

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

MICROSOFT CORPORATION, a	)	
Washington corporation, FS-ISAC,	)	
INC., a Delaware Corporation,	)	
HEALTH-ISAC, INC., a Florida	)	Civil Action No:
corporation,	)	
	)	
Plaintiffs,	)	
	)	<b><u>FILED UNDER SEAL</u></b>
v.	)	
	)	
DENIS MALIKOV, and	)	
JOHN DOES 1-7,	)	
	)	
	)	
Defendants.	)	

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**NOTICE OF HEARING RE: MOTION FOR  
PROTECTIVE ORDER TEMPORARILY SEALING DOCUMENTS**

Please take notice that should the Court find it appropriate to hear oral argument on Plaintiffs’ Motion for a Protective Order Temporarily Sealing Documents, Plaintiffs respectfully requests oral argument to be set for April 18, 2022 at 10:00 a.m., or as soon as the matter may be heard.

Dated: April 4, 2022

Respectfully submitted,

/s/ Joshua D. Curry

Joshua D. Curry

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Jonathan D. Goins (Georgia Bar No. 738593)  
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*Attorneys for Plaintiff Microsoft Corporation*

**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: April 4, 2022

Respectfully submitted,

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HEALTH-ISAC, INC., a Florida )  
corporation, )  
Plaintiffs, )  
v. )  
DENIS MALIKOV, and )  
JOHN DOES 1-7, )  
Defendants. )

Civil Action No:

**FILED UNDER SEAL**

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**PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER TEMPORARILY SEALING DOCUMENTS**

Pursuant to Fed. R. Civ. P. 26(c)(1), Plaintiffs Microsoft Corporation, FS-ISAC, Inc., and HEALTH-ISAC, Inc. hereby moves for a protective order temporarily sealing the instant case in general, and the following documents in particular, filed by Plaintiffs in this action:

1. Plaintiffs' Complaint and Appendices A in support thereof;
2. Civil Cover Sheet;
3. Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction

4. Brief in Support of Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
5. [Proposed] Order Granting Plaintiffs' Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
6. Declaration of Christopher Coy in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
7. Declaration of Jason 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 Gabriel M. Ramsey in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
9. Declaration of Rodelio G. Finones in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
10. Declaration of Brian Tishuk in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;

11. Declaration of Errol Weiss in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
12. Declaration of Tomas Prochazka in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
13. Plaintiffs' Motion for Leave to Exceed Page Limits Re: Plaintiffs' Brief in Support of Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
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15. Notice of Hearing Re: Plaintiffs' Motion for Leave to Exceed Page Limits Re: Plaintiffs' Brief in Support of Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
16. Motion for Protective Order Temporarily Sealing Documents;

17. Brief in Support of Motion for Protective Order Temporarily Sealing Documents

18. [Proposed] Order Granting Plaintiffs' Motion for Protective Order Temporarily Sealing Documents;

19. Notice of Hearing Re: Motion for Protective Order Temporarily Sealing Documents;

20. *Pro Hac Vice* Applications for Richard Boscovich, Gabriel M. Ramsey, Kayvan Ghaffari, Emily Alban, Garylene Javier, and Anna Saber.

Plaintiffs respectfully requests that the case in general and these materials be sealed pending execution of the *ex parte* temporary relief sought in Plaintiffs' Application for Temporary Restraining Order. Plaintiffs respectfully requests that 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 upon the temporary restraining order, Plaintiffs be permitted to disclose such materials as it deems necessary to commence its efforts to provide Defendants notice of the preliminary injunction hearing and service of the Complaint.

Plaintiffs respectfully requests that should the Court decide not to grant the *ex parte* relief requested in Plaintiffs' Application for an Emergency Temporary



Restraining Order and Order to Show Cause re Preliminary Injunction, that the materials be sealed indefinitely.

Dated: April 4, 2022

Respectfully submitted,

/s/ Joshua D. Curry

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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: April 4, 2022

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MICROSOFT CORPORATION, a  
Washington corporation, FS-ISAC,  
INC., a Delaware Corporation,  
HEALTH-ISAC, INC., a Florida  
corporation,

Plaintiffs,

v.

DENIS MALIKOV, and  
JOHN DOES 1-7,

Defendants.

Civil Action No:

**FILED UNDER SEAL**

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

**INTRODUCTION**

Plaintiffs have filed a Complaint and Ex Parte Application for an Emergency Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction (“TRO Application”) to stop the harmful and malicious Internet activities of Defendants Denis Malikov and John Does 1-7, which are aimed at Microsoft Corporation, FS-ISAC, Inc., and HEALTH-ISAC, Inc., their customers, members, and the public. Plaintiffs seek *ex parte* relief in the TRO Application that will cease the irreparable harm resulting from Defendants' conduct. Plaintiffs’ *ex*

*parte* relief under seal because advance public disclosure or notice of the requested relief would allow Defendants to evade such relief and further prosecution of this action, thereby perpetuating the irreparable harm at issue. The reasons for Plaintiffs' request are set forth in detail in its TRO Application and supporting declarations. Therefore, Plaintiffs request that this case and all documents filed in this case be sealed pending execution of the temporary restraining order sought in Plaintiffs' TRO Application. Plaintiffs' request is narrowly tailored to impose the least restriction on the public's right of access to information. Plaintiffs request 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 see *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).

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, Plaintiffs' right and interest in protecting its ability to obtain *ex parte* temporary relief, and the necessity of sealing to Plaintiffs' ability to obtain

such relief, is paramount over any competing public interest to immediate access to the information Microsoft requests to be sealed. If Plaintiffs' 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 Plaintiffs' Complaint and moving papers would far outweigh the public's right to access that information. Moreover, there is no need for public access to these documents while Plaintiffs are seeking *ex parte* temporary relief, which will only be effective if the materials remain under seal until after Microsoft is able to obtain that relief. Applying the balancing test demonstrates that Microsoft'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 Plaintiffs 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, Plaintiffs only seek to seal such information for a limited period of time. After Microsoft obtains effective *ex parte* temporary relief, Plaintiffs intend 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. 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* temporary relief that Plaintiffs request in the TRO Application, Plaintiffs 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, Plaintiffs request that this case 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 TRO Application:

1. Plaintiffs' Complaint and Appendices A in support thereof;
2. Civil Cover Sheet;
3. Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
4. Brief in Support of Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction

5. [Proposed] Order Granting Plaintiffs' Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
6. Declaration of Christopher Coy in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
7. Declaration of Jason 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 Gabriel M. Ramsey in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;
9. Declaration of Rodelio G. Finones in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction
10. Declaration of Brian Tishuk in Support of Plaintiffs' Application for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction;

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20. *Pro Hac Vice* Applications for Richard Boscovich, Gabriel M. Ramsey, Kayvan Ghaffari, Emily Alban, Garylene Javier, and Anna Saber.

Plaintiffs respectfully request that the case and these materials be sealed pending execution of the *ex parte* temporary relief sought in the TRO Application. Plaintiffs 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, 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, Microsoft 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.

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

Dated: April 4, 2022

Respectfully submitted,

/s/ Joshua D. Curry

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Dated: April 4, 2022

Respectfully submitted,

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Defendants.	)	

**DECLARATION OF GABRIEL M. RAMSEY IN SUPPORT OF MOTION  
FOR PROTECTIVE ORDER TEMPORARILY SEALING DOCUMENTS**

I, Gabriel M. Ramsey, declare as follows:

1. I am an attorney admitted to practice in the State of California. I am a partner at the law firm of Crowell & Moring LLP (“Crowell”), counsel of record for the plaintiffs in this matter. I make this declaration in support of Plaintiffs’ Motion for a Protective Order Temporarily Sealing Documents. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify to the following under oath.

2. This case arises out of the harmful and malicious Internet activities of Defendants Denis Malikov and John Does 1-7, (collectively "Defendants"). I am

informed and believe that Defendants are sophisticated cybercriminals who specialize in stealing sensitive information from computer networks.

3. I am informed and believe that Defendants make unauthorized access to Microsoft's services and software, hack into a target's computer network, and in particular Microsoft's software, install malware on those networks giving them long-term and surreptitious access to those networks, and then locate and exfiltrate sensitive information from them. I am informed and believe, for reasons explained in detail in the declarations of Christopher Coy, Rodel Finones, and Jason Lyons in support of Plaintiffs' Application For Temporary Restraining Order, And Order To Show Cause For Preliminary Injunction ("TRO Application") - that permitting Defendants to learn of these proceedings prior to execution of the temporary *ex parte* relief sought in the TRO Application will significantly impede, if not preclude, Plaintiffs' ability to obtain effective relief against Defendants. This is because Defendants are highly-sophisticated cybercriminals capable of quickly adapting the command and control infrastructure used to perpetrate Defendants' unlawful conduct in order to overcome Microsoft's remediation efforts.

4. I am informed and believe that, absent a protective order, there is a substantial risk that Defendants will learn of these proceedings before the temporary *ex parte* relief sought in the TRO Application can be effected and will

take steps to evade the relief sought. Over the past seven years, Microsoft has prosecuted many similar cases. These cases all involved similar litigation strategies and claims and have involved John Doe defendants conducting illegal activities through identifiable but movable online command and control infrastructures similar to that used by Defendants. In three of those cases, the John Doe defendants immediately took action to attempt to defy and evade the court's order as soon as they detected legal action being taken against them.

5. For example, in a case against operators of a botnet known as "Rustock," (*Microsoft v. John Does, 1-11*, Case No. 2:11-cv-00222 (W.D. Wa. 2011) (Robart, J)), the defendants attempted to destroy evidence on a server using remote means very shortly after Microsoft began execution of the seizure order and literally while forensic investigators were examining the server.

6. In cases against operators of two other botnets, "ZeroAccess" (*Microsoft Corporation v. John Does 1-8 et al.*, Case No. A13-cv-1014-SS (W.D. Tex. 2013) (Sparks, J.)) and "Dorkbot" (*Microsoft v. John Does 1-5*, Case No. 1:15-cv-06565-JBW-LB (E.D.N.Y. 2015)), the defendants in each case attempted to defy the courts injunctive order by attempting to move their command and control infrastructure as soon as they detected legal action being taken against them.

7. Thus, given the very similar circumstance of the case against Defendants, it is my belief that even disclosing that Microsoft has initiated this case will give Defendants the opportunity to adapt the command and control infrastructure so that they can continue to perpetrate their unlawful conduct. For this reason, Microsoft respectfully requests that all documents filed in this case be temporarily sealed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on April 4, 2022.

A handwritten signature in black ink, appearing to read "Gabriel M. Ramsey", written in a cursive style.

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Gabriel M. Ramsey