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Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CAROLYN ANDERSON,)	
)	
Plaintiff,)	CIVIL ACTION NO. C11-902-RBL
)	
vs.)	DOMINO'S MOTION FOR
)	PROTECTIVE ORDER RE:
DOMINO'S PIZZA, INC., DOMINO'S)	AMENDED DISCOVERY
PIZZA, LLC, FOUR OUR FAMILIES,)	
INC., and CALL-EM-ALL, LLC,)	Hearing Date: May 18, 2012
)	No Oral Argument
Defendants.)	

I. RELIEF REQUESTED

Domino's Pizza, Inc. & Domino's Pizza, LLC (collectively, "Domino's") move for a protective order related to Carolyn Anderson's Fourth and Fifth Amended Requests for Production. The requested discovery violates this Court's Order dated March 30, 2012. Further, the requested discovery is neither relevant, nor reasonably calculated to lead to discovery of relevant information; is overly broad and burdensome and/or is barred by the discovery deadline for class action certification.

II. FACTS

DOMINO'S MOTION FOR PROTECTIVE ORDER
RE: 4TH AND 5TH AMENDED DISCOVERY - 1

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3 This lawsuit relates to robo-calls made in Pierce County, Washington by Four Our
4 Families, Inc. ("FOFI") an independent Domino's franchisee, between June and August 2009.
5 See, Ex. 3 to Godwin Dec.: Portions of Brown Deposition p. 34: 14-19. Anderson asserts
6 Federal claims under U.S.C. 227 (b)(1)(B) and Washington claims RCW 80.36.400. Anderson
7 has moved for class certification of the Washington claims. Anderson has abandoned class
8 certification of the Federal claims. Any claims under the Federal TCPA are personal to
9 Washington resident Anderson.
10

11 On December 8, 2011, Anderson sent Fourth Requests for Production to Domino's. On
12 December 12, 2011, Anderson sent Fifth Requests for Production to Domino's. Domino's
13 timely moved for a protective order related to that and other discovery. Domino's motion for a
14 protective order was granted in part and denied in part in an Order dated March 30, 2012
15 ("Order"). Anderson sent Amended Fourth and Fifth Requests for Production to Domino's on
16 April 11, 2012. Domino's has answered all discovery required under the Order.
17

18 A telephone conference between counsel for Domino's, Brant Godwin, and counsel for
19 Anderson, Rob Williamson, was held on May 3, 2012. Both parties made a good faith effort to
20 resolve issues related to the Amended Fourth and Fifth Requests for Production. See, B. Godwin
21 Dec. Even after the conference counsel disagree on whether a large amount of the discovery
22 should be allowed.
23

24 All objections are thoroughly outlined in Domino's Responses.

25 **III. ISSUES PRESENTED**

26 DOMINO'S MOTION FOR PROTECTIVE ORDER
RE: 4TH AND 5TH AMENDED DISCOVERY - 2

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3 1. Whether discovery should be produced when it is irrelevant and beyond the scope
4 allowed in this Court's March 30, 2012 Order?
5
6 2. Whether discovery should be produced when it is overly broad and unduly
7 burdensome?

8 **IV. EVIDENCE RELIED UPON**

- 9 1. This Motion; and
10 2. Declaration of Brant Godwin

11 **V. ARGUMENT**

- 12 1. **Amended Request for Production No. 27 Violates this Court's Order as it**
13 **Seeks Out of State Discovery without Basis.**

14 Request No. 27 seeks "all e-mails or letters to RPM from you or to RPM from you [sic]
15 regarding a. RPM's use of Call-Em-All or any other vendor that makes or facilitates the making
16 of pre-recorded calls, the names of the other franchises using such vendors, your awareness of
17 RPM/s [sic] marketing with pre-recorded calls, the names of all your employees award of the
18 marketing, any statements either approving or disapproving of the marketing."
19

20 This case centers on the actions of one franchisee, FOFI, located in Pierce County,
21 Washington. The Order noted that Anderson is not seeking national class certification and "has
22 not therefore established a basis to seek discovery nationally." See, Order p. 3: lns. 12-14.
23 Anderson still has not established any basis for the national discovery sought by No. 27. Further,
24 the Order noted that "while communications between Domino's and RPM may reflect in general
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3 the degree of control Domino's exercises over franchisees, Plaintiff fails to explain why the same
4 issue cannot be more efficiently explored through a search of communications between
5 Domino's and Four Our Families – the relevant parties here.” See, Order p. 3: lns. 14-18.
6 Anderson has actually done such discovery. As will be discussed in more detail below, the
7 individuals with the most knowledge on this issue from both FOFI and Domino's have been
8 deposed¹. The representative of FOFI was available for another deposition, which Anderson
9 opted not to take. Finally, the Order ruled that as far as Request No. 27 goes, “Plaintiff may seek
10 specific documents about Domino's efforts at compliance **following** the *Spillman* litigation....”
11 See, Order p. 4: lns. 3-5. The Amended Request as drafted goes well beyond this scope in both
12 time (no limit on time) and material sought (not limited to attempts at compliance after
13 *Spillman*). The requested discovery violates the terms of the Order.
14
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16 The Amended Request, to the extent it seeks material related to franchisees who operated
17 pizza stores outside the State of Washington, is still irrelevant since this litigation relates solely
18 to calls made by FOFI in Pierce County, Washington between June and August of 2009. See,
19 Ex. 3 to Godwin Dec.: Portions of Brown Deposition p. 34: 14-19.
20

