

Window World of Baton Rouge, LLC v. Window World, Inc.; Window World of St. Louis, Inc. v. Window World, Inc., 2022 NCBC Order 62A.

STATE OF NORTH CAROLINA
WILKES COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1

WINDOW WORLD OF BATON
ROUGE, LLC; WINDOW WORLD OF
DALLAS, LLC; WINDOW WORLD
OF TRI STATE AREA, LLC; and
JAMES W. ROLAND,

Plaintiffs,

v.

WINDOW WORLD, INC.; WINDOW
WORLD INTERNATIONAL, LLC;
and TAMMY WHITWORTH,

Defendants.

**ORDER ON MOTIONS TO SEAL
[CORRECTED]**

WILKES COUNTY

15 CVS 2

WINDOW WORLD OF ST. LOUIS,
INC.; WINDOW WORLD OF
KANSAS CITY, INC.; WINDOW
WORLD OF SPRINGFIELD/PEORIA,
INC.; JAMES T. LOMAX III;
JONATHAN GILLETTE; B&E
INVESTORS, INC.; WINDOW
WORLD OF NORTH ATLANTA,
INC.; WINDOW WORLD OF
CENTRAL ALABAMA, INC.;
MICHAEL EDWARDS; MELISSA
EDWARDS; WINDOW WORLD OF
CENTRAL PA, LLC; ANGELL P.
WESNERFORD; KENNETH R.
FORD, JR.; WORLD OF WINDOWS
OF DENVER, LLC; RICK D. ROSE;
CHRISTINA M. ROSE; WINDOW
WORLD OF LEXINGTON, INC.;
TOMMY R. JONES; JEREMY T.
SHUMATE; WINDOW WORLD OF
PHOENIX LLC; JAMES BALLARD;
and TONI BALLARD,

Plaintiffs,

and

WINDOW WORLD OF ROCKFORD,
INC.; WINDOW WORLD OF JOLIET,
INC.; SCOTT A. WILLIAMSON;
JENNIFER L. WILLIAMSON; and
BRIAN C. HOPKINS,

Plaintiffs and
Counterclaim
Defendants,

v.

WINDOW WORLD, INC.; WINDOW
WORLD INTERNATIONAL, LLC;
and TAMMY WHITWORTH,
individually and as trustee of the
Tammy E. Whitworth Revocable
Trust,

Defendants and
Counterclaim
Plaintiffs,

v.

WINDOW WORLD OF
BLOOMINGTON, INC.,

Counterclaim
Defendant.

1. **THIS MATTER** is before the Court on the following motions in the above-captioned cases:

- a. Plaintiffs' Consent Motion for Leave to File Under Seal (the "First Motion"), (ECF No. 805);¹
- b. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Second Motion"), (ECF No. 810);

¹ For ease of reference, all ECF citations in this Order are to the Court's e-docket in 15-CVS-1.

- c. Defendants Window World, Inc. and Window World International, LLC's (together, "WW") Consent Motion for Leave to File Under Seal (the "Third Motion"), (ECF No. 825);
- d. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Fourth Motion"), (ECF No. 833);
- e. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Fifth Motion"), (ECF No. 842);
- f. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Sixth Motion"), (ECF No. 886);
- g. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Seventh Motion"), (ECF No. 891);
- h. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Eighth Motion"), (ECF No. 901);
- i. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Ninth Motion"), (ECF No. 910); and
- j. Plaintiffs' Consent Motion for Leave to File Under Seal (the "Tenth Motion"; collectively, the "Motions"), (ECF No. 915).

I.

PROCEDURAL HISTORY

2. Plaintiffs filed their Motion Requesting Entry of Sanctions and Application of the Crime-Fraud Exception to Privilege (the "Renewed Crime-Fraud Motion") on

31 January 2022.² In connection with this motion, Plaintiffs provisionally filed under seal their Brief in Support of Renewed Crime-Fraud Motion (the “Renewed Crime-Fraud Brief”),³ an Index of Exhibits to Plaintiffs’ Renewed Crime-Fraud Brief,⁴ and thirty-three of the sixty supporting exhibits.⁵ The First Motion accompanied these documents.⁶

3. That same day, Plaintiffs also filed their Motion to Compel,⁷ a Brief in Support of Motion to Compel (the “Compel Brief”),⁸ an Index of Exhibits to Plaintiffs’ Compel Brief,⁹ sixty-four exhibits,¹⁰ and the Second Motion.¹¹ The Compel Brief, the Index of Exhibits, and fifty of the supporting exhibits¹² were provisionally filed under seal.

² (Pls.’ Mot. Requesting Entry Sanctions and Appl. Crime-Fraud Exception to Privilege [hereinafter “Pls.’ Renewed Crime-Fraud Mot.”], ECF No. 807.)

³ (Pls.’ Br. Supp. Renewed Crime-Fraud Mot. [hereinafter “Pls.’ Crime-Fraud Br.”], ECF No. 808.)

⁴ (Index Exs. Pls.’ Crime-Fraud Br., ECF No. 809.)

⁵ (Pls.’ Crime-Fraud Br. Exs. 3–4, 8–21, 26–33, 38–40, 42, 46–47, 49–50, 54, ECF Nos. 808.3–.4, .8–.21, .26–.33, .38–.40, .42, .46–.47, .49–.50, .54.)

⁶ (Pls.’ Consent Mot. Leave File Under Seal, ECF No. 805.)

⁷ (Pls.’ Mot. Compel, ECF No. 812.)

⁸ (Pls.’ Br. Supp. Mot. Compel [hereinafter “Pls.’ Compel Br.”], ECF No. 813.)

⁹ (Index Exs. Pls.’ Compel Br., ECF No. 813.1.)

¹⁰ (Pls.’ Compel Br. Exs. 1–64, ECF Nos. 813.2–.65.)

¹¹ (Pls.’ Consent Mot. Leave File Under Seal, ECF No. 810.)

¹² (Pls.’ Compel Br. Exs. 5–9, 12, 14–34, 36–53, 55–58, 62–63.)

4. On 23 February 2022, WW filed its Brief in Support of Consent Motion to Seal (the “First Brief in Support”)¹³ and two supporting exhibits,¹⁴ and Plaintiffs filed public redacted versions of their Compel Brief and Renewed Crime-Fraud Brief.¹⁵ That same day, WW sent to the Court via email, copying all counsel of record, proposed redactions to Exhibits 19–21 and 37–41 to the Compel Brief and Exhibits 12–14, 16, 20, and 28 to the Renewed Crime-Fraud Brief for *in camera* review. Plaintiffs filed a Statement in Response to WW’s First Brief in Support on 1 March 2022.¹⁶

5. WW filed the Third Motion, in which it sought sealed treatment for its Brief in Opposition to Plaintiffs’ Motion to Compel (the “Compel Response”)¹⁷ and four exhibits thereto,¹⁸ the following day.¹⁹ WW then timely filed a public redacted

¹³ (Defs.’ Br. Supp. Consent Mot. Seal [hereinafter “WW 1st Br. Supp.”], ECF No. 823.)

