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12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 WESTERN DIVISION

15 CBS Broadcasting Inc.,
 16 Plaintiff,
 17 v.
 18 American Broadcasting Companies Inc.,
 19 et al.,
 20 Defendants.

CASE NO. 2:12-CV-04073 MMM
 (JEMx)

**CBS'S *EX PARTE* APPLICATION
 FOR EXPEDITED DISCOVERY AND
 TO SHORTEN TIME FOR BRIEFING
 AND HEARING ON CBS'S MOTION
 FOR A PRELIMINARY
 INJUNCTION; MEMORANDUM OF
 POINTS AND AUTHORITIES;
 DECLARATION OF THEANE
 EVANGELIS KAPUR**

[[Proposed] Order filed concurrently]

Hearing:

Date: None set
 Time: None set
 Place: Courtroom No. 780
 Judge: Hon. Margaret M. Morrow

26 TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:

27 PLEASE TAKE NOTICE THAT Plaintiff CBS Broadcasting Inc. ("CBS"), by
 28 and through its counsel of record, applies *ex parte*, pursuant to Federal Rule of Civil

1 Procedure 26(f)(1) and 6(c)(1)(C), and Local Rules 6-1 and 7-19, for (i) an order for
2 expedited discovery, and (ii) an order shortening time for briefing and hearing on
3 CBS’s impending Motion for a Preliminary Injunction. This *ex parte* Application is
4 based upon this Notice, the enclosed Application, Memorandum of Points and
5 Authorities, the Declaration of Theane Evangelis Kapur, and such other evidence as
6 may be presented to the Court at any hearing on the *ex parte* Application.

7 By this application, CBS seeks limited discovery on an expedited basis in order
8 to learn the nature and extent of the ongoing infringement of CBS’s copyright interests
9 and theft of CBS’s trade secrets and other confidential information by Defendants
10 American Broadcasting Companies, Inc. (“ABC”), The Walt Disney Company, Disney
11 Enterprises, Inc., ABC, INC. (dba Disney/ABC Television Group), Keep Calm and
12 Carry On Productions, Inc., Corie Henson, Michael O’Sullivan, Kenny Rosen, and
13 others (collectively, “Defendants”). CBS needs discovery to develop the evidentiary
14 record for an imminent request for a preliminary injunction barring Defendants’
15 wrongful and infringing conduct—circumstances that courts routinely have found to
16 justify expedited discovery. *See, e.g., Apple Inc. v. Samsung Electronics Co.*, 2011
17 WL 1938154, *2 (N.D. Cal., May 18, 2011); *Interserve, Inc. v. Fusion Garage PTE,*
18 *Ltd.*, 2010 WL 143665, at *2 (N.D. Cal., Jan. 7, 2010); *OMG Fid., Inc. v. Sierius*
19 *Techs., Inc.*, 239 F.R.D. 300, 305 (N.D.N.Y. 2006); *Bonus of Am., Inc. v. Angel Falls*
20 *Servs., LLC*, 2010 WL 2218574, at *4 (D. Minn., May 28, 2010).

21 CBS’s request for a preliminary injunction must be expedited because of the
22 circumstances giving rise to CBS’s claims. The misappropriation of CBS’s valuable
23 intellectual property is occurring at an accelerated rate as the culmination of
24 Defendants’ infringing work (a new television series entitled “Life in a Glass House”
25 (“*Glass House*”)) is scheduled to broadcast throughout the United States on June 18,
26 2012. *Glass House*, which remarkably employs at least 19 former producers and staff
27 from CBS’s groundbreaking and extremely popular television series *Big Brother*, is a
28 carbon copy of *Big Brother* and an obvious attempt by Defendants to capitalize on *Big*

1 *Brother*'s unique success. Allowing the infringing work to air publicly without giving
2 CBS an opportunity to stop the ongoing infringement will substantially prejudice CBS
3 and cause it irreparable harm.

4 Moreover, CBS owns a number of valuable trade secrets related to the behind-
5 the-scenes, technical aspects of filming and production on *Big Brother* that CBS
6 alleges are being disclosed to ABC and its affiliates, in violation of non-disclosure
7 agreements, by CBS's former employees who now work on *Glass House* (including
8 Defendants Henson, O'Sullivan, and Rosen). Because *Glass House* is now in the
9 midst of production, the value to Defendants of CBS's trade secrets and confidential
10 information is at its highest, and those trade secrets and confidential information are
11 likely being disclosed on the production of *Glass House* every day. CBS will suffer
12 substantial and irreparable harm if these wrongs are allowed to continue, as compared
13 to the limited burden that this discovery will place on Defendants. CBS's application
14 for expedited discovery is, therefore, supported by good cause.

15 Finally, pursuant to Federal Rule of Civil Procedure 6(c)(1)(C) and Local Rule
16 6-1, CBS also applies to the Court to shorten time for the briefing and hearing schedule
17 for its impending motion for a preliminary injunction. Based on the Court's
18 "discretion to shorten time" under the federal rules, *see United States v. Fitch*, 472
19 F.2d 548, 549 n.5 (9th Cir. 1973), CBS requests that the Court set an accelerated
20 briefing and hearing schedule so that, after limited discovery, the Court may decide
21 CBS's motion as soon as possible—to mitigate the ongoing, irreparable harm to CBS
22 and to resolve the motion before Defendants broadcast their infringing work.

23 Counsel for Defendants were given notice of this *ex parte* application on May
24 14, 2012 and expressed their intent to oppose this motion. ABC and its affiliated
25 entities' counsel is Glenn D. Pomerantz of Munger, Tolles & Olson LLP. Mr.
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28 Glenn.Pomerantz@mto.com. Counsel for Defendants Henson, O'Sullivan, and Rosen

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5 Dated: May 14, 2012

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11 By: /s/ Scott A. Edelman
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant American Broadcasting Companies Inc.’s (“ABC”) latest reality
4 television project, “Life in a Glass House” (“*Glass House*”)—which remarkably
5 employs at least 19 former producers and staff from Plaintiff CBS Broadcasting Inc.’s
6 (“CBS”) hit reality television series *Big Brother*—is a carbon copy of *Big Brother* and
7 an obvious attempt by Defendants to capitalize on its unique success. Because
8 Defendants are currently engaged in ongoing infringement of CBS’s rights in *Big*
9 *Brother* and theft of CBS’s valuable trade secrets associated with that series, and
10 because ABC intends to begin broadcasting its infringing show on June 18, 2012, CBS
11 requests that this Court enter an order granting CBS expedited discovery to enable it to
12 bring a motion for a preliminary injunction.

13 As detailed in CBS’s complaint, Defendants’ development of *Glass House* is a
14 theft of CBS’s trade secrets, confidential information, and copyrightable expression.
15 The striking similarities between the two shows have also been recognized by the
16 media, who, as CBS has alleged, have reported that ABC “is copying *Big Brother*” and
17 “knocking off” the highly successful show that CBS has been broadcasting since 2000.
18 (Cmplt. ¶ 3.) *Glass House* is a substantially similar reproduction of *Big Brother* in
19 violation of CBS’s exclusive rights under the Copyright Act, 17 U.S.C. § 101, *et seq.*,
20 and valuable trade secrets related to the behind-the-scenes, technical aspects of filming
21 and production on *Big Brother* are being disclosed to ABC, in violation of non-
22 disclosure agreements, by the former *Big Brother* employees working on *Glass House*
23 (including Defendants Henson, O’Sullivan, and Rosen (the “Individual Defendants”)).

24 Because *Glass House* is set to debut only five weeks from today, more trade
25 secrets, confidential information, and copyrightable expression are being passed to
26 ABC and its affiliates every day that passes. Once this information is disclosed, the
27 harm to CBS is irreparable; no amount of money can cause CBS’s competitors to un-
28 learn its valuable trade secrets and confidential information.

1 Limited, expedited discovery will allow CBS to develop the evidentiary record
2 in connection with its motion for a preliminary injunction, and it will benefit the Court
3 and the parties by “allow[ing] the Court to address any request for preliminary
4 injunctive relief at the outset of the case, thereby providing a measure of clarity to the
5 parties early in the proceeding and facilitating effective case management.” *Apple Inc.*
6 *v. Samsung Electronics Co.*, 2011 WL 1938154, *2 (N.D. Cal., May 18, 2011).
7 Indeed, numerous courts have found grounds for expedited discovery orders in cases
8 like this one—where a party seeks discovery in advance of a preliminary injunction in
9 connection with claims of infringement or misappropriation. *See, e.g., id.; Interserve,*
10 *Inc. v. Fusion Garage PTE, Ltd.*, 2010 WL 143665, at *2 (N.D. Cal., Jan. 7, 2010);
11 *OMG Fid., Inc. v. Sierius Techs., Inc.*, 239 F.R.D. 300, 305 (N.D.N.Y. 2006).

12 CBS therefore requests that the Court order Defendants to respond to the six
13 document requests attached to this Application as Exhibit A (Kapur Decl., Ex. A),
14 make a single disclosure identifying persons working on *Glass House*, and make
15 available for deposition a limited number of the key former *Big Brother* staff members
16 who are now employed on *Glass House*. In addition, CBS requests that the Court
17 shorten the briefing and hearing schedule for CBS’s impending preliminary injunction
18 motion so that the Court can decide the motion as soon as possible—to mitigate the
19 ongoing, irreparable harm to CBS and to resolve CBS’s motion before Defendants
20 begin broadcasting their infringing work. CBS has met and conferred with counsel for
21 Defendants, who have been unwilling to allow the reasonable expedited discovery that
22 CBS requests. (*See* Kapur Decl., ¶¶ 5–7.)

23 II. FACTUAL BACKGROUND

24 A. CBS’s Hit Series *Big Brother*

25 *Big Brother* is an enormously successful reality television show that CBS has
26 been broadcasting as the exclusive U.S. licensee since 2000. (Cmplt. ¶ 23.)
27 Contestants on the show live together in a large house, isolated from the outside world,
28 where they are filmed continuously. Contestants are periodically “evicted” from the

1 house as a result of tasks and competitions. They are voted for eviction by their co-
2 contestants or, in the premiere season, by viewers. (Cmplt. ¶¶ 25, 37.) Although the
3 show typically broadcasts daily updates in the evening, viewers also can watch a
4 continuous, 24-hour feed from multiple cameras on the web. (Cmplt. ¶ 31.)

