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Paul R. Kiesel (SBN 119854)
kiesel@kiesel-law.com
KIESEL LAW LLP
8648 Wilshire Blvd.
Beverly Hills, CA 90211-2910
Telephone: (310) 854-4444
Facsimile: (310) 854-0812
Liaison Counsel

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

Case No.: 5:12-MD-02314-EJD

IN RE: FACEBOOK INTERNET
TRACKING LITIGATION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR ADMINISTRATIVE RELIEF
TO AMEND CONSOLIDATION ORDER**

Judge: The Honorable Edward J. Davila
Court Room: 4

1 NOTICE IS HEREBY GIVEN that pursuant to Civil Local Rule 7-11, Plaintiffs hereby
2 move this Honorable Court for an order modifying the April 3, 2012 Order Granting Plaintiffs'
3 Motion to Consolidate and Appoint Interim Class Counsel [ECF No. 19], as amended on June 26,
4 2013 [ECF No. 66]. In sum, the movants propose Steering Committee member David A. Straite
5 be appointed to the Executive Committee, taking the place of James P. Frickleton, who would
6 return to the Steering Committee.

7 In support of this motion, movants state as follows and submit accompanying declarations
8 of David Straite and Stephen Grygiel.

9 1. The Executive Committee currently consists of James Frickleton of Bartimus,
10 Frickleton, Robertson & Goza, P.C., and Stephen Grygiel of Silverman, Thompson, Slutkin &
11 White, P.C.

12 2. Full discovery in this case began last year on April 11, 2014, upon Magistrate
13 Judge Paul Grewal's approval of the stipulated protective order governing the exchange of
14 confidential information and trade secrets (the "Protective Order") [ECF No. 75].

15 3. David A. Straite of Kaplan Fox & Kilsheimer LLP ("Kaplan Fox") is a court-
16 appointed member of the plaintiff's Steering Committee and has been assisting with discovery at
17 the direction of the Executive Committee since April 11, 2014. Kaplan Fox is also hosting the
18 electronic database of documents exchanged in discovery.

19 4. The undersigned are mindful of the preference to privately order counsel to avoid
20 burdening the court with requests to approve minor adjustments of duties. *See, e.g.*, Manual for
21 Complex Litigation (Fourth) § 10.22 ("in some cases the attorneys coordinate their activities
22 without the court's assistance, and such efforts should be encouraged") (emphasis added). In this
23 case, however, discovery has reached a point that will require increased investment by plaintiffs'
24 counsel, and court approval of the private ordering will facilitate this process.

25 5. David Straite and other professionals at Kaplan Fox are already thoroughly familiar
26 with the case. Mr. Straite has been counsel for two of the four lead plaintiffs since the inception of
27 the case, and is currently serving on the Steering Committee. Over the past year, Mr. Straite has
28 signed all pleadings as the representative of the Steering Committee. Mr. Straite's background

1 and a profile of Kaplan Fox can be found in Exhibits A through C of the Declaration of David
2 Straite dated March 9, 2015 (“Straite Decl.”).

3 6. Stephen Grygiel is currently on the Executive Committee, and has joined the firm
4 of Silverman, Thompson, Slutkin & White LLC. Mr. Grygiel’s CV and a profile of Silverman
5 Thompson are Exhibits to the Declaration of Stephen Grygiel dated March 9, 2015.

6 7. On October 5, 2012, Mr. Straite and Mr. Grygiel jointly argued on behalf of
7 plaintiffs before Your Honor in opposition to defendant’s motion to dismiss. *See* Transcript of
8 Proceedings Before the Honorable Edward J. Davila [ECF No. 60]. Both attorneys are willing and
9 able to work together as co-lead counsel on behalf of the class, and court approval of the motion
10 is in the best interest of the class going forward.

11 8. The Protective Order already designates Mr. Straite as a contact for discovery
12 matters, see Section 7.4(a), and thus no amendment to the Protective Order is needed.

13 9. Counsel for Defendant Facebook was informed of the pendency of this motion via
14 email on March 5, 2015, and received no indication that Facebook would oppose today’s motion
15 *See* Straite Decl. ¶ 7.

16 For the foregoing reasons, this Honorable Court should grant this Motion.

17

18 Dated: March 10, 2015

19 **KIESEL LAW LLP**

20 By: /s/ Paul R. Kiesel
21 Paul R. Kiesel (SBN 119854)
22 *kiesel@kiesel-law.com*
23 8648 Wilshire Blvd.
24 Beverly Hills, CA 90211-2910
25 Telephone: (310) 854-4444
26 Facsimile: (310) 854-0812
27 *Liaison Counsel*

Respectfully Submitted,

**BARTIMUS, FRICKLETON, ROBERTSON
& GOZA, P.C.**

By: /s/ Jim Frickleton
James P. Frickleton
jimf@bflawfirm.com
11150 Overbrook Road, Suite 200
Leawood, KS 66211
Telephone: (913) 266-2300
Facsimile: (913) 266-2366

Plaintiffs’ Executive Committee

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**SILVERMAN, THOMPSON, SLUTKIN &
WHITE LLC**

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

Plaintiffs' Executive Committee

KAPLAN, FOX & KILSHEIMER LLP

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

