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Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

CAROLYN ANDERSON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DOMINO'S PIZZA, INC., DOMINO'S )  
PIZZA, LLC, FOUR OUR FAMILIES, )  
INC., and CALL-EM-ALL, LLC, )  
)  
Defendants. )

CIVIL ACTION NO. C11-902-RBL  
DOMINO'S PIZZA, INC. AND  
DOMINO'S PIZZA, LLC MOTION  
FOR PROTECTIVE ORDER  
**HEARING DATE: January 20, 2012**

**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, Fifth, and Sixth Requests for Production and certain requests for electronically stored information. This motion is based on the fact that 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. Further, portions of the requested discovery are protected by an

DOMINO'S MOTION FOR PROTECTIVE ORDER - 1

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1 Order in *Spillman v. Domino's Pizza, LLC et al.* 10-349-BAJ-SCR.

2 **II. FACTS**

3  
4 This lawsuit relates to robo-calls made in Pierce County, Washington by a Domino's  
5 franchisee between June and August 2009. Anderson asserts Federal claims under U.S.C. 227  
6 (b)(1)(B) and Washington claims RCW 80.36.400. Neither statute creates liability for calls made  
7 on behalf of another. The lawsuit was moved to Federal Court on May 31, 2011.

8 On July 26, 2011, Anderson filed the Joint Status Report, indicating the class certification  
9 discovery would be completed by October 31, 2011.

10 Anderson has filed an untimely motion for class certification as to Washington residents.  
11 There has been no motion to certify a national class. Any claims under the Federal TCPA are  
12 personal to Anderson.  
13

14 On December 8, 2011, Anderson sent Fourth Requests for Production and Requests for  
15 Electronically Stored Information to Domino's. On December 12, 2011, Anderson sent Fifth  
16 Requests for Production to Domino's. On December 28, 2011, Anderson sent Sixth Requests for  
17 Production to Domino's.

18 A telephone conference between counsel for Domino's, Brant Godwin, and counsel for  
19 Anderson, Rob Williamson, was held on January 4, 2011. Both parties made a good faith effort  
20 to resolve issues related to the Fourth, Fifth, and Sixth Requests for Production as well as the  
21 December 8, 2011 ESI Requests. Progress was made on some of the issues discussed. For  
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24 DOMINO'S MOTION FOR PROTECTIVE ORDER – 2  
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1 example, it was agreed that some documents would be produced pursuant to a protective order  
2 limiting disclosure. However, even after the conference, counsel disagree on whether a large  
3 amount of the discovery should be allowed.  
4

5 All objections, are thoroughly outlined in Domino's Responses.

### 6 III. ISSUES PRESENTED

- 7 1. Whether discovery should be produced when it is irrelevant and barred by the  
8 Joint Scheduling Order?
- 9 2. Whether discovery should be produced when it is overly broad and unduly  
10 burdensome?
- 11 3. Whether discovery should be produced when it is subject to a protective order  
12 moved for at the request of another litigant in another Federal action?
- 13 4. Whether certain of Anderson's Requests for Electronically Stored Information are  
14 so irrelevant, overly broad and unduly burdensome to be subject to a protective  
15 order?  
16

### 17 IV. EVIDENCE RELIED UPON

- 18 1. This Motion; and
- 19 2. Declaration of Brant Godwin

### 20 V. ARGUMENT

- 21 1. **The majority of documents requested by Anderson relates to out of state**  
22 **events and is neither relevant nor reasonably calculated to lead to relevant**  
23 **information.**

24 Relevant evidence is defined as "evidence having any tendency to make the existence of

1 any fact that is of consequence to the determination of the action more probable or less probable  
2 than it would be without the evidence.” ER 401. Discovery is generally allowed “regarding any  
3 nonprivileged matter that is relevant to any party’s claim or defense...” FRCP 26(b)(1).

4 The majority of the discovery requested by Anderson here is irrelevant.

5 a. Discovery related to Louisiana franchisee RPM is irrelevant and should be barred.