¹⁴ (WW 1st Br. Supp. Exs. A–B, ECF Nos. 823.2–.3.)

¹⁵ (Public Redacted Pls.’ Compel Br., ECF No. 821; Public Redacted Pls.’ Crime-Fraud Br., ECF No. 822.) The parties twice requested leave of the Court to extend the deadlines for filing public redacted versions of the provisionally sealed documents and for WW to file its brief(s) in support of sealing. (See Joint Mot. Extension BCR 5 Deadlines, ECF No. 814; Second Joint Mot. Extension Time BCR 5 Deadlines, ECF No. 818.) The Court granted both motions, setting first a 16 February 2022 deadline and then a 23 February 2022 deadline for the parties to file public redacted versions and for WW to file its supporting brief(s). (See Order Joint Mot. Extension BCR 5 Deadlines, ECF No. 816; Order Second Joint Mot. Extension Time BCR 5 Deadlines, ECF No. 820.)

¹⁶ (Pls.’ Statement Resp. Defs.’ 1st Br. Supp. [hereinafter “Pls.’ Statement”], ECF No. 824.)

¹⁷ (Defs.’ Br. Opp’n Pls.’ Mot. Compel [hereinafter “WW Compel Resp.”], ECF No. 827.)

¹⁸ (WW Compel Resp. Exs. L–N, Q, ECF Nos. 827.13–.15, .18.)

¹⁹ (See WW Consent Mot. Leave File Under Seal 1–2, ECF No. 825.)

version of the Compel Response²⁰ and public unredacted versions of Exhibits L–N.²¹ In an email to the Court’s law clerks dated 9 March 2022 and copying all counsel of record, WW provided its proposed redactions to Exhibit Q for the Court’s *in camera* review.

6. On 17 March 2022, Plaintiffs filed the Fourth Motion, seeking to seal portions of their Reply Brief in Support of Motion to Compel (the “Compel Reply”) and Exhibit 1 thereto.²² Plaintiffs timely filed a public redacted version of their Compel Reply on 24 March 2022.²³ That same day, WW filed a Response to the Fourth Motion in which it indicated that Exhibit 1 may be filed publicly.²⁴

7. Plaintiffs filed both a Reply to Response Brief of Beth Vannoy Regarding Plaintiffs’ Renewed Crime-Fraud Motion (the “Renewed Crime-Fraud Reply (Vannoy)”) ²⁵ and a Reply to WW’s Response Brief Regarding Plaintiffs’ Renewed Crime-Fraud Motion (the “Renewed Crime-Fraud Reply (WW)”), ²⁶ as well as fifteen

²⁰ (Public Redacted WW Compel Resp., ECF No. 828.)

²¹ (Unsealed Public Copies WW Compel Resp. Exs. L–N, ECF Nos. 829–31.)

²² (See Pls.’ Consent Mot. Leave File Under Seal 1 [hereinafter “4th Mot. Seal”], ECF No. 833; *see also* Pls.’ Reply Br. Supp. Mot. Compel [hereinafter “Pls.’ Compel Reply”], ECF No. 835; Pls.’ Compel Reply Ex. 1, ECF No. 835.1.)

²³ (Public Redacted Pls.’ Compel Reply, ECF No. 837.)

²⁴ (See Defs.’ Resp. 4th Mot. Seal 2, ECF No. 838.)

²⁵ (Pls.’ Reply Resp. Br. Beth Vannoy Regarding Pls.’ Renewed Crime-Fraud Mot. [hereinafter “Pls.’ Crime-Fraud Reply (Vannoy)”], ECF No. 844.)

²⁶ (Pls.’ Reply Defs.’ Resp. Br. Regarding Pls.’ Renewed Crime-Fraud Mot. [hereinafter “Pls.’ Crime-Fraud Reply (WW)”], ECF No. 846.)

supporting exhibits²⁷ on 1 April 2022. In the accompanying Fifth Motion, Plaintiffs sought sealed treatment for their Renewed Crime-Fraud Reply (WW), Renewed Crime-Fraud Reply (Vannoy), and Exhibits B–K to the Renewed Crime-Fraud Reply (Vannoy).²⁸ WW filed its Brief in Support of Fifth Motion (the “Second Brief in Support”) on 12 April 2022.²⁹ The next day,³⁰ Plaintiffs filed a public unredacted version of their Renewed Crime-Fraud Reply (WW)³¹ and a public redacted version of their Renewed Crime-Fraud Reply (Vannoy).³² Plaintiffs also submitted proposed redactions to Exhibits B and C to the Renewed Crime-Fraud Reply (Vannoy) via email to the Court’s law clerks, copying all counsel of record, for *in camera* review.

8. The Court subsequently ordered additional briefing in relation to Plaintiffs’ Motion to Compel and directed WW to produce additional documents for the Court’s *in camera* review.³³ In compliance with the Court’s orders, Plaintiffs filed a Statement Regarding Privilege Claims for Vannoy Colvard Billing Records (the “First

²⁷ (Pls.’ Crime-Fraud Reply (Vannoy) Exs. A–L, ECF Nos. 844.1–.12; Pls.’ Crime-Fraud Reply (WW) Exs. A–C, ECF Nos. 846.2–.4.)

²⁸ (*See* Pls.’ Consent Mot. Leave File Under Seal 1–2 [hereinafter “5th Mot. Seal”], ECF No. 842.)

²⁹ (Defs.’ Br. Supp. 5th Mot. Seal [hereinafter “WW 2d Br. Supp.”], ECF No. 850.)

³⁰ Plaintiffs requested leave of the Court to extend the deadline for filing public redacted versions of the provisionally sealed documents to 13 April 2022, (*see* Consent Mot. Extension BCR 5.2(d) Deadline, ECF No. 851), and the Court granted the motion *nunc pro tunc*, (*see* Order Consent Mot. Extension BCR 5.2(d) Deadline, ECF No. 855).

³¹ (Public Pls.’ Crime-Fraud Reply (WW), ECF No. 854.)

³² (Public Redacted Pls.’ Crime-Fraud Reply (Vannoy), ECF No. 853.)

³³ (*See* Order *in Camera* Review and Further Review and Briefing, ECF No. 858; Order Am. Order *in Camera* Review and Further Review and Briefing, ECF No. 863.)

