

**** E-filed February 3, 2010 ****

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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUAN CARLOS KAKOGUI,

No. C09-04841 JF (HRL)

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION TO SHORTEN TIME**

v.

AMERICA BROKERS CONDUIT, et al.,

[Re: Docket No. 28]

Defendants.

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Plaintiff Juan Carlos Kakogui sued defendants in October 2009, alleging various federal and state claims pertaining to his home mortgage. Defendants moved to dismiss his complaint, but the motion was mooted when Kakogui filed a First Amended Complaint. Defendants then moved to dismiss the First Amended Complaint. The hearing for this motion to dismiss is set for March 26, 2010, the same day as the case's initial case management conference.

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Plaintiff now moves for an order shortening time to hear his motion to conduct discovery prior to the time specified in Rule 26(d). Defendants did not file an opposition or statement of non-opposition to plaintiff's administrative motion within the time specified by this court's Local Rules. *See* N.D. Cal. Civ. R. 7-11.

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According to the Federal Rules of Civil Procedure, a party cannot conduct discovery until meeting and conferring pursuant to Rule 26(f), unless otherwise authorized by the Rules, stipulation of the parties, or court order.¹ Fed. R. Civ. P. 26(d). Rule 26(f) provides that the parties must meet


¹ Rule 26(d) contains exemptions for certain proceedings that are not relevant here.

1 and confer at least twenty-one days before the initial scheduling conference to prepare for initial
2 disclosures and develop a plan for discovery. Fed. R. Civ. P. 26(f). Plaintiff asserts that he served
3 discovery upon defendants, but that they objected to his requests on grounds that he served them too
4 early. He argues that because the initial scheduling conference is now set for the same day as
5 defendants' motion to dismiss, he will be "without the benefit of the issuance of a Rule 26(d)
6 discovery order setting forth discovery guidelines" for the case in advance of the motion to dismiss.
7 (Mot. 2.) As a result, he says, he will be "severely prejudiced" if the court does not hear his motion
8 to conduct early discovery on shortened time. (*Id.* at 3.)

9 Despite plaintiff's desire to conduct early discovery, the hearing on defendants' motion to
10 dismiss is not based on any evidence that Kakogui might gather from discovery. Instead, the motion
11 tests the sufficiency of his First Amended Complaint as pled. Furthermore, the window of time for
12 the required 26(f) meet-and-confer process in preparation of the initial scheduling conference has
13 not yet arrived. As a result, the court finds good cause lacking and, accordingly, DENIES
14 Kakogui's motion to shorten time.

15 **IT IS SO ORDERED.**

16 Dated: February 3, 2010

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19 HOWARD E. LLOYD
20 UNITED STATES MAGISTRATE JUDGE
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