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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 HP TUNERS, LLC,

9 Plaintiff,

v.

10 KEVIN SYKES-BONNETT, et al.,

11 Defendants.

CASE NO. C17-5760 BHS

ORDER ON THE PARTIES'
VARIOUS MOTIONS

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13 This matter comes before the Court on Plaintiff HP Tuners, LLC's ("HPT")
14 motion for relief to modify expert disclosure deadlines (Dkt. 53), motion to compel and
15 for sanctions and to modify scheduling order (Dkt. 64), and motion for temporary
16 restraining order and preliminary injunction (Dkt. 69); and Defendants Kevin Sykes-
17 Bonnett ("Sykes-Bonnett"), Syked ECU Tuning Incorporated, and John Martinson's
18 (collectively "Defendants") emergency motion for temporary restraining order (Dkt. 69).
19 The Court has considered the pleadings filed in support of and in opposition to the
20 motions, oral argument of counsel, and the remainder of the file and hereby rules as
21 follows:
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1 **I. PROCEDURAL HISTORY**

2 On August 29, 2018, the Court held oral argument on the four pending motions
3 referenced above. Dkt. 87. At the conclusion of the hearing, the Court ordered the
4 parties to file an agreed order reflecting the issues discussed. Dkt. 88 at 61. On
5 September 10, 2018, each side filed a proposed order because the parties were unable to
6 agree on certain issues. Dkts. 93, 94. The parties did not submit any additional
7 explanation for the remaining disputed issues.

8 **II. DISCUSSION**

9 **A. Extending Deadlines**

10 The parties were able to agree to continue the trial date to the end of April 2019
11 and to extend relevant deadlines according to the new trial date. Dkts. 93 at 7–8, 94 at 5–
12 6. The Court finds that good cause exists to strike the current scheduling order and
13 continue trial to April 30, 2019. Therefore, the Court grants the motions on these issues.

14 **B. Defendants’ Motion**

15 Regarding Defendants’ motion, HPT contends that the motion should be denied,
16 Dkt. 93, ¶ 10, and Defendants fail to address the issue. On the record, the Court
17 concluded that Defendants’ motion addressed discovery issues instead of an emergency
18 issue that required immediate injunctive relief. Dkt. 86 at 38. The Court then discussed
19 each of Defendants’ discovery requests with HPT’s attorney. *Id.* at 38–53. As set forth
20 in that discussion, the Court granted in part and denied in part Defendants’ discovery
21 requests. To the extent Defendants seeks additional relief on these issue, they must file
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1 an appropriate motion. Thus, the Court finds no need to provide any further ruling on
2 Defendants' discovery requests and denies the request for injunctive relief.

3 **C. HP's Motions**

4 The parties reached agreement on a number of issues. After setting forth the
5 agreed issues, the Court will address the remaining disputed issues. First, the parties
6 agreed as follows:

7 Defendants, as well as each of their agents, and all persons acting in
8 concert with any of them, are hereby immediately restrained from, directly
9 or indirectly, using, accessing, distributing, disseminating, transferring,
10 copying or otherwise referencing HPT's key generator program and tool;

11 Defendants, as well as each of their agents, and all persons acting in
12 concert with any of them, are hereby immediately restrained from, directly
13 or indirectly, using, accessing, distributing, disseminating, transferring,
14 copying or otherwise referencing any HPT programs, software, electronic
15 file folders, files or information obtained or received from Ken Cannata or
16 any third party;

17 Defendants, as well as each of their agents, and all persons acting in
18 concert with any of them, shall immediately return to HPT any and all
19 originals and copies of the Flash Drive, the HPT key generator program and
20 tool and all HPT programs, software, electronic file folders or files in their
21 possession, custody or control if such continues to exist in any form or
22 manner whatsoever;

Defendants, as well as each of their agents, and all persons acting in
concert with any of them, shall immediately return to HPT any and all HPT
interfaces in their possession, custody or control and, prior to returning said
interfaces being returned to HPT, Defendants shall not take any action to
modify, manipulate, damage or the interfaces being returned to HPT;

Defendants, as well as each of their agents, and all persons acting in
concert with any of them, are immediately restrained from, directly or
indirectly, publicly releasing HPT's programs, software, electronic file
folders, files or information in any manner whatsoever;

Defendants, as well as each of their agents, and all persons acting in
concert with any of them, are immediately restrained from, directly or
indirectly, providing HPT's programs, software, electronic file folders, files
or information to any third party in any manner whatsoever;

1 Within five (5) business days of the entry of this Order, each
2 Defendant shall provide a Declaration, under penalties of perjury under 28
3 U.S.C. § 1746, to HPT which:

4 specifically details any and all programs, software,
5 electronic file folders, files or information of HPT that was
6 provided to each particular Defendant by Ken Cannata or any
7 other third party;

8 specifically details the time, place, location and
9 particulars of the destruction of (i) all originals and copies of
10 the Flash Drive and/or (ii) all originals and copies of HPT's
11 programs, software, electronic file folders or files that were in
12 the possession, custody or control of Defendants including
13 but not limited to detailed information concerning the
14 specifics of what was destroyed and the identity of any
15 witnesses to said destruction and also including when, how
16 and where all of said materials and information were
17 destroyed;

18 certifies that: (i) all originals and copies of the Flash
19 Drive and (ii) all originals and copies of HPT's programs,
20 software, electronic file folders or files in possession, custody
21 and/or control of Defendants have been destroyed and/or
22 returned to HPT, and if Defendant cannot certify to the
foregoing, Defendant shall provide specific details and
particulars concerning (i) any originals or copies of the "Flash
Drive" and/or (ii) any originals and copies of HPT's
programs, software, electronic file folders or files which have
not been destroyed and/or returned;

 certifies that Defendant is not in possession, custody or
control of (i) any originals or copies of the "Flash Drive" or
(ii) any originals and copies of HPT's programs, software,
electronic file folders or files, and if Defendant cannot certify
to the foregoing, Defendant shall provide specific details and
particulars concerning Defendant's possession, custody or
control of (i) any originals or copies of the "Flash Drive"
and/or (ii) any originals and copies of HPT's programs,
software, electronic file folders or files;

 certifies that Defendant is not aware of the location or
whereabouts of (i) any originals or copies of the "Flash
Drive" or (ii) any originals and copies of HPT's programs,
software, electronic file folders or files, and if Defendant
cannot certify to the foregoing, Defendant shall provide
specific details and particulars concerning the location or
whereabouts of (i) any originals or copies of the "Flash

1 Drive” and/or (ii) any originals and copies of HPT’s
2 programs, software, electronic file folders or files; and
3 certifies that Defendant did not copy, transfer, save,
4 load, download and/or store (i) any originals or copies of the
5 “Flash Drive” or (ii) any originals and copies of HPT’s
6 programs, software, electronic file folders or files onto any
7 computer, device, hard drive and/or storage device at any
8 time, and if Defendant cannot certify to the foregoing,
9 Defendant shall provide specific details and particulars
10 concerning the computer, device, hard drive and/or storage
11 device on which (i) any originals or copies of the “Flash
12 Drive” or (ii) any originals and copies of HPT’s programs,
13 software, electronic file folders or files were copied,
14 transferred, saved, loaded, downloaded and/or stored.

15 Dkts. 93, ¶¶ 1–5, 7, 8, 9(a)–9(e), 9(h); 94 ¶¶ 1–7, 8(a)–8(f). To the extent that the parties
16 agree to this relief, the Court finds that such relief is warranted. Thus, the Court grants in
17 part HPT’s motion for injunctive relief as set forth above.

18 Second, the parties disagree on three remaining issues. The first disputed issue is
19 the Court’s ruling on HPT’s motion to compel and for sanctions and modify scheduling
20 order. Dkt. 64. HPT contends that the Court granted the portion of the motion relating to
21 the request to compel Defendants’ production of discovery. Dkt. 93 at 7 n.1. The Court
22 has reviewed the transcript and disagrees with HPT’s contention. The majority of the
discussion revolved around the production of source code and the possibility of
appointing a third-party expert to compare each party’s code. Thus, the discovery and
sanction issues remain pending. HPT requests that the Court address these issues in a
telephone conference. *Id.* The Court denies this request. Instead, the Court will renote
the motion and consider the issues in due course.

1 2. HPT's motion to compel and for sanctions and to modify scheduling order
2 (Dkt. 64) is **GRANTED in part** and **RENOTED in part** for consideration on the
3 Court's October 5, 2018 calendar;

4 3. HPT's motion for temporary restraining order and preliminary injunction
5 (Dkt. 69) is **GRANTED in part** and **DENIED in part** as stated herein;

6 4. Defendants' emergency motion for temporary restraining order (Dkt. 69) is
7 **DENIED**; and

8 5. The current scheduling order is **STRICKEN**, and the Clerk shall issue a
9 new, abbreviated schedule based on a trial date of April 30, 2019.

10 Dated this 18th day of September, 2018.

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13 BENJAMIN H. SETTLE
14 United States District Judge
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