5 *Big Brother* pioneered a series of interactive features through which viewers of
6 *Big Brother* are given input into the show, including which contestants are evicted
7 from the house and in some cycles of the show which contestants are allowed back into
8 the house after they have been eliminated. (Cmplt. ¶ 30.) For example, there is a
9 contestant called “America’s Player,” who is given assignments, unknown to the other
10 houseguests, through votes from the viewing public. The public votes on which
11 nominated contestant America’s Player should vote off and campaign to get evicted.
12 (Cmplt. ¶ 32.)

13 **B. ABC’s Production Of A Virtually Identical Show—*Glass House*—That**
14 **Infringes *Big Brother***

15 ABC recently announced it is producing a new reality television show named
16 “Life in a Glass House,” which ABC plans to debut on June 18, 2012 and run through
17 August 20, 2012. (Cmplt. ¶¶ 33-34.) The show is virtually identical to *Big Brother*,
18 leading media outlets to report that ABC “is copying Big Brother” and “knocking off”
19 the highly successful show that CBS has been broadcasting since 2000. (Cmplt. ¶ 3.)

20 For example, according to ABC’s own description and additional published
21 accounts, *Glass House*, like *Big Brother*, involves 14 contestants living together in a
22 house rigged with cameras. And as in *Big Brother*, contestants on *Glass House* will
23 face eviction, with the last person standing winning a six-figure cash prize. (Cmplt.
24 ¶ 35.)

25 ABC has also copied the interactive features that CBS pioneered with *Big*
26 *Brother*. In *Glass House*, just like in *Big Brother*, viewers will be encouraged to
27 support and follow the contestants they like, their votes helping to determine which
28 contestants are sent home. As in *Big Brother*, viewers can watch a live online feed of

1 *Glass House*. While the show will be broadcast for just one hour per week, there will
2 be several live online feeds at other times, when viewers can talk with the players and
3 offer encouragement, criticism, or suggestions. (Cmplt. ¶ 36.)

4 **C. ABC’s Development, Filming, And Production Of *Glass House* Is Led By**
5 **Former *Big Brother* Producers And Staff Hired By ABC To Facilitate Its**
6 **Copyright Infringement And Misappropriation Of CBS’s Trade Secrets**

7 The striking similarity between the two shows is unsurprising, because the
8 access ABC has had to CBS’s protected intellectual property is unparalleled: *Glass*
9 *House*’s most senior positions and most critical functions are being led and staffed
10 with former producers and other staff of *Big Brother*. (Cmplt. ¶ 38.) Former *Big*
11 *Brother* producers and staff—all of whom signed non-disclosure agreements in
12 connection with *Big Brother*—have been hired by ABC to lead the development,
13 filming, and production of *Glass House*. (Cmplt. ¶¶ 38-62.)

14 For example, Defendant Corie Henson, ABC’s Vice President of Alternative
15 Programming, was a Producer of *Big Brother* seasons 6 and 7. (Cmplt. ¶ 44.)

16 Defendant Kenny Rosen worked for at least five years as Co-Executive Producer of
17 *Big Brother* seasons 3 through 8. He is now the *Glass House* show-runner. (Cmplt.
18 ¶ 45.) And Defendant Michael O’Sullivan was a Supervising Producer of *Big Brother*
19 for at least eight years (seasons 4 through 13). He is now involved in the production of
20 *Glass House*. (Cmplt. ¶ 46.) At least 16 other former *Big Brother* producers and staff
21 are now working at CBS on *Glass House*. (Cmplt. ¶¶ 47-62.)

22 The non-disclosure agreements that each of these former *Big Brother* producers
23 and staff signed specify that if a signatory’s work on *Big Brother* would reveal
24 “confidential and/or proprietary information and/or trade secrets . . . , which may never
25 be intended for dissemination to the general public at any time,” they would not
26 “publish, reveal, disseminate, disclose, or cause to be published, revealed,
27 disseminated or disclosed . . . any Confidential Information.” (Cmplt. ¶ 41.)

1 **D. Procedural History**

2 ABC announced its development, production, and targeted debut of *Glass House*
3 on April 30, 2012. On May 4, 2012, CBS sent letters to ABC, The Walt Disney
4 Company (ABC’s parent), and the three Individual Defendants, advising each of them
5 that their development and production of *Glass House* infringed CBS’s copyright and
6 that Defendants had misappropriated CBS’s trade secrets. (Kapur Decl., Ex B.) CBS
7 received no response to these letters until after it filed the complaint. (Kapur Decl.
8 ¶ 3.)

9 CBS filed a complaint in the instant action on May 10, 2012, asserting claims
10 for (1) copyright infringement (17 U.S.C. § 101 et seq.); (2) trade secret
11 misappropriation (Cal. Civ. Code, §§ 3426-3426.11); (3) unfair and unlawful
12 competition (Cal. Bus. & Prof. Code, § 17200 et seq.); (4) breach of contract; (5)
13 breach of fiduciary duty; (6) inducing breach of contract; (7) inducing breach of
14 fiduciary duty; (8) conversion; (9) conspiracy; and (10) aiding and abetting. (Cmplt.
15 ¶¶ 73-161.)

