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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTON EWING,

Plaintiff,

v.

EMPIRE CAPITAL FUNDING
GROUP, INC., et al.,

Defendants.

Case No.: 17cv2507-LAB-MDD

**ORDER DENYING LIMITED
EXPEDITED DISCOVERY**

[ECF No. 33]

On December 14, 2017, Anton Ewing (“Plaintiff”) filed a complaint alleging violations under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1962 and 1964, the Telephone Consumer Protection Act (“TCPA”), 42 U.S.C. §§ 227, *et seq.*, and California’s Invasion of Privacy Act (“CIPA”), Penal Code §§ 632 and 637.2, against Peter Tafeen, Business First Funding Corp., Shore Funding Solutions, Inc, Prosperify Consulting, LLC, SMS Ventures, Inc, Resolve Holdings Corp, Wayne A. Shirreffs, and various doe defendants. (ECF No. 1).

On January 9, 2018, Defendants Ascend Funding, LLC (“Ascend”), and Peter Tafeen (“Tafeen”) filed a Motion to Dismiss for Lack of Jurisdiction. (ECF No. 10). On February 4, 2018, Plaintiff filed the instant *ex parte*

1 motion for leave to seek limited expedited discovery. (ECF No. 33).

2 Defendants responded in opposition on February 12, 2018. (ECF No. 41).

3 As provided herein, Plaintiff's Motion for Discovery is **DENIED**.

4 DISCUSSION

5 A. Legal Standard for Motion for Expedited Discovery

6 Federal Rule of Civil Procedure 26(d) states:

7 A party may not seek discovery from any source before the
8 parties have conferred as required by Rule 26(f), except in a
9 proceeding exempted from initial disclosure under Rule 26(a)(1)(B),
or when authorized by these rules, by stipulation, or by court order.

10 In the instant case, Plaintiff may obtain early discovery only by court
11 order. Though "[e]xpedited discovery is not the norm[,]” district courts within
12 the Ninth Circuit have permitted expedited discovery prior to the Rule 26(f)
13 conference upon a showing of “good cause.” *Am. LegalNet, Inc. v. Davis*, 673
14 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009) (internal quotations and citations
15 omitted). “Good cause exists ‘where the need for expedited discovery, in
16 consideration of the administration of justice, outweighs the prejudice to the
17 responding party.’” *In re Countrywide Fin. Corp. Derivative Litig.*, 542 F.
18 Supp. 2d 1160, 1179 (C.D. Cal. 2008) (quoting *Semitool, Inc. v. Tokyo Electron*
19 *Am. Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)). In considering whether good
20 cause exists, factors courts may consider include “(1) whether a preliminary
21 injunction is pending; (2) the breadth of the discovery request; (3) the purpose
22 for requesting the expedited discovery; (4) the burden on the defendants to
23 comply with the requests; and (5) how far in advance of the typical discovery
24 process the request was made.” *Palermo v. Underground Sols., Inc.*, Case No.
25 12cv1223-WQH-BLM, 2012 WL 2106228, at *2 (S.D. Cal. June 11, 2012)
26 (citing *Am. LegalNet*, 673 F.Supp.2d at 1067).

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1 B. Analysis

2 Plaintiff asserts that expedited discovery is necessary to address
3 whether Defendants Ascend and Tafeen have “substantial contacts and
4 connection to California” sufficient to establish jurisdiction. (ECF No. 33 at
5 5). Defendants, on the other hand, argue that Plaintiff’s request is nothing
6 more than a fishing expedition. (ECF No. 41 at 5).

7 1. Existence of a Pending Preliminary Injunction

8 Courts may find good cause when the party seeking expedited discovery
9 has a pending motion for a preliminary injunction. *See Am. LegalNet*, 673 F.
10 Supp.2d at 1066 (denying Plaintiff’s motion for expedited discovery and
11 noting that “expedited discovery is not automatically granted merely because
12 a party seeks a preliminary injunction []”); *TGI Friday’s, Inc. v. Stripes*
13 *Rests., Inc.*, No. 1:15-CV-00592-AWI, 2015 WL 2341991, at *2 (E.D. Cal. May
14 13, 2015). Here, Plaintiff’s prayer for relief requests a preliminary and
15 permanent injunction “to restrain further violations of the CIPA....” (ECF
16 No. 1 at 51). Plaintiff’s request for expedited discovery, however, is not
17 directed to the merits of the requested injunctions. Thus, the first *American*
18 *LegalNet* factor weighs against permitting expedited discovery.

