EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re Facebook Privacy Litigation

NO. C 10-02389 JW

ORDER DENYING MOTION TO AMEND JUDGMENT

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Presently before the Court is Plaintiffs' Motion to Amend Judgment.[1] The Court finds it appropriate to take the Motion under submission without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court DENIES Plaintiffs' Motion to Amend Judgment.

A. Background

A detailed summary of the factual background of this case is provided in the Court's May 12, 2011 Order.[2] The Court reviews the procedural history relevant to the present Motion.

On May 12, 2011, the Court granted in part and denied in part Defendant's motion to dismiss. (See May 12 Order.) On June 13, 2011, Plaintiffs filed an Amended Complaint pursuant to the Court's May 12 Order.[3] On November 22, 2011, the Court granted Defendant's motion to

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[1] (Plaintiffs' Motion to Alter or Amend Judgment, or, Alternatively, for Relief from Judgment and Supporting Memorandum, hereafter, "Motion," Docket Item No. 109.)

[2] (Order Granting in part and Denying in part Defendant's Motion to Dismiss, hereafter, "May 12 Order," Docket Item No. 91.)

[3] (First Amended Consolidated Class Action Complaint, hereafter, "FAC," Docket Item No. 92.)

dismiss the Amended Complaint with prejudice.[4] The same day, the Court entered judgment pursuant to its November 22 Order. (Docket Item No. 107.)

Presently before the Court is Plaintiffs' Motion to Amend Judgment.

B. Standards

The Federal Rules of Civil Procedure provide that a party may file a "motion to alter or amend a judgment" no later than twenty-eight days after entry of judgment. Fed. R. Civ. P. 59(e). In general, a Rule 59(e) motion may be granted on one of "four basic grounds," namely: "(1) if [the] motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if [the] motion is necessary to present newly discovered or previously unavailable evidence; (3) if [the] motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted). Because specific grounds for a Rule 59(e) motion are not provided in the Federal Rules of Civil Procedure, "the district court enjoys considerable discretion in granting or denying [such a] motion." Id. (citation omitted). However, amending a judgment after it has been entered is "an extraordinary remedy which should be used sparingly." Id. (citation omitted).

C. Discussion

Plaintiffs contend that the Court should amend its judgment to deny Defendant's motion to dismiss Plaintiffs' claim under the Stored Communications Act ("SCA"),[5] on the ground that the Court's November 22 Order "contains manifest errors of fact" concerning Plaintiffs' claim under the SCA.[6] (Motion at 1-4.) In particular, Plaintiffs contend that the Court's November 22 Order

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[4] (Order Granting Defendant's Motion to Dismiss with Prejudice, hereafter, "November 22 Order," Docket Item No. 106.)

[5] (See November 22 Order at 3-6 (discussing both the SCA and Plaintiffs' claim under that Act); see also May 12 Order at 9-10 (discussing the SCA and Plaintiffs' claim under it in an earlier version of the Complaint).)

[6] Plaintiffs contend that their Motion to Amend Judgment "is directed solely at [their] SCA cause of action, and not any of [their] other causes of action." (Motion at 1 n.1.)

dismissed Plaintiffs' SCA claim on the basis of a "mistake of fact,"[7] insofar as the November 22 Order failed to recognize that "the communications at issue [in this case] were not requests to be connected to advertisers, but rather were communications between Plaintiffs and Facebook concerning [Plaintiffs'] private Facebook browsing and virtual filing cabinet activities."[8] (Id. at 2.) Defendant responds that the Court did not make any "manifest error of fact" in its November 22 Order, and that Plaintiffs "simply disagree with the Court's decision."[9]

Here, in its November 22 Order, the Court stated the following:

> Upon review, the Court finds that Plaintiffs' argument relies on two mutually inconsistent propositions. On the one hand, Plaintiffs allege that the communications at issue in this case were requests to be connected to specific advertisements; that the requests were addressed to advertisers; and that Defendant merely acted as the "intermediary" for those communications. . . . On the other hand, Plaintiffs contend that Defendant acted as [a remote computing service ("RCS")] provider for purposes of Plaintiffs' claim under the SCA. . . . On the first view, if the communications were addressed to advertisers, then they were not sent to Defendant in order for Defendant to provide the "processing or storage" of Plaintiffs' "data," which means that Defendant was not acting as an RCS provider with respect to the communications. [Quon v. Arch Wireless Operating Co., Inc., 529 F.3d 892, 901-02 (9th Cir. 2008).] By contrast, on the second view, if Defendant was acting as an RCS provider for purposes of Plaintiffs' claim, then it must be the case that Plaintiffs' communications consisted of "data" which Plaintiffs sent to Defendant for "processing or storage." However,

