

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 1956

ADDISON WHITNEY, LLC,
Plaintiff,

v.

BRANNON CASHION; VINCENT
BUDD; RANDALL SCOTT;
ANDREW CUYKENDALL; AMY
BAYNARD; JENNIFER RODDEN;
and LEADERBOARD BRANDING,
LLC,

Defendants.

**ORDER ON MOTIONS TO SEAL
(RE: DISCOVERY DISPUTES)**

1. This Order addresses six motions to seal under Rule 5 of the North Carolina Business Court Rules (“BCR”). (ECF Nos. 203, 206, 216, 219, 225, 227.) The parties ask to seal nearly forty filings made in connection with recent discovery motions.

I.
BACKGROUND

2. This is a dispute between a branding company and six former officers and employees. Addison Whitney, LLC pitches itself as a specialist in branding strategy with a focus on pharmaceutical companies. Most of its management—Brannon Cashion, Vincent Budd, Randall Scott, Andy Cuykendall, Amy Baynard, and Jennifer Rodden—resigned on the same morning in January 2017. They then launched a competing business named Leaderboard Branding, LLC (together “Defendants”). Addison Whitney asserts claims for misappropriation of trade secrets and breach of

fiduciary duty, among others. Defendants have counterclaims for defamation and violations of the North Carolina Wage and Hour Act.¹

3. Early 2019 brought a wave of discovery disputes. Addison Whitney moved to compel a nonparty named John Miller to appear for a deposition (“Contempt Motion”). (Pl.’s Mot. Contempt Against John Miller, ECF No. 166 [“Pl.’s Contempt Mot.”].) In addition, Defendants and Addison Whitney filed cross-motions to compel against each other. (See Defs.’ Mot. Compel, ECF No. 194; Pl.’s 2d Mot. Compel, ECF No. 196.) Together, these motions involved more than twenty distinct disputes and dozens of exhibits.

4. Along with their initial briefs, the parties filed five consent motions to keep various exhibits entirely under seal. (See ECF Nos. 167, 171, 187, 192, 197.) All five were defective. In an order dated May 31, 2019 (“May 2019 Order”), the Court observed that

the motions do not identify in any fashion what information is confidential, highly confidential, or not confidential. Rather, the parties contend that they have agreed to place blanket confidentiality designations over the documents in question, and move to seal myriad exhibits solely on the basis of that agreement. These shortcomings make it difficult to evaluate the confidential nature of the information and whether it is of the type and quality that should be sealed.

(Order on Mots. Seal 5, ECF No. 201 [“May 2019 Order”].) The Court went on to note its strong suspicion

that many, if not all, of the exhibits contain a substantial amount of non-confidential material. . . . If so, then this is not the rare

¹ Previous orders and opinions detail the nature of this case and its procedural history. See *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 23 (N.C. Super. Ct. Mar. 15, 2017); *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 51 (N.C. Super. Ct. June 9, 2017); *Addison Whitney, LLC v. Cashion*, 2017 NBC LEXIS 111 (N.C. Super. Ct. Dec. 1, 2017).

circumstance[] in which an entire document should be filed under seal, and it was incumbent upon the parties to file public versions of the provisionally sealed documents, redacting only the truly confidential information.

(May 2019 Order 5.) The Court denied the motions but gave each side the chance to cure the defects in renewed motions. (See May 2019 Order 5, 6.)

5. Both sides filed renewed motions on July 3, 2019. (See ECF No. 225 [“Defs.’ July 3 Mot.”]; ECF No. 227 [“Pl.’s July 3 Mot.”].) In the interim, each side had also moved to seal exhibits associated with the response and reply briefs to the cross-motions to compel. (See ECF No. 203 [“Defs.’ June 13 Mot.”]; ECF No. 206 [“Pl.’s June 13 Mot.”]; ECF No. 216 [“Defs.’ June 27 Mot.”]; ECF No. 219 [“Pl.’s June 27 Mot.”].)

6. Today, the Court issued its decision on the discovery motions. With the benefit of that decision, the Court now decides the six pending motions to seal.

II. ANALYSIS

7. Court filings are public records. They must be “open to the inspection of the public” in all but unusual circumstances. N.C.G.S. § 7A-109(a). For that reason, this Court presumes that all case filings will be publicly available and puts the burden on the parties to overcome that presumption. See BCR 5.1(b); *Preiss v. Wine & Design Franchise, LLC*, 2018 NCBC LEXIS 55, at *7 (N.C. Super. Ct. June 4, 2018).

