to fund the action at its discretion).

OP (C.D. Cal. May 22, 2007) (Judgment & Probation/Commitment Order) ECF No. 34. Mathis was also reprimanded by the Washington State Bar for “commit[ting] a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” *See* Reply Decl. Ex. G. The Eiffel Tower Funds has refused to explain Mathis’ current role with Eiffel Tower Ventures, LLC. *See* Reply Decl. Ex. F. Similarly, the individual who signed Eiffel Tower’s Certification as “Ralph Romero, Esq.” is not listed as a licensed attorney on the LexisNexis or Martindale.com directories, and the Eiffel Tower Funds has refused to provide any information about his authority to execute that Certification.

Criminal convictions and ethical violations by some members of competing groups present serious questions about the ability of these groups to represent the Class.¹⁴ *See Shi v. Sina Corp.*, No. 05 Civ. 2154(NRB), 2005 WL 1561438, at *4 (S.D.N.Y. July 1, 2005) (“[h]onesty and trustworthiness are . . . relevant factors in determining an[] individual’s ability to serve as a class representative”) (citation omitted). The other members of the Eiffel Tower Funds have not provided enough information about themselves for the Court to even assess their adequacy.

CONCLUSION

For the foregoing reasons, the Institutional Investor Group respectfully requests that the Court: (1) appoint the Institutional Investor Group as Lead Plaintiff; (2) approve the Institutional Investor Group’s selection of Labaton Sucharow and Bernstein Litowitz as Co-Lead Counsel for the Class; (3) consolidate all related actions; and (4) deny all other motions.

Dated: August 20, 2012

Respectfully submitted,

By: /s/ Gerald H. Silk
Max W. Berger
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¹⁴ The willingness of the Galvans to partner with Anhood, an apparent convicted criminal, raises grave concerns about the due diligence they conducted before agreeing to move as a group, and fatally undermines their motion. *See Faris v. Longtop Fin. Techs. Ltd.*, No. 11 Civ. 3658 SAS, 2011 WL 4444176, at *8 (S.D.N.Y. Oct. 4, 2011) (“[T]he willingness of the other members of the . . . Group to seek lead plaintiff appointment with [movant subject to Ponzi scheme allegations] raises questions about the adequacy of the entire group.”).

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