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**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 20, 2016, the Court granted permission to submit supplemental briefing related to
5 the Supreme Court decision *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) [ECF No. 126].
6 Supplemental *Spokeo* briefing concluded on June 10, 2016.

7 After the conclusion of briefing and oral argument, the United States Court of Appeals for the
8 Sixth Circuit issued an opinion addressing the “contemporaneity” aspect of the term “intercept” within
9 the meaning of the Wiretap Act, 18 U.S.C. § 2511. *See generally Luis v. Zang*, No. 14-3601, 2016 WL
10 4363151 (6th Cir., Aug. 16, 2016). The requirement of “contemporaneity” was addressed by the parties
11 in the briefing. *See* Motion at 12-13; Plaintiffs’ Brief in Opposition to Motion [ECF No. 104-3];
12 Defendant’s Reply in Further Support of Motion [ECF No. 109] at 6-7. “Contemporaneity” was also
13 discussed at the April 28, 2016 oral argument. *See* Transcript at 19-28, 48-52, 78-81, and 103-106.

14 A copy of *Luis v. Zang* is attached as Exhibit A. Plaintiffs respectfully seek leave to provide the
15 decision as supplemental authority for the Court’s consideration when deciding the Motion.

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17 **[signatures on following page]**
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1 Dated: October 4, 2016

Respectfully submitted,

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3 **KAPLAN, FOX & KILSHEIMER LLP**

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