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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a Washington) corporation,)) No. CV07 936RSM
Plaintiff,)	
v.)) IMMERSION CORPORATION'S RESPONSE TO PLAINTIFFS MOTION TO SEAL ORIGINAL COMPLAINT
IMMERSION CORPORATION, a Delaware) corporation,)	
Defendant.))

Immersion Corporation has not yet responded to the Complaint in this action, but specially appears to respond briefly to Microsoft's Motion to Seal Original Complaint. The request to seal should be granted, but the body of Microsoft's motion regrettably misstates the pertinent background.

When Microsoft filed its original complaint in this case on June 18, 2007, it elected to include in its allegations confidential financial terms of an agreement between Immersion Corporation and Sony Computer Entertainment, Inc. and Sony Computer Entertainment America, Inc. Immersion had previously given this information to Microsoft only after Microsoft expressly agreed in writing to preserve it as confidential and not further disseminate it. When Immersion learned of the public filing of the Complaint containing the confidential information, Immersion promptly informed Microsoft by letter that its public disclosure of this

1 sensitive financial information violated the express terms of the confidentiality agreement that
2 Microsoft signed on May 11, 2007—the agreement that enabled Microsoft to learn the
3 information. After Immersion raised the confidentiality agreement, Microsoft then filed an
4 Amended Complaint that deleted the information. Microsoft also filed a ‘Motion to Seal Original
5 Complaint.’ But rather than point out to the Court that Microsoft’s original Complaint
6 unnecessarily contained confidential information that Microsoft itself expressly agreed would
7 receive confidential treatment, Microsoft uses its own misconduct as an opportunity to
8 improperly pre-argue the merits of the case. In doing so, Microsoft completely ignores its own
9 violation of the parties’ confidentiality agreement, the basis for Immersion’s raising the
10 confidentiality point.

11 Microsoft specifically agreed that Immersion’s agreement with Sony, and the confidential
12 information therein, would only be used ‘subject to an appropriate confidentiality agreement or
13 court order that may be negotiated or otherwise entered.’ As a result, the information should not
14 have been included in the original Complaint and should be sealed. Microsoft’s Motion to Seal
15 arises only because Microsoft disregarded this agreement. There is no issue regarding the public
16 policy of settlement agreements. Indeed, whether Immersion’s agreement with Sony constitutes a
17 ‘settlement of the Sony Lawsuit’ under the terms of the Microsoft-Immersion contract at issue in
18 this lawsuit is one of the core questions to be litigated in this case. Those questions will be
19 addressed at the appropriate time and in the appropriate context. This, however, is neither the
20 appropriate time nor context, and it was inappropriate for Microsoft to use its own failure to
21 abide by the confidentiality agreement as an opportunity to try to ‘condition’ the court to its
22 position regarding the sharply contested core issue of whether Immersion’s agreement with Sony
23 was a ‘settlement’ within the terms and meaning of the applicable agreements between Immersion
24 and Microsoft. Microsoft also lodges an overreaching proposed order that it no doubt intends
25 to point to later in the case, when the Court has not yet had any opportunity -- nor cause -- to
26 have any involvement in the merits of the case.

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 28th day of June, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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