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8 Attorney for Plaintiff,
9 LIBERTY MEDIA HOLDINGS, LLC

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION

12 LIBERTY MEDIA HOLDINGS, LLC)

13 Plaintiff,)

14 vs.)

15 CARY TABORA AND SCHULYER)
16 WHETSTONE,)

17 Defendants)

Case No. 3:11-CV-00651-IEG -JMA
Judge: Hon. Irma E. Gonzalez

**NOTICE OF WITHDRAWAL OF
PLAINTIFF'S AMENDED COMPLAINT**

[L. CIV. RULE 7.1(G)(1)]

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2 This is to provide notice that, pursuant to Local Civil Rule 7.1(g)(1), Plaintiff Liberty
3 Media Holdings, LLC (“Plaintiff”) hereby withdraws its Amended Complaint filed on August
4 12, 2011 (CM/ECF Doc. 4, filed 7/19/2011). Counsel is cognizant of the requirements for
5 amendment under Fed. R. Civ. P. 15(a)(1)(A) and 15(a)(2) and filed CM/ECF Doc. 4 in error.

6 Fed R. Civ. P. 15(a)(1)(A) and (B) allows a party to amend its Complaint once, as a
7 matter of course, within 21 days after service or before the responsive pleading, whichever is
8 earlier. The Summons Returned Executed on 05/18/2011 and the Amended Complaint was filed
9 more than two months later on 7/19/2011. The 21 day requirement under Fed. R. Civ. P.
10 15(a)(1)(A) had lapsed, therefore it was improper to file the Amended Complaint without
11 seeking leave from the Court.

12 Fed. R. Civ. P 15(a)(2) allows for Amendment in all other cases only with the opposing
13 party’s written consent or with the Court’s leave. The Court should freely give leave when
14 justice so requires. Unfortunately, due to the undersigned’s own error, Plaintiff failed to move
15 the Court for leave to Amend the Complaint.

16 Because Plaintiff neither filed the Amended Complaint within the 21 day period
17 articulated in Fed. R. Civ. P. 15(a)(1)(A) nor sought leave of the Court to do so under Fed. R.
18 Civ. P 15(a)(2), the submission of CM/ECF Doc. 4 was improper.

19 Furthermore, under the California Rules of Professional Conduct, CRPC 3.3:400 Candor
20 With The Tribunal, Plaintiff’s counsel is under an ethical duty to report all adverse legal
21 authority. Counsel seeks to be candid with this Court in bringing attention to the requirements of
22 the Federal Rules of Civil Procedure and admitting his clear error on Plaintiff’s behalf. See *In*
23 *the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.

24 Plaintiff wishes to withdraw the CM/ECF Doc. 4 and, should the need arise, will file all
25 documents with this Court in accordance with applicable Federal Rules of Civil Procedure and
26 Local Civil Rules as needed.

27 Defendant Tabora has not yet opposed the Amended Complaint and the Court has not
28 yet ruled on that submission. As such, Plaintiff requests that the Court direct the clerk to remove
EM/ECF Doc. 4.

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Date: August 12, 2011.

s/ Marc Randazza
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CERTIFICATE OF SERVICE

I hereby certify that Plaintiff Liberty Media Holdings' Proof of Service – Acknowledgement of Service was filed using this Court's CM/ECF system on August 12, 2011. Plaintiff was able to effectuate service to Mr. Tabora via US Mail, UPS, Return Receipt Requested, and Email at ctabora@schools.nyc.gov.

Mr. Tabora's attorney, William Skinner, Esq. was also served via US Mail, UPS, Return Receipt Requested, and Email at Will@SkinnerEsq.com.

Date: August 12, 2011.

s/ Marc Randazza
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