

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICARDO VIGIL, ET AL.,

Plaintiffs,

15-CV-8211 (JGK)

- against -

ORDER

TAKE-TWO INTERACTIVE SOFTWARE, INC.,

Defendant.

JOHN G. KOELTL, District Judge:

The defendant Take-Two Interactive Software, Inc. has moved to dismiss this action on, among other grounds, lack of standing under Article III of the Constitution. After the briefing on the motion was complete, the Supreme Court decided Spokeo, Inc. v. Robin, 136 S. Ct. 1540 (2016). The parties addressed the effect of Spokeo in letters to the Court and the decision was discussed at oral argument of the motion to dismiss. Although the plaintiffs did not ask for leave to file an amended complaint in light of Spokeo, the plaintiffs reserved the right to seek to file an amended complaint if the motion to dismiss is granted. After the argument, the Court of Appeals for the Second Circuit has summarily vacated two other decisions to allow plaintiffs the opportunity to replead in light of Spokeo and to allow the District Court to decide the effect of Spokeo on those complaints in the first instance. See Devorah Cruper-Weinmann v. Paris Baguette America, Inc., No. 14-3709-CV, and Yehuda Katz v.

Donna Karen Company LLC, No. 15-464-CV, 2016 WL 3553448, at *1 (2d Cir. June 30, 2016).

It is clear that the plaitniffs in this case should be afforded the opportunity to replead in light of Spokeo. The Court cannot require the plaintiffs to replead but they should be given the opportunity to do so and the parties should be given the opportunity to rebrief their motion in light of Spokeo.

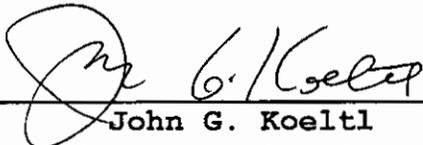
Therefore, the plaintiffs may file a second amended complaint by July 15, 2016, or advise the Court that they do not choose to file an amended complaint. The current motion to dismiss (ECF No. 25) is **denied without prejudice as moot**. The defendant shall move or answer against the second amended complaint (or the current complaint if the plaintiffs affirmatively choose not file a second amended complaint) by July 29, 2016. The plaintiffs shall respond to any motion to dismiss by August 12, 2016. The defendant may reply by August 19, 2016.

This procedure assures that the plaintiffs have the opportunity to file an amended complaint in light of Spokeo, and also assures that, whatever the plaintiffs decide to plead, the parties will have the opportunity to brief the motion to dismiss in light of Spokeo.

The Clerk is directed to close Docket No. 25.

SO ORDERED.

Dated: New York, New York
July 1, 2016



John G. Koeltl
United States District Judge