

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Praecipio Consulting, LLC v. Howser

No. 25-cv-02927-JST (N.D. Cal. Apr. 10, 2025) · No. 25-cv-02927-JST · Decided April 10, 2025

OPINION

Praecipio Consulting, LLC v. Howser

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 PRAECIPIO CONSULTING, LLC, et al., Case No. 25-cv-02927-JST 8 Plaintiffs,

ORDER GRANTING REQUEST FOR

9 v. EXPEDITED DISCOVERY

10 NICHOLAS HOWSER, et al., Re: ECF No. 7 Defendants. 11 12 13 Before the Court are the parties' simultaneously filed briefs regarding the sequence and 14 scope of expedited discovery in advance of the Court's hearing on Plaintiffs' forthcoming motion 15 for preliminary injunction. ECF Nos. 23, 24. The Court will grant Plaintiffs' request for 16 expedited discovery.

17 I. BACKGROUND

18 On March 28, 2025, Plaintiffs Praecipio Consulting, LLC and Gaia Praecipio Buyer, Inc. 19 filed this action, alleging violations of the DTSA and breach of contract by former employees 20 Nicholas Howser and James Areias, who now work for Plaintiffs' competitor, catworkxs GmbH. 21 ECF No. 1. On the same day, Plaintiffs filed a motion for temporary restraining order and request 22 for expedited discovery. ECF No. 7. On March 31, 2025, the Court held a status conference and 23 directed the parties to meet and confer regarding temporary relief. ECF No. 17. On April 2, 2025, 24 the parties filed a joint status report, ECF No. 19, stating that they had reached agreement on most 25 of the temporary relief requested by Plaintiffs but that issues regarding expedited discovery 26 remained. The parties then filed a stipulated temporary restraining order, ECF No. 21, which the 27 Court entered. ECF No. 22. The parties also filed simultaneous briefing regarding expedited 1 10, 2025.

2 II. LEGAL STANDARD

3 "[A] party seeking expedited discovery in advance of a Rule 26(f) conference has the 4 burden of showing good cause for the requested departure from usual discovery procedures." 5 Qwest Commc'ns Int'l, Inc. v. WorldQuest Networks, Inc., 213 F.R.D. 418, 419 (D. Colo. 2003). 6 Although "[t]he good cause standard may be satisfied where a party seeks a preliminary 7 injunction," it "is not automatically granted merely because a party seeks a preliminary 8

injunction.” *Am. LegalNet, Inc. v. Davis*, 672 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009) (internal quotations and citations omitted). Rather, “[f]actors commonly considered in determining the reasonableness of expedited discovery include, but are not limited to: ‘(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden of the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.’” *Id.* at 1067 (quoting *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 234 F.R.D. 4, 6 (D.D.C. 15 2006)); *Apple Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2011 WL 1938154, at *16 (N.D. Cal. May 18, 2011). “[G]ood cause is frequently found in cases involving claims of infringement and unfair competition.” *Semtool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 18 276 (N.D. Cal. Apr. 19, 2002).

19 III. DISCUSSION

20 A. Good Cause 21 Plaintiffs request that the Court order forensic examination of Defendants Howser and 22 Areias’s personal devices, in order to determine whether Howser and Areias still possess 23 Plaintiffs’ trade secret property. ECF No. 24 at 7–8. Plaintiffs further seek limited requests for 24 production, interrogatories, deposition notices, and two third-party subpoenas, in order to prepare 25 for the hearing on Plaintiffs’ forthcoming motion for preliminary injunction. 26 First, although not dispositive, the Court notes that Plaintiffs’ forthcoming motion for a 27 preliminary injunction supports their request for expedited discovery. See *Am. LegalNet*, 673 F. 1 injunction should generally be related to information sought in order to preserve the “status quo.” 2 *Id.* at 1068. Because Plaintiffs seeks development of the factual record in support of their 3 preliminary injunction, which seeks to preserve the status quo, the purpose for which discovery is 4 sought weighs in favor of expedited discovery. 5 Defendants contend that Plaintiffs’ requested discovery is overbroad and unduly 6 burdensome. ECF No. 23 at 9–10. But “Defendant[s] [have] neither explained how Plaintiff’s 7 requests are overly broad or unduly burdensome nor provided any evidence describing the nature 8 of the burden.” *Anthony v. Iron Mountain Inc.*, No. 20-CV-5932 AB (ASX), 2021 WL 12310802, 9 at *3 (C.D. Cal. Oct. 4, 2021). This by itself is enough to overrule Defendants’ objection. See *N. 10 Am. Co. for Life & Health Ins. v. Philpot*, No. 08-CV-0270, 2009 WL 10672468, at *4 & n.2 (S.D. 11 Cal. June 1, 2009) (overruling party’s discovery objections because it did not quantify its asserted 12 burden to producing the requested information). Nor have they offered any narrower alternative 13 discovery.¹ 14 Finally, the importance and urgency of the requested discovery is supported by Plaintiffs’ 15 allegation that Defendant Areias, after receiving an evidence preservation notice, destroyed two 16 Praecipio-owned laptops in his possession. Defendants do not rebut or even respond to this 17 allegation. “Evidence that Mr. [Areias] destroyed evidence regarding his conduct is undoubtedly 18 probative of Mr. [Areias’s] consciousness of guilt regarding the alleged” theft of trade secrets. 19 *Clear-View Techs., Inc. v. Rasnick*, No. 13-CV-02744-BLF, 2015 WL 3453529, at *2 (N.D. Cal. 20 May 29, 2015). While the Court is sensitive to Defendants’ privacy concerns,² in view of the

