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Honorable Ronald B. Leighton

10 UNITED STATES DISTRICT COURT  
11 FOR THE WESTERN DISTRICT OF WASHINGTON

12 CAROLYN ANDERSON,	)	
	)	
13 Plaintiff,	)	CIVIL ACTION NO. C11-902-RBL
	)	
14 vs.	)	DEFENDANTS DOMINO'S PIZZA,
	)	INC. AND DOMINO'S PIZZA, LLC
15 DOMINO'S PIZZA, INC., DOMINO'S	)	RESPONSE TO PLAINTIFF'S
16 PIZZA, LLC, FOUR OUR FAMILIES,	)	MOTION TO COMPEL FRCP 30(B)(6)
17 INC., and CALL-EM-ALL, LLC,	)	
	)	<b>HEARING DATE: April 6, 2012</b>
18 Defendants.	)	
	)	

19 **I. RELIEF REQUESTED**

20  
21 COMES NOW Domino's Pizza, Inc. and Domino's Pizza, LLC ("Domino's") and  
22 respectfully requests Carolyn Anderson's ("Anderson") Motion for an Order Compelling Proper  
23 FRCP 30(B)(6) Witnesses and Sanctions be Denied. The witnesses produced by Domino's were  
24 properly prepared and reflect Domino's limited knowledge related to these claims. The

25 DOMINO'S RESPONSE RE: MOTION  
26 TO COMPEL FRCP 30(B)(6) - 1

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3 witnesses lack of knowledge reflects the fact that (1) Domino's did not exercise any control over  
4 the alleged calls at issue in this lawsuit and (2) that Domino's does not engage in this form of  
5 marketing rather than a lack of preparation.  
6

## 7 II. SUPPLEMENTAL FACTS/CORRECTIONS

### 8 1. Corrections

9 Domino's disagrees with Anderson's assertion as to the claims at issue in this case. The  
10 claims here are limited to potential class claims under the Washington RCW 80.36.400.<sup>1</sup>  
11 Anderson's motion for class certification has not been decided yet. The scope of Anderson's  
12 claims is important as it defines the scope of permissible discovery and whether or not Domino's  
13 designated representatives were proper.  
14

15 This case is not about Domino's franchisees engaging in telemarketing as stated by  
16 Anderson. This case is not about Domino's encouraging franchisees to engage in telemarketing  
17 as stated by Anderson. This case centers on the actions of one franchisee, Four Our Families, Inc.  
18 ("FOFI"), located in Pierce County, Washington. There is not even the slightest fragment of  
19 evidence that Domino's knew about or encouraged FOFI to make the calls in this case. In fact,  
20 the controlling shareholder of FOFI, Michael Brown, has testified that he never told anyone at  
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24 <sup>1</sup> Anderson has confirmed that she is no longer pursuing federal TCPA claims in here Opposition to Four  
25 Our Families, Inc.'s Motion for Summary Judgment.  
26 DOMINO'S RESPONSE RE: MOTION  
TO COMPEL FRCP 30(B)(6) - 2

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3 Domino's about the calls as he made the decision to implement this marketing strategy solely on  
4 his own without any consultation with Domino's.

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6 2. Additions

7 Anderson raises no issue with Wayne Pederson's preparation, knowledge or testimony.  
8 Wayne Pederson was the Domino's FRCP 30(B)(6) designee to discuss two of the six topics  
9 identified by Anderson in her deposition notice. Anderson deposed Mr. Pederson on the same  
10 day as Natalie Haydon and Chris Roeser were deposed.

11  
12 3. Natalie Haydon

13 Ms. Haydon is a Field Marketing Leader for the area covering Washington State. See,  
14 Ex. 1 to Godwin Dec.: Haydon Dep. 5:9-12 & 6:11-13. She has held this position since August  
15 2008. See, Ex. 1 to Godwin Dec.: Haydon Dep. 5:13-14. As the Field Marketing Leader,  
16 Washington franchisees would have interacted with her regarding local marketing questions.  
17 See, Ex. 1 to Godwin Dec.: Haydon Dep. 6:22-25, 7:1-2, & 30:11-15. Ms. Haydon was the  
18 primary source for Washington franchisee marketing questions in 2008 and 2009, the periods  
19 raised in Anderson's FRCP 30(B)(6) notice. See, Ex. 1 to Godwin Dec.: Haydon Dep. 19:9-10.  
20 Prior to the deposition, Ms. Haydon searched her own computer for the terms "call" and  
21 "Brown". See, Ex. 1 to Godwin Dec.: Haydon Dep. 13:13-14. She also searched for newsletters  
22 and policy memorandums. See, Ex. 1 to Godwin Dec.: Haydon Dep. 16:1-6. She also found  
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3 presentations given during co-op meetings, weekly updates and minutes from co-op meetings.  
4 See, Ex. 1 to Godwin Dec.: Haydon Dep. 16: 25-24. She also went back and checked for  
5 responsive documents in 2008 prior to when she commenced her employment with Domino's in  
6 August. See, Ex. 1 to Godwin Dec.: Haydon Dep. 17: 13-17.  
7