21 **2. Amended Request No. 28 is Still Overbroad as to Time and Scope in**
22 **Violation of this Court's Order.**

23 ¹ Plaintiff has deposed Wayne Pederson – V.P. Ops technology & Support; Natalie Haydon –
24 Marketing Area Leader; Chris Roeser – Manager Precision Marketing; Joe Devereaux – Director
25 of Franchise Services and Mike Brown- Controlling Shareholder of FOFI. All have testified that
26 FOFI made the decision to implement the automated dialing marketing campaign on its own
without any involvement from Domino's Pizza LLC.

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3 This Request seeks “all documents related to the PULSE program from January 1, 2008
4 to present ...” related to a number of issues.

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6 Plaintiff previously was able to delve into the capabilities and use of the PULSE System
7 during the FCRP deposition of the Domino’s person most knowledgeable concerning the PULSE
8 System, Wayne Pederson, the V.P. Ops Technology & Support at Domino’s, testified that
9 PULSE is the point of sale and back of house system used in Domino’s Pizza stores. See EX 5
10 to Godwin Dec.: Portions of Pederson Deposition p. 5:6-10. Franchisees, such as FOFI, are not
11 required by Domino’s Pizza LLC to utilize all the functionality of the PULSE System. See EX 5
12 to Godwin Dec.: Portions of Pederson Deposition p. 6:7-13. Of critical importance to the issues
13 in this litigation, PULSE has no capabilities that enable the system to be used to make robo-calls,
14 such as those made by FOFI. See EX 5 to Godwin Dec.: Portions of Pederson Deposition p.
15 28:2-4.
16

17 The Order noted that discovery regarding PULSE could be relevant but called on
18 Anderson to limit the discovery in scope and time. See, Order p. 5: lns. 1-2.

19 Anderson’s Request as drafted is overbroad to time. FOFI has testified that calls were
20 only made between June and August of 2009. See, Ex. 3 to Godwin Dec.: Portions of Brown
21 Deposition p. 34: 14-19. This is the relevant time period. Discovery before and after is not
22 reasonably limited in time. Further, the Request as drafted seeks information related to out of
23 state franchisees. As the Court has noted, out of state discovery is irrelevant given Anderson’s
24 choice not to pursue Federal TCPA claims. See, Order p. 3: ln. 14. Anderson might argue such
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3 discovery is relevant to show control by Domino's but the Court noted in its Order this issue can
4 be better explored by looking at interactions between Domino's and FOFI, which Anderson has
5 had the opportunity to do. See, Order p. 3: Ins. 16-18. Request No. 28 violates the reasonable
6 limitations placed by the Order.
7

8 Further, the Request seeks all documents related to "reports" that can be generated using
9 PULSE. PULSE allows franchisees to access their own customer data in variety of ways without
10 assistance from or knowledge of Domino's. This Request calls for potentially irrelevant
11 documents unrelated to any issue in this case.
12

13 **3. Amended Request No. 29 is Overbroad to Scope in Violation of the Order.**

14 Request No. 29 seeks information related to the "opt in" program on Domino's web page,
15 including documents related to RPM and out of State franchisees. Domino's has provided a
16 Response to this Request but seeks clarification on the scope. For the reasons stated above, this
17 Request should be limited to the "opt in" program as it relates to Washington State franchisees
18 only, as Anderson's claims only potentially relate to Washington calls. There has been nothing
19 offered to establish the relevance of the remaining information sought.
20

21 **4. Amended Request Nos. 32 and 45 are Simply a Re-Wording of Discovery the**
22 **Court Earlier Determined was Inappropriate.**

23 Amended Request No. 32 seeks "all discovery and responses thereto, including all
24 depositions, from *Spillman v. Domino's Pizza, LLC et al.* in which the topic of transmitting pre-
25 recorded solicitation telephone calls using an automatic dialing and announcing device is
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3 discussed.” Anderson’s original Request simply sought all discovery from the *Spillman*
4 litigation.

5 Amended Request No. 45 seeks all documents “produced by you to any party in
6 discovery or to the Court in *Spillman v. Domino’s Pizza, LLC* that relate to marketing with pre-
7 recorded telephone calls, use of Call-Em-All or other similar vendors, and communications to
8 and from RPM regarding the calls.”

