

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

)	
SDSE NETWORKS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:22-cv-01024
)	
)	
SAROOP MATHUR,)	
)	
Defendant.)	
)	

**[PROPOSED]
JOINT EXPEDITED SCHEDULE AND DISCOVERY PLAN
FOR PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff SDSE Networks, Inc. (“SDSE”) and Defendant Saroop Mathur (“Mathur”), by and through undersigned counsel, met and conferred to consider, with respect to SDSE’s motion for preliminary injunction [Docket No. 4], a mutually-agreeable expedited schedule and discovery plan.

The Parties have agreed upon the following:

1. Hearing on the Motion.

- a. A hearing on Plaintiff’s motion for preliminary injunction shall be set for November 18, 2022, or as the Court directs.
- b. The Parties anticipate that the hearing shall last one day.
- c. The Parties may rely on limited live testimony at the hearing.
- d. The Parties shall submit a plan for hearing procedures, evidence, and argument on or before October 21, 2022, or as the Court directs.

2. Briefing on the Motion.

- a. Plaintiff shall submit a renewed motion for preliminary injunction and a memorandum in support of the motion on or before October 28, 2022.
 - i. The memorandum in support shall be limited to thirty (30) pages.
- b. Defendant shall submit a memorandum in opposition to the motion on or before November 7, 2022.
 - i. The memorandum in opposition shall be limited to thirty (30) pages.
- c. Plaintiff shall submit a reply memorandum in support of the motion on or before November 14, 2022.
 - i. The reply memorandum in support shall be limited to fifteen (15) pages.

3. Scope of Discovery in Connection with the Motion.

- a. The Parties agree that the subject matter of discovery for purposes of this expedited schedule and discovery plan shall be limited to the issues in the motion for preliminary injunction and as addressed by the Court during the September 15, 2022 hearing.

4. Party Written and Document Discovery.

a. Requests for Production.

- i. The Parties shall serve requests for the production of documents on September 21, 2022.
 - 1. Each Party shall be limited to fifteen (15) requests.
- ii. Objections and responses to the requests shall be served on or before September 26, 2022.

- iii. Each Party's document production shall be completed on or before October 10, 2022.
- iv. The parties shall submit a document production protocol for Court approval on or before September 23, 2022.

b. Interrogatories.

- i. The Parties shall serve interrogatories on September 21, 2022.
 - 1. Each Party shall be limited to ten (10) interrogatories.
- ii. Objections to the interrogatories shall be served on or before September 26, 2022.
- iii. Responses to the interrogatories shall be served on or before October 5, 2022.

c. Requests for Admissions.

- i. The Parties shall serve requests for admissions on September 21, 2022.
 - 1. Each Party shall be limited to twenty-five (25) requests for admissions.
- ii. Objections to the requests for admissions shall be served on or before September 26, 2022.
- iii. Responses to the requests for admissions shall be served on or before October 10, 2022.

5. Party Depositions.

a. Plaintiff.

- i. Plaintiff shall take the deposition of Defendant.

b. Defendant.

- i. Defendant shall take the deposition of:
 1. SDSE (30(b)(6) corporate representative).
 - a. Defendant shall serve 30(b)(6) corporate representative topics on September 21, 2022.
 - b. Objections to the 30(b)(6) corporate representative topics shall be served on or before September 26, 2022.
 2. James Rautner.

6. Third-Party Subpoenas.

a. By Plaintiff.

- i. Plaintiff shall issue subpoenas for the production of documents and for the deposition testimony from:
 1. Eclipz, Inc. (“Eclipz”) (30(b)(6) corporate representative).
 2. Dennis Andal.
- ii. Plaintiff shall serve the subpoenas on September 21, 2022.
 1. Defendant’s counsel acknowledges and agrees that they are authorized to accept service of the subpoenas and that the subpoenas shall be deemed to have been served when emailed to Defendant’s counsel.
 2. Defendant’s counsel acknowledges and agrees that they are authorized to address any issues that may arise in connection with the subpoenas pursuant to this expedited schedule and discovery

plan, and the expedited discovery dispute procedures that shall apply to this motion.

- iii. Objections to the subpoenas shall be served on or before September 26, 2022.

b. By Defendant.

- i. Defendant shall not be permitted to issue any subpoenas.

7. Forensic Expert Discovery.

a. Testifying Forensic Expert Witnesses.

- i. Each Party shall be limited to one testifying forensic expert witness and shall disclose such forensic expert on September 21, 2022.
- ii. No Party shall be permitted to rely on any other testifying expert witness on any issue.

b. Exchange of Forensic Copies of Devices.

- i. Procedure for Exchange of Forensic Copies of Devices.
 - 1. Each Party shall direct their respective forensic expert to provide a forensic copy of the devices identified herein directly to the other Party's forensic expert.
 - 2. Forensic copies of the devices to be provided by a Party shall be received, stored, accessed, viewed, and used, only by a designated forensic expert for a party.
 - 3. Counsel for the parties shall not receive, store, access, view, or use any forensic copy of a device provided by an opposing party.
- Notwithstanding this provision, a designated expert may produce

documents or other evidence found in a forensic image for use in the case.

4. There is a disputed issue with regard to access to Mr. Mathur's devices identified in section iii, which is addressed in paragraph 16 below.

ii. Plaintiff shall provide a forensic copy of:

1. MacBook Laptop.
2. Dell Laptop.
3. WD Hard Drive.

iii. Defendant shall provide a forensic copy of:

1. all devices in Defendant's possession, custody, or control that Defendant used to connect to or access the MacBook laptop, Dell laptop, or WD hard drive at issue in this litigation; or that Defendant used to connect to or access any SDSE system, SDSE device, or SDSE information between June 2021 to September 12, 2022. Defendant will endeavor to identify such devices to the best of his recollection. Plaintiff will provide a list such devices as identified by its forensic expert.

iv. The Parties shall exchange forensic copies of devices on the first business day after the date that the Court approves both (a) the protective order; and (b) the protocol detailing how Defendant's forensic expert shall handle all of the forensic copies exchanged between the Parties.

- v. The Parties shall submit a protocol detailing how Defendant's forensic expert shall handle all of the forensic copies exchanged between the Parties, and how and to what extent Defendant's forensic expert may share information contained in such forensic copies with Defendant's counsel and Defendant, for Court approval on or before September 23, 2022.
- vi. Defendant's forensic expert and Defendant's counsel shall not be permitted to share any information contained in or relating to any of the forensic copies exchanged between the Parties, with anyone other than Defendant, including but not limited to anyone at Eclipz or its agents and affiliates.

c. Forensic Expert Discovery

- i. Document discovery on each Party's forensic expert shall be limited to the production of the following:
 - 1. A written report containing the expert opinions to be relied upon by the Party, consistent with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.
 - 2. List of materials relied upon by the forensic expert.
 - 3. List of publications since 2016.
 - 4. List of cases in which forensic expert was identified as a testifying expert witness since 2016 (whether or not the expert actually testified).
- ii. Each Party shall be permitted to depose the other Party's forensic expert.

iii. The Parties agree that the following is not subject to discovery from the forensic experts:

1. Communications with forensic experts.
2. Drafts of documents prepared by forensic experts.

d. Forensic Expert Reports

- i. Each Party shall serve the initial report of its forensic expert on or before October 12, 2022.
- ii. Each Party shall serve the rebuttal report of its forensic expert on or before October 17, 2022.
- iii. Rebuttal reports shall not address any issues that were not previously addressed in the other forensic expert's initial report.

8. Deposition Timing and Procedure.

a. Timing.

- i. All depositions shall be completed by October 21, 2022.

b. Procedures.

- i. The Parties shall submit an agreed-upon deposition protocol for Court approval on or before September 23, 2022

9. Expedited Discovery Dispute Procedures.

- a. The Parties shall submit expedited discovery dispute procedures for Court approval on or before September 23, 2022.
- b. The Parties shall meet and confer on September 28, 2022 to discuss all of the objections to the discovery requests and subpoenas.

10. Protective Order.

- a. The Parties shall submit a proposed protective order for Court approval on or before September 23, 2022.

11. Filing and Service.

- a. All documents filed through the Court's CM/ECF system are deemed served electronically as provided by the Federal Rules of Civil Procedure and the Court's Local Rules.
- b. All filings and other materials to be served on the other Party shall be sent by email to the list of recipients agreed-upon by the Parties.
 - i. If a filing or other material is too voluminous to be sent via email as an attachment, it may be sent via email including a secure FTP download link.
- c. All documents to be served on a Party shall be in searchable ".PDF" format or other usable and searchable electronic file format (e.g., WORD format).

12. Court Filings.

- a. Unless stated otherwise with respect to a specific term in this expedited schedule and discovery plan, or as ordered by the Court, all filings with the Court made in connection with the motion for preliminary injunction shall be made in accordance with the Court's CM/ECF Rules.

13. Modification of Plan.

- a. The Parties' agreement to the terms of this expedited schedule and discovery plan notwithstanding, each Party reserves the right to seek modifications for good

cause shown and consistent with the Federal Rules of Civil Procedure and the Court's Local Rules.

- b. Notwithstanding Section 15(a), the Parties may agree to extensions without Court approval but only if such extensions will not affect the dates for the filing of the renewed motion and other briefing or the hearing on the motion for preliminary injunction.

14. Limitations on Terms of Joint Plan.

- a. The terms of this expedited schedule and discovery plan are limited in effect to the adjudication of the motion for preliminary injunction.
- b. The terms of this expedited schedule and discovery plan shall have no effect on any other aspects of this lawsuit.