8 Because of Ms. Haydon's position, she is the only person at Domino's who might have  
9 spoken with FOFI about marketing recommended by Domino's. As contact person between  
10 Domino's and FOFI, any discussion of robo-calls would have gone through her. Ms. Haydon  
11 would, in all probability been copied on any email regarding robo-calling from a Washington  
12 franchisee to Domino's. Thus a search of her computer is the simplest and best way to find  
13 potential emails regarding "calls" or "Brown".  
14

15 4. Chris Roeser

16 Mr. Roeser was designated in part to discuss the telephone "opt in" feature on the  
17 Domino's website. Mr. Roeser is the person at Domino's that was charged with the  
18 responsibility for developing and implementing the short lived telephone "in" feature, which  
19 was in existence from August 2009 to September of 2010 and involved just 11 franchisees, none  
20 of which owned or operated stores in the State of Washington. Any correspondence regarding  
21 the feature would likely have gone through Mr. Roeser. All of this is moot since FOFI has  
22 testified that it did not use or even know about the telephone "opt in" feature.  
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3 As a member of the Precision Marketing Team in Domino's marketing department Mr.  
4 Roeser also is the person most knowledgeable regarding Domino's policies or positions on auto  
5 dial marketing. He is familiar with the one document that Domino's generated to state its  
6 position on the subject; namely, Domino's has never engaged in a national robo-call marketing  
7 campaign and does not encourage such marketing be implemented by franchisees on a local  
8 level. Mr. Roeser's seeming lack of knowledge is simply due to the fact that Domino's does not  
9 engage in robo-call marketing on a national level and has little, if any, involvement in  
10 franchisee's local marketing plans., While Domino's can provide advice and guidance,  
11 franchisees, such as FOFI, are entitled to develop and implement their own local marketing  
12 strategies.  
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15 Chris Roeser and Natalie Haydon are the people at Domino's with the most knowledge  
16 on the designated subjects. If documents were sent related to the designated subjects, the  
17 documents would have passed through the computers of these two witnesses.  
18

### 19 III.ISSUES

20 Whether by searching hard drives where any responsive documents would necessarily  
21 exist and reviewing relevant documents, Domino's witnesses satisfied the FRCP 30(B)(6)  
22 requirement?  
23

### 24 IV. EVIDENCE RELIED UPON

25 1. Declaration of Natalie Haydon;  
26 DOMINO'S RESPONSE RE: MOTION  
TO COMPEL FRCP 30(B)(6) - 5

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- 3 2. Declaration of Chris Roeser;
- 4 3. This Motion.
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## 6 V. ARGUMENT

### 7 General Preparation

8 Domino's has an obligation to make a conscientious, good faith effort to produce  
9 thoroughly prepared witness about the noticed deposition topics and facts known to the company  
10 and counsel. When presented with plaintiff's 30(b)(6) deposition notice containing six areas of  
11 inquiry Domino's did not select just one corporate representative and attempt to educate that  
12 person as to the areas they were unfamiliar with. To the contrary, Domino's thoughtfully selected  
13 three employees based on their positions with the company, work experience, and job duties  
14 during the period of time at issue in this litigation believed to be the most knowledgeable about  
15 the topics identified in the FRCP 30(B)(6) notice. Domino's even flew one witness, Natalie  
16 Hayden, into Ann Arbor from Denver, CO so that Anderson could depose all three witnesses on  
17 the same day in the same location. Each deponent's work responsibilities rendered them highly  
18 involved with the topics identified on the notice of deposition. This was not a situation where  
19 the deponents needed to be shown volumes of documents or speak with other people in the  
20 company to become conversant in the deposition topics. A review of the deposition transcripts  
21 reveal that at no time did any of the witnesses indicate on the record that they were not  
22 knowledgeable about the various topics contained in the FRCP 30(B)(6) notice.  
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25 DOMINO'S RESPONSE RE: MOTION  
26 TO COMPEL FRCP 30(B)(6) - 6

