

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

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

CLASS ACTION
No. C11-902 RBL
PLAINTIFF'S REPLY TO DEFENDANT'S
RESPONSE TO PLAINTIFF'S MOTION TO
COMPEL FRCP 30(b)(6) WITNESSES
AND SANCTIONS
NOTED FOR HEARING: April 6, 2012

I. Introduction

Domino's opposes this Motion by submitting to the Court declarations of the two witnesses who were produced to provide deposition testimony pursuant to Plaintiff's 30(b)(6) deposition notice. These declarations do not deny that the witnesses were unprepared to respond to the topics that were their responsibility.

Domino's knew that many franchisees were using automatic dialing and announcing device services to blast out tens of thousands of robo-calls to customers. Domino's largest franchisee, RPM, utilized the services of one such blaster, Defendant Call-Em-All. Domino's invited Call-Em-All to attend a franchisee convention so that it could sell its wares to unsuspecting franchisees, including Defendant Four our Families Incorporated ("FOFI"). After the Federal Trade Commission issued directions that such calls would not be made without the

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WITNESSES AND SANCTIONS - 1
(No. C11-902-RBL)

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1 express written permission of the called party, Domino's cooperated with RPM to create a
2 telephone opt in program so that the robo-calls could continue. When required to produce
3 witnesses who could address the critical subjects concerning the relationship between Domino's
4 and robo-calling, Domino's made no effort to produce qualified persons.

6 II. The Two Witnesses Produced by Domino's

7 A. Christopher Roeser:

8 Mr. Roeser does not deny that he did not review or search for any documents, did not
9 consult or confer with other employees, and limited his "preparation" to thinking about what he
10 recalled. He did not conduct a search or use search terms to look at materials that may have been
11 sent out to franchisees regarding the topic. In particular, he made no search of any of the
12 communication that field marketing teams had with franchisees about voice broadcasting. He
13 claims to be familiar with the "one document" that Domino's generated stating its position on
14 "robo calling" but admitted that his search "was between [his] ears primarily". (*Id.*10:15-17).

16 Mr. Roeser's scant declaration discusses the opt in feature that was created at the request
17 of RPM on Domino's.com, and claims he is the person most knowledgeable regarding Domino's
18 policies and positions on autodial marketing. In contrast, the one admitted document generated
19 by Domino's on this subject was by Rich Rezler. Further, in a telephone conference call which
20 was described by witness Haydon, Lori Bohlen, VP of Field Marketing, expressed the position of
21 Domino's about this issue. Mr. Roeser's immediate boss, Andy Wetzel and, before, Joanne
22 Owings, had awareness of the robo-calling activities of franchises, as did Robert Weisberg.
23 Further, Mr. Rosier admitted he was aware of writings from the Field Marketing Team about
24 robo-calling (Deposition of Christopher Roeser, at 25) but neither he nor Ms. Haydon, the other
25 witness tendered by Domino's, could identify or describe these documents, nor had Domino's
26

1 ever produced them. The marketing activities of Domino's and the communications between
2 Domino's and its franchisees involve many different persons and physical locations, such as the
3 field offices which witness Haydon works. Given that Mr. Roeser candidly admits that he made
4 no effort to prepare for his deposition, including making no outreach to any other persons in the
5 Domino's enterprise, the testimony he gave is necessarily limited and inadequate.
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7 With regard to the other topic assigned to Mr. Roeser, the telephone opt-in program and
8 communications related to it, especially communications with RPM, it is undisputed that Mr.
9 Roeser did nothing. He did not know what franchisees use the program, he did not know of any
10 communications with RPM about the program, nor could he testify with respect to any other
11 aspect of the topic. Given that Domino's facilitated efforts by RPM and other franchisee to
12 continue with their robo-calling, evidence regarding those efforts is important to establish
13 Domino's commitment to and belief in the effectiveness of that particular marketing strategy.
14

15 B. Natalie Hayden

16 Ms. Hayden was responsible for two topics. She now submits a declaration claiming,
17 with no foundation, that it was only she that would have had any communications with FOFI
18 about robo-calling, and that she "in all probability" would have been copied on any e-mails
19 regarding robo-calling. Again, like Mr. Roeser, she felt no obligation to make any effort to
20 prepare for the deposition or study the topics in question except to see what might exist on her
21 local computer in Denver. She also claims she was never informed by Michael Brown, the owner
22 of FOFI, or any other employee that it had used robo-calls in its local marketing efforts. In fact,
23 in her deposition, she stated that she knew about this litigation by having been advised by Mr.
24 Mandel, a corporate attorney of Domino's. When asked about a conference call in which the
25 position of Domino's with respect to robo-calling was apparently announced by the Vice
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1 President of Field Marketing, Lori Bohlen, she had no memory of what was said, the date of the
2 call or who participated and the context of the statements about robo-calling. It is of some
3 interest that before Ms. Haydon became an employee of Domino's, she worked for a franchisee
4 that in fact used robo-calling and Call-Em-All for its marketing. For someone so familiar with
5 the topic before she came to Domino's, her claimed ignorance of it thereafter is disappointing.
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7 III. Legal Argument

8 Domino's argues that this is not a case about franchisees engaging in robo-calling or
9 about Domino's encouraging franchisees to do so, but the limited issue of whether FOFI did so.
10 But the liability of Domino's for the calls rests upon its facilitation of franchisees to make robo-
11 calls, including the creation of a new form of functionality on its website so that franchisees
12 could access telephone numbers and continue with a robo-call marketing. Domino's invited Call-
13 Em-All to come to a franchise convention expressly for the purpose of permitting Call-Em-All to
14 sign up other franchisees to robo-call. Domino's profited by the successful marketing efforts of
15 its franchisees. Accordingly the testimony of prepared and knowledgeable whiteness about
16 Domino's role in this type of marketing is important.
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18
19 DATED this 6th day of April, 2012.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 6, 2012, I electronically filed the foregoing document with
3 the Clerk of the Court using the CM/ECF system which will send notification of such filing to all
4 counsel of record who receive CM/ECF notification, and that the remaining parties shall be
5 served in accordance with the Federal Rules of Civil Procedure.
6

7 Dated this 6th day of April, 2012.

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