

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Repairify, Inc., d/b/a asTech,

Plaintiff,

v.

AirPro Diagnostics LLC,

Defendant.

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CIVIL ACTION NO. 4:19-CV-1370

**PLAINTIFF REPAIRIFY, INC.’S MOTION FOR EXPEDITED DISCOVERY
IN ANTICIPATION OF PRELIMINARY INJUNCTION HEARING**

Plaintiff Repairify, Inc., d/b/a asTech (“asTech”), files this Motion for Expedited Discovery in Anticipation of Preliminary Injunction Hearing and respectfully shows the Court as follows:

I. NATURE AND STAGE OF PROCEEDINGS

asTech has filed an Application for Preliminary Injunction to prevent AirPro Diagnostics LLC (“AirPro” or “Defendant”) from further publishing false and misleading advertisements regarding asTech and its products and from continuing to interfere with asTech’s existing and prospective business relationships within the industry.

On April 15, 2019, asTech filed suit against AirPro based on AirPro’s various violations of the Lanham Act, tortious interference with asTech’s prospective and existing business relationships, business disparagement, and defamation. *See generally* Compl. (ECF No. 1). These claims are based on AirPro’s false, misleading, and disparaging statements about asTech and its products that AirPro has made through its website and through more direct forms of communication with customers, Original Equipment Manufacturers (“OEMs”), and others within the industry.

Because this harm to asTech is ongoing and will continue without the Court's intervention, asTech has no adequate remedy at law. Accordingly, asTech seeks preliminary injunctive relief against AirPro. With that in mind, asTech further seeks authorization from the Court to conduct limited, expedited discovery related to the issues to be raised at a hearing on the Application for Preliminary Injunction.

II. STATEMENT OF ISSUES AND STANDARD OF REVIEW

The issue before the Court is whether asTech is entitled to an Order authorizing expedited discovery, so that asTech may prepare for and most efficiently present evidence at a hearing on its Application for Preliminary Injunction.

A district court's discovery decisions are reviewed for an abuse of discretion. *See Bituminous Cas. Corp. v. Buckley*, 348 Fed. Appx. 23, 26 n. 1 (5th Cir. 2009) (citing *Atkinson v. Denton Publ'g Co.*, 84 F.3d 144, 147 (5th Cir. 1996) ("stating that the district court's disposition of contested discovery matters "is reviewed only for an abuse of discretion"))).

III. ARGUMENT AND AUTHORITIES

A. Legal Standard

Under Federal Rule of Civil Procedure 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." Although the Federal Rules do not provide a standard for the court to use in exercising its authority to order expedited discovery, generally courts will use one of two standards to determine whether a party is entitled to conduct such discovery: a "preliminary-injunction-style analysis" or the "good cause" standard. *Greenthal v. Joyce*, No. Civil Action No. 4:16-CV-41, 2016 WL 362312, *1 (S.D. Tex. Jan. 29, 2016) (citing *St. Louis Grp., Inc. v. Metals & Additives Corp.*, 275 F.R.D. 236, 239 (S.D. Tex. 2011) (citations omitted)).

Though the Fifth Circuit has not expressly adopted either standard for granting expedited discovery, several district courts, including the Southern District of Texas, within the Fifth Circuit have expressly utilized the “good cause” standard. *Id.* (citing *St. Louis Grp.*, 275 F.R.D. at 239); *see also Dallas Buyers Club, LLC v. Ripple*, No. Civ. A. H-14-3393, 2015 WL 1346217, *1 (S.D. Tex. Mar. 23, 2015); *El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986, 991 (S.D. Tex. 2004). In determining whether good cause exists, courts often consider: (1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made. *Greenthal*, 2016 WL 362312 at *2 (citing *St. Louis Grp.*, 275 F.R.D. at 240 (citations omitted)).

“Good cause” for granting expedited discovery generally exists where, as here, the plaintiff seeks expedited discovery in aid of a preliminary injunction hearing. *El Pollo Loco*, 344 F. Supp. 2d at 991 (“Expedited discovery would be appropriate in cases involving preliminary injunctions or challenges to personal jurisdiction.”). Expedited discovery is particularly appropriate in the preliminary injunction and temporary restraining order context because such discovery “better enable[s] the court to judge the parties’ interest and respective chances for success on the merits.” *Edudata Corp. v. Sci. Computs., Inc.*, 599 F. Supp. 1084, 1088 (D. Minn. 1984); *see also Rockdale, Inc. v. U.S. Preventative Med., Inc.*, NO. 08-cv-120, 2008 WL 4682043, *1 (E.D. Tex. Oct. 21, 2008) (“An order for expedited discovery would be appropriate in a case seeking a preliminary injunction”); FED. R. CIV. P. 26(d) advisory committee’s note (recognizing that expedited discovery “will be appropriate in some cases, such as those involving requests for a preliminary injunction”).

B. Discovery into the Alleged Bases of AirPro's False and Misleading Advertisements as Well as into AirPro's Communications with Members of the Industry Regarding asTech Is Central to asTech's Claim for a Preliminary Injunction.

Good cause exists for asTech's request to conduct targeted discovery on an expedited basis into the false and misleading advertisements AirPro has published on its website as well as AirPro's communications with members of the industry regarding asTech. That information is central to this case, because asTech's false advertising claims are based on the literal falsity of AirPro's statements and AirPro's continued publication of those statements to members of the industry.

Expedited discovery is particularly necessary because asTech is unable to verify whether AirPro has a legitimate basis for its advertising claims without obtaining copies of the information AirPro relied on in making those claims. Given the critical importance of this discovery, AirPro cannot cite any basis for refusing to produce that information or explain why that information should not be produced on an expedited basis.

C. asTech's Discovery Requests Are Narrowly Targeted to Allow asTech a Fair Opportunity to Prepare for a Hearing on Its Application for Preliminary Injunction.

Here, asTech seeks expedited discovery from AirPro in order to properly prepare for the hearing on asTech's Application for Preliminary Injunction, which seeks to enjoin AirPro from continuing to disseminate various false and misleading advertisements. As outlined in asTech's Complaint, AirPro has engaged in a months-long campaign of falsehoods which has only increased in intensity with time. For that reason, asTech seeks a hearing on its Application for Preliminary Injunction as soon as reasonably possible in order to enforce its rights under the Lanham Act and to protect itself from further injury due to AirPro's tortious conduct.

asTech requests the attached expedited discovery to prepare for the hearing on its Application for Preliminary Injunction. The requested discovery is reasonable in scope. The

information sought is crucial to asTech's prosecution of this case and is highly relevant to the issues to be presented at the preliminary injunction hearing. The requested depositions are necessary because the identified witnesses are or may be adverse to asTech and are or may be subject to the control of AirPro. asTech requests this discovery in addition to other discovery, including depositions of these and other potential witnesses, which may be necessary to prepare to present the merits of this case.

Specifically, asTech requests that the Court shorten the time for AirPro to serve Rule 26 Initial Disclosures and respond to asTech's Interrogatories and Requests for Production, which are attached to this Motion as **Exhibit 1**. Additionally, asTech requests that the Court enter an Order allowing asTech to depose the following persons on an expedited basis: (1) AirPro's corporate representative(s); (2) Lonnie E. Margol of AirPro; (3) Chuck Olsen of AirPro; and (4) Frank LaViola of AirPro.

IV. CONCLUSION AND PRAYER

For these reasons, asTech requests that the Court enter an Order granting asTech's Motion for Expedited Discovery as follows:

- a. AirPro must serve its Rule 26 Initial Disclosures responses to asTech's First Set of Interrogatories and First Set of Requests for Production within fourteen (14) calendar days of the date of the Court's Order; and
- b. AirPro must present the following individuals for deposition at least ten (10) calendar days before the date of the Preliminary Injunction Hearing at a date, time, and place agreed to by the Parties or, failing agreement, as set by asTech's Notice of Deposition.
 - i. AirPro's corporate representative(s);
 - ii. Lonnie E. Margol of AirPro;
 - iii. Chuck Olsen of AirPro; and
 - iv. Frank LaViola of AirPro.

Dated: May 6, 2019

Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Yasser A. Madriz

Yasser A. Madriz

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Counsel for Plaintiff Repairify, Inc. d/b/a asTech

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and served the following party by common-carrier delivery:

AirPro Diagnostics LLC
11737 Central Parkway
Jacksonville, Florida 32224

Via FedEx Tracking No. 7870 8217 7005

/s/ Yasser A. Madriz

Yasser A. Madriz

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Plaintiff,

v.

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CIVIL ACTION NO. 4:19-CV-1370

PLAINTIFF’S FIRST SET OF EXPEDITED REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT AIRPRO DIAGNOSTICS LLC

Plaintiff Repairify, Inc. d/b/a asTech (“asTech”), by counsel, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (collectively, the “Rules”), requests that Defendant AirPro Diagnostics LLC (“AirPro”) respond to the following requests for the production of documents and things (“Requests”) and produce the documents requested within 14 days of the date of service.

INSTRUCTIONS

1. These Requests are continuing in character, so as to require that supplemental responses and productions be made seasonably if further documents are obtained.
2. If, in responding to any Request, the responding party encounters any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.
3. Whenever in these Requests you are asked to identify or produce a document which is deemed by you to be properly withheld from production for inspection or copying:
 - A. If you are withholding the document under claim of privilege (including, but not limited to, the work product doctrine), please provide the information set forth in Fed. R. Civ. P. 26(b)(5), including the type of document, the general subject matter of the

document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable this party to assess the applicability of the privilege or protection claimed by you;

B. If you are withholding the document for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify each document and, in addition to the information requested in paragraph (4.A), above, please state the reason for withholding the document.

4. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

5. It is intended that these Requests will not solicit any material protected either by the attorney/client privilege or by the work product doctrine, that was created by, or developed by, counsel for the responding party after the date on which this litigation was commenced. If any Request is susceptible of a construction that calls for the production of such material, that material

need not be provided and no privilege log pursuant to Fed. R. Civ. P. 26(b)(5) will be required as to such material.

6. If any requested document(s) has been destroyed or mislaid, state the circumstances under which the document was destroyed or mislaid.

DEFINITIONS

1. “AirPro,” “you,” or “your” means AirPro and all of its officers, directors, agents, employees, representatives, investigators, attorneys, and consultants.

2. “asTech Device” means the vehicle scanning tool currently sold by asTech, including all associated hardware and software.

3. “AirPro Device” means the vehicle scanning tool sold by AirPro, including all associated hardware and software.

4. “AirPro Letter” means the letter sent by AirPro to various OEMs, customers, and other industry members, along with all accompanying documents, as set forth in Paragraph 44 of the Complaint.

5. “AirPro Website” means all webpages at the web address <https://airprodiagnostics.com> and all prior versions thereof dating back to January 1, 2018, whether at the same or different web addresses or domain names.

6. “OEM” means an original equipment manufacturer.

7. “Document” or “documents” means anything within the scope of Federal Rule of Evidence 1001 and Federal Rule of Civil Procedure 34, including, without limitation, all originals, drafts, revisions and non-identical copies of any written, typed, printed, recorded, magnetic, electronic (including, but not limited to emails, text messages, and social media activities), graphic or other form of memorialization or communication and also specifically including all of your

internal memoranda and notes whether in the custody, control or possession of you or your counsel, regardless of the medium on which they are produced, reproduced or stored.

8. “Communication(s)” means the transmittal of information from any person or entity to another person or entity by any mode or medium, including but not limited to verbal transmission, written or electronic correspondence, face-to-face meetings and/or conveying information through third persons.

9. “Person” or “persons” means all entities, including without limitation individuals, associations, companies, partnerships, joint ventures, corporations, trusts, estates, agencies or governmental entities.

10. “Identify” with respect to a person means to state a person or entity’s full name, address and telephone number, and with respect to a document, to identify its author, recipient, date and a description of its contents.

11. “Identify” with respect to documents or things means to give, to the extent known, the (a) type of document; (b) subject matter; (c) author(s), addressees(s), and recipient(s); and (d) date of the document.

12. “Complaint” means the Complaint filed in this Lawsuit (ECF No. 1).

13. The term “concerning” means relating to, referring to, describing, evidencing, constituting, containing, discussing, summarizing, memorializing, pertaining to, supporting, corroborating, demonstrating, or contradicting.

REQUESTS FOR PRODUCTION

Please produce the following at the Richmond, Virginia office of the undersigned counsel:

1. Advertisements, marketing materials, press releases, presentations, and other promotional materials authored or published, or caused to be authored or published, by AirPro that refer or relate to asTech or the asTech Device.
2. Documents sufficient to identify every recipient of the AirPro Letter.
3. Documents and communications that support, refute or otherwise relate to statements made in the AirPro Letter.
4. Communications with former, current, or prospective asTech or AirPro customers and/or OEMs that refer or relate to asTech and/or the asTech Device.
5. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that asTech does not offer an “Evergreen Warranty - Tool Replaced When Hardware Improvements are Made at No Cost.”
6. Internal communications concerning the creation of the content on the AirPro Website that concerns or references asTech and/or the asTech Device.
7. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that asTech’s ability to perform ADAS calibrations is “limited” as compared to AirPro’s.
8. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that asTech’s ability to “program and flash modules in-house” is “limited” compared to AirPro’s.

9. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that, following a scan request, your “technicians will remote into the AirPro attached to the vehicle within 10 minutes.”

10. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that the asTech Device “delays scan tool and vehicle data responses by adding negative response codes into data stream, which can skew results,” while the AirPro Device does not.

11. Documents and communications that support, refute, or otherwise relate to the scan test found on the AirPro Website that purports to show that “Astech [sic] missed an Airbag safety system code B1831” and “also missed code C1280 engine circuit malfunction in the 4wd control ecu.”

12. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that “if the dealer has the software, so does AirPro.”

13. All documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that AirPro “services all 2019 and prior year vehicles (except Tesla)” and asTech does not.

14. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that “the breadth and depth of our coverage is superior to any aftermarket scan tool and all other scanning devices.”

15. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that “[o]ur research indicates we can save minimally 50% over typical dealer sublet invoice costs.”

16. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that: “The AirPro is a hybrid all in one ADAS ready scan tool comprised of a...a high level, OEM sourced proprietary scan-tool and a SAE J2534-2 device to interface with OEM direct software on demand.”

17. Documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that: “The asTech device also limits scan tool functionality to only those automotive protocols which have been developed for conversion, thus limiting vehicle or module coverage even further.”

18. All documents and communications that support, refute, or otherwise relate to your claim on the AirPro Website that your comparisons between the AirPro Device and the asTech Device “are FACTS” and “comprised from many different sources” (*see* ECF No. 1-1 at 10), including documents sufficient to identify the referenced “sources.”

19. All documents and communications that support, refute, or otherwise relate to your claim on AirPro’s FaceBook page and in the AirPro Letter that the AirPro Device has been “approved” by OEMs, including Subaru.

20. All documents and communications concerning any tests, trials, or studies started or conducted by or on behalf of AirPro that refer or relate to the asTech Device and/or the comparative capabilities of the asTech Device and the AirPro Device, including, without limitation, data collected, working papers, and any resulting summaries or reports.

21. All documents comparing, contrasting, analyzing, evaluating, or otherwise relating to the effectiveness, reliability or safety of the asTech Device.

22. All analyses and opinions provided to, or prepared by or at the direction of, AirPro regarding assertions or other claims about asTech and/or the asTech Device.

23. All documents relied on in preparing your responses to asTech's Expedited Interrogatories.

Dated: May 6, 2019

Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Yasser A. Madriz

Yasser A. Madriz

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CIVIL ACTION NO. 4:19-CV-1370

PLAINTIFF’S FIRST SET OF EXPEDITED INTERROGATORIES TO DEFENDANT

Plaintiff Repairify, Inc. d/b/a asTech (“asTech”), by counsel, and pursuant to Federal Rule of Civil Procedure 33, calls upon Defendant AirPro Diagnostics LLC (“AirPro”) to answer each of the following interrogatories within 14 days of the date of service.

INSTRUCTIONS

1. Unless otherwise stated, the time period covered by these interrogatories is November 1, 2018 up to and including the date on which the interrogatories are answered.
2. These interrogatories are deemed continuing to the fullest extent permissible and to apply to all information or documents that you subsequently create, develop, discover or receive.
3. If the answer to the whole of the question is not known, so state, and answer the part known. If the answer to the question is only partly known, provide all responsive information known and specify in what respect the response is or may be incomplete due to partial lack of knowledge. If the exact dates, amounts, or other figures or facts are not known, but you have information permitting you to make an approximate or estimated answer, please

state such answer and indicate that it is an approximation or estimate because more precise information is not known or available to you.

4. Whenever appropriate, verb tenses shall be interpreted to include past, present and future tenses; references to a gender shall be interpreted to include the masculine, feminine and neuter; and the terms “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these interrogatories any information which might otherwise be construed to be outside their scope.

6. If you withhold any responsive information on the grounds that it is privileged or otherwise excludable from discovery, identify the information, describe its subject matter, and specify the basis for the claimed privilege or other grounds of exclusion.

7. If at any time subsequent to the answering of these interrogatories, any other information responsive to these interrogatories is located or comes within your custody, possession or control, asTech requests that it be identified.

DEFINITIONS

1. “AirPro,” “you,” or “your” means AirPro and all of its officers, directors, agents, employees, representatives, investigators, attorneys, and consultants.

2. “asTech Device” means the vehicle scanning tool currently sold by asTech, including all associated hardware and software.

3. “AirPro Device” means the vehicle scanning tool sold by AirPro, including all associated hardware and software.

4. “AirPro Letter” means the letter sent by AirPro to various OEMs, customers, and other industry members, along with all accompanying documents, as set forth in Paragraph 44 of the Complaint.

5. “AirPro Website” means all webpages at the web address <https://airprodiagnostics.com> and all prior versions thereof dating back to January 1, 2018, whether at the same or different web addresses or domain names.

6. “OEM” means an original equipment manufacturer.

7. “Document” or “documents” means anything within the scope of Federal Rule of Evidence 1001 and Federal Rule of Civil Procedure 34, including, without limitation, all originals, drafts, revisions and non-identical copies of any written, typed, printed, recorded, magnetic, electronic (including, but not limited to emails, text messages, and social media activities), graphic or other form of memorialization or communication and also specifically including all of your internal memoranda and notes whether in the custody, control or possession of you or your counsel, regardless of the medium on which they are produced, reproduced or stored.

8. “Communication(s)” means the transmittal of information from any person or entity to another person or entity by any mode or medium, including but not limited to verbal transmission, written or electronic correspondence, face-to-face meetings and/or conveying information through third persons.

9. “Person” or “persons” means all entities, including without limitation individuals, associations, companies, partnerships, joint ventures, corporations, trusts, estates, agencies or governmental entities.

10. “Identify” with respect to a person means to state a person or entity’s full name, address and telephone number, and with respect to a document, to identify its author, recipient, date and a description of its contents.

11. “Identify” with respect to documents or things means to give, to the extent known, the (a) type of document; (b) subject matter; (c) author(s), addressees(s), and recipient(s); and (d) date of the document.

12. “Complaint” means the Complaint filed in this Lawsuit (ECF No. 1).

13. The term “concerning” means relating to, referring to, describing, evidencing, constituting, containing, discussing, summarizing, memorializing, pertaining to, supporting, corroborating, demonstrating, or contradicting.

INTERROGATORIES

1. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that asTech’s ability to perform ADAS calibrations is “limited” as compared to AirPro’s, and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

2. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that asTech’s ability “program and flash modules in-house” is “limited” as compared to AirPro’s, and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

3. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that the asTech Device “delays scan tool and vehicle data responses by adding negative response codes into data stream, which can skew results,” while

the AirPro Device does not, and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

4. State all facts and identify all documents that support, refute, or otherwise relate to the scan test found on the AirPro Website that purports to show that “Astech [sic] missed an Airbag safety system code B1831” and “also missed code C1280 engine circuit malfunction in the 4wd control ecu,” including, without limitation, the sale date of the asTech device used; the year, make, and model of the vehicle tested; the operator of the asTech device; and the OEM hardware and software used, if any, in connection with conducting the test, and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

5. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that asTech does not offer an “Evergreen Warranty - Tool Replaced When Hardware Improvements are Made at No Cost,” and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

6. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that AirPro “services all 2019 and prior year vehicles (except Tesla) No Excuse Chart!” and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

7. State all facts and identify all documents that support, refute, or otherwise relate to your claim in the AirPro Letter that “what some OEM engineers have uncovered was that the methodology by which the asTech obtains and translates the OEM code for transferring back and forth across the internet, opens opportunities for failure due to delayed responses and/or dropped data packets” and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

8. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that: “From the time of submission of a scan request, our technicians will remote into the AirPro attached to the vehicle with [sic] 10 minutes.”

ANSWER:

9. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that: “Our research indicates we can save minimally 50% over typical dealer sublet invoice costs.”

ANSWER:

10. State all facts and identify all documents that support, refute, or otherwise relate to your claim on the AirPro Website that: ““The AirPro is a hybrid all in one ADAS ready scan

tool comprised of a...a high level, OEM sourced proprietary scan-tool and a SAE J2534-2 device to interface with OEM direct software on demand.”

ANSWER:

11. Identify every person to whom you sent the AirPro Letter.

ANSWER:

12. Identify every source of information (including, without limitation, trials, tests, studies, witnesses, and promotional materials) on which you relied in preparing the “Truth Campaign” graphic and/or the “AirPro & Astech [sic] Comparison” found on the AirPro Website (see ECF No. 1-1 at pp. 3, 10-11).

ANSWER:

13. Identify all employees, agents, consultants, independent contractors, and/or representatives of AirPro who approved, helped create, drafted content for, or provided information for, the <https://airprodiagnostics.com/difference-airpro-astech/> page on the AirPro Website, regardless of whether you intend to call the person to testify in this action. For each person identified, describe in detail the specific information the person(s) provided and/or role they played in creating or approving the webpage.

ANSWER:

14. Describe, with particularity, all formal and informal tests, trials, and/or studies that you have started or conducted, or caused to be started or conducted, to compare or contrast

the reliability, accuracy, effectiveness, or safety of the asTech Device and the AirPro Device, including the methods by which those tests were conducted, the individual(s) who conducted them, and results of all such tests.

ANSWER:

15. Identify every OEM whose software you contend is “resident” on the AirPro Device, as stated on the AirPro Website, and identify the license or other agreement pursuant to which AirPro obtained that software.

ANSWER:

16. State all facts supporting your contention that the AirPro Device is safer and/or more effective than the asTech Device, and identify all persons who have, or whom you believe may have, knowledge of those facts.

ANSWER:

17. Identify all communications you have had with former, current, and/or prospective customers and/or OEMs concerning asTech and/or the asTech Device. For each such communication, please state (a) the names of all parties to the communication; (b) the format of the communication (via telephone, e-mail, etc.); (c) the substance of the communication; (d) the date or approximate date of the communication; and (e) any documents that evidence such communications.

ANSWER:

18. Identify all allegedly false claims AirPro contends that asTech.has made about AirPro.

ANSWER:

Dated: May 6, 2019

Respectfully submitted,

MCGUIREWOODS LLP

By: /s/ Yasser A. Madriz

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Repairify, Inc., d/b/a asTech,

Plaintiff,

v.

AirPro Diagnostics LLC,

Defendant.

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CIVIL ACTION NO. 4:19-CV-1370

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S REQUEST FOR EXPEDITED DISCOVERY**

THIS MATTER comes before the Court on Plaintiff Repairify, Inc.’s, d/b/a asTech, (“asTech”) Motion for Expedited Discovery (the “Motion”) (ECF No. _____), seeking to serve expedited discovery on Defendant AirPro Diagnostics LLC (“AirPro” or “Defendant”).

Based on the facts and authority set forth in the Motion; asTech’s expedited discovery requests; any opposition papers filed by AirPro; and any oral argument and evidence submitted by counsel, the Court hereby finds that the Motion has merit and should be GRANTED.

WHEREFORE, the Court hereby GRANTS asTech’s Motion and ORDERS that:

- a. AirPro must preserve—and not destroy, modify, alter, or conceal—all documents, e-mails, electronic media, and physical items relevant to the matters set forth in asTech’s Complaint (ECF No. 1);
- b. AirPro must respond to asTech’s First Set of Expedited Interrogatories and First Set of Expedited Requests for Production within fourteen (14) calendar days of the date of this Court’s Order; and
- c. AirPro must present the following individuals for deposition at least ten (10) calendar days before the date of the Hearing on asTech’s Application for

Preliminary Injunction at a date, time, and place agreed to by the parties or, failing agreement, as set by asTech's Notice of Deposition.

- i. AirPro's corporate representative(s);
- ii. Lonnie E. Margol of AirPro;
- iii. Chuck Olsen of AirPro; and
- iv. Frank LaViola of AirPro.

ENTERED this _____ day of _____, 2019.

UNITED STATES DISTRICT JUDGE

Submitted by:
Yasser A. Madriz
/s/ Yasser A. Madriz