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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

ALLERGAN, INC., et al.,)	Case No.: SACV 14-1214 DOC(ANx)
Plaintiffs,)	
vs.)	
VALEANT PHARMACEUTICALS INTERNATIONAL, INC., et al.)	ORDER DENYING MOTION FOR EXPEDITED PROCEEDINGS
Defendants.)	

Before the Court is Plaintiffs’ request for expedited proceedings. Allergan, Inc. (“Allergan”) and Karah M. Parschauer (collectively, “Plaintiffs”) initially filed an ex parte application for expedited proceedings on Aug. 4, 2014 (“Ex Parte App.”) (Dkt. 11). Valeant Pharmaceuticals International, Inc., Valeant Pharmaceuticals International, and AGMS, Inc. (“Valeant”) and Pershing Square Capital Management, LP, PS Management, GP, LLC, PS Fund 1, LLC, and William A. Ackman (“Pershing Square”) (collectively, “Defendants”) jointly opposed the application (“Ex Parte Opp.”) (Dkt. 15). This Court issued a minute order on Aug. 7, 2014 denying the ex parte application, and construing it instead as a motion for an expedited

1 schedule (Dkt. 24). Defendants filed another opposition (“Rule 57 Opp.”) (Dkt. 34) and
2 Plaintiffs filed a reply (“Reply”) (Dkt. 37). Defendants then filed a sur-reply (“Sur-Reply”) (Dkt.
3 38). After reviewing the papers and considering the arguments at the hearing, the Court DENIES
4 the motion.

5 **I. Background**

6 This case arises out of Plaintiffs’ allegations that Defendants violated federal securities
7 laws and regulations in connection with Valeant’s tender offer for Allergan and in connection
8 with Valeant’s and Pershing Square’s proxy solicitations.

9 **A. Alleged Securities Law Violations**

10 Plaintiffs’ core allegations are based on Section 14(e) of the Williams Act, 15 U.S.C. §
11 78n(e). Compl. ¶ 52. Section 14(e) prohibits “fraudulent, deceptive, or manipulative acts or
12 practices, in connection with any tender offer.” Rule 14e-3(a), 17 CFR 240.14e-3(a), provides
13 that when an “offering person” “has taken a substantial step or steps to commence . . . a tender
14 offer,” it shall be unlawful for “any other person” to purchase or sell securities or options if 1)
15 he receives nonpublic, material information about the tender offer directly or indirectly from the
16 offering person, and 2) the information has not been publicly disclosed. Relatedly, Rule 14e-
17 3(d), 17 CFR 240.14e-3(d), makes it unlawful for an “offering person” to communicate
18 “material, nonpublic information relating to a tender offer to any other person under
19 circumstances in which it is reasonably foreseeable that such communication is likely to result in
20 a violation of this section.”

21 Plaintiffs allege that the Pershing Square Defendants acquired their 9.7% stake in
22 Allergan after Valeant gave them confidential information about its plans to make a tender offer
23 for Allergan. Plaintiffs allege that Valeant was an “offering person” because Valeant had already
24 begun hiring lawyers and having board committee meetings to discuss a transaction with
25 Allergan. Compl. ¶ 52, 54. Defendants respond that Valeant and Pershing Square cannot be
26 considered an “offering person” and “any other person,” respectively, because Valeant and
27 Pershing Square were co-bidders acting through PS Fund 1, a joint venture. Ex Parte Opp. at 4;
28 Rule 57 Opp. at 3.

1 Plaintiffs also allege that the Defendants made various material misstatements and
2 omissions related to Valeant's tender offer and Valeant's and Pershing Square's proxy
3 solicitations in violation of Sections 13(d), 14(a), and 14(e) of the Securities Exchange Act of
4 1934 and regulations issued thereunder. Compl. ¶ 132-158.

5 **B. Hostile Takeover Context**

6 Valeant is currently attempting a hostile takeover of Allergan. Allergan's board has
7 already rejected several bids by Valeant and has enacted a "poison pill" stockholder rights plan
8 that prevents any one group of stockholders, e.g., PS Fund 1, from accumulating a larger stake
9 in Allergan. Ex Parte App. (Dkt. 11), at 4. In order to remove the poison pill so that it can
10 proceed with its tender offer, Valeant is now appealing directly to Allergan's shareholders to
11 replace six of nine Allergan board members with directors who are friendlier to Valeant's
12 acquisition. *Id.* at 1-2.

