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United States District Court
Northern District of California

**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](#)

**ORDER GRANTING IN PART
ADMINISTRATIVE MOTION TO
SEAL AT ECF 611**

[Re: ECF 611]

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

[Re: ECF 194]

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

[Re: ECF 98]

Before the Court is the administrative motion of Amazon.com, Inc., and Amazon Web Services, Inc. (collectively, “Amazon”), and Twitch Interactive, Inc. (“Twitch”) to file under seal portions of their Reply in Support of Motion for Attorney Fees and Cost (ECF 612), as well as several accompanying exhibits. For the reasons stated below, the Court GRANTS the motion IN PART.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. 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 considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

Parties moving to seal documents must also 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 Amazon and Twitch’s sealing motion and the declaration of the designating party submitted in support thereof. The Court finds that the parties have articulated compelling reasons to seal the requested documents. The Court’s rulings on the sealing request is

1 set forth in the table below.

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
ECF 611-4	Amazon's and Twitch's Reply in Support of Motion for Attorney Fees and Costs ("Reply")	GRANTED as to 12:12-21	<p>Portions of the Reply reference or describe documents designated as "Highly Confidential – Attorney's Eyes Only" by PersonalWeb. Declaration of Ravi R. Ranganath ("Ranganath Decl.") ¶¶ 2, 3, ECF 611-1.</p> <p>PersonalWeb requests that the Court maintain under seal only Exhibits 1 and 10 to the Gregorian Declaration and the portions of the Reply that reference or describe the contents of Exhibits 1 and 10, found in the Reply at 12:12-21. Declaration of Viviana Boero Hedrick ("Hedrick Decl.") ¶¶ 3-6, ECF 633.</p>
ECF 611-5	<p>Exhibit 1 to the Reply Declaration of Todd Gregorian in support of the Reply ("Gregorian Declaration")</p> <p>Excerpts of the August 22, 2019 deposition testimony of Kevin Bermeister</p>	GRANTED as to the entire document.	<p>PersonalWeb has designated this document as "Highly Confidential – Attorney's Eyes Only." Ranganath Decl. ¶¶ 2, 3.</p> <p>This exhibit contains excerpts of the deposition transcript of PersonalWeb's Non-Executive Chairman, Kevin Bermeister. In this testimony, Mr. Bermeister provides non-public and sensitive financial information describing settlements negotiations and licensing agreements entered into between PersonalWeb and third parties that are not part of this MDL proceeding, and that relate to the resolution of cases that also were never a part of this MDL proceeding. Hedrick Decl. ¶¶ 3-6</p>
ECF 611-6	Exhibit 9 to the Gregorian Declaration	DENIED	PersonalWeb has designated this document as "Highly Confidential – Attorney's Eyes Only."

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
	January 25, 2018 emails between PersonalWeb and its counsel.		The designating party, PersonalWeb, does not seek to seal this document. <i>See</i> Hedrick Decl. ¶ 4.
ECF 611-7	Exhibit 10 to the Gregorian Declaration Patent and licensing settlement agreement concerning the patents-in-suit	GRANTED as to the entire document.	PersonalWeb has designated this document as “Highly Confidential – Attorney’s Eyes Only.” Ranganath Decl. ¶¶ 2, 3. Exhibit 10 to the Gregorian Declaration is a settlement agreement between PersonalWeb and VigLink that was designated as “Highly Confidential – Attorneys’ Eyes Only” under the Stipulated Protective Order. This is a settlement agreement between PersonalWeb and an entity that is not now and was never a party to this MDL proceeding. Additionally, this settlement agreement contains highly sensitive financial information as it discloses revenue information belonging to Viglink, which is confidential information that PersonalWeb agreed to maintain as confidential under the terms of that settlement agreement. Hedrick Decl. ¶¶ 3-6.
ECF 611-8	Exhibit 11 to the Gregorian Declaration June 2015 letter from PersonalWeb’s counsel to an accused infringer of the patents-in-suit	DENIED	PersonalWeb has designated this document as “Highly Confidential – Attorney’s Eyes Only.” Ranganath Decl. ¶¶ 2, 3. The designating party, PersonalWeb, does not seek to seal this document. <i>See</i> Hedrick Decl. ¶ 4.
ECF 611-9	Exhibit 13 to the Gregorian Declaration Emails between PersonalWeb’s counsel and counsel for an accused infringer of the	DENIED	PersonalWeb has designated this document as “Highly Confidential – Attorney’s Eyes Only.” Ranganath Decl. ¶¶ 2, 3. The designating party, PersonalWeb, does not seek to seal

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
	patents-in-suit from January to March 2018		this document. <i>See</i> Hedrick Decl. ¶ 4.

III. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS IN PART Amazon and Twitch's administrative motion to seal at ECF 611. Amazon and Twitch shall file a revised redacted version of their Reply, and public versions of Exhibits 9, 11, and 13 to the Gregorian Declaration within one week of this order.

IT IS SO ORDERED.

Dated: October 5, 2020



BETH LABSON FREEMAN
United States District Judge

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