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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 THE FEDERAL DEPOSIT INSURANCE
CORPORATION,

11 Plaintiff,

12 v.

13 KERRY K. KILLINGER, et al.,

14 Defendants.
15

CASE NO. C11-459 MJP

ORDER GRANTING MOTION TO
COMPEL

16 This matter comes before the Court on Plaintiff's motion to compel. (Dkt. No. 65.)

17 Having reviewed the motion, the response (Dkt. No. 72), the reply (Dkt No. 75), and all related
18 papers, the Court GRANTS the motion.

19 **Background**

20 Plaintiff Federal Deposit Insurance Corporation ("FDIC") seeks an order compelling
21 Defendant Esther Rotella to answer pending jurisdictional discovery requests and to extend the
22 time for the FDIC to respond to her pending motion to dismiss. (Dkt. No. 65 at 2.) Defendant
23 Esther Rotella has refused to respond to the interrogatories and requests for production, stating
24

1 that the FDIC has not made a prima facie showing of jurisdiction and that the discovery
2 prematurely seeks information related to the merits. Her motion to dismiss for lack of
3 jurisdiction is currently ripe for decision.

4 **Analysis**

5 Federal Rule of Civil Procedure 26(b)(1) provides:

6 Unless otherwise limited by court order, the scope of discovery is as follows:
7 Parties may obtain discovery regarding any nonprivileged matter that is relevant
8 to any party's claim or defense-including the existence, description, nature,
9 custody, condition, and location of any documents or other tangible things and the
10 identity and location of persons who know of any discoverable matter.

11 The Court may also “[f]or good cause, . . . order discovery of any matter relevant to the subject
12 matter involved in the action.” Id. “[D]iscovery should ordinarily be granted where pertinent
13 facts bearing on the question of jurisdiction are controverted or where a more satisfactory
14 showing of the facts is necessary.” Laub v. United States Dep’t of Interior, 342 F.3d 1080, 1093
15 (9th Cir. 2003) (quoting Butcher’s Union Local No. 498 v. SDC Inv., Inc., 788 F.2d 535, 540
16 (9th Cir. 1986)). There must be at least a colorable claim of personal jurisdiction to permit such
17 discovery. See Mitan v. Feeney, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007). “This
18 ‘colorable’ showing should be understood as something less than a prima facie showing, and
19 could be equated as requiring the plaintiff to come forward with ‘some evidence’ tending to
20 establish personal jurisdiction over the defendant.” Id. (citation omitted).

21 The FDIC has made a colorable claim of personal jurisdiction over Defendant Esther
22 Rotella in its complaint sufficient to be permitted jurisdictional discovery in the face of the
23 pending motion to dismiss. The complaint alleges that Esther Rotella and her husband engaged
24 in a fraudulent conveyance in Washington, and the publically available facts shows a likelihood
that Esther Rotella lived in Washington at the time of the alleged fraudulent conveyances. Esther

1 Rotella disputes these factual assertions, which demonstrates why jurisdictional discovery would
2 aid in the determination of the pending motion to dismiss for lack of personal jurisdiction. See
3 Laub, 342 F.3d at 1093. The Court therefore finds it appropriate to permit jurisdictional
4 discovery prior to ruling on Esther Rotella's pending motion. The Court GRANTS the motion.

5 The Court ORDERS Defendant Esther Rotella to respond to the FDIC's jurisdictional
6 interrogatories and requests for production and serve her responses within 20 days of entry of
7 this order. The FDIC will then be permitted to file a response to Defendant Esther Rotella's
8 motion to dismiss, which shall be due by no later than October 21, 2011. Defendant's revised
9 reply shall be due by no later than October 28, 2011. The motion shall be re-noted to October
10 28, 2011, and the Court will not consider the currently filed reply brief unless specifically
11 requested by Defendant.

12 The Court separately notes that the FDIC and all parties must file any discovery disputes
13 using the unified format of Local Rule CR 37. The Court will strike without prejudice any
14 discovery motion that does not employ this format. The Court separately agrees with Defendant
15 that the FDIC should have filed a response to the motion to dismiss rather than this stand-alone
16 motion to compel. Yet, the Court does not agree that it should simply grant the motion to
17 dismiss because the FDIC did not technically file a response brief. The motion to compel
18 sharply disputes the motion to dismiss and requests more time to file a response. The Court thus
19 finds good cause to extend the noting date of the motion to compel, despite the technical defects
20 in the FDIC's pleading approach. The Court advises the parties to file responsive briefing if they
21 wish to dispute a motion, as Local Rule CR 7(b)(2) does permit an adverse inference in the
22 absence of an opposition. The Court does not find it proper to invoke that Local Rule in this
23 instance, as the FDIC quite clearly disputes the merits of the motion.

1 **Conclusion**

2 The Court GRANTS the FDIC's motion to compel. In light of the colorable claim of
3 personal jurisdiction and the factual dispute raised in the pending motion to dismiss, the Court
4 finds it proper to permit the FDIC to perform jurisdictional discovery before responding to
5 Defendant Esther Rotella's motion to dismiss. The Court ORDERS Defendant Esther Rotella to
6 serve her answers to the FDIC's jurisdictional interrogatories and requests for production within
7 20 days of entry of this order. Defendant Esther Rotella's motion to dismiss is re-noted to
8 October 28, 2011. The FDIC's response is due by no later than October 21, 2011, and
9 Defendant's reply is due by no later than October 28, 2011.

10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated this 23rd day of September, 2011.

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14 Marsha J. Pechman
15 United States District Judge
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