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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 IN RE: FACEBOOK INTERNET
13 TRACKING LITIGATION

No: 5:12-md-02314-EJD

14 _____
15 MICHAEL SINGLEY
16 Individually and on Behalf of All
17 Others Similarly Situated,

No: 5:12 –CV-00670-EJD

18 Plaintiffs,

19 v.

20 FACEBOOK, INC

21 DOES 1 THROUGH 10,

22 Defendants

23
24 **PLAINTIFF, MICHAEL SINGLEY'S MOTION FOR LEAVE TO (1) WITHDRAW AS**
25 **REPRESENTATIVE PLAINTIFF; (2) SUBSTITUTE JANE PEDDICORD**
26 **AS REPRESENTATIVE PLAINTIFF (3) AMEND CAPTION**
27 **AND (4) FILE AMENDED PLEADING**

28 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

1 Plaintiff, Michael Singley files this Motion (1) to withdraw as representative plaintiff; (2)
2 to substitute Jane Peddicord as representative plaintiff and (3) to amend caption.
3

4 INTRODUCTION

5 1. This class action arises out of improper and unlawful actions by the Defendants, who
6 participated in a scheme to intercept, endeavor to intercept, or procure the Plaintiff and the Class
7 members' personal information as prohibited by law.
8

9 2. Plaintiff, Michael Singley and the Class members are individuals who subscribe to the
10 online social media site Facebook, Inc. ("Facebook").

11 3. Plaintiff, Michael Singley filed the Original Class Action Complaint on October 5, 2011.

12 4. The Summons has been issued, but service on Defendant, Facebook, Inc. has not been
13 obtained.
14

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 Withdrawal of Michael Singley as Representative Plaintiff

17 5. In this pre-certification class action, class representative Michael Singley requests leave to
18 withdraw as the class representative because he does not believe that he can continue to serve in
19 that capacity.
20

21 6. Parties may be dropped or added by order of the court on motion of any party or of its
22 own initiative at any stage in the action and one such terms as are just leave to amend at this stage
23 in the proceedings "shall be freely given" in the absence of countervailing factors such as undue
24 delay, bad faith or dilatory motive, undue prejudice to the opposing party, or futility of the
25 amendment. *See* Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). The
26 substitution would not cause delay because service has not been completed and Defendant has not
27 yet answered in this cause.
28

1 7. Although Rule 21, and not Rule 15(a), normally governs the addition [and subtraction] of
2 new parties to an action, the same standard of liberality applies under either Rule. *FTD Corp. V.*
3 *Banker's Trust Co., 954 F. Supp. 106, 109 (S.D.N.Y. 1997)*. Leave to withdraw as a
4 representative plaintiff is customarily given in a class action when another representative plaintiff
5 is willing to substitute into the action. *See. E.g., Cook Inv. Co. v Harvey, 1975 WL 394*3, 20*
6 *Fed. R. Serv.2d 612), Fed. Sec. L. Rep. P 95, 203 (N.D. Ohio Apr 04, 1975)*. Insofar as no
7 countervailing factors exist and another representative plaintiff is willing to substitute into the
8 same action, this Court should grant leave for Michael Singley to withdraw.
9

10 **Substitution Jane Peddicord as Representative Plaintiff**

11 8. Plaintiffs' counsel hereby moves to substitute the representative plaintiff in this pre-
12 certification class action. The current representative plaintiff is Michael Singley. The proposed
13 representative plaintiff is Jane Peddicord.
14

15 9. Plaintiff's Counsel owe a fiduciary duty to the class and have a responsibility to seek an
16 appropriate substitute representative if the initial representative plaintiff sees to withdraw.
17 *Lowenschuss v. Bluhdorn, 78 F.R.D. 675 (S.D.N.Y. 1978)*. By all accounts, it appears that Jane
18 Peddicord would make an appropriate representative plaintiff.
19

20 10. Ms. Peddicord is an individual who resides in Austin, Texas. Upon information and
21 belief, Defendant intercepted, collected and stored personal information from her.
22

23 **Amend Caption**

24 11. Fed. R. Civ. P. 10(a) requires that the caption of the complaint include the names of all of
25 the parties to the action. Accordingly, if the motion to substitute plaintiff is granted, the caption
26 of this action should be amended to identify, JANE PEDDICORD, Individually and on behalf of
27
28

1 all others similarly situated,” as the plaintiff in compliance with Fed. R. Civ. P. 10 (a). Plaintiff
2 seeks leave to file an amended complaint with the new caption.

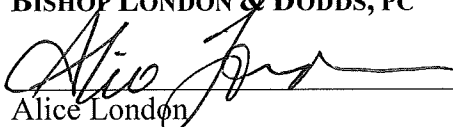
3 CONCLUSION

4 For all the forgoing reasons, Plaintiff Michael Singley respectfully requests that this Court
5 grant his motion for leave to (1) withdraw as representative plaintiff; (2) substitute Jane
6 Peddicord for Michael Singley as representative plaintiff; (3) to amend the caption; and (4) to file
7 an amended pleading with the revised caption accordingly and grant such other and further relief
8 as the Court deems just and proper.
9

10
11 Dated this 27 day of March, 2012.
12

13 Respectfully submitted,

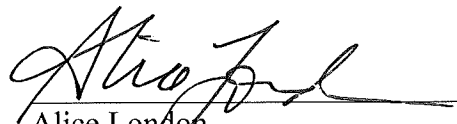
14 **BISHOP LONDON & DODDS, PC**

15 
16 Alice London
17 Texas State Bar No. 15292000
18 Daniel W. Bishop, II
19 State Bar No. 02348500

20 ATTORNEYS FOR PLAINTIFF, MICHAEL SINGLEY

21 **CERTIFICATE OF SERVICE**

22 The undersigned certifies that the foregoing document, together with the Proposed Order
23 granting Michael Singley’s Motion for Leave to (1) Withdraw as Representative Plaintiff; (2)
24 Substitute Jane Peddicord as Representative Plaintiff (3) Amend Caption and (4) File Amended
25 Pleading was served on all counsel who are deemed to have consented to electronic service in
26 each of the cases captioned Local Rule CV 5(a).

27 
28 Alice London