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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 **ZACK WARD, ET AL.,**

5 Plaintiffs,

6 v.

7 **APPLE INC.,**

8 Defendant.

Case No. 12-cv-05404-YGR

**ORDER DENYING MOTION TO DISMISS;
SETTING BRIEFING SCHEDULE FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 57

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10 On September 15, 2015, defendant moved to dismiss pursuant to Federal Rule of Civil
11 Procedure 12(b)(6). (Dkt. No. 57.) Oral argument on the opposed motion was heard on December
12 14, 2015. The Court finds that defendant's argument relies on an accompanying request for
13 judicial notice (Dkt. No. 58) of certain evidence that is not appropriate for consideration on a
14 motion to dismiss for failure to state a claim. As the motion is inextricably linked to the overbroad
15 request for judicial notice, the motion is **DENIED**.

16 However, the Court will entertain a narrow motion for summary judgment by defendant
17 solely on the issue of whether the complaint alleges a relevant market. The motion shall be filed
18 no later than **February 2, 2016**, on a standard 35-day schedule. While the pre-filing conference
19 requirement is waived, the parties must otherwise follow the Court's Standing Order in Civil
20 Cases, including by submitting separate statements of material facts. In furtherance of addressing
21 the merits of the anticipated motion, plaintiffs shall each submit to defendant by no later than
22 **January 8, 2016**, declarations describing in detail the circumstances surrounding their purchases
23 of the iPhones and AT&T service plans in question, including whether the devices were acquired
24 separately from, and prior to, the service plans.

25 This Order terminates Docket Number 57.

26 **IT IS SO ORDERED.**

27 Dated: December 15, 2015

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YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE