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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YVES SICRE DE FONTBRUNE,
Plaintiff,
v.
ALAN WOFYSY, et al.,
Defendants.

Case No. [5:13-cv-05957-EJD](#)

**ORDER TO SHOW CAUSE ON
FURTHER DISCOVERY**

Re: ECF No. 118

On May 21, 2018, Defendants moved for summary judgment on eight different defenses. ECF No. 61. On September 12, 2019, the Court granted Defendants’ Motion for Summary Judgment based on one of these defenses. ECF Nos. 84. In doing so, the Court also made several findings as to Defendants’ other defenses, including the notice, fraud, and due process defenses. *Id.* at 16–19, 28. Specifically, the Court found that there existed genuine disputes of material fact and, therefore, Defendants were not entitled to summary judgment on those defenses. *Id.*

The Ninth Circuit reversed the Court’s grant of summary judgment on Defendants’ one prevailing defense. *De Fontbrune v. Wofsy*, 39 F.4th 1214, 1227 (9th Cir. 2022), *cert. denied sub nom. Wofsy v. Sicre de Fontbrune*, 143 S. Ct. 1084 (2023). However, the Ninth Circuit also affirmed this Court’s determinations with respect to Defendants’ notice and fraud defenses.¹ *Id.* at 1234 (“The district court appropriately left to the finder of fact to determine whether Wofsy ‘receive[d] notice of the proceeding in sufficient time to enable [him] to defend.’”); 1236 (“The district court did not err by denying Wofsy summary judgment on the fraud defense.”).

¹ The Ninth Circuit had no occasion to opine on the Court’s denial of summary judgment on Defendants’ due process defense because that issue was not appealed. ECF No. 116 n.2.
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After the Ninth Circuit remanded the case to this Court, Defendants requested additional discovery on their remaining notice, fraud, and due process defenses. *See* Joint Status Report, at 4, ECF No. 116. On the Court’s invitation, Defendants submitted a list of proposed discovery requests, consisting of ten requests for production, four interrogatories, and at least one deposition. ECF No. 118.

In light of the Court’s prior findings as to Defendants’ notice, fraud, and due process defenses, as well as the Ninth Circuit’s corresponding holdings, the parties are ORDERED TO SHOW CAUSE why the Court should or should not permit further discovery and dispositive motions in this case. Both parties shall submit written responses not to exceed 8 pages by May 26, 2023, at which point the Court will take Defendants’ request for further discovery under submission.

IT IS SO ORDERED.

Dated: May 12, 2023



EDWARD J. DAVILA
United States District Judge