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2 THE HONORABLE RONALD B. LEIGHTON
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6
7 IN THE UNITED STATES DISTRICT COURT FOR THE
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CAROLYN ANDERSON,

11 Plaintiff,

12 v.

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

16 Defendants.

NO. C11-00902 RBL

**DECLARATION OF ROB
WILLIAMSON IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS DOMINO'S PIZZA,
INC., AND DOMINO'S PIZZA,
LLC'S MOTION FOR PROTECTIVE
ORDER**

NOTED ON MOTION CALENDAR:
JANUARY 20, 2012

17 I, Rob Williamson, hereby declare as follows:

18 1. I am one of the attorneys for the Plaintiff in this matter.

19 2. Plaintiff served Fourth, Fifth and Sixth Requests for Production of Documents on
20 Defendants Domino's Pizza Inc. and Domino's Pizza, LLC ("Domino's") on December 8, 12, and
21 28, 2011, respectively. Responses to the Fourth and Fifth Requests for Production are now
22 overdue, and Domino's has yet to produce a single document.

23 3. Domino's Motion for Summary Judgment was continued by this Court to March
24 30, 2012. The continuance was granted based upon the Motion of Plaintiff which argued that
25 additional time was needed to obtain necessary discovery to respond to the motion. Continued
26

DECLARATION OF ROB WILLIAMSON IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANTS DOMINO'S PIZZA,
INC., AND DOMINO'S PIZZA, LLC'S MOTION FOR PROTECTIVE
ORDER - 1

(Case No. C11-902-RBL)

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1 delays by Domino's in responding to that discovery will impair the ability of Plaintiff to respond
2 in a timely manner.

3
4 4. There are 19 Requests for Production in the Fourth and Fifth sets and the
5 protective order now sought by Domino's appears to seek an order that it need not respond to 10,
6 but is silent as to the remainder, which should, presumably, now be answered. Domino's also has
7 not responded with any Electronically Stored Information (ESI) which has been withheld from
8 the beginning of this litigation.

9
10 5. Attached hereto as Exhibit A are excerpts from the deposition of Brad Herrmann,
11 the CEO of Defendant Call-Em-All.

12 6. Attached hereto as Exhibit B is the Domino's 10K filed with the effective January
13 2, 2001

14 7. Attached hereto as Exhibit C is an article by Rick Rezler which was also Exhibit 2
15 to the deposition Christopher Roeser.

16 8. Attached hereto as Exhibit D is an excerpt from the Deposition of Christopher
17 Roeser.

18
19 I declare under penalty of perjury of the laws of the State of Washington that the
20 foregoing statements are true and correct.

21 Dated: January 18, 2012 on Bainbridge Island, Washington

22 WILLIAMSON & WILLIAMS

23 s/RobWilliamson

24 Rob Williamson

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Attorneys for Plaintiff and the Proposed Class

EXHIBIT A

10:06 1 PULSE. And PULSE is all cap P-U-L-S-E. Do you recognize that
2 document?

3 A Yes.

4 Q And what was or is PULSE?

10:06 5 A PULSE is one of the systems that franchisees -- I
6 think there is multiples, but one of the systems that
7 franchisees use to run their business.

8 Q And is PULSE something that exists on the
9 Domino's' corporate website?

10:06 10 MR. SHAFFER: If you know.

11 A I don't know. What I know about PULSE is that for
12 a franchisee that's where like their orders are processed
13 and I know that's where the phone numbers they're always
14 trying to pull are located. I don't know how it is all
15 set up on the back end.

16 Q (By Mr. Williamson) This document begins with Tim
17 sent this. Do you know who Tim is?

18 A I'm quite confident Tim is a franchisee.

19 Q All right. But is this a Call-Em-All document
10:07 20 or --

21 A It is. So, yes, it is a Call-Em-All document
22 where we cut and pasted instructions that a franchisee
23 sent us and put into this so we could help our franchisees
24 get to their data.

10:07 25 Q All right. And to your knowledge, when

10:07 1 franchisees uploaded phone numbers, was it numbers they
2 had obtained by using PULSE?

