

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

CAROLYN ANDERSON,

Plaintiff,

v.

DOMINO'S PIZZA, INC., DOMINO'S  
PIZZA, LLC, FOUR OUR FAMILIES,  
INC. and CALL-EM-ALL, LLC,

Defendants.

CIVIL ACTION NO.: C11-902-RBL

**DECLARATION OF SCOTT SHAFFER,  
ESQ. IN SUPPORT OF DEFENDANT  
CALL-EM-ALL'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR CLASS  
CERTIFICATION**

**Hearing Date: January 13, 2012**

I, Scott Shaffer, hereby certify under penalty of perjury as follows:

1. I am a member of Olshan Grundman Frome Rosenzweig & Wolosky LLP, attorneys representing Defendant Call-Em-All, LLC in this case. In support of Call-Em-All's opposition to Plaintiff's Motion For Class Certification, I hereby declare as follows:

2. Attached hereto as Exhibit A is true and correct copy of a solicitation letter sent on March 19, 2010 to Plaintiff Carolyn Anderson by the law firm of Williamson &

**DECLARATION OF SCOTT SHAFFER IN  
SUPPORT OF DEFENDANT CALL-EM-ALL,  
LLC'S OPPOSITION TO PLAINTIFF'S MOTION  
FOR CLASS CERTIFICATION – Page 1**

**CORR CRONIN MICHELSON  
BAUMGARDNER & PREECE LLP**  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154-1051  
Tel (206) 625-8600  
Fax (206) 625-0900

1 Williams. Although not Bates stamped, the letter was produced by Williamson & Williams  
2 as part of the discovery process in this matter.

3 3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the  
4 deposition of Four Our Families' owner of Michael Brown taken in this lawsuit.

5 4. Attached hereto as Exhibit C is a true and correct copy of Call-Em-All's  
6 Terms of Use.

7 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the  
8 deposition of Call-Em-All's president Brad Herrmann taken in this lawsuit.

9 6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the  
10 deposition of Domino's employee Christopher Roeser taken in this lawsuit.

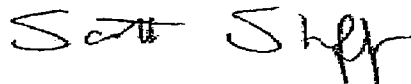
11 7. Attached hereto as Exhibit F is a true and correct copy of excerpts from the  
12 deposition of Plaintiff Carolyn Anderson taken in this lawsuit.

13 8. Attached hereto as Exhibit G is a true and correct copy of the page of the  
14 website of Defendant Domino's Pizza, LLC concerning consent to receive telemarketing  
15 calls. The page can be accessed on the Internet at [http://express.dominos.com/pages/opt-  
17 in.jsp](http://express.dominos.com/pages/opt-<br/>16 in.jsp).

18 9. Attached hereto as Exhibit H is a true and correct copy of Denial of Petition  
19 for Certification in from the Supreme Court of the State of New Jersey affirming the  
20 decision reported at *Local Baking Products, Inc. v. Kosher Bagel Munch, Inc.*, 421  
21 N.J.Super. 268, 23 A. 3d 469 (2011).  
22  
23  
24

1 I certify under penalty of perjury of the laws of the State of Washington and the  
2 United States that the foregoing statements are true and correct.

3 Dated: January 9, 2012

4  
5 

6  
7 SCOTT SHAFFER

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies as follows:

3 I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of  
4 record for Defendant Call-Em-All, LLC herein.

5 I hereby certify that on this date, I electronically filed the attached foregoing with  
6 the Clerk of the Court using the CM/ECF system, which will send notification of such  
7 filing to the following persons:  
8

9 Kim Williams  
10 Rob Williamson  
11 Williamson & Williams  
12 17253 Agate St. NE  
13 Bainbridge Island, WA 98110  
14 *Attorneys for Plaintiffs*

David M. Soderland  
Dunlap & Soderland, P.S.  
901 Fifth Avenue, Suite 3003  
Seattle, WA 98164  
*Attorneys for Domino's Pizza, LLC*

13 Nelson C. Fraley II  
14 Faubion, Reeder, Fraley & Cook, P.S.  
15 5920 – 100<sup>th</sup> St. SW #25  
16 Lakewood, WA 98499  
17 *Attorneys for Defendant Four Our Families, Inc.*

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

20 DATED: January 9, 2012 at Seattle, Washington.

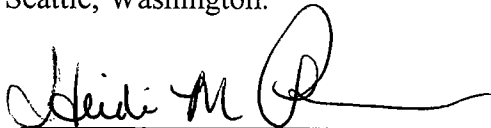
21   
22 Heidi M. Powell

EXHIBIT A

**WILLIAMSON  
& WILLIAMS**  
L A W Y E R S

187 PARFITT WAY SW  
SUITE 250  
BAINBRIDGE ISLAND, WA 98110  
(206) 780-4447  
(206) 780-5557 (FAX)  
www.williamslaw.com

1708 BELLEVUE AVENUE  
SEATTLE, WA 98104

**KIM WILLIAMS\***  
(206) 780-4456  
kim@williamslaw.com

**ROB WILLIAMSON\*\***  
(206) 780-4457  
robin@williamslaw.com

\* ALSO ADMITTED IN OREGON  
\*\* ALSO ADMITTED IN CALIFORNIA

Please reply to the  
Bainbridge Island Address

March 19, 2010

VIA EMAIL AND REGULAR MAIL

Carolyn Anderson  
1126 132<sup>nd</sup> St Ct E  
Tacoma, WA 98445  
lasbry@mail2bryan.com

Re: Domino's Pizza autodialer telephone solicitation

Dear Ms. Anderson:

Our firm has filed a number of class action lawsuits in the State of Washington on behalf of classes of people who receive automatic dialing and announcing device (ADAD) solicitation calls from businesses; currently we have cases pending against Payless Shoe Source, Talbot's, Intuit, Sprint and Tween Brands, to name only a few. In connection with our work in this area, we obtained records of complaints submitted to the Washington Attorney General's Office regarding ADAD solicitation calls, including a copy of the complaint you filed with the Washington State Attorney General's Office concerning a sales call you received from Domino's Pizza on August 31, 2009.

Unfortunately, it appears that the Attorney General's Office was unable to assist you in connection with a claim for statutory damages against Domino's. Your Attorney General complaint indicates that Domino's did not respond to your request for a copy of WAC 408-120-253, and I am enclosing WAC 480-120-253 which I believe is the WAC you need. As you can see, this WAC addresses ADAD calls that are not made for commercial solicitation purposes, and it does not appear to apply to the call you received from Domino's.

We would like to discuss with you the possibility of filing a class action case on your behalf and on behalf of all other persons in Washington State and, potentially, around the United States who received ADAD solicitation calls from Domino's. Please give me a call or send me an email if you are interested in discussing the Domino's matter in more detail. There is no charge for a consultation, and, in the event we file a case, our firm advances all costs of suit.

I look forward to hearing from you.

Sincerely,

WILLIAMSON & WILLIAMS

  
Kim Williams

KW/vh  
Enclosure

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CAROLYN ANDERSON, )  
Plaintiff, )

vs. ) No. 10-2-15941-0 SEA

DOMINO'S PIZZA, INC., DOMINO'S )  
PIZZA, LLC and FOUR OUR )  
FAMILIES, INC., )  
Defendants. )

Deposition Upon Oral Examination Of  
MICHAEL W. BROWN

9:38 a.m.

Thursday, September 30, 2010  
5920 100th Street SW, Suite 25  
Tacoma, Washington

REPORTED BY: Keri A. Aspelund, RPR, CCR No. 2661

SEATTLE DEPOSITION REPORTERS, LLC

www.seadep.com

(206) 622-6661 \* (800) 657-1110 FAX: (206) 622-6236



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1 APPEARANCES:  
 2 For the Plaintiff: ROB WILLIAMSON, ESQ.  
 3 Williamson & Williams  
 4 187 Parfitt Way SW, Suite 250  
 5 Bainbridge Island, WA 98110  
 6 206-780-4447  
 7 roblin@williamslaw.com  
 8 For the Defendants Domino's:  
 9 DAVID M. SODERLAND, ESQ.  
 10 Dunlap & Soderland  
 11 901 Fifth Avenue, Suite 3003  
 12 Seattle, WA 98164  
 13 206-682-0902  
 14 dsoderland@dunlapsoderland.com  
 15 For the Defendant Four Our Families:  
 16 NELSON C. FRALEY II, ESQ.  
 17 Faubion, Johnson, Reeder & Fraley  
 18 5920 100th Street SW, Suite 25  
 19 Tacoma, WA 98499  
 20 253-581-0660  
 21 nfraley@fjr-law.com  
 22  
 23  
 24  
 25

Page 4

1 Tacoma, Washington; Thursday, September 30, 2010  
 2 9:38 a.m.  
 3 -----  
 4 (Exhibit-1 marked.)  
 5 (Exhibit-2 marked.)  
 6 (Exhibit-3 marked.)  
 7 (Exhibit-4 marked.)  
 8 (Exhibit-5 marked.)  
 9 MICHAEL W. BROWN: Witness herein, having been  
 10 duly sworn, testified as follows:  
 11 E-X-A-M-I-N-A-T-I-O-N  
 12 BY MR. WILLIAMSON:  
 13 Q. Mr. Brown, would you just state your full name  
 14 including your middle initial for us.  
 15 A. Michael W. Brown.  
 16 Q. And you are the owner of some Domino's stores,  
 17 is that correct?  
 18 A. Yes.  
 19 Q. Okay. For purposes of our deposition, if I talk  
 20 about Domino's, I mean the corporate main headquarters, the  
 21 franchisor, okay?  
 22 A. Okay.  
 23 Q. And when I talk about the stores, I mean your  
 24 store or stores; is that okay?  
 25 A. Four Our Families, Inc.?

Page 3

1 E-X-H-I-B-I-T I-N-D-E-X  
 2 NO. DESCRIPTION PAGE/LINE  
 3 1 Amended Subpoena for Deposition of 4 4  
 4 Michael Brown  
 5 2 (Exhibit withdrawn) 4 5  
 6 3 Plaintiff's First Interrogatories 4 6  
 7 and Requests for Production with  
 8 Answers and Responses Thereto  
 9 4 Domino's Pizza LLC Standard 4 7  
 10 Franchise Agreement  
 11 5 Call em all charges 4 8  
 12 6 Credit Balance 51 2  
 13 7 Opt Out Report 51 3  
 14  
 15 E-X-A-M-I-N-A-T-I-O-N  
 16 BY PAGE/LINE  
 17 MR. WILLIAMSON 4 11  
 18 MR. SODERLAND 66 2  
 19 MR. WILLIAMSON 76 1  
 20 MR. FRALEY 77 1  
 21 MR. WILLIAMSON 78 4  
 22  
 23  
 24 (Note: \* Denotes phonetic spelling.)  
 25

Page 5

1 Q. Yes.  
 2 A. Okay.  
 3 Q. And then if I talk about the calls, I mean the  
 4 calls that were placed through using -- what is it  
 5 called -- Call-Em-All?  
 6 A. Yes.  
 7 Q. So, the calls, some people call them robocalls,  
 8 and some people call them ADAD, and there's difference  
 9 names, but for our deposition, I'll just say the calls,  
 10 okay?  
 11 A. Okay.  
 12 Q. Tell me when Four Our Families, Inc., was  
 13 formed. Four Our Family, is it, Inc.?  
 14 A. Yeah, it's F-O-U-R --  
 15 Q. Right.  
 16 A. -- Our, O-U-R, and Families with I-E-S.  
 17 Q. Right.  
 18 A. And it was formed in September of 1994.  
 19 Q. Okay. Was it formed to -- was it formed as part  
 20 of making a decision to buy a franchise from Domino's?  
 21 A. I bought four stores, yes.  
 22 Q. Okay. In '94?  
 23 A. Yes.  
 24 Q. Oh, okay. And do you still have those same four  
 25 stores?

Page 34

1 A. Yeah.  
 2 Q. All right. And so then you had contact with  
 3 some -- renewed contact with somebody at Call-Em-All, or  
 4 was it just a matter of going on their web site?  
 5 A. You can go right onto their web site and sign  
 6 up, anybody can.  
 7 Q. Okay. And the process, as I understand it,  
 8 would be in part that you would download phone numbers that  
 9 you wanted to be called, is that right?  
 10 A. Correct.  
 11 Q. Okay. What about did you have to download or  
 12 type in the script of what you wanted the call to say?  
 13 A. Yes.  
 14 Q. Okay. And when did you first start having these  
 15 calls made on your behalf, roughly?  
 16 A. I believe in June of 2009.  
 17 Q. All right. And how long did you do that?  
 18 A. Up until about August 30th or 31st.  
 19 Q. Of 2009?  
 20 A. Yes.  
 21 Q. Okay. And why did you stop after that?  
 22 A. Because they changed the federal law that you  
 23 had to have a written permission from the customer to be  
 24 called, so --  
 25 Q. How did you -- sorry.

Page 35

1 A. From them. They e-mailed me in August and said  
 2 the laws are changing on September 1st, and they even  
 3 advertised that we can help you with getting these forms,  
 4 and I just looked at it and said that's way too much work  
 5 for all my customers to get written permission to be able  
 6 to call it, so I just said I'm not going to do it anymore  
 7 after that point.  
 8 Q. Okay. Did you ever have -- did you ever believe  
 9 that the marketing this way was helpful? Did you have any  
 10 sense that it improved sales or not?  
 11 A. Oh, yes, it did.  
 12 Q. Oh, okay. So, when you would go online -- when  
 13 you went on -- excuse me, went online initially to do this,  
 14 was there some portion of their web page where you had to,  
 15 in effect, sign a contract, where you had to click "I  
 16 agree," or somehow there was something that went that --  
 17 that you had to do?  
 18 A. Yeah, I believe there was.  
 19 Q. But nothing sent to you? You don't have any  
 20 papers, do you, from them?  
 21 A. No.  
 22 Q. All right. And do you recall -- so, initially  
 23 to do it you would need to download telephone numbers, is  
 24 that right?  
 25 A. To them, yes.

