

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-02083-MWF (PLAx)**

Date: **January 31, 2013**

Title: Nexon America, Inc., et al. -v- Game Anarchy, LLC, et al.

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PRESENT: HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT  
JUDGE

Rita Sanchez  
Courtroom Deputy

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING PLAINTIFF  
NEXON'S APPLICATION TO FILE  
UNDER SEAL [41]

This matter is before the Court on the Application to File Under Seal filed by Plaintiffs Nexon America, Inc. and Nexon Korea Corporation ("Nexon") on January 30, 2013 (the "Application"). (See Notice of Manual Filing (Docket No. 41)). The Application includes an unredacted version of Nexon's Motion for Summary Judgment Against Defendant David Allen Baker. (See Docket No. 42 (redacted version)).

For the reasons stated below, the Application is hereby GRANTED.

"In this circuit, we start with a strong presumption in favor of access to court records. The common law right of access, however, is not absolute and can be overridden given sufficiently compelling reasons for doing so." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citations omitted) (discussing factors relevant to "compelling reasons" standard).

Furthermore, the "presumption of access is not rebutted where, as here, documents subject to a protective order are filed under seal as attachments to a dispositive motion." *Id.* at 1136 ("[S]ummary judgment adjudicates substantive rights and serves as a substitute for trial.' . . . 'once the [sealed discovery] documents are made part of a dispositive motion [*e.g.*, a summary judgment

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motion ruled upon by the court] . . . they lose their status of being raw fruits of discovery,’ and no longer enjoy protected status ‘without some overriding interests in favor of keeping the discovery documents under seal.’” (citations omitted); *cf.* Cal. R. Ct. 2.550 (distinguishing between “discovery materials that are used at trial or submitted as a basis for adjudication of matters” and those used as part of “discovery motions or proceedings”).

Nexon argues that the documents proposed to be filed under seal were designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order entered in this case, or that the documents contain descriptions of such confidential information. But, in the absence of the proper showing, the Court will not assume that documents designated as “Confidential” (or “Highly Confidential”) pursuant to a protective order should be protected from disclosure.

However, Nexon’s Application goes on to make the required showing under the “compelling reasons” standard. These documents contain information regarding trade secrets such as source codes and software security measures, as well as certain financial data and third-party customer, personal financial information.

Accordingly, the Court ORDERS that the following documents are hereby accepted as filed under seal:

- Declaration of Peter J. Creath in Support of Plaintiffs’ Motion for Summary Judgment Against Defendant David Allen Baker;
- Exhibit C to the Declaration of Peter J. Creath in Support of Plaintiffs’ Motion for Summary Judgment Against Defendant David Allen Baker;
- Exhibits 21 - 26 to the Declaration of Bradley J. Mullins;
- Unredacted version of the Notice of Motion and Motion of Plaintiffs for Summary Judgment against Defendant David Allen Baker; and,

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- Unredacted version of Plaintiffs' Separate Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment against Defendant David Allen Baker.

In addition, the Court ORDERS that the following documents be filed on the public record:

- Plaintiffs' Application to File Under Seal;
- [Proposed] Order Granting Plaintiffs' Application to File Under Seal;
- Notice of Lodging of Exhibit C to the Declaration of Peter J. Creath in Support of Plaintiffs' Motion for Summary Judgment Against Defendant David Allen Baker Pursuant to L.R. 11-5;
- Notice of Lodging of unredacted version of Plaintiffs' Separate Statement of Undisputed Facts in Support of Plaintiff's Motion for Summary Judgment against Defendant David Allen Baker; and,
- Proof of Service.

Finally, the Court ORDERS Nexon to file a redacted version of the Declaration of Peter J. Creath, including Exhibit C, if possible. Otherwise, Nexon at least must file a notice of lodging of the Creath Declaration.

IT IS SO ORDERED.