3 MR. SHAFFER: Objection.

4 A Yeah, I don't know how they got the phone numbers
10:08 5 at the end of the day.

6 Q (By Mr. Williamson) All right.

7 A Because even within PULSE I don't believe that all
8 franchisees use PULSE so, yeah, I don't know.

9 Q Have you ever yourself looked at the Domino's
10:08 10 PULSE main screen?

11 A No.

12 Q Okay. And then if we could go to the -- two more
13 pages, 12369 through 71, it seems to be a repeat of what
14 we looked at earlier. Is that just a different version of
10:08 15 the same document?

16 A Yes, I suspect this is from one e-mail and Pat
17 might have put two attachments on it.

18 Q All right.

19 A And that's both of them.

10:09 20 Q Actually goes through 12373 and those five are all
21 one document that say 1 of 5, 2 of 5, et cetera. What
22 about if we could look at 12374? Is that a -- what we
23 looked at earlier something that got sent out to people if
24 they were interested?

10:09 25 A Yes. Or, actually, let me correct that. That was

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10:19 1 was a little bit before the FTC rule became effective.
2 Did you know on August 21, though, that it was going to be
3 effective in 10 days?

4 A Certainly.

10:20 5 Q So you were, I presume, concerned that after that
6 to the extent you continued to work with franchisees you
7 would also have to get past that written permission
8 hurdle?

9 A Yes.

10:20 10 Q What was the new phone opt-in process as you
11 understood it?

12 A Well, at some point I became aware that Domino's
13 corporate website, which had always collected I think
14 e-mail opt-ins and text opt-ins -- and I don't know if
10:20 15 this is in all areas -- and I believe it was just for RPM
16 Pizza that they were considering collecting phone opt-ins
17 after you ordered a pizza online as opposed to calling up
18 and ordering it.

19 I got wind of something along those lines.
10:20 20 Clearly, I said -- I was always trying to -- obviously, I
21 always wanted to get in with Domino's corporate, but they
22 really weren't interested in working with me. This was
23 one opportunity. Somebody at corporate might actually be
24 doing something. So I sent this e-mail out and I think
10:21 25 the most interesting thing is they never replied back. I

10:35 1 indicating that they are going to comply with local and
2 federal law, the terms and conditions?

3 A Definitely. Every client goes through that.

4 Q And if they don't sign that off accepting the
10:35 5 terms and conditions, you don't go any farther?

6 A They will never make a call with us.

7 Q Prior to August 31st, 2009, do you have a
8 recollection of whether you -- Call-Em-All ever received
9 any information from franchisees through the PULSE system?
10:36 10 Was that something afterwards or do you know?

11 A What was the date?

12 Q September -- let's use September 1, 2009, new
13 regulations.

14 A Yeah.

10:36 15 Q Prior to that date did Call-Em-All ever get
16 information did you know about from franchisees that was
17 generated by the PULSE system?

18 A Yes.

19 Q And that would be RPM be one of the franchisees?

10:36 20 A I don't know that they are using PULSE. I mean,
21 they are big. They may have their own thing. As I
22 understand, PULSE is not ubiquitous. I'm not an expert on
23 the Domino's franchisees, but I know many. But I'm quite
24 certain not all of them use PULSE for their operations,
10:36 25 for their software. And -- but obviously you can see we

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Alliance Reporting, LLC 214-599-0600

10:37 1 sent out instructions for PULSE. So so we were -- those
2 that were using PULSE, we certainly were trying to help
3 them get the data out of PULSE.

4 Q And when you say you were using them, your
10:37 5 contractual relationships were with franchisees as opposed
6 to corporate?

7 A Yes.

8 MS. BROWN: I'm sorry to interrupt. Dave,
9 can you speak up a little louder on your questioning? I'm
10:37 10 having trouble hearing you.

11 MR. SODERLAND: I'll move a little closer to
12 the phone.

13 MR. WILLIAMSON: Get away from me.

14 MR. SODERLAND: I'm almost through here,
10:37 15 Nicole.

16 Q (By Mr. Soderland) When you said earlier that
17 Dominoes was stand-off-ish, I think you indicated didn't
18 want to touch you with a 10-foot pole. Are we talking
19 about the same thing that they want to focus their
10:38 20 marketing through the website as opposed to your type of
21 services?

22 A I wouldn't characterize it that way because I
23 don't know. I mean, the one conversation I had was that,
24 but the overall stand-off-ish impression I got would have
10:38 25 been through word of mouth through franchisees, so I think

10:48 1 There is multiple ways to enter them in the system.

2 Q But it is the client who puts that information in?

3 A That's right.

4 Q And can a franchisee access that information

10:49 5 through the PULSE system?

6 A I'm under the impression, yes, and that's why we

7 sent out the PULSE -- the PULSE access, you know, one of

8 the exhibits here that sort of how to get numbers out of

9 PULSE.

10:49 10 Q Okay. And do you know if Mike Brown used PULSE to

11 get his customer call list?

12 A I can't say what he did. I know we sent him

13 instructions for how to get numbers out of PULSE, so I

14 would assume that he is a PULSE user and that's where they

10:49 15 came from or at least the large majority would have come

16 from.

17 Q Does Call-Em-All promote or encourage their

18 clients to call noncustomers?

19 A No, emphatically no. We've turned away business

10:50 20 in many cases I was under the impression was legal because

21 we just -- we don't want our service to be used to call

22 people that you don't have a relationship with.

23 Q Okay. And who do you encourage them to call?

24 A Their customers or in the case of a church their

10:50 25 constituents or I guess a politician their constituents.

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Alliance Reporting, LLC 214-599-0600



call-em-all

Exporting numbers from PULSE.

Tim sent this and said anyone that needs help can call him. Try his cell first.

If you have PULSE the easiest way to get the phone #'s you need is to follow this path:

From The Domino's Pulse Main Screen Select:

backoffice>marketing>searches>marketing search>output fields(select custom report) > available fields- phone number, name, street number, street name, postal code> search criteria> customers last order date> was between> (date and date) you may also want to eliminate schools, businesses, hotels , colleges, otherwise you might be making phone calls to disinterested non-customers) > results> Print> Export > Excel(xls) format
Copy to a disk or e-mail to yourself then delete all names and phone numbers you think shouldn't be phoned. Save the revised list and you are ready to upload it to the call-em-all website.

Be prepared to shorten your message to less than 30 seconds or you will be charged more. You'd be surprised how quickly 30 seconds goes when you try and read a script yourself. That's why Domino's Pizza LLC has to pay so much for national ads to get it done professionally within 30 seconds and to get the message out to so many people...it really must take a lot of talent and know how! But a message from a local owner to the community you work and live in is hard to gauge how powerful any messages we give to our customers will be. The one thing McDonald's and Taco Bell don't have is Domino's Pizza's Customer's Phone numbers ...This is definitely a competitive advantage we have over other types of food service industries, let's use what we've got to get more orders.

How should I format a file for importing?

File Requirements:

Excel (.xls) or

Comma Separated Values (.csv or .txt)

Column Order:

Column 1 = Phone Number with Area Code

Column 2 = First Name (Optional)

Column 3 = Last Name (Optional)

Column 4 = Notes (Optional)

Column 5 = Phone 2 (Optional)

Column 6 = Phone 3 (Optional)

CONFIDENTIAL

CEA012367

Creating a Broadcast

Once your account is set up, login and go to "my account" at the top of the page. Change your "maximum message length" to 30 seconds. This will prevent you from going over the 30 second call that will cost you more call units.

1. On your homepage (where it says, Welcome your name), click on the blue rectangle that says "create a broadcast".
2. On the next page, you will pick "announcement".
3. The next page is where you will upload your file. Once the file is analyzed, import all good records.
4. The next page asks when you want to send the broadcast. If you want to send right now, pick now, after I record my message". The other option for later would prompt you to put in the date and time you want the broadcast to go out. The second option is more than likely what you will use.
5. Now you will name the broadcast and verify the caller ID the recipient will see when receiving the call. Name the broadcast something you will recognize (ex: 5213 med 1 top 3.99) in the event you need to look it up later or want to use the message over again. If you put the day of the special in the message, but no date, you can use this message over at a later date.
6. You are now on the final page. You will call the phone number in line item 1 and when prompted, put in the message recording ID in line item 2. Please keep in mind the phone number will stay the same, but the message recording ID will change for each broadcast. A call unit is a 30 second message. Try to keep it at 30 sec or under or you will be charged an additional call unit for every phone number (see Changing Broadcast Preferences below).

Changing Broadcast Preferences

Once you have logged into your account, please take a minute to go to "my account" at the top of the page and pick "broadcast preferences". The bottom dropdown box will give you the ability to set the maximum message length. I would recommend you set it at 30 seconds. You can leave everything like it is.

EXHIBIT B

Domino's PULSE™ point-of-sale system

Our computerized management information systems are designed to improve operating efficiencies, provide corporate management with timely access to financial and marketing data and reduce store and corporate administrative time and expense. We have installed Domino's PULSE™, our proprietary point-of-sale system, in every Company-owned store in the United States and in substantially all of our domestic franchise stores. Domino's PULSE™ features include:

- touch screen ordering, which ensures accuracy and facilitates more efficient order taking;
- a delivery driver routing system, which ensures delivery efficiency;
- administrative and reporting capabilities, which enable store managers to better focus on store operations and customer satisfaction; and
- state-of-the-art online ordering capability, including Pizza Tracker and Pizza Builder.

Management also believes that utilizing Domino's PULSE™ throughout our domestic system, and a growing portion of our global system, provides us with competitive advantages over other point-of-sales systems, including:

- consistent execution and communication of operational best practices in our stores;
- real-time dissemination of data with field management, which enables efficient and informed decision making;
- data collection capability, which provides senior management insight into store operations;
- innovation sharing throughout the system, which allows all users to be more efficient and profitable; and
- electronic dissemination of materials and information to our stores, which reduces training and operating costs.

Since the rollout of Domino's PULSE™ to our domestic stores, our online ordering transactions have grown. Currently, on average, nearly 25% of our domestic stores' sales originate online. In 2010, we made the strategic decision to develop our own online ordering platform and manage this important and growing area of our business internally. Recent industry data indicates that we have the largest share of online sales in the U.S. QSR pizza category. Additionally, we estimate that the Domino's Pizza system is one of the largest on-line retailers in the U.S. in terms of the number of transactions. We intend to continue to enhance and grow our online ordering capabilities.

We require our domestic franchisees to install and maintain Domino's PULSE™. Additionally, Domino's PULSE™ has been installed in nearly 1,600 international franchise stores.

EXHIBIT C



DOMINO'S ONLINE

NEWS/EVENTS/NEWS/NEWS RELEASES/ARCHIVED ARTICLES

News Releases

September 25, 2009

[Chasing a Goal
100% D.O.T. over
90-day Window](#)

September 9, 2009

[RMM Updates](#)

July 17, 2009

[Update Regarding
Oven Baked
Sandwiches Taste
Claim Materials](#)

April 5, 2009

[WorldWide Rally
Expenses In Conclu](#)

March 1, 2009

[Tribute to
Franchisee Tom "TJ"
Johnson](#)

February 13, 2009

[Memphis BBQ
Chicken Is favorite
of Drive-Thru
Gourmet](#)

January 30, 2009

[First Data FAQs and
Directory](#)

January 23, 2009

[Automated
Telephone Calling
Vendor
Recommendations](#)

October 8, 2008

[Brian Baldwin Is
Domino's fastest
Oven Baked
Sandwich maker](#)

September 29, 2008

[Increase Profits by
Reducing Energy
Usage](#)

September 22, 2008

[Advertising Roll-Up
Vote Underway This
Fall - UPDATED with
video](#)

Automated Telephone Calling Vendor Recommendations

by Rich Rezier - January 29, 2009

Situation: Local franchisees are utilizing 3rd party vendors to leverage auto-calling messages at the store level. These calls are placed by the vendor to Domino's customers in an effort to advertise special offers and help drive sales locally.

Recommendations:

- It is not recommended that you use these marketing services as a consistent / ongoing marketing tool. These automated calls can lead to unhappy customers and many unwanted complaints.
- Research your state's telephone marketing laws so that you are aware of the regulations associated with automated calling services. Seek local legal advice before opting into any auto-dialing contract.
- Use a reputable company with solid recommendations from other respected business owners. You are going to trust this company with your customers!
- Have a formalized contract with the third party vendor which includes indemnification and a rider (available on DOL) which will help you to be protected.
- Ask the auto-calling vendor about their knowledge of these state laws to ensure you are both on the same page and ensure their compliance with all national, state and local automated telemarketing regulations.
- Ensure that the 3rd party vendor is checking the national 'do not call' list and scrubbing your customers against an opt-out list.
- All automated calls MUST provide your customers with a way to "opt out" per FTC ruling in December 2008.
- Limit your use of automated calling. Use the marketing method (if you must) very, very, very sparingly.
- Use personalized phone recordings from the store manager or someone on your team with a friendly voice to create a more local / personal feel for the message is encouraged. Making a local reference by the store manager at the end of the call ("Go Broncos!" for example) is one way to do this.

Required Provisions in the Contract:

Indemnification. [Vendor/Company name] Vendor will defend, indemnify and hold harmless [Franchisee Entity Name], Domino's Pizza LLC, and their subsidiaries and affiliates from any claim, damage, suit, loss or expense (including reasonable attorneys' fees) arising out of; (1)

NEWS/EVENTS QUICK
INFO

September 19, 2008
Domino's
sandwiches Subway
In taste test

September 15, 2008
RPM conquers
Hurricane Gustav

September 5, 2008
Oven Baked
Sandwiches; Trans
Fat Labeling Update
(9)

September 4, 2008
New Chief
Marketing Officer
Russell Warner

August 21, 2008
Stan Gage to Big
Ten Market on Oven
Baked Sandwiches

August 20, 2008
Patrick Doyle on Fox
Business Channel
talking sandwiches

August 18, 2008
USA Today
Domino's to add sub
sandwiches to pizza
delivery

August 13, 2008
NEW PHOTOS: RPM
Pizza Breaks Three
World Records

July 25, 2008
How to Save Gas

July 2, 2008
Open for Lunch

June 17, 2008
Beijing Olympic
Torch Relay

June 13, 2008
Domino's Assists
Indiana Flood
Victims

June 10, 2008
Treatment of
Confidential
Information

May 20, 2008
ASCI Scores
Released May 20,
2008

May 16, 2008
Photos from 2008
Domino's Business

the breach of any of Vendor's representations or warranties made hereunder, or (ii) the testing, purchase or use of the services provided by Vendor, developed, designed, or modified hereunder, including but not limited to claims of negligence, breach, warranty, product liability, patent infringement or interference with intellectual property rights.

Compliance with Laws and Regulations. Vendor hereby represents and warrants that the services provided hereunder and all of the actions taken by Vendor hereunder, will comply with all applicable laws, ordinances and regulations, both federal, state and local, including, but not limited to, all laws relating to commercial telephone calls, telemarketing and "Do Not Call Lists."

EXHIBIT D

1 A. I didn't see drafts of it. I was aware it was being
2 assembled.

3 Q. And who is Mr. Rezler, R-e-z-l-e-r?

4 A. You know, I don't know who Rich Rezler is.

5 Q. Do you know even if he works for Domino's?

6 A. As a fact, I don't know.

7 Q. Have you ever seen news releases by Mr. Rezler before or since
8 this time?

9 A. No.

10 Q. You said that prior to this coming out, you were aware of it
11 being worked on or something like that?

12 A. That's correct.

13 Q. Do you know who was working on it besides assuming Mr. Rezler
14 worked on it?

15 A. It's my understanding there was somebody on the Field
16 Marketing Team who was working with, well, was working to put
17 this together to -- well, that's the answer to the question.
18 I think that there was somebody on the Field Marketing Team.

19 Q. Field Marketing, is that at the same sort of level in the
20 hierarchy as Multimedia Marketing?

21 A. There is a VP of Field Marketing as there is a VP of
22 Multimedia Marketing.

23 Q. Well, back then, who was the VP of Field Marketing?

24 A. Lori Bohlen was her name.

25 Q. L-a-u --