

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 2332

LINX LEGAL, INC.,

Plaintiff and Counterclaim
Defendant,

v.

BENJAMIN WHITED,

Defendant and Counterclaim
Plaintiff,

and

INTERVAL EXIT SERVICES, LLC;
SARA MORRIS; KAYLEIGH
SPERGER; DAVID CURRIE; MARK
WEIDMAN; and SCOTT WEIDMAN,

Defendants.

**ORDER ON PLAINTIFF'S
MOTION TO SEAL**

1. Linx Legal, Inc. moves to seal information that it filed in the public record months ago. (*See* Mot. to Seal, ECF No. 26.) For the following reasons, the Court **DENIES** the motion.

2. The essential facts are these. Describing itself as a “timeshare-relief business,” Linx Legal claims to have valuable, secret methods of identifying unhappy timeshare owners and helping them cancel their contracts. (Compl. ¶¶ 11, 12, ECF No. 3.) The complaint alleges that six former employees and their new employer (“Interval”) stole these secrets and are using them to compete. (*See* Compl. ¶¶ 18, 19, 24–26.) Linx Legal has twice moved for a preliminary injunction on the theory that the defendants copied its confidential documents, including a customer service

agreement. The first motion, embedded in the complaint, was procedurally defective, so the Court gave Linx Legal a chance to cure the issue. (*See* ECF No. 6.) When that deadline passed without cure, objection, or explanation of any kind, the Court deemed the motion abandoned and denied it without prejudice. (*See* ECF No. 16.) A few days later, Linx Legal renewed its motion with the same arguments and supporting evidence. (*See* ECF No. 18.)

3. For each motion, the record was and is publicly available. Linx Legal did not ask to seal anything either time. This includes the centerpiece of its copying accusation: a side-by-side comparison of twenty or so paragraphs from its customer service agreement and Interval's. This comparison appears in Linx Legal's injunction brief and a supporting affidavit from its CEO. (*See* Br. Supp. Mot. Prelim. Inj. 10–18, ECF No. 3; Aff. R. Musumeci 10–17, ECF Nos. 3, 19.) Linx Legal did not file a copy of its agreement, stating each time that it had been “intentionally omitted pending resolution of [Linx Legal's] motion to seal”—a puzzling reference to a motion that had not been filed in relation to a document whose key terms had already been disclosed. (*See* Aff. R. Musumeci Ex. C.)

4. Nearly five months after moving for a preliminary injunction and nearly a month after renewing that request, Linx Legal moved to seal the parts of its original injunction brief and supporting affidavit that quote its customer service agreement. For the first time, Linx Legal also filed the agreement itself and placed it provisionally under seal. Sealing each of these filings, it contends, is necessary “to preserve the confidentiality” of the agreement. (*See* Br. in Supp. Mot. to Seal 2, ECF

No. 27.) Presumably by accident, Linx Legal provisionally sealed the motion to seal too.

5. “Court filings are public records. They must be ‘open to the inspection of the public’ in all but unusual circumstances.” *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *3–4 (N.C. Super. Ct. June 10, 2020) (quoting N.C.G.S. § 7A-109(a)). The party asking the Court to seal information bears “a heavy burden” and “must articulate its reasons with specificity, giving ‘information sufficient for the Court to determine whether sealing is warranted.’” *Id.* at *4 (quoting BCR 5.2(b)).

6. The burden is even heavier when a litigant files material on the public record and then asks to seal it later. Confidential information loses its confidential character once made public, and courts usually do not have the ability or the desire “to make what has thus become public private again.” *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004); *see also Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *6–7 (N.C. Super. Ct. Oct. 28, 2019) (denying motion to seal documents that had been filed publicly two months earlier); *Beroz v. Nuvotronics, Inc.*, 2018 NCBC LEXIS 249, at *6–7 (N.C. Super. Ct. Apr. 3, 2018) (same); *Performance Chevrolet, Inc. v. ADP Dealer Servs., Inc.*, 2015 U.S. Dist. LEXIS 24221, at *2 (E.D. Cal. Feb. 27, 2015) (Courts “have denied requests to seal documents where they were already publicly filed, or where the information contained in the documents is already in the public domain.”); *Flohers v. Eli Lilly & Co.*, 2013 U.S. Dist. LEXIS 125746, at *6 (D. Kan. Sept. 4, 2013) (“Ex-post facto sealing should not generally be permitted.”).

7. Here, the Court cannot fathom any sound reason to seal Linx Legal's preliminary-injunction brief and affidavit. Both have been available for half a year to the public and competitors alike. Whatever secrets they carried are secret no more. Indeed, it is hard to conceive of any valid grounds to seal documents that a party knowingly put in the public record so long ago. The circumstances would have to be extraordinary, yet Linx Legal hasn't given any reason to do so, failing even to acknowledge that it seeks to withdraw from the public record documents that it twice put there. Linx Legal's actions (and inaction) belie its after-the-fact assertions of confidentiality.

8. So too for the customer service agreement. Although Linx Legal argues that sealing is needed "to preserve the confidentiality" of the agreement, there is no confidentiality left to preserve. (*See* Br. in Supp. Mot. to Seal 2.) Its key, substantive terms appear verbatim in Linx Legal's publicly filed brief and affidavit. (*See* ECF Nos. 3, 19.) An essential feature of any secret is *secrecy*, but Linx Legal has published the "secret" parts of its customer service agreement to the world, and the parts that it did not reveal are routine or boilerplate (severability, choice of law, etc.). If any vestige of confidentiality remains, Linx Legal hasn't identified it and therefore hasn't carried its burden to conceal all or part of the agreement from public view.

9. Finally, Linx Legal also placed under seal its motion to seal and the brief in support of that motion. (ECF Nos. 26, 27.) This appears to have been an accident. If not accidental, then the request to seal is simply unsupported. Nothing in the motion or brief suggests that either contains confidential information. And Linx Legal did

not file a public, redacted version of either document, as the rules require. *See* BCR 5.2(d).

10. For these reasons, the Court **DENIES** the motion to seal. The Court shall unseal Linx Legal's motion, supporting brief, and the attached customer service agreement. (*See* ECF Nos. 26, 27.) To round out the briefing on the pending motion for preliminary injunction, the Court also directs the defendants to file their brief in opposition within fourteen days of this Order.

SO ORDERED, this the 7th day of August, 2020.

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