

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,
ALI NEHMEH, CAPITAL
COMMUNICATIONS, INC.,
and LESTER MORALES,

Defendants.

_____/

ORDER GRANTING IN PART AND DENYING IN PART MOTION
TO DISMISS (#28) AND GRANTING MOTION FOR PARTIAL DISMISSAL (#36)

On March 22, 2011, plaintiff filed a class action complaint alleging Nehmeh Enterprises, Inc. d/b/a Little Caesar's ("NEI"), Little Caesar Enterprises, Inc., Little Caesar Detroit DMA Advertising Program, Inc., and Caesar Fund, Inc. 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 May 18, 2011, plaintiff filed a first amended class action complaint, adding defendants Ali Nehmeh, Capitol Communications, Inc., and Lester Morales and dismissing the Little Caesar defendants. The case was stayed from August 15, 2011 to January 23, 2012. The motions currently before the court are defendants NEI and Nehmeh's motion to dismiss (#28) and defendants Capitol and Morales's motion for partial dismissalal (#36). In their motion to dismiss,

defendants NEI and Nehmeh argue (1) Michigan Court Rule 3.501(A)(5) prohibits class actions for a minimum amount; (2) plaintiff has not stated a plausible claim to hold Nehmeh personally liable under the TCPA; and (3) the conversion claim is barred by the *de minimis* doctrine or, alternatively, the court should decline to exercise supplemental jurisdiction. In their motion for partial dismissal, defendants Capitol and Morales argue the conversion claim should be dismissed because it is legally impossible to convert employee time and plaintiff's conversion claim is *de minimis*. Alternatively, defendants Capitol and Morales ask the court to decline to exercise supplemental jurisdiction over the conversion claim. The motions are fully briefed and a hearing was held on the motions on March 8, 2012. At the hearing, defendants NEI and Nehmeh indicated they were withdrawing their argument that MCR 3.501(A)(5) prohibits the class action asserted in this case. For the reasons set forth on the record, NEI and Nehmeh's request to dismiss the TCPA claim against Nehmeh is DENIED and request to decline to exercise supplemental jurisdiction over the conversion claim is GRANTED. Capitol and Morales's motion for partial dismissal is GRANTED in so far as the court declines to exercise supplemental jurisdiction over the conversion claim and therefore DISMISSES the conversion claim without prejudice.

IT IS SO ORDERED.

Dated: March 12, 2012

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

<p>CERTIFICATE OF SERVICE</p> <p>Copies of this Order were served upon attorneys of record on March 12, 2012, by electronic and/or ordinary mail.</p> <p><u>s/Marcia Beauchemin</u> Deputy Clerk</p>
