

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 9:15-cv-81194- KAM

BEACHES MLS, INC.,

Plaintiff,

**EXPEDITED CONSIDERATION
REQUESTED**

v.

MIAMI ASSOCIATION OF REALTORS,
INC., et al.

Defendants.

**PLAINTIFF'S MOTION FOR AN ORDER PURSUANT TO 47 USC § 551(c)(2)(B) AND
SECOND MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY**

Plaintiff, BEACHES MLS, INC. ("BEACHES"), moves the Court on an expedited basis for leave to conduct discovery of Comcast and telecommunications providers T-Mobile and NBS, and for an Order authorizing the disclosure of personally identifiable subscriber information from Comcast concerning the subscriber assigned a Comcast IP address on August 2, 2015, and, and in support thereof states as follows:

1. In support of BEACHES' Application for Temporary Restraining Order ("TRO"), which was granted in part by the Court in its Order dated August 24, 2015, BEACHES submitted a Declaration of Sarah Chenoweth, BEACHES' MLS Technical Specialist, detailing her discovery of the unauthorized administrative level access that employees of MIAMI ASSOCIATION OF REALTORS, INC. ("MIAMI") obtained to the Flex MLS software platform ("Flex") with the assistance of employees of JUPITER-TEQUESTA-HOBE SOUND ASSOCIATION OF REALTORS, INC. ("JUPITER").

2. Further investigation has revealed that two of the unauthorized usernames used to access the Flex system engaged in extensive activity on the Flex system. These usernames are “fl.billcole” and “fl.jthstestuser.”

3. The “fl.jthstestuser” user accessed the Flex system at different times from different IP addresses, one of which was assigned to Comcast, and another which was assigned to NBS (Fusion).

4. The “fl.billcole” user accessed the Flex system at different times from different IP addresses, one of which was assigned to T-Mobile, and another which was assigned to NBS (Fusion).

5. Attached hereto as Exhibits 1, 2 and 3 are proposed subpoenas to be served on Comcast, T-Mobile and NBS (Fusion), respectively, for the names and addresses of the subscribers who were assigned the IP addresses that were used to access Flex with the usernames “fl.jthstestuser” and “fl.billcole.”

6. The Plaintiffs are in need of information showing the identity of the subscribers that accessed Flex in order to demonstrate that employees of MIAMI accessed Flex in violation of 18 U.S.C. § 1030, the Computer Fraud and Abuse Act (“CFAA”). The subpoenas proposed are narrowly tailored to obtain only the information necessary to identify the subscribers who were assigned the IP addresses that were used to access Flex.

7. Prior to the filing of this motion, undersigned counsel contacted counsel for the defendants, sent counsel this motion in draft form, requested defendants agree to the relief requested, but counsel has not responded as of the filing of this motion.

MEMORANDUM OF LAW

Rule 26(d)(1) of the Federal Rules of Civil Procedure requires the parties to wait until after a case management conference is held before serving discovery, unless the Court grants leave for good cause. *See Monsanto Co. v. Woods*, 250 F.R.D. 411 (E.D. Mo. 2008).

Good cause exists here. BEACHES has made serious allegations against the defendants for violations of the CFAA. The CFAA is a criminal statute with a civil right of action and violations give rise to significant penalties, damages and attorneys' fees and costs. The Court has issued a TRO against the Defendants and has set a hearing for eight days from now to consider converting the TRO into a preliminary injunction. In order for the Court to have all the evidence before it to make an informed decision, the communications providers should be subpoenaed to provide information in their exclusive possession for the Court's consideration at the September 3rd hearing.

The Court will make a decision before the 26(f) conference in this case. Expedited discovery help the Court make its decision on a sufficiently informed basis. Expedited discovery will avoid an informational imbalance between the parties. This informational imbalance will lead to disproportionate results if BEACHES is not permitted the discovery requested. If the expedited discovery is denied, BEACHES will be unable to present all the evidence available to show that IP addresses assigned to the defendants were used to access Flex.

WHEREFORE, BEACHES respectfully requests that this Court grant the instant motion on an expedited basis and permit BEACHES to serve the subpoenas attached and obtain information pursuant to the subpoena in advance of the hearing on September 3, 2015 in this matter, that this court issue an Order requiring Comcast to comply with the subpoena attached hereto as Exhibit "1", and grant such other and further relief as the Court deems just and proper.

Dated: August 28, 2015

Respectfully submitted,

/s/ Joel B. Rothman

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by the Court's ECF system or by the undersigned's electronic mail account on August 28, 2015 on all counsel or parties of record on the Service List below.

/s/ Joel B. Rothman, Esq.

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