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2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5
6 **CANCER CENTER ASSOCIATES FOR
RESEARCH AND EXCELLENCE, INC.,**

7 **Plaintiff,**

8 **v.**

9 **PHILADELPHIA INSURANCE COMPANIES,
10 PHILADELPHIA INDEMNITY INSURANCE
COMPANY,**

11 **Defendants.**

1:15-CV-00084 LJO MJS

**ORDER DENYING EX PARTE
REQUEST FOR EXPEDITED
DISCOVERY (DOC. 11); CONTINUING
BRIEFING DEADLINES RE MOTION
TO DISMISS; AND VACATING
MOTION TO DISMISS HEARING.**

12
13 Cancer Center Associates for Research and Excellence (“cCare” or “Plaintiff”) brings this
14 lawsuit against Philadelphia Indemnity Insurance Company (“Philadelphia”) and Philadelphia
15 Consolidated Holding Corporation (“PCHC”), erroneously sued as Philadelphia Insurance Company
16 (“PIC”), for breach of contract, declaratory judgment, and tortious breach of the covenant of good faith
17 and fair dealing, all claims arising out of a coverage dispute involving an insurance policy issued by
18 Defendants to cCare (the “Policy”). Doc. 1. On March 5, 2015, Defendant filed a motion to dismiss,
19 arguing, among other things, that this Court lacks subject matter jurisdiction over this dispute because
20 the Policy contains a mandatory arbitration provision. Doc. 7. The motion to dismiss was set for hearing
21 on April 14, 2015, meaning that Plaintiff’s opposition was to be due March 3, 2015. On March 16, 2015,
22 Plaintiff filed an ex parte application for an order continuing the hearing on the motion to dismiss to
23 permit time for limited, expedited discovery. Doc. 11. On March 18, 2015, Defendants filed an
24 opposition to the ex parte application. Doc. 12. Having considered all of the parties’ arguments in light
25 of the entire record, the Court DENIES the application without prejudice for the reasons set forth below.

1 A request for early or expedited discovery must be supported by good cause. *See* Fed. R. Civ. P.
2 26(d)(1); *Semitoool Inc. v. Tokyo Electron Am. Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). “Good cause
3 may be found where the need for expedited discovery, in consideration of the administration of justice,
4 outweighs the prejudice to the responding party.” *Semitoool*, 208 F.R.D. at 276;

5 Factors commonly considered in determining the reasonableness of
6 expedited discovery include, but are not limited to: ‘(1) whether a
7 preliminary injunction is pending; (2) the breadth of the discovery
8 requests; (3) the purpose for requesting the expedited discovery; (4) the
9 burden on the defendants to comply with the requests; and (5) how far in
10 advance of the typical discovery process the request was made.

11 *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009).¹

12 Here, the Court finds that Plaintiff has failed to articulate a proper need for expedited discovery.
13 Plaintiff’s request for additional discovery is limited to a request to take one Rule 30(b)(6) deposition of
14 Philadelphia in order to “allow cCare to gather the relevant facts to support its argument that Defendants
15 have waived or are estopped from requesting arbitration in this action.” Doc. 11 at 6-7. Specifically,
16 Plaintiff maintains that Defendants have waived the right to arbitrate by refusing to comply with a prior
17 order of this Court regarding submission of the dispute to arbitration and by refusing to allow arbitration
18 to proceed in a manner consistent with the arbitration agreement. Doc. 1 at ¶ 59. But, it is not at all clear
19 that further discovery is necessary for the Court to rule on the pending motion to dismiss. Defendants
20 argue in their motion that this Court lacks jurisdiction to rule on Plaintiff’s request for declaratory relief
21 regarding waiver because waiver goes to enforceability of the arbitration agreement, which is an issue
22 reserved for decision by the arbitrator under the rules of the American Arbitration Association (“AAA”).
23 Doc. 7 at 8-9. However, under certain circumstances, waiver may be a threshold issue suitable for

24 ¹ While Plaintiffs are correct that motions to compel arbitration may be adjudicated pursuant to the summary judgment
25 standard set forth in Federal Rule of Civil Procedure 56, *see Coup v. Scottsdale Plaza Resort, LLC*, 823 F. Supp. 2d 931, 939
(D. Ariz. 2011) (reviewing cases), it is also permissible to raise a motion to compel arbitration pursuant to Rule 12(b)(1). *See*
Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1104 (9th Cir. 2010). In considering a Rule
12(b)(1) motion, the court may consider evidence outside the pleadings to resolve factual disputes. *Robinson v. United States*,
586 F.3d 683, 685 (9th Cir. 2009). Even in the context of a Rule 12(b)(1) motion, the plaintiff is entitled to seek expedited
discovery, but only if “it is possible that the plaintiff can demonstrate the requisite jurisdictional facts if afforded that
opportunity.” *St. Clair v. City of Chico*, 880 F.2d 199, 202 (9th Cir. 1989).