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4 Wayne Pederson is V.P. Ops Technology & Support. He was designated to discuss  
5 topics 3 and 5 set forth in the notice of deposition. Plaintiff concedes that Wayne Pederson  
6 provided all the information plaintiff was seeking.  
7

8 Natalie Haydon

9 Ms. Haydon is the Area Leader – Field Marketing and serves as the “point person” for  
10 advertising issues between Washington franchisees and Domino’s. This was also true in 2008  
11 and 2009, the periods identified in the FRCP 30(B)(6) notice. Ms. Hayden was selected to cover  
12 topics 1 and 2 in the FRCP 30(B)(6) notice. Prior to being deposed, she searched her own  
13 computer using search terms most likely to find responsive documents. Because she was the  
14 main contact for Washington franchisees, she would most likely have been copied on any email  
15 and such a search reflects the extent of Domino’s knowledge on the subject. She searched  
16 through Domino’s newsletters and policy memorandums. She reviewed past presentations made  
17 during co-op meetings, weekly updates and meeting minutes for the applicable 2008 and 2009  
18 period. She even went back and reviewed documents prior to her start date at Domino’s in order  
19 to be prepared.  
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22 Despite this preparation, she still had very little information. The lack of information was  
23 not due to any lack of preparation on her part, but simply because Domino’s had no knowledge  
24 of the robo-calls made by franchisee FOFI. Ms. Haydon testified that while she has spoken with

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3 Michael Brown about certain marketing issues, those conversations never concerned robo-call  
4 marketing campaigns. Michael Brown, owner of FOFI confirmed this fact when he testified that  
5 he did not inform Domino's that he was implementing a local robo-call marketing effort. It  
6 might not help Anderson's case, and she might not like the testimony, but it is what it is. The  
7 reason Ms. Haydon had little information reflects and confirms Domino's lack of involvement in  
8 these calls rather than any lack of preparation.  
9

10 Chris Roeser

11 Chris Roeser is the Manager-Precision Marketing. "Precision Marketing" is the pinpoint  
12 positioning of your message through direct communication. That is, as opposed to mass  
13 marketing via television or radio advertisements, Precision Marketing concerns more point to  
14 point communication, such as direct mail, electronic mail, call centers, SMS, etc. Had Domino's  
15 engaged in a national marketing campaign that utilized robo-calling as a component it would  
16 have been overseen by Mr. Roeser's team. As stated above, Mr. Roeser is the person most  
17 knowledgeable about item "6" on Anderson's FRCP deposition notice regarding the telephone  
18 "opt in" program. Mr. Roeser and his team were the group tasked with designing and  
19 implementing the telephone "opt-in" program and he would have been copied on emails  
20 regarding the telephone "opt in" program. Given his extensive involvement in the creation,  
21 implementation and maintenance of this short lived program, it is not required for him to search  
22 all documents to find all information necessary to provide testimony.  
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3 Further, FOFI did not participate in the telephone “opt in” program. Michael Brown, the  
4 controlling shareholder of FOFI testified he was not even aware of the existence of this program.  
5 No franchisee operating in the State of Washington participated in the telephone “opt in”  
6 program. These facts lead to the indisputable conclusion that the telephone “opt in” program has  
7 no relevance to any issue that remains in this litigation...especially now that Anderson has  
8 abandoned her federal TCPA claims.  
9

10 As a member of the Precision Marketing Team, Mr. Roeser was also most familiar with  
11 Domino’s policies on robo-calling. He reviewed the one document Domino’s generated  
12 regarding the subject, namely the Fast Fax.  
13

14 Mr. Roeser was designated to address; item 4. Domino’s policies for auto dial marketing;  
15 and, item 6. the telephone “opt in” program, including communications with franchisees  
16 regarding the program, specifically franchisee RPM. As stated above, Mr. Roeser fully  
17 addressed item 4 by stating Domino’s policy on the auto dialing and discussing the one  
18 document Domino’s created related to that policy.  
19

20 The majority of the subjects designated in item 6 relate solely to a franchisee operating  
21 exclusively in the southern United States and bears no relevance to Anderson’s Washington  
22 claims. The topics covered in item 6 are even less relevant now that Anderson has abandoned  
23 her federal TCPA claim. As Anderson asserts in her motion, the dispositive issue in this case is  
24 Domino’s potential liability for actions of its franchisee FOFI operating out of Pierce County,  
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3 Washington. Occurrences involving out of state franchisees have no bearing on this lawsuit.  
4 Domino's has filed a motion for protective order objecting to this irrelevant and burdensome  
5 discovery.  
6

7 Anderson has explored, without objection from Domino's, the "dispositive issue in this  
8 litigation". Whether Domino's can be held liable for the acts or omissions of FOFI hinges on the  
9 language contained in the franchise agreement between Domino's and FOFI and the extent of the  
10 actual control, if any, Domino's exerted over FOFI with respect to FOFI's robo-call marketing  
11 campaign, not activities involving an unrelated franchisee in Louisiana. To explore the critical  
12 issue of control, Anderson: 1. deposed Domino's Director of Franchise Services, Joseph  
13 Devereaux, who indicated that FOFI controlled its own local advertising. 2. Deposed FOFI  
14 owner, Michael Brown, who indicated that he made these calls on his own without Domino's  
15 input or knowledge. 3. Deposed Domino's Area Leader-Field Marketing for Washington,  
16 Natalie Haydon, who confirmed that Domino's was unaware of FOFI robo-calls. 4. Deposed  
17 Wayne Pederson and determined that Domino's Pulse system has no link to robo-calling. 5.  
18 Deposed Chris Roeser and determined Domino's has a national policy discouraging robo-calling.  
19 The critical issue of Domino's control over FOFI has been thoroughly explored.  
20  
21

22 The Taylor Case Cited by Anderson is Distinguishable and does Not Apply Here.

23 The Taylor case cited by Anderson places a duty on corporations to prepare and produce  
24 knowledgeable FRCP 30(B)(6) witnesses who can bind the corporation with their answers. U.S.

25 DOMINO'S RESPONSE RE: MOTION  
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3 v. Taylor, 166 F.R.D. 356, 360-61 (M.D.N.C. 1996). In *Taylor*, defendant sought to disclaim  
4 knowledge by not preparing a witness and then later rely on documents to present arguments to  
5 the contrary at trial. *Id.* at 362. The holding in *Taylor* sought to prevent such practices.  
6

7 This present case involves the situation in which Domino's genuinely does not have some  
8 of the knowledge sought by Anderson. This is because Domino's limits its involvement in local  
9 franchisee advertising campaigns. Domino's knowledge on robo-calls in Washington State is  
10 truly limited to that which has been testified to; namely it discourages such marketing practices  
11 and had no knowledge of FOFI's robo-calling activities. The *Taylor* holding does not say that a  
12 corporation can be without knowledge as Domino's is here.  
13

14 If the Court Finds the Natalie Haydon or Chris Roeser were Inadequately Prepared  
15 Sanctions should be Limited When a Third Witness Pederson was Deposed without  
16 Complaint.

17 Domino's complied with its obligations with respect to the 30(b)(6) deposition. It  
18 produced three deponents who based on their job responsibilities were knowledgeable about the  
19 areas they were designated to discuss. Sanctions are not appropriate in this matter. Mr.  
20 Williamson traveled to Michigan to depose three witnesses. He has raised no objection to the  
21 preparation of the third FRCP 30(B)(6) designee of Domino's, Wayne Pederson. It is presumed  
22 Anderson would not have included the items to be addressed by Mr. Pederson in the FRCP  
23 30(B)(6) notice if the topics were not important enough that Anderson's counsel would travel to  
24 Michigan. Mr. Williamson would have had to incur the same travel, airfare, lodging, meals and  
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3 travel time to depose Mr. Pederson, even if he had not deposed Mr. Roeser and Ms. Haydon. It  
4 is improper to award these expenses. That said, should the court rule the documents at issue are  
5 relevant or the witnesses have not been properly prepared, Domino's is willing to bring any  
6 witnesses ordered by the Court out to Seattle at its expense.  
7

8 VI. CONCLUSION

9 For the above stated reasons, Domino's respectfully requests that the Court DENY  
10 Anderson's Motion for Compel Additional 30(B)(6) Motion and Sanctions.

11 Dated March 30, 2012.

12 DUNLAP & SODERLAND, PS

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14 

15 David M. Soderland, WSBA#6927  
16 Brant A. Godwin, WSBA#34424  
17 Attorneys for Defendants Domino's  
18 Pizza, Inc. and Domino's Pizza, LLC

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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 March 30, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following via Legal Messenger and/or U.S. Mail.

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

11 DATED at Seattle, Washington this 30<sup>th</sup> day of March, 2012.

12   
13 \_\_\_\_\_  
14 Gail M. Garner