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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE HOLT,
Plaintiff,
v.
FACEBOOK, INC.,
Defendant.

Case No.16-cv-02266-JST

**ORDER GRANTING MOTION TO
CERTIFY AND STAYING CASE**

Re: ECF No. 74

United States District Court
Northern District of California

On March 9, 2017, this Court issued an order granting in part and denying in part Facebook’s motion to dismiss. ECF No. 72. The Order concluded, among other things, that Plaintiff had plausibly alleged the existence of an Automatic Telephone Dialing System (“ATDS”) and that the Telephone Consumer Protection Act (“TCPA”) is not unconstitutional under the First Amendment. On March 21, 2017, Facebook moved to certify the Court’s Order for interlocutory review under 28 U.S.C. § 1292(b) or, alternatively, to stay the case pending the D.C. Circuit’s decision in ACA International v. FCC, No. 15-1211.

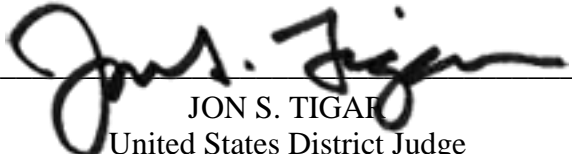
Judge Henderson recently granted an almost identical motion in Brickman v. Facebook, Inc., No. 16-CV-00751-TEH, 2017 WL 1508719 (N.D. Cal. Apr. 27, 2017). As here, Judge Henderson denied Facebook’s motion to dismiss after concluding that Brickman plausibly alleged an ATDS and rejecting Facebook’s First Amendment challenge. In response, Facebook filed a motion seeking interlocutory review of the court’s order or, alternatively, to stay the case pending the outcome of ACA International v. FCC, which motion Judge Henderson granted.

This Court has read Judge Henderson’s order granting Facebook’s motion in Brickman and agrees with its analysis. For the same reasons, the Court grants Facebook’s 1292(b) motion. If the Ninth Circuit decides to review the Court’s March 9 Order, the Court stays this case pending a

1 decision. If the Ninth Circuit declines to review the Order, the Court stays this case pending the
2 D.C. Circuit's decision in ACA International v. FCC, No. 15-1211.¹

3 IT IS SO ORDERED.

4 Dated: May 2, 2017

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6 JON S. TIGAR
United States District Judge

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United States District Court
Northern District of California

¹ The Court has concluded that this motion is suitable for disposition without a hearing. Civ. L.R. 7-1(b). The hearing scheduled for May 25, 2017 is vacated.