

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 COLIN R. BRICKMAN,
5 Plaintiff,
6 v.
7 FACEBOOK, INC.,
8 Defendant.

Case No. 16-cv-00751-TEH

**ORDER REQUIRING
SUPPLEMENTAL BRIEFING,
CONTINUING HEARING ON
DEFENDANT'S MOTION TO
DISMISS, AND CONTINUING CASE
MANAGEMENT CONFERENCE**

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10 One of the issues raised by Defendant Facebook, Inc. ("Facebook") in its pending
11 motion to dismiss is the constitutionality of the Telephone Consumer Protection Act
12 ("TCPA"). Facebook argues that, because the statute's exceptions draw distinctions based
13 on the message a speaker conveys, it is content-based and therefore subject to strict
14 scrutiny under Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015). Plaintiff argues that
15 intermediate scrutiny applies to the TCPA but fails to address whether the statute and its
16 exceptions would pass strict scrutiny.

17 To ensure a full record if the Court ultimately determines that strict scrutiny applies,
18 **IT IS HEREBY ORDERED** that Plaintiff shall file, by **November 21, 2016**, a
19 supplemental brief of no more than eight pages discussing whether the TCPA and its
20 exceptions would pass strict scrutiny. Facebook may file a response of no more than five
21 pages by **November 28, 2016**. The hearing on Facebook's motion and the parties' initial
22 case management conference is continued to **December 12, 2016, at 10:00 AM**, in
23 Courtroom 2, 17th Floor, San Francisco.

24
25 **IT IS SO ORDERED.**

26
27 Dated:

28 _____
THELTON E. HENDERSON
United States District Judge