

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

M. AILEEN MORNINGSTAR and ALICE
 SLETTEDAHL, Derivatively on Behalf of
 Nominal Defendant RINO INTERNATIONAL
 CORPORATION,

Plaintiffs,

vs.

QIU JIANPING, *et al.*,

Defendants,

and

RINO INTERNATIONAL CORPORATION,

Nomianl Defendant.

Case No. 2:13-cv-00427-JCM-GWF

ORDER

**Motion to Expedited Discovery -
 #100**

This matter is before the Court on Plaintiffs' Motion for Expedited Discovery (#100), filed on March 11, 2013; Defendants Dejun Zou and Jianping Qiu's Response to Motion for Expedited Discovery (#110), filed on March 28, 2013; and Plaintiffs' Reply in Support of Motion for Expedited Discovery (#111), filed on April 4, 2013.

BACKGROUND AND DISCUSSION

This action was transferred from the United States District Court for the Central District of California pursuant to Order (#103) entered by District Judge Pregerson on March 12, 2013. As stated in Judge Pregerson's order:

This case is one of four shareholder derivative suits filed on behalf of RINO. This is the second such action filed in federal court. The first (the "Nevada Action") was filed in the District of Nevada on December 20, 2010, approximately one month before this case was initiated.

...

1 Defendants Zou Dejun and Qiu Jianping recently sold two California
2 houses to help fund the settlement of a related shareholder class
3 action in this court. (Declaration of Robin Winchester ¶ 36.)
4 Plaintiffs in this case believe that the home sales yielded an excess of
approximately \$2.4 million. (*Id.* ¶ 37.) Plaintiffs have sought
discovery regarding these assets and intend to seek to establish a
constructive trust over the \$2.4 million. (*Id.* ¶ 49.)

5 In the meantime, the Nevada Action has proceeded, and may soon
6 settle. The parties to the Nevada Action moved for preliminary
7 settlement approval in November 2012. The parties here appear to
agree that final approval of the proposed settlement in the Nevada
Action will extinguish Plaintiffs' claims in this case.

8 The court in the Nevada Action has yet to rule on the pending motion
9 for preliminary approval. Even if the court does preliminarily
10 approve the settlement, Plaintiffs here intend to object to the
settlement in the Nevada Action at the final approval stage.

11 *Order (#103).*

12 Prior to the transfer of the action to this district, Plaintiffs filed a motion for expedited
13 discovery against Defendants to identify and locate funds derived from the sale of the homes owned
14 by Defendants Zou Dejun and Qiu Jianping. *See Motion for Expedited Discovery (#84).*
15 Magistrate Judge Victor Kenton conducted a telephonic hearing on that motion on February 11,
16 2013. Because Defendants Zou Dejun and Qiu Jianping had not yet been served in the action, the
17 motion applied only to Defendant RINO. In granting the motion as to Defendant RINO, Magistrate
18 Judge Kenton stated as follows:

19 Rino opposes this discovery on various grounds: the asserted failure
20 of Plaintiffs to comply with the Local Rules of this Court concerning
21 motion practice; that Plaintiffs have not demonstrated good cause for
22 expedited discovery; that most of the Defendants from whom
23 Plaintiffs seek expedited discovery have never been served and are
not under the Court's jurisdiction; and that Defendants are
prejudiced. The Court finds no merit to the Opposition, and for the
reasons set forth, intends to order the discovery.

24 This case has been pending for an extended period of time.
25 Defendants do not dispute Plaintiffs' contention that various motions
26 which they filed were voluntarily held in abeyance by them pending
the outcome of the mediation. As to demonstrating good cause, the
Court finds that the discovery sought is very limited, and is certainly
27 relevant to the action. Plaintiffs further argue that there is a danger of
dissipation of the remaining proceeds from the sale of the property.
28 Further Plaintiffs represent that the District Judge has approved a
method of service of process on Defendants Dejun and Jianping.

...

1 Plaintiffs indicate they will seek a constructive trust over any
2 remaining proceeds from the sale of the property.

3 While Defendants raise a third objection, that certain Defendants
4 have never been served, and while this is true at this time,
5 nevertheless Rino does not dispute Plaintiffs' contention that the
6 property which was assertedly owned individually by Defendants
7 Dejun and Jianping was utilized to fund the class action settlement of
8 which those Defendants were not a part.

9 Finally, Rino asserts that Plaintiffs have an improper purpose in
10 seeking this discovery; to wit, as a means of funding attorneys' fees.
11 The Court sees no need to consider such arguments, as they are
12 speculative, and in any event, if Plaintiffs do (as they indicate in their
13 moving papers) seek a constructive trust over any excess funds from
14 the sale of the property, appropriate arguments can be made to and
15 considered by the District Court at that time. The Court sees no
16 prejudice in approving the expedited discovery at this time, as it
17 would appear to be clearly relevant and meets the "good cause"
18 standard for expedited discovery.

19 For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion
20 and will require Rino to respond to the Proposed Interrogatories
21 within fourteen (14) days of the date of this Order.