8. It’s a heavy burden. The party asking to keep a court filing under seal must articulate its reasons with specificity, giving “information sufficient for the Court to determine whether sealing is warranted.” BCR 5.2(b). That means the Court needs enough information to know whether the party’s private interest in keeping the

matter secret outweighs the public's interest in open courts. Cryptic or conclusory claims of confidentiality won't do. *See, e.g., Potts v. KEL, LLC*, 2018 NCBC LEXIS 254, at *3–4 (N.C. Super. Ct. Oct. 19, 2018); *Beroz v. Nuvotronics, Inc.*, 2018 NCBC LEXIS 249, at *3 (N.C. Super. Ct. Apr. 3, 2018).

9. This is true even when the motion to seal is unopposed, as often happens. “The fact that the parties have agreed to treat information as confidential does not require that the Court permit it to remain under seal.” *Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *6 (N.C. Super. Ct. Jan. 18, 2018). Nor is the Court “bound by” any party’s “designation of material as ‘confidential,’” whether under a consent protective order or through private contract. *Id.* at *5; *see also France v. France*, 209 N.C. App. 406, 415–16, 705 S.E.2d 399, 407 (2011) (“Evidence otherwise appropriate for open court may not be sealed merely because an agreement is involved that purports to render the contents of that agreement confidential.”); *Beroz*, 2018 NCBC LEXIS 249, at *3 (“Our appellate courts and this Court have frequently and soundly rejected the notion that parties to litigation may shield information from the public by agreement.”).

10. Some showing of harm is essential. Public disclosure of a trade secret, for example, would destroy it, resulting in self-evident harm to its owner. Likewise, disclosure of a business’s proprietary information might give a leg up to its competitors. Thus, “[a] corporation may possess a strong interest in preserving the confidentiality of its proprietary and trade-secret information, which in turn may justify partial sealing of court records.” *Doe v. Doe*, 823 S.E.2d 583, 598 (N.C. Ct.

App. Dec. 18, 2018) (quoting *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014)); *see also Taylor*, 2018 NCBC LEXIS 4, at *7 (granting motion to seal details of drug manufacturing process because disclosure “could prove valuable to competitors developing similar pharmaceuticals”).

11. Not all business information is truly sensitive, though. Companies (and individuals) keep a great deal of private information that would cause little or no harm if disclosed. Even competitively valuable information may grow stale over time. It is the party’s burden, not the Court’s, to show which is which. *See, e.g., Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019) (“[T]he reason the court seals [private documents] is not because the parties have agreed to keep them confidential but instead because their disclosure would cause serious harm to one or both parties”); *Taylor*, 2018 NCBC LEXIS 4, at *7 (denying motion to seal dates, attendees, and contents of board meetings because no “strong public policy reason to protect this information . . . outweigh[ed] the public’s right to access”).

12. When sealing is justified, the extent of sealing must be narrowly tailored to protect the party’s interest in secrecy while preserving, as much as possible, the public’s interest in open courts. Sealing an entire document should be a “rare circumstance,” and “redactions or omissions should be as limited as practicable.” BCR 5.2(d).

13. Sometimes, the burden falls on someone other than the moving party. This often happens when the moving party files a document that was designated by one of the other parties as confidential under the terms of a protective order. *See* BCR

5.2(b)(4). The designating party has the interest in secrecy and therefore the burden to show in a supplemental brief that sealing is appropriate. *See* BCR 5.3. The same rules apply: the supplemental brief must give the Court all it needs to weigh the party's interest against the public's. When the designating party does not file a brief, "the Court may summarily deny the motion for leave and may direct that the document be unsealed." BCR 5.3.

14. Whether to grant or deny a motion to seal lies within the trial court's sound discretion. *See Taylor*, 2018 NCBC LEXIS 4, at *4. Here, the Court has already admonished the parties to comply with the local rules, to articulate the reasons that support sealing, and to limit redactions as much as practicable. With few exceptions, the pending motions fall short.

