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: LETTERS ROGATORY)**

1. This Order addresses three motions to seal. (*See* Pl.'s Mot. Leave File Ex. A Under Seal, ECF No. 241 ["Pl.'s 1st Mot."]; Defs.' Mot. Leave File Docs. Under Seal, ECF No. 248 ["Defs.' Mot."]; Pl.'s Mot. Leave File Exs. Under Seal, ECF No. 251 ["Pl.'s 2d Mot."].) For the reasons discussed below, the Court **DENIES** all three.

2. This is a dispute between a branding company and six former officers and employees.[1] 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").

[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).

Addison Whitney asserts claims for misappropriation of trade secrets and breach of fiduciary duty, among others.

3. Discovery is in the late stages. On two recent occasions, Addison Whitney sought discovery from third parties—Centrexion Therapeutics and The NemetzGroup, LLC—outside North Carolina. It appears that Centrexion Therapeutics, a biopharmaceutical company, was looking to hire a branding firm for a project in late 2016. The NemetzGroup, an advisory firm, helped with the search. Although Addison Whitney initially won the bid (or so it says), the project was halted and later given to Leaderboard Branding. Addison Whitney wished to ask Centrexion Therapeutics and The NemetzGroup about these events but, because both are based in Massachusetts, could not serve subpoenas without first obtaining commissions, also called letters rogatory, allowing it to do so. *See* N.C. R. Civ. P. 45(f). Addison Whitney requested the commissions, which Defendants opposed. (*See* ECF Nos. 237, 244.) The Court granted both requests. (*See* ECF Nos. 242, 253.)

4. In connection with these disputes, the parties moved to seal nearly all the supporting exhibits. For the first requested commission (related to Centrexion Therapeutics), this included a single document: exhibit A to Addison Whitney's reply brief. The exhibit is a statement of work between Leaderboard Branding and Centrexion Therapeutics. (*See* Pl.'s 1st Mot. Ex. A, ECF No. 241.1.) Addison Whitney argues that the statement of work should be publicly available but provisionally filed it entirely under seal because Defendants designated it as "Attorneys' Eyes Only" under the parties' consent protective order. (*See* Pl.'s 1st Mot. 1.)

5. For the second requested commission (related to The NemetzGroup), there were many exhibits. Defendants submitted the Affidavit of G. Bryan Adams, III ("Adams Affidavit"), along with eight exhibits, most of which are e-mails discussing the status of the bidding process for Centrexion Therapeutics's project. (*See* Aff. G. Bryan Adams, III, ECF No. 247 ["Adams Aff."]; Adams Aff. Exs. 1–8, ECF Nos. 247.1–8.) Defendants argue that each document contains "confidential business matters" and should therefore be sealed entirely; Addison Whitney has not taken a position. (Defs.' Mot. 2–5.) In reply, Addison Whitney offered two exhibits, one an e-mail thread and the other a set of slides marked as Leaderboard Branding's Operational Execution Plan. (Pl.'s 2d Mot. Exs. A, B, ECF Nos. 251.1–2.) Again, Addison Whitney argues that these documents should be publicly available but provisionally filed them entirely under seal because Defendants marked them "Attorneys' Eyes Only." (Pl.'s 2d Mot. 1.)

6. Whether to grant or deny a motion to seal lies within the trial court's sound discretion. *See Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *4 (N.C. Super. Ct. Jan. 18, 2018). The default rule is that court filings are "open to the inspection of the public," except as prohibited by law. N.C.G.S. § 7A-109(a). In the right circumstances, a trial court may "shield portions of court proceedings and records from the public," but should do so sparingly and only "in the interest of the proper and fair administration of justice[.]" *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463, 515 S.E.2d 675, 685 (1999); *see also France v. France*, 209 N.C. App. 406, 413, 705 S.E.2d 399, 405 (2011).

7. "The party seeking to maintain materials under seal bears the burden of establishing the need for filing under seal." BCR 5.1(b); *see also Preiss v. Wine & Design Franchise, LLC*, 2018 NCBC LEXIS 55, at *7 (N.C. Super. Ct. June 4, 2018). Sometimes, that is not the moving party but rather the party that produced the relevant materials and designated them as confidential. In that situation, the rules of this Court give the designating party a chance to brief the issue. *See* Business Court Rule ("BCR") 5.3. 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.