16 **III. ARGUMENT**

17 Defendants’ blatant stealing of CBS’s trade secrets, copyrightable expression,
18 and other confidential information is illegal, irreparably harms CBS, and must be
19 stopped before it is too late. Expedited discovery and a shortened schedule for CBS’s
20 impending motion for a preliminary injunction is warranted here so CBS can quickly
21 file—and so the Court can efficiently decide—a motion to enjoin Defendants from
22 misappropriating, disclosing, or using CBS’s confidential information and trade
23 secrets, and from infringing CBS’s copyrightable expression. (See, e.g., Cmplt ¶¶ 87,
24 103, 105, 123 (seeking preliminary injunctive relief).)¹ This is an established basis for

26 ¹ “Reality television” is a relatively new format, and courts have had few occasions
27 to apply the Copyright Act to “reality” shows. Nonetheless, it is clear that reality
28 television is protectable under the Act. Courts so far have assumed reality TV is
protectable and have examined whether the works are substantially similar and/or
the alleged infringer’s degree of access to the original work. See, e.g., *Bethea v.*

(Cont’d on next page)

1 expedited discovery, and expedited discovery and an order shortening time are
2 supported by good cause here due to the extreme burden and irreparable harm to CBS
3 if these matters are delayed.

4 **A. CBS Has Good Cause To Proceed *Ex Parte***

5 As a direct result of ABC's scheduled June 18, 2012 broadcast date for *Glass*
6 *House*, CBS is unable to request expedited discovery from the Court via noticed
7 motion without suffering severe harm. If CBS filed a noticed motion, its motion for
8 expedited discovery would be heard, per Local Rule 6-1, on June 11, 2012 at the
9 earliest. By that time, *Glass House* would be set to air in one week, and there would
10 be insufficient time to collect discovery and set a briefing and hearing schedule on
11 CBS's motion for a preliminary injunction. Moreover, delaying discovery by months
12 would cause further and irreparable disclosure of CBS's trade secrets and confidential
13 information to CBS's business competitors.

14 **B. CBS's Request For Expedited Discovery Is Supported By Good Cause**

15 Federal Rule of Civil Procedure 26(d) expressly authorizes the Court to issue an
16 order permitting early discovery. In this circuit, "[c]ourts may permit expedited
17 discovery before the Rule 26(f) conference upon a showing of good cause." *Am.*

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20 *Burnett*, 2005 WL 1720631 (C.D. Cal., Jun. 28, 2005); *Milano v. NBC Universal,*
21 *Inc.*, 584 F. Supp. 2d 1288 (C.D. Cal. 2008); *CBS Broadcasting Inc. v. ABC, Inc.*,
22 2003 WL 23407514 (S.D.N.Y., Jan. 14, 2003). Moreover, even where a format
23 relies on generic "*scenes a faire*," this Circuit recognizes that "[t]he particular
24 sequence in which an author strings a significant number of unprotectable elements
25 can itself be a protectable element." *Metcalf v. Bocho*, 294 F.3d 1069, 1074 (9th
26 Cir. 2002); *see also Sheehan v. MTV Networks*, 1992 WL 58876, *3 (S.D.N.Y.,
27 Mar. 13, 1992) ("[E]ven though a television game show is made up entirely of
28 stock devices, an original selection, organization and presentation of such devices
can nevertheless be protected . . ."). And courts require a lower burden for
infringement where, as here, the defendant has a high degree of access to the rights
holder's protectable expression. *Three Boys Music Corp. v. Bolton*, 212 F.3d 477,
484 (9th Cir. 2000); *Metcalf*, 294 F.3d at 1074. Indeed, *Big Brother* has been
registered with the Copyright Office. (Kapur Decl., Exh. C.) In either case, there is
no requirement that a movant establish likelihood of success on the merits in order
to obtain expedited discovery. *Apple*, 2011 WL 1938154, at* 3. CBS will make
that showing in connection with its motion for a preliminary injunction.

1 *LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, (2009) (C.D. Cal.) (quoting *In re*
2 *Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179 (C.D. Cal.
3 2008)); *see also Interserve*, 2010 WL 143665, at *2 (“In the Ninth Circuit, courts use
4 the ‘good cause’ standard to determine whether discovery should be allowed to
5 proceed prior to a Rule 26(f) conference.”). “Good cause exists where the need for
6 expedited discovery, in consideration of the administration of justice, outweighs the
7 prejudice to the responding party.” *Am. LegalNet*, 673 F. Supp. at 1066 (internal
8 quotation omitted).

9 In determining whether good cause supports a request for expedited discovery,
10 courts generally consider: “(1) whether a preliminary injunction is pending; (2) the
11 breadth of the discovery requests; (3) the purpose for requesting the expedited
12 discovery; (4) the burden on the defendants to comply with the requests; and (5) how
13 far in advance of the typical discovery process the request [is] made.” *Id.* at 1067.
14 These factors support expedited discovery here.