22 *Order (#95).*

23 RINO served its responses to Plaintiffs' Interrogatories as ordered by the court.¹ RINO
24 responded to most of the interrogatories by stating that it "is without knowledge or information
25 sufficient to form a belief as to the information requested in this Interrogatory beyond what is in the
26 public record." *Motion (#100), Exhibit C.* RINO did state in response to Interrogatory No. 3 that
27 through its counsel, it received a wire transfer in the amount of \$3,535,000 from counsel for Dejun
28 Zou, which it believed represented a portion of the proceeds from the sale of Defendants Dejun's
and Jianping's houses and which was thereafter transferred to fund the Class Action Settlement
Fund. *Id.* RINO did not provide information regarding the excess sales proceeds which is the
focus of the Plaintiffs' proposed discovery requests.

Once service was effected against Defendants Dejun and Jianping, Plaintiffs filed their
instant Motion for Expedited Discovery (#100) on March 11, 2013. Defendants Dejun and

¹The court did not require RINO to respond to the proposed requests for production of
documents attached to Plaintiffs' first motion for expedited discovery. The order did not discuss
the requests for production or the reasons for not requiring RINO to respond to them.

1 Jianping make substantially the same arguments in opposition to Plaintiffs' motion for expedited
2 discovery that Defendant RINO made in opposing the first motion for expedited discovery. *See*
3 *Defendant RINO's Opposition to Motion for Expedited Discovery* (#85). Defendants Dejun and
4 Jianping also argue that Plaintiffs failed to comply with the meet and confer requirements of Local
5 Rules 37-1 and 37-2.4 of the Central District of California and this District's Local Rule 26-7, both
6 of which require the party seeking discovery to meet and confer, or to attempt to meet and confer,
7 with the other party prior to filing a discovery motion. These local rules supplement the
8 requirement in Fed.R.Civ.Pro. 37(a)(1) that a motion to compel discovery "must include a
9 certification that the movant has in good faith conferred or attempted to confer with the party or
10 person failing to make disclosure or discovery in an effort to obtain it without court action."

11 Plaintiffs' instant Motion for Expedited Discovery was filed one day before Judge
12 Pregerson ordered this case transferred to the District of Nevada. Because the case was still
13 pending in the Central District of California when the motion was filed, it was technically governed
14 by the Local Rules of the Central District of California. Plaintiffs argue that Local Rule 37-2 does
15 not apply to a motion for expedited discovery because the rule "contemplates that an action is
16 already in the discovery phase, and that particular issues regarding discovery requests and
17 responses are in dispute. *See Reply* (#111), pg. 8. This interpretation of the local rule is, at best,
18 dubious. Local Rule 37-1 states that "[p]rior to filing any motion relating to discovery pursuant to
19 F.R.Civ.P. 26-37, counsel for the parties shall confer in a good faith effort to eliminate the
20 necessity for hearing the motion or to eliminate as many of the disputes as possible." Local Rule
21 37-2 governs the form by which a discovery motion is to be presented to the court if the parties are
22 unable to resolve their differences. A motion for expedited discovery falls under Rule 26(d)(1) of
23 the Federal Rules of Civil Procedure and is therefore a "motion relating to discovery pursuant to
24 F.R.Civ.P. 26-37" within the scope of Local Rule 37-1 of the Central District of California. As a
25 matter of practicality, this Court sees no reason why a request for expedited discovery should not be
26 governed by rules that require the parties to meet and confer prior to filing discovery motions.

27 Plaintiffs' counsel states that prior to filing the first motion for expedited discovery on
28 January 22, 2013, she provided counsel for RINO and individual Defendants Dejun and Jianping

1 with copies of the proposed discovery requests and notified them of her intention to file the motion
2 for expedited discovery. Plaintiffs' counsel requested that Defendants' counsel notify her regarding
3 whether they would consent to the motion. Defendants Dejun and Jianping advised Plaintiffs'
4 counsel by letter on March 7, 2013 that they preferred to wait for a ruling on Defendant RINO's
5 motion to stay proceedings before engaging in a meet and confer conference regarding Plaintiffs'
6 request for expedited discovery. Arguably, Plaintiffs' counsel should have informed Defendants'
7 counsel of her desire to meet and confer without waiting for a decision on the motion to stay. The
8 Court concludes, however, that further efforts to meet and confer would not have resolved the
9 dispute. As set forth above, Defendants Dejun and Jianping have made the same arguments in
10 opposition to the motion for expedited discovery that Defendant RINO unsuccessfully made to
11 Magistrate Judge Kenton.

12 This Court agrees with Magistrate Judge Kenton that the limited discovery sought by
13 Plaintiffs is relevant and that good cause exists to grant expedited discovery as it relates to
14 Plaintiffs' stated intention to seek a constructive trust over the excess funds. Defendants are, of
15 course, free to oppose the imposition of a constructive trust. Defendants will not be unduly
16 burdened, however, by being required to respond to this limited discovery. Nor will they be
17 otherwise prejudiced thereby. Accordingly,

18 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Expedited Discovery (#100) as to
19 Defendants Dejun Zou and Jianping Qiu is **granted**.

20 **IT IS FURTHER ORDERED** that Defendants Dejun Zou and Jianping Qiu shall serve
21 their responses to Plaintiffs' Interrogatories and Requests for Production Documents (Exhibits D
22 and E to Plaintiffs' Motion) within fourteen days of the date of this order.

23 DATED this 17th day of April, 2013.

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25 
26 GEORGE FOLEY, JR.
27 United States Magistrate Judge
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