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EASTERN DISTRICT OF VIRGINIA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

Microsoft Corporation, a Washington State Corporation and LF Projects, LLC, a Delaware State Series Limited Liability Company,

Plaintiffs,

v.

Abanoub Nady (also known as MRxC0DER),

and

John Does 1-4, Controlling A Computer Network and Thereby Injuring Plaintiffs and Its Customers,

Defendants.

Civil Action No.

**FILED UNDER SEAL PURSUANT TO  
LOCAL RULE 5**

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PROTECTIVE ORDER  
TEMPORARILY SEALING DOCUMENTS**

Plaintiffs' submit the following memorandum in support of their Motion for a Protective Order Sealing Documents.

**BACKGROUND**

Microsoft Corporation and LF Projects, LLC (collectively, "Plaintiffs") have filed a Complaint and an *Ex Parte* Application for an Emergency Temporary Restraining Order and Order to Show Cause re Preliminary Injunction ("TRO Application") to prevent the activities of Abanoub Nady (also known as MRxC0DER) and John Doe Defendants 1-4 (collectively "Fake ONNX Defendants") who are engaged in harmful and malicious Internet activities directed at Plaintiffs, its customers, and the general public. Plaintiffs seek *ex parte* relief in its TRO Application to disable the recently registered domains set forth in **Appendix A** to the Proposed Order and mitigate

against the irreparable harm caused by the Fake ONNX Defendants criminal conduct.

Plaintiffs seek this relief under seal, because advance public disclosure or notice of the requested relief would allow the Fake ONNX Defendants to evade such relief and further prosecution of this action, thereby perpetuating the irreparable harm at issue. The reasons and bases for Plaintiffs' requested relief are set forth in detail in the *Ex Parte* Application For Temporary Restraining Order filed concurrently herewith. Therefore, Plaintiffs request that the *Ex Parte* Application for Temporary Restraining Order and associated pleadings be sealed pending execution of the *ex parte* relief sought in Plaintiffs' Temporary Restraining Order, in particular disabling of the domains set forth in **Appendix A** to the Proposed Order. Plaintiffs' requested sealing order is narrowly tailored to impose the least restriction on the public's right of access to information as possible. Plaintiffs request that all sealed documents be immediately unsealed upon execution of the portion of the Order disabling the domains set forth in **Appendix A** to the Proposed Order. As soon as that relief is executed, Plaintiffs will file a notice of execution and will seek unsealing of the documents, such that all papers will be made available on the public docket.

### **ARGUMENT**

The First Amendment provides for public access to the courts, but that right of access is not without limits. *Va. Dep't of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004). Indeed, "the trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." *In re The Knight Publ'g Co.*, 743 F.2d 231, 235 (4th Cir. 1984); *see also Rushford v. New Yorker Magazine*, 846 F.2d 249, 253 (4th Cir. 1988) (stating that to place documents under seal, the court must determine "that the denial [of access] serves an important governmental interest and that there is no less

restrictive way to serve that governmental interest.”).

Under Fourth Circuit law, the district court must do the following prior to sealing court records: (1) give public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives. *Ashcraft v. Conoco*, 218 F.3d 282, 288 (4th Cir. 2000) (citing *In re Knight Pub.[sic] Co.*, 743 F.2d 231, 235-36 (4th Cir. 1984)); *In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 294 (4th Cir. 2013) (finding no error to seal documents and noting “[t]he mere fact that a case is high profile in nature does not necessarily justify public access”).

The Federal Rules of Civil Procedure also recognize the important public and judicial interest in protecting confidential business information. *See* Fed. R. Civ. P. 26(c)(1)(G) (empowering courts to order “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way”). Likewise, Supreme Court and Fourth Circuit authority recognize the necessity of non-public *ex parte* proceedings. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 415 U.S. 423, 439 (1974) (“Ex parte temporary restraining orders are no doubt necessary in certain circumstances.”); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999) (“[T]emporary restraining orders may be issued without full notice, even, under certain circumstances, *ex parte*[.]”); *Bell v. True*, 356 F. Supp. 2d 613, 617 n.3 (W.D. Va. 2005) (“Material allowed to be filed *ex parte* will of course be kept sealed, to prevent its disclosure outside of the court.”); *see also Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005) (upholding sealing of *ex parte* search warrants based on risk that evidence will be

destroyed).<sup>1</sup>

If notice is given prior to issuance of a TRO, it is likely that the Fake ONNX Defendants will be able to quickly mount an alternate command and control structure and direct the vast majority of the infiltrated computers to begin to communicate through that alternate structure before the TRO can have any remedial effects. Declaration of Jason Lyons in Support of Plaintiffs' *Ex Parte* Application for Temporary Restraining Order ("Lyons Decl.") ¶¶ 70-72. Thus, public disclosure of this filing would undermine the relief sought by Plaintiffs. *Id.*

In this case, Plaintiffs' rights and interests in protecting their ability to obtain emergency *ex parte* temporary relief, and the necessity of sealing their pleadings is paramount over any competing public interest to *immediate* access to the information Plaintiffs requests be sealed. If Plaintiffs' papers are not sealed, the relief sought would very likely be rendered fruitless and there is a substantial risk Defendants would destroy evidence. Fake ONNX Defendants are sophisticated cybercriminals.

Given Plaintiffs' actions against similar unlawful Internet activity, even disclosing that Plaintiffs has initiated this case risks giving Defendants the opportunity to change their command and control infrastructure. Based on similar actions, it is likely that Defendants in this case will take similar steps to destroy evidence and move their command and control infrastructure if they are given notice of the pending legal action against them.

The harm that would be caused by the public filing of Plaintiffs' Complaint and moving papers would far outweigh the public's right to access to that information. There is no need for the public to have immediate access to the Complaint, TRO Application, and supporting documents while Plaintiffs' are seeking *ex parte* relief which will only be effective if these materials remain under seal. Applying the balancing test set forth in governing law demonstrates that Plaintiffs'

interest in obtaining effective relief outweighs any immediate public right to disclosure.

Plaintiffs only seek to seal such information for a limited period of time, until after effective *ex parte* temporary relief has been obtained. After such point, sealing will no longer be necessary, and Plaintiffs will immediately commence efforts to provide Defendants notice of the preliminary injunction hearing and service of the Complaint—at which point, all documents will be unsealed and the public will be given full access to these proceedings. Plaintiffs, 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* relief Plaintiffs' requests, Plaintiffs asks 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.

Given the limited period of sealing as an alternative that balances the public interest in access with Plaintiffs' important interests in maintaining these materials under seal for a brief period of time, granting the instant request to seal is warranted and consistent with the legal framework for addressing this issue.

### **CONCLUSION**

Therefore, for all the foregoing reasons, Plaintiffs requests that this case and the following documents in particular be kept under seal in accordance with Fed. R. Civ. P. 26(c)(1) and Local Civil Rule 5, pending execution of the *ex parte* relief sought in the TRO Application:

1. Plaintiffs' Complaint and Appendices in support thereof;
2. Civil Cover Sheet;
3. Summons to Abanoub Nady and John Does 1-4;

4. Application for an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
5. Brief in Support of Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
6. [Proposed] Order Granting Plaintiffs' Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
7. Declaration of Jason B. Lyons in Support of Plaintiffs' Application for an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
8. Declaration of Michael Dolan in Support of Plaintiffs' Application for an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
9. Declaration of Jeffrey L. Poston in Support of Plaintiffs' Application for an Emergency *Ex Parte* Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
10. Motion for Protective Order Temporarily Sealing Documents;
11. Brief in Support of Motion for Protective Order Temporarily Sealing Documents;
12. The declaration of Jeffrey L. Poston in Support of Motion for Protective Order Temporarily Sealing Documents;
13. [Proposed] Order Granting Plaintiffs' Motion for Protective Order Temporarily Sealing Documents;
14. Motion for Leave to Exceed Page Limits Re: TRO Application
15. Brief in Support of Motion for Leave to Exceed Page Limits Re: TRO Application
16. Declaration of Jeffrey L. Poston in Support of Motion for Leave to Exceed Page Limits Re: TRO Application

17. [Proposed] Order Granting Motion for Leave to Exceed Page Limits Re: TRO Application; and

18. *Pro Hac Vice* Applications for Jeffery L. Poston, Garylene Javier, and Anna Z. Saber.

Plaintiffs respectfully requests that the case and these materials be sealed pending execution of the *ex parte* temporary relief sought in Plaintiffs' TRO Application. Plaintiffs respectfully requests that immediately upon the 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, Plaintiffs will file with the Clerk of the Court a Notice that the temporary restraining order has been executed. Plaintiffs further requests that upon execution of the temporary restraining order, Plaintiffs 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.

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

Dated: November 12, 2024

Respectfully submitted,  


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