

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CINEMARK USA, INC.,

Plaintiff,

v.

**ROBLOX CORPORATION and
NUMEROUS UNNAMED JOHN/JANE
DOES,**

Defendants.

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Civil Action No. 3:16-cv-01576-O

ORDER

Before the Court is Plaintiff’s Emergency Motion for Expedited Discovery and Supporting Memorandum of Law (ECF No. 4), filed June 13, 2016. Plaintiff seeks to immediately begin discovery and direct Defendants to respond to all discovery requests propounded by Cinemark within ten days of service. Pl.’s Mot. 1, ECF No. 4. Cinemark requests expedited discovery to learn the full extent of the nature and scope of Defendants’ alleged unlawful conduct; and the identities of the numerous unnamed John/Jane Does identified in Cinemark’s Complaint “as quickly as possible to stem the irreparable harm being caused to Cinemark as a consequence of Defendants’ actions.” *Id.* at 2. Specifically, Cinemark seeks: (1) a deposition of Defendant Roblox; (2) requests for production “relating to all electronic evidence relevant to this action”; and (3) leave to immediately serve non-party subpoenas.

Rule 26(d)(1) of the Federal Rules of Civil Procedure provides that “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except . . . by court order.” Fed. R. Civ. P. 26(d)(1). “Control of discovery is committed to the sound discretion

of the trial court and its discovery rulings will be reversed only where they are arbitrary or clearly unreasonable.” *Williamson v. U.S. Dep’t of Agric.*, 815 F.2d 368, 373 (5th Cir. 1987). “[I]t is generally accepted that courts use one of the following two standards to determine whether a party is entitled to conduct such discovery: (1) [] preliminary-injunction-style analysis . . .; or (2) the ‘good cause’ standard.” *St. Louis Grp., Inc. v. Metals & Additives Corp., Inc.*, 275 F.R.D. 236 (S.D. Tex. 2011). While “[t]he Fifth Circuit has not adopted either standard[, s]everal district courts within the Fifth Circuit have expressly utilized the ‘good cause’ standard” *Id.* at 240 (citing *El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986, 991 (S.D. Tex. 2004); *Paul v. Aviva Life & Annuity Co.*, No. 3-09-CV-1490-B, 2009 WL 3815949, at *1 (N.D. Tex. Nov. 12, 2009) (Kaplan, M.J.); *Commodity Futures Trading Comm’n v. M25 Inv., Inc.*, No. 3:09-cv-1831-M, 2009 WL 3740627, at *1 (N.D. Tex. Sept. 29, 2009) (Lynn, J.)).

Under the good cause standard, “the burden of showing good cause is on the party seeking the expedited discovery.” *St. Louis Grp.*, 275 F.R.D. at 240. “Moreover, the subject matter related to requests for expedited discovery should be narrowly tailored in scope.” *Id.* (citing *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 277 (N.D. Cal. 2002); *Monsanto Co. v. Woods*, 250 F.R.D. 411, 415 (E.D. Mo. 2008) (citing *Irish Lesbian & Gay Org. v. Giuliani*, 918 F. Supp. 728, 730–31 (S.D.N.Y. 1995) (“[C]ourts generally deny motions for expedited discovery when the movant’s discovery requests are overly broad.”)). “District courts . . . have allowed expedited discovery under a variety of circumstances,” such as “when there is some showing of irreparable harm that can be addressed by limited, expedited discovery.” *St. Louis Grp.*, 275 F.R.D. at 240 (citing *McMann v. Doe*, 460 F. Supp. 2d 259, 265–66 (D. Mass. 2006) (allowing expedited discovery on basis that showing of irreparable harm had been made because plaintiff could receive no remedy

without knowing the defendants' actual names); *Monsanto*, 250 F.R.D. at 413 (allowing limited discovery to minimize the risk of loss or destruction of physical evidence of infringement).

Having reviewed Plaintiff's Motion for Expedited Discovery and the authorities cited therein, the Court finds that Cinemark has not established a "showing of irreparable harm that can be addressed by limited, expedited discovery." *St. Louis Grp.*, 275 F.R.D. at 240. Cinemark persists that its "expedited discovery request is narrowly tailored in scope to only obtain relevant electronic evidence that may be altered, destroyed, disposed of, or concealed in the absence of an expedited process." Pl.'s Mot. 4, ECF No. 4. However, in considering Cinemark's Motion to Preserve Evidence (ECF No. 3), the Court previously found that Cinemark "does not provide any evidence that the relevant electronic data will be destroyed absent a court order." Order, June 14, 2016, ECF No. 9. Here, similarly, the Court finds that Cinemark has not provided any evidence to support that an expedited discovery request is justified at this time.

Based on the foregoing, the Court finds that Plaintiff's Motion should be and is hereby **DENIED.**

SO ORDERED on this **14th day of June, 2016.**


Reed O'Connor
UNITED STATES DISTRICT JUDGE