9
10 The Order noted that “Plaintiff has not shown grounds to force Domino’s to recreate the
11 *Spillman* discovery wholesale.” See, Order p. 4: lns. 5-6. Yet, that is exactly what Amended
12 Request Nos. 32 and 45 seek. The subject matter of the *Spillman* case was ADAD calls. Thus,
13 **all** discovery in the *Spillman* case arguably relates to ADAD calls. Anderson has simply
14 changed the wording of her Requests slightly but the end result is the same; she is seeking to
15 force Domino’s to recreate wholesale the discovery from the *Spillman* case despite the Court’s
16 clear Order prohibiting this.
17

18 This request is also objectionable for the reasons stated above as to Request No. 27 as it
19 seeks out of State discovery and Anderson has provided without basis.
20

21 **5. Amended Request Nos. 34, 38 and 41 are Overbroad to Time and Scope and**
22 **Seek Information in Violation of this Court’s Earlier Order.**

23 Amended Request No. 34 seeks “all documents from or to Rick Rezler, related to
24 marketing with pre-recorded telephone calls by any franchisees and communications with any
25 other or your employees on the topic.”

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3 Amended Request No. 38 seeks “all documents from or to any of your employees
4 involved in the production of Exhibit 2 which related to marketing with pre-recorded telephone
5 calls by any franchisees and communication with any other of your employees on the topic.”
6

7 Amended Request No. 41 seeks “all documents related to creation of the telephone opt in
8 program or functionality, and communications to or from franchisees regarding the functionality
9 including any documents like those described by Mr. Roeser at page 45 of his deposition.”

10 The March 30, 2012 Order noted that such inquiries could be relevant but noted that the
11 original Request “lacks any sort of reasonable limitation on scope or time.” See, Order p. 5: ln.
12 9. The Amended Requests also lack any limitation on time, seeking “all documents” related to
13 communications with any employee related to such marketing. The relevant time period for
14 these claims is between June 2009 (when the first call was made) and August 2009 (when the
15 last call was made). Any Request outside of that time period violates the Order and should be
16 denied.
17

18 The Order also noted that that since Anderson abandoned the national class claims, she
19 “has not therefore established a basis to seek discovery nationally.” See, Order p. 3: lns. 5-6.
20 Yet, Amended Requests No. 34, 38 and 41 still seek information from out of Washington State,
21 thus violating the scope of allowed discovery in the Order.
22

23 Anderson has made no showing as to why such discovery is relevant and, as noted in the
24 Order, any possible “control” issues can be more efficiently explored by looking at interactions
25 between the Washington franchisee involved in this case and Domino’s. See, Order p. 3: lns. 16-

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3 18. As noted above, Anderson has had the opportunity to conduct such discovery at multiple
4 depositions of both Domino's representatives and the owner/President of FOFI. To explore the
5 issue of control, Anderson deposed: 1. Domino's Director of Franchise Services, Joseph
6 Devereaux, who indicated that FOFI controlled its own local advertising; 2. FOFI Controlling
7 Shareholder, Michael Brown, who indicated that he made the unilateral decision to create and
8 implement the local marketing campaign that utilized these calls on his own without Domino's
9 input or knowledge; 3. Domino's Area Leader-Field Marketing for Washington, Natalie
10 Haydon, who confirmed that Domino's was unaware of FOFI robo-calls; 4. Wayne Pederson
11 who testified that the PULSE System has no link to robo-calling and has no functionality that
12 would enable it to be used in making robo-calling; and 5. Chris Roeser and determined
13 Domino's has a national policy discouraging robo-calling. The critical issue of Domino's
14 control over FOFI has been thoroughly explored as to the franchisee at issue in this Washington
15 case.
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18 Further, FOFI has testified that it was not aware of and did not use the "opt in" feature
19 referenced in Amended Request No. 41. FOFI has also testified that it never told Domino's
20 about the planned calls and was not directed to make the calls by Domino's. See, Ex. 4 to
21 Godwin Dec.: Declaration of M. Brown. The scope of Amended Requests 34, 38 and 41 violate
22 the Order by seeking irrelevant out of State discovery without providing any basis for doing so.
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24 **6. In Addition to Violating this Court's Order, All of the Amended Requests**
25 **Seek Irrelevant Information as Drafted.**

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3 for its basis. Indeed, the facts outlined above demonstrate such discovery is completely
4 irrelevant.

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6 Further, we know that FOFI made the first call in June of 2009 and the last call was made
7 in August 2009. See, Ex. 3 to Godwin Dec.: Portions of Brown Deposition p. 34: 14-19.
8 Discovery outside of this time period is irrelevant.

9
10 **VI. CONCLUSION**

11 For the above stated reasons Domino's respectfully requests the Court issue a protective
12 Order related to Anderson's Amended Fourth and Fifth Requests for Production.

13 **RESPECTFULLY SUBMITTED**

14 May 8, 2012.

15 **DUNLAP & SODERLAND, PS**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am employed at Dunlap & Soderland, PS, attorneys of record for Defendants Domino's
Pizza, Inc. and Domino's Pizza, LLC.

On May 8, 2012, I caused a true and correct copy of the foregoing document to
be delivered to the following via email:

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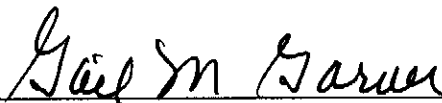
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8 I declare under penalty of perjury under the laws of the State of Washington that the
9 foregoing is true and correct.

10 DATED at Seattle, Washington this 8th day of May, 2012.

11 
12 _____
13 Gail M. Garner

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24 CERTIFICATE OF SERVICE - 2

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