A. Defendants' June 13 Motion

15. The Court begins with Defendants' June 13 Motion. This motion aims to seal the entirety of ten exhibits—marked as exhibits 2, 3, 6, and 8–14—that were offered in opposition to Addison Whitney's Second Motion to Compel. (*See* ECF Nos. 203.1–203.10.)

16. Defendants' only argument is that the parties designated the documents as confidential under the protective order. (Defs.' June 13 Mot. 2.)² That is not a valid basis for sealing, as the Court has stressed before. (*See* May 2019 Order 4 ("The parties' mere designation of confidentiality is not a sufficient basis to support sealing the exhibits.")) Defendants have not shown that the documents contain sensitive

² This motion inadvertently marks the first page as page "2" so that all page numbers are off by one. The Court uses the motion's pagination when citing it.

information at all, much less specified what that information is, what harm would result from disclosure, and why it would be necessary to seal them in their entirety.

17. Context suggests that some of the documents may have been designated by Addison Whitney, although the motion does not say one way or the other. If so, Addison Whitney had the burden to show that sealing is appropriate. Yet it did not file a supporting brief. *See* BCR 5.3.

18. In short, neither side has rebutted the public's presumptive right of access. The Court therefore denies Defendants' June 13 Motion. All ten exhibits shall be unsealed.

B. Addison Whitney's June 13 Motion

19. Addison Whitney's June 13 Motion addresses eight documents filed in opposition to Defendants' Motion to Compel. These include the affidavit of Steven Nigh and six accompanying exhibits. (*See* ECF Nos. 206.1–206.7.) The other document is marked as exhibit 1 to the affidavit of Rebecca McPhail. (*See* ECF No. 206.8.)

20. The Court notes that these documents were filed publicly on the electronic docket in June 2019, likely through inadvertence. Neither side informed the Court of the mistake. In January 2020, the Court placed them provisionally under seal on its own initiative. By that point, the documents had been publicly available for more than six months. That fact is not dispositive, but it does suggest that Addison Whitney would face no serious risk of harm from public disclosure, and it calls into question Addison Whitney's own commitment to keeping the information secret.

21. Nigh Affidavit. Paragraph 6 of the Nigh Affidavit reports the total amount of fees that Addison Whitney has paid its attorneys for document review. (ECF No. 206.1.) Addison Whitney seeks to seal this figure, arguing that it “comes from counsel’s internal files” and is “highly confidential.” (Pl.’s June 13 Mot. 1.) Twice, though, Addison Whitney states in its public briefs that it has paid more than \$300,000 for document review. (See Pl.’s 2d Mot. Compel 2 n.1; Pl.’s Resp. Defs.’ Mot. Compel 5, ECF No. 208.) It has not shown that any harm would result from disclosure of the exact figure. The Court denies this request.

22. Nigh Affidavit Ex. 8. This exhibit contains excerpts of Betsy Lard’s deposition testimony. (ECF No. 206.4.) Lard is one of Addison Whitney’s employees. Addison Whitney argues that her testimony “concern[s] information Plaintiff considers confidential (including discussion of that confidential information).” (Pl.’s June 13 Mot. 3.) The Court cannot make heads or tails of that cryptic explanation. It will suffice to note that the redacted testimony does not appear to be highly sensitive. The request is denied.

23. Nigh Affidavit Ex. 11. The next exhibit includes the deposition testimony of Joe Daley, another employee of Addison Whitney. (ECF No. 206.6.) The stated rationale for sealing this testimony is that it concerns “the terminations of certain Addison Whitney employees and the reasons therefor, which Addison Whitney considers confidential.” (Pl.’s June 13 Mot. 3.) Addison Whitney might prefer to keep its personnel decisions private, but it has not articulated any reason to believe the

information is sensitive or competitively valuable or that any harm would result from disclosure. This request is denied.

24. Nigh Affidavit Exs. 9, 16; McPhail Affidavit Ex. 1. Together, these three exhibits include excerpts of Cashion's deposition testimony, excerpts of McPhail's deposition testimony, an e-mail addressing the process for calculating commissions for a departing employee, and an offer letter to a former Addison Whitney employee. (ECF Nos. 206.5, 206.7, 206.8.) Each document includes information about employee compensation, which Addison Whitney asserts to be "confidential" or "highly confidential." (Pl.'s June 13 Mot. 3–4.)

25. Again, the mere assertion of confidentiality is too conclusory to support sealing. Addison Whitney does not articulate any harm that would result from disclosure of the information, some of which is nearly five years old and all of which relates to former, not current, employees. Nor has it shown that its present interest in keeping the information secret outweighs the public's right of access. The Court denies the request. *See Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 547 (7th Cir. 2002) ("[M]any litigants would like to keep confidential the salary they make, the injuries they suffered, or the price they agreed to pay under a contract, but when these things are vital to claims made in litigation they must be revealed.").

26. Nigh Affidavit Ex. 5. This omnibus exhibit includes portions of a personnel file, communications regarding employee compensation, Addison Whitney's communications plan for informing clients about Defendants' resignations, and client billing data. (ECF No. 206.2.) The size and variety of the exhibit make it difficult to

review, meaning it was all the more important for Addison Whitney to show clearly and specifically why these very different types of information must be sealed.

27. No reasoning is given. Addison Whitney states only that some of the information is “confidential” (compensation information and the communications plan) and the rest is “highly confidential” (billing data and communications with clients). (Pl.’s June 13 Mot. 2.) The difference between confidential and highly confidential information is not explained. Nor does Addison Whitney say that the information is competitively valuable or that its disclosure would cause competitive harm.

28. Even so, with reluctance, the Court will grant the request to seal the client billing data. Addison Whitney has alleged that one of its trade secrets is a client list that compiles data about client projects, buying habits, product launches, and revenues. (*See* ECF No. 206.3.) It seems likely that the billing data in this exhibit could relate to the alleged trade secret, and disclosure might endanger the trade secret (if there is one) or prejudice the Court’s ability to decide the trade-secret claim down the road. Addison Whitney should have made a better case for protecting this information and must do so if it seeks to file similar information under seal in the future. The Court will also grant the request to seal any personal identifying information, which must be redacted by statute. *See* N.C.G.S. § 132-1.10(d).

29. In all other respects, the request to seal the exhibit is denied. The other information does not appear to be related to the alleged trade secrets, nor has Addison

Whitney suggested as much. And its stated grounds for sealing are conclusory and unpersuasive.

30. Accordingly, Addison Whitney shall file a public version of exhibit 5 to the Nigh Affidavit that redacts only the client billing data and all personal identifying information.

31. Nigh Affidavit Ex. 6. The last exhibit includes excerpts of Addison Whitney's interrogatory responses. (ECF No. 206.3.) Interrogatory 22 concerns employee compensation, which Addison Whitney again argues is "confidential." (Pl.'s June 13 Mot. 2.) As discussed above, a conclusory assertion of confidentiality is not enough to rebut the public's presumptive right of access.

32. Addison Whitney argues that its response to Interrogatory 7 should be sealed because it "contains a description of confidential and trade secret information belonging to Addison Whitney." (Pl.'s June 13 Mot. 2.) A company has a strong interest in keeping its trade secrets out of the public eye. *See Doe*, 823 S.E.2d at 598; *Perry v. Frigi-Temp Frigeration, Inc.*, 2020 NCBC LEXIS 48, at *7-8 (N.C. Super. Ct. Apr. 15, 2020). Here, though, the response to interrogatory 7 is generic, mirroring the high-level descriptions of the alleged trade secrets in the second and third amended complaints. (*Compare* ECF No. 206.3, *with* ECF Nos. 78, 151.) The response refers to a "Database," "non-public case studies," and certain "client lists" with data about the clients' buying habits and related information, among other things. The actual database, studies, lists, and other content are not disclosed. Put

simply, trade secrets should be sealed, but generic descriptions of the secrets should not, especially when they already appear elsewhere in the public record.

33. Last is the response to Interrogatory 11. This response identifies two prospective clients that Addison Whitney believes it lost to Defendants. Addison Whitney states, without support or explanation, that it considers the names of its clients confidential, (*see* Pl.'s June 13 Mot. 2), but some evidence shows that Addison Whitney puts client names on its website and shares them with prospective clients, all apparently for marketing purposes, (*see* Dep. S. Norrdahl 58:21–59:12, ECF No. 203.7 (noting that Addison Whitney's website identified past clients and projects); Ex. 1 to Aff. B. Adams, ECF No. 247.1 (e-mail to prospective client identifying past clients)). Addison Whitney must offer more than its say so to show that these client names are not only confidential but competitively sensitive.

34. The request to seal exhibit 6 to the Nigh Affidavit is denied.

C. Defendants' June 27 Motion

35. Only two documents are at issue in Defendants' June 27 Motion: exhibits 2 and 3 to the reply brief in support of their Motion to Compel. Exhibit 3 is an excerpt of Addison Whitney's "Transition Communications Plan." (ECF No. 216.2.) The excerpt is a script that Addison Whitney gave its employees to use in e-mails with clients when informing them that Cashion (or Budd, or Scott, etc.) had departed. Exhibit 2 includes three e-mails to clients using the script. (ECF No. 216.1.)

36. Addison Whitney is the designating party for both documents. In a supplemental brief, it asserts that it "considers all of its client communications

confidential” and “considers its succession planning following the Defendants’ resignation to be highly confidential.” (Pl.’s Supp. Br. 3, ECF No. 232.) Each rationale is conclusory, and neither is persuasive. For one thing, communications are confidential only if both sides treat them that way. There is no evidence that the clients viewed these e-mails as confidential, even if Addison Whitney did. And the content of the e-mails is rather ordinary: informing the client that one or more Defendants had left the company, introducing new leadership, and assuring the client of continued service. None of this is highly sensitive. It is hard to see how disclosure would harm Addison Whitney, and it has not shown otherwise. Whatever minimal interest Addison Whitney has in keeping the documents secret does not outweigh the public’s right of access.

37. Defendants’ June 27 Motion is denied.

D. Addison Whitney’s June 27 Motion

38. Along with its June 27 Motion, Addison Whitney provisionally filed under seal three documents that Defendants designated as confidential under the protective order. (See ECF Nos. 219.1–219.3.) Addison Whitney argues that the documents should be made public and “only seeks to provisionally file these exhibits under seal until the Defendants file a supplemental brief under Business Court Rule 5.3, or the Court otherwise rules on this motion.” (Pl.’s June 27 Mot. 1.)

39. It was Defendants’ burden to show why these materials should be sealed, yet they did not file a supplemental brief. The Court therefore summarily denies the motion. See BCR 5.3.

E. Defendants' July 3 Motion

40. Next is Defendants' July 3 Motion, which is a renewed motion to seal eleven documents. These include two exhibits filed in opposition to Addison Whitney's Contempt Motion. (*See* ECF Nos. 171.1, 171.2.) The other nine are exhibits in support of Defendants' Motion to Compel. (*See* ECF Nos. 187.1–187.8, 189–91, 192.1.)³

41. Contempt Opp'n, Exs. 1, 2. Defendants contend that these two exhibits, which are excerpts of the deposition testimony of Budd and Cashion, should be filed entirely under seal because they contain discussions of matters subject to attorney-client privilege. (*See* Defs.' July 3 Mot. 2–3.) In a related order, the Court concluded that Budd and Cashion waived privilege, which negates any basis for sealing. Even if the Court had found no waiver, sealing would not be appropriate. Much of the testimony appears verbatim in the parties' briefs, which are not sealed. (*See* Pl.'s Contempt Mot. 2, 3, 4, 5, 10; Defs.' Resp. Opp'n Pl.'s Mot. Contempt 2, 3, 6, ECF No. 173.) And Defendants have never argued that the testimony was itself privileged, only that the underlying communications with counsel were. The request to seal these excerpts is denied.

³ Defendants filed amended versions of exhibits 12, 16, and 18 to their Motion to Compel on February 23, 2019. (ECF Nos. 189–91.) In their renewed motion, Defendants include only the ECF Numbers of the original versions of exhibits 12, 16, and 18 in the list of documents they wish to seal, but then include the ECF Numbers of both the original and amended versions in the body of their motion. (*See* ECF No. 225.) Addison Whitney refers to the original version of exhibit 12 and the amended versions of exhibits 16 and 18 in its supplemental brief in support. (*See* ECF No. 232.) The Court assumes that the parties' arguments apply to both the original and amended versions of the exhibits.

42. Mot. Compel, Exs. 14, 15, 19. With Addison Whitney's consent, Defendants have withdrawn the request to seal exhibits 14, 15, and 19 in support of their Motion to Compel. (See ECF Nos. 187.3, 187.4, 187.8.) These documents shall be unsealed.

