

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZAK HURICKS, et al.,
Plaintiffs,
v.
SHOPKICK, INC.,
Defendant.

No. C-14-2464 MMC

**ORDER AFFORDING PARTIES LEAVE
TO FILE ADDITIONAL SUPPLEMENTAL
BRIEFS RE: DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT; DENYING
AS MOOT PLAINTIFFS’ MOTION FOR
RELIEF; CONTINUING HEARING ON
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are two motions: (1) defendant Shopkick, Inc.’s “Motion for Summary Judgment,” filed May 1, 2015, and (2) plaintiffs Zak Huricks and Trista Robinson’s “Motion for Relief Pursuant to Federal Rule of Civil Procedure 56(d),” filed May 27, 2015. Having read and considered the papers filed in support of and in opposition to the motions, the Court, for the reasons stated below, will afford the parties leave to file additional supplemental briefing with respect to defendant’s motion and will deny as moot plaintiffs’ motion.

After both motions were fully briefed, the Court, by order filed July 1, 2015, approved the parties’ stipulation allowing them to file, no later than July 10, 2015, supplemental briefing to address the effect of an order they expected the Federal Communications Commission (“FCC”) to issue shortly before that date. On July 10, 2015, prior to the FCC’s issuance of the FCC’s order, plaintiffs and defendant filed supplemental

1 briefing, titled, respectively, "Statement of Supplemental Authority Related to Shopkick's
2 Motion for Summary Judgment" and "Supplemental Brief in Support of Motion for Summary
3 Judgment," in which each side anticipated a ruling in its favor with respect to the FCC's
4 construction of the term "automatic telephone dialing system" as set forth in 47 U.S.C.
5 § 227(a)(1). Thereafter, on that same date, defendant filed another supplemental brief,
6 titled "Second Supplemental Brief in Support of Motion for Summary Judgment," in which it
7 reported that the FCC had just issued its order, in which the FCC addressed not only the
8 above-referenced issue but also a separate potentially dispositive issue, namely, the
9 question of who is deemed the "initiator" of a call.

10 In sum, having been granted the opportunity to file supplemental briefing based on
11 an anticipated ruling by the FCC, neither party has done so. Nevertheless, the Court will
12 afford the parties a further opportunity to file what they had intended to file when they
13 submitted the above-referenced stipulation, specifically, briefing in which they argue their
14 respective positions as informed by the FCC's interpretation of the applicable law.


15 Also, given plaintiffs' acknowledgement that they have received from defendant the
16 evidence that is the subject of their motion for relief under Rule 56(d) (see Pls.' Reply, filed
17 June 17, 2015, at 1:6-9), the Court will afford the parties leave to include discussion of that
18 evidence in their respective supplemental briefs, and hereby DENIES plaintiffs' motion as
19 moot.

20 Accordingly, the parties shall file, no later than August 7, 2015, and not to exceed
21 ten pages in length, their respective additional supplemental briefs on the issues set forth
22 above.

23 In light of the additional briefing, the hearing on defendant's motion for summary
24 judgment is hereby CONTINUED to August 21, 2015, at 9:00 a.m.

25 **IT IS SO ORDERED.**

26
27 Dated: July 17, 2015

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MAXINE M. CHESNEY
United States District Judge