

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE CLASS 8 TRANSMISSION INDIRECT)
PURCHASER ANTITRUST LITIGATION)
)
)

Civil Action No. 11-009-SLR

**PLAINTIFFS’ MOTION FOR
LEAVE TO WITHDRAW CLASS REPRESENTATIVES AND TO
SUBSTITUTE NEW CLASS REPRESENTATIVES IN THEIR PLACE**

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 21 and 41(a)(2), Indirect Purchaser Plaintiffs (“IPPs”) in the above-referenced action, by and through their attorneys, brings this motion in good faith and respectfully request leave of Court to (1) voluntarily withdraw Plaintiffs Premier Produce Co., Inc. (“Premier”) and Joseph Williams from serving as a class representatives, and (2) substituting T.C. Construction Inc., (“T.C.”) and Phillip E. Nix respectively.

II. STATEMENT OF FACTS

On January 15, 2013, IPPs, including Premier and Mr. Williams, filed the third amended complaint (Dkt. No.73) in this case, asserting violations of various state laws including the laws of California (where Premier is located) and Kansas (where Mr. Williams lives).

Premier is no longer able to participate in this action as a class representative and seeks leave of court to withdraw from serving in that capacity. IPPs move to substitute T.C. as the proposed representative of the California class.

Mr. Williams is no longer a class member, as the proposed class is now defined, as he did not purchase a new truck. IPPs move to substitute Mr. Nix as the proposed representative of the Kansas class.

Counsel for IPPs have informed counsel for defendants of their intention to substitute T.C. in place of Premier, and Defendants do not oppose the withdrawal of Premier but do oppose the substitution of T.C. in place of Premier. Counsel for IPPs have informed counsel for defendants of their intention to substitute Nix in place of Williams, and Defendants do not oppose the withdrawal of Williams but do oppose the substitution of Nix in place of Williams. T.C. and Nix are prepared to respond to any discovery previously propounded to the IPPs, including depositions¹ shortly after the filing of the IPPs' Motion for class certification.

III. ARGUMENT

Federal courts allow plaintiffs to withdraw as class representatives when, as here, the voluntary withdrawal sought is in good faith and “unless the defendant would suffer prejudice other than the prospect of a second lawsuit or some tactical advantage.” *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409, M 21-95, 2004 WL 2453927, at *1 (S.D.N.Y. 2004) (granting plaintiffs' motion to withdraw as class representative and denying defendants' motion to depose withdrawing plaintiffs); *see also, e.g. Arney v. Finney*, 766 F. Supp. 934, 941 (D. Kan. 1991) (granting motion for leave to withdraw as class representative); *In re Ins. Mgmt Solutions Group, Inc. Sec. Litig.*, 206 F.R.D. 514, 515 (M.D. Fla. 2002) (permitting withdrawal of named plaintiff and class representative six days before class certification).

The withdrawal of Premier and Mr. Williams as class representatives is in good faith and the withdrawal will not prejudice Defendants. Additionally, these withdrawals will not adversely impact the viability or continuation of this class action, because as detailed below, IPPs also move to substitute T.C. and Mr. Nix, so the putative California and Kansas state classes will remain represented.

¹ Depositions of the IPPs have just begun and thus far only one IPP has given his deposition.

Pursuant to Fed. R. Civ. P., 21, this Court may “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party.” “Courts may allow class counsel to identify new class representatives who meet Rule 23(a) requirements. See Manual for Complex Litigation (Fourth) § 21.26 (“[C]ourts generally allow class counsel time to make reasonable efforts to recruit and identify a new representative who meets the Rule 23(a) requirements. The Court may permit intervention by a new representative or may simply designate that person as a class representative in the order granting class certification.”) (emphasis added). *In re Welbutrin XL Antitrust Litig.*, 282 F.R.D. 126, 139 (E.D.Pa. 2011); *see also In re Telectronics Pacing Systems, Inc.*, 172 F.R.D. 271, 283 (S.D. Ohio 1997).

While scheduling orders in this case state that “[a] motions to join other parties and/or amend the pleadings in the Avenarius Action shall be filed on or before February 1, 2014”, the orders also state that “any party may, upon an showing of good cause, move for or otherwise request amendment” of the order.” [See ¶¶ 3 and 11 to Dkt Nos. 88 and 112.] Good cause exists to substitute TC and Mr. Nix, as the California and Kansas state classes will be unrepresented unless they are substituted. Defendants will not suffer prejudice because T.C. and Mr. Nix are prepared to provide discovery on an expedited basis.

IV. CONCLUSION

For the foregoing reasons, IPPs respectfully request that the Court grant this motion for leave for withdrawal of Premier and Mr. Williams, and to substitute T.C. and Mr. Nix in their place.

Dated: November 3, 2014

Respectfully Submitted,
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