

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

LIFEMD, INC., *et al.*,

Plaintiffs,

v.

CHRISTIAN M. LAMARCO, *et al.*,

Defendants.

Civil Action No. 2:21-cv-00640-WSS

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY

NOW come Plaintiffs LifeMD, Inc. (“LifeMD”), Stefan Galluppi (“Galluppi”) and Justin Schreiber (“Schreiber”), by and through their undersigned counsel, and hereby submit the following Memorandum in Support of their Motion for Leave to Conduct Expedited Discovery, respectfully averring as follows:

I. Introduction

By this Motion, Plaintiffs seek leave to serve limited, immediate subpoenas seeking information to learn the identity of Defendants Culper Research and John/Jane Does. This information is necessary, relevant, and proportional to the needs of this case, enabling Plaintiffs the opportunity to learn the identities of Culper Research and Does, and to amend the Complaint accordingly and effectuate service of process on other responsible parties involved. Plaintiffs will use this information to prosecute the claims made in their Complaint and any amended pleading in this matter. Without this information, Plaintiffs cannot join all necessary parties and pursue this lawsuit fully to protect their rights.

II. Background¹

Plaintiff LifeMD, Inc. is a leading telehealth company that is transforming the healthcare landscape with direct-to-patient product and service offerings. LifeMD's telemedicine platform enables virtual access to affordable and convenient medical treatment from licensed providers and, when appropriate, prescription medications and over-the-counter products delivered directly to the patient's home. LifeMD is managed by a seasoned team of experienced and dedicated professionals, including co-Plaintiffs Justin Schreiber, Chairman & CEO, and Stefan Galluppi, Chief Technology Officer.

Defendant Culper Research is an anonymous short-seller that publishes bogus and purported "investigative investment research" reports through its website at www.culperresearch.com and through postings on Twitter as @CulperResearch. Culper's website does not list the authors of any of its reports or any information regarding its own business operations, address, or acting principals. Culper's state of incorporation and principal place of business is unknown. Culper refuses to disclose the individuals or entities behind it; thus, the exact identity of Culper and its cohorts is currently unknown. Culper, through co-Defendants Christian Lamarco and John/Jane Does, has a history of publishing unfounded, fraudulent "reports" about companies. Several other companies, including SOS, Ltd., OrthoPediatrics Corp., and CleanSpark, Inc. have been victim to similar "short and distort" schemes engaged in by Defendants using false and defamatory "investigative research" reports published by Defendants, which have resulted in those companies' stocks plummeting.

In April 2021, Plaintiffs fell victim to a "short and distort" scheme initiated by Culper Research and its cohorts. In such a scheme, short-sellers, working in concert with an involved

¹ The facts contained herein are as alleged in the Complaint (ECF No. 1), except those new facts surrounding the Second Report (defined below) recently published by Defendants, Lamarco, Culper Research, and John/Jane Does.

publisher-generator of false information, borrow securities, sell them, and then drive the price of their target company's stock down by knowingly spreading materially false, misleading, defamatory, and disparaging information about the company. Once the company's stock drops to an artificially low price, the short-sellers repurchase and return the borrowed securities, pocketing the difference.

On April 14, 2021, Culper Research, individually and/or in conjunction with Lamarco and Does, published a false and defamatory report concerning Plaintiffs on its website www.culperresearch.com and via Twitter using @CulperResearch. The Report, titled *LifeMD, Inc. (LFMD): Redwood Redux at RexMD* (hereinafter referred to as the "Report") was distributed globally on the internet and has been disseminated or linked to other widely read websites. As set forth in the Complaint, the Report is filled with false and defamatory statements about Plaintiffs, misrepresenting and discrediting LifeMD's business practices, accusing Schreiber and Galluppi of engaging in fraud, and the company being complicit in felonious acts, amongst other things. Defendants published the Report with malicious motives, as part of their desire to damage Plaintiffs and decrease LifeMD's share price for their own personal gain and to the detriment of LifeMD's shareholders. When the Report was written and published, Defendants knew, or were recklessly indifferent to the fact, that the numerous defamatory statements contained therein were false. As a result of the libelous Report, Plaintiffs have been significantly damaged.

Accordingly, on May 13, 2021, Plaintiffs brought this suit against Lamarco, Culper Research and Does for defamation, trade libel, and permanent injunctive relief. Plaintiffs knew the identity of Lamarco and served him on May 19, 2021. But Plaintiffs do not know the identity of the remaining Defendants, Culper Research and Does. Thus, Plaintiffs cannot join all necessary parties to this litigation or enforce and protect all their rights until they determine the identities of

the remaining Defendants and all parties responsible for the libelous Report. Plaintiffs likely can obtain that information from the limited subpoenas they wish to serve, and therefore seek permission to conduct limited, expedited discovery for that purpose.

That purpose has become even more important now. Yesterday, May 27, 2021, Defendants published a second report on LifeMD (the “Second Report”). It, like the first Report, seeks to disparage LifeMD and co-Plaintiffs Galluppi and Schreiber with additional false statements of connections to Redwood Scientific and new false statements suggesting Plaintiffs’ involvement in stock schemes, illegitimate businesses, and fraudulent and shady business practices. Apparently, it was not enough for Culper Research and others to publish the false and defamatory Report. They had to publish the negative Second Report a little more than a month later, and after this lawsuit was filed and Defendant Lamarco served. The Second Report stands as additional evidence of actual malice by Defendants and a relentless drive to harm Plaintiffs and the value of LifeMD. Immediate discovery to ascertain the identities of all responsible defendants and hold them to account in this action is needed.

III. Standard

Pursuant to Rule 26(d), “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d). “[However], [f]or good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.” *K-Beech, Inc. v. Doe*, No. 11-7083, 2012 WL 262722, at *2 (E.D. Pa. Jan. 30, 2012). “Good cause exists where the ‘need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the

responding party.” *Strike 3 Holdings, LLC v. Doe*, CV 20-5123-KSM, 2020 WL 6342770, at *1 (E.D. Pa. Oct. 29, 2020) (citing *Canal Street Films*, 2013 WL 1775063, at *3).

Cases such as this are the paradigm for when leave to conduct pre-Rule 26(f) conference discovery should be allowed. “In cases involving as-yet-unknown defendants, in which the plaintiff cannot serve its complaint—much less confer with the defendant—without obtaining identifying information from a third party, ‘the only potential avenue for discovery is a court order under Rule 26(d)(1).’” *Strike 3 Holdings, LLC v. Doe*, 964 F.3d 1203, 1207 (D.C. Cir. 2020) (internal brackets and citations omitted) (emphasis added). The Third Circuit has instructed that where discovery is sought that “would aid in the identification of responsible defendants or the lack thereof, district courts should strongly consider granting it.” *Alston v. Parker*, 363 F.3d 229, 233 n.6 (3d Cir. 2004) (emphasis added); *Athill v. Speziale*, No. 06-4941, 2009 WL 1874194, at *14 (D.N.J. June 30, 2009) (“Plaintiffs should thus be allowed every opportunity to identify the unknown defendants.”); see also *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (“[C]ourts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff’s claim is ‘clearly frivolous.’”).

IV. Argument

In this case, good cause exists for the expedited discovery sought by Plaintiffs, and such expedited discovery is reasonable and narrowly tailored to the purpose for which it is requested. Plaintiffs cannot obtain the identity of Culper Research and Does without conducting early discovery. Culper Research’s website and Twitter page contain no information on its identity, including entity structure, location, owners, operators, or other responsible persons. Public information about Culper Research is thin and no more revealing. Plaintiffs have already employed a private investigator to attempt to discover the identity of Culper Research and those behind

Culper Research, but to no avail. Indeed, unless this Court grants Plaintiffs' Motion, this litigation cannot proceed efficiently and expeditiously, as Plaintiffs will be without information as to the identities of all Defendants. Plaintiffs would have to wait until the discovery phase to potentially learn the identity of all parties involved, then amend to add new parties, and likely re-adjust the litigation schedule as new parties are added.

Further, the scope of the expedited discovery requested by Plaintiffs is narrowly tailored to the important purpose of identifying the unknown Defendants. In that regard, Plaintiffs seek to issue limited subpoenas to various individuals/entities. As set forth in the attached proposed subpoenas (attached hereto as Exhibit A), Plaintiffs seek identity information from the following:

- Domains by Proxy, LLC ("DBP") - DBP is an Internet company that offers domain privacy services through partner domain registrars such as GoDaddy. Often, domain owners list DBP as their administrative and technical contacts in the Internet's WHOIS database, thereby keeping their personal information secret. However, as stated in its policies, DBP will release a registrant's personal information in some cases, such as by court order or in response to a subpoena. DBP is the listed registrant of the www.culperresearch.com website and will have information about the true owner/operator of Culper Research. *See* WHOSIS Lookup Report (Ex. B);
- GoDaddy.com, LLC ("GoDaddy") – GoDaddy is a website hosting company that partners with DBP to offer privacy services for websites it hosts. GoDaddy is listed as the registrar for the www.culperresearch.com website and likely will have information regarding the owners/operators of the Culper Research site. *See id.*;
- Twitter, Inc. – Defendants not only published the false and defamatory Report on their website, www.culperresearch.com, but also via Twitter using @CulperResearch. Twitter may have information regarding the identity of the person(s)/entity maintaining the @CulperResearch Twitter account;
- StockTwits, Inc. – StockTwits, Inc. is the largest social network of traders, investors, media, public companies, and investment professionals whereby such individuals can "tweet" about current market trends and other investment news and topics. StockTwits may have information regarding the identity of the person(s)/entity maintaining the @lennymd99 account. This user registered an account on May 14, 2021, and has posted 49 of 50 total tweets on LifeMD's Stocktwits page. These posts appear designed to pump and dump on the company for short-selling purposes. Moreover, the negative posts reference the Second

Report issued by Culper Research prior to its release, *i.e.*, the report did not become public until May 27, 2021, and was not discussed by others on LifeMD's social networking pages. In other words, @lennymd99 has unique, inside knowledge of the Second Report and Culper Research's involvement in same; and

- Guidepoint Global, LLC and Valiant Capital Management, L.P. – These two entities—an expert network search company and hedge fund—recently worked together to attempt to develop investor research information about LifeMD and its online pharmacy service provider, GoGoMeds.com. Shortly before Culper Research published the Report, these two entities sent GoGoMeds unsolicited links to a questionnaire that focused on LifeMD and its products, services, operations, management, and competitive market. The nature of the questionnaire and timing of Guidepoint and Valiant Capital's participation in same compared to the Report suggest these entities likely have information about Culper Research and other unknown defendants working with Culper.

The parties subpoenaed will not suffer any harm or additional burden from responding to Plaintiffs' subpoenas prior to a Fed. R. Civ. P. 26(f) conference as such information would be discoverable during the general discovery period. There will also be no prejudice to the one, other named Defendant in the case, Christian Lamarco, given that no early discovery will be served on him, and he has yet to formally appear in the case and/or express any connection to the other Defendants.

Because the identity information is crucial to the full prosecution of the case involving all necessary parties, the requested discovery is limited and narrowly tailored, and there is no prejudice to the parties involved, Plaintiffs' Motion for Leave to Conduct Expedited Discovery should be granted.

V. Conclusion

For the reasons set forth above, Plaintiffs' Motion for Leave to Conduct Expedited Discovery should be granted, and Plaintiffs should be permitted to immediately issue and serve the subpoenas attached hereto as Exhibit A.

Dated: May 28, 2021

Respectfully submitted,

GORDON & REES LLP

By: /s/ Jessica G. Lucas

Jessica G. Lucas, Esquire (PA ID No. 311280)

S. Manoj Jegasothy, Esquire (PA ID No. 80084)

Gordon Rees Scully Mansukhani, LLP

707 Grant Street, Suite 3800

Pittsburgh, PA 15219

Tel: (412) 577-7400

Fax: (412) 347-5461

jlucas@grsm.com

mjegasothy@grsm.com

Counsel for Plaintiffs