Page 36

1 Q. Okay. Do you remember roughly how big the first  
 2 download was, how many numbers?  
 3 A. I don't know. An estimate, I think I tried  
 4 5,000 calls the first time. I don't have the records in  
 5 front of me --  
 6 Q. Okay.  
 7 A. -- of what the charges were on my credit card.  
 8 Q. Okay. And was the database then that large at  
 9 that time, were there 5,000 phone numbers that you were  
 10 able to download into the system?  
 11 A. Yes.  
 12 Q. Okay. Did you have more than that and you just  
 13 limited the first download to 5,000 numbers?  
 14 A. Yeah.  
 15 Q. Okay.  
 16 A. I would do it by location of each store.  
 17 Q. Oh, all right. And how did you get those phone  
 18 numbers?  
 19 A. I downloaded them from the store.  
 20 Q. Okay. And how did the store have them?  
 21 A. From the customer calling in --  
 22 Q. Okay.  
 23 A. -- and then they would give their telephone --  
 24 we would get it on caller ID and confirm it, which is a  
 25 safety thing, and then we'd put their address in, and make

Page 37

1 their pizza up, and then they're in our database at that  
 2 point.  
 3 Q. And was the database that was available kept by  
 4 each store?  
 5 A. Yes.  
 6 Q. So, you've got like six databases?  
 7 A. Yes.  
 8 Q. All right. So, do you remember -- if you don't,  
 9 that's okay -- which store's database you used for the  
 10 first call?  
 11 A. No, I don't remember that.  
 12 Q. Okay. Did you, over the course of the few  
 13 months that you did this, make calls from each of the  
 14 stores?  
 15 A. Yes.  
 16 Q. Did you sometimes do more than one store?  
 17 A. Yes.  
 18 Q. Did the script change over the six -- three  
 19 months or so you did this?  
 20 A. Yes.  
 21 Q. Okay. At any point did anyone with Call-Em-All  
 22 interface with you about you might want to change the  
 23 script to this or that, or was it always your decision?  
 24 A. My decision.  
 25 Q. Okay.

Page 34

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 2 Q. All right. And so then you had contact with  
 3 some -- renewed contact with somebody at Call-Em-All, or  
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 19 Q. But nothing sent to you? You don't have any  
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 25 A. To them, yes.

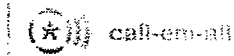
Page 36

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 4 5,000 calls the first time. I don't have the records in  
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 9 that time, were there 5,000 phone numbers that you were  
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Page 37

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 4 each store?  
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 7 A. Yes.  
 8 Q. All right. So, do you remember -- if you don't,  
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 10 first call?  
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 18 Q. Did the script change over the six -- three  
 19 months or so you did this?  
 20 A. Yes.  
 21 Q. Okay. At any point did anyone with Call-Em-All  
 22 interface with you about you might want to change the  
 23 script to this or that, or was it always your decision?  
 24 A. My decision.  
 25 Q. Okay.

EXHIBIT C



## Terms Of Use

Call-Em-All, LLC ("Call-Em-All") is providing users ("User") with access to its telephone messaging services and web site, (the "Call-Em-All Service"), subject to the terms and conditions of this User Agreement (the "Terms of Use"). Any new features, changes, updates or improvements of the Call-Em-All Service, and the availability of new Call-Em-All services, shall be subject to the terms of this User Agreement unless explicitly stated otherwise.

### 1. YOUR ACCEPTANCE OF THIS USER AGREEMENT

Please read the User Agreement carefully before using or registering for the Call-Em-All Service. By using or registering for the Call-Em-All Service, you agree to be bound by the terms and conditions set forth. If you do not wish to be bound by these terms and conditions, you may not access or use the Call-Em-All Service.

### 2. MODIFICATION OF TERMS

We reserve the right to modify and restate the terms and conditions of the User Agreement, and modification(s) shall be effective immediately upon being posted on the Call-Em-All.com web site.

Unless explicitly stated otherwise, any new features that augment or enhance the current Call-Em-All Service, including the release of new Call-Em-All properties, shall be subject to the User Agreement. You understand and agree that the Call-Em-All Service is provided "AS-IS" and that Call-Em-All assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store or deliver any User communications or personalized information.

You are responsible for reviewing these terms and conditions regularly. Your continued use of the Call-Em-All Service shall be deemed to be your conclusive acceptance of all modifications to the User Agreement.

### 3. PRIVACY POLICY

By using or registering for the Call-Em-All Service you acknowledge that you have read and accept the Call-Em-All Privacy Statement. Before using or registering for the Call-Em-All Service, please carefully read the Call-Em-All Privacy Statement. A link to the Call-Em-All Privacy Statement is on the bottom of each page of Call-Em-All.com.

## CALL-EM-ALL PRIVACY STATEMENT

Call-Em-All has implemented this privacy policy to ensure that personal information (specifically set forth below) pertaining to our clients is kept private and secure subject to the Terms & Provisions of the Call-Em-All User Agreement. Call-Em-All will not distribute any of the information we receive from you while using the Call-Em-All voice broadcasting service. Financial information and other information deemed critical by Call-Em-All will be exchanged over a secure connection and encrypted within our database.

Call-Em-All does not currently have any relationships with third parties that would want or require your personal information. If any aspect of this privacy policy changes, it will be updated on both our website and our User Agreement. If Call-Em-All deems the change particularly important, we will also notify clients via email.

### What personal information does Call-Em-All collect?

#### Registration

During our registration process prior to using the site, Call-Em-All requires that you supply your name, e-mail address, phone number, and other identifying information. This information is used to establish your Call-Em-All account, and so that we may contact or identify you for support purposes.

#### Order/Purchase

During our ordering process, Call-Em-All requires that you provide us with a credit card number and other associated information. This information will be encrypted and stored so that we may process future orders and subscription renewals.

#### Phone Lists

Before sending a voice broadcast, you will need to provide Call-Em-All with a list of phone numbers and other optional information for the people you would like to call. This information will not be shared with any third parties, pursuant to this privacy policy and the Call-Em-All User Agreement.

#### Voice Broadcasts/Recordings

Call-Em-All will record your voice inputs (messages) in order to transmit them to the phone numbers you provide. Call-Em-All reserves the right to review these messages at any time and for any reason, particularly if we have reason to believe that messages are in violation of the Call-Em-All User Agreement.

#### Cookies

Call-Em-All employs cookies to recognize you and your access privileges on our site, as well as to track site usage. Subscribers who do not accept cookies cannot use the Call-Em-All voice broadcasting service. We do not use cookies for any reason other than to help make the Call-Em-All website easy for you to use.

#### IP Addresses

Call-Em-All logs IP addresses for systems administration and troubleshooting purposes. We do not use IP

address logs to track your session or your behavior on our site.

#### E-Mail

Call-Em-All will use the email address you provide at registration as the primary method for communicating account-related information with you.

#### Data Security

To prevent unauthorized access, maintain data accuracy, and ensure the use of information, we have put in place appropriate physical and electronic procedures to protect the information we collect online.

Will my information be used for marketing purposes by Call-Em-All or any other company?

Call-Em-All does not currently have any relationships with any third parties that may want or require your personal information. Therefore, you will not receive marketing messages from any company other than Call-Em-All.

Call-Em-All may, from time to time, choose to send email to our users in the form of a newsletter or special offer. Should we decide to send an email to our users, it will be sent ONLY to account owners and individuals that have a login to the Call-Em-All website.

At the end of your broadcast messages, Call-Em-All may give call recipients the option to remove their phone number from your calling list.