15 **1. CBS Expects To File A Motion For A Preliminary Injunction Against**
16 **Defendants’ Infringement Of CBS’s Copyright And**
17 **Misappropriation Of CBS’s Trade Secrets**

18 This case has all the hallmarks of one requiring expedited discovery. First, the
19 discovery is sought in conjunction with an imminent motion for a preliminary
20 injunction. According to the Advisory Committee Notes to Federal Rule of Civil
21 Procedure 26, early discovery is appropriate in cases “such as those involving requests
22 for a preliminary injunction.” Notes to the 1993 amendments to Rule 26(d); *see also*
23 *Am. LegalNet*, 673 F. Supp. at 1066 (“The good cause standard may be satisfied where
24 a party seeks a preliminary injunction.”). Second, courts routinely observe that
25 expedited discovery is particularly appropriate “in cases involving claims of
26 infringement and unfair competition.” *See, e.g., First Time Videos, LLC v. Doe*, 2012
27 WL 1355725, *3 (E.D. Cal., Apr. 18, 2012) (emphasis added); *Pink Lotus*
28 *Entertainment, LLC v. Doe*, 2012 WL 260441, *2 (E.D. Cal., Jan. 23, 2012) (same);

1 *Hard Drive Productions, Inc. v. Doe*, 2012 WL 126247, *1 (E.D. Cal., Jan. 17, 2012)
2 (same).

3 A motion for a preliminary injunction need not be “pending” for expedited
4 discovery to be warranted. Numerous courts have ordered expedited discovery where,
5 as here, information is needed to develop the evidentiary record for an impending
6 request for an injunction. For example, in *Apple Inc. v. Samsung Electronics Co.*, the
7 District Court for the Northern District of California granted a plaintiff’s request for
8 “extensive discovery . . . approximately two-and-a-half months before discovery would
9 ordinarily be available” where it was necessary to “to allow [the plaintiff] to determine
10 whether to seek an early injunction.” 2011 WL 1938154 , at *2. The *Apple* court
11 noted that early expedited discovery was “relevant to [plaintiff’s] claims of
12 infringement,” which would “likely [] be central to any motion for preliminary
13 injunction.” *Id.* Thus, “expedited discovery would allow the Court to address any
14 request for preliminary injunctive relief at the outset of the case, thereby providing a
15 measure of clarity to the parties early in the proceeding and facilitating effective case
16 management.” *Id.*

17 Numerous other courts have also ordered expedited discovery in cases like this
18 one—where a plaintiff announces its intention to seek an injunction in connection with
19 the theft of the its intellectual property. *See, e.g., Interserve*, 2010 WL 143665, at *2
20 (granting expedited discovery in intellectual property dispute where it “will allow
21 plaintiff to determine whether to seek an early injunction”); *OMG Fid., Inc.*, 239
22 F.R.D. at 305 (granting expedited discovery in trade secret misappropriation and unfair
23 competition dispute in advance of preliminary injunction to give plaintiff “an early
24 opportunity to develop evidence for use in support of such a motion”); *accord Bonus*
25 *of Am., Inc. v. Angel Falls Servs., LLC*, 2010 WL 2218574, at *4 (D. Minn., May 28,
26 2010) (granting motion for “expedited discovery to prepare for a motion for a
27 preliminary injunction”); *United Cent. Bank v. Kanan Fashions, Inc.*, 2010 WL
28 775040, at *2 (N.D. Ill., Mar. 5, 2010) (noting previous “leave to conduct expedited

1 discovery” and instructing of plaintiff “to file a motion for a preliminary injunction, if
2 necessary, after conducting ‘a little’ discovery”); *New York Civil Liberties Union v.*
3 *New York City Transit Auth.*, 675 F. Supp. 2d 411, 422 (S.D.N.Y. 2009) (noting
4 “expedited plan for discovery in regard to Plaintiff’s contemplated motion for a
5 preliminary injunction”). For example, in *Apple*, the district court plaintiff’s motion
6 for expedited discovery in anticipation of a motion for a preliminary injunction where
7 the plaintiff alleged that an unfinished product that had yet to be released was
8 infringing. *See, e.g., Apple*, 2011 WL 1938154, at* 3.

9 CBS’s intention to file an imminent motion seeking a preliminary injunction
10 against, among other things, Defendants’ misappropriation, infringement, and unfair
11 and unlawful business practices is, therefore, a sufficient basis for ordering the limited
12 discovery CBS seeks here.

13 **2. Expedited Discovery Is Necessary To Avoid Prejudice And** 14 **Irreparable Harm To CBS**

15 If discovery is not ordered in connection with CBS’s imminent request for a
16 preliminary injunction, then discovery will not begin until after the Rule 26(f)
17 conference, which is likely to be months away. But ABC is set to broadcast *Glass*
18 *House* on June 18, 2012—long before CBS would be able to obtain sufficient
19 discovery under normal discovery practice. Requiring CBS to wait until after *Glass*
20 *House* airs would irreparably harm and prejudice CBS in multiple ways.

21 First, allowing Defendants’ infringing work to broadcast throughout the United
22 States in violation of CBS’s exclusive rights under the Copyright Act will irreparably
23 harm CBS’s interests in *Big Brother*. Money will be inadequate to compensate CBS
24 for the erosion of *Big Brother*’s viewership and loss of goodwill among *Big Brother*
25 viewers that could occur if CBS’s competitors are allowed to publicly broadcast a
26 blatant rip-off of the show. *E.g., Automated Merchandising Sys., Inc. v. Crane Co.*,
27 357 F. App’x. 297, 301 (Fed. Cir. 2009) (lost market share may constitute irreparable
28 harm); *Berster Tech., LLC v. Christmas*, 2012 WL 33031, *10 (E.D. Cal., Jan. 6, 2012)

1 (in copyright dispute, “lost or damaged good will,” “lost business,” and “lost business
2 opportunities” qualify as irreparable harm).

3 Second, if CBS is not permitted to seek expedited discovery in connection with
4 a motion for a preliminary injunction, then CBS will suffer substantial prejudice and
5 irreparable harm through the loss of its valuable trade secrets. CBS has alleged that
6 the former *Big Brother* producers and staff intend to continue to disclose and misuse
7 the trade secrets identified above, among others, by participating in the development,
8 filming, and production of *Glass House*. (E.g., Cmplt. ¶¶ 67-72.) For example, the
9 Individual Defendants were given copies of the “House Guest Manual,” “Producer’s
10 Binder,” and “Story Producers Handbook”—three critically important documents that
11 reveal highly confidential and proprietary trade secrets about how *Big Brother* is
12 produced—in connection with their work on *Big Brother*. CBS believes the Individual
13 Defendants have used these documents during their work on *Glass House* and may
14 have communicated their contents to other employees of *Glass House*. (Cmplt. ¶ 69.)

15 Indeed, the production phase leading up to the airing of the show—which CBS
16 believes is the current stage of *Glass House* (Cmplt. ¶ 72)—is the critical time period
17 in which trade secrets are most likely to be divulged. The House Guest Manual
18 contains, among other things, details about how the *Big Brother* production staff
19 interacts with contestants. The Producer’s Binder sets forth the style guide, show
20 formats, planning and executing of the show, and a compilation of various reference
21 materials for producers. And the Story Producers Handbook, among other things, sets
22 forth the processes *Big Brother* uses to produce the show on such a tight timeframe.
23 (Cmplt. ¶¶ 69.) This information is most useful during the development and
24 production phase *before* airing, as the ABC producers and staff are planning and
25 formulating a strategy for *Glass House*. Once these trade secrets are disclosed, the
26 harm to CBS is irreparable; no amount of money can cause CBS’s competitors to un-
27 learn them. *See, e.g., Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 92-93 (3d
28 Cir. 1992) (“[A]n intention to make imminent or continued use of a trade secret or to

1 disclose it to a competitor will almost always show irreparable harm.”). The need for
2 CBS to get an expeditious determination of its request for a preliminary injunction is,
3 therefore, substantial, and “it is clear that [CBS] will potentially be unfairly prejudiced
4 should [the Court] not permit discovery to go forward since it will not have an early
5 opportunity to develop evidence for use in support of such a motion.” *OMG Fidelity*,
6 239 F.R.D. at 305.

7 **3. The Requested Discovery Is Narrowly Tailored And Not Overly**
8 **Burdensome Or Prejudicial To Defendants**

9 CBS’s application for expedited discovery is also supported by good cause
10 because each of its discovery requests is narrowly tailored and directly relevant to the
11 issues that will form the core of CBS’s anticipated preliminary injunction motion.
12 Moreover, the limited discovery sought by CBS will not excessively burden
13 Defendants.

14 First, CBS seeks to serve six document requests, which are attached as Exhibit
15 A to the supporting declaration for this Application. (Kapur Decl., Ex. A.) These
16 requests ask only for documents relating to the production of *Glass House* or to *Big*
17 *Brother*, and communications involving specified individuals, all of whom are former
18 employees of *Big Brother* who had access to CBS’s confidential information and trade
19 secrets. Such documents will allow CBS and the Court to determine, among other
20 things, whether *Glass House* is substantially similar to *Big Brother*—a key factor for
21 whether Defendants have committed infringement and, thus, for whether CBS can
22 establish likelihood of success in order to obtain a preliminary injunction. *Metcalf v.*
23 *Bocho*, 294 F.3d 1069, 1074 (9th Cir. 2002). And they will shed light on the extent of
24 Defendants’ acts of infringement and misappropriation, which will allow CBS to show
25 likelihood of success and irreparable harm.

