

1 SCOTT A. EDELMAN, SBN 116927
SEdelman@gibsondunn.com
2 MICHAEL W. SEITZ, SBN 271136
MSeitz@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East
4 Los Angeles, CA 90067-3026
Telephone: 310.552.8500
5 Facsimile: 310.551.8741

6 THEANE EVANGELIS KAPUR, SBN 243570
TKapur@gibsondunn.com
7 BLAINE H. EVANSON, SBN 254338
BEvanson@gibsondunn.com
8 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
9 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
10 Facsimile: 213.229.7520

11 Attorneys for Plaintiff,
CBS BROADCASTING INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 CBS Broadcasting Inc.,
16 Plaintiff,
17
18 v.
19 American Broadcasting Companies Inc.,
et al.,
20 Defendants.

CASE NO. 2:12-CV-04073 GAF (JEMx)

DISCOVERY MATTER

**CBS'S PROPOSED SCHEDULE PER
MAGISTRATE JUDGE
MCDERMOTT'S JUNE 1, 2012
ORDER**

[[Proposed] Order filed concurrently]

Hearing:

Date: None set
Time: None set
Place: Courtroom No. C, 8th Floor
Judge: Hon. John E. McDermott

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1 On May 31, 2012, Plaintiff CBS Broadcasting Inc. (“CBS”) filed an *Ex Parte*
2 Application for An Immediate Scheduling Conference and to Compel Discovery for a
3 Motion for a Preliminary Injunction (“Ex Parte Motion”). The Court held a telephonic
4 hearing on June 1, 2012 and Defendants agreed to produce documents reflecting the
5 most recent version of documents responsive to CBS’s Request for Production Nos. 2-
6 4 by Saturday, June 2, 2012. *See* Amended Minute Order re: Telephonic Conference,
7 Docket No. 29 (“June 4, 2012 Order”). The Court ordered that the deposition of
8 CBS’s choice proceed on Sunday, June 3, 2012. *See id.* The deposition of Defendant
9 Kenny Rosen, Glass House executive producer, took place on Sunday, June 3, 2012.
10 Finally, the Court “declined to rule on trade secret discovery issues on an ex parte
11 basis” and ordered that the parties “meet and confer and agree on a schedule for
12 briefing the remaining discovery disputes regarding documents that have not been
13 produced.” *See id.* If the parties did not agree, the Court asked that the parties notify
14 the Court and present alternative schedules by 4:00 P.M. *See id.*

15 The parties have met and conferred and have been unable to agree on a proposed
16 schedule for the remaining disputes from the Ex Parte Motion and were unable to
17 formulate a joint stipulation. CBS’s proposed schedule and statement in support is set
18 forth herein, as well as CBS’s response to Defendants’ proposed schedule.

19 **I. PLAINTIFF CBS’S PROPOSAL**

20 **A. Plaintiff CBS’s Introductory Statement and Proposed Schedule**

21 This Court’s Order contemplated submission of a further briefing schedule
22 regarding additional discovery. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

1 [Redacted]

2 Citations to “Dep.” are references to the rough ascii transcript of Defendant
Kenneth Rosen’s June 3, 2012 deposition, which is attached as Exhibit B to the
Declaration of Theane Evangelis Kapur.

3 [Redacted]

1 •

2
3
4 CBS undeniably has an interest in stopping the irreparable harm caused by
5 Defendants' *ongoing* misappropriation of trade secrets, infringement of *Big Brother's*
6 copyright, and other unlawful activity (including spoliation of evidence). For these
7 reasons, CBS intends to seek a TRO preventing the ongoing production and imminent
8 airing of *Glass House* on June 18.

9 CBS therefore requests that this Court order targeted discovery, the scope of
10 which is set forth in CBS's revised request for production.⁴ Alternatively, in light of
11 the Court's June 1, 2012 order and because CBS needs discovery as soon as possible—
12 and without delay caused by unnecessary briefing on issues that have already been
13 litigated extensively over two rounds of briefing—CBS proposes the following
14 schedule:

- 15 • By 5:00 P.M. on Tuesday, June 5, 2012, CBS will file its portion of a joint
16 stipulation proposing a discovery schedule (which will contemplate targeted
17 discovery from its revised request for production that will be completed by
11:59 P.M. on Thursday, June 7, 2012) and a motion to compel production;
- 18 • By 5:00 P.M. on Wednesday, June 6, 2012, Defendants will file their portion
19 of a joint stipulation regarding CBS's proposed discovery schedule and any
opposition to CBS's motion;
- 20 • CBS will waive reply; and
- 21 • Should this Court deem it necessary, a hearing may be held (in person or via
22 telephone).

