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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

YARDSTASH SOLUTIONS, LLC,  
Plaintiff,  
v.  
MARKETFLEET, INC.,  
Defendant.

Case No.: 17cv0625-JLS-MDD

**ORDER GRANTING LIMITED  
EXPEDITED VENUE DISCOVERY**

**[ECF NO. 25]**

On March 28, 2017, Plaintiff Yardstash Solutions, LLC filed a complaint alleging patent infringement and unfair competition against Defendant Marketfleet, Inc. (ECF No. 1). On June 6, 2017, Defendant filed a motion to dismiss for improper venue. (ECF No. 11). On September 29, 2017, as directed by the district judge, Plaintiff filed this motion for venue discovery. (ECF No. 25). Defendant responded in opposition on October 16, 2017. (ECF No. 28). Plaintiff replied on October 23, 2017. (ECF No. 29).

Plaintiff may conduct limited venue discovery, as provided below.

1 DISCUSSION

2 Plaintiff asserts that expedited discovery is necessary to determine  
3 whether venue is appropriate in the Southern District of California. An  
4 action for patent infringement may be brought “in the district where the  
5 defendant resides, or where the defendant has committed acts of  
6 infringement and has a regular and established place of business.” Title 28,  
7 United States Code, Section 1400(b). Here, there is no dispute that  
8 Defendant is incorporated in Delaware and has its principal offices in Chico,  
9 California, in the Eastern District of California, and San Juan, Puerto Rico.  
10 (ECF No. 28 at 4).<sup>1</sup> Accordingly, the only issue regarding venue is whether  
11 Defendant has “committed acts of infringement and has a regular and  
12 established place of business” in the Southern District of California.

13 Plaintiff asserts that Defendant generates substantial revenue from  
14 selling and shipping infringing products in this District and “reasonably  
15 believes that Defendant also runs a place of business” within the District.  
16 (ECF No. 25-1 at 3). The district court has determined that venue discovery  
17 may be useful in this case and has approved such discovery as may be  
18 ordered by this Court. (ECF No. 24). Accordingly, the only issue before this  
19 Court is the scope of the discovery to be authorized, not whether the  
20 discovery should be authorized.

21 Plaintiff has supplied 12 interrogatories, 9 requests for admission and 6  
22 requests for production that Plaintiff intends to serve or has served on  
23 Defendant regarding venue. (ECF Nos. 25 at 5-17). Among other things,  
24 Plaintiff requests that Defendant identify all customers in this District since  
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27 <sup>1</sup> The Court will refer to pagination supplied by CM/ECF rather than original pagination throughout.

1 January 2015, all business partners or persons conducted business on  
2 Defendant's behalf in the District, where Defendant manufactures its  
3 allegedly infringing product and shipping ports of the allegedly infringing  
4 product. (ECF No. 25 at 5-8). Plaintiff also requests that Defendant produce  
5 all documents regarding sales of the allegedly infringing product in this  
6 District, shipping of the product in this District, distribution of the product in  
7 this District and leasing and ownership of a business office in this District.  
8 (ECF No. 25 at 14-17).

9 Defendant, for its part, appears to challenge the district court's  
10 determination that venue discovery is appropriate. (ECF No. 28). This Court  
11 is not in a position to overrule or reverse a superior court. As a consequence  
12 of Defendant's likely misunderstanding of the purpose and parameters of this  
13 motion, Defendant did not mount a challenge to the scope of the discovery  
14 sought by Plaintiff. Consequently, the Court will not rule upon the propriety  
15 of each discovery request; rather the Court will determine the scope of  
16 discovery that will be allowed, provide an opportunity for Plaintiff to reframe  
17 its discovery requests and allow Defendant to object as may be warranted.<sup>2</sup>

18 Regarding scope of discovery, a recent opinion from a sister district  
19 held, albeit without supporting law or analysis, that the identity of the  
20 defendant's in-district customers, the volume of sales to in-district customers,  
21 and the presence of a third party distributing defendant's products in-district  
22 are all irrelevant to the §1400(b) venue analysis. *Hand Held Prod., Inc., v.*  
23 *The Code Corp.*, Case No. 2:17cv167-RMG \*7, 2017 WL 3085859, at \*4 (D.

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26 <sup>2</sup> Any disputes must be brought before the Court as provided in this Court's  
27 Chambers Rules. In the event of a dispute, just to be clear, counsel must meet and confer  
and, if the matter is not resolved, bring a joint motion before the Court.

1 S.C. July 18, 2017). This Court tends to agree that this type of discovery does  
2 not aid in determining whether Defendant has a “regular and established  
3 place of business” in this District. A volume of business and a number of  
4 customers may not make for a “place of business” under the patent venue  
5 statute. A “place of business” suggests, instead, a physical location or a  
6 consistent and regular presence in the District.

7 Plaintiff is not entitled to venue discovery before the claims accrued.  
8 Plaintiff is not necessarily entitled to venue discovery through the present.  
9 Accordingly, all discovery requests must be limited in time to the date the  
10 claims accrued plus a reasonable time thereafter.

#### 11 CONCLUSION

12 1. Plaintiff’s Motion for Expedited Venue Discovery is **GRANTED**.

13 2. Defendants are **ORDERED** to respond to limited discovery  
14 requests by Plaintiffs, as follows:

15 (a) Discovery Mechanisms: Plaintiff may serve requests for  
16 production, interrogatories, and requests for admission. Plaintiff may  
17 not serve any “contention” requests or interrogatories nor conduct any  
18 depositions, unless agreed upon between the parties;

19 (b) Subjects of discovery:

20 i. Personnel working in the Southern District of California;

21 ii. Sales, service, support, maintenance, distribution,  
22 shipping, storage or other activities regularly conducted by  
23 Defendant in this District or that is conducted by third parties on  
24 behalf of Defendant in this District;

25 iii. Property directly owned by Defendant located in this  
26 District;

27 iv. Sales or business offices, distribution, shipping or storage  
facilities for Defendant’s products, leased or owned by Defendant,  
or on Defendant’s behalf, in this District;

1 (c) Timeframe: The time the claim or claims accrued plus a  
2 reasonable time thereafter;

3 (d) Location: Southern District of California.

4 **IT IS SO ORDERED.**

5 Dated: October 26, 2017



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7 Hon. Mitchell D. Dembin  
8 United States Magistrate Judge  
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