26 Moreover, producing documents regarding *Glass House*, *Big Brother*, and the
27 former *Big Brother* employees working on *Glass House* is hardly burdensome to
28 Defendants. *Glass House* is a newly developed series that presumably has been in

1 production only for a short time, and the request for documents related to *Big Brother*
2 applies to a limited timeframe. The universe of documents is therefore necessarily
3 small. Moreover, Defendants ABC and its affiliates are “sophisticated parties”
4 represented by capable counsel, *Apple*, 1011 WL 1938154, at *2; producing this
5 limited set of documents will not impose a significant burden on them, even on a tight
6 timeframe.²

7 Second, CBS also seeks an order that Defendants disclose to CBS the names of
8 all the individuals who have worked on *Glass House*. This information should be easy
9 for Defendants to produce, and it will allow CBS to identify conclusively how many
10 former *Big Brother* employees Defendants have working on the show. *E.g.*, *OMG*
11 *Fidelity*, 239 F.R.D. at 305 (interrogatories not burdensome on defendant where they
12 are “exceedingly pointed”). The information will therefore help determine the degree
13 of Defendants’ access to CBS’s copyrightable expression and trade secret
14 information—a critical factor for determining whether Defendants are committing
15 infringement and misappropriation. *See, e.g.*, *Three Boys Music Corp. v. Bolton*, 212
16 F.3d 477, 485 (9th Cir. 2000) (“Under our case law, substantial similarity is
17 inextricably linked to the issue of access. In what is known as the inverse ratio rule,
18 we require a lower standard of proof . . . when a high degree of access is shown.”);
19 *Metcalf*, 294 F.3d at 1074 (holding that plaintiffs’ copyright claim was “strengthened
20 considerably by [defendant’s] access to their works”).

21 Third, CBS seeks an order from the Court that ABC and its affiliates make
22 available for depositions between May 24 and May 31, 2012 ten individuals who have
23 been involved in *Glass House* and who CBS will identify after it has an opportunity to
24 review documents from Defendants. These depositions are necessary for CBS to
25 discern the nature and extent of Defendants’ infringement and misappropriation.

26
27 ² Similarly, the Individual Defendants have been working on *Glass House* for a short
28 time, and the number of documents in their possession related to *Glass House* is
likely to be small.

1 Because each of the depositions will involve individuals working on the production of
2 *Glass House*, the potential deponents are very likely to be present in this District, are
3 under the control of Defendants, and can easily be produced by Defendants in this
4 action.

5 Finally, conducting discovery and deciding the preliminary injunction in the
6 most efficient way possible is also beneficial to Defendants. Here, without efficient
7 and expeditious discovery, the parties and the Court run the risk that CBS's motion for
8 a preliminary injunction will come up for hearing after *Glass House* is already on the
9 air. Putting aside the irreparable harm to CBS, such circumstances could mean that the
10 Court will have to enjoin the distribution and broadcast of *Glass House* in the middle
11 of the series—a possibility that would be more costly for both CBS and Defendants.
12 Courts therefore recognize that it is often less prejudicial to enjoin a defendant that has
13 invested fewer resources into an infringing product than to wait until the defendant has
14 invested additional resources before enjoining its use. *See, e.g., Trak, Inc. v. Benner*
15 *Ski KG*, 475 F. Supp. 1076, 1078 (D. Mass. 1979) (noting that denying early injunctive
16 relief before commencement of sales campaign would “mak[e] permanent relief more
17 problematic.”). And Defendants have no valid interest in delaying these proceedings
18 so they can broadcast *Glass House* before the Court is able to issue a preliminary
19 injunction. *See, e.g., OMG Fidelity*, 239 F.R.D. at 306 (“[J]ustice delayed is justice
20 denied [T]he interjection of delay into litigation for the mere sake of delay serves
21 no useful purpose.”). It therefore makes eminent sense for CBS and the Court to have
22 expeditious access to the evidence necessary to determine if a preliminary injunction is
23 warranted.

24 **C. A Shortened Briefing And Hearing Schedule Is Necessary To Avoid**
25 **Substantial And Irreparable Harm To CBS**

26 By this Application, CBS also requests that the Court shorten time for the
27 briefing and hearing schedule for CBS's impending Motion for a Preliminary
28 Injunction. The Court has “discretion to shorten time” for briefing and hearing of a

1 motion under the federal and local rules. *See United States v. Fitch*, 472 F.2d 548, 549
2 n.5 (9th Cir. 1973); Fed. Rule of Civ. Proc. 6(c)(1)(C); Local Rule 6-1. Here, an
3 accelerated briefing and hearing schedule on CBS's Motion for a Preliminary
4 Injunction is necessary to mitigate the ongoing, irreparable harm described above and
5 to resolve CBS's motion before Defendants infringing work begins broadcasting. CBS
6 proposes, so that its motion is heard expeditiously after the limited discovery, that: (i)
7 CBS file its motion for a preliminary injunction on or before June 4, 2012; (ii)
8 Defendants file their opposition on or before June 8, 2012; and (iii) CBS file any reply
9 on or before June 10, 2012. Such a schedule will allow CBS adequate time to seek
10 limited discovery in support of its motion, and it will give the Court time to hear and
11 decide the motion before *Glass House* begins broadcasting on June 18, 2012.

12 IV. CONCLUSION

13 For these and all of the foregoing reasons, CBS respectfully requests that the
14 Court order expedited discovery according to the following schedule:

- 15 (a) Defendants are ordered to serve written responses and responsive
16 documents to the requests for production filed as Exhibit A to the
17 Declaration of Theane Evangelis Kapur filed in support of CBS's *Ex*
18 *Parte* Motion for Expedited Discovery on or before May 18, 2012, by
19 5:00 p.m. PST.
- 20 (b) Defendants are ordered to disclose to CBS the names of all individuals
21 working on *Life in a Glass House* or *Glass House* on or before May 18,
22 2012, by 5:00 p.m. PST.
- 23 (c) Defendants are ordered to make available for deposition ten (10)
24 individuals associated with the project *Glass House*, who will be
25 identified by CBS on or before May 21, 2012, between May 24, 2012 and
26 May 31, 2012, inclusive.
- 27 (d) CBS's anticipated motion for a preliminary injunction will be briefed and
28 heard on an expedited schedule before the June 18, 2012 broadcast of

1 *Glass House*. CBS shall file its motion for a preliminary injunction on or
2 before June 4, 2012. Defendants shall file their opposition on or before
3 June 8, 2012, and CBS shall file its reply brief on or before June 10, 2012.
4 CBS's motion for a preliminary injunction against Defendants shall be set
5 for a hearing on or before June 16, 2012.

6 Dated: May 14, 2012

7 SCOTT A. EDELMAN
8 THEANE EVANGELIS KAPUR
9 BLAINE H. EVANSON
10 MICHAEL W. SEITZ
11 GIBSON, DUNN & CRUTCHER LLP

12 By: _____ /s/ Scott A. Edelman
13 Scott A. Edelman

14 Attorneys for CBS Broadcasting Inc.

1 proposal: (1) CBS would provide more specific disclosures of its trade secrets; (2)
2 Defendants would produce a cherry-picked set of documents “sufficient to show the
3 Glass House show as it is currently envisioned”; (3) the parties would each be entitled
4 to 7 hours of deposition time to use as they see fit, and Defendants would serve a Rule
5 30(b)(6) deposition notice on CBS; and (4) the parties would agree to a briefing
6 schedule in which CBS’s motion for preliminary injunction would be due May 25,
7 2012, Defendants’ opposition brief due June 4, 2012, CBS would waive its reply brief,
8 and CBS’s motion would be heard on June 11, 2012. Defendants’ proposal is included
9 in Exhibit D as well.

10 7. Apart from Defendants’ request for further disclosures related to CBS’s
11 trade secrets, which CBS is currently gathering, CBS cannot agree to Defendants’
12 proposal. As an initial matter, the schedule Defendants propose is unworkable because
13 it is too limited and will not produce the documents related to defendants’ infringement
14 of CBS’s copyright and misappropriation of its trade secrets, which are necessary for
15 CBS’s motion for a preliminary injunction. Moreover, the deposition schedule would
16 be insufficient because there are at least 19 people working on the show from *Big*
17 *Brother*, and 10 depositions is a reasonable request in light of that fact. Further, CBS
18 is entitled to a reply brief in support of its motion for preliminary injunction and is
19 willing to draft its reply over a weekend and file on a Monday. Finally, Defendants
20 have not asserted any counter-claims, and there is no need for them to conduct any
21 discovery. Even if there were, it would be far more limited than the discovery that
22 CBS must seek in support of its motion for a preliminary injunction.

23 8. CBS’s Application to proceed *ex parte* is supported by good cause
24 because, if CBS filed a noticed motion, its motion for expedited discovery and to
25 shorten time would be heard, per Local Rule 6-1, on June 11, 2012 at the earliest. By
26 that time, *Glass House* would be set to air in one week, and there would be insufficient
27 time to collect discovery and set a briefing and hearing schedule on CBS’s motion for
28 a preliminary injunction against its broadcast. Moreover, CBS has alleged that its

1 trade secrets are currently being divulged to its business competitors. Delaying a
2 decision on CBS's Application would cause irreparable harm to CBS due to the
3 disclosure of its valuable and confidential trade secrets.

4 I declare under penalty of perjury under the laws of the United States and the
5 State of California that the foregoing is true and correct, and that this Declaration was
6 executed on this 14th day of May 2012, at Los Angeles, California.

7
8
9 /s/ Theane Evangelis Kapur

10 THEANE EVANGELIS KAPUR
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1 **CERTIFICATE OF SERVICE**

2 I, Gilbert Lee, certify as follows:

3 I am employed in the County of Los Angeles, State of California; I am over the
4 age of eighteen years and am not a party to this action; my business address is 333
5 South Grand Avenue, Los Angeles, California, 90071-3197, in said County and State.
6 I am employed in the office of Theane Evangelis Kapur, a member of the bar of this
7 Court, and at her direction on May 14, 2012, I served the following document:

8 **CBS'S *EX PARTE* APPLICATION FOR EXPEDITED DISCOVERY AND TO
9 SHORTEN TIME FOR BRIEFING AND HEARING ON CBS'S MOTION
10 FOR A PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND
11 AUTHORITIES; DECLARATION OF THEANE EVANGELIS KAPUR**

12 on the parties listed on the attached Service List by the following means of service:

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17 Telephone: (213) 683-9100
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**Attorneys for Corie Henson, Michael
O'Sullivan, and Kenny Rosen**

28 **BY PERSONAL SERVICE:** I caused each such document to be
transmitted to counsel of record by same-day courier service.

I am employed in the office of Gibson, Dunn & Crutcher LLP, a member of the
bar of this court, and the foregoing document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 14, 2012, in Los Angeles, California.

/s/ Gilbert Lee
Gilbert Lee