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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

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11 AARON WILLIAMS, on behalf of himself  
and all others similarly situated,

12 Plaintiff,

13 v.

14 PILLPACK, LLC,

15 Defendant.

CASE NO. 19-5282 RJB

ORDER ON DEFENDANT  
PILLPACK LLC'S MOTION TO  
SEAL

16 This matter comes before the Court on Defendant PillPack, LLC's ("PillPack") Motion to  
17 Seal. Dkt. 185. The Court has considered the pleadings filed in support of and in opposition to  
18 the motion and the file herein.

19 **FACTS**

20 In this class action, the Plaintiffs allege that PillPack violated the Telephone Consumer  
21 Protection Act of 1991 ("TCPA"), 47 U.S.C. §227 *et. seq.* Dkt. 6. The class was certified on  
22 February 12, 2021. Dkt. 140.

23 Plaintiffs now move to modify the class definition. Dkt. 178. PillPack filed a response  
24 and, in the instant motion, move to seal certain documents and deposition transcripts filed in

1 support of their response. Dkt. 185. The deposition transcripts and some of the documents were  
2 from entities who are not parties to this case, Fluent, Inc. (“Fluent”), Citadel Marketing Group  
3 (“Citadel”), and Byte Success Marketing LLC (“Byte”). *Id.* PillPack points out in this motion  
4 that it is not the entity seeking to keep some of these items under seal. *Id.* Some of the items  
5 sought to remain under seal were designated as “confidential” by either Fluent, Citadel, or Byte  
6 and were provided, at least in part, under a stipulated protective order. *Id.* Counsel for each of  
7 these non-parties were served with a copy of this motion. Dkt. 185, at 6-7. The Plaintiffs  
8 respond and agree that the motion to seal is appropriate as to some of the documents filed (those  
9 that contain personal identifying information) and oppose the motion as to the deposition  
10 testimony and some of the documents provided by Byte. Dkt. 202.

11 For the reasons provided below, the motion (Dkt. 185) should be granted, in part, and  
12 denied, in part.

### 13 DISCUSSION

14 Western District of Wash. Local Civ. R. (“Local Rule”) 5(g) provides, “[t]here is a strong  
15 presumption of public access to the court’s files. This rule applies in all instances where a party  
16 seeks to overcome the policy and the presumption by filing a document under seal.” Local Rule  
17 5(g)(3)(B) requires that a motion to seal include: “(i) the legitimate private or public interests that  
18 warrant the relief sought; (ii) the injury that will result if the relief sought is not granted; and  
19 (iii) why a less restrictive alternative to the relief sought is not sufficient.” Local Rule 5(g)(3)(B)  
20 additionally provides, in part,

21 Where parties have entered a litigation agreement or stipulated protective order . .  
22 . governing the exchange in discovery of documents that a party deems  
23 confidential, a party wishing to file a confidential document it obtained from  
24 another party in discovery may file a motion to seal but need not satisfy subpart  
(3)(B) above. Instead, the party who designated the document confidential must  
satisfy subpart (3)(B) in its response to the motion to seal or in a stipulated  
motion.

1           The “party seeking to seal a judicial record then bears the burden of overcoming this  
2 strong presumption by meeting the compelling reasons standard.” *Kamakana v. City & Cty. of*  
3 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)(*internal quotations and citations omitted*). “The  
4 party must articulate compelling reasons supported by specific factual findings that outweigh the  
5 general history of access and the public policies favoring disclosure, such as the public interest in  
6 understanding the judicial process.” *Id.*, at 1178–79.

7           The following documents are sought to be remain under seal:

- 8           (1) the unredacted Declaration of Eric A. Franz (Dkt. 192, 1-12);
- 9           (2) Exhibit A to Franz Declaration (Dkt. 192, at 14);
- 10           (3) Exhibit E to Franz Declaration (Dkt. 192, at 16-42)(Rule 30(b)(6))(deposition of Jeff  
11 Richard for non-party Fluent)(designated as “confidential” by Fluent pursuant to a stipulated  
12 protective order);
- 13           (4) Exhibit H to Franz Declaration (Dkt. 192, at 44-73)(Rule 30(b)(6) deposition of  
14 David Andras for non-party Citadel)( designated as “confidential” by Citadel pursuant to a  
15 stipulated protective order);
- 16           (5) Exhibit P to Franz Declaration (Dkt. 192, at 75-103)(emails and call statistics from  
17 non-party Byte)(designated as “confidential” by Byte pursuant to a stipulated protective order);
- 18           (6) Exhibit Q to Franz Declaration (Dkt. 192, at 105);
- 19           (7) Exhibit R to Franz Declaration (Dkt. 192, at 107-113)(service contract between non-  
20 party Byte and another entity as well as emails from and to non-party Byte)(designated as  
21 “confidential” by Byte pursuant to a stipulated protective order); and
- 22           (8) Exhibits A, B, C, D, E, F, and G to the Declaration of Kimberly Spicer (Dkt. 190, at  
23 1-15).

1 Dkt. 185.

2 PillPack’s motion to seal (Dkt. 185) should be granted to as to the unredacted Declaration  
3 of Eric A. Franz (Dkt. 192, 1-12); Exhibit A to Franz Declaration (Dkt. 192, at 14); Exhibit Q to  
4 Franz Declaration (Dkt. 192, at 105); and Exhibits A, B, C, D, E, F, and G to the Declaration of  
5 Kimberly Spicer (Dkt. 190, at 1-15). PillPack has provided “compelling reasons” to keep these  
6 pleadings under seal. *Kamakana*, at 1178. Each of these documents contain personally  
7 identifying information, including names, addresses, phone numbers. PillPack has shown that (i)  
8 there are legitimate private and public interests in keeping these pleadings under seal, (ii) the  
9 individuals whose information is in these documents may suffer privacy invasions if they are not  
10 kept under seal, and (iii) there is not a less restrictive alternative to keeping these documents under  
11 seal. Accordingly, these documents should remain under seal. This ruling applies only to the  
12 present motion and may be reassessed at a later stage in the case.

13 PillPack’s motion to seal (Dkt. 185) should be denied as to: Exhibit E to Franz  
14 Declaration (Dkt. 192, at 16-42)(Rule 30(b)(6)(deposition of Jeff Richard for non-party Fluent);  
15 Exhibit H to Franz Declaration (Dkt. 192, at 44-73)(Rule 30(b)(6) deposition of David Andras  
16 for non-party Citadel); Exhibit P to Franz Declaration (Dkt. 192, at 75-103)(emails and call  
17 statistics from non-party Byte); and Exhibit R to Franz Declaration (Dkt. 192, at 107-  
18 113)(service contract between non-party Byte and another entity as well as emails from and to  
19 non-party Byte).

20 At this point, no reason, much less a “compelling reason,” to keep these documents under  
21 seal has been provided. *Kamakana*, at 1178. The parties who designated the information as  
22 “confidential” failed to respond to the motion despite having notice and an opportunity to be  
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1 heard. Local Rule 5(g)(3)(B). Exhibits E, H, P and R to the Franz Declaration should not remain  
2 under seal.

3 The Court is unable to unseal portions of a document in the court's filing system  
4 CM/ECF. Due to PillPack's decision to file all the documents together under seal in one entry in  
5 CM/ECF (Dkt. 192), PillPack should be ordered to refile Exhibit E to Franz Declaration (Dkt.  
6 192, at 16-42); Exhibit H to Franz Declaration (Dkt. 192, at 44-73); Exhibit P to Franz  
7 Declaration (Dkt. 192, at 75-103); and Exhibit R to Franz Declaration (Dkt. 192, at 107-113).  
8 These documents should be refiled by October 29, 2021.


9 **I. ORDER**

10 Therefore, it is hereby **ORDERED** that:

- 11 • PillPack's Motion to Seal (Dkt. 185) **IS**:
- 12 • **DENIED** as to: Exhibit E to Franz Declaration (Dkt. 192, at 16-42); Exhibit H to  
13 Franz Declaration (Dkt. 192, at 44-73); Exhibit P to Franz Declaration (Dkt. 192,  
14 at 75-103); and Exhibit R to Franz Declaration (Dkt. 192, at 107-113);
- 15 ○ **By October 29, 2021**, PillPack **SHALL** refile Exhibit E to Franz  
16 Declaration (Dkt. 192, at 16-42); Exhibit H to Franz Declaration (Dkt.  
17 192, at 44-73); Exhibit P to Franz Declaration (Dkt. 192, at 75-103); and  
18 Exhibit R to Franz Declaration (Dkt. 192, at 107-113); and
- 19 • **GRANTED** in all other respects.

20 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
21 to any party appearing *pro se* at said party's last known address.  
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1 Dated this 26<sup>th</sup> day of October, 2021.

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3 ROBERT J. BRYAN  
4 United States District Judge

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