VC Statement”), an Index of Exhibits, and three supporting exhibits.³⁴ In the Sixth Motion, Plaintiffs moved to seal their First VC Statement and Exhibits A–B thereto.³⁵ On 11 July 2022, Plaintiffs timely filed a public unredacted version of Exhibit B and public redacted versions of their First VC Statement and Exhibit A.³⁶

9. On 8 July 2022, Plaintiffs filed the Seventh Motion, seeking sealed treatment for their Statement Regarding Vannoy Colvard Billing Records (the “Second VC Statement”) and the five exhibits thereto.³⁷ Plaintiffs submitted proposed redactions to Exhibit B via email to the Court’s law clerks, copying all counsel of record, on 15 July 2022 for the Court’s *in camera* review. That same day, WW filed its Brief in Support of Plaintiffs’ Seventh Motion (the “Third Brief in Support”).³⁸

10. WW filed a Motion to Allow *in Camera* Testimony Relating to Plaintiffs’ Renewed Crime-Fraud Motion (the “Motion for *Ex Parte* Testimony”) on 6 July

³⁴ (Pls.’ Statement Regarding Privilege Claims Vannoy Colvard Billing Rs. [hereinafter “Pls.’ 1st VC Statement”], ECF No. 888; Index Exs. Pls.’ 1st VC Statement, ECF No. 888.1; Pls.’ 1st VC Statement Exs. A–C, ECF Nos. 888.2–.4.)

³⁵ (See Pls.’ Consent Mot. Leave File Under Seal 1–2 [hereinafter “6th Mot. Seal”], ECF No. 886.)

³⁶ (See Public Redacted Pls.’ 1st VC Statement, ECF No. 894; Public Redacted Pls.’ 1st VC Statement Exs. A–B, ECF Nos. 894.1–.2.)

³⁷ (See Pls.’ Consent Mot. Leave File Under Seal 2 [hereinafter “7th Mot. Seal”], ECF No. 891; see also Pls.’ Statement Regarding Vannoy Colvard Billing Rs. [hereinafter “Pls.’ 2d VC Statement”], ECF No. 893; Pls.’ 2d VC Statement Exs. A–E, ECF Nos. 893.1–.5.)

³⁸ (Defs.’ Br. Supp. 7th Mot. Seal [hereinafter “WW 3d Br. Supp.”], ECF No. 898.)

2022.³⁹ Plaintiffs filed their Brief in Response to the Motion for *Ex Parte* Testimony (the “*Ex Parte* Response”),⁴⁰ which was filed provisionally under seal, along with the Eighth Motion⁴¹ on 26 July 2022. Fifteen days later, Plaintiffs filed a public redacted version of their *Ex Parte* Response.⁴²

11. In its reply to the Motion for *Ex Parte* Testimony, WW agreed to waive the attorney-client privilege with respect to some of the documents at issue in the Renewed Crime-Fraud Motion and the Motion to Compel,⁴³ and the Court subsequently entered a Scheduling Order to permit the parties an opportunity to file supplemental briefs regarding the effect of these newly produced documents on the Renewed Crime-Fraud Motion and Motion to Compel.⁴⁴ On 22 August 2022, Plaintiffs filed provisionally under seal their Brief Concerning Newly Produced Documents (the “Waiver Documents Brief”),⁴⁵ an Index of Exhibits,⁴⁶ and twenty-six exhibits⁴⁷ in compliance with the Court’s 10 August 2022 Scheduling Order. The

³⁹ (Defs.’ Mot. Allow *in Camera* Test. Relating to Pls.’ Renewed Crime-Fraud Mot. [hereinafter “WW Mot. *Ex Parte* Test.”], ECF No. 889.)

⁴⁰ (Pls.’ Br. Resp. WW Mot. *Ex Parte* Test. [hereinafter “Pls.’ *Ex Parte* Test. Resp.”], ECF No. 903.)

⁴¹ (Pls.’ Consent Mot. Leave File Under Seal [hereinafter “8th Mot. Seal”], ECF No. 901.)

⁴² (Public Redacted Pls.’ *Ex Parte* Test. Resp., ECF No. 908.)

⁴³ (Defs.’ Reply Supp. WW Mot. *Ex Parte* Test. 4, 11–13, ECF No. 905.)

⁴⁴ (Scheduling Order, ECF No. 907.)

⁴⁵ (Pls.’ Br. Concerning Newly Produced Docs. [hereinafter “Pls.’ Waiver Docs. Br.”], ECF No. 912.)

⁴⁶ (Index Exs. Pls.’ Waiver Docs. Br., ECF No. 912.1.)

⁴⁷ (Pls.’ Waiver Docs. Br. Exs. A1–A25, B, ECF Nos. 912.2–.27.)

Ninth Motion accompanied these filings.⁴⁸ WW filed its Brief in Support of Plaintiffs' Ninth Motion (the "Fourth Brief in Support") on 12 September 2022.⁴⁹ That same day, Plaintiffs filed public redacted versions of their Waiver Documents Brief⁵⁰ and Exhibits A1, A5, A14, A16, and B,⁵¹ and filed public unredacted versions of the Index of Exhibits and the other twenty-one exhibits.⁵²

12. On 6 September 2022, Plaintiffs filed the Tenth Motion, in which they sought sealed treatment for their Reply to 29 August 2022 Response Briefs of WW and the Vannoys Concerning Newly Produced Documents (the "Waiver Documents Reply").⁵³ Plaintiffs timely filed a public unredacted version of their Waiver Documents Reply on 16 September 2022.⁵⁴ Ten days later, WW agreed to unseal this document in its Response to Plaintiffs' Tenth Motion.⁵⁵

⁴⁸ (Pls.' Consent Mot. Leave File Under Seal [hereinafter "9th Mot. Seal"], ECF No. 910.)

⁴⁹ (WW Br. Supp. 9th Mot. Seal [hereinafter "WW 4th Br. Supp."], ECF No. 919.)

⁵⁰ (Redacted Pls.' Waiver Docs. Br., ECF No. 918.)

⁵¹ (Redacted Pls.' Waiver Docs. Br. Exs. A1, A5, A14, A16, B, ECF Nos. 918.2, .6, .15, .17, .27.)

⁵² (Redacted Pls.' Waiver Docs. Br. Index Exs., ECF No. 918.1; Redacted Pls.' Waiver Docs. Br. Exs. A2–A4, A6–A13, A15, A17–A25, ECF Nos. 918.3–.5, .7–.14, .16, .18–.26.)

⁵³ (See Pls.' Consent Mot. Leave File Under Seal 2 [hereinafter "10th Mot. Seal"], ECF No. 915; see also Pls.' Reply 8/29/22 Resp. Brs. WW and Vannoys Concerning Newly Produced Docs. [hereinafter "Pls.' Waiver Docs. Reply"], ECF No. 917.)

⁵⁴ (Public Version – Pls.' Waiver Docs. Reply, ECF No. 920.)

⁵⁵ (Defs.' Resp. 10th Mot. Seal 2, ECF No. 921.)

II.

LEGAL STANDARD

13. Documents filed in the courts of this State are “open to the inspection of the public[.]” except as prohibited by law. N.C.G.S. § 7A-109(a); *see Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463 (1999). Nevertheless, “a trial court may, in the proper circumstances, shield portions of court proceedings and records from the public[.]” *France v. France*, 209 N.C. App. 406, 413 (2011) (emphasis omitted) (quoting *Virmani*, 350 N.C. at 463). “The determination of whether [documents] should be filed under seal is within the discretion of the trial court.” *Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *4 (N.C. Super. Ct. Jan. 18, 2018).

