

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM SILVERSTEIN,
Plaintiff,

v.

KEYNETICS INC., et al.,
Defendants.

Case No. [16-cv-00684-DMR](#)**ORDER TO SUBMIT SUPPLEMENTAL
BRIEFING ON DEFENDANTS'
MOTIONS TO DISMISS**

Re: Dkt. Nos. 6, 13

The court has reviewed the motions to dismiss filed by Defendants 418 Media LLC and Lewis Howes (Docket No. 6, the “418 Media Defendants”) and specially appearing Defendants Keynetics Inc. and Click Sales Inc. (Docket No. 13, the “Keynetics Defendants”), and Plaintiff’s oppositions thereto (Docket Nos. 14, 25). In their motions, Defendants argue that Plaintiff’s claims are preempted by the federal CAN-SPAM Act, 15 U.S.C. §§ 7701-7713. In support, the 418 Media Defendants cite *Kleffman v. Vonage Holdings Corp.*, 49 Cal. 4th 334, 346 (2010), which discussed the Ninth Circuit’s holding in *Gordon v. Virtumundo*, 575 F.3d 1040, 1064 (9th Cir. 2009), that “a state law requiring an e-mail’s ‘from’ field to include the name of the person or entity who actually sent the e-mail or who hired the sender constitutes ‘a content or labeling requirement’ that ‘is clearly subject to preemption.’” Neither Plaintiff nor the Keynetics Defendants cited *Gordon* in their briefs, and the 418 Media Defendants did not discuss *Gordon* at length in their brief. For his part, Plaintiff relies on *Balsam v. Trancos*, 203 Cal. App. 4th 1083, 1098-1102 (2012), in his opposition brief, and cites it in his amended complaint, but none of the Defendants cited or discussed *Balsam* in their briefs.

Therefore, by 12:00 p.m. on April 11, 2016, Plaintiff, the 418 Media Defendants, and the Keynetics Defendants shall each file a brief that does not exceed four pages addressing the

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applicability of Gordon and Balsam to the facts of this case, including their impact on the question of whether federal law preempts some or all of Plaintiff's claims.

IT IS SO ORDERED.

Dated: April 7, 2016

