

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SCOTT HOLLAND,

No. CIV S-10-2110-GEB-CMK

Plaintiff,

vs.

ORDER

TD AMERITRADE, INC.,

Defendant.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court are several of plaintiff's motions: Motion for Discovery and Stay (Doc. 43); Motion for Extension of Time (Doc. 45); and Request for Discovery (Doc. 46).

First, plaintiff requests the court allow discovery to proceed and to stay issuing final judgment on the prior motion to dismiss for six months while discovery occurs. This request was received the day after the order granting the motion to dismiss was signed, and the same day in which the order was filed. Thus, the motion to stay is moot (Doc. 43).

Next, plaintiff requests the court to allow discovery prior to the filing of an amended complaint. This request also includes a request for a Rule 26(f) conference, if needed. Plaintiff is essentially requesting the court allow him to conduct discovery in order to discover the claims he might have. This is not the intended use of discovery. Discovery is designed to assist the parties in preparation for trial, not development of claims. As such, discovery generally

1 does not commence until a case is at issue, with an operative complaint on file as well as an
2 answer to the complaint. Here, no operative complaint has been filed. The current deadline for
3 filing an amended complaint is March 3, 2011. As no operative complaint nor an answer has yet
4 been filed, this case is not at issue and commencement of discovery is not appropriate.

5 Therefore, plaintiff's request for discovery (Docs. 43, 46) disclosures and conference is denied.

6 Finally, plaintiff is requesting additional time to file his amended complaint. In
7 addition to requesting the amended complaint not be due until after initial discovery disclosures,
8 plaintiff also indicates a need for additional time to conduct necessary research on his CLRA
9 claim. While plaintiff is requesting five months to file his amended complaint, the court finds
10 that amount of time to be excessive. However, good cause appearing therefor, plaintiff will be
11 provided an additional 45 days from the original deadline. The new deadline for filing his
12 amended complaint will therefore be April 18, 2011.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's motion to stay (Doc. 43) is denied as moot;
- 15 2. Plaintiff's motion for an extension of time to file an amended complaint
16 (Doc. 45) is granted;
- 17 3. Plaintiff shall file an amended complaint, as set forth in the court's order
18 filed February 1, 2011 (Doc. 42), on or before April 18, 2011; and
- 19 4. Plaintiff's request to conduct discovery prior to the case being at issue
20 (Doc. 46) is denied.

21
22 DATED: March 3, 2011

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
26