14. Rule 5 of the North Carolina Business Court Rules (the “Business Court Rules” or “BCR”) governs the process for filing documents under seal in this Court and includes specific procedural instructions designed to ensure a proper balance between the interests of the litigants and the public.⁵⁶ When a motion to seal is filed by a party who is not the designating party, the designating party may file a supporting brief that provides the Court with additional information to determine whether sealing is warranted under BCR 5.2(b). *See* BCR 5.2(c); BCR 5.3 (2020). Until the Court can make this determination, the public can access either public

⁵⁶ The new codification of the Business Court Rules that went into effect on 1 July 2022 included substantial changes to BCR 5. The first five motions were filed pursuant to the 14 October 2020 codification; the second five motions were filed pursuant to the 1 July 2022 codification. This Order will therefore include a “(2020)” parenthetical when referencing the prior codification.

redacted versions or non-confidential descriptions of those documents. *See* BCR 5.2(f); BCR 5.2(d) (2020).

III.

ANALYSIS

15. WW, as the designating party, bears the burden of overcoming the presumption that court records should be open to the public. *See* BCR 5.1(c); BCR 5.1(b) (2020); *Preiss v. Wine & Design Franchise, LLC*, 2018 NCBC LEXIS 55, at *7 (N.C. Super. Ct. June 4, 2018).

16. As an initial matter, the Court notes that WW no longer seeks sealed treatment for the following provisionally sealed documents:

- a. Index of Exhibits and Exhibits 3–4, 8–11, 15, 17–18, 21, 27, 29–33, 39–40, 42, 46–47, 49–50, and 54 to Plaintiffs’ Renewed Crime-Fraud Brief;
- b. Index of Exhibits and Exhibits 9, 12, 15–18, 22–26, 36, 42–53, 55–57, and 63 to Plaintiffs’ Compel Brief;
- c. Exhibits L–N to WW’s Compel Response;
- d. Exhibit 1 to Plaintiffs’ Compel Reply;
- e. Plaintiffs’ Renewed Crime-Fraud Reply (WW);
- f. Exhibits D–K to Plaintiffs’ Renewed Crime-Fraud Reply (Vannoy);
- g. Exhibit B to Plaintiffs’ First VC Statement;
- h. Plaintiffs’ Second VC Statement and Exhibits C–E thereto;
- i. Index of Exhibits and Exhibits A2–A4, A6–A13, A15, and A17–A25 to Plaintiffs’ Waiver Documents Brief; and

j. Plaintiffs' Waiver Documents Reply.

The Court will therefore direct that these documents be unsealed below.⁵⁷

17. WW has grouped the documents for which it seeks sealed treatment into the following five categories: (i) documents it contends are protected by attorney-client privilege; (ii) documents it contends are protected by the work-product doctrine; (iii) documents it contends contain confidential and proprietary business information; (iv) documents it contends Plaintiffs filed by mistake; and (v) attorney billing records. There is a sixth category of documents for which WW has failed to provide the Court with a basis for sealing. The Court will address each category of documents in turn.

A. Attorney-Client Privilege

18. WW seeks to seal the entirety of Exhibits 19 and 38 to the Renewed Crime-Fraud Brief and Exhibits 5, 14, 58, and 62 to the Compel Brief on the basis of attorney-client privilege.⁵⁸ Each of these exhibits consists of various emails between Beth Vannoy ("Vannoy"), in-house counsel for WW, and WW executives, WW directors, and/or counsel involved in this litigation. Exhibit 19 to the Renewed Crime-Fraud Brief also includes a redline of a WW licensing agreement. WW additionally seeks to seal those portions of the Renewed Crime-Fraud Brief, Compel Brief, and the

⁵⁷ The Court notes that WW no longer seeks sealed treatment for a total of 95 filings in each of the two above-captioned matters. The Court reminds the parties that "[a] person who appears before the Court should strive to file documents that are open to public inspection and should file a motion to seal a document *only if necessary*." BCR 5.1(c) (emphasis added). The Court therefore expects the moving party to consult with the designating party *prior to* filing a motion to seal to ensure that only those documents for which a designating party seeks sealed treatment are properly subject to a motion to seal and provisionally sealed on the Court's e-docket.

⁵⁸ (See WW 1st Br. Supp. 3–6.)

Renewed Crime-Fraud Reply (Vannoy) that quote from or reference these six exhibits.

19. In its First Brief in Support, WW contends that these exhibits include “several documents that the Court [previously] ruled were privileged, but due to sanctions imposed on [WW], were ordered to be produced in part or in full to Plaintiffs.”⁵⁹ Indeed, the Court did determine that the following information was privileged in its August 2019 Order:

- a. the entirety of Exhibit 5 to the Compel Brief, which is identical to Sample Document 7 and part of which is included in Challenge Documents 46 and 87;
- b. the entirety of Exhibit 38 to the Renewed Crime-Fraud Brief and Exhibit 62 to the Compel Brief, which are included as part of Challenge Document 47;
- c. the entirety of Exhibit 58 to the Compel Brief and the email portion of Exhibit 19 to the Renewed Crime-Fraud Brief, which are identical to Challenge Document 87, included as part of Challenge Document 46, and partially included in Sample Document 7; and
- d. the 16 September 2014 7:54 AM email from Ritchie Taylor and the 16 September 2014 4:07 PM⁶⁰ email from Vannoy included in Exhibit 14 to

⁵⁹ (WW 1st Br. Supp. 4.)

⁶⁰ Both the Special Discovery Master’s Report and the Court’s 16 August 2019 Order and Opinion on Plaintiffs’ Privilege Motions, WW’s Motion to Strike, and Parties’ Rule 53(g) Exceptions to Special Master’s Report (the “August 2019 Order”) mistakenly refer to this

the Compel Brief, which are included as part of Challenge Document 246.⁶¹

20. WW argues that “[b]ecause these documents were determined to be privileged but were produced to Plaintiffs solely due to sanctions imposed on [WW] and not through a voluntary production or disclosure, the properties of privilege still apply to these documents; therefore, they should be sealed from the public.”⁶² The Court disagrees.

21. While it is true that “[t]he public’s interest in protecting the attorney-client privilege is no trivial consideration,” *In re Investigation of the Death of Miller*, 357 N.C. 316, 328 (2003), “[t]he attorney-client privilege can be waived[,]” *Blythe v. Bell*, 2012 NCBC LEXIS 44, at *21 (N.C. Super. Ct. July 26, 2012) (citations omitted). In the Court’s August 2019 Order, this Court concluded that “to the extent that the Challenged Claw-back Documents⁶³ are in fact privileged, . . . WW has *waived* any such claim of privilege or work-product immunity as to those documents.” *Window World of Baton Rouge, LLC*, 2019 NCBC LEXIS 54, at *35 (emphasis added). As

email as being sent at 4:08 PM rather than 4:07 PM. *Compare Window World of Baton Rouge, LLC v. Window World, Inc.*, 2019 NCBC LEXIS 54, at *141 (N.C. Super. Ct. Aug. 16, 2019), *and* (Special Disc. Master’s Report 18, ECF Nos. 681 (sealed), 684 (public)), *with* (Pls.’ Compel Br. Ex. 14, ECF No. 813.15).

