

Cammayo v 1AND8, Inc.
2024 NY Slip Op 35123(U)
October 2, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150173/2024
Judge: Lizette Colon
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At IAS Part 21M of the Supreme Court of the State of New York, held in and for the County of Richmond, at the Courthouse, located in Staten Island, City and State of New York on the 2nd day of October 2024.

PRESENT: HON. LIZETTE COLON, JSC

-----X
Katherine Cammayo

Plaintiff(s),

-against-

**Motion Seq#1
ORDER/DECISION**

INDEX NO. 150173/2024

1AND8, Inc. d/b/a Museum of Ice Cream

Defendant(s).
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Papers Numbered (NYSCEF)

Notice of Motion/OSC (MS#1) _____
And Affirmations/Affidavits Annexed _____ 16-23
Answering Affirmations/Affidavits in Opposition _____ 30-36
Reply Affirmations/Affidavits _____

Virtual oral arguments held 08/27/2024 via Microsoft Teams.

Plaintiff’s motion (MS#1), with opposition, for an Order overruling Defendant’s objection purporting to limit discovery to its “Sips & Scoops” promotion and ordering Defendant to produce all responsive, non-privileged documents, concerning all ticket purchasers to its Museum of Ice Cream NYC location from August 29, 2022 to present; and extending the deadline for Plaintiff to file a Note of Issue by 60 days, until February 25, 2025, is hereby granted in part and denied in part for the forgoing reasons.

CPLR § 901 provides the prerequisites to a class action: “a. [o]ne or more members of a class may sue or be sued as representative parties on behalf of all if: 1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is

impracticable; 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4. the representative parties will fairly and adequately protect the interests of the class; and 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

“While class certification is an issue that should be determined promptly a trial court has discretion to extend the deadline upon good cause shown, such as the plaintiff’s need to conduct preclass certification discovery to determine whether the prerequisites of a class action set forth in CPLR 901 (a) may be satisfied. The purpose of preclass certification discovery is to ascertain the dimensions of the group of individuals who share plaintiff’s grievance.” *Rodriguez v. Metro. Cable Commc’ns*, 79 A.D.3d 841, 913 N.Y.S.2d 292 (2010).

At the outset, the Court notes that Defendant’s motion to dismiss (MS#2) is currently pending before the Court. Pursuant to CPLR 3214 “[s]ervice of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise. If the motion is based solely on the defense that the summons and complaint, summons with notice, or notice of petition and petition was not properly served, disclosure shall not be stayed unless the court orders otherwise.” The Court directs the Parties to proceed with discovery in accordance with this Order/Decision.

Plaintiff alleges that Defendant’s website violates Section 25.07(4) of the New York Arts and Cultural Affairs Law (“ACAL”) by not disclosing the total price of tickets upfront, and

instead hiding the total price, inclusive of taxes and fees, until the final checkout screen. Plaintiff seeks to represent a class of all individuals in the United States who purchased tickets to the Museum of Ice Cream NYC from Defendant's website on or after August 29, 2022. Plaintiff also seeks to represent a New York subclass of all individuals in New York who purchased tickets to the Museum of Ice Cream NYC from Defendant's website on or after August 29, 2022. Based on the papers submitted, the Court finds that Plaintiff's discovery requests surpass what is necessary for Plaintiff to certify a class. However, Defendant shall respond to Plaintiff's interrogatories accordingly:

Interrogatory No. 1- Defendant does not have respond to this Interrogatory. The request is overbroad and makes no exception for privileges.

Interrogatory No. 2- Defendant shall provide the total amount of ancillary fees it collected from its New York customers during the class period through its website and any other affiliate websites only.

Interrogatory No. 3- Defendant shall produce documents sufficient to show the total number of New York customers Defendant collected ancillary fees from through its website and any other affiliate websites only, during the class period.

Interrogatory No. 4- Defendant shall produce documents sufficient to show the total number of transactions where it collected ancillary fees from its New York customers through its website and any other affiliate websites only, during the class period.

Interrogatory No. 5- Defendant shall produce documents sufficient to show the total amount of ancillary fees it collected from non-New York customers through its website and any other affiliate websites only, during the class period.

Interrogatory No. 6- Defendant shall produce documents sufficient to show the total number of non-New York customers that it collected ancillary fees from through its website and any other affiliate websites only, during the class period.

Interrogatory No. 7- Defendant shall provide documents sufficient to show the total number of transactions where it collected ancillary fees from its New York customers through its website and any other affiliate websites only, during the class period.

Interrogatory No. 8-14- Defendant does not have to respond to these interrogatories at this stage of the case, because it is unnecessary for class certification.

Interrogatory No. 15- Defendant does not have to respond to this interrogatory at this stage of the case, because it is unnecessary for class certification. Additionally, this interrogatory is overbroad and makes no exception for privilege.

Interrogatory Nos. 16-24- Defendant does not have to respond to these interrogatories at this stage of the case, because it is unnecessary for class certification.

Additionally, Defendant does not object to the extension of the Note of Issue deadline.

The New NOI date will be February 28, 2025. Parties are to submit a proposed cc order by November 8, 2024., and are to immediately file a vcc request form (found in our Part Rules) should any other discovery issues arise.



Hon. Lizette Colon, JSC.