

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

E.K.D., by her next friend Melissa K.	)	
Dawes, and C.M.D., by his next friend	)	
Jennifer E. DeYong, individually and on	)	
behalf of all others similarly situated,	)	No: 3:11-cv-00461-GPM-SCW
	)	
Plaintiffs,	)	CLASS ACTION
	)	
v.	)	
	)	
FACEBOOK, INC.,	)	
	)	
Defendant.	)	

**DECLARATION OF MATTHEW D. BROWN IN SUPPORT OF  
MOTION TO STAY PROCEEDINGS PENDING  
RULING BY MDL PANEL ON MOTION TO TRANSFER**

I, Matthew D. Brown, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am admitted *pro hac vice* in the above-captioned matter before this Court. I am a partner with the law firm of Cooley LLP, attorneys for Defendant Facebook, Inc. (“Facebook”) in this action. I make this declaration in support of Facebook’s Motion to Stay Proceedings Pending Ruling by MDL Panel on Motion to Transfer. I have personal knowledge of the facts stated in this declaration, and if called upon to testify, could and would competently testify thereto.

2. On August 1, 2011 Facebook filed a motion before the Judicial Panel on Multidistrict Litigation (the “MDL Panel”) to transfer five actions to a single judge in the Northern District of California pursuant to 28 U.S.C. Section 1407 (the “MDL Motion”) (MDL No. 2288). The five actions were: (1) *Cohen v. Facebook, Inc.*, No. 10-cv-05282 (N.D. Cal.) (“*Cohen*”); (2) *Fraleley v. Facebook, Inc.*, No. 11-cv-01726 (N.D. Cal.) (“*Fraleley*”); (3) *Nastro v. Facebook, Inc.*, No. 11-cv-02128-FB-ALC (E.D.N.Y.) (“*Nastro*”); (4) *Dawes v. Facebook, Inc.*,

No. 11-cv-00461-GPM (S.D. Ill.) (“*Dawes*”); and (5) *Downey v. Facebook, Inc.*, No. 11-cv-03287 (N.D. Cal.) (“*Downey*”). Attached hereto as **Exhibit A** is a true and correct copy of Facebook’s brief filed in support of the MDL Motion. Attached hereto as **Exhibit B** is a true and correct copy of Facebook’s reply brief filed in support of the MDL Motion. On August 16, 2011, the Panel set Facebook’s MDL Motion for hearing on Tuesday, September 27, 2011 in Philadelphia, Pennsylvania.

3. The *Cohen* action was filed on November 22, 2010. On June 28, 2011, the court in *Cohen* granted Facebook’s motion to dismiss the initial Class Action Complaint without prejudice. On July 18, 2011, the *Cohen* plaintiffs amended their complaint. Briefing on Facebook’s motion to dismiss the First Amended Class Action Complaint was completed on September 1, 2011. Facebook’s motion was heard and taken under submission by the Court on September 15, 2011.

4. In the *Cohen* action, Facebook served initial and amended responses to plaintiffs’ first set of requests for production (76 requests) on May 19, 2011 and May 23, 2011, respectively. After the *Cohen* plaintiffs amended their first set of requests for production, on June 27, Facebook served responses to plaintiffs’ amended first set of requests for production (still 76 requests). On June 30, 2011, Facebook served initial responses to plaintiffs’ first set of interrogatories (13 interrogatories). On July 5, 2011, Facebook served initial responses to plaintiffs’ second set of requests for production (9 requests). Earlier this month, I had several telephone and email communications with counsel for the *Cohen* plaintiffs to meet and confer regarding Facebook’s responses to the *Cohen* discovery requests. Facebook agreed to provide by September 9, 2011—and did so provide—amended responses to the first set of interrogatories and second set of requests for production. Facebook also agreed to produce the first and second

tranches of responsive documents to the *Cohen* plaintiffs in September. Facebook also agreed to schedule depositions in October 2011 in response to the *Cohen* plaintiffs' notice of Rule 30(b)(6) "person most knowledgeable" deposition calling for testimony on 27 topics.

5. The *Fraleley* action was filed on March 11, 2011. On March 18, 2011, the *Fraleley* plaintiffs amended their complaint. Facebook filed a motion to dismiss on May 18, 2011. The *Fraleley* plaintiffs amended their complaint again on June 6, 2011. Briefing is now complete on Facebook's motion to dismiss the Second Amended Class Action Complaint, which is scheduled to be heard before Judge Koh on September 29, 2011.

6. The plaintiffs in *Fraleley* have served the following discovery: (1) five sets of Requests for Admission containing a total of 53 requests; (2) five sets of Requests for Production of Documents containing a total of 63 requests; (3) one set of Interrogatories containing 15 questions; and (4) five notices of Rule 30(b)(6) "person most knowledgeable" depositions calling for witnesses prepared to testify on Facebook's collective knowledge on 50 topics. After meeting and conferring with Facebook, Plaintiffs thereafter took the Rule 30(b)(6) depositions off calendar. On August 12, 2011, the plaintiffs re-noticed their Rule 30(b)(6) depositions, this time issuing six notices calling for "person most knowledgeable" depositions on 39 topics for September 2011. Depositions on most of these topics are scheduled to begin on September 20, 2011. Facebook has served responses to the *Fraleley* plaintiffs' requests for admission, requests for production, and interrogatories.

7. The *Dawes* action was filed in this Court on June 1, 2011. Neither party has served any discovery in this action.

8. The *Downey* action was filed on July 5, 2011. On August 19, 2011, the *Downey* plaintiffs voluntarily dismissed their complaint.

9. The *Nastro* action was filed on May 3, 2011. On August 4, 2011, the *Nastro* plaintiffs voluntarily dismissed their complaint.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this day, the 21st of September, 2011, in San Francisco, California.

/s/ Matthew D. Brown  
Matthew D. Brown (*admitted pro hac vice*)

## Certificate of Service

I hereby certify that on September 21, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notifications of such filings to the following:

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Dated: September 21, 2011

/s/ Matthew D. Brown  
Matthew D. Brown

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