13 Under Allergan's bylaws, a special shareholders meeting shall be called if holders of 25%
14 of Allergan's shares submit valid request forms. Allergan cannot call a meeting if federal
15 securities laws were violated in soliciting the request forms. *Id.* at 2. Defendants represented to
16 this Court at oral argument that they have collected the required number of forms and intend to
17 request a special meeting. Hr'g Tr. 64:18-24, Aug. 20, 2014. Once the request has been made,
18 Allergan's directors have a "reasonable period of time" within which to decide whether a special
19 meeting should be called. Ex Parte App. at 2. Plaintiffs represented at oral argument that they
20 believe 120 days to be a reasonable time; Defendants similarly interpret Allergan's bylaws to
21 require a decision within 120 days. Hr'g Tr. 99; Ex Parte Opp. at 3.

22 Pursuant to Federal Rule of Civil Procedure 57, Plaintiffs seek a quick resolution of
23 whether the Valeant Defendants violated federal securities laws in their actions related to the
24 tender offer and proxy solicitations thus far, so that its directors will be able to make an
25 informed decision about whether to call the special meeting. Ex Parte App. at 9-10.

26 **II. Legal Standard**

27 Under Federal Rule of Civil Procedure 57, "[t]he court may order a speedy hearing of a
28 declaratory judgment action." A declaratory judgment allows a party to seek a ruling on his

1 prospective rights before an “actual controversy . . . has . . . reached a stage at which either party
2 may seek a coercive remedy and in cases where a party who could sue for coercive relief has not
3 yet done so.” *Seattle Audubon Soc. v. Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996). Declaratory
4 judgment allows the party to clarify what his obligations are, so that he can avoid future
5 lawsuits. *Id.* A declaratory judgment is appropriate “whether or not further relief is or could be
6 sought.” 28 U.S.C. § 2201; Fed. R. Civ. P. 57 (“The existence of another adequate remedy does
7 not preclude a declaratory judgment that is otherwise appropriate.”).

8 “[D]istrict courts possess discretion in determining whether and when to entertain an
9 action under the Declaratory Judgment Act.” *See Wilton v. Seven Falls Co.*, 515 U.S. 277, 282
10 (1995); *see also* Fed. R. Civ. P. 57 (“The court *may* order a speedy hearing of a declaratory-
11 judgment action.”) (emphasis added). One factor that a district court may consider is whether
12 declaratory judgment would “terminate the controversy” or at least substantially narrow the
13 issues. Fed. R. Civ. P. 57 Advisory Committee Notes; *Klungvedt v. Unum Grp.*, No. 2:12-CV-
14 00651 JWS, 2012 WL 2368623, at *3 (D. Ariz. June 21, 2012) (granting speedy hearing under
15 Rule 57 on ERISA claim because it would be dispositive as to state law claims); *Chevron Corp.*
16 *v. Donziger*, 800 F. Supp. 2d 484, 491 (S.D.N.Y. 2011) (explaining that decision on
17 enforceability of judgment “probably would be dispositive of the unjust enrichment count,
18 dramatically narrow or eviscerate the RICO and fraud claims . . .”). Other factors include
19 whether there is a pending state court proceeding, *Wilton*, 515 U.S. at 283; whether the facts are
20 relatively undisputed; and whether the plaintiff shows the need for urgency. *See* Fed. R. Civ. P.
21 57 Advisory Committee Notes (“A declaratory judgment is appropriate when it will ‘terminate
22 the controversy’ giving rise on undisputed or relatively undisputed facts.”); *Anderson v.*
23 *Pictorial Prods., Inc.*, 232 F. Supp. 181, 182 (S.D.N.Y. 1964) (denying request for speedy
24 hearing because plaintiff’s delay in filing the lawsuit showed that the matter was not urgent);
25 *Tri-State Generation & Transmission Ass’n, Inc. v. BNSF Ry. Co.*, CV08-272-PHX-MHM, 2008
26 WL 2465407, at *6-7 (D. Ariz. June 17, 2008) (granting request for speedy hearing where
27 resolution of plaintiff’s declaratory judgment claim was likely dispositive of the matter and
28 where the claim was fairly straightforward and simple).

1 **III. Discussion**

2 The parties have two core areas of disagreement: 1) whether declaratory judgment
3 is available in this case, i.e., whether Rule 57 applies to this case, as a legal matter; and,
4 2) even if so, whether a speedy hearing is appropriate, which is a matter of discretion for
5 the Court. For the reasons discussed below, the Court finds that Rule 57 does apply.
6 However, the Court declines to exercise its discretion to order expedited proceedings.