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[7] The Court observes that Plaintiffs' contention is: (1) that the Court "misconstrue[d]" Plaintiffs' argument; and (2) that such a misconstrual constitutes an "error of fact" for purposes of Rule 59(e). (Motion at 2-4.) It is not clear that a court's alleged misconstrual of a party's allegations constitutes an "error of fact" within the meaning of Rule 59(e), though other district courts have treated such an alleged misconstrual in that way. See, e.g., Indep. Trust Corp. v. Stewart Info. Servs. Corp., No. 10-cv-4430, 2011 WL 1831586, at *3-4 (N.D. Ill. May 11, 2011). Regardless, as the Ninth Circuit explained in Herron, a court "considering a Rule 59(e) motion is not limited merely to [the four "basic grounds" upon which a Rule 59(e) motion may be granted]," but may consider whether amendment "may be appropriate" under other circumstances. Herron, 634 F.3d at 1111.

[8] Plaintiffs bring their Motion to Amend Judgment under Fed. R. Civ. P. 59(e), but also request relief from the Court's Judgment under Fed. R. Civ. P. 60(b). (Motion at 1-2.) However, the grounds under which Plaintiffs move for relief under Rule 60(b) appear to be identical to the grounds under which they move under Rule 59(e). (See id. (contending, as to Plaintiffs' claim for relief from judgment pursuant to Rule 60(b), solely that "there are mistakes and other reasons [sic] inherent in the Court's judgment that entitle Plaintiffs to relief from that judgment").) Accordingly, the Court treats Plaintiffs' Motion to Amend Judgment solely as a Motion brought pursuant to Rule 59(e).

[9] (Facebook, Inc.'s Opposition to Plaintiffs' Motion to Alter or Amend Judgment, or, Alternatively, for Relief from Judgment at 3-5, Docket Item No. 113.)

Plaintiffs allege that the communications at issue were requests to be connected to advertisements, not data to be processed or stored.[10]

Upon review, the Court does not find good cause to amend its judgment. In its November 22 Order, the Court examined Plaintiffs' Amended Complaint and found that Plaintiffs' argument regarding their SCA claim relied on "two mutually inconsistent propositions," namely: (1) the allegation that the communications were addressed to advertisers, from which it would necessarily follow that the communications were not sent to Defendant for the purpose of "processing or storage" of Plaintiffs' "data";[11] and (2) the allegation that Defendant acted as an RCS provider for purposes of Plaintiffs' SCA claim, from which it would necessarily follow that the communications at issue consisted of "data" for "processing or storage" which Plaintiffs sent to Defendant.[12] Thus, in its November 22 Order, the Court expressly recognized that one way to interpret Plaintiffs' Amended Complaint is the way proposed by Plaintiffs in the present Motion, namely, an interpretation under which the communications at issue were sent from Plaintiffs to Defendant. However, the Court found that Plaintiffs had failed to state a claim under the SCA, *regardless* of whether Plaintiffs were alleging that the communications at issue were addressed to advertisers or to Defendant. (November 22 Order at 5-6.) Thus, the Court finds that Plaintiffs have not shown that they are entitled to the "extraordinary remedy" of an amended judgment, insofar as they have not shown that the Court committed a "manifest error of fact" in its November 22 Order. Herron, 634 F.3d at 1111.

Accordingly, the Court DENIES Plaintiffs' Motion to Amend Judgment.[13]

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[10] (November 22 Order at 5-6.)

[11] (See, e.g., FAC ¶ 74 (alleging that "[w]hen a Facebook user clicks on an advertisement posted on Facebook's website, the user sends a message to Facebook requesting that Facebook connect the user to the specific advertisement," which means that "Facebook actually acts as the intermediary between the user and the advertiser").)

[12] (See, e.g., FAC ¶ 81 (alleging that Facebook acts as an RCS provider).)

[13] In their Motion, Plaintiffs also request leave to amend their complaint to "clarify[] the details" concerning their SCA claim. (Motion at 5.) However, the Ninth Circuit has clearly stated that "once judgment has been entered in a case, a motion to amend [a] complaint can only be

D. Conclusion

The Court DENIES Plaintiffs' Motion to Amend Judgment.

Dated: February 21, 2012

JAMES WARE
United States District Chief Judge

entertained if the judgment is first reopened under a motion brought under Rule 59 or 60." Lindauer v. Rogers, 91 F.3d 1355, 1357 (9th Cir. 1996). Thus, in light of the Court's denial of Plaintiffs' Motion to Amend Judgment, the Court may not entertain Plaintiffs' request for leave to amend their complaint. Id.

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United States District Court
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