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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAYMUND PACELLO, JR.,)	Civil No.13-0405-GPC(WVG)
)	
Plaintiff,)	ORDER DENYING EX PARTE
)	MOTION FOR EXPEDITED
v.)	DISCOVERY (DOC. NO. 8)
)	
JAMIE JIMENEZ, et al.,)	
)	
Defendants.)	
)	
_____)	

Plaintiff Raymund Pacello, Jr. ("Plaintiff") has filed an Ex Parte Motion For Expedited Discovery ("Motion"). Defendants Jaime (erroneously sued as "Jamie") Jimenez and Griselda Jimenez, Bank of America, and Bank of New York Mellon have filed Oppositions to the Motion. For the reasons stated below, the Motion is DENIED.

On February 20, 2013, Plaintiff filed a Complaint against Defendants alleging Violation of the Fair Debt Collection Practices Act (15 U.S.C. § 1692), Violation of the California Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code § 1788, et seq.), Violation of Cali-

1 fornia Business & Professions Code § 17200, Quiet Title,
2 Cancellation of Written Instrument, Accounting, and Fraud,
3 in connection with the financing and foreclosure on his
4 former home at 574 Old Trail Drive, Chula Vista, Califor-
5 nia ("subject property").

6 Plaintiff's Motion seeks the following expedited
7 discovery:

8 1. The history and current status of any assignments
9 of the promissory note, including who the current holders
10 of the note may be and to receive a full accounting on the
11 subject loan.^{1/}

12 2. A Federal Rule of Civil Procedure 30(b)(6)
13 deposition of Defendant First American Title Insurance
14 Company ("First American") pertaining to the purported
15 assignment of trust deeds.^{2/}

16 3. Depositions of Jaime Jimenez and Griselda Jimenez
17 regarding the alleged fraud in the chain of title of the
18 subject property.

19 Generally, a party may not initiate discovery before
20 the parties have satisfied the meet and confer requirement
21 of Federal Rule of Civil Procedure 26(f). However, a court
22 may authorize earlier discovery "for the convenience of
23 parties and witnesses and in the interests of justice."
24 Fed. R. Civ. P. 26(d). A court may grant a request to
25 take discovery prior to the parties' meeting under Rule

27 ^{1/}The Court presumes that Plaintiff seeks this information regarding the
28 subject property.

^{2/}See footnote 1.

1 26(f) where the requesting party demonstrates good cause.
2 See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D.
3 273, 276 (N.D. Cal. 2002); U.S. v. Distribuidora Batiz
4 CGH, S.A. DE C.V., 2009 WL 2487971, at 10 (S.D. Cal.
5 2009). A balancing test is used to determine the presence
6 of good cause. See Semitool, 208 F.R.D. at 267-268.
7 "Good cause may be found where the need for expedited
8 discovery, in consideration of the administration of
9 justice, outweighs the prejudice to the responding party."
10 Id. at 276.

11 Here, Plaintiff contends that the discovery he seeks
12 will show that First American knew, when it issued title
13 insurance to Jaime Jimenez and Griselda Jimenez, that the
14 foreclosure on Plaintiff's home was based on fraudulent
15 documents, that the documents he seeks are solely in
16 Defendants' possession, and that he needs to present such
17 information in Opposition to Defendants' Motions to
18 Dismiss his Complaint.

19 However, Plaintiff does not explain why the discov-
20 ery sought must be presented in opposition to Defendants'
21 Motions to Dismiss. Since a motion to dismiss tests the
22 sufficiency of the complaint, and extrinsic evidence is
23 not usually considered by the court in ruling on a motion
24 to dismiss, Plaintiff has failed to show why the court
25 should consider the information he seeks in ruling on the
26 Motion to Dismiss. Also, some of the information Plain-
27 tiff seeks is equally available to him as it is to Defen-
28 dants. Additionally, all the information Plaintiff seeks

1 does not appear to have any bearing on Plaintiff's ability
2 to respond to Defendants' Motions to Dismiss, nor Plain-
3 tiff's ability to cure any defects in the Complaint, if
4 the Court finds any defects. In fact, all of the discovery
5 sought by Plaintiff can wait until after Defendants have
6 answered Plaintiff's Complaint and Plaintiff and Defen-
7 dants have met and conferred regarding discovery, pursuant
8 to Federal Rule of Civil Procedure 26(f).

9 On the other hand, the expedited discovery sought by
10 Plaintiff would subject Defendants to the costs of re-
11 searching, collecting and producing documents to Plaintiff
12 regarding an accounting on his loan, which may never be
13 discoverable in this action, litigating the financial
14 privacy rights of Jaime Jimenez and Griselda Jimenez prior
15 to or after deposing them, and preparing for and complet-
16 ing a Federal Rule of Civil Procedure 30(b)(6) deposition,
17 all before the pleadings are settled.

18 The Court finds that Plaintiff has failed to present
19 good cause for the expedited discovery he seeks because
20 his need for the expedited discovery, in consideration of
21 the administration of justice, does not outweigh the
22 prejudice to Defendants in having to respond to the
23 requested discovery. Semitool, 208 F.R.D. at 276. As a
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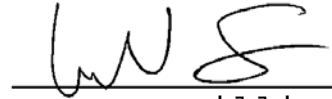
1 result, Plaintiff's Motion for Expedited Discovery is
2 DENIED.

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4 DATED: April 9, 2013

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Hon. William V. Gallo
U.S. Magistrate Judge

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