

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MICROSOFT CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
DOES 1-10,)	<u>FILED UNDER SEAL</u>
)	
Defendants.)	
)	
)	
)	

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION
FOR PROTECTIVE ORDER TEMPORARILY SEALING
THIS CASE AND CERTAIN DOCUMENTS**

INTRODUCTION

Plaintiff has filed a Complaint and shortly will file an Application For An Emergency *Ex Parte* Order For Temporary Restraining Order and Related Relief (“TRO Application”) to stop the harmful and malicious Internet activities of Defendants Does 1-10, which are aimed at Microsoft Corporation, their customers, members, and the public. Plaintiff seeks *ex parte* relief to file this case in general and certain documents under seal because advance public disclosure or notice of this case or the requested relief would allow Defendants to evade such relief and further prosecution of this action, thereby perpetuating the irreparable harm at issue. Therefore, Plaintiff requests that this case in general and all documents filed

in this case be sealed pending execution of the temporary restraining order sought in Plaintiff's forthcoming TRO Application. Plaintiff's request is narrowly tailored to impose the least restriction on the public's right of access to information. Plaintiff requests that all sealed documents be immediately unsealed upon execution of the temporary restraining order.

ARGUMENT

The public has a right to access judicial records and documents, but this right is not absolute. *Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1245 (11th Cir. 2013). "The right of access does not apply to discovery and, where it does apply, may be overcome by a showing of good cause." *Id.* Pleadings and motions that are "presented to the court to invoke its powers or affect its decisions," whether or not characterized as dispositive," are subject to the public's right of access, and a showing of good cause must be made to seal them. *Id.* (citation omitted); *see also FTC. v. AbbVie Prods. LLC*, 713 F.3d 54, (11th Cir. 2013).

"When deciding whether to grant a party's motion to seal, the court is required to balance the historical presumption of access against any significant interests raised by the party seeking to file under seal." *Sheffield v. State Farm Fire & Casualty Co.*, No. 5:14-CV-38, 2016 WL 3546373, at *1 (S.D. Ga. June 23, 2016); *see also Romero*, 480 F.3d at 1246. In balancing these interests, courts look to "whether allowing access would impair court functions or harm legitimate

privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.” *Romero*, 480 F.3d at 1246.

Good cause can exist under a variety of circumstances where the moving party’s right to protect a legitimate interest outweighs the public’s right of access. One such circumstance is “when disclosure will cause the party to suffer a clearly defined and serious injury.” *Reid v. Viacom International Inc.*, No. 1:14-CV-1252-MHC, 2016 WL 4157208, at *2 (N.D. Ga., Jan. 25, 2016). Another is when a party’s privacy or proprietary interests are at stake, such as trade secrets. *Romero*, 480 F.3d at 1246; *see also Danimer Scientific, LLC v. Metabolix, Inc.*, No. 1:10-CV-102 (WLS), 2010 WL 11470643, at *2 (M.D. Ga. Nov. 9, 2010) (finding good cause to protect trade secrets and other confidential, proprietary information when disclosure would harm the parties' legitimate privacy interest in the information).

This Court has sealed records in a case similar to the one at hand. *See Microsoft Corp. v. Malikov*, No. 1:22-CV-1328-MHC, 2022 WL 1742862, at *5 (N.D. Ga. Apr. 8, 2022) (directing Plaintiffs to “move the Court to unseal this case and make the appropriate portions of the filings in this action accessible to the public.”) Moreover, courts in other judicial districts have sealed records when

doing so was necessary to protect against cybercrime. *E.g.*, *Oneamerica Financial Partners, Inc. v. T-Systems North America, Inc.*, No. 115CV01534TWPKL, 2016 WL 891349, at *4 (S.D. Ind., Mar. 9, 2016) (granting motion to seal information regarding plaintiffs' IT security and infrastructure that if disclosed, could make plaintiff vulnerable to a hacker attack); *In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (holding that compelling reasons existed to seal complaint because it contained information that could be used "to circumvent Google's anti-virus and anti-spam mechanisms"). Thus, an effort to thwart future cyberattacks is sufficient good cause to seal sensitive information. *See Music Group Macao Commercial Offshore Ltd v. Foote*, No. 14-cv-03078-JSC, 2015 WL 3993147, at *2 (N.D. Cal. Jun. 30, 2015) ("Weighing the public interest in understanding the judicial process against Plaintiff's allegation that disclosing server data may harm it by encouraging another cyberattack, or at least making it feasible, the Court finds a compelling reason to seal").

In this case, Plaintiff's right and interest in protecting its ability to obtain *ex parte* temporary relief, and the necessity of sealing to Plaintiff's ability to obtain such relief, is paramount over any competing public interest to immediate access to the information Plaintiff requests to be sealed. If Plaintiff's papers are not sealed, the relief sought would very likely be rendered fruitless, and there is substantial risk Defendants would destroy evidence. The harm that would be caused by public

filing of Plaintiff's Complaint and related papers would far outweigh the public's right to access that information. Moreover, there is no need for public access to these documents while Plaintiff is seeking *ex parte* temporary relief, which will only be effective if the materials remain under seal until after Plaintiff is able to obtain that relief. Applying the balancing test demonstrates that Plaintiff's interest in protecting the confidentiality of the pleadings far outweighs any public right to disclosure of that information.

There is a real and substantial risk that if this case and documents filed are made public before Plaintiff can execute the temporary restraining order, Defendants will destroy all evidence of their prior activities, change their online identities, and move their infrastructure to different servers to continue carrying out their illicit activities. Further, Plaintiff only seeks to seal such information for a limited period of time. After Plaintiff obtains effective *ex parte* temporary relief, Plaintiff intends to immediately commence its efforts to provide Defendants notice of the preliminary injunction hearing and service of the Complaint. All documents will then be unsealed and the public will be given full access to these proceedings. Plaintiff, upon execution of the *ex parte* relief, will file with the Clerk of the Court a Notice that the temporary restraining order has been executed.

Should, however, the Court decide not to grant the *ex parte* temporary relief that Plaintiff requests in its forthcoming TRO Application, Plaintiff respectfully

requests that such materials remain sealed for an indefinite period, as public disclosure or notice absent the *ex parte* relief requested would facilitate Defendants' harmful and malicious Internet activities.

CONCLUSION

For the foregoing reasons, Plaintiff requests that this case in general and the following documents be kept under seal in accordance with Fed. R. Civ. P. 26(c)(1) pending execution of the *ex parte* relief sought in the forthcoming TRO

Application:

1. Plaintiff's Complaint, and the attachments thereto;
2. Civil Cover Sheet; and
3. Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant to Fed. R. Civ. P. 7.1.

Plaintiff respectfully requests that the case and these materials be sealed pending execution of the *ex parte* temporary relief sought in the forthcoming TRO Application. Plaintiff respectfully requests that immediately upon execution of the temporary restraining order, the instant case be unsealed and the foregoing documents be filed in the public docket. Upon execution of the *ex parte* relief, Plaintiff will file with the Clerk of the Court a Notice that the temporary restraining order has been executed. Plaintiff further requests that upon execution of the temporary restraining order, Plaintiff be permitted to disclose such materials

as it deems necessary, including to commence its efforts to provide Defendants notice of the preliminary injunction hearing and service of the Complaint.

Plaintiff respectfully requests that should the Court decide not to grant the *ex parte* temporary relief requested in the forthcoming TRO Application, that the materials be sealed indefinitely.

Dated: May 13, 2025

Respectfully submitted,

/s/ Joshua D. Curry

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CERTIFICATION OF COMPLIANCE

Pursuant to L.R. 7.1(D), N.D. Ga., counsel for Plaintiff hereby certifies that this Motion has been prepared with one of the font and point selections approved by the Court in L.R. 5.1, N.D. Ga.

Dated: May 13, 2025

/s/ Joshua D. Curry