

## Damages in Pre-Certification Discovery are Premature, Discovery Limited to Numerosity and Ascertainability

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Happy Tuesday TCPA World!! An interesting case here ...

In *Andrew Martin v. Khaylie Hazel Yearning LLC*, No. 3:22-CV-176-SA-JMV, 2022 WL 17573424, at \*1 (N.D. Miss. Dec. 9, 2022), plaintiff originally sought the identity of the members of the classes **and** to determine the amount of damages the identified members are entitled to recover. (i.e., putting the cart before the horse?)

By way of background, Plaintiff filed his complaint seeking to certify two nationwide classes. Defendant did not answer, so default judgment was entered. SMH... Plaintiff requested leave to conduct class certification and damages discovery.

The Court found that Plaintiff sought discovery beyond the relevant and proportional issues pertinent to a decision on class certification. At the court's request, Plaintiff then supplemented his motion requesting itemized discovery including subpoenas of Defendant and third parties.

The Court found that Plaintiff is **not** entitled to discovery as to damages unless and until a class is certified. The Court also limited the discovery for the prior two-year period and to the factors necessary for having the class certified.

As to Defendant, the Court held that Plaintiff is permitted a 30(b)(6) deposition of Defendant's manager and incorporator as specified in the subpoena to include:

1. call logs in her possession relating to the solicitation of sales or promotions of Defendants' CBD oil products,
2. discovering the identity and contact information of any third party engaged on behalf of Defendant to solicit or promote sales of its products via telephone, and
3. the types of information maintained by Defendant which could be reviewed to ascertain the identity and contact information of putative class members and/or whether a person otherwise meets a purported class definition.

As to third parties, the court allowed up to five (5) subpoenas for production of their respective call logs, and an example of such information, if any, maintained by such third party that could be reviewed to ascertain whether a person meets a purported class definition and their identity.

**Takeaway:**

Before class certification, discovery **can** include call logs, identity and contact information of any third party engaged to solicit or promote sales and the types of information maintained by Defendant to ascertain the identity and contact of the class. However, damages, specific identity and contact information is premature until a class is certified.

Until next time, Countess!!!

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National Law Review, Volume XII, Number 347

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