⁶¹ See *Window World of Baton Rouge, LLC*, 2019 NCBC LEXIS 54, at *128, *131, *141; (Special Disc. Master’s Report 8, 10, 18, 22).

⁶² (WW 1st Br. Supp. 5–6.)

⁶³ The August 2019 Order defines “Challenged Claw-back Documents” as the “280 documents that were included in the 2018 Claw-back for which Plaintiffs challenge WW’s assertion of privilege” and includes the “Challenge Documents” referenced Paragraph 19 above. See *Window World of Baton Rouge, LLC*, 2019 NCBC LEXIS 54, at *16.

such, the properties of privilege *do not* apply to these exhibits or the portions thereof that were included in the Challenged Claw-back Documents.

22. Furthermore, the Court doubts whether those portions of Exhibit 5 to the Compel Brief that were not included in the Challenged Claw-back Documents do, in fact, contain privileged material. Although Plaintiffs have asked the Court to compel the production of this exhibit without redactions in the underlying Motion to Compel, the version for which WW is currently seeking sealed treatment is redacted. The portion of Exhibit 5 to the Compel Brief not included in either Challenge Document 46 or 87 merely consists of an email header and a box surrounding the words “Attorney Client Privilege.”⁶⁴ Thus, it appears to the Court that any potentially privileged information has been redacted.

23. The Court also notes that Exhibit 56 to the Renewed Crime-Fraud Brief, which has been publicly available since 31 January 2022, includes ten licensing agreements that contain almost identical language to that of the licensing agreement included in Exhibit 19 to the Renewed Crime-Fraud Brief.⁶⁵ Here again, the Court is skeptical that any part of the licensing agreement included in Exhibit 19 warrants sealing.

⁶⁴ (See Pls.’ Compel Br. Ex. 5, ECF No. 813.6.)

⁶⁵ (Compare Pls.’ Crime-Fraud Br. Exs. 56-11 to -13, -15 to -21, ECF No. 808.56, *with* Pls.’ Crime-Fraud Br. Ex. 19.)

24. With the exception of Exhibit 14 to the Compel Brief,⁶⁶ WW has provided the Court with no additional basis for sealing these six exhibits.⁶⁷ But rather than deny the Motions to Seal with respect to the remaining five exhibits and those portions of Plaintiffs’ briefs that quote from or reference the exhibits, the Court will give WW the opportunity to provide an alternative justification for sealing this information in the form of a supplemental brief. In doing so, however, the Court reminds WW that “[a] corporation very well may desire that the allegations lodged against it in the course of litigation be kept from public view to protect its corporate image, but the First Amendment right of access does not yield to such an interest.” *Doe v. Doe*, 263 N.C. App. 68, 91 (2018) (quoting *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014) (collecting cases to that effect)).

B. Work-Product Doctrine

25. WW next seeks to seal the entirety of Exhibits 27–34 to the Compel Brief and Exhibit B to the Second VC Statement, which consist of various privilege logs compiled by WW, as well as those portions of the Compel Brief, Compel Response, Compel Reply, Renewed Crime-Fraud Brief, and Renewed Crime-Fraud Reply (Vannoy) that reference or quote from these exhibits. WW argues that because the privilege logs were “made during the course of litigation and for the purpose of

⁶⁶ In its First Brief in Support, WW requests that the Court consider partial sealing of its confidential and proprietary business information contained in Exhibit 14 should the Court deny entire sealing on the basis of privilege. (See WW 1st Br. Supp. 13.) The Court will therefore consider whether partial sealing of this exhibit is warranted on that basis in section C below.

⁶⁷ (See WW 1st Br. Supp.)

litigation,” they therefore qualify for work-product protection and “should be sealed.”⁶⁸

26. Work-product immunity protects materials “prepared in anticipation of litigation” from discovery. *Sessions v. Sloane*, 248 N.C. App. 370, 383 (2016). However, “[b]ecause work product protection by its nature may hinder an investigation into the true facts, it should be narrowly construed consistent with its purpose, which is to *safeguard the lawyer’s work in developing his client’s case.*” *Evans v. United Servs. Auto. Ass’n*, 142 N.C. App. 18, 29 (2001) (cleaned up) (emphasis added). Privilege logs do not—and should not—serve this purpose.

27. Rule 26(b)(5) of the North Carolina Rules of Civil Procedure provides as follows:

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must (i) expressly make the claim and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, *without revealing information itself privileged or protected*, will enable other parties to assess the claim.

(emphasis added). By definition, the information included in a privilege log should contain only non-confidential and non-privileged descriptions of the document or thing withheld from discovery. Drafted correctly, nothing in a privilege log should warrant sealing.

28. One other factor weighs against sealing here. Although the parties have redacted the document descriptions used by WW in its privilege logs throughout the

⁶⁸ (WW 1st Br. Supp. 7; WW 3d Br. Supp. 3.)

parties' briefing on both the Renewed Crime-Fraud Motion and the Motion to Compel, the content of the quoted descriptions appears unredacted elsewhere in the briefs. For example, the Compel Brief includes the following unredacted quote from WW's supplemental responses to Plaintiffs' Sixth Set of Requests for Production and First Set of Requests for Admission:

[WW] began to actively consider a possible conversion to a franchise model for business reasons in or about May 2010 and relied on Beth Vannoy to gather and organize information for ultimate use by a franchise attorney to advise [WW] on such a conversion if the company decided to adopt a franchise model for business reasons.⁶⁹

Yet the privilege log descriptions "information needed by Ms. Vannoy" and "being prepared to help analyze possible franchise conversion" are redacted in the immediately preceding paragraph.⁷⁰ Similarly, the parties redact the privilege log descriptions "draft document" and "draft franchise disclosure document" throughout their briefing and yet devote large portions of their briefs to discussing the draft Franchise Disclosure Document (the "FDD") without redacting that phrase.⁷¹ Either this information is protected from disclosure or it is not, and the Court concludes it is not. The Court will therefore direct that Exhibits 27–34 to the Compel Brief and Exhibit B to the Second VC Statement, as well as those portions of the Compel Brief, Compel Response, Compel Reply, Renewed Crime-Fraud Brief, and Renewed Crime-Fraud Reply (Vannoy) that reference or quote from these exhibits, be unsealed below.

⁶⁹ (Pls.' Compel Br. 5 (quoting Pls.' Compel Br. Ex. 35 at 9, ECF No. 813.36).)

⁷⁰ (See Pls.' Compel Br. 4–5.)

