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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 NEW AUTHORITY;  
REQUEST FOR LEAVE**

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

Next CMC: June 29, 2017, 1:00pm

PLAINTIFFS' NOTICE OF NEW AUTHORITY AND REQUEST FOR LEAVE  
No. 5:12-md-02314-EJD

1 Earlier today, May 16, 2017, the privacy regulators of five European countries issued a common  
2 statement regarding their respective investigations of the privacy implications of Facebook’s use of  
3 tracking cookies and the Like Button to, among other things, track Internet users without their consent.  
4 *See* Common Statement by the Contact Group of Data Protection Authorities of The Netherlands,  
5 France, Spain, Hamburg and Belgium (English Language Version) (May 16, 2016) (the “Common  
6 Statement”), attached as **Exhibit A**. Three regulators (in France, Belgium and the Netherlands) held  
7 today that Facebook’s practices are unlawful, and investigations by two others (in Germany, via the  
8 Hamburg DPA, and Spain) continue. Specifically:

9 1. **The Netherlands**: the Dutch Data Protection Authority (the “Autoriteit Persoonsgegevens”) has  
10 determined that Facebook “violates data protection law” because it uses sensitive  
11 personal information without user consent in order to show targeted advertisements.

12 Common Statement at 2. Simultaneously with the Common Statement, the Dutch DPA  
13 issued an English Language press release repeating the same conclusion. *See* Press Release,  
14 *Dutch Data Protection Authority: Facebook Violates Privacy Law* (May 16, 2017), attached  
15 as **Exhibit B**.

16 2. **France**: the French Commission Nationale de l’Informatique et des Libertes (the “CNIL”) today  
17 announced monetary sanctions against Facebook due, in part, to “unlawful tracking,  
18 via the *datr* cookie, of internet users.” Common Statement at 1. The French regulator  
19 specifically found that Facebook’s disclosures regarding data collection do not sufficiently  
20 make clear that users’ “personal data are systemically collected as soon as they navigate on a  
21 third-party website that includes a social plug-in.” *Id.* Simultaneously with the release of the  
22 Common Statement, the CNIL issued an English Language press release providing more  
23 detail of their investigation and the “public sanction.” Press Release, CNIL, *Facebook*  
24 *Sanctioned For Several Breaches of the French Data Protection Act* (May 16, 2017),  
25 attached as **Exhibit C**. Today’s announcement and sanction are an extension of the CNIL’s  
26 earlier decision regarding the *datr* cookie and unlawful tracking of Internet users. *See* CNIL  
27 Decision dated January 26, 2016, included as Exs. 4 & 5 to the Declaration of Stephen  
28

1 Grygiel (ECF Nos. 104-4 and 104-5); *see also* Plaintiffs’ Opposition to Facebook’s Motion  
2 to Dismiss at 25 (ECF No. 104) (discussing CNIL investigation and decision).

- 3 3. Belgium: the Belgian Privacy Commission issued new guidance to Facebook “about its  
4 tracking of users and non-users of Facebook through cookies, social plug-ins and pixels”  
5 following Facebook’s changes to its practices in 2015 and 2016 following an earlier decision  
6 of the Belgian Privacy Commission. Common Statement at 1; *see also* Second Amended  
7 Complaint at ¶¶ 154-160 (discussing the earlier Belgian decision referenced in the Common  
8 Statement). Although Facebook made some changes, the Privacy Commission found today  
9 that “Facebook continues to act in non-compliance with both Belgian and EU data protection  
10 law as regards the tracking of both users and non-users of Facebook through cookies, social  
11 plug-ins and pixels.” Common Statement at 1.

12 Plaintiffs do not argue that Dutch, French or Belgian law applies in this case. Rather, as pled in  
13 the Second Amended Complaint, argued in the Opposition to the Motion to Dismiss, and now  
14 emphasized by multiple privacy regulators, Facebook’s practice of tracking Internet users and  
15 aggregating personal data is globally condemned when it lacks consent. Tracking and aggregation of  
16 Internet browsing, without consent, is a breach of social norms and a grave invasion of privacy.  
17 Plaintiffs therefore respectfully seek leave to provide the Common Statement and the Dutch and French  
18 press releases as supplemental authority for the Court’s consideration when deciding the pending  
19 Motion to Dismiss. All three attached documents are provided publicly on the websites of the various  
20 regulators and are capable of verification.

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22 **[signatures on following page]**  
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1 Dated: May 16, 2017

Respectfully submitted,

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3 **KAPLAN, FOX & KILSHEIMER LLP**

**SILVERMAN, THOMPSON, SLUTKIN &  
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