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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ATS, INC., et al.,
Plaintiff,
v.
FM GLOBAL, INC., et al.,
Defendants.

Case No.: C 09-3175 JW (PVT)
**ORDER DENYING PLAINTIFFS' MOTION
TO CONDUCT DISCOVERY, AND
ORDER FINDING APPLICATION TO
SHORTEN TIME MOOT**

On November 20, 2009, Plaintiffs filed a motion to conduct discovery and issue letters rogatory,¹ along with an application for an order shortening time for hearing said motion.² Defendant's opposed the application to shorten time. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without oral argument. Based on the briefs and arguments presented,

IT IS HEREBY ORDERED that Plaintiffs' motion to conduct discovery is DENIED. The

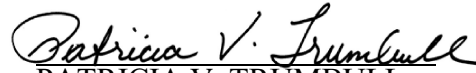
¹ Pursuant to the San Jose Division's Standing Order Regarding Case Management in Civil Cases, "All disclosure or discovery disputes in cases assigned to district judges are referred to the assigned magistrate judge for determination pursuant to Fed.R.Civ.P. 72(a)." The assigned magistrate judge in this case is Magistrate Judge Patricia V. Trumbull, and thus the portion of Plaintiffs' motion seeking leave to conduct discovery and for issuance of a letter rogatory is automatically referred to Magistrate Judge Trumbull.

² The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 scope of discovery is generally tied to the parties' pleadings. *See* FED.R.CIV.PRO. 26(b) (limiting the
2 scope of discovery to "any nonprivileged matter that is relevant to any party's *claim or defense*").
3 Thus, absent an operative pleading discovery is usually³ not permitted. *See, e.g., In re Flash Memory*
4 *Antitrust Litigation*, 2008 WL 62278 (N.D.Cal. 2008).

5 IT IS FURTHER ORDERED that, in light of the foregoing order, Plaintiffs' motion to
6 shorten time is MOOT.

7 Dated: 11/24/09

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9 PATRICIA V. TRUMBULL
United States Magistrate Judge

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25 ³ Rule 27 provides a narrow exception for pre-filing discovery to perpetuate testimony.
26 A motion under Rule 27 requires the moving party to show: 1) that the petitioner expects to be a party
27 to an action cognizable in a United States court but cannot presently bring it or cause it to be brought;
28 2) the subject matter of the expected action and the petitioner's interest; 3) the facts that the petitioner
wants to establish by the proposed testimony and the reasons to perpetuate it; 4) the names or a
description of the persons whom the petitioner expects to be adverse parties and their addresses, so far
as known; and 5) the name, address, and expected substance of the testimony of each deponent. Plaintiff
has not shown all of the factors required under Rule 27 to justify pre-complaint discovery.