⁷¹ (See, e.g., Pls.' Compel Br.; WW Compel Resp.; Pls.' Compel Reply.)

C. Confidential and Proprietary Business Information

29. The third category for which WW seeks sealed treatment is its alleged confidential and proprietary business information. Specifically, WW seeks to file the following documents under seal:

- a. those portions of a contract (the “Contract”) that reflect the amounts paid by WW to a former store owner for alleged consulting services;⁷²
- b. those portions of an executive severance agreement (the “Severance Agreement”) that discuss employee compensation and benefits;⁷³
- c. those portions of several WW emails⁷⁴ and various versions of WW’s FDD⁷⁵ that contain references to the “identification of suppliers, the rebates paid by suppliers, tiered pricing opportunities, advertising obligations, training for new store owners, and the identity of an outside training source[;]”⁷⁶
- d. the entirety of a prior version of WW’s corporate bylaws;⁷⁷ and

⁷² (Pls.’ Crime-Fraud Br. Ex. 20, ECF No. 808.20.)

⁷³ (Pls.’ Crime-Fraud Br. Ex. 28, ECF No. 808.28.)

⁷⁴ (Pls.’ Compel Br. Ex. 14; Pls.’ Waiver Docs. Br. Exs. A1, A5, A14, A16, ECF Nos. 912.2, .6, .15, .17.)

⁷⁵ (Pls.’ Compel Br. Exs. 19–21, 37–41, ECF Nos. 813.20–.22, .38–.42; Pls.’ Crime-Fraud Br. Exs. 12–14, 16, ECF Nos. 808.12–.14, .16; WW Compel Resp. Ex. Q, ECF No. 827.18; Pls.’ Crime-Fraud Reply (Vannoy) Exs. B–C, ECF Nos. 909.2–.3.)

⁷⁶ (WW 1st Br. Supp. 11; *see also* WW 2d Br. Supp. 5; WW 4th Br. Supp. 5.)

⁷⁷ (Pls.’ Crime-Fraud Br. Ex. 26, ECF No. 808.26.)

- e. those portions of the Compel Brief, Compel Response, Compel Reply, Renewed Crime-Fraud Brief, Renewed Crime-Fraud Reply (Vannoy), and Waiver Documents Brief that reference or quote from the aforementioned exhibits.

30. With regard to the Contract and Severance Agreement, WW first contends that sealing is necessary because “they are negotiated terms of executed contracts that contain confidentiality provisions[.]”⁷⁸

31. Although parties may agree to designate certain information as “confidential,” our Court of Appeals has emphasized that “freedom of contract must be balanced with the presumptive right of public access to court proceedings.” *Doe*, 263 N.C. App. at 96; *see also Taylor*, 2018 NCBC LEXIS 4, at *5 (“A court . . . is not bound by the parties’ designation of material as ‘confidential,’ even if the designation is made in accordance with a confidentiality agreement executed by the parties.”). While the parties’ designation of material as “confidential” is one factor the Court may consider when determining whether sealing is warranted, “the reason the court seals [documents] is not because the parties have agreed to keep them confidential but instead because their disclosure would cause serious harm to [the] parties[.]” *Bradshaw v. Maiden Cap. Opportunity Fund, LP*, 2020 NCBC LEXIS 42, at *10 (alterations in original) (quoting *Lovell v. Chesson*, 2019 NCBC LEXIS 76, at *5 (N.C. Super. Ct. Oct. 28, 2019)).

⁷⁸ (WW 1st Br. Supp. 14.)

32. Here, in addition to its agreement-based argument, WW contends that sealing the amount paid to the former store owner in the Contract is necessary because “disclosure would give any independent contractor seeking to work with [WW] a competitive advantage, and work to [WW’s] disadvantage, in negotiating an amount for services.”⁷⁹ WW also argues that sealing the compensation and benefits terms of the Severance Agreement is appropriate because filing this information publicly would “give competitors an advantage by disclosing confidential information on the internal process and terms under which [WW] employed a top executive of the company and on which it ended the employment relationship[,]” which, in turn, could hinder WW’s ability to “end[] other top executive relationships on favorable terms” and “negotiat[e] favorable employment terms for hiring a new executive.”⁸⁰

33. “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*, 263 N.C. App. at 91–92 (quoting *Co. Doe*, 749 F.3d at 269). Internal business operations and employee compensation are included within the categories that North Carolina courts have treated as confidential and proprietary trade secrets that may warrant protection. *See, e.g., Sunbelt Rentals, Inc., v. Head & Engquist Equip., L.L.C.*, 174 N.C. App. 49, 55–56 (2005) (holding that “customer information, preferred customer pricing, employees’ salaries, equipment rates, fleet mix information, budget information and structure of

⁷⁹ (WW 1st Br. Supp. 14.)

⁸⁰ (WW 1st Br. Supp. 15.)

the business” may constitute trade secrets); *Perry v. Frigi-Temp Frigeration, Inc.*, 2020 NCBC LEXIS 48, at *8 (N.C. Super. Ct. 2020) (holding that internal operations, acquisition and growth strategies, financial information, customer identities, and employee salary and profit incentives may constitute trade secrets).

34. The Court concludes that these concerns are applicable here and will therefore order that the Contract and Severance Agreement remain under seal below. Rather than file public redacted versions of the Contract and Severance Agreement, WW provided the Court with its proposed redactions of those documents via email for the Court’s *in camera* review. The Court finds that WW’s proposed redactions are appropriately limited and will direct WW to file public redacted versions of the Contract and Severance Agreement, consistent with the versions provided to the Court, below.

35. WW next seeks to seal those portions of several WW emails and various versions of the FDD that contain references to the “identification of suppliers, the rebates paid by suppliers, tiered pricing opportunities, advertising obligations, training for new store owners, and the identity of an outside training source[.]”⁸¹ Through the affidavit of Charles F. Bauer, WW’s corporate counsel, WW argues that this information should be sealed because disclosure could “provide [WW’s] competitors non-public information from which competitors can undermine [WW’s] ability to negotiate prices with suppliers and undermine the ability of [WW] stores to

⁸¹ (WW 1st Br. Supp. 11; *see also* WW 2d Br. Supp. 5; WW 4th Br. Supp. 5.)

market and sell [WW] products to their customers.”⁸² WW further contends that public access to this information could “provide a significant and valuable contribution to an attack plan for a competitor of [WW] or to a blueprint/business plan for a would-be new competitor of [WW].”⁸³

36. Our courts have treated pricing and internal business operations and strategies as confidential and proprietary trade secrets that may warrant protection. *See Bradshaw*, 2020 NCBC LEXIS 42, at *11–12 (collecting cases). In addition, the Court is satisfied that the proposed redactions to these exhibits, submitted to the Court via email for *in camera* review, are “as limited as practicable” as required by BCR 5. *See* BCR 5.2(f); BCR 5.2(d) (2020). As such, the Court will seal the twenty exhibits described in Paragraph 29(c) above and will direct WW to file public redacted versions of these exhibits, consistent with the versions provided to the Court via email, below.

37. With regard to WW’s bylaws, however, WW has not met its burden of overcoming the presumption that court documents should be open to the public. The only justification WW provides for sealing this document is that the “bylaws are kept confidential[;] . . . they reveal WW’s internal governance, processes, and procedures[;]” and “the current version is substantially the same.”⁸⁴

⁸² (WW 1st Br. Supp. Ex. B ¶ 7 [hereinafter “Bauer Aff.”], ECF No. 823.3.)

⁸³ (Bauer Aff. ¶ 16(g).)

⁸⁴ (WW 1st Br. Supp. 17.)

38. Even taking those assertions as true, “[s]ome showing of harm is essential[]” to justify sealing a document. *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *5 (N.C. Super. Ct. June 10, 2020). “Not all business information is truly sensitive Companies . . . keep a great deal of private information that would cause little or no harm if disclosed. . . . It is the party’s burden, not the Court’s, to show which is which.” *Id.* Rather than deny the First Motion to Seal with respect to this exhibit, however, the Court will give WW an opportunity to provide additional justification for sealing in a supplemental brief.

D. Mistake

39. WW next seeks to seal Exhibits 6–8 to the Compel Brief, which are various iterations of a chart produced by Manning, Fulton & Skinner, P.A., outside counsel for WW. Although WW initially withheld these documents on work-product grounds, the parties agree that WW relinquished its work-product claims for the exhibits and subsequently produced them in redacted form.⁸⁵

40. In light of this production, WW argues that these documents “are not the subject of a current dispute, should not have been filed with the Court, are entirely extraneous, and should remain sealed on the [C]ourt’s docket.”⁸⁶ Plaintiffs, however, contend that “WW’s remaining privilege claims in the referenced documents remain

⁸⁵ (See WW 1st Br. Supp. 18; Pls.’ Statement 2; Pls.’ Compel Br. 22.)

⁸⁶ (WW 1st Br. Supp. 18.)

in dispute[]” and, therefore, “were properly filed with the Court and are not extraneous to Plaintiffs’ pending [M]otion to [C]ompel.”⁸⁷

41. Even if Plaintiffs filed the exhibits by mistake as WW contends (and Plaintiffs dispute), that fact alone does not provide the Court with a basis for sealing these documents. “[T]he 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[,]” *Addison Whitney, LLC*, 2020 NCBC LEXIS 74, at *4, and WW, as the designating party, has failed to show how “their disclosure would cause serious harm to [the] parties[,]” *Bradshaw*, 2020 NCBC LEXIS 42, at *10 (alteration in original) (quoting *Lovell*, 2019 NCBC LEXIS 76, at *5).

42. Nevertheless, the Court will permit WW to provide additional justification for sealing Exhibits 6–8 to the Compel Brief as part of the supplemental briefing discussed above.

E. Attorney Billing Records

43. WW next seeks to seal the entirety of the “descriptive billing narratives” included in the attorney billing records for legal work performed by Vannoy, Colvard, Triplett, & Vannoy, P.L.L.C. (“Vannoy Colvard”) for WW that were included as Exhibit A to Plaintiffs’ Second VC Statement and Exhibit B to Plaintiffs’ Waiver Documents Brief.⁸⁸ Alternatively, WW requests sealing the following three categories of “sensitive business and/or personal information”: “[i] entries reflecting

⁸⁷ (Pls.’ Statement 2.)

⁸⁸ (See WW 3d Br. Supp. 4; WW 4th Br. Supp. 7.)

consummation of a confidential settlement between [WW] and third parties or other confidential agreements with third parties, [(ii)] entries reflecting sensitive governance matters[,] or [(iii)] entries reflecting sensitive personal matters for individuals associated with [WW].”⁸⁹ WW argues that because “disclosure of billing records in the public domain is far from normal practice[,]” sealing the descriptions of the work performed by Vannoy Colvard is appropriate because “[a]ttorney billing records reflect many dimensions of the attorney[-]client relationship and can also reflect sensitive and confidential matters.”⁹⁰

44. Although the Court does not agree that entire sealing of the billing narrative descriptions is warranted, the Court nevertheless concludes that sealing the entries that fall into the three categories identified by WW above is appropriate. None of these categories of information is relevant to the Court’s resolution of the underlying motions. Moreover, “records [that] would divulge confidential information regarding legal advice . . . constitute privileged communications and, as such, should not be disclosed.” *Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999); *see also Agio Int’l Co. v. Zhejiang Longda Force Co.*, No. 1:15-cv-00192-MR, 2019 U.S. Dist. LEXIS 61301, at *3–4 (W.D.N.C. Apr. 10, 2019) (sealing attorney billing records appropriate when plaintiff demonstrated documents may reveal confidential and privileged information); *Custom Dynamics, Inc. v. Goracoff*, No. 5:17-cv-00506-FL, 2019 U.S. Dist. LEXIS 9090, at *2 (E.D.N.C. Jan. 18, 2019) (same).

⁸⁹ (WW 3d Br. Supp. 5; WW 4th Br. Supp. 8–9.)

⁹⁰ (WW 3d Br. Supp. 4; WW 4th Br. Supp. 7.)

F. Lack of Supporting Brief

45. WW lastly seeks sealed treatment for Plaintiffs' First VC Statement and Exhibit A thereto⁹¹ as well as Plaintiffs' *Ex Parte* Response.⁹² However, Plaintiffs did not articulate the "circumstances that warrant sealing" in either the Sixth or Eighth Motions, BCR 5.2(b)(2), and WW failed to file a brief in support of sealing any of these documents, *see* BCR 5.2(c).

46. "A person who seeks to have a document sealed bears the burden of establishing the need for sealing the document." BCR 5.1(c); *see also PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020). When the moving party is not the designating party, the latter may "file a brief in support of . . . the motion no later than twenty days after having been served with the motion." BCR 5.2(c).

47. Rather than deny the Sixth and Eighth Motions, however, the Court will permit WW to set out the circumstances that warrant sealing these documents in the supplemental briefing referenced above.

IV.

CONCLUSION

48. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

⁹¹ (*See* 6th Mot. Seal 1–2.)

⁹² (*See* 8th Mot. Seal 2.)

a. The Court **GRANTS in part** the Motions to Seal as follows:

(1) The Court hereby **ORDERS** that the following documents shall remain under seal pending further order of the Court:

- (a) Plaintiffs' Renewed Crime-Fraud Brief, (ECF No. 808), and Exhibits 12–14, 16, 20, and 28 thereto, (ECF Nos. 808.12–.14, .16, .20, .28);
- (b) Plaintiffs' Compel Brief, (ECF No. 813), and Exhibits 14, 19–21, and 37–41 thereto, (ECF Nos. 813.15, .20–.22, .38–.42);
- (c) WW's Compel Response, (ECF No. 827), and Exhibit Q thereto, (ECF No. 827.18);
- (d) Plaintiffs' Compel Reply, (ECF No. 835);
- (e) Plaintiffs' Renewed Crime-Fraud Reply (Vannoy), (ECF No. 844), and Exhibits B and C thereto, (ECF Nos. 844.2–.3);
- (f) Exhibit A to Plaintiffs' Second VC Statement, (ECF No. 893.1);
and
- (g) Plaintiffs' Waiver Documents Brief, (ECF No. 912), and Exhibits A1, A5, A14, A16, and B thereto, (ECF Nos. 912.2, .6, .15, .17, .27).