23 This Court has already recognized the exigency of the discovery here, having

24
25 ⁴ CBS has already approached Defendants' counsel about narrowing CBS's requests
26 for production, including narrowing the dates for production, narrowing the parties
27 from whom production will be required, and narrowing the subjects of production.
28 Additionally, CBS today sent Defendants a revised, narrowed request for
production, and Defendants' counsel have already stated that they have a forensic
firm that has already gathered emails, so there can be no undue burden associated
with producing what Defendants have already gathered. (*E.g.* Dep. at 74.)

1 already ordered production of an “up-to-date outline” of *Glass House* and a seven-hour
2 deposition which occurred on Sunday, June 3. Order at 2. Immediate discovery is
3 even more warranted given [REDACTED]

4 [REDACTED]
5 [REDACTED] *See, e.g., U.S. Water Servs., Inc. v. Itoh*, 2011 WL 83416, at *2 (W.D. Wash.
6 Mar. 3, 2011) (granting TRO to restrain misappropriation of trade secrets);
7 *Advantacare Health Partners v. Access IV*, 2004 WL 1837997, at *1 (N.D. Cal. 2004)
8 (granting TRO and ordering immediate discovery and forensic scanning of hard
9 drives).

10 And Defendants’ repeated objections—which center solely on one claim, trade
11 secrets—neither require extensive additional briefing, nor should hold up discovery.
12 *Ongoing* misappropriation causes irreparable harm. *See, e.g., JustMed, Inc. v. Byce*,
13 600 F.3d 1118, 1130 (9th Cir. 2010) (“The term ‘use’ in the context of
14 misappropriation” contemplates any “use that reduces the value of the trade secret”);
15 *Pyro Spectaculars, Inc. v. Souza*, 2012 WL 968084, at *15 (E.D. Cal. Mar. 21, 2012)
16 (similar and granting a preliminary injunction). CBS has already provided trade
17 secret-related discovery, yet Defendants’ position is that discovery is not a two-way
18 street. Indeed, since last week, Defendants have had CBS’s confidential and
19 proprietary *Big Brother* manuals and CBS’s third and final trade secret designations
20 (Dkt. 21 (Ex. M)), which simply provide additional details on the very same trade
21 secrets CBS has asserted since the filing of its complaint.⁵ Defendants’ nitpicking
22 aside (*see, e.g.,* Dkt. 24 at 20 (disputing only two examples out of fourteen from CBS’s
23 third trade secret letter)), CBS’s disclosures are far and away specific enough for
24 discovery to go forward; “[t]he trade secret designation is to be liberally construed,
25 and reasonable doubts regarding its adequacy are to be resolved in favor [of]

26 _____
27 ⁵ CBS has already agreed to allow the Individual Defendants and certain in-house
28 attorneys at ABC to view CBS’s trade secrets letter, which has previously been
subject to an “outside counsel eyes only” designation. (Kapur Decl ¶ 5.)

1 *allowing discovery to go forward.”* *Brescia v. Angelin*, 172 Cal. App. 4th 133, 143
2 (2009) (emphasis added). [REDACTED]

3 [REDACTED]
4 Until Defendants provide some indication of how *these* trade secret designations
5 are supposedly inadequate—and how Defendants hope to add anything further beyond
6 the objections they have already provided in briefing the previous two *ex parte*
7 applications—there is no need for a full motion-to-compel briefing schedule, which
8 will only cause needless delay of discovery that CBS is clearly entitled to. See *Perlan*
9 *Therapeutics, Inc. v. Superior Ct.*, 178 Cal. App. 4th 1333, 1346 (2009).

10 And there can be no doubt that it is improper for Defendants’ trade secret
11 objections to hold up discovery *of the entire case*. CBS *will* be entitled to further
12 discovery “relevant to any party’s claim[s]” which here include not just copyright and
13 trade secrets, but also other claims, including unfair competition or conversion (Cmplt.
14 (Counts 3 & 8))—claims which no doubt merit targeted discovery of documents that
15 relate to both *Big Brother* and *Glass House*’s production. It is not a matter of if CBS
16 will get discovery—just a matter of when. CBS would be far more prejudiced by not
17 getting discovery than Defendants would be by having to provide it. And that is
18 particularly true since Defendants—despite protesting against CBS’s allegedly “vastly
19 accelerated, burdensome discovery” (Dkt. 24 at 7)—managed to produce documents
20 *within hours* of this Court’s ordering their production. (Kapur Decl. ¶ 2.)

21 Accordingly, there should be no further delay in CBS’s ability to get documents, and
22 CBS’s proposed schedule is eminently reasonable.

23 **B. CBS’s Attempts to Compromise**

24 CBS’s proposed schedule comes on the heels of several attempts to compromise
25 on the scope and schedule of discovery as a whole. See Dkt. 20 at 6-8; Dkt. 20-1
26 (Edelman Declaration); Dkt. 20-2 (Kapur Declaration). CBS has agreed to provide
27 two additional designations of trade secrets (on May 15 and May 31) in addition to
28 what was set forth in CBS’s complaint. On May 29, 2012, CBS informed ABC that it

1 was willing to respond to all of Defendants’ requests for production (and indeed, CBS
 2 still stands ready to do so and has already produced the *Big Brother* manuals). CBS
 3 has also continually narrowed its document requests. CBS, on May 29, omitted
 4 seeking large categories of documents pertaining to *Glass House* (which would meet
 5 Rule 26’s relevance requirements), offering a simultaneous exchange of documents
 6 and seeking only documents “relating to” *Big Brother*, the format or content of *Glass*
 7 *House*, the design of the house on *Glass House*, and the latest episode of *Glass House*.
 8 (ABC responded by advising that they were unwilling to produce *any* documents—
 9 including those relevant to CBS’s copyright claims—until CBS provided yet another
 10 trade secret designation that Defendants unilaterally deemed acceptable.)

11 Additionally, CBS’s current document requests are now even further limited as
 12 to time, parties, and subject matter. CBS’s first Request for Production seeks “All
 13 DOCUMENTS from January 1, 2008 to present in the possession, custody, or control
 14 of Defendants American Broadcasting Companies, Inc., ABC, INC., Keep Calm and
 15 Carry On Productions, Inc., Corie Henson, Michael O’Sullivan, or Kenny Rosen,
 16 including but not limited to emails, text messages, instant messages, and
 17 communications on Facebook, Twitter, or other social media sites, CONCERNING
 18 BIG BROTHER and created in the context of or RELATING TO the development,
 19 pre-production, or production of GLASS HOUSE.” (Kapur Decl. Exh A.)

20 II. DEFENDANTS’ PROPOSAL

21 A. ABC’s Proposed Schedule

Action Under Local Rule 37	Defendants Proposed Option #1	Local Rules Deadline
24 Step No. 1: 25 Plaintiff Provides Its 26 Section of Joint 27 Stipulation and All 28 Supporting Documents and Declarations to Defendants (<i>See</i> Local Rule 37-2.2)	Assume June 5	Assume June 5

<p>Step No. 2: Defendants Provide Their Section of Joint Stipulation and All Supporting Documents and Declarations to Plaintiff (See Local Rule 37-2.2)</p>	<p>6 calendar days after Plaintiff provides Section of Joint stipulation and Permission to disclose May 31 letter to individual defendants (<i>i.e.</i>, June 11 if section of stipulation given on June 5)</p>	<p>7 calendar days (June 14 if assume June 5 for Step No. 1)</p>
<p>Step No. 3: Combination of Sections and Filing (See Local Rule 37-2.2)</p>	<p>Plaintiff files combined sections without modification next business day after receiving Defendants' Section of Joint Stipulation (<i>i.e.</i>, June 12 if Defendants' section provided June 11).</p>	<p>End of next business day</p>
<p>Step No. 4: Supplemental Memorandum (See Local Rule 37-2.3)</p>	<p>Parties may file supplemental memorandum up to 3 business days after filing of joint stipulation (<i>i.e.</i>, June 15 if filed on June 12)</p>	<p>Due 14 Days Before Hearing: June 18 for July 2 Hearing</p>
<p>Step No. 5: Hearing Date</p>	<p>The earliest date the Court is available after Supplemental Memorandum is Filed</p>	<p>21 Days after Filing Joint Stipulation. If Filed June 11, then hearing July 2.</p>

**This proposal escalates hearing date by potentially 14 days over the normal Local Rules schedule

B. Plaintiff CBS's Response

ABC is trying to “run out the clock” before *Glass House* airs. The evidence of this is their elaborate five-step briefing schedule, which contemplates an earliest available hearing date of June 18, 2012 (*i.e.*, the day *Glass House* airs), evidently requiring *two more weeks of back-and-forth on a discovery dispute in advance of a preliminary injunction*. Such a proposal is on top of the two rounds of briefing that have already occurred and does not remotely tip its hand as to the additional delay Defendants will undoubtedly lobby for as far as when the further discovery itself will actually occur, for Defendants have given no indication of what sorts of deadlines they will propose for discovery.