#### 4. REMOVE PHONE NUMBER

If members of your group do not wish to receive messages, they may visit our website and click 'Opt Out' on the home page of the web site. Alternatively, you may notify Call-Em-All of your request for the removal of a telephone number from a calling list by sending an e-mail to AccountSupport@call-em-all.com or by writing to: Call-Em-All, 2611 Internet Blvd., Suite 120, Frisco, TX, 75034. If no specific calling list is specified, the number will be blocked from receiving calls from any Call-Em-All user. Our Do Not Call list applies even if a calling list is uploaded to our system by a client and is not stored in our database.

#### 5. REGISTRATION INFORMATION

You agree, as a condition of your use of the Call-Em-All Service, to provide Call-Em-All with accurate and complete information when registering for or using the Call-Em-All Service, and to update and maintain such information. Call-Em-All has the right to suspend, restrict or terminate your use of the Call-Em-All Service and to refuse any future use of all or portions of the Call-Em-All Service if Call-Em-All has reason to believe that you have failed to comply with these requirements.

#### 6. MINIMUM AGE

If you are under the age of eighteen, you are prohibited from using or registering for the Call-Em-All Service. By using or registering for the Call-Em-All Service, you warrant to Call-Em-All that you are above the age of eighteen. In addition, parents of children under the age of 18 should be aware that the Call-Em-All Service is designed to appeal to a broad audience. Accordingly, as a parent or legal guardian, it is your responsibility to determine whether any portion of the Call-Em-All Service is inappropriate for your child.

#### 7. TELEPHONE CHARGES

Access to the Call-Em-All service is achieved by dialing a toll-free number within any of the contiguous forty eight (48) states of the United States, Hawaii, and Canada. Call-Em-All Communications is not responsible for any charges that you may incur from dialing outside of the United States or any other connection charges that you may incur when calling the Call-Em-All toll-free phone number, e.g., cellular, mobile, or pay phones.

Please note that Call-Em-All delivers messages anywhere within the contiguous forty eight (48) states of the United States. Messages CANNOT be delivered to Alaska.

#### 8. ACCOUNT SECURITY

When you are registered, you will establish a Username and a PIN. You are responsible for protecting the confidentiality of your Username and PIN, and you are fully responsible for all activities that occur under your Username.

You agree: (a) to exit from your account when you conclude each session, and (b) to immediately notify Call-Em-All of any loss, compromise or unauthorized use of your Username and PIN or any other breach of security. You may notify Call-Em-All by sending an e-mail to AccountSupport@call-em-all.com or by writing to: Call-Em-All, 2611 Internet Blvd., Suite 120, Frisco, TX, 75034. Call-Em-All will not be liable for any loss or damage of any kind resulting from either the authorized or unauthorized use of your Username and PIN.

#### 9. CONSENT TO RECORD YOUR VOICE INPUTS

You agree and consent that Call-Em-All may record oral or voice communications, utterances, conversations or commands, made by you during the use of the Call-Em-All Service. By using the Call-Em-All Service, you expressly consent and grant to Call-Em-All the right to record and use these recordings. If you do not authorize Call-Em-All to make or use these recordings, you may not use the Call-Em-All Service.

Call-Em-All is under no obligation to monitor any recordings for accuracy, completeness, or quality. User understands that recordings may or may not resemble that which User intends to record and that Call-Em-All is under no obligation to ensure that recordings will successfully represent that which User intends to record. User agrees that all recordings become part of the Content (hereinafter defined) of the Call-Em-All Service.

#### 10. RESTRICTION AND MODIFICATION OF SERVICE

You agree that Call-Em-All may limit your use of the Call-Em-All Service, including without limitation the frequency and duration for which you may access the Call-Em-All Service, and that Call-Em-All has no responsibility or liability for any unavailability or limitation on use of the Call-Em-All Service. In addition, Call-Em-All reserves the right at any time to limit, access to, modify, change or discontinue the Call-Em-All Service, or any part thereof, with or without notice. You agree that Call-Em-All shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Call-Em-All Service. You acknowledge and agree that Call-Em-All may establish general practices and limits, which may not be published, concerning the use of the Call-Em-All Service, including without limitation the maximum time that messages will be retained, the maximum number of messages that may be sent from or received by an account on the Call-Em-All Service, the length of message sent and the maximum number of times, and the maximum duration for which you may access the Service, in a given period of time. You agree that Call-Em-All has no responsibility or liability for the deletion or failure to store any messages and other communications maintained or transmitted by the Call-Em-All Service. You acknowledge that Call-Em-All reserves the right to terminate any inactive or dormant account(s). You agree and Call-Em-All reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

#### 11. YOUR CONDUCT

As a condition of your use of the Call-Em-All Service, you agree and warrant to Call-Em-All that you will not use the Call-Em-All Service for any purpose that is unlawful or prohibited by the User Agreement. You may not use the Call-Em-All Service in any manner that could damage, impair, disable or overburden the Call-Em-All Service, interfere in any way with Call-Em-All's rights, interfere in any way with any other user's use and enjoyment of the Call-Em-All Service, or otherwise infringe on any person's rights.

Specifically, you agree and warrant to Call-Em-All that:

You will not use, or attempt to use, the Call-Em-All Service to convey any information that may be considered unlawful, harassing, libelous, abusive, threatening, obscene, hateful, offensive, harmful, vulgar, distasteful, defamatory, indecent, objectionable, or invasive of another person's privacy or proprietary rights.

You will follow the letter and spirit of the terms of the User Agreement and all applicable laws;

You will not use, or attempt to use, the Call-Em-All Service in connection with any junk messages, spamming, advertising or messages that are duplicative, unsolicited, or promotional in nature;

You will not send, or attempt to send, messages to emergency lines, to any health care facility or similar establishment, to numbers assigned to radio common carrier services or to any service for which the called party is charged for the call;

You will not transmit, or attempt to transmit, any material that may infringe the contractual, fiduciary, intellectual property rights, or other rights of third parties, including trademark, copyright or the right of publicity;

You will not impersonate, or attempt to impersonate, any other person, falsify contact information, misrepresent a relationship with any person or entity, including misrepresenting a relationship with Call-Em-All, or otherwise attempt to mislead others as to the identity of the sender or the origin of a message;

You will not resell, or attempt to resell, the use of the Call-Em-All Service without express, prior written consent/permission from Call-Em-All;

You will not collect, or attempt to collect, or store information about the Call-Em-All Service or other users, including contact information, without their consent;

You will not interfere, or attempt to interfere, with or disrupt connections to the Call-Em-All Service or violate the regulations, policies or procedures of such connections;

You will not attempt to gain unauthorized access to the Call-Em-All Service, other accounts, computer systems or networks connected to the Service.

You will not attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password/PIN mining or any other means.

You agree and Call-Em-All retains the right, at its sole discretion, to determine whether or not User's conduct is consistent with the letter and spirit of the User Agreement. Call-Em-All may immediately terminate User's Call-Em-All account if User's conduct is found to be inconsistent with this User Agreement.

