

E-Filed: April 8, 2015

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7 NOT FOR CITATION
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 TMT INVESTMENTS PLC; et al.,

No. C14-05323 HRL

12 Plaintiffs,

ORDER:

13 v.

**(1) DENYING WITHOUT PREJUDICE
EX PARTE APPLICATION FOR
EXPEDITED DISCOVERY; and**

14 JOHN DOE, 1-10,

15 Defendants.

**(2) CONTINUING CASE
MANAGEMENT CONFERENCE TO
JUNE 30, 2015**

[Re: Docket No. 6]

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19 TMT Investments PLC, German Kaplun, and Alexander Morgulchik sue John Doe, 1-10, for
20 defamation, invasion of privacy, interference with business relations, and trademark infringement.
21 Plaintiffs allege that in the fall of 2014, the Doe defendants began to publish the blogs
22 armdconflict.wordpress.com (“Armdconflict Blog”) and tmtinvestments.wordpress.com (“TMT
23 Blog”). Armdconflict Blog is allegedly dedicated to describing a perceived conflict between Kaplun
24 and Morgulchik, and the CEO of Armada OAO. The TMT Blog has allegedly published statements
25 that question the integrity of the Plaintiffs and insinuate their involvement in criminal dealings. In
26 addition, Plaintiffs allege that in October 2014, the Doe defendants began publishing the Facebook
27 page, “TMT Investments Plc,” at <http://www.facebook.com/tmtinvestments> (“Facebook Page”).
28 According to Plaintiffs, the Facebook page uses TMT Investments’ trade name without
authorization and creates a risk of confusion in the public as to TMT Investments’ sponsorship or

1 approval of the publications on the Facebook Page. In addition, the Facebook Page allegedly
2 includes links to the Armdconflict Blog and the TMT Blog.

3 Presently before the Court is Plaintiffs' Ex Parte Application for Expedited Discovery. Dkt.
4 No. 6. Plaintiffs request leave to take depositions and obtain documents from Automattic, Inc. and
5 Facebook, Inc. to learn the identities of the Doe defendants. Plaintiffs argue that the Doe defendants
6 have not published their true names or contact information on the Blogs or Facebook Page, and
7 Plaintiffs have been unable to determine the identity of the publishers based on publicly accessible
8 information.

9 Under Fed. R. Civ. P. 26(d)(1), discovery is not permitted without a court order prior to a
10 conference between the parties as required by Fed. R. Civ. P. 26(f) and then only upon a showing of
11 "good cause." *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275 (N.D. Cal. 2002).
12 When considering good cause, courts consider: whether: (1) the plaintiff can identify the missing
13 party with sufficient specificity such that the Court can determine that the defendant is a real person
14 or entity who could be sued in federal court; (2) the plaintiff has identified all previous steps taken
15 to locate the elusive defendant; (3) the plaintiff's suit against the defendant could withstand a
16 motion to dismiss; and (4) the plaintiff has demonstrated that there is a reasonable likelihood of
17 being able to identify the defendant through discovery such that service of process would be
18 possible. *Patrick Collins, Inc. v. John Does 1-54*, No. CV-11-1602, 2012 WL 911432, at *3 (D.
19 Ariz. Mar. 19, 2012).

20 When a plaintiff does not know the defendant's identity at the time a complaint is filed,
21 courts may grant the plaintiff's early discovery to determine the doe defendant's identity "unless it
22 is clear that discovery would not uncover the identit[y], or that the complaint would be dismissed on
23 other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). In *Gillespie*, the Ninth
24 Circuit held that the district court abused its discretion in denying early discovery because it was
25 "very likely" that the requested early discovery—interrogatories directed to named defendants—
26 would "have disclosed the identities of the 'John Doe' defendants." *Id.* at 643; *see also Wakefield v.*
27 *Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (quoting *Gillespie*, 629 F.2d at 642); *Young v.*
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1 *Transp. Deputy Sheriff I*, No. 08-15584, 2009 WL 2011201, at *1 (9th Cir. July 6, 2009) (applying
2 the *Gillespie* standard).

3 Here, Plaintiffs have not made the required showing of good cause. Specifically, Plaintiffs
4 have not addressed whether they can identify the missing parties with sufficient specificity such that
5 the Court can determine that the defendants are real persons or entities who could be sued in federal
6 court, whether Plaintiffs' suit against the defendants could withstand a motion to dismiss, and
7 whether there is a reasonable likelihood of being able to identify the defendants through discovery
8 such that service of process would be possible. In addition, although Plaintiffs conclusorily state
9 that they "have been unable to determine the identity of the publishers based on publicly accessible
10 information," they do not specify what steps they have taken in an attempt to determine the identity
11 of the publishers. Ex Parte Appl. at 4.

12 Accordingly, Plaintiffs' Ex Parte Application is denied without prejudice. Plaintiffs are
13 granted leave to re-file an application for expedited discovery. In addition, the case management
14 conference, currently set for April 14, 2015, is continued to June 30, 2015, at 1:30 p.m.

15 **IT IS SO ORDERED.**

16 Dated: April 8, 2015



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 **C14-05323 HRL Notice will be electronically mailed to:**

2 Ganka Alexandrova Hadjipetrova gankah@gmail.com

3 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
4 **registered for e-filing under the court's CM/ECF program.**

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