7 **i. Whether Rule 57 Applies**

8 Defendants argue that declaratory judgment is inappropriate altogether because
9 Plaintiffs are not seeking a declaration of future rights in a context where Plaintiffs'
10 obligations are unclear. Defendants contend that Plaintiffs' claims are based on past
11 wrongs, are already ripe, and that their claims to damages and injunctive relief have
12 already accrued. *See* Rule 57 Opp. at 12-13.

13 However, under the case law and the plain language of Rule 57's advisory notes
14 and 28 U.S. § 2201, Plaintiffs' claims for damages and injunctive relief are not a barrier
15 to declaratory relief. Plaintiffs seek declaratory judgment in order to clarify its future
16 obligations under Allergan's bylaws, so that Allergan's board will not take an invalid
17 action that will expose Allergan to future litigation. *See Ex Parte App.* 9-10. This is the
18 purpose of declaratory judgments. *Seattle Audubon Soc.*, 80 F.3d at 1405. Thus, Rule 57
19 applies.

20 **ii. Whether a Speedy Hearing is Merited**

21 As discussed above, Plaintiffs seek a speedy hearing so that Allergan's board can make
22 an informed decision as to whether a special meeting should be called. Plaintiff also claims that
23 the expedited schedule will help stabilize Allergan's stock price and prevent harm to Allergan's
24 current and potential investors. Mot. at 11.

25 Defendants' argue that an expedited schedule is not needed because Plaintiffs' delay in
26 filing the complaint shows that their claims are not urgent. Defendants claim that if Plaintiffs
27 were truly interested in expediting proceedings, they would not have waited to file a complaint
28 until August even though they have known since June 2014 about Valeant's tender offer and the

1 insider trading events they complained about happened mostly in February and April 2014. Rule
2 57 Opp. at 7. Defendants assert that, although Plaintiffs claim to seek speedy resolution of their
3 claims, Plaintiffs are actually trying to delay holding the shareholder meeting. On August 1,
4 2014, the same day that Plaintiff Allergan filed its complaint in this Court, Allergan wrote a
5 letter to the Chancery Court in Delaware notifying that court of Allergan's action in this Court
6 and stating its position that it believes that the Delaware court should decide any Delaware state
7 law questions (such as interpretation of the bylaws). *Id.* Ex. 5 at 94. Defendants interpret the
8 letter as an implied request for the Delaware court to stay anticipated litigation in Delaware
9 pending this Court's resolution of Allergan's federal securities law claims. If the Delaware court
10 decides to stay its own proceedings, then Allergan will have incentive to delay this Court's
11 proceedings as much as possible. *Id.* at 17-18.

12 The Court finds neither side's arguments entirely persuasive. Complaints take time to
13 investigate and develop; filing a complex case within a few months of discovering a harm does
14 not necessarily mean that a matter is not urgent, especially when there appear to be new
15 developments every few days in this live battle for corporate control.

16 On the other hand, although potentially imminent, neither the formal request for a special
17 meeting nor the actual shareholder meeting has happened yet. It is also not clear that Allergan's
18 bylaws require Allergan's directors to wait for the Court to resolve the claims before they can
19 act. Since the parties have not sought the Court's interpretation of the bylaws and in fact insist
20 that such interpretation is a matter for the Delaware state court, Rule 57 Opp., Ex. 5, at 94; Ex
21 Parte Opp. at 3 n.2, the Court will refrain from opining on what Allergan's bylaws mean. Even
22 if the bylaws did have such a requirement, however, the Court would be reluctant to create a
23 precedent that allows corporations to demand at will the immediate attention and input of the
24 federal courts in order to resolve intra-corporate disputes that might be better left to the dynamic
25 free market or to the state court.

26 The Court is also concerned that the facts in this case are complex and "vigorously"
27 disputed. Ex Parte Opp. at 4. For instance, in order to resolve the Section 14(e) insider trading
28 claims, the Court would have to determine whether Valeant and Pershing Square were acting as

1 co-bidders through PS Fund 1, which Defendants claim is a joint venture, or whether Valeant
2 and Pershing Square were acting as separate “person[s]” within the meaning of the Securities
3 Exchange Act § 14(e). This is likely a fact-intensive question that would benefit from more than
4 limited discovery.

5 The Court appreciates the seriousness of Plaintiffs’ federal securities laws claims.
6 However, the Court does not see sufficient justification at this time for accelerating Plaintiffs’
7 case over all the others waiting in the docket.

8 **IV. Disposition**

9 Thus, the Court DENIES Plaintiff’s motion for expedited proceedings.

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12 DATED: August 21, 2014

David O. Carter

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14 DAVID O. CARTER
15 UNITED STATES DISTRICT JUDGE
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