8. For each of Addison Whitney's motions, this burden falls to Defendants because they produced the three documents at issue. Yet Defendants did not file a supporting brief, as BCR 5.3 directs. This is not the first time that Defendants have failed to comply with the rules governing motions to seal. (*See* Order Mots. Seal 4–5, ECF No. 201.) The failure to file a supporting brief, in view of earlier infractions, is reason alone to deny the motions summarily. *See* BCR 5.3.

9. Even if that were not the case, the Court would deny Addison Whitney's motions for other reasons. There is no way to tell whether the documents contain confidential information. Addison Whitney has argued, without rebuttal, that they do not. And although Defendants marked the documents as "Attorneys' Eyes Only," they have given no explanation for it. Of course, Defendants' designation by itself is certainly not controlling. As this Court has repeatedly observed, "[t]he fact that parties have agreed to treat information as confidential does not require that the

Court permit it to remain under seal." *Taylor*, 2018 NCBC LEXIS 4, at *6. In short, the motions do not establish any persuasive reason for sealing the materials at issue, much less that this is the "rare circumstance" in which entire documents should be placed under seal. BCR 5.2(d).

10. So too for Defendants' motion to seal the Adams Affidavit and its exhibits. Defendants argue that each exhibit "contains discussions of confidential business matters." (Defs.' Mot. 2–4.) "Litigants may overcome the public's interest in open court proceedings by demonstrating that certain information is subject to trade-secret protection or otherwise includes sensitive business information," but conclusory assertions that material is confidential are not enough to carry that burden. *Beroz v. Nuvotronics, Inc.*, 2018 NCBC LEXIS 249, at *3 (N.C. Super. Ct. Apr. 3, 2018). Here, Defendants have not identified the supposedly confidential information with specificity, explained what is confidential about it, or shown that harm would result from public disclosure. *See id.* at *3–4.

11. Indeed, having reviewed the exhibits, it is obvious that they contain a great deal of nonconfidential information. Exhibits 1 and 3 are e-mail threads in which Addison Whitney or Leaderboard Branding transmit project proposals, but the proposals are not included in the exhibits (apart from a cover page). (*See* Adams Aff. Exs. 1, 3.) Exhibits 2 and 4 are e-mail threads about scheduling conference calls. (*See* Adams Aff. Exs. 2, 4.) Exhibit 5 is an e-mail stating that The NemetzGroup had reached out to branding firms on behalf of Centrexion Therapeutics. (*See* Adams Aff. Ex. 5.) Exhibits 6 and 7 are the cover pages for proposals that Addison Whitney and

Leaderboard Branding submitted to Centrexion Therapeutics; the proposals themselves are not included. (*See* Adams Aff. Exs. 6, 7.) Exhibit 8 is the cover page for a work order between Leaderboard Branding and Centrexion Therapeutics, which notes the existence of an agreement between the two but does not recite its terms or even describe the services to be performed. (*See* Adams Aff. Ex. 8.) Finally, the Adams Affidavit gives a high-level description of each exhibit. (*See* Adams Aff. 2–3.) Defendants have given no reasoned basis to place any of this information under seal, and they have not shown "that the risk of harm [from disclosure] outweighs the public's interest in open court proceedings." *Beroz*, 2018 NCBC LEXIS 249, at *6.

12. For these reasons and in its discretion, the Court **ORDERS** as follows:

a. The Court **DENIES** Addison Whitney's Motion for Leave to File Exhibit A Under Seal, (ECF No. 241), and Motion for Leave to File Exhibits Under Seal, (ECF No. 251).

b. The Court **DENIES** Defendants' Motion for Leave to File Documents Under Seal, (ECF No. 248).

c. The clerk shall unseal the documents identified at ECF Nos. 241.1, 247, 247.1–8, 251.1–2.

d. Neither side has suggested that the documents at issue contain the confidential information of Centrexion Therapeutics or The NemetzGroup. Even so, the Court directs Addison Whitney to serve a copy of this Order on both and to file an appropriate certificate of service within three business days of the date of this Order.

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

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