

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAJAMES STEWART, *et al.*,

No. C-12-5164 EMC

Plaintiffs,

v.

GOGO, INC.,

**ORDER DENYING PLAINTIFFS'
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION**Defendant.

Previously, the Court granted Defendant Gogo, Inc.'s motion to dismiss. In the order, the Court noted that Plaintiffs' complaint as pled was deficient in that (1) it appeared that the contracts at issue bound airlines on an aircraft-by-aircraft basis and that (2) Plaintiffs failed to make any allegations as to why airplanes that *could* be equipped with internet access should not be included in the full range of selling opportunities reasonably open to a competitor. *See* Docket No. 37 (Order at 2, 6). The Court gave Plaintiffs leave to file an amended complaint to address this deficiency. *See* Docket No. 37 (Order at 9).

In lieu of an amended complaint, Plaintiffs have now filed a motion for leave to file a motion for reconsideration. Plaintiffs explain that, based on contracts that Gogo has produced, they now have evidence to support the allegation that the contracts at issue bound airlines with respect to their entire (or close to entire) fleets.

Plaintiffs' motion, however, is an awkward way to resolve the matter. It makes little sense for Plaintiffs to ask, in essence, to stand on their original complaint when it was not clear from the allegations in that complaint that the contracts at issue bound airlines with respect to their entire (or

1 close to entire) fleets. Moreover, now that Plaintiffs have had the benefit of reviewing the contracts,
2 Plaintiffs should be able to make new factual allegations to support their case.

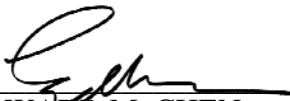
3 Accordingly, the Court concludes that the best way to proceed is to allow Plaintiffs to file an
4 amended complaint in which they may, *e.g.*, explicitly plead that the contracts are exclusive and
5 bind airlines with respect to their entire (or close to entire) fleets. Plaintiffs may also include in the
6 amended complaint allegations regarding the specific airlines discussed in their motion.

7 Plaintiffs shall file their amended complaint within twenty (20) days from the date of this
8 order. Defendants shall then have twenty (20) days thereafter to file a response to the amended
9 complaint (whether a motion or an answer).

10 Accordingly, Plaintiffs' motion is denied but Plaintiffs have leave to file an amended
11 complaint consistent with the above.

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13 IT IS SO ORDERED.

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15 Dated: July 30, 2013

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EDWARD M. CHEN
United States District Judge