#### 12. NO SPAM AND CONSENT TO DAMAGES

Call-Em-All will immediately terminate any account which it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited messaging activities. Activities such as sending spam or other unsolicited messages can cause harm to Call-Em-All (and our customer base) in numerous ways including, but not limited to, damaging the Call-Em-All brand name, damaging our reputation for delivering relevant messages, damaging our reputation for privacy,

damaging our ability to attract and retain customers, and damaging other consumer customer and business goals, activities, or relationships. Call-Em-All retains sole responsibility and discretion for calculating losses; because these and other damages are often difficult to quantify, if actual damages cannot be reasonably calculated by Call-Em-All; then you agree to pay Call-Em-All liquidated damages of \$5.00 for each piece of spam or unsolicited message transmitted from or otherwise connected with your Call-Em-All account; otherwise, you agree to pay Call-Em-All's actual damages, to the extent such actual damages can be reasonably calculated by Call-Em-All.

### 13. COMPLIANCE WITH FEDERAL AND STATE REGULATIONS

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., the Federal Trade Commission's Telemarketing Sales Rule including the August 2008 Amendment at 16 CFR Part 310, and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the Call-Em-All Service will not cause Call-Em-All to violate these or other similar laws.

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the Call-Em-All Service will not cause Call-Em-All to violate these or other similar laws.

User agrees that it is the sole responsibility of User to abide by any laws defined by the State or Federal Government in which Call-Em-All Services will be applicable. User understands and agrees that Call-Em-All will not be held responsible for damages to the User or any third party incurred due to User's failure to abide by State and/or Federal laws. Please refer to the Telephone Consumer Protection Act of 1991. You may visit the Federal Communications Commission Web site at <http://www.fcc.gov> and the Federal Trade Commission Web site at <http://www.ftc.gov>. Please refer to the appropriate State Attorney Generals office or other applicable offices for telemarketing rules and or regulations pertaining to your intended application and use of the Call-Em-All Service.

### 14. NO RESPONSIBILITY FOR CONTENT

As part of the Call-Em-All Service, Call-Em-All may offer User access to communications, media and commerce services. Call-Em-All does not guarantee the accuracy, integrity, quality or appropriateness of any messages, communications, information, data, text, music, sound, or other materials ("Content"), whether publicly posted or privately transmitted through the Call-Em-All Service. You acknowledge that the Call-Em-All Service simply acts as a passive conduit for the distribution and transmission of information. You acknowledge that Call-Em-All has no obligation to screen, preview, or monitor such Content. By using the Call-Em-All Service, you agree that it is solely YOUR RESPONSIBILITY to evaluate the accuracy, usefulness, completeness, or appropriateness of any Content that you send, receive, access, post, or otherwise transmit through the Call-Em-All Service, including Content that may be offensive, indecent or objectionable. Under no circumstances will Call-Em-All be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content sent, accessed, posted or otherwise transmitted via the Call-Em-All Service.

### 15. DISCLOSURE

Call-Em-All may make identifiable information available to our employees and third parties with whom we contract. In addition, Call-Em-All may provide aggregate statistics, unique identifiers, demographic, and other anonymous information about our users to advertisers, Service Providers (hereinafter defined), and other third parties. You acknowledge and agree that Call-Em-All may make such uses of information you provide or Call-Em-All collects.

While Call-Em-All is committed to protect your privacy, Call-Em-All does not guarantee that your communications, contact information and other identifiable information will never be disclosed. You acknowledge and agree that Call-Em-All may disclose any information or Content as described herein, or if required to do so by law or in the good faith belief that such disclosure is reasonably necessary to: (a) comply with any legal process; (b) respond to claims of a violation of the rights of third parties; or (c) protect the rights, property, or safety of Call-Em-All, its users or the public. Call-Em-All does not accept any responsibility for accidental or inadvertent disclosure, unauthorized access or other disclosure as required by law or described herein.

As we continue to develop our business, we might sell our company or buy other companies or assets. In such transactions, customer information generally is one of the transferred business assets. Also, in the event that Call-Em-All, or substantially all of its assets are acquired, you consent to the transfer of your information as one of the transferred assets.

### 16. SERVICE FEES AND CHARGES

The basic account fees ("Service Fees") shall be provided at the rates set out in the Call-Em-All pricing plan at the time of subscription, plus applicable taxes, fees, and surcharges. Call-Em-All may modify subscription Service Fees at renewal periods.

### 17. SUBSCRIPTION BILLING

Service Fees for subscription users of the Call-Em-All Service will be automatically charged on the first day of each month to the credit or debit card on file for User.

If for any reason payment is not effected through User's credit or debit card and payment becomes past due, Call-Em-All will assess a late payment charge of 1.5% per month, or 18% annually (or the highest amount allowed by law, whichever is lower) on the amount due. The total amount of the late payment, and the late charge, shall be due and payable immediately. User is responsible for any fees, including attorney and collection fees that Call-Em-All may incur in its efforts to collect any Service Fees, surcharges and late payment charges owing from the User. Additionally, Call-Em-All reserves the right to immediately



and without notice terminate the account of any User with a past due balance.

Call-Em-All reserves the right to change the billing process upon providing the Subscriber with 30 days notice in writing or via email.

**Unlimited Usage on Subscription Accounts:** You agree and Call-Em-All retains the right, at its sole discretion, to determine whether or not User is abusing the unlimited usage privilege on a subscription account. If Call-Em-All determines that an account is abusing the unlimited usage privilege, Call-Em-All may restrict or terminate that account. As a guideline only, a user that creates broadcasts that result in more calls per day than the maximum number of recipients in their subscription plan will be considered in abuse of the unlimited usage privilege. Abuse may be addressed by contacting the group leader to warn of excessive usage. Call-Em-All reserves the right to charge an additional 9 cents (\$.09) per call for any excessive calls, as determined at the sole discretion of Call-Em-All.

## 18. FREE TRIALS

Call-Em-All may permit User to use the Call-Em-All Service on a free trial basis. During this time, User will not incur any charges or fees for use of the service. After the expiration of your free trial, you will have the option to purchase a Call-Em-All messaging package or subscription as described on the Call-Em-All web-site. Call-Em-All reserves the right to terminate the account of any free trial User at any time.

## 19. TERM AND TERMINATION

Call-Em-All Service subscriptions shall automatically renew on a monthly basis at the rate indicated on the pricing plans page of the Call-Em-All.com website. Users may discontinue their subscription at any time by logging in to the website and selecting "Cancel my Subscription", or by sending an email to [AccountSupport@call-em-all.com](mailto:AccountSupport@call-em-all.com). WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH SUBSCRIPTION PERIODS. Users that have no past due balance and have paid for the current month will be able to complete broadcasts on their cancelled account until their paid subscription ends.

Call-Em-All per-call service plans will expire after one hundred eighty (180) days of inactivity or upon exhaustion of the messages. Inactivity is defined to mean that User has neither purchased an additional per-call plan, nor initiated a broadcast. Call-Em-All per-call service plans are non-refundable.

## 20. SERVICE PROVIDERS

The Call-Em-All Service may provide User with opportunities to be transferred or linked to third party providers ("Service Providers") of products, services, advertisements or Content that may be accessible through and operate with the Call-Em-All Service. Call-Em-All does not endorse and is not responsible or liable for any Content, data, advertising, products or services available or unavailable from, or through, such Service Providers. You further agree that should you use or rely on such Content, data, advertisement, goods or services on, available or unavailable from, or through any such Service Providers, Call-Em-All is not responsible or liable, indirectly or directly, for any damage or loss caused or alleged to be caused by or in connection with such use or reliance. Your dealings with, or participation in promotions of Service Providers, and any other terms, conditions, representations or warranties associated with such dealings, are between you and such Service Providers exclusively and do not involve Call-Em-All.

You agree that Call-Em-All is not responsible for the accessibility or unavailability of Service Providers or for your interaction and dealings with them.

## 21. LIABILITY DISCLAIMER

YOU AGREE THAT:

A. IF YOU USE THE CALL-EM-ALL SERVICE, YOU DO SO AT YOUR OWN AND SOLE RISK. THE CALL-EM-ALL SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CALL-EM-ALL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

IN THE EVENT OF A CRITICAL EMERGENCY, REGULAR CALL-EM-ALL.COM MESSAGING SERVICES MAY TEMPORARILY BE PRE-EMPTED TO PROVIDE SERVICE TO CLIENTS WITH EMERGENCY-RELATED NEEDS.

B. CALL-EM-ALL DOES NOT WARRANT THAT (i) THE CALL-EM-ALL SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE CALL-EM-ALL SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CALL-EM-ALL SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE CALL-EM-ALL SERVICE WILL MEET YOUR EXPECTATIONS, (v) ANY INFORMATION YOU PROVIDE OR CALL-EM-ALL COLLECTS WILL NOT BE DISCLOSED, OR (vi) ANY ERRORS IN ANY DATA OR SOFTWARE WILL BE CORRECTED. YOU ARE ESPECIALLY ADVISED NOT TO USE OR RELY ON THE CALL-EM-ALL SERVICE AND INFORMATION OR ANY OTHER PROGRAM, INFORMATION OR SERVICE WHATSOEVER RELATED THERETO FOR "CONTENT SENSITIVE" OR "MISSION CRITICAL" APPLICATIONS AND USE. "CONTENT SENSITIVE" SHALL MEAN ANY INFORMATION OR DATA YOU DO NOT WISH TO BE ACCESSIBLE TO OTHER USERS. "MISSION CRITICAL" APPLICATIONS AND USE SHALL MEAN APPLICATIONS AND USE THAT MAY RESULT IN DAMAGE.

C. IF YOU ACCESS OR TRANSMIT ANY CONTENT THROUGH THE USE OF THE CALL-EM-ALL SERVICE, YOU DO SO AT YOUR OWN DISCRETION AND YOUR SOLE RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOU IN CONNECTION WITH SUCH ACTIONS.

D. NO DATA, INFORMATION OR ADVICE OBTAINED BY YOU IN ORAL OR WRITTEN FORM FROM CALL-EM-ALL OR

THROUGH OR FROM THE CALL-EM-ALL SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

## 22. LIMITATION OF LIABILITY

YOU EXPRESSLY AGREE THAT CALL-EM-ALL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF CALL-EM-ALL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR INABILITY TO USE THE CALL-EM-ALL SERVICE; (ii) THE COST OF ANY SUBSTITUTE GOODS AND SERVICES PURCHASED TO REPLACE ANY GOODS OR SERVICES PURCHASED OR OBTAINED AS A RESULT OF ANY INFORMATION OBTAINED FROM OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE CALL-EM-ALL SERVICE; (iii) DISCLOSURE OF UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR INFORMATION OR MESSAGES; (iv) STATEMENTS OR CONDUCT OF ANY SERVICE PROVIDERS OR OTHER THIRD PARTY ON THE CALL-EM-ALL SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE CALL-EM-ALL SERVICE.

## 23. INDEMNIFICATION

You agree to indemnify, defend and hold harmless Call-Em-All, its officers, directors, owners, employees, agents, other Service Providers, vendors or customers from and against all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees resulting from any violation of the User Agreement by you or any harm you may cause to anyone. You agree and we reserve the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## 24. PROPRIETARY RIGHTS

You acknowledge and agree that the Call-Em-All Service and any necessary software used in connection with the Call-Em-All Service and Service Providers contain proprietary and confidential information that are protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in sponsor advertisements or information presented to you through the Call-Em-All Service or other users is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You may not, and agree not to, modify, reformat, copy, display, distribute, transmit, publish, license, create derivative works from, transfer or sell any information, products or services obtained from the Call-Em-All Service, except as set forth herein. Call-Em-All, the Call-Em-All logo and other Call-Em-All logos, product and service names may be trademarks, service marks or other intellectual property of Call-Em-All (the "Call-Em-All Marks"). You agree not to display or use the Call-Em-All Marks in any manner without the prior, express written permission of Call-Em-All.

## 25. NOTICE

You agree that Call-Em-All may communicate any notices to you, including notices of changes to the User Agreement, through email, regular mail or by posting of those notices on the [Call-Em-All.com](http://Call-Em-All.com) web site or through the Call-Em-All Service.

## 26. ENTIRE AGREEMENT

The User Agreement governs your use of the Call-Em-All Service. This User Agreement, your pricing plan, and your payment agreement constitute the entire agreement between you and Call-Em-All. They supersede any prior agreements between you and Call-Em-All. Additional terms and conditions may apply when you use the services of Service Providers and others. These additional terms will not reduce, diminish, or eliminate any rights Call-Em-All possesses with respect to this User Agreement.

## 27. GOVERNING LAW AND ARBITRATION

The User Agreement and the relationship between you and Call-Em-All shall be governed by the laws of the State of Texas without regard to its conflict of law provisions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Call-Em-All Service or to the terms of this User Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. You agree to submit any dispute with Call-Em-All exclusively to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of any arbitration shall be in the city of Frisco, Texas. You agree any arbitrator shall not have the authority to award punitive damages. You agree to be bound by any ruling in such arbitration proceeding and that such ruling shall be enforceable in any court of competent jurisdiction.

## 28. MISCELLANEOUS

Any failure by Call-Em-All to exercise any rights or enforce any of the terms of this User Agreement shall not constitute a waiver of such rights or terms. If any portion of the User Agreement is found by an arbitrator or a court of competent jurisdiction to be invalid, the arbitrator or court should nevertheless give effect to the parties' intentions expressed herein. All other provisions of the User Agreement remain in full force and effect.

[Feedback](#) | [Opt Out](#) | [Login](#) | [User ID and PIN Help](#)  
[Privacy Policy](#) | [Terms Of Use](#) | [Responsible Use](#) | [About Us/Contact Us](#) | [Site Map](#)  
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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

1  
2  
3 CAROLYN ANDERSON, )  
4 Plaintiff, )  
5 ) CIVIL ACTION NO.  
08:42 5 ) 2:11-cv-00902 RBL  
6 )  
7 DOMINO'S PIZZA, INC. )  
8 DOMINO'S PIZZA, LLC, )  
9 FOUR OUR FAMILIES, INC. )  
and CALL-EM-ALL, LLC, )  
Defendants. )

10  
11  
12 -----  
12 ORAL DEPOSITION  
13 OF  
14 BRAD HERRMANN  
15 -----

December 2, 2011

16  
17  
18 ANSWERS AND DEPOSITION of BRAD HERRMANN, a witness  
19 produced on behalf of the Plaintiff, taken in the above  
08:42 20 styled and numbered cause at 9:05 a.m. on the 2nd day of  
21 December, 2011, before Kelly Cobb, a Certified Shorthand  
22 Reporter in and for the State of Texas, taken in the  
23 Executive Conference Center of the Hyatt Regency DFW, 2334  
24 N. International Parkway, DFW Airport, in the City of  
08:42 25 Irving, County of Dallas, State of Texas.

