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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER D. SCHNEIDER,  
  
Plaintiff,  
  
v.  
  
BANK OF AMERICA, N.A.; FHLMC  
LBAC 173 a.k.a. FEDERAL HOME  
LOAN MORTGAGE CORPORATION  
(FREDDIE MAC); BAC HOME LOANS  
SERVICING LP; BALBOA  
INSURANCE CO.; BANK OF  
AMERICA MORTGAGE; QUALITY  
LOAN SERVICES CORP.; HOME  
RETENTION GROUP; and DOES 2-  
40,  
  
Defendants.

No. 2:11-cv-02953-JAM-EFB

**ORDER DENYING DEFENDANT'S MOTION  
TO DISMISS**

Defendant Quality Loan Services Corporation ("Quality" or  
"Defendant") seeks to dismiss Christopher D. Schneider's  
("Plaintiff") complaint because of his alleged failure to comply  
with an order compelling discovery. The Court denies the motion  
because Plaintiff has adequately complied and Defendant has not

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1 suffered prejudice.<sup>1</sup>

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3 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4 Plaintiff alleges that Defendant Quality, in concert with  
5 other defendant institutions (collectively, "Defendants"),  
6 created an "improper and involuntary escrow account" on  
7 Plaintiff's property, and compelled Plaintiff to enter an  
8 insurance agreement for which Defendants received "improper  
9 kickbacks" from the insurance company. SAC ¶¶ 28-29. Defendant  
10 Quality is represented by Attorney Matthew Bryan Learned.  
11 Attorney Alison Valerie Lipka represents all other defendants  
12 ("co-Defendants").

13 For almost a year, the parties have been embroiled in  
14 discovery disputes. Recently, Defendants secured an order to  
15 compel Plaintiff's compliance with discovery (Doc. #206). All  
16 defendants represented by Attorney Lipka subsequently moved to  
17 dismiss the case with prejudice for Plaintiff's failure to  
18 comply with that order (Doc. #207). That motion has since been  
19 voluntarily dismissed on the basis that Plaintiff had complied  
20 with discovery (Doc. #225). One day before that motion's  
21 dismissal, Defendant Quality filed a similar motion to dismiss,  
22 which is presently before this Court (Doc. #224). Plaintiff  
23 opposes the motion (Doc. #227).

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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for September 2, 2015.

1 II. OPINION

2 A. Legal Standard

3 Federal Rule of Civil Procedure 41(b) allows the Court to  
4 dismiss a case where a plaintiff fails to "comply with . . . a  
5 court order[.]" In addition, Rule 37(b) specifies that a court  
6 may "dismiss[] [an] action or proceeding in whole or in part"  
7 for defiance of a discovery order. Fed. R. Civ. P. 37(b)(2)(A).  
8 Dismissal under either rule is subject to the Court's  
9 discretion. In re Exxon Valdez, 102 F.3d 429, 432 (9th Cir.  
10 1996); Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th  
11 Cir. 1991). A key consideration under both rules is whether the  
12 noncompliance has caused prejudice to the moving party. Nealey  
13 v. Transportacion Maritima Mexicana, S. A., 662 F.2d 1275, 1279  
14 (9th Cir. 1980); Banga v. Experian Info. Solutions, 2009 WL  
15 2407419, at \*1 (N.D. Cal. Aug. 4, 2009).

16 B. Analysis

17 Defendant urges the Court to dismiss this case for  
18 Plaintiff's failure to comply with the May 13, 2015 discovery  
19 order. Mot. at 3. That order required Plaintiff to serve  
20 responses to interrogatories, to produce documents in response  
21 to requests for production, and to appear for deposition.  
22 Discovery Order (Doc. #206) at 2. Plaintiff contends that  
23 between June 26, 2015 and the date of filing his opposition  
24 (August 18, 2015), he has complied with discovery and has now  
25 "turned over every [responsive] document in his possession[.]"  
26 Opp. at 2:6; Yesk Decl. at 2. He also states that he appeared  
27 for deposition on July 28 and August 3, at which time Defendant  
28 Quality's counsel was present. Opp. at 1-2; Yesk Decl. at 2.

1 Defendant concedes in its reply that Plaintiff in fact  
2 appeared for deposition. Reply at 3. Plaintiff's  
3 representations about his compliance are also bolstered by co-  
4 Defendants' notice to the Court - filed one day after  
5 Defendant's present motion - stating that Plaintiff produced  
6 documents and appeared for deposition. See generally Defendant  
7 Bank of America N.A.'s Notice of Plaintiff's Compliance (Doc.  
8 #225).

9 Defendant protests that even if Plaintiff produced  
10 documents to Bank of America, he never produced those documents  
11 to Quality. Reply at 3. But Defendant appears to concede that  
12 it has access to the discovery documents produced to Bank of  
13 America. See id. (complaining that these "749 pages of  
14 material" were not "organize[d] and label[ed.]").

15 Thus, even if these documents were not produced directly to  
16 Quality, they were produced to co-Defendants' counsel and  
17 Defendant Quality has access to them. The Court is not  
18 persuaded that Defendant suffered prejudice by the  
19 unavailability of these documents when they were in fact  
20 available. Defendant further argues that it has been prejudiced  
21 because the deadline to file dispositive motions is fast  
22 approaching: September 16, 2015. Reply at 2. If Defendant  
23 believes it requires more time to prepare and file a dispositive  
24 motion, it may petition the Court to amend the scheduling order.

25 The Court declines to issue the severe sanction of  
26 dismissal in this case. Defendant has not demonstrated  
27 Plaintiff's noncompliance. See United States v. Nat'l Med.  
28 Enterprises, Inc., 792 F.2d 906, 911 (9th Cir. 1986) ("[T]he

1 district judge is best equipped to assess the circumstances of  
2 the noncompliance." ). To the contrary, Plaintiff's attorney's  
3 sworn declaration, representations by co-Defendants, as well as  
4 Defendant Quality's own concessions, indicate that Plaintiff is  
5 in compliance.

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7 III. ORDER

8 For the reasons set forth above, the Court DENIES  
9 Defendant's motion to dismiss.

10 IT IS SO ORDERED.

11 Dated: August 31, 2015

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14 JOHN A. MENDEZ,  
15 UNITED STATES DISTRICT JUDGE  
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