

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAIRYLAND ANIMAL CLINIC, S.C.,

Plaintiff,

v.

HOMEOPET, LLC and JOHN DOES 1-10,

Defendants.

ORDER & CERTIFICATION
TO THE ATTORNEY
GENERAL OF THE UNITED
STATES

16-cv-147-jdp

Plaintiff Dairyland Animal Clinic, S.C. has filed a class action complaint against defendants HomeoPet, LLC and John Does 1-10, alleging violations of the Telephone Consumer Protection Act of 1991 (TCPA), as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227 *et seq.* Dairyland alleges that defendants sent it and at least 25 others an unsolicited fax in January 2015. Dkt. 1, ¶ 11.

HomeoPet has answered the complaint, Dkt. 11, and filed a notice that its defenses in this case could call into question the constitutionality of the federal statute under which Dairyland seeks relief, Dkt. 14. In short, HomeoPet contends that its affirmative defenses raise the following constitutional questions:

1. Whether the TCPA, as applied, violates HomeoPet's Fifth and Fourteenth Amended rights to due process, or its Eighth Amendment right to be free from excessive fines.
2. Whether the TCPA, as applied, violates HomeoPet's First Amendment right to free speech.

Id.

Under Federal Rule of Civil Procedure 5.1, a party whose pleading calls into question the constitutionality of a federal statute must provide notice to the Attorney General of the United States (assuming that the United States or one of its officers is not a party to the

case). HomeoPet has not confirmed that it sent its notice to the Attorney General by certified or registered mail, *see* Fed. R. Civ. P. 5.1(a)(2), but the court assumes that HomeoPet has or will soon comply with this requirement.

Under Rule 5.1, the court must certify to the Attorney General that a federal statute has been challenged and permit the United States to intervene if it elects to do so. As explained above, HomeoPet's answer in this case raises potential constitutional issues. Thus, pursuant to 28 U.S.C. § 2403(a) and Rule 5.1, the court certifies that this case questions the constitutionality of a federal statute.

Accordingly, IT IS ORDERED that:

1. Defendant HomeoPet, LLC is directed to promptly file proof that it has mailed its notice to the Attorney General of the United States by certified or registered mail.
2. The clerk of court is directed to send a copy of this order to the Attorney General of the United States and to the United States Attorney for the Western District of Wisconsin.

Entered June 2, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge