

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

1 in Support of Plaintiffs’ Motion to Temporarily Seal the Proposed Order for Plaintiffs’ Motion to
2 Enter an ESI Order (“Kennedy Decl.”) at ¶¶ 2-3. The parties were unable to reach an agreement.

3 *Id.*

4 **ARGUMENT**

5 Section 5.6 of the Protective Order requires any party filing information that has been
6 designated as Protected Material by another party or non-party to “confer with the Designating
7 Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the Designating
8 Party will remove the designation, whether the document can be redacted, or whether a motion to
9 seal or stipulation and proposed order is warranted.” Protective Order § 5.6. Plaintiffs have met
10 and conferred with Amazon regarding the Proposed Order for Plaintiffs’ Motion to Enter an ESI
11 Order, and Amazon has taken the position that portions of it should be sealed. Kennedy Decl. at
12 ¶¶ 2-3.

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

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

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

7 **CONCLUSION**

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

12
13 Dated: March 22, 2024

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

14 Respectfully submitted,

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