

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

MICROSOFT CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. <u>1:25-CV-2695-MHC</u>
	)	
DOES 1-10,	)	<b><u>FILED UNDER SEAL</u></b>
	)	
Defendants.	)	
	)	
	)	
	)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF  
EMERGENCY EX PARTE MOTION FOR EXPEDITED DISCOVERY**

Plaintiff Microsoft Corp. (“Microsoft”), by counsel and pursuant to Fed. R. Civ. P. 26(d), moves this court *ex parte* to grant it leave to conduct expedited third-party discovery narrowly tailored to identifying the persons in control of the computers, websites, and software at issue in this case. In support, Microsoft states as follows:

Federal Rule of Civil Procedure 26 generally prohibits discovery before the parties have conducted a Rule 26(f) discovery conference. *Rivera v. Parker*, No. 1:20-CV-03210-SCJ, 2020 WL 8258735, at \*3 (N.D. Ga. Aug. 28, 2020) (citation omitted). However, courts often permit discovery to commence before a Rule 26(f) conference for a variety of reasons, such as to permit a party to prepare for injunction

proceedings, *U.S. Commodity Futures Trading Comm'n v. Van Beuningen*, No. 1:16-CV-978-TCB, 2016 WL 9454431, at \*7 (N.D. Ga. Mar. 29, 2016), to “protect the effectiveness of discovery,” *Notaro v. Koch*, 95 F.R.D. 403, 405 (S.D.N.Y. 1982), and to preserve evidence at risk of being lost, *e.g.*, *Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC*, No. 5:15-CV-115-BR, 2015 U.S. Dist. LEXIS 182856, at \*16 (E.D.N.C. June 29, 2015). The Eleventh Circuit has not adopted a standard for allowing expedited discovery, but many district courts within the Eleventh Circuit have expressly used a general good cause standard when confronted with expedited discovery requests. *Rivera*, 2020 WL 8258735, at \*3 (collecting cases).

“In determining whether good cause exists, the court should weigh the need for quick discovery against the prejudice to the responding party.” *Id.* (citation omitted). Good cause may be found where there is “some impelling urgency,” or “hazard of loss,” requiring action to be “taken forthwith.” *Id.* (citation omitted). “It has also been held that the Court should consider the following factors in deciding whether a party has shown good cause for expedited discovery: (1) whether a motion for preliminary injunction is pending; (2) the breadth of the requested discovery; (3) the reason(s) for requesting expedited discovery; (4) the burden on the opponent to comply with the request for discovery; and (5) how far in advance of the typical

discovery process the request is made.” *Id.* (citation omitted). Expedited discovery is supported in this case.

First, the expedited discovery Microsoft seeks is narrowly tailored to identifying the persons in control of the computers, websites, and software at issue in this case. Expedited discovery is justified where it is sought to “ascertain the names and/or addresses of unidentified defendants so that they could be served with process and the plaintiff might prosecute the lawsuit.” *Mullane v. Almon*, 339 F.R.D. 659, 665 (N.D. Fla. 2021) (citation); *see also Pulsepoint, Inc. v. 7657030 Canada Inc.*, No. 13-61448-CIV, 2013 WL 12158589, at \*1 (S.D. Fla. Oct. 31, 2013), *order enforced*, No. 13-61448-CIV, 2013 WL 12158383 (S.D. Fla. Dec. 16, 2013) (expedited discovery justified where Plaintiff established it needed expedited discovery to identify the Doe Defendants so that it could serve them with the Complaint).

Second, the expedited discovery is necessary to avoid the potential loss of evidence. Defendants are technologically capable and sophisticated scofflaws. If given prior notice of this motion before Microsoft can serve subpoenas and trigger third party preservation obligations, Defendants could delete logs and other technical artifacts that may be important evidence in this case. In addition, certain deleted artifacts might be irretrievably lost due to third party data retention and destruction policies. *See, e.g., Microsoft Corp. v. Doe*, No. 1:21-cv-822 (RDA/IDD), 2021 U.S.

Dist. LEXIS 218557, at \*15 (E.D. Va. July 30, 2021) (ordering third party ISPs to preserve evidence). For some providers, only a subpoena may trigger suspension of data destruction policies, and it is important for that suspension to occur before Defendants know that their information is being subpoenaed as evidence in this case. “A majority of District Courts have granted expedited discovery where evidence...may no longer be available at a later date.” *See Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 73159, at \*6 (E.D. Va. July 1, 2011) (collecting cases).

Third, Microsoft is subject to irreparable harm absent expedited discovery. The inability to identify Defendants, to obtain relief on Microsoft’s claims, and potential loss of evidence are all forms of irreparable harm. *See, e.g., id.* The fact that Defendants’ underlying conduct is causing Microsoft irreparable harm also weighs in favor of expedited discovery. *TracFone Wireless, Inc. v. SCS Supply Chain LLC*, 330 F.R.D. 613, 615 (S.D. Fla. 2019) (collecting cases).

Finally, *ex parte* relief is appropriate in light of the facts presented. “[E]x parte orders of very limited scope and brief duration may be justified in order to preserve evidence where the applicant shows that notice would result in destruction of evidence.” *E.g., First Tech. Safety Sys. v. Depinet*, 11 F.3d 641, 651 (6th Cir. 1993); *Commodity Futures Trading Comm’n v. Highrise Advantage, LLC*, No. 6:20-CV-1657-ORL-41GJK, 2020 WL 6380876, at \*6 (M.D. Fla. Sept. 16, 2020) (*ex parte* relief is justified when notice to the other party would result in the destruction of

documents when notice is given.); *Diretto v. Country Inn & Suites by Carlson*, No. 1:16cv1037(JCC/IDD), 2016 U.S. Dist. LEXIS 110322, at \*9 (E.D. Va. Aug. 18, 2016). Where, as here, an aggrieved party brings forth evidence “indicating the defendant’s past willingness to...conceal evidence,” it is proper to find that “the adverse party is likely to take the opportunity” to conceal evidence or engage in “deceptive conduct” warranting *ex parte* relief. *Id.* Defendants have already gone to great lengths to obfuscate their identities and conceal their misconduct. Such conduct supports Microsoft’s entitlement to *ex parte* expedited discovery. *Microsoft Corp. v. Doe*, No. 1:21-cv-822 (RDA/IDD), 2021 U.S. Dist. LEXIS 218557, at \*15.

For the reasons set forth herein, Microsoft respectfully requests that this Court authorize Microsoft to engage in targeted third-party discovery.

Dated: May 14, 2025

Respectfully submitted,

/s/ Joshua D. Curry

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**CERTIFICATION OF COMPLIANCE**

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiff hereby certifies that this Notice has been prepared with one of the font and point selections approved by the Court in L.R. 5.1, N.D. Ga.

Dated: May 14, 2025

/s/ Joshua D. Curry