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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**

Presently before the Court is Plaintiffs’ Motion to Amend Judgment.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> On November 22, 2011, the Court granted Defendant’s motion to

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<sup>1</sup> (Plaintiffs’ Motion to Alter or Amend Judgment, or, Alternatively, for Relief from Judgment and Supporting Memorandum, hereafter, “Motion,” Docket Item No. 109.)

<sup>2</sup> (Order Granting in part and Denying in part Defendant’s Motion to Dismiss, hereafter, “May 12 Order,” Docket Item No. 91.)

<sup>3</sup> (First Amended Consolidated Class Action Complaint, hereafter, “FAC,” Docket Item No. 92.)

1 dismiss the Amended Complaint with prejudice.<sup>4</sup> The same day, the Court entered judgment  
2 pursuant to its November 22 Order. (Docket Item No. 107.)

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

4 **B. Standards**

5 The Federal Rules of Civil Procedure provide that a party may file a "motion to alter or  
6 amend a judgment" no later than twenty-eight days after entry of judgment. Fed. R. Civ. P. 59(e).  
7 In general, a Rule 59(e) motion may be granted on one of "four basic grounds," namely: "(1) if [the]  
8 motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if  
9 [the] motion is necessary to present newly discovered or previously unavailable evidence; (3) if [the]  
10 motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an  
11 intervening change in controlling law." Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir.  
12 2011) (citation omitted). Because specific grounds for a Rule 59(e) motion are not provided in the  
13 Federal Rules of Civil Procedure, "the district court enjoys considerable discretion in granting or  
14 denying [such a] motion." Id. (citation omitted). However, amending a judgment after it has been  
15 entered is "an extraordinary remedy which should be used sparingly." Id. (citation omitted).

16 **C. Discussion**

17 Plaintiffs contend that the Court should amend its judgment to deny Defendant's motion to  
18 dismiss Plaintiffs' claim under the Stored Communications Act ("SCA"),<sup>5</sup> on the ground that the  
19 Court's November 22 Order "contains manifest errors of fact" concerning Plaintiffs' claim under the  
20 SCA.<sup>6</sup> (Motion at 1-4.) In particular, Plaintiffs contend that the Court's November 22 Order  
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23 <sup>4</sup> (Order Granting Defendant's Motion to Dismiss with Prejudice, hereafter, "November 22  
24 Order," Docket Item No. 106.)

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

28 <sup>6</sup> 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.)

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

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

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

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21 <sup>7</sup> The Court observes that Plaintiffs' contention is: (1) that the Court "misconstrue[d]"  
 22 Plaintiffs' argument; and (2) that such a misconstrual constitutes an "error of fact" for purposes of  
 23 Rule 59(e). (Motion at 2-4.) It is not clear that a court's alleged misconstrual of a party's  
 24 allegations constitutes an "error of fact" within the meaning of Rule 59(e), though other district  
 25 courts have treated such an alleged misconstrual in that way. *See, e.g., Indep. Trust Corp. v. Stewart*  
 26 *Info. Servs. Corp.*, No. 10-cv-4430, 2011 WL 1831586, at \*3-4 (N.D. Ill. May 11, 2011).  
 27 Regardless, as the Ninth Circuit explained in *Herron*, a court "considering a Rule 59(e) motion is not  
 28 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.

<sup>8</sup> 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).

<sup>9</sup> (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.)

1 Plaintiffs allege that the communications at issue were requests to be connected to  
2 advertisements, not data to be processed or stored.<sup>10</sup>

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

20 Accordingly, the Court DENIES Plaintiffs' Motion to Amend Judgment.<sup>13</sup>

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21 <sup>10</sup> (November 22 Order at 5-6.)

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

25 <sup>12</sup> (*See, e.g.*, FAC ¶ 81 (alleging that Facebook acts as an RCS provider).)

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

1 **D. Conclusion**

2 The Court DENIES Plaintiffs' Motion to Amend Judgment.

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5 Dated: February 21, 2012



6 JAMES WARE  
United States District Chief Judge

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entertained if the judgment is first reopened under a motion brought under Rule 59 or 60.” Lindauer  
27 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  
28 complaint. Id.

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**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: February 21, 2012**

**Richard W. Wieking, Clerk**

By:           /s/ JW Chambers            
**Susan Imbriani**  
**Courtroom Deputy**