19 2. The Breadth of the Request

20 A party’s expedited discovery requests should be “narrowly tailored” so
21 as to discover only the “minimum amount of information needed” to achieve
22 its stated purpose. *AF Holdings LLC v. Doe*, 2012 WL 974933, at *3
23 (E.D.Cal., 2012). Plaintiff seeks the following discovery:

- 24 (1) Depositions of the persons most knowledgeable of the
25 fundamental issues relevant to Defendants’ Motions to Dismiss;
26 (2) No more than ten Interrogatories to Defendants Ascend
27 Funding and Peter Tafeen related strictly to the matters raised by
Defendants in their Motions to Dismiss and going to the core of

1 whether personal jurisdiction exists over Defendants; and (3) No
2 more than fifteen Requests for Production of Documents to
3 Defendant Ascend Funding related strictly to the matters raised
4 by Defendants in their Motions to Dismiss and going to the core of
5 whether personal jurisdiction exists over Defendants. Plaintiff
6 additionally seeks to serve a limited number of third party
7 subpoenas (no more than five subpoenas) on parties that Plaintiff
8 has reasonable grounds to believe will have information with
9 respect to sales of Ascend products to California and Defendants'
10 contacts with California.
11 (ECF No. 33 at 17).

12 Plaintiff maintains that this proposed discovery is limited and narrowly
13 tailored to address the jurisdictional issues in Defendants' Motion to Dismiss.
14 (*Id.*)

15 Defendants argue that Plaintiff's request for discovery is overly broad.
16 (ECF No. 41 at 16). Defendants contend the breadth "in-and-of-itself
17 establishes that Plaintiff's request is supported by nothing more than his
18 hope that such broad discovery may produce something of value to him."
19 (*Id.*)

20 Here, Plaintiff's requested discovery is overbroad. Without Plaintiff
21 identifying what information is sought and from whom beyond referencing
22 the pending Motion to Dismiss, the Court disagrees with Plaintiff's assertion
23 that the requests are narrowly tailored to discover the minimum amount of
24 information Plaintiff needs to accomplish his purpose. Thus, the Court
25 concludes that this factor also does not support granting expedited discovery.

26 3. Purpose for Requesting Expedited Discovery

27 A party's purpose for requesting expedited discovery must "outweigh []
the prejudice" such early discovery causes "the responding party." *In re*
Countrywide, 542 F. Supp. 2d at 1179. Here, Plaintiff proposes broad
categories of discovery and does not present specific discovery requests to

1 fight Defendants’ Motion to Dismiss. Defendants have asserted, by way of
2 sworn declarations, that California is not the proper jurisdiction for Plaintiff’s
3 lawsuit. Plaintiff does not make any substantive challenges to the
4 declarations and specifically argues that Tafeen’s declaration is unreliable
5 because Tafeen is “a felon convicted of multiple crimes of moral turpitude.”
6 (ECF No. 33 at 8). The Court concludes that this factor does not support
7 granting expedited discovery.

8 4. Defendants’ Burden of Complying with Expedited Discovery

9 Plaintiff, in his declaration, states that Defendants will not be
10 prejudiced by the request for jurisdictional discovery. (ECF No. 33-1 at ¶18).
11 Defendants object, insisting that “any continuance of these proceedings... will
12 cause Ascend to incur further unwarranted attorney’s fees and costs.” (ECF
13 No. 43 at 9). Because of the breadth of Plaintiff’s proposed discovery, the
14 Court finds that complying with all of Plaintiff’s requests would pose a
15 significant burden to Defendants. Thus, the Court concludes that this factor
16 does not support granting expedited discovery.

17 V. Timing of the Request

18 A party seeking expedited discovery should not do so too far in advance
19 of the start of formal discovery. *See AmLegalNet*, 673 F.Supp.2d at 1067.
20 This case is in its early stages, having just been filed three months ago.
21 Thus, the timing factor also does not support granting expedited recovery.

22 CONCLUSION

23 On balance, Plaintiff has not demonstrated good cause sufficient to
24 warrant granting his request for expedited discovery.

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1 For the foregoing reasons, the Court **DENIES** Plaintiff's motion for
2 leave to conduct expedited discovery.

3 Dated: March 19, 2018



4 Hon. Mitchell D. Dembin
5 United States Magistrate Judge

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