6  
7 As an example, Request for Production Number 27 reads: “Produce all e-mails or letters  
8 to RPM from you or to RPM from you regarding: a. Pulse b. The Telephone Opt In Program, c.  
9 The litigation against RPM d. This litigation.” This request relates to a Louisiana franchisee. In  
10 this case, it is undisputed that Anderson received two calls, both from a Washington franchisee  
11 FOF. FOF has testified that it made the calls without input from or advice from other sources,  
12 including Domino’s and/or franchisees in Louisiana. The source of the calls to Anderson has  
13 been identified and the calls did not originate in or relate to Louisiana. The requested documents  
14 are unrelated to Anderson’s individual claim under federal law since it is undisputed that both  
15 calls came from Washington franchisee FOF. Anderson apparently is not filing a motion for  
16 class certification to the federal claims under the TCPA, eliminating any relevance to the  
17 requested documents under a federal class action. The requested documents from a Louisiana  
18 case have no bearing on Anderson’s claims under Washington law. The requested documents  
19 have no “tendency to make the existence of any fact that is of consequence to the determination  
20 of the action more probable or less probable than it would be without the evidence” as required  
21 under FRCP 26(b)(1).  
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1 It is anticipated that Anderson will argue the documents are relevant to somehow imply  
2 that Domino's endorsed this type of marketing or the calls were made on Domino's behalf.  
3 However, the "on behalf" of language is inapplicable to Anderson's claims under federal (U.S.C.  
4 227 (b)(1)(B)) and Washington (RCW 80.36.400) law. Both statutes pled by Anderson create  
5 liability for entities that **make** calls. Neither statute creates "on behalf" of liability. It is  
6 particularly telling that the federal statute specifically chose to create "on behalf" of liability  
7 related to the Do Not Call Statute, but opted not to for the robo-call statute under which  
8 Anderson pled. The statutes pled by Anderson do not create "on behalf of" liability and this  
9 cannot be used to create potential relevance.  
10

11 The requested discovery related to RPM can only possibly relate to class certification  
12 issues. The October 31, 2011 deadline for this discovery has passed. The November 28, 2011  
13 deadline for filing class certification has also passed. The only potential relevance this discovery  
14 could have relates to class certification issues. Relevance cannot be created using class related  
15 discovery where the deadline for such discovery has passed.  
16

17 There is no relevance to any discovery related to RPM or events in Louisiana. This  
18 discovery is also covered under an existing protective order, see below for further explanation.  
19 Requests for Production 27, 32 and 45 relate to RPM. Domino's requests a protective order  
20 related to these Requests.  
21

22 b. Discovery regarding other Domino's Franchisees is also irrelevant and should be  
23 barred or limited.

24 As another example, Request for Production 39 reads: "Produce all documents related to  
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DOMINO'S MOTION FOR PROTECTIVE ORDER - 5

1 any complaints by any customers of any franchisee regarding automated calls.” This litigation is  
2 about two calls made to Carolyn Anderson in Washington in August of 2009. We know who  
3 made the calls here, a Washington franchisee. There is no national class, making any calls to  
4 anyone outside of Washington completely irrelevant. This discovery related to out of state  
5 franchisees should be barred or at the least limited to Washington in a limited time frame.

7 Requests 36, 39 and 40 deal with out of state issues.

- 8 c. Discovery related to opt-in is irrelevant where FOF has testified that it did not use this  
9 feature.

10 Request for Production 29 reads: “Produce all documents related the [sic] telephone opt  
11 in program.” FOF has testified that it did not know about or utilize any opt in program. The  
12 testimony of FOF makes this request irrelevant. If allowed, any discovery related to an opt in  
13 program should be limited to Washington in a limited time frame. Requests 29 and 41 deal with  
14 opt in.

15 **2. Much of the discovery requested by Anderson is overly broad and**  
16 **burdensome.**

- 17 a. PULSE

18 Request number 28 reads: “Produce all documents related to the PULSE program.”  
19 PULSE is a point of sale program used by all Domino’s franchisees. It is used by over 4,000  
20 franchisees in the United States and has been around for over seven years. There are teams of  
21 people at Domino’s who deal solely with PULSE issues. Providing all documents related to  
22 PULSE would require production of hundreds of thousands of pages of materials. Some of the  
23  
24 DOMINO’S MOTION FOR PROTECTIVE ORDER – 6

1 materials might be proprietary. Some of the materials might be private, for example, this  
2 Request could even be read to require production of personnel information related to PULSE  
3 team members. Compiling and providing the requested documents would likely take hundreds,  
4 if not thousands of hours and cost a large amount. This Request is the very definition of overly  
5 broad and unduly burdensome.  
6

7 The burden is increasingly ridiculous when one considers that the vast majority of the  
8 Requested information would bear absolutely no relevance to issues in this litigation.

9 Request number 28 deals with PULSE.

10 b. Employee information

11  
12 Request number 34 reads: "Produce all documents related to Rick Rezler, including but  
13 not limited to news releases." Anderson seemingly conceded that this was overbroad as worded  
14 and agreed to limit this Request to all marketing materials related to Mr. Rezler. However, even  
15 with this limitation, this Request is too broad. As modified by Anderson, the request asks for  
16 documents not related to telephone marketing, documents not related to Washington, documents  
17 not related to Anderson, and documents from the distant past or irrelevant time periods. This  
18 Request is simply too broad and Domino's should be protected from it.  
19

20 Request number 34 deals with Rick Rezler. Request number 38 makes a similar request  
21 for "all documents related to any other of your employees" and the same issues apply.