21 evidence Plaintiffs have presented and the risk of further spoliation, the Court finds that Plaintiffs' 22 requested discovery is not overbroad or unduly burdensome. 23 Taking the various factors together, the Court concludes that Plaintiffs have established 24 25 1 Defendants have, however, noted the parties' agreement that "Confidential Information" does not include "the identities or contact information of Praecipio's customers." ECF No. 23 at 5 (citing 26 ECF No. 21 §1(a)). 2 Any privacy concerns can be addressed through the adoption of an appropriate forensic 27 examination protocol. In re Apple Inc. Device Performance Litig., No. 5:18-MD-02827-EJD, 1 good cause for the expedited discovery that they request. 2 B. Trade Secret Disclosure 3 Defendants contend that "this Court should require a trade secrets disclosure before 4 allowing discovery to proceed." ECF No. 23 at 4. Here, Plaintiffs bring their trade secret claim 5 under the federal Defend Trade Secrets Act, 18 U.S.C. § 1831, et seq. (DTSA). They do not bring 6 a claim under the California Uniform Trade Secrets Act (CUTSA), and thus that act's requirement 7 that "before commencing discovery relating to the trade secret, the party alleging the 8 misappropriation shall identify the trade secret with reasonable particularity" does not apply. See 9 Cal. Code Civ. Proc. § 2019.210; Yeiser Rsch. & Dev., LLC v. Teknor Apex Co., No. 17-cv-1290- 10 BAS-MSB, 2019 WL 2177658, at *4 (S.D. Cal. May 20, 2019) ("Nor do DTSA's express 11 provisions regarding civil proceedings incorporate any discovery procedure analogous to certain 12 state law statutory requirements in trade secrets cases that require a plaintiff to first disclose trade 13 secrets before being able to receive discovery from the defendant."). 14 Defendants observe that federal courts have sometimes chosen to rely on CUTSA's trade 15 secret disclosure requirement "to determine the proper course of discovery." Yeiser, 2019 WL 16 2177658, at *5 (collecting cases). As an initial matter, "[t]his reliance may be particularly 17 appropriate in cases in which a plaintiff raises both federal DTSA and state law trade secrets 18 claims"—which Plaintiffs do not do. Id. More significantly, Defendants do not cite any authority 19 in which a court opted to require a trade secret disclosure before ordering expedited discovery 20 before a preliminary injunction hearing. See Calendar Research LLC, No. 2:17-cv-04062-SVW- 21 SS, 2020 WL 4390391 (C.D. Cal. May 13, 2020) (summary judgment); Yeiser., 2019 WL 22 2177658 (S.D. Cal. May 20, 2019) (traditional discovery rather than expedited, preliminary- 23 injunction discovery). 24 In fact, courts recognize that requiring trade secret disclosure can "become a tool for 25 delay" even when requested in the traditional discovery process—a concern greatly amplified 26 where, as here, Plaintiffs seek preliminary relief. See Blockchain Innovation, LLC v. Franklin 27 Resources, Inc., No. 21-cv-08787-AMO (TSH), 2023 WL 4045234, at *2–3 (N.D. Cal. June 15, 1 secret disclosure under the circumstances. 2 C. Validity of Noncompete Clause 3 Finally, Defendants argue that the noncompete clause in Plaintiffs' agreements with 4 Defendants is impermissibly restrictive and thus unenforceable, such that Plaintiffs cannot use 5 their breach of contract claim to support their request for expedited discovery. ECF No. 23 at 6–7. 6 The Court agrees with Plaintiffs that this argument "put[s] the cart before the horse." ECF

7 No. 24 at 11. Notably, Defendants cite no cases in which a court evaluated the validity of a
8 contract underlying a plaintiff's claim before granting expedited discovery in connection with a
9 preliminary injunction hearing. Moreover, even if Defendants were correct that the breach of 10
contract claim cannot support Plaintiffs' request for discovery, Plaintiffs' DTSA claim still could.
11 Accordingly, the Court declines to assess the validity of the noncompete clause at this stage.

12 CONCLUSION

13 Plaintiffs' request for expedited discovery is granted. The Court orders that Howser and 14
Areias shall, within seven days of entry of this Order, identify and surrender their personal 15
electronic devices (e.g., laptops, computers, phones, tablets, etc.) to a neutral forensic analyst for
16 examination to (a) confirm that all Praecipio Property has been destroyed and/or returned, and
(b) 17 ascertain to what extent, if any, Howser and Areias transferred such documents to other
devices or 18 other people for copying or reproduction. The parties shall meet and confer over a
forensic 19 protocol, including the neutral forensic analyst. 20 Plaintiffs also may undertake the
following discovery: 21 1. The written discovery proposed to the Court as Exhibits to the
Declaration of 22 Amanda L. Morgan, ECF No. 7-1; 23 2. Deposition subpoenas to serve on
Nicholas Howser, James Areias, Denise Johnson, 24 and catworkx GmbH (including a Rule 30(b)
(6) deposition of catworkx GmbH). 25 Howser, Areias, and the third-party witnesses are ordered
to respond to Plaintiffs' written 26 discovery within ten days of service of the discovery requests,
or as otherwise agreed. Howser, 27 Areias, and the third-party witnesses must sit for their
deposition within seven days of service of 1 their discovery responses to Praecipio, or as
otherwise agreed. The parties shall meet and confer 2 || concerning the reciprocal discovery sought
by Defendants. 3 IT IS SO ORDERED. 4 Dated: April 10, 2025

° JON S. TIGA

6 United States District Judge 7 8 9 10 11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28