

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

)	
)	
REGINALD MOORE, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	No. 4:14-CV-1542-JAR
)	
v.)	
)	
FAMILY DOLLAR STORES, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Family Dollar Stores, Inc.’s Motion for Leave to Depose Plaintiff on the Limited Issue of Recently Destroyed Evidence. (Doc. No. 13) The motion is fully briefed and ready for disposition.

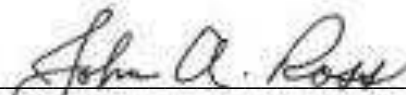
Plaintiff Reginald Moore (“Moore”) brings this putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), alleging that Defendant Family Dollar Stores, Inc. (“Family Dollar”) sent him unsolicited text messages without his prior express written consent. Family Dollar seeks leave to take Moore’s deposition to inquire about the circumstances surrounding the recent loss/destruction of his cell phone and determine what steps, if any, can be taken to mitigate the effects of lost evidence. At this point there appears to be no urgency for taking Moore’s deposition prior to the parties conferring as required by Rule 26(f). While Family Dollar suggests that Moore’s immediate deposition is necessary “to potentially recover information that has been lost or destroyed,” Family Dollar does not explain how such a deposition would serve to “recover” any such information. Family Dollar may examine Moore

on the loss of his cell phone when he is presented for deposition following the Rule 26(f) meet-and-confer session.

Accordingly,

IT IS HEREBY ORDERED that Defendant Family Dollar Stores, Inc.'s Motion for Leave to Depose Plaintiff on the Limited Issue of Recently Destroyed Evidence [13] is **DENIED**.

A separate Order setting this matter for a Rule 16 scheduling conference will accompany this Memorandum and Order.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

Dated this 13th day of November, 2014.