22 **3. Documents related to the *Spillman* case are protected by a Stipulated**  
23 **Protective Order and should not be the subject of discovery.**

24 The *Spillman* case has three parties, Toni Spillman, Domino's Pizza, LLC and RPM

1 Pizza, Inc. All three parties stipulated to the order. It appears that Toni Spillman was the party  
2 who actually moved the court for the order, but all three parties were involved in requesting it.  
3 The Order specifically prevents use of documents produced in that case in other litigation. See, ¶  
4 11a. The Order specifically applies to deposition testimony, answers to interrogatories and  
5 things produced in the *Spillman* case. See, ¶ 2.

6  
7 Request number 45 reads in part: “Produce all documents of any type, including but not  
8 limited to electronically stored documents, relating to the discovery electronically stored  
9 information produced by you to any party or the Court in *Spillman v. Domino’s Pizza, LLC....*”

10 Request number 32 reads: “Produce all discovery and responses thereto, including all  
11 depositions, from *Spillman v. Domino’s Pizza, LLC, et al.*”

12 The Order directly covers the items requested by Anderson here. The Order was not  
13 requested solely by Domino’s. It was requested by all three parties to the Spillman and  
14 Domino’s would have to breach that Order to produce the items requested by Anderson here.  
15 Requests number 27, 32 and 45 deal with RPM. Domino’s should not be required to violated the  
16 Spillman Order merely to produce the irrelevant documents (see above) requested by Anderson  
17 here. Domino’s requests an Order protecting it from these requests.

18  
19 **4. Certain electronically stored information sought by Anderson is irrelevant,**  
20 **overly broad and unduly burdensome and should not be allowed.**

21 a. Custodians

22 Anderson has requested that searches be made of the hard drives of all Field Marketing  
23 Teams, Customer Care Teams, Customer Care Units and Customer Units. Many of the requests

24 DOMINO’S MOTION FOR PROTECTIVE ORDER – 8  
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1 involve entities that do not work within Washington. These requests are irrelevant here where  
2 there is no national class and the only issues are Carolyn Anderson's and potentially claims  
3 within Washington. Further, these claims are duplicative since Anderson has already identified  
4 the individuals who make up the relevant teams dealing with Washington. Finally, search of  
5 these terms can only relate to class certification and the time for class certification passed long  
6 before this discovery was served on December 8, 2011.

8 Domino's should not be required to search the hard drives of these irrelevant custodians  
9 and seeks an Order clarifying this.

10 b. Terms

11 Many of the terms Anderson requests Domino's search are overbroad, burdensome and  
12 objectionable. Anderson requested that Domino's search for the following terms:  
13 "communica\*", "complain\*", "PULSE", "teleph", "Fast Facts" and "RPM". "Communica\*",  
14 "complain\*" and "teleph" are exceedingly broad and seemingly not targeted towards the issues  
15 in this litigation. The majority of which would likely be completely irrelevant. "RPM" is  
16 Domino's largest franchisees and has hundreds of stores. "Fast Facts" are weekly email news  
17 letters sent to franchisees. The only one that relates to telemarketing has been produced.  
18 "PULSE" has been discussed above. Each of the above requests would likely involve thousands  
19 of pages of documents.

22 Additionally, once the documents with Anderson's terms are separated, Domino's would

1 have to have live persons review each document to make see if it had any relation to issues in  
2 this case. It is likely that, given the above terms, most documents would not. This would be a  
3 tremendous burden both in time and money to Domino's.

4 Finally, responsive documents would be found if Anderson's other terms are run.  
5 Domino's does not object to Anderson's other terms. These include, "adad", "autodial" "Pre-  
6 recorded calls", "robocall" and "tcpa" among other things. The other search terms identified by  
7 Anderson are targeted to issues directly involved in this litigation. Responsive documents, if  
8 any, could be efficiently found by searching the other search terms identified by Anderson rather  
9 than the overly broad, burdensome and duplicative terms she seeks.  
10

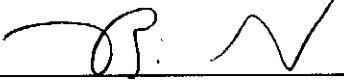
11 It must be said that the parties are working to resolve this issue. Domino's is awaiting  
12 word from its IT Department to specify how many documents each requested term implicates.  
13 The parties might modify their positions based on what the IT Department finds.  
14

## 15 VI. CONCLUSION

16 For the above stated reasons Domino's respectfully requests the Court issue a protective  
17 Order related to Anderson's Fourth, Fifth and Sixth Requests for Production and Request for  
18 ESI.

19 DATED: January 9, 2012.

20 DUNLAP & SODERLAND, PS

21   
22 \_\_\_\_\_  
23 Brant Godwin, WSBA#34424  
24 Attorneys for Domino's Pizza, Inc.  
25 and Domino's Pizza, LLC

26 DOMINO'S MOTION FOR PROTECTIVE ORDER - 10

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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 January 9, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following via email:

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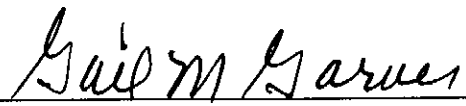
CERTIFICATE OF SERVICE – 1

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

DATED at Seattle, Washington this 9 day of January, 2012.

  
\_\_\_\_\_  
Gail M. Garner

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