43. Mot. Compel, Exs. 12, 13, 17. These three exhibits include deposition testimony of Lard, McPhail, and Kaitlin Ragone (another Addison Whitney employee). (See ECF Nos. 187.1, 187.2, 187.6, 189.) Addison Whitney is the designating party. In its supplemental brief, it argues that client names should be redacted from the testimony of each because it "generally considers the identity of its clients confidential." (Pl.'s Supp. Br. 1–2.) As discussed above, there is evidence to the contrary, and Addison Whitney's unsupported assertion of confidentiality is not enough to rebut the presumption that court filings should be public. The Court denies the request.

44. Mot. Compel, Ex. 6. This exhibit includes excerpts of Addison Whitney's interrogatory responses. (See ECF No. 192.1.) Addison Whitney is the designating party and therefore has the burden, yet its supplemental brief does not address this exhibit. This document appears to be the same as exhibit 6 to the Nigh Affidavit, which the Court has concluded should not be sealed. (*Compare* ECF No. 192.1, *with* ECF No. 206.3.) The Court therefore denies this request for the reasons discussed above and because Addison Whitney offered no basis to seal it in its supplemental brief. *See* BCR 5.3.

45. Mot. Compel, Exs. 16, 18. Addison Whitney is also the designating party for these two exhibits (original and amended), which include excerpts of the deposition

testimony of Lisa Stockman and Natasha Kempf. (*See* ECF Nos. 187.5, 187.7, 190, 191.) Kempf is an employee of Addison Whitney; Stockman is employed by its parent company, inVentiv Health.

46. Addison Whitney seeks to seal Kempf's testimony in its entirety because she discusses "EBITDA figures and the calculation of compensation for certain Defendants, who were senior executives before they resigned." (Pl.'s Supp. Br. 2.) Addison Whitney contends that the financial data is "highly confidential" and that compensation information for its executives is "confidential." (Pl.'s Supp. Br. 2.) For reasons given above, Addison Whitney has not shown that its interest in keeping compensation information secret outweighs the public's right of access. Addison Whitney's EBITDA, however, is one of the alleged trade secrets in the case (although its supplemental brief does not expressly say so). (*See* ECF No. 206.3.) The Court will therefore deny the request to seal the whole exhibit but will allow Addison Whitney to submit a public version of Kempf's testimony that redacts the EBITDA data.

47. So too for Stockman's testimony. According to Addison Whitney, "Stockman discusses various inVentiv Health divisions and their financial performance," which it considers "highly confidential." (Pl.'s Supp. Br. 2-3.) It argues that "specific dollar figures and references to whether various inVentiv Health divisions made or missed their financial targets" should be redacted. (Pl.'s Supp. Br. 3.) This testimony also relates to EBITDA figures, which are redacted in a public version filed by Defendants. (*See* ECF No. 231.7.) The relationship between these figures, the figures discussed

by Kempf, and the asserted trade secrets are not clear. For now, though, the Court grants the request to keep the unredacted version under seal.

F. Addison Whitney's July 3 Motion

48. Finally, the Court turns to Addison Whitney's July 3 Motion, which is a renewed motion to seal ten documents. These include three exhibits to its Contempt Motion and seven exhibits to its Second Motion to Compel.

49. Contempt Mot. Ex. 9; 2d Mot. Compel Exs. 22, 23, 25, 28. Defendants designated these five documents as confidential under the protective order. (See ECF Nos. 167.3, 197.1, 197.2, 197.4, 197.6; see also Pl.'s Br. Supp. Renewed Mot. Seal 3, 4, 6, 8, ECF No. 229.) Addison Whitney does not oppose sealing exhibit 22 to its second motion to compel but argues that the other four should be filed publicly. Defendants have the burden, yet they did not file a supplemental brief. The Court summarily denies the request to seal these exhibits. See BCR 5.1(b), 5.3.

50. 2d Mot. Compel Exs. 16, 27, 29. These exhibits contain various e-mail strings. (See ECF Nos. 197.3, 197.5, 197.7.) As Addison Whitney observes, the e-mails include a list of clients, "upcoming projects for those clients, and the estimated value of those projects"; a spreadsheet that compiles similar information; and a discussion of its master case study list. (Pl.'s Br. in Supp. Renewed Mot. Seal 2, 5, 6.) Addison Whitney contends that disclosure of this information could harm its relationships with current clients and put Addison Whitney at a competitive disadvantage in the industry. (See Pl.'s Br. Supp. Renewed Mot. Seal 2, 5.)

51. The Court credits these explanations as minimally sufficient grounds to seal the three exhibits. The redacted information goes beyond client names to include additional details about ongoing projects, their value, and certain case studies. This mirrors Addison Whitney's descriptions of its alleged trade secrets. (*See* ECF No. 206.3.)⁴ Although Addison Whitney does not expressly contend that the information is derived from its alleged trade secrets, its assertion that disclosure would cause competitive harm raises that possibility. In the context of nondispositive discovery motions, this is just barely sufficient to support sealing the information. At summary judgment, better explanations—and better support—will be required.

52. Public versions of these documents have not yet been filed. Addison Whitney shall do so, redacting only the confidential information as proposed in its brief in support of the renewed motion to seal. The redactions must be as limited as practicable.

53. Contempt Mot. Exs. 1, 2. These exhibits include excerpts of testimony from the depositions of Budd and Cashion as well as certain documents referred to at the deposition. (*See* ECF Nos. 167.1, 167.2.) Addison Whitney contends that the testimony should not be sealed. (*See* Pl.'s Br. Supp. Renewed Mot. Seal 7, 8.) Defendants, as the designating parties, did not submit a supplemental brief. The Court therefore denies the request to seal the testimony of Budd and Cashion. *See* BCR 5.3.

⁴ A compilation of client names, projects, and pricing information may deserve trade-secret protection in the right circumstances. *See, e.g., GE Betz, Inc. v. Conrad*, 231 N.C. App. 214, 233–34, 752 S.E.2d 634, 649 (2013); *Sunbelt Rentals, Inc., v. Head & Engquist Equip., L.L.C.*, 174 N.C. App. 49, 56, 620 S.E.2d 222, 228 (2005).

54. Attached to the excerpt of Budd's transcript is the e-mail that appears as exhibit 29 to the Second Motion to Compel, and Addison Whitney argues that it should be sealed for the same reasons. (*Compare* ECF No. 197.7, *with* ECF No. 167.1.) This e-mail discusses Addison Whitney's "master case studies list." For the reasons given earlier, this e-mail shall be sealed, and Addison Whitney shall file a redacted version.

55. Attached to the excerpt of Cashion's transcript is a set of meeting notes. According to Addison Whitney, "[t]hese notes include the names of [its] clients, which [it] considers confidential." (Pl.'s Br. in Supp. Renewed Mot. Seal 8.) For all the reasons discussed above, the mere assertion that client names are confidential is not enough to support sealing, especially given other evidence that Addison Whitney publishes some client names for marketing purposes.

III. CONCLUSION

56. The Court **ORDERS** as follows:

a. Defendants' Motion for Leave to File Documents Under Seal, dated June 13, 2019, (ECF No. 203), is **DENIED**. Within five days of this Order, the clerk shall unseal exhibits 2, 3, 6, and 8–14 to Defendants' response in opposition to Addison Whitney's Second Motion to Compel. (ECF Nos. 203.1–203.10.)

b. Addison Whitney's Motion for Leave to File Documents Under Seal, dated June 13, 2019, (ECF No. 206), is **GRANTED** in part and **DENIED** in part, as follows:

(1) Addison Whitney's Motion for Leave to File Documents Under Seal is **GRANTED** with respect to the client billing data and personal identifying information contained in exhibit 5 to the affidavit of Steven Nigh. (ECF No. 206.2.) This unredacted exhibit shall remain under seal pending further order of the Court. Within five days of this Order, Addison Whitney shall file a public version, redacting only the client billing data and personal identifying information in compliance with N.C.G.S. § 132-1.10(d).

