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PHOEBE MICRO, INC., a California corporation

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

PHOEBE MICRO, INC., a California corporation, Individually, and on behalf of all others similarly situated,

Plaintiff,

v.

FRY'S ELECTRONICS, INC., a California corporation,

Defendant.

Case No.: C13-2337-YGR

CLASS ACTION

Honorable Yvonne G. Rogers

NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. P. 41(a)(1) AND ORDER

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiff Phoebe Micro, Inc. ("Phoebe"), through its counsel of record, hereby voluntarily dismisses the action, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Defendant Fry's Electronics, Inc. ("Fry's") has not filed an answer or a motion for summary judgment and this purported class action does not involve a certified class. Thus, dismissal does not require a Court order.

Phoebe filed its complaint against Fry's on May 22, 2013. Phoebe has not filed any motion seeking certification of a class. Phoebe and its counsel have decided to voluntarily dismiss the claims of Phoebe without prejudice. Phoebe and its counsel have entered into no agreement with any defendant in connection with the voluntary dismissal. Neither Phoebe nor its counsel has received or will receive any consideration for dismissal.

Under Federal Rule of Civil Procedure 41(a)(1), Phoebe is entitled to dismiss this action on its own initiative:

> Subject to the provisions of Rule 23(e), 23,1(c), 23.2 an 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
>
> (i) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .

Fed. R. Civ. Proc. 41(a)(1).

Because the proposed class has not been certified under Rule 23, this voluntary dismissal is not subject to restriction under Rule 23(e) of the Federal Rules of Civil Procedure. See Fed. R. Civ. Proc. 23(e)(1)(A) ("The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval") (emphasis added).

No prejudice to absent putative class members will result from dismissal of the action because a class has not been certified, the dismissal will not affect their rights, and no absent putative class member will be bound by the voluntary dismissal of Phoebe's claims.

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Accordingly, Federal Rule of Civil Procedure 23(e)(1)(B) regarding notice is inapplicable to the instant dismissal as none of the absent putative class members would be bound:

> The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

Fed. R. Civ. Proc. 23(e)(1)(B); see also 2003 Advisory Committee Notes ("notice is not required when the settlement only binds the individual class representatives").

THEREFORE, Phoebe hereby dismisses the action without prejudice as to the individual claims of Phoebe.

Dated: July 12, 2013

METHOD LAW FIRM, A PROFESSIONAL CORPORATION

By: /s/ Nena W. Wong
NENA W. WONG
Attorneys for Plaintiff
PHOEBE MICRO, INC., a California corporation

Date: July 12, 2013

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Judge Yvonne Gonzalez Rogers