(2) The Court hereby **ORDERS** that WW shall have through and including 2 December 2022 to file public, redacted versions, consistent with the proposed redactions provided to the Court for *in camera* review, of the following documents:

- (a) Exhibits 12–14, 16, 20, and 28 to Plaintiffs’ Renewed Crime-Fraud Brief;
- (b) Exhibits 14, 19–21, and 37–41 to Plaintiffs’ Compel Brief;
- (c) Exhibit Q to WW’s Compel Response;
- (d) Exhibits B and C to Plaintiffs’ Renewed Crime-Fraud Reply (Vannoy);
- (e) Exhibit A to Plaintiffs’ Second VC Statement; and
- (f) Plaintiffs’ Waiver Documents Brief and Exhibits A1, A5, A14, A16, and B thereto.

b. The Court **DENIES as moot** the Motions to Seal as to the following documents and hereby **ORDERS** that the Wilkes County Clerk of Superior Court shall unseal these documents within five days of the entry of this Order:

- (1) Index of Exhibits, (ECF No.809), and Exhibits 3–4, 8–11, 15, 17–18, 21, 27, 29–33, 39–40, 42, 46–47, 49–50, and 54 to Plaintiffs’ Renewed Crime-Fraud Brief, (ECF Nos. 808.3–.4, .8–.11, .15, .17–.18, .21, .27, .29–.33, .39–.40, .42, .46–.47, .49–.50, .54);
- (2) Index of Exhibits, (ECF No. 813.1), and Exhibits 9, 12, 15–18, 22–26, 36, 42–53, 55–57, and 63 to Plaintiffs’ Compel Brief, (ECF Nos. 813.10, .13, .16–.19, .23–.27, .37, .43–.54, .56–.58, .64);
- (3) Exhibits L–N to WW’s Compel Response, (ECF Nos. 827.13–.15);
- (4) Exhibit 1 to Plaintiffs’ Compel Reply, (ECF No. 835.1);

- (5) Plaintiffs' Renewed Crime-Fraud Reply (WW), (ECF No. 846);
 - (6) Exhibits D–K to Plaintiffs' Renewed Crime-Fraud Reply (Vannoy), (ECF Nos. 844.4–.11);
 - (7) Exhibit B to Plaintiffs' First VC Statement, (ECF No. 888.3);
 - (8) Plaintiffs' Second VC Statement and Exhibits C–E thereto, (ECF Nos. 893, 893.3–.5);
 - (9) Index of Exhibits, (ECF No. 912.1), and Exhibits A2–A4, A6–A13, A15, and A17–A25 to Plaintiffs' Waiver Documents Brief, (ECF Nos. 912.3–.5, .7–.14, .16, .18–.26); and
 - (10) Plaintiffs' Waiver Documents Reply, (ECF No. 917).
- c. The Court **DENIES in part** the Motions to Seal as follows:
- (1) The Court **DENIES** the Motions to Seal with respect to the following documents and hereby **ORDERS** that the Wilkes County Clerk of Superior Court shall unseal these documents within five days of the entry of this Order:
 - (a) Exhibits 27–34 to Plaintiffs' Compel Brief, (ECF Nos. 813.28–.35); and
 - (b) Exhibit B to Plaintiffs' Second VC Statement, (ECF No. 893.2).
 - (2) The Court **DENIES** the Motions to Seal with respect to those portions of the following documents that quote from or reference the documents listed in Paragraph 48(c)(1) above:
 - (a) Plaintiffs' Renewed Crime-Fraud Brief, (ECF No. 808);

- (b) Plaintiffs' Compel Brief, (ECF No. 813);
- (c) WW's Compel Response, (ECF No. 827);
- (d) Plaintiffs' Compel Reply, (ECF No. 835); and
- (e) Plaintiffs' Renewed Crime-Fraud Reply (Vannoy), (ECF No. 844).

(3) The Court hereby **ORDERS** that the documents listed in Paragraph 48(c)(2) above shall nevertheless remain under seal pending further order of the Court.

d. The Court **DEFERS** ruling on the Motions to Seal as to the following documents and hereby **ORDERS** that they shall remain under seal pending further order of the Court:

- (1) Plaintiffs' Renewed Crime-Fraud Brief, (ECF No. 808), and Exhibits 19, 26, and 38 thereto, (ECF Nos. 808.19, .26, .38);
- (2) Plaintiffs' Compel Brief, (ECF No. 813), and Exhibits 5–8, 58, and 62 thereto, (ECF Nos. 813.6–.9, .59, .63);
- (3) Plaintiffs' Renewed Crime-Fraud Reply (Vannoy), (ECF No. 844);
- (4) Plaintiffs' First VC Statement, (ECF No. 888), and Exhibit A thereto, (ECF No. 888.2); and
- (5) Plaintiffs' *Ex Parte* Response, (ECF No. 903).

e. The Court hereby **ORDERS** that WW shall have through and including 2 December 2022 to submit for *in camera* review via email to the Court's

law clerks proposed more limited redactions, consistent with the Court's rulings above, of the following documents:

- (1) Plaintiffs' Renewed Crime-Fraud Brief, (ECF No. 808), and, if appropriate, Exhibits 19, 26, and 38 thereto, (ECF Nos. 808.19, .26, .38);
 - (2) Plaintiffs' Compel Brief, (ECF No. 813), and, if appropriate, Exhibits 5–8, 58, and 62 thereto, (ECF Nos. 813.6–.9, .59, .63);
 - (3) WW's Compel Response, (ECF No. 827);
 - (4) Plaintiffs' Compel Reply, (ECF No. 835);
 - (5) Plaintiffs' Renewed Crime-Fraud Reply (Vannoy), (ECF No. 844);
 - (6) Plaintiffs' First VC Statement, (ECF No. 888), and Exhibit A thereto, (ECF No. 888.2); and
 - (7) Plaintiffs' *Ex Parte* Response, (ECF No. 903).
- f. WW shall have through and including 2 December 2022 to file a supplemental brief in support of the Motions to Seal with respect to those documents listed in Paragraph 48(d). Any such supplemental brief shall comply with the procedural requirements of BCRs 5 and 7. Should any of the provisionally sealed documents listed in Paragraph 48(d) not be the subject of a timely filed supplemental brief, such documents shall be unsealed and made a part of the public record.

SO ORDERED, this the 28th day of November, 2022.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge