

FILED

MAR 14 2019

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICROSOFT CORPORATION,

Plaintiff,

v.

JOHN DOES 1-2,

Defendants.

Case: 1:19-cv-00716 (JURY-DEMAND)
Assigned To : Cooper, Christopher R.
Assign. Date : 3/14/2019
Description: TRO/PI

Chief Judge Beryl A. Howell

ORDER

Pending before the Court is plaintiff Microsoft Corp.'s Motion for a Temporary Sealing Order related to its instant action seeking an *ex parte* preliminary injunction. See LCvR 40.7(f) (stating that the Chief Judge shall "hear and determine . . . motions in any case not already assigned" including "motion[s] to seal the complaint"); see also LCvR 5.1(h)(1) ("Absent statutory authority, no case or document may be sealed without an order from the Court."). The motion is granted, subject to any further consideration by the United States District Judge to whom this case is randomly assigned.

I. LEGAL STANDARD

"The starting point in considering a motion to seal court records is a strong presumption in favor of public access to judicial proceedings." *Hardaway v. D.C. Hous. Auth.*, 843 F.3d 973, 980 (D.C. Cir. 2016) (quoting *EEOC v. Nat'l Children's Ctr., Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996)). Courts should consider six factors, originally identified in *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980), in determining whether that presumption may be overcome, including:

(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure,

and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.”

Metlife, Inc. v. Fin. Stability Oversight Council, 865 F.3d 661, 665 (D.C. Cir. 2017) (quoting *Nat’l Children’s Ctr.*, 98 F.3d at 1409 (citing *Hubbard*, 650 F.2d at 317–22)). In “motions to seal or unseal judicial records, the *Hubbard* test has consistently served as our lodestar because it ensures that we fully account for the various public and private interests at stake,” *Metlife, Inc.*, 865 F.3d at 666.

II. DISCUSSION

The plaintiff, Microsoft, requests temporary sealing of its pleadings associated with the instant *ex parte* Motion for a Preliminary Injunction. Pl.’s Mot. for Sealing Order (“Pl.’s Mot.”) at 1. Microsoft has filed the motion for a preliminary injunction “to prevent the activities of [defendants John Does 1 and 2] who are engaged in harmful and malicious Internet activities directed at Microsoft, its customers, and the general public.” Pl.’s Mem. in Supp. of Mot. for Sealing Order (“Pl.’s Mem.”) at 1. Specifically, Microsoft seeks to “disable the recent registered domains set forth in Appendix A to [its] Complaint,” *id.* and warns that “advance public disclosure or notice of that requested relief would allow Defendants to evade such relief and further prosecution of this action, thereby perpetuating the irreparable harm at issue,” *id.* at 1–2. Microsoft avers that its “rights and interests in protecting its ability to obtain *ex parte* temporary relief, and the necessity of sealing its pleadings in order to effectively disable the domains . . . , is paramount over any competing public interest to *immediate* access to the information Microsoft requests to be sealed.” *Id.* at 4 (emphasis in original).

Moreover, Microsoft suggests that if its “papers are not sealed, the relief sought would very likely be rendered fruitless, and there is a substantial risk Defendants [elsewhere referred to

as ‘highly sophisticated cybercriminals’] would destroy evidence.” *Id.* Microsoft points to past experience suggesting that when the “defendants become aware of efforts to mitigate or investigate their activities, they take steps to conceal their activities and to conceal the injury caused to their victims, making it more difficult for their victims to adequately assess the damage or take steps to mitigate that injury.” *Id.* at 5. This experience “underscores the risk that the 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” instant action. *Id.*

Microsoft notes that it “only seeks to seal [its pleadings] for a limited period of time, until after effective ex parte temporary relief has been obtained, disabling the domains. . . . [after which] all documents will be unsealed and the public will be given full access to these proceedings.” *See id.* at 6. If the United States District Judge to whom this case is assigned grants Microsoft’s request to disable the defendants’ domains, Microsoft proposes to file a Notice with the Clerk of the Court when that order is executed, at which point the pleadings in this matter may be unsealed. *Id.* at 2, 6; Pl.’s Mot. at 2.

At this early stage of the litigation, the Court is persuaded that the plaintiff has met its burden of showing that the interests in temporarily sealing this case outweigh the public interest in disclosure because sealing is necessary in order to protect evidence and to prevent the defendants from taking steps to conceal their activities or any injuries caused to plaintiff or others. Therefore, the Court grants the plaintiff’s motion to seal this case.

III. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the plaintiff’s Motion for a Temporary Sealing Order is **GRANTED**;
and it is further

ORDERED that this action, and all papers and pleadings filed in connection therewith, shall remain sealed until further Order of the Court; and it is further

ORDERED that the plaintiff will be expected to discuss its proposal for the process of lifting the sealing order at the first scheduled Court conference on this matter.

SO ORDERED.

Date: March 14, 2019



Beryl A. Howell

BERYL A. HOWELL
Chief Judge