

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FRICKCO INCORPORATED,  
a Michigan corporation, individually  
and as the representative of a class  
of similarly situated persons,

Plaintiff,

v.

Case No. 11-CV-11168  
HON. GEORGE CARAM STEEH

NEHMEH ENTERPRISES, INC.  
d/b/a LITTLE CAESAR'S, LITTLE  
CAESAR ENTERPRISES, INC.,  
LITTLE CAESAR DETROIT DMA  
ADVERTISING PROGRAM, INC.,  
and CAESAR FUND, INC.,

Defendants.

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ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED CLASS  
ACTION COMPLAINT AND TO ADD PARTY DEFENDANTS (#23) AND  
DENYING MOTIONS TO DISMISS (#12 AND #21) AS MOOT

On March 22, 2011, plaintiff filed a class action complaint alleging defendants violated the Telephone Consumer Protection Act, 47 U.S.C. §227, by sending unsolicited advertising faxes to plaintiff and others, and alleging conversion on the same basis. On April 15, 2011, defendants Little Caesar Enterprises, Inc., Little Caesar Detroit DMA Advertising Program, Inc., and Caesar Fund, Inc. (the "Little Caesar defendants") filed a motion to dismiss. Upon stipulation of the parties, the time for defendant Nehmeh Enterprises, Inc. ("Nehmeh") to respond to the complaint was extended to May 16, 2011. On May 10, 2011, defendant Nehmeh filed a motion to dismiss. On May 11, 2011, plaintiff filed a motion for leave to file a first amended complaint and to add parties. Plaintiff seeks

leave to add Ali Nehmeh, Capitol Communications, Inc., and Lester Morales as additional party defendants, and to dismiss without prejudice the Little Caesar defendants. The Little Caesar defendants assent to plaintiff's motion. Defendant Nehmeh does not assent to plaintiff's motion. However, as noted by plaintiff, Federal Rule of Civil Procedure 15(a)(1)(B) allows a plaintiff to amend its complaint without leave within twenty-one days after service of a motion under Rule 12(b). Because plaintiff filed its motion and first amended complaint within twenty-one days after service of defendant Nehmeh's motion to dismiss, and the Little Caesar defendants agree to the amendment, plaintiff's request for leave to amend is granted. While making no determinations regarding the sufficiency of plaintiff's first amended complaint, the court believes the pending motions to dismiss are moot in light of the new pleading. Defendants may file a new motion within the applicable time limit.

IT IS HEREBY ORDERED that plaintiff's motion for leave to file first amended complaint and add party defendants is GRANTED, defendant Nehmeh's motion to dismiss is DENIED without prejudice as moot, defendants Little Caesar Enterprises, Inc., Little Caesar Detroit DMA Advertising Program, Inc., and Caesar Fund, Inc.'s motion to dismiss is DENIED without prejudice as moot, and defendants Little Caesar Enterprises, Inc., Little Caesar Detroit DMA Advertising Program, Inc., and Caesar Fund, Inc. are dismissed without prejudice.

SO ORDERED.

Dated: May 17, 2011

s/George Caram Steeh \_\_\_\_\_  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
May 17, 2011, by electronic and/or ordinary mail.

s/Marcia Beauchemin  
Deputy Clerk