

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

DXC TECHNOLOGY COMPANY, a)	
Nevada corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No:
JOHN DOES 1-2,)	
)	
)	
Defendants.)	FILED UNDER SEAL PURSUANT TO LOCAL RULE 5
)	
)	
)	
)	

**BRIEF IN SUPPORT OF DXC’S MOTION FOR PROTECTIVE ORDER
TEMPORARILY SEALING DOCUMENTS**

Plaintiff DXC Technology Company submits the following memorandum in support of its Motion for a Protective Order Sealing Documents.

BACKGROUND

DXC has 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 John Doe Defendants 1 and 2 (collectively “Defendants”) who are engaged in harmful and malicious Internet activities directed at DXC. DXC seeks *ex parte* relief in the TRO Application that will cease the irreparable harm resulting from Defendants’ conduct. DXC seeks *ex parte* relief under seal because advance public disclosure or notice of the requested relief would allow Defendants to evade such relief and render further prosecution of this action fruitless, thereby perpetuating the irreparable harm to DXC. The reasons for DXC’s request are set forth in detail in the TRO Application filed concurrently herewith. Therefore,

DXC requests that this case and all documents filed in this case be sealed pending execution of the temporary restraining order sought in DXC's TRO Application. DXC's requested sealing order is narrowly tailored to impose the least restriction on the public's right of access to information as possible. DXC requests that all sealed documents be immediately unsealed upon execution of the temporary restraining order.

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, Lcal 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).¹

In this case, DXC’s rights and interests in protecting its ability to obtain emergency *ex parte* temporary relief, and the necessity of sealing its pleadings is paramount over any competing public interest to *immediate* access to the information DXC requests be sealed. If DXC’s papers are not sealed, the relief sought would very likely be rendered fruitless and there is a substantial risk Defendants would destroy evidence. Defendants are sophisticated, well-resourced, organized, patient, reactive, and persistent cybercriminals. DXC was the victim of a

¹ This Court has recognized that “private interests, based not on the content of the material to be sealed, but instead on the relationship of the parties, might also have the potential to override even the stronger First Amendment presumptive right of public access.” *Level 3 Commc’ns., LLC v. Limelight Networks, Inc.*, 611 F. Supp. 2d 572, 583 (E.D. Va. 2009) (Davis, J.).

coordinated attack by defendants who installed and ran software without DXC's or its customers' knowledge or consent, to support the defendants' attacks and to attempt to steal information. Declaration of Mark Hughes In Support Of DXC's TRO Application ("Hughes Decl.") ¶18. Granting DXC possession of these domains will enable DXC to channel all communications to those domains to secure servers, and thereby significantly cut off the means by which the defendants deliver malicious files to DXC-owned systems. *Id.* at ¶22. Redirecting these domains of defendants will directly disrupt defendants' infrastructure, mitigating impact to DXC and its customers. *Id.*

Defendants' techniques are designed to resist technical mitigation efforts. For example, there are attributes of the malicious software and use of the domains that are designed to obfuscate defendants' activities. *Id.* at ¶24. If Defendants knew DXC sought the relief set forth in the TRO Application, they could quickly adapt and change the command and control infrastructure to new infrastructure, enabling them to evade the relief sought in the TRO Application. *Id.* Indeed, evidence shows that Defendants may attempt to abandon or decrease use of that infrastructure and move to new infrastructure in order to continue efforts to compromise DXC systems. *Id.* For this reason, providing notice to the defendants in advance of redirection of the domains at issue would render these particular attempts to disable the infrastructure futile. *Id.* Further, when the defendants become aware of efforts to mitigate or investigate their activities, they are likely to take steps to conceal their activities, making it more difficult for DXC to mitigate the impact going forward. *Id.* Even disclosing that DXC has initiated this case risks giving Defendants the opportunity to change their command and control infrastructure or destroy evidence.

The harm that would be caused by the public filing of DXC's 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 DXC is 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 DXC's interest in obtaining effective relief outweighs any immediate public right to disclosure.

DXC only seeks 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 DXC 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. DXC, 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 DXC requests, DXC 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 DXC's 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, DXC 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:

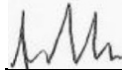
1. The instant Motion for Protective Order Sealing Documents and accompanying documents, including the Brief in support of this Motion;
2. The declaration of Gabriel M. Ramsey in Support of Motion for Protective Order Sealing Documents;
3. DXC's *Ex Parte* Application for an Emergency Temporary Restraining Order and Order to Show Cause re Preliminary Injunction and accompanying documents;
4. The Declaration of Mark Hughes in Support of DXC's *Ex Parte* Application for an Emergency Temporary Restraining Order and Order to Show Cause re Preliminary Injunction and attachments thereto;
5. [Proposed] Preliminary Injunction Order and accompanying documents.

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

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

Dated: July 20, 2020

Respectfully submitted,



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