

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stephen G. Grygiel (*admitted pro hac vice*)
**SILVERMAN THOMPSON
SLUTKIN WHITE LLC**
201 N. Charles Street, 26TH Floor
Baltimore, MD 21201
Tel.: (410) 385-2225
Fax: (410) 547-2432
sgrygiel@mdattorney.com

Frederic S. Fox (*admitted pro hac vice*)
David A. Straite (*admitted pro hac vice*)
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022
Tel.: (212) 687-1980
Fax: (212) 687-7714
dstraite@kaplanfox.com

Laurence D. King (206423)
Mario Choi (243409)
KAPLAN FOX & KILSHEIMER LLP
350 Sansome Street, 4th Floor
San Francisco, CA 94104
Tel.: (415) 772-4700
Fax: (415) 772-4707
lking@kaplanfox.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE: FACEBOOK, INC. INTERNET
TRACKING LITIGATION

No. 5:12-md-02314-EJD

**PLAINTIFFS' NOTICE OF RECENT
DECISION; REQUEST FOR LEAVE**

N.D. Cal. L.R. 7-3(d)

1 On January 14, 2016, Defendant Facebook, Inc. (“Facebook”) filed a Motion to Dismiss
2 Plaintiffs’ Second Amended Consolidated Class Action Complaint (“Motion”) [Dkt. 101]. On April
3 28, 2016, this Court heard argument on the Motion and took the matter under submission [Transcript,
4 Dkt. 123]. On May 27, 2016, subsequent to oral argument, a Court in this District issued an opinion
5 that bears directly on the Motion. *See In re: Anthem, Inc. Data Breach Litig.*, 15-md-2617-LHK-NC,
6 order granting in part and denying in part various motions to dismiss (N. D. Cal., May 27, 2016)
7 (*Anthem* ECF No. 524) (hereinafter “*Anthem I*”), slip opinion appended as Exhibit A.

8 **1. Loss of Value of Personally Identifiable Information (“PII”)**

9 On February 14, 2016, the *Anthem* Court granted in part and denied in part two earlier motions
10 to dismiss (“*Anthem I*”). The Court discussed whether “Loss of Value of PII” is damages for standing
11 purposes. Plaintiffs provided their view of this portion of *Anthem I* in the brief in opposition to the
12 Motion dated February 18, 2016 (“Opposition Brief”) on page 7. [ECF No. 104-4]. Defendant
13 Facebook responded to plaintiffs’ *Anthem I* discussion in the reply brief dated March 10, 2016 (“Reply
14 Brief”) on page 5, n.5. [ECF No. 109]. On May 27, 2016, in *Anthem II*, Judge Koh clarified the
15 meaning of “Loss of Value of PII.” *Anthem II*, slip op. at 25-27, 44-45, 77.

16 **2. Breach of Contract Under California Law**

17 Plaintiffs bring a claim for breach of contract. *See* Second Amended Complaint, Count VI
18 [ECF No. 93]. Plaintiffs provided their view on whether Facebook’s privacy policy is incorporated by
19 reference in the governing contract (the “Statement of Rights and Responsibilities” or “SRR”).
20 Opposition Brief at 31-32. Defendant responded in the Reply at 23. In *Anthem II*, Judge Koh discusses
21 California law governing the incorporation by reference of a privacy policy into to a contract. *Anthem*
22 *II*, slip op. at 15-22.

23 Plaintiffs seek leave to provide *Anthem II* as supplemental authority for the Court’s consideration
24 when deciding the Motion.

25
26 **[signatures on following page]**
27
28

1 Dated: June 3, 2016

Respectfully submitted,

2
3 **SILVERMAN, THOMPSON, SLUTKIN &**
4 **WHITE LLC**

KAPLAN, FOX & KILSHEIMER LLP

5 By: /s/ Stephen G. Grygiel
6 Stephen G. Grygiel (admitted *pro hac vice*)
7 201 N. Charles St., #2600
8 Baltimore, MD 21201
9 Telephone (410) 385-2225
10 Facsimile: (410) 547-2432
11 *sgrygiel@mdattorney.com*

12 *Interim Co-Lead Counsel*

By: /s/ David A. Straite
Frederic S. Fox (admitted *pro hac vice*)
David A. Straite (admitted *pro hac vice*)
850 Third Avenue
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
dstraite@kaplanfox.com

Laurence D. King (206423)
Mario Choi (243409)
350 Sansome Street, 4th Floor
San Francisco, CA 94104
Tel.: (415) 772-4700
Fax: (415) 772-4707
lking@kaplanfox.com

Interim Co-Lead Counsel

