Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO.

MICROSOFT CORPORATION, H2-PHARMA, LLC, and GATEHOUSE DOCK CONDOMINIUM ASSOCIATION, INC.,

Plaintiffs

v.

DOES 1-7,

Defendants

FILED UNDER SEAL

PLAINTIFFS' EMERGENCY *EX PARTE* MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY

Plaintiffs Microsoft Corporation, H2-Pharma, LLC, and Gatehouse Dock Condominium Association, Inc., by counsel and pursuant to Fed. R. Civ. P. 26(d), move this court *ex parte* to grant them 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, Plaintiffs states as follows:

Federal Rule of Civil Procedure 26 generally prohibits discovery before the parties have conducted a Rule 26(f) discovery conference. *Blue Hill Invs., Ltd v. Silva*, No. 15-20733-CIV, 2015 WL 12712313, at *1 (S.D. Fla. June 12, 2015) (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. Chandler*, No. 8:12CV2044-T-27EAJ, 2012 WL 5382903, at *3 (M.D. Fla. Sept. 11, 2012), 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). Indeed, district courts have "broad discretion over the management of pre-trial activities, including discovery and scheduling." *Fender Musical Instruments Corp. v. Amuic Music*, No. 25-CV-20575, 2025 WL 1755080, at *4 (S.D. Fla. Apr. 15, 2025) (citation omitted). The Eleventh Circuit has not adopted a standard for allowing expedited discovery, but many district courts within the Eleventh Circuit, including this Court, have expressly used a general good cause standard when confronted with expedited discovery requests. *Berluti SA v. Individuals, Bus. Entities, & Unincorporated Associations Identified on Schedule "A,"*, No. 25-21362-CIV, 2025 WL 1754967, at *1 (S.D. Fla. May 7, 2025) (collecting cases).

"Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *Fender*, 2025 WL 1755080, at *4. Good cause may be found where there is "some impelling urgency," or "hazard of loss," requiring action to be "taken forthwith." *See GE Seaco Servs., Ltd. v. Interline Connection*, N.V., 2010 WL 1027408, at *1 (S.D. Fla. Mar. 18, 2010) (citations omitted). "Factors the Court considers in deciding whether a party has shown good cause include: (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 Plaintiffs seek 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 omitted); *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 Plaintiffs 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., Plastic the Movie Ltd. v. Doe*, No. 8:15-CV-733-T-17EAJ, 2015 WL 12862480, at *1 (M.D. Fla. Apr. 27, 2015) (granting motion for expedited discovery because physical evidence would "be destroyed as ISPs typically retain their user activity logs for limited periods of time. If the information is erased, Plaintiff will be unable to link the IP address to Doe Defendant and pursue its infringement lawsuit."); *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); *see also In re Chiquita Brands Int'l, Inc.*, No. 07-60821-CV, 2015 WL 12601043, at *3 (S.D. Fla. Apr. 7, 2015) (Good cause has been found "where there is a need to

preserve evidence that may be destroyed before it can be obtained by ordinary discovery.") (citation omitted).

Third, Plaintiffs are subject to irreparable harm absent expedited discovery. The inability to identify Defendants, to obtain relief on Plaintiffs' claims, and potential loss of evidence are all forms of irreparable harm. *See, e.g.*, *Hard Drive Prods.*, 2011 U.S. Dist. LEXIS 73159. The fact that Defendants' underlying conduct is causing Plaintiffs 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 Plaintiffs' 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, Plaintiffs respectfully request that this Court authorize them to engage in targeted third-party discovery.

Dated: January 7, 2026

Respectfully submitted,

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