THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495-JHC

PLAINTIFFS' MOTION TO TEMPORARILY SEAL THE PROPOSED ORDER FOR PLAINTIFFS' MOTION TO ENTER AN ESI ORDER

NOTE ON MOTION CALENDAR:
Friday, April 19, 2024

Pursuant to Local Civil Rule 5(g) and § 5.6 of the Protective Order (Dkt. #160), Plaintiffs respectfully move the Court to temporarily seal the Proposed Order for Plaintiffs' Motion to Enter an ESI Order. Plaintiffs are filing this motion only because Amazon maintains that portions of the Proposed Order should be sealed. Plaintiffs do not claim confidentiality with respect to any information that is the subject of this Motion.

Pursuant to Local Civil Rule 5(g)(3)(A), the undersigned counsel certify that they met and conferred with Amazon in an attempt to reach agreement on the need to file the Proposed Order for Plaintiffs' Motion to Enter an ESI Order under seal. Declaration of Christine Kennedy

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in Support of Plaintiffs' Motion to Temporarily Seal the Proposed Order for Plaintiffs' Motion to Enter an ESI Order ("Kennedy Decl.") at ¶¶ 2-3. The parties were unable to reach an agreement. *Id*.

ARGUMENT

Section 5.6 of the Protective Order requires any party filing information that has been designated as Protected Material by another party or non-party to "confer with the Designating Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the Designating Party will remove the designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted." Protective Order § 5.6. Plaintiffs have met and conferred with Amazon regarding the Proposed Order for Plaintiffs' Motion to Enter an ESI Order, and Amazon has taken the position that portions of it should be sealed. Kennedy Decl. at ¶¶ 2-3.

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when a court considers a request to seal, "a strong presumption in favor of access is the starting point." *Id.* at 1178 (internal quotation marks and citations omitted); *see also* W.D. Wash. LCR 5(g) ("There is a strong presumption of public access to the court's files."). Courts apply a "good cause" standard when considering requests to seal materials in connection with non-dispositive motions. *Kamakana*, 447 F.3d at 1180.

Amazon asserts that portions of the Proposed Order for Plaintiffs' Motion to Enter an ESI Order are confidential, and contain sensitive, non-public information regarding Amazon's information technology systems. Kennedy Decl. at ¶ 3.

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Plaintiffs do not agree that any portions of the Proposed Order for Plaintiffs' Motion to Enter an ESI Order should be sealed, and are filing this motion solely based on Amazon's assertion of confidentiality. If entered, the Proposed Order would be a court order, and does not contain any information that would prejudice Amazon if publicly disclosed. If Amazon files a "specific statement" supporting its request to seal, as required by Local Civil Rule 5(g)(3)(B), Plaintiffs will address Amazon's claimed grounds for sealing in their reply brief.

CONCLUSION

Pursuant to Local Civil Rule 5(g) and § 5.6 of the Protective Order (Dkt. #160), Plaintiffs respectfully request that the Court temporarily seal the Proposed Order for Plaintiffs' Motion to Enter an ESI Order until Amazon has had an opportunity to file the statement required by Local Civil Rule 5(g)(3)(B) and the Court has ruled on any request to permanently seal.

Dated: March 22, 2024

I certify that this brief contains 552 words, in compliance with LCR 7(e)(4).

Respectfully submitted,

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