(2) Addison Whitney's Motion for Leave to File Documents Under Seal is **DENIED** with respect to (i) the affidavit of Steven Nigh, (ECF No. 206.1); (ii) exhibits 6, 8, 9, 11, and 16 thereto, (ECF Nos. 206.3–206.7); and (iii) exhibit 1 to the affidavit of Rebecca McPhail, (ECF No. 206.8). The clerk shall unseal these documents within five days of this Order. (ECF Nos. 206.1, 206.3–206.8.)

c. Defendants' Motion for Leave to File Under Seal, dated June 27, 2019, (ECF No. 216), is **DENIED**. Within five days of this Order, the clerk shall unseal exhibits 2 and 3 to Defendants' reply brief in support of their Motion to Compel. (ECF Nos. 216.1, 216.2.)

d. Addison Whitney's Motion for Leave to File Documents Under Seal, dated June 27, 2019, (ECF No. 219), is **DENIED**. Within five days of this Order, the clerk shall unseal exhibits 3–5 to Addison Whitney's reply brief in support of its Second Motion to Compel. (ECF Nos. 219.1–219.3.)

e. Defendants' Renewed Motion to File Under Seal, dated July 3, 2019, (ECF No. 225), is **GRANTED** in part and **DENIED** in part, as follows:

- (1) The clerk shall immediately unseal exhibits 14, 15, and 19 to Defendants' Motion to Compel. (ECF Nos. 187.3, 187.4, 187.8.)
- (2) Defendants' Renewed Motion to File Under Seal is **GRANTED** with respect to exhibit 16 and amended exhibit 16 to Defendants' Motion to Compel. (ECF Nos. 187.5, 190.) These exhibits shall remain under seal pending further order of Court.
- (3) Defendants' Renewed Motion to File Under Seal is **GRANTED** with respect to the EBITDA data contained in exhibit 18 and amended exhibit 18 to Defendants' Motion to Compel. (ECF Nos. 187.7, 191.) These unredacted exhibits shall remain under seal pending further order of the Court. Within five days of this Order and after consultation with Addison Whitney, Defendants shall file a public version of amended exhibit 18, in which redactions are limited to information related to Addison Whitney's EBITDA data.
- (4) Defendants' Renewed Motion to File Under Seal is **DENIED** with respect to exhibits 1 and 2 to Defendants' response brief in opposition to Addison Whitney's Motion for Contempt Against John Miller, (ECF Nos. 171.1, 171.2), and exhibits 6, 12, 13, and 17 and amended exhibit 12 to Defendants' Motion to Compel, (ECF Nos. 187.1, 187.2,

187.6, 189, 192.1), and the clerk shall unseal these exhibits within five days of this Order.

f. Addison Whitney's Renewed Motion for Leave to File Documents Under Seal, dated July 3, 2019, (ECF No. 227), is **GRANTED** in part and **DENIED** in part, as follows:

(1) Addison Whitney's Renewed Motion for Leave to File Documents Under Seal is **GRANTED** with respect to exhibits 16, 27, and 29 to its Second Motion to Compel, (ECF Nos. 197.3, 197.5, 197.7). These exhibits shall remain under seal pending further order of the Court. Within five days of this Order, Addison Whitney shall file public versions, in which redactions or omissions are as limited as practicable.

(2) Addison Whitney's Renewed Motion for Leave to File Documents Under Seal is **GRANTED** with respect to the e-mail that discusses its "master case studies list" included in exhibit 1 to Addison Whitney's Motion for Contempt Against John Miller, (ECF No. 167.1). This unredacted exhibit shall remain under seal pending further order of the Court. Within five days of this Order, Addison Whitney shall file a public version, in which redactions or omissions are as limited as practicable.

(3) Addison Whitney's Renewed Motion for Leave to File Documents Under Seal is **DENIED** with respect to exhibits 2 and 9 to its Motion

for Contempt Against John Miller, (ECF Nos. 167.2, 167.3), and exhibits 22, 23, 25, and 28, and to its Second Motion to Compel, (ECF Nos. 197.1, 197.2, 197.4, 197.6), and the clerk shall unseal these exhibits within five days of this Order.

57. Finally, the Court notes that summary judgment is just around the bend. Given the nature of this case, some of the supporting materials may need to be filed under seal, but the Court urges the parties to keep requests to seal to a minimum. Take notice that any request to seal must comply with BCRs 5.2 and 5.3. Unsupported assertions of confidentiality will not suffice. Sealing motions and supplemental briefs must identify the governing legal standard and relevant case law, specify the information sought to be sealed, articulate the harm that would result from disclosure (or another compelling interest that warrants sealing), and, when appropriate, point to supporting evidence.

SO ORDERED, this the 10th day of June, 2020.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases