

Exhibit 13

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BEYOND SYSTEMS, INC.,)	No. CV 08-1039-RGK (PLAx)
Plaintiff,)	ORDER DENYING PLAINTIFF’S EX PARTE
v.)	APPLICATION FOR ADDITIONAL
CONNEXUS CORP., <u>et al.</u> ,)	DEPOSITIONS
Defendants.)	

The Court has reviewed plaintiff’s Ex Parte Application for an order allowing it to take three additional depositions beyond the ten deposition limit of Fed.R.Civ.P. 30(a)(2)(A)(i), filed on October 22, 2008 (the “Application”), defendants’ Opposition thereto, and the documents filed in connection therewith. Plaintiff’s Application is **denied without prejudice**. Plaintiff seeks relief on an ex parte basis because the discovery cut-off is November 18, 2008, and it thus “must notice and take these[] depositions forthwith.” Application, at 8. It further indicates that it has been working diligently to meet and confer with defendants over this issue, but defendants “only recently” notified plaintiff that they would not stipulate to the additional depositions. Id.

Plaintiff has not established that, with the exercise of due diligence, it could not have moved for an order to take these additional depositions at an earlier time, or that it only now discovered the need to take these depositions. Rather, plaintiff simply sets forth the identities of those

1 individuals whose depositions it would take, but offers no explanation for not having determined
2 prior to this time that it would need to take more than ten depositions.¹ This is the risk a party
3 takes when conducting discovery toward the close of the discovery period. Indeed, the District
4 Judge denied the parties' stipulation to extend the schedule in this matter, including the discovery
5 cut-off date, despite plaintiff's explanation that it has not been able to complete discovery within
6 the allocated time period. Ex parte applications are solely for extraordinary relief and should be
7 used with discretion. See Mission Power Engineering Co. v. Continental Casualty Co., 883
8 F.Supp. 488 (C.D. Cal. 1995). Plaintiff has not provided an adequate excuse for not pursuing the
9 relief it seeks prior to this time, or shown the exercise of diligence that would warrant this
10 extraordinary relief.

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13 DATED: October 24, 2008

/ s /
PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

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27 ¹ Plaintiff indicates that the defaults of defendants MailCompanyX and Sebastian Barale were
28 "recently" set aside, and their depositions have not yet been taken. However, the district judge
ordered that the defaults be set aside on August 11, 2008, and yet the deposition notices were not
served until October 18, 2008, over two months later.