**ORIGINAL**

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A P P E A R A N C E S

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MS. NICOLE BROWN (Appearing telephonically.)

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I N D E X  
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P R O C E E D I N G S

The Witness: BRAD HERRMANN

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\* \* \* \* \*

09:09 1 Q Okay. Great. And then the other one is 42  
2 through 48 and it says at the top somewhere, I think it  
3 said terms of service. Oh, sorry. There is one in  
4 between. It is just No. 42. If you could --

09:10 5 A Uh-huh.

6 Q Is that the log-in page of somebody at least back  
7 in 2009 if they came into the site?

8 A Yes. This is what we could all our responsible  
9 use policy. You'll see we have several things on our  
09:10 10 website and during the sign-up process trying to make sure  
11 that our clients are using our technology responsibly.

12 Q What about does that -- thank you. What about the  
13 issue of people making calls -- or clients making calls  
14 that are legal in terms of state and federal laws? Do you  
09:11 15 have any particular documents that relate to that for  
16 clients?

17 A Certainly. In terms of use we will reference  
18 that, which looks like your next document. Terms of use  
19 will reference that. We also have -- and I think we  
09:11 20 provided this, we produced this, a series of questions  
21 that every client has to answer specifically on the  
22 website before their account will be allowed to make any  
23 calls. And, you know, some of those say very specifically  
24 something along the lines of do agree to use Call-Em-All  
09:11 25 without -- do you agree to use Call-Em-All without



11:09 1 Q And in the case Four Our Families, did you upload  
2 any of the numbers?

3 A No.

4 Q Did you supply them with any numbers that they  
11:09 5 could upload?

6 A No.

7 Q Did you point them to a third party where they  
8 could obtain phone numbers from?

9 A Short of sending them the PULSE instructions, no.

11:09 10 Q Did you say, hey, I know this company that sends  
11 out leads and you can buy a list of customers from your  
12 competitor?

13 A No, we would never have done that.

14 Q Okay. Other than the -- you just said that as  
11:09 15 part of the registration process your client has to  
16 represent that they are calling people with whom they have  
17 a relationship. Other than that representation, does  
18 Call-Em-All have any way of knowing whether the call  
19 recipient has -- actually in fact has a relationship with  
11:10 20 your client other than -- let me say that again.

21 Other than the representation of your client, do  
22 you have any way of validating or ascertaining whether the  
23 relationship in fact exists?

24 A No, we don't.

11:10 25 Q And in this case did you have the representation

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAROLYN ANDERSON,  
Plaintiff,

vs.

Case No. 2:11-cv-00902 RBL

DOMINO'S PIZZA, INC., DOMINO'S  
PIZZA, LLC, FOUR OUR FAMILIES,  
INC., and CALL-EM-ALL, LLC,  
Defendants.

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DEPOSITION OF CHRISTOPHER ROESER

Taken by the Plaintiff on Friday, October 28, 2011, at the  
offices of Huron Reporting & Video Conferencing, 623 W. Huron  
Street, Ann Arbor, Michigan, at 9:05 a.m.

**APPEARANCES:**

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16 REPORTED BY:

Ms. Diane Bennett, CSR-4019, RPR  
Certified Shorthand Reporter

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1 he meant -- about that program and also wanted to know about  
2 the legal terms since there were some legal restriction or  
3 legal parameters involved in the program. So he's asking  
4 Joanne and I if he can share that information with some of his  
5 other clients.

6 Q. All right. So when he writes this Dear -- "Hi Joanne & Chris"  
7 like you're old buddies --

8 A. Yeah.

9 Q. -- you, in fact, had no relationship with him at the time?

10 A. That's right. That's right.

11 Q. But you gathered he heard about this phone opt-in process and  
12 he was writing about it?

13 A. Uh-huh. Yes.

14 Q. Tell me again what the phone opt-in process was.

15 A. So as owners of the dominos.com website, we managed the  
16 functionality and the customers' experience with the website,  
17 so we built some new functionality on the website, in right  
18 about this time, that allowed franchisees to collect phone  
19 numbers of customers who had opted, who would opt in to  
20 receive automated phone calls.

21 So these franchisees would notify us that they are  
22 interested in taking advantage of this functionality on the  
23 website and they would collect opt-ins through the website but  
24 we had to build that because we owned the website.

25 Q. All right. When did this functionality -- is "functionality"

1 another word for just something you can do on the website?

2 A. Yeah. Yeah.

3 Q. Okay. I wanted to put it that way so Dave would be tracking  
4 this conversation.

5 A. Okay. Yeah.

6 MR. SODERLAND: And you might need to define what  
7 "website" is for me, too, Rob.

8 BY MR. WILLIAMSON:

9 Q. When had this functionality been -- I assume like anything,  
10 you tinkered with it before it got running -- but when did it  
11 like finally get running on the site?

12 A. It was I believe mid August 2009, so it was right about the  
13 time of this email.

14 Q. And I need to understand what it meant.

15 I mean it would have a list of customers who had  
16 opted in to getting phone called; is that right?

17 A. Yes. So you're asking me like how it worked?

18 Q. Yes, please.

19 A. Okay. So, just taking an individual case, so a customer could  
20 visit our website on what we call a computer --

21 MR. SODERLAND: Got it. Got it.

22 A. -- and go to the website, navigate to a page, an opt-in page  
23 where they could opt in to receive emails from the company,  
24 they could opt in to receive text messages from Domino's.

25 The third thing they could do, as of this time \_,

1 was opt in to receive automated phone calls. If they checked  
2 that box that, yes, they wanted to receive automated phone  
3 calls from their local store manager is the way it was kind of  
4 presented to them, they would enter their phone number and  
5 their mailing address. So we could identify who their store  
6 was, we used their mailing address to tie them to their local  
7 store.

8 We would then, on the back end behind the scenes at  
9 the website, we would take that phone number and pass that  
10 number directly to the franchisee so they could do with it  
11 whatever they wanted to do, presumably it would be to feed  
12 their automated phone process.

13 BY MR. WILLIAMSON:

14 Q. Okay. This would be, if they chose, if the franchisee even  
15 came onto the site to get the information?

16 A. If the --

17 Q. In other words, how would a franchisee know that that  
18 functionality or that data was now available?

19 A. Well, it's kind of a, it was word of mouth, more or less, that  
20 the franchisee would hear that this functionality was  
21 available to them to take advantage of.

22 We actually built this, we put this process in place  
23 because a large franchisee, an influential franchisee in our  
24 system, asked us to. And --

25 Q. Who is that, by the way?



EXHIBIT F

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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CAROLYN ANDERSON,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 2:11-cv-00902 MJP
	)	
DOMINO'S PIZZA, INC.,	)	
DOMINO'S PIZZA, LLC, FOUR OUR	)	
FAMILIES, INC., and	)	
CALL-EM-ALL, LLC,	)	
	)	
Defendants.	)	

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DEPOSITION OF CAROLYN ANDERSON  
Wednesday, September 21, 2011

Reported by: Kylie Hammington, CCR, RPR  
License No. 2054

APPEARANCES

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Also Present:

Bryan Anderson

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1 pizzas from Domino's, you've picked those pizzas up  
2 each --

3 A Correct.

4 Q -- two or three times that you've purchased from  
5 Domino's?

6 A That's correct.

7 Q How about with Pizza Hut?

8 A Yes, I would say with them too. I've never had  
9 delivery. We have a very hard house to find and it's  
10 terrible to have these people -- can't find it. So  
11 I've just always called ahead. The few times I've ever  
12 ordered pizza, I'll say I need to pick up something by  
13 6:00 or 6:30 or 7:00 or whatever the occasion. And I  
14 just go in, pick it up, and pay for it and leave, and  
15 it's finished. It's done.

16 Q Why do you say your house is hard to find?

17 A You have to know how to get there is why I say that.

18 Q Okay. Well...

19 A It's -- how could I say this? Yeah, you could Google  
20 and it will give you some type of a path to follow, but  
21 it's down a road and then you turn and go down another  
22 little area and turn in and then it's a long driveway  
23 in. It's extremely -- not on any given path. So you  
24 have to kind of know where you're going.

25 Q In that instance, if you were to have a pizza

1 question assumes evidence not in issue. She's never  
2 talked to Nicole Brown and she has said that several  
3 times now.

4 Q Correct?

5 MR. WILLIAMSON: You want me to say so?

6 MR. SHAFFER: I'm asking the witness.

7 Q Correct? If that statement is true, then I  
8 misunderstand. Have you ever spoken to Nicole Brown?

9 A No. Not never.

10 Q Then I misunderstood. And you've spoken to Michael  
11 Brown how many occasions?

12 A I believe two or three. Maybe two or three.

13 One -- maybe two.

14 Q How many times in person?

15 A One time in person.

16 Q And one or two times on the phone?

17 A Yeah.

18 Q And, in any event, there was no -- the first call which  
19 you refer to as a robocall, it was just silence on the  
20 phone?

21 A Correct.

22 Q And the second one, it was just a recording and it may  
23 have been the one that was played before, right?

24 A True.

25 Q How did you come to -- how did you come to get involved

1 with your attorneys on this?

2 A My attorneys sent to me a letter.

3 Q What was -- a letter asking -- I'm sorry. Did you make  
4 the first contact to your attorneys, or did the  
5 attorneys -- were you responding to an ad or some kind  
6 of solicitation?

7 A There was no solicitation and no ad.

8 Q So how did you come to retain Williams and Williamson?

9 A I received a letter in the mail.

10 Q Okay. What did the letter say?

11 A Stating facts and figures of my problem.

12 Q You received a letter from them?

13 A Correct.

14 Q And did -- was it -- was it addressed Dear Sir or  
15 Madam, or was it Dear Mrs. Anderson?

16 A I'm not sure who it came to. I believe it came to my  
17 name.

18 Q Okay. Do you have a copy of that letter still?

19 A I don't know.

20 Q Okay. I would ask that it be produced.

21 (Request for production.)

22 Q I mean, did the letter say -- well, what's your best  
23 recollection of what was in the letter?

24 A My best recollection would be that it was just general  
25 information about my problem and something about

1           maybe -- or could they be of any help, somewhere in  
2           that area.

3       Q     How did they know -- how did they know to send it to  
4           you?

5       A     I don't know. I have no idea how.

6       Q     Okay. So were you referred -- did you get the name of  
7           your law firm from the attorney general? Did they  
8           refer you to them?

9       A     No. They referred me to no one. They can't do that.

10      Q     Now, I'm looking at my notes of what your testimony was  
11           today, and you started out by saying that you felt that  
12           you had been deceived and that's why you started this  
13           lawsuit. Is that -- are my notes an accurate  
14           reflection of what you said?

15      A     I guess the word would be deceived. I don't know if I  
16           used that. I could probably think of a better word  
17           than that, but, yes, that's -- in the essence, my  
18           answer would be yes.

19      Q     What's a better word? Because I have in my notes  
20           deceived, and if it's not --

21      A     I guess I'll just stick with deceived, because I don't  
22           know. That isn't probably the word I would have first  
23           chosen, but it works. So we'll just leave it at that.

24      Q     Well, okay. So then in what way do you feel you were  
25           deceived?



EXHIBIT G



ORDER MENU CDUPONS LOCATIONS TRACKER ESPAÑOL

Tracker | Log In

Email, Text, and Phone Offers

Domino's delivers terrific offers, promotions and news through email and phone! By signing up for Domino's Pizza Offers, you will be the first to hear our news. Your email address will never be shared or sold by Domino's Pizza LLC.

Enter/Confirm Your Address Your street address is used to determine your local Domino's Store.

\*Street:
\*City:
\* State: Select state
\* Zip Code:

Email Signup Enter your email address to have deals sent to your inbox.

E-mail:
Confirm E-mail:

Text-Message Deals Plug in your mobile number to receive text deals.

Cell Phone Number:

By subscribing, you consent to receiving up to 6 SMS messages per month from 366466. Domino's will not charge you for text messages; however standard message and data rates may apply. To opt out of Domino's text messaging program, send the word STOP to DOMNO (366466) at any time.

For help or information on this program send HELP to 366466.

For additional assistance, contact customer service at 734-930-3030 or you may click here to send us an email.

Supported Carriers: AT&T, Sprint, Nextel, Boost, Verizon Wireless, US Cellular, T-Mobile, Virgin Mobile USA, ATel and others

To read our privacy policy, click here

\* Required Fields

SIGN ME UP

CANCEL

Corporate Info // Nutritional Info // Gift Cards // Email & Text Offers // Legal Info // Careers // Customer Service // Domino's Blog

FOCUS ON FACEBOOK FOLLOW US ON TWITTER

LEGAL STUFF ► Any Delivery Charge is not a tip paid to your driver. Please reward your driver for awesomeness. Our drivers carry less than \$20.

Minimum purchase required for delivery. You must ask for this limited time offer. Prices, participation, delivery area and charges may vary. Returned checks, along with the state's maximum allowable returned check fee, may be electronically presented to your bank. ©2011 Domino's IP Holder LLC. Domino's®, Domino's Pizza®, and the modular logo are registered trademarks of Domino's IP Holder LLC. "Coca-Cola" and the Contour Bottle design are registered trademarks of The Coca-Cola Company.

Our Guarantee: If you are not completely satisfied with your Domino's Pizza experience, we will make it right or refund your money.

OPEN FOR LUNCH



COMPLETE YOUR ORDER WITH A DRINK.

EXHIBIT H

SUPREME COURT OF NEW JERSEY  
C-423 September Term 2011  
069084

LOCAL BAKING PRODUCTS, INC.,  
(INDIVIDUALLY AND AS THE  
REPRESENTATIVE OF A CLASS  
OF SIMILARLY-SITUATED PERSONS)

ON PETITION FOR CERTIFICATION

PLAINTIFFS-PETITIONERS,

v.

KOSHER BAGEL MUNCH, INC.,

DEFENDANT-RESPONDENT.

**FILED**

DEC 13 2011

*Mark P. ...*  
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-003923-09  
having been submitted to this Court, and the Court having  
considered the same;

It is ORDERED that the petition for certification is  
denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at  
Trenton, this 9<sup>th</sup> day of December, 2011.

The foregoing is a true copy  
of the original on file in my office.

*Mark P. ...*  
CLERK OF THE SUPREME COURT  
OF NEW JERSEY

*Stuart Rabner*  
CLERK OF THE SUPREME COURT