

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

XL MARKETING CORP., et al.,

Plaintiffs,

v.

KRISTINA KIRBY,

Defendant.

No. C 11-5107 PJH

**ORDER DENYING MOTION FOR  
PARTIAL SUMMARY JUDGMENT;  
ORDER TO SHOW CAUSE RE  
SUBJECT MATTER JURISDICTION**

Defendant’s motion for partial summary judgment came on for hearing before this court on January 15, 2014. Plaintiffs and counter-defendants XL Marketing Corp., et al. (“plaintiffs”) appeared through their counsel, Leeor Neta. Defendant and counter-plaintiff Kristina Kirby (“defendant” or “Kirby”) appeared through her counsel, Daniel Balsam. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court DENIES Kirby’s motion for the reasons stated at the hearing. Kirby seeks a ruling regarding the scope of federal CAN-SPAM preemption in the abstract, and presents no actual facts in her motion. As such, the court finds that Kirby seeks an advisory opinion, and thus DENIES her motion for partial summary judgment. The court also DENIES as moot plaintiffs’ “application to strike” Kirby’s motion.

At the hearing, the court also noted that the jurisdictional basis for this case is unclear, now that it is no longer consolidated with Davison v. Riley. Accordingly, the court orders plaintiffs to show cause as to why this case should not be dismissed for lack of subject matter jurisdiction. Plaintiffs shall have until **January 29, 2014** to file a response to this order, and Kirby shall have until **February 12, 2014** to respond to plaintiffs’ filing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Finally, to remove any doubt, this case shall remain stayed for all purposes other than the OSC until the court rules otherwise.

**IT IS SO ORDERED.**

Dated: January 15, 2014

  
\_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge