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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,)	IMMERSION CORPORATION'S
)	MOTION TO FILE UNDER SEAL
v.)	CERTAIN SUPPORTING DOCUMENTS
)	
IMMERSION CORPORATION, a Delaware corporation,)	NOTE FOR MOTION CALENDAR:
)	Friday, May 2, 2008
Defendant.)	

Pursuant to Local Rule 5(g) and Rule 26(c)(1) of the Federal Rules of Civil Procedure (“Rule 26(c)”), defendant Immersion Corporation (“Immersion”) respectfully requests that the Court allow it to file under seal Exhibits A, B, C, and D to the Declaration of Jofrey M. McWilliam in Support of Immersion’s Response to Microsoft Corporation’s (“Microsoft”) “Motion to Limit Speaking Objections.”

To date, the parties have produced documents in this action with the understanding that documents designated “Confidential,” and all deposition transcripts for a 21-day period following their receipt by all parties, will be protected from disclosure pursuant to a Protective Order that ultimately will be entered in this action. On February 13, 2008, the parties submitted to the Court a [Proposed] Stipulated Protective Order Regarding Treatment by the Parties of Confidential Documents (Dkt. No. 43); however, it was rejected by the Court because the parties

1 did not agree on all of its language. (Minute Order of 3/20/08.) The parties are now working to
2 reach agreement on all the language contained in the Stipulation and resubmit it for the Court's
3 approval or to prepare a motion for a protective order under the expedited procedure set forth in
4 Local Civil Rule 37(a)(2).

5 Notwithstanding that a protective order has yet to be entered in this action, Immersion
6 respectfully submits that there is "good cause" that the documents set forth above be filed under
7 seal. *See Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (a
8 "good cause" showing under Rule 26(c) will suffice to keep sealed discovery documents
9 attached to non-dispositive motions because "the usual presumption of the public's right of
10 access" is rebutted for non-dispositive motions where "the public has less of a need for access to
11 court records"). The above-referenced exhibits to the McWilliam Declaration contain business
12 sensitive and confidential information, including confidential correspondence between
13 Immersion and Sony Computer Entertainment, Inc. and Sony Computer Entertainment America,
14 Inc. (collectively, "Sony") in 2006 and 2007 and correspondence during the negotiations
15 between Immersion and Microsoft in 2003 relating to the resolution of Immersion's patent
16 lawsuit against Microsoft. The subject exhibits have each been designated "Confidential"
17 pursuant to the pending Protective Order, or are subject to the above-referenced 21-day waiting
18 period. Sealing of these documents is proper under Local Rule 5(g) and Rule 26(c) because the
19 public's interest in accessing such information is minimal or nonexistent, while the interests of
20 the parties and relevant non-parties in protecting these documents from public disclosure is
21 substantial. None of these exhibits to the pending non-dispositive motion deals with any specific
22 matters of public importance. Further, information relating to the parties' claims is already
23 available from other pleadings and documents on file with the Court.

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1 In view of the foregoing, Immersion respectfully requests that this Court enter an order
2 sealing the above-described documents. A proposed order is lodged herewith.

3 DATED this 28th day of April, 2008.

4 BYRNES & KELLER LLP

5 By /s/ Jofrey M. McWilliam

6 Bradley S. Keller, WSBA #10665

7 Jofrey M. McWilliam, WSBA #28441

8 1000 Second Avenue, Suite 3800

9 Seattle, WA 98104-4082

10 Telephone: (206) 622-2000

11 Facsimile: (206) 622-2522

12 bkeller@byrneskeller.com

13 jmcwilliam@byrneskeller.com

14 *Attorneys for Defendant Immersion Corporation*

1 **CERTIFICATE OF SERVICE**

2 The undersigned attorney certifies that on the 28th day of April, 2008, I electronically
3 filed the foregoing with the Clerk of the Court using the CM/ECF system which will send
4 notification of such filing to the following:

5 Paul J. Kundtz (pkundtz@riddellwilliams.com)
6 Blake Marks-Dias (bmarksdias@riddellwilliams.com)
7 Wendy E. Lyon (wlyon@riddellwilliams.com)
8 Riddell Williams P.S.
9 1001 Fourth Avenue Plaza, Suite 4500
10 Seattle, WA 98154-3600
11 *Attorneys for Plaintiff*

12 /s/Jofrey M. McWilliam
13 /s/Jofrey M. McWilliam, WSBA #28441
14 Byrnes & Keller LLP
15 1000 Second Avenue, 38th Floor
16 Seattle, WA 98104
17 Telephone: (206) 622-2000
18 Facsimile: (206) 622-2522
19 jmcwilliam@byrneskeller.com