

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRILOBIO, INC.,
Plaintiff,
v.
KEONI GANDALL, et al.,
Defendants.

Case No. 24-cv-06337-JST

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER AND EXPEDITED DISCOVERY

Re: ECF No. 15

United States District Court
Northern District of California

Before the Court is Plaintiff Trilobio, Inc.’s motion for a temporary restraining order and expedited discovery. ECF No. 15. The Court will grant the motion in part and deny the motion in part.

I. BACKGROUND

Plaintiff Trilobio is a start-up biotech company that is “combining innovations in hardware, software, machine learning, and genetic engineering to fully automate biotech research and development.” ECF No. 15 at 8. Roya Amini-Naieni and Maximilian Schommer are co-founders of Trilobio. *Id.* at 10. Plaintiff alleges that Amini-Naieni and Schommer also “invited [Defendant Keoni Gandall] to be a co-founder of Trilobio” primarily because Gandall promised to secure a renowned Stanford bioengineering professor, Andrew Endy, as an advisor to Trilobio. *Id.* at 11. Trilobio hired Gandall as its CFO, ECF No. 15 at 16, and Gandall signed a “Confidential Information and Invention Assignment Agreement” that required him to hold “in the strictest confidence” any inventions, trade secrets, or otherwise confidential information and “deliver to the Company (and [] not keep in my possession, recreate, or deliver to anyone else)” any information “belonging to the Company.” ECF No. 15-6 ¶ 4. Trilobio terminated Gandall’s employment at 8:00 p.m. on February 21, 2023 due to Gandall’s poor performance and failure to engage

1 Professor Endy as an advisor. ECF No. 15-12 ¶ 9.

2 Trilobio alleges that immediately after his termination, “Gandall accessed Trilobio’s most
3 sensitive documents and data—including data he was unauthorized to access, like CEO Roya
4 Amini-Naieni’s work email account and Google Drive.” ECF No. 15 at 16. A cybersecurity
5 professional who examined Gandall’s Trilobio computer concluded that Gandall had written
6 programs on his desktop to copy Trilobio materials to Gandall’s personal cloud storage account.
7 *Id.* at 17; ECF No. 15-15 ¶ 13. Trilobio alleges that the materials Gandall accessed contained
8 Trilobio trade secrets, including: confidential information about Trilobio’s investors, suppliers,
9 and potential customers; “proprietary hardware, software, electrical, and biological engineering
10 documents[;]” and “detailed financial budget and projections.” ECF No. 15 at 18.

11 Gandall subsequently created Defendant Nanala LLC. *Id.* Trilobio alleges that in August
12 2024 it discovered that Gandall and Nanala had continued to meet with Trilobio investors and had
13 incorporated Trilobio trade secrets into Nanala investor pitches. *Id.* at 18–19. According to
14 Trilobio, “Nanala LLC’s business is nothing more than Gandall rebranding and using Trilobio
15 trade secrets and intellectual property in the marketplace.” *Id.* at 19.

16 Trilobio filed its complaint in this action on September 9, 2024, ECF No. 1. It brings
17 claims under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; the Defend Trade Secrets
18 Act, 18 U.S.C §§ 1836, et seq.; the California Comprehensive Computer Data Access and Fraud
19 Act, Cal. Pen. Code § 502; and the California Uniform Trade Secrets Act (“CUTSA”) (Civ. Code
20 §§ 3426 et seq.); for unfair business practices, Cal. Bus. & Prof. Code §§ 17200 et seq.; and for a
21 variety of state common law claims. Trilobio filed its motion for temporary restraining order and
22 for expedited discovery, ECF No. 15, on September 25, 2024. Defendants filed an opposition on
23 October 2, 2024, ECF No. 21, and Plaintiffs replied on October 8, 2024, ECF No. 26. The Court
24 held a hearing on the motion on October 16, 2024. ECF No. 29.

25 **II. JURISDICTION**

26 The Court has jurisdiction under 28 U.S.C. §§ 1331, 1367.

27 **III. LEGAL STANDARD**

28 The same legal standard applies to a motion for a temporary restraining order and a motion

1 for a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
 2 839 n.7 (9th Cir. 2001). A plaintiff “must establish that he is likely to succeed on the merits, that
 3 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
 4 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def.*
 5 *Council*, 555 U.S. 7, 20 (2008). The court may “balance the elements” of this test, “so long as a
 6 certain threshold showing is made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th
 7 Cir. 2011) (per curiam). Thus, for example, “serious questions going to the merits and a balance
 8 of hardships that tips sharply towards the plaintiff can support issuance of a preliminary
 9 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and
 10 that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
 11 1135 (9th Cir. 2011) (quotation marks omitted). Injunctive relief is “an extraordinary remedy that
 12 may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v.*
 13 *Nat. Res. Def. Council*, 555 U.S. at 22.

14 **IV. DISCUSSION**

15 **A. Temporary Restraining Order**

16 **1. Likelihood of Success on the Merits**

17 The Court begins by assessing the likelihood of Trilobio’s success on the merits. Trilobio
 18 brings a claim for violation of CUTSA, among other claims.

19 “As defined by the plain language of the statute, misappropriation of a trade secret under
 20 the California UTSA consists of only two elements: (1) existence of a trade secret, and (2)
 21 improper acquisition, use, or disclosure of that trade secret.” *Applied Med. Distrib. Corp. v.*
 22 *Jarrells*, 100 Cal. App. 5th 556, 569–70 (2024) (citing Cal. Civ. Code § 3426.1(b)). “[A] trade
 23 secret is something (1) having commercial value from not being generally known and (2) that is
 24 the subject of reasonable secrecy measures¹.” *Coast Hematology-Oncology Assocs. Med. Grp.,*
 25 *Inc. v. Long Beach Mem’l Med. Ctr.*, 58 Cal. App. 5th 748, 754 (2020) (citing Cal. Civ. Code
 26 § 3426.1(d)(1), (2)).

27
 28

¹ Defendants do not dispute that Trilobio took reasonable secrecy measures.

1 Trilobio has made a strong showing of likelihood of success on the merits of its CUTSA
2 claim. The evidence shows that Gandall took confidential, trade secret information² from Trilobio
3 after his termination and has continued to use the information for Nanala’s benefit, despite
4 Gandall having signed a confidentiality agreement while employed at Trilobio. *See Henry Schein,*
5 *Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016) (finding likelihood of success on the
6 merits where “Plaintiff has alleged that Defendant e-mailed and downloaded, to her personal
7 devices, confidential information from [Plaintiff] before leaving her employment to work at a
8 competitor” and “provided copies of a Confidential and Non-Solicitation Agreement and a Letter
9 Agreement with provisions for confidentiality and non-solicitation, both of which appear to be
10 signed by [Defendant]”). Accordingly, the court concludes Trilobio has established it is likely to
11 succeed on the merits.

12 Gandall’s arguments to the contrary are not persuasive. First, he argues that Trilobio’s
13 procedures for combinatorial assembly of DNA molecules and synthesizing a specific genome
14 genome using oligo pools are not trade secret because information about the procedures is well
15 known; Trilobio is not currently pursuing this technology in the marketplace; and the information
16 does not have commercial value. These arguments are not supported by the evidence. For
17 example, Gandall submitted several journal articles concerning the use of DNA assembly using
18 oligo pools, contending that “[n]othing that has been done at Trilobio has improved upon the oligo
19 pool technology and information that is otherwise readily ascertainable by lawful and proper
20 means from published papers, articles, and other sources.” ECF No. 21-1 ¶ 20. Trilobio’s reply
21 brief and supporting declaration, however, demonstrate that none of the scientific papers proffered
22 by Gandall discuss or reveal Trilobio’s proprietary methodologies or its source code. Thus, the
23 information is not well known. Notably, Gandall’s counsel did not attempt to rebut this showing
24 at the hearing.

25 Gandall’s contention that the information has no commercial value is belied by his
26 attempts to start a company using that same technology. For example, an investor pitch document

27

28 ² The precise nature of the trade secret is described with more particularity in Plaintiff’s moving
and reply papers but is not repeated in this public document.

1 Gandall prepared for Nanala states, “We are also targeting high-throughput DNA labs which need
2 combinatorial assembly of DNA molecules which not a widely offered service in the DNA
3 assembly market.” ECF No. 14-14 ¶ 7. The pitch document also states that Nanala will work on
4 synthesizing the JCVI-Syn3.0 genome using oligo pools. *Id.* The document then goes on to list a
5 variety of procedures, technologies, and business objectives derived from Gandall’s employment
6 with Trilobio. *Id.* ¶ 8. Gandall disputes that this information is a trade secret but does not deny or
7 contradict Trilobio’s description of the document. ECF No. 21-1 ¶ 26. That Gandall and Nanala
8 are using Trilobio’s confidential information to attract investors is more than sufficient, at this
9 stage of the litigation, to demonstrate the information’s commercial value.

10 Second, Gandall admits that he downloaded Trilobio’s proprietary oligo pool files onto his
11 own computer, but argues that Trilobio CEO Roya Amini-Naieni consented to the downloading in
12 November 2022. ECF No. 21 at 7. Gandall claims that, at that point in time, “Trilobio [had]
13 ended its exploration of oligo pool technology in early 2022 and the oligo pool files [had] sat
14 unused for almost a year.” *Id.* He also claims that he has not used anything in the oligo pool files
15 in connection with his work at Nanala. In fact, he claims, “[a]fter the turmoil surrounding his
16 sudden and emotional departure from Trilobio, [he] simply forgot the files were on his website.”
17 ECF No. 21-1 ¶ 36. These claims are not believable and they damage Gandall’s credibility as a
18 whole. Not only does Gandall fail to explain why Amini-Naieni gave her consent, but documents
19 show that in November 2022, Gandall was in the midst of receiving a negative performance
20 review. ECF No. 15-8. It simply is not credible that Amini-Naieni would have given him
21 permission to download the company’s confidential information that same month. Nor does the
22 Court believe Gandall’s claim that he “forgot” that the files were on his website. Gandall also
23 fails to explain why he went to the effort of taking something he allegedly wasn’t interested in and
24 that had no value.

25 In short, Trilobio has demonstrated a likelihood of success on the merits of its CUTSA
26
27
28

1 claim.³ *Applied Med. Distrib. Corp.*, 100 Cal. App. 5th at 569–70.

2 **2. Irreparable Harm**

3 Trilobio has demonstrated that it will suffer irreparable injury absent preliminary relief. It
 4 alleges that Defendants’ use of its trade secrets hurts its position in the competitive biorobotics
 5 market and risks broader disclosure of its confidential technology. “California courts have
 6 presumed irreparable harm when proprietary information is misappropriated.” *TMX Funding, Inc.*
 7 *v. Impero Techs., Inc.*, No. C 10-00202 JF (PVT), 2010 WL 1028254, at *8 (N.D. Cal. Mar. 18,
 8 2010); *see also Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d at 1078 (holding that the “[p]ublic
 9 interest is also served by enabling the protection of trade secrets”). Moreover, Trilobio presents
 10 evidence that Gandall has had recent meetings with Trilobio investors. ECF No. 15 at 27.
 11 “Evidence of threatened loss of prospective customers or goodwill certainly supports a finding of
 12 the possibility of irreparable harm.” *Stuhlberg*, 240 F.3d at 841.

13 Accordingly, Trilobio has shown a likelihood of irreparable harm.

14 **3. Balance of Hardships**

15 The balance of hardships tips in Trilobio’s favor. As another court in this district has
 16 explained:

17 The proprietary information at issue belongs to Plaintiff, not
 18 Defendant[s]. Thus, Plaintiff has a very strong interest in ensuring
 19 that the information is not disclosed. On the other side, Defendant[s]
 20 have little interest in disclosing or using the information because such
 21 disclosure or use is unauthorized. Consequently, the Court finds that
 granting Plaintiff’s TRO will result in little meaningful hardship to
 Defendant[s] because the TRO would essentially only require [them]
 to abide by existing law regarding the unauthorized use of another’s
 trade secrets.

22 *Comet Techs.*, 2018 WL 1990226, at *5 (quotation marks and citation omitted).

23 Accordingly, the Court concludes the balance of equities tips in favor of granting the TRO.
 24 *See Dish Network LLC v. Ramirez*, No. 15-CV-04712-BLF, 2016 WL 3092184, at *7 (N.D. Cal.
 25 June 2, 2016) (balance of hardships tips in favor of plaintiff seeking injunction when it would “do
 26

27 _____
 28 ³ Because the Court grants Trilobio’s motion for a TRO based on its CUTSA claim, it does not
 reach the merits of its remaining claims. *See Comet Techs. United States of Am. Inc. v. Beuerman*,
 No. 18-CV-01441-LHK, 2018 WL 1990226, at *3 n.1 (N.D. Cal. Mar. 15, 2018).

1 no more than require Defendant to comply with federal and state . . . laws” (citation omitted).

2 **4. Public Interest**

3 Similarly, the public interest is served when defendant is asked to do no more than abide
4 by trade laws and the obligations of contractual agreements he signed with his employer. The
5 public interest is also served by enabling the protection of trade secrets. *Bank of Am., N.A. v. Lee*,
6 No. CV 08-5546 CAS (JWJX), 2008 WL 4351348, at *7 (C.D. Cal. Sept. 22, 2008).

7 Accordingly, the Court concludes that all four factors for a TRO have been met and will
8 grant the requested TRO.

9 **B. Security**

10 A “court may issue a preliminary injunction or temporary restraining order only if the
11 movant gives security in an amount that the court consider proper to pay the costs and damages
12 sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P.
13 65(c). The court has discretion “as to the amount of security required, *if any*.” *Johnson v.*
14 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quotation marks and citations omitted) (emphasis
15 in original).

16 Trilobio contends no bond is required here because “the sought injunction merely enjoins
17 Defendants from committing unlawful acts, or else accelerates discovery obligations,” and
18 because Gandall agreed in his signed confidentiality agreement with Trilobio that Trilobio could
19 seek injunctive relief without a bond. ECF No. 15 at 28–29; ECF 15-6 ¶ 11-f. Defendants
20 respond only that, “In the event it grants a TRO, the Court is required to order a bond ‘in an
21 amount that the Court considers proper to pay the costs and damages sustained by any party found
22 to have been wrongfully enjoined or restrained.’ FRCP 65(c).” ECF No. 21 at 10. Defendants
23 make no argument as what an appropriate amount would be.

24 The Court agrees with Trilobio and declines to require any security in this case given
25 Gandall’s agreement that any breach of the confidentiality agreement would give rise to injunctive
26 relief “without the necessity of posting a bond or other security (or, where such a bond or security
27 is required, I agree that a \$1,000 bond will be adequate).” ECF No. 15-6 ¶ 11(f). Moreover,
28 “there is no likelihood of harm because the TRO would simply enjoin Defendant[s] from doing

1 something Defendant[s] never had a right to do in the first place.” *Comet Techs.*, 2018 WL
2 1990226, at *6.

3 **C. Expedited Discovery**

4 Finally, Trilobio also requests that it be permitted to seek discovery now, before a Rule
5 26(f) conference has taken place, under Federal Rule of Civil Procedure 26(d)(1). The standard
6 for evaluating such requests is “good cause,” which “may be found where the need for expedited
7 discovery, in consideration of the administration of justice, outweighs the prejudice to the
8 responding party.” *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal.
9 2002). Good cause “is frequently found in cases involving claims of infringement and unfair
10 competition.” *Id.*

11 Trilobio argues that expedited discovery “will help protect Trilobio trade secrets from
12 further disclosure” and “will also aid Trilobio in the discovery of facts for use in preliminary
13 injunction briefing. ECF No. 15 at 29. Defendants respond that “Trilobio’s claim that it has good
14 cause for expedited discovery is thoroughly belied by its failure to avail itself of the benefits of
15 discovery tools available in” a separate employment action Gandall brought against Trilobio in
16 California state court. ECF No. 21 at 10. Trilobio states, without contradiction, that it was
17 unaware of Gandall’s improper use of its trade secrets until late August. Thus, it had no reason to
18 request discovery earlier. The Court agrees with Trilobio that it has established good cause to
19 seek discovery before a Rule 26(f) conference here. *See Comet Techs.*, 2018 WL 1990226, at *7
20 (“Quickly determining what information Defendant removed from Plaintiff, and whether and how
21 Plaintiff’s information is being used by Plaintiff’s competitors is essential in order to minimize
22 any harm to Plaintiff’s competitive position.”).

23 However, the Court will not now grant Trilobio’s request for “full disk forensic imaging”
24 of all of Defendants’ personal accounts and electronic devices. As the Court has previously
25 observed, such imaging raises potential privacy concerns. *See Henry Schein, Inc. v. Cook*, 191 F.
26 Supp. 3d at 1078 (plaintiff’s argument that defendant “ha[d] already sought to destroy evidence”
27 did not amount to good cause to obtain a forensic “mirror” of defendant’s devices). As discussed
28 at the hearing and as set forth below, the Court will instead order the parties to meet and confer

1 regarding Plaintiff's discovery requests in light of those concerns, balanced against its legitimate
2 need to assure itself that its confidential information has not been misappropriated or otherwise
3 wrongfully used. The denial of Trilobio's request is without prejudice to the parties' meet and
4 confer efforts and further discussion with the Court.

5 **CONCLUSION**

6 Trilobio's motion for a temporary restraining order and expedited discovery is granted in
7 part and denied in part. It is hereby ordered that:

8 A. Defendants Keoni Gandall and Nanala LLC, and all persons acting under, in
9 concert with, or for any one of them, or anyone who receives actual notice of this order, whether
10 or not in the United States, are hereby restrained and enjoined from each and all of the following:

11 1. Any and all use, disclosure, providing third parties access to, transferring,
12 copying, duplication, reproduction, publication, distribution, broadcasting or marketing of any
13 version of Trilobio Confidential Information. Confidential Information includes trade secrets,
14 inventions, and other proprietary information of Trilobio, such as (without limitation) source code,
15 schematics, and other business, technical, and financial information developed, learned, or
16 obtained by a Trilobio employee (including Gandall during his employment at Trilobio); and

17 2. Destroying, concealing, disposing, deleting, removing or altering any
18 document of any kind, whether paper or electronic (including computer files, emails, hard drives,
19 disk drives, USB drives, zip drives, and cloud-based storage accounts), data, drafts or other things
20 or materials that:

- 21 (a) were obtained from or belong to Trilobio;
- 22 (b) contain, relate to, or are derived from Trilobio Confidential
23 Information, including versions of Trilobio documentation or data
24 that Gandall or others may have modified or further developed;
- 25 (c) relate in any way to Trilobio Confidential Information, including
26 any use, disclosure, possession or transfer of Trilobio Confidential
27 Information, including modified versions of, copies of and/or
28 references thereto;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (d) relate in any way to the creation, copying, duplication, development, production, distribution, publication or broadcast of any version of Trilobio Confidential Information or any derivative, copy, or reproduction thereof; and
- (e) relate in any way to instructions, requests, directives, or agreements with or by any third party concerning the use or disclosure of Trilobio Confidential Information, including instructions, requests, directives or agreements made by any Defendant or between any Defendant and any existing or potential employer, partner, or customer.
- (f) relate in any way to source code relating to the operation of autonomous robots for oligo pool DNA synthesis, or source code for robotic biosynthesis.

B. Defendants shall, within seven days of the issuance of this Order, identify to Trilobio’s counsel of record, in writing and under oath, the identity and last-known contact information, including the title, email address, physical address, telephone number, employer and other identifying information in any Defendant’s possession, custody or control, of the individuals, groups, companies, governmental entities, or other persons or entities, if any, to whom any Defendant and, as applicable, any Defendant’s agents and all of those acting in active concert or participation with any Defendant, have disclosed, transferred, published, distributed, broadcasted, or marketed any Trilobio Confidential Information.

C. Pursuant to Federal Rule of Civil Procedure 26(d)(1), Trilobio may commence discovery and any limits on discovery that would be applicable to Trilobio before any Rule 26(f) conference shall be and hereby are lifted.

D. By October 23, 2024, the parties shall submit a stipulated proposed protective order or competing proposed protective orders, and a stipulated proposed order or competing proposed orders regarding the discovery of electronically stored information (“ESI”).

1 E. By October 23, 2024, the parties shall submit a stipulated discovery plan or
2 competing discovery plans regarding the method by which Plaintiff will retrieve information from
3 Defendants' computers and other electronic devices.

4 F. By October 23, 2024, the parties shall either jointly or separately propose a date for
5 a hearing on Plaintiff's motion for preliminary injunction.

6 G. The Court sets a hearing via Zoom webinar on October 28, 2024 at 9:30 a.m. to
7 resolve any disputes regarding the orders and discovery plan identified in Paragraphs D and E. If
8 the parties submit stipulated orders and a stipulated plan, the October 28 hearing will be vacated.

9 H. Trilobio shall not be required to post a bond for the issuance of this temporary
10 restraining order.

11 I. This temporary restraining order is issued without prejudice to Trilobio or
12 Defendants seeking further additional discovery or other relief as appropriate, including further
13 equitable or legal relief.

14 J. The Court will hold a case management conference on hearing via Zoom webinar
15 on November 20, 2024 at 9:30 a.m. A joint case management statement is due November 18,
16 2024.

17 K. Consistent with Civil Local Rule 65-1(c), Plaintiff shall serve this temporary
18 restraining order (and unredacted copies of all documents filed in support of obtaining it) upon all
19 Defendants within 2 days of the entry of this order. Plaintiff shall also email these materials to
20 Defendant Gandall's known email address.

21 **IT IS SO ORDERED.**

22 Dated: October 17, 2024

23 
24 JON S. TIGAR
25 United States District Judge
26
27
28