

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STORZ MANAGEMENT COMPANY, a
California Corporation, and STORZ
REALTY, INC.,

Plaintiffs,

v.

ANDREW CAREY, an individual, and
MARK WEINER, an individual,

Defendants.

No. 2:18-cv-00068-TLN-DB

**ORDER DENYING PLAINTIFFS' *EX*
PARTE APPLICATION FOR EXPEDITED
DISCOVERY**

This case involves alleged trade secret misappropriation and breach of duties by former officers in Storz Management Company. Plaintiffs Storz Management Company and Storz Realty, Inc.'s (collectively "Plaintiffs") move *ex parte* for expedited discovery. (ECF No 16.) Plaintiffs served Defendants Andrew Carey and Mark Weiner (jointly "Defendants") on January 12, 2018. (ECF Nos. 5 & 6.) However, Defendants have yet to make an appearance or file an answer in the given matter.

Plaintiffs seek expedited discovery in support of their pending motion for preliminary injunction filed on January 30, 2018. (ECF No. 8.) Plaintiffs seek to conduct expedited discovery as follows: collect information regarding the identity and location of Storz property in Defendants' possession, Defendants' communications with Plaintiffs' customers and employees,

1 documents relating to Defendants' communications with mobile home parks, ledgers for
2 Defendants' company, an accounting of the companies' property, cellphone records of
3 Defendants in connection with their businesses, all records to support a full and complete
4 investigation into Defendants' companies' activities, images of the computers used by Defendants
5 and the company, identification of all persons whom Defendants have contacted regarding their
6 company, personal tax returns for Defendants appropriately redacted, Company tax returns, and
7 immediate depositions of Defendants and two former employees of Storz. (ECF No. 16-1 at 4–
8 5.)

9 A party may not seek discovery from any source before the Rule 26(f) conference unless
10 otherwise authorized by the rules, by stipulation, or by court order. Fed. R. Civ. P. 26(d)(1). In
11 determining whether to grant expedited discovery, courts in the Ninth Circuit apply the “good
12 cause” standard and find good cause “where the need for expedited discovery, in consideration of
13 the administration of justice, outweighs the prejudice to the responding party.” *Semitoool, Inc. v.*
14 *Tokyo Electron America, Inc.*, 208 F.R.D 273, 276 (N.D. Cal. 2002). Courts consider the
15 following factors when determining whether good cause justifies expedited discovery: “(1)
16 whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the
17 purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with
18 the requests; and (5) how far in advance of the typical discovery process the request was made.”
19 *Apple Inc. v. Samsung Elec. Co., Ltd.*, 2011 WL 1938154, at *1 (N.D. Cal. May 18, 2011)
20 (quoting *Am. Legal Net, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009)).

21 Good cause for expedited discovery has been found in cases involving claims of unfair
22 competition or in cases where the plaintiff seeks a preliminary injunction. *Palermo v.*
23 *Underground Solutions, Inc.*, 2012 WL 2106228, at *2 (S.D. Cal. June 11, 2012). In cases where
24 a preliminary injunction is pending, courts often permit expedited discovery designed to obtain
25 information required for the preliminary injunction. *Id.* The discovery request must be narrowly
26 tailored to obtain information relevant to a preliminary injunction determination. *Dimension*
27 *Data N. Am. V. NetStar-1, Inc.*, 226 F.R.D. 528, 532 (E.D. N.C. 2005). Expedited discovery may
28 be denied where the expedited discovery goes to the merits of the plaintiff's claim. *Am. Legal*

1 *Net, Inc.*, 673 F. Supp. 2d at 1069.

2 Plaintiffs assert good cause exists to permit expedited discovery. (ECF No. 16-1 at 6–7.)
3 Plaintiffs contend the pending motion for preliminary injunction and the fact that the discovery is
4 directed at issues raised in the preliminary injunction motion warrant granting expedited
5 discovery. (ECF No. 16-1 at 6.) Plaintiffs further contend Defendants have already destroyed
6 evidence by removing data from their Storz computers prior to leaving. (ECF No. 16-1 at 6.)
7 Plaintiffs argue expedited discovery is crucial to prevent the further destruction of evidence and
8 to provide more support for their pending motion for preliminary injunction. (ECF No. 16-1 at
9 6.)

10 Plaintiffs’ application mostly asserts a need for discovery to support its pending motion
11 for preliminary injunction. However, Plaintiffs motion for preliminary injunction belies that
12 contention. Plaintiffs mention a need for expedited discovery in only one instance. (ECF No. 8-1
13 at 16.) Plaintiffs state that Defendants removed from their offices key missing files which
14 support their cause of action under the Defend Trade Secrets Act. (ECF No. 8-1 at 16.) Plaintiffs
15 then state in a footnote that expedited discovery including the deposition of Robert Domingo, the
16 person allegedly enlisted to remove the information from Storz’s offices after Defendants’
17 termination, will provide crucial information relating to the key missing files. (ECF No. 8-1 at 16
18 n.6.) This single instance is contradicted by the continuous remarks throughout the *ex parte*
19 application that “Defendants’ destruction of evidence makes knowing more impossible.” (*See,*
20 *e.g.*, ECF No. 8-1 at 16.) Even if the Court were inclined to find a single instance of need
21 sufficient to demonstrate good cause, the discovery sought is overly broad for this purpose.
22 Plaintiffs seek accounting documents, tax documents, contact information, and computer pictures,
23 which would not determine what missing files Defendants actually possess. (ECF No. 16-a at 4–
24 5.)

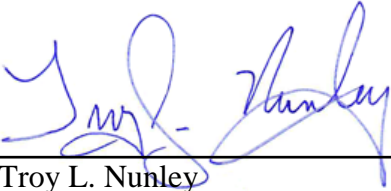
25 Furthermore, Plaintiffs offer contradictions in their two moving papers. In their motion
26 for preliminary injunction, Plaintiffs state “Storz has established [Defendants] are liable, that
27 Storz has suffered indefinable losses as a result of these thefts and data destruction, and that Storz
28 is likely to prevail on the merits of its CFAA claims, entitling it to full return of all removed files

1 and documents, and all of the expedited discovery it requests.” (ECF No. 8-1 at 18.) However, in
2 their ex parte application, Plaintiffs assert expedited discovery is necessary to support their
3 motion for preliminary injunction and prevent the destruction of evidence. It is clear from
4 Plaintiffs’ statement in their motion for preliminary injunction that they do not believe the
5 evidence is necessary to support their preliminary injunction. Rather, Plaintiffs’ statement
6 suggests Plaintiffs feel they are entitled to expedited discovery because they have shown a
7 likelihood of success on the merits of their Computer Fraud and Abuse claim. This is not the
8 standard. Based on the above, the Court finds Plaintiffs’ request goes to the merits of the
9 complaint rather than in support of their motion for preliminary injunction and thus must be
10 denied.

11 For the reasons set forth above, the Court hereby DENIES Plaintiffs’ ex parte application
12 for expedited discovery.

13 IT IS SO ORDERED.

14
15 Dated: 2/8/2018

16
17
18 
19 _____
20 Troy L. Nunley
21 United States District Judge
22
23
24
25
26
27
28