

United States District Court  
Northern District of California

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

IN RE: PERSONALWEB TECHNOLOGIES, LLC ET AL., PATENT LITIGATION
AMAZON.COM, INC., and AMAZON WEB SERVICES, INC.,
Plaintiffs
v.
PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,
Defendants,
PERSONALWEB TECHNOLOGIES, LLC, a Texas limited liability company, and LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company,
Plaintiffs,
v.
TWITCH INTERACTIVE, INC. a Delaware corporation,
Defendant.

Case No. [18-md-02834-BLF](#)

**OMNIBUS ORDER RE: SEALING  
MOTIONS AT ECF 540 AND ECF 549**

[Re: ECF 540, 549]

Case No.: 5:18-cv-00767-BLF

[Re: ECF 154, 160]

Case No.: 5:18-cv-05619-BLF

[Re: ECF 66, 70]

Before the Court are administrative motions filed by PersonalWeb Technologies, LLC (“PersonalWeb”) and Amazon.com, Inc., and Amazon Web Services, Inc. (collectively, “Amazon”), and Twitch Interactive, Inc. (“Twitch”) to file under seal portions of their briefs and exhibits in connection with Amazon’s and Twitch’s motions for summary judgment. ECF 540, 549. For the reasons stated below, Amazon’s and Twitch’s motion to seal (ECF 540) is GRANTED IN PART and DENIED IN PART. PersonalWeb’s motion to seal (ECF 549) is GRANTED.

## I. LEGAL STANDARD

1 “Historically, courts have recognized a ‘general right to inspect and copy public records and  
2 documents, including judicial records and documents.’” *Kamakana v. City & Cty. Of Honolulu*,  
3 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597  
4 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor  
5 of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,  
6 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more  
7 than tangentially related to the underlying cause of action” bear the burden of overcoming the  
8 presumption with “compelling reasons” that outweigh the general history of access and the public  
9 policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir.  
10 2016); *Kamakana*, 447 F.3d at 1178–79.

11 However, “while protecting the public’s interest in access to the courts, we must remain  
12 mindful of the parties’ right to access those same courts upon terms which will not unduly harm  
13 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.  
14 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the  
15 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto Safety*,  
16 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access  
17 to court records attached only to non-dispositive motions because those documents are often  
18 unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving to seal  
19 the documents attached to such motions must meet the lower “good cause” standard of Rule 26(c).  
20 *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard requires a  
21 “particularized showing,” *id.*, that “specific prejudice or harm will result” if the information is  
22 disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir.  
23 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated by specific examples  
24 of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476  
25 (9th Cir. 1992). A protective order sealing the documents during discovery may reflect the court’s  
26 previous determination that good cause exists to keep the documents sealed, *see Kamakana*, 447  
27 F.3d at 1179–80, but a blanket protective order that allows the parties to designate confidential  
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documents does not provide sufficient judicial scrutiny to determine whether each particular document should remain sealed. *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

In addition to making particularized showings of good cause, parties moving to seal documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

## II. DISCUSSION

The Court has reviewed the parties’ sealing motions and the declarations of the designating parties submitted in support thereof. The Court finds that the parties have articulated compelling reasons to seal certain portions of the submitted documents. The proposed redactions are generally narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below.

### A. ECF 540 RE Amazon’s and Twitch’s Motions for Summary Judgment

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
540-5 (543-1)	Exhibit 1 to the Declaration of Saina S. Shamilov in support of Motion of Amazon.com, Inc., and Amazon Web Services	GRANTED as to the entire document	Exhibit 1 comprises, among other things, highly sensitive information about the technical design and operation of Twitch’s services

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
	<p>Inc. for Summary Judgment of Noninfringement and Motion of Twitch Interactive, Inc. for Summary Judgment of Noninfringement and to Exclude the Testimony of Erik de la Iglesia (“Shamilov Declaration” at ECF 543)</p> <p>Technical Report of PersonalWeb’s expert Erik de la Iglesia on infringement</p>		<p>including without limitation the characterization by PersonalWeb’s expert of Twitch’s confidential and proprietary source code and excerpts of depositions of Twitch’s technical witnesses. Both this highly confidential source code and the deposition transcripts have been designated under the Stipulated Protective Order and consist of sensitive information that Twitch maintains as confidential and does not reveal to the general public. <i>See</i> Declaration of Ravi R. Ranganath (“Ranganath Decl.”) ¶¶ 3-6, ECF 540-1.</p>
540-6 (543-2)	<p>Exhibit 2 to Shamilov Declaration</p> <p>Responsive Report of Amazon and Twitch’s expert Dr. Jon B. Weissman on non-infringement</p>	GRANTED as to the entire document.	<p>Exhibit 2 comprises, among other things, highly sensitive information about the technical design and operation of the Amazon and Twitch services, including without limitation the characterization by Amazon and Twitch’s expert of Amazon and Twitch confidential and proprietary source code and excerpts of depositions of technical witnesses. Both this highly confidential source code and the deposition transcripts have been designated under the Stipulated Protective Order and consist of sensitive information that Amazon and Twitch maintain as confidential and do not reveal to the general public.</p> <p>Disclosure of this non-public highly confidential information would put Amazon and Twitch at undue risk of serious harm by revealing trade secrets and confidential information that may put Amazon and Twitch at a disadvantage relative to competitors and competing services. <i>See</i> Ranganath Decl. ¶¶ 7-10.</p>
540-7 (543-4)	Exhibit 4 to Shamilov Declaration	GRANTED as to the entire	Exhibit 4 reflect sensitive business information. Specifically, Exhibit 4 is an excerpt of deposition testimony

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<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
	deposition transcript of James Richard		internal operation of Twitch's web servers. Disclosure of this non-public highly confidential information would put Twitch at undue risk of serious harm by revealing trade secrets and confidential business information that may put Twitch at a disadvantage relative to competitors and competing services. <i>See</i> Ranganath Decl. ¶¶ 11-13.
570-8 (543-7)	Exhibit 7 to Shamilov Declaration  Excerpt from the deposition transcript of Ronald Lachman from PersonalWeb Techs., LLC v. Microsoft Corp., No. 6:12-CV-00663 (E.D. Tex.)	GRANTED as to the entire document.	This exhibit contains excerpts of testimony from the Lachman Deposition regarding non-public aspects of the business negotiations between Kinetech, Inc. and Digital Island, Inc. Additionally, these deposition excerpts were previously designated as Confidential in the prior action, <i>PersonalWeb Techs., LLC v. Microsoft Corp.</i> , No. 6:12-cv-00663-LED (E.D. Tex.). Disclosure of non-public details regarding the negotiation and business deadlines between Digital Island and Kinetech, would put PersonalWeb at a competitive disadvantage. <i>See</i> Declaration of Viviana Boero Hedrick ("Hedrick Decl.") ¶¶ 3-7, ECF 568.
540-4 (541)	Portions of Amazon's Memorandum of Points and Authorities in Support of Motion of Amazon.com, Inc. and Amazon Web Services, Inc. for Summary Judgment on Noninfringement	DENIED as to the excerpt found at page:line nos.: 14:7-14:11	The designating party, PersonalWeb, has not requested to maintain under seal the designated portions of Amazon's Motion for Summary Judgment. <i>See</i> Ranganath Decl. ¶ 14; <i>see also generally</i> , Hedrick Decl.

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