

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

**ZACK WARD, ET AL.,**  
Plaintiffs,  
v.  
**APPLE INC.,**  
Defendant.

Case No. 12-cv-05404-YGR

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

Re: Dkt. No. 57

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

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

This Order terminates Docket Number 57.

**IT IS SO ORDERED.**

Dated: December 15, 2015

  
YVONNE GONZALEZ ROGERS

United States District Court  
Northern District of California