

1 **\*\* E-filed June 24, 2010 \*\***

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7 NOT FOR CITATION  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 JUAN CARLOS KAKOGUI,

No. C09-04841 JF (HRL)

12 Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL AS  
PREMATURE**

13 v.

14 AMERICAN BROKERS CONDUIT, et al.,

**[Re: Docket No. 50]**

15 Defendants.  
\_\_\_\_\_ /

16 *Pro se* plaintiff Juan Carlos Kakogui (“Kakogui”) sued defendants alleging several state and  
17 federal law claims arising out of his home mortgage.

18 An initial case management conference took place in May but no scheduling order has been  
19 issued. (Docket No. 49.) A further case management conference is set for August 20.<sup>1</sup> (Docket  
20 53.) On May 28, Kakogui filed the instant motion to compel the defendants to “provide an affidavit  
21 of truth” and to answer his “qualified written request.” (Docket No. 50.)

22 Federal Rule of Civil Procedure (“FRCP”) 37 permits a party to move to compel discovery  
23 with respect to a request made under the FRCP discovery rules. *See* Fed. R. Civ. P. 37(a)(3). Such  
24 a motion may only be made after discovery has been sought unsuccessfully. *See Bermudez v.*  
25 *Duenas*, 936 F.2d 1064, 1068 (9th Cir. 1991) (pro se plaintiff’s motion to compel production of  
26 documents dismissed as premature because he had made no request for documents pursuant to  
27 FRCP 34). Moreover, because discovery generally may not be sought before the parties have

28 <sup>1</sup> Defendants’ motion to dismiss Kakogui’s Second Amended Complaint is currently pending and  
scheduled for hearing on August 20 as well. (Docket Nos. 47 & 51.)

1 conferred as required by Rule 26(f), a motion to compel filed before that conference is premature.  
2 See Fed. R. Civ. P. 26(d)(1); *Arias v. Dyncorp*, 517 F.Supp.2d 221, 230 (D.D.C. 2007) (discovery  
3 may not be demanded before a Rule 26(f) planning conference).

4 As noted above, there is no scheduling order for this case yet. In addition, Kakogui's  
5 requests do not appear to be FRCP discovery requests: he asks for an "affidavit of truth" and for  
6 answers to a "qualified written request," not discovery requests made under the FRCP discovery  
7 rules. Accordingly, his motion to compel is DENIED as premature.<sup>2</sup>

8 **IT IS SO ORDERED.**

9 Dated: June 24, 2010

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12 HOWARD R. LLOYD  
13 UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> The Court notes that Kakogui should wait to file discovery until after the case management conference takes place on August 20 and a scheduling order has issued by Judge Fogel.

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**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**