15. Party Agreement to Extend Temporary Restraining Order

- a. The Parties agree that the Temporary Restraining Order, issued on September 15, 2022 [Docket No. 33], shall be extended until such time that the Court rules on Plaintiff's motion for preliminary injunction.

16. Disputed Issues Regarding Access to Mathur's Devices

- a. **Plaintiff's Position:** As discussed above, Mr. Mathur was in possession of three SDSE devices until July 2022: A MacBook Laptop, a Dell Laptop and a WD hard drive. It appears that Mr. Mathur tampered with data on each device before returning them to SDSE. For example, SDSE's forensic analysis showed that the SDSE MacBook was intentionally wiped on June 28, 2022, including Mathur's search for and deletion of all files containing the word Eclipz. Mr. Mathur also deleted a backup file on the WD drive on June 28, 2022. However, these devices

also show that Mr. Mathur attached other devices to the computers and hard drive, which may contain SDSE source code or other confidential information. Plaintiff has identified the following the following devices so far:

MacBook:

- A 64 GB SanDisk thumb drive that was attached on 6/22/21 and 9/27/21
- An unknown 128GB generic thumb drive that was attached on 11/8/21 and 11/10/21
- An unknown 128GB generic thumb drive that was attached on 1/6/22 and 3/29/22

Dell laptop:

- A SanDisk thumb drive was attached on 6/22/21 (probably the same drive as attached to the MacBook)
- A Lexar thumb drive was attached on 9/15/21
- A SanDisk thumb drive attached to the Dell laptop on 11/2/21

WD hard drive:

- On 6/28/22, the same day he deleted files on SDSE's MacBook, Mr. Mathur deleted a backup file on the WD Drive (dated 1/22/22), which appears to be a backup of the Dell laptop. Mr. Mathur used a Windows laptop to access and delete the backup file.

SDSE would like to inspect that computer to understand what Mr. Mathur did with that computer with regard to SDSE information. SSDSE disagrees with Defendant that his supposed privacy interests trump SDSE's legitimate interest to determine what information is on the devices Mr. Mathur intentionally connected

to his SDSE-issued equipment. The proposals offered by Mr. Mathur for treatment of his devices will only cause delay would severely restrict SDSE's ability to conduct its own search for information. SDSE submits that the procedures outlined to treating the forensic images in Section 7(b)(i) 1, 2 and 3 above are more than adequate to protect Mr. Mathur's and Eclipz's interests. Mr. Mathur can always object to disclosure of specific files for use in the preliminary injunction proceedings if warranted.

- b. **Defendant's Position**: Plaintiff seeks to inspect forensic images of Defendant's personal devices, that will likely contain limited, if any, information relevant to the case. These personal devices may also contain Eclipz' proprietary information, which Mr. Mathur is under separate obligations to keep confidential and which in no event should be disclosed to anyone associated with SDSE, counsel or otherwise, who remains in ongoing litigation with Eclipz. With these unique sensitivities in mind, and because the Parties are unable to agree to protective measures for these personal devices, Defendant proposes two options regarding protective measures to prevent the unfettered search of Defendant's irrelevant personal and confidential information, and Eclipz' proprietary information. In similar situations, courts have imposed protective measures such as the following, and Defendant asks the Court to adopt one of the approaches below:

- i. Option A: For forensic copies of the device(s) to be provided by Defendant, Defendant's forensic computer expert shall mirror image Defendant's device(s) and remove only Defendant's personal information

and any Eclipz proprietary information from the mirror image of Defendant's devices. The resulting forensic copy shall be received, stored, accessed, viewed, and used, only by Plaintiff's designated forensic expert. Defendant's expert shall provide Plaintiff with the protocol utilized to remove the confidential information. *Ferron v. Cactus Search, LLC*, No. 2:06-CV-327, 2008 WL 1902499, at *3 (S.D. Ohio April 28, 2008) (allowing Plaintiff's forensic expert to remove Plaintiff's personal, confidential information "that could not reasonably lead to the discovery of information relevant to th[e] litigation" to "strike a balance between competing interests").

- ii. Option B: Forensic copies of the devices to be provided by Defendant shall be received, stored, accessed, viewed, and used, only by an independent forensic expert to be agreed upon by the parties. Plaintiff may submit questions to the independent forensic expert to be answered in the expert's report. Plaintiff's questions must first be submitted to Defendant for objections and will be otherwise subject to the expedited dispute resolution protocol. *Genworth Fin. Wealth Mgmt. v. McMullan*, 267 F.R.D. 443, 449 (D. Conn. 2010) (granting motion to compel forensic imaging by a "neutral court appointed expert" where the devices included Defendant's personal devices).

Dated: September